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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Pickens County
Honorable Robin B. Stilwell, Circuit Court Judge
S.C. Ct. App. Appellate Case No. 2016-001905

THE STATE, ... PETITIONER,

v.

CHARLES BRANDON RAMPEY, ...RESPONDENT.

APPENDIX

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INDEX

INDEX	i
RECORD ON APPEAL	1
FINAL BRIEF OF APPELLANT	259
FINAL BRIEF OF RESPONDENT	285
COURT OF APPEALS OPINION NO. 2020-UP-245 (Filed August 19, 2020)	324
PETITION FOR REHEARING.....	326
ORDER DENYING PETITION FOR REHEARING	336

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No: 2016-001905

State of South Carolina,

Respondent

v.

Charles Brandon Rampey,

Appellant.

RECORD ON APPEAL

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INDEX

Trial Transcript.....	1-252
Indictment.....	253-254
Court's Exhibit 1.....	255
Certificate of Counsel.....	256

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

COURT OF GENERAL SESSIONS
2016-GS-39-01538

 CCRY

STATE OF SOUTH CAROLINA,
PLAINTIFF,

vs.

TRANSCRIPT OF RECORD

CHARLES BRANDON RAMPEY,
DEFENDANT.

August 31, 2016 - September 1,
2016
Pickens, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE.

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

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Attorney for the Plaintiff

THOMAS BOGGS, ESQ.
Attorney for the Defendant

APRIL P. HERRON
Circuit Court Reporter

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

	<u>Page No.</u>
Opening Statement by Ms. Odom.....	38
Opening Statement by Mr. Boggs.....	41
<u>(PW) DEPUTY VAN MASSINGILL:</u>	
Direct Examination by Ms. Odom.....	44
Cross-Examination by Mr. Boggs.....	46
<u>(PW) KATHRYN HINTON:</u>	
Direct Examination by Ms. Odom.....	48
Cross-Examination by Mr. Boggs.....	55
<u>(PW) <i>Minor</i></u>	
Direct Examination by Ms. Odom.....	58
Cross-Examination by Mr. Boggs.....	73
Redirect Examination by Ms. Odom.....	96
<u>(PW) MARY FRAN CROSSWELL, M.D.:</u>	
Direct Examination by Ms. Odom.....	99
Cross-Examination by Mr. Boggs.....	110
<u>(PW) SHAUNA GALLOWAY-WILLIAMS:</u>	
Direct Examination by Ms. Odom.....	116
Cross-Examination by Mr. Boggs.....	142
<u>(PW) MARVIN NIX:</u>	
Direct Examination by Ms. Odom.....	158
Cross-Examination by Mr. Boggs.....	165
Redirect Examination by Ms. Odom.....	169
Recross-Examination by Mr. Boggs.....	169
<u>(DW) <i>A.M.</i></u>	
Direct Examination by Mr. Boggs.....	176
Cross-Examination by Ms. Odom.....	184
Redirect Examination by Mr. Boggs.....	188
Closing Argument by Ms. Odom.....	191
Closing Argument by Mr. Boggs.....	194
Closing Argument by Ms. Odom.....	206
Charge by the Court.....	221
Verdict of the Jury.....	240
Sentence of the Court.....	249
Certificate of the Reporter.....	252

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(State's Exhibits)			
1	Photograph	161	162
(Defendant's Exhibits)			
1	Photograph	4	76
2	Photograph	4	76
3	Photograph	4	76
4	Photograph	4	76
5	Photograph	4	76
6	Photograph	4	76
7	Photograph	4	76
8	Photograph	4	76
(Court's Exhibits)			
1	Jury Note	236	
2	Jury Note	236	

All Exhibits were retained by the Clerk of Court for Pickens County.

P R O C E E D I N G S

(WHEREUPON, Defendant's Exhibit Nos. 1 through 8 were marked for identification.)

THE COURT: All right, ladies and gentlemen, welcome back. I know some of you are anxious to get back and have the opportunity to sit on a jury. A good number of you, I think probably the majority of you sat through jury qualification the first time around, okay, so you kind of have an idea of the way things are going to happen and the way things will go. So if you sat through it the first time, you get to hear me say some of the same things again. And I apologize to you in advance for that, but each case requires the same deliberation and the same pace and all the charges that I did the first time, okay.

Now, ladies and gentlemen, we are about to begin the case of the State of South Carolina vs. Charles Brandon Rampey. Now, I am going to read for you the indictments, the charging papers that the State has prepared. Now, understand the charging papers and/or the indictments are simply allegations, allegations against the Defendant in this case. This is the document which, essentially, begins the prosecution of the case.

Now, when I read this to you, I want to make sure that you do not think that I am asserting to you or

1 telling you what the facts in this case are, because I am
2 not. I have no position with regard to what the facts are
3 in this case. And these indictments will not tell you
4 what the facts are. They simply tell you the allegations
5 that the State has made against the Defendant.

6 In this case, just like in any other case that may
7 come before the Court in the United States of America in
8 the State of South Carolina, in the County of Pickens, a
9 defendant is presumed innocent, presumed innocent and
10 retains that presumption of innocence until such time as
11 12 deliberating jurors determines that the State has met
12 its burden of proving each and every element of the
13 offense beyond a reasonable doubt. The State has the
14 burden of proving the allegations. As we stand here right
15 now, the Defendant, Mr. Rampey, retains his presumption of
16 innocence and he won't lose it until the State has met its
17 burden of proof to the satisfaction as determined by 12
18 juror.

19 So, having said that, ladies and gentlemen, I'm going
20 to read the allegations on the indictments for you. The
21 first case is State of South Carolina vs. Charles Brandon
22 Rampey, and it is case number 2016-GS-39-1538. And that
23 is an indictment for criminal sexual conduct with a minor
24 in the third degree. In this indictment, ladies and
25 gentlemen, the State would allege that Mr. Rampey did in

1 Pickens County on or about and between the dates of
2 November 1st, 2012, and December 31st, 2013, being over
3 the years of age of 14, did willfully and lewdly commit or
4 attempt a lewd and lascivious act upon or with the body of
5 its parts of HMG, a child under the age of 16.

6 Ladies and gentlemen, in the second indictment that
7 is before you today, and that is State vs. Charles Brandon
8 Rampey, it is indictment number 2015-GS-39-1160. And that
9 is an indictment for criminal sexual conduct with a minor,
10 second degree. In that indictment, ladies and gentlemen,
11 the State would allege that Mr. Rampey did in Pickens
12 County between the dates of November 1st, 2012, and
13 December 31st, 2013, commit a sexual battery upon HMG, who
14 was 14 years of age or less, but, at least, 11 years of
15 age at the time.

16 Now, ladies and gentlemen, before we get started, I
17 will ask you, is there anyone that has any prior
18 knowledge, any prior disposition, any prior opinion
19 regarding the parties or the allegations in this case?

20 (There was no response.)

21 THE COURT: All right. Let the record reflect no
22 affirmative response.

23 Ladies and gentlemen, as I've told you already, the
24 Defendant in this case is Mr. Charles Brandon Rampey. I
25 will ask you, is there anyone among you who has any

1 personal, professional or family relationship with
2 Mr. Rampey?

3 (There was no response.)

4 THE COURT: Ladies and gentlemen of the jury,
5 Mr. Rampey is represented by Mr. Thomas Boggs, a lawyer
6 license to practice in the State of South Carolina. Is
7 there anyone among you who has a personal, professional or
8 family relationship with Mr. Boggs?

9 (There was no response.)

10 THE COURT: Ladies and gentlemen, Ms. Shannon Odom of
11 the Thirteenth Circuit Solicitor's Office is prosecuting
12 this case on behalf of the State. Is there anyone among
13 you who has a personal, professional, or family
14 relationship with Ms. Odom or anyone who is employed by
15 the Thirteenth Circuit Solicitor's Office?

16 (There was no response.)

17 THE COURT: All right. Let the record reflect no
18 affirmative response.

19 Ladies and gentlemen, here is a list of potential
20 witnesses that may be called to testify in this case --

21 MR. BOGGS: Your Honor?

22 THE COURT: Yes, sir.

23 MR. BOGGS: Excuse me, I hate to interrupt you.
24 We're striking number two on the Defendant's list. We're
25 removing it.

1 THE COURT: I got you. I understand.

2 MR. BOGGS: I'm sorry.

3 THE COURT: No, no, you're okay. I want to make sure
4 that -- okay.

5 All right, ladies and gentlemen, here's a list of
6 potential witnesses that may be called to trial in this
7 case. Now, all of these witnesses may not be called, some
8 of them may be called, there potentially could be more.
9 But as we anticipate right now, these are some potential
10 witnesses. The question is going to be the same. Do you
11 have any personal, professional, family relationship with
12 any of the following people: Brandon Rampey; Tami Rampey;
13 Kathy Hinton; Allie Mosteller; ~~Minor~~ ; ~~step sister~~ ;
14 ; Ty Murry of DSS; Dr. Mary Fran Crosswell; Kathryn
15 Hinton; Teddi Palis, former Pickens County Sheriff's
16 Office; Deputy Van Massingill, Pickens County Sheriff's
17 Office; Captain Marvin Nix, Pickens County Sheriff's
18 Office; and Shauna Galloway-Williams of the Julie
19 Valentine Center.

20 Any among you have a personal, professional or family
21 relationship with any of these persons?

22 Yes, ma'am?

23 PROSPECTIVE JUROR: I know Ty Murry professionally
24 through work.

25 THE COURT: Okay, your name and jury number?

1 PROSPECTIVE JUROR: No. 18, Traci Brockman.

2 THE COURT: Okay. And knowing this person, do you
3 feel like you can still be fair and impartial in this
4 trial, ma'am?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Okay. Thank you for telling me, I
7 appreciate it.

8 Anyone else?

9 (There was no response.)

10 THE COURT: All right, ladies and gentlemen, is there
11 anyone among you who is a member of an organization which
12 advocates for criminal prosecution or victim's rights or
13 is a contributor to any of those types of organizations?
14 And by example, I mean organizations like MADD, Mothers
15 Against Drunk Driving, SADD, Students Against Drunk
16 Driving, or any other like organization, again, that
17 advocate for criminal prosecution or for victim's rights?

18 (There was no response.)

19 THE COURT: All right. Let the record reflect no
20 affirmative response.

21 Ladies and gentlemen, I have a couple of questions
22 for you that may be sensitive to you, okay. So I need --
23 you're all under oath, obviously, and I need honest
24 answers from you. But if you don't want to answer out
25 loud if you need to respond in the affirmative to any of

1 these questions, then come down and we'll come right over
2 here next to the court reporter with the lawyers and you
3 can talk to me in a more intimate setting, okay?

4 Is there anyone among you who has been accused of,
5 investigated or charged with committing a sex-related
6 offense?

7 (There was no response.)

8 THE COURT: Is there anyone among you who has a
9 family member or a close friend who has been accused of,
10 investigated or charged with committing a sex-related
11 offense?

12 (There was no response.)

13 THE COURT: Ladies and gentlemen, has any member of
14 the jury panel -- I've got two copies of the same voir
15 dire.

16 You gave me two copies, didn't you?

17 MS. ODOM: Yes.

18 THE COURT: Yes, sir?

19 PROSPECTIVE JUROR: You want me to come up there?

20 THE COURT: You can say it right there or you can
21 wait and come up, it's entirely up to you.

22 PROSPECTIVE JUROR: I've got a nephew who is accused
23 of sexual assault on a minor.

24 THE COURT: Your name and juror number?

25 PROSPECTIVE JUROR: Jimmy Bagwell, No. 6.

1 THE COURT: Do you think you can still be a fair and
2 impartial juror given that fact, sir?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Okay, thank you for telling me.

5 Anyone else?

6 (There was no response.)

7 THE COURT: Is there any member of the jury panel or
8 your immediate family who's been the victim of sexual
9 abuse?

10 (Jurors stand.)

11 THE COURT: Y'all can tell me now or you can come up.
12 It's entirely up to you, whatever you feel comfortable
13 doing.

14 PROSPECTIVE JUROR: I have a sister that she was
15 molested as a child, around age four and five, repeatedly,
16 that was in the State of Florida. Then she was raped, if
17 you will, as a teenager.

18 THE COURT: Okay. Do you feel like -- what's your
19 name and juror number, first of all?

20 PROSPECTIVE JUROR: Sara Garrett, No. 55.

21 THE COURT: Okay. You still feel like you can be a
22 fair and impartial in this trial, ma'am?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay, I thank you for telling me.

25 Now, you don't have to tell me that much detail. You

1 can really just say yes or no and explain to the extent
2 that you want to. These are sensitive issues, I know, and
3 I'm not looking to pry into your personal lives. I don't
4 need to know the details. It's important, though, for the
5 attorneys to be able to calculate their strikes based on
6 your experiences, okay. This isn't an inquisition. I
7 don't want to make anybody uncomfortable, okay.

8 Someone else?

9 PROSPECTIVE JUROR: Yeah, Carolinda Mathews, No. 88.
10 I was a victim years ago.

11 THE COURT: Okay. Could you still be a fair and
12 impartial juror in this trial?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you for letting me know, I
15 appreciate it.

16 Has any member of the jury panel or your immediate
17 family been a victim of child abuse?

18 (There was no response.)

19 THE COURT: Okay. All right. Ladies and gentlemen,
20 is there anyone among you who needs to come up and talk to
21 me? Anybody?

22 You do? Okay. Let me ask one more question and I'm
23 going to talk to you.

24 Is there anyone among you who for whatever reason
25 feels as though you cannot be a fair and impartial juror

1 in the trial of this case?

2 (There was no response.)

3 THE COURT: Okay. All right, I'm going to come down
4 and we'll talk, okay.

5 Then everybody else, just hold tight. After we're
6 done, we'll go into jury qualification, okay.

7 Stand this way so your voice carries this way.

8 PROSPECTIVE JUROR: I lost my son a few years ago.

9 THE COURT: Yes, ma'am.

10 PROSPECTIVE JUROR: I just can't handle details like
11 this. I do have a family member that has been through
12 that, so.

13 THE COURT: What's your name and juror number?

14 PROSPECTIVE JUROR: Davinia Goddard, 63.

15 THE COURT: Okay, 63. Okay. Do you think you can
16 serve on this jury or is it too difficult for you?

17 PROSPECTIVE JUROR: It's too difficult.

18 THE COURT: Okay.

19 So No. 63, I'm going to strike her for cause, okay.

20 No worries. Okay.

21 THE COURT: All right.

22 PROSPECTIVE JUROR: Judge?

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: Can I come talk?

25 THE COURT: I'm sorry, yeah, yeah, come on up. I

1 apologize.

2 PROSPECTIVE JUROR: No problem.

3 THE COURT: Wait for Mr. Boggs to get here so he can
4 hear what we're saying.

5 Yes, sir.

6 PROSPECTIVE JUROR: I have two daughters that were
7 sexually abused when they were 11 and 12 by my ex-wife's
8 husband.

9 THE COURT: Right.

10 PROSPECTIVE JUROR: It was 40 years ago. I don't see
11 a problem.

12 THE COURT: As long as you're comfortable. Name and
13 jury number just for the record?

14 PROSPECTIVE JUROR: Duane Reller, R-E-L-L-E-R, No.
15 116.

16 THE COURT: Okay. All right, thank you. I
17 appreciate you telling me.

18 Anybody else?

19 (There was no response.)

20 THE COURT: All right. Counsel, do you have any
21 additional questions in voir dire that you would like me
22 to pose to this jury panel?

23 MS. ODOM: No, sir.

24 MR. BOGGS: None from the Defense, Your Honor.

25 THE COURT: All right, ladies and gentlemen, we're

1 going to proceed to jury strikes now. Those of you who
2 have been here before have been through it before. You
3 know that it's --

4 For these offenses, does the Defense get 10 or five
5 strikes.

6 MR. BOGGS: Ten.

7 THE COURT: Okay. All right.

8 That's your understanding of it as well?

9 MS. ODOM: Yes, sir.

10 THE COURT: So the State will have five strikes and
11 the Defense will have 10.

12 So ladies and gentlemen, what will happen is the
13 Clerk of Court is going to read off your name from a
14 randomly-generated list of jurors. No particular order.
15 When he reads your name, I want you to stand up. And the
16 attorneys are going to exercise strikes or peremptory
17 challenges. They can strike for just about any reason.
18 What you will hear from -- if you hear from both
19 attorneys, from both attorneys either please seat the
20 juror or please swear the jury, then bring all your
21 belongings, everything you have and have a seat in the
22 jury box. If you hear from either side, please excuse the
23 juror or please strike the juror from the trial of this
24 case, then you will have been stricken and just take your
25 seat back and we'll go on the next juror.

1 Now, we'll have 12 seated jurors. And we're going to
2 try to get two alternates, although we may not have
3 enough. We may have to just be content with one
4 alternate. It just depends on how many strikes are
5 exercised, okay.

6 So if you are chosen as an alternate, then what that
7 means is you may or may not be on the deliberating jury.
8 It depends on whether anyone is disqualified during the
9 course of the case. But if you're an alternate juror,
10 your role is just as significant and important as the
11 seated jurors because you may at any point in time have to
12 assume one of the 12 juror's positions, okay.

13 So having said that, I'm going to turn it over to the
14 Clerk of Court to exercise strikes.

15 THE CLERK: Juror No. 124, Beverly J. Rogers.

16 (Beverly J. Rogers, a black female, came forward.)

17 THE CLERK: What says the State?

18 MS. ODOM: Please present Ms. Rogers.

19 THE CLERK: And the Defense?

20 MR. BOGGS: Swear the juror.

21 THE CLERK: If you would come forward, please, ma'am,
22 and have a seat in the jury box.

23 Juror No. 88, Carolinda C. Mathews.

24 (Carolina C. Mathews, a white female, came forward.)

25 THE CLERK: What says the State?

1 MS. ODOM: Please present Ms. Matthews.

2 THE CLERK: And the Defense?

3 MR. BOGGS: Excuse the juror from the case.

4 THE CLERK: If you return to your seat, please,
5 ma'am.

6 Juror No. 32, Nancy R. Cooper.

7 (Nancy R. Cooper, a white female, came forward.)

8 THE CLERK: What says the State?

9 MS. ODOM: Please present Ms. Cooper.

10 THE CLERK: And the Defense?

11 MR. BOGGS: Excuse her from the case.

12 THE CLERK: If you will return to your seat, please,
13 ma'am.

14 Juror No. 159, Teresa G. Yearwood.

15 (Teresa G. Yearwood, a white female, came forward.)

16 THE CLERK: What says the state?

17 MS. ODOM: Please present Ms. Yearwood.

18 THE CLERK: And the Defense?

19 MR. BOGGS: Excuse the juror from the case.

20 THE CLERK: If you would return to your seat, please,
21 ma'am.

22 Juror No. 134, Amy S. Smith.

23 (Amy S. Smith, a white female, came forward.)

24 THE CLERK: What says the State?

25 MS. ODOM: Please present Ms. Smith.

1 THE CLERK: And the Defense?

2 MR. BOGGS: Excuse the juror.

3 THE CLERK: If you would return to your seat, please,
4 ma'am.

5 Juror No. 74, Joni K. Hurley.

6 (Joni K. Hurley, a white female, came forward.)

7 THE CLERK: What says the State?

8 MS. ODOM: Please present the juror.

9 THE CLERK: And the Defense?

10 MR. BOGGS: Excuse the juror.

11 If you would return to your seat, please, ma'am.

12 Juror No. 129, Brandi T. Simmons.

13 (Brandi T. Simmons, a white female, came forward.)

14 THE CLERK: What says the State?

15 MS. ODOM: Please present Ms. Simmons.

16 THE CLERK: And the Defense?

17 MR. BOGGS: Please excuse the juror.

18 THE CLERK: If you would return to your seat, please,
19 ma'am.

20 Juror No. 110, Rodney S. Phibbs, III.

21 (Rodney S. Phibbs, III, a white male, came forward.)

22 THE CLERK: What says the State?

23 MS. ODOM: Please present the juror.

24 THE CLERK: And the Defense?

25 MR. BOGGS: Swear the juror.

1 THE COURT: If you would come forward, please, sir,
2 and have a seat in the jury box.

3 Juror No. 122, Christopher P. Robinson.

4 (Christopher P. Robinson, a white male, came
5 forward.)

6 THE CLERK: What says the State?

7 MS. ODOM: Please present Mr. Robinson.

8 THE CLERK: And the Defense?

9 MR. BOGGS: Swear the juror.

10 THE CLERK: If you would come forward, please, sir,
11 and have a seat in the jury box.

12 Juror No. 55, Sara J. Garrett.

13 (Sara J. Garrett, a white female, came forward.)

14 THE CLERK: What says the State?

15 MS. ODOM: Present Ms. Garrett.

16 THE CLERK: And the Defense?

17 MR. BOGGS: Excuse the jury from this case.

18 THE CLERK: If you would return to your seat, please,
19 ma'am.

20 Juror No. 147, Dana J. West.

21 (Dana J. West, a white female, came forward.)

22 THE CLERK: What says the State?

23 MS. ODOM: Please present the juror.

24 THE CLERK: And the Defense?

25 MR. BOGGS: Swear the juror.

1 THE CLERK: If you would come forward, please, ma'am,
2 and have a seat in the juror box.

3 Juror No. 82, Felicia L. Leese.

4 (Felicia L. Leese, a Hispanic female, came forward.)

5 THE CLERK: What says the State?

6 MS. ODOM: Please present Ms. Leese.

7 THE CLERK: And the Defense?

8 MR. BOGGS: Excuse the juror from this case.

9 THE CLERK: If you would return to your seat, please,
10 ma'am.

11 Juror No. 103, Jimmy E. Nolan.

12 (Jimmy E. Nolan, a white male, came forward.)

13 THE CLERK: What says the State?

14 MS. ODOM: Please present the juror.

15 THE CLERK: And the Defense?

16 MR. BOGGS: Swear the juror.

17 THE CLERK: If you would come forward, please, sir,
18 and have a seat in the jury box.

19 Juror No. 117, Sarah F. Rice.

20 (Sarah F. Rice, a white female, came forward.)

21 THE CLERK: What says the State?

22 MS. ODOM: Please present the juror.

23 THE CLERK: And the Defense?

24 MR. BOGGS: Swear the juror.

25 THE CLERK: If you would come forward, please, ma'am,

1 and have a seat in the jury box.

2 Jury No. 6, Jimmy L. Bagwell.

3 (Jimmy L. Bagwell, a white male, came forward.)

4 THE CLERK: What says the State?

5 MS. ODOM: Please excuse the juror from the trial of
6 this case.

7 THE CLERK: Okay. If you would return to your seat,
8 please, sir.

9 Juror No. 113, Richard A. Powell.

10 (Richard A. Powell, a white male, came forward.)

11 THE CLERK: What says the State?

12 MS. ODOM: Please present the juror.

13 THE CLERK: And the Defense?

14 MR. BOGGS: Swear the juror.

15 THE CLERK: If would come forward, please, sir, and
16 have a seat in the jury box.

17 Juror No. 116, Duane F. Reller.

18 (Duane F. Reller, a white male, came forward.)

19 THE CLERK: What says the State?

20 MS. ODOM: Please present Mr. Reller.

21 THE CLERK: And the Defense?

22 MR. BOGGS: Excuse the juror from this case.

23 THE CLERK: If you would return to your seat, please,
24 sir.

25 Juror No. 26, Nikolas L. Chapman.

1 (Nikolas L. Chapman, a white male, came forward.)

2 THE CLERK: What says the State?

3 MS. ODOM: Please present the juror.

4 THE CLERK: And the Defense?

5 MR. BOGGS: Swear the juror.

6 THE CLERK: If you would come forward, please, sir,
7 and have a seat in the jury box.

8 Juror No. 128, David R. Sias.

9 (David R. Sias, a white male, came forward.)

10 THE CLERK: What says the State?

11 MS. ODOM: Please present the juror.

12 THE CLERK: And the Defense?

13 MR. BOGGS: Swear the juror.

14 THE CLERK: If you would come forward, please, sir,
15 and have a seat in the jury box.

16 Juror No. 43, Gregory D. Durham.

17 (Gregory D. Durham, a white male, came forward.)

18 THE CLERK: What says the State?

19 MS. ODOM: Please present the juror.

20 THE CLERK: And the Defense?

21 MR. BOGGS: Swear the juror.

22 THE CLERK: Would you come forward, please, sir, and
23 have seat in the jury box.

24 Juror No. 50, Vincent W. Fortgang.

25 (Vincent W. Fortgang, a white male, came forward.)

1 THE CLERK: What says the State?

2 MS. ODOM: Please excuse the juror.

3 THE CLERK: If you would return to your seat, please,
4 sir.

5 Juror No. 40, Gregory J. Dodgens.

6 (Gregory J. Dodgens, a white male, came forward.)

7 THE CLERK: What says the State?

8 MS. ODOM: Please excuse the juror.

9 THE CLERK: Would you return to your seat, please,
10 sir.

11 Juror No. 76, Robert S. Keith.

12 (Robert S. Keith, a white male, came forward.)

13 THE CLERK: What says the State?

14 MS. ODOM: Please present the juror.

15 THE CLERK: And the Defense?

16 MR. BOGGS: Swear the juror.

17 THE CLERK: If you would come forward, please, sir,
18 and have a seat in the jury box.

19 Juror No. 39, Sheila N. Dobson.

20 (Sheila N. Dobson, a white female, came forward.)

21 THE CLERK: What says the State?

22 MS. ODOM: Please present the juror.

23 THE CLERK: And the Defense?

24 MR. BOGGS: Excuse the juror from the case.

25 THE CLERK: Return to your seat, please, ma'am.

1 Juror No. 135, Brian M. Smith.

2 (Brian M. Smith, a white male, came forward.)

3 THE CLERK: What says the State?

4 MS. ODOM: Please present the juror.

5 THE CLERK: And the Defense?

6 MR. BOGGS: Swear the juror.

7 THE CLERK: Okay. If you would come forward, please,
8 sir, and have seat in the jury box.

9 THE COURT: All right. Counsel, we're going to
10 select two alternates collectively. The Defense gets two
11 strikes, the State gets one. We have seven remaining
12 jurors.

13 Go ahead.

14 THE CLERK: Juror No. 37, Mark A. Dent.

15 (Mark A. Dent, a white male, came forward.)

16 THE CLERK: What says the State?

17 MS. ODOM: Please present the juror.

18 THE CLERK: And the Defense?

19 MR. BOGGS: Swear the juror.

20 THE CLERK: If you would come forward, please, sir,
21 and have a seat in the jury box.

22 Juror No. 118, Katherine E. Richey.

23 (Katherine E. Richey, a white female, came forward.)

24 THE CLERK: What says the State?

25 MS. ODOM: Please present the juror.

1 THE CLERK: And the Defense?

2 MR. BOGGS: Excuse the juror from the case.

3 THE CLERK: If you would return to your seat, please,
4 ma'am.

5 Juror No. 114, Andrew D. Rausch.

6 (Andrew D. Rausch, a white male, came forward.)

7 THE CLERK: What says the State?

8 MS. ODOM: Please present the juror.

9 THE CLERK: And the Defense?

10 MR. BOGGS: Swear the juror.

11 THE CLERK: If you would come forward, please, sir,
12 and have seat in the jury box.

13 THE COURT: All right, Counsel, any matters of law or
14 issues to take up with respect to the qualification and/or
15 selection of this jury?

16 State?

17 MS. ODOM: No, Your Honor.

18 THE COURT: From the Defense?

19 MR. BOGGS: None from the Defense, Your Honor.

20 THE COURT: All right, good enough.

21 All right, ladies and gentlemen, for those of you who
22 weren't selected, I extend my condolences. I wish you had
23 the opportunity to serve. This is the last -- this should
24 be the last trial that we pick a jury for this week, so I
25 probably won't see you again unless something very

1 unforeseen happens. I hope you have a great remainder of
2 your week and have a great weekend as well.

3 I appreciate your service. I recognize that y'all
4 didn't serve on a jury, but understand, we moved a lot of
5 cases this week by way of plea court downstairs and trial
6 court up here. So simply by virtue of you being here,
7 we've gotten a lot of work done. I promise you it would
8 not have happened but die y'all being ready and available
9 to preside over cases. So you've accomplished a lot and I
10 do appreciate it. You've been a great help to me, I can
11 assure you.

12 So I'm going to ask you to call back one more time
13 tonight, okay, just in case, just in case. I anticipate
14 that that message that you call after 6:00 tonight here
15 will say you're dismissed for the remainder of the week.
16 But just in case, I'm going to ask you to call back one
17 more time. Have a great day.

18 (WHEREUPON, the jury venire was excused at
19 approximately 1:05 p.m.)

