STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Marion County

Honorable Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM BRUCE CLARK, JR.

APPELLANT

APPELLATE CASE NO 2020-000385

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)	**IN THE COURT OF GENERAL SESSIONS**
COUNTY OF MARION)	**19-GS-33-00291**
STATE OF SOUTH CAROLINA,)	
Plaintiff,)	**Transcript of Record**
vs.)	
)	February 18-21, 2020
WILLIAM BRUCE CLARK, JR.)	
Defendant.)	

B E F O R E:

Honorable Thomas A. Russo
Marion County Courthouse
Marion, South Carolina

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

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Circuit Court Reporter

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FEBRUARY 18, 2020 - DAY ONE OF FOUR

(On the Record - 12:17 P.M.)

VOIR DIRE:

THE COURT: Thank you, folks, please have a seat. All right. We recognize the state to call the first case for trial.

MR. RICHARDSON: Thank you, Your Honor, we call indictment 2019-GS-33-291, State versus William Bruce Clark, Jr.

THE COURT: Thank you, sir. Ladies and gentlemen, you've heard that the state has called the first case for trial, case 2019-GS-33-291, that's the State of South Carolina versus William Bruce Clark, Jr. Before I go over these allegations contained in this charging document or this indictment, let me first explain to you, that -- that is what an indictment is. It is just a document that contains the allegations or the charges that the state has made against the individual. It is not, in any sense, evidence in this case and the allegations contained in this document are not evidence of guilt. They are simply the allegations that the state has made against, in this case, Mr. William Bruce Clark, Jr.

To these allegations, or to these charges, Mr. Clark has pled not guilty. That plea of not guilty places upon him the presumption of innocence and it places upon the state, the burden of proof. In this country, in all criminal cases tried

in this court, a defendant is presumed innocent of the charge or charges that they face and it is the state's burden to prove a defendant's guilt beyond a reasonable doubt.

But I'm gonna, for purposes of asking you some questions, I am gonna go over with you the allegations that are contained here in this indictment against Mr. Clark, so that I may ask you some questions regarding these matters and your ability to serve as a juror.

In this indictment, there's a -- there's four charges, there's four counts contained in this indictment. Count one is the allegation of criminal sexual conduct with a minor in the first degree. And the allegations are that William Bruce Clark, Jr., did in Marion County, State of South Carolina, between the dates of April the 1st of 2014 and July the 1st of 2015, willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the first degree by engaging in sexual battery with a manner who is less than 11 years of age, to wit, a minor female, whose date of birth is [redacted]2007, in violation of Section 16-3-655(A)(1) of the South Carolina Code of Laws, 1976, as amended.

Count two is a second charge of criminal sexual conduct with a minor in the first degree, and that allegation is that William Bruce Clark, Jr. did in Marion County, State of South Carolina, between the dates of April the 1st of 2014 and July the 1st of 2015, willfully and unlawfully commit the crime of

criminal sexual conduct with a minor in the first degree by engaging in a sexual battery with a minor, who was less than 11 years of age, to wit, a minor female, whose birth date is [redacted]06, 2006, in violation of Section 16-3-655(A)(1) of the South Carolina Code of Laws, 1976, as amended.

Count three, ladies and gentlemen, that is a count for criminal sexual conduct with a minor in the first degree. And the allegations of that charge are that William Bruce Clark, Jr. did in Marion County, State of South Carolina -- I don't know how to cut this thing off, folks, I apologize. I got it turned off. In that allegation, count three, criminal sexual conduct with a minor in the first degree, that William Bruce Clark did in Marion County, State of South Carolina, between the dates of July the 1st of 2015 and June the 24th of 2017, willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the first degree, by engaging in a sexual battery with a minor, who is less than 11 years of age, to wit, a minor female, whose date of birth is [redacted]06 in violation of Section 16-3-655(A)(1) of the South Carolina Code of Laws, 1976, as amended.

And count four charges Mr. Clark with the offense of criminal sexual conduct with a minor in the second degree. That allegation is that William Bruce Clark, Jr., did in Marion County, State of South Carolina, between the dates of June the 25th of 2017 and November the 28th of 2017, did

willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the second degree by engaging in a sexual battery with a minor, who was between the ages of 11 years of age and 14 years of age, to wit, a minor female whose date of birth is [redacted]06, in violation of Section 16-3-655(B) of the South Carolina Code of Laws, 1976, as amended.

These four charges are the charges or the allegations that the state has made against Mr. Clark. To these charges, as I indicated, Mr. Clark has pled not guilty and that places upon him the presumption of innocence and, upon the state, the burden of proof.

Now, based on what I have shared with you, is there any member of the jury panel, who knows anything about this case or who has read anything about this case or knows anything more than what I just shared with you about this case? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

I am gonna ask the attorneys to stand and to introduce themselves, if you'd listen carefully. And we'll begin with the state.

Mr. Richardson?

MR. RICHARDSON: Thank you, Your Honor. Good afternoon, folks. I'm David Richardson and I'm a prosecutor with the Solicitor's Office of the 12th Judicial Circuit, which is

Marion and Florence County. I work with the elected solicitor, who is Ed Clements, who is seated here in front of me. And sitting with me in this case will be Jamie Scruggs, who is also a prosecutor in this office.

THE COURT: Thank you, sir. Ladies and gentlemen, is there any member of the jury panel who is related by blood, connected by marriage, or who has any close business or personal relationship with, or who has ever been represented or prosecuted by either Mr. Richardson, or Mr. Scruggs, or Solicitor Clements? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you, there are none.

Mr. Brooker?

MR. BROOKER: Thank you, Your Honor.

Good morning, ladies and gentlemen, my name is Thurmond Brooker. I'm an attorney from Florence, South Carolina.

THE COURT: All right. And, Mr. Brooker, while you've got the floor, let me get you to introduce your client to the jury, please.

MR. BROOKER: Yes, thank you, Your Honor. And seated next to me, ladies and gentlemen, is -- if you'll stand up, William -- is William Bruce Clark.

THE COURT: All right. Thank you very much.

Thank you, Mr. Clark, you may have a seat, sir.

Folks, is there any member of the jury panel who is

related by blood, connected by marriage, or who has any close business or personal relationship with or who has ever been represented by Mr. Brooker? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel, who is related by blood, connected by marriage, or who has any close business or personal relationship with Mr. William Bruce Clark, Jr.? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Now, ladies and gentlemen, I have some names that I'm gonna call out. These are folks who are possible or potential witnesses. These are people who may or may not appear during the course of this trial and testify. The question that I ask you, for example, as it related to Mr. Clark, remember I said are you related by blood, connected by marriage, or have any close business or personal relationship. That's the question that I'm gonna be asking as it relates to these individuals whose names I'm gonna call out. If I call out a name and that question applies to you in this -- and the person whose name I call, go ahead and stand, but if you would, continue to listen because I have several names that I'm gonna call out and it may be that you know more than one of these folks that are listed here. As I said, these are possible or potential

witnesses that may appear during the course of this trial: Derrick Sentell Smith; Robert Christopher Smith; Elizabeth Morphis; Robin Griggs; Meg Temple; Kelly Clark; W.C. ; Minor 1 ; Minor 2 ; Angie Bolten. Any members of the jury panel related by blood, connected by marriage, or have any close business or personal relationship with any of those folks? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: All right. Thank you, folks, there are none.

Now, I have some questions I'm gonna ask, if you'd listen carefully. And again, I'm not, in asking these questions, I'm not in any way trying to make anyone uncomfortable or embarrass anyone. It's just that I have to ask these questions.

Is there any member of the jury panel who has been the victim of a sexual assault or battery or an attempted sexual assault or battery? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel who has had a minor or a child in your family who has been the victim of a sexual assault and battery or an attempted sexual assault or battery? If so, please stand.

All right. Ma'am, your name, please?

JUROR 17: Jeanne Brown.

THE COURT: I'm gonna start back and then I'll work my way up. Okay? And this is Ms. Brown?

CLERK: 17.

THE COURT: Okay. Juror Number 17. Ms. Brown, you've had a minor or a child member of your family who has been the victim of a sexual assault?

JUROR 17: Seven-year-old granddaughter.

THE COURT: All right. And, Ms. Brown, the fact that you've had that experience, would that in any way affect your ability to give both the state and the defense a fair and impartial trial?

JUROR 17: Yes, sir.

THE COURT: Okay. Well, Ms. Brown, I'm gonna excuse you from this case. I'm gonna get you to remain with us, because it may be that we could use you on a different type of case. But, but I will excuse you so that as I go through these additional questions, if any of them apply to you, you don't need to stand, because I'm just gonna excuse you. Okay?

JUROR 17: All right.

THE COURT: Thank you, ma'am.

Ma'am, your name, please?

JUROR 53: Heather Derr.

CLERK: 53.

THE COURT: 53?

CLERK: Yes, sir.

THE COURT: Ms. Derr, you've had a member of your family a child or member of your family?

JUROR 53: My daughter.

THE COURT: All right. And, ma'am, the fact that you have had that experience, would that in any way affect your ability to give both the state and the defense a fair trial?

JUROR 53: Yes.

THE COURT: All right. Ms. Derr, I'm gonna do the same with you. I'm gonna excuse you from participation in this case. I ask that you remain with us. It may be that there may be another case that we could use you on, but I'll excuse you from participation in this matter. Okay?

JUROR 53: Okay.

THE COURT: Thank you, ma'am.

All right. Is there any member of the jury panel, who has been diagnosed or treated for depression, anxiety, or any other mental or emotional disorder, who is not currently being compliant with their treatment? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel, who is the parent, grandparent, brother, sister, or caregiver of a female child who is age 16 or younger, and due to the fact that that is your either child, grandchild, brother, sister, or you're the caregiver of that person, would that affect your ability to

give both the state and the defense a fair and impartial trial; if your ability to do so would be affected by the fact that you are the parent, grandparent, brother, sister, or caregiver of a female age 16 or younger, if that would affect your ability to give both the state and the defense a fair trial, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel or member of your family or close circle of friends who has ever been the victim of a violent crime or sex crime, including but not limited to either murder, assault and battery, criminal sexual conduct, or other assault and battery or other similar violent crime? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

In this -- this case, or these allegations that I've given to you, obviously, involve an allegation of criminal sexual conduct with someone under the age of 16 years of age. Is there any member of the jury panel who believes you could not give both the state and the defense a fair and impartial trial because of the nature of these allegations? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel who holds the belief that a witness is more or less credible because of their age? If so, please stand.

Thank you. There are none.

Is there any member of the jury panel who holds the belief that a witness, who is a law enforcement officer, is more credible simply because that person is a law enforcement officer? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel or member of your family or close circle of friends who is a supporter or a member of any organization that advocates for the protection or welfare of children or women? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Is there any member of the jury panel or member of your family or close circle of friends, who is a member or supporter of any organization that advocates against violence? If so, please stand.

(REPORTER'S NOTE: No response.)

THE COURT: Thank you. There are none.

Ladies and gentlemen, I've asked you several questions and, if you'll notice, for those of you who have stood to respond to my questions, my follow-up question is always would

that in any way affect your ability to give both the state and the defense a fair and impartial trial. Hopefully, the reason for that is obvious. Anytime we select a jury in this court, whether it be a criminal case or civil case, what our hope is is that we can empanel a group of 12 folks, who will listen to the evidence presented and listen -- anything outside this court, set that aside, and decide this case based solely upon the evidence that is presented during the course of this trial, giving the state and the defense a fair and impartial trial. That is our goal. That's our purpose anytime we select a jury, again, whether it's for a criminal case or a civil case.

So, maybe the thing -- the best thing to do is simply ask this. Whether I have asked the question or not, is there any member of the jury panel who has any reason to believe that you would not be able to give both the state and the defense a fair and impartial trial? If so, please stand.

Thank you. There are none.

Are there any additional questions or voir dire from the state?

MR. RICHARDSON: No, Your Honor.

THE COURT: Anything additional from the defense?

MR. BROOKER: No, sir, Your Honor.

JURY SELECTION:

THE COURT: All right. Ladies and gentlemen, let me

explain how we go about selecting juries in General Sessions Court. Madam Clerk has a computer and she's got a program on this computer. What it does, is it takes this list of jurors -- now your names appear on this list pretty much in alphabetical order. Well, it takes this list and it completely and randomly reorders the list. For example, if I was Tommy Russo, Juror Number 134 on this list, I may show up as Tommy Russo, Juror 14 on this new list. There's no rhyme or reason for it; it just takes your names and it reshuffles them and it puts them on a new list. She's gonna do that with her computer and print out that new list and then she's gonna start at the top of that new list, and she'll call the first name that appears. If your name is called, I would ask that you stand and then -- and just stand there. She will then ask first of the state words to this affect, what say you for the state. The state has two options. And, if they can either excuse you and if they excuse you, you'll just have a seat; or they can present you. If they present you, you'll just remain standing. She will then look to the defense and ask of the defense words to this affect, what say you for the defense. The defense has two options. They can either excuse you and, if they do, you'll just have a seat; or they can seat you and if they seat you, then you'll come around and you'll have a seat over here in the jury box. All right?

So, we're gonna go through that process until we've

selected our panel. If your name is called and you are selected to be on the jury, please bring with you any personal belongings that you brought to court because after you come over here and have a seat, you won't be returning to your seat out there. Okay?

So, Madam Clerk, you ready to ---

CLERK: Yes, sir.

THE COURT: All right. Is the state ready to proceed to jury selection?

MR. RICHARDSON: Yes, sir.

THE COURT: Defense ready?

MR. BROOKER: Yes, sir, Your Honor.

THE COURT: All right. Madam Clerk?

CLERK: I'm gonna be calling by the juror number.

Juror Number 156, Karen Edwards, formerly known as Karen Townsend.

What say the state?

MR. RICHARDSON: Please excuse the juror for the purpose of this case.

CLERK: Thank you, Ms. Edwards.

Juror Number 55, Alan Dozier.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Mr. Dozier, if you'll come up front, please.
Juror Number 31, Kimela Collins.
What say the state?
MR. RICHARDSON: Please present the juror.
CLERK: What say the defense?
MR. BROOKER: Court's indulgence for just a second.
THE COURT: Yes, sir.
MR. BROOKER: Present the juror.
CLERK: Ms. Collins, you may come up front, please.
Juror Number 2, Vanessa Arnold.
What say the state?
MR. RICHARDSON: Please present the juror.
CLERK: What say the defense?
MR. BROOKER: Present the juror.
CLERK: Ms. Arnold, can you come up front, please.
Juror Number 160, Codey Walters.
What say the state?
MR. RICHARDSON: Please present the juror.
CLERK: What say the defense?
MR. BROOKER: I'm sorry, what's the juror number?
CLERK: 160.
MR. BROOKER: 160. Please excuse this juror from this trial.
CLERK: Thank you, Mr. Walters, you can take a seat.
Juror Number 59, Karen Eaddy.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Ms. Eaddy, you can take a seat. Thank you.

Juror Number 119, Antonio McElroy.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Mr. McElroy, you can take a seat. Thank you.

Juror 141, Laura Schweitzer.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Thank you, Ms. Schweitzer.

Juror Number 43, Crystal Davis.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Thank you.

Juror 165, Terry White.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Mr. White, you can come up front, please.

Juror 48, Shawana Davis.

What say the state?

MR. RICHARDSON: Please excuse the juror.

MR. BROOKER: What number was that?

CLERK: 48.

Thank you, Ms. Davis, you may have a seat.

Juror Number 128, Teresa Moore.

What say the State?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: I apologize to the Court, Your Honor, for taking so long.

THE COURT: That's all right.

MR. BROOKER: Please excuse this juror.

CLERK: Ms. Moore?

THE COURT: I think he said excuse her.

CLERK: Sir?

THE COURT: Yeah. Mr. Brooker, didn't you say excuse this juror?

MR. BROOKER: I believe I ---

THE COURT: Oh, you didn't say it; I'm sorry.

MR. BROOKER: I believe so.

CLERK: You did?

MR. BROOKER: Yes.

CLERK: Thank you, Mr. Brooker.

MR. BROOKER: I'm sorry.

CLERK: Ms. Moore, you can take a seat. Thank you.

Juror Number 144, Teresa Shaw.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Ms. Shaw, thank you.

Juror 169, Phillip Williams.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Mr. Williams, if you'd come up front, please.

Juror Number 72, Lyria Gerald.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Ms. Gerald, if you'd come up front, please.

Juror Number 101, Alicia Keith.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Ms. Keith, you may take a seat.

Juror number 110, Shayla Lyles.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Ms. Lyles, if you'll come up front, please.

Juror Number 13, Freddie Brock.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Present the juror.

CLERK: Mr. Brock, if you'll come up front, please.

Juror Number 139, Stephanie Rogers.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Ms. Rogers, if you'll come up front, please.

Juror Number 70, Debra Gerald.

What say the state?

MR. RICHARDSON: Please excuse this juror.

CLERK: Thank you, Ms. Gerald, you can take a seat.

Juror Number 164, Greg White.

What say the state?

MR. RICHARDSON: Please excuse the juror.

CLERK: Thank you, Mr. White.

Juror Number 86, Ladasha Holton.

MR. BROOKER: 86?

CLERK: Yes, sir.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse this juror.

CLERK: Thank you, Ms. Holton, you can take a seat.

Juror Number 7, Danielle Boatwright.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: May we approach, Your Honor?

THE COURT: Yes, sir.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. Ms. Boatwright, can I get you to come up here for a minute. I just need to ask you something?

(REPORTER'S NOTE: Bench conference is held on the record in

the presence of but outside the hearing of the jury.)

THE COURT: Am I correct that you work at Anderson Brothers Bank?

JUROR 7: I do.

THE COURT: Okay. Do you know -- do you work with a girl by the name of -- and this is gonna be pretty broad but -- by the name of Kim?

JUROR 7: I work with Kim Odom.

THE COURT: Okay. Yeah. Do you know if she is any way related to this defendant?

JUROR 7: I have no idea at all.

THE COURT: Okay. If she is related to him, would that in any way affect your ability to be fair and impartial? Had you rather stay out of it?

JUROR 7: I had rather stay out of it.

THE COURT: Okay. I get that. All right.

I'm gonna excuse Ms. Boatwright.

Just have a seat.

JUROR 7: Okay.

(REPORTER'S NOTE: End of bench conference.)

THE COURT: All right. I'm gonna excuse Ms. Boatwright from participation in this matter.

CLERK: Juror Number 154, Deborah Thompson.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: I'm sorry, what's that number again?

CLERK: 154.

MR. BROOKER: 154?

CLERK: Yes, sir.

MR. BROOKER: Please present the juror.

CLERK: Ms. Thompson, if you'll come up front, please.

Juror Number 152, Brian Terry.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please present the juror.

CLERK: Mr. Terry, if you'll come up front, please.

Juror Number 9, Kenyatta Braddy.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Please excuse the juror.

CLERK: Thank you.

Juror Number 29, Maurice Chew.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

THE COURT: They're out of strikes.

MR. BROOKER: Present the juror.

THE COURT: All right.

CLERK: Mr. Chew, if you'll come up.

THE COURT: All right. We're gonna do two alternates; it will be one and two on each.

CLERK: Juror Number 5, James Bedell.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Present the juror.

CLERK: Mr. Bedell, if you'll come up front, please.

Juror Number 167, Amy Williams.

What say the state?

MR. RICHARDSON: Please present the juror.

CLERK: What say the defense?

MR. BROOKER: Present the juror.

THE COURT: Ms. Williams, if you'll come up front, please.

THE COURT: All right. Are there any motions regarding jury selection from the state?

MR. RICHARDSON: None from the state, Your Honor.

THE COURT: Anything from the defense?

MR. BROOKER: None from the defense, Your Honor.

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, those of you who remain in the panel, I'm gonna -- I'm gonna excuse you

for the afternoon. You have a card that has a phone number on it. If you would please call that number after 6 o'clock this evening and just follow the instructions that you'll get when you call that number.

Now, please make sure you put that number where you can get your hands on it and then put it, whether it be on your refrigerator or on your phone or somewhere, put a reminder to call that number after 6 o'clock. We've had folks that have not called the number and that's gonna tell you whether or not you have to be back tomorrow or whether or not you have to come back at all or whether or not you need to call back. And if you don't call that number and you don't get the instructions, you're not gonna know what to do and, if the instruction is to be here in the morning and you don't show up, they're gonna send a deputy to your workplace or your home in an effort to find you and, depending on your thoughts and feelings, that can be a little embarrassing. So, in any case, please make sure you call that number after 6 o'clock this evening and then follow whatever instructions you get on that recording. Okay?

So, if everyone else will remain seated, I'm gonna ask the members of the panel to be excused.

(REPORTER'S NOTE: Remaining jury venire excused.)

THE COURT: And, ladies and gentlemen, I'm gonna excuse you in just a moment to go to lunch. I need you to come back,

but it's -- it'll be about 1:20 by the time I give you the instructions I need to give you, so I would ask if you would to be back here at 2:45. Okay?

So, now, you are the folks that are gonna hear this case. So, it's very important that you do everything within your power to protect and to maintain your ability to be fair and impartial. So, it's important that you do not talk about this case with anyone, do not allow anyone to talk to you. I tell juries all the time, just when you have a break and you're not here at the courthouse, just try to let your minds rest and go into neutral and don't worry about this -- this matter until you get back here.

Now, when you return, you'll come back and when you come back, come straight up to the courtroom and there will be somebody to escort you back here into the jury room.

Now, when you come back and you reconvene in the jury room, please, and this is very important, have no conversation about this case. Okay? Sometimes jurors will look at me a little odd like well, you know, I thought we were supposed to deliberate, we're supposed to talk about it. Well, you're not allowed to and you're not supposed to until the time is right and that won't be until all of the evidence is in. So, it's important that until that time, you have no conversation with anybody, even amongst yourselves. You come back and introduce yourselves to each other and get to know each other, that's --

talk all you want to about anything in the world, just don't talk about this case. Okay?

So, I would ask that everyone in the courtroom please remain seated. And ladies and gentlemen, I'm gonna ask you to please be back here ready to go at 2:45. Okay?

So, y'all remain seated while the members of the jury are excused.

(REPORTER'S NOTE: Jury exits courtroom @ 1:19 P.M. The following takes place outside the presence of the jury.)

THE COURT: All right. Let's go ahead and take up that motion that Mr. Brooker has.

MOTIONS:

MR. BROOKER: Just a second. Thank you, Your Honor. Your Honor, at this time, the defense makes a motion to strike the -- the indictments, specifically Count 1, Count 2, Count 3 of the indictments, along with Count 4 of indictments. And that motion is based upon two specific reasons. The first reason is that we'd argue to the Court that the indictment is overbroad, which means that it does not provide sufficient specificity to the defendant in a way which it would allow him to be able to defend himself against the charges and also it would avail him of all of the defenses that are normally available to someone in his position.

Specifically, Your Honor, Count 1 of the indictment, and I'm not reading the indictments in its entirety, of course

Count 1 alleges criminal sexual conduct with a minor in the first degree, and of course it alleges that -- that the CSC first degree took place between April 1, 2014 and July 1, 2015. And it goes on to simply quote the language in the statute and says willfully and unlawfully commit the crime of criminal sexual conduct with a minor in the first degree by engaging in a sexual battery with a minor who is less than 11 years old. So, on Count 1 of the indictment, I think, this a 15 year to 15 month or one year and three-month timespan.

Count 2 of the indictment, Your Honor, is almost identical in which it also alleges a timeframe between April 1, 2014 to July 1, 2015. And the, of course, alleges the statutory language for the offense with no factual allegations. And of course, Count 2 is also a 13-month timespan.

Count 3, Your Honor, alleges CSC with a minor first degree between July 1, 2015 and June 24, 2017 with the statutory language which is a 23-month, I think, timespan. And I think the last indictment, Your Honor, or last count, Your Honor, was 4, and that's CSC with a minor, second degree between July 25, 2017 and November 28, 2017, roughly a five-- month timespan.

And we're moving to squash the indictment, Your Honor, on the ground that it's overbroad, and of course is, is that, you know, this argument primarily comes from the precedent that

was established by *State v. Baker*. And if we could pause for one second, Your Honor, my screen just went dark. But of course is, is that Your Honor, I think -- if you could indulge me for just a second, Your Honor?

THE COURT: Yes, sir.

MR. BROOKER: Your Honor, and I think in *State v. Baker*, and of course is, -- I won't read this case word for word, I know Your Honor has it before you. I think *State v. Baker* dealt with whether or not the indictment was insufficient to these -- the first one was that whether or not the indictment was insufficient because notice, proper notice, was not given to the defendant because of the amount of time in which the indictment was presented to defendant. That's not the case here. We're not alleging like in *Baker*, where the indictment was given to the defendant, I think two weeks before the actual trial. And of course, the Court says is that that's insufficient time.

The other issue in which the Court in *Baker* found that the indictment was insufficient was based upon this over graphic issue. And of course, the incident in that case, I think, it was an indictment that originally alleged or alleged that criminal sexual conduct with a minor had occurred, I think, over the course of -- over the course of three years. Of course, it was specifically narrowed down to the summer of 2002, the summer of 2003, and the summer 2004. So, that

indictment alleges that the defendant in that case committed CSC, the original indictment in the summer of those two years, which is roughly around about three months. And of course is, that that indictment was amended or either a superseding indictment was obtained and of course that superseding indictment alleged a time period of over six years. And of course is, that reports that -- in Baker indicates that that time period was too broad. And, and I think what's important in Baker, at least what I took from Baker is, is that the rationale as to why that indictment was over broad -- and I think even -- even though it was six months, is is that the Court goes on, and I think in Baker talk about -- at least indicate that one significant defense that is available to a defendant on this specifically, probably the most important defense and, of course is, that the only complete defense in a case in which we're talking about CSC is alibi. And of course is, is that the Court basically says in Baker is, is that when you are -- how you create the exception that is that under -- under many circumstances is created in CSC cases and most of the time just in CSC cases. But of course is that it's -- I think it's becoming, you know, I think the exception or at least the -- the, you know, the timespan is really, really has become, I think, expansive in CSC cases. What the Court says is that when you accept this kind of broad timespan, then one of the things that you -- and I think in which the defendant

has a constitutional right to, and that is that of the defense of self-defense. And that is that when you allege the -- that this CSC conduct occurred over 13 months, over 13 months, or in this case 15 months, that it occurred sometime within this 15 month span. And of course is, is that one of the things I always do with my defendants, if I can, when there is a specific date that's alleged or even if it's close to a specific date, if it's a weekend or even down to a week, then one of the things I'm able to do is take my client and say, well, let's go back and look at that week, or let's go back and look at that day and to see whether or not we can develop a timeline as to where you are and to see whether or not there are potential alibi witnesses that will be available to you. And of course, in every conversation, in every case in which there is a specific date alleged, as I'm able to do that. In CSC cases, it's one of the only cases in which defendants are provided with that constitutional -- that constitutional defense of alibi.

And of course -- and of course is, so that the *Baker* case makes that clear. And I think the *Baker* case, I think, went on to say, and I'll read this verbatim, it says due to the expansive timeframe and lack of specificity as to this timeframe, we can only conclude *Baker* was prejudiced by the defects in the indictment. Although, we recognize that the difficulty the prosecutor faces in identifying exact dates in

child sexual abuse cases. The classic criminal case, and this is important, should not translate into an exception that operates to circumvent constitutional and statutory principles.

So, they recognize, the *Baker* Court recognized that it is difficult. It is difficult. And this is a South Carolina Supreme Court case that to my understanding is it has not been overturned. It says it is difficult when dealing with a minor child to try to identify specific dates. But of course, when dealing with the constitution and statutory principles, it says that that constitution and those statutory principles, you know, cannot give weight to the difficult that the prosecutor might face in getting this time span. And of course is, that sometimes the prosecutor can't narrow it down to a specific date, but of course is if they can narrow it down like they did in *Baker*, at least underneath the original indictment or they said well, it occurred in the summer. Well, three months is still a difficult time to try to cover. But of course is, is that when you're talking 15 months and you're talking about 24 months, it is impossible for him to -- to try to develop a defense of alibi. There's no way that he can cover that period of time. And, an alibi has to be a -- an alibi, in order for an alibi to be available to him, is that he has to cover every inch of time in which the allegations have alleged to have occurred. So, he would have

to, underneath this indictment, he would have to account for every place he was 24 hours a day, seven days a week for 15 months in order to develop a complete alibi. It is impossible. It is impossible. So, alibi is no longer available to him. It is no longer available and any other defendant under the similar circumstances where the government says it occurred within a 15-month timespan or it occurred within a 24-month timespan. It is impossible. And as a constitutional, I think -- well, that's a constitutional and statutory, I think, defense that was available to him, that is robbed of him simply because of the type of case. And I think the Court says correctly, we are sensitive to what type of cases they are -- these are, we're sensitive to the fact that we're dealing with children, but still you know the constitution and, of course, our statutory principles can only bend so far.

And of course is, that it goes on to say -- and I'm almost finished, Your Honor -- it says accordingly, we hold that the trial judge erred in refusing to squash [sic] the indictment as the -- as the non-specific six-year-old period covered in the indictment was unconstitutional and overbroad because it lacked the -- excuse me, Your Honor -- specificity as to when the alleged acts occurred. It is axiomatic that an indictment must include more than the elements of the charged offense. And of course is, that I have also looked at other

cases that basically says that traditionally, that if, if -- if the date of which any -- the date of which a crime occurs, basically as -- is not an element of the offense or may not be relevant to the offense charged. And of course is, is that under those circumstances -- and of course is, the Court says you may be able to -- to, to overlook it, that's what previous courts have said, I think before *Baker*. But of course is is that the reason why it's -- in CSC cases, is that it's so important is is that usually in CSC cases, just like in this one, when dealing with an allegation that has occurred years ago, we're dealing with an allegation, and because it did occur years in the past, there is no forensic evidence, there was no other independent evidence in which we can rely on, the Court may rely on or the jury may rely on. This whole case is based upon the allegations that are made from the alleged victim, unsubstantiated. And because of that, that's why -- that's why at least in these sorts of cases, the alibi defense becomes so important. If it was a situation in which there was hair, or there was -- there was bodily fluids, or there was video, and there's other type of evidence in which you can rely on, but there's not. In these cases is is that the only defense that's really a complete defense is available and it is alibi. And that defense is taken away from him. He cannot stand before a jury and says I wasn't there when she said it happened, because he doesn't know when it happened. He can't

even say, well, that weekend that she says it happened, I was in Chicago on that weekend or I was out of town -- I was out of town because I was -- I did construction work and my construction work took me out of town. That is not available to him. Even the week is not available to him, the month is not available to him, the year is not available to him, even though he couldn't account for it. And that's what the importance of *Baker* is, is that -- and I understand it's difficult for them, but of course is, I think like the Court says and the Supreme Court says in *Baker* is that just because it's difficult, it doesn't mean that we have to -- we can relax our constitutional -- our constitutional requirements and the court's statutory principles. They have to do a better job in trying to narrow this down. Otherwise is is that with Mr. Clark and all other defendants is is that we cannot conceivably defend against it effectively unless we know when it happens.

THE COURT: All right.

MR. BROOKER: Thank you, Your Honor.

THE COURT: Mr. Richardson?

MR. RICHARDSON: Thank you, Judge. The *Baker* case is kind of an extreme situation. I guess the age-old saying in the law where bad facts make bad law, this was something that should not have happened. On the front end the way that this case, the *Baker* case took place where the indictment was

submitted two weeks prior to trial and covered a blanket six-year frame of time.

The *Baker* case does not serve to overturn any prior case law with respect to these issues. I think there's like a *State v. Williams* back in '91 that upheld a two-year timeframe. And, subsequently, Mr. Brooker and I tried a case back, I think, in 2016, after this case came out. We had an argument with respect to this case in that one similar, almost identical circumstances, and -- and to my knowledge, that one has not been overturned based on the *Baker* argument.

What we have in this case and many other cases like this, this isn't a situation where the child alleges that, you know, in two-year frame of time this happened to me once, and they can't narrow it down. This is a situation where there's prolonged -- allegations of prolonged and prolific abuse. Wherein these actions are alleged to have happened many times within these windows. So, what we would be left with if ours -- if a child reported, you know, this happened to me, you know, somewhere between 10 and 15 times while we lived at X house, you know, I have to choose between putting 15 counts of the same thing on the indictment for the same window of time or just doing one count to cover it. Because it's, you know, in my thought, you're gonna believe one or you're gonna believe all; you know, you either believe it or you don't. But I think there's case law out there upholding timeframes

that are greater than what exist in this indictment, and these kind of cases would be impossible to try if you have to be that specific as to dates and times when these occurred. I mean, I could -- I could go ahead and nolle pros about a third of my file drawer if, if this indictment is not sufficient, because that's just the nature of these cases.

And I think that would be the gist of my argument.

THE COURT: All right.

MR. BROOKER: If I could do a brief reply, Your Honor?

THE COURT: Yes, sir.

MR. BROOKER: And I'll be very brief.

Your Honor, I would disagree with -- with the -- respectfully disagree with what Mr. Richardson says when he says that these cases would be impossible to, to address if you, you know, if you didn't allow the court to apply this broad finding. And the reason why, Your Honor, is that the reason why that these cases have these broad time periods is not because it's not -- not because it's impossible to narrow it, it's just that the work is not being done to narrow it down.

For instance is, Your Honor, is that a simple question like saying, well, was the weather warm or cold? And of course, if the child says, well, the weather was -- it was a cold -- it was cold during that period of time. Was it before Christmas or after Christmas? You know, all of these tools

can be used to at least if you cannot narrow it down to an exact date, you can narrow it down maybe to an exact season. And of course is, is that because the more and more you can narrow down, at least, the more and more chance it gives us to be able to look at a smaller period of time. Now, although three months is a difficult period of time to assess, but it's much easier to examine a three-month period of time than it is to examine, you know, 15 months or even 24 months. It's not because it's impossible; it's because he is is that unfortunately -- and like I said is and I hate to say this is, but unfortunately is, is that what normally happens in these CSC cases is is that the children make some allegation and then of course is that, you know, the government goes straight for the arrest warrants and of course stop the prosecution, instead of sitting down and having detailed sessions, long sessions, to try and figure out the dates. When I read the forensic interview, of course, Your Honor, we can make the forensic interview of both of these children a court exhibit for the purposes of this motion. And of course, if you read the forensic interview, there is no attempt in the forensic interview to narrow down the period of time. There is no asking what was the weather warm or was it cold; was it before Christmas or after Christmas; did it happen before your birthday or after your birthday. There is plenty of ways in which you can narrow this down as much as possible, but that

work has not been done and the reason why that work has not been done is is that because it has been taken for granted that there's an exception that's created for CSC cases. There is an exception that's created for them, and that is that you can allege a broad period of time, and of course is, that it's always gonna be upheld.

So, the question then becomes is is that whether or not there was a way to narrow this down. Absolutely, yes, it's just that the work was not done. And once you put in the work and ask the child all of those appropriate questions and try to narrow this down as much as you can, then of course is, and I think they come in alleging good faith that we have narrowed this down as much as we can; this is it. The most that we can narrow this down to is is that -- is to, you know, is the four months, you know. What grade were you in at the time of that? Were you in school or not in school? If the child says ---

THE COURT: You're getting repetitive now. We've done that.

MR. BROOKER: I know. I know. Well, the child says well, it happened ---

THE COURT: You tell me something new or end your argument.

MR. BROOKER: I'll end my argument, Your Honor, in just a minute. But -- and of course is, that I think that something else could've been said, another grounds in which the, the,

the indictment was insufficient to this is is that, also, I think at the end it says is is that -- that -- and of course, I think the *Baker* court is probably setting a, you know, a standard that might be, you know, that might be exclusive to CSC cases. What the Court says is that it's axiomatic that the indictment must include more than just the elements of the charge. Which means is is that I think that what the court is saying is that you have to allege exactly what the conduct was. In the indictment you have to allege that it was CSC because on this date of time, you know, dad took his hands and of course is, is that and whatever the allegation is. And sometimes even factual allegations can serve to at least provide some more specific information. But of course is is that, again, I think this indictment fails in that way as well, too. It doesn't allege any specific facts. It's just alleged that -- alleged that the child was underage and the elements of CSC. It says a sexual battery took place, nothing more, but not saying what that sexual battery was or whether or not it was -- I'm trying not to be explicit, but of course is is that specifically whether or not the sexual battery was anal, whether or not it was vaginal, whether or not it was -- it was -- it was penis to vaginal penetration or whether it was -- it was digital penetration. No specific evidence whatsoever.

And for those reasons, Your Honor, is is that we're

asking the Court to consider squashing [sic] the indictments on that basis, Your Honor.

THE COURT: Anything further?

MR. RICHARDSON: One correction, I said the '91 case was *State v. Williams* earlier, it's actually *State v. Wade* and I will put that that cite on at 306 S.C. 79.

With respect to the last argument Mr. Brooker made about the language where it's axiomatic and the indictment must include more than the elements the charged offense, I think that's in the context of the discussion with respect to time is how I interpret that paragraph and I just wanted to put that on the record.

THE COURT: All right. I'm gonna look at these things over the lunch break and I'll let you know when we get back my answer. Okay?

MR. RICHARDSON: Thank you, Your Honor.

THE COURT: Or my ruling.

MR. BROOKER: Just that I think -- these are just a couple of minutes. The only other ones is that we ask that the -- that the witnesses be sequestered?

THE COURT: Oh, yeah.

MR. BROOKER: I don't know if there was anything about that, but of course is, I'll do one -- I'm not gonna make an argument about this is that -- the other motion that I want to make -- and of course, I did the motion, and of course is,

that's the use of the word victim. And of course is, that we ask that the children not be referred to as a victim, and the reason why is, is that because it is that this is an allegation versus -- a allegation -- it's not like a murder case in which you know you've got a victim because someone is dead, you just don't know who did it. But here, there's an issue as to whether or not the -- whether or not the sexual conduct occurred. Of course, I think the Court is telling the jury that these young girls are the victim and the Court is maybe not intentionally, but in minds of the jury, maybe inferring to the jury that the Court believes that these events did took place. And of course is that they called the, you know, the accusers. And I would suggest is that they've made the allegations but, of course, it's left to the jury to decide whether or not the events took place.

Thank you, Your Honor.

MR. RICHARDSON: With respect to the sequestration request, the mother of the children is the legal guardian, and I think, you know, the children are the complainants in the case and, of course, they would be allowed, if they wanted to be ---

THE COURT: Yeah.

MR. RICHARDSON: And I think the mother being their legal guardian, you know, would be allowed.

THE COURT: Yeah.

MR. RICHARDSON: And also the investigator in the case.

THE COURT: The lead investigator.

MR. RICHARDSON: Other than that, no problem.

THE COURT: Okay.

MR. RICHARDSON: And I'll try to use the word complainant. I've had to do that in a case -- or accuser.

THE COURT: Or accuser, yeah.

MR. RICHARDSON: I had to do that in a case last month and I've gotten pretty good at that.

THE COURT: Okay. All right.

All right. We'll -- then we'll then reconvene at 2:45 and I'll have my decision on the motion.

MR. BROOKER: Thank you, Your Honor.

RECESS - 1:50 P.M.

*******OFF THE RECORD*******

(On the Record - 3:16 P.M.)

BY THE COURT:

THE COURT: Thank you, folks, please have a seat.

I've reviewed all the information. I reviewed and looked at some case law and, although I would like for the Court to have given us a little bit more guidance regarding time and things of that nature, after reviewing everything in this matter, I'm gonna respectfully deny your motion to quash the indictment. The -- the timeframes, it does mention that the allegation is committing a sexual assault on the minors and it

lists their dates of birth. The timeframe, in reading the cases that I've read, does not seem to be outside that timeframe of reasonableness, and the court does say that it is a reasonable person standard, it's an objective standard, it is not a subjective standard. And there are cases that would support the timeframe here. As well as, and, you know, when I'm looking at -- at an indictment and just making the determination as to whether to quash the indictment, I also take into consideration the fact that there's been discovery, there's Rule 5, there's *Brady*. There doesn't seem to be any allegations that Mr. Clark would not in any way be able to establish his defense. Mr. Richardson indicates that this is allegations of ongoing conduct with, I believe, family members. So, this is not a stranger or a distant third party. I just think, after reading what I've read and hearing arguments in this matter, I'm gonna respectfully deny the motion to quash and will not your exception to that, Mr. Brooker.

The witnesses will need to be sequestered. Those that are outside of the ones that we discussed earlier.

MR. RICHARDSON: Yes, sir, Your Honor. In the courtroom now is the mother of the complainants.

THE COURT: Correct. Okay.

MR. RICHARDSON: And some folks that are sitting out there who are not on the witness list and would not be called;

they're support.

THE COURT: Okay.

MR. RICHARDSON: I did want to put on the record, too -- Mr. Brooker and I talked about this a little bit ago -- the final plea offer that was made. I just want to put that out there. It was an *Alford* plea to one count of criminal sexual conduct with a minor in the third degree under the 0-15 year statute straight up, and I was advised that that offer was declined. I just wanted to, in case down the road it ever comes up about what the plea offer was, I just wanted to put it out on the record.

THE COURT: Okay. Mr. Brooker, would you concur with what Mr. Richardson shared that that offer was in fact made and rejected?

MR. BROOKER: Yes, Your Honor, that offer was made. I discussed that with Mr. Clark and, of course, Mr. Clark declined that offer, and I expressed that to Mr. Richardson.

THE COURT: Sure. Okay. All right. And that certainly is his right, and so we'll proceed then.

Also, with regards to Mr. Brooker's motion regarding referring to the accusers as victims, I think, Mr. Richardson, you are agreeing will do whatever -- all within your power to avoid that?

MR. RICHARDSON: Yes, sir; that's fine.

THE COURT: Okay. All right. And I know this might not

be as easy, which -- and I don't know, hopefully, your witnesses can comply with that as well?

MR. RICHARDSON: Yes, sir, I'll ---

THE COURT: We'll -- Mr. Brooker will certainly keep us on our toes as far as if that occurs or not. We'll remind him of that. Okay?

All right. Anything else we need to take up before we bring the jury out?

MR. RICHARDSON: Not from the state, Your Honor.

THE COURT: Anything from the defense?

MR. BROOKER: No, sir.

THE COURT: All right. Let's bring the jury out, please.

(REPORTER'S NOTE: Jury enters courtroom @ 3:24 P.M.)

THE COURT: All right. Ladies and gentlemen, before we get started, let me share a few things with you, if I may, just kind of administratively.

We will try to do what we can to make it comfortable in here for you. It's not easy to do when you got a lot of folks, because some folks are gonna be too cold, some folks are gonna be too hot, and so we're gonna try to keep it as comfortable as we can. But if anyone is just terribly uncomfortable, you know, just let me know and we'll see what we can do about that.

The other thing I wanted to mention to you is this. It's very important throughout the course of this trial that

you see and hear everything that goes on. So, if at any time during the course of this trial, any of the witnesses or any of the attorneys or the Court, if we speak to softly or we don't speak clearly and you don't understand something or you didn't hear something, please, let me know. We can always get somebody to repeat what it is they -- they said or testified to, but it's very important that you hear and see everything that goes on during the course of trial.

Also, from time to time, we'll take breaks during the trial. But those breaks and we'll -- I'll try to be aware of how long we're here and whether or not we need to take a break, but it doesn't always flow that efficiently and evenly. There's really no delicate way to say this, but as we all know, there are times when Mother Nature calls and we have to answer the call and it may not be during one of our scheduled breaks. Please, if you need to take a break, anybody, any one person, you need to take a break, get my attention or get the bailiff's attention, let me know, we'll take a break. We can always pick up where we left off. I would much rather take a break and let you have that break and then come back and pick up where we left off, because sometimes there's a witness on the stand, you might think well, you know what, I'll wait until that witness is done and then I'll let the judge know. Well, the witness may be lengthy and the next thing you know, you're thinking more about, oh my God, how long is this person

gonna go rather than what they're actually testifying about. So, that's very important. So, please, don't hesitate; we can take -- we can take as many breaks as you need to take and we'll do that.

Now, before I -- I'm gonna address you with some opening remarks, but before I do that, I'm gonna ask you if you would give your attention to Madam Clerk, she's gonna place you under your oath for your role as jurors in this case.

CLERK: Ladies and gentlemen, if you'll please stand and raise your right hand.

(REPORTER'S NOTE: Jury is duly sworn.)

THE COURT: Folks, we're about to begin the trial of the State of South Carolina versus William Bruce Clark, Jr. Now, I don't know if any of you have served on a jury or served as a juror in an actual trial before or not. Most people don't have the opportunity to do what you're doing here this week. Most peoples' experience regarding jury trials is what they've seen on television, read in books, or seen in the movies. We all know how those trials go. They're full of high action, they're intense situations, because that's Hollywood's way to try to entertain us. Now, during the course of this trial, any one of those things could occur, but what's important to keep in mind at all times, is that this trial is not for your entertainment. This trial is a fundamental part of our democracy and unlike T.V., movies and books. This trial may

be slow, it may be fast, it may be very deliberate, it may be repetitive. In other words, more than likely, it will be very different from what you expect from T.V., books, or movies.

This is a courtroom that is a place of honor, that is dedicated to the protection and to the preservation of citizens' rights through what many have called the greatest justice system ever created. The attorneys that appear before you, they are advocates for the parties that they represent. But first and foremost, they are officers of the Court, sworn to uphold the integrity and the fairness of our judicial system. You should expect them to be professional, competent, and ethical in the performance of their duties.

Now, you have just taken an oath to try this case and to reach a fair and a just verdict. You are also expected to be professional, reasonable, and ethical in the performance of your duties. I have absolutely no doubt you will do just that. And I want to thank you now for your participation in our system of justice here in Marion County.

I'm gonna share a few things with you that basically serve as an introduction to the trial. This is not a charge on the law. I will give you the law at the close of the evidence. But I want to share a few things with you so that you can better follow along with what's going on as we go through this trial.

The defendant in this case is charged by the indictment

that I read to you earlier today and that has been filed with this court, and he's charged with three counts of criminal sexual conduct with a minor in the first degree and one count of criminal sexual conduct with a minor in the second degree. The elements of those charges or those crimes, I will give you and explain to you later when I give you the charge on the law.

But I want to share with you right now is this indictment that I read to you earlier. It is the charge which brings this case into court. It is not, in any sense, evidence of any of the allegations that it contains. To these allegations, to this indictment, Mr. Clark has pled not guilty, and the state, therefore, has the burden of proving each of the elements of this indictment beyond a reasonable doubt. It's gonna be your duty, ladies and gentlemen, to decide whether or not the state has met that burden.

Your purpose as jurors is to find and determine the facts. You are the sole judges of the facts in this case. If at any time I make any comment about the evidence that's presented or any of the facts, you must disregard those comments, because only you, the jury, are allowed to decide what the evidence shows and what the facts are of this case. You are to determine those facts from the testimony that you hear from witnesses who are placed under oath and testify, as well as any of items that may come in during the course of the

trial. It is up to you to determine what inferences, which you feel, may be properly drawn from the evidence. It is especially important that you perform your duty of determining the facts diligently and conscientiously because, ordinarily, there's no way that this Court can correct an erroneous determination of facts by a jury.

Now on the other hand, but with equal emphasis, the same law that makes you the judges of the facts makes me the judge of law. The law, as given to you by the Court, is the only law that you may consider. You must accept it, and you must follow it, even though you may disagree with it. I'm not allowed to tell you what I think about the facts of this case, and you're not allowed to disagree with me about what the law is or what you think the law should be. Your job is to take the law as I give it to you and apply it to the facts as you find the facts from the testimony and the evidence presented during the course of this trial.

It is very important, ladies and gentlemen, throughout this trial, that you keep an open mind and that you do not decide any issue in this case until all of the evidence has been presented, the attorneys have had an opportunity to share with you their closing arguments and I've given you the law. Only then would it be appropriate for you to begin your deliberations in deciding this case. It is your solemn responsibility to determine the guilt or innocence of the

defendant and your verdict must be based solely upon the evidence as it is presented to you during the course of this trial.

Now, in just a moment, I'm gonna recognize Mr. Richardson on behalf of the state. He will make what we refer to as an opening statement. I don't know what he'll share with you but, typically, what you'll hear in an opening statement is he more than likely will explain to you what the issues of this case are or at least what he believes the issues are. Once he's concluded his opening remarks, I'll then recognize Mr. Brooker on behalf of the defense. He is also permitted to make an opening statement if he chooses to, although he's not required to.

What is important for you to understand, ladies and gentlemen, is this, what the attorneys tell you in their opening statements, what they tell you or speak to you is not evidence. They are not under oath; they're not testifying. But, what it is is their contention as to what they believe the issues or the evidence will show. The evidence in this case will be presented to you by witnesses who are placed under oath and take the witness stand as well as any exhibits which come in during the course of the trial.

From time to time during the trial, you may hear one of the lawyers say something along these lines, Judge, we have a matter of law we need to take up with the Court or, Your

Honor, may we approach the bench. If I can resolve a matter of law before -- up here at the bench, I'll do that. But there's sometimes, because depending on what the issue is or what the matter of law is, I may need to ask you to step back into your jury room while I take up a matter of law. If I do that, the only reason I would do that is this, if you recall earlier, I told you that I'm not to have any influence over you about the facts. Well, sometimes when I'm dealing with an issue of law, it requires me to make some comment about the evidence or the testimony in connection with a ruling that I have to make. Well, to protect you from those comments, I may ask you to step back into the jury room, let me resolve that issue of law, and then bring you back out and pick up where we left off.

In determining what the true facts are in this case, you are gonna have to decide whether or not the testimony of a witness is believable. It will be my responsibility to rule as a matter of law whether certain testimony is allowed into this record or not. But, once testimony is admitted, whether or not you believe it is solely up for you to decide. In deciding whether to believe a witness, you have the right to consider the interest of a witness, the bias of any witness, the opportunity for the witness to have seen the matters and the things about which they testified, the way the witness acts on the witness stand. You have the right, ladies and

gentlemen, to consider anything in this record that will help you to evaluate the testimony of the witnesses. That means it's very important that you pay close attention to the witnesses, listen carefully, observe them, listen carefully to the attorneys as well as to the Court. Try not to let your thoughts wander but pay strict attention to all of the evidence and the testimony so, that at the close of the testimony and the evidence, the lawyers have had an opportunity to address you with their closing remarks, and I've given you the charge on the law, then you'll be in a position to retire to your jury room and begin your deliberations.