20 THE COURT: Counsel, y'all come up real quick.

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: Okay, I know that before we had started
23 the case, y'all had -- we talked about several matters,
24 one of them was the sequestration, okay. And I did
25 indicate to you that I would grant an order of

1 sequestration and I'm hereby granting it on the record. I
2 can't -- understand from where I sit, I can't police an
3 order of sequestration because I don't know who's
4 testifying and who's not. A lot of people may come in and
5 out of the courtroom and I don't know if they're
6 perspective witnesses. So y'all are charged with the
7 responsibility of policing the order of sequestrations.

8 Are all of the witnesses in the courtroom now?

9 MS. ODOM: All the witnesses who aren't allowed to be
10 in the courtroom for the State are out of the courtroom.

11 THE COURT: Okay. Good enough.

12 All right, ladies and gentlemen, I know I extended
13 condolences to the jurors who didn't get selected for the
14 jury, which means that I need to extend to you
15 congratulations. I'm looking forward to the opportunity
16 to work with you on this case. I anticipate this should
17 be a fairly short case. I hope it will be done tomorrow.
18 As a matter of fact, I expect that it will be done
19 tomorrow.

20 Now, when we start the trial of a case, I find that
21 it's helpful for me to tell the jury, first of all, what
22 your role is as jurors, what my role is as the judge, then
23 the process and procedure for going through this case. So
24 let's start first and foremost with your role as jurors.

25 As jurors in the trial of the case, you are the

1 judges of the facts in the case. You will determine, your
2 sole and exclusive authority and responsibility, what the
3 facts are in the case. You will determine what those
4 facts are based on the evidence that's presented at trial.

5 Now, you'll see evidence presented in this trial in
6 -- perhaps, in several forms. I don't know what type of
7 evidence you're going to receive. I haven't seen it. I'm
8 in the same position that y'all are. I read the
9 indictments and that was the first time I had ever seen
10 them. So you and I are in the same exact position with
11 regard to this case. We're going to be seeing the
12 evidence for the first time.

13 So, ladies and gentlemen, evidence can take any
14 number of forms. It can be evidence from witnesses who
15 take the stand and testify. It could be documents which
16 are submitted into the record. It could be audiotapes,
17 videotapes. It can be physical objects placed into the
18 record. You can receive evidence in any number of ways.
19 And you'll look at that evidence and you'll decide from
20 that evidence what the facts are in the case using both
21 your common sense and your abilities of observation and
22 your auditory abilities.

23 Now, you will take that and at the end of the case,
24 you will apply the law as I give it to you to the facts as
25 you determine them to be to come to your determination in

1 this case. Again, your determination will be whether the
2 State has met its burden of proving each and every element
3 of each offense beyond a reasonable doubt. Until 12 of
4 you determine that the State has met that burden of proof,
5 then the Defendant in the case retains the presumption of
6 innocence.

7 Now, I've told you that y'all will apply the law to
8 the case and law to the facts as you find them to be.
9 Now, I'm the judge of the law, which means I'll be charged
10 with the responsibility of telling you what the law is.
11 The reason I don't give you a full charge on the law on
12 the front end is because I don't know what the evidence is
13 going to be. So I'm not in a position to tell you exactly
14 and precisely what the law will be as it relates to
15 evidence because I'm like y'all, I haven't seen it yet.

16 But, essentially, what I'll do in this case is, first
17 of all, give you the law at the end of the case. During
18 the conduct of the trial, I'm the person who makes sure
19 that we follow the law, the rules of procedure and the
20 rules of evidence. So, if you will, I'm the umpire. I'm
21 the objective referee. I'm just calling balls and
22 strikes. I'm going to make sure we stay on track and that
23 we're not going outside of what may be considered relevant
24 evidence.

25 Now, during the course of the trial while I am

1 fulfilling that responsibility, the lawyers may make
2 objections, they may make motions. Now, it is incumbent
3 upon me to rule on those motions, so I'm going to rule for
4 or against a party. There are two parties and they're
5 both taking issue with something. I'm going to side with
6 one said or the other. But understand that when I rule on
7 an objection or a motion, don't take from that that I have
8 a preference or a bias either way. I truly don't. I'm
9 just making an objective decision based on my
10 understanding of the law and rules of evidence. I don't
11 have a bias either way. I don't have a dog in this fight.
12 My only concern is that both of these parties, the State
13 and the Defendant, get a fair trial. And by extension,
14 then you get a fair trial because your time is valuable
15 and it's important that we get this right the first time
16 around. So as we go through the trial, again, I will be
17 objective and unbiased and I will try to make objective
18 appropriate rulings with regard to the law and with regard
19 to the motions that are posed.

20 Now, the way this will start is after I finish giving
21 you a short opening statement to kind of give you an idea
22 of where we're going, then the parties will have the
23 opportunity to offer opening statements to you. Opening
24 statements are not evidence. Those are simply remarks by
25 each side. The attorneys are, essentially, introducing

1 themselves and their theory of the case. Generally
2 speaking, they're very short and are intended, again, not
3 to tell you the entire case, not to try the case, but to
4 introduce themselves and their theory of the case. That,
5 again, is not evidence. It's argument and persuasion.

6 After the parties have had the opportunity to make
7 opening statements to you, then the State will have the
8 opportunity to begin putting its case into the record.
9 Ordinarily, what happens is the State is going to call a
10 witness to the stand. The witness will come take the
11 stand, take the oath of a witness and then testify.
12 That's evidence. And during the course of that witness's
13 testimony, the State may be presenting documents,
14 audiotapes, videotapes, objects, any number of things
15 which may be admitted into the record as evidence. After
16 the State has examined that witness, then the Defense will
17 have the opportunity to examine that very same witness.
18 And again, the Defense can introduce evidence in that
19 manner as well by admitting documents, tapes, audiotapes,
20 but isn't required to. The Defense isn't required to.
21 After one witness is gone, the next will be called and
22 we'll go through the same process.

23 After the State has called all of its witnesses to
24 the stand, then the State will rests. The Defense will
25 then have the opportunity at its discretion to put a case

1 into the record. So they would then call witnesses,
2 examine those witnesses, introduce evidence and the State
3 would have the opportunity to cross-examine that witness.
4 After the State has exhausted of all its witnesses, then
5 the State under some circumstances may call witnesses in
6 reply. It doesn't happen real often, but if it does,
7 you'll know. Usually, that's very short and surgical,
8 intended to respond to something the Defense has put into
9 the record.

10 After you've heard all of the evidence to be
11 presented in the case, then we go to closing arguments.
12 Closing arguments are like opening statements in that they
13 are not evidence. That is simply the attorneys arguing
14 and commenting on the evidence that has been presented in
15 an attempt to persuade you to their respective side.

16 After you've heard closing arguments from each side,
17 then I'll give you a closing charge on the law. After
18 I've heard everything and you've heard everything, I'll
19 give the jury a closing charge on the law.

20 Now, ladies and gentlemen, at that point, I'll send
21 you back to your jury room and you can begin your
22 deliberations. I expect that will be some time either
23 late tomorrow morning or early tomorrow afternoon. That's
24 my expectation right now. I don't know that for sure, but
25 that's my expectation.

1 Don't begin any deliberations until such time as I
2 tell you to, okay. We're going to take in this case
3 breaks. For instance, we're going to go home tonight,
4 obviously. We're going to take some breaks probably this
5 afternoon just to refresh. Don't discuss the case. Don't
6 discuss what you thought about a witness, don't discuss
7 whether you thought it was believable or not believable.
8 Don't discuss anything about the case. Because you know
9 from your own personal experience and your own common
10 sense that you cannot begin to make any important decision
11 until you've heard all of the evidence that bears upon the
12 decision.

13 The same is true in life, you know that. If you had
14 a brother, a sister, a son, a parent, somebody who's come
15 to you and told you a story and you were absolutely
16 convinced of it when you heard that story at first
17 impression. But then later on, you heard the other side
18 of the story and it put it in a different perspective.
19 Same is true in court. It's important that you hear
20 everything before you make up your mind, before you begin
21 to make up your mind about the case. So wait until I give
22 you instructions to begin your deliberations.

23 Also, when you go home tonight, your spouse, your
24 friend, your significant other, whoever, is going to
25 invite you to discuss the case. What are you doing? What

1 kind of case is it? What happened? Tell me what they
2 said. Resist the temptation. Okay. Don't do it.
3 Because this is what happens, they're going to ask you a
4 question that may seem very innocent at first. You're
5 going to answer. And then if your spouse is like my
6 spouse, they're going to ask you another question.
7 They're never going to be satisfied with the first one,
8 right. So you're going to start making decisions about
9 what you saw. And, you know, that's a form of
10 deliberations and you're doing it with somebody who's
11 outside the jury. So don't discuss the case with anyone,
12 okay.

13 When you go home, also, don't do any self-help.
14 Don't get on the computer and go to the online internet
15 and see if you can find out some information about this
16 case. I suspect that you wouldn't be able to, but don't
17 do it. Because the only thing that is relevant to your
18 consideration in this case is the evidence that is
19 submitted in accordance with the law and the rules in this
20 case in this courtroom.

21 Okay. So, ladies and gentlemen, as I told you, we're
22 going to take routine breaks, every hour to hour and a
23 half. It's all going to be based on witnesses, how many
24 witnesses we have, when those witnesses stop, when is a
25 good time for us to stop. If at any point in time during

1 this trial, any of you need to take a break, let me know
2 or let the bailiff know. It doesn't matter if we've been
3 back on the record for two minutes, you let me know
4 because y'all are the 14 most important people in this
5 courtroom right now. It's much more important that you're
6 listening to the evidence and paying attention than
7 thinking boy, I wish they'd shut up so I can take a break.
8 So y'all let me know and we'll take a break.

9 All right. So, ladies and gentlemen, we're about to
10 start with opening statements.

11 And let me ask you, Ms. Odom, you have -- how many
12 witnesses do you think you're going to have?

13 MS. ODOM: Seven.

14 THE COURT: Fairly short witnesses, most of them?

15 MS. ODOM: Some are and some aren't, about half and
16 half.

17 THE COURT: All right, good enough.

18 And Mr. Boggs, how many witnesses to you anticipate
19 right now that you have?

20 MR. BOGGS: Your Honor --

21 THE COURT: And I won't hold you to it, obviously.

22 MR. BOGGS: I don't anticipate more than one.

23 THE COURT: Okay. So you've heard that, ladies and
24 gentlemen. Eight witnesses, okay, eight witnesses. And
25 we'll go through those as quickly as we can, as quickly as

1 possible.

2 Okay. So I'm going to ask you right now to take a
3 break. There are two matters of law that I need to take
4 up with the attorneys before we begin opening statements.
5 And those will help us go a little bit more quickly and
6 efficiently. We won't keep you out very long at all. So,
7 please, return to your jury room and don't discuss the
8 case.

9 (WHEREUPON, the jury left the courtroom at
10 approximately 2:08 p.m.)

11 THE COURT: Yes, sir.

12 MR. BOGGS: Your Honor, I'm going to remove another
13 witness from my list.

14 THE COURT: Okay.

15 MR. BOGGS: Tami Rampey.

16 THE COURT: All right, good enough. Thank you.

17 All right. There is -- I know there's a matter of
18 direct presentment, so you may affect that presentment at
19 this time, ma'am.

20 MS. ODOM: Thank you, Your Honor.

21 Your Honor, this is the matter of State vs. Charles
22 Brandon Rampey on indictment 16-GS-39-1538, criminal
23 sexual conduct with a minor in the third degree. It was
24 directly presented to the grand jury in July of this year,
25 July 19th of 2016. The matter was true billed and we are

1 here on arraignment. Your Honor, would you like for me to
2 read the body of the indictment?

3 THE COURT: No, ma'am. I think I've already read it
4 on the record to the jury pool. Has the same been
5 presented, a copy to the Defendant?

6 MS. ODOM: Yes, sir, to his attorney.

7 THE COURT: Okay. All right, good enough.

8 Have you served -- received a copy of the same?

9 MR. BOGGS: I have, Your Honor. We waive any formal
10 arraignment.

11 THE COURT: Okay. Good enough. Let the record
12 reflect that the indictment has been presented. Of
13 course, the rules and formal arraignment has been waived.

14 All right. Anything additional that we need to put
15 on the record before we begin our opening statements?

16 MR. BOGGS: No, sir.

17 MS. ODOM: No, sir.

18 THE COURT: Okay. Now, y'all notice that I set an
19 expectation with the jury that y'all were going to be
20 short on opening, right? So y'all be short on opening,
21 all right.

22 MS. ODOM: I won't make you liar.

23 THE COURT: Yeah, that's right. They'll hold it
24 against you, okay, because I've already established their
25 expectations in that regard.

1 Okay. All right. When they come back in, we'll
2 swear them and then, Ms. Odom, you can begin.

3 (WHEREUPON, the jury came into open court at
4 approximately 2:25 p.m.)

5 THE COURT: Okay. All right. Ladies and gentlemen,
6 we're about to start. First thing I need to do is have
7 the Clerk of Court render the oath. You took an oath
8 yesterday to tell the truth. This is a little bit
9 different. This is the oath to try this case truly and
10 verily and in accordance with the law and the evidence
11 that's presented in the case.

12 Mr. Wellborn, I'll defer to you, sir.

13 THE CLERK: If you would, please, stand. Again,
14 after the oath is administered, please answer by saying, I
15 will. Raise your right hand.

16 (WHEREUPON, the jury was sworn.)

17 THE CLERK: Thank you. You may be seated.

18 THE COURT: All right. Ms. Odom, your argument,
19 ma'am.

20 MS. ODOM: Thank you, Your Honor.

21 OPENING STATEMENT BY MS. ODOM

22 MS. ODOM: Criminal sexual conduct, that's why we're
23 here today. You heard the Judge read out the two charges
24 earlier. CSC, kind of a fancy term for someone being
25 molested or sexually assaulted. And that's what happened

1 in this case. The victim, Minor she was 12
2 years old at the time. She's 15 now. It's been three
3 years ago. But she reported and told how her stepfather,
4 the Defendant, had been touching her for some time.
5 That's how it started. It started with touching, groping,
6 fondling. And gradually, he worked his way up, worked his
7 courage up and it moved into something else, to sexual
8 assault. After a while, she had had enough and was able
9 to work her courage up and tell about it. And that's what
10 the case is about, her being assaulted.

11 You're going to hear from her today as well as
12 several other witnesses. And at the end of the case,
13 you're going to be sure, you're going to be convinced,
14 you're going to know that it happened and it happened how
15 she says it happened. We're going to prove that to you
16 through our witnesses.

17 Now, just so you kind of have an idea of the charges
18 and what to look for. The two charges, CSC second degree
19 and third degree. The third degree is just touching. I
20 say just, but really that's kind of downplaying it. It's
21 touching, it's fondling, it's groping. The legal
22 definition is when someone over the age of 14 willfully
23 and lewdly commits an act on the body of a victim under
24 the age of 16 with the intention of satisfying his own
25 lust or the child's lust. So him touching on her for him

1 to get sexually aroused or an attempt to turn her on or
2 both. That's CSC third degree.

3 CSC second degree is the intercourse. You're going
4 to hear from her about that. She's going to tell you
5 about it. But it's just not vaginal intercourse. It can
6 be that, it can be anal intercourse. It can even be oral
7 sex with him forcing her to do that to him or him doing
8 that to her. So all of those would qualify as criminal
9 sexual conduct in the second degree. So that's what you
10 need to be looking for.

11 And I encourage you, I plead with you, listen, listen
12 to every witness. Listen to everything they say. And
13 when they're up there, kind of gauge them, get a feel for
14 them. Think, why are they testifying? What motive, what
15 bias might they have? Are they doing this for their own
16 good or someone else's? Who's benefit? What are they
17 gaining by testifying? Look at their demeanor. Don't
18 just listen to them, but look at them. Really pay
19 attention. We're not just here for the heck of it. This
20 case is important to the State, it's important to the
21 Defendant. It's important to many other parties involved.
22 This is very serious.

23 And at the end of the case, I'll get an opportunity
24 to stand before you again to summarize all of the evidence
25 I presented, all my witnesses. Mr. Boggs will get another

1 chance to come up here. But, ultimately, I will ask you
2 to render justice, to deliberate, to discuss it amongst
3 yourselves and really consider everything, and then find a
4 verdict of guilty on both counts because the Defendant is
5 guilty. Thank you.

6 THE COURT: Mr. Boggs.

7 MR. BOGGS: Thank you.

8 OPENING STATEMENT BY MR. BOGGS

9 MR. BOGGS: Good afternoon, my name is Tam Boggs. I
10 represent Brandon in these charges. And I agree with two
11 things she said. One is, listen to everything because at
12 the conclusion of this trial, you're going to see a
13 pattern and a story that was built. It will be almost
14 like a pyramid. And that's about the only way you're
15 going to be able to reach a verdict that literally speaks
16 the truth. So I agree with her on that.

17 I agree with her again when she said we're not here
18 just for the heck of it. We're not. We're here today to
19 close a two-and-a-half-year nightmare that Brandon and his
20 wife, Lori, who is Minor's mother, and the other four
21 children who live with them have been going through.
22 We've been trying to get this done for two and a half
23 years. Finally, we're here and you're going to correct
24 this problem.

25 All right. I'm not going to sit up here and talk to

1 you about reasonable doubt and all these legal terms, but
2 I do want to point out two things. Number one, Haleigh is
3 a pretty, bright little girl. Good little actress. So
4 I'm sure you're going -- go ahead and get ready for it.
5 She's going to get on the stand and cry and try to get
6 your sympathy. But we're not here for sympathy, we're
7 here to clean up a mess that's been going on for two and a
8 half years based upon the facts, based upon the testimony,
9 based upon the physical evidence that's going to be given
10 to you, okay. All I want you to keep in your head at this
11 time is two words, credibility and believability. Because
12 at the conclusion of this trial, the Judge is going to
13 charge you that you consider that. You consider
14 credibility and you consider believability. And this case
15 comes down to nothing more than credibility and
16 believability.

17 Let me thank you right now for your service. One of
18 the greatest differences in our country than most other
19 countries is that we are allowed to have peers rule on
20 criminal charges. And this is an inconvenience a lot of
21 times to come and serve on a jury, but you're doing a
22 tremendous service to us and I want to thank you right at
23 the start. But again, catalog it, catalog it.
24 Credibility, believability.

25 At the conclusion of the trial, the evidence is going

1 to show that this was an unfortunate result of a plan that
2 Minor came up with. Almost three years ago, Minor ,
3 the testimony is going to show, wanted to move out of her
4 mother's house and go live with her grandmother. And her
5 mother said no because there would be no rules, you'll be
6 running the streets and you cannot go live with your
7 grandmomma because we rules and you've got to abide by
8 them. So Minor came up with a plan. If I accuse my
9 stepfather of touching me, then I'll go live with
10 grandmomma and grandmomma and momma will work out how this
11 is going to be rectified.

12 At that time, Minor had no idea that it would go
13 this far. At that time, Minor didn't even think the
14 police would be involved. She thought her grandmother and
15 mother would work it out between themselves. She'd live
16 with grandmomma and be able to run the streets like she
17 wanted to. But that's not what happened. That's not what
18 happened. So that plan -- you'll see how that plan just
19 blew up in her face during this whole process.

20 She got what she wanted, though. She got out of her
21 house. She got out of that house and she completely
22 changed from what she was when she lived in that house
23 with the rules to what she became once she lived in the
24 house with no rules. So she accomplished what she wanted.
25 She got out of the house. But it's put her mother,

1 Brandon, and her four siblings in two and a half years of
2 pure misery. We're going to correct that over the next
3 two days. Credibility and believability. Catalog it
4 because that's what it's going to come down to. Thank
5 you.

6 THE COURT: All right. Ms. Odom, you may call your
7 first witness.

8 MS. ODOM: Thank you, Your Honor, the State calls
9 Deputy Massingill.

10 THE CLERK: If you would, place your left hand on the
11 Bible, raise your right.

12 VAN MASSINGILL, after having been duly
13 sworn, testified as follows:

14 THE CLERK: Thank you, please be seated. State your
15 name for the record.

16 DIRECT EXAMINATION

17 BY MS. ODOM:

18 Q State your name.

19 A Deputy Van Massingill.

20 Q And where do you work?

21 A Pickens County Sheriff's Office.

22 Q How long have you been working there?

23 A A little under five years now.

24 Q And before you worked there, where did you work?

25 A Bi-Lo.

1 Q Now, tell me what your job duties are right now.

2 A As of right now, I'm on the community action team. I
3 don't respond to calls, it's more of a proactive policing.
4 Before that, I worked the road on the Bravo team, which I
5 answered calls, 911 calls for service, that kind of thing.

6 Q So your job previously was answering calls that
7 somebody made to 911, you'd go on out there?

8 A Yes, ma'am.

9 Q Were you working January 2nd of 2014?

10 A Yes, ma'am.

11 Q Did you have the opportunity to respond to a call in
12 reference to MINOR

13 A Yes, ma'am.

14 Q Where did you respond?

15 A Easley Baptist Hospital in Easley.

16 Q Who did you meet with when you got there?

17 A I met with the grandmother and the victim, Kathryn
18 Hinton and MINOR

19 Q Do you remember what MINOR's demeanor was?

20 A No, ma'am.

21 Q And without telling me anything else she may have
22 said, did MINOR tell you a place or location where any
23 abuse may have occurred?

24 A Yes, ma'am, two locations, 108 Pond Creek Lane in
25 Central, 105 Bridwell Road in Six Mile, which is both

1 within Pickens County.

2 Q Did she tell you a time or a time frame when any
3 abuse may have occurred?

4 A Within the past year of the date -- reporting the
5 incident of the date, so within the past year.

6 Q Okay. Did you have any other involvement with the
7 case?

8 A No, ma'am.

9 Q You just took the report?

10 A Yes, ma'am.

11 Q What did you do from there?

12 A I just turned it over to the detective division.

13 MS. ODOM: Please answer any questions Mr. Boggs has.

14 CROSS-EXAMINATION

15 BY MR. BOGGS:

16 Q Officer Massingill, the date was January 2nd, 2014;
17 is that correct?

18 A Yes, sir.

19 Q Okay. And you had a conversation with Minor about
20 allegations that she was making against her stepfather,
21 right?

22 A Yes, sir.

23 Q In fact, you actually had two separate statements
24 from her, right? The first statement she gave was that
25 her grandfather --

1 MS. ODOM: Objection, it calls for hearsay.

2 MR. BOGGS: This is the victim saying this.

3 THE COURT: I understand. You can ask her those
4 questions.

5 I presume she's going to take the stand; is that
6 correct?

7 MS. ODOM: Yes, sir.

8 THE COURT: With respect to the report, I think that
9 is hearsay.

10 BY MR. BOGGS:

11 Q All right. You asked what happened and she told you,
12 right?

13 A Yes, sir.

14 Q Okay. Then later on, you, basically, got a second or
15 enlarged story, didn't you?

16 A What do you mean?

17 Q About two-thirds of the way down. After you asked
18 her a question, she gave her an enlarged statement, right?

19 A She was just advising what went on within that year.

20 Q Yeah, yeah. But, basically, it was two separate
21 statements. The first thing she told you, right? And
22 then later on, she gave you another version, right?

23 A I don't understand.

24 Q Okay, I'll move on, never mind. And that, again, was
25 the only involvement you had in this case?

1 A Yes, sir, taking the report.

2 MR. BOGGS: Okay. That's all I have with him, Your
3 Honor.

4 THE COURT: Any redirect, ma'am?

5 MS. ODOM: No, sir.

6 THE COURT: Okay. May this officer be excused?

7 MS. ODOM: That's what I was going to ask, Your
8 Honor, if he can be excused?

9 THE COURT: Do you have an objection to him being
10 excused?

11 MR. BOGGS: No, sir.

12 THE COURT: Sir, thank you. Appreciate you being
13 here. You may be excused.

14 MS. ODOM: Judge, at this time, the State calls
15 Kathryn Hinton.

16 THE CLERK: Ma'am, place your left hand on the Bible,
17 raise your right.

18 KATHRYN HINTON, after having been duly
19 sworn, testified as follows:

20 THE CLERK: Thank you, ma'am. If you would have a
21 seat and state your name for the record, please.

22 THE WITNESS: Kathryn Hinton.

23 DIRECT EXAMINATION

24 BY MS. ODOM:

25 Q Ms. Hinton, how are you related to *Minor*?

1 A She's my daughter -- I mean, my granddaughter.

2 Q Who is Minor's mom?

3 A Lori.

4 Q Is she your daughter?

5 A Yes, ma'am.

6 Q All right. How old was Lori when Minor was born?

7 A I think she was already turned 15. I think she just
8 turned 15. I'm not really sure, it's been a long time
9 ago.

10 Q Where did they live when Minor was born?

11 A They lived with me and my second husband, Ricky
12 Durham.

13 Q And how long did they live with you?

14 A I think until Minor was about three years old.

15 Q And where did they go when Minor was three?

16 A They went to live with Teresa Rhodes and Bobby
17 Rhodes.

18 Q Who are they?

19 A James's mother and father, parents.

20 Q Who is James?

21 A That's Lori's second husband -- first husband.

22 Q So when Minor was three, her mother married James
23 Rhodes?

24 A Yes, ma'am.

25 Q And they went to live with his parents?

1 A Yes, ma'am.

2 Q Where did they live after that?

3 A I think they stayed over there and then they came to
4 live in my trailer that I had, *address*.

5 Q Is that in Pickens County?

6 A Six Mile. Yes, ma'am, it's in Pickens County.

7 Q And you say that's your trailer?

8 A Yes, ma'am. I owned it whenever I got divorced from
9 Lori's father. We bought that trailer on that land. I
10 still own the land, but I had to -- the trailer got
11 repossessed.

12 Q All right. Did you live near the trailer when
13 *Minor* lived on *street*.

14 A Whenever I came back with Ricky Durham, my second
15 husband. And he had a house at 209 Shadydale Circle. And
16 I took the settlement money that I got from my first
17 marriage and I helped my -- helped Ricky fix the house up
18 so that we could live there.

19 Q How far away from *Minor* was that, from *street*,
20 the Shady address?

21 A Maybe three miles, not too far. It was right down
22 the road from Six Mile Trailer Park.

23 Q So did Lori end up having any more kids after
24 ?

25 A Yeah, her and James got married and they had Katlyn.

1 Q All right. And when ~~Minor~~ lived on ~~Street~~, were
2 her and Katlyn come over to your house a good bit?

3 A Yeah, they stayed with me and Rickey.

4 Q How often would you say they were over at your house?

5 A Probably about every weekend. Me and her was close,
6 so I wanted to see her as much as I could.

7 Q Okay. Did there come a time when James and Lori
8 separated?

9 A Yeah, I think James couldn't hold a job and he
10 wouldn't work, so that's what their problem was.

11 Q Who did Lori start seeing after James?

12 A Then she started seeing Brandon.

13 Q Okay. Do you remember about when he came into the
14 picture? What year or anything?

15 A I think about 2008, 2009. Because Ricky died in
16 2008, January of 2008, so I think after that. But I can't
17 really remember.

18 Q That's all right. Now, do you know how they met, her
19 and Brandon?

20 A They met when they was working at Mark Four Dayco.

21 Q All right. And did he move in with her or did she
22 move in with him?

23 A She was still living in my trailer, so he moved in
24 with her.

25 Q Okay. Did he have any children?

1 A Yes, ma'am, he had Braydon and Brianna.

2 Q Would you ever -- would he ever keep Minor and
3 Katlyn?

4 A As I remember he did, yeah.

5 Q Would you have them and he or Lori pick them up?

6 A Yeah, they would want to stay with me. And then he
7 would call and say that he wanted to come get them.

8 Q So did he, to your knowledge, ever have the
9 opportunity to keep them without Lori around?

10 A Well, Lori was working. I know that she had to work.

11 Q All right, Ms. Hinton, do you remember the day that
12 told you about this case?

13 A Yeah, I was working on second shift at Reliable and I
14 was fixing to go to work. And then he called and said
15 that he wanted to come get them.

16 Q All right.

17 A Then I told Minor and she said that --

18 Q Don't tell me what she said, but --

19 A I mean --

20 Q Can you tell me about her demeanor, did she get
21 upset?

22 A Yeah, she broke down. And I said, Why don't you want
23 to go with Brandon? And she said --

24 Q Don't tell me what she said, but did she start
25 crying?

1 A Yeah, she started crying.

2 Q Did she get emotional?

3 A Yeah.

4 Q Now, as to location only, did she disclose to you
5 where any abuse may have happened?

6 A Uh-huh.

7 Q As to time frame only, did she tell you when or how
8 long any abuse may have been going on?

9 A No, she didn't.

10 Q In response to her getting upset and saying something
11 to you, where did y'all go?

12 A Well, I had to call into work. I said, I need to
13 take you to the hospital. So that's where we went, we
14 went to Easley Hospital.

15 Q And in response to what she said, did you contact law
16 enforcement?

17 A Yeah, they said they had to bring law enforcement in.

18 Q All right. So after all that happened, did Haleigh
19 live with you for a while?

20 A Uh-huh.

21 Q Okay. Do you remember how long she stayed with you?

22 A Probably about a year or two.

23 Q And why did she end up having to move?

24 A I guess because I was having problems getting over my
25 second husband and me and Tommy started fussing a lot.

1 Q Is Tommy your current husband?

2 A Yeah, he's my husband now.

3 Q So y'all started fussing a good bit?

4 A Yeah.

5 Q So she had to go live with someone else?

6 A Yeah, we had to go through marriage counseling.

7 Q Do you know who she lives with -- or who did she go
8 live with after that?

9 A I think she went to live with Teresa.

10 Q Tell me who Teresa is.

11 A That's her grandmother. Other grandmother.

12 Q So it's not her biological, but her sister's
13 grandmother?

14 A It's James's mother.

15 Q Okay. Do you know who she lives with now?

16 A Alan.

17 Q How is Alan -- tell me how he's related or not
18 related to the family. How does he fit in?

19 A Well, she -- they knew him when Teresa and Bobby was
20 married. They lived -- his brother lives right across the
21 street from them.

22 Q So he's a family friend?

23 A Yeah.

24 Q So there wasn't a family member for her to go and
25 live with?

1 A (The witness shakes head.)

2 Q So she had to go live with a family friend?

3 A (The witness nods head.)

4 Q All right. Is the Defendant -- is Charles Brandon
5 Rampey in the courtroom?

6 A Yeah, he's right over there.

7 MS. ODOM: Your Honor, can the record reflect she's
8 pointed the Defendant out?

9 THE COURT: Well, the record will reflect that she
10 pointed. You're going to put a final point on that.

11 BY MS. ODOM:

12 Q Can you describe what the Defendant is wearing?

13 A He's wearing a suit, a black suit.

14 Q And is the person wearing the black suit, the
15 Defendant, is that Charles Brandon Rampey?

16 A (The witness nods head.)

17 Q All right.

18 MS. ODOM: Your Honor, I'll just leave that one
19 there.

20 THE COURT: Okay.

21 MS. ODOM: Please answer any questions the Defense
22 attorney may have for you.

23 CROSS-EXAMINATION

24 BY MR. BOGGS:

25 Q Back in the fall of 2013, Minor started asking you

1 numerous times whether she could come live with you,
2 didn't she? She, basically, wanted to come live with you,
3 didn't she?

4 A I guess.

5 Q Well, she asked you if she could?

6 A I don't really remember that.

7 Q All right. Well, you don't doubt that, do you?

8 A No, she always wanted to come stay with me.

9 Q And --

10 A I raised *Minor*. I'm sorry. I raised .

11 Q But Lori, your daughter, her mother, Lori, would not
12 let her come and move in with you; isn't that correct?

13 A Yes.

14 Q All right. And *Minor* kept asking over and over, I
15 want to go stay with -- they call you Nana; is that right?

16 A Uh-huh.

17 Q I want to go stay with Nana, didn't she?

18 A (The witness nods head.)

19 Q You have to say yes or no.

20 A Yes, sir.

21 Q But her momma wouldn't let her do it, right?

22 A Huh-uh.

23 Q Now, you said *Minor* is living with Alan?

24 A Yes, sir.

25 Q And Alan is what, about 55 years old?

1 A I think he's older than that.

2 Q Okay. He has no relationship to you at all, does he?

3 A No.

4 Q Has no relationship to Minor at all?

5 A Huh-uh.

6 Q So Minor a 16-year-old, is living with a man 55 or
7 60 years old that's not related to anybody in your family;
8 is that correct?

9 A Yes, sir.

10 Q That doesn't bother you?

11 A Yeah, it bothers me.

12 MS. ODOM: Objection, irrelevant.

13 THE COURT: Overruled.

14 MR. BOGGS: Judge, I think that's the only questions
15 I've got for her.

16 THE COURT: Any redirect?

17 MS. ODOM: No, sir.

18 THE COURT: All right. Thank you.

19 MR. BOGGS: Your Honor, I've got a matter of law and
20 I think we can do a sidebar real quick.

21 THE COURT: Okay. Y'all come on up here.

22 She can be excused, I presume?

23 MS. ODOM: Yes, sir.

24 MR. BOGGS: She can, yes, sir.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: Okay. You may call your next witness,
2 ma'am.

3 MS. ODOM: Your Honor, the State calls Minor
4

5 THE CLERK: Place your left hand on the Bible, raise
6 your right:

7 Minor after having been duly
8 sworn, testified as follows:

9 THE CLERK: If you would, have a seat and state your
10 name for the record, please.

11 THE WITNESS: Minor

12 DIRECT EXAMINATION

13 BY MS. ODOM:

14 Q All right. Minor how old are you?

15 A I'm 15.

16 Q And what town do you live in?

17 A I live in Liberty right now.

18 Q Who do you live with?

19 A I live with my Uncle Alan.

20 Q Is he related to you?

21 A No, he's an old family friend. I've known him ever
22 since I was a little kid.

23 Q What is your date of birth?

24 A 2001

25 Q What subject -- or what grade are you in?

1 A I'm in grade 10.

2 Q What kind of subjects do you have this year?

3 A Mostly, I've been studying art class, but I have a
4 lot of Spanish and English and math. I'm really good at
5 math.

6 Q Can you describe to me your family?

7 A My family is a little bit confusing, but -- okay, I
8 never knew my real dad. He hasn't really been in the
9 picture. I've always lived with my mom.

10 Q What your mom's name?

11 A Lori.

12 Q All right.

13 A I've always lived with her. Since my mom had me,
14 whenever she was smaller, my grandmother, her husband kind
15 of took the role of my father figure, her husband did.
16 And I guess they've always been around. And then -- I'm
17 sorry. Thank you. Then my mom met my first dad, which
18 was James Rhodes. She met him and they were together for
19 a long time. I considered him my father. Then they had
20 my little sister, K.G. .

21 Q How old is she?

22 A She is 10 right now.

23 Q Do you have any other brothers or sisters?

24 A I have a biological brother and I have -- I still
25 consider them my brother and sister, two stepsisters -- a

1 stepbrother and a stepsister.

2 Q All right. Tell me their names.

3 A The girl is ~~step~~sister and the boy is -- my
4 step-siblings are ~~step~~sister and ~~brother~~ but my biological
5 little brother is ~~brother's name~~.

6 Q Who is his dad?

7 A Charles.

8 Q Do you call him Charles?

9 A No, I always called him Brandon.

10 Q All right. So where did you live when you were born?

11 A I lived -- honestly, it was very hazy, but from what
12 I've always heard, I lived with my grandmother for a few
13 years. Then whenever my mom found James, we moved in with
14 his family. And then whenever they split up -- well,
15 actually, Nana Kathy gave us the trailer, we moved in
16 there and stayed there for the while.

17 Q Where is the trailer?

18 A It's in ~~address~~.

19 Q All right. Describe to me the trailer. How many
20 bedrooms did it have?

21 A It had three.

22 Q How many bathrooms did it have?

23 A Two.

24 Q When y'all first moved in there, who had what
25 bedroom?

1 A I had the bedroom on the far right end and my little
2 sister had the bedroom sort of in the middle. Then my
3 parents had the master bedroom on the left end.

4 Q All right. And tell me, do you remember when or how
5 Brandon came into the picture?

6 A Right after my stepdad and my mom got divorced, he
7 just appeared there. I don't know how they met, all I
8 know is, all of a sudden, he was there.

9 Q Did he move in with y'all?

10 A Yes, he did..

11 Q Were you excited?

12 A Yeah.

13 Q How did you feel about it?

14 A I was excited. I mean, I was sad because I missed my
15 other dad. I never had a dad before, so maybe this could
16 be my dad, you know.

17 Q Do you remember how old you were when Brandon started
18 coming around?

19 A Nine or 10, I don't know.

20 Q And do you remember him and your mom getting married?

21 A All I remember is them getting -- I know they
22 married, but all I remember is them getting proposed to
23 because I was there whenever he proposed to her. And one
24 day after school, sometime whenever I was about 10, 11, I
25 was in middle school, they took me out of school and told

1 me that they got married.

2 Q So you didn't actually go to the wedding or anything,
3 but they let you know they got married?

4 A Yeah.

5 Q All right. Minor do you remember -- well, let me
6 ask you this first. Do you love your mom?

7 A I love my mom to death. She's my twin.

8 Q Do you miss your mom?

9 A (The witness nods head.)

10 Q Do you get to see her very often?

11 A (The witness shakes head.)

12 Q All right. Minor we're now getting to the tough
13 part of the testimony. If you need to take a break, let
14 me know, okay?

15 A I'm fine.

16 Q Do you remember about how old you were when the abuse
17 started happening?

18 A Eleven or 12. I guess 12, I don't know, maybe 11.

19 Q Do you remember about what time of year, like, what
20 season it started happening?

21 A I think it was the summertime.

22 Q Was it warm outside?

23 A (The witness nods head.)

24 Q And you said your birthday is in month?

25 A Yes.

1 Q So during the summer that year, where would you stay
2 when you weren't in school?

3 A I would stay home or on the weekends, whenever Nana
4 Kathy wasn't working, I would go over there sometimes.

5 Q When you stayed home, who was there?

6 A Well, it depended on who was working. My mom didn't
7 work for a while. But it really depended on who was
8 working.

9 Q All right. Minor can you tell me about any abuse
10 or anything that you remember happening first?

11 A Yes. I do remember the first time this all happened.

12 Q Where were you?

13 A I was at the trailer.

14 Q And who all was there?

15 A All of my siblings and Brandon.

16 Q Okay. When you say all your siblings, his kids, too?

17 A Yes.

18 Q And what happened?

19 A He called me into a room and he made me touch him.

20 Q Where did he make you touch him?

21 A His private area.

22 Q And when you say private area, do you mean his penis?

23 A Yes.

24 Q How did he make you touch him?

25 A He made me put my hand on it, basically. And he told

1 me it was called jacking off.

2 Q And what did you do?

3 A I did like I was told.

4 Q And is that all that happened that first time?

5 A Pretty much, yes.

6 Q Do you remember a time at the trailer in the
7 bathroom?

8 A (The witness nods head.)

9 Q Can you tell me about that?

10 A I believe we were in the bathroom was the worst one.
11 It's the most -- I remember it lasted about two hours.

12 Q What happened?

13 A First, he told me to go in there. And like he did
14 before, he told me to touch him with my hands.

15 Q Okay. And what did his -- what did his penis look
16 like?

17 A I don't know how to explain it.

18 Q Can you tell me how it felt?

19 A It was weird. It was scary.

20 Q What were the other kids doing when he would call you
21 in there?

22 A They would be playing outside. I don't know if they
23 went outside, but I know some of them went outside. I
24 don't know what they were doing while I was in there.

25 Q Besides touching it with your hand, what else did he

1 have you do?

2 A He made me put it in my mouth.

3 Q And tell me your position, standing up, sitting down?

4 How were you positioned when you put his penis in your
5 mouth?

6 A On my knees.

7 Q Did he tell you to get like that?

8 A (The witness nods head.)

9 Q How did you know what to do?

10 A He told me.

11 Q What did he tell you to do?

12 A He told me to get on my knees and put it in my mouth.

13 Q And then what?

14 A Then he told me to move my head back and forth.

15 Q Did anything else happen in the bathroom this time?

16 A (The witness nods head.)

17 Q What else happened?

18 A He told me to take off my pants and he put it in my
19 butt.

20 Q Tell me what position you were in when that happened.

21 A He leaned me over the bed.

22 Q Now, what room were you in?

23 A The master bedroom.

24 Q Okay. All right. I'm sorry to ask, but how did that
25 make you feel?

1 A Well, I don't know really how to explain it. It was
2 just scary.

3 Q And did he say anything to you?

4 A He made weird noises. He called me beautiful and it
5 scared me.

6 Q Did you say anything to him?

7 A I told him to stop.

8 Q What would he do when you -- when you would say stop,
9 what would he do?

10 A He would yell at me or he would cover up my mouth.

11 Q Would he ever threaten you?

12 A (The witness nods head.)

13 Q What would he say?

14 A He told me if I told he wouldn't let me see -- he
15 wouldn't let me see my grandmother anymore, or he would
16 take stuff away, or he would -- he would put it in deeper.

17 Q He said he would his penis deeper inside of you?

18 A (The witness nods head.)

19 Q Did any other -- can you tell me about any other
20 abuse that happened at the trailer?

21 A Ma'am?

22 Q Can you tell me about anything else that happened at
23 the trailer?

24 A There was this one time that mom was home and she was
25 cooking. And he took me to my bedroom and told me to sit

1 on the bed. Then he pulled down my pants and he started
2 licking my private parts.

3 Q And is that all that happened that time?

4 A (The witness nods head.)

5 Q All right. Was there a time when y'all moved from
6 Six Mile?

7 A (The witness nods head.)

8 Q Tell me where y'all moved.

9 A We moved -- I don't remember the exact address, but I
10 know it was in Cateechee.

11 Q Tell me about that house.

12 A It's a big house. It was a lot bigger than the
13 trailer. It had a fenced-in porch. Then it had, I think,
14 three bedrooms or what you would call bedrooms. I don't
15 know, we used them for bedrooms.

16 Q And why did y'all move out there, do you know?

17 A Because his parents used to live there and they got a
18 new place. And we had a big family, so we took the
19 opportunity and moved.

20 Q All right. MINOR., do you remember what time of
21 year y'all moved to Cateechee?

22 A Fall, almost wintertime.

23 Q Did any abuse happen at that home?

24 A Yes.

25 Q Tell me about anything that happened there.

1 A Well, there's only two I can really remember. We
2 were taking in Christmas trees -- we just got done buying
3 Christmas trees at Wal-mart. I was helping him take them
4 in. My mom was inside vacuuming or cleaning, I don't know
5 where she was. My siblings were in the playroom, living
6 room of sort. And I went outside to go get more stuff and
7 he came out with me. Then we were on the porch and he
8 started abusing me.

9 Q All right. Tell me what he started doing.

10 A First, he pulled down his pants and made me get on my
11 knees and made me put it in my mouth.

12 Q When you say pulled down his pants, did he pull them
13 down all the way?

14 A I think so, yes.

15 Q Did anything happen after he made you put his penis
16 in your mouth?

17 A He stuck it in my butt again.

18 Q And what position were you in?

19 A I was on my hands and knees.

20 Q And what time of the day or night was it?

21 A It was nighttime.

22 Q You said it happened on the porch?

23 A Yeah.

24 Q Tell me more about the porch.

25 A It's screened in. It's a closed-in porch. And it

1 was also the laundry room.

2 Q What was your mom doing?

3 A She was either vacuuming -- I think she was
4 vacuuming.

5 Q When did it -- do you remember how long it lasted?

6 A I don't remember.

7 Q Was there -- you said there's only two incidents you
8 remember at the house, what was the other incident?

9 A It was last incident that happened before I told. It
10 was a small one. He just -- it was Christmas Day and he
11 took me into the bathroom and he put lotion on my hands
12 and he made me jack it.

13 Q And did anything come out?

14 A (The witness nods head.)

15 Q What came out?

16 A White stuff.

17 Q Where was -- where was your mom when that happened?

18 A I think she was in the car getting the kids ready to
19 go to my aunt's for Christmas.

20 Q So that was on Christmas Day?

21 A (The witness nods head.)

22 Q And what did y'all do after that incident?

23 A We just went over to their house and we stayed over
24 there. And I didn't tell for a couple of days after that.

25 Q So that was in -- all this happened right before you

1 told?

2 A (The witness nods head.)

3 Q Okay. Tell me about you telling. What prompted you
4 to finally tell somebody?

5 A I was over at my Nana Kathy's. I tried to be over
6 there as much as I could whenever this first started. You
7 know, the more I was away from there, the less it would
8 happen. And so I was over at my Nana Kathy's and then he
9 called and said that he wasn't going into work today, he
10 wanted us to come over. I guess as soon as I heard this,
11 I just -- I couldn't do it anymore. I knew something was
12 going to happen.

13 Q So you were afraid if you went there something would
14 happen?

15 A (The witness nods head.)

16 Q So you told your Nana?

17 A (The witness nods head.)

18 Q What happened after that?

19 A I told my grandmother and she asked me all these
20 questions, and then she called my mom. And I don't know
21 what my mom said, but she didn't come up to the hospital
22 with us. She called her boss and told her that she had to
23 go to the hospital with me, because she worked second
24 shift. So we went up there and talked to a police officer
25 about it.

1 Q Do you remember what you told him?

2 A I told him exactly what happened.

3 Q How did it feel having to talk about this to a male
4 police officer?

5 A It felt -- I felt safe because he was a police
6 officer, but at the same time, since this started
7 happening, I've been afraid -- I was afraid of men, so it
8 didn't feel that great.

9 Q So after you talked to the police officer, that first
10 police officer, who did you talk to next, do you remember?

11 A I think I talked to a lady police officer. I'm not
12 sure if I talked her then, but a doctor came in and she
13 examined me.

14 Q And did you ever speak to Captain Nix, who is beside
15 me?

16 A Yeah, I spoke to him a little bit after the incident
17 at the hospital.

18 Q Do you know how many times you had to -- you ended up
19 talking to him?

20 A I think two, maybe three.

21 Q Okay. And over the last few years, have you had to
22 talk with several different people about this?

23 A Yes, ma'am.

24 Q So after this happened, who did you live with?

25 A After that happened, I lived with my grandmother.

1 Q And what was it like living with your grandma?

2 A It was different. I mean, whenever I was little,
3 yeah, I wanted to spend time with her more. I don't know
4 why. It's just what every kid, you know -- they buy you
5 stuff, so you got to go over there and live with them.
6 And so I was over there and it wasn't what I was expecting
7 and I just wanted my mom. She wasn't there, so.

8 Q How old were you at this point?

9 A I think 12.

10 Q Twelve?

11 A Maybe 11 or 12. I don't remember.

12 Q Okay. But when you told in January when the police
13 officer came out, the abuse had happened the Christmas
14 before, so two weeks before?

15 A (The witness nods head.)

16 Q And the abuse had been happening in the months right
17 before that Christmas?

18 A (The witness nods head.)

19 Q Okay.

20 A I was 12. I was 12. I believe I was 12.

21 MS. ODOM: Beg the Court's indulgence one moment.

22 THE COURT: Sure.

23 BY MS. ODOM:

24 Q All right. Minor is Brandon in the courtroom
25 today?

1 A Yes.

2 Q Tell me what he's wearing.

3 A He's wearing a black suit.

4 Q Can you point to Brandon?

5 A (The witness complies.)

6 Q And is that the man who abused you?

7 A (The witness nods head.)

8 MS. ODOM: Your Honor, can the record reflect that
9 she's pointed out the Defendant?

10 THE COURT: Yes, ma'am.

11 MS. ODOM: All right. ~~Minor~~ please answer any
12 question that the Defense attorney has.

13 CROSS-EXAMINATION

14 BY MR. BOGGS:

15 Q ~~Minor~~ you're going to have to help me out here a
16 little bit, okay? A couple things, you have been
17 interviewed by a good many people, right?

18 A Yes, sir.

19 Q And you've given a good number of statements?

20 A Yes, sir.

21 Q To various police officers and counselors and people
22 like that, right?

23 A Yes, sir.

24 Q All right. And during a lot of these, you refer to
25 your private and Brandon's private, I mean, that's the

1 word you use. Just for clarification, when you referred
2 to Brandon's private, you're talking about his penis; is
3 that right?

4 A Yes, sir.

5 Q And when you refer to yours, you're talking about
6 your vagina; is that correct?

7 A Yes, sir. Unless I say my butt, then it's my butt.

8 Q I'm about half deaf, I'm sorry.

9 A Unless I say it's my butt.

10 Q I understand that, but the word private is talking
11 about -- if you're talking about your anus, you use the
12 word butt?

13 A Yes.

14 Q If you're talking about privates, you're talking
15 about your vaginal area, right?

16 A Yes.

17 Q Okay. I want to show you a couple of pictures if I
18 could. The first one was taken at Hollywild in 2013. Do
19 you recognize -- Santa Claus is cut off, but he was
20 sitting right there?

21 A Yeah.

22 Q You recognize that?

23 A Yeah.

24 Q Do you know all the people in there?

25 A Yep.

1 Q Is that a fair representation of the circumstances
2 that existed on December 13th of 2013?

3 A (The witness nods head.)

4 Q You have to say yes or no for this young lady.

5 A Yes.

6 Q All right. Now, minor if you would, I'm going to
7 show you another picture. Do you recognize the people in
8 that picture?

9 A Yes. That was the night that we got the Christmas
10 trees.

11 Q Okay. Is that a fair representation of the
12 circumstances that existed when this picture was taken?

13 A Yes.

14 Q Okay. I'm going to show you one more. It was taken
15 Christmas morning. Do you recognize the people in there?

16 A Yes, all of them.

17 Q Do you remember when this picture was taken?

18 A (The witness nods head.)

19 Q You have to say yes or no for her.

20 A Yes.

21 Q Is that a fair representation of the circumstances
22 that existed at that time?

23 A Yes.

24 Q Okay.

25 MR. BOGGS: Your Honor, at this time, we would move

1 to introduce Defendant's 1, 2 and 3 into evidence.

2 MS. ODOM: No objection?

3 THE COURT: All right. Without objection, the same
4 is in evidence.

5 They're already marked?

6 MR. BOGGS: Yes, sir, they are.

7 (WHEREUPON, Defendant's Exhibit Nos. 1, 2 and 3
8 were admitted into evidence.)

9 BY MR. BOGGS:

10 Q Defendant's Exhibit No. 1 is a picture taken at
11 Hollywild in December -- December 13th, 2013, correct?

12 A Yes.

13 Q It's a family picture. Now, are you in that picture?

14 A I'm right there.

15 Q All right. Tell the jury what you're wearing.

16 A I'm wearing a blue sweatshirt and I'm the one with
17 square glasses.

18 Q And you're standing next to your mother, Lori; is
19 that correct?

20 A Yes, sir.

21 Q And Brandon's there and your four siblings, right?

22 A Yes.

23 MR. BOGGS: Your Honor, request permission to
24 publish?

25 THE COURT: You may.

1 BY MR. BOGGS:

2 Q Okay. Defendant's Exhibit No. 2 was taken December
3 3rd of 2013, okay. Tell me what that's a picture of.

4 A It's of me and my little sister putting up ornaments
5 on our Christmas tree.

6 Q Okay. And that was the day you brought the Christmas
7 trees, right?

8 A Yes.

9 Q Tell the jury what you're wearing in that picture.

10 A I'm wearing shorts and a shirt.

11 Q And you're the one with glasses on, right?

12 A Yes.

13 MR. BOGGS: Publish, Your Honor?

14 THE COURT: Yes, sir.

15 BY MR. BOGGS:

16 Q Okay. Then the last one, that was taken Christmas
17 morning as y'all were getting ready to go over to your
18 aunt's house; is that right?

19 A Yes.

20 Q Do you recognize all the people in that picture?

21 A Yes, I do.

22 Q Are you in that picture?

23 A Yes.

24 Q And you're standing -- are you standing in the back
25 next to a woman?

1 A Yes.

2 Q Who is that woman?

3 A Tami Rampey.

4 Q Is that Brandon's mother?

5 A Yes.

6 Q And this was taken, like you say, the Christmas
7 morning as y'all were getting ready to go, right?

8 A Yes.

9 Q And the vehicle in the background, that's the car you
10 rode over to your aunt's in; is that correct?

11 A Yes, that's their Suburban.

12 Q Okay. Now, your grandmother testified that you
13 wanted to go live with her?

14 A Yes. I think every kid wants to go live with their
15 grandmother and grandfather at some time.

16 Q In your mind, you had some reasons for it. You had
17 five children in the house, right?

18 A Yes.

19 Q In your house, you're the oldest, right?

20 A Yes.

21 Q And you, basically, ended up having to be the
22 babysitter for the youngest, didn't you?

23 A Yes.

24 Q You had to change the diapers and fix the food for
25 them and all that, right?

1 A Yeah.

2 Q You also had other chores that you had to do around
3 the house, right?

4 A Yes, sir.

5 Q And when you wanted to go out with your friends, a
6 lot of times your mother wouldn't let you do that, right?

7 A Yes.

8 Q There were a couple friends she didn't think you
9 should be hanging around with; isn't that right?

10 A Yes.

11 Q And you didn't particularly like the clothes that you
12 were wearing, you wanted to change your clothes and style
13 and all that, right?

14 A No.

15 Q Not really? Okay. But you did feel like you were
16 not getting the attention that the other children were
17 getting, did you?

18 A Well, of course not.

19 Q Of course not, you weren't getting the attention or
20 what?

21 A Well, I didn't feel like I was getting the attention.

22 Q Exactly. Now, if you got to go live with your
23 grandmomma, you'd be the only child there and she didn't
24 have very many rules and you'd get all the attention that
25 way, wouldn't you?

1 A No.

2 Q What other children lived with her?

3 A Well, my little sister was wanting to live with her,
4 too. I mean, all of us wanted to.

5 Q No, I'm not talking about ~~little sister~~. I'm talking about
6 you going to live with your grandmomma. You wanted to do
7 that so you would get all the attention and not have to
8 share it with your little siblings; isn't that right?

9 A No.

10 Q That's not right, okay. So you didn't mind not
11 getting the attention?

12 A No. I mean, sure, I had those days where I wanted
13 more attention, but I would never just move somewhere to
14 get more attention.

15 Q Okay. You might have to explain that one to me. But
16 anyway, you don't deny you wanted to go live with your
17 grandmom?

18 A No.

19 Q You don't deny that you weren't getting the attention
20 you thought you were entitled to, right?

21 A No, I don't deny that.

22 Q You didn't really particularly like being the full
23 time babysitter for your little brother, did you?

24 A Well, actually, I liked it a lot. I mean, sure, I
25 didn't like it at times, but it was fun.

1 Q Because it bid into your time, didn't it?

2 A Well, yeah, but he's my little brother.

3 Q All right. Do you know A.M. ?

4 A Yes.

5 Q And you and she were just like sisters, weren't you?

6 A (The witness nods head.)

7 Q And she is -- do you consider her like a cousin? I
8 mean, she's not really a cousin, but you considered her a
9 cousin?

10 A I considered her my cousin.

11 Q And at one time, she was, basically, your best
12 friend, wasn't she?

13 A Yes.

14 Q And like all teenagers do, you guys sit around and
15 talk and all that kind of stuff, right?

16 A Actually, we would play a lot of games, we wouldn't
17 really talk.

18 Q And you talked to A.M. about wanting to go live with
19 Nana, didn't you?

20 A Well, yeah.

21 Q And do you remember telling A.M. that you knew a way
22 that you could end up going to live with Nana and that
23 would be accusing Brandon of molesting you?

24 A I would never say that, no.

25 Q You wouldn't say that? Even if A.M. -- A.M. seems

1 to remember it. You don't? Think hard. Think hard. You
2 were sitting on the bed with A.M. talking about it and
3 you came up with a plan as to how you could get to go live
4 with Nana. You don't remember that?

5 A No, sir. I don't think I've ever planned a plan to
6 mess up my whole family.

7 Q All right. Do you have any reason to believe that
8 Allie would just be making up stuff?

9 A No, I don't think she would make it up, but at the
10 same time, I didn't say it.

11 Q Okay. Now, let's talk about the specific
12 allegations. Do you remember talking to the first
13 policeman that came in?

14 A Yes, sir.

15 Q Okay. And he interviewed you at the hospital,
16 correct?

17 A Yes, sir.

18 Q And he asked you what happened. Do you remember what
19 you told him?

20 A Yes, I do.

21 Q All right. And you told him -- the first thing you
22 told him was that Brandon had been touching your private
23 areas, such as your breasts and vagina; is that right?

24 A Yes, sir.

25 Q All right. And he talked to you a little bit more.

1 But your first statement was fondling, Brandon had been
2 fondling you, right?

3 A Yes.

4 Q Later on, you're still at the hospital, but later on,
5 the cop asked you had Brandon ever put his penis in you.
6 Do you remember that?

7 A Yes.

8 Q So you said, Oh, yeah, yeah, he did one time, but I
9 can't remember when it happened. Do you remember telling
10 Massingill that?

11 A I believe so, yeah.

12 Q Well, it's in his report, you want to read it?

13 A No.

14 MS. ODOM: Objection, inappropriate question.

15 MR. BOGGS: All right. I'll move on.

16 THE COURT: Go ahead.

17 BY MR. BOGGS:

18 Q So you, in effect, at the hospital gave two
19 statements. The first statement being you were fondled,
20 right? The second time, it was you were fondled and
21 Brandon had put his penis in you one time; is that
22 correct?

23 A Yes.

24 Q And that was on January 2nd of 2014, does that sound
25 right?

1 A I believe so, yes.

2 Q Okay. Now, on January 3rd, the next day, you wrote a
3 statement, right?

4 A Yes.

5 Q And in that statement, instead of being one time, you
6 said he had put his penis in you about five times. Do you
7 remember that?