Now, before we go any further, let me inquire from the state, are there any objections or exceptions to the Court's opening remarks?

MR. RICHARDSON: None, Your Honor.

THE COURT: Any objections or exceptions from the defense?

MR. BROOKER: No, sir, Your Honor.

THE COURT: All right. Thank you, gentlemen.

All right. Ladies and gentlemen, now, if you would please, give the attorneys your close and undivided attention as they address you with their opening statements. Mr. Richardson?

MR. RICHARDSON: Thank you, Your Honor. Mr. Brooker.

OPENING BY RICHARDSON:

MR. RICHARDSON: Earlier today, the Judge read out the charges in the indictments that charged William Bruce Clark, Jr. in this case, four different things. Three of them are the same charge, just different time periods, different person, criminal sexual conduct with a minor in the first degree. The fourth one is second degree. What's not in that charging document, what I tell you now, is there are two children involved in the case, two sisters, Minor 1 and Minor 2 . They have the same last name as the defendant because they are his biological daughters.

At the time this started, they would've been around seven and eight years old. They're about 17 months apart in age. They are now 13 and 12. This conduct went on from around 2014 to around 2017 continuously over that period of time at several different locations around town here.

The children in this case have endured a lot, not only while this was going on but since. And I tell you that, tell you these cases are unpleasant to hear about under any circumstance. It's difficult on children who are involved. But in this case particularly, when the defendant is somebody who is supposed to be the protector and that person turns into the predator. That sort of a betrayal of trust can be very difficult on kids.

In order for me to prove this case to you, I'm gonna have

to put those kids in that chair, and they're gonna have to talk about these horrible things, these private, embarrassing things in front of you, a group of strangers to them, and I anticipate that that will be very difficult. They're of the age now where they're, you know, getting to teenage status and, you know, when they get to that age, you're acutely aware of what everyone's, you know, what everyone's judging around you, you know. Teenagers can be awkward, and I don't think these are any different. It wouldn't surprise me if they sat in this chair, if there were times of silence, times of tears, so I ask you to have patience with them as we go through this.

Since these incidents were reported to law enforcement back in November of 2017, these kids have had to travel a road to get here. They've had to meet with a forensic interviewer, who is asking all kinds of questions about these private details. They've had to meet with doctors, who've done thorough physical examinations to parts that you don't want to have thorough physical examinations done. They've had to come up here to this courthouse. They're having to come up here and talk about these things to strangers. So, this has been a long road for them, and it culminates with this trial this week. This is the end of it, good or bad.

The things that I have to prove to you are as follows: One, I have to prove the children's ages at the time these events occurred. They're only 12 and 13 now and these events

occurred, you know, a while back. So, most of the time, both of these kids were under the age of 11 years when these occurred. Criminal sexual conduct with a minor first degree, means that the child involved was under 11 years of age. Okay? Second degree means that they were at least 11 and up to 14. So, three of the counts under 11, one count 11 to 14. One count in the indictment deals with Minor 2 . She's the youngest of the two. She, if you can look at it this way, got off relatively light in all this. The number of incidents of abuse with her were few. Minor 1 got the worst of it. She is the older sister. The remaining counts of the indictment apply to her. The abuse with her lasted over a greater period of time and ended just before the report was made in November of 2017. The ages you have to look for.

Also, you might remember hearing a term when the Judge was reading the indictment to you that the defendant engaged in sexual battery with the children. Sexual battery is a key term in this trial. What sexual battery means, and I have to prove to you, that the children were penetrated sexually. That can be vaginal, anally, orally. A sexual battery can be any of those things. Predominantly, what we'll hear about in this case will be anal penetration. There are some incidents that you'll hear about that Minor 1 , the older child in particular, that involved forced oral sex. The remainder of it, though, I believe most of what you'll hear about will be

anal penetration.

In order to figure out what to do with this case, you have to listen to everything that comes from this chair and look and listen to any exhibits that come into evidence. I anticipate some exhibits coming in for you to review in addition to testimony that comes from this witness stand. And at the conclusion of all the evidence that comes in this case, you'll have to decide did this defendant, William Bruce Clark, commit these crimes against these children, and you have to believe that beyond a reasonable doubt in order to convict him.

Now, these cases are a little odd. They're a little different from what you might see on T.V. or hear out in the community. This isn't like a murder case or, you know, some burglary where there's cameras set up and all, you know, people get caught on video or all these sorts of things. These cases, by their very nature, are private. They take place in the home. They take place at the hands of someone who was supposed to be a trusted figure.

Folks who do these kind of things to children don't advertise it. So, we don't have surveillance camera footage and all this sort of stuff. What these cases come down to is witness credibility, meaning how believable is the person talking to me from this chair and why. So, what you'll have to do at the conclusion of all the testimony is evaluate the

folks you hear from. Should I believe them? Why should I believe them? What motivations do they have to tell me the truth? What motivations do they have to lie to me? So, I ask you to pay particular attention to the details and the credibility of each witness that talks to you. What do they have to gain or lose by doing this? Ask yourself that as each person talks.

At the conclusion of the evidence, I'll have a chance to talk to you again. We'll review everything that came into evidence and, at that point, I'm gonna ask you to find the logical conclusion in this case that William Bruce Clark is guilty of these crimes.

Thank you.

THE COURT: Thank you, Mr. Richardson.

Mr. Brooker?

MR. BROOKER: Thank you, Your Honor, Mr. Richardson, Mr. Scruggs.

OPENING BY BROOKER:

MR. BROOKER: Good afternoon, ladies and gentlemen. I think Judge Russo said to you, we have the greatest legal system in the world. And every time I stand before a jury, I always say to that jury, yes, that's true, but there's always a qualification. There's always a qualification. And what is that qualification? That qualification is we have the greatest system in the world if you, the jurors, understand

what your duties are as jurors. You, the jurors, understand the principles that you have to apply, and you, the jurors, apply those principles correctly. You are the system. You are the system. You determine whether or not this is the greatest system in the world. And, if you apply those principles correctly, if you apply them without passion, prejudice, or out of sympathy, then the system works. If you don't, the system doesn't.

Let's talk about some of the principles that's applicable in this case that Judge Russo has already mentioned to you, and they're important principles. So important that I think they bear repeating. Judge Russo advised you of the presumption of innocence. In our criminal justice system, William Clark, as he sits there in that chair next to me, is absolutely and completely innocent, absolutely and completely innocent. And, you have to believe that. You have to believe that. As we all sit in this jury room, all of us in this country, we're born with the presumption of innocence. We're born with certain inalienable rights. One of those inalienable rights is freedom, freedom. And of course, when the government seeks to take our freedom away, the government has to do it by a high standard.

Mr. Clark is innocent. You have to presume he's innocent, because he is innocent. The government has said that Mr. Clark has committed certain criminal offenses or

violation of the community laws. Of course, the Judge has explained to you what those criminal offenses are.

So, how does the government prove that Mr. Clark, who is completely innocent, is now guilty? How does he go from being innocent like the rest us to being guilty. The way that happens is is that the government has to prove his guilt beyond a reasonable doubt. They have to prove his guilt beyond a reasonable doubt. They have to strip that innocence from him.

Now, Mr. Richardson has said some things to you and says that this is what the father has done. The father has done despicable things and the children have suffered, and he has told you that Mr. Richardson is guilty. He's told you that, but, of course, in a court of law, what matters is proof. What has he proven to you yet? He proved nothing to you; hasn't proved absolutely not one thing to you.

So, as you're sitting there in the jury seat and as you listen to Mr. Richardson talk and, if you have formulated any opinion about William Clark's guilt or innocence, you've already failed in your duties as a juror.

Judge Russo said something else that's also extremely important. And of course is, he talked about the role of the attorneys in criminal cases. He talked about the role of myself, the role of Mr. Richardson, a role for Mr. Scruggs. We are attorneys and, of course, what attorneys do in trial is

that we facilitate a presentation of evidence to you. We are not fact witnesses. Every word that came out of Mr. Richardson's mouth -- he could not tell you whether or not those events took place because he wasn't there. He wasn't a fact witness. Don't ever be confused about what our role is. So far, you have heard zero evidence, not one bit. Don't ever think that what I say and what Mr. Richardson say, and even what the Judge say is factual evidence. The Judge has a role, too. And of course, the Judge is going to coordinate this event. He's gonna make sure, you know, that the attorneys present this case in a way, you know, that is -- that is appropriate to rules and he's gonna make sure that, at the conclusion of this case, that you understand what the law is.

Don't think that you've heard anything, don't think that you've heard evidence yet. Don't get mad and angry and feel as if Mr. Clark has done something wrong.

Now, Mr. Richardson also said that the evidence in this case will come primarily in two forms, I believe. It will come in the form of testimony and it will come in the form of exhibits.

Now, one of the things that you need to know up front is what sort of evidence that can you anticipate hearing?

Well, what this case is about is is that Mr. Clark has two daughters. At one in time, Mr. Clark and Ms. Clark and their three kids were together, and they are no longer

together, they are separated. They separated prior to these allegations being made. And, then of course, years after the fact, Mr. Clark was notified that allegations had been made against him. He was notified these allegations against him, and these allegations were made by his two daughters, and that is equally traumatic. Specifically, if the allegations are not true. Specifically, if a father is accused of molesting his kids. It is just as traumatic. It is just as traumatic.

Now, I anticipate, of course, what the state says is is that, you know, Mr. Clark's two daughters will get on the stand and they'll testify. That is gonna be the basis of their case. The basis of the case is gonna be the testimony of the two daughters. There is no physical evidence in this case. Like Mr. Richardson said, there's no cameras. There is no DNA evidence. There is nothing that you can look at other than the testimony that's coming from the kids. No physical evidence whatsoever.

Now, when these kids made these allegations against their father, they were interviewed as Mr. Richardson says. And of course is, is that they were also medically examined, because although we don't have video, we don't have audio, we do have science. They were medically examined. And of course, the allegations in this case -- the allegations in this case, as Mr. Richardson says, are allegations of full anal penetration and vaginal penetration of a small girl's body by a full-grown

adult.

And he's right, you know, we don't put cameras in the rooms of our kids. We don't have eyewitnesses, but we do have science. Science is all there is. And of course is, that you'll hear the testimony, you know, from the medical provider, how they examined the young ladies afterwards. And I believe that when you hear that testimony, you'll find after the testimony from the medical examination, it's gonna be inconsistent from the alleged facts.

But how can this be? The children said it happened. How could any medical evidence be then -- how could the medical evidence not support the existence of this happening? Now, that is a very, very, I think profound question. Could it be true? Could it be possible that there's another explanation as to why these allegations are being made against William by his daughters? Could there be another explanation other than the fact that it happened?

Now, with all that being said, I'll say one last thing and I'll sit down. And I alluded to this before, but I want to re-emphasize it, and that's the burden of proof. The Judge will re-emphasize this to you as well, too. The burden of proof always rest on the state, always rests on the state. It never leaves the state. Mr. Clark, theoretically, if he wants to, although it would not be appropriate, you know, can theoretically, you know, fall asleep at his chair. He doesn't

have to say anything, he doesn't have to present any evidence. He doesn't have to do anything because in our system of justice, when the government seeks to take away our freedom, the burden of proof rests with them. It never leaves them. Everything that has to be proven in this case has to be proven by the state. Under no circumstances, are you to look at Mr. Clark and say, refute that, prove that not true, or prove that you didn't do these -- do these things. Under no circumstances are you allowed to do that, because then you would be forcing him to prove the existence or, at least, that an event never occurred.

Our government says that no one has to prove, no defendant, no one being charged with an offense has to prove that. The government brings the charges, they have to prove it, and they have to prove it beyond a reasonable doubt. And I will say to this, ladies and gentlemen, I think at the conclusion of this case, I think once the state has presented its evidence and once you've heard everything, I think you'll have reasonable doubt. I think you'll doubt whether or not the -- whether or not the theory as explained to you by Mr. Richardson is the full truth. These girls may be victims, but may not just be victims of sexual assault by their father. They may be victims of a dysfunctional family. But, it's up to them to prove you -- to prove to you that it's everything that he said that it was squarely rest on them.

THE COURT: Thank you, Mr. Brooker.

MR. BROOKER: Thank you, Your Honor.

THE COURT: Mr. Richardson, you may call your first witness.

MR. RICHARDSON: Yes, Your Honor. We call Derrick Sentell Smith.

THE COURT: All right.

MR. RICHARDSON: Judge, may we approach while he's gone to get that witness?

THE COURT: Yeah.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. Go ahead.

DERRICK SENTELL SMITH, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF DERRICK SENTELL SMITH BY MR. RICHARDSON:

Q: Will you say your name for the record, please?

A: Sergeant Derrick Smith.

Q: All right. Sergeant Smith, where do you work?

A: I work for the Marion City Police Department.

Q: And how long have you been there?

A: I've been there 10 years.

Q: Okay. And what are your job duties there?

A: I'm an investigator.

Q: Okay. And back in November of 2017, what were your job

duties?
A: I was a patrolman at the time.
Q: All right. Back on November 28th of 2017, were you working that day?
A: Yes, sir; I was.
Q: Did you have an opportunity to take a report involving this case?
A: Yes, I did.
Q: Who was the person you met with that day?
A: I met with Ms. Kelly Clark and her daughters, Minor 1 and Minor 2 .
Q: Okay. And where did you meet with?
A: I met them at the Marion Police Department.
Q: Okay. And did they provide a report to you about what took place in this case?
A: Yes, sir; they filed a statement.
Q: All right. And what was the nature of the report?
A: At the time, they simply advised me that it was a report. I didn't find out the nature of it until I met with them.
Q: Right. The subject matter -- did you learn of the subject matter that they were reporting?
A: Yes.
Q: And what was that?
A: Criminal sexual conduct with a minor.
Q: Okay. And as part of your report taken, did you get

incident locations?

A: I did.

Q: And what were the incident locations that you documented where these incidents were reported to have taken place?

A: The incident locations were [redacted] West Bond Street, Marion, South Carolina.

MR. BROOKER: Objection, Your Honor.

THE COURT: All right. State the objection.

MR. BROOKER: Your Honor, objection to hearsay. I think he is testifying to what someone else said to him, of course, which is the definition of hearsay.

MR. RICHARDSON: Judge, this had to do with just the preliminary basic information of the report that led to their investigation.

THE COURT: I'm gonna sustain the objection. He doesn't have to go into the details ---

MR. RICHARDSON: Okay.

THE COURT: --- as far as the address or whatever, but he can just testify generally what he learned through his investigation.

MR. RICHARDSON: Okay.

BY MR. RICHARDSON:

Q: How many locations were discussed?

A: Three separate locations.

Q: Were any of those locations outside of Marion County?

A: They were not.
Q: Okay. So, all were in Marion County?
A: Yes, sir.
Q: After you took the report and got the information from Ms. Clark, were there any further steps taken as far as referrals to other agencies?
A: I contacted my captain and advised him of the incident, and I then contacted Pee Dee Coalition and I spoke with the agent, Donna Dawson (spelled phonetically), who came out and got Ms. Clark's information as well as her daughters and she contacted Care Center.
Q: Was it the Durant Center?
A: I don't know who she spoke to.
Q: Okay. Do you know the purpose of the place that was contacted?
A: It was to do a forensic interview.
Q: A forensic interview?
A: Yes, sir.
Q: Of whom?
A: Of Minor 1 and Minor 2 .
Q: Okay. And is that an investigatory tool that is used by law enforcement?
A: Yes.
Q: Okay. So, instead of talking to the children -- child witnesses yourself, they may be referred to a forensic

interviewer?
A: That's correct.
Q: Okay. Is that all the -- all that you did with the case?
A: Yes, sir.
Q: Okay. Please answer any questions Mr. Brooker has.
THE COURT: Cross?
CROSS EXAMINATION OF DERRICK SENTELL SMITH BY MR. BROOKER:
Q: Thank you. How are you, Sergeant Smith?
A: All right.
Q: I'll be very quick. I think you mentioned at that particular period of time that you were working with the Marion City Police Department?
A: Yes, sir.
Q: And I think you indicated that you were working as a patrolman; is that correct?
A: Yes, sir.
Q: Okay. And so you were not -- you were not the investigator in connection with this case; is that correct?
A: I was not.
Q: Okay. And my understanding is that, and of course I'm not asking you what anyone said, but it's my understanding is that basically as a patrolman, is that what happens is you come out, and of course is, is that you take preliminary statements; is that correct?
A: Yes, sir.

Q: Okay. And after you take your preliminary statements, do you normally then turn this over to an investigator and, of course, it's the investigator's job to then handle the investigation?

A: Yes.

Q: Okay. And who was the investigator in this case?

A: I'm not sure, but I contacted Captain Chris Smith and advised him of the incident.

Q: Okay. Okay. You're not sure who the investigator was?

A: No, sir.

Q: But it certainly wasn't you; is that correct?

A: It was not.

Q: Okay. And just a very simple question is, you're not a fact witness in this case, are you? And I can rephrase that if you don't ---

A: Would you rephrase it?

Q: Yeah. As far as the allegations in this case, you didn't witness any of the alleged allegations in this case; is that correct?

A: No, sir.

Q: Okay. The only thing that you know is is that what someone may have said to you; is that correct?

A: Yes.

Q: Okay. All right. If you can indulge me for just a second, Your Honor? Let me make sure I don't have any further

questions.

THE COURT: Yes, sir.

MR. BROOKER: No further questions, Your Honor.

THE COURT: Anything on redirect?

MR. RICHARDSON: Briefly, Judge.

REDIRECT EXAMINATION OF DERRICK SENTELL SMITH BY MR. RICHARDSON:

Q: Could you just provide us the date and the time that the report was made?

A: I took the report on November 28th around 2:00 P.M.

Q: And what year was it?

A: It was 2017.

Q: Okay. Thank you. That's all the questions I have, Judge. I would ask that he be relieved from his subpoena?

THE COURT: Any objection?

MR. BROOKER: If you can indulge me for just a second, Your Honor?

Your Honor, I know this is unusual. I would ask that he not be relieved from his subpoena as of yet, and the reason why is that there are other witnesses testifying in which he may, you know, then end up as a -- an impeaching witness.

THE COURT: All right. Why don't I do this? I'm gonna excuse him at this time.

MR. BROOKER: Certainly.

THE COURT: But just be on telephone standby so that, if

you need to be recalled, they can reach you. Okay?

MR. SMITH: Yes, Your Honor.

THE COURT: All right. Thank you, sir.

BY THE COURT:

All right. Ladies and gentlemen, we're gonna -- a little bit unusual, we're gonna recess a little bit early today. The next witness may or may not carry us beyond the 5 o'clock hour, and I told you, to the extent we can and to the extent we have a time, we try to adhere to that schedule.

What I'm gonna ask you to do, if you would, please, is to be back in the morning. Be up here in the jury room ready to go at 9 o'clock. Okay?

Now, you're about ready to leave and go home and I'm sure that you probably have family, friends, or loved ones that will be curious as to whether or not you've been selected to be on a jury. You can tell them that you were selected, but that's really as far as it goes, and that you do have to be back tomorrow.

Saying something as innocent as, well, it involves a gentleman whose been charged with criminal sexual conduct with a minor or it involves a young man by the name of Clark. That could possibly elicit a response that might somehow jeopardize your ability to stay fair and impartial. So, what you need to tell anyone, family, friends, or loved ones, is that you were selected on a case, you're not allowed to discuss the case at

all, not even to talk about the charge, and that you have to be back tomorrow and that, if they will be patient, that once the case is over then you're free to discuss it and share everything. And so, just ask them to be patient, if you would.

Also, there have been countless studies that show that our minds operate much more efficiently if we're well rested. So, to the extent you can and to the extent you have control over this, try to get a good night sleep tonight, if you can.

Jury service can be taxing from not necessarily, a muscular standpoint, but it can be taxing from a mental standpoint. So, if you're well rested, you certainly will be in a much better frame of mind to listen to the testimony and to take in all that's presented.

Try to be here, if you would, be here at 9 o'clock and we'll get started once everyone is reconvened.

Last thing, you've taken an oath to try this case and to reach a fair and just verdict. Your decision in this case must be based solely upon the evidence presented here in this courtroom. It would be highly improper if you try to go home and do some independent investigation, like getting on a computer or something like that and looking up stuff. There's so much stuff out there on that internet that is garbage and not true. And, what I would ask you do as -- as your oath requires of you, is to please -- I tell folks, just -- you'll

forget about this case until tomorrow morning. Just put it out of your mind and you -- you'll come back and, at some point, decide this case based on the evidence presented here in this courtroom. Okay?

So, if everyone else will please remain seated for the members of the jury, I'm gonna excuse you at this time and ask you to be back at 9 o'clock tomorrow. Okay?

(REPORTER'S NOTE: Jury exits courtroom @ 4:19 P.M. The following takes place outside the presence of the jury.)

THE COURT: Is there anything we need to take up before we adjourn?

MR. RICHARDSON: Yes, sir.

THE COURT: All right.

MR. RICHARDSON: I anticipate -- in the morning, I have three witnesses coming in that -- two of them will be expert witnesses and one of them will be the forensic interviewer. Based on their schedules, I need to kind of take them out of order and get them in and out in the morning. With the forensic interviewer, that sort of puts in a chicken-before-the-egg situation with respect to the forensic interviews being played for the jury. What I would suggest that we do, if, of course, we have to take most of the forensic interviewer's testimony in camera, and the only thing she can testify to in front of the jury is basically to lay the foundation for the -- the discs, if the Court has approved,

you know, considered all the factors that lead to the disc coming into evidence anyway. However, in order for those interviews to come in, the children have to be made available to be cross examined on the elements of the offenses and the making of the video. So, if we take the forensic interviewer first, the children will not hear her testify. So, I would suggest would be to handle the in camera portion of the forensic interviewer and then her testimony in front of the jury and just have those two interviews admitted into evidence subject to the children fulfilling their end of the requirements subsequently.

THE COURT: Okay.

MR. RICHARDSON: If that makes sense.

THE COURT: Mr. Brooker, does that make sense to you?

MR. BROOKER: I think I understand what he's trying to get at, Your Honor, is a long as -- as long as those tapes are not admitted, I don't think we should have problem. Of course is, is that as long as they're all gonna testify to, you know, preliminary stuff and they're not gonna get into ---

THE COURT: Right.

MR. BROOKER: --- any -- and of the facts. But, I think, also we, we, we, we have the forensic interviewer under subpoena as well, too, for purposes of potential impeachment purposes during our -- during our potential case in chief.

THE COURT: All right. So ---

MR. RICHARDSON: If it becomes necessary.

THE COURT: So, then basically what you're saying is, after the in camera determination with the forensic interviewer, to admit the tapes and subject to the juvenile witnesses testifying ---

MR. RICHARDSON: Right.

THE COURT: --- in support of that?

MR. RICHARDSON: Right. So that the ---

THE COURT: So, then if they don't, then they don't come in?

MR. RICHARDSON: Right, and they could not be published until after the children are actually on the stand.

THE COURT: Correct. All right. That sounds like a plan.

MR. BROOKER: Yeah, I think it works ---

THE COURT: All right.

MR. RICHARDSON: And also, law enforcement did ask me to mention that, I guess, during the proceedings this afternoon, there were a couple of occasions where they have made observations of the defendant turning and looking back at the mother of the kids, or at least that's what we perceived. Some of them said they had to say something to him about it and they just ask me to bring it to the Court's attention, so that there could be instruction of facing forward.

THE COURT: Okay. Well, let's just -- let's just keep

our attention forward, okay, Mr. Clark? And I -- I didn't notice anything, but let's just remember to do that.

MR. CLARK: Yes, Your Honor.

THE COURT: All right. Is there anything else that we need to take up before we adjourn?

MR. RICHARDSON: Not from the state, Judge.

MR. BROOKER: Nothing from the defense, Your Honor.

THE COURT: All right. I -- I had the jury come in a little bit earlier than we normally do, just because we ended a little bit early. I just thought I'd try to recoup that time. So, we'll start at 9 o'clock tomorrow morning. Okay?

MR. RICHARDSON: Okay. And I'll let my witnesses know or I'll ask them to get here a few minutes early, because I think I told them to be here at 9:00.

THE COURT: Okay. Yeah, if you could get word to them to come a little bit earlier.

MR. RICHARDSON: Okay.

THE COURT: Okay. We'll be in recess then until 9 o'clock.

RECESS - 4:24 P.M. - END OF DAY ONE

*******OFF THE RECORD*******

FEBRUARY 19, 2020 - DAY TWO OF FOUR

(On the Record - 9:40 A.M.)

THE COURT: Thank you, folks, please have a seat.

MR. RICHARDSON: All right. Judge, I think we're ready

to go forward with the trial. I'm gonna do things a little different this morning, I'm gonna call the kids, I think, first.

THE COURT: Go ahead and do that. All right. Is there anything we need to take up from the state before we get started?

MR. RICHARDSON: I don't think so.

THE COURT: Anything from the defense, Mr. Brooker?

MR. BROOKER: Nothing, Your Honor.

THE COURT: Okay. Let's go ahead and bring the jury out and we'll get started.

(REPORTER'S NOTE: Jury enters courtroom @ 9:41 A.M.)

THE COURT: All right. Ladies and gentlemen, welcome back. I hope everyone had a good evening and ready to get started back this morning.

If you recall, yesterday we were on the state's case. We adjourned a little bit early, but we're now ready to proceed. So, I would recognize Mr. Richardson for the state's next witness.

MR. RICHARDSON: Thank you, Your Honor. We're gonna call Minor 1 .

THE COURT: All right.

CLERK: Raise your right hand.

Minor 1 , HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF Minor 1 BY MR. RICHARDSON:

Q: All right, Minor 1. You go by Minor 1; is that right? Let's get this -- remember the microphone. There we go. All right.

What name do you go by?

A: Minor 1 (spelled phonetically).

Q: All right. How old are you, Minor 1?

A: Thirteen.

Q: Okay. Can you tell me who all you live with in your house right now?

A: My mom, my grandma, my brother and my sister.

Q: Okay. And what's your sister's name?

A: Minor 2 (spelled phonetically).

Q: And how old is she?

A: Twelve.

Q: So, y'all are pretty close in age, aren't you?

A: Yeah.

Q: Do y'all get along?

A: Sometimes.

Q: Are y'all best friends?

A: No.

Q: How about your brother; how old is he?

A: Fifteen.

Q: And what's his name?

A: W.C. .

Q: Y'all get along?

A: Sometimes.
Q: He's your best friend?
A: No.
Q: Who is your best friend; you got somebody at school?
A: Alia.
Q: Is that somebody in your class?
A: Uh-huh, (affirmative response).
Q: Good. What grade are you in?
A: Seventh.
Q: Seventh grade, middle school. All right. So, you live with your mom as well, right; what is her name?
A: Kelly.
Q: Okay. Is she your best friend?
A: Sometimes.
Q: Sometimes? All right. Do you know what you're here about today?
A: Yeah.
Q: Okay. Well, I want to talk about when y'all first moved to Marion a long time ago; do you remember that? Do you remember where you lived when you first moved here?
A: Yeah.
Q: What did you call that house?
A: The burnt house.
Q: The burnt house? Is that because it burned down at some point?

A: Uh-huh, (affirmative response).
Q: And that's why y'all don't live there now or that's why y'all moved?
A: Yeah.
Q: Okay. When y'all lived in the burnt house, do you remember what street that was on? It's okay if you don't, but if you do?
A: Bond Street.
Q: Bond Street; is that what you said?
A: Yeah.
Q: Okay. And is that in Marion?
A: Yeah.
Q: Okay. Who all lived in the burnt house with you?
A: My mom, my grandma, my sister, and my brother, and my dad lived there sometimes.
Q: Okay. So, you said your grandma lived there; is that your mom's mom?
A: Yeah.
Q: Okay. And after that house burned, where did y'all move then?
A: We lived at my uncle's for a little while and then we moved to Northside.
Q: Northside; is that in Marion, too?
A: Uh-huh, (affirmative response).
Q: Is that a yes?

A: Yes.
Q: And when you lived in Northside, who all lived in the house with you?
A: Me, my sister, my brother, and my mom, and my grandma, and my dad lived there.
Q: Okay. And at some point when you lived in the Northside house, did your dad move out?
A: Yeah.
Q: And where did he go live after that?
A: My Nanna's.
Q: Your Nanna's; is that his mom?
A: Yeah.
Q: All right. And where did he stay over at Nanna's?
A: In the camper.
Q: In a camper. Could you describe kind of where -- how that was set up, where it was?
A: In Nanna's backyard.
MR. BROOKER: Can we approach, Your Honor, just for a second.
THE COURT: Hold on Mr. Richardson.
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
THE COURT: Okay.
MR. RICHARDSON: Sorry about that.
BY MR. RICHARDSON:

Q: So, when you -- you were describing where the camper was, and you said it was in your grandma's backyard?
A: Yeah.
Q: Okay. Now, did you -- who all stayed in the camper with your dad or was it just him?
A: It was just him.
Q: Okay. And what kind of camper was it, like a big one that drives around or like that one that hooks up to the back of the truck or ---
A: Like the one that hooks up to the back of the truck, I think.
Q: Okay. So, did y'all didn't ever -- there's no steering wheel in it, right?
A: Right.
Q: Okay. Okay. Now, let's go back in time. So, those are kind of the three places that we're talking about, right?
A: Right.
Q: The Bond Street, Northside, and the camper. Okay. Does that sound right to you?
A: Yeah.
Q: Okay. Do you remember back, it's been a while ago now, going talk to a lady named Robin Griggs, or Ms. Robin?
A: I think I remember.
Q: You do. Okay. Do you remember the things that you talked to her about?

A: Yeah, I remember it.
Q: You remember it?
A: (Indicates affirmatively.)
Q: Okay. And do you remember that she told you that her talking to you was videotaped?
A: I remember that.
MR. BROOKER: Objection to leading, Your Honor.
THE COURT: All right. I'm gonna sustain the objection as to any leading.
BY MR. RICHARDSON:
Q: What do you remember telling Ms. Robin that happened in the burnt house?
A: (No response.)
Q: Okay. Then I'll put it this way. Did something happen to you in the burnt house that caused you to talk to Ms. Robin? Getting a little feedback. That's okay.
A: My dad raped me.
Q: Okay. Okay. And that happened in the burnt house?
A: Yeah.
Q: Okay. All right. How about in the Northside house, do you remember what happened there that you had to talk to Ms. Robin about?
A: Yeah.
Q: Was it the same kind of stuff?
A: Yeah, it was the same thing.

Q: Okay. And it was kind of the same with the camper as well?
A: Yeah.
MR. BROOKER: Objection to leading, Your Honor.
THE COURT: Sustained as to any leading.
BY MR. RICHARDSON:
Q: In the burnt house, can you tell us what part of your body was affected or touched?
A: My butt.
Q: Okay. Now, did something touch on the outside or inside?
A: I don't understand the question.
Q: Okay. What I'm -- what I'm asking is, did anything in those times go inside of you?
A: Yes.
Q: And who did that?
A: My father.
Q: Okay. In the Northside house, what part of your body?
A: The same part.
Q: Okay. And how about at the camper?
A: It's the same part.
Q: Okay. What, if anything during this time at any of the three places, happened with your mouth and daddy's private part; was there any contact there?
MR. BROOKER: Your Honor, objection to leading.
THE COURT: Sustained as to the leading. Let me ask

y'all something?

MR. RICHARDSON: Okay.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY MR. RICHARDSON:

Q: I'm sorry. Back in November around Thanksgiving a couple of years ago, where were you around Thanksgiving that year?

A: At Nanna's house.

Q: Okay. And what happened at Nanna's house around Thanksgiving last year, or 2017? I'm sorry.

A: (No response.)

Q: Well, let me ask, who all was there?

A: Me, my sister, my brother, and Nanna, my dad, and C.F. , and his girlfriend. I think, me -- I think that's -- I don't really remember who all was there.

Q: Okay. What happened there in the kitchen around Thanksgiving?

A: (No response.)

Q: Let me ask you this. Who went in the kitchen?

A: Me and my dad.

Q: And what happened in there?

A: He, he just ---

Q: What did he say in there? Do you remember what he said? What did he say, if anything?

A: If I told anyone ---

Q: Did you say, if I told anyone?
A: That he would hurt me if I told.
Q: Why did he say that in the kitchen? What had happened? What body part of yours was involved in the kitchen?
MR. BROOKER: Again, Your Honor, I'm gonna object to the leading.
THE COURT: Overruled.
A: My mouth and -- my mouth.
Q: Okay. What body part of his? What letter does it start with?
A: P.
Q: Say what?
A: P.
Q: Okay.
A: P.
Q: Okay. All right. And what do you call it? When you're joking around with your friends at school or whatever, what do you call it?
A: We don't talk about it.
Q: Okay. When you got out of the kitchen there that day, what did you do?
A: Called Grandma to come get me.
Q: And, and where did you go after she came and got you?
A: Home.
Q: Who did you talk to about what had happened?

A: My mom.
Q: Was she the first person you talked to about it?
A: Yeah.
Q: All right. Thank you. I want you to answer any questions that Mr. Brooker may have. Okay? It's his turn to ask questions.

CROSS EXAMINATOIN OF Minor 1 BY MR. BROOKER:

Q: How you doing, Minor 1 ?
A: Good.
Q: Okay. I want to ask you a couple of questions about what you just testified to. Okay? And if at any point in time, if I ask you a question and you don't understand, you let me know and I'll make sure that I rephrase it. Okay?
A: Uh-huh, (affirmative response).
Q: All right. Now, indulge me just a second, Your Honor.
THE COURT: Yes, sir.
Q: I think you mentioned three places. You mentioned Bond Street, Northside, and you mentioned a camper. And Bond Street, I think you said that's the house that burned?
A: Yeah, that hour burnt down.
Q: I'm sorry?
A: Bond Street burnt down.
Q: Bond Street burned down. Okay. Tell me what happened at Bond Street.
A: (No response.)

Q: All right. What about Northside, Northside is that in Marion? Do you know what street Northside is on? What happened at Northside?
A: (No response.)
Q: Okay. Let me ask you this. Did you prepare for your testimony today?
A: I did prepare.
Q: Okay. All right. You said you didn't prepare?
A: We prepared little bit.
Q: Okay. Who did you prepare with?
A: The solicitor.
Q: Now, when you say the solicitor, are you talking about the gentleman that just asked you the questions?
A: Yes.
Q: Okay. Mr. Richardson, okay. When did you prepare?
A: A couple of months ago.
Q: Did you prepare any this week or last week?
A: No.
Q: And how did you prepare when you prepared, I think you said a couple of months ago?
A: I told him what happened.
Q: So, you didn't talk with him this week?
A: No.
Q: You didn't talk with him last week about your testimony?
A: No.

Q: Or any time within the last month?
A: No.
Q: Did you talk with anybody else in Mr. Richardson's office about your testimony this week?
A: I don't think so.
Q: Okay. What about last week?
A: I don't think I did.
Q: Okay. And I think at one time, you said that you prepared with Mr. Richardson -- was that just one time?
A: Yeah.
Q: Was that just one day or was it over the course of multiple days?
A: It was one day.
Q: Okay. Now, let's talk about Thanksgiving, I think you just testified about Thanksgiving; is that right?
A: Uh-huh, (affirmative response).
Q: Okay. And I think you said that your mom was in there -- not your mom -- I think you said your nanna was there; is that your grandmother from your dad's side?
A: I guess.
Q: I'm sorry. I didn't hear you.
A: I guess.
Q: You guess. Okay. I think you said Nanna, who is Nanna; I want to make sure I understand who you're talking about?
A: His mom.

Q: Okay. And I think you said your sister was there, your dad was there, and I think a couple of other people?
A: Yeah.
Q: Okay. Did you talk with anyone else besides the solicitor's office in preparing your testimony?
A: Ms. Gamble.
Q: Who is Ms. Gamble?
A: (No response.)
Q: Okay. That's fine. Is that the lady who has been with you when you were up at the courthouse this week?
A: Uh-huh, (affirmative response).
Q: Okay. Okay. Did you talk about your testimony in the courtroom?
A: Yeah.
Q: Were you given any tips on how to testify and what to testify to?
A: No.
Q: Tell me about the trailer?
A: The what?
Q: Trailer, you mentioned something about a trailer?
A: The one we live in now?
Q: I'm sorry. I think you said your dad used to live in a trailer?
A: A camper.
Q: Camper, I'm sorry. I'm sorry. I'm sorry. Can you tell

me anything else about the camper?
A: It was in Nanna's backyard.
Q: I'm sorry; I can't understand you.
A: It was in Nanna's backyard.
Q: I'm sorry; I can't hear you.
A: It was in Nanna's backyard.
Q: Oh, that's where it was located at?
A: Uh-huh, (affirmative response).
MR. BROOKER: If you can indulge me for just a second. May we approach, Your Honor?
THE COURT: Yes.
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
MR. BROOKER: No further questions, Your Honor.
MR. RICHARDSON: Redirect?
THE COURT: Yes, sir.
REDIRECT EXAMINATION OF Minor 1 BY MR. RICHARDSON:
Q: My turn.
A: You just went.
Q: Well, can I go one more time? How many times -- and I'm talking about across all three places, okay, Northside, Bond Street, and the camper at Nanna's house. How many times would you say that your dad did something to you of a sexual nature?
MR. BROOKER: Objection, Your Honor.
THE COURT: What's the objection?

MR. BROOKER: Do you want us to approach to not say it in front of the jury?

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. I'm gonna sustain the objection.

MR. RICHARDSON: I don't have any further questions then, Judge.

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, I'm gonna get you to step back into the jury room before we go any further just for a few minutes. Let me take up an issue and then I'll bring you back out.

Please have no conversation about the case.

(REPORTER'S NOTE: Jury exits courtroom @ 10:29 A.M. The following takes place outside the presence of the jury.)

THE COURT: Let me just talk to y'all up here real quick. Let's step back in chambers real quick and let me speak to you and we'll get started back.

We'll be at ease, folks, if anyone needs to use the restroom or whatever.

RECESS - 10:30 A.M.

*****OFF THE RECORD*****

(On the Record - 11:04 A.M.)

THE COURT: Thank you, folks. Please have seat. All right.

Anything before we get started from the state?

MR. RICHARDSON: No, Your Honor.

THE COURT: From the defense?

MR. BROOKER: Yes, Your Honor, I think we have a couple of motions, Your Honor.

THE COURT: Yes, sir.

MOTIONS:

MR. BROOKER: Just a second, Your Honor.

THE COURT: Okay.

MR. BROOKER: Your Honor, we want to -- we need to make of couple of motions, Your Honor. Of course, the motions are based upon, and of course, I think the justifications for the motions are multiple, but of course is is that the facts supporting each motion is gonna be the same. So, I'm gonna kind of put it together.

THE COURT: Okay.

MR. BROOKER: And of course is, is that we make a motion for a mistrial and for a motion to dismiss based upon three distinct reasons. And of course the first one is that violation of due process, a violation of the confrontation clause and also violation of Rule 601, and that's the competency of a witness.

I think Minor 1 just testified before the Court, and of course is, that she testified, and of course I think it's not -- I'm not exaggerating when I state that she had

extreme difficulty testifying on direct examination, and then of course is is that when we then got up to do cross that she was incapable of answering or didn't answer questions that I asked. And of course these questions that I asked were questions I think were leading to the heart of the case. I think she testified on cross examination -- excuse me -- on direct examination or at least information was solicited on direct examination about three locations and I think the theory is that -- what the jury -- the case is, is that these were the three locations of the alleged assault. And of course is, is, I think, one at Bond Street, which was referred to as the burnt-out house, the other one was Northeast, and of course is, there as testimony in reference to to a, a, a camper at, at her paternal grandmother's house. And of course is, is that I attempted to solicit information in reference to the allegations at each location, because I think Mr. Clark is charged with CSC with a minor first degree based upon those incidences happening at those -- allegedly happening at those locations. So, I asked her in reference to -- let's talk about what happened at Bond Street. And of course is, that which is alleged to be, you know, one of the incident locations. And of course is, is that I waited to see whether or not she could respond to my questions, and of course is, is that after silence for a while, her not responding to that question, I then moved on to talk about the second location

and asked her questions about, well, let's talk about what happened at Northeast, or can you tell me what happened to you at the Northeast location and met with the same results on -- on -- and then of course, I also asked her about the trailer location and was pretty much met with the same results, silence or inability to answer those questions.

And of course is, is that due process, and of course the due process clause -- and of course I won't get into the facts of it -- Your Honor knows the due process probably better than I do -- is that the due process clause requires fairness. And of course is, is that fairness means in this trial he has to have the ability to be able to defend himself. And of course is, that it is just a founding principle in any trial that the -- that the defendant be able to ask questions about the conduct of which he's alleged to have -- have committed, to be able to challenge that conduct, and of course is, is that to be able to confront the witnesses. And of course is, is that that was not possible in this particular situation. And of course is, is that, as a result of that, it's a violation of the confrontation clause. It's also a violation of the due process clause, and of course is, it's a violation of Rule 601.

Rule 601 of the Rules of Evidence, which deals with competency, it says that every person is competent to be a witness except as otherwise provided by statute or these

rules. And of course, 601(b) says that disqualification of a witness. It says that a witness is disqualified to be a witness if the Court determines that, one, the proposed witness is incapable of expressing himself concerning the matter has to be understood by the Judge and the jury, either directly or through interpretation by one who can understand it; or two, the proposed witness is incapable of understanding the duty of a witness to tell the truth.

I don't think that there's any evidence that -- that Minor 1 is incapable of understanding the duty to tell the truth, but of course is is that with respect to expressing herself regarding the matter that's at issue, I certainly on 601(b)(1), I think it fails there because we have to be -- this is a very serious charge. I mean it carries 25 years to life. We have to be able to explore all of these allegations completely and in depth, you know, in order to ensure, you know, that he has had a fair trial and that justice has been served. And of course, when I examine the witness on direct examination or either on cross examination, you know, about the incident details of these allegations, and then of course is if the witness can't express herself about those things, and then of course is that it calls into question as to whether or not the witness is qualified to give the testimony that she's giving. And again it reverts back to the confrontation clause or ties in or is interrelated to

confrontation issues and also due process issues. I think neither has happened in this case. I think -- excuse me -- I think that due process and confrontation clause have been compromised. I think he is incapable of receiving a fair trial, has received a fair trial. So, at this time, we're asking the Court to grant a mistrial and/or a dismissal of the case or at least to disqualify the witness.

Now, disqualifying the witness is complicated, Your Honor, and without -- and the reason why is -- and of course, we discussed this, I think, briefly in chambers -- and that is that if the witness is disqualified, the witness has already impart information to the jury and that might be damaging to the jury. I can, of course -- therefore, may have tainted, you know, the jury's ability to be able to be fair and impartial, even if the Court tries to then disqualify the jury and give the jury a curative instruction as to -- as to disregard the testimony that they've heard and this has been disqualified, if the Court chooses to do that. And so, I think that still has become appropriate remedy of this situation. So, we're asking the Court to grant a mistrial and/or to dismiss the indictment because of these reasons.

Thank you, Your Honor.

THE COURT: Thank you, sir.

Mr. Richardson?

MR. RICHARDSON: Yes, Your Honor.

On cross examination, I feel like there was more opportunity to explore than was taken. There were several examples of when an objective or open-ended question was asked of the witness and there was no response, which I struggled with on direct examination as well. I mean, there were long pauses at times, and I would try to rephrase questions or, you know, get there and we eventually did. But, you know, on cross, there would be an open-ended question followed by some silence, and then move on. I feel like there was some remedial measures that could've been taken, such as rephrasing the questions, or asking the Court to instruct the witness to answer, asking leading questions. There were no questions at all posed to the witness about the forensic interview tape wherein these allegations were discussed in detail.

My position is there was opportunity for further cross examination than was attempted, and I feel like the -- after the questions moved on from the open-ended, what happened at such and such place, more questions were asked that the witness did answer and was on a roll of answering questions when cross was ultimately terminated. And for those reasons, I don't feel like the mistrial is appropriate. I feel like, you know, the witness responded to a lot, and questions that were not responded to were open-ended. And again, I look back at the direct examination. Again, we have to look at the fact that this is a child witness in a very difficult setting. So,

I think we have to have a little more patience than we would with an adult witness. And I think for all the totality of those reasons, I don't think a mistrial is appropriate.

THE COURT: All right. Thank you, sir.

MR. BROOKER: Your Honor, just for the record, because just in case Your Honor denies the appeal, can I make a reply for the record?

THE COURT: Sure.

MR. BROOKER: It will be 45 seconds, I promise, Your Honor, you can hold me to it.

THE COURT: Go ahead.

MR. BROOKER: It will be no more than 45 seconds.

Your Honor, with respect to the arguments that we could've done more on direct examination, the reason why, Your Honor, that is not sufficient because, basically, I think what the prosecutor is making the argument is, is that we need to reconstruct the way in which I approach his defense in order to -- in order accommodate the issue that he was having a problem himself. He even confesses that he had a problem getting information out of this witness. And of course is, is that the way that I asked my questions is always the same way, and of course is, is that allowing the witness to answer to try to determine whether or not there's any inconsistencies with previous statements before. And of course is, that leading questions by me is not required. And on direct or

cross examination, I'm not required to get in stuff that they were not able to get into. I think questions in reference to the way in which the video was taken and that what's -- that is the burden that is on the state. That burden doesn't shift to the defendant to do that. The state carries the burden to make sure that all of that is done and that testimony is -- that questions are asked about the taping of the video and of the elements. That is not our burden to do that. We don't even have to ask questions if we don't want to, but of course, it would be a problem for us if we didn't take advantage of the opportunity to cross examine, which we did. But I can't be asked to completely change the way in which I handle my defense in order to accommodate. And, of course, I thought at least I was trying to be as sensitive as possible, because I understand the nature of dealing with a minor child. And of course is, that I didn't push or shove by I tried to refocus on every particular event. And then of course I eventually tried to make her feel comfortable by asking her different questions about, you know, how did she prepare. She answered some of those questions about how she prepared but, you know, but that burden is not on to -- to -- to do the job through leading questions.

THE COURT: All right.

MR. BROOKER: Thank you, Your Honor.

THE COURT: There was -- there was difficulty in Mr.

Richardson's direct in the beginning. I think Ms. Clark answered questions that, that -- fairly freely that didn't deal with the issue at hand but, when we got to the issue at hand or the allegations at hand, it became very difficult, which is understandable. But needless to say, the -- during the direct examination, there was testimony at each location as to what occurred or the allegations as to what occurred that led to these charges.

Once cross examine -- Mr. Brooker came up cross, again, kind of a similar situation in that Ms. Clark was able to answer questions that dealt with her preparation and those type of questions, but when we got to the -- the issues regarding the allegations in this matter, she again when silent.

Now, throughout that process -- and I agree, and Mr. Brooker, I agree, that there's nothing -- there's no requirement that the defense use leading questions in cross examination; that's just a tool. Cross examination is made up of a lot of different aspects; leading questions, non-leading questions, you know, storytelling, you know, the cross examiner actually being the one who testifies more so than the witness, and all those different things that make up cross examination. And I don't -- I don't make it a point to ever question an attorney's trial strategy, and I don't in this case either. Every person, as you've mentioned, has the --

has the right to proceed how they feel is appropriate.

However, having said that, the witness was made available for cross examination. Whether or not -- now, she did go silent, but I'm not aware of anything in the record at any time where the Court was asked to instruct the witness to answer the question. I wasn't -- I'm not aware of there being any objections that the witness is not answering the questions and admonition -- no request to the Court to admonish her regarding her refusal to answer or her inability, however you want to phrase it. We did come over on sidebar, and Mr. Brooker, you did -- you did voice your frustration. And at that time, I asked you at sidebar, well, you know, maybe you need to ask more leading questions to -- you know, sometimes when it's hard for a witness to testify, it's easier for them to be able to answer yes and no than it is to give open-ended narrative type responses.

And so, I mentioned, you know, there's cross examination, and you made your point and I understand it that it's not for you to do the job of the prosecutor. But be that as it may, you know, that was the decision that you made to not -- you know, you can ask leading questions that don't -- that don't set out the state's case for them, but you could've asked questions and you chose to go in a different direction.

What I'm seeing here is, I don't see a violation of due process or the confrontation clause, and the fact that the

witness was made available, you had the opportunity to cross. She was not terribly cooperative. There were no objections; there were no requests asking the Court to instruct the witness to answer questions. There was a tool in your arsenal that you are allowed to use in your situation that the state can't use in direct examination and you chose not to use it for whatever reason. And again, I don't question that. I'm just saying that tool was available, it wasn't used.

And so -- and as far as Rule 601, the witness, I think, was able to answer the questions and was made available to do that. I don't think that she fits under the Section (b) of disqualifying the witness. She did, on direct examination, after some time and patience, did state what she alleges occurred and happened to her. And so, I'm gonna respectfully deny the motion for a mistrial, as well as your motion to dismiss.

Anything further?

MR. RICHARDSON: No, sir.

THE COURT: And I certainly note your exception to that.

MR. BROOKER: Thank you, Your Honor.

THE COURT: All right.

Yes, sir?

MR. RICHARDSON: Judge, in terms of scheduling, one of my expert witnesses is here and I'm having to jumble all these up based on everybody's schedules. But I have one who has a

narrow window of opportunity to be here today, so I need to call that person next. That'll be Meg Temple.

THE COURT: All right. Okay. All right. Let's bring the jury in, please.

(REPORTER'S NOTE: Jury enters courtroom @ 11:25 A.M.)

THE COURT: All right. Ladies and gentlemen, thank you for that -- that time. We now recognize Mr. Richardson for the state's next witness.

MR. RICHARDSON: Thank you, Your Honor. We call Meg Temple.

THE COURT: All right. Ms. Temple, if you'd please come around to be sworn, ma'am.

MEGAN DOWLING BRYANT TEMPLE, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF MEG TEMPLE BY MR. RICHARDSON:

Q: Ms. Temple, could you give your full name for the record, please?

A: Yes, Megan Dowling Bryant Temple.