8 A Yes.

9 Q Okay. So it went from fondling to fondling and
10 putting his penis in you one time to the next day, it was
11 fondling and putting his penis in you five times?

12 A Yes, but you have to remember I was 12. I can't
13 remember these things. Some things you just want to
14 forget.

15 Q Okay. All right. But you seem to -- your story kind
16 of seems to get bigger. Okay. Then on the sixth,
17 January 6th, you interview with this gentleman right here,
18 right?

19 A Yes.

20 Q All right. And you told him that Brandon on several
21 occasions had put his penis in you, right?

22 A Yes.

23 Q So what you told Massingill, that it had only
24 happened once, wasn't true because it had grown now to
25 five times and then to several times; is that right?

1 A I believe so, yes.

2 Q Okay. And then you mentioned this female cop you
3 talked to. I think -- isn't that Palis, Teddi Palis?

4 A I believe so.

5 Q Does that ring a bell? Okay. And you told her that
6 Brandon had had anal sex with you and oral sex; is that
7 correct?

8 A Yes, sir.

9 Q I'm sorry?

10 A Yes, sir.

11 Q So gone from the fondling, to the fondling and one
12 time, to the five times, to the multiple times, and then
13 we're down to fondling, vaginal sex, anal sex and oral
14 sex, right?

15 A Actually, I have never said that he put it in my
16 vagina, no.

17 Q Well, what's your private?

18 A My vagina.

19 Q Well, that's what you told the police officers, put
20 it in your private.

21 MS. ODOM: Objection, he's made a statement and
22 hasn't asked a question.

23 BY MR. BOGGS:

24 Q Do you remember telling the police officers that you
25 had had -- that he had stuck it in your vagina -- or your

1 private?

2 A I think I said butt because I don't remember him
3 saying that he put it in my vagina, no.

4 Q But do you remember telling Palis what I just said?

5 A Yes, but I think I meant my butt.

6 Q So your story has gone from the fondling, down, down,
7 down, it gets better every time. Why didn't you tell
8 Massingill about the oral sex and the anal sex?

9 A I was 12. And the more I think about it, the more
10 that I was told to tell about it, the more I remembered.

11 Q So you're blaming it on your age?

12 A Well, no, of course not. I'm saying the more that I
13 was told to tell about it, the more I remembered.

14 Q Now, you talked to Palis on the seventh. So we've
15 had the second, the third, the sixth and the seventh of
16 January, right?

17 A (The witness nods head.)

18 Q And the on the eighth, you met with Detective Nix,
19 right?

20 A Yes.

21 Q All right. And you said that Brandon had performed
22 anal sex on you the day you were going to go get your
23 Christmas trees?

24 A Yes.

25 Q And you also told Detective Nix that on Christmas Day

1 as everyone is getting ready to get in that car, load up
2 and go over to your aunt's --

3 A Yes.

4 Q -- that he sexually assaulted you; is that right?

5 A Yes, he made me do what I told --

6 Q Now, do you -- excuse me. Go ahead.

7 A He made me do what I told her.

8 Q Okay. And you told Detective Nix this on the eighth,
9 right?

10 A Yes, I believe so.

11 Q Okay. So you've had the second, the third, the
12 sixth, the seventh, the eighth and you've added to this
13 story all along, right? And at that time, you were living
14 with your grandmomma, right?

15 A Yes.

16 Q So you had accomplished what you wanted and that was
17 to go live with your grandmomma?

18 A No.

19 Q Okay. But then something happened, the latter part
20 of January, it really blew a whole in your stories, didn't
21 it?

22 A Huh?

23 Q Do you remember January 27th of 2014?

24 A No.

25 Q Do you remember having a medical exam?

1 A Oh, yeah, yeah.

2 Q All right. That was January 27th, 2014, right?

3 A Yes.

4 Q And you remember Dr. Crosswell?

5 A Yes, I believe so.

6 Q I'm sorry?

7 A I believe so, yes.

8 Q Well, she's the doctor that examined you, right?

9 A Yes.

10 Q And she did a vaginal exam and she did an anal exam,
11 right?

12 A Yes.

13 Q Do you remember what the results of those were?

14 A Well, it said that my vagina is not touched and it
15 wasn't.

16 Q So because your hymen was still intact, right?

17 A Huh?

18 Q Your hymen was still intact. It had not been busted?

19 A (The witness shakes head.)

20 Q You know what that means?

21 A Huh?

22 Q That means you're a virgin?

23 A Yeah.

24 Q And if you're a virgin, you've never had a penis put
25 in you, right?

1 A In that part of my body, no.

2 Q All right. Well, you also had an anal exam,
3 remember?

4 A Yeah.

5 Q Do you remember what the doctor found out about that?

6 A No.

7 Q Well, this is your report, do you want to read it to
8 the jury?

9 A Um.

10 MS. ODOM: Objection, I would say this is the wrong
11 witness --

12 MR. BOGGS: This is her medical record. She can
13 testify as to what her medical record is.

14 THE COURT: You can ask the doctor -- you can ask her
15 if she remembers what it was and if she says no, then you
16 can ask the doctor.

17 I presume the doctor is going to take the stand?

18 MS. ODOM: Yes, sir.

19 THE COURT: You can ask the doctor that question.

20 BY MR. BOGGS:

21 Q Well, did you discuss your medical exam with the
22 doctor?

23 A Not really.

24 Q You don't remember the doctor telling you that your
25 sphincter was normal?

1 A No.

2 Q You don't remember that or it wasn't normal?

3 A I don't remember anything. I think all I was
4 thinking about was whenever she was going to give me
5 stuffed animals.

6 Q I'm sorry?

7 A She said that she would give me a prize at the end,
8 so -- because I went through all that, so I think that was
9 the only thing I was thinking about at the time.

10 Q Okay. The doctor didn't tell you that there was no
11 medical evidence of anal penetration? She didn't tell you
12 that?

13 MS. ODOM: Objection, asked and answered.

14 THE COURT: Sustained. I'm going to give you the
15 opportunity to ask the doctor those questions. She's not
16 a medical expert and she can't come to any medical
17 conclusions. You'll have the opportunity to ask the
18 doctor those questions.

19 MR. BOGGS: All right.

20 BY MR. BOGGS:

21 Q So at this time, you're living with Nana, correct?

22 A Yes, sir.

23 Q And you said you lived with Nana for about a year?

24 A Yes.

25 Q Okay. And you know -- well, scratch that, I'll ask

1 the doctor that. But you do remember having conversations
2 with Allie, you just don't remember what they were about,
3 right?

4 A No. I know we always played, but I don't remember
5 what they were about.

6 Q Okay. Now, you didn't have many rules living with
7 Nana, did you?

8 A Yes, I did.

9 Q You did?

10 A I did.

11 Q Okay. But you pretty much changed your whole --
12 well, let me ask you this way, you weren't hanging around
13 with Allie anymore, were you?

14 A No, I wasn't able to see her anymore.

15 Q And you changed the way your hair was, right?

16 A Yes.

17 Q And you changed your clothes?

18 A Yes.

19 Q And you changed who you hung out with, right?

20 A Not really, no.

21 Q Not really, okay. Can you tell me who that's a
22 picture of?

23 A That's me.

24 Q All right. And is this a picture that you posted on
25 social media?

1 A Yes.

2 Q Okay. Now, can you tell me who that's a picture of?

3 A Me.

4 Q And is that a picture that you posted on social
5 media?

6 A Yes.

7 Q Can you tell me who that's a picture of?

8 A That's me.

9 Q Is that a picture you posted on social media?

10 A Yes.

11 Q How often do you wear -- excuse me, let me ask you
12 this first. Who is that a picture of?

13 A Me.

14 Q Is that one you posted on social media?

15 A Yes.

16 Q And what about that one?

17 A Me.

18 Q Is that one you posted on social media?

19 A Yes.

20 Q Okay.

21 MR. BOGGS: Okay. Move to introduce these, Your
22 Honor?

23 THE COURT: Okay.

24 MS. ODOM: No objection.

25 MR. BOGGS: Defendant's Exhibits 4 through 8, Your

1 Honor.

2 THE COURT: All right. They're so admitted without
3 objection.

4 (WHEREUPON, Defendant's Exhibit Nos. 4 through 8
5 were admitted into evidence.)

6 BY MR. BOGGS:

7 Q Okay. Now, what is -- tell me what that means, that
8 writing down on the bottom?

9 A Pikachu, that's my name. That was my name on social
10 media.

11 Q So that refers to you?

12 A Yes.

13 Q And this is a picture of you?

14 A Yes.

15 Q And were you living with your grandmomma then?

16 A Well, yeah.

17 MR. BOGGS: Request permission to publish, Your
18 Honor.

19 THE COURT: Yes, sir.

20 BY MR. BOGGS:

21 Q And No. 5, were you living with your grandmother
22 then?

23 A Yes.

24 Q And No. 6?

25 A Yes, I was living with my grandma.

1 Q When did you change your hair color from blue to
2 blonde?

3 A I have actually changed my hair color a lot.

4 Q Sometimes it's pink, it's been green, it's been
5 black.

6 A It's been rainbow.

7 Q It's been rainbow. That's not the way your mother
8 would let you dress when you were at home, right?

9 A Well, I never asked for that. She said I could dye
10 my hair once.

11 Q She did, okay. Is that a picture of you, too?

12 A Yes, it is.

13 Q And that Pikachu -- is that how you pronounce that?

14 A Pikachu, yes.

15 Q And that's a message you sent to somebody, right?

16 A I didn't send that to anybody.

17 Q What's that?

18 A That's a caption.

19 Q All right. So you're just asking somebody to chat
20 with you?

21 A Yeah.

22 Q Okay. But you're the one that wrote that?

23 A Yes.

24 Q Is that the kind of language that you use now?

25 A No.

1 Q You didn't use that language when you lived with your
2 mother?

3 A I don't use that language anymore.

4 Q Well, you printed it for the whole world to see.

5 A I don't use it anymore.

6 Q Don't use it anymore?

7 A I was 13. I was --

8 Q Age again, eh? Is that you?

9 A Yes.

10 Q Okay. I'm going to give the jury time to look at
11 these. Hold on a minute.

12 (Pause.)

13 BY MR. BOGGS:

14 Q All right, ~~Minor~~, we've got a couple more coming.
15 I've just got a couple more questions, okay?

16 A Okay.

17 Q You said you were living with Alan -- what's his
18 name?

19 A Uncle Alan, yeah.

20 Q Is that him right there?

21 A Yes.

22 Q And he's not related -- even though you call him
23 uncle, he's not related to you at all, right?

24 A No, I've known him ever since I met my first stepdad.

25 Q Okay. ~~Minor~~ do you remember also having an

1 interview with somebody over at the Julie Valentine
2 Center?

3 A Yes.

4 Q That was pretty extensive, wasn't it?

5 A Yes.

6 Q And I think it was Sarah Davis, does that sound
7 right?

8 A I believe so, yes.

9 Q Okay. And that would have been January 30th, which
10 was three days after your medical exam, does that sound
11 about right?

12 A I believe so, yeah.

13 Q And you told them -- of course, you didn't know what
14 the results of your medical exam were then?

15 A No.

16 Q Okay. You didn't find out until later; is that
17 right?

18 A I don't know.

19 Q Okay.

20 MR. BOGGS: I think that's all the questions I have,
21 Your Honor.

22 THE COURT: Any redirect, ma'am?

23 MS. ODOM: Yes, sir, briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. ODOM:

1 Q So ~~Minor~~ when you started dying your hair, how old
2 were you?

3 A I think I was about 13.

4 Q Did any of your friends dye their hair?

5 A Yeah.

6 Q What all colors have you dyed it?

7 A I have dyed it rainbow. I have dyed it green, blue,
8 pretty much every color except orange.

9 Q What about painting your fingernails, how long have
10 you been painting your fingernails?

11 A I've been painting my fingers -- I painted my
12 fingernails black when I was living with my mom, too. I
13 painted my fingernails a lot.

14 Q And do you think you would make up an allegation of
15 sexual abuse just so you could dye your hair black?

16 A No. Why would I -- okay. To start out, why would
17 me, a 12-year-old girl --

18 MR. BOGGS: Your Honor, I'm not sure that's
19 responsive. I object to that.

20 THE COURT: I think she's trying to respond. Let's
21 give her some time. You can lodge your objection if you
22 find that it's objectionable and inadmissible.

23 THE WITNESS: I miss my mom. I'm sorry. I've been
24 trying to keep a straight face.

25 BY MS. ODOM:

1 Q Do you think if you said none of this happened, you
2 could go back and live with your mom?

3 A I always thought that, but at the same time maybe all
4 of this would still be happening. I don't see why people
5 would believe that I would make up something just to go
6 live with my grandma. I had a wonderful family. I had a
7 little brother. I had a little sister. I had my mom. I
8 had people who cared about me. I had a family.

9 Q Did you love the Defendant?

10 A (The witness nods head.)

11 Q But did you want to have sex with him?

12 A No. I wanted him to be my dad. I always wanted a
13 dad. I just wanted him to be my dad.

14 MS. ODOM: All right. Nothing further.

15 THE COURT: Recross, sir?

16 MR. BOGGS: No, sir.

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

19 All right, ladies and gentlemen, let's take a short
20 break. We'll come back in in just a few minutes and
21 resume testimony. Please don't discuss the case.

22 (WHEREUPON, the jury left the courtroom at
23 approximately 3:35 p.m.)

24 THE COURT: Okay. We'll be in recess for a few
25 minutes.

1 (WHEREUPON, a short break was taken.)

2 (WHEREUPON, the jury entered the courtroom at
3 approximately 3:47 p.m.)

4 THE COURT: All right. You may call your next
5 witness.

6 MS. ODOM: Your Honor, the State calls Dr. Crosswell.

7 THE CLERK: Place your left hand on the Bible, raise
8 your right.

9 MARY FRAN CROSSWELL, M.D., after having
10 been duly sworn, testified as follows:

11 THE CLERK: Thank you, ma'am. If you would, have a
12 seat and state your name for the record, please.

13 THE WITNESS: My name is Mary Fran Ratchford
14 Crosswell.

15 DIRECT EXAMINATION

16 BY MS. ODOM:

17 Q All right, Dr. Crosswell, can you tell me what your
18 occupation is?

19 A I'm a child abuse pediatrician at the Greenville
20 Health System.

21 Q How long have you worked there?

22 A This next month will be 10 years.

23 Q Tell us about your job. What exactly do you do
24 there?

25 A I perform medical evaluations on children where

1 there's a concern of some form of child maltreatment.

2 Q Tell me about your education.

3 A I received my undergraduate degree from Wake Forest
4 University. I received my medical degree from the
5 University of Louisville School of Medicine and completed
6 pediatric residency at the Greenville Health system.

7 Q In addition to your education and to your training at
8 the hospital, what other types of training have you had?

9 A I've done multiple annual continuing medical
10 education courses, primarily focused in the field of child
11 maltreatment.

12 Q Have you had any special training in child sexual
13 assault?

14 A Yes, I have.

15 Q Can you tell me about your experience specifically in
16 the field of child sexual assaults?

17 A Since September of 2008 -- or, excuse me, 2006, I
18 have focused full time work on child abuse evaluation.
19 The majority of those evaluations are sexual abuse
20 evaluations.

21 Q So how many years did you say you have been doing
22 this?

23 A September 11th, it will be 10 years.

24 Q Do you know about how many exams you've done?

25 A I perform between 150, 200 exams a year, multiplied

1 by 10, so I'd say close to 2000 exams.

2 Q Have you ever testified in court?

3 A Yes, I have.

4 Q How many times, ballpark, do you think you've
5 testified?

6 A I would estimate 35 to 40 times.

7 Q And how many times have you been qualified as an
8 expert in child abuse pediatrics?

9 A I would estimate 30 to 35 times in the field of child
10 abuse pediatrics. Otherwise, it's been in general
11 pediatrics.

12 MS. ODOM: Your Honor, at this time, I'm going to
13 move to have her qualified as an expert in child abuse
14 pediatrics.

15 THE COURT: Any voir dire or exceptions, sir?

16 MR. BOGGS: We have no objection. We would stipulate
17 to her qualifications.

18 THE COURT: All right, ladies and gentlemen, when a
19 party offers a witness as an expert witness, they do so
20 because of a witness's expertise, education and experience
21 in a given field. The reason someone may offer someone as
22 an expert witness is because an expert witness can testify
23 as to things that a lay witness may not be able to testify
24 to. That is, an expert witness can offer opinion evidence
25 that a lay witness may not otherwise be able to offer.

1 Now, when someone is qualified as an expert witness,
2 that does not mean that his or her testimony has any
3 greater weight or value than any other piece of evidence
4 that you receive or any greater weight or value than the
5 testimony of any other witness. Just like with any piece
6 of evidence that you receive and just like with any
7 testimony that you hear, you determine what has weight and
8 you determine what has value. Same is true for an expert
9 witness.

10 All right. You may proceed. She is so qualified.

11 MS. ODOM: Thank you, Your Honor.

12 THE COURT: Yes, ma'am.

13 BY MS. ODOM:

14 Q All right. Talking about the procedure of examining
15 a child for sexual abuse, can you tell me what happens
16 from start to finish when a child comes into your office?

17 A Yes. So when a child comes to my office, they're
18 greeted by a child life specialist, who is an employee of
19 the hospital, who has special training in child
20 development and helping a child feel comfortable in the
21 medical evaluation. She brings the child back to the exam
22 room and explains to both the child and the caregiver
23 exactly what will happen during their time with me,
24 allowing the child to use all the medical equipment that I
25 will be using.

1 Next, I will take a medical history from the provider
2 or caregiver who has brought the child in for the exam.
3 Then if a child is old enough, I attempt to obtain
4 independent history of why they're there from the child.
5 And then perform the physical exam after that.

6 Q Okay. So they have -- the specialist kind of helps
7 them comfortable?

8 A That's correct.

9 Q And then you as well explain to them what's going to
10 happen?

11 A Yes.

12 Q Tell me about the physical exam.

13 A So most of the exam is what a general pediatrician
14 would do, just a head to toe physical exam, looking in the
15 eyes, ears, the mouth, listening to heart and lungs,
16 assessing the stomach or abdomen. And then for the sexual
17 abuse evaluations, we use a piece of medical equipment
18 called a colposcope. A colposcope is a form of
19 magnification and light source. And it also has the
20 ability to photo document any physical findings that I may
21 see.

22 Q What do you look for when doing the exam?

23 A I'm looking for any type of acute injury or chronic
24 injury. An acute injury would be something like a cut or
25 a bruise. A chronic injury would be something that is

1 healed, like a scar, or sight of previous injury, if that
2 makes sense.

3 Q So when you're doing the physical exam, what part do
4 you do last? What part of the body do you examine last?

5 A I do -- for a female, it's the vaginal and anal area
6 that I do as the last piece of the evaluation.

7 Q Can you tell me about the genital exam?

8 A As far as?

9 Q As to what happens.

10 A So I have this piece of equipment, this colposcope,
11 that, again, is like a magnifying glass and a bright
12 light. So the child will -- depending on their age, will
13 get in like a gynecologic pose with the stirrups at the
14 end of the bed. And then I tell them what I'm doing. I
15 use my hands, too, to be able to visualize the structures
16 that are deeper to the external region and look through
17 the magnifying system. If there's any indication to do
18 any testing for sexually transmitted infections, I will do
19 the necessary swabs at that time.

20 Q And just to kind of aid the jury in seeing what
21 you're talking about, would you mind describing the female
22 sexual organs and giving us a drawing --

23 A Sure.

24 Q -- to aid in that?

25 A May I step down?

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

2 THE WITNESS: So when you first look at a female
3 genital area, the first layer of tissue that you have to
4 move aside are some fatty layers of tissue called the
5 labia majora. Once that is laid aside, you'll be able to
6 see the clitoris, which are also connected to the labia
7 minora, which is another layer of tissue. And that kind
8 of wraps around like this. Deep to that is the opening to
9 the vagina. And then partially covering the vagina is a
10 layer of tissue, I'm going to mark it different, it's
11 called the hymen. Then you have a space in between where
12 this ends and then this is where the anus is. And just to
13 orient you, the opening to where urine comes out is there
14 and it's called the urethra.

15 Q Thank you. All right. Can you tell me what the
16 hymen is?

17 A The hymen is just a thin layer of tissue that really
18 marks where the entrance of the vagina is.

19 Q And what are some misconceptions about the hymen?

20 A Many people believe that the hymen will have obvious
21 injury or scarring if there has been any type of
22 penetration and this is not always the case, especially in
23 child sexual abuse.

24 Q And can you tell me why?

25 A Either because the nature of the abuse didn't cause

1 an injury to start with or if there was an injury, it can
2 heal within a matter of days to the point where you don't
3 see any scarring or any remnant of that injury. Then once
4 a child reaches the age of puberty, the affects of hormone
5 on this tissue allow it to become more elastic so that
6 objects can pass without causing any injury. So there
7 have been studies of pregnant teenagers with normal
8 hymens. So there's been obvious penetration without any
9 signs of injury.

10 Q Now, can you -- in reference to the anal cavity, can
11 you tell me about your examination in reference to the
12 anus?

13 A So I push the buttocks aside to be able to visualize
14 the anus. The entrance to the anus has a muscle called
15 the anal sphincter. In its normal state, it remains
16 contracted so that it keeps the contents of the anus
17 inside the anus. When someone passes a bowel movement,
18 then that sphincter relaxes. So I'm looking at the tone
19 of the sphincter to make sure it has good tone. I'm
20 looking for any fissures, which would be for an acute
21 injury or recent injury. I'm looking for any bruising or
22 scars that may be there.

23 Q Can you tell me -- this may be a silly question, but
24 what's the anus designed for?

25 A Well, the anus is designed to pass bowel movements,

1 which are large -- you know, can be large objects, so
2 they're designed to allow objects to pass without causing
3 any trauma.

4 Q If something is inserted into the anus, would there
5 necessarily be injury?

6 A No. Just as the sphincter can relax to allow objects
7 to pass out, the sphincter can also relax and allow
8 objects to pass in.

9 Q And do you think the size of an object could have an
10 affect on the possible injury or noninjury to the anus?

11 A Well, certainly, depending on what size you're
12 talking about -- certainly, the variation in size -- you
13 know, larger objects may be more predisposed to injury
14 than smaller objects.

15 Q And you earlier said something about the sphincter
16 tone. Can you kind of elaborate on that and what that
17 means?

18 A It just means that that muscle is contracted like it
19 should be. For me, when I say normal anal sphincter tone,
20 that area and the way the skins folds is as I would expect
21 it to fold because the muscle is working as it should.

22 Q Okay. And if anal penetration was completed, would
23 it necessarily disturb the hymen?

24 A No. I would not expect it to disturb the hymen if it
25 were anal penetration.

1 Q Did you have an opportunity to examine Haleigh
2 Galbreath?

3 A Yes, I did.

4 Q What date did you examine her on?

5 A I examined her on January 27th, 2014.

6 Q And she did speak with you before the exam started?

7 A Yes, she did.

8 Q As to location only, did she tell you where any abuse
9 took place?

10 A She said it was in the bathroom, but it usually
11 happened in her mom's and his bedroom.

12 Q And to time or time frame only, did she tell you when
13 the abuse took place?

14 A She said that the first time it happened she was 11
15 or 11 and a half, and the last time was on Christmas Day.

16 Q And how old was she when you examined her?

17 A She was 12.

18 Q How much did she weigh at the time of the exam?

19 A She weighed 116 pounds.

20 Q And do you know what percentile that is?

21 A She was 80th percentile for her weight, which means
22 that girls her age, approximately 80 percent weigh less
23 and 20 percent weigh more.

24 Q How about her height, do you happen to know that?

25 A She was five, four and a half, which is the 91st

1 percentile for her age.

2 Q Can you tell me about her exam overall, what kind of
3 health she was in?

4 A She was in very good health.

5 Q And what about the findings in reference to her
6 genital exam?

7 A She had a normal exam.

8 Q Was her hymen intact?

9 A Her hymen did not have any evidence of any tears or
10 lacerations.

11 Q And was there anything unusual about her anus?

12 A No, there was not.

13 Q And you've already touched on this a little in your
14 testimony, but is there always evidence of trauma in
15 sexual abuse cases?

16 A No. In child sexual abuse, it's actually rare to
17 have a specific finding of sexual abuse on the exam. Less
18 than three percent of the cases have a specific physical
19 finding that would indicate the abuse.

20 Q And you said about the hymen being able to heal up
21 quickly, what about an exam in general, do all injuries
22 heal up quickly?

23 A Yes. The type of tissue in those areas is mucosal
24 tissue. So the analogy I make is that when you bite the
25 inside of your mouth, sometimes that will heal up in a day

1 or two and it won't leave a sign of scarring. And it's
2 the same type of tissue in that location. It has a rich
3 blood supply, so it heals very quickly and can heal
4 without scarring.

5 Q Would a female's estrogen levels affect that any?

6 A Well, again, the effects of estrogen will allow the
7 hymen to become much more elastic so that it can stretch
8 without tearing or causing a laceration.

9 Q And do you know ~~Minor's~~ estrogen level?

10 A By report, she had not started her period, but on her
11 physical exam, she had the pubic hair and breast
12 development, which would indicate that she is pubertal,
13 which would indicate that she -- I guess I should say
14 peripubertal, meaning that she was close to starting her
15 period. And pubic hair and breast development are
16 dependent on the internal hormones in the body.

17 MS. ODOM: Beg the Court's indulgence one moment?

18 THE COURT: Yes, ma'am.

19 MS. ODOM: All right, Doctor, please answer any
20 question Mr. Boggs has.

21 CROSS-EXAMINATION

22 BY MR. BOGGS:

23 Q Dr. Crosswell, ~~Mary~~ wrote a statement and
24 testified earlier today that her vagina had been
25 penetrated, at least, five times, okay?

1 A Okay.

2 Q It is normal for her to still have a hymen after that
3 many penetrations?

4 MS. ODOM: Objection. I might have misheard the
5 question, but I think he said vagina. That would be
6 misstating prior testimony in evidence.

7 MR. BOGGS: I didn't hear what she said.

8 THE COURT: I think she says that you're misstating
9 the prior evidence.

10 Here's my position on that. I don't know what the
11 prior evidence is. I don't take a position on what the
12 prior evidence is. Y'all determine what you heard, okay.
13 The attorneys' questions, just like opening and closing
14 statements, are not evidence, okay.

15 I don't know -- I don't take a position on whether
16 that was a misstatement or not. I don't take the position
17 on whether you misstate evidence or not. That's up to the
18 attorney -- or excuse me, the jury to determine.
19 Questions aren't evidence, the responses are evidence.
20 Documents that are put into the record are evidence. If
21 either of the attorneys misstate the record, then I'm sure
22 that you will recognize that.

23 Okay. You may proceed.

24 BY MR. BOGGS:

25 Q She wrote a statement to the police that she had had,

1 at least, five times where she had vaginal penetration,
2 okay. Is it not unusual for her to still have the hymen?

3 A Well, I think there -- first, you have to define what
4 penetration is. Penetration to me --

5 Q Sexual intercourse.

6 A Well, penetration to me, a medical definition, that
7 would put her at risk of sexually transmitted infection is
8 any contact with the penis to her genital area past the
9 labia majora, so you can have penetration of the labia.

10 And some women -- many women don't know exactly where the
11 vagina starts and where it ends. So many cases of child
12 sexual abuse, there's penetration of the labia without
13 penetration of the vagina. However, even in a
14 peripubertal child that has estrogenized that would allow
15 it to stretch. There are many studies that have shown
16 that repeated penetration can occur and still have a
17 normal hymen.

18 Q So the answer to my question is you would not be
19 surprised, correct?

20 A I would not be surprised.

21 Q Okay. So there's no medical evidence saying that it
22 didn't happen, but there's also no medical evidence that
23 it did happen?

24 A The --

25 Q That's a yes or no, then you can explain. There's no

1 medical evidence that --

2 MS. ODOM: Objection. I would ask him to allow her
3 to answer the question how she would answer the question
4 --

5 MR. BOGGS: I'm repeating the question. It's a yes
6 or no question. I've told her she can explain it.

7 THE COURT: Pose the question and let her respond.

8 BY MR. BOGGS:

9 Q There is no medical evidence that there was ever any
10 penile penetration of her vagina, is there?

11 A The medical evidence is the history that I was
12 provided.

13 Q I understand.

14 A A medical evaluation cannot take just one component
15 of the evaluation. Any medical evaluation is going to
16 require a history, a physical exam and any laboratory
17 studies that are necessary to determine.

18 Q Okay. I don't want to argue with you, so let me make
19 it so I can understand it. Is there any physical evidence
20 that her vagina was penetrated?

21 A There is no physical evidence.

22 Q All right. Now, as far as the anus goes, is there
23 any physical evidence that there was penetration of her
24 anus?

25 A There is no physical evidence.

1 Q All right. Her testimony is that her anus was
2 penetrated multiple times, right?

3 A I wasn't here for her testimony, so I don't know what
4 her testimony was.

5 Q Well, you interviewed her back a couple years ago,
6 but anyway, assuming that is what the police and her
7 testimony is, okay?

8 A Okay.

9 Q Is it not unusual for the sphincter to not be
10 stretched some?

11 A Again, penetration, I'm not sure how far it was
12 penetrated, but there are -- there are many studies of
13 children who have been repeatedly sexually abused that
14 have normal anus exams.

15 Q All right. Let's just do it this way. Is there any
16 physical evidence that her anus had ever been penetrated?

17 A No, there's no physical evidence.

18 Q In fact, your report -- your anal report says normal
19 anal sphincter tone; is that correct?

20 A I said normal anal sphincter tone, yes.

21 Q No fissures?

22 A No fissures.

23 Q No lacerations?

24 A No.

25 Q No bruising?

1 A No.

2 Q No scarring?

3 A Nor would I expect there to be based on the history
4 that I was provided.

5 Q No scarring?

6 A No scarring.

7 Q Okay. So again, you're just taking her word for it?

8 A I performed a medical evaluation to come to my
9 opinion.

10 Q Uh-huh. But no medical evidence at all, no
11 physical --

12 MS. ODOM: Objection, asked and answered.

13 MR. BOGGS: That's all I have for her.

14 THE COURT: Any redirect?

15 MS. ODOM: No, sir.

16 THE COURT: All right. Thank you, appreciate it.
17 You may call your next witness.

18 MS. ODOM: Your Honor, may I have a second to step
19 out in the hall and see if she's here --

20 THE COURT: Sure.

21 MS. ODOM: -- before I call her name with no
22 response?

23 (Pause.)

24 MS. ODOM: Your Honor, at this time, the State calls
25 Shauna Galloway-Williams.

1 SHAUNA GALLOWAY-WILLIAMS, after being duly
2 sworn, testified as follows:

3 THE CLERK: Thank you. If you would, have a seat and
4 state your name for the record.

5 THE WITNESS: Shauna Galloway-Williams.

6 DIRECT EXAMINATION

7 BY MS. ODOM:

8 Q Where do you work?

9 A I'm executive director of the Julie Valentine Center.

10 Q And tell me how long have you been at the Julie
11 Valentine Center?

12 A I been in my role as executive director since 2009.
13 Prior to that, I was the clinical director. Prior to
14 that, I worked doing contract with the center as well as
15 being employed by the Department of Mental Health.

16 Q What kind of work -- or what does the Julie Valentine
17 Center do?

18 A We are the child abuse and sexual assault recovery
19 center. We serve Greenville and Pickens County. We
20 provide prevention and education services, crisis
21 intervention, advocacy and therapeutic services through
22 three programs, our children's advocacy center, our rape
23 crisis program as well as our education program. Yeah,
24 that's pretty much it.

25 Q Okay. Can you tell me about your education?

1 A Yes, I have a Bachelor's Degree in psychology from
2 Winthrop University and a Master's Degree in counseling
3 from Clemson University.

4 Q And what other kind of training have you had in
5 addition to your two degrees?

6 A So in addition to that, I have over 150 skills-based
7 hours of training directly related to assessing child
8 maltreatments when there are allegations of child
9 maltreatment with children in families. Because I'm
10 licensed as professional counselor in the State of South
11 Carolina, I'm also required to complete, at least, 22
12 hours of continuing education credit each year. So most
13 of my continuing education credits have been directly
14 related to child abuse and sexual assault because that's
15 my area of specialization.

16 Q So in addition to your degrees, you didn't just stop
17 there, you continue every year to have more and more
18 education?

19 A That's correct.

20 Q And would you count your work, your experience as
21 part of your training as well?

22 A Sure, yes.

23 Q How many victims of child abuse would you say you've
24 worked with?

25 A I don't know an exact number, but I would say

1 thousands of children and families. I've been working in
2 counseling assessing and supervising clinicians since
3 2001. And in that time period, I have conducted
4 interviews and assessments of over 900 children in
5 addition to providing individual therapy, family therapy
6 and group counseling to children and families.

7 Q So you don't just work with children who have been
8 abused, you work with their family as well?

9 A That's correct. I co-facilitate a group for
10 nonoffending caregivers whose children have been sexually
11 abused.

12 Q Do you work with adult survivors of sexual abuse?

13 A I don't work directly with adult survivors. Our
14 center does serve adult survivors, though.

15 Q In addition to all the training, continuing
16 education, do you teach or train others?

17 A I do. I'm an adjunct professor at USC Upstate in
18 their child advocacy studies program. I teach two courses
19 there. One is a three-hour course on child maltreatment.
20 The other is a three-hour course on gender violence in
21 society. I also provide training to other professionals
22 in the field, including providing training to Greenville
23 County school district with their administrators, that
24 includes all their principals, vice-principals, attendance
25 clerks, social workers and guidance counselors in

1 recognizing and responding to child abuse and sexual in
2 youth serving organizations. I also have presented at
3 national and statewide as well as local conferences in the
4 area of child maltreatment.

5 Q Have you had the opportunity to write or publish
6 anything?

7 A I have not been published in any journals, no.

8 Q What are the textbooks you use in your classes?

9 A Well, in the child maltreatment course, I use a book
10 that is entitled "Child Maltreatment". It's written by
11 Stephanie King. And the text itself covers the dynamics
12 of child maltreatment, system responses to that and the
13 different types of child maltreatment we tend to see in
14 the field.

15 Q So are the issues and topics of child sexual abuse
16 and maltreatment thoroughly researched?

17 A Yes.

18 Q And you said there's articles out there on the topic?

19 A There are. There are articles on the topics related
20 to child maltreatment. There are journals that are
21 specifically related to child maltreatment. There are
22 textbooks and there are even entire programs. In fact,
23 the program that I teach in is the child advocacy studies
24 program. And that program is dedicated to training
25 professionals who are going to enter the field of child

1 protection.

2 Q Are these articles peer reviewed?

3 A They are.

4 Q Can you tell me what that means?

5 A Peer reviewed articles mean that before an article
6 can be published, it has to be reviewed by other
7 professionals in the field. And it's usually compared --
8 the articles are compared to other research that's been
9 done in the field. And before an article can be published
10 in a peer review journal, it has to go through that
11 process.

12 Q Is the research on child maltreatment and sexual
13 abuse dynamics accepted and used by experts in the field?

14 A Yes.

15 Q And is it not just in the teaching field, but is it
16 also relied on and used in the counseling area or with
17 counselors?

18 A Yes.

19 Q Is it used at the Julie Valentine Center?

20 A Yes.

21 Q How about all over the country?

22 A Yes. Many of the trainings and the information that
23 we base our practice and our protocols on at the center
24 are based on nationally-recognized trainings and
25 information and research. And again, a lot of the work

1 that's done in the child advocacy studies programs or cast
2 programs across the country represent the fact that it is
3 a widely-recognized field of expertise now.

4 Q Do you happen to have with you any studies or
5 articles showing the reliability or do you know any
6 offhand?

7 A That demonstrate the liability?

8 Q Yes, ma'am.

9 A Well, typically, when you're talking about
10 reliability, you're talking about scientific studies,
11 studies that can be replicated over and over again. So
12 when we're talking about the research that's done in the
13 area of child abuse and neglect, those don't tend to be
14 studies where you're testing one condition against another
15 or looking for reliability, rather you're looking at
16 longitudinal research where you're comparing information
17 across cases over time. Given the fact that we're talking
18 about abuse and neglect, we can't really expose children
19 or families to the conditions of abuse and then some to
20 not those conditions and compare that way.

21 So in terms of scientific reliability, that's not the
22 type of testing -- or research that we're talking about.
23 However, the research that supports our field has been
24 widely researched and replicated. In other words, teams
25 of researchers may find the same type of conditions or

1 similar characteristics among children who've reported to
2 have been sexually abused or adults who have reported to
3 have been sexually abused or cases that have been
4 indicated in that way.

5 Q Thank you. Have you ever testified in court before?

6 A I have.

7 Q Do you know how many times you've testified?

8 A I have been qualified as an expert in general
9 sessions over 30 times.

10 Q And have you been qualified before in the field of
11 child and sexual abuse dynamics and disclosure?

12 A I have.

13 MS. ODOM: Your Honor, at this time, the State
14 request that Ms. Galloway-Williams be qualified in this
15 case as an expert in the field of child sexual abuse
16 dynamics and disclosure.

17 THE COURT: Any voir dire or exceptions to that
18 qualification?

19 MR. BOGGS: I have a question, Your Honor.

20 THE COURT: Yes, sir.

21 VOIR DIRE

22 BY MR. BOGGS:

23 Q Did you examine ~~Minor~~ at all? Have you examined
24 ~~Minor~~?

25 A Is that the child in this case?

1 Q Well, obviously, you haven't then?

2 A That's correct, I have not.

3 Q So you've never talked to her?

4 A No.

5 Q Have you reviewed the police notes?

6 A I have not.

7 MR. BOGGS: Your Honor, she may be an expert, Judge,
8 but I would object to her testifying to anything about
9 *Miss*

10 THE COURT: Okay. And I think the law specifically
11 precludes that if I'm not mistaken.

12 MR. BOGGS: Yes, sir.

13 However, she can testify -- do you take exception
14 generally to her expertise or her ability to opine about
15 subjects within her given field?

16 MR. BOGGS: No, sir.

17 THE COURT: Okay. All right. She is so admitted as
18 an expert witness.

19 Ladies and gentlemen, I've explained to you
20 previously what an expert witness is and why someone may
21 be offered as an expert witness. I just remind you once
22 again that if someone is admitted and qualified as an
23 expert witness that does not mean that their testimony has
24 any greater weight. Just like any other testimony you
25 receive, you decide whether it's credible and whether it

1 has weight.

2 You may proceed.

3 MS. ODOM: Thank you, Your Honor.

4 BY MS. ODOM:

5 Q All right. So my next question has kind of already
6 been answered, but do you know the child in the case we're
7 hear about today?

8 A I do not.

9 Q Have you read any incident records?

10 A I haven't.

11 Q Have you talked to any of the officers involved?

12 A I have not.

13 Q And other than talking to me in an effort to get you
14 here to court, have you done any investigation on this
15 occasion specifically?

16 A No, I haven't.

17 Q Okay.. Do you know why you're testifying here today?

18 A I'm here today to testify to provide education and
19 information about the dynamics of child sexual abuse, so
20 as a blind expert witness.

21 Q Are you being paid by me or my office?

22 A I'm not.

23 Q How are you paid?

24 A Our center is -- the Julie Valentine Center is a 1C3,
25 which means we're a nonprofit organization and about a

1 third of our funding comes from the federal government
2 through grants that we write on an annual basis. The
3 other third comes from United Way of Greenville County as
4 well as Pickens County. And the final third is made up of
5 fund raising and donations as well as grants.

6 Q So whatever you say today isn't going to affect you
7 getting paid or not?

8 A No, I'll be paid regardless.

9 Q Okay. All right. So you've been qualified as an
10 expert in child sexual abuse and dynamics. Can you kind
11 of give the jury a broad overview on what that means?

12 A So the area of child abuse dynamics or child sexual
13 abuse dynamics?

14 Q Yes, just like briefly to kind of let them know what
15 you do or why you're here.

16 A So there are a number of things that are unique to
17 cases of child sexual abuse that unless you've experienced
18 it or studied it or it's part of your job or your
19 education, you may not understand. There's some unique
20 things about the way that children talk about child sexual
21 abuse or disclose abuse. There's some unique things
22 around how they respond or others respond to it. It's not
23 -- it's really hard to understand in some respects because
24 when we think about children being harmed or hurt, you
25 know a child falls down on a playground or if their

1 sibling injures them, the first thing that they'll do is
2 come and tell someone. And that's not usually what
3 happens in cases of child sexual abuse. So that's just
4 one example of some of the differences and some of the
5 things that make it a little bit more challenging to
6 understanding how children are -- why children are acting
7 the way they are and why they may do some things that may
8 seen counterintuitive to what we would do ourselves as
9 adults.

10 Q Tell me about delayed disclosure. What does that
11 mean?

12 A So delayed disclosure is the term that we use to
13 refer to children not disclosing or telling about abuse
14 right away. It's such a common occurrence that we have a
15 term to describe that. And that means that children may
16 not tell within hours, days, weeks and many times, years
17 or never tell about child sexual abuse.

18 Q Can you kind of talk to us about the process of
19 disclosure?

20 A Well, we refer to disclosure as a process because we
21 know one, that children often don't tell right away when
22 it does happen. We also know that sometimes children
23 won't tell everything about an incident or incidents all
24 at one time. So it is a process. There are a couple of
25 different ways that we categorize disclosures. Many

1 disclosures are accidental, meaning, that the child hasn't
2 made a conscious, deliberate effort to make a disclosure.
3 There's been a behavior that's been observed or a question
4 has been asked of them or something triggers the child to
5 tell that something has happened. That would be an
6 accidental disclosure.

7 There are tentative disclosures where children might
8 share a little bit about what happens to them, wait to see
9 how people respond to that, if they're believed, if it's
10 investigated, what happens to the family when they
11 disclose. And then they may share more or they may not
12 share more. And then there are active disclosures, when
13 children make a conscious, deliberate effort to tell
14 someone what has happened to them.

15 Q Can you tell me some -- can you tell me some things
16 that might affect how or why the child delays that
17 disclosure factors?

18 A So like I said, many children do not tell about abuse
19 right away, they delay their disclosure. Two of the main
20 reasons -- one of the main reasons for that is fear. They
21 fear what will happen to them if they tell. They fear
22 what will happen to the person that has abused them if
23 they tell. They fear that they're going to get in trouble
24 because children think that they're going to get in
25 trouble, that they're responsible.

1 The second main reason that children delay disclosure
2 is because they're often abused by someone that they know,
3 they love and they trust, so this is someone they have a
4 relationship with in some way. It may also be someone
5 that's known, loved and trusted by the child's family
6 members and even the community. And that relationship, in
7 and of itself, can make it very challenging for a child to
8 tell. Because there may be things about that relationship
9 that they actually appreciate and enjoy. Or it may be
10 that that relationship is important to other family
11 members or friends or community members.

12 Children may not disclose because they feel
13 responsible in some way for what happened. Children are
14 naturally egocentric. They think that everything revolves
15 around them and that they are the cause for things. But
16 in sexual abuse cases, children may feel responsible
17 because they were told in some way they have something to
18 do with it. They may feel responsible because if it's an
19 incident that's happened repeatedly and they didn't tell
20 someone or didn't do anything to stop it, they may feel
21 responsible for that.

22 Their bodies may have responded to the sexual abuse
23 and that makes them feel guilty and shameful and
24 responsible for that. And then along with that, there's a
25 lot of shame and embarrassment with sexual abuse. In

1 general, people don't talk about sex openly and, in
2 particular, children don't. Many young children don't
3 even have the words or context to put that into words or
4 conversation. So it's often very uncomfortable and
5 embarrassing for children to talk about that. They may
6 not even have the words to describe what's happened to
7 them.

8 Q So they -- and by the words, you're talking about
9 terminology?

10 A Yes.

11 Q So if they don't know what their privates -- what to
12 call different parts of their privates, that could affect
13 their disclosure?

14 A Certainly. Yeah, if children don't have the language
15 skills to describe the parts of their body or the acts
16 that have been committed on them, they may not be able to
17 describe it in the same way that we as adults would
18 describe it or understand it.

19 Q And earlier you were talking about a relationship,
20 how they could affect it. Through your research, is it
21 possible for a victim to both love their perpetrator and
22 dislike them?

23 A Yes. That's one of the relationship dynamics that
24 makes it very difficult for children to disclose. Because
25 they do often like things and have loving relationships

1 with the person that is committing this offense with them.
2 So it can look very confusing on the outside to other
3 people. It can feel very confusing to the child.

4 It's very similar to any significant partner
5 relationship that we may have with someone. There may be
6 one thing that that person does that we just absolutely
7 can't stand, that drives us nuts. Again, I'm not
8 minimizing the experience of child sexual abuse to a pet
9 peeve, but we still maintain the relationship with that
10 partner or that best friend in spite of some of these
11 other things that may be hurtful or painful that we
12 dislike. It's a very similar kind of dynamic with a child
13 who's being sexually abused by someone that they know,
14 they love and they trust.

15 In some instances, the offender may be the one person
16 that gives that child the most attention and affection and
17 maybe someone who the child is closest with. So they can
18 both appreciate that relationship, but dislike what's
19 happening to them.

20 Q And you also already touched on this, but the child
21 being afraid of what other people -- how they would react,
22 you said that also affects the disclosure?

23 A Right. Yes. That general fear of the unknown,
24 what's going to happen to my family if I tell. What's
25 going to happen to other relationships, what's going to

1 happen to me, what's going to happen to my siblings, my
2 friends, are people that find out about this. There's
3 just general fears of not knowing what's going to happen.
4 Some of those fears may be there because children were
5 told or threatened that if you tell that this will happen
6 or they may have seen instances where things did happen
7 and they may fear that that would happen to them as well.

8 Q Now, other things that may -- what are things that
9 might affect how a child responds when asked a question
10 about the abuse?

11 A One of the main things that will impact that is who's
12 asking the questions and how the questions are asked. So,
13 for example, if a mom is asking her child questions about
14 what happened, the questions that she ask and the way she
15 ask them will likely be very different from the type of
16 questions that an investigator might ask of the child.
17 And the type of information that mom is seeking might be
18 very different from the type of information that law
19 enforcement or an interviewer or therapist or someone else
20 might be seeking.

21 So the type of questions and who's asking the
22 questions may determine the type of information that the
23 child shares. Because sometimes -- again, when we're
24 talking about these disclosures of abuse and the process,
25 you know, children don't always know exactly what it is

1 that we're asking of them because they're still children.
2 Even as adults, we don't always know what you're asking of
3 us, so we may need to ask a clarifying question. But with
4 children, even more so. So they may not know that when
5 you ask -- this happens to me often with children. The
6 question I ask is well, where did he touch you? And what
7 I want the child to tell me is where on her body she was
8 touched. But often, children will say in my bedroom.
9 Because where did he touch you could mean in what room, in
10 what house, in what city. And if I'm not specific about
11 that question, I may not get the answer that I am looking
12 for from that question. Does that make sense.

13 Q It does. So who's asking the question, how they're
14 wording the question. How about what surrounding they're
15 in, would that affect it as well, how the child answers?

16 A Certainly. So, yeah, I mean, being in a setting
17 where the child feels more comfortable asking questions,
18 that may be more willing to share information, depending
19 on who's in the room with them when they ask questions and
20 what that setting is. Those things could certainly impact
21 the type of information the child shares and how
22 comfortable they are sharing information.

23 Q Tell me what makes sexual abuse different, the
24 disclosure different than physical abuse disclosure?

25 A Well, there's a couple of things. You know, with

1 sexual abuse, again, there's the taboo and the shame
2 associated with sexual behavior in general. So there's a
3 lot of secrecy and shame associated with that. And it
4 even often makes it even more complicated and difficult
5 for people to talk about for children to share information
6 about.

7 Also with sexual abuse, you may not see any visible
8 injuries or see that anything has happened, whereas with
9 physical abuse, there might be bruising or injury or
10 things that are present to indicate that something has
11 happened.

12 Q In your experience, is the abuse always a violent or
13 aggressive act?

14 A No. That's another one of those dynamics that is
15 difficult to understand. Many times, it's not a violent
16 or aggressive act. Many times, these incidents happen in
17 a place where the child is comfortable, again, with
18 someone they know, they love and they trust. And there's
19 not often fighting back or that violent aggression we tend
20 to associate with somebody that's being hurt by another
21 person or someone's doing something to someone they don't
22 want to happen.

23 Q Do children necessarily recall every instance of
24 sexual abuse or recall it in chronological order?

25 A Well, time is an abstract concept, meaning that it's

1 takes a long time for children to really understand. So
2 they may have a really hard time, depending on their age,
3 giving us a day, month, year. You know, with children,
4 even up until the age of 12 or 13, sometimes we associate
5 time frames with holidays or school or other things so
6 that we can get a good frame of reference of when they're
7 talking about an incident occurring. To ask a child to
8 remember an exact date and time is very challenging,
9 particularly, if there's been recurring or multiple
10 incidents of abuse.

11 The example I like to use is, you know, I go to the
12 grocery store every week on the same day. I go every
13 Sunday. I park in basically the same parking spot and I
14 go down the same aisles every week, been doing that for
15 years. But if you ask me to tell you what items I bought
16 on a particular date, a year and time, I might be able to
17 tell you in general what I bought because there's a few
18 things that I always pick up, but I wouldn't be able to
19 tell you every single item. But if there were one day
20 that I went in and I parked in a different spot or
21 somebody hit my car with the buggy or something like that,
22 I would probably remember those details more
23 significantly. I still may not remember everything that
24 was in my cart, but I remember that particular incident
25 more so than others.

1 So it's a similar kind of memory structure with
2 children. You know, with repeated abuse events, they may
3 not be able to tell you every single detail about every
4 single time it happened, but there may be some incidents
5 that stand out more than others and they may be able to
6 tell you in general what happened during the specific
7 times, but they may not be able to tell you exact dates
8 and exact years and exactly what time those things
9 happened. They may be able to say it happened in the
10 night or in the morning, during the summer, during the
11 winter, whether we were in school or we were out of
12 school. Those are the kind of time and reference anchors
13 that we tend to use with children to help them to be able
14 to describe to us this abstract concept that they don't
15 necessarily get.

16 Q All right. Can you tell me what grooming is?

17 A Grooming is what we refer to as an attempt to gain a
18 trusting relationship with a child to engage them in
19 abusive acts. It also is a way of normalizing sexual
20 behavior with children. It may involve introducing
21 children to sexual materials, maybe showing them pictures,
22 showing them movies, touching them in ways that may not
23 directly feel sexual, but then progressing to other
24 behaviors like that, sharing dirty jokes. It may involve
25 giving special treats or favors, giving children money,

1 buying them gifts, allowing them to stay up later, giving
2 them special attention. All of that with the intent of
3 developing and maintaining a trusting relationship with
4 the child, and also, testing the waters with the child to
5 see just how far they can go and whether or not this is
6 the child that may tell or not tell.

7 Q So it's normal for touching to start at one level and
8 progress with grooming?

9 A Yes. So that can happen, yes. That would be a type
10 of grooming. Where there might be a behavior or
11 introduction to touch that may feel uncomfortable, but
12 it's not quite and the child tolerates that and doesn't
13 say anything. And so the next time, the touch progresses
14 to a different type of touch and then so on and so on
15 until the behavior progresses to more sexualized behavior.

16 Q Can you tell me about some factors that may make
17 sexual abuse -- make a victim more susceptible or
18 vulnerable to sexual abuse?

19 A Sure. So there are some characteristics associated
20 with children that increase the risk of sexual abuse. The
21 younger a child is, the higher at risk they are for sexual
22 abuse because they're more reliant on caregivers and
23 others to take care of them, particularly bathing,
24 toileting, those types of things, so they're higher risk.
25 And they also have fewer verbal skills or opportunities to

1 tell if something does happen. So the age of the child is
2 a factor.

3 Developmental disabilities, delays, those things are
4 risk factors for children. They're high risk of being
5 abused. Children who have known behavior problems who are
6 known by others to be liars or who are getting themselves
7 in trouble are at high risk of being abused because when
8 those children are abused and they do make an outcry, many
9 times, people are quick to say well, she's already lied
10 about all these other things, why wouldn't she lie about
11 this or he. There are other risk factors related to the
12 family in the home that put a child at risk.

13 Substance abuse is one of the main risk factors for
14 abuse and neglect of children when the parents are using
15 substances in the home and around the child. Single
16 parent households increase the risk of sexual abuse,
17 particularly if there are live-in partners. There's a
18 higher risk of child sexual abuse in those types of homes.

19 Q So when you say single parent, you mean the other
20 parent isn't living with them?

21 A Right. So, for example, if a mom is living with her
22 child and has live-in partners, the rate of child sexual
23 abuse increases significantly when single parents have
24 live-in partners in their homes.

25 Q What if a child craves attention, would that affect

1 anything?

2 A Well, again, you know, going back to the idea that
3 any sort of behavioral problems or -- and, certainly,
4 attention seeking could be one of those, might influence
5 whether or not that child is more likely to be abused than
6 others.

7 Q I'm going to get a little bit into coaching. What
8 does coaching mean in your field?

9 A When a child is influenced to say something that may
10 not necessarily have happened. When they've been
11 influenced to add or change or delete from their
12 disclosure..

13 Q Can you tell me some signs of coaching?

14 A Well, when we're talking with children and when we
15 are assessing their disclosures, we're looking to see if
16 they share core and contextual details. So the core
17 details are who, what, how something happened. The
18 contextual details are the sensory details, what did
19 something feel like, what did it smell like, what did they
20 hear, what did they see. Contextual details are the
21 details that a child shares that let us know that what
22 they're talking about is something they've experienced and
23 not something that someone has told them about.

24 THE COURT: Do you need to talk to the clerk, Mr.
25 Boggs?

1 MR. BOGGS: He's had heart problems. He feels like
2 he's having palpitations now. Could we take about a
3 five-minute break?

4 THE COURT: Ladies and gentlemen, just return to your
5 jury room. Please don't discuss the case. We'll come
6 back in a few seconds.

7 (WHEREUPON, the jury left open court at
8 approximately 4:45 p.m.)

9 MR. BOGGS: He was hospitalized about a month ago for
10 heart problems. He tells me that's --

11 What's your problem? You need a doctor?

12 We got anybody in here, EMS?

13 THE COURT: If we need to call EMS, let's go ahead
14 and call EMS. No reason to sit on it.

15 Y'all come around and talk to me real quick, okay.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: Okay. Let's go back on the record. I
18 recognize, of course, that we just had a series of events
19 happen and they aren't recorded on the record, so I just
20 want to make sure it is very clear what happened. The
21 Defendant, Mr. Rampey, was starting to have some chest
22 pains. He has a history of some medical issues.
23 Therefore, we suspended the conduct of the trial and
24 called EMS. EMS has come and they have removed him from
25 the courthouse. We have a witness on the stand,

1 Ms. Galloway-Williams, who may not be able to appear
2 tomorrow, therefore, we will continue with her examination
3 by consent of both parties. We anticipate that will be
4 very, very short. The Defendant will miss very little, if
5 nothing, this afternoon, at least, of any consequence.

6 And I don't mean to demean your testimony in any way,
7 shape or form, but it won't be prejudicial to him is the
8 point that I'm making.

9 I'll explain that to the jury as well and make sure
10 that they recognize that I instructed EMS to be called and
11 for medical authorities to tend to him.

12 Okay. We'll come back tomorrow morning at
13 9:00 o'clock and we'll see where we stand with the hopes
14 that we'll be able to proceed with the trial of the case.

15 Okay. Bring the jury in.

16 (WHEREUPON, the jury entered the courtroom at
17 approximately 5:00 p.m.)

18 THE COURT: All right. Ladies and gentlemen, thank
19 you for being patient with us. As you saw when we
20 adjourned previously, Mr. Rampey indicated to the Court
21 that he was having some chest pains. Apparently, he had a
22 history with some health issues over the last several
23 weeks. So when you went out, I instructed EMS to be
24 called and I instructed medical authorities to tend to him
25 out of the wealth of caution. He won't be with us for the

1 rest of the day, but, understand, that's not by his
2 choice, that's because I've instructed that to happen.

3 Now, we're going to continue with the testimony of
4 Ms. Galloway-Williams. I don't think we have very much
5 left and we should conclude fairly briefly, but I didn't
6 want Ms. Galloway-Williams to have to leave and then come
7 back tomorrow morning. So we'll take that testimony, then
8 after we've taken that testimony, we will adjourn for the
9 afternoon. Okay.

10 All right. I believe it's your witness, Ms. Odom.

11 MS. ODOM: Thank you, Your Honor.

12 BY MS. ODOM:

13 Q Do children who are abused sometimes act out?

14 A Yes.

15 Q Do they sometimes change their appearance?

16 A Yes.

17 Q Can you give me any examples of that or elaborate?

18 A Sure. Some children may begin to act out after they
19 have been abused. They might -- one of the things that we
20 tend to tell parents to look out for when they're asking
21 for warning signs that something may have happened to
22 their child is behavior change, something significant in
23 their appearance or behavior that wasn't there before.
24 For example, a child who was previously very social
25 becoming very isolated or vice versa. A child who tended

1 to be very conservative becoming less so. You know,
2 sometimes we see children who may sexually act out. You
3 know, they've been exposed to sexual behavior, so they may
4 act out with others. They may be promiscuous if they're
5 introduced to sexual behavior at a young age. At the same
6 time, there may be absolutely no outward symptoms or signs
7 or changes that a child would display. Some children don'
8 change their behavior at all and a lot of times -- or
9 sometimes you may not see anything any different.