Q: All right. Didn't know you had that many names. That's a lot names.

A: Yeah.

Q: All right. Ms. Temple, what do you do for a living?

A: I'm Executive Director of the Care House of the Pee Dee, which is a children's advocacy center that works with allegations of abuse and neglect. And, they are -- excuse me,

I just came off the stairs -- along with being the executive director there, I am also a therapist and a forensic interviewer.

Q: All right. And how long have you been involved in your career with dealing with child abuse victims?

A: Over 10 years.

Q: Okay. And what sort of education, training, background do you have in order to your job?

A: So, I have a undergraduate degree in psychology, a master's in clinical psychology, am a licensed professional counselor, and a licensed professional counselor supervisor. I am also a trained forensic interviewer, which is going through a nationally approved training program, keeping up with peer review, keeping up with the regular continuing education for a licensure for counseling as well.

Q: Have you ever testified in court before as an expert witness?

A: I have.

Q: And in what area?

A: I've testified in a few different areas. I've testified in child abuse semantics, and I've testified in child trauma; those are the two main things.

Q: Okay. Approximately, how many times have you testified in court as an expert?

A: In probably between 10 and 15.

Q: Okay.

MR. RICHARDSON: Your Honor, I'd have the witness qualified as an expert in child dynamics?

THE COURT: Any objection? Would you like to voir dire the witness?

MR. BROOKER: Yes, Your Honor.

THE COURT: All right.

VOIR DIRE EXAMINATION OF MEGAN DOWLING BRYANT TEMPLE BY MR. BROOKER:

Q: Just very briefly, Ms. Temple. What was your educational background again?

A: I have an undergrad degree in psychology and a master's degree in clinical psychology.

Q: And of course is, is that the master's degree, I think you said, is in clinical psychology?

A: Yes, sir.

Q: Is that geared towards any particular -- any particular area of psychology? I hope I'm phrasing that correct.

A: No, it's pretty generalized as far as it's clinical. So, and the -- providing on the therapeutic side. It's not research based, but it's generalized otherwise.

Q: Okay. So, you said it's not research based?

A: No, it's not. It's not to become a researcher.

Q: I'm sorry, yes, my next question would be that is is that

THE COURT: Mr. Brooker, you're looking down; I need you to speak up.

MR. BROOKER: I'm apologize.

THE COURT: You can look down, just speak louder.

MR. BROOKER: I apologize, Your Honor.

BY MR. BROOKER:

Q: My next question would be is -- is that have you -- have you conducted any research of your own in the area in which you are attempting to be qualified as an expert, child abuse dynamics?

A: No, I've reviewed research, but I've not conducted any research of my own.

Q: And what recent research have you reviewed?

A: I couldn't even begin to cite all of it. I mean, in being in the field for 10 years, I'm required to, as far as peer review, read research articles to discuss those. It's part of just kind of ongoing education.

Q: Could you identify maybe at least one article and of course the source of that?

A: So, Roland Summit's Child Sexual Abuse Accommodation Syndrome is one.

Q: And of course is, is that just -- child abuse sexual dynamics, is that -- is that a specific discipline?

A: You mean a discipline that you get a specific degree in?

Q: Yes.

A: I don't believe so.
Q: Is it a specific discipline in which you can -- is only -- so, it's not a specific discipline that you can get a degree in?
A: Huh-uh, (negative response), not that I'm aware of. Definitely nowhere in South Carolina.
Q: Are you aware if you can get it anyplace?
A: No, I've never heard of it. I mean, I'd hate to say that somewhere in the world you can't, but I've never heard of it.
Q: And the reason why I'm asking that is you've never heard that there is no prescribed or recommended research course, is that -- is that correct, in that particular area?
A: There's no degree that I'm aware of in that particular area. Yes.

MR. BROOKER: I don't have any further questions, Your Honor.

THE COURT: All right. I'm going to find Ms. Temple is qualified to testify as an expert in the field.

You may proceed.

MR. RICHARDSON: Thank you, Your Honor.

MR. BROOKER: And, Your Honor, just for the record, so just -- I have not consented to ---

THE COURT: You object to that?

MR. BROOKER: Yes, yes, just for the record.

THE COURT: All right. I'll note your objection.

MR. BROOKER: Thank you, sir.

THE COURT: Yes, sir.

MR. RICHARDSON: Thank you, Judge.

CONTINUATION OF DIRECT EXAMINATION OF MEGAN DOWLING BRYANT TEMPLE BY MR. RICHARDSON:

Q: All right. Ms. Temple, have you had any contact with any of the kids or family members involved in this case?

A: No.

Q: So, you're not aware of any of the allegations, parties, anybody?

A: No, I don't know who's involved.

Q: All right. I'm gonna ask you a few questions about some terminology, I guess, that's used in your line of work. Could you explain what a delayed disclosure is and why that's significant in your line of work?

A: Sure. So, disclosure just means how somebody came to find out something has happened, or an allegation has happened. And so, delayed disclosure, there are multiple types of disclosure. The delayed is the most common, which just means that immediately after an incident, somebody didn't come out and say something has happened, they've waited some level of time. So, most research finds that -- I mean researchers agree that delayed disclosure is what is the norm. That in sexual abuse allegations, specifically with children, that a child is less likely to come and say immediately after

something has happened that it happened. They're more willing to -- they're gonna wait some time. And one of the researchers suggest that you're likely to wait at least -- 75 percent of disclosures that they researched, that children waited at least a year in order to disclose, and about 17 percent waited at least five years to disclose. So, delayed disclosure just means that it -- that it took some level of time after an incident occurred before somebody decided to say something about what happened.

Q: In your experience or in your reading research, is there any correlation to the relationship of the perpetrator to the victim of some kind of abuse with respect to a delayed disclosure?

A: Yes. So, what I've seen is that when there is some form of relationship, especially a close relationship, a familial relationship or somebody who is playing a family role, you're gonna have more -- you're gonna have higher rates of delayed disclosure.

So, if something were to happen with a -- with a stranger, a child is more likely to disclose immediately, because there's no fear, no concern, that that person knows anything about them or it can get back to them. But, in a situation where you have a close relationship, you're gonna wait to disclose and they'll -- the closer the relationship, sometimes the longer that the delay for disclosure.

Q: Okay. How about in the same vein as your last answer, in your line of work, what sort of barriers to disclosure do you come across with respect to these children that you deal with?
A: So, there are, you know, a lot of reasons of why somebody may not disclose, but the number one reason is fear. And that can be fear in a few different ways. Some are easy to understand. Fear in regards to something may happen to them or to somebody that they love, you know, somebody may have threatened that something is gonna happen, that they're gonna hurt somebody or hurt them. And so that can play into why -- why there may be delayed disclosure.

But there are other issues, there are other possibilities as well. I mean, you can also have fear of something actually happening to the person who did something to you, especially if it's a situation where you have -- there's a good close relationship as a familial situation, you know, somebody in the family. There may be fear or concerns that is gonna impact the livelihood of the family, the financial livelihood, the emotional connection and even though something bad may've happened, a child may still not want something negative or like to go to jail or something bad happen to the person who's done something to them.
Q: Could you describe -- first, would you describe the term grooming for us?
A: Yeah. So, grooming is a word that's been used a long

time in the child abuse field. It's really -- they're changing that terminology more to the idea of manipulation, which is a little bit easier, I think, to understand. And the idea of that is that a relationship and little items or little things that are done over time so that it's not extremely noticed. So, grooming can be as easy as initially, what would be considered maybe a touch that's -- that seems a little like a hug that holds on a little too long, but there's nothing that's black and white about why. You know, you can't explain exactly why it doesn't seem right. And often the perpetrator can see how -- what the response is. You know, did a child say no, did a child push them away, did a child go tell somebody, and that helps them to understand kind of how to move forward next. Because if they get a negative, immediate response, they may decide that that's not -- this is not the right child to try and do something with. However, if in turn, you know, the hug wasn't upsetting to anything, then you may move forward onto something -- onto movements that are a little bit more provocative and enter that way.

MR. BROOKER: Objection. Your Honor, I have an objection.

THE COURT: What's your objection?

MR. BROOKER: If you want me to say it in front of the jury, I will be more than happy to.

THE COURT: State your objection?

MR. BROOKER: I don't know if it's appropriate for the jury to hear what I have to say.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. Mr. Brooker, you can state your objection, sir.

MR. BROOKER: The objection, Your Honor, because the testimony as given goes beyond the, I won't even say field, but the area that she was qualified as an expert in.

THE COURT: All right. Mr. Richardson, I'll allow you to ask questions regarding that objection and then I'll rule on the objection ---

MR. RICHARDSON: Okay.

THE COURT: --- depending on those responses.

MR. RICHARDSON: All right.

BY MR. RICHARDSON:

Q: Ms. Temple, with respect to the grooming or manipulation topic, is the victim of abuse and their relationship with the perpetrator of the abuse and the kind of the dynamic you were talking about where there's a trial and error period with behaviors of the perpetrator, is that conversation or that topic within the area of child abuse dynamics?

A: Yes.

Q: All right. Is there research in the field or topics and conferences and that sort of thing dealing with grooming and

perpetrator/victim behavior in the grooming ---

A: Yes.

Q: --- conversation?

A: Yes.

Q: Okay. What I'd ask you ---

THE COURT: I'm gonna overrule the objection. I'll allow it.

MR. RICHARDSON: Thank you, Your Honor.

BY MR. RICHARDSON:

Q: You mentioned that grooming in certain situations, manipulation, is sort of, you know, try a little something and see where it gets me and if there's pushback, you know, kind of re-evaluate. Would threats be considered a form of grooming or manipulation? Say for example, if the perpetrator threatened to harm the -- a victim of abuse or a person that was cared about, would that be considered grooming or manipulation or would that be something separate?

A: I think most of times that would probably be something separate. You know, it's manipulation in the idea of let me see how you respond and, if you don't go tell somebody, then I feel more confident moving forward.

Q: Okay. Could you tell us a little bit about in your experience and in the training that you've received and research that you've read, about the effect of sexual abuse on a child's behaviors?

A: Yes. So, any form of trauma ---

MR. BROOKER: Objection, Your Honor. And of course is, is that bolster ---

THE COURT: Overruled, I'm gonna allow it.

BY MR. RICHARDSON:

Q: You can go ahead and answer.

A: Okay. So, in trauma in general, we see lots of behavioral and emotional responses. And in the trauma counseling that I do, we see a lot of that. So, you can see extreme changes in behavior, changes in grades, changes where an increase like aggression or anxiety. A lot of those things fit into traditionally trauma diagnoses that we see in the field of counseling. And it, it makes sense in the idea that you have something that you're thinking about, you're replaying incidences that happened in your mind that were traumatic, it's a lot harder for you to focus on the other pieces of things that are going on in your life. So, you can lose focus on the traditional things like school, friends, family, those things that you were focused on, and in turn are having to have more of an emotional mental dealing that you're, you know, you're having to deal with the impact that the trauma has caused.

Q: Thank you, ma'am. Please answer any questions that Mr. Brooker has.

CROSS EXAMINATION OF MEGAN DOWLING BRYANT TEMPLE BY MR.

BROOKER:

Q: Okay. Ms. Temple, I think you testified that in the -- with respect to the children that's involved in this case, that you have never seen or heard or had contact with those children ---

A: Correct.

Q: --- is that correct?

A: Yes.

Q: Did you ever review any of their files or charts?

A: I have not reviewed anything. I can't -- I'm sorry.

Q: I know it's difficult, but I just -- I'm gonna ask it and then, of course, I promise I'll give you enough time to answer it. I just want to make sure the court reporter gets both of us down.

A: Okay.

Q: So, have you looked any records, documents or anything that's related to the allegations that these children -- children have made?

A: No, I have not.

Q: And so, when you're testifying here today, you're testifying in general; you're not testifying specifically in reference to these children; is that correct?

A: Correct.

Q: Okay. So, it's a general information?

A: Correct.

Q: Okay. And the general information that you're testifying on, do you have any indication as to whether or not the general information that you're testifying apply to these kids or that you just testified to?

A: I don't.

Q: Okay. All right. Now, let me ask you some questions in reference, I think, to what you have testified to if you can indulge me a second. Delayed disclosure, okay, I think you testified of what delayed disclosure was; is that correct?

A: Yes, I did; uh-huh, (affirmative response).

Q: And of course is, is that -- and I think you testified that delayed disclosure could be based upon many different factors?

A: It can be.

Q: Okay. Do you have a list of the defined factors that -- that, that, that, that delayed disclosure might be based upon?

A: So, other factors that delayed disclosure can be based upon are gender. We normally see that males take longer to disclose than females. Also, the age of the initial incidents have something to do with disclosure. Children, younger children have more delayed disclosure than people who are assaulted during adolescent years. So, if you're a younger child, you are more likely to wait than if you are a teenager. So, those are some of the other areas that delayed disclosure... Maternal support has something to do with

delayed disclosure. So, if there's not the support of the mother, a child is more likely to not disclose or to have a delayed disclosure. And those are the main ones.

Q: All right. You would agree with me is is that delayed disclosure -- delayed disclosure, is there a correlation between delayed disclosure -- and I believe I know the answer to this is -- is there a correlation between delayed disclosure and the -- and -- is delayed disclosure somehow it validates an allegation?

A: Does it validate an allegation?

Q: Yeah. Do you know of any study that deals with the correlation between delayed disclosure and validation?

A: No.

Q: Okay. Okay. And of course is, my understanding is and you can correct me if I'm wrong is is that you've never read an article like that or you have research like that because there is no correlation between delayed disclosure and of course credibility, unless you have research you can tell me ---

A: So, there is research that in -- in cases where there is external evidence that abuse has occurred, like an STD or pregnancy or something like that. There is evidence that shows that external evidence that also shows the validity of these disclosures, but it's not specifically connected the delayed disclosure.

Q: Okay.
A: Does that make sense?
Q: That makes sense. That makes sense. And so, there is no direct correlation; is that correct?
A: Between validity and delayed disclosure?
Q: Absolutely.
A: Not that I'm aware of.
Q: Okay. That's what I thought. Okay. And of course is, and I think that you testified to there was a 75 percent -- I think you said, you gave a couple of statistics, I think you said 75 percent of delayed disclosures usually occur, I think you said, after about around a year?
A: So, in one study of where there had been disclosures, in one study they found that the delayed disclosure rate was 75 percent for one year, for waiting at least a year and about 17 percent for waiting upwards of five years.
Q: Okay. And was that a controlled study or what was the dynamics of that study?
A: So, when you're talking about people in those situations, you're not gonna have the same situation of a controlled study, because people would either had something happen or they haven't, you know, or they haven't had something happen. So, in that study, that was a surveyed study of adults being asked about their childhood sexual abuse experiences.
Q: Okay. And this was a study that's based upon -- that was

based upon adults making these statements ---
A: About their childhood sexual experiences.
Q: About childhood experiences ---
A: Uh-huh, (affirmative response).
Q: --- after they're becoming -- after they've become adults?
A: Correct.
Q: Okay. So, not exactly the situation that we have here where -- do you know of any -- do you know of any studies that deals with disclosure as it relates to children disclosing while they are children?
A: They are -- yes, there is research out there in regards to -- part of what you have in research is you have to have parental permission in order to research children. So, you have -- you're gonna have more research that's geared after somebody turns 18 than you are gonna have when -- when somebody is a juvenile because they have to have parental permission in order to be -- to take part in a study.
Q: And because these are controlled models, and of course these -- because these are not controlled models, these models cannot be used to apply to every circumstance; is that correct?
A: I would say that every -- I mean, nothing can be applied to every circumstance.
Q: And the reason why I say that is, that in a controlled

model, you can control the variables but, in an uncontrolled model, you cannot control variables or outside influences or things that may influence factors or that might influence the research?

A: Right. So, in -- in controlled studies, what you have is you have two groups of people and you don't know who are in those groups. So, if you're looking at a situation of disclosure, you -- you wouldn't have -- it would be very difficult to do a controlled study, because you wouldn't know how many people or what you had and to be able to have the same numbers of disclosure on both sides, because you wouldn't know that information in advance. So, it can -- so, the research is very different. Controlled, truly like blind controlled study in behavior of people would be really difficult to -- that would be really difficult.

Q: And as a result of that is, is that what you're telling to the jury, this is general information. This is not information that can be applied to, to, to, to, to every alleged allegation of abuse?

A: Correct.

Q: And of course, you can't tell the jury that -- that what you're testifying to applies to this particular case?

A: I don't -- I don't know about this particular case.

Q: Absolutely. Okay.

MR. BROOKER: If you can indulge me for just a second,

Your Honor, to make sure I don't have any further questions.

THE COURT: Yes, sir.

MR. BROOKER: No further questions, Your Honor.

MR. RICHARDSON: No redirect, Judge.

THE COURT: Thank you very much, ma'am, you may step down.

MR. RICHARDSON: The next witness will be Dr. Elizabeth Morphis.

THE COURT: All right. Doctor, if you'd come around to be sworn, please. Thank you, ma'am.

ELIZABETH MORPHIS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF ELIZABETH MORPHIS BY MR. RICHARDSON:

Q: All right. Would you -- what's your name; state your name for the record, please?

A: Elizabeth Morphis.

Q: Okay. And I'll go ahead and call you Dr. Morphis, because I know you are one. Could you tell us what you do for a living?

A: I'm a pediatrician. I have a general pediatric practice and then I'm the Medical Director of the Durant Children's Center.

Q: All right. Where -- where is all of that located?

A: In Hartsville, South Carolina and the Durant Center is in the Florence, Hartsville and now Sumter.

Q: Okay. And what kind of education background do you have to be a pediatrician?
A: I completed four years of undergraduate with a degree in biology. I went to medical school for four years and then I went into a three-year residency program to become a pediatrician.
Q: All right. And how long have you been a pediatrician?
A: Twenty-five years.
Q: Do you have any experience in your time as a pediatrician dealing with children who are before you for sexual assault examinations?
A: Yes, sir.
Q: Okay. How long have you been doing those?
A: Since 2016, right at four years.
Q: All right. Can you say maybe approximately how many of those you've completed?
A: Gosh, probably over 500 exams.
Q: All right. Have you testified in court before as an expert witness?
A: Yes, sir.
Q: In what field?
A: Child abuse.
Q: All right.
MR. RICHARDSON: Your Honor, I ask Dr. Morphis be qualified as an expert in the area of child abuse.

THE COURT: Any objection?

MR. BROOKER: I object to ---

THE COURT: Do you want to voir dire the witness?

MR. BROOKER: No, I think, Your Honor, is that I have no objection to her being qualified as a -- as a -- a medical expert as a pediatrician -- pediatrician. I'm kind of confused when he says expert about child abuse. I just don't think they ---

MR. RICHARDSON: I think what we're gonna be talking about would be under the umbrella of pediatrics. So, I can just ask her to be qualified as an expert in the area pediatrics.

MR. BROOKER: Yeah, no question about that. I'm sorry.

THE COURT: All right. That will okay.

MR. RICHARDSON: Okay.

BY MR. RICHARDSON:

Q: Dr. Morphis, did you have an opportunity to in this case to do physical examinations of Minor 1 and Minor 2 ?

A: Yes, sir.

Q: And when were those examinations completed?

A: I would have to look at my notes, December of 2017. I'm not exactly sure of ---

Q: All right. Well, do you have -- are those your notes ---

A: I do.

Q: --- would you like to use them to refresh your

recollection?
A: Yes. 12/4/17, December 4th.
Q: December 4th, 2017?
A: Yes, sir.
Q: Okay. And were the examinations you did on those two children the same examinations you do for any person coming in with a sexual assault allegation?
A: Yes, sir.
Q: All right. Tell us the steps that you take in a sexual assault examination?
A: We develop a rapport with the patient and try to make the patient feel at ease. I tell them that I'm gonna do a checkup of all their skin. I'm gonna basically check them head to toe and look at all the skin. You have skin everywhere, and we do a head-to-toe examination looking for any kind of marks, tattoos, bruises, and we also examine the genitalia. We put the females in a frog-leg position and we have a culposcope, which is like a magnified -- like a magnifying light, so you can look at the tissue there as well.
Q: Okay. And do you examine -- you examined and you said you put them in the frog-leg position. Do you examine -- you mentioned genitalia, you exam the anal cavity as well?
A: Yes, sir.
Q: Okay. And was that accomplished in this case for both children?

A: Yes, sir.
Q: All right. And what were the results?
A: They were normal.
Q: Okay. Normal results?
A: Yes, sir.
Q: What would you -- what is -- in medical terminology, what does a normal exam look like?
A: Depending on if the child is pre-pubertal or post-pubertal, you examine the hymen, examine the surrounding area of the vagina, the labia, to make sure there are no bruises, marks, bleeding. You examine the anus, rectal area making sure there's no tears in the skin. Normal means the absence of all that. It's normal mucosa is how we refer to that.
Q: So, in this case, there were no signs of tearing or anything that would raise a red flag to you in that exam?
A: Right, there were no injuries.
Q: All right. I wanted to ask you some questions about the healing capabilities of various parts of the body. Okay? With respect to the anal rectal area first, could you explain to us how that area responds to trauma and how it heals?
A: Yes, sir. The rectum and the vaginal area are very vascular tissues, meaning that they have a lot of blood flow to that area. And so, because there is an increase of blood flow, it's very rapidly healing. The body remakes the cells so to speak and heals very rapidly. There's also the type of

tissue is very distensible or very elastic, and so, it -- it's a type of stretching that can take place without a lot of injury.

Q: Okay. So, if you do see an injury in a medical examination, say to the veins, is there something in your training, based on your knowledge of the healing powers of the body, that would tell you somewhat of a timeline of when that injury may have occurred?

A: Somewhat, yes, sir. Injury would show that it's probably been within five to seven days. If you see a healing injury, then you cannot -- if there's an injury that's still present, it would've had to occur within five to seven days. Because of the rapidity that tissue heals. Beyond that you cannot tell -- if it's been more than that, if there was perhaps an injury that has already healed.

Q: So, if some incident took place six months prior to you seeing the patient, would you expect to see a visible injury?

A: No, sir.

Q: So, any time before a week, you would not expect to see an injury?

A: Right. And usually within 72 hours is our window of opportunity to see an acute injury.

Q: And what is -- I think you touched on this a little bit, but those parts of the body that we're discussing, are they designed to heal differently than other parts of the body or

to respond to trauma differently and why?
A: Well, there's certain areas of the body that have a greater blood supply and they heal more rapidly because of that blood supply, and then in the vaginal area and to somewhat of the rectum, because of the distensibility, they are allowed to be more elastic without injury. So, there's more distensibility of that area than maybe say the hand or the ear or another part of the body.
Q: With respect to the vaginal area, could you explain to us what the hymen is and how that may respond to injury?
A: Yes, sir. The hymen is an area that actually surrounds the vaginal opening. It can be thickened or thin, depending on the patient or the person. Puberty affects that as well, the hormones that come in can change the hymenal tissue. The hymen is sort of a misnomer, people used to think that that was an indicator of penetration. They've done studies on pregnant women that still have a hymen area. So, that's not a good indicator. However, the hymen is part of the vaginal tissue. So, if there's an injury to it, it heals rapidly as well.
Q: Okay. So, it can heal just like any other body parts you've talked about?
A: Or a little bit more rapidly than other body parts, yes, sir.
Q: When it heals, can it appear to be the same as it was

prior to an injury?
A: It can.
Q: Is that typical?
A: It is in about 90 percent of the cases, that's the case.
Q: Could you tell us in all the child sexual assault examinations that you do, could you assign a percentage to the number of cases that you see injury?
A: Me, personally, I have seen less than one percent injury.
Q: Okay. So, 99 percent show no injury?
A: Of my cases. I think the statistics that are out there, say that 95 percent have no injury.
Q: Okay. Thank you, ma'am. Please answer any questions Mr. Brooker may have.
A: Yes, sir.

CROSS EXAMINATION OF ELIZABETH MORPHIS BY MR. BROOKER:

Q: I want to talk with you, first, I think -- I think you said that you performed examinations on both children; is that correct?
A: Yes, sir.
Q: Okay. I want to talk with you a little bit about Minor 1 . And of course is, is that what sort of examination did you perform on Minor 1 ?
A: Just our head-to-toe skin examination, like a regular child abuse exam.
Q: Okay. Did you perform a vaginal examination or

examination of the vaginal area?
A: Yes, sir.
Q: Okay. What about the rectum?
A: Yes, sir.
Q: Okay. Let's talk about the vaginal area. How did you -- how did you perform -- again, how did you perform that procedure?
A: So, the child is typically laying on the exam table and we have the child scoot down and put the legs in a frog-leg position with the feet together and the knees out, and then we use a culposcope, which is the magnified light and you -- you examine the exterior and then you, to look at the actual vaginal opening, you gently apply pressure to the labia, kind of pulling it down and forward so not to cause pain to the patient, and using the culposcope, we examine that area and then you can see the rectum that way as well. Or sometimes, we have to turn the patient or flip the legs up, but usually we can do it all that same area.
Q: Okay. Now, old were the children at the time in which they allege that this abuse took place -- well, let's stick with Minor 1 , is that, of course, vaginal examination. About how old was she at that time?
A: When I examined her, she was 11.
Q: Okay. Do you know how old she was when she alleged the period of abuse took place?

A: I do not.
Q: Okay. All right. Well, let me ask you a question about an 11-year-old. Maybe you said is, is that -- it is that -- it is that -- that a hymen is kind of the tissue that kind of covers the opening of the vaginal area?
A: Yes, sir.
Q: Okay. What is the relatively size of that opening in an 11-year-old?
A: It would depend on her estrogen level. And just to clarify, the hymen does not cover the opening of the vagina. It surrounds the opening of the vagina.
Q: I didn't mean literally cover.
A: Okay. Sorry.
Q: Okay. I didn't mean literally cover. Okay. About what's the size of that opening?
A: I did not examine -- I mean, I examined, but I did not document the size of the opening.
Q: Is there a research on what the size of the opening is in a typical 11-year-old.
A: There is some old research that used to -- people used to be concerned with the hymenal opening, or they talk about the hymenal ring, but now we know that that does not indicate -- you can't know about normal 11-year-old. It's kind of like height or weight. There's a range, but that has kind of fallen by the wayside as to be an indicator or any kind of

abuse or non-abuse.
Q: Did you examine what the size of the opening was?
A: I did not measure her opening; no, sir.
Q: And of course is, is that I think there is a -- I think and you tell me whether or not this is kind of an old wives' tale?
A: Yes, sir.
Q: I don't know is, is that -- and I think often people believe that a lot of times is is that -- that maybe the first time doing intercourse, or even maybe not even the first time doing intercourse, is is that, that, that, that -- that some females of course may experience bleeding in the vaginal area, you know, as a result of -- of first time intercourse. Is that -- does that sometime happens?
A: It can. It's not an old wives' tale, but there's not a clear percentage of how often that happens, and they actually have done studies on pregnant teenagers and found that only like 30 percent of those recall having any bleeding.
Q: Okay. Okay. If there is bleeding, then what generally causes the bleeding?
A: I don't know.
Q: You say you don't know what -- if -- you know, if -- I'm sorry. I'm surprised to hear you say that. Is that you're saying that you're a physician, of course a pediatric physician, and of course is, is that I'm pretty sure you know

about these things, of course is what you're telling the jury is is that if there is vaginal bleeding, then you don't know the cause of what the vaginal bleeding would be?

A: I mean, there would be numerous causes. It could be a menstrual cycle, it could be the onset of a menstrual cycle, it could be a tear in labia, it could be a urethral tear, it could be a UTI; I could not answer that.

Q: If there's a tear in the labia, you said that could be one cause?

A: That could be a cause; yes, sir.

Q: Okay. What about the hymen tissue?

A: The hymenal tissue, if it tore, could cause some bleeding.

Q: And of course is, if the -- if the hymen tissue is torn, and of course is, is that and I know that you testified that it can heal itself, but if it's -- if it's torn, I guess like any tear on the body, internally or externally, is there evidence of the tissue being disturbed?

A: Depending on the degree of the trauma or the injury, there could be some scarring, but most commonly, there is not because of that type of tissue.

Q: When you said most commonly there is not, are you referring to any specific research study?

A: Multiple studies; yes, sir.

Q: Okay. What studies were you referencing?

A: I would have to look back at the books. Baron (spelled phonetically) would probably be the most research on that, but I would have to reference some text books or specific documents.

Q: I know you told me about there could be -- is it fair to say, a tear of the hymen tissue. What about the, I think you said that another cause would be is if there's a tear of the, I think it's labia, if I'm pronouncing that correctly?

A: The what, the labia?

Q: Yeah.

A: You could. I mean, any tissue down there could tear.

Q: And of course is, is that could sexual trauma -- could sexual intercourse or sexual trauma cause tears?

A: It could.

Q: And I think it's your testimony is is that you indicated to -- that when -- that when you did the vaginal examination on Minor 1 , that there was -- that there was no evidence of tissue disturbance to the hymen or to the -- is it labia? Am I pronouncing that right?

A: Labia.

Q: Labia?

A: L-a-b-i-a.

Q: L-a-b?

A: Yes.

Q: Okay.

A: Yes, her exam was normal.
Q: So, so, no evidence of any disturbance of that tissue whatsoever?
A: No evidence of any injuries.
Q: Okay. Any evidence of any tissue -- I know we talked about the hymen, of course is, is that the labia, is that -- excuse me for being inartful, but this is not by area of expertise, and obviously I'm assuming is is that, from the vaginal cavity, that there is tissue that lines the wall of the vaginal cavity; is that correct?
A: Yes, sir.
Q: Okay. Did you see any evidence of any disturbance or tear, bruise, or anything of that particular tissue?
A: I did not see any injury.
Q: Now, you also did a rectal examination, I think, on Minor 1 ; is that correct?
A: Yes, sir. Well, I did not do an additional rectal exam; I just examined the rectum.
Q: You did a visual examination?
A: Yes, sir. Yes, sir, visual.
Q: And for the jury, what is the difference between a digital and a visual examination?
A: So, in medicine, when people say a rectal exam, you kind of think about the digital exam, which is when they put the finger inside of the rectum checking for prostate or any other

enlargement, but we did not do that. We just do a visual, which is just looking at the rectum.

Q: And, and of course is, let me ask you this question because, again, I don't know, this is not my area of expertise. You know, is -- have, have x-rays ever been used -- and of course I'm not talking about your traditional x-rays, I'm talking about a CT scan or anything like that. Has that sort of technology ever been used to try and determine, at least in a situation like this, where there is -- there is allegations and you're trying to get a closer look to see whether or not, you know, if there is disturbance beyond what your eye can see, is that machinery has ever been used for that sort of thing?

A: Not that I'm ever aware of.

Q: Okay. So, you're saying is is that you just did the visual; is that correct?

A: Yes, sir. Yes, sir.

Q: And from the visual, you didn't see any disturbance whatsoever?

A: Right. And I may add that that culposcope that we look through ---

Q: Uh-huh, (affirmative response).

A: --- is a magnified vision. So, it's not just your naked eye looking; it's a magnified view.

Q: I gotcha. So, that you can get -- so that you can get an

extremely close-up view of the tissue?
A: Yes, sir.
Q: And that's almost like, you know, like someone looking under a, what is it, a -- what's the word I'm looking for?
A: A microscope.
Q: A microscope, that's it. Thank you very much.
A: Yes, sir, very similar.
Q: So, it's similar to that looking underneath a microscope?
A: Depending on the amplification but, yes, sir, it gives us a better view of the tissue.
Q: Okay. Okay. And even with that, that amplified view, you didn't see anything?
A: Right.
Q: And that goes for both vaginal and of then, of course, anal. And of course, I'm gonna quickly go through anal, because I know you've already talked about anal. And of course is, you said, anal or rectal examination, that you did that on Minor 1 as well, too?
A: Yes, sir.
Q: And of course is, is that on that you saw no injury to any tissue whatsoever?
A: Correct.
Q: What sort of tissue could be injured -- injured, if you were to insert an objection, I guess, and of course, we're talking about a small child, if you insert an object into a

small child, I guess the size of the objects could determine whether or not there was trauma or whether there's not trauma?
A: Certainly, the size of the object could -- could determine trauma or not. Again, you're talking about a distensible type of tissue that has elasticity and does stretch.
Q: Certainly. But it does stretch but of course is is that the stretch does have limitations; is that correct?
A: Sure.
Q: And that's why sometimes if the tissue stretches too much then, of course, there may be bruising or tearing or that sort of stuff?
A: Yes, sir.
Q: Okay. I think I asked this question, but is that -- I know that you said that you didn't measure the hymen opening. Did you -- what about the vaginal, did you measure it?
A: That's kind of the same thing. The entrance to the vagina is it's bordered by the hymen, so when you speak of hymenal opening, that would -- unless there's no hymen -- you would be basically talking about the vaginal opening. The hymenal opening and the vaginal opening are sort of the gateway or the same ---
Q: And I'm sorry. What I mean is, is that I was -- I'm referencing I believe is the rectal opening?
A: Oh, the rectal opening?

Q: I apologize.
A: That's okay. If the rectum is not completely closed, then we would measure that, and it was completely closed.
Q: It is completely closed? Why would you measure if it's not completely closed versus if it's not completely closed?
A: That would be done probably in the emergency room, because, if it was open, then there would be an acute finding, and they would have to do evidence collection unless there was another organic reason for the rectum to be not closed.
Q: And of course is, and I think you said is, and did you also use the, I guess, that telescopic view of the rectum the same thing ---
A: Yes, sir.
Q: --- the same equipment?
A: Yes, sir.
Q: And of course, even after looking at the telescopic view of the rectum is that you didn't see any signs of, of trauma or either new scarring or old scarring or anything like that whatsoever?
A: No.
Q: And of course, I'll move to the other child and move a little bit quickly on Minor 2 . Did you just do a rectal examination or did you do both of them?
A: I did both on her as well.
Q: You did both on her?

A: Yes, sir.
Q: The vaginal examination, and of course, same examination that you did on Minor 1 , you did on, on, on -- on Minor 2 ; is that correct?
A: Yes, sir.
Q: Okay. Using the same equipment and the same technique?
A: Yes, sir.
Q: Okay. Did you any signs of any -- any old trauma, scar tissue, anything like that?
A: No, sir.
Q: And I'm assuming is is that the reason why you do these examinations is to try to look and see whether or not that's present?
A: That's a small part of the exam. The examination that we do, 95 percent of the time in witness child sexual abuse, is normal. And, we do it to reassure the patient that their body does not have injuries and it has healed, if there were injuries, and that they have a normal life ahead of them to try to minimize some of the mental trauma they've been through and that we anticipate them going through.
Q: You didn't see any, any signs of any -- any injury to her whatsoever?
A: It was normal.
Q: Everything was normal. Okay. What about with respect to the -- and I think you said you also did a, a rectal

examination on Minor 2 , same procedure; is that correct?
A: Yes, sir, a visual rectal.
Q: Using the same instruments; is that correct?
A: Yes, sir.
Q: Okay. And of course is, is that you saw no evidence of new scar tissue or either old scar tissue; is that correct?
A: It was normal; yes, sir.
MR. BROOKER: If you can indulge me for just a second, Your Honor, and let me make sure that I don't have any follow-up questions for this witness.
THE COURT: All right, sir.
MR. BROOKER: No further questions, Your Honor.
MR. RICHARDSON: Brief redirect, Judge?
THE COURT: Yes, sir.

REDIRECT EXAMINATION OF ELIZABETH MORPHIS BY MR. RICHARDSON:

Q: Dr. Morphis, Mr. Brooker asked you a question about whether the size of the object that may be inserted into openings of the body would affect, I guess, the level of damage and the healing. Say, if a larger object were inserted into the anal opening and that's large enough that it would stretch the tissue to the point of causing a tear or any sort of damage or bleeding or what have you, would that size of the object affect the body's ability to heal from it?
A: No, sir. If you have a tear -- and a good way to think about it is oftentimes, infants have large stools, so maybe

something is coming out of the rectum rather than going in, but either way, sometimes they have a tear and even though have a tear, it heals very rapidly because of that type of tissue and the blood supply that goes to that type of tissue.

Q: Okay. So, even if a large object either comes in or goes out ---

A: Yes, sir.

Q: --- the healing rate would be the same?

A: Yes, sir.

Q: All right. And in the same vein as that, how about prolonged incidents of abuse? Like I said of just one incident with a large object, not multiple incidents over a period over months or years, would that type of repetitive trauma impact the body's ability to heal to a normal state?

A: No, I mean, the body still should be able to heal in that area very rapidly.

Q: Okay. Still within 5 to 7 day window that you described earlier?

A: Yes, sir.

Q: Okay. I think that's all the questions I have.

MR. BROOKER: Just real briefly, Your Honor.

THE COURT: Yes, sir.

RECROSS EXAMINATION OF ELIZABETH MORPHIS BY MR. BROOKER:

Q: I think on the question that Mr. Richardson asked is and I think he asked about healing and, of course, if he says that

if there was a particularly large object that is used and a large object caused trauma -- I think Mr. Richardson asked you is whether or not that would affect the body's ability to be able to heal, and I think you testified that it would not, the body could still heal?

A: Yes, sir.

Q: Okay. But of course, if that trauma is extensive and if there's a lot of tearing, even though that body heals, there would be -- there could be scar tissue, would it not?

A: There could be, depending on the amount of trauma and the difference in the -- it does not affect the body's ability to heal, it may affect the time it heals. But, there should -- the body's ability to heal should be the same.

Q: And that's -- and I understand that is is that there's no question as to whether or not -- whether or not the body heals, but the course -- but the question is is that when normally when we suffer extensive scar tissue, is that -- or tears in that tissue heals, that tissue can leave signs that it has been disturbed -- is that correct -- that it has been torn and, of course, it heals?

A: Some injuries can leave scars; yes, sir.

Q: Even on the inside of the body, there's scar tissue; is that correct -- can be left on the inside of the body?

A: It can, yes.

Q: Okay. Not just on the outside. And of course is, is

that if there is repetitive trauma -- and I think Mr. Richardson asked you is that, what if there is repetitive trauma? What if there is, again, dealing with a small child, eight, nine, 10, whatever the age is, and of course is, is that if there is -- there is repetitive trauma in the vaginal area, then of course is does that repetitive trauma then create a greater likelihood that there would be scar tissue?
A: Actually, no, because of the distensibility. Depending on the trauma, it may actually increase the elasticity a little bit, and so you may have less likelihood that you would scar.
Q: Even if -- even if you're tearing -- even if there is tearing of the tissue, is there a greater probability if there is multiple tearing of the tissue that then of course is, is that -- that there would greater likelihood that if there is evidence of tearing?
A: If there is multiple tearing -- I'm sorry; can you rephrase that?
Q: If there's multiple tearing on multiple occasions, does that amplifies -- it doesn't say that it's an absolute certainty, but does it amplify the probability that there may be evidence of the tearing if it's occurring on multiple occasions, multiple tearing?
A: Each tear would have the same ability to repair, I guess. I'm not sure if I'm answering your question, but every -- each

tear would have the ability to repair in that area about the same.

Q: And it would heal and then, of course, it creates a chance -- it thus creates a chance of scar tissue; does it not?

A: Perhaps, I'm not sure.

MR. BROOKER: Indulge me, Your Honor, I think I don't have any further questions.

No further questions, Your Honor.

THE COURT: All right.

MR. RICHARDSON: Thank you, Judge.

May we approach briefly about scheduling for the next witness?

THE COURT: You're done?

MR. RICHARDSON: Yes, sir, I have no further questions.

THE COURT: All right. Dr. Morphis, thank you very much for being here.

DR. MORPHIS: Thank you.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, I'm gonna break and allow you to go to lunch at this time. Again, as always, when you're not here, please do everything within your power to protect your ability to remain fair and impartial.

Don't allow anyone to talk with you, don't speak with anyone about this case. I'm gonna give you a little bit of an extended lunch, it's about 12:30. I'm gonna ask you to be back at 2:30. Okay? So, I'll give you a couple of hours for lunch. And then when you get back at 2:30, we'll start back. So, if everyone else would please remain seated, members of the jury, we'll see you back at 2:30.

(REPORTER'S NOTE: Jury exits courtroom @ 12:30 P.M. The following takes place outside the presence of the jury.)

THE COURT: All right.

MR. RICHARDSON: All right, sir. Judge, we'd call Robin Griggs.

THE COURT: All right.

CLERK: Ma'am, if you'll come around and be sworn, please. Put your left hand on the Bible and raise your right hand.

ROBIN TYLER GRIGGS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

PROFFER DIRECT EXAMINATION OF ROBIN TYLER GRIGGS BY MR. RICHARDSON:

Q: All right. Ms. Griggs, will you say your name for the record, please?

A: Robin Tyler Griggs.

Q: All right. And where do you work, Ms. Griggs?

A: The Durant Children's Center.

Q: All right. And what do you do there?
A: I'm a forensic interviewer.
Q: How long have you been doing that?
A: Sixteen years.
Q: All right. Can you explain to us what a forensic interview is?
A: It's just a neutral fact-finding interview. When I get a referral, I'm just there to talk to kids about anything.
Q: So, how are you notified of a case?
A: Law enforcement or DSS usually make the referrals.
Q: All right. So, you ask kids questions based on what the report is that you've received?
A: That and anything else that -- I try to cover all the possible concerns in a family.
Q: Did you do forensic interviews in this case with respect to Minor 1 and Minor 2 ?
A: Yes, sir; I did.
Q: Do you know the date of those interviews?
A: November 30th, 2017.
Q: And do you have the ages of the children at the time you interviewed them?
A: Minor 1 was 11, and Minor 2 was 10.
Q: All right. What methodology do you use when doing a forensic interview on a child, in terms of how you ask the questions?

A: Usually, they're non-leading. Allow the child to give all the information but, sometimes, you have to let the child know what -- what direction you're going and then ask them to open up and be more open-ended.

Q: Okay. Is there a particular title -- like I've seen RATAC in the past -- is there a type of name associated with how you do this?

A: Yes, sir, and we don't do RATAC anymore; we do what's called Child First. And it's not a change in our protocol, it's more a change in the terminology so that it shows that it's more fluid instead of set stages.

Q: What do you mean by that?

A: Like RATAC, the first one is rapport, so that it's not -- you don't have to go through each one of them in order. You can go back and forth. With Child First, it's mainly getting the rapport with the child, which is in all of the different protocols and then talking with them, once they're comfortable, about things. And what we use now is just called Child First.

Q: Okay. So, the Child First thing is more liberated, where you can kind of just go with kind of what feels right at the moment in terms of what direction you go?

A: Right. Even though we would say RATAC was semi-structured, some people kind of felt like you had to go in that order. Whereas, we follow the child, which is why they

changed it to Child First. So, if the child comes in and sits down and starts talking, I don't stop and go wait a minute, we need to do this first.

Q: Okay. What kind of training have you had to conduct these interviews?

A: Well, I started with Durant Children's Center in November of 2004. I went to training at National Children's Advocacy Center in Huntsville, December 2004. So, I've been trained with National Children's Advocacy Center and I've been trained through the South Carolina, through it used to be called, I forget what it was, but it's Child First now.

Q: Okay. How long have you been doing these; did you say already?

A: Since November 2004; so, it's 16 years.

Q: Okay. When you met with these two children, in your conversation with them, did you have any concern about their ability to understand the questions you were asking?

A: No, sir.

Q: Did the answers they provided to you make sense to you as it related to your question?

A: Yes, sir.

Q: Do you memorialize your interviews in some way?

A: They're audio/videotaped and I write a report.

Q: All right. And you turn all that over to law enforcement or the solicitor's office or whoever requests it?

A: Correct.
Q: All right. In this case, both of their interviews were audio/video taped that day?
A: Yes, sir.
Q: And this questioning was done in response to an investigation that you were made aware of?
A: Correct.
Q: In the area of child abuse or sexual abuse?
A: Correct.

MR. RICHARDSON: Your Honor, I have copies and I provided these to Mr. Brooker. These are copies of the forensic interviews that I've redacted with respect to objectionable things. Like there's issues with domestic violence and other things that are discussed that I redacted and I've given Mr. Brooker an opportunity to view them. But, these I'd like to have marked for the purpose of this hearing. I guess it would State's 1 and 2?

THE COURT: State's 1 and 2.

STATE'S EXHIBIT NUMBERS 1 AND 2
MARKED FOR IDENTIFICATION

BY MR. RICHARDSON:

Q: Ms. Griggs, I want to show you these two items, State's 1 and 2 that are just for the purposes of identification at this point. Do you recognize Number 1?
A: Yes, sir.

Q: And what is that?

A: That's DVD of my interview with Minor 1 .

Q: Okay. Did you have an opportunity to take a look at the content of this disc earlier?

A: Yes, sir; this morning.

Q: Okay. And Number 2?

A: That is a DVD of Minor 2 .

Q: Okay. Are these both true and accurate representations of the conversations you had with them, subject to the redactions ---

A: Yes, sir.

Q: --- that were inadmissible material?

A: Yes, sir.

Q: All right.

MR. RICHARDSON: Judge, if now is the appropriate time, I would like to publish these to you or if you just want to look at them in chambers later?

THE COURT: Yeah, I can take them back and look at them in chambers.

MR. RICHARDSON: Okay. In that case, I think that's all the question I would have for Ms. Griggs right now.

THE COURT: All right. Mr. Brooker, any questions for Ms. Griggs?

MR. BROOKER: Just a few, just very briefly.

CROSS EXAMINATION OF ROBIN TYLER GRIGGS BY MR. BROOKER:

Q: And is that -- I think on the video, I think it was very difficult for -- for Minor 1 , I think specifically, to speak about the issue; is that correct?
A: Correct.
Q: And of course is, a lot of times when you have children that are not forthcoming and willing to speak, but you have to find different ways to try and draw it out?
A: Correct.
Q: Did you have to do with Minor 1 ?
A: I had to use our anatomic drawings. We utilize drawings or anatomically correct dolls to clear up any confusion or to make sure I understand what they're talking about.
Q: Okay. And of course is, as I listened to the video is, is that -- were there specific questions I think that was -- that was asked in reference to times and places? I mean, exactly what time it took place, that these alleged incidents took place?
A: Yes, we do try to ask that, but we don't always expect kids to be completely 100 percent accurate with time and place.
Q: Okay. Were there times and places given in this particular situation with respect to Minor 1 ?
A: Excuse me, let me take a quick look.
Q: Sure.
A: Yes.

Q: What was the time and places?
A: She went my Minor 1 when I interviewed her. Minor 1 said she was nine when this first started, and the weekend before Thanksgiving was the last time anything had happened.
Q: Okay. She said nine when it started and then Thanksgiving when it ended ---
A: Right.
Q: --- before Thanksgiving, I am assuming, Thanksgiving at ---
A: Correct.
Q: Okay. All right. Okay. But nothing more specific than that?
A: No, sir.
Q: Were you able to get a full account of all the -- a full account of the details of each and every allegation?
A: I'm not sure, sir, because I asked what I knew to ask and get what I could, but I don't know if something has arisen later that may not have been discussed in the interview.
Q: And what I mean by a full account is, is that were you able to go into detail with each specific allegation with the children?
A: Yes, sir; I'm sorry, yes, sir.
Q: And what I mean go in detail is that she was able to tell you the detail, the detail -- the detail of each details -- go into detail of each and every event that she alleged?

A: No, sir. Not every time do we expect it -- especially if there's more than one incident of anything, we don't expect the child to be 100 percent giving every detail.
Q: So, from my understanding is that she gave you kind of a broad detail, broad, I think, scope, saying that this is what happened very briefly, but not going into minute details of the event?
A: She was able to give some details, but I wouldn't be able to say 100 percent she gave me every detail about every incident.
Q: Okay. Because I think that there was an allegation of how many events -- did she ever -- I think a statement was asked if that happened more than once; did she say how many times it happened?
A: Normally, I try to do just do one or more than one. Because the kids, again, don't always know time and we don't want them to say 500 knowing that that's not an accurate depiction of what happened.
Q: So, you want to try to prevent them from giving an outrageous number?
A: Right, or, you know, one if it really happened more than one.
Q: And I'm gonna ask this question and I'm going -- if, if, if what you said is accurate, that is that you're trying to control her from giving an outrageous number, then of course

is, that at some extent you're exercising some sort of influence on what her testimony is?

A: No, sir. What we're trying to do is, kids, sometimes if you ask them, you know, how many times, they might give an outrageous number thinking that it did happen that time but realistically, as adults, we know that that's not reasonable to accept as a number.

Q: But that doesn't happen in all situations, right?

A: It does not.

Q: Some children may give an accurate number; is that correct?

A: Correct.

Q: And so, but if you don't ask, you never know whether or not the child gives a realistic number or a ridiculous number unless you give them a chance to give a number; is that correct?

A: Correct.

Q: So, she wasn't given a chance to specifically give a number; is that correct?

A: I just recall asking one time or more than one time.

Q: Yeah. Okay.

MR. BROOKER: No further questions, Your Honor.

THE COURT: Anything further?

MR. RICHARDSON: I don't have anything further, Your Honor.

THE COURT: All right. Thank you, ma'am. You may step down.

MR. RICHARDSON: I think that's all we need to take up prior to you observing the tape.

THE COURT: All right. Well, I'll do that during the lunch break here. So, we'll -- we'll then adjourn for lunch and be back, start back at 2:30. Okay?

RECESS - 12:46 P.M.

*******OFF THE RECORD*******

(On the Record - 2:55 P.M.)

(REPORTER'S NOTE: The following takes place outside the presence of the jury.)

BY THE COURT:

THE COURT: Please take a seat. It would have been nice to know that one of those videos was 30 minutes long.

MR. RICHARDSON: I told you, I said one was 30 and one was 10.

THE COURT: I heard 11 and 9. But anyway.

MR. RICHARDSON: I think I may've said 40 minutes total or something like that.

THE COURT: All right.

MR. RICHARDSON: All right. Thank you, Your Honor. Since we're back on the record now, I think, you've have had an opportunity to review the discs that were marked as State's 1 and 2 for identification only at this point and that would

conclude the state's presentation with respect to Section 17-23-175 of the South Carolina Code, and that's the section for admissibility of an out-of-court statement of a child under 12. Pursuant to that statute, the forensic interviews would be admissible upon the Court's ruling, based on the factors that are listed. Particularly, that the case is in General Sessions Court, which it is; the statement was given in response to questioning and conducted during an investigative interview of the child, which they were; an audio/visual recording was made and that's been -- that's clear; the child testifies at the proceeding and is subject to cross examination on the elements of the defense in making the out-of-court statement. So, far, we've had one child testify and the other will be this afternoon. So, as we mentioned earlier, I guess with the one child still remaining to testify, I think it can come into evidence but would be subject to her testifying. Then, if the Court finds in the in camera hearing, the totality of the circumstances surrounding the making of the tape and provides particularized guarantees of trustworthiness and then the statute goes on to define what the Court -- to say what the Court could consider, but is not limited to. And those factors were whether the statement was elicited by leading questions, when the interviewer has been trained in conducting these interviews, whether the statement represents a detailed account of the alleged offense, whether

the statement has internal coherence, and sworn testimony of a participant, which may be determined necessary by the Court.

I would argue that the discs do have or are worthy of a determination of trustworthiness based on the circumstances involved in the tapes, and I believe there is internal coherence, and I believe the interviewer has been sufficiently trained. There be some incidents of leading in there, but I don't think that is dominant by any stretch. So, I would ask that the Court deem those two interviews admissible. And what I follow, the method that I follow in order to accomplish this would be under *State v. Anderson*, which is 413 S.C. 212; that's where the State Supreme Court lays out basically how to get these things before the Court.

THE COURT: What was that cite again, 401?

MR. RICHARDSON: It's 413 S.C. 212.

THE COURT: 4013?

MR. RICHARDSON: No, 413.

THE COURT: 413. I gotcha. Okay.

MR. RICHARDSON: S.C. 212.

THE COURT: 212. And the cite was the 17- on the statute?

MR. RICHARDSON: Yes, sir. 17-23-175.

THE COURT: Okay.

MR. RICHARDSON: A copy of that statute is listed in total in a footnote in the *State v. Anderson* case, which I can

hand up to you if you want to take a look at it.

THE COURT: If you've got a copy of it, that will be fine. Thank you, sir.

All right. Mr. Brooker?

MR. BROOKER: Thank you, Your Honor. Your Honor, I'm assuming that we're all here to talk -- our arguments is only relevant with respect to Minor 1 , I think, she's the only one that testified.

THE COURT: Well, at this time, yes.

MR. BROOKER: Okay. Okay. Your Honor, we would argue that -- that the -- that the forensic interviews are not admissible. I think because one is, is that they don't comport with the requirements of the 17-23-175. In addition to that, we would argue that it is also a violation of the confrontation clause and due process, and I will be very brief with respect to that.

The reason why we argue it is a violation of the due process and confrontation, the arguments are very similar to the argument made the last time and that is, is that when Minor 1 testified, I think on cross examination -- on direct examination, not just on cross, but on direct and cross is, is that she was extremely limited in the facts in which she was able to present. I think she used a broad description that she was raped, and then of course is that she made a -- I think that she was asked is, is that, you know, what part of

the body was affected, and of course is, is that she said her butt area, but she didn't specifically talk about the events that took place, exactly how the events took place, and then of course, when asked about the Northeastern, I think, residence, she just said the same thing happened there; the trailer, the same thing happened there with no description whatsoever. And of course, the reason why it violates the confrontation clause and also due process is, is that what this tape purports to do is, is to bring into -- bring into facts that have not been testified to and have not been cross examined by the witness on the stand. These are things that she could not indicate on the stand; these are things that she was not subject to cross examination to on the stand; and of course is, that, if these tapes are played, then of course is that -- is that we will have testimony that will -- you know, that will be presented to the jury, in which the witness did not testify to and also in which the witness cannot be cross examined on.

Half the stuff that's contained, I won't say half, but most of the stuff that's contained in her tape, it's not stuff that she testified to on the stand. And of course is, and of course, I don't think that, you know, that 17-25-175 is -- is -- is meant to be used in a way it was just used and that is is that in a situation where you have a child that simply can't testify and, then of course is, is that you circumvent,

you know, the confrontation clause and circumvents due process by allowing it to -- allowing her testimony to be presented primarily by the video as opposed to her being able to testify by herself.

Now with respect to the statute, Your Honor, under 2, under Subsection, I think, 2-3, where it says, is that she was cross examined on the elements of the offense and was subject to cross examination on the elements of the offense in the making the out-of-court statement. I won't go into detail about that, I will just simply say the argument can be made regarding our -- the -- Mr. Clark's inability to be able to cross examine her. Because I think when it says subject to cross examination, I don't think the court means is that she was put on the stand. I think -- I think what the statute is saying is, is that, you know, she actually has to go through the process; not that she's actually just simply sitting on the stand. And of course is, we have to be able to have our questions answered by ---

THE COURT: What questions -- what questions were you prevented from asking her?

MR. BROOKER: No, we did ask her questions; we didn't get an answer of the questions.

THE COURT: Okay.

MR. BROOKER: You know, I'm not saying that we were -- we -- we could ask her, but it does not good to ask questions, if

you can't get an answer. And the only the other thing, Your Honor, is that under Subsection (b) when it comes to truthfulness. And of course is, is that we say is that whether the statements was elicited by leading questions; we think that they were and then of course is, is that whether the statements represented a detailed account of the offense alleged and of course, if Your Honor listened to the statements. And I think the forensic interviewer testified to this and, of course, the tapes themselves, evidence, that is even a detailed account of the allegations cannot even be taken from the -- because it's saying, I think, problems that we've got here in the court. And for those reasons, Your Honor, I would ask that submission of the tape is inappropriate under the statute and also because due process and confrontation clause.

THE COURT: All right. I'm gonna overrule the objection. I think that the -- the statement, obviously, it was given in response to questions that were conducted through an investigative interview. It was, in fact, taped and preserved. The child was -- was provided -- was -- did testify here and was subject to cross examination on the elements of the offense and the making of the out-of-court statement, and I understand your argument regarding that, but as I stated in my ruling earlier, I -- the Court can't control a cross examination or how it's done or how it's executed,

whether or not you choose to you use leading questions or not or any of the tools available subject -- that are available to someone on cross examination. But whether or not you decided or chose to question her regarding the out-of-court statement, she was on the stand, subject to that -- I appreciate what you're sharing with the Court that that she was reluctant to speak. But, it didn't go any further, and it could have gone further. I don't know what the result would have been, but she certainly was subject to the cross and the cross ended up being limited and -- and in my opinion, it ended prematurely, but that was the decision of counsel.

The -- I think on the totality of the circumstances surrounding it, I think it -- it does have the sufficient trustworthiness, the guarantees of trustworthiness. In listening to the interview, I'm not gonna say and I can't state with particularity, there may have been -- I can't say there was no leading questions asked, but there -- what was asked that might've been considered leading, I didn't find that there was anything that was egregious or that was used to elicit or conduct or prevent the child from -- from testifying. If there were leading questions, they were minimal, and they weren't with regards to anything substantive or pursuant to the allegations here. The interviewer was, in fact, trained at conducting these interviews, and I find that all the circumstances surrounding the statements were

appropriate. I'm gonna allow them and note your exception and that's to -- as to Minor 1 -- as to Minor 1 . The other young lady we have yet to hear from. So, we'll deal with that. Okay.

All right. You ready to proceed?

MR. RICHARDSON: Yes, sir.

THE COURT: Defense ready to proceed?

MR. BROOKER: Yes, sir, Your Honor.

THE COURT: Who -- who you calling next?

MR. RICHARDSON: I'll call Ms. Griggs to put the -- to enter the discs, so, Item Number 1, Exhibit 1, I'm gonna ask to move into evidence. Item 2 I will ask to move in subject to the testimony of ---

THE COURT: Did we not do that earlier?

MR. RICHARDSON: No, sir.

THE COURT: Okay.

MR. RICHARDSON: No, the way *State v. Anderson* lays it out, is the out-of-court testimony -- excuse me -- the in camera testimony of the forensic interviewer has to take place first, and once the Court rules on the admissibility, then the forensic interviewer testifies in front of the jury solely to authenticate the interviews.

THE COURT: All right. Okay. Let's bring the jury in.

(REPORTER'S NOTE: Jury enters courtroom @ 3:10 P.M.)

THE COURT: All right. Ladies and gentlemen, I hope

everyone had a good break and we will pick up where we left off and recognize Mr. Richardson for the state's next witness.

MR. RICHARDSON: Thank you, Your Honor. We call Robin Griggs.

THE COURT: Ma'am, if you'd please come around and be sworn.

ROBIN TYLER GRIGGS, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF ROBIN TYLER GRIGGS BY MR. RICHARDSON:

Q: All right. Ms. Griggs, would you say your full name for the record?

A: Robin Tyler Griggs.

Q: Okay. Ms. Griggs, where do you work?

A: Durant Children's Center.

Q: And what do you do there?

A: I'm a forensic interviewer.

Q: All right. And as part of your job, do you interview children who have been referred to you?

A: Yes, sir.

Q: All right. And when you interview those children, do you memorialize that in any way?

A: Audio and visual recordings, if I do a report.

Q: All right. And did you meet with Minor 1 and Minor 2 with respect to this case?

A: Yes, sir; I did.

Q: And on what date did you meet with them?
A: November 30th, 2017.
Q: Okay. And did you record your interviews with them?
A: Yes, sir.
Q: Okay. I want to show you what's been marked as State's Exhibit 1 for identification at this point. Could you tell me if you recognize that?
A: That's the DVD for Minor 1 .
Q: All right. And have you had an opportunity to take a look at the contents?
A: Yes, sir, this morning.
Q: Okay. And does it portray an accurate -- a fair and accurate representation of your interview with her subject to redactions made by agreement by the parties?
A: Yes, sir.
Q: Okay.
MR. RICHARDSON: Your Honor, I'd ask for State's Number 1 to be entered into evidence.
THE COURT: All right. I'm gonna allow that subject to your objection.
MR. BROOKER: Yes, sir. Thank you, Your Honor.

STATE'S EXHIBIT NUMBER 1
ADMITTED INTO EVIDENCE

BY MR. RICHARDSON:
Q: I'll show you State's Number 2 for identification?

A: This is the DVD for Minor 2 .
Q: And does this show a fair and accurate representation of your interview with her, subject again to redactions made by agreement?
A: Yes, sir.
Q: All right.
MR. RICHARDSON: Judge, at this time, I'd ask to move State's 2 into evidence with the exception that we have to meet the testimonial requirement with the next witness. So, subject to the child testifying.
THE COURT: All right. At this time, I'm not gonna allow that into evidence, but the record is clear as to Ms. Griggs' testimony regarding that. And then if you lay the appropriate foundation later, we'll revisit that.
MR. RICHARDSON: Thank you, Your Honor.
BY MR. RICHARDSON:
Q: All right. Please answer any questions that Mr. Booker may have for you.
THE COURT: Any cross?
MR. BROOKER: I don't have any questions for Ms. Griggs.
THE COURT: All right. Thank you, sir.
MR. RICHARDSON: Thank you.
THE COURT: Ma'am, thank you very much.
MS. GRIGGS: Thank you.
THE COURT: You may step down.

MR. RICHARDSON: Your Honor, our next witness will be Minor 2 .

THE COURT: All right. Minor 2 , if you would come around and be take the witness stand, please. You can just come have a seat up here and then Ms. Gray will place you under oath.

Minor 2 , HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION OF Minor 2 BY MR. RICHARDSON:

Q: All right, Minor 2 , can you tell us what name you go by, usually?

A: Minor 2 .

Q: All right. Do your friends call you anything short for that, short; you don't go by Minor 2?

A: (Indicates negatively.)

Q: So, you go by Minor 2 ?

A: (Indicates affirmatively.)

Q: All right. Very good. How old are you now?

A: Twelve.

Q: Twelve? What grade are you in?

A: Sixth.

Q: Okay. And can you tell us who all you live with at home now?

A: My grandma, my mom, my brother, and my sister.

Q: Okay. And back when you first moved to Marion, do you

remember about how old you were when that was?
A: No, sir.
Q: No? Okay. Do you remember the house you lived in when you first moved to Marion?
A: I think it was my grandma's house.
Q: All right. And did something happen to that house that caused you not live there anymore?
A: Yeah.
Q: What happened to that house?
A: The house burnt down.
Q: Okay. Do you remember where you went to live after that?
A: Yeah, but I don't know the name of it.
Q: You don't know the name of it? Okay. Well, when you lived in the house that burned, do you remember who lived in that house with you?
A: My grandma, it was her house; my momma; my sister; my brother; and I think my dad lived there, but I don't recall.
Q: Do you remember him being there at all?
A: Yeah.
Q: Okay. In that house, where did everybody sleep usually?
A: I slept upstairs. Minor 1 and W.C. usually slept downstairs.
Q: So, Minor 1 and W.C. ?
A: W.C. used to sleep downstairs and I used to sleep upstairs.

Q: Okay. You used to sleep upstairs. Where was your parents' room in that house?
A: Upstairs.
Q: Okay. So, you'd be up -- would you be up there near them?
A: (Indicates affirmatively.)
Q: Is that a yes?
A: Yes, sir.
Q: Okay. Were there times where you may end up in the bed in their room?
A: Yes, sir.
Q: Okay.
MR. BROOKER: Objection to leading, Your Honor.
THE COURT: Sustained as to leading.
BY MR. RICHARDSON:
Q: What happened to you in that house that burned down that we're here about today?
A: I got raped.
Q: What do you mean by that? Well, let me ask you this way. What part of your body?
A: My butt.
Q: And who did it?
A: My dad.
Q: Was the -- you said that this happened to your butt. Was this touching on the outside or inside? Well, how do you know

it happened, like what did you feel?
A: Inside.
Q: Inside? Did you see what was put inside of you?
A: No, sir.
Q: What was the lighting like in the room when that happened?
A: Like the dark most of the time.
Q: What time of day was it?
A: Night.
Q: Nighttime? How many times did that happen to you?
A: Four or five.
Q: Okay. Tell us about the last time.
A: Okay. So, it was just like every other time, I just say no. And then -- it happened. I as able to get my momma and then I always woke her up, but I wasn't able to and then he said that he wouldn't do it no more.
Q: Okay. So, was your mom, she was in the house?
A: (Indicates affirmatively.)
Q: Yeah? Is that a yes?
A: Yes, sir.
Q: Okay. Where was she located?
A: On the pallet.
Q: On a pallet. All right. Where was the pallet?
A: Like there was the bed and it was like at the foot of it.
Q: It was at the foot of the bed? All right. So, she was

on the pallet; where were you and your dad?
A: I was on like my Dora bed and then somehow I got to the bed.
Q: Now, tell us about this Dora bed. Remember, none of us have seen this room.
A: Okay. So, it was like -- so, there's a wall and my bed was on the wall and then there was like a wall in front of the Dora bed, like there's a space between it, and then that's their bed and then the pallet.
Q: You keep saying Dora bed, you mean Dora the Explorer?
A: Yeah.
Q: Okay. I think hopefully, we know that. So, there's a Dora bed, a pallet, and then a bed?
A: Yes, sir.
Q: Okay. So, you said a second ago that you started out in the Dora bed. All right. And then what happened after that?
A: And then somehow I got to their bed.
Q: So, you found yourself in their bed?
A: (Indicates affirmatively.)
Q: Is that a yes?
A: Yes, sir.
Q: Okay. And what happened in there -- in the bed?
A: So, Daddy pulled my underwear down, and then I don't know what it was, but he put something in my butt.
Q: Okay. You say at first, he pulled your underwear down?

Is that a yes?
A: Yes, sir.
Q: Okay. So, when this happened, what did you do next?
A: I can't remember. All I know is somehow I got up and I went to get momma.
Q: So, what did you -- what did you do to your mom to try to wake her up?
A: I shook her.
Q: Did she wake up?
A: No, sir.
Q: What did your dad do then?
A: He said I'm not gonna do this to you anymore. And then I just went back to bed.
Q: Is that the last time anything happened to you?
A: Yes, sir.
Q: When -- was there a point where your dad moved out or wasn't living with y'all anymore?
A: I think.
Q: All right.
A: I can't remember.
Q: Do you recall him living around his mom's house?
A: Yes, sir.
Q: All right. Where did he stay there at that property?
MR. BROOKER: Again, this is leading, Your Honor.
A: At like a trailer.

THE COURT: Sustained as to you leading.

Q: Okay. Where did your dad stay when he lived with his mom?

A: There was like a trailer thing at the back; I can't remember what it was called. It was like a camper and he stayed there.

Q: Did you spend a lot of time in the camper visiting with him?

A: I wouldn't -- I didn't like it there. So, I didn't go in it.

Q: Who spent the most time back there in the camper with him?

A: Minor 1 .

Q: Do you recall if -- would y'all spend the night over there any?

A: I can't remember. I mean, I think Momma and Minor 1 did. I don't think I ever -- I mean I did one time, but then I tried not to.

Q: Okay.

MR. RICHARDSON: I beg the Court's indulgence one moment.

BY MR. RICHARDSON:

Q: All right. Thank you, Minor 2 . Please answer any questions Mr. Brooker may have. Okay?

CROSS EXAMINATION OF Minor 2 BY MR. BROOKER:

Q: How you doing, Minor 1 ?

A: Good.
Q: I'm sorry, Minor 2 . I apologize.
How old are you Minor 2 ?
A: Huh?
Q: I'm sorry. How old did you say you were?
A: Twelve.
Q: Twelve right now. And of course is, is that you said that -- I think you just testified that, you know, that you were raped; is that correct?
A: Yes, sir.
Q: And you were raped by your father?
A: Yes, sir.
Q: Okay. And when's the first time you said that happened?
A: I don't know the date.
Q: I'm sorry. I'm sorry, I didn't hear your answer?
A: I don't know the date.
Q: I'm sorry. I'm sorry; I didn't hear your answer.
A: I don't know the date.
Q: No, I said when did -- when was the first time it happened? You don't know the date, you say?
A: (Indicates negatively.)
Q: Do you know how old you were?
A: I was like seven or eight, I think.
Q: And of course, where did it happen?
A: Bond Street.

Q: Is that the place that you call the burnt-out house?
A: Yes, sir.
Q: And do you know when did that house burned?
A: No, sir.
Q: Okay. And is this alleged to have happened before or after the house burned?
A: Before.
Q: Okay. And I think you testified that you believed that you, your mother, your grandmother, and your brother and sister was living there, but you wasn't quite sure about your father?
A: Yes, sir.
Q: Why wasn't you quite sure about your father?
A: Because I don't know if like, him and my mother had a fight and he was gone a lot, because they did that a lot.
Q: Okay. You don't know whether he was living there at the time?
A: Yes, sir.
Q: Okay. Now, I'm gonna ask you some questions about this first event and you tell me -- tell me how did this -- I think the first time it happened, tell me how it happened?
A: So, this was before I had my Dora bed. So, I just lay in their bed with them sometimes. So, my underwear had pulled down, and then I looked to see what it is and I could tell that it was daddy, and then I looked for momma and she was

like gone. I don't know where she went. I think she was -- I think that was the time, but I can't remember if there was a pallet then, and then he stick his -- I don't know what he stuck in me, but he sticked something in my butt.

Q: You think he stuck something in your butt?

A: Yes, sir.

Q: I'm sorry. I'm just writing out and repeating what you're saying. Okay. And I'm not trying to embarrass you or anything like that but, of course, it's important that I get the factual information and get the truth. So, I may ask you some questions that, you know, may be a little bit tough for you but I need to ask them. Okay?

A: Yes, sir.

Q: And if I ask you anything that you don't understand or if you need a little bit of time to answer it, you just let me know.

A: Yes, sir.

Q: Okay? How long did this last, I'm talking about the first time?

A: The first time?

Q: Yeah.

A: I'd say like a few minutes.

Q: Okay. And of course is, is that -- was your father wearing clothes?

A: I don't know.

Q: Okay. What were you wearing?
A: I was wearing a night gown.
Q: Okay. Now, I think you said you don't -- you felt something go into your -- into your behind; is that correct?
A: Yes, sir.
Q: And I think you testified that you don't know what it was; is that correct?
A: Yes, sir.
Q: Okay. And you said this lasted a couple of minutes. What position were you in?
A: I was laying on my side.
Q: You were laying on your side? And where was your father; where was he at?
A: He was behind me.
Q: Okay. And then of course is is that you said you don't know what he was wearing or anything like that?
A: No, sir.
Q: Okay. I'm trying to find a good way to answer this. Okay. What did you felt? If you don't understand me, just say I don't understand you and I can try and repeat my question.
A: I don't understand you.
Q: Sure. Let me see the best way to put this is, is that did you feel any pain?
A: A little.

Q: Was your father moving?
A: I don't think so.
Q: And of course, I think you said this listed a couple of minutes. Did you feel the pain for -- well, I don't know how many minutes you said, you said a few minutes, I think. Did you feel the pain for the duration of whatever minutes that it allegedly took place?
A: Yes, sir.
Q: You were seven or eight at the time. Did he ever touched any other part of your body?
A: No, sir.
Q: What about your front part?
A: No, sir.
Q: And when I'm talking about the front part, I don't know what you would call it, did he touch your lower private area?
A: No, sir.
Q: Has he ever touched your lower private area?
A: No, sir.
Q: You said that this happened something like four or five times?
A: Yes, sir.
Q: Okay. And where did it happen four or five times at?
A: Bond Street.
Q: On Bond Street?
A: Yes, sir.

Q: Okay. Let's talk about the second time. Tell me what happened the second time?
A: It was really the same as the first time.
Q: Identical as the first time?
A: Like longer.
Q: I'm sorry?
A: It was longer, and he said that if I told anybody he would kill them and he would kill me.
Q: You said it was longer?
A: Yes, sir.
Q: Okay. Now, the second time, did it allegedly happen in the same room?
A: Yes, sir.
Q: Where was your mom?
A: On the pallet, yeah.
Q: Was it daytime or nighttime?
A: Night.
Q: Where was your brother?
A: Downstairs.
Q: Where was your sister?
A: Downstairs.
Q: The first time, where was your brother and sister?
A: Downstairs.
Q: And I think you said it happened longer; how long?
A: Like a few minutes, but longer.

Q: I'm sorry. Was it -- now you said longer. When you're talking about longer, are you talking about longer than the first time?
A: Yes, sir.
Q: And I think you said the first time was a few minutes. About how long the second time?
A: Like how long was it?
Q: I'm sorry. I didn't understand ---
A: Like how long was it?
Q: Yes, ma'am.
A: Still a few minutes.
Q: A few minutes. And how did it happen? You on the bed, again?
A: Yes, sir.
Q: Okay. And where was dad?
A: Sir?
Q: Well, let me ask you this. How were you laying on the bed?
A: On my side again.
Q: On your side again. And where was dad? And where was dad?
A: He was on the opposite side, like behind me again.
Q: Okay. And did you feel anything that time?
A: Yes, sir.
Q: I'm sorry?

A: Yes, sir.
Q: Was it a lot of pain, a little pain?
A: A little pain.
Q: Okay. Now, that time, did you see any fluid or anything like that?
A: No, sir.
Q: Okay. Now, I know the first time, you said you don't know what the object was. The second time, do you know what the object was?
A: No, sir.
Q: Okay. And I'm not trying -- I'm not trying to be redundant. I'm gonna ask you about the third time, too. You said the third time was the same; is that right?
A: Yes, sir.
Q: Okay. You were upstairs in the bedroom, nighttime?
A: Nighttime.
Q: On your side?
A: Yes, sir.
Q: Dad behind you?
A: Yes, sir.
Q: Mom's on the pallet?
A: Yes, sir.
Q: Your brother and sister downstairs?
A: Yes, sir.
Q: And you didn't see what the object was?

A: No, sir.
Q: It lasted a couple of minutes?
A: Yes, sir.
Q: Okay. And you felt pain?
A: Yes, sir.
Q: Okay. A little or a lot?
A: Like a little bit and then it started hurting.
Q: I'm sorry?
A: It was like hurting a little bit and then it started hurting more.
Q: And how long did it last, the act, what you're saying -- I think you said something was inserted in your rear end; how long did that last, same time?
A: I can't remember.
Q: Okay. The fourth time, was the fourth time was identical as well, too?
A: Not really.
Q: All right. Well, tell me about the fourth time if it wasn't the same.
A: So, it was technically kind of the same. So, all that happened, but somehow, I was able to get up and then I ran to momma, and then I shook her and tried to wake her up, but she didn't wake up, and daddy said that he wouldn't it no more.
Q: Was everything else the same; were you in the same position?

A: Yes, sir.
Q: And he was behind you?
A: Yes, sir.
Q: It lasted a couple of minutes?
A: Yes, sir.
Q: And, and you felt pain like you did the last time?
A: Yes, sir.
Q: And you don't know what the object was?
A: No, sir.
Q: Okay. And your brother and sister downstairs?
A: Yes, sir.
Q: Happened at nighttime?
A: Yes, sir.
Q: Okay. And mom was asleep?
A: Yes, sir.
Q: Do you know whether dad was -- I didn't ask you this for the second time. I know you told me the first time you didn't know what dad was wearing; do you know what dad was wearing the second time?
A: No, sir.
Q: Do you know what he was wearing the third time?
A: No, sir.
Q: Do you know what he was wearing the fourth time?
A: No, sir.
Q: Did -- did you see -- I'm trying to ask this in a way in

which you'll understand. Did you see any fluid, blood, or anything like that?

A: No, sir.

Q: Any white fluid or anything like that?

A: No, sir.

Q: And who was the first person you told this to?

A: My momma.

Q: And when?

A: Did I tell her?

Q: And when did you tell it to her?

A: Thanksgiving, maybe ---

Q: You told this to Grandmom at Thanksgiving?

A: Yeah, I'm pretty sure it was Thanksgiving.

Q: And that was -- did you talk with anyone else about this? Outside the forensic interviewer, did you talk with the forensic interviewer?

A: Sir?

Q: Did you go to Florence and talk with a lady in Florence about this?

A: Yes, sir.

Q: I think that was the lady, I think Ms. Griggs, do you remember her?

A: I remember a girl named Robin.

Q: I'm sorry?

A: I remember a girl named Robin.

Q: And girl named?
A: Robin.
Q: Robin? Okay. That may be her, Robin Griggs. Who else did you tell about this? So, we've got your grandmom, and a girl named Robin Griggs?
A: My mother.
Q: And when did you tell your mother?
A: She was the one I told.
Q: She was the one you told?
A: Yeah.
Q: So, you didn't tell grandmom?
A: No.
Q: I'm sorry, I thought you told grandmom on Thanksgiving. Okay. Is that right; you told mom instead of grandmom around Thanksgiving?
A: Yes, sir.
Q: And where was you at when you told her?
A: We was at our new house ---
Q: And I promise you, I'm almost finished. Okay? Did you tell her this on Thanksgiving Day or do you remember before Thanksgiving Day or ---
A: I think it was on Thanksgiving Day like that night.
Q: I'm sorry?
A: I think it was like on Thanksgiving Day.
Q: On Thanksgiving Day. Anything else happen to you that --

let me put this in probably a better way. I think you told me that, that, that dad -- you said that dad put something in you, not quite sure what it is, three or four times, okay, on three or four different occasions, right?

A: Yes, sir.

Q: Okay. And almost finished, I promise you. Okay. The three or four times -- remember the first time?

A: Yes, sir.

Q: I think you said it happened on the first time, then you said it happened the second time?

A: Yes, sir.

Q: How much time between the first time and the second time?

A: Huh?

Q: I'll rephrase that. The first time it allegedly happened, and the second time it allegedly happened, how much time between the two? Was it the next day or two days or five days?

A: Oh, the next day.

Q: I'm sorry; go ahead.

A: The next day.

Q: Okay. So, so, the first time he did it one night and then the second time, he did it the next night. What about the third time?

A: I think it was like a day -- like -- okay. So, it was that night that he did it, and then the next day after the

next day.
Q: And then the day after the next day?
A: So, it was it like day -- two days after.
Q: Okay. Okay. So, I want to make sure I understand, because I don't want to misunderstand you incorrectly. You're saying the first time it happened one night, and then the second time it happened the next night, and then you said the third time it happened ---
A: Like the night after next.
Q: --- the night after next. And then the fourth time it happened?
A: Like the next day.
Q: The next day. So, all of this was in the span of one week?
A: Yes, sir.
Q: Now, I'm almost finished. I know I keep saying that, but I'm gonna get you off of here soon.
Did anyone witness what you are alleging?
A: No, sir.
Q: No one witnessed it?
A: No, sir.
Q: Okay. And you never told anybody about it until I think you said mom or grandmom, I think, you said on Thanksgiving night?
A: Yes, sir.

Q: Now, just real quickly, did you -- how did you prepare for your testimony today?
A: I didn't really do anything. I just woke up at like 7 A.M. I got dressed and that's it.
Q: Did you talk to anybody about your testimony?
A: No, sir.
Q: When was the last time you talked to somebody about -- about your testimony?
A: I can't remember.
Q: Was it days or months?
A: It was like last month, I think, cause he -- no ---
Q: And who did you talk with when you did talk with them?
A: I talked with -- I can't remember his name. He's right there (indicating).
Q: Mr. Richardson?
A: Yes.
Q: Now, have you talked with anyone other than Mr. Richardson about your testimony?
A: I talked to Ms. Gamble but not really about this.
Q: All right. Okay. I know you said a long time ago, you talked with your mom and told your mom like on Thanksgiving. Have you talked with anyone else, any of your family members about this since then?
A: No, sir.
Q: And so, and I think -- if my memory serves me correctly,

this would've been in Thanksgiving in 2017; does that sound about right?

A: I think so.

Q: So, from 2017 up and to this point, you didn't talk to mom, or anybody else in your family?

A: No, sir.

MR. BROOKER: If you can indulge me for just a second, Your Honor.

No further questions, Your Honor.

MR. RICHARDSON: No redirect, Judge, and I would ask to move State's 2 into evidence.

THE COURT: Mr. Brooker, any objection?

MR. BROOKER: Just subject to the previous objections.

THE COURT: All right. I'm gonna allow State's 2 into evidence over the defendant's objections.

STATE'S EXHIBIT NUMBER 2

ADMITTED INTO EVIDENCE

THE COURT: All right. Thank you, Ms. Clark. You may step down.

MR. RICHARDSON: Judge, our next witness would be W.C. .

W.C. , HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF W.C. , BY MR. RICHARDSON:

Q: All right. W.C. , is that what you go by?

A: Yes, sir.
Q: Okay. How old are you?
A: Fifteen.
Q: Okay. So, you got two little sisters?
A: Yes, sir.
Q: And they're your best friends in the world?
A: Yes, sir.
Q: Y'all get along all the time?
A: No, sir.
Q: All right. What grade are you in in school?
A: Tenth.
Q: All right. Do you remember where y'all lived when you first moved to Marion?
A: We lived on West Bond Street.
Q: All right. And where did you live after you moved out of West Bond Street?
A: We moved to Northside.
Q: And in those two places where you lived, who all lived in those houses with you?
A: My momma, my grandmother, my sisters, and my daddy.
Q: All right. Did your dad -- well, where did your dad go to live after Northside?
A: He moved into my grandmother's camper.
Q: All right. Can you describe that whole -- that setup for us?

A: Well, he had my -- my nanna's house, in the backyard there was a pull camper in the very back.
Q: Okay.
A: And the camper was, it was camouflaged. Inside he had like a little chair, it was a little side chair, and there was a little chair right here, and over this way there was a kitchen and a bedroom, like a little bedroom, and the toilet was right there.
Q: All right. So, when he moved over there to the camper, did you and your sisters go visit sometimes over there?
A: Yes, sir.
Q: All right. Now, did -- where did your grandma stay?
A: My daddy's momma stayed on Jones Avenue.
Q: All right. Is that in Marion?
A: Yes.
Q: All right. So, the camper was in her backyard on Jones?
A: Yes, sir.
Q: On her property, where did she stay?
A: In her house.
Q: All right. When you'd go to visit, where would you spend most of your time?
A: Most of my time, I stayed in the house.
Q: All right.
A: And my sisters would stay in the camper -- or Minor 1 would stay in the camper a lot.

Q: All right. So, what about Minor 2
A: Minor 2 was most of the time with me.
Q: Mostly with you?
A: (Indicates affirmatively.)
Q: Tell us -- you touched on it just now. What did you observe about Minor 1 and where she would be most of the time?
A: Most of the time she slept in the camper.
Q: All right. Who else would be in the camper?
A: My daddy.
Q: Anybody else?
A: No.
Q: Okay. Was there any reason why you didn't go back there and spend the night much?
A: I just didn't -- there was two in there, too crowded up. I just didn't like it.
Q: Okay. Do you remember being at your, I think, nanna's house or grandma's house sometime around Thanksgiving 2017?
A: Yes, sir.
Q: Who all was there when you were there?
A: Me and my sisters, my nanna, and my daddy.
Q: All right. And what do you remember, if anything, about a time where Minor 1 was called in the kitchen -- called into the kitchen?
A: My sisters were arguing, and she got called into the kitchen, because there's a kitchen and then there's like the

little dining area and there was a door in between those.

Q: Okay.

A: And my daddy had called her into the kitchen and shut the door.

Q: Was there anybody -- who was in the other than the two of them?

A: Nobody.

Q: Okay. Do you recall about how long they were back there?

A: About five minutes, yeah, five minutes.

Q: What happened when they came out?

A: My sister was crying.

Q: And what did she do?

A: She stormed out -- stormed out the house and called my grandmother, my momma's momma.

Q: And did somebody come pick y'all up?

A: My grandmother came and picked up both of my sisters and I stayed.

Q: Okay. All right. Please answer any questions that Mr. Brooker may have for you. Okay?

A: All right.

CROSS EXAMINATION OF W.C. BY MR. BROOKER:

Q: I don't have many questions for you, W.C. . I'll be very quick.

I think you said that y'all lived on Bond Street?

A: Yes, sir.

Q: Okay. And I think you testified that -- that at times, that your -- that there was a camper at your grandmother's house, I think, on Jones Street; is that correct?
A: Yes, sir.
Q: And it was behind the house someplace?
A: Yes, sir.
Q: And sometime your dad stayed in that camper?
A: Yes, sir.
Q: Okay. And you said that y'all would come over and visit?
A: Yes, sir.
Q: Okay. And of course is, is that y'all come over and visit, then of course is is that your grandmother would be there; is that correct?
A: Yes, sir.
Q: Because it was her house?
A: Yes, sir.
Q: And of course when I say your grandmother, I'm talking about your, your, your mother's mother; is that correct?
A: That's my daddy's mother.
Q: I'm sorry. I'm sorry. That's what I meant, your father's mother?
A: Yes, sir.
Q: Okay. And who else stayed at that house besides your grandmother?
A: There was -- there was my grandmother, my father, and my

grandmother's boyfriend or husband, and his family.
Q: So, your grandmother?
A: Uh-huh, (affirmative response).
Q: And of course your grandmother had a significant other, had somebody which she was dating?
A: Yes, sir.
Q: And then of course, that person's family?
A: Yes, sir.
Q: Okay. Okay. On Jones Street, I think you were also asked some questions about on Jones Street?
A: Yes, sir.
Q: How many rooms was -- how many bedrooms was on, not on Jones Street, I apologize, Bond Street?
A: On Bond Street?
Q: Uh-huh, (affirmative response).
A: Downstairs there was a kitchen, a living room, a bedroom, and there was two bedrooms.
Q: Okay. And then what about the upstairs?
A: Upstairs there was a main room, a bathroom, and a bedroom.
Q: Where did you sleep at?
A: I slept upstairs, and sometimes I slept on my grandmother's couch.
Q: So, you would sleep upstairs?
A: Yes, sir.

Q: What about Minor 2 ?
A: Minor 2 would sleep upstairs with my momma.
Q: What about Minor 1 ?
A: Minor 1 would sleep downstairs.
Q: And of course, your mom and dad would sleep upstairs?
A: Yes, sir.
Q: Now, it was also mentioned some property around, what is it, Northwest or Northeast?
A: North Bond Street. It was West Bond Street.
Q: It was West Bond Street? I want to make sure I understand is is that -- that's the house that burned down -- that's the house that burned down on Bond Street?
A: Yes, sir.
Q: And of course is, is that when that house burned down, where did you move?
A: Northside.
Q: Northside. Do you know what year the house burned down on Bond Street?
A: It was 2015. I'm not exactly sure. Somewhere around that time.
Q: Did y'all leave there before the house burned down or, or, or did you move because the house burned down?
A: We moved because the house burned.
Q: You moved because the house burned?
A: Yes, sir.

Q: And then that's when y'all moved on the, you said Northeast side?
A: Northside.
Q: Northside. And where were you staying at on the Northside; did y'all have your place or you staying with someone?
A: I was staying with my grandma.
Q: Okay. Y'all moved in with her house?
A: Yeah. Bond Street was her house, too, but like we all lived -- moved together. We all lived together.
Q: And this is your maternal grandmother, your mother's mother?
A: Yes, sir.
Q: Did your father live with you when y'all moved to Bond Street?
A: Yes, sir.
Q: With -- and talking about after the house burned down, was he living in the house when it burned down?
A: Yes, sir.
Q: And of course, he then -- all of y'all moved over to your -- your maternal grandmother's house?
A: Yes, sir.
Q: And you think that was roughly around 2005?
A: 2015.
Q: I'm sorry, 2015. I apologize.

A: Yes, sir.
Q: And how long did you stay there?
A: We stayed there -- stayed there for about a year, a year and a half.
Q: And of course all of y'all stayed there or -- or not?
A: Yes, sir; we all stayed.
Q: So, when y'all left there about a year or year and a half, where did you move to?
A: We moved to Planters Ridge.
Q: I'm sorry?
A: Planters Ridge Court.
Q: Okay. And that includes all of y'all?
A: Me, my sisters, my mom, and my grandmother; yes, sir.
Q: What about your father?
A: No, sir.
Q: Where was he?
A: My nanna's camper.
Q: When did he left?
A: Excuse me?
Q: When did he left? I think you said that in 2015, the house burned down and y'all all moved to your -- moved to your -- your mother's mother's house, your maternal grandmother's house?
A: Yes, sir.
Q: But when y'all left there, he wasn't with you.

A: Yes, sir.
Q: So he left sometime before then?
A: Yes, sir.
Q: Now, go back to Thanksgiving. I think you said is, is that your sisters were --- this is Thanksgiving, I think you testified to. You said your sisters were -- got into an argument or something like that?
A: Yes, sir; they got into an argument.
Q: Okay. And I think you said is is that your dad took your sister into the kitchen?
A: Yes, sir.
Q: Called her into the kitchen, whatever -- whatever phrase you used; is that correct?
A: Yes, sir.
Q: And then when she came out she was crying about five minutes later?
A: Yes, sir.
Q: Were you ever in that kitchen?
A: No, sir.
Q: Do you know whether or not anyone else was in that kitchen or looking into that kitchen?
A: No, sir.
Q: Who all was in the house?
A: It was me, my grandmother, and my sister.
Q: Okay. Was your father there?

A: Yes, sir, in the kitchen.
Q: Okay. And I think when you said your grandmother, you're talking about your father's mother?
A: Yes, sir.
Q: Was anyone else there?
A: No, sir; not that I recall.
Q: Okay. And that's everything that you know; is that correct?
A: Yes, sir.
MR. BROOKER: Indulge me for just a second, Your Honor, to make sure I don't have any further questions.
THE COURT: Yes, sir.
MR. BROOKER: No further questions, Your Honor.
MR. RICHARDSON: No redirect, Judge.
THE COURT: All right. Thank you very much, sir, you can step down.
MR. RICHARDSON: May he remain?
THE COURT: Yeah.
MR. RICHARDSON: Thank you.
THE COURT: Let me talk with y'all about our schedule.
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
THE COURT: All right. You can call your next witness.
MR. RICHARDSON: Thank you, Your Honor. We call Kelly Clark.

THE COURT: Ms. Clark, please come around and be sworn.

KELLY BLYTHE CLARK, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF KELLY BLYTHE CLARK BY MR. RICHARDSON:

Q: All right. Ms. Clark, would you state your name for the record, please?

A: Kelly Blythe Clark.

COURT REPORTER: I'm sorry, your middle name?

A: Blythe.

COURT REPORTER: Can you spell that for me?

A: B-L-Y-T-H-E.

BY MR. RICHARDSON:

Q: All right. Ms. Clark, who are your children?

A: W.C. , Minor 1 , and Minor 2 .

Q: All right. What is -- is that the order of their ages you just gave, as far as oldest to youngest?

A: W.C. , Minor 1 , and Minor 2 ; yes, sir.

Q: All right. What is Minor 2 's date of birth?

A: [redacted]07.

Q: [redacted]07. All right. And what is Minor 1 's date of birth?

A: [redacted]06.

Q: All right. As an aside, who is Ms. Gamble, we've heard that name a few times; who is Ms. Gamble?

A: She's the clinical psychologist for the schools.

Q: So, she's a school counselor?
A: Yeah, she's been with us from the beginning.
Q: Okay. All right. There's been testimony about the house on West Bond Street that burned down. Do you remember when you and your family moved into that house on Bond Street?
A: We moved into the house on Bond Street in 2014. Seem like it would've been ---
Q: Do you remember about what time of year?
A: Yeah, the kids -- it was after March. So, the kids only had a couple of months left of school that year.
Q: Okay. And the West Bond Street house is in Marion County?
A: Yes, sir.
Q: All right. And do you recall when the West Bond Street house burned?
A: I think it burned down in May of 2015.
Q: Okay. And do you recall when you moved into the Northside house?
A: It would have been 2015, maybe around June or July of -- because -- yeah.
Q: So, shortly after the Bond house burned?
A: Yes, sir.
Q: Okay. All right. Let's go back to the Bond house for a minute. When you lived on Bond Street, who all lived in there?

A: Me, my children, and my mom stayed there all the time, and then, sometimes, Bruce would live there, too.
Q: All right. And where was your bedroom in that house?
A: It was upstairs.
Q: All right. And what were the sleeping setups or arrangements in that bedroom?
A: Well, at first, it was just my bed and there was a pallet, you know, in case like the kids wanted to sleep up there or, in case, like me and Bruce were fighting and then ---

MR. BROOKER: Objection, Your Honor. Can we approach?

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: Overruled.

BY MR. RICHARDSON:

Q: All right. So, there was a pallet on the floor at the front or foot of the bed?
A: Yeah, it was like -- like there at that wall would be my bed, and then the pallet would be right there, and then we had a T.V. over here.
Q: All right. And how about a Dora bed?
A: We got the Dora bed -- we put the Dora bed up and then ---
Q: And that was in the room too?
A: --- and then it would've been like my bed, the pallet,

and then her bed was against the side wall.
Q: All right. Who occupied the Dora bed?
A: Minor 2 .
Q: All right. Now, in the Northside house, what were the -- who all was in that house with you?
A: To start with, it was me, and the kids, and my mom, and Bruce. I can't remember if Bruce was there when we first moved in. I don't think he was. I think he came after we moved in.
Q: Okay. But there were times when he stayed there?
A: Yes, sir.
Q: Okay. What was the setup of that house in terms of the amount of stories and where the bedrooms were?
A: When you walked into that house, you walked into a sunroom, and then you walked into the kitchen, and then if you walked that way, you would walk to the living room, and then in the hallway, it was my room, and then at the end, I think at the end of the hallway, on the left would have been Minor 1 and Minor 2 s room and on the right would have been W.C. 's room.
Q: Okay. So, at some point while you were living in the Northside house, did -- I guess you call him Bruce, William Clark -- but he moved out?
A: Yes, sir.
Q: Okay. So, at that point, that left you, your mom, and

the kids in the house?
A: Yes, sir.
Q: And is that kind of how it's been since?
A: Yes, sir.
Q: All right. Let me take you to November of 2017 around Thanksgiving time. Where had the kids gone to visit?
A: The weekend before -- Thanksgiving is on a Thursday. The weekend before that, the kids had went to Ms. Angie's.
Q: And who is that?
A: Bruce's mom.
Q: Okay.
A: And so, Minor 1 came home -- I think maybe that -- she came home like on Saturday. I think they were supposed to stay to Sunday, but Minor 1 demanded us to come get her, but I couldn't go because I -- I didn't go over there, so my mom got them, and she was just upset.
Q: Okay. What happened after -- after that with respect to the kids? At some point, did y'all have a conversation?
A: Me and the kids?
Q: Yeah, you and your girls?
A: Come Thanksgiving Day ---
Q: Let me stop you there. We can't talk about what was said ---
A: Okay.
Q: --- but on Thanksgiving Day, go ahead.

A: I can't talk about what was said?
Q: You had a talk with them on Thanksgiving?
A: I did.
Q: Was it -- were -- was it both girls together?
A: No, sir.
Q: All right. Who did you talk to first?
A: Minor 1 .
Q: All right. Why did you feel the need to speak with her?
A: Well, it started out, Minor 1 didn't want to go to Ms. Angie's on Thanksgiving, because she said her stomach hurt. And that was usual, but ---

MR. BROOKER: I object, Your Honor is that we start getting into the hearsay and, of course, she can't speak to what the children said and so ---

THE COURT: He's doing a good job avoiding hearsay.

MR. BROOKER: I think she said one of the children told her something about her getting sick or her stomach hurting or something. I just think before we get too far down that road, I want to at least a caution, nothing factually about the allegations but of course is is that technically it's hearsay. I don't want to run into a problem.

THE COURT: Okay. Well, if that occurs, make your objection and I'll rule on it. I'll sustain the objection as to any hearsay, anything that was told to you by someone.

MR. RICHARDSON: Okay.

BY MR. RICHARDSON:

Q: So, what made you feel the need to speak with Minor 1 ?

A: She didn't get dressed and she kept sitting on the toilet, and she had a discharge. And she was only like 11 then. I want to say 11, yeah. And I didn't know like why would an 11-year-old have a discharge like, I mean, not for any reason, I just didn't know why. So, I google everything. So, I googled, you know discharge in girls.

THE COURT: You can't testify as to what she read on Google.

BY MR. RICHARDSON:

Q: Right, without saying what you saw on Google ---

A: So, I went into the bathroom and I asked her had she been touched.

Q: Okay. So, that's where -- that's why that conversation took place?

A: Yes, sir.

Q: All right. Did she tell you times and locations where things occurred as in ---

A: At first, no.

Q: Okay. But, okay, eventually they did share?

A: Yes.

Q: What locations around this town did she indicate things had occurred to her?

A: At that time ---

MR. BROOKER: And of course, Your Honor, I know you may overrule this, but of course for technical purposes, I'm gonna object to that line of questioning ---

THE COURT: You -- I'm sorry.

MR. BROOKER: --- based upon hearsay and confrontation.

MR. RICHARDSON: This would be the time and place exception under evidence Rule 801(b).

THE COURT: All right. Overruled.

BY MR. RICHARDSON:

Q: So, did she give you, at any point, whether it was the first conversation or later ---

A: Okay. Yes, sir.

Q: --- locations in this town where things occurred?

A: Yes, sir.

Q: What were those locations?

A: She told me that on Bond Street.

Q: Okay. What was the next location?

A: Northside.

Q: All right. And were there any other locations?

A: The camper, and Ms. Angie's dining room.

Q: Okay. Did she provide you with times, as in when I was a certain age or this year, or did she give times when things occurred?

A: Well, when she told me he messed with her on Northside, she kind of told me about when that was and that would have

been in, maybe, 2015, 2016. And then on Bond Street, she really didn't remember the time, but the last time would've been that Saturday before Thanksgiving and she was sure about -- I mean, that it was for sure that date.

Q: Okay. That was the same day you talked about where she came home early?

A: Yes, sir.

Q: Okay. Did you, I guess, based on your conversation with Minor 1 , did you have a conversation with Minor 2 ?

A: I had my mother to go get W.C. and Minor 2 from Ms. Angie's on Thanksgiving after I found out.

Q: Okay.

A: And I talked with Minor 2 .

Q: All right. And was a location given to you where things occurred with her?

A: At the burnt house -- Bond Street, the burnt house.

Q: Okay. Was that the only one?

A: Yes, sir.

Q: All right. With the information that you got from those conversations, what was your next step?

A: I took them to the police department. At first, I told them we had to tell, and we took them -- I went to the police department.

Q: All right. Was that the same day or the next day?

A: The next day or the day after because the girls didn't

want to tell. They were -- they didn't want to tell, so I had to make them understand that we had to tell.

Q: All right. So, you went the next morning or next day?

A: Yes, sir.

Q: Okay.

MR. RICHARDSON: I beg the Court's indulgence.

THE COURT: Yes, sir.

BY MR. RICHARDSON:

Q: Thank you, ma'am, please answer any questions Mr. Brooker may have.

CROSS EXAMINATION OF KELLY BLYTHE CLARK BY MR. BROOKER:

Q: Just a few quick. Ms. Clark, let me ask you a couple of questions. I don't want to get extensively into your relationship with -- I notice you carry the last name Clark. And so, were you and Mr. Clark married?

A: We still are.

Q: Oh, you still are married, okay. And of course is, that -- and I think you said y'all lived on Bond Street?

A: Yes, he lived there sometimes.

Q: I'm sorry?

A: He lived there sometimes.

Q: He lived there sometimes on Bond Street with -- you and the kids lived on Bond Street; is that correct?

A: With my mother, yes.