10 MS. ODOM: Please answer any questions Mr. Boggs has.

11 THE COURT: Mr. Boggs.

12 CROSS-EXAMINATION

13 BY MR. BOGGS:

14 Q Okay. You sound like you've given this testimony a
15 lot, basically, the same testimony, which is kind of
16 boilerplate.

17 A That's --

18 Q My question -- excuse me. My question is this, you
19 testified or said that you've never seen *Minor*, right?

20 A That is correct.

21 Q All right. You've never talked to her, right?

22 A Right.

23 Q Okay. Never looked at any reports?

24 A I have not.

25 Q Okay. So you can't testify today that anything that

1 you said as far as these dynamics, et cetera, et cetera
2 would apply to her, right?

3 A That's correct.

4 MR. BOGGS: Nothing further, Your Honor.

5 THE COURT: Redirect, ma'am?

6 MS. ODOM: No, sir.

7 THE COURT: Okay. All right. All right. Thank you,
8 ma'am. I appreciate you being here. You may be excused,
9 ma'am.

10 MS. ODOM: May she be released from her subpoena?

11 THE COURT: You don't intend to call her again, do
12 you?

13 MR. BOGGS: No.

14 THE COURT: Yes, ma'am, you may be released from your
15 subpoena. Thank for being here.

16 All right. Ladies and gentlemen, we're going to
17 break for the afternoon. Please be back tomorrow at 9:00.
18 I'm hopeful, I'm hopeful that we'll be able to resume the
19 case then.

20 How many additional witnesses do you have?

21 MS. ODOM: One.

22 THE COURT: One witness from the State.

23 And you anticipate one?

24 MR. BOGGS: Possibly.

25 THE COURT: Okay. So two witnesses. After we've

1 heard from those witnesses, then we'll move to argument
2 and charge.

3 So this evening, please don't discuss the case.
4 You'll have plenty of time to discuss it when you begin
5 your deliberations, but for the immediate time being,
6 don't discuss it. When you come back tomorrow morning, we
7 will resume the trial.

8 Hope y'all have a good evening and be safe going home
9 and coming back. Thank you. You're released.

10 (WHEREUPON, the jury left the courtroom at
11 approximately 5:04 p.m.)

12 THE COURT: Y'all have any written request for
13 charge?

14 MR. BOGGS: I do not, other than your standard
15 credibility, believability.

16 THE COURT: Yes, sir, you get that.

17 Any written request for charge?

18 MS. ODOM: No, sir. I would ask do you give the
19 standard reasonable doubt charge?

20 THE COURT: Now, I ordinarily give the firmly
21 convinced standard as opposed to the type of doubt which
22 would cause a reasonable person to hesitate to act. I can
23 give the other one if you want me to, but I find that
24 really doesn't necessarily resonate with juries, at least,
25 it doesn't resonate with me. So if you want to argue the

1 type of doubt that would cause a reasonable person to
2 hesitate to act, then I will favorably entertain your
3 request.

4 MS. ODOM: No, sir. I just want to know so during my
5 closing.

6 THE COURT: Yeah, I'm going to say, you know, proof
7 beyond a reasonable doubt is proof which leaves you firmly
8 convinced of the Defendant's guilt. Okay. Then I'll go
9 on with a little bit further explanation, but that's the
10 definition I give.

11 MS. ODOM: Okay.

12 THE COURT: Then otherwise, with respect to the two
13 charges and the indictments, I'm simply going to read the
14 statutory language and subparagraphs B and C, okay. All
15 right.

16 MS. ODOM: Do you read the specific definition of
17 sexual battery?

18 THE COURT: You read that statute and you tell me if
19 you think if it's necessary, okay?

20 MS. ODOM: Okay. I'll do that.

21 THE COURT: And we'll include it if you think it's
22 necessary, okay. I'm not reading the statute right now,
23 so I don't know if it's included in one of the
24 subparagraphs or not or if we need to give a definition.

25 MS. ODOM: It's in a different section.

1 THE COURT: It's in the definition category. Okay.
2 We'll include that definition. Okay. I haven't read it
3 today.

4 Okay. All right. Good enough.

5 MR. BOGGS: Thank you, Your Honor.

6 The court: Yes, sir.

7 Y'all have a great evening. We'll be back at 9:00
8 tomorrow.

9 (WHEREUPON, Court was adjourned for the day to
10 be reconvened on Thursday, September 1, 2016.)

11 THURSDAY, SEPTEMBER 1, 2016

12 THE COURT: Mr. Rampey, how are you doing today, sir?
13 Feel better?

14 MR. RAMPEY: No, sir.

15 THE COURT: No, no better. But your hearts better, I
16 hope.

17 MR. RAMPEY: They told me I need to follow up with my
18 cardiologist and possibly have to have a pacemaker.

19 THE COURT: Well, I'm sorry to hear that. I'm glad
20 you're back. You're looking fit.

21 MR. RAMPEY: Yes, sir. Thank you.

22 THE COURT: That's good news.

23 All right. We have one juror who's still
24 outstanding. Any issues we need to take up before we get
25 started?

1 MR. BOGGS: Your Honor, it's come to my attention
2 that two members of the family spoke to a juror yesterday
3 after court -- excuse me, this morning. And you,
4 obviously, instructed everyone in the courtroom not to
5 talk about the case, specifically, with the jurors. I'm
6 concerned as to what that conversation was, whether it
7 impacts, whether it was enough to lead to a mistrial. I
8 would think we need to explore whether or not -- or what
9 the substance of it was and why it happened, why the juror
10 even talked to these two.

11 THE COURT: We can do one of two things.

12 MR. BOGGS: Yes, sir.

13 THE COURT: And I'll do whatever y'all want to do. I
14 can bring the juror out, put the juror under oath and
15 conduct voir dire. I can bring the juror into the grand
16 jury room with the two of you present and ask those
17 questions as well and see if you're satisfied. Or just to
18 avoid any appearance of impropriety, I can just excuse
19 that juror and replace it with an alternate.

20 MR. BOGGS: The two gentlemen that spoke to this
21 juror are sitting right here. You may want to ask them
22 why they talked to them and what was the substance and if
23 they knew that juror.

24 THE COURT: Okay. Who spoke to the juror?

25 MR. BOGGS: I think it was these two.

1 THE COURT: Gentlemen, I'm going to ask you to stand
2 up if you will and identify yourselves.

3 MR. JAMES RHODES: James Rhodes.

4 THE COURT: Okay.

5 And sir, you are?

6 MR. BOBBY RHODES: I'm Bobby Rhodes.

7 THE COURT: Did y'all have a conversation with a
8 juror this morning?

9 MR. BOBBY RHODES: No, sir.

10 THE COURT: You didn't talk to him at all?

11 MR. BOBBY RHODES: We didn't talk to anybody.

12 MR. JAMES RHODES: We didn't --

13 THE COURT: Y'all can't talk at the same time,
14 gentlemen, because the court reporter can't take it down.

15 I tell you what, Mr. Rhodes, the younger, and then
16 Mr. Rhodes, the elder, you tell me your recollection of it
17 and then you can tell me your recollection of it.

18 MR. JAMES RHODES: The only person we saw was
19 Rampeys. We saw no jurors. We got here at 9:00 on the
20 dot.

21 THE COURT: I'm afraid you were talking so quickly
22 that I couldn't understand you.

23 MR. BOBBY RHODES: I said we only saw the Rampeys.
24 We didn't see the jury. We got here at 9:00. We were
25 actually running late.

1 THE COURT: All right. Sir?

2 MR. JAMES RHODES: Like he said, we came from
3 breakfast straight here. We haven't spoken to anyone.

4 THE COURT: Okay. Good enough. Thank y'all. I
5 appreciate that.

6 THE COURT: Do you have some -- Mr. Boggs, do you
7 have some evidence to the contrary?

8 MR. BOGGS: Lori, did you see them talking -- and
9 Brandon's sister, who's outside with my witness --

10 THE COURT: Okay.

11 MR. BOGGS: -- says that they saw these two talking
12 to a member of the jury panel.

13 THE COURT: Ma'am, would you stand up and identify
14 yourself for the Court?

15 MS. RHODES: Lori Rhodes.

16 THE COURT: And tell me what you saw.

17 MS. RHODES: I saw them coming up the stairs --

18 THE COURT REPORTER: I'm sorry, I can't hear her,
19 Judge.

20 MS. RHODES: They were coming up the stairwell
21 talking to the juror.

22 THE COURT: Do you know the substance of
23 conversation?

24 MS. RHODES: No, sir.

25 THE COURT: So they were in the stairwell?

1 MS. RHODES: Yes, sir.

2 THE COURT: Were you in the stairwell as well?

3 MS. RHODES: No, sir.

4 THE COURT: Well, how would you know that they were
5 speaking to each other if you weren't in the stairwell.

6 MS. RHODES: I just assumed.

7 THE COURT: Okay.

8 MS. RHODES: I just assumed, I guess, that since they
9 were talking to each other. I don't know what the subject
10 matter was.

11 THE COURT: Are you sure that they were talking to
12 each other and these two gentlemen weren't talking to one
13 another as opposed to the juror?

14 MR. RHODES: It seemed they were talking all
15 together?

16 THE COURT: Did you hear any of the substance of the
17 conversation?

18 MS. RHODES: No, sir.

19 THE COURT: Okay. All right. Thank you. I
20 appreciate you telling me. I mean, these things are
21 sensitive and they're important, so it is important for me
22 to flush it out.

23 Do y'all want to have a conversation with that juror
24 specifically?

25 MR. BOGGS: I have no problem letting the clerk go

1 back and just ask the jury did any juror get approached by
2 anybody on the way into court this morning and have a
3 conversation with that person.

4 THE COURT: Are you comfortable with that?

5 MS. ODOM: Judge, I'm trying to think through it real
6 quick. I'd hate to just go back there and make a blanket
7 statement to the 14 of them, then it puts in their heads
8 well, somebody's trying something. I'd like to identify
9 the specific juror and then maybe pull them out into the
10 grand jury room or pull them outside the jury room and
11 just ask him or her alone.

12 THE COURT: Frankly, that's what I would prefer to,
13 just pull him out with all of us there and just say hey,
14 did you have a conversation with -- did anyone approach
15 you or did anyone have a conversation with you this
16 morning about this case.

17 MR. BOGGS: All right. So would you bring the jury
18 in, just let them sit for a second, get her to be able to
19 identify which one it is, send them back and then she can
20 tell us which one it was.

21 THE COURT: Can you tell us which one it was?

22 MS. RHODES: Yes, sir, he had on a suit.

23 THE COURT: The gentleman who is a funeral director,
24 am I correct?

25 MR. BOGGS: I think he's the only one that had a suit

1 on.

2 THE COURT: I think that's right. And if I'm not
3 mistaken, he was sitting on the front row in the second
4 seat from the right, does that sound right to you?

5 MS. RHODES: I don't remember where he was sitting
6 yesterday, sir.

7 THE COURT: Okay. I think that's the gentleman.
8 Yes, sir.

9 MR. JAMES RHODES: So we came up the stairwell this
10 morning and there were a gentleman following us. I even
11 held the door for him, but I never said a word to him.

12 THE COURT: Okay. Okay. I appreciate you saying
13 that. I appreciate you saying that. And I'm not pointing
14 fingers. I don't suspect anything.

15 MR. JAMES RHODES: Well, I don't even really know who
16 he is. I probably wouldn't recognize him if you brought
17 him in here.

18 THE COURT: Okay. Well, what we'll do is -- you
19 know, we just need to make sure that it's fair. Whether
20 he's on the jury or not on the jury, ultimately, doesn't
21 necessarily matter to me. What matters to me is that
22 everyone understands after this trial is over, regardless
23 of the outcome, appreciates and recognizes and believes
24 that it was a fair trial.

25 MR. BOGGS: And it does sound like it could have been

1 an incidental contact type thing, but if we could just
2 clear it up real quick, I think that would satisfy us.

3 THE COURT: Okay.

4 MR. BOGGS: The only -- excuse me.

5 THE COURT: Go ahead.

6 MR. BOGGS: The only other issue was, as I had
7 mentioned to the Court and Ms. Odom, my anticipated
8 witness is a 12-year-old female. To me, she sounds
9 extremely competent and bright. I've thrown out to the
10 solicitor that if we both agreed on competency, that would
11 be fine, she could testify. If they objected to her
12 competency, we'd need a few questions asked to her by the
13 Court. That's the only other issue, Your Honor.

14 THE COURT: Good enough.

15 Do you have any issues with regard to the competency
16 of this perspective witness?

17 MS. ODOM: I've never met her before. I don't know
18 anything about her. I'll probably end up agreeing, but if
19 I could just see her --

20 THE COURT: I tell you what, just to make sure, we
21 can bring her in and put her on the stand, then I can ask
22 her questions related to her competency to stand trial.
23 Is she here?

24 MR. BOGGS: Yes, sir, she's in the hall.

25 THE COURT: Why don't you just go ahead and bring her

1 in. We'll do that.

2 _____ A.M. after being duly sworn,
3 testified as follows:

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

6 THE WITNESS: My name is A.M. . . .

7 THE COURT: What do you go by?

8 THE WITNESS: A.M.

9 EXAMINATION

10 BY THE COURT:

11 Q Okay. A.M., I'm going to ask you a few questions.
12 There are no secrets. The reason I'm asking you questions
13 is because my understanding is you're 12 years old; is
14 that right?

15 A (The witness nods head.)

16 Q And I need to make a determination as to whether it's
17 appropriate for you to testify in the case. So some of
18 the questions I ask you may seem a little odd, maybe even
19 a little silly, but they're questions I have to ask you to
20 make the determination as to whether you should testify
21 today, okay. Where do you go to school?

22 A Liberty Middle.

23 Q What grade are you in?

24 A Seventh grade.

25 Q Do you have brothers and sisters?

- 1 A Yes, I have one sister and one brother.
- 2 Q Okay. Do you go to church?
- 3 A Sometimes.
- 4 Q Where do you go to church when you go?
- 5 A New Image.
- 6 Q Okay. You play any sports?
- 7 A No, I don't, but I'm going to this year.
- 8 Q You are? What you going to play?
- 9 A I'm going to play softball.
- 10 Q Good for you. You'll enjoy that, I'm sure. Do you
- 11 know the difference between the truth and a lie?
- 12 A Yes.
- 13 Q Okay. And is it good to tell the truth?
- 14 A Yes.
- 15 Q Is it good to tell a lie?
- 16 A No.
- 17 Q Do you understand what will happen to you if you tell
- 18 a lie?
- 19 A Yes, I do.
- 20 Q Okay. And in this case, do you intend to tell the
- 21 truth?
- 22 A Yes.
- 23 Q Do you have any reason to lie?
- 24 A No.
- 25 Q Okay.

1 THE COURT: Ladies and gentlemen, is there anything
2 additional you'd like to ask this young lady?

3 MR. BOGGS: Nothing from the Defense, Your Honor.

4 MS. ODOM: No, sir.

5 THE COURT: Okay. Any question as to her competency?

6 MR. BOGGS: None, Your Honor.

7 MS. ODOM: No.

8 THE COURT: Okay. All right, A.M.. Thank you for
9 answering those questions. What I'm going to ask you to
10 do is you can go back out of the courtroom and when we're
11 ready for you to testify, what we'll do is we'll bring you
12 back in. The jury will be here. And what we'll do is
13 we'll swear you in again and you'll go through that
14 process. And instead of me asking you questions, the
15 lawyers will ask you questions, okay, and you'll be
16 addressing the jury, not necessarily me, okay.

17 All right. Good luck to you. Thank for coming in.

18 THE WITNESS: You're welcome.

19 THE COURT: Okay. Mr. Rhodes, I think before we
20 started that, you were raising your hand.

21 MR. BOBBY RHODES: Yes, sir. I just want to state
22 the fact when I was coming up the stairwell because I was
23 getting my daily exercise.

24 THE COURT: Okay. All right. Good enough. Good
25 enough.

1 All right. Will you check and see if we're still
2 waiting on the jury?

3 So during that time, what we'll do -- I believe the
4 juror that we're talking about is Mr. Robinson, Juror No.
5 122. Okay. So why don't we have the bailiff bring him
6 back to the grand jury room. If you will join me, I'm
7 just going to pose that question to him, okay.

8 So we still are looking for one juror, but we have
9 two alternates. What I intend to do is --

10 Who is the juror who is missing?

11 THE CLERK: Powell, Juror 113, Richard Powell.

12 THE COURT: Okay. Richard Powell, Juror No. 113 is
13 not here, therefore, I'm going to place on the
14 deliberating juror of 12 the first alternate, Mr. Mark
15 Dent, Juror No. 37.

16 All right. Are we ready to proceed?

17 MR. BOGGS: Yes, sir.

18 THE COURT: We ready, Ms. Odom?

19 MS. ODOM: Yes, sir.

20 THE COURT: All right. Good enough.

21 Bring them in.

22 (WHEREUPON, the jury entered the courtroom at
23 approximately 9:30 a.m.)

24 THE COURT: All right. Good morning, ladies and
25 gentlemen of the jury. I appreciate you all being on

1 time. We're starting a little bit late because we were
2 waiting on a juror, but we're not going to wait anymore.
3 We're going to go ahead and go forward. That's one of the
4 reasons we have alternates.

5 So Mr. Dent, you are now on the jury of 12
6 deliberating jurors.

7 So it's my anticipating we will have two witnesses
8 this morning and then we will go to argument and charge.
9 We'll have to take a break after the State completes its
10 case for me to take up some legal business. Then the
11 Defense will have the opportunity to put evidence into the
12 record and we can roll into argument and charge.

13 Having said that, Ms. Odom, it's your case, you may
14 call your next witness, ma'am.

15 MS. ODOM: Thank you, Your Honor, the State calls
16 Marvin Nix.

17 THE CLERK: Place your left hand on the Bible, raise
18 your right hand.

19 MARVIN NIX, after being duly sworn,
20 testified as follows:

21 THE CLERK: Thank you, sir. If you would, have a
22 seat and state your name for the record.

23 THE WITNESS: Marvin Nix.

24 DIRECT EXAMINATION

25 BY MS. ODOM:

1 Q What's your rank or your title?

2 A I'm currently captain of judicial services at the
3 Pickens County Sheriff's Office.

4 Q So I should call you Captain Nix?

5 A If you want.

6 Q All right. Tell me how many years you've been with
7 the sheriff's office.

8 A Twenty-three years, eight months.

9 Q And you say you're over the jail and judicial
10 services right now?

11 A Yeah, my current assignment, I'm, basically,
12 responsible for the operations of the jail, detention
13 center, courthouse, civil and warrant process.

14 Q What did you do before that?

15 A Before that, I was assigned to the criminal
16 investigations division, assigned special victims unit.

17 Q Is that the position you were in when this case came
18 about?

19 A Yes, ma'am.

20 Q Tell me what your duties as an investigator were
21 then.

22 A As an investigator with the special victims unit, we,
23 basically, handled any type of child abuse, child sex
24 cases, anything really dealing with children.

25 Q And tell me how you became involved in this case?

1 A I received this case as a followup case, I believe it
2 was January 3rd, 2014. Usually, if a road deputy responds
3 to an initial call and it requires followup investigation,
4 it comes to the investigation division. Like I said, this
5 one I think I got from Van Massingill. He took the
6 original report.

7 Q So what did you do first when you got the case?

8 A First thing when I got the case, I contacted Ms.
9 Kathryn Hinton, which is the victim's grandmother, and
10 arranged for her to bring the victim in to speak with me.

11 Q What date did that happen on?

12 A I believe it was January 3rd.

13 Q Okay.

14 A 2014.

15 Q And do you remember how old ~~Minor~~ was at that
16 point?

17 A At the time, she was 12.

18 Q And that first meeting you had with her as to date
19 only or date range, can you tell me what she might have
20 told you about when any of these could have happened?

21 A It occurred within the last year. Through the
22 initial investigation, it probably started when she was
23 11, so about a year.

24 Q Okay. And do you remember her demeanor when you
25 spoke with her?

1 A Yeah, when I first met Minor, she was, like I said,
2 12 years old, very shy, really appeared not to want to
3 talk to me.

4 Q Did she seem just uncomfortable?

5 A Very uncomfortable.

6 Q So what did you do after that -- well, before I go
7 on, to location only, did she tell you where the abuse
8 happened?

9 A Yeah, two different locations.

10 Q And what are those?

11 A One of the locations being a mobile home she lived
12 at, which was on street which I believe is name
13 of mobile home park which I think is the name of the
14 subdivision -- mobile home park. And then another
15 location where she was currently living, which was
16 address either one.

17 Q Both of those are in Pickens County?

18 A Yes, ma'am.

19 (WHEREUPON, State's Exhibit No. 1 was marked for
20 identification only.)

21 BY MS. ODOM:

22 Q All right. I'm going to show you what's been marked
23 as State's Exhibit 1 for identification purposes. Do you
24 know what that is?

25 A Yes.

1 Q Tell me what it is.

2 A It's the house located *Address*.

3 Q Is that a fair and accurate representation of the
4 house?

5 A Yes.

6 MS. ODOM: Your Honor, at this time, I'd move to have
7 this introduced into evidence as State's 1?

8 MR. BOGGS: No objection.

9 THE COURT: All right. Without objection, the same
10 is admitted.

11 (WHEREUPON, State's Exhibit No. 1 is admitted
12 into evidence.)

13 BY MS. ODOM:

14 Q Do you know what happened to the -- can you tell us
15 if that trailer is still there in *town*?

16 A I'm not sure.

17 Q All right. So this is the house where she said some
18 of the abuse occurred?

19 A Yes.

20 Q Okay.

21 MS. ODOM: Your Honor, I just want to publish it to
22 the jury.

23 THE COURT: Yes, ma'am.

24 BY MS. ODOM:

25 Q Now, after you spoke with *Minor*, what did you do

1 next?

2 A After I spoke to Minor I actually went to the
3 house at Address and spoke with her mother and
4 attempted to speak with Brandon.

5 Q And after that, what did you do?

6 A Normally in these cases, we refer the victims to the
7 Julie Valentine Center, which is an advocacy center for
8 children. They specialize in forensic interviews and
9 provide services for children that are victims of these
10 type crimes.

11 Q And what's the difference in somebody from over there
12 talking to a child versus you talking to a child?

13 A They're specially trained in the questions to ask. I
14 mean, they specialize in it.

15 Q Did you set up any other appointments?

16 A I did. I scheduled a medical exam, I believe, with
17 Dr. Crosswell.

18 Q And did you speak with the victim again?

19 A I did.

20 Q All right. Tell me about that time.

21 A I believe it was on January 7th, 2014. I went to R.
22 C. Edwards Middle School and actually met and spoke with
23 her along with the SRO.

24 Q What's SRO?

25 A School resource officer.

1 Q Who was that?

2 A Office Palis.

3 Q Tell me about that officer. Is that a man or a
4 woman?

5 A She's a female. She's assigned to the school,
6 basically, works there are R.C. Edwards.

7 Q So the kids see her everyday?

8 A Everyday.

9 Q Kids may be a little more comfortable with her?

10 A Yes.

11 Q Was she in the meeting with you when you talked to
12 Haleigh?

13 A Yes.

14 Q You told me ~~Miss~~ age, tell me the Defendant's
15 age at the time of this incident.

16 A I believe he was 26.

17 Q He's definitely older than 16?

18 A Yes.

19 Q Older than 18?

20 A Yes.

21 Q Is he in the courtroom?

22 A Yes.

23 Q What is he wearing?

24 A A black suit, looks like a garnet and black tie.

25 Q Can you point him out to me?

1 A Over there.

2 Q And that's the Defendant?

3 A Yes.

4 MS. ODOM: Judge, if the record could reflect he's
5 pointed out the Defendant?

6 THE COURT: Yes, ma'am.

7 BY MS. ODOM:

8 Q All right. So ~~Minor~~ -- did you have the
9 opportunity to view another interview with Haleigh?

10 A I did.

11 Q Okay. And so has her interviews jumped around or
12 anything?

13 A No.

14 Q They've been pretty much the same?

15 A Consistent.

16 Q And has any witness ever come forward to you saying
17 that they heard ~~Minor~~ say she made this up?

18 A No.

19 Q You've never had anyone come forward to you like
20 that?

21 A No.

22 MS. ODOM: Please answer any questions Mr. Boggs has.

23 CROSS-EXAMINATION

24 BY MR. BOGGS:

25 Q You were what we call the case officer in this case;

1 is that correct?

2 A Yes, sir.

3 Q And you had access to all information collected --

4 A Yes, sir.

5 Q -- whether it be interviews, medical reports,
6 anything?

7 A Yes, sir.

8 Q Okay. And just for clarification for the jury, is
9 that pretty much what MINOR looked like at the time that
10 you saw her?

11 A Yes.

12 Q And that would have been January -- the first time
13 you saw her was the second -- third?

14 A Third.

15 Q Okay. And you interviewed her on January 6th; is
16 that correct? I think you said the seventh, but --

17 A The seventh.

18 Q Okay. The supplement date of 1/6/2014?

19 A Oh, yeah, it was the third. You're talking about the
20 first?

21 Q No, no, a supplemental report.

22 A Let me look at it.

23 Q Am I reading that right?

24 A Yeah, that's just what I wrote the supplement, but I
25 met with her on the third when I received the report.

1 Q Okay. So that's the actual date that you wrote it,
2 not the date that you met with her, correct?

3 A Yes.

4 Q And during that meeting, she said that she -- that
5 Brandon had stuck his private in her private several
6 times; is that --

7 MS. ODOM: Objection, Your Honor, hearsay.

8 MR. BOGGS: The victim's already testified to this.

9 THE COURT: That's part of the statement that was
10 referenced, correct?

11 MR. BOGGS: Yes, sir, and this is part of his case
12 file, which is his business records.

13 THE COURT: He can ask whether she stated that or not
14 and he can state either yes or no. It's entirely up to
15 him.

16 THE WITNESS: Could you ask me the question again?

17 MR. BOGGS: Yes, sir, yes, sir.

18 BY MR. BOGGS:

19 Q During that interview, M~~iss~~ said on several
20 occasions he had stuck his private into her private?

21 A Yes, sir.

22 Q Okay. And you heard her testify that her definition
23 of private on Brandon was his penis and her definition of
24 her private was her vagina. You heard testify to that
25 yesterday, right?

1 A I think I heard --

2 Q I mean, you either did or you didn't?

3 A No, I didn't.

4 Q Okay. Now, you did have to talk to her again, didn't
5 you?

6 A Yes, sir.

7 Q And on that next time you talked to her, you made a
8 note that some of the recollections that she had were
9 different than what she had told you before; is that
10 right? Is that what that means?

11 A I didn't actually speak to her on that meeting.

12 Q Okay. So who is the I here?

13 A I went to speak with her, but there was someone else
14 there.

15 Q But you were present when she gave those
16 recollections?

17 A Yes.

18 Q And they were different than what she had said before
19 in some respects?

20 A A little more information, yes.

21 Q Well, different is not more, different is different
22 than what she had said before. That's the way it's
23 written up. Again, I didn't write the report.

24 A Right, okay.

25 Q Isn't that correct?

1 A There were some different recollections, yes.

2 MR. BOGGS: That's all the questions I have. Thank
3 you.

4 THE COURT: Yes, ma'am.

5 REDIRECT EXAMINATION

6 BY MS. ODOM:

7 Q All right, Captain, can different mean something
8 other than what was previously stated?

9 A Yes.

10 Q Can different mean more detail?

11 A Yes.

12 Q Can different mean additional?

13 A Yes.

14 MS. ODOM: All right. No further questions.

15 THE COURT: Any recross, sir?

16 RECROSS-EXAMINATION

17 BY MR. BOGGS:

18 Q You said that some of the recollections were
19 different, not that she added more?

20 A If you say so.

21 Q No, I'm reading your report.

22 A Okay.

23 MR. BOGGS: Thank you.

24 THE COURT: All right, Officer, thank you. I
25 appreciate it. You can step down.

1 Okay. Does the State have any more evidence?

2 MS. ODOM: No, sir, Your Honor.

3 THE COURT: Okay. All right. State rests?

4 MS. ODOM: Yes, sir, the State rests.

5 THE COURT: Ladies and gentlemen, the State rests.

6 That means I must necessarily take up some legal issues.
7 Now, I'm going to give you a little bit of homework back
8 in your jury room. I'm going to ask you to elect a
9 foreperson for your jury. You have a lot of potential
10 candidates for foreperson of the jury, so I'm going to let
11 you decide who that should be.

12 Now, a foreperson of a jury is responsible for
13 ensuring that everyone on the jury has a voice during jury
14 deliberations. That is that everyone has the opportunity
15 to be heard. When you're in a group of 12 people, you
16 know, there are going to be some people who are more vocal
17 and more opinionated than others, and some people who are
18 going to be more shy and going to be a little bit more
19 quiet than others. The foreperson makes sure that
20 everyone has the opportunity to be heard.