Q: And that was your mother -- that was your mother's

residence and you said he lived there sometimes?
A: Yes.
Q: And you believe, I think you testified that y'all moved there sometime in 2014?
A: Yes, sir.
Q: And then left someplace in 2015?
A: Yeah, I think the house burnt down in May of 2015.
Q: And I think you just told Mr. Richardson that and you just told me that he was living there sometimes with y'all?
A: Yes, sir.
Q: Okay. And then of course when that house burned down and y'all moved to, I think, the Northside?
A: Yes, sir.
Q: And that was in with your mother?
A: Yes, sir.
Q: And again, you and your kids were living in the house with your mother?
A: Uh-huh, (affirmative response).
Q: And how long did you stay on the Northside with your mother at that location?
A: I think until 2017.
Q: Okay. Now, you said this, I think, on direct examination and I wanted to just make sure I understand it correctly. You said that when you moved to the Northside, you're not quite sure whether or not Mr. Clark stayed with y'all when you were

on the Northside?
A: No, he stayed with us. I'm not quite sure if he stayed with us like time we -- I don't remember if he was -- what time he was in there, but I had finally talked with my mom into letting him come stay. He did live there for a while until July of 2017 is when he left.
Q: He left in July of when?
A: 2017.
Q: 2017. And about how long did he stay there; I believe you said you talked to your mom?
A: He stayed for a while; I don't know.
Q: Was it more than a year, less than a year?
A: Oh, he would stay, and then he would leave, then he would come back, and then he had to leave.
Q: So, it was come and go, come and go, come and go?
A: Uh-huh, (affirmative response).
Q: Was it that same situation on Bond Street?
A: Yes.
Q: Okay. So, okay, but not a consistent residence?
A: Huh-uh, (negative response).
Q: All right. And I think you said when he left in July of 2017, that was permanent, he didn't stay ---
A: I'd have to -- no, that was it.
Q: Okay. After July of 2017 ---
A: After July of 2017, there was no anything after that.

Q: Okay. Now, I'll ask you this question is, is that you were in the courtroom when your girls testified; is that correct?
A: Yes, sir.
Q: Okay. Now, the conduct that they testified to, you was not a witness to any of that conduct; is that correct?
A: That is correct.
Q: And do you know -- and don't tell me, you know, don't tell me what anybody said; that's not what I'm asking.
A: Okay.
Q: Do you know of anybody else -- now, I think you were in the courtroom when the girls says that -- that nobody was a witness. Do you know of anybody else that was a witness to the conduct that they allege?
A: You mean do I know if anyone saw?
Q: Yeah, was a witness to the conduct in which they testified to in the courtroom, the girls?
A: No one touching the girls.
Q: Now, I think you testified to the first time that you thought something was wrong is and I think you said was it on Thanksgiving Day that Minor 1 had a discharge?
A: Yes, sir.
Q: Did she ever have a discharge before other than what you discovered on November 28th, 2017?
A: No, sir.

Q: Well, on Christmas Day 2017, whatever day it happened?
A: It was Thanksgiving Day.
Q: It was Thanksgiving Day on 2017?
A: Yes.
Q: I think that's what you testified to. Was that the first time that you've ever noticed a discharge from Minor 1 ?
A: Yes.
Q: Does Minor 1 have a pediatrician?
A: She has a doctor, not a pediatrician.
Q: Okay. She has a family doctor?
A: Uh-huh, (affirmative response).
Q: I'm not asking you about the family -- don't tell me anything the family doctor said. I want to make that clear. Who was her family doctor? Do you know what the name is?
A: Dr. Odom.
Q: Dr. Odom, is that here in Marion?
A: I think it might be -- it's like -- it might be in Mullins; it's like Marion/Mullins.
Q: I gotcha. In Marion County, but in maybe Mullins? Okay. But in Marion County.
Is he the same doctor for Minor 2?
A: Yes, sir.
Q: Did you ever notice any discharge from Minor 2?
A: No, sir.
Q: Now, Thanksgiving, at least not Thanksgiving, I think you

said is -- a little before Thanksgiving, the kids went to dad's -- dad's mother's house; is that right?

A: Uh-huh, (affirmative response).

Q: To spend time for Thanksgiving?

A: Yes, sir.

Q: Okay.

A: No, they went -- they went -- they was there the weekend before Thanksgiving.

Q: The weekend before Thanksgiving?

A: Yes, sir.

Q: Thanksgiving is always falls on a Thursday. So, that weekend before that Thanksgiving, they were ---

A: Before, yes, sir.

Q: --- at, at Dad's mother's house?

A: Yes.

Q: How long had they been there?

A: You mean for the weekend?

Q: Yeah -- yeah, were they a couple of days or was it just a one day visit or ---

A: I think they went there on that Friday.

Q: They were there that Friday and then came back on Saturday?

A: Yeah, that Saturday.

Q: Saturday. Did both girls -- did everybody come back or was it just Minor 1 ?

A: I think it was both girls, but it could've just been Minor 1 .

Q: Almost finished. And I think you said the first time that you noticed anything with respect to Minor 1 is when you found that she had a discharge on Thanksgiving Day. Was that the first time that you noticed anything with respect to Minor 2 as well, too, when you found that discharge on Thanksgiving Day?

A: Yes, sir.

Q: Almost finished. On North Bond Street ---

A: West Bond Street.

Q: Excuse me, I'm sorry, West Bond Street, and I may be -- that's the second home, right?

A: That's the first home.

Q: That's the first home is on West Bond Street and then of course is is that ---

A: Northside was the second.

Q: --- Northside was the second home. And I think you testified, too, let me correct it if I get that wrong is, is that on Northside, I think when you come into the house -- and I think you testified that there was a -- that the children had their own room there?

A: They shared a room.

Q: How many rooms was in that house?

A: On Northside?

Q: Yeah. Yes, ma'am.
A: It was like three bedrooms, and then it had a sunroom and a den and the living room.
Q: And I think you testified that you had your bedroom and did -- did your son have -- have -- have his own room?
A: Yes, sir.
Q: And the two girls share a room?
A: Yes, sir.
Q: Okay. And then where did your mom sleep?
A: In the living room.
Q: And when -- and when William would come over and stay, he stayed with you in your room?
A: Yes, sir.
MR. BROOKER: If you can indulge me for just a second, Your Honor, let me make sure I don't have any follow-up questions.
Indulge me for just a second, Your Honor?
THE COURT: Yes, sir.
MR. BROOKER: I'm almost finished, Your Honor. Just indulge me for just a second.
THE COURT: Yes, sir.
BY MR. BROOKER:
Q: Now, I think you said is, is that, that, that on Thanksgiving Day, you noticed that there was a discharge in Minor 1 's -- discharge in Minor 1 ?

A: Yes, sir.
Q: Thank you, ma'am. How did you discover the discharge?
A: She was in the bathroom.
Q: And you were in there with her?
A: Yes, sir, she kept saying that her stomach ---
Q: Hold on; don't tell me what she said. I'm just asking you to give your description, you know, of -- you know of where you were versus where she was. But if you don't have to tell me what she says. And so, she was in the bathroom and you was in the bathroom; is that correct?
A: Yes, sir.
Q: Okay. And I think you testified that you saw a discharge?
A: Yes, sir.
Q: And that's what -- that's what your spurred your concern; is that correct?
A: Yes, sir.
MR. BROOKER: I don't have any further questions for this witness, Your Honor.
THE COURT: Anything on redirect?
MR. RICHARDSON: No redirect.
THE COURT: All right. Ma'am, thank you very much, you may step down.
MS. CLARK: Thank you very much.
MR. RICHARDSON: Your Honor, I think what we would have

next, it will take us past the 5 o'clock hour.

BY THE COURT:

THE COURT: Okay. Ladies and gentlemen, we're gonna adjourn for the evening. I would ask you to continue to do everything to maintain your ability to remain fair and impartial. Let your family, friends and loved ones know that we're still going forward and, so, that you're still not allowed to talk about the case but to just remain patient and, when it's over, you'll be able to tell them whatever they want to hear.

I'm gonna ask you, if you would, to be back in the jury room ready to go at 9:30. Okay? And then once everyone is here, we'll get started.

Everyone else, ladies and gentlemen, please remain seated, while the members of the jury are excused. We'll see you back here at 9:30 tomorrow morning.

(REPORTER'S NOTE: Jury exits courtroom @ 4:38 P.M. The following takes place outside the presence of the jury.)

THE COURT: Okay. All right. Anything we need to go over or take up before we adjourn?

MR. RICHARDSON: Not from the state, Judge.

THE COURT: All right. Mr. Brooker, anything further?

MR. BROOKER: Not that I'm aware of, Your Honor.

THE COURT: All right. I promise y'all I will be not only on time tomorrow, but I'll be early. So, if you need

anything, I'll be here. Okay? We'll be in recess then until 9:30.

RECESS - 4:39 P.M. - END OF DAY TWO

*****OFF THE RECORD*****

FEBRUARY 20, 2020 - DAY THREE OF FOUR

(On the Record - 10:12 A.M.)

THE COURT: Thank you, ladies and gentlemen, please have a seat. Guys, I got a word from a couple of the jurors that said they were having a hard time hearing the attorneys speak in your questioning of the witnesses. And sometimes, you know, I notice that y'all get up here kind of close to the witness. Sometimes when you're close to the witness you don't speak as loudly. So, if y'all would, keep your voices up and so everybody can hear. Okay?

Anything we need to take up from the state before we get started?

MR. RICHARDSON: No, Your Honor.

THE COURT: From the defense?

MR. BROOKER: No, sir, Your Honor.

THE COURT: All right. Let's bring the jury in, please.

(REPORTER'S NOTE: Jury enters courtroom @ 10:12 A.M.)

THE COURT: All right. Ladies and gentlemen, welcome back. I hope everyone had a good evening. We're ready to continue where we adjourned yesterday and recognize Mr. Richardson with the state's next witness.

MR. RICHARDSON: Thank you, Your Honor. At this time, we'd like publish Exhibits 1 and 2 to the jury?

THE COURT: All right. Exhibits 1 and 2 are the forensic interviews ---

MR. RICHARDSON: Yes, sir.

THE COURT: --- of the young ladies. All right. And I'm gonna allow you to do that, Mr. Brooker, subject to your objections, sir.

MR. BROOKER: I'm sorry, Your Honor. Is, is that, if I -- we could approach for just a minute?

THE COURT: Yeah.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. We good?

MR. BROOKER: We're fine.

THE COURT: What I was mentioning to you is Mr. Richardson is -- before his next witness, he wants to publish the State's 1 and 2, those interviews, and I told him that I would allow that subject obviously to your earlier objections.

MR. BROOKER: Yes, sir.

THE COURT: And I would note those for the record.

MR. BROOKER: Yes, sir.

THE COURT: All right. For both, counsel for both tables, if y'all need move to around to where you can see or hear, feel free to do that. Mr. Richardson, is that where you

intend to leave it, where it is right now? I don't know, is that ---

MR. RICHARDSON: Well ---

THE COURT: I didn't know if you had enough cord to bring it maybe a little bit more to the front of the jury and you may not. If you don't, for God sake, don't unplug it. I just want to be able to --- and, Mr. Brooker, if there's ---

MR. BROOKER: I'll stand right here, Your Honor.

THE COURT: I was gonna try to get you a chair over there and then that way ---

MR. BROOKER: I don't mind standing, Your Honor, it won't hurt me a bit.

THE COURT: It's about 40 minutes. Do some calisthenics when you're over there.

MR. BROOKER: I sit down all day, Your Honor, sometimes it's nice to stand up.

THE COURT: You know, I didn't think about that. You're probably right. We'll put it over there and if you want to use it, it'll be there. How about that?

MR. BROOKER: Yes, sir.

THE COURT: All right. Ladies and gentlemen, if you recall back yesterday, State's Exhibits 1 and 2 are the videotape of the forensic interviews of Ms. Clark or Minor 1 and ---

MR. RICHARDSON: Minor 2 .

THE COURT: --- Minor 2 . What I want to share with you is you'll notice, at some point, in each of these, it'll look like there's a skip or a gap. Anytime you do a videotape of an individual for use at trial, there are things that oftentimes will occur during an interview, and there will be issues or there will be things that are raised that are not admissible in this trial; they're not relevant to any issue in this trial. Oftentimes, when you confer with people and you interview and talk to people, you talk about a lot of things as you get to the point that you're trying to reach. So, what we've done is, those portions of the interview that aren't admissible in this case, that have nothing to do with this case, I've had them remove those. So, if you see a gap or a jump in the -- in the video, that's intentional; that's been taken out. It's not to hide anything from you, it's just we took out matters that weren't relevant to this case, we took those out. And both Mr. Brooker and Mr. Richardson have both agreed to those redactions. So, I just wanted to point that out to you, so that you didn't think that there was something wrong or something -- a hitch in those tapes; that's an intentional gap. All right.

(REPORTER'S NOTE: State's 1 and 2 published for the jury. Audio not transcribed herein.)

MR. RICHARDSON: The state rests, Judge.

THE COURT: All right. Ladies and gentlemen, the state

has rested their case. At the close of the state's case, in every trial, I have to take up matters of law with the attorneys before we proceed. So, I'm gonna ask you to step back into your jury room while I do that. It shouldn't take terribly long, and then we'll resume.

Please have no conversation about the case.

(REPORTER'S NOTE: Jury exits courtroom @ 11:07 P.M. The following takes place outside the presence of the jury.)

THE COURT: All right. At this time, I'll take up any motions at the close of the state's case.

MR. BROOKER: If you could indulge me for one minute, Your Honor?

THE COURT: Sure.

MR. BROOKER: I'm sorry, Your Honor.

THE COURT: That's okay.

MR. BROOKER: I've got a old, cheap computer.

THE COURT: Listen, I have technical problems constantly.

MR. BROOKER: Your Honor?

THE COURT: Yes, sir.

MOTIONS:

MR. BROOKER: Our motion for directed verdict is not gonna be long and let me just preface by this is, is that our motion is primarily based upon, and of course is, when I make this motion, I want to make that this motion incorporates all of the previous motions and objections that we've made ---

THE COURT: Sure.

MR. BROOKER: --- I think prior to the start of this trial and then, of course, also during the trial.

THE COURT: Correct.

MR. BROOKER: It is that we believe that based upon those motions that we previously made that there was insufficient evidence in which a jury to reach conclusion beyond a reasonable doubt that Mr. Clark is guilty of the offense and that each and every element of that offense is present. I think in order for the jury to reach that conclusion is is that certain elements the jury would have to engage in -- in speculation, as a result of the occurrence of those events, and as a result of that, I think, if my memory serves me correctly is is that if we prevail on the law with respect to the directed verdicts that is is that if there is an element in which the jury has to engage in speculation then, of course is, is that that charges should not appropriately -- should not appropriately be presented to the jury. And of course the judge should grant a directed verdict under these circumstances. And so, our motion in -- I want to make sure to, you know, put that on the record, Your Honor. Our motion for directed verdict incorporates all of the previous motions and objections that we've raised along with the argument that we just submitted.

Thank you, Your Honor.

THE COURT: All right. I'm gonna respectfully deny the motion. I think that there -- I think it's a factual issue depending on how the jury views the evidence and the testimony and, of course, they're the judges of the credibility and the believability of the evidence. But I think that there is evidence in the record that would support whatever verdict they might would reach. I will note and specifically note for the record, you're renewing all your previous objections and exceptions to the Court's rulings, and those are certainly part of the record.

Anything further from the defense at this time then?

MR. BROOKER: Nothing further that I'm aware of, Your Honor.

BY THE COURT:

THE COURT: Have you discussed with Mr. Clark his constitutional rights to present a case, to testify, to not testify, and have you had the opportunity to have that discussion with him?

MR. BROOKER: I have discussed that with him, Your Honor. I have discussed that with him, Your Honor.

THE COURT: Okay. Is there any -- does Mr. Clark have any prior record that would be subject to impeaching -- impeachment or would be subject to questioning?

MR. BROOKER: I don't believe so, Your Honor. At least from the record that we was presented to. And of course is,

is that I don't know whether or not the prosecutor's office disagrees with us, but from the criminal record that we was presented -- and I went over this prior to the trial and I don't see anything in that file records that is subject to be disclosed if he decided to take the stand as ---

THE COURT: The state concur with that?

MR. RICHARDSON: I believe so, Judge. I think what is on his record is too old. I think it's beyond 10 years.

THE COURT: Okay.

MR. RICHARDSON: And what's on his record within the last 10 years is -- looks to be Magistrate Court property offenses, driving offenses, so I don't think we would get into that.

THE COURT: All right. Well, and again let me, Mr. Brooker, are you -- have you had that discussion with Mr. Clark to the extent that the Court can then talk to him about it, or do you need any time?

MR. BROOKER: Certainly, Your Honor, I think I have to that extent to which the Court can talk to him about it.

THE COURT: Okay.

MR. BROOKER: I'll quickly ask him again out of an abundance of precaution whether or not he wants to speak with me again about it.

THE COURT: All right.

MR. BROOKER: He has no questions for me, Your Honor.

THE COURT: All right. Mr. Clark, I'm just gonna kind of

review those matters with you. During our discussion, if you need to stop and talk with Mr. Brooker, you let me know and I'll give you whatever time you need.

MR. CLARK: Yes, sir.

THE COURT: Every time we try a case here in General Sessions Court, every individual, all of us, we have these constitutional rights. We all the same rights; they're the same for everybody. You have the constitutional right to remain silent. You also have the constitutional right to testify. I'm gonna address the -- the testifying first. If you decided that you wanted to testify in your defense, you certainly have that right. You would take the stand, as all the witnesses do. You'd be placed under oath and you would answer questions first from Mr. Brooker, he would have questions to ask you. And then, you would be also required to answer any questions that Mr. Richardson or the state would have. You understand that, sir?

MR. CLARK: Yes, sir.

THE COURT: We've just discussed any prior criminal record that might be subject to you being questioned about. It appears that there is nothing.

MR. CLAKR: Yes, sir.

THE COURT: So, you wouldn't have to address any of those issues. But you understand, though, that you would have to answer the questions from both the state and the defense?

MR. CLARK: Yes, sir; I understand.

THE COURT: Okay. The other position you could take that all of us have the right, is to remain silent. If you decided that you wanted to remain silent, I would instruct the jury that that is your constitutional right. I would tell the members of the jury that the burden of proof in this case rests with the state. That a person charged with a criminal offense in this state is never required to prove themselves innocent. The burden rests on the state and the fact that you chose to remain silent could not be considered by the jury at all during their deliberations. I would also instruct them that the fact that you chose to remain silent, could not even be discussed in the jury room; they're to give it no consideration at all. You understand that?

MR. CLARK: Yes, sir.

THE COURT: Okay. And you've talked with Mr. Brooker about this?

MR. CLARK: Yes, sir.

THE COURT: All right. Now, Mr. Clark, a person's right to testify or right to remain silent is a constitutional right that they have and so even though it's important that you talk to your attorney and anyone else you wish to talk to, the bottom line is, when it comes time to make that decision, it has to be your decision.

MR. CLARK: Yes, sir.

THE COURT: Mr. Brooker can't make that decision for you or no one else. It's got to be your call. Do you understand that?

MR. CLARK: Yes, sir.

THE COURT: Have you had enough time to discuss that with Mr. Brooker and decide what you wish to do?

MR. CLARK: Yes, sir.

THE COURT: All right. And do you wish to testify or to remain silent?

MR. CLARK: I would wish to testify.

THE COURT: All right. That's sounds great. We will certainly honor that request. Thank you, sir.

MR. CLARK: Thank you, sir.

THE COURT: Anything from the state before we proceed then?

MR. RICHARDSON: I'm advised by law enforcement that Sergeant Smith is downstairs.

THE COURT: All right. Good.

MR. RICHARDSON: We had requested his presence.

THE COURT: Yeah. Yeah.

Let me do this while we've got a break with the jury out. Let's take a short break, if anyone needs to use the restroom or whatever and then before we start back, let me just talk with the attorneys in the back for scheduling purposes to see where we're at and what we need to do.

RECESS - 11:19 A.M.

*******OFF THE RECORD*******

(On the Record - 11:47 A.M.)

THE COURT: All right. Is the state ready to proceed?

MR. RICHARDSON: Yes, sir, Your Honor.

THE COURT: Defense ready?

MR. BROOKER: Yes, Your Honor.

THE COURT: All right. Let's go ahead -- Officer Smith is here. Let's go ahead and bring the jury in then.

(REPORTER'S NOTE: Jury enters courtroom @ 11:47 A.M.)

THE COURT: All right. Ladies and gentlemen, I've taken up the matters of law that I needed to take up and we are ready to proceed. If you recall, when we took the break, the state had rested their case. I took up the matters of law that I needed to take up, and now we're ready to proceed and recognize Mr. Brooker on behalf of the defense.

Mr. Brooker?

MR. BROOKER: Thank you, Your Honor. Your Honor, we would recall, I think, Sergeant Smith, I believe?

THE COURT: All right. Sergeant Smith, if you'd come around and you're still under oath from -- didn't you testify Monday?

MR. SMITH: Yes.

THE COURT: Was it Monday?

COURT REPORTER: Tuesday.

THE COURT: Tuesday, I'm sorry. You're still under oath, sir, so, if you'd please take the stand.

DIRECT EXAMINATION OF DERRICK SENTELL SMITH BY MR. BROOKER:

Q: And I think like the Judge said, Sergeant Smith, you testified on Monday; is that correct?

THE COURT: Tuesday.

Q: I'm sorry, Tuesday. I'm sorry. Tuesday; is that correct?

A: Yes.

Q: And of course is, and I think if my memory serves me correctly, did you testify that you came out to the residence as a result of a call from the mother?

A: I did not. I met them at the police department.

Q: I'm sorry. That's it, you met them at the police department. And of course, did you talk with the mother at the police department?

A: Yes, I did.

Q: Okay. And of course is, is that did y'all talk about how she became or what arose as her concerns that led to her to contact you or contact the police department about the alleged sexual abuse?

A: Ms. Clark stated that her daughter's behavior had changed over the past couple of months and on Thanksgiving holiday of 2017 ---

Q: I'm sorry. I'm sorry. Go ahead, I apologize.

A: On Thanksgiving holiday of 2017, she noticed the behavior continued, so she asked the daughters what was wrong with them and they explained to her what happened.

Q: Okay. But my understanding is, is that -- is that she said that what -- what the impetus for her becoming concerned is that she said she saw change in her daughter's behavior for the last couple of months?

A: Yes.

Q: And that was the impetus for causing her to -- to be concerned?

A: Yes.

Q: Did she mention anything else other than what -- did you put that in your report?

A: Yes, I did.

Q: Okay. And of course, did you mention anything as being impetus for causing her to be concerned other than what you put in your report?

A: Other than what the daughters told her when she initially asked the daughters what they were upset about and what the daughters told her.

Q: Sure. No further questions, Your Honor.

MR. RICHARDSON: No questions, Your Honor.

THE COURT: All right. Officer Smith, thank you very much, sir, you may step down.

All right. You may call your next witness.

MR. BROOKER: Your Honor, next we would call Angela Batton.

THE COURT: All right. Ma'am, if you'd please come around to be sworn.

MR. SMITH: Excuse me, Your Honor.

THE COURT: Yes, sir.

MR. SMITH: The school has early dismissal and I have to pick up my son?

THE COURT: Oh, any objection.

MR. BROOKER: No objection, Your Honor.

THE COURT: Thank you very much. You're free to go. Thank you, sir.

ANGELA BATTON, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF ANGELA BATTON BY MR. BROOKER:

Q: Ms. Batton, first of all, what is your relationship to W.C. ?

A: He's my son.

Q: And of course is, is that to the Minor 1 and ---

MR. SCRUGGS: Excuse me, Your Honor, may we approach briefly?

THE COURT: Yes, sir.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: All right. Folks, let me get you to step

back in the jury room and let me take up a matter of law, and then I'll get you back out here. I'm sorry.

(REPORTER'S NOTE: Jury exits courtroom @ 11:53 A.M. The following takes place outside the presence of the jury.)

THE COURT: All right. It has been brought to my attention, ma'am, have you been here the whole week for the trial?

MS. BATTON: I didn't come Tuesday. I just came yesterday.

THE COURT: You were here yesterday?

MS. BATTON: Uh-huh, (affirmative response).

THE COURT: You were here in court throughout the trial, throughout the time we've been trying the case?

MS. BATTON: Yes, sir.

THE COURT: Would there be any motions?

MOTIONS:

MR. RICHARDSON: I believe there has been a sequestration order in place that was one of the first things we did the first day of trial. It was Mr. Brooker's motion. We complied with it. I think the fact that she sat through the testimony yesterday, that would've been the testimony of both children and every other family member. I feel like that's in violation of the sequestration order. I am not asking for a mistrial, but I would ask the Court to preclude her from testifying in this case based on that violation of the

sequestration order.

THE COURT: All right, sir.

Mr. Brooker?

MR. BROOKER: Thank you, Your Honor. Your Honor, there was a sequestration order and of course I think she testified to yesterday -- testified that she was here yesterday but not on the first day. And of course, we would ask Your Honor is, is to -- is to not disqualify her from testifying, I guess, unless there was some actual prejudice. I think this morning, I advised the prosecutor's office what the subject of her testimony was going to be and, of course, the subject of her testimony was going to be related to -- to, I think, primarily related to the day in which -- the date in which, I think the children visited her for Thanksgiving. That part of her testimony had already previously been disclosed to this witness. Of course, this witness knew what that testimony was, because before we even make the determination as to whether or not she was gonna be a witness, we have to determine whether or not she has relevant evidence to exactly what was -- relevant evidence with respect to the allegation. And of course is, that, prior to the trial of this case, we had informed her, you know, that -- that on the -- on the 17th -- I think in November 2017 around Thanksgiving is that there was an allegation made that there was a sexual assault that took place in her house on that day. And of course is, is

that -- and of course ---

THE COURT: I'll tell you what -- and you're restricting her testimony to that incident, that issue?

MR. BROOKER: She was not a witness to any of the other incidences whatsoever.

THE COURT: Or to any other that testifying?

MR. BROOKER: Just background information. Background information but, of course, she's not a witness to anything else. Like, I think I was starting off by asking her relationships to everybody.

THE COURT: Yeah, sure, I mean. Establishing that -- the relationships and all. Her testimony though, your presentation of this witness is to address the issue that occurred in or around Thanksgiving in her home in 2017.

MR. BROOKER: She has no factual knowledge with respect to any of the other incidences in which the children -- in which the children testified to. She won't be asked any questions about any of those other incidences whatsoever.

THE COURT: As well as anything that any other witness testified to yesterday because that's the concern that obviously is here.

MR. BROOKER: No. No, she will not be asked a question about -- we're not calling her as a rebuttal witness to rebut anything that anybody says except for that -- that day and her knowledge of what took place that day.

THE COURT: That issue that you discussed.

MR. RICHARDSON: Judge, as to that incident, testimony came from the child, Minor 1 , from the witness stand about that incident. Testimony came from the child, W.C. , about that incident and his observations of who was present and who wasn't. And she was here for all that testimony. That is separate and apart from what was played in that video, and she was here for all of it yesterday.

MR. BROOKER: And I think the question would then become, Your Honor, is, is that whether or not it changes or whether or not it changes her testimony, I'd given to the prosecutor this morning the nature of what her testimony would be is that, and of course, like I said, she was already privy to the conversation, privy to the testimony of the girls.

Now, I think what Minor 1 testified to is, is that, I think, on the -- on that Thanksgiving Day was is that he saw -- W.C. , I think the young boy, testified to is that he saw his sister go into the kitchen with his mom, excuse me, with his father, and then, of course, I think he testified about five minutes later he saw him come out and she was crying. And but of course is is that he was not aware -- he didn't know what went on and, then of course is, is that he didn't know whether or not anybody else -- had no knowledge of any other witnesses to the facts of the case. So, but of course, she had already been disclosed at the beginning of the trial

that she was gonna be a witness.

THE COURT: Well, I understand that.

MR. BROOKER: And then so ---

THE COURT: The whole nature of the reason for the sequestration ---

MR. BROOKER: I know. I know and I guess the whole question is, is that whether or not there's any prejudice. Now, if there was significant prejudice to the state, then of course is, is that I would understand that. But of course is, is that her being in here -- in there yesterday does not changed the nature of what her testimony was and, of course, the reason why we're gonna call -- we had called her because is, that she had previously said and on that, that she was a witness to the kitchen incident and Thanksgiving and that's the whole purpose for us calling her. And of course is, is that her testimony have not, and of course is, my understanding is it will not change and we're not asking -- we're not calling her as a rebuttal witness to try to rebut anything that anyone says. And so, whether she was in this courtroom or not, her testimony was always gonna be inconsistent with the testimony of the children. That's why we called her and we had already let her knew what the testimony of the child was.

THE COURT: I'm gonna deny the motion to preclude the witness from testifying. However, I am gonna restrict her

testimony to the issue regarding the incident that occurred in her home on or around Thanksgiving 2017. As I said earlier, when I -- when I -- when you thought it was someone else and they were only here for the videotape. The video was made available to the defense under Rule 5 and *Brady*. There would've been nothing to preclude the defense from sharing that with the witness and reviewing those statements with the witness. So, if that was the only reason she was -- if that was the only testimony that she was present for, then -- then I don't find it to be an issue. As it turns out, she was here for all of yesterday. And so, I think it appropriate to restrict her testimony to the incident on that date and time and not on anything else or to rebut any other testimony that was put in the record yesterday.

All right?

MR. BROOKER: Thank you, Your Honor.

THE COURT: Bring the jury back in, please.

(REPORTER'S NOTE: Jury enters courtroom @ 12:03 P.M.)

THE COURT: Thank you, ladies and gentlemen.

Mr. Brooker, you may proceed.

MR. BROOKER: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION OF ANGELA BATTON BY MR. BROOKER:

Q: Ms. Batton, again, what is your relationship to William Clark?

A: He's my son.

Q: And your relationship to Minor 1 and also to Minor 2 ?

A: I'm their nanna.

Q: Okay. Okay. Now, I want to specifically direct your testimony to, I think, and I think that this would've been around Thanksgiving, November of 2017; is that correct?

A: Yes, sir.

Q: Okay. And of course is, is that did Minor 1 -- did Minor 1 and Minor 2 , and of course is, is that W.C. , the boy, visit your home?

A: They did.

Q: Okay. And what was the purpose of them visiting your home in November of 2017?

A: My son wanted to spend time with them and that's the only way that they could spend -- they couldn't go to his house.

Q: Okay. And of course is, is that in, I think -- did y'all have dinner that day?

A: No, this was actually the weekend before Thanksgiving.

Q: Okay. It was the weekend before Thanksgiving?

A: Weekend before Thanksgiving.

Q: And of course, do you remember how long they stayed to your house?

A: They came Friday and they were supposed to stay until Sunday.

Q: Okay. Okay. And of course, did they stay until Sunday?

A: Minor 1 didn't.
Q: Okay. What about the other two children?
A: Yes, sir.
Q: I'm sorry?
A: Yes, sir.
Q: They did stay until Sunday. And of course is, is that when did Minor 1 leave?
A: She left Saturday afternoon.
Q: Okay. And of course is, is that why did she leave?
A: Her and Minor 2 had got in a fight, and W.C. and Bruce was going to my other son's house. So, I walked outside and ---
Q: And I'll just caution you is, is that you can -- you can give me what happened and that sort of stuff, but, you know, don't tell me what someone says?
A: Oh, I won't.
Q: Okay. Go ahead.
A: And they were fighting because Minor 2 said that ---
MR. RICHARDSON: I object.
THE COURT: You can't say what someone else said. You can't testify to ---
A: I just said they were fighting.
BY MR. BROOKER:
Q: Yeah, you can say that they were fighting, but you can't tell us their conversation that they had.

A: Oh, okay.
Q: You can tell us what they were doing?
A: Okay. They were fighting. So, I told Minor 2 to come in the house with me and before I could get in the house, Minor 1 had already ran in and got my phone and called her other grandma. And Bruce and W.C. all came in. We were all in the living room, and he was getting on Minor 1 for fighting with Minor 2 And then he called Minor 2 -- Minor 1 in the kitchen to keep from showing her up in front of the other kids. And my living room, my door here is glass, you can see through it.
Q: Your living room door is glass?
A: It's glass. You can see through it to the kitchen.
Q: Okay.
A: And I was afraid that he was gonna spank her. So, I stood there and I watched him to make sure he did not spank her.
Q: Okay. And tell me, what did you observe?
A: He was talking to her.
Q: Okay. At that particular period of time, did you see him take out his penis and, of course, make her perform oral sex on him?
A: Of course not, I wouldn't allow that.
Q: Okay. And how long did -- did William and Minor 1 stay in the kitchen?
A: Do what now?

Q: How long were they in the kitchen?
A: It wasn't but a few seconds because her grandma was already out there waiting on her.
Q: Okay. Okay. And then of course is, is that when grandma arrived, what happened?
A: She got her stuff up and told me, said bye, Nanna, and she ran out the door.
Q: Okay. And of course is, is that had you seen her since that time -- let me rephrase that. I mean, seen her -- has she been back to your house since that time?
A: No.
Q: Okay. Of course is, is that you said that Minor 1 and, of course, W.C. did not leave?
A: No, W.C. and Minor 2 didn't leave.
Q: I'm sorry, W.C. and Minor 2 didn't leave. And of course is, how long did they stay?
A: Well, they stayed until Fannie (spelled phonetically) got off of work, and Fannie and Bruce carried Minor 2 to Walmart to get her a birthday present.
Q: Okay. Who is Fannie?
A: My son's girlfriend.
Q: Okay. Okay. So, and so they stayed until she got off of work and then they took who to the where?
A: They carried Minor 2 , W.C. , and C.F. , which is Fannie's little daughter, to Walmart.

Q: Okay.
A: It was Minor 2's birthday, so they got Minor 2 a birthday present.
Q: Okay. Okay. And of course, did they come back to the house after that?
A: They came back to the house and I carried them home.
Q: Okay. That same night?
A: That same night.
Q: Okay. And -- and which home did you carry them to? Mom's home?
A: Yeah, Mom's home, Kelly's home.
Q: Okay. And just to be absolutely certain is, is that on the event that occurred in the kitchen -- the event that occurred in the kitchen, did you witness any sort of sexual contact whatsoever?
A: No, I did not.
Q: And to make clear, you watched the entire time while they were in the kitchen?
A: I watched the entire time, which W.C. was standing right beside me.
Q: Okay.
MR. BROOKER: No further questions, Your Honor.

CROSS EXAMINATION OF ANGELA BATTON BY MR. SCRUGGS:

Q: Ms. Batton, that's your son sitting over there at the defense table?

A: Yes, it is.
Q: He's -- he's what, 36?
A: Yes, he is.
Q: You're his mother; you've known him from birth?
A: Of course.
Q: You carried him around for nine months, right?
A: Yes.
Q: You raised him, right?
A: Yeah.
Q: You provided for him?
A: Yes, I did.
Q: And I'm sure you love him greatly?
A: I love him, but I love my grandbabies, too.
Q: I understand. Some people sometimes say that nothing is more powerful than a mother's love; would you agree with that?
A: I agree with that with a certain extent, because I would not lie for my son when it comes to something like that.
Q: Okay. There was a time where your son was living in a camper behind your home; is that right?
A: Yes, it is.
Q: Does he still live there?
A: He has to; he's got the ankle monitor on.
Q: Okay. I'm sure you hope that as you grow older that he'll be there to take care of you?
A: Not really.

Q: Not really?
A: No.
Q: Okay. You've been in the courtroom throughout this trial?
A: No, I was not here Tuesday.
Q: Okay. You were in the courtroom yesterday, right?
A: Yes, I was.
Q: And you watched and heard testimony from three of your grandchildren?
A: Yes, I did.
Q: You heard the allegations that they made against your son?
A: Yes, I did.
Q: And I'm sure that you have known that your son was arrested in January of 2018 for these charges?
A: Yes, I was.
Q: Okay. And today in February of 2020, you are taking the stand and telling the story that you were there on the weekend before Thanksgiving and that you saw him in the kitchen with Minor 1 ?
A: I did.
Q: And that there was a glass window that you could see the whole thing, right?
A: Yes.
Q: And that's not anything what -- anything like what

Minor 1 is claiming that it is?
A: No, it's not.
Q: That's your testimony here today?
A: That's my testimony.
Q: And this happened the weekend before Thanksgiving 2017?
A: Yes, it did.
Q: Your son was arrested in January 2018, right?
A: He was arrested in December, you didn't ---
Q: Well, let's back up. He was arrested shortly thereafter, correct?
A: Yes.
Q: Okay. So, all, you know, all of 2018 goes by, 365 days, then 2019 comes, 365 days go by and here we are February 2020 and this is the first time that you have told this?
A: No, it's not the first time. I told Kelly when she -- she come to me with it, and I told her what happened that day.
Q: Okay. Well, let me ask you this. Did you tell Marion Police Department this?
A: I was not never asked. I told Mr. Brooker that. Nobody never come to me and nobody never asked me anything.
Q: Okay.
A: The social -- yes, I did tell somebody. Whatever the social service lady was that came to my house, I told her.
Q: Okay. But I just want to be clear, you never thought hey, maybe I should call the police department?

A: Well, I didn't know what all the allegations was. I know what happened that day and I did tell the social service lady that came to the house to talk to us.

Q: But, ma'am, you would agree with me, you never told anybody from Marion Police Department?

A: No, I never told nobody from Marion Police Department.

Q: And you never thought it would be a good idea, hey, maybe I should call the solicitor's office and tell them this?

A: No.

Q: Okay. So, you never called anyone from the solicitor's office or Mr. Richardson to tell him that?

A: No.

Q: I have no further questions.

THE COURT: Redirect?

MR. BROOKER: Yes.

REDIRECT EXAMINATION OF ANGELA BATTON BY MR. BROOKER:

Q: Just gonna ask you a couple of questions in reference to what Mr. Scruggs asked you.

A: Okay.

Q: I think Mr. Scruggs made a big deal about mother's love. Do you love your son?

A: Yeah, I love my son.

Q: Okay. You love your grandkids?

A: Yes, I love my grandkids.

Q: Would the love for your son cause you to lie about the

allegations -- the allegations alleged about your granddaughters?

A: No, it would not.

Q: You're certain of that?

A: I'm positive of that. I love my grandkids. I have put my grandkids ahead of him plenty of times, and if Kelly would tell you the truth, she would tell you that.

Q: And I think it is, is that you testified on cross examination that when you heard about this, and of course is, and you talked with Kelly?

A: Yes, I did. She come to my house.

Q: She came to your house?

A: Uh-huh, (affirmative response).

Q: And of course is, is that what did you -- and of course is, I'm trying to create a timeline for the jury. I know you says is, is that the weekend before Thanksgiving, is that when the kids were there?

A: Uh-huh, (affirmative response).

Q: And of course is, is that, and I think it's been testified that this allegation was made on that Thanksgiving Day, which would have been, you know, that Tuesday, a couple of days later on, Thanksgiving. So, when did she have the conversation with Kelly?

A: She came to my house that Christmas Eve.

Q: Christmas Eve she came to your house?

A: Uh-huh, (affirmative response).
Q: And of course y'all had a conversation about these allegations?
A: Yes, we did.
Q: And of course is, is that did you tell her what you saw?
A: Yes, I did. I told her word for word and W.C. -- she called W.C. in there and W.C. backed me up.
Q: Okay. Okay. W.C. is the -- is the son?
A: Yes, he is.
Q: Okay. And you said he was standing right next to you?
A: He was standing right next to me.
Q: Okay. Who all was there at the house that day?
A: That day when it ---
Q: The day that the children stayed that weekend, this Saturday, in which all of this was supposed to have happened in the kitchen?
A: Okay. It was me; my husband was at work; W.C. ; Minor 1; Minor 2; and Bruce; and C.F. .
Q: Okay. And of course is, is that, I think you were asked -- well, on direct examination, who did you tell and, of course, you said that one, you had this conversation with the children's mom?
A: Yes, I did.
Q: And of course, too, you said that you had this conversation with the Department of Social Services?

A: I sure did.
Q: Okay. And then of course, three, I think you were asked is, is that whether or not you called and talked with law enforcement, Marion Police Department?
A: No, I didn't.
Q: Okay. Are you an investigator?
A: No.
Q: Were you charged with investigating the case?
A: No.
Q: Did anybody from Marion Police Department contact or contact you and says, hey, Ms. Kelly, we heard this thing happened at your home -- that's gonna be, hey, Ms. Batton, we heard this thing happened at your home, could you tell us what happened? Anybody from Marion Police Department did that?
A: No.
Q: Now, you also asked is, is that whether or not he contacted -- whether or not you contacted Mr. Richardson; do you know Mr. Richardson?
A: No, I don't.
Q: Did you know Mr. Richardson prior to this week?
A: No.
Q: Ever met him?
A: No.
Q: Ever knew he was in charge of this case?
A: No.

Q: Ever met Mr. Scruggs?

A: No.

Q: Ever knew he was in charge of this case?

A: No.

Q: Okay. Has Mr. Richardson called you and says, hey, we heard this thing happened at your house, it was alleged to have happened at your house, hey, Ms. Batton, you know, did you see anything. Did anyone from the solicitor's office call you and said that to you?

A: No. I haven't heard anything from none of it.

Q: For the people who asked you what you saw, did you tell them?

A: Yes, I did.

Q: And has that story ever changed?

A: No, it hasn't.

MR. BROOKER: No further questions, Your Honor.

THE COURT: Anything on recross.

MR. SCRUGGS: No recross.

THE COURT: Nothing else?

MR. SCRUGGS: No, sir.

THE COURT: I thank you, ma'am. You may step down.

All right. Let me get y'all to step around here.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, I think, my belief is that there's a good possibility that we'll get this case to you for your consideration today. And so what I've done is I've ordered lunch for you. It's not here yet, but what we're gonna do is we're going break at this time for lunch. Now, I'm not gonna ask you to sit back there and just wait around, but I can't let you leave either. So, here's what I -- here's what I'm gonna do. We're gonna break for lunch and let the folks out here that want to go grab something do that. If you want to have a seat in the jury room, you can do that. If you want to go downstairs and stretch your legs or get some fresh air or whatever, I can let you do that as well, but you'll have to do that with the bailiffs with you. Because no one is allowed to have any communication or any contact with you. Okay? So, we're gonna do that at this time. The food is on the way, so I don't anticipate it will be very long before, and then we'll bring you back up and let you eat here. So, we're gonna be at ease now.

Here's the thing, folks, those of you who are in the audience, as you're aware, here in Marion County, we're kind of restricted with regards to our space. So, what I'm gonna ask everyone to do is, if you want to go to lunch and get something, that's fine. I know a lot of times people hang out downstairs and go around waiting for things to start back. I

don't want anyone doing that. Okay? Because if the jury wants to go downstairs and stretch their legs, I'm gonna let them do it. So, I need everyone here either to be sitting in the courtroom or off the property. Okay? Until we start back. So, I'm gonna let everyone else go ahead and do what they want to do.

One of you ladies had to pick up a child from daycare; which one was that?

JUROR: She's with her grandma today; I didn't take her.

THE COURT: Okay. Because I was gonna say, we still may be done by 5:00, but if you get the case for your deliberations, it may be longer, and so I was gonna kind of talk with you about that, but you're okay for right now?

JUROR: I'm okay.

THE COURT: All right. Good deal.

All right. So, we're in recess.

(REPORTER'S NOTE: Jury exits courtroom @ 12:25 P.M.)

RECESS - 12:25 P.M.

*******OFF THE RECORD*******

(On the Record - 1:16 P.M.)

THE COURT: All right. All right. I believe the -- I believe the jury panel is ready to resume.

Is the state ready?

MR. RICHARDSON: Yes, sir.

THE COURT: Mr. Brooker, is the defense ready to proceed?

MR. BROOKER: I'm sorry, Your Honor.

THE COURT: That's okay. Is the defense ready to proceed?

MR. BROOKER: We are.

THE COURT: All right. Let's bring the jury in.

(REPORTER'S NOTE: Jury enters courtroom @ 1:18 P.M.)

BAILIFF: Judge, we have a couple in the restroom.

We've got them all, Judge.

THE COURT: All right. Ladies and gentlemen, if you recall when we broke, that we were on the defense's case and we'll recognize Mr. Brooker for the defense's next witness.

Mr. Brooker?

MR. BROOKER: Thank you, Your Honor. Defense would call William Clark to the stand.

THE COURT: All right. Mr. Clark, if you'd please come around and be sworn, sir.

WILLIAM BRUCE CLARK, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF WILLIAM BRUCE CLARK BY MR. BROOKER:

Q: Mr. Clark, what's your -- what's your full name for the record, please?

A: William Bruce Clark, Jr.

Q: Okay. And, Mr. Clark, are you married?

A: Yes, sir.

Q: Okay. And who are you currently married to?

A: Kelly Clark.
Q: Okay. And is Kelly Clark, is she the mother of -- of the children, Minor 1 and Minor 2 ?
A: Yes, sir.
Q: All three of your children?
A: Yes, sir.
Q: Okay. And roughly, how long have y'all been married; when did y'all get married?
A: We've been married nine years, I believe.
Q: Roughly nine years. Okay. All right. And of course is, were you in a relationship with her before that?
A: Yes, sir.
Q: Okay. And so total how long have y'all been together?
A: Off and on, me and Kelly has been together since I was 15, 16.
Q: And how old are you right now?
A: Thirty-six.
Q: Okay. Now, I'm assuming at some point in time, y'all had children together; is that correct?
A: Yeah, we had W.C. when I was 19 ---
Q: Okay. And that was about ---
A: --- 20, I turned 20.
Q: Okay. And of course, W.C. is the young man who is in the courtroom who testified earlier; is that correct?
A: Yes, sir.

Q: Okay. And then of course is, is that -- was it Minor 1 after that?
A: Yes, sir, Minor 1 after that.
Q: Okay. And of course is, is that did y'all live together?
A: Yes.
Q: Okay. And of course is, is that where were y'all living together at?
A: We stayed in Pee Dee out there at Bill Evans trailer park, and I worked in Marion during that time.
Q: Okay. Okay. And of course is, is that let me -- let me ask you this question is, is it around 2000 and -- I think around 2014 or '15, I think, on Bond Street. When were y'all living on Bond Street?
A: She's lived on Bond Street her whole life and we lived off and on Bond Street, you know, our relationship, you know, something night would happen and we would go stay there.
Q: Who's lived on Bond Street their entire life?
A: Kelly has.
Q: Okay. And did she own that home?
A: Her mother does.
Q: Okay. Okay. That was her mother's house?
A: Her father; yes, sir.
Q: Okay. Her mother and father's home?
A: Yes, sir.
Q: And of course is, is that I think you said that y'all

lived there with the kids at some point in time?
A: Yes, sir; our kids has always lived with us.
Q: And of course is, is that -- when's the last you can remember that y'all were staying there on Bond Street together as a family?
A: When it burned.
Q: Okay. And you were living there along with -- along with your kids and Kelly, and, and, and Kelly's mother?
A: And her mother and her brother stayed there, Robbie, and her daddy had done left. Sometimes, her Uncle Ronnie would stay, you know.
Q: Okay. So, all of y'all stayed there on Bond Street?
A: Yeah.
Q: At that address?
A: Yes, sir.
Q: Okay. And of course is, let's -- let's talk about Bond Street. Tell me about the house on Bond Street. What size of house it is or is it a house or mobile home or what is it?
A: It's a two-story house.
Q: It's a two-story house?
A: Yeah. Well, it's a one-story house, but it's got, you know, an upstairs.
Q: It's got an upstairs?
A: Right.
Q: Okay.

A: Cathedral ceilings, you know.
Q: Okay. Cathedral ceilings?
A: Right.
Q: And of course, is there a room upstairs?
A: Yeah, it's got a turn stair case that comes up and an open room here and then it's got a room behind that room and it's got a bathroom. The showcase room you walk in ---
Q: Uh-huh, (affirmative response).
A: --- there's a bathroom there, and it's got the bedroom, and then there's a bedroom behind a bedroom.
Q: Okay. Okay. And so, how many bedrooms were there upstairs?
A: Upstairs there was two bedrooms -- two bedrooms.
Q: Okay. And -- and was there a bathroom?
A: And a bathroom.
Q: And a bathroom?
A: Yes, sir.
Q: How many bedrooms were there downstairs?
A: There was two bedrooms downstairs, living room, kitchen.
Q: Okay. And of course is, is that -- and next I'm gonna ask you about the sleeping arrangements, where everybody slept at in the house, is that -- I know that you said that -- I think from what you said is, it seemed like there could be an awful lot of people in there at one time.
A: Right.

Q: Okay. Let's start with -- with grandma. Where did grandma basically sleep?
A: Well, nobody used her room. She kept her room locked. After Robbie left, she kept that room locked up. I don't know really why she did it, but she kept that room locked up.
Q: Okay. So, there was a bedroom; was that bedroom downstairs, her bedroom?
A: Yes, sir.
Q: Okay. And of course is, I think you said there was another bedroom downstairs?
A: Yeah, there was another bedroom. It was like a laundry room like it's where the washing machine and dryer was, and there was a bunch of stuff in there. You know, it really wasn't used as a bedroom but ---
Q: Okay. Okay. Okay. I want to make sure I understand. Okay. So, let's talk about the sleeping arrangements it is, is that where did -- where did -- where did grandmom slept at usually?
A: On the couch.
Q: She slept on the couch?
A: Yeah.
Q: And then of course is, is that what about W.C. , where did W.C. sleep, your son?
A: W.C. slept downstairs most of the time.
Q: Okay. And what about Minor 1 ?

A: Minor 1 slept downstairs, too.
Q: Okay. And what about Minor 2 ?
A: Minor 2 would sleep upstairs with us.
Q: Okay. And where did you and Kelly slept?
A: We had a bed -- when you walk into the showcase room, we had a bed against the wall right here. Minor 2's bed was right here, and that's all.
Q: Okay. All right. Now, okay. And I think you said a couple of other people stayed in the house?
A: They stayed in and out, though.
Q: They were just in and out?
A: Yeah. Well, Robbie stayed there for a couple of months while we was there last time. So, I mean, I don't know.
Q: Okay. But they weren't -- they were not permanent residency occupants?
A: No, they was not permanent residents. The only permanent residents was Joanie ---
Q: Okay. All right.
A: --- and the kids.
Q: Now, I think it was alleged, and I'm gonna talk with you about this, I think -- let's talk about -- let's talk about Minor 1 .
MR. BROOKER: Indulge me for just a second, Your Honor, let me make sure I have the right report here.
THE COURT: Yes, sir.

BY MR. BROOKER:

Q: Let's talk about Minor 1 . Okay. And Minor 1 , she's your oldest daughter?

A: Yes, sir.

Q: Okay. And of course is, is that, you know what sort of relationship did you have with Minor 1 ?

A: Typical father/daughter relationship really.

Q: Okay. Did you spend any time with her?

A: Oh, yeah. Yeah, I spent time with her.

Q: Okay. All right. And of course, were you working at that time?

A: Yes. I do construction work.

Q: When y'all were living on Bond Street, were you working during that period of time y'all were living on Bond Street?

A: Yes, sir.

Q: And where were you working at?

A: Me and my daddy had a business; it's called Bruce's Roofing and Construction.

Q: Okay. And were you working that -- working that business most of the time while you were on Bond Street?

A: Yes, sir.

Q: Okay. And of course is, is that what were your working hours for that business?

A: Daylight, I mean.

Q: Okay. How many days of week roughly?

A: Whenever we had work, I was working. We took -- we take Saturday and Sunday off.

Q: Okay. All right. And of course is, is that I think that -- were you in the courtroom when Minor 1 testified, testified that she was assaulted by you on Minor 1 ---

A: Yes, sir.

Q: --- or while she lived on Madison Street?

A: Yes, sir, I was in the courtroom.

Q: Excuse me, Bond Street, I apologize -- while y'all were living on Bond Street?

A: Yes, sir.

Q: Okay. And of course is, that I want to ask you emphatically, and tell me absolutely, have you ever -- have you ever sexually assaulted Minor 1 ?

A: No, sir.

Q: Have you ever inserted your penis or anything else into her anal area?

A: No, sir. No, sir.

Q: Have you ever inserted your penis, your finger, or anything else into her?

A: I've never touched her inappropriate. I've gave her suppositories. She's had a problem her whole life with using the bathroom. And, if you'll look at her records, you'll see that, too. And her mother knows that I -- would know about that. And I've never touched her like inappropriate.

Q: Okay. Yeah, and -- and anyway, have you ever had any indication from -- and don't tell me what anyone says, because I don't want you to tell me what anyone says. Have you ever received any indication from Minor 1 , you know, that you touched her or engaged her inappropriately?

A: No, sir.

Q: Have you ever received any indication, absent the time in which -- and we'll get into when the allegations were made against you and, of course, when you became aware of them. But while you were on Bond Street, has -- has anyone ever approached you, whether it be Minor 1 , whether it be Minor 2, whether it be grandma, grandpa, or anyone in the family, ever approached you regarding your contact with the children or having concern about your contact with the children?

A: No, sir. No, sir.

Q: Okay. Now, I think Minor 1 said that also that at some point of time, y'all moved to the Northside?

A: Yes, sir; we did.

Q: Okay. And why did you move to the Northside?

A: Because the house burnt, and Robbie rented that place for Joanie, and he bought he him a place.

Q: Okay. Tell us about the house on the Northside?

A: All right. It's a nice house.

Q: Just the configuration of the house?

A: It was a nice house.

Q: Okay.
A: It was one, two, three, three -- it was three-bedroom, but it had like this big sun room in the front.
Q: Uh-huh, (affirmative response).
A: And it was like two rooms put together, you know, and it had a nice, good-sized living room, fireplace, and walk on into the kitchen and then you'd come into the, you know, the dining area right here, and it had the sunroom walking out the back door, a two-car garage.
Q: Okay. How many bedrooms did that house have?
A: It had, I think, three bedrooms.
Q: Okay. And who lived in that house on Northside once y'all left Bond Street to move to Northside?
A: Me, Joanie, and the kids, and Kelly, and Robbie stayed there with us for a little while.
Q: When you say Joanie, is that Kelly's mother?
A: Yeah, that's Kelly's mother.
Q: Okay. Okay. And of course is, is that how long did y'all -- how long did y'all stay at her -- well, let me ask you this. How long did you stayed with the family at -- on Northside?
A: I don't really know. I stayed -- I stayed a good -- I'd say three months there, probably.
Q: Okay.
A: Yes, sir.

Q: And I think there was testimony that, you know, that, that, that, that, that, you know, that, that -- you sometimes stayed there and sometimes didn't stay there; is that correct?
A: Yeah, yeah. Me and Kelly didn't agree and I would just have to leave, you know.
Q: Okay. Now, when's the last time you remember staying on Bond Street -- staying on the Northside?
A: The last time was on a Sunday and ---
Q: Instead of staying on the Northside, I know we've been talking about staying on the Northside. Do you know what -- what street that house was on?
A: It was right across from the sub -- there's a substation over there, police station?
Q: Uh-huh, (affirmative response).
A: It's right across from it, the schoolhouse.
Q: Okay. Is that here -- is that here in Marion?
A: Yes, sir.
Q: Okay. Okay. And of course is, is that now, I think, you were in the courtroom when Minor 1 testified ---
A: Yes, sir.
Q: --- about you sexually assaulting her there?
A: Yes, sir.
Q: Okay. And I think, Minor 1 testified to I think, she didn't say when, but she testified to at least anal penetration and she also testified to vaginal penetration.

And I'll ask you straight out, absolutely, did you ever at that -- at that residence or at any residence, it doesn't matter where, did you ever, ever penetrate her at that residence or any place else with your hand, with your foot, with your penis, with anything?

A: No, sir.

Q: Okay. And how long did you stay with the family; at some point in time, did you left the family and -- and you and Kelly broke up?

A: Me and Kelly broke up. Me and Kelly broke up all the time.

Q: But permanently broke up?

A: Permanently broke up?

Q: When's the last time that y'all just -- I know that she testified that y'all were on and off. You know, when's the last time you ---

A: '16. She said we was together in '17. We split up in '16. I started talking to Fannie in, what was it, around March or May -- March. I started talking to Fannie, I believe it was March 9th. So, me and Kelly had done been split up a good six months before me and Fannie ever started talking.

Q: Okay. This was in -- when did you start talking with Fannie?

A: March 8th.

Q: March of what year?
A: Of '17.
Q: March of 2017 you start with Fannie. And then of course is, I'll ask you who is Fannie. Who is Fannie?
A: Fannie Faircloth, my girlfriend.
Q: Okay. She's your girlfriend?
A: Yes, sir.
Q: Okay. And of course is, is that -- what are you currently -- who do you currently reside with?
A: We live together.
Q: Okay. Y'all live together; when did y'all start -- when did you start living together with Fannie?
A: When did we start living together? We talked -- we talked probably two or three months, I stayed in Marion and we'd see each other every weekend, you know, and I moved in with her about three months afterwards.
Q: So, roughly what time? If you can remember. I know all these dates sometimes are difficult to remember. If you can remember, about what time, what period of time is this?
A: It was probably in July. No, we got the tattoos in July. So, I reckon it was around August.
Q: Of what year?
A: Of '17.
Q: Of '17?
A: Yes, sir.

Q: And of course is, is that when you moved in with Fannie -- have you moved in with her ever since? Have you been with her ever since, I think you said -- when y'all moved in, have y'all been together ever since?
A: Yes, sir.
Q: Okay. And of course, who lives with you and Fannie?
A: Me, Fannie; her son, Sterling; C.F. , her daughter; her mom stays there, sometimes.
Q: Okay. And where does -- and where is that residence at?
A: Currently me and her has been staying at my mom's house because of my ankle band wouldn't let me leave Marion.
Q: Okay.
A: We did stay in Carolina Shores.
Q: Carolina Shores; where is that at?
A: It's in Little River next to the -- it's North Carolina.
Q: It's in North Carolina?
A: Yes, sir.
Q: Okay.
A: I'm sorry.
Q: And of course is, -- that's all right. And I think you said you stayed, at that point in time, when you first started living with Fannie, it was you, it was Fannie's son -- how old is Fannie's son?
A: Sterling is, I want to say he's 21, 20. I believe he's 20.

Q: Okay. And I think you also said that she has a -- has a daughter. How old is the daughter?

A: C.F. is nine, 10 -- nine, nine.

Q: Okay. And of course is, is that, and of course, I think you testified that you've been living with them pretty much ever since. You've been with family?

A: Pretty much, yes.

Q: Okay. Okay. Now, and I don't want to get into -- I'm not gonna get into specifics, so, of -- your relationship with Kelly is, is that do you and Kelly have any contact after you -- after you left, I think, permanently, y'all broke off permanently; did y'all have any contact thereafter?

A: Yeah, well she text me and ---

MR. SCRUGGS: Objection to any hearsay.

THE COURT: Sustained.

BY MR. BROOKER:

Q: Just answer the question yes or no?

A: Yes, sir.

Q: Okay.

A: Yes, sir, she contacted me.

Q: And of course is, is that do y'all have a cordial relationship; yes or no?

A: Cordial?

Q: Do y'all get along?

A: Do we get along? No, no, no. No, sir.

Q: Okay. And of course is, is that -- well, have y'all ever fought about the children?
A: I wouldn't say we fight about them. I would never try to take her youngins away from her. You know what I mean? And I beg to see them when I can see them, you know, I paid her $100 a week. When we split up, I'd leave the $100 on my momma's front porch and would go home and text her and tell her it was there. And, you know, she would call and talk to me. Sometimes I'd talk to her ---
Q: Again, I'll tell you, you can just say y'all called and talked, but don't tell me about your conversation.
A: Yeah, well none of the conversations would -- I'd call and talk to her sometimes and she'd call me sometimes, but there is nothing else between me and her after -- you know what I mean, broke up the last time.
Q: Okay. Of course is, is that -- that -- let's talk about the Thanksgiving, not Thanksgiving, but for the weekend before Thanksgiving in 2017.
A: Okay.
Q: I think is, that Minor 1 said, I think Minor 1 , and you were here in the courtroom, Minor 1 testified, you know, and that's the -- was the last time -- let me ask you this question. Was that the last time that you seen her?
A: Yes, sir.
Q: Okay. And you were in the courtroom and I think when

Minor 1 testified and that something happened at that residence?

A: Yes, sir; I was.

Q: Okay. Tell me what happened -- what happened. I think it's been testified previously that that was on Saturday or something like that?

A: No, it was on Saturday, yes, sir.

Q: On Saturday before the, you know, before the holiday. Who was there?

A: Me, and W.C. , and Kelly, Minor 2 ; all the kids was there. My mother was there. We was going to my brothers; he weren't there. C.F. was there. That's it.

Q: That's Fannie's daughter?

A: Right.

Q: Okay. Okay. And so it was yourself, it was -- it was -- is your son, is it -- is it W.C. , he has your name, right, your son, W.C. ?

A: He has my name, my first name and Kelly's first name.

Q: Okay. Okay. So, W.C. was there and then, of course is, is that Minor 2 was the there, Minor 1 was there. I think you said that C.F. was there, your mom was there ---

A: Uh-huh, (affirmative response).

Q: --- anybody else; have I covered everybody?

A: No.

Q: Okay. And of course is, is that what caused them to come

and stay that weekend, was supposed to stay that weekend at your mom's house?

A: Because I hadn't seen them for a long time. Ever since I moved to North Carolina, she wouldn't let me see them. She said it was too far for the kids to go.

Q: Don't tell me what she tells you.

A: All right. Well, I apologize.

Q: You can tell me that you hadn't seen them for a long time. Yeah, told me what someone else says.

A: Well, I hadn't seen them for a long time. Anyhow, I couldn't see them because it was too far and she didn't know Fannie.

Q: Uh-huh, (affirmative response).

A: And so finally, I told her I wasn't gonna pay her no more, you know, unless I could see them. And she told me that I could see them on that Thursday, I mean, on -- she wouldn't let me see them because I lived too far away, but she ---

Q: That's all right. There's some napkins right next to you.

A: I just need a minute.

Q: Just take your time.

A: I told her I wasn't gonna pay her no more child support if she wouldn't let me see my kids. She said that she didn't trust Fannie and she wasn't gonna let me see them. I told her that I stood just as good a chance as she did in Court, to

take out her papers, where I could have my visitations and rights. So, she calls me back that Friday and she says that ---

MR. SCRUGGS: Objection.

BY MR. BROOKER:

Q: Yeah, told tell me what she said.

A: Anyhow, she agreed to let me see my kids if I would go to my mother's house. So, I went to my mother's house. And I was dadgum about to go to my little brother's for a birthday party, and I seen Minor 2 was crying in the front yard. So, I asked her what was wrong with her ---

Q: Don't tell me what she says.

A: --- I parked the car ---

Q: You can tell me what you say to her, but don't tell me what she says.

A: I parked the car, me and W.C. got out, went back there and talked to Minor 1. I told Minor 1 that she had to play with Minor 2 too, she couldn't just play with C.F. , and she took off in the house. We all went in the house behind her, and she was already on the phone in the kitchen and called her grandma to come get her. So, I shut the door -- I shut the door to try to talk to her, and there wasn't no talking to her. I told her that I just wanted to see her, I hadn't seen them in a long time. And anyways, her grandmother was already outside and she took off and left, and Kelly called me. She

said, you know -- you know ---

MR. SCRUGGS: Objection.

BY MR. BROOKER:

Q: Don't tell me what Kelly says.

A: Well, me and Kelly talked.

Q: You can say that y'all talked.

A: And she said that ---

Q: Don't tell me again.

A: She let me keep my little girls -- my other two because it was Minor 2 's birthday; she let me keep her.

Q: So, that day was Minor 2 's birthday. So, so, so only Minor 1 -- only Minor 1 left?

A: Yeah, only Minor 1 left.

Q: And I think, let me make sure my understanding is, is that your testimony was is that who picked up Minor 1 ?

A: Joanie did.

Q: Okay. And I think your testimony was, and you correct me if I'm wrong, I want to make sure that I understand, that Minor 2 and your son stayed?

A: Yes, sir.

Q: Okay. And did they stay for the rest of the weekend?

A: They stayed and I took them ---

Q: I'm sorry, go ahead.

A: --- they stayed and I took them, me and Fannie took W.C. and Minor 2 to Walmart and got her birthday present and,

dadgum, I brung them back -- come back home. And I asked Kelly did I need to come out there and Kelly told me don't worry about it.

Q: Whoa, don't tell me what Kelly said. You can tell me that you called her.

A: Well, Kelly called me while I was at Walmart and asked me would I buy a cake for Minor 2 s birthday party. I thought she said a cake; she said a cape, a Wonder Woman cape; I misunderstood her. So, I asked her how much it costs and she told me what it costs and I sent it by W.C. .

MR. SCRUGGS: Objection. This is a whole conversation that's being recounted; it's hearsay.

THE COURT: Sustained as to any hearsay.

BY MR. BROOKER:

Q: Yeah, you can tell me your part of the conversation. You can tell your part of the conversation. You can't tell me what she said to you. You can say that we called and I talked with her about this.

A: Yes, sir.

Q: But you can't tell me what she said back to you. So, you can tell me what you talked with her about. You know, it's called hearsay. So, y'all talked with Minor 2 about -- talked with her -- we'll start from there. You talked with Kelly about getting something for her for her birthday; is that correct?

A: Right.
Q: Okay. All right. And how long did y'all stay at the store; what store did you go to?
A: We went to Walmart.
Q: Walmart and how long did y'all stay there?
A: We couldn't find the cake. I couldn't find a cake; there weren't no bakery there. So, I didn't get it. I asked her how much it cost and I give it to W.C. to give to her, and I took -- I went back to my mother's and my mother took them home.
Q: She took them home that afternoon?
A: Yes, sir.
Q: Okay. Now, and I will ask you, you know, straight out, point blank, is, is that when you took Kelly into that -- when you took Minor 1 into the kitchen ---
A: I didn't take her in the kitchen. She went to the kitchen, stormed into the house.
Q: Okay. Okay. I gotcha.
A: I just shut the door so nobody could hear what we was saying. I didn't want to get onto her in front of everybody.
Q: Why didn't you want anybody to hear; why didn't you want anybody to hear what you were saying to her?
A: Because I felt like it would embarrass her. C.F. was there and all the kids, I don't know.
Q: Okay.

A: I ain't never got onto any of my youngins in front of anybody. I always pulled them to the side and talked to them.
Q: What did you say to her?
A: I just told her -- I don't -- I don't even remember exactly. I don't remember what was said. I don't remember. All I remember she was already done called her grandma. They wasn't no talking to her when she went in there.
Q: Okay. How long were y'all in the kitchen; was it the kitchen?
A: Yeah, it was the kitchen.
Q: How long were y'all in there?
A: A minute at the most, probably. It all happened so fast, I'd say we might have been in there two or three minutes. I don't know.
Q: Okay. Did you ever have oral sex with her while you were in there?
A: No, sir. No, sir.
Q: Okay. Now, you were here in this -- in the courtroom when your daughters testified. Well, I'll tell you what. I'm gonna leave you -- leave that for a second there and, of course, I'm gonna go and address Minor 1 -- excuse me -- Minor 2. And you were in the courtroom when Minor 2 testified; is that correct?
A: Yes, sir.
Q: And of course is, is that do you remember what Minor 2

testified to?

A: Yes, I do remember what she testified to.

Q: Okay. What did she testify to?

A: She said I messed with her in her butt.

Q: Did you do any of that?

A: No, sir. No, sir. I've never touched my youngin. I couldn't even get -- I watched -- I changed them youngins' diapers. I raised them youngins. I'd been there when they was babies. There was no way I could ever touch my youngins like that. I couldn't -- how would I even be aroused?

Q: How did it make you feel when you hear that?

A: It broke my heart. It broke my heart because I ain't never -- I did, I disciplined my youngins, don't get me wrong. I never beat them with no belt. I spanked them with my hands but -- I don't know how they could say I did something to them. And to say I -- she stayed with me in the camper and -- her my daughter or not, I promise you, and that one would not let anything like that go down at her house. Just the way it looks. The only time them youngins slept in that camper was when Kelly Clark stayed in the camper with me, and then W.C. stayed there, Minor 2 stayed there, Minor 1 stayed there. I was never alone with them youngins -- when we moved to Marion, I have never been alone with them since. And it's not for the fact of me being a child molester; it's for the fact that she was scared I was gonna take them youngins and

she'd never get them back; that's what she was scared of. That's what she was scared of because of what she'd done to me.

Q: Did y'all have arguments about custody or visitation or anything like that?

A: No, I wouldn't never take her youngins away from her and she knows I wouldn't try. Youngins need their mother. I had my mother coming up and I didn't have my daddy, really. He was in and out. But, I always had my mother and youngins belong with their mother and that's how I've always felt about it. I just wanted to visit and just be a part of their lives.

Q: Now, I'm not gonna ask you to get in their minds and you can't get in their minds and say what's in their minds, but you can say what's in your mind. Why do you think -- if you didn't do these things ---

MR. SCRUGGS: Objection, this is speculation.

THE COURT: I'm gonna sustain that; I mean, I didn't hear your question ---

MR. BROOKER: May we approach, Your Honor.

THE COURT: Yeah, come on around.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: Ladies and gentlemen, let me get you to step back into the jury room while I take up this matter of law. Please have no conversation about the case. I'll bring you

back out shortly.

(REPORTER'S NOTE: Jury exits courtroom @ 1:54 P.M. The following takes place outside the presence of the jury.)

THE COURT: Mr. Brooker, you need a few minutes to look at that?

MR. BROOKER: I'm getting to the rules now, Your Honor.

THE COURT: All right.

MR. BROOKER: Give me just a second.

THE COURT: I'm gonna step back here. Holler at me when you're ready.

MR. BROOKER: Sure.

RECESS - 1:55 P.M.

*******OFF THE RECORD*******

(On the Record - 2:03 P.M.)

THE COURT: Thank you, folks, have a seat.

All right. Yes, sir?

MR. BROOKER: Your Honor, the rule that I'm looking at is, is that obviously it's -- it's 803 and specifically (3) the existing mental, emotional, and physical condition. And of course the rule reads, cannot that a statement of declarant's existing state of mind, emotion, sensation, or physical condition such as -- you know, in parenthesis, such as intent, plan, motive, design, a mental feeling, pain, and body healing [sic], but not including the statements of memory or belief to prove the fact remembered or believed, unless it

relates to execution, revocation, identification, or terms of declarant's will. And so, and of course is, is that on the case law that I'm taking a look at as well, too, is, is that I think is *State v. Garcia*, that's a Supreme Court case, 334 S.C. 71, 1998 gives the exceptions discussed, it discussed in great detail. And in that case it says, you know, that it says -- if you give me just a second -- it says, let me find my place, Your Honor. It says -- it says Rule 803 is identical to the counterpart in the federal rules of evidence, and it says Rule 803 provides an exception for statements of presence -- of present state of mind, emotional or physical condition, and of course the Court says that the statements are considered trustworthy because they are based upon unique perception. That is the declarant has a unique perspective into his own feelings and emotions. The statements may either directly or circumstantially show the declarant's state of mind, emotion or physical condition. And of course, the Court went on to state that Rule 503 (3) does not permit a statement of memory or belief to prove a fact remembered. So, he couldn't basically say what he believed in his attempt to try to prove the existence of a particular fact. Now, that would be inappropriate if he says, you know, I believe this took place and, of course, he's using his memory to try to remember -- to try to prove a specific fact.

In this particular situation, he's not doing that. He's

basically expressing what his emotions are, what his feelings are and what he's thinking. And of course, it goes on to say that it says consequently, while the present state of the declarant's mind is admissible as an exception to the hearsay rule, the reason for declarant's state of mind is not. Which means is and I think the Court says is that although he may state what his -- what his present state of mind and emotion is in, that does not give him the ability to be able to go down that road and try to explain why he feels that.

THE COURT: Is that not referring to at the time something occurs?

MR. BROOKER: I don't think it's limited. I think ---

THE COURT: We're talking about, here you are now, a couple of years later and we're in a trial and he's on the stand as a witness ---

MR. BROOKER: I think Rule 1 deals with present sense impression. It's a statement describing or explaining the event or condition made while declarant's was perceiving the event or emotion. And so under -- under the -- under the exception Number 1, present sense impression, so someone can describe something while they are preceding that event and it says that creates an exception to the hearsay rule. I think that's what you're referring to, I think exception Number 1.

THE COURT: Number 3, which you cited, says a statement of the declarant's then existing state of mind, emotion,

sensation, or physical condition, such as intent, plan, motive, design, mental feeling, pain, bodily health, but not including a statement of memory or belief to prove that the fact remembered or believed, unless it relates to the execution, revocation, identification or terms of the declarant's will.

MR. BROOKER: Yeah, I understand that. And of course is, is that what it says -- when it says his then existing state of mind, they're talking about what his state of mind is right now. Is that what his state of mind -- what his state of mind six months ago? Is it what his state of mind six months ago or six years ago would be related to presence -- present -- present sense impression when a person is basically thinking what they thought at the time when they were perceiving something in the past. You know, six years when this happened, as it happened, this is what I felt and this is what my perception was as the event was happened -- happening, is that that under Subsection Number 3, you know, it does not -- that does not relate to him, you know, basically, experiencing an event and expressing what he felt. Now, what he felt as he was experiencing that event. It's talking about his present -- his present state of mind.

THE COURT: All right. Give me a second. You're citing hearsay rules and this isn't hearsay.

MR. BROOKER: I'm citing exception to the hearsay rule.

THE COURT: This isn't hearsay though rules. What you're asking him to testify to is not hearsay.

MR. BROOKER: Uh-huh, (affirmative response).

THE COURT: You're asking -- you, you're just flat out asking Mr. Clark to speculate as to why these allegations would've been made.

MR. BROOKER: I'm asking about his belief, his present state of mind. And like I said, if you want to -- you can, you know, overrule, Your Honor, that's fine with me, but I don't want to delay this any longer. Now, I can try to rephrase it in a way, but even if I try to rephrase it in a way, then ---

THE COURT: I'm not gonna allow him to speculate. So, I'm gonna overrule, I mean, or I'm gonna sustain the objection as to speculation.

MR. BROOKER: And that's fine, Your Honor, is, is that but he would be speculating, Your Honor, because is, is that I know we don't have -- we were not present during of these events, but of course is, I think like -- like the case that I cited is, is that he's basing this upon his perception ---

THE COURT: You're wanting to ask him why he thinks they've made these allegations. That's complete speculation and you're not -- what you're citing to me are hearsay rules and it's not hearsay. You're not asking him to discuss any hearsay statements. You're asking him why do you think they

would do this, and that's complete speculation. So, anyway, I'm gonna sustain the objection as to speculation.

MR. BROOKER: Okay, sure.

THE COURT: All right. And I'll note your exception to that ruling.

MR. BROOKER: Thank you, Your Honor.

THE COURT: All right. Let's bring the jury back in.

MR. BROOKER: Let me make sure where I left off.

THE COURT: Yeah, go ahead and check that out while they're coming in.

(REPORTER'S NOTE: Jury enters courtroom @ 2:12 P.M.)

THE COURT: All right. Ladies and gentlemen, thank you. I'm sustaining the state's objection and you may continue.

MR. BROOKER: Your Honor, can he have some water?

THE COURT: Absolutely. Yeah, go ahead and get him some, yes.

MR. BROOKER: Sure.

BY MR. BROOKER:

Q: I think where we left off was is, is that we were -- I think you had concluded by explaining about buying Minor 1 or buying ---

A: Minor 2 .

Q: --- Minor 2 -- I'm sorry, buying Minor 2 or trying to buy Minor 2 a birthday cake and couldn't find the cake so you gave

them money for it.
A: Right.
Q: Okay. And I think your testimony was is that she went home -- that your momma took her home that afternoon?
A: Yeah, we got Minor 2 's present and we went back to Momma's. I called Kelly and asked her did she want me to bring them and she said let your momma do it, so momma did it.
Q: That's fine. You can tell me, I just want to make sure you didn't ---
A: Yeah, I wouldn't ---
Q: You can tell me what you said, but ---
A: It was best if Momma took her, so Momma did take her.
Q: Okay. Okay. And of course, she took them home.
A: Yes.
Q: And was that the last time that you saw them?
A: Yes; that's the last time.
Q: And what I mean by saw is that that's the last time that you were able to have contact with your kids?
A: Right.
Q: Okay. And you have not had contact with them?
A: This is the first time I've seen them in a long time.
Q: Okay.
A: They did some growing.
Q: Yeah. Yeah. And let's talk about Minor 1 and, of course, the allegations that Minor 1 made and -- and I think

we've already talked about Minor 2 and, of course, the allegations that Minor 2 made about you. And I think Minor 1 's allegations were relatively similar.

MR. SCRUGGS: Your Honor, I'm gonna have to object. Counsel is trying to summarize what another witness testified to.

THE COURT: I'm gonna sustain.

MR. SCRUGGS: Thank you.

MR. BROOKER: I'm just redirecting his attention. I haven't state what her allegations are yet, but -- but that's fine. I'm not gonna restate what her allegations are. I'm directing him back to her allegations.

BY MR. BROOKER:

Q: Let's move to Minor 2 's allegations. Do you remember Minor 2 's allegations?

A: Yes, sir.

Q: Were you here in the courtroom when she made them?

A: Yes, sir.

Q: And of course is, is that -- and I think, and you correct me -- well, so I don't get into trying to say that I'm interpreting what her allegations are, you were in the courtroom when she made them?

A: Yes, sir.

Q: And of course is, is that from your perception, what did she say that you did? What did Minor 2 say that you did to her?

A: She said I stuck something in her butt.

Q: Okay. And -- and do you remember how many times that she alleged that?

A: She alleged that it happened every day for a week.

Q: Every day -- every day for a week?

A: That's what I understood her to say.

Q: Okay. And then of course is, is that what -- do you remember where she said it happened at?

MR. SCRUGGS: Judge, I'm gonna have to object ---

A: Told ---

THE COURT: Hold on.

MR. SCRUGGS: I'm going to have to object again. He is testifying to what other people have testified about. If counsel wants to ask him what does he have to say in response to the allegations, that's appropriate, but these questions aren't.

MR. BROOKER: He has to understand what the allegations are so he can respond to them. So, I'm asking him what his understanding of what the allegations were, so then he can respond to it. If he was falling asleep, you know, he can tell me what they were, or if he didn't understood them, he couldn't tell me what they were. I have to first establish that he understand what the allegations are and that's what I'm trying to do is ---

THE COURT: Let me get y'all up here.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: Okay. Sustain the objection. You may continue.

BY MR. BROOKER:

Q: Now, let's -- let's -- let's talk about, let's get back to Minor 2, and of course is, is that -- let's talk about those events. Let me just ask you broadly, do you understand the allegations made against you; yes or no?

A: Yes, sir.

Q: Do you understand the allegations made against you by her?

A: Yes, sir.

Q: Now, did you ever put your penis -- I know this is a redundant question -- did you ever put your penis, ever put your finger, toe, or any object, even if it wasn't an object that belonged to you, any object, into her anal opening, or her anal area whatsoever?

A: No, sir.

Q: And at any time, and I mean at any time during her entire natural born life, have you ever done that?

A: No, sir. No, sir.

Q: All right. Now, let me ask you just a couple of more questions, and of course is, I may be -- may be about to wind up. And I want to redirect you back to, think back to, I

think the last time you saw the kids. I think you said that that weekend and if, if, if -- and I'm gonna redirect you, but if my characterization of what you testified to is incorrect, you correct me. I'm gonna redirect you back to the testimony that you -- the line of testimony in which you discussed about the conversations you had with Kelly that led you to see the kids that weekend.

A: Right.

Q: Are you back there?

A: Uh-huh, (affirmative response).

Q: Okay. And of course is, I think if -- let me make sure that you answer the question and I don't answer it for you -- is -- I think you said y'all had an argument?

A: Yeah, we had an argument. I told her I weren't gonna give her no more money, not unless she let me see my youngins. I told her that I stood just as much good a chance as she did in court. She'd done failed drug tests with DSS I stood just as good a chance ---

Q: Don't -- don't -- don't talk about her.

A: Well, I don't mean it like that. I'm just telling you that's what I said. She told me ---

Q: Don't tell me what she said.

MR. SCRUGGS: Objection.

A: She wouldn't let me see the kids. We hung up. Maybe a week -- the end of that week come, she calls me back, lets me

see the kids. Is that all right?

Q: I want to understand that conversation.

A: She lets me see the kids if I'll go to Momma's house.

Q: Okay. So, it had to be at your mother's house?

A: Yes, because before that, I hadn't seen the kids in about three months probably.

Q: I'm sorry, about how long?

A: About three months.

Q: About three months before that?

A: Right.

Q: Okay. Now prior to that time, prior to you and her and -- and I know that -- that you testified that the children came that Friday.

A: Children came ---

Q: Friday before Thanksgiving?

MR. SCRUGGS: Objection, Your Honor, this is direct examination. I mean, counsel is leading the witness.

THE COURT: All right. I'm gonna sustain to any leading. Just ask your question.

MR. BROOKER: I'm redirecting him. He's already testified to this. I'm redirecting him back to that testimony. There's a difference.

THE COURT: All right.

MR. BROOKER: Okay.

THE COURT: Well, I'll decide what the difference is.

MR. BROOKER: I understand, Your Honor.

THE COURT: So, I'm gonna sustain your objection to any leading, and you may go ahead and ask your question.

MR. BROOKER: Thank you, Your Honor.

BY MR. BROOKER:

Q: Okay. I'm redirecting you back to -- to when she -- when -- when the children came over. I think, wasn't your testimony was that the children came over?

A: They came over that Friday and ---

Q: And, and my next question was is -- and I'm trying to figure out what's the relationship in time between when that conversation you had with Kelly ---

MR. SCRUGGS: Objection, Your Honor, I -- I, you know, I don't think it matters how you phrase it, whether you're redirecting open-ended questions on direct examination.

THE COURT: All right. You can ask him, what was your conversation?

MR. BROOKER: That's not my question. That's why ---

THE COURT: Well, what's your question?

MR. BROOKER: That's what I'm -- if he let me finishes it, then I promise you, I won't let him talk until I've asked the question. So, if he wants to make an objection, he can.

THE COURT: As long as it's not a leading question.

MR. BROOKER: As long as it's not a leading question and this is not.

THE COURT: All right.

BY MR. BROOKER:

Q: Is that, what I'm trying to figure out is, is that what's the time period between the time in which you had the call with Minor 2 -- excuse me -- you had the call with Kelly, you know, and the time in which you actually saw them on that Friday. What was the time period lapsed?

A: It is that being that I had talked to her at the beginning of the week.

Q: Okay. So, that same week?

A: Yeah.

Q: Now, prior to that, prior to that, had you ever -- ever had any inkling, you know that -- ever had any inkling, you know, that you were suspected of sexual assault?

A: No, sir. No, sir. None at all. The only reason that she didn't want me alone with the kids ---

Q: Don't tell me -- don't tell me what she thinks. Okay? You don't tell me what she thinks.

A: All right.

Q: Like I said, she can speak for herself.

A: No; no, sir; no, sir.

Q: Just -- just answer my questions. Okay?

A: Right.

Q: All right. And so, and I think is, that my understanding was, when was the first time that you were contacted and

notified that these allegations had been made against you?
A: December the 7th.
Q: December the 7th?
A: Yes, sir.
Q: Okay. And don't tell me what anybody's saying, I'm just asking you who, who contacted you?
A: There was -- I woke up one morning and there was -- my yard was full of -- and it was the police.
Q: Law enforcement contacted you.
A: Right.
Q: And that's the first time that you became aware of it?
A: Yes, sir.
Q: Okay.
A: Yes, sir.
Q: All right. Okay. Now -- now, let me just ask you a couple of other questions and, of course, I'll be complete, I think -- I'm almost there. Is, is that, did you give a statement -- and this is a yes or no answer -- did you give a statement to law enforcement?
A: I asked them for a lie detector test that was the only thing, and they wouldn't never ---
Q: Don't tell me what they said.
A: --- say anything about it. They'd tell me they'd see about, they were checking on it.
Q: Don't tell me what they said.

A: I never got one.
Q: Okay. Did you give a statement?
A: No, they didn't ---
Q: Did you ever give a statement?
A: No, sir.
Q: Did you offer to give one to law enforcement?
A: I, I -- no, they didn't never ask me for a statement, and I didn't never get to talk to nobody. They just served the warrant and locked me up. As soon as I got locked up there, they was a Marion County officer come in not even 30 minutes after I was there, and he brung me back to Marion.
Q: Okay.
A: And I felt like they tried to make it look like I'd run, but I was living there for months and months in North Carolina.
Q: Yeah, I know. Don't tell me about your feelings. I don't want to get anything.
A: No, I wasn't saying about my feelings, I was just saying that ---
Q: Okay. Just answer my question yes or no and, if I need an answer a follow-up, I'll ask you a follow-up.
A: Yes, sir. Yes, sir.
Q: Okay. All right. Okay. So, and I'll ask you a question. If the answer is yes or no, you tell me.
A: Yes, sir.

Q: Do you know whether or not law enforcement ever -- did they ever ask you a list of -- ask you about, you know, the identity of who was present, I think on that weekend the children spent with you at Thanksgiving?

A: No, sir.

Q: Do you know whether or not your mother was ever interviewed?

A: No, sir. She wasn't interviewed.

MR. BROOKER: If you can indulge me for just a second, Your Honor, I want to make sure that I don't have any further follow-up questions ---

THE COURT: Yes, sir.

MR. BROOKER: --- before I sit down.

No further questions, Your Honor.

THE COURT: Cross?

MR. SCRUGGS: Thank you, Your Honor.

CROSS EXAMINATION OF WILLIAM BRUCE CLARK BY MR. SCRUGGS:

Q: Mr. Clark, I just want to start off by confirming some of the locations we've talked about this week. I believe you said that around 2014, y'all moved to what everyone has been calling the burnt house on Bond Street; is that right?

A: 2014, yes, sir. No, it was '15.

Q: Okay.

A: We stayed in Dillon up till then.

Q: Okay. And at the burnt house on Bond Street, you lived

there, Kelly lived there, the kids, and her mom, right?
A: Yes, sir.
Q: And then of course the house caught on fire, right?
A: Right.
Q: And y'all moved to a new house on Northside, right?
A: Well, I didn't move with them right away to Northside. They moved in there without me at first.
Q: Okay. But y'all eventually ended up at a house on Northside?
A: Yeah, Kelly, finally talked her into letting me move back in.
Q: Say that again?
A: I said Kelly finally talked her momma into letting me stay there, too.
Q: Okay. And you lived with them in the house on Northside, right?
A: For a little while.
Q: For a few months, I think you said?
A: Yeah, for a few months, yes, sir.
Q: And then you moved to your momma's house and lived in a camper in her backyard, right?
A: Yes, sir.
Q: Okay. All right. And when you were in the camper, your kids would come over and visit every so often?
A: My kids would come every other weekend.

Q: Okay.
A: But they didn't come to the camper. My kids never stayed in that camper unless me and Kelly was together is when they stayed in the camper.
Q: Fair enough. You were at that location, and I'm including in that location your grandma's -- your mother's house and you've got the camper out back.
A: Yes, sir.
Q: They would come see you at that location, correct?
A: Yes, sir; they would.
Q: Okay. All right. I think it's fair from your testimony about your children that you would agree with me that you had a hand in their upbringing, right?
A: I did; yes, sir.
Q: And I think you testified that you changed their diapers?
A: I did.
Q: And would you say that you're a good dad?
MR. BROOKER: Objection, Your Honor. If we could approach?
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
MR. BROOKER: I'm just waiting for your ruling on the objection, for the record.
THE COURT: I'm gonna sustain the objection.
MR. BROOKER: Thank you, Your Honor.

THE COURT: I'm just giving them a moment.

MR. BROOKER: Thank you.

MR. SCRUGGS: Just briefly, Your Honor.

THE COURT: All right. I'm gonna sustain the objection. You may continue.

BY MR. SCRUGGS:

Q: Okay. Mr. Clark, you testified earlier about the time that the kids were with you at your mom's house, the Saturday before Thanksgiving; is that correct?

A: Yes, sir.

Q: And it's my understanding from your testimony that you say that Minor 1 stormed into the kitchen, right?

A: Yes, sir.

Q: And you went in after her, right?

A: All of us went in.

Q: Sir?

A: All of us went in.

Q: Okay. But am I correct that you went in there?

A: Me and W.C. was the first ones in.

Q: Okay. But you testified earlier that you normally talked to your children alone because you don't ---

A: I do.

Q: Okay. So, you went into the kitchen and you were alone with Minor 1 , right?

A: Yes, sir.

Q: Okay. And you closed the door behind you, right?
A: It's a glass door, they can see through it. It's french doors.
Q: Okay. And you testified that y'all were in there for two to three minutes?
A: At the longest.
Q: Okay.
MR. SCRUGGS: Nothing further, Your Honor.
THE COURT: Anything on redirect?
MR. BROOKER: I don't have anything on redirect, Judge.
THE COURT: All right. Thank you very much, sir, you may step down.
MR. CLARK: Thank you, sir.
MR. BROOKER: May we approach, Judge?
THE COURT: Yes, sir.
(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)
BY THE COURT:
THE COURT: Ladies and gentlemen, we may or may not have any additional witnesses. I'm gonna give Mr. Brooker an opportunity to go check on something. So, if you would, step back into the jury room. Don't have any discussions about the case and I'll bring you back out as I know where we're at.
(REPORTER'S NOTE: Jury exits courtroom @ 2:40 P.M. The following takes place outside the presence of the jury.)

THE COURT: All right. We'll be at ease for just a few minutes.

RECESS - 2:40 P.M.

*******OFF THE RECORD*******

(On the Record - 3:12 P.M.)

THE COURT: All right. I'm gonna get you to call -- I don't know -- I don't know these folks. Let me get you to call the first person to come up?

MR. BROOKER: I think it's Christopher Stackhouse.

THE COURT: Mr. Stackhouse, would you come around, sir, I'm gonna get you -- place you under oath and then I'm gonna get you take the stand and I've just got a few questions for you. Okay?

MR. STACKHOUSE: Yes, sir.

CHRISTOPHER STACKHOUSE, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

THE COURT: All right. Thank you, sir. If you'd just have a seat and -- right here will be good, just on the witness stand there. And Mr. Stackhouse, this is just gonna be a little bit -- a little informal, in the fact that I understand that you saw and heard some things yesterday that caused you some degree of concern and you contacted Mr. Brooker's office, correct?

MR. STACKHOUSE: That's correct.

THE COURT: Okay. Would you mind just sharing with us

what it was you saw and heard?

MR. STACKHOUSE: Okay. Well, yesterday I was here to meet with one of the ---

THE COURT: Mr. Hoeffer?

MR. STACKHOUSE: Hoeffer.

THE COURT: Yes, sir.

MR. STACKHOUSE: About a pending matter that's going on.

THE COURT: Right.

MR. STACKHOUSE: And when I first got here, I noticed that the guards wouldn't let -- the guards informed that they wouldn't let her come in, that she had been looking for me. So, whenever we was standing around, I guess, couldn't think of the name and I seen Mr. Brooker coming, because I was calling the prosecutor Mr. Hayward.

THE COURT: Yeah.

MR. STACKHOUSE: So, nobody didn't understand who I was and Mr. Brooker basically knew who I was speaking of.

THE COURT: Right.

MR. STACKHOUSE: So, he was going for lunch and so I think, he's a -- I think he works with the sheriff's office; he had a magic wand and while he was putting the magic wand on the door, the guy back here, I was sitting beside him I think yesterday, he had on some tan pants, maybe some khakis, and he made a statement when two of the little girls was coming in.

THE COURT: Okay.

MR. STACKHOUSE: Before they could get to the thing where the metal detectors ---

THE COURT: The wand.

MR. STACKHOUSE: Yes, and he made a statement and his statement was remember what I told you, don't forget. And while we was sitting there, I think that the lady was holding -- I thought it was a real baby. Today I was informed that it was a doll baby. My aunt, you know, she knew that it wasn't a real baby.

THE COURT: Yeah.

MR. STACKHOUSE: Because, I didn't, you know, take notice. And basically, I had caught her yesterday when she was looking at me and she gave me kind of like a hunch, and this morning when I was speaking to her about it, you know, as a concerns as when I told Brooker, the lady was saying something about she gonna go in here and play fool. And when the little girls was walking in, that's what was stated, like play fool. And I didn't understand, you know, like really what it was until, like I said, today, you know, I called her and was speaking about it, and I told her, I said, you know, I'm gonna bring this to Brooker's attention.

THE COURT: Yeah.

MR. STACKHOUSE: Or whatever, so that's what I did.

THE COURT: Okay. All right.

MR. STACKHOUSE: And again, you know, I don't know, you

know, these people. You know ---

THE COURT: Yeah, you don't have any relationship with any of these folks?

MR. STACKHOUSE: No.

THE COURT: Okay.

MR. STACKHOUSE: And I didn't even know who, you know, he was on trial with or anything.

THE COURT: Right.

MR. STACKHOUSE: So, it just happened to be while we were sitting out there. And also, I think it was Solicitor Clements, I went to the door, you know, and I think you got, you know, cameras out there, you know to back this. I went to the door and notice that -- well, when Mr. Clements was going out, I was trying to stop him. You know, and he made, you know, a statement as if, you know, for whatever reason I think he made a statement something like is you trying to practice law, and I didn't understand what that was. But my reason was trying to go, you know, and speak to him about, you know, some things or whatever and that's when I came back in and, you know, took forward.

THE COURT: Yeah. Okay. All right. Well, thank you. Thank you for coming back up here this afternoon.

MR. STACKHOUSE: And I apologize about the time, you know, the day was a good friend of mine's funeral today and because of this, you know, I mean, like ---

THE COURT: I understand.

MR. STACKHOUSE: --- you know, I wasn't able to go to the funeral because, you know, I promised, you know, Mr. Brooker that I would be here.

THE COURT: Sure.

MR. STACKHOUSE: You know, to share what I see and what I heard.

THE COURT: Okay. Well, I do appreciate that and thank you very much. And I think this young lady was with you yesterday?

MR. STACKHOUSE: Yes, she actually came before I did.

MS. MCCRIMMON: I -- same thing.

THE COURT: Is there anything other than what Mr. Stackhouse just shared; is there anything in addition that you would have to share?

MS. MCCRIMMON: No, he's telling the truth about everything.

THE COURT: All right. And you heard what he heard?

MS. MCCRIMMON: Yes, I heard.

THE COURT: Okay.

COURT REPORTER: Her name, Judge.

THE COURT: Oh, I'm sorry. Can I get your name for the record?

MS. MCCRIMMON: Angela McCrimmon.

THE COURT: All right. Thank you.

MR. STACKHOUSE: And, Judge, just for the, you know, something that when she told me it was a doll baby, I was thinking it was a real baby.

THE COURT: Yeah.

MR. STACKHOUSE: Even as I said it to Mr. Brooker this morning, and she said that the doll baby -- what intrigued her to pay attention is that the doll baby reminded her of some little doll baby she just bought her granddaughters for Christmas, and she said with some little doll babies, it can like have cameras or recordings in it and she said -- she wasn't trying to get into their conversation, but she was paying attention to the little doll baby is what kind of kept her attention.

THE COURT: Yeah. Okay. All right. Well, great. Well, thank you very much. You can step down.

COURT REPORTER: I'm sorry, ma'am, I didn't catch your name?

MS. MCCRIMMON: Angela McCrimmon.

COURT REPORTER: Angela?

MS. MCCRIMMON: McCrimmon.

COURT REPORTER: Kramer?

MS. MCCRIMMON: McCrimmon.

THE COURT: McCrimmon.

MR. BROOKER: McCrimmon, Angela McCrimmon.

THE COURT: McCrimmon, yeah.

MR. BROOKER: You want to spell it for her?

THE COURT: All right.

MS. MCCRIMMON: M-C-C-R-I-M-M-O-N.

COURT REPORTER: Thank you.

THE COURT: Thank you, ma'am.

All right. Let me get y'all to step back.

RECESS - 3:17

*******OFF THE RECORD*******

(On the Record - 3:32 P.M.)

THE COURT: Folks, please have a seat.

All right. Mr. Brooker, I'll be happy to hear from you then.

MR. BROOKER: Thank you, Your Honor.

THE COURT: What's your ---

MOTIONS:

MR. BROOKER: I think you just heard from two witnesses and I think one was put under oath and, of course, that was Mr. Stackhouse, the other young lady is Angela McCrimmon. And of course is, is that what they testified to, is I think, yesterday afternoon, this would've been after Minor 1 testified but before Minor 2 testified, they testified that they were downstairs and, of course is, is that they saw family and/or friends -- I think the person they identified would be I think the grandmother, and of course is, that an African-American gentleman, who has been accompanying them, I think

the entire week. They saw, before Minor 2 came up to give her testimony that afternoon after lunch, and they saw the African-American gentleman make some sort of statement to her. Of course, the court reporter has that statement, but something to the affect is that, you know, don't forget what I told you or don't forget -- whatever that statement is -- before she goes in to -- before she goes in to testify and of course, they said another statement they heard was something like act fool or play fool or something like that. I'm not quite sure who the children -- who it was directed to, because both of the girls were there. And of course is, is that when Minor 1 testified on direct examination, and of course is, is that I asked her, and then of course is, is that this is less relevant to -- excuse me, not Minor 1 , but Minor 2 -- that's very relevant to Minor 2 but more than Minor 1 because -- and I was always ask the children this is, about their testimony, how they prepared for their testimony, whether or not they've talked to anyone. And of course is, and I think they indicated they'd only talked to Mr. Richardson a couple of months before. Both of them gave the same answer.

THE COURT: Hold on now. Your question was, did you talk with anyone in preparation for your testimony today. That was your question to the young ladies.

MR. BROOKER: I can't tell you exactly what that question was, Your Honor.

THE COURT: I can't say it was worded exactly that way, but your question to the young ladies was, did you discuss or talk with anyone in preparation for your testimony today, and I'm not sure you used those exact words, but that was your question to the young ladies.

MR. BROOKER: And it could be, Your Honor, but like I said, usually it's multiple questions because the resulting person -- the result was is that, is that they indicated they had not talked to anyone except Mr. Richardson. I didn't ask them if you talked with your mom, you know, did you talk with anybody else; no, didn't talk to mom and didn't talk to anybody else.

THE COURT: About their testimony though, Mr. Brooker, and that's important. I mean, surely you didn't just mean did you talk with anybody before you came in here today about anything? That wasn't your question and your question is important to the issue that you're putting forth here, because it's whether or not they talked with anyone regarding their testimony or in preparation for their testimony.

MR. BROOKER: Absolutely, Your Honor. Because obviously, I wouldn't want to know if they talked with anybody about the weather.

THE COURT: Exactly.

MR. BROOKER: I mean, it would be completely irrelevant.

THE COURT: Right.

MR. BROOKER: The whole question centers around to whether or not they had talked to anyone, you know, about their testimony, anything that related to their testimony. And of course is, is that we got a no to it. And of course is, that it appears as if that may not have been true based upon -- based upon the information that was given to me or given to this Court by Mr. Stackhouse and Ms. McCrimmon. And obviously is, is that those statements were short. The statements were very short. And of course, we don't know exactly what was meant by that. Remember what I told you or remember what I told you or whatever the phrase is. We don't know exactly what was meant by that. It suggested they may have gotten instruction. But, my point is, Your Honor is, is that I asked the witness that question on cross examination. The whole purpose is to probe whether or not they had gotten any instruction, regardless of what that instruction is, from anybody about their testimony. And so, I can probe into that. That's the whole purpose of cross examination. Now, if a witness tells me, no, didn't talk to anybody, you know, then I have to accept that as being true and I have to move on. And a lot of times, that's what witnesses tell me. They'll say, no, I didn't talk to anybody and then I move on. But then sometimes the witness says, well, I did talk to someone and then, of course is, that I go on and say, well, who did you talk with, what did they say or what did you say, so I can

figure out whether or not there is anything improper. But the purpose is, is that I am entitled to a truthful answer and so I can probe into what that is. It may not be anything or it may be something, but I don't know that unless I get -- unless I get a truthful answer to my question and so I can probe.

THE COURT: And you found out this morning after Mr. Stackhouse called your office?

MR. BROOKER: That's correct, Your Honor. The sequence ---

THE COURT: So, what are you -- what are you asking the Court today?

MR. BROOKER: What I'm asking the Court, Your Honor, is is to allow me to put those witnesses on the stand, and I'll ask impeaching witnesses to that one statement that I asked, did you talk with someone about your testimony, did you give any instructions, and, of course, the answer was no.

THE COURT: Who are you asking to put on the stand?

MR. BROOKER: Mr. Stackhouse and -- and Ms. McCrimmon, the two ---

THE COURT: Mr. Stackhouse or Ms. McCrimmon either one could not testify to hearsay.

MR. BROOKER: Your Honor ---

THE COURT: What would you ask them?