21 Over and beyond that, I can't tell you exactly how
22 you will conduct your deliberations or what additional
23 role the foreperson may assume. Each and every jury
24 deliberates a little bit differently based on the 12
25 personalities that are in the jury room. However, it is

1 necessary that a foreperson be elected by you.

2 That foreperson will also been charged with signing
3 the verdict form, ultimately, and also will be responsible
4 for writing down any questions or issues that the jury may
5 have during your deliberations so that the same can be
6 delivered to me. I'm hopeful that you don't have any
7 questions, but if you do, you can write those down and
8 give them to me.

9 So while we're out and I'm handling this business, if
10 y'all would go back into your jury room and handle that
11 business. Just write down the name of the foreperson,
12 give it to the bailiff and then I'll know when you come
13 back out. Okay. Thank you.

14 (WHEREUPON, the jury left the courtroom at
15 approximately 9:50 a.m.)

16 THE COURT: All right. Counsel, before we get to
17 motions, let me state on the record what happened in our
18 session with the juror, Mr. Robinson. I forgot to put
19 that on the record earlier. Either party can take
20 exception to how I recount this, but before we began the
21 trial today, we brought Mr. Robinson into the grand jury
22 room and counsel for both parties were there. We asked
23 him specifically whether he had been approached by any
24 person from the State's side or from the Defense side and
25 had been asked to discuss the case or whether he had

1 discussed the case with anyone this morning.

2 He stated clearly and unequivocally, I might even say
3 emphatically, that he, in fact, did not have any
4 conversations this morning within anyone regarding this
5 case. I was satisfied that he had not and I'm satisfied
6 that he can continue as an impartial juror in the trial of
7 this case. And it's my understanding that the parties
8 agree with that assessment.

9 MS. ODOM: Yes, sir.

10 MR. BOGGS: Correct.

11 THE COURT: Okay. All right.

12 Motions?

13 MR. BOGGS: Two motions, Your Honor. First one is a
14 motion to dismiss on the State's failure to present
15 sufficient evidence that would allow the jury to reach a
16 verdict of guilty based on anything other than
17 speculation, surmise and conjecture.

18 THE COURT: Yes, ma'am?

19 MS. ODOM: In response to the directed verdict
20 motion, it's not the weight of the evidence, it's the
21 existence of it. There has been direct testimony, not
22 just circumstantial, but direct testimony about the abuse.
23 All the elements of both crimes have been thoroughly
24 covered and discussed during the State's case. And I
25 would argue that there is more than enough to go forward.

1 THE COURT: All right. In a motion for directed
2 verdict, the Court is not allowed to offer an opinion or
3 judgment regarding the weight or the sufficiency of the
4 evidence, but simply to look to see if there is any
5 evidence upon which a jury can find that the State has met
6 its burden of proof.

7 In reviewing the evidence, I find that there is
8 evidence in the record upon which the State can find -- or
9 excuse me, the jury can find that the State has met its
10 burden of proof. Again, I take no position with respect
11 to the credibility, the weight or the value of any of that
12 evidence, I merely note that it exist. And on that basis,
13 sir, I respectfully deny the motion.

14 MR. BOGGS: Thank you, Your Honor. Your Honor, my
15 second motion for directed verdict is based upon
16 jurisdictional issues. One of the necessary elements that
17 the State has to prove is the location of the crime for
18 jurisdictional purposes. I did not hear any testimony
19 that this offense, alleged offense occurred in Pickens
20 County.

21 THE COURT: Yes, ma'am.

22 MS. ODOM: I think I got just about every witness
23 other than Ms. Galloway-Williams to say -- the victim said
24 where it happened, the two addresses. Captain Nix said
25 the addresses she told him it happened. He confirmed

1 they're both in Pickens County. So did Detective
2 Massingill confirmed where the victim said it happened and
3 they're both in Pickens County. I asked Ms. Hinton where
4 Haleigh said it happened. I think she said Pickens County
5 as well. I am very careful, overly so, to the point where
6 it probably drives the jury crazy thinking why does she
7 keep asking that. I think that's been covered.

8 THE COURT: I think the location of the alleged
9 incident was sufficiently articulated. I respectfully
10 deny the motion.

11 MR. BOGGS: Your Honor, as I mentioned to the Court
12 based on the medical situation that occurred, he's been
13 advised to walk for about five to 10 minutes about every
14 hour.

15 THE COURT: Well, let's take --

16 MR. BOGGS: I don't want to have a repeat of
17 yesterday.

18 THE COURT: I got you. Let's take five minutes,
19 okay. Right now, it is 9:55, so we're going to come back
20 in at 10:00. Okay. When you close, I want to be ready to
21 go straight into argument and charge.

22 MR. BOGGS: Okay. Yes, sir.

23 (WHEREUPON, a short break was taken.)

24 THE COURT: Ready for the jury?

25 MR. BOGGS: Yes, sir.

1 MS. ODOM: Judge, can I just put one thing on the
2 record before the jury comes out?

3 THE COURT: Yes, ma'am.

4 MS. ODOM: Probably out of an abundance of caution, I
5 just want to cover it.

6 THE COURT: Yes, ma'am.

7 MS. ODOM: I can't remember for sure if I moved to
8 enter the picture into evidence or not. And I know I've
9 rested, but I was going to just ask to make sure that I
10 did and if I didn't --

11 THE COURT: I got you.

12 Any issue with that, sir?

13 MR. BOGGS: I don't think she put it in, but we
14 stipulated to it.

15 THE COURT: Okay. Good enough. All right. I'll
16 admit it without objection.

17 MS. ODOM: Thank you, Your Honor.

18 THE COURT: Okay. Just for the record and for
19 y'all's information, the jury selected Mr. Brian Smith,
20 Juror No. 135, as the foreman of the jury.

21 Okay. You may bring them in.

22 (WHEREUPON, the jury came into open court at
23 approximately 11:30 a.m.)

24 THE COURT: Mr. Smith, congratulations, sir. You're
25 either the foreman because of your demonstrated leadership

1 competencies or because they just ramrodded you into it.
2 I don't want to know which, but congratulations. Happy to
3 have you.

4 Okay. All right. Mr. Boggs, your case.

5 MR. BOGGS: Your Honor, we would call A.M.
6 Mosteller.

7 A.M. fter being duly sworn,
8 testified as follows:

9 THE CLERK: Thank you, please be seated. If you
10 would have a seat and state your name for the record,
11 please.

12 THE WITNESS: My name is A.M.

13 DIRECT EXAMINATION

14 BY MR. BOGGS:

15 Q Can you pull up a little bit closer to that
16 microphone so everybody can hear you, okay?

17 A All right.

18 Q Allie, how old are you?

19 A I am 12 years old.

20 Q When is your birthday?

21 A 2003.

22 Q You're close to being 13; is that correct?

23 A Uh-huh.

24 Q You live in Pickens County?

25 A (The witness nods head.)

1 Q You have to answer yes or no so this lady can take it
2 down.

3 A Yes.

4 Q Okay. Do you know Brandon Rampey?

5 A Yes.

6 Q How do you know him?

7 A He is my uncle.

8 Q Is your mother his sister?

9 A Yes.

10 Q Over the years, have you seen Brandon on a regular
11 basis.

12 A Well, it was about two and a half years ago.

13 Q No, before this allegation came out, did you see
14 Brandon on a regular basis?

15 A Yes.

16 Q All right. Were you ever afraid to be alone with
17 him?

18 A No.

19 Q Did he ever do anything inappropriate to you?

20 A No.

21 Q All right. Do you know MINOR?

22 A Yes.

23 Q All right. And yesterday, MINOR testified that you
24 would not make up a lie, that you would tell the truth.
25 And you understand that's what we're here for today?

1 A Uh-huh.

2 Q You wouldn't make up a story, you would tell the
3 truth, okay?

4 A Uh-huh.

5 Q That's what we want, all right?

6 A All right.

7 Q Now, I know you're probably no expert on testifying,
8 if I ask you a question or Ms. Odom ask you a question you
9 don't understand, it's perfectly okay to just say I don't
10 understand the question or rephrase it, okay?

11 A Yes, sir.

12 Q All right. Now, how would you describe your
13 relationship with Haleigh?

14 A When?

15 Q I'm sorry?

16 A When?

17 Q Before December of 2013?

18 A I would consider her as a sister.

19 Q Okay. I'm half deaf. You said --

20 A I would consider her as a sister.

21 Q You considered her as a sister?

22 A Uh-huh.

23 Q And did you see her on a fairly regular basis?

24 A Just about every time when my uncle would be over.

25 Q Did you guys play together?

1 A Uh-huh.

2 Q Did you talk a lot?

3 A Yeah.

4 Q And at some point in the fall of 2013, did 'Mina
5 ever say anything to you about wanting to go live with her
6 grandmother?

7 A Yes, she did.

8 Q What did she call her grandmother?

9 A She called her grandmother Nana Kathy.

10 Q Nanny Kathy?

11 A Nana Kathy.

12 Q Nana Kathy. Okay. And did she tell you why she
13 wanted to go live with her grandmother?

14 A Yes, she did.

15 Q You've got to speak up a little bit so everybody on
16 the jury can hear you. Why did she tell you she wanted to
17 live with her grandmother?

18 A Because she got everything she wanted there.

19 Q And she wouldn't have to live under house rules.

20 A Uh-huh.

21 Q And did she tell you what her mother said about that?

22 A Her mother --

23 MS. ODOM: Objection, Your Honor, hearsay.

24 MR. BOGGS: Your Honor, this is in reply to what was
25 brought out yesterday.

1 THE COURT: I understand. You can rephrase the
2 question and ask her how her mother felt about that.

3 BY MR. BOGGS:

4 Q How did her mother feel about Minor going to live
5 with Nana?

6 A She didn't like it very much.

7 Q And do you know why she didn't like it?

8 A Because she didn't want Minor doing everything she
9 wanted because she may do something wrong.

10 Q Okay. Now, did you have a specific conversation with
11 Haleigh on December 26th of 2013?

12 A Yes.

13 Q All right. Where were you?

14 A We were in my bedroom.

15 Q All right. And were you just having girl talk going
16 back and forth?

17 A Yeah.

18 Q Were you doing anything else?

19 A We were playing with our My Little Ponies we got for
20 Christmas.

21 Q You were playing with My Little Ponies. What are
22 those, toys or something?

23 A Yeah, they're toys.

24 Q And you'd just gotten them for Christmas?

25 A Uh-huh.

1 Q So that would have been the day before?

2 A Yeah.

3 Q The 25th?

4 A Uh-huh.

5 Q Is that why you remember specifically the 26th as the
6 day of this conversation?

7 A Yeah.

8 Q Okay. So you got My Little Ponies for Christmas, the
9 next day, you and *Mina* are in your bedroom on your bed
10 playing with My Little Ponies?

11 A Yes.

12 Q All right. And did she begin talking about wanting
13 to go live with Nana again?

14 A Yes, she did.

15 Q Did she indicate whether her mother was still against
16 it?

17 A She told me that her mother wouldn't like it.

18 Q Okay. Tell me what the substance of that
19 conversation -- just tell the jury what you and she talked
20 about as far as her plan to live with her grandmother?

21 A Well, she was saying she would tell a lie -- well,
22 she was thinking about telling a lie, but she never said
23 specifically which lie -- well, a lie.

24 Q Telling a lie on anybody in particular?

25 A She said she would tell it on my Uncle Bubba.

1 Q Did you get the impression from that conversation
2 that she felt that if she told a lie on Brandon she would
3 be able to go live with her grandmother?

4 A Yeah.

5 Q And that exactly what happened?

6 A Uh-huh.

7 Q Are you aware of that?

8 A Uh-huh.

9 Q You've got to speak up, yes or no?

10 A Yes.

11 Q Did you have any further conversations that day about
12 this whole situation?

13 A We had some conversations before that day.

14 Q Okay. So this was not the first time she had brought
15 it up.

16 A Yeah.

17 Q Okay. Meaning yeah, you had talked about it before?

18 A Uh-huh.

19 Q Is that yes or no?

20 A Yes.

21 Q Okay. Now, did you tell anybody at that time what
22 ~~MINOR~~ had said?

23 A No, I didn't.

24 Q All right. Did you ultimately tell your mother about
25 this?

1 A After he had already, you know, went to jail and then
2 got out.

3 Q All right. So you don't say anything about it until
4 Brandon got arrested and got out on bond; is that correct?

5 A Uh-huh.

6 Q Who did you tell?

7 A I told my mother.

8 Q And were you pretty scared at that time?

9 A Yeah.

10 Q Okay. Did you really think ~~minor~~ would go through
11 with this initially?

12 A Probably, because she did a lot of things that she
13 said she would do.

14 Q So when she said she would tell a lie on Brandon, you
15 believed her?

16 A I believed her, but I was just scared to tell
17 anybody.

18 Q Okay. And when he was arrested -- or after he was
19 arrested and got out, you felt like at that point you had
20 to tell somebody?

21 A Yeah.

22 Q But by then, the damage had been done?

23 A Yeah.

24 Q He was already arrested, the case was already
25 pending, correct?

1 A (The witness nods head.)

2 Q Yes?

3 A Yeah.

4 Q Okay. Going back to your statement that you and
5 Haleigh, you felt like y'all were kind of like sisters?

6 A Yeah.

7 Q So up until that time, did you and she confide in
8 each other about a lot of different things girls do?

9 A Yeah.

10 Q Okay.

11 MR. BOGGS: That's all the questions I have of her,
12 Your Honor.

13 THE COURT: Okay. Cross-examination?

14 MS. ODOM: Yes, sir.

15 CROSS-EXAMINATION

16 BY MS. ODOM:

17 Q All right. So how old did you say you are now?

18 A I'm 12.

19 Q So how old were you at the time?

20 A It was about two and a half years ago, so I would be
21 around 10 or nine, depends on which time.

22 Q All right. When's your birthday?

23 A 2003.

24 Q How long has it been since you've seen Minor?

25 A It has been almost three years.

1 Q So since this happened, you haven't seen her?

2 A Yeah.

3 Q You haven't talked to her?

4 A Huh-uh.

5 Q How does that make you feel?

6 A It doesn't really put any effect on me.

7 Q So it doesn't bother you?

8 A Huh-uh.

9 Q I thought you said y'all were like best friends?

10 A Not anymore.

11 Q Okay. All right. So -- but how you feel about your
12 family, you love your family?

13 A Yes, I love my family.

14 Q You love your mom?

15 A Uh-huh.

16 Q How about your grandmother?

17 A I love my grandmother.

18 Q How about Brandon?

19 A I love him, too.

20 Q Did you discuss your testimony with the Defense
21 attorney before you came in?

22 A Can you please rephrase that? I don't understand
23 what you're saying.

24 Q Did you talk about your testimony with Mr. Boggs
25 before today?

1 A I don't know what you're trying to ask me.

2 Q Have you ever spoken with Mr. Boggs before?

3 A I had to talk to him because, I mean, he had to know
4 what was going on.

5 Q So you have spoken with him. How many times have you
6 spoken with him?

7 A Once.

8 Q Did he tell you what he would ask you today?

9 A No.

10 Q Did y'all talk about what you would be discussing?

11 A A little bit.

12 Q So you knew what --

13 A Like what I would be doing here.

14 Q But y'all didn't talk about what questions he would
15 ask you?

16 A No, we didn't.

17 Q Well, who told you what questions you'd be asked?

18 A Nobody did.

19 MR. BOGGS: Objection, Your Honor, that's an improper
20 question.

21 THE COURT: Well, she answered it. She said nobody
22 did, so I'm going to overrule.

23 MR. BOGGS: Good for her.

24 BY MS. ODOM:

25 Q So did you discuss what you were doing here today

1 with any of your family?

2 A No, I didn't.

3 Q And when did you first bring this up?

4 A Well -- I don't understand what you're saying.

5 Q When did you first tell your mother about what you're
6 saying today?

7 A The summer of 2013.

8 Q So you told your mother what Haleigh said before
9 Haleigh said it?

10 A I actually don't know when this happened, so I don't
11 know.

12 Q You don't know, okay. You told Mr. Boggs a moment
13 ago that you waited until Brandon got out on bond before
14 you talked to your mom?

15 A I didn't know when that was.

16 Q Okay. Well, just answer my current question, okay.
17 Do you remember telling Mr. Boggs a few minutes ago that
18 once Brandon got out on bond, then you talked to your mom
19 about this?

20 A Yes.

21 Q Do you know that Brandon got out on bond
22 February 26th of 2014.

23 A No, I didn't.

24 Q Okay.

25 A I just knew it was after that.

1 Q All right. Did you ever speak with law enforcement
2 about this?

3 A No.

4 Q Do you know that your mom spoke with law enforcement
5 several times?

6 A No.

7 Q Do you know that your mom never told law enforcement
8 that you had anything to say?

9 A I don't know what she did.

10 Q Have you ever spoken with me about the case?

11 A No.

12 Q Do you think it's important that someone, a cop or a
13 prosecutor know what you had to say?

14 A I don't understand the question.

15 Q Do you think you should have told a cop before now?

16 A Yes, I should have.

17 MS. ODOM: Nothing further.

18 THE COURT: Any redirect, sir?

19 MR. BOGGS: Just a clarification.

20 REDIRECT EXAMINATION

21 BY MR. BOGGS:

22 Q She's indicated I tried to coach you. I met with you
23 in my office one time for about 15 to 20 minutes?

24 A Yeah.

25 Q You told me what happened; is that correct?

1 A Yes.

2 Q Did I discuss with you any questions I was going to
3 ask you or anything like that?

4 A No, you didn't.

5 Q All right. And up until today, that's the only time
6 you've laid eyes on me; isn't that correct?

7 A Yes.

8 Q Did I in any way try to influence you about saying
9 anything?

10 A No.

11 Q All right. So when she asked you about coaching or
12 giving you questions, that's not true, is it?

13 A No.

14 MR. BOGGS: That's all I have.

15 THE COURT: Any recross, ma'am?

16 MS. ODOM: No, sir.

17 THE COURT: All right. Thank you. You can step
18 down. Thank you for being here.

19 THE WITNESS: Do I go sit out there?

20 THE COURT: Yes, ma'am, yes, ma'am. Go back to
21 school, I presume.

22 MR. BOGGS: Yes, sir, I was going to say she's got
23 school if she may be excused.

24 THE COURT: Okay. All right. Anything further from
25 the Defense?

1 MR. BOGGS: Defense rests, Your Honor.

2 THE COURT: Okay. Are we ready to go to argument and
3 charge? Any motions need to be put on the record?

4 MR. BOGGS: Just renew the two previous ones.

5 THE COURT: All right. The ruling is the same.
6 Anything from the State?

7 MS. ODOM: No, sir.

8 THE COURT: Okay. So will you waive opening?

9 MR. BOGGS: I prefer she open and close.

10 THE COURT: Okay. All right. So you'll open on the
11 law and close. Okay.

12 MS. ODOM: All right. Your Honor, just to make sure,
13 if I open on the law, I'm still able to speak about the
14 law in my final closing.

15 THE COURT: Yes, ma'am. I'm going to give you both
16 liberty recognizing that you're professional attorneys and
17 you know what's right and what's wrong, okay?

18 MS. ODOM: Thank you, Your Honor.

19 THE COURT: So, ladies and gentlemen, now we're going
20 to go to closing arguments and we're going to have the
21 closing charge on the law.

22 Now, as I told you before, opening statements and
23 closing arguments and lawyers questions are not evidence.
24 So you're about to hear argument from each side. Now,
25 that is not evidence. You've already heard all the

1 evidence that you will receive in the case. This will
2 simply be argument in an attempt for the attorneys to
3 persuade you to their side, to advocate their respective
4 positions.

5 The State will open, the State will open on the law,
6 that is discuss the law with you. The Defense will have
7 the opportunity then to argue, and then the State will
8 have the opportunity to close, to make their argument.
9 The State goes last because the State has the burden of
10 proof as I've already told you.

11 So, ladies and gentlemen, having said that, we're
12 going to go ahead and begin our closing argument.

13 Ms. Odom?

14 CLOSING ARGUMENT BY MS. ODOM

15 MS. ODOM: Thank you, Your Honor.

16 Right now, I'm just going to talk to you about the
17 law and after Mr. Boggs gets done, then I'll give a little
18 further closing. The two charges are CSC with a minor,
19 second degree and third degree. They're distinct charges.
20 They're different from each other. When you're back
21 there, you look at one and you look at the other one. You
22 review all the evidence for one and you review all the
23 evidence for the other one.

24 Now, I'll start with CSC with a minor third degree.
25 This is the one I said is usually talked about as

1 touching. No penetration. This is just touching,
2 groping, fondling. But the way the law reads, the
3 defendant over the age of 14 at the time, the victim under
4 the age of 16. The defendant touched the victim or had
5 the victim touch him in a lewd manner with an intent to
6 achieve some kind of sexual gratification. Meaning that
7 the Defendant touched the little girl when he was
8 intending to get some kind of sexual gratification from it
9 or he touched her trying to turn her on, or he had her
10 touch him trying to get turned on, or even he thought
11 maybe she'll touch me and she'll like it. So that's what
12 that means, the touching. And this can be anywhere on the
13 body.

14 Now, CSC second degree, that's penetration. And it
15 doesn't have to be penis and vagina. It includes any kind
16 of penetration. And it doesn't necessarily have to be the
17 penis at all. The way this reads, the defendant committed
18 a sexual battery on someone who was 14 years of age or
19 less, but, at least, 11. And here, you're going to have
20 that. When it started she was 11, 11 and a half. She was
21 12 when she reported, 12 when it ended.

22 Now, the sexual battery, I'm going to read you the
23 definition of it and then kind of explain to you what it
24 means because the definition is kind of crisp and written
25 to avoid any kind of vulgarity. Sexual battery means

1 sexual intercourse, cunnilingus, fellatio, anal
2 intercourse or any intrusion, however slight, of any part
3 of a person's body or an object. So somebody's body or an
4 object into the genital or anal openings of another
5 person's body, except when it's done for medical purposes.
6 So this doesn't apply to when she got her physical from
7 Dr. Crosswell.

8 So, basically, sexual intercourse, cunnilingus, when
9 he performed oral sex on her. The act of him putting his
10 mouth on her privates. Fellatio, when he made her perform
11 oral sex on him, when he made her put his penis in her
12 mouth. Anal intercourse, when he put his penis, however
13 slight, into her buttock. It doesn't say it has to be the
14 whole thing. It doesn't say it has to X amount of seconds
15 or minutes. However slight an intrusion. This includes
16 fingers or anything else on somebody's body that he may
17 try to put into her body. It also includes anything going
18 into her vagina. It's not everything. You don't have to
19 check off every kind, every kind, oral sex on him, oral
20 sex on her, anal sex on her. You don't have to check them
21 all off. It's anything. If you find that any of these
22 happened. It can be more than one, unfortunately, and
23 that's this case. So that's the law. That's the two
24 charges we have.

25 A little bit more on the law is the standard you use

1 when you're back there when you're looking over everything
2 thinking about everything she told you, everything all the
3 other witnesses told you. It's beyond a reasonable doubt.
4 And a lot of times, lawyers try to confuse jurors on this,
5 try to muddy up the waters a little bit, but it just
6 basically means were you firmly convinced, are you firmly
7 convinced it happened? So that's most of the law on it.
8 The Judge will charge you a little bit more, but I'm going
9 to sit down now and y'all will see me again in a few
10 minutes.

11 THE COURT: Mr. Boggs.

12 MR. BOGGS: May it please the Court?

13 THE COURT: Yes, sir.

14 CLOSING ARGUMENT BY MR. BOGGS

15 MR. BOGGS: Thank you, Your Honor.

16 Ladies and gentlemen of the jury, criminal sexual
17 conduct, criminal sexual conduct with a minor. One --
18 other than murder, it's one of the most serious cases that
19 can come into this courtroom. This has been an extremely
20 short trial, particularly, particularly for a charge that
21 is so devastating and so serious as this. Do not let the
22 fact of this trial being so short have any impact on your
23 deliberations and your thought processes. Because it was
24 the short trial, it just wasn't much evidence. That's
25 what it came down to. That's why it's short. It's not

1 short because of a lack of seriousness. So do not let
2 that weigh in your decision at all.

3 The Judge is going to charge you about reasonable
4 doubt. He's going to charge you about what we talked
5 about at the first of the trial, believability and
6 credibility as it relates to the evidence and the
7 witnesses' testimony. He's also going to charge you about
8 something else. Each of you, each of you was put on this
9 jury because you possess something. You each possess
10 common sense. The Judge is going to charge you that you,
11 as jurors, need to apply that good common sense to the
12 facts and the testimony during your deliberations. He's
13 going to charge you that you can use your personal
14 experiences in life. You're on this jury for a reason.
15 That's because the State and us felt like you people
16 possess the common sense, the good every day experiences
17 to reach a just verdict. So pay attention to that because
18 there's going to be some little areas during your
19 deliberations that you're going to say to yourselves, you
20 know, I know that's what she said, but that just doesn't
21 make sense. It just doesn't make sense.

22 Now, ~~Mina~~ as I told you at the beginning of the
23 trial, she turned those tears on and off whenever the
24 solicitor wanted her to, however, did you notice one thing
25 during cross-examination? Not one tear. And I was going

1 over the same information as the solicitor. Not one tear.
2 She was just kind of be-bopping along with me and I'm
3 sitting there thinking wait a minute, it was that
4 devastating to you while Ms. Odom was talking to you, why
5 isn't it now? Again, that's not the answer to the case.
6 But it's certainly something to think about.

7 You've heard the testimony from Kathy Hinton that
8 Minor wanted to come live with her. You heard testimony
9 from Minor, she wanted to go live with Nana. You heard
10 the testimony from A.M. that Minor wanted to go live
11 with Nana. Why? No rules. Run the streets. Do whatever
12 she wanted to do. But her mother, Lori, wasn't going to
13 put her in that situation and said no, you cannot go live
14 with your grandmother because of the reason you would have
15 no discipline.

16 December 2013, that's what Minor looked like.
17 December 2013, that's Minor Christmas Day 2013, that's
18 Minor and the family. She makes these allegations. And
19 guess what, she gets what she wants. She gets to go live
20 with grandma, right. Living with grandma. Living with
21 grandma. Living with grandma. I'm sorry, I should have
22 cut that bottom part off. I apologize for the language,
23 but that's living with grandma. Living with grandma.
24 Mom, I want to go live with Nana. No, you can't do that.
25 Momma, I want to go live with Nana. No, you can't do

1 that. I don't want to be this. I want to be this. No,
2 you're not going to be that. You're going to do this and
3 grow up like any normal 12-year-old. Minor thinks well,
4 if I lie, I can go from here to here. And she did exactly
5 that. And remember this, remember, remember on the stand
6 Minor said A.M. will not make up a story. A.M. will
7 tell the truth. A.M. doesn't have anything to gain in
8 here today? She's not getting rewarded or she's not
9 getting to skip school. She just left to go back to
10 school. But she came to do what Minor said she would
11 do, and that's to tell the truth.

12 December 26th, Minor says to A.M., if I tell a lie
13 on Brandon, then I can go live with Nana. I will bet you
14 a hundred dollars to a doughnut, she never realized the
15 police would get involved. She thought it would be
16 handled by her mother and her grandmother. She never one
17 time thought it would blow up like it did. Okay. But she
18 got what she wanted. She got to go from that to that.

19 Now, let's look at the specific allegations that she
20 makes because I've got a little bit of problem with some
21 of them. She starts out telling Massingill Brandon
22 fondled me. Okay. They were over at the hospital, Easley
23 Hospital. He keeps talking to her and he brings up --
24 Massingill bring up, Well, did he ever put his penis in
25 you? What does Minor say? Oh, yeah, he did one time.

1 Put it in my private. Which she defines as her vagina.
2 But I can't remember when this happened. That was
3 January 2nd.

4 January 3rd, she writes a statement for Captain Nix
5 saying well, if I'm getting by with this one, maybe I can
6 make it a little bit bigger. So she went from fondling
7 and one time sexual intercourse, but she doesn't remember
8 when. January 3rd, five times.

9 Then she talks to Nix. At that point, she's fondling
10 and multiple times sexual intercourse. Then comes the
11 sixth where she adds anal sex. So now she's gone from
12 fondling, fondling one time to fondling five times,
13 fondling multiple times and vaginal penetration and anal
14 intercourse. Then she gets to talk to somebody else. And
15 what does it become then? Oral sex. So we've gone from
16 fondling, fondling one time, she doesn't know when,
17 fondling multiple times and sexual intercourse, fondling,
18 intercourse, anal intercourse, fondling, intercourse, anal
19 intercourse, oral sex.

20 So this story, the more she talks to people, just
21 gets bigger. It just gets bigger. Because she's getting
22 the things she didn't get at home. Do you remember what
23 she said she didn't get at home? Attention. Those four
24 little siblings and the ones getting attention. That's
25 one of the reasons she wanted out of the house.