MR. BROOKER: --- Your Honor, underneath, I think it's hearsay exception, present sense impression.

THE COURT: It's not a present sense impression. Mr. Stackhouse isn't given an impression one way or the other. He's informing you, this is what I heard, I thought you might need to know it.

MR. BROOKER: Well, and I think also, Your Honor, he testified to is, is that it causes him concern. He testified to -- is that as to -- as to the propriety of it, that he tried to stop the solicitor and tell the solicitor as he was leaving, because it did cause him -- cause him concern once he heard that. And so, this is not a situation where obviously is that he felt concerned about the matter to the extent that he tried to stop the solicitor before the solicitor leaves and then, of course, he called my office that afternoon and spoke with my secretary, but as you say, I did not speak with him until this morning. And as soon as I spoke with him, I think, this morning when I got to the courthouse, I, I, I talked with Mr. Richardson and then we went in and talked with Your Honor, you know, about these developments.

THE COURT: There's nothing -- and don't get me wrong, I greatly appreciate Mr. Stackhouse and Ms. McCrimmon for their diligence, but there's nothing that was testified to or said that indicates that you got an untruthful answer from the young lady the day before. And so, what you'd be asking is to put that in the record so that you could argue speculation to a jury that something improper occurred in an effort to

discredit a witness. And it's all based on, I mean, complete speculation. Don't forget what I told you. I have no idea what it was. I'm speculating if I try to tell you what I think it was. When I say, you know, here's a little girl getting ready to testify in front of a jury panel, it may be a family member or a caring friend who knows, don't forget what I told you. Well, what does it mean; I don't know. I told you, we're here for you, we love you, we support you, don't forget that. I don't know. It's complete speculation. And under 403, I think it is -- it confuses the issues. I think it's a undue delay in the trial; it's a waste of time. I'm gonna deny your motion.

MR. BROOKER: Thank you, Your Honor.

THE COURT: All right.

Now, Mr. Richardson, do you have -- I'm sorry.

MR. BROOKER: Could they be excused, since ---

THE COURT: Absolutely. Folks, thank you, and thank you for making yourselves available today.

MR. BROOKER: Thank you, Your Honor.

MR. RICHARDSON: Your Honor, before they go, may I say ---

THE COURT: I'm not gonna hear any more on that issue.

MR. RICHARDSON: Okay.

THE COURT: I'm not gonna hear any more. Mr. Richardson?

MR. RICHARDSON: Yes, sir. We would like to recall,

assuming that the defense will rest?

THE COURT: Well, I don't know. I haven't gone that far. I apologize, Mr. Brooker.

MR. BROOKER: That's okay. May I speak with my client?

THE COURT: Yeah, I'm sorry.

Yes, sir, Mr. Brooker?

MR. BROOKER: Your Honor, I just talked with my client, and of course is, is that I think they listed the investigator in this case and, of course, they did not intend to call him. And of course is, that we may want to call the investigator, I think that's Mr. Smith.

THE COURT: If you've got another witness, you tell me.

MR. BROOKER: I think that's Mr. Smith and then that's gonna be it for us. That should be very -- it could be very short.

THE COURT: All right. Well, let me -- let me ask you this. I'm trying --

MR. BROOKER: Sure.

THE COURT: --- be efficient.

MR. BROOKER: Sure.

THE COURT: Because I think the jury might get tired of coming in and out and in and out. If you put investigator Smith up and we go through that, and let's assume at that point you rest, the state wants to put -- I can't remember who?

MR. RICHARDSON: W.C.

THE COURT: W.C. , the son, W.C. back on the stand?

MR. RICHARDSON: Yes, sir.

THE COURT: What's the defense's position on that?

MR. BROOKER: It is that we would object to it for the reasons in which we discussed before, and the reason why is, is that, you know, he testified to what his perception was. Those witnesses testified to what their perception was. If there's a conflict, that is natural. You know, I don't see the need to, to, to recall him, and of course is, if he then solicits something that's new, then of course is, that I'm then gonna then have to get into any new thing he solicits in his rebuttal, and then of course is, is that it, it, it could snowball. But, I think the jury understands that there's a conflict in his testimony and there is gonna be a conflict in his testimony. They can argue that conflict in closing arguments. So, we can't consent to it and we'll leave it to Your Honor's discretion.

THE COURT: Well, I'm going to -- give me a second. I'm gonna respectfully deny the request to call Mr. Clark. He was -- and it goes back to a lot of what we've discussed. There was a request and a ruling to sequester the witnesses, and I know that there's no way that you can predict whether or not you're gonna have to recall somebody or not, but he remained

in court and then he was present for all of the other testimony. And so, I think that kind of violates the sequestration rule. And so, I'm gonna deny the motion or I guess it's a motion to call him. I'm not gonna allow him to be recalled.

So, you ready to proceed?

MR. BROOKER: Sure, Your Honor. Mr. Smith shouldn't take very long.

MR. RICHARDSON: Yes, sir, we're ready.

THE COURT: Let's bring the jury out, please.

(REPORTER'S NOTE: Jury enters courtroom @ 3:46 P.M.)

THE COURT: Thank you, folks. That took a little longer than anticipated because the folks we were waiting on were running late. But anyway, we're ready to proceed. We would recognize Mr. Brooker for the defense's next witness.

MR. BROOKER: Thank you, Your Honor. The next witness, Your Honor, will be -- will be, I think this is Captain Robert Smith, I believe.

THE COURT: All right. Sir, if you'd please come around to be sworn.

ROBERT SMITH, HAVING BEEN DULY SWORN TESTIFIES AS FOLLOWS:

DIRECT EXAMINATION OF ROBERT SMITH BY MR. BROOKER:

Q: Did I get your title correctly, is it captain?

A: Yes, sir.

Q: Okay. And of course is, is that what agency are you with?
A: Marion Police Department.
Q: Okay. And then of course is, was you with the Marion Police Department at the time in which this complaint came in back in 2017?
A: I was.
Q: Okay. And as the captain of the police department, I'll let you know my ignorance is, is that what you generally do in that capacity as the captain?
A: I handle all the evidence; I assign duties; I have investigators that work up under me; the whole department works under me as far as investigation goes.
Q: Okay. Okay. So, you're the head of the department?
A: No, second.
Q: You're second, I'm sorry. The chief would be head of the department?
A: Yes, sir.
Q: Okay. And of course, you're second. And of course is, is that with respect to this case, was there a -- was there an investigator that was assigned to this case?
A: I assigned myself to it because we were short at the time. It was just me and one other investigator working handling everything in the city.
Q: Okay. And I'll just let the, you know, what -- how long

have you been with the Marion County Sheriff's Department?
A: I work with the City of Marion Police Department.
Q: I'm sorry, City of Marion Police Department.
A: Twenty years.
Q: Twenty years. And how long were you in the capacity as the captain?
A: I think it was around the first of 2017.
Q: Okay. And then of course is, is that -- and what position did you move from into the captain's position?
A: Lieutenant in investigations.
Q: Okay. So, you were a lieutenant in investigations. So, you were an investigator before you became a captain?
A: Yes.
Q: Okay. And how long were you an investigator?
A: Since 2000 -- the end of 2008.
Q: Okay. And of course is, is that in your job as an investigator, it's a pretty simple question is, is what do you normally do in the position as investigator?
A: I follow up on cases, interview people involved in the cases as they mentioned in the cases.
Q: Okay.
A: Collect evidence.
Q: Okay. Now, I'm gonna direct your attention to this particular case. When did you first became aware of the complaint in this particular case?

A: Sergeant Smith came to me, I was -- I think I was walking up from something and he told me what he had, and I went ahead and told him to notify Dawn Dawson with -- I think she's with Durant's and set up an appointment with them for interviews on the juveniles.

Q: Okay. So, so, my understanding is you made sure that, that the forensic interviews were set up for the minor children?

A: Yes.

Q: Okay. All right. And of course is, is that did you come out and -- did you speak to the kids yourself?

A: No, I did not.

Q: Okay. Did you -- now, the mother is, I think, Kelly Clark. Did you ever go out and speak with Kelly Clark?

A: Not until I was serving subpoenas on her for a court date.

Q: And what I'm trying to figure out is, is that once you -- once you assigned yourself as the investigator, and then once you went -- did you ever got out immediately thereafter to talk with her and get a statement from her?

A: I do not recall. That's what I usually do when I assign myself a case. Like I said, we were short at the time, and I was juggling cases left and right.

Q: Did at some point in time, did you -- did you -- did you get the, I think you said is, is that there was a videotape

that was played in the courtroom of the child's forensic interview?

A: Yes, I've seen the report and a video for one.

Q: Okay.

A: And I went ahead and read over it and watched the video and found I had probable cause to go ahead and secure a warrant. I then notified Ms. Griggs, Rhonda Griggs, and said you only sent me one DVD. So, she then emailed, not emailed, but mailed me the other one.

Q: Okay. Okay. And when -- when you looked at that DVD and I think is, is that -- you correct me if I'm wrong, but the children in these DVDs, I think, mentioned people being present in the house at the time in which these alleged events took place?

A: They did.

Q: Okay. Did you go interview any of the people ---

A: I did not.

Q: And I would say for any of the events that -- the events that was alleged to have happened at Bond Street, did you interview any of the people that was alleged to have been in the house during that incident, that alleged incident?

A: I did not.

Q: Okay. What about for the incidences that was alleged -- the incidents that was alleged on the Northside property?

A: No.

Q: And of course is, and I think finally is there was incidents that was alleged to have took place, I think, at Ms. Batton's home, who is the mother of the defendant. Did you go out and try to talk with the people who were present at that incident?

A: No, I did not.

Q: Did you ever -- I think you've already answered this, did you ever sought a statement from Ms. Batton?

A: No.

Q: Okay. Did you ever sought a statement from Mr. Clark?

A: No, I did not. It was my intention to. I think he was picked up late one afternoon. I don't know if it was the weekend, the next day, or the day that I wasn't there the next day when they usually arraign them. And so, it just slipped through the crack.

Q: I gotcha. With respect to -- with respect to cases alleging sexual abuse, do you have specific -- are you specifically trained as an investigator to investigate those sorts of ---

A: Not specifically, no.

Q: Okay. Okay. And at that time, back in 2007, do you know what your training was as it relates to investigation of abuse and neglect -- sexual abuse and neglect involving minor children?

A: I've had a couple of classes on it, but that's it.

Q: Okay. Do y'all have or does the City of Marion Police Department have a, a, a, a protocol that y'all follow -- a child sexual abuse protocol that y'all follow whenever you receive a complaint of, you know, of alleged sex abuse involving a child?

A: We do have one. I can't recite it. I have a female investigator that usually handles all those cases. Like I said, this time I assigned it to myself being we were short.

Q: Okay. That's fine.

MR. BROOKER: If you can indulge me for a second, Your Honor, and let me make I don't have any further questions for the captain?

No further questions, Your Honor.

THE COURT: All right.

Anything on cross?

MR. RICHARDSON: No questions.

THE COURT: All right. Thank you very much, sir, you may step down.

You may call your next witness.

MR. BROOKER: We seek to call no further witnesses, Your Honor.

THE COURT: The defense rests?

MR. BROOKER: Yes.

BY THE COURT:

THE COURT: All right. Ladies and gentlemen, the defense

has rested their case, and it's about 4 o'clock, it's close to 4 o'clock. What we're gonna -- at the close of the defense's case, I have to take up matters of law with the attorneys as I did at the close of the state's case. I'm not gonna have you sit around while I do that. Then it will get -- it was my hope, the reason I brought lunch in for you today, that we would -- you would get the case for your consideration, but through no fault of the parties at all, the attorneys, the parties, that it appears that we're gonna need to probably go into tomorrow. So, I'm not gonna keep you here any longer while we take up these matters of law, but -- so, I'm gonna excuse you and we're gonna start a little bit later tomorrow morning, just because of weather concerns. I think -- I think the schools around here are -- yeah, the county offices are opening at 10. So, we'll delay our start until 10 o'clock.

I do want to say this, I don't think we'll have any problems, but if any one of you have -- if the weather causes you to have problems getting here, or you need any assistance in getting here, please contact the clerk's office. All right. Contact the clerk's office, you've got the number to the clerk's office and let them know and what we'll do is, we'll -- we'll send a deputy out to assist you and help you get to court. Okay? So, if you have any issues at all getting here, we'll certainly provide you any transportation that you might need. But, I'm in hopes that you won't need

that, and I think we'll be fine.

(REPORTER'S NOTE: Court confers with deputy.)

Thank you, Judy, you're exactly right, because they want be opening until 10. Yeah, if you think you're gonna need some assistance in getting here, if you'll call the Marion County Dispatch, and you can tell them Judge Russo told me to call you and that y'all would send somebody to help us get to court and they'll send somebody out there. And then if that's not right, then they'll fuss at me later on and it'll be okay.

So, now, here's one thing that I am pretty confident in and that is that you will get the case for your consideration tomorrow. So, tell family, friends and loved ones, patient for one more day. Tell them to be patient, and then tomorrow evening or tomorrow at some point, y'all can discuss the case all you want. Okay? But just continue to maintain your ability to remain fair and impartial.

So, if everyone else would please remain seated, I'm gonna ask the jury or release the jury and ask you to be back at 10 o'clock tomorrow morning.

(REPORTER'S NOTE: Jury exits courtroom @ 4:01 P.M. The following takes place outside the presence of the jury.)

THE COURT: Okay. All right. At this time, I'll take up motions at the close of the defense's case.

MOTIONS:

MR. BROOKER: We'll take two very brief motions, and of

course is, is that the first motion, Your Honor, just would be again, to -- is the motion for directed verdict. Of course, Your Honor, that motion is based upon all previous objections and motions that we've made before on pretrial and, of course, also during trial. and of course is, we're not gonna belabor the point is, is that generically what I say to the Court is, is that we don't believe that based upon the evidence that's been presented, you know, that the state has met its burden and that would cause the Court -- cause the jury to have to speculate and that a, a, a motion for directed verdict is appropriate at this time.

THE COURT: All right. And you said you have another motion?

MR. BROOKER: The only other motion, Your Honor, is, is that, is that it's based upon the -- and I think I have to make it just to protect myself, I think you already made your decision, I think, based upon the testimony of -- of the witnesses. I think these, McCrimmon and Stackhouse, and of course is, -- and of course, I'm not supposed to argue with the Court once the Court -- the judge has made his motion, so, I'm not rearguing that motion, Your Honor. And so, once you made your ruling, that's it and not reargue that motion. But of course is, I think it's incumbent upon me is, is to make a motion based upon -- a motion for mistrial based upon the fact that we do believe that, that, that, that we was not given

full advantage or full opportunity to cross examine the witness, at least when it comes to Minor 2, because is, is that you asked that one specific question -- excuse me -- I'm sorry -- it was Minor 2, to ask that one specific question in reference to, you know, who she had talked with and referenced in preparation of her testimony that day. Of course, she gave an answer and said I think no one accept Mr. Richardson and of course, based upon, I think, the in camera testimony that was given by Mr. Stackhouse and, of course, I think -- I think Ms. McCrimmon, although she was not under oath, I think testified to the Court or said to the Court that her testimony would be pretty much identical ---

THE COURT: Would mirror his, yes.

MR. BROOKER: --- to Mr. Stackhouse's. And of course is, is that we didn't have the opportunity to go into that particular area with her in reference to who may've said what and I know you said that although it may've been innocent, it may not have been innocent, at least the instructions that was given. We think because we were given that false -- my perception, Your Honor, is -- I don't want you to get upset about that -- my perception interpretation of the answer to that question was false. It deprived of a true opportunity to cross examine her on that impeachment issue. And so, and based upon that, we're requesting a mistrial.

THE COURT: All right.

MR. BROOKER: Thank you, Your Honor.

THE COURT: I'm gonna respectfully deny that motion for a mistrial. I, you know, if Mr. Stackhouse's testimony would've been I overheard her talking about her testimony, that would be a whole different subject. His testimony, Mr. Stackhouse's observations did nothing more than, than indicate that during the time out of court she was talking with family and friends and nothing wrong with that. There's no indication that the comment made had anything to do with her testimony and complete, pure speculation. I've made that ruling; so, I respectfully deny your motion.

I'm also gonna deny your motion for a directed verdict. I think -- I think it's a fact issue as to the charges and the allegations made in this case and I think it's up to the jury to sort through the facts as the fact finders.

BY THE COURT:

THE COURT: So, anything from the state at this point?

MR. RICHARDSON: No, sir. I think we're starting at 10:00 in the morning, and my understanding is, since he's put evidence, it would be for closing, it would be I would open fully or I would close ---

THE COURT: You would close in full.

MR. RICHARDSON: He would then go and then I could reply to what he said on his close.

THE COURT: Correct, your reply would be restricted to

anything raised in his closing.

MR. RICHARDSON: Yes, sir.

THE COURT: Now, we -- we've got prepared -- all right. We've got a proposed charge that we're ready to give out to you because we're gonna tweak it a little bit. But, if you have any specific requests to charge that you want us to consider, how about email them. Email that to us. And I mentioned this -- Thurmond, I mentioned this, I was talking to Jamie before we came in -- I think it was Jamie I was talking to; it might've been David. I think it was you, David, I can't remember. But on the verdict form and we'll discuss it in more detail, but because we have three charges that are the same charge, but with a different accuser, I think the verdict form -- so the jury is clear as to what they're being asked to decide, would be -- would need to be, just for example. As to Count 1, criminal sexual conduct with a minor in the first degree, and then in parenthesis underneath that to put -- and I'm gonna use a phrase that the jury would probably understand based on testimony, burned house. Okay?

MR. BROOKER: Okay.

THE COURT: So, that they know that Count 1 -- and I'm not sure Count 1 relates to that incident, but my point is, I need to put like maybe burned house, and then maybe Northeast?

MR. RICHARDSON: Northside.

THE COURT: Northside house. Then grandparent's house,

and then travel trailer or trailer. You see what I'm saying? I think I need to designate what each count, so that the jury -- and they may find him not guilty on all of them; they may find him guilty of all of them; or they may find him guilty of this one and not guilty of this one. And the only way they can differentiate between what charge they're making a decision on, is if they know what location relates to that charge. You see what I'm saying?

MR. BROOKER: I think I see what you're saying, Your Honor.

THE COURT: So, it would be something along these lines of as to indictment number 2019-GS-33-291, criminal sexual conduct with a minor in the first degree, Count 1, and then maybe underneath that put burned house. And I'll explain to the jury what that means. I mean, I'm not gonna just let them look at that and go, what does that mean. I would let them know, Count 1 refers to the allegations which occurred, which allegedly occurred at the burned house. Count 2, is in with regards to the allegations which allegedly occurred at the Northside house.

MR. BROOKER: Yes, sir, Your Honor.

THE COURT: That's basically so that they can know what they're being asked, you know, to decide.

MR. BROOKER: Okay. And am I being asked to give an opinion on that as of now?

THE COURT: Yeah, well -- I mean, no, not this minute. I'm just letting you know what I'm thinking.

MR. BROOKER: Sure.

THE COURT: Somehow, you know, I don't want to just put a verdict form where it has Counts 1, 2, 3, and 4 and then tell us what your verdict is, because they don't know if Count 1 refers to the allegations at the burned house or if it refers to the allegations at Grandma's house. They need -- there needs to be some distinction.

MR. BROOKER: And I understand that, Your Honor. I just -- and I'll definitely let you know because, like I said is, you know, that's kind of novel to me, so I want to be research before I say yay or nay.

THE COURT: New to me, too, that's why I'm asking.

MR. BROOKER: I want to make sure I'm not doing anything wrong.

THE COURT: All right. Well, anyway, be thinking about that because there's gonna have to be a verdict form of some sort.

We're starting at 10:00. I'm gonna be here earlier than that because and I -- weather permitting, how about let us be here at 9:00. Okay? Because we're gonna need to go over the charge and the verdict form and all that stuff and that will give us time to do that. It'd be -- it'd be lovely if we could surprise this jury and actually start at 10 o'clock.

That would be shocking.

MR. RICHARDSON: Watch them be late.

THE COURT: All right. We'll be -- then Court will be in recess till 10:00. We'll be back at 9:00.

RECESS - 4:12 P.M. - END OF DAY THREE.

*******OFF THE RECORD*******

FEBRUARY 21, 2020 - DAY FOUR OF FOUR.

(On the Record - 10:29 A.M.)

BY THE COURT:

THE COURT: Thank you, folks, please have a seat.

All right. We made the change on the charge that we discussed. And so, is the state ready to proceed to closing arguments?

MR. RICHARDSON: Yes, sir, Your Honor.

THE COURT: Defense ready? Mr. Brooker, the defense ready to proceed?

MR. BROOKER: I'm sorry, Your Honor. We are.

THE COURT: All right. Then let's bring the jury out.

(REPORTER'S NOTE: Jury enters courtroom @ 10:30 A.M.)

THE COURT: Good morning, folks. You know, this is typical for us down here in the south that we get a little indication that we might have some weather and so we panic and we start things late and all and it couldn't be a more beautiful day. It's probably the best day of the week. But anyway, I'm glad. I'm glad it's a beautiful day and we don't

have any weather issues or weather problems.

I'm gonna do a little bit of an administrative matter here before we go any further, if I can find the sheet.

All right. Mr. Chew, would you be so kind enough to agree and serve as the foreman of the jury for me? I'll explain to you. I'm not asking you to do anything out of the ordinary. It's just what we have found over time, is that when we deal with a group of folks, it's easier to deal with one person on behalf of the whole group, than it is to deal with each individual. For example, if during the course of your deliberations, if anyone has a question about something or wants to ask the Court a question or whatever, typically, it's easier for one person to -- to kind of be the communicator between the jury panel and the Court. And so, that's the main role of the foreperson, is to be the liaison between the jury panel and the Court.

I will tell you this. In this case, which is the same as in every case that's tried in this courtroom, whether it be a civil case or a criminal case, the jury's verdict must be unanimous. You must all agree on the verdict, whatever it is. And I tell you that to say this, what that tells you is that you are all equal members of the jury. So, that the foreman's thoughts or opinions or vote carries no more weight than anyone else on the jury. You're all equal because your verdict must be unanimous; you must all agree on it, whatever

it ends up being. So, I -- I encourage juries all the time to listen carefully to each other as you go through your deliberations. Don't be -- don't be shy to give your thoughts and opinions, and don't be hesitate to review or to think back on your own thoughts and opinions in a critical manner. In other words, you know, be open to listening to what everyone has to say and be willing to change your thoughts if you are convinced that your thoughts aren't correct or if you think that your thoughts might not be right. I also tell jurors all the time, also though, don't ever give up your firmly held or your honest beliefs simply to be in agreement. And I'll instruct you on that when I get to that point in my jury charge.

But my point is that you are all equal members of the jury and -- that's okay -- and that the -- that the foreman is -- is the communicator between the jury panel and the Court.

As I told you yesterday when we took a break, at the close of the defense's case and at the close of the evidence, I'm required to take up matters of law before we proceed. Well, I have done that. We have taken up those matters of law, and now we've reached the portion of this case where the attorneys are gonna have an opportunity to address you with their, what we typically refer to as closing arguments. This is their opportunity to talk with you about what they believe the evidence in this case has shown. Because the state has

the burden of proof, Mr. Richardson will go first. Then Mr. Brooker will then address you, and then if Mr. Richardson chooses to, he may reply briefly to Mr. Brooker. And so, that's the order that we'll go.

Once they've concluded their closing remarks to you, I will then give you the charge on the law. And at that point, you will then be able to go back into the jury room and, for the first time, you'll be able to start, as a panel, discussing the case and doing your deliberations.

So, if you would, ladies and gentlemen -- and let me say this, and remind you of this. As I told you, with regards to their opening statements, if you recall, when they gave you their opening statements on Tuesday, I told you that what they tell you in their opening statements is not evidence. It is merely their beliefs as to what they believe the evidence will show. Well, I will tell you this as well, with regards to their closing arguments. Although, they're gonna argue to you what they believe the evidence in this case has shown, what they tell you or what they share with you is not evidence. They're gonna argue the evidence, but they are not under oath. So, they are not testifying in this case; they are just arguing to you what they believe the evidence has shown. The evidence that you're gonna have to decide this case came from the witness stand and then any exhibits that came in during the course of the trial. All right? But it is very important

that you listen carefully as they address you with their closing remarks.

So, at this time, I would recognize Mr. Richardson on behalf of the state.

MR. RICHARDSON: Thank you, Your Honor.

CLOSING BY RICHARDSON:

MR. RICHARDSON: Somebody is lying. That's clear enough from what we've heard from this witness stand this week. The way to figure out who is and who isn't is up to you. And, the way to do that is by judging the credibility of the witnesses who have testified in front of you or on the videos you've seen.

In order to do that, there are certain things you need to consider about each of those people and the other witnesses who really have no dog in the fight, such as the expert witnesses and what they had or detract from the main people at issue here. Okay?

We have several allegations going on in this case. The youngest girl, Minor 2 , she was the last of the girls to testify. Her allegation took place in the, what they call the burnt house on Bond Street here in Marion. Now, we know from pretty much everybody's testimony, kids and adults, I guess, the family lived at West Bond Street burnt house, the house that burned down, from sometime in 2014 until around May of 2015, which is when the house burned and the family had to

move.

So, with Minor 2 , she told you that everything that happened to her at the hands of her father took place in that house. So, we can narrow the focus on her down to that one location. And you recall what she said, both in person here from this chair, and also on this table, that she was upstairs in the room where her parents stayed. She had a bed in that room as well, she called her Dora bed. And on several occasions, she found herself in the main bed in the room with her father, and she described to you how she was -- what she was wearing, she had on a nightgown with underwear. She described to you that the underwear got pulled down, which she had her back to her father, that it was nighttime, dark in the room, and she felt something go inside of her behind. She indicated to you that the last time this occurred, she went over to try to wake her mother up. And before she could, or she was unsuccessful anyway, her father indicated to her that he wouldn't mess with her anymore. And according to her, that beared out to be true, because from all locations from that point on, she indicated to you that nothing further happened to her.

The remaining allegations in this case, come from Minor 1 , who is just over a year older than Minor 2 . Now remember I told you in the opening that you would have to hear from these kids on the witness stand, and that Minor 1 , you

would find, endured more over time, and that's shown by her testimony and also her interview that you got to watch. She also indicated to you that things happened to her in the burnt house, the same place where they moved on West Bond Street. She further indicated to you that even after they moved to what they call the Northside house that it kept happening to her.

At some point, while they lived in the Northside house, dad moves out. He moves in on his mother's property in a camper right behind the house. The kids go over to visit. Minor 1 indicates going over there, it continues to happen with the last incident taking place actually inside Grandma's house around the weekend before Thanksgiving 2017.

So, you have a distinction between these two kids where the abuse stops. Minor 2 tried to go to mom early on in the process. And you can deduce from what she said, if you believe it to be true, that her behavior, her activity trying to take sake the mom awake spooked him. Minor 1 , you heard nothing that she tried to do the same thing in terms of waking the mom or going to the mom or doing anything like that. Consequently, it continues until, finally, there is a disclosure around Thanksgiving 2017. So, we have a period of years that we're talking about here where these things went on.

Details, when you judge the credibility of witnesses, you

got to look at the details. Particularly, I think, in these videos because these videos were taken way closer to time. These videos, you heard from Robin Griggs, were taken, I think, around December 4th, somewhere in December of 2017. And you can tell by looking at the kids, they've grown a lot since then. But, think about kids of that age. So, they're 12 and 13 now. Back in '17, they were a few years younger than that when they gave these videos.

What makes sense for a kid that age to know and describe, and what makes sense for them not to know. So, you hear some details that stand out. Think about Minor 1 's video and these videos are in evidence. If you get back there and start discussing them and you feel like you need to see them again, because I know you've only seen them once, we will show them to you again. Minor 1 was asked a question in that video, if -- if she ever noticed anything in her underwear after these incidents with her father, and she indicated white stuff and red stuff. All right. This is coming from, I guess at the time, an 11-year-old kid, an 11-year-old girl. Okay. White stuff and red stuff, so use your imagination on what those things could be that she found in her underwear after these things would take place with her father.

She also kind of blurted out in the video, at some point, with respect to forced oral sex, it didn't taste good. She was asked about how it tasted or felt or, you know, whatever.

That was just something that she recalled feeling in that moment that it was happening to her. Details.

Motives. Who in this case has a motivation to lie and how strong is that motivation? And I pose it to you this way, if William Bruce Clark, Jr. did not do this, then there is a grand conspiracy, enormous conspiracy cover multiple years, multiple people. Everybody is capable of telling a lie, but take yourselves through this journey that these kids have been on. What is their motivation when they're 10 and 11 to say my own father has had sex with me, has put his penis inside of my anus, or has put his penis inside of my mouth. Think about the consequences, the collateral consequences, of coming out with that information. Okay?

If you are mad at dad or you're mad at mom, or whatever, there's a whole lot of stuff you could say that could make them look bad but spare you the ultimate humiliation, you know. You can say daddy hits me, you know, he punches me in the back of the head, he, he cusses me out; he does all of these horrible things to me. You can put marks on your own body. You know, you can do things if you're gonna come up with some grand conspiracy to destroy a parent. But, these kids have told you a story involving the most personal details of their lives, the most embarrassing things that can happen to somebody, humiliating things. It's horrible enough at the prospect of a person molesting you as a child, but it is

astronomically greater at the prospect of having your own parent do those things. They report this to Momma. Now, they just don't come out and say, hey, guess what. They've been carrying this for a while. It's not until mom sees things and she inquires, what's up, that they come off it. All right. So, they tell her. All right. That can't be an easy thing.

Then they go see Robin Griggs, a complete stranger they've never met, and they sit in a room with a video camera pointed at them and they tell you all the stuff that you heard from that tape. These gross details that make sense to us when we hear them as adults, but does it make sense coming from a kid if they're just making it up. So, they endure that. Then, they got to go see Dr. Elizabeth Morphis, another complete stranger, who puts them on a bed in what she described as a frog-leg position, bottomless, where their most intimate parts are inspected, probed, prodded, what have you. And might you think, if they're making this up, as they're laying there on that bed in a frog-legged position, the thought may have crossed their mind, you know, this might not be worth it. That's a heck of a lot to go through to maintain some grand conspiracy to bury your father. So, they undergo that. And then, in the ultimate humiliation, they come in here, sit in that chair, and they got to tell you, a group of strangers, a group, a large group sitting three, four feet away, about all this stuff again. And not only are they doing

it in front of you, they're doing in front of the man who brought them in the world, the guy they're accusing of doing it, to where if you believe them, the guy who has destroyed any faith that those kids would have an authority figure, but they did it.

So, what's their motivation? What more could they have done? They did everything. They told, they told, they went through the exam, they told again. They've done everything that they can do to tell their story. You are the last step. Nobody else can do anything but you at this point. There's nobody else to tell that story to. This is the last time.

Brother W.C. is in a tough spot. He's the oldest sibling. He's got two little girls, who I'm sure in some respect, look up to him. And, he's got a dad, who by no account from this stand, ever messed with him. So, imagine the difficulty for him to go through all this, but he got up here and he talked to you about the things that he observed. What's his motivation to lie? What's his motivation to say, I saw my dad take Minor 1 into the kitchen and close the door, and when they came out, she was crying, stormed out of the house, and then called Grandma to come get her. What's his motivation to say that that phone call was made after the fact, when his father and grandmother say that phone call was made earlier? What dog does W.C. have in this fight?

Kelly, the mom. Depending on what you believe about

credibility in this case, Kelly is either one of the most sympathetic figures in all this or the most sadistic. Because if you believe the kids, then that is a mother's worst nightmare. Not only were her kids sexually abused, but her own husband did it, their father. Can you imagine the inner turmoil? If you don't believe the kids, then Kelly is in on the conspiracy. She might even be the head of it. So, in order for you to believe that, she would have to be so sadistic that she would have pushed these kids to go through hell out of her own selfish desire. Carried this on for years, leaving these kids with no independent thought or decision making. Having them come up here, where she can't get to them, having them be in that video room where she's not with them and continue on with these things. Is the gravity of that fault the reasonable solution in this case?

The defendant, Daddy, he told you the complete opposite stuff, never touched them. I had a hand in raising them. I was there. I was changing the diapers. I was doing all the stuff. Clearly, he has motive to say those things because he's sitting over there in that defendant chair and these allegations are against him. You know, I would be highly surprised if there would be some Perry Mason moment, where he got up there and said, well, you know what, it's been weighing on me, you got me. That's just not realistic.

His mother, her testimony directly conflicts with Brother

W.C. , directly conflicts. She says that Brother W.C. was standing right with her looking in that kitchen door, but that's her baby sitting in that chair. She said that call was made prior to the kitchen incident, but that's her baby sitting in that chair over there.

One person in this case testified twice and that was Sergeant Smith with Marion Police Department. Again, he talked of details. Sergeant Smith testified; he was the first witness called. He testified he took the report and he met with Kelly when she had come up to the police station to report this. All right. So, after we heard from him the first time, we heard from Kelly. Kelly, the mom, talked about how she went in the bathroom when Minor 1 got back from Nanna's house and there was some discharge that came out of Minor 1 . She thought it was weird, never seen it. She got concerned and started asking questions, and that's what prodded her to ask these questions and ultimately get to the police. All right?

Then, Sergeant Smith testified again, and he recalls the mother coming in, Kelly coming in and saying that she had noticed behavioral changes in her children that were problematic to her. All right? Which on the surface seems to conflict. Is it the discharge, is it the behavioral changes, could it be both? Well, how do we know did any of that, what she said, make sense? How do we know that it could apply?

Well, let's look at what other people said about those types of things.

If you'll remember from Minor 1 's video and I know it's tough to hear. She's a soft talker. You can listen to it again. She mentioned the incident with the discharge. She didn't use the word discharge, but she mentioned that taking place. Now, she mentioned this over two years ago in a room at the Durant Center. There was two people talking about it. All right.

Behavioral changes. Remember Meg Temple? I called her as an expert witness. I called her, you know, a blind expert, not that she's visually impaired just she's never had anything to do with this case. She's never met a soul involved in this case. She was here to talk about, generally, what you would expect to see in kids who have been sexually abuses. And what was one of the things she talked about? Behavioral changes. She talked about delayed disclosures, and how kids, typically, the closer the perpetrator is to them the more likely they are to hold back on disclosing. And, lo and behold, what do we have in this case that Meg Temple knew nothing about it? Delayed disclosure. The father is the -- the kids sit on the information for years, because that's my dad. What will that do to my mom; what will that do to my life; what will people say about me; will people laugh at me. Imagine the difficult, the thoughts that roll around in those kids' heads. With

Minor 1 up here the other day, the pain was powerful; it was all over her.

Where is the physical evidence, Mr. Brooker asked in his opening; there will be no evidence. You would think that if some adult male was having his way with a little kid, that that kid's body would be destroyed. But, you heard from Dr. Elizabeth Morphis, who has been a pediatrician over 20 years, who had been seeing child sexual abuse victims for years. She's done over 500 sexual abuse exams on little kids. And what did she tell you; over 95 percent of the cases -- that's not her cases, 99 percent of her cases -- but over 95 percent of cases countrywide, however wide, that the research shows, show zero sign and that's because the body parts involved are forgiving. The tissue that they are made of, mucosal tissue, I think she described that. It's naturally filled with elasticity, blood vessels, lots of blood supply so that it can heal quickly. Just think about the proper uses of those body parts. They're all the time; that's what they're designed to do. So, they heal very quickly. So, 95 percent plus of the cases where children are sexually abused, there is no physical sign. And you even heard the question, well, if you know that, you know, what's the purpose of even doing these physical examinations. And the answer was remarkable. She said, you know, she knows that there's likely not gonna be any sign of anything, but that kid doesn't. And it shows that

kid, you're not broken. Because while they may be no scars on those body parts, you can bet there's some scars on the heart and on the mind. It will take a heck of a lot longer to heal than five to seven days.

So, when you get back in that jury room, consider those things. Consider that all the elements that I told you I had to prove have been met. They were both under the age of 11 at the burnt house when this happened, sexual battery happened in that burnt house, anal intercourse, sexual battery.

At the Northside house with Minor 1 , she was under the age of 11 when he -- that move to the camper. At the kitchen incident, she would have turned 11 and that's why that one is second degree, but they all involved sexual battery.

You get back in that jury room and you talk it over. You watch the videos if you want, whatever, but you find a verdict that's consistent with the details and motives in this case and you tell me who is lying. Thank you.

THE COURT: Thank you, Mr. Richardson.

Mr. Brooker?

MR. BROOKER: Thank you, Your Honor.

CLOSING BY BROOKER:

MR. BROOKER: Good morning to everyone.

Let me tell you something, say something to you, make a statement to you. I won't tell you whether or not it's true is is that there was a period in my life, you know, where I

played football for a minor league team. I played for about six or seven years and it was various teams throughout the state of South Carolina -- excuse me -- throughout the country, I played on the minor league football teams. Got a chance, one chance to play for the pros. I went up and played for a pro team and signed and played for a short period of time before I injured myself, and then that ended my football career. I had to do something else and decide, well, got to make a living and decided to go to law school.

Now, you're probably saying, well, why in the heck is that attorney saying that stuff to me; why in the world is he telling me this? I say it to you for one reason, it has some relevant application to your job as a juror. And that relevant application is, is to determine whether or not what you hear is the truth. What part of what I said just a minute ago was the truth? Was some of it the truth, all of it the truth, or is none of it the truth; what part is? How do you determine whether or not someone says something to you is the truth? How do you determine whether or not an allegation is the truth? Well, under normal circumstances, you would investigate. You would say, well, okay, what minor league teams did you play for? You'd call up those minor league teams and try to see whether or not they exist. You would then, those minor league teams, I didn't name them, you then, if they do exist, you would then go and see if you could get

records from those minor league teams to see whether or not they ever had a Thurmond Brooker on their roster. You go to each one of those teams and, then of course is, is that you would then come back and you'd say, well, you said you played for a pro team. Which pro team did you play for? Identify the name of that team and then, of course, go to that team and try to go find what years I alleged to have played, and then try to obtain records to see whether or not I actually did.

Now, what I just said to you is gonna become relevant in a minute. So, I'm gonna speak on it just a little. Remember at the beginning of this trial, I said to you that we have the greatest judicial system in the world, but the system only works if you, the jury, understands what your obligation is; you understand the principals that support that judicial system; that you accept those principals as the Court judicial system; and that you'll apply them indiscriminately, without prejudice and without passion, and the Judge is gonna instruct that to you.

Now, you heard what the government presented. And, I would submit to you is, is that what the government did is that they presented a case of passion to you. They said that these children made these allegations and we want you to believe it. We don't have any evidence to support it, but we want you to believe it. The children got up here and they were sad and they were this and they were that. Could you

imagine this; could you imagine that? None of what was presented was actually evidence. It was a passionate argument. Well, why would they subject themselves to this? Could you imagine how hard this would be? You would have to assume that there was a conspiracy; you have to assume all of this. Where's the evidence?

The Judge instructed you at the beginning of this case, that the indictment is made of allegations. Someone alleged something. That's all it is; it's not proof. And in this case, the children are the allegers. They alleged these things that happened. They alleged that it happened, just like I alleged to you the story about me becoming a minor league player, worked the minor leagues for a while until I went to the pros. I alleged it. Is it true? Is what the children saying is true; did it happen that way? Is that allegation true? You got to go out and prove it.

Now, the Judge is gonna instruct you of what these principals are, but I mentioned to you at the beginning of this trial, the first thing is the presumption of innocence. It's one of the cornerstones of our criminal justice system. He sits there -- as William sits there in that chair right there next to me, he as innocent as anybody in this room. He carries the same innocence that we all carry as citizens of this country. We're born with it and it stays with us throughout our entire life unless the government strips it

away from us. The government says you broke our laws. This innocence that we all carry, that you carry, we're gonna strip it away from you, and we're gonna take the most precious thing that any human being has and that's their freedom. The burden for the government to take somebody's freedom is high. It is the highest burden we have and it should be, because I submit to you nothing is more precious than one's freedom. Nothing is more precious than that.

That burden is proof beyond a reasonable doubt, the highest burden we have. And that burden rests with the government, it never falls on William Clark. Even though William Clark presented testimony, even though he got on the stand -- and the Judge will tell you and, of course, I told you this and the Judge told you this before we started the trial in the pretrial instructions. William Clark doesn't have to prove a thing. William Clark doesn't have to take the stand, he doesn't have to call witnesses, he doesn't have to testify, the burden is never on him. It's always on the government, and it's proof beyond a reasonable doubt.

Now, this brings me to my story, how the story I told you at the beginning about myself. Well, what's the difference between belief and proof? What is the difference between believing something and proving something, because there is a distinction and one has no place in this courtroom and the other does. One has no place in this courtroom and the other

does.

I brought a dictionary with me, so I can kind of let you know what belief is. And I know this is just a common word and I know all of you probably say, well, I know what belief means, but let me tell you what the dictionary is. This is an old dictionary, 1966. And here it says, belief is acceptance of the truth or actuality of something without certain of proof. It's accepting something without having the proof to believe it. We believe a lot of stuff that we don't prove. It's accepting something without the actuality of proof. That's not what -- that's not what your job is. That's not what you can do in this courtroom today or you will violate your obligations as a juror.

The government has to prove it and prove it beyond a reasonable doubt. Well, what does proof mean, to prove? What does it mean to prove something? According to the dictionary -- let me find it -- proof means to show to be true or genuine as by evidence or show something exists through evidence. Show it exists through evidence. The same way that those statements that I made to you, those statements I made about myself at the beginning of this trial, I didn't ask you to believe those things about me. And you might say, well, Mr. Brooker, I choose -- I choose to believe that those things about you are true, that you played on minor league teams and then you got your chance and, of course, you went to the pros

and you played for a short period of time and suffered an injury and your playing career was over, and then you went to law school. I can choose to believe that about you, and you can, when you're outside of this courtroom, you can choose to believe people. But inside this courtroom, you cannot to choose to believe people; it has to be proven. And if it's not proven, then the burden has not been satisfied to strip someone's -- to strip someone's innocence, to strip someone's freedom.

So, don't confuse belief from proof. When you get back in that room, don't say I believe this happened, I believe this happened. You have to say to yourself, did the state prove these allegations happened. That's what you got to say to yourself. You find yourself saying believe, believe, believe, believe, believe and you're failing in that responsibility. The judicial system isn't working to guarantee every justice is gonna be done. Justice will not be served.

Now, let's talk about proof and whether or not it existed and whether or not it was presented by the government. And of course is, that they told you what the allegations were and I think the Judge read you the indictment at the beginning of this case. William is charged with CSC in the first degree, in which he has alleged to have engaged in sexual battery with his daughter, under the age of 11. That means he had sex with

her; that's what sexual battery is. He had physical sex with his daughter; that's what the allegation is. That's what the daughter alleges.

Now, let's talk about -- that's the allegation, but let's talk about proof. What was the proof of that? What was the proof of that that the government presented? Well, you can look at the witnesses that got up on the stand. The first witness was, I think, the officer, and that was Officer Derrick Sentell. And the officer said, he really didn't know anything about it. He said he got a call from the mom and he went over there and took a report, that he was a patrol officer at the time, and that he contacted the investigator. He contacted, I think, Captain Smith, I believe.

Of course, you heard Captain Smith testify and, of course, Captain Smith said that they were short on investigators, and of course he says that, so he assigned the case to himself. And I asked him a bunch of questions. He said he got the allegations, the young girls were sent over to the Durant Center, where they talked with the forensic interviewer, Ms. Griggs. And of course, Ms. Griggs is not a -- she's a forensic interviewer. She just takes the children's statement. She just takes down their statement, and of course, you heard it; it was video recorded. Is that evidence to prove that it happened, that it existed? It's not. Captain Smith, when I asked him a question, well, okay,

you assigned yourself to investigate this case, let's talk about what investigation that you did do to prove it, not to just believe it, but prove it. I asked him, well, once you got the forensic interviews, and of course is, that the children said this happened. Did you go to those places? No. Some of the allegations identify people. I think all of them identify people being in the house. I think Minor 1 , the younger girl, says that everything happened to her at the burnt house. And she said well, she was there, her sister, Minor 2 was there, too. I'm talking -- I'm sorry, Minor 2 is who I'm talking about, Minor 2 is the younger girl. She said he was there; her older sister, Minor 1 , was there; mom was there; her dad was there; her brother was there, W.C. ; her mom's mother was there. I said, did you go and talk with any of them, try to talk with any of them? No. Did you try and talk with any of them on any of the allegations that these children made and, on every allegation, they alleged the presence of people? No. Do you have a child abuse sexual protocol that you follow? I think we have one; I don't recall what it is. Did you go get the medical records? Was the medical records from these children's doctors obtained, the family doctors obtained? I think the mother testified they had a family doctor. No. Well, why would you want to get the medical records? Well, the family doctor could've potentially saw these girl all the time. They're going back and forth to the

family doctor. They could've been examined by the family doctor for whatever reason. It could be valuable evidence to help to try to substantiate whether or not these allegations are true, the accusations are true. He didn't do any of it. He didn't do one thing. He says that when he got the allegation, when he got the statement from the forensic interviewer -- the forensic interviewer took the children's statement and when he got that back, he went and got William. He rushed to judgment and arrested him. I said, well, did you go to talk with W.C. , W.C. ? He says, well, yeah, I had planned to do it and I was scheduled to do it, but then something happened and he never did went and talk with him.

The last allegation the young girl alleged -- alleges that William's mom was there. She also alleged, I think, that -- that the daughter of Fannie -- I think that's the girl's name, that is William's girlfriend right now was there. Go talk with them? No. No proof there. No proof from the initial officer, no validation from the investigating officer, no validation from the forensic interviewer, because that's not her job. It's just to take the statement.

Then of course, she then goes to -- for a physical examination. She went for a physical examination because there was allegations of vaginal rape and anal rape. And of course in the forensic -- in the videotape you hear, at least

Minor 1 says that at one point in time that she noticed that, after one of these alleged events, she noticed -- one or more of these alleged events that she noticed white stuff and red stuff. Blood, some sort of vaginal fluid, which alleges is, is that this was -- this would've been -- suggests that this may've been significant penetration. They said there was -- which suggested that this may be significant trauma. And of course is, if you remember Dr. Morphis, she's the one that got on the stand. She's the one that did the vaginal examination and also the rectal examinations. And I asked her on both of them, how the results come out; what was the finding? Everything was absolutely normal, absolutely normal. Well, then of course is, is that and of course Mr. Richardson, solicited this and I'm glad he did; he mentioned this in his closing arguments. He said well, Dr. Morphis said, well, that's not unusual that there's 95 -- in 95 percent of the cases, some study will -- in 95 percent of the cases, that the kids are not left with injuries after being assaulted. And I asked her one question and I asked her one question is because that question is the most important question. And I asked her, well, so whether or not there was injury, is there a correlation between the existence of injury and the amount of the trauma? Could the greater the trauma is, could that raise a greater probability of the existence of an injury, the residual effects of the injury. Of course, she says yes.

Obviously, the greater the trauma is, the more probability of an injury. And of course, the reason why that statistic is deceptive is when it says 95 percent, because there's no information with respect to -- with respect to at least the research -- the research report that she was alleging that she said that she had written -- that she was referring to 95 percent. She couldn't tell you the model that they were using. She couldn't tell you whether or not the 95 percent involved children with slight injury or children with significant injury. Because obviously, if there's less injury, then of course there's less probability of residual effect. Well, did she tell you what the model was? She said well all of these were children that were identical to the -- identical the fact pattern that these children alleged. So, we're comparing apples with apples versus apples with oranges; no. So, what does that tell you about that research that she -- that she cites to you. It says it has no application whatsoever here. Because we don't know whether or not we're talking about children with significant anal trauma and significant vaginal trauma versus children with not. She doesn't tell you anything about that, nothing about it whatsoever. I also asked her about scar tissue is, is that when there is damage to the skin, internal damage, is it possible to leave scar tissue. She said yes, even after healing. There's no question that the body heals, but if

there's significant trauma, then of course is, is that when the body heals, it still leaves scar tissue. And I asked her whether or not that was a possibility and she said yes. But was any of this found? And you have to decide whether or not this was significant trauma. Specifically, with respect to Minor 1 because what she was alleging is, is that she experienced vaginal and anal bleeding. On the forensic interviewer, when she was asked, when she told them that she saw blood -- excuse me -- her words were red stuff and white stuff. And the forensic interviewer asked, well, you know, vaginal, was it vaginal or anal and she said both. So, she said that she suffered trauma so severe that she had bleeding from the anus, and she had bleeding from the vaginal area. But yet, not one single scar was detected. The hymen looks normal. The vulva -- I think is how she pronounced it, maybe I pronounced it correctly -- was normal. The anus was completely normal and, of course, she said that she used an instrument, which is almost like a microscope. So, they took extremely detailed pictures, digital pictures, of the tissue from the interior of the anus, and also of the interior of the vagina. So, any damage around the, the, the, the vaginal cavity was detected? No. So, did Dr. Morphis help prove the existence of the allegation or did she help prove the opposite? But, they had to put it on; they couldn't ignore it. We had -- we had Dr. Morphis' -- Dr. Morphis' report.

They had to share it with us. Now, also is -- so, nothing there.

So, they put up, I think, this is -- this is -- I don't want to call her by her first name and this was, I think, the expert -- what was the expert's name?

Indulge me for just a second, Your Honor, I'm sorry. Indulge me for just a second, I want to be able to call the expert's name. I got it; I have it here. Aw, there it is.

It was Meg Temple. Meg Temple is the expert that they got up on the stand that works at the Durant Center. And of course is, is that I think she had a background, I think, as a -- as a, I think -- a -- she was qualified as an expert on child abuse dynamics. Child abuse dynamics. And of course is, is that she testified to delayed disclosure. She also testified to, you know, how sometimes children behave after sexual abuse. I asked her one question at the outset of her testimony that I hope you heard and you were listening to, and I asked her was anything that she was going to testify to, what she had testified to, because she testified first on direct examination by Mr. Richardson. I asked her, did anything that you testified to, does it have an application to these children's case. Remember what her answer was? No. Can you apply it to these children's cases? No. Is there an absolute behavioral pattern that every child experience with sexual assault? No. So, sometimes there's a change in

behavior in children, I think is what Mr. Richardson says. Guess what? I have an eight-year-old and a 12-year-old, and their behavior changes all the time and it's not because of sexual abuse. They are as moody and sometimes grouchy, and sometimes they're sweet and loving. A child's behavior could change because of something they're experiencing at school. It could be both. They're picked at at school. A child's behavior changes naturally. I think you can probably remember from your own experiences is that when you were children growing up. You can probably remember from some of your own experiences when you were growing up of having mood changes and swings as you got older because children's lives are complicated going to school and having to deal with everything, they change. Sometimes children are depressed for whatever reason. That's why there's not a standard model. That's why the change in, in, in, in, in a child's behavior doesn't mean sexual abuse, because I imagine is, is that if that was the case, then all of us -- all of us would be going home and getting our kids and taking them to be checked. So, that doesn't mean sexual abuse because the child's behavior changes. That's what the expert says. There's not a standard model. That's why she says in anything that she testified to, that she could not apply it to these kids' case because she had never seen them, never talked with them, never studied their case, didn't know anything about their case. She was

giving you general information. That's doesn't mean anything about whether or not these children were abused. So, does it prove these allegations? No. Meg Kelly did not prove these allegations. They didn't put up any witnesses to prove these allegations.

Now, I'm gonna pivot and, then of course is, is that I'm trying not to be too long. But, the Judge is also gonna talk with you about reasonable doubt and that you can't convict unless you have -- if there's a reasonable doubt. Is there reasonable doubt in this case? There is. Let's talk about a little bit of it and then after I do that, I'll close, ladies and gentlemen.

Well, what are some of the things that create reasonable doubt? One thing that creates reasonable doubt is the physical examination. You would think after the sexual trauma that these children described, the bleeding, there would be tiny bit of scarring. Says flat out nothing; they could not find a thing, not one thing. For both of the children, not just one, but for both of the children, examinations could not find a thing afterwards, a thing that was out of the ordinary, after a child -- two children to have been raped to the extent that they were bleeding from the butt and from the vagina, something had to be torn if they were bleeding, not just one time but multiple times. And they alleged full penetration. So, it's not something that they're saying, well, you know,

we, just know, just played around the outer openings; no, they alleged full penetration. And I know Meg says, it doesn't necessarily have to have it. Well, that's called reasonable doubt as to that much trauma didn't cause any sort of injury, not an inkling.

Another thing is that the children's -- the mother's inconsistent statements about how she learned. Remember when the mom was on the stand and the mom testified, and I asked the mom, how did you learn -- when did you first became alarmed that maybe these children were being sexually abused? She said the first time she had any idea of it was on Christmas Day, excuse me, not on Christmas Day, Thanksgiving Day. She said that she was in the bathroom with -- with Minor 1 and that Minor 1 had a discharge, and that's what caused her concern. That's when she felt -- and said -- she talked to the kids and, then of course, if you remember, she said she went to the police department that day, on Thanksgiving Day right after she was informed.

Well, remember when I recalled the officer or recalled Officer Smith that testified -- he was the first officer who testified and, then of course, when we put up evidence, we recalled Officer Smith, because that's not what she told Officer Smith. When she talked with Officer Smith and he took her statement on Thanksgiving Day, she told Officer Smith that -- that what causes her concern, that the children's behavior

began to change over the last several months, and that is what stimulated her to inquire about what's going on and then she was told. She never told the officer that, hey, it was the discharge. I went in the bathroom with my daughter -- with my, however old she is, 11-year-old daughter and she had a discharge and that's when I came -- she didn't mention that to the officer at all. She said, oh, over the last couple of months, there's been a change in their -- a gradual change in their behavior, and that's what caused me the concern. Well, you would think that that would be momentous. That would be something that would stick in a mother's mind, the moment that you learned or suspected your child was sexually assaulted. You don't get that confused. That is not a moment that happens every day. It's something that sticks with you. But, why the change? And there was one.

Now, she also said that all of this happened on Thanksgiving Day. And of course, the officer was asked about his report. His report was taken on November 28, 2017. November 28, 2017. That's when she went down and spoke with the officer. Ladies and gentlemen, I have the -- I have a calendar for the month of November 2017. I have a calendar here for November 2017. Guess when Thanksgiving was on November -- in November 2017; guess what the date of Thanksgiving is. Thanksgiving was on November 23rd. This happened, this report ---

MR. RICHARDSON: Your Honor, I would object to this coming in because it's not into evidence.

THE COURT: Sustained.

MR. BROOKER: Can we approach, Your Honor?

THE COURT: Yes.

(REPORTER'S NOTE: Bench conference is held off the record in the presence of but outside the hearing of the jury.)

THE COURT: Ladies and gentlemen, have no conversation about the case. We need you to step back into the jury room. We'll take a short break and then we'll resume.

Mr. Brooker, make a note as to where you're at.

MR. BROOKER: Yes, sir.

THE COURT: You can pick up where you left off.

MR. BROOKER: Yes, sir.

(REPORTER'S NOTE: Jury exits courtroom @ 11:54 A.M.)

THE COURT: We'll be at ease.

RECESS - 11:54 A.M.

*******OFF THE RECORD*******

(On the Record - 12:09 P.M.)

THE COURT: Bring the jury out. And, Mr. Brooker, if you want to take your place back up here and find your spot?

MR. BROOKER: Sure.

THE COURT: All right. You may proceed, Mr. Brooker.

MR. BROOKER: Thank you, Your Honor. Your Honor, at this time, Your Honor, we would like to ask the Court to take

judicial notice that Thanksgiving Day on December -- December 2017 ---

THE COURT: November.

MR. BROOKER: --- I'm sorry. I'm sorry, I'm skipping a month. Thanksgiving Day on November 2017 was on the 23rd of November.

THE COURT: All right. Ladies and gentlemen, Mr. Brooker has asked the Court to take judicial notice as to that. The Court can take judicial notice to a fact if it is a fact that is undisputable, and he has his copy, but I just pulled up a copy of the calendar. In November of 2017, Thanksgiving Day was in fact on November the 23rd that year. So, you can -- the Court has taken judicial notice of that fact, and so you can consider that as factual and true that in 2017, Thanksgiving Day was on the 23rd of November. Okay?

You may proceed.

MR. BROOKER: Thank you, Your Honor.

CONTINUATION OF CLOSING BY BROOKER:

MR. BROOKER: So, and so, when Ms. Clark testified to the fact that she discovered this on Thanksgiving Day, and then of course is, is that after discovering this on Thanksgiving Day, she immediately went down the Marion County City Police Department to report this. That wasn't true. That wasn't true. And so then comes is that what do you make of this? The 28th would've been five days later. It would've been five

days later. That Thursday would have been Thanksgiving, the 23rd, Friday would have been the 24th, Saturday the 25th, Sunday the 26th, Monday the 27th, and then of course Tuesday of the following week would have been the 28th. So, five days later. So, she said she discovered her children were raped and immediately went to the Sheriff Department. When actually it was five days later. The question then becomes is, if you discovered your children were raped, allegedly raped, would you say, well, I'll just go to the police in five days and the Court can make sure that they're raped, and you report then. I think you all know the answer to that. I think you all know the answer to that. And it's not like it wasn't on a -- on a -- on a memorable date. Sometimes we can get dates mixed up, but Thanksgiving Day is a memorable day. You know, it didn't occur on some random day, like on, you know, random dates to us, like -- you know, I don't remember -- I don't remember, you know, July 10 because July 10 didn't have no significance to me. It doesn't have any significance to me. But things that have significance to us, we remember. But there were two benchmarks, two benchmarks that would've been significant to her. The first benchmark, that would've been etched in her head would be the day that the minor child told -- children told me that they had been raped. That's a significant benchmark that would cause you to remember. And two is -- the other significant benchmark is that how did I learn that my

child was raped when I remembered it -- when I learned it on Thanksgiving Day. That's supposed to be a joyous day and a day of celebration. It would make it memorable; it would stick in the head. Five days later.

Now, so we talked about, you know, physical examination of the children, the results of it creating reasonable doubt. We just talked about the mother's inconsistency. Let's also talk about the timeline. Let's talk about Minor 1 's -- and why that would create inconsistency or at least reasonable doubt. Is that, in the indictment, of course the Judge presented this indictment to you. Count 1 of the indictment says that Minor 1 -- Minor 1 was raped between April 1 of 2014 to July 1 of 2015. That's a 15-month period; that's 15-month period. They said all of this occurred sometime between that period of time. And of course, you can listen to the -- you can listen to the forensic interviews, because there's no specified date in the forensic interviews. Forensic interviews were taken shortly after the allegations were made, no specific date whatsoever. That's why it's so broad. It occurred somewhere within this 15-month period. If you remember, when I talked with Minor 1 on the stand, and I said, well, you know, let's talk about the periods between the conduct. The first time it happened it was, you know, the first time it allegedly happened, that first time when you allege that you and dad was on the bed and, and, and, and dad

stuck something into your butt; that's the way she explained it. Says well, that first time it happened -- when did it happen again? She said it happened the next night. So, the second event happened the next night. And I said, well, when was the next time? And she said, well, the third time didn't happen the next night, but the night following, which means she said there was an interval. So, the third time was skip a day and then the third time happened. And then she said the fourth time didn't happen the next day after -- the next day after. So, all of it happened within a five-day span. Because remember, I asked her, I said, well, all of this happened in less than a week? All of your sexual assault happened in less than a week. Previously is, is that it was thought that this happened over a 15-month span.

Now, the timeline, and I'll be very quick with this because I need to move forward. The timeline has to when all of this occurred, it's also suspicious, too, because it does suggest motive. You can remember when the father testified, when William testified, William basically said that, you know, that he and Kelly were married, I think had these three kids. They've been married, I think he said, for something like nine years, off the top of his head he said nine years. And of course he said that between 2014, 2015, somewhere along in there, they lived at the house that the children referred to has the burned house; that's the house that's on -- I think

that's the, the, the what they call the burned house. I think that's the house that was, I forget the name of the street, but that house. And of course is, is that once that house burned down, of course they moved to another house. And of course he testified he didn't immediately move with the family then. Is, is that Kelly had to convince his mom to allow him to come stay with them in the new house. And of course he said when they moved to that house on the Northside, that he was off and on. And I think Kelly testified to the same thing too, that he was off and on; he wasn't there permanently. And of course Kelly testified to -- and I think William disagreed with her about the date in which they permanently separated. But, Kelly testified that the last time -- and I asked her this question -- the last time that they would've been together or he would've stayed at that house would've been in July of 2017. And I think, if my memory serves me correctly is that William said it was earlier than that; it would have been '16. But of course William then testified, you know, that once they separated permanently then of course is, is that eventually, he -- he entered into a new relationship with -- with Fannie. And of course he testified that him and Fannie has been together ever since. Fannie has -- and he testified that Fannie has kind of a older teenage boy -- I think now he's 21 -- of course something like a nine-year old girl similar to the ages of his girls, and that he's been

living with them ever since.

And he also testified to the fact is that the relationship between him and Kelly was not a good one after that. And of course, if you can remember, he said is that that he missed them so bad, he said that when he paid his child support sometimes, he left money, is that he would have to leave the money on the porch and then she would come and pick it up off the porch so they would not have any contact. So, it was a bad relationship. I mean, it wasn't -- it didn't on, you know, I mean, they didn't end it on good terms. It appears that it didn't end on good terms. They were not getting along and I asked about that, at all. And he also told you that it had gotten so bad, you know, that that weekend before Thanksgiving 2017, he said that that -- the beginning of that week, the children came to stay that weekend, I think, that Friday. And of course is, is that which would've been somewhere around something like the 17th, the children came and stayed the 16th and 17th that Friday, and he says that he had called her and threatened her that if I cannot see my kids, I'm not gonna pay child support. And I can't recall, but I thought he did, at some point in time, mention something about, you know, maybe going to the court and getting papers to see his children. And after they had that threatening exchange, that's when that weekend, she finally said, I'll let you see them but you can only do it at

your mom's house. They were not on good terms. After all these years, after all these years, these allegations never arose until he threatened stopping child support, until he threatened to say I'll take you to court and I'll fight you to see these kids. And the next week, he was being alleged -- it was being alleged that he molested his kids. And I asked him is, is that those allegations ever been made before; did you have any inkling that, that, that, that -- no. Right after he threatened, I'll take you to court, I'm gonna see my kids, I'll take you to court if I have to. And the next week, he's a child molester.

You've got to consider the timing. Then of course, there was contradictory evidence with respect to Minor 1 . That's another reasonable doubt. And of course is, -- and I'm almost finished, but I think this is -- this is close to the last one. Remember, that's the last time that Minor 1 said that he had assaulted her. She said that on that weekend before Thanksgiving, her and mom -- dad and mom had this argument on the phone, and dad threatened mom, and mom said, I'll let you see them, but you've got to see them at your mom's -- at your mom's house. And of course, it was also Minor 1 's birthday, excuse me, Minor 2 s birthday that -- that Saturday. It was also Minor 2 s birthday and of course is, is that -- and I think W.C. even substantiated a portion of this because W.C. said that the girl -- that -- that Minor 1 and Minor 2

had gotten into a fight that day. But other than them agreeing on that, that's when the statements between William and his mother and William diverges. William admits that the girls got in a fight and, of course, Minor 2 was -- Minor 1 was upset over that fight. And of course, the father said is, is that -- that when -- when the two girls got in that fight and Minor 1 ran into the kitchen, and of course is, is that he said she called his mom -- called her mom, called somebody to come pick her up because she didn't want to stay because they had gotten into that fight. And of course is, is that mom also verified that the children had a fight and Minor 1 got angry and she wanted to leave. And of course is, is that W.C. said that he went into the kitchen after -- after her, and she had already called somebody to pick her up and it was actually her grandmother. Her grandmother came and picked her up. But W.C. said he went into the door, and of course, he talked about the door, but the door is a, is a, is a, is a glass door, so you can see in. And of course, Grandmom says, she watched through the glass door because she wanted to make sure that Dad didn't spank her so he watched -- she watched. And he said that when he went in there, he didn't spank her. He said that he doesn't like to yell and discipline his kids in front -- in front of other people; he don't want them embarrassed. And he said that they went in there and they were in there for a short time, a very short time before

Grandmom pulls up and, of course, mom verified this. Grandmom pulls up and then she runs out and then she jumps in the car with grandmom and goes. That would've been that weekend on the 22nd. And of course is, you heard mom says, I watched the whole thing, I watched the whole thing. She said she specifically watched, because she wanted to make sure that Minor 1 -- that her father didn't spank her because of the way she was behaving. She said that never happened. Dad never took his daughter into the kitchen, pulled his pants down, and made her suck or whatever it is, is that his penis. And of course, they try to cross examine mom and said, well, you love your son. You know, we all love our kids, but there's some things we will not do for our kids. We love our kids, but if you see your child raping your granddaughter, I don't think any of us could stand there and watch and let it happen and I think W.C. said they were in there only 5 minutes before Minor 1 came out crying. Of course she came out crying, she just had a fight with her sister, but grandmom said she watched the whole thing. She didn't want to see Minor 1 get a spanking; it didn't happen. It did not happen. And that didn't happen like any of the other stuff didn't happen.

And the final thing I want to say to you about what creates reasonable doubt, at least something that just was -- remember when Minor 1 testified, and remember when Mr. Richardson stood here and Minor 1 turned towards you, the

jury, and testified, but I could see her and I know you could too. Remember she was smiling and smirking and giggling as she's supposed to be telling this horrible event. I noticed that, because when I was sitting there and that's the first thing I noticed is that her smiling and smirking as she's supposed to be telling this horrible event. And you can also remember when Mr. Richardson was standing here and he was trying to look around her to make contact with her mom for approval. I believe -- I believe that was hard for her to testify, but I don't believe it was hard for her to testify for the reasons that the state is trying to tell you to. I think the reason why it was hard to testify and it's hard for her to testify is, is that she knew she was being asked to tell something that wasn't true. She knew that what she was saying wasn't true and I don't think that she wanted to do it. I don't think that she wanted to do it whatsoever.

But I say to you, ladies and gentlemen, I've been practicing for 20 years and I know that the solicitor, Assistant Solicitor Richardson says, well, you have to believe these people do all this bad stuff. And God knows, after practicing for 20 years, I've seen a lot worse. This sort of stuff happens all the time. It's not immune from happening now. He would not have been the first father falsely accused of molesting these kids. I don't blame the children; I don't blame them whatsoever.

Minor 1 had a -- Minor 2 had a difficult time, too. When I asked her about how it happened, she couldn't give me any significant detail. She said oh, it happened this way the first time and then the same with the second time and the same -- almost identical; almost flat out identical all 4 or 5 times. Same place, same position, same thing; mom's same place, dad's same place, brother same place, sister same place, almost identical. No deviation; it's just a reprint. You make one thing and then you just duplicate it, no real specificity between, between the two events. It's not logical. There's no evidence, there's no evidence these allegations are true, no evidence whatsoever. There's a lot of reasonable doubt as to why they're not true. When he gets up on the stand and he denies it -- and he cries, and he don't understand why his daughters are doing this and saying this. All of this happened after he threatened mom, I'll take you to court. And the next week, he's a child molester. The whole time he was in another relationship with another family, living with them and moved on with his life.

Ladies and gentlemen, I'll say this and then I'm gonna sit down. I want to say one thing about the verdict form. Let me take a look at the verdict form. The Judge is gonna give you the verdict form. That verdict form is gonna have guilty or innocent. One thing I always do is to explain to the jury what that means. Guilt means is that the state has

proven the allegations beyond a reasonable doubt. They've proven the allegations have been made beyond a reasonable doubt. Not by asking you to believe them, they've proved them with independent evidence. If you find that they've proven these allegations, then you find guilt. And then you'll see a space for not guilty. Not guilty means that they have not met the burden of proof. They haven't proved these allegations beyond a reasonable doubt. They haven't presented the evidence. And I would submit to you that they have not. They've asked you to believe, but they haven't proved. They said these are what these girls says and this is the reason why you should believe them, not this is what these girls says and here's the evidence to prove it.

When you get back in that jury room, on each one of these allegations, says, okay, this is Minor 1 's allegations. Minor 1 says this happened. Father says this didn't. Let's look at the independent proof of it. Because you've got two competing allegations. There is no infinite proof of it. Same thing with Minor 1 . This burden is not met. And I think if you follow your duty and you not -- and you're not guided by passion, because that's one thing that the state will always have. You know, we love children and it tugs at our heart when a case involves children. And that's their main weapon is our love for children, our sympathy for them, and he's gonna ask you to get back there and violate your duty as

a juror, get back there and say I believe that this happened, although there's been no evidence to prove it, but I believe it. The children say it, I believe it. He's gonna ask you to find on that. I won't get a chance to get up again. Mr. Richardson is gonna get back up and he will try to find and poke holes in everything I've said to you. That's his job. And I'm pretty sure he'll do a good job and he'll try to find a way to give an explanation, but remember your duty. Remember the difference between belief and proof. Remember proof beyond a reasonable doubt and remember reasonable doubt. Remember all of these principles and apply these principles. And I think if you remember all of these principles and you apply them, you're gonna say, they haven't proved this case. They haven't proved this case. And I don't think they can prove it, because it didn't happen. The medical examination, I think there bears it didn't happen.

Thank you very much.

THE COURT: Mr. Richardson?

MR. RICHARDSON: Thank you, Your Honor.

REPLY CLOSING BY RICHARDSON:

MR. RICHARDSON: All right. Y'all have just heard a gross mischaracterization of what evidence is and what proof is and what the truth is. Evidence in a case in court comes from the witness stand and exhibits. If you believe the evidence that has been generated from the witness stand and

exhibits, you consider that as proof. That is how court works. Okay? Based on the characterization you just got, nobody can be convicted of anything, because anything that comes out of here that you believe, doesn't mean it's proof. That makes zero sense, and I need to fix that for you now. Okay?

People testified from here. You get to pick who you believe and who you don't. If you believe the defense witnesses, that's proof to you. If you believe the kids, that's proof to you. What is spoken from here is evidence that you use to make your determination as to guilty or not guilty. Okay? All right.

Next, with the medical exam, either Dr. Elizabeth Morphis knows what she's talking about or she is a horrible doctor, because she cited these studies talking about how 95 percent of these cases over the, you know, country or wherever, showed no physical injury. She said in her own practice, her own experience, 99 percent of them show no physical injury. So, according to the defense, she must suck as a doctor, you know. She's only been doing it 20 years. So, she must not know what in the heck she's doing, because 99 percent of kids she examines show nothing. So, 99 percent -- by their estimation, 99 percent of these kids must walk in there lying. So, child abuse doesn't exist. What Dr. Morphis said isn't reasonable doubt for squat. What Dr. Morphis says is completely

consistent with what was found in this case. You expect to see an injury within five to seven days of an assault. Any time after that, you expect to see nothing. That is what she said from this stand.

This case, like many cases, like Meg Temple said, delay disclosure. These, by their very nature, are disclosed after the fact of the assault, sometimes years later. So, it is completely consistent that you would expect to see no physical injury because the body heals quickly. Within five to seven days, there is no sign. So, that's not reasonable doubt of squat.

The calendar, if the mom is screwing -- my recollection of the testimony is that mom was told, and then she indicated that the girls didn't want to tell anybody else. So, she waited until the next day to go to the police department. That's my recollection; you have your recollection, but that's what I remember her saying. Even if I'm correct in my recollection of it, that still makes the date off because we know that the date of the report was the 28th, according to what the cop said. So, if the mom is screwing up the date, it makes the girls liars in your mind, that answers the question; that's an issue in this case. But does that screw up on a date by the mom, make the girls liars? Does it make them, having remained consistent for years now on the video, on the stand, does that make them liars.

Think about again what they've gone through and I don't say that to inflame your passions and to make you love children more. I say that as a common sense means of reasoning your way through all of what you've heard. Why do the kids put themselves through that particular pain when there are other avenues that are less impactful and embarrassing and humiliating on them.

There's a grand conspiracy to bury this guy. This lasted years, it's covered in the entire family of people who are in on it and the major players are two little kids. They were just playing our heartstrings. If you believe that, cut him loose. But, if you can watch that video of those two kids and you remember how those two kids were sitting in that chair, and you think that what they say is true, then that is proof, because what they say is evidence. What they said is evidence that you use to make your determination.

Reasonable doubt means that you are not firmly convinced that this took place. If you are not firmly convinced that this took place, the kids are lying. Okay? So, that's the choice you got to make. Watch the videos, talk about it, render your verdict, and tell me. I'd like to know who's lying.

Thank you.

THE COURT: Thank you, Mr. Richardson.

CHARGE TO JURY:

THE COURT: All right. Folks, when we started this case, I told you that you were the judges of the facts and that I was the judge of the law. And so during the trial, while the attorneys have been presenting to you the evidence or the facts in the case, it's been appropriate for me to be on the bench out of the way and allow that process to occur. But we've now reached the portion of this trial where you and I are in this together; you as the judges of the fact and me as the judge of the law. So, I just think it's appropriate that I come down to be with you as I give you the charge on the law. I am going to pretty much read this verbatim from my notes here so that I don't miss anything or misquote anything.

Mr. Foreman and members of the jury, you have heard the evidence and the arguments of both parties. I will now explain to you the rules of law you must follow and apply in deciding this case. When I have finished, you will go into your jury room and be -- and begin your discussions, which we oftentimes call your deliberations. Your decision must be based only on the evidence presented here in this courtroom. You must not be influenced in any way by either sympathy for or prejudice against anyone.

The indictment charges the defendant, William Bruce Clark, Jr., with three counts of first degree criminal sexual conduct with a minor and one count of second degree criminal sexual conduct with a minor. I remind you, the fact that the

defendant was arrested, charged, and indicted in this case is not evidence in this case, and it cannot be considered by you as evidence of guilt, nor does it create any presumption or inference of guilt. The indictment, as I told you earlier, is simply a formal written instrument, which contains the charge made against a defendant. An indictment is a formal document, which brings the case into this court. The defendant has pled not guilty to these charges and that plea puts the burden on the state to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove him or herself innocent. I charge you that it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued, unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt, beyond a reasonable doubt. The presumption of innocence is not a mere legal theory. It's not just a legal phrase. But, it is a substantial right to which every defendant is entitled, unless you, the jury, are satisfied from the evidence of the

defendant's guilt beyond a reasonable doubt.

So, what is a reasonable doubt in the law? Some of you may have served as jurors in civil cases, where you were told that a fact is only -- it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or the preponderance of the evidence. In criminal cases, the state's proof must be more powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things in this world that we know with absolute certainty and in criminal cases, the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is firmly convinced that the defendant is guilty of the crimes charged, you must find the defendant guilty. If, on the other hand, you think that there is a real possibility that the defendant is not guilty, then you must give the defendant the benefit of that doubt and find him not guilty.

Ladies and gentlemen, I just thought of something, just give me one moment, I'll pick up where I left off. I just need to get my law clerk to do something for me.

Now, I remind you that during this trial, you and I have certain duties to perform. As the Trial Judge, it is my responsibility to preside over the trial of this case, and I

also have the duty to rule on the admissibility of evidence offered during the trial. I have the additional duty to charge you the law that is applicable in this case. It is your duty as jurors to accept and to apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon your idea, because you are sworn to accept the law and to apply the law exactly as I state it to you.

As I told you at the start of this case, you, the jury, are the sole judges of the facts in this case. The law does not allow me to have an opinion about the facts. This is a matter solely for you, the members of the jury, to determine. As jurors, it is your duty to determine the effect, value, weight and truth of the evidence that is presented during this trial.

Now, to determine the facts in this case, you're going to have to evaluate the credibility or the believability of the witnesses. And, credibility simply means that, believability. It becomes your duty as jurors to analyze and to evaluate the evidence and to determine which evidence convinces you of its truth. You, the jury, can believe as much or as little of each witnesses' testimony as you think is proper. You, the jury, should assess the credibility of each witness. You may consider whether any witness has exhibited to you any

interest, bias, prejudice, or other emotion in this case. You may also consider the appearance and the manner of a witness while that witness is on the witness stand. You do not determine whether the burden of proof has been met, merely by counting the number of witnesses presented by each side.

Now, there is two types of evidence which are generally presented during a trial. There's direct evidence and there's circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. Circumstantial evidence is proof of a chain of facts and circumstances, which indicate the existence of a fact. Crimes may be proven by circumstantial evidence. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence, nor is there any greater degree of certainty required of circumstantial than of direct evidence. However, to the extent that the state does rely on circumstantial evidence, all of the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt. If the circumstances merely portray the defendant's behavior as suspicious, then that proof has failed. You should weigh all of the evidence in this case. The state has the burden of proving the defendant guilty beyond a reasonable doubt and that burden rests with the state, regardless whether it uses or relies on

direct evidence, circumstantial evidence, or some combination of the two.

Now, the rules of evidence ordinarily do not allow or permit a witness to testify to opinions or conclusions. There is an exception to this rule that exists for witnesses that we call expert witnesses. A witness, who by education and experience has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which that witness claims to be an expert and may also state the reasons given for that opinion. You should consider any expert opinion received into evidence in this case and, like any other evidence, give it the weight that you think it deserves. An expert witness' testimony is to given no greater weight than that of any other witness simply because the witness is an expert. Further, you're not required to accept an expert's opinion, even though it's not contradicted.

Now, the indictment in this case, ladies and gentlemen, alleges several different offenses against the defendant. There are three separate charges of first degree criminal sexual conduct with a minor, and then there's a charge for second degree criminal sexual conduct with a minor. Each count charges a separate and a distinct offense. You must decide each count separately, and on the evidence and the law applicable to it, uninfluenced by your decision as to any

other charge. The defendant may be convicted or acquitted on any or all of the charges that have been brought. You will be asked to write a separate verdict of guilty or not guilty for each separate offense.

Now, Mr. Clark is charged with first degree criminal sexual conduct with a minor. The state must prove beyond a reasonable doubt that the defendant engaged in a sexual battery with the victim. Now, a sexual battery is defined as sexual intercourse, cunnilingous, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body, or of any object into the genital or anal openings of another person's body, except when that intrusion is accomplished for medically recognized treatment or diagnostic purposes. The state must then prove beyond a reasonable doubt that the victim was less than 11 years old at the time of the sexual battery. Consent, willingness, indifference, or ignorance on the part of the minor, if any, as to what was taking place, does not in any way affect the charge of criminal sexual conduct with a minor, because an unmarried woman, under the age of 14, cannot legally consent to sexual intercourse.

Now, Mr. Clark is also charged with the offense of criminal sexual conduct with a minor in the second degree. The elements of second degree criminal sexual conduct with a minor, are the exact same as first degree criminal sexual

conduct with a minor, but with one exception. That being that the age of the child. For criminal sexual conduct with a minor in the second degree, the state must prove all of the elements that I described to you, but must also prove that the victim was at least 11 years old but not more than 14 years old at the time of the sexual battery.

Now, your verdicts in this case must be unanimous, as I told you earlier. You must all agree on the verdict, whatever it may be. Your deliberations are secret. You will never have to explain your verdict to anyone. Each of you must decide this case for yourself, but only after fully considering the evidence with your fellow jurors. So, you must discuss the case with one another in trying to reach an agreement. While you're discussing the case, don't hesitate to re-examine your own opinion and to change your mind if you become convinced that you are wrong, but don't give up your honest or firmly held beliefs simply to be in agreement with others.

Now, ladies and gentlemen, I've got a form, a verdict form, that I will send back into the jury room with you. And Mr. Chew, you'll be in charge of this verdict form. It is a simple form. It's fairly self-explanatory. The top of the form just has the caption of the case, and then as you go into the form itself, it talks about as to Count 1, as to Minor 2 Clark, criminal sexual conduct with a minor in the first

degree, we, the jury, find the defendant, William Bruce Clark, Jr., either guilty or not guilty of that charge. And then it will have Count 2, which is the next charge on the indictment. Again, we, based on your consideration of the evidence, we find the defendant either guilty or not guilty. And then it has Count 3 as well as Count 4. And that verdict form will be brought -- will be sent back with you when you begin your deliberations.

The other thing I want to mention to you is this. The -- the videotapes of the interviews, they are in evidence, so they're available to you. We don't really have a way to set that up for you in the jury room. So, if you want to see those again -- it's up to you whether you want to see them again, but if you want to, if you'll just let the bailiff know that you would like to see the videos and we'll bring you back out and we'll show those to you. Okay?

Now, if you would, step back into the jury room. Don't begin your deliberations at this point. I'm gonna go over with the attorneys and make sure that I've covered everything. If there's anything I need to bring you back out and charge you on, I will do that, but if everything is good, we'll send the verdict form back and then you can begin your deliberations.

Now, we -- we're having lunch sent in for you. So, I'm gonna let y'all make the call. If you want to deliberate

while you eat, you can do that; if you want to stop your deliberations and eat and then resume, that's up to you. I'll just leave that up to you. But let me make this clear. While you're back there during your deliberations, everybody must be present for the deliberations, because you all need to have the benefit of each other's comments. So, if any person has to excuse themselves to use the restroom or something like that, Mr. Chew, just make sure that you stop the deliberations while that person is gone and when they come back, you can begin back. Okay? So, please step into your jury room and await the verdict form before you begin your deliberations.

(REPORTER'S NOTE: Jury exits courtroom @ 1:04 P.M. The following takes place outside the presence of the jury.)

BY THE COURT:

THE COURT: All right. Are there any objections or exceptions to the charge from the state?

MR. RICHARDSON: None from the state, Your Honor.

THE COURT: Anything from the defense?

MR. BROOKER: None from the state, Your Honor, except on the last paragraph, you didn't tell the jury how they should communicate with you should they need to communicate with you by notifying the jury of putting it in writing and that sort of stuff.

THE COURT: Oh.

MR. BROOKER: Putting a note, like writing a note ---

THE COURT: Gotcha.

MR. BROOKER: Just that last paragraph. I think that you were explaining something else and you didn't come back to it.

THE COURT: I just ran away from that, didn't I? Okay.

MR. BROOKER: Other than, I have no exceptions, Your Honor.

THE COURT: All right. And -- and, folks, I usually get you to get with Kay to go over the evidence, but I think the only two things were the videos and I've already told them about that.

Is there any -- and I'll do it loud enough where you'll hear. Any objection to me just poking my head in and instructing them that about the note?

MR. BROOKER: I don't have any objection to it, Your Honor.

THE COURT: Okay. Let me do that, rather than bringing them all the way back out and stuff and then what I'll do is I'll get the two alternates to step out.

MR. BROOKER: Okay.

THE COURT: Okay?

(REPORTER'S NOTE: Court goes to jury room door to address jury concerning contact with the Court.)

THE COURT: Hey, guys, I forgot to mention something to you. Here's the verdict form. If anybody have a question about anything, Mr. Chew, here's a pad and some paper. If you

would, if there's a question, just write it on the pad and knock on the door, let the bailiff know you have a question, and he'll pass it up to me, and then I will either bring you out and respond to it or I'll write my response. Okay?

And also, when you're -- once you're done and you've reached a verdict on each of the charges, just knock on the door and let the bailiff know you have a verdict and then we'll bring you out.

JUROR 5: How about the alternates?

THE COURT: I'm gonna get y'all to come on out.

JUROR 5: Now?

THE COURT: Yes, sir. That will be -- that will be fine. I came into give them that and to get y'all to come on out.

(REPORTER'S NOTE: Alternates enter courtroom.)

THE COURT: Is their lunch here?

CLERK: I just have to go across the street and get it.

THE COURT: All right. Let's go ahead and -- folks, I'm gonna have them go ahead and bring your lunch up. So, like I said, y'all make the call if you want to eat and talk or if you want to eat and begin. All right. We're gonna bring it on over.

And as for my alternates, folks, I want to thank you for your service. Sometimes it's hard to be an alternate, because you sat here all week and you heard everything and you went through everything that the main panel went through, but now,

it's -- I think they're all healthy and can proceed with their deliberations. So, I'm gonna excuse you at this time. I want to thank you for your service. We've had several cases over the last couple of months where we had to actually, something happened with one of our main jurors. I had one where they had a death in their family, another one got sick, and we had to substitute the alternate. So, it's important that you heard everything that they heard, because if someone would've had to've been excused, then I would have had to substitute one of y'all for them. So, I appreciate your work this week. If you need a work excuse, do you know ---

CLERK: Judge, they can go across the street to the clerk's office.

THE COURT: Okay. If you need a work excuse, you can go across to the clerk's office, across the road here, and they can give you one. Okay? And I want to thank you for your service and you're free to go. Thank you.

Yeah, 101, if you need that work excuse across the road there.

COURT REPORTER: Do we need to send these back?

THE COURT: We can send can them back and then they can tell us if they want to watch them.

(REPORTER'S NOTE: Deliberations commence at 1:09 P.M.)

THE COURT: All right. So, what we're gonna do is we're just gonna be at ease. If y'all want to go grab something to

eat and we'll call you if something comes up before you get back.

RECESS - 1:09 P.M.

*******OFF THE RECORD*******

(On the Record - 3:26 P.M.)

VERDICT OF THE JURY:

THE COURT: I'm told that the jury has reached a verdict. I don't know what the verdict is, I'm just told that they have a verdict. So, what I would ask, which is what I ask in every case that I preside over, and that is, you know, any time you have a case, more than likely -- I don't know what the verdict is, but more than likely one side is gonna be okay with the verdict and one side is not gonna be okay with the verdict. So, I don't ever ask anybody to agree with the jury's verdict. All I ask is that you receive it in a respectful manner. So, if -- if you don't think that you're gonna be able to do that, if you think your emotions may be too high or whatever, then I would suggest that you step out of the courtroom while I receive the jury's verdict, because if there are any outbursts or there are any court disturbances, then whoever is involved in that is gonna get -- is gonna get locked up. Okay? The jury, whether you agree or disagree with their verdict, it is their decision and they've worked all week long in this matter and their decision is deserving of being received in a respectful manner. Okay? So, I'm giving you that opportunity

now. If you don't think you can control your emotions, then now is the time to step out, but if you think you're fine, then that's fine, you're welcome to stay.

Is the state ready to receive the jury's verdict?

MR. RICHARDSON: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. BROOKER: Yes, sir, Your Honor.

THE COURT: All right. Please ask the members of the jury to join us.

(REPORTER'S NOTE: Jury enters courtroom @ 3:28 P.M.)

THE COURT: All right. Mr. Chew, has the jury reached a unanimous verdict, sir?

JUROR 29: Yes, sir.

THE COURT: All right. If you'd please pass that to the bailiff for me. Thank you.

All right. Madam Clerk, if you would, I'm gonna get you to publish the jury's verdict.

CLERK: The State of South Carolina versus William Bruce Clark, Jr., indictment number 2019-GS-33-00291. As to Count 1, Minor 2 , criminal sexual conduct with a minor in the first degree, we, the jury, find the defendant, William Bruce Clark, Jr., guilty.

As to Count 2, criminal sexual conduct with a minor in the first degree, we, the jury, find the defendant, William Bruce Clark, Jr., guilty.

As to Count 3, as to Minor 1 , criminal sexual conduct with a minor in the first degree, we, the jury, find the defendant, William Bruce Clark, Jr., not guilty.

As to Count 4, Minor 1 , criminal sexual conduct with a minor in the second degree, we the jury, find the defendant, William Bruce Clark, Jr., not guilty.

Ladies and gentlemen of the jury, if the verdict you have given me is your correct verdict, please signify that by the raising of your right hand.

(REPORTER'S NOTE: Jury unanimous confirms.)

THE COURT: All right. Thank you, ladies and gentlemen. Folks, I want to thank you for your service this week and I want to -- I also want to apologize. There have been times this week that we didn't get started when I told you we would get started. And I want you to understand, that was not the fault of the parties. All the lawyers and the parties, they were here on time every day. One day it was strictly my fault, but I was running late, and then other times, we had other matters that needed to be taken up. So, it's not easy being a juror, because you sit back there and you wonder why aren't we starting, and there's things going on and you don't know what's going on. So, I know that's not easy, but I do want to thank all of you for your service this week. If you need a work excuse ---

CLERK: Room 101 at the clerk's office.

THE COURT: --- Room 101 over at the clerk's office. They can have that for you.

We are going to -- we'll probably just take a short minute here before we get into the sentencing portion of the case. Now, I tell members of the jury, you've worked the case this week. If you would like to stay for that portion, you're welcome to. But if you would like to be excused and leave, you also can do that as well. It's up to you. Just about every single time I have a case, I typically have some jurors stay; I have some jurors leave. There's no rule on that; it's up to you. If you want to remain for that you can and if you would like to be excused and go, you can do that as well.

I do want to say this. If you recall on Tuesday, I told you that state law only requires you to serve on jury duty once every three calendar years. So, if you -- you've earned that exemption. So, that if you get called for jury duty here in State Circuit Court, for the balance of this year, all of 2021 and all of 2022, if you get a summons for jury service here in this court, you can use that exemption and be excused from that service. It is just an exemption; it doesn't mean you're not qualified to serve. So, if you get that summons and you want to serve, I would encourage you to do so, but it is an exemption that is available to you if you decide to use it. Okay? So, we will, in just a few minutes, we will proceed to the sentencing phase. And as I said, if you want

to be excused and leave, feel free to do that. If you want to stay for that, feel free to do that as well.

And lastly, all week long, I've ask you to not talk about the case. I've asked you to not discuss this with any person. That restriction is lifted. So, if your family, friends or loved ones are still curious as to what you've been doing, you can share with them what you've done or what you've heard this week.

Also, you have the right to still not talk about it. So, if someone does come up to you and -- and want to ask you any questions or anything like that, all you have to tell them is you don't want to talk about it. That should end it. If it doesn't you let me know and I'll make sure it ends it. Okay? But you're free, you're under no further restrictions as far as discussing the case. That will be up to you whether you wish to or not. Okay?

Is the state ready to proceed to sentencing?

MR. RICHARDSON: In three minutes.

THE COURT: Okay. And I'm gonna have a talk with y'all's office; that's got to stop. I know why you need the three minutes.

MR. RICHARDSON: Yes, sir.

THE COURT: But, at least when I'm on the bench, get those forms prepared ahead of time. Okay?

So, we'll take a few minutes while that happens.

RECESS - 3:36 P.M.

*******OFF THE RECORD*******

(On the Record - 3:40 P.M.)

MR. RICHARDSON: Judge, I have the sentencing sheets.

THE COURT: Right. Thank you.

All right. Before we -- before we go any further, let me recognize Mr. Brooker. Is there anything from the defense as far as any motions or anything you want me to take up at this time?

MR. BROOKER: There is no post-trial motions, I'm aware of, Your Honor, if they're -- if we have any, I think under the statute, we have 10 days to do it.

THE COURT: Sure.

MR. BROOKER: So, I ---

THE COURT: Yeah. I'll give you that time and if you need it ---

MR. BROOKER: Sure.

THE COURT: --- that's fine.

MR. BROOKER: Thank you, sir.

THE COURT: All right. I'll be happy to hear from the state then as far as sentencing.

SENTENCING:

MR. RICHARDSON: Thank you, Your Honor. As to prior record, he's got a violation of the ABC law in 2003; a criminal domestic violence of a high and aggravated nature in

2004; a driving under suspension in 2007; driving under suspension in 2014; and malicious injury to personal property in 2017.

I have asked the family if anybody wishes to speak and the mother does wish to address the Court with respect to sentencing.

I put the sentence range on the sentencing sheet. This is one of those odd statutes, where you get -- it's 25 or life the way the statute reads, not 25 to life. So, it's kind of an oddity, but that's the way it's written.

But I think Ms. Kelly Clark would like to address you at the appropriate time.

THE COURT: All right. Ms. Clark, I'll be happy to hear from you, ma'am.

MS. CLARK: From here?

THE COURT: You can come up here, if you would.

Yes, ma'am, I'll be happy to hear from you.

MS. CLARK: Okay. From the time I found out that he was hurting my daughters, this has been a nightmare. It was really hard to get them to come forward to tell, you know, because they were scared for their life. So, and then, this has been a very hard journey. You know, my kids are very traumatized. They don't sleep well. They have nightmares. I mean, they've been through so much. And Bruce Clark is a very -- he's very dangerous to society. And I want him, I mean

today it's over, but my kids are still going to have sleepless nights, they're still in counseling and -- you know, there's just been a lot of damage that's been done to them, and I think he should really have to pay for all the damage.

THE COURT: Yes, ma'am.

MS. CLARK: Because, they don't have a childhood; he took their childhood from them.

THE COURT: Okay. Thank you, ma'am. Is that all from the state?

MR. RICHARDSON: Yes, sir.

THE COURT: Mr. Brooker, I'll be happy to hear from you, sir, and if anyone else would like to address the Court, I'll be happy to hear from them.

MR. BROOKER: Yeah, I think she wants to.

Your Honor, this is his mother. But just to give you a little bit about William Clark, Your Honor, a little bit of background information. William is 35 years of age, Your Honor. He is here from Marion, South Carolina. And of course is, is that I think you know his marital history. He's married to Ms. Clark. Of course, they have three children together. He is currently, Your Honor, I think, in a relationship with, I think, Fannie, who is referenced, I think, throughout this trial. And of course, he lives with her, and of course is, is that with her two children. I think one I think is a grown boy around 21 years old. Of course,

the other girl is nine years old. Of course, they living -- they've been together as a family for the last couple of years. He graduated from Marion High School -- excuse me, I'm sorry -- went to Marion High School. Of course, I think he did not graduate. I think he left in the 11th grade. He has a fork lifter's license. He has no physical health problems, Your Honor, that I'm aware of. No mental health problems. And of course, I think the Court has explained what his -- his criminal history was, which is not significant. I think nothing significant within the past 10 years. And of course is, is that I think most of his offenses have been misdemeanor offenses. And, Your Honor, he has always been gainfully employed and I think for as long as I've represented him, he has worked at a number of places. Of course, most of them is construction and/or roofing business, and of course, the most recent is with his father and Bruce Roofing & Construction in Dillon, South Carolina. And of course prior to that, he worked at (inaudible) for five years, and of course is, is that he worked at the Rooftop (spelled phonetically).

And this is always, I think, a difficult part, Your Honor, of any sort of trial and that is the sentencing. But of course, he's looking at a minimum of 25 years and at the age of 35, he'll have to serve those -- he'll have to serve 25 years and that means that he's gonna be roughly around 60, in the neighborhood of 60 when he gets out, I think at 35. I

think that's correct, he will be close to 60. And which is a good -- good chunk of his life. That's a significant chunk of his life. That's gonna be the rest of his 30's, it's gonna be all of his 40's; it's gonna be all of his 50's he has to serve. And I understand the Court has to do a balancing test where the Court tries to figure out a -- an amount of time that the Court thinks is appropriate. And of course is, is that we think that 25 years, of course, I hope Your Honor does, is appropriate. It'll take him away from everything for 25 years. I think now Your Honor has the option of life, but of course is, is that I think although under the circumstances is, is that I think that I think life doesn't benefit him. I think he doesn't teaches him anything that he can't learn in 25 years. If the purpose of Court's punishment to try and teach him a lesson, I think 25 years is long enough to think about these events. I think he, when he comes out, you know, he'll have some life. And of course is, is that definitely, if there's any concern about any issues with respect to the kids is that they will be long grown by the time he gets out, long grown by that time.

There's nothing else that I can say to you, Your Honor. I'll recognize his mother, who is standing behind me. She probably knows him better than I do, and she might want to say a few things, too. I'll ask her and see if she does.

Your Honor, I just talked with her and asked her whether

or not she wanted to speak, and of course is, is that she don't. I think she's broken up about this and I think it's hard enough for me to speak -- that's all I have, Your Honor.

THE COURT: Mr. Clark, you're not -- you're certainly not required to address the Court, but you certainly have the right to if you would like to. So, if you would like to address the Court, I would be happy to hear from you. It's up to you. Okay?

MR. CLARK: I just ask for mercy on me, Judge. That's all.

THE COURT: All right. Mr. Brooker, is there any -- did Mr. Clark spend any time in pretrial incarceration that he would be entitled to credit for?

MR. BROOKER: I think, Your Honor, he spent three months, I believe, that he was incarcerated before he was then released, I think, on home detention, electronic monitoring, and I think -- I think the home detention was he was on house arrest, I think, with the exceptions of work and, you know, that sort of stuff.

THE COURT: All right.

MR. BROOKER: But actual incarceration was three months, I believe.

THE COURT: Mr. Richardson, do you know -- let me see, I might know based on this. Okay. I think I've got it. Thank you. I was just trying to look for that number.

All right. Under indictment number 2019-GS-33-291, the jury found Mr. Clark guilty under Count 1, as well as under Count 2 of the indictment. Those -- both of those charges were allegations of criminal sexual conduct with a minor in the first degree. With the evidence that was presented to the jury, that that -- that sexual conduct was that of anal intercourse, both as to Count 1 as well as to Count 2. So, I find that the jury did in fact find that Mr. Clark was guilty of engaging in anal intercourse with minors under the age of 11 years of age on each of those counts.

And as to Count 1 and Count 2, the sentence of the Court is that you be committed to the State Department of Corrections for a period of 25 years. Those two sentences are to run consecutive to each other. He is to be given credit for the three months that he did serve.

Good luck to you, sir.

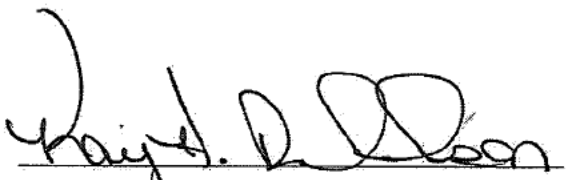
MR. RICHARDSON: Thank you, Your Honor.

ADJOURNED - 3:58 P.M.

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. William Bruce Clark, Jr., held in the Court of General Sessions for Marion County, Marion County Courthouse, Marion, South Carolina, on February 18-21, 2020.

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



Kay H. Richardson
Official Court Reporter

May 26, 2020.

WITNESSES

Robert C Smith — Marion Police Department

David A Richardson

ARREST WARRANT NUMBER

2019GS3300291 2019GS3300291A
2019GS3300291B

2019GS3300291C

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 5/9/19

VERDICT

Foreperson of Petit Jury *Date:*

DOCKET NO. **2019-GS-33-00291**

The State of South Carolina

County of

MARION

FILED

2019 MAY -9 PM 1:11

MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

COURT OF GENERAL SESSIONS

MAY TERM **2019**

THE STATE

vs.

WILLIAM BRUCE CLARK JR

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE (3 COUNTS) & CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE
(3 COUNTS) &
CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

At a Court of General Sessions, convened on MAY 8, 2019 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
CDR: 0385 16-03-0655(A)(1)

That William Bruce Clark Jr did in Marion County, State of South Carolina, between the dates of April 1, 2014 and July 1, 2015 , willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: a minor female , whose date of birth is [redacted]2007, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT TWO- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
CDR: 0385 16-03-0655(A)(1)

That William Bruce Clark Jr did in Marion County, State of South Carolina, between the dates of April 1, 2014 and July 1, 2015, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: a minor female , whose date of birth is 6-25-2006, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

COUNT THREE - CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
CDR: 0385 16-03-0655(A)(1)

That William Bruce Clark Jr did in Marion County, State of South Carolina, between the dates of July 1, 2015 and June 24, 2017, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: a minor female, whose date of birth is 6-25-2006, in violation of Section 16-3-655(A)(1), S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING AN ORIGINAL PART OF THE INDICTMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE (3 COUNTS) AND CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE, WITH THE AFORESAID NAME OF WILLIAM BRUCE CLARK, JR SHOWN THEREON:

COUNT FOUR- CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE

CDR: 0396 16-03-0655(B)

That William Bruce Clark Jr did in Marion County, State of South Carolina, between the dates of June 25, 2017 and November 28, 2017 , willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was between the ages of eleven (11) years and fourteen (14) years of age, to wit: a minor female, whose date of birth is [redacted]-2006, in violation of Section 16-3-655(B), S. C. Code of Laws, 1976, as amended.

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

E.L. Clements III

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

Respectfully Submitted,

RECEIVED
Nov 30 2020
SC Court of Appeals

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 30th day of November, 2020.