1 But anyway, those are her allegations. One of the
2 allegations was I was sexually assaulted the day that we
3 were going to go get our Christmas trees. Think back to
4 the testimony. I was sexually assaulted the day we were
5 going to go get our Christmas trees. December 3rd, you
6 draw your own conclusions with this. There's *Minor* with
7 her sister and the Christmas tree. I'm not the brightest
8 bulb in the house, but, to me -- again, you draw your own
9 conclusions, to me, that doesn't look like somebody who's
10 just been sexually assaulted. But again, you make your
11 decision. You weigh what that means to you.

12 But even more than that, *Minor* testified that on
13 December 25th, Christmas Day, she and all her family were
14 together and they were getting ready to go over to her
15 aunt's house to spend Christmas and she was sexually
16 assaulted before they went. Remember that? The kids were
17 there. Her mother was in the bedroom getting dressed.
18 All these little kids running around. Look how many
19 family members were there on the 25th. Look at them.
20 That's according to her testimony, right before they
21 loaded up in that Suburban and went to the aunt's house.
22 Family picture. And when I was looking at this, it just
23 kind of struck me as odd, somebody that's smiling that
24 big, it's hard to believe that they were just sexually
25 assaulted. So I started wondering when was this picture

1 taken? It tells you right there. 8:13 in the morning as
2 they're loading up to go, she is trying to convince
3 everyone that she had just been sexually assaulted. 8:13,
4 12/25/2013. Again, you're the ones who have to judge this
5 evidence, not me. But my common experience was that
6 somebody who had just been sexually assaulted, I would be
7 surprised that they were smiling that much. Does it make
8 sense? Does it make sense?

9 Well, she went through these allegations and she got
10 what she wanted. She's living with grandma. She's
11 getting all this attention. Then what happened? Then
12 what happens? She runs into a brick wall. Do you
13 remember when that happened? January 27th, 2014. What
14 happened on January 27th, 2014? Dr. Crosswell did a
15 medical exam, did a medical exam. And during that medical
16 exam, there's a physical done, both in the vaginal area
17 and the anal area. Dr. Crosswell did everything she could
18 yesterday to bring this back over to the State's side.
19 She went around and around and around and around the block
20 over and over, this could happen, this could happen.

21 Again, I'm not the brightest bulb in the house, but I
22 really found her testimony strange. And she didn't go
23 specifically to the allegations Minor made. But I found
24 it strange that if a 12-year-old girl had had vaginal
25 penetration multiple times, more than five, according to

1 Haleigh, that she would not have any indication of that.
2 The hymen still intact, no bruises, contusions, tears or
3 scarring. I found it really strange that the medical
4 report on the anal inspection was normal. She read it.
5 Normal. No fissures, no contusions, no stretching of the
6 sphincter, no bruising, no nothing. And she tried to
7 explain that. And again, I'm no doctor. I'm just an old
8 layman, even not that bright, but it's hard for me to
9 accept that a 12-year-old girl that says that she had anal
10 penetration multiple times would not have one tiny little
11 scar if nothing else. It's almost impossible to believe
12 the sphincter had not been stretched. But again, you're
13 the ones that has got to weigh this evidence, not me. Not
14 me.

15 But the one thing we do know from the doctor is this,
16 Doctor, we've been through all this rigamarole, is there
17 any physical evidence of vaginal penetration? You
18 remember her answer, don't you? No. Doctor, is there any
19 physical evidence of anal penetration? No. That's as
20 plain as it can be. It's as plain as it can be. You
21 weigh the testimony -- and this is going back to the
22 credibility and believability. If you believe that a
23 12-year-old can have multiple intrusions into her anus
24 without one piece of physical evidence? I mean, that's
25 your prerogative. That's your prerogative. That's what

1 you guys are here for.

2 I just don't know how you get around the medical. I
3 am not that bright to see how you can actually get around
4 it. I guess you could make arguments that well, the
5 doctor talked about the elasticity and the doctor talked
6 about estrogens and all this, but she never explained it
7 as it related to Minor She never said this relates
8 specifically to Minor She talked about all these other
9 people. Why didn't she testify about Minor The only
10 thing she testified to about Minor -- not about these
11 other medical journals and all this other stuff she was
12 talking about. Why didn't she testify -- this little girl
13 specifically, her only testimony about Minor was no
14 physical evidence. No physical evidence. I didn't hear
15 anything else.

16 I'm not going to go through the testimony of all the
17 witnesses, but I was a little bit thrown because I never
18 really grasped the last lady that testified yesterday,
19 can't remember her name. I'm not even sure why she was
20 here. I never talked to Minor I never read any
21 reports or Minor... I never seen anything related to
22 Minor She gave just a boilerplate testimony. It
23 sounded like -- basically, it sounded like she and the
24 solicitor had gotten the questions together and off they
25 went. Didn't have anything to do with Minor. They're

1 going to try to tie it into Minor. They're going to try
2 to tie it into Minor. Say, well, that could apply to
3 Minor. We're not here for could's. We're not here to
4 say that could.

5 If that lady -- again, I can't remember her name, I
6 apologize for that. But if she had wanted to tie this in,
7 all her dynamics, I think is what she called them, to
8 Minor, why didn't she interview Minor? Why didn't
9 she, at least, read the reports on Minor. So I submit
10 her testimony -- I mean, it took up about 30 minutes, but
11 other than that, it didn't do anybody any good. But
12 again, you judge that. It's not up to me to judge whether
13 or not that had any significant in this case. That is up
14 to you guys because you're the ones that have to decide
15 what the truth is. You're the ones that have to decide.

16 Now, there was one little thing that Minor said
17 that went over my head until about 3:15 this morning. I
18 sat there and said, my gosh, I forgot all about that.
19 Every police officer that testified talked about the
20 vaginal penetration. Minor she was on the stand and I
21 ask her, you wrote your statement and said there was
22 vaginal penetration at least five times. When did she
23 decide that there was none? After January 27th, 2014?

24 Yesterday on the stand at the very end of my
25 examining her, I almost missed it. She made a little

1 statement, I don't think I told the cops -- I don't think
2 I ever told the cops that there was vaginal penetration.
3 It's in all their reports. It's in her statement itself
4 that she testified to from yesterday. And yet, she is
5 still trying to tailor this story to suit her needs. It's
6 tragic. It really is tragic. She has been caught up in
7 something that she couldn't get out of and it snowballed
8 and snowballed and snowballed what she thought was going
9 to be a little innocent effort to get to live with Nana
10 two and a half years ago.

11 Brandon and ~~Minor's~~ mother, Lori, and those four
12 little siblings need to be put back together and have
13 whatever they can make of their lives. I'm asking you to
14 think about just a few things because this is what it
15 boils down to. ~~A.M's~~ testimony, the girl that won't
16 lie, the girl that won't make up a story, according to
17 Haleigh. Her testimony that ~~Minor~~ said this is how I
18 get to Nana's. I have to make up a story. She didn't say
19 I'm going to make up a story, she said I'll make up a lie
20 and I can get to Nana's. I can go from this to that.
21 That's what her job was. Keep that in mind.

22 I don't want to beat a dead horse, but the reports of
23 January 27th, 2014 is astronomical in a case like this.
24 Astronomical. No physical evidence. No physical
25 evidence. So take away no physical evidence. Take away

1 -- I don't know what her name was, take her away. She
2 didn't say a word about ~~Minor~~ just wanted to talk about
3 dynamics. You throw in the cops and say ~~Minor~~ said
4 this. What do you have left? Once you scrape all that
5 away, what do you have? We have that short trial we had
6 because there's nothing there. There's nothing there
7 other than ~~Minor~~ making unsubstantiated allegations.

8 The other thing that bothered me so much in ~~Minor~~ 's
9 testimony was her assertions that on numerous occasions
10 she was sexually assaulted with multiple people in the
11 house. Where were your siblings? They were running
12 around. Where was your momma? Oh, she was vacuuming.
13 Common sense. Common sense. Oh, he assaulted me
14 Christmas morning before we went to my aunt's with all
15 those people right there. Do you believe that? Does your
16 common sense tell you to believe that? That's up to you.
17 You put whatever weight you want to in any of this
18 testimony. Is that common sense? Does the story make
19 sense? No. Does her story support any piece of evidence?
20 January 27th says no.

21 Like I said, this is a tough case. This is a real
22 tough case. It's a real serious case. And as I said just
23 a second ago, next to murder, it's probably one of the
24 most serious cases that comes into this courtroom. Don't
25 take it lightly just because it's a short trial. Don't

1 think because it's a short trial it's a slam dunk. Weigh
2 the evidence, weigh the credibility, weight the
3 believability to determine whether or not the State has
4 met its burden of proof beyond a reasonable doubt. Beyond
5 a reasonable doubt.

6 Again, I want to thank you for your service. You've
7 got a tough job. Got a tough job. But scrape away,
8 scrape away and get down to the basic facts. No
9 corroboration. No physical evidence. And a girl who
10 won't lie saying *Minor* had told her this is exactly what
11 she was going to do. Thank you.

12 THE COURT: Ms. Odom.

13 CLOSING ARGUMENT BY MS. ODOM

14 MS. ODOM: Thank you, Your Honor.

15 She loved him, but she didn't want to have sex with
16 them. That's what really stands out to me. Twelve years
17 old. You heard her testify. She was excited. She wanted
18 a dad. She never knew her daddy. She knew her stepdaddy,
19 but he wasn't around anymore. She was excited when
20 Brandon came around, looking forward to having a male
21 figure in her life. She loved him, but she didn't want to
22 have sex with him.

23 And that last witness yesterday that testified,
24 Mr. Boggs said I don't know why she testified, I don't
25 know why she testified. Well, she discussed some things

1 and was able to explain things that normal people may not
2 think about. Because when you think somebody is getting
3 sexually assaulted, somebody is being bent over made to
4 have sex against their will, surely, they're going to go
5 tell somebody right away. Ms. Galloway-Williams said it's
6 not always the case. She's an expert. She's testified
7 before. She testified yesterday. She's done her
8 research. She teaches. She knows about these things.
9 And for a child, it is different for them. It is
10 different for a little girl going through this than it is
11 for a grown woman. A little girl who wants a father, who
12 wants a family, it is so different.

13 So she was there to try to explain how things could
14 be different, how a child may not necessarily tell the
15 second something happens. How they're going to be
16 conflicted inside and think well, I kind of want my family
17 to stay together or I don't want my mom to be mad at me.
18 You know, she's got a lot of things going through her head
19 that she doesn't understand. You heard the doctor
20 testify, she's getting ready to go through puberty. You
21 can see in these pictures, she was developing breasts,
22 have pubic hair, but she hadn't started her period yet.
23 This little girl is going through a hell of a time all the
24 way around. Of course, she was confused.

25 One thing I don't want you to get confused about is

1 any of that testimony that came from the stand. Man, oh,
2 man. Let me just go ahead and apologize to you right now.
3 I've been told all my life that whatever I'm thinking is
4 written on my face. So if I made any kind of faces or
5 looked a little flustered during the trial, I'm sorry,
6 because I can't hide anything. If I have a bad day at
7 work and come home, my husband knows. I don't say a word,
8 he knows.

9 So I'm sorry if I've made any kind of face that
10 offended you, it's been all I could do not to jump up and
11 say that's not what they said. That's not the testimony.
12 No. Listen to it. Play it back if you need to. Anything
13 I say, anything the Defense attorney says, not testimony,
14 not evidence. The Judge told you. When I objected and
15 said he's misstating that, the Judge said anything the
16 attorneys say, not evidence. If you want to listen to it
17 again, you can. But he keeps saying Minor said five
18 times in her vagina, five times. No, she didn't. She
19 never said that. Never said that he stuck his penis in
20 her vagina from the very beginning.

21 Now, they want to make a big deal about how when that
22 first officer came to the hospital, she gave him two
23 completely different statements. No, she didn't give him
24 two statements. The officer said, What happened? She
25 said, well, my stepdad has been touching me. All right.

1 Next question the officer asked, Well, did he ever
2 penetrate you? And again, she's 12. And she says yes, he
3 did. She doesn't say where and he doesn't ask where. She
4 doesn't say yes, he put his penis in my vagina. No. She
5 doesn't give two completely different statements. He
6 wants to say first it was fondling, then it was
7 penetration. The questions happen one right after
8 another. What happened? My stepdad's been touching me.
9 Did he ever penetrate you? Yes, he did. At that point,
10 the officer stops.

11 Captain Nix said, Ms. Galloway-Williams said, there's
12 people who are specially trained to talk to a child.
13 Because what I'm -- the answer I'm wanting or what I'm
14 getting at may be different than what the child is
15 thinking. And it's possible for a child to answer one way
16 and you think they're saying something else. Like the
17 perfect example Ms. Galloway-Williams said when she where
18 did he touch you. Well, that can mean on your body, that
19 can mean in the house, that can mean in the city. So
20 there's special people trained at the JV Center, the Julie
21 Valentine Center, that talk to children, get the answers
22 without putting anything in their heads, anything like
23 that without misconstruing something.

24 He made a big deal about ~~Miss~~ said that he stuck
25 it in her vagina five times and then later that medical

1 exam said her hymen was still intact and that just doesn't
2 make any sense. She never, ever has said that he put it
3 in her vagina. Of course, her hymen is going to be
4 intact. He didn't put his penis in there. That's another
5 thing to think about. Her period hadn't started. She
6 didn't get pregnant. Maybe she could get pregnant, better
7 not put it in her vagina. You know, this isn't something
8 that just one day the Defendant decided, you know, I think
9 I want to have sex with my stepdaughter. No, built up to
10 it. Kind of got her trust, knew she craved that
11 attention, knew that he probably could do what he wanted
12 to, wasn't going to matter, nobody is going to believe
13 her. No, he built up to it. He thought about it. It got
14 worse over time.

15 Another thing about being questioned, it depends who
16 ask the question and how they ask it. It depends on where
17 you are. The courtroom is going to be a lot different
18 than at her house. At the hospital, when she just
19 disclosed 20 minutes before, 30 minutes before, she's
20 bawling her eyes out. She's upset over this. Her life
21 has changed. And a cop shows up, it's different. But
22 over all this time, all this time, three years, she's had
23 to go through this, talked to so many people and she's
24 been consistent. I asked her, You think if you just said
25 it didn't happen, it could go back to normal? She misses

1 her mom and she loves her mom.

2 They made a big deal about how she wanted to live
3 with her grandma. Well, yeah, don't you think if you were
4 getting bent over, if you were getting groped on all the
5 time that you wouldn't want to live there anymore, that
6 you wouldn't want to be there with a person who's sexually
7 assaulting you. That makes perfect sense. Of course, she
8 wants to go live with her grandma. She's not going to get
9 touched on over there. But who's to say that when she
10 told this that she necessarily would have been removed
11 from the home? Five kids in that home. One defendant,
12 one perpetrator. It could have just as easily been that
13 Defendant removed from the home instead of those five kids
14 removed from the home. So when she told, who's to say
15 that it wouldn't have been the other way around? And that
16 would have been fine with her. She misses her mom. She
17 just didn't want to get sexually assaulted.

18 Now, the whole dyeing her hair and putting on make
19 up. I put on eye makeup this morning. You think I'm
20 guilty of anything because I put on makeup? I dye my
21 hair. So does that make me a liar? Twelve years old,
22 turned 13. Middle school. The Goth thing, painting
23 fingernails. She had her fingernails painted yesterday.

24 I mean, I just want to get up and be like, is that
25 the best you got? Is that the best you got? That she's

1 going to make this up just so she can go dye her hair,
2 just so she can paint her fingernails? That she's going
3 to make it up, these specific times of abuse? It started
4 out with him telling me, just touch it. Just jack it.
5 Then the next time, it was this. You think she thought
6 about well, I need to do, at least, six times. I need to
7 come up with 10 times. I need to do this or that. You
8 think a 12-year-old is going to say I need to make up X
9 amount of allegations and if I don't, then it's not going
10 to work. You think she's gone through three years of
11 having to retell and talk to people over and over again
12 about this? You think that's pleasant for her to be on
13 the stand? Nobody wants to have to talk about sex.

14 I'm a grown woman, I don't want to talk about sex
15 with Captain Nix or with any of you in front of you. I
16 don't want to have to do that. How about a child, you
17 think that's pleasurable for her to have to do this over
18 and over again when all it would take is for her to say
19 forget it. I'm not going forward. I lied, I just want it
20 to be over. It would have been real easy for her to end
21 this, but she's consistent because it happened. If she's
22 just going to make up a story, make it up, don't you think
23 it would have been just one main thing, just one he
24 touched me. That would have done it. That would have
25 been enough. But she details what happened.

1 Let's talk about the porch incident. Now, when you
2 say when she said -- it wasn't they were getting ready to,
3 they had already went and got Christmas trees and brought
4 them back to the house. The kids were inside. It was
5 nighttime. It was later. Remember how old these siblings
6 are. The three of them are very young. Then her sister
7 -- she's the oldest 12, her sister is four years younger
8 than her. Her mom was inside vacuuming up the needles or
9 whatever from the tree. She says it happened on the
10 porch. You think porch, you might think of your own porch
11 and it might be open and you're like well, that doesn't
12 really make sense. Picture of the house. She kept saying
13 screened-in porch. Look at that porch. It's a little
14 screen, but it's boarded in, too. It's nighttime. So
15 when you start thinking the porch, I don't know. Don't
16 think about your porch, think about this porch.

17 And another thing, she said her mom was in the house
18 vacuuming. Think about that. They want you to believe
19 well, that doesn't make sense, that couldn't have
20 happened. Minor said that everybody was inside, her and
21 the Defendant went outside to get in the last little bit.
22 When they come back in, he stopped her and told her, Touch
23 me. Pulled down his pants, pulled his penis out and made
24 her get on her knees while he stood up. Made her put his
25 penis in her mouth and suck on his penis.

1 He was standing up. Momma's inside vacuuming. Then
2 -- he didn't sit down. He didn't lay on the floor. He
3 kept standing up and had her bend over. It would have
4 been real easy if momma's coming, the vacuum turns off.
5 That would have been his cue. The vacuum turns off. He
6 would have known if she was coming. Also, he stood up the
7 whole time. It would have been very easy for him to pull
8 the pants back up, walk into the house, intercept mom
9 before she could ever see *Minor* . Don't you for one
10 second believe that that couldn't happen because it did
11 happen.

12 If she was going to make that up, do you think she
13 would have made up and said oh, well, my mom was inside
14 the house and we were on the porch. Because at first
15 blush, you say, what? What do you mean? Your mom was
16 just a few feet away or at the front of the house. But
17 then you think about it and everything she said makes
18 sense. They would have had notice of momma coming out.

19 Now, the last incident, the one that happened on
20 Christmas Day, in the closing, Mr. Boggs was saying they
21 just opened their gifts that Christmas morning. They were
22 going over and he made her do this at 8:13 or whatever the
23 picture was taken. That's not what *Minor* testified to.
24 She didn't say at 8:13 in the morning that they went over
25 to Aunt Bebe's, to Aunt Beth's. No, she said it was

1 around lunch, a little later. They opened their presence
2 early in the morning and then he made her touch him later
3 on. The quick little thing and then they went over. So
4 that's why it's important to think what we're saying is
5 not testimony, but what comes from the witness stand is
6 testimony.

7 You heard the doctor say MINOR was 80th percentile.
8 Yeah, she's 11, she's 12. She's a big girl. Not big fat,
9 I'm not saying that. She's a tall girl. She's big for
10 her age. She's already developing breasts. And this one,
11 she looks just as tall, if maybe not taller than her mom.
12 The whole, you know, she just did this to get out of the
13 house. No guarantee it would have gotten her out of the
14 house because he could have been kicked out instead of
15 her.

16 But then she goes over to grandma's. That ain't no
17 vacation. Yeah, she's doing her hair like any other
18 teenager, like any other seventh grader would do, but
19 grandma and her husband are fighting so bad that she's
20 removed from that home. You think that's pleasant, going
21 from one home where you're being abused into another one
22 and you get removed again? From there, she's placed with
23 her half sister's grandma. That doesn't last long.
24 There's no other family members who would take her or who
25 were there to take her. She doesn't know her daddy or his

1 side. So now she's with a family friend, with her half
2 sister's grandma's ex-boyfriend. She's known him her
3 whole life, but still, you think this is what she wanted.
4 She wants to be with her mom. She said they were like
5 twins. And her mom was young when she had her. I can see
6 them being really close. You know, it's kind of sad to
7 think about it, it's really sad to think about it. It's
8 like the Defendant is a fox and has been escorted right to
9 that chicken coop. The rooster before was kicked out,
10 she's let him come on it, put him up above her kids, put
11 him over her kids, chosen him over her child. You know,
12 this little girl, she didn't have a fighting chance.
13 She's been brave enough to get up here and tell you what
14 happened, to give you the details that she's maintained.

15 Ms. Galloway-Williams touched on it a little
16 yesterday, how children might lie, but think about what
17 they would say when you make up a lie. If someone
18 approaches you and says well, say he touched you. All
19 right. Well, he touched me and it was in the bedroom or
20 whatever. But they're not going to come up with a complex
21 lie and then be able to remember it for three years and
22 repeat it every time about how they just got Christmas
23 trees, it was on a back porch. You know, think about
24 that.

25 Bottom line is she took all she could. Then there

1 was the -- the thing that compelled her to finally seek
2 out, to finally say enough's enough. It had been getting
3 worse and worse. It started out simple enough, not
4 painful for her. Then it got to the point to where it was
5 hurting. She would yell out. He would threaten her and
6 say he was going to put it in even further. We don't know
7 how far he put it in, but he did it to her and he was
8 getting bolder and bolder. It was getting worse and
9 worse. And it got to that point where he wanted her to
10 come over, no other adult would have been there, and she
11 knew what was going to happen. She had had enough. She
12 couldn't take it anymore and she said something.

13 But now with -- the thing about she said the last
14 time penetration when they got Christmas trees a few weeks
15 before Christmas, so end of November. She has that
16 medical exam end of January, two months later. Of course,
17 there's not going to be any physical evidence. In two
18 months, it had healed up. That just doesn't make sense,
19 he's saying, no physical evidence. There's not going to
20 be physical evidence. This is a secret crime. Defendants
21 who commit these crimes usually don't do it in front of
22 people because they don't want to get caught. If he's
23 going to continue abusing her, he can't do it where he's
24 going to get caught. It's secret. That's how it happens.
25 You pick one child, you exploit them, nobody knows about

1 it. It's a secret crime.

2 And she's been dealing with this. And, you know,
3 that last witness, the Defense's witness. I wasn't sure
4 how to approach it. I have to be honest with you,
5 sometimes, I like to get in somebody's face a little bit.
6 I like to tear them up a little bit. There's no reason to
7 get in a child's face. There's no reason for me to try to
8 make her cry. Bottom line is, it's a last ditch effort
9 that reeked of desperation. Of course, she loves her
10 momma, this little girl. Loves her grandmomma, loves the
11 Defendant. She's going to do whatever they tell her to
12 do. And with her saying this when it happened and then
13 never contacting law enforcement, don't you think when her
14 momma talked to Captain Nix afterwards that she would have
15 said, oh, yeah, by the way, my daughter is saying this?
16 Or don't you think in the time since that that somebody
17 would have contacted the cops, contacted me, contacted my
18 office saying hey, by the way, there's a witness saying
19 that Haleigh said this. I had no idea until this morning.
20 Don't you think that would have been helpful? No,
21 desperate, thinking we've got to do something. What can
22 we do? What can we do? Why don't we put a little girl up
23 there. We know the prosecutor ain't going to get onto
24 her. Maybe that will help a little bit. It didn't
25 really.

1 Minor's the one that's having to go through this.
2 She's the one that said everything when it first happened,
3 even though she didn't understand everything, she's
4 probably understanding now. You know, when she first
5 said, you know, everything she said on the stand, she said
6 that two and a half years ago. You know, stuff came out
7 of his penis. She might not have known what that was when
8 she was 12, she probably knows what it is now, sex ed and
9 everything. Things have probably started coming together
10 in her mind. She's probably thought goodness, the first
11 person I had sex with is my mom's husband. My mom and me
12 have been with the same person. I had to have sex with my
13 little brother's dad.

14 You know, these aren't light subjects. This is what
15 she's having to go through. You think about her demeanor.
16 You think about her motives. You think about everybody
17 else's motives. All the other witnesses that testified,
18 their witness, her motive. Keep that family together.
19 Keep her momma happy. Keep her grandmomma happy. Think
20 about my witnesses, Shauna Galloway-Williams, not getting
21 paid any more to say anything. The doctor, not getting
22 paid any more to say anything.

23 And she's an expert, too. Mr. Boggs saying that
24 don't make any sense. Why wouldn't she have a tear, that
25 doesn't make good sense. She's an expert. She's a

1 doctor. She has testified over and over again. She knows
2 her stuff. So when you're thinking about that medical
3 exam, don't go back there saying well, Ms. Odom said this
4 or Mr. Boggs said that, no, the doctor who performed it,
5 who's the expert.

6 This is the last time I get to talk you before I sit
7 down. So it's always tempting to kind of read over
8 everything because I guarantee you, the second the Judge
9 starts talking, I'm going to think of something. Oh, man,
10 why didn't I say that. But what it all comes down to is
11 ~~Minor~~ do you believe her? Do you believe her? Do you
12 think she would have made all this up just so she could
13 paint her fingernails? Because that doesn't make sense at
14 all. Do you think she would have all these specific
15 details? You think a 12-year-old should know those
16 specific details? About how to make white stuff come out
17 of a penis or that it's called jacking off or how it
18 really hurts even if you just put the tip of somebody's
19 penis in your butt? You think a 12-year-old little girl,
20 who by the Defense attorney is saying her mom really
21 sheltered her, tried to keep her in line, you think she's
22 going to know all that stuff, all those details she gave
23 to investigators, she gave to anyone who would ask her the
24 questions? You think she's going to know all those
25 details? No. She got up there and she poured her heart

1 out. She told you what she's been saying all these years.
2 Y'all need to go back there and thoroughly discuss this.
3 Although it's been a short trial that doesn't mean it's
4 not important. Go back there and find him guilty of both
5 counts.

6 THE COURT: All right. Ladies and gentlemen, I'll
7 give you the charge on the law, but let's take a short
8 break first. Five, 10 minutes, we'll come back in and
9 we'll go to the charge on the law. Please don't discuss
10 the case yet.

11 (WHEREUPON, the jury left open court at
12 approximately 11:20 a.m.)

13 THE COURT: Okay. We'll come back in on the record
14 in approximately 10 minutes.

15 MR. BOGGS: Thank you, Your Honor.

16 (WHEREUPON, a short break was taken.)

17 (WHEREUPON, the jury entered the courtroom at
18 approximately 11:30 a.m.)

19 CHARGE ON THE LAW

20 THE COURT: All right, ladies and gentlemen, when we
21 began this case, I told you that you had a certain role to
22 perform and I have a certain role to perform as well. As
23 the judge of the law, it's my responsibility to tell you
24 the law that relates and applies to the evidence that's
25 been presented in this case.

1 Now, when you took your oath, you swore to accept the
2 law as I give it to you. So if you come into this
3 courtroom with any prior notion, any opinion or previous
4 position about what the law is or about what the law
5 should be, I charge you now to disregard that. Under your
6 oath, you must accept the law as I give it to you.

7 Now, ladies and gentlemen, your role, of course, is
8 to determine what the facts are in the case. You do that
9 based on the evidence that's been received. Now, let me
10 restate one thing that's very important that I've told
11 you, at least, twice in this trial. And that is that the
12 Defendant is presumed innocent until the State meet its
13 burden of proving each and every element of each offense
14 beyond a reasonable doubt..

15 Now, understand that the presumption of innocence has
16 its basis in our constitution. And that's not just a
17 legal theory. It's very important and it's the
18 cornerstone of our criminal justice system. So understand
19 that as the Defendant sits here today now in this
20 courtroom, he wears a cloak of innocence. And that cloak
21 of innocence will not be removed until and unless 12
22 deliberating jurors determine that the State has met its
23 burden of proving each and every element beyond a
24 reasonable doubt of each charge that is before you.

25 Now, you've got two charges in this case. Two

1 charges. You've got the criminal sexual conduct second
2 degree and a criminal sexual conduct in the third degree.
3 Now, understand, ladies and gentlemen, that those are two
4 separated and distinct charges. Two separate and distinct
5 indictments. So you will consider each one separate from
6 the other. I'm going to give you two verdict forms to
7 demonstrate to you clearly that there are two separate
8 charges to be considered separately and distinctly. So
9 you'll look at one and determine whether the State has met
10 its burden of proof. And if so, you will find
11 accordingly. If not, you will find accordingly. You will
12 do the same thing with the second indictment, the second
13 verdict form that I give you. Understand that if you find
14 the Defendant either guilty or not guilty of one offense,
15 that does not mean that you have to find him the same,
16 either guilty or not guilty, on the other offense. You
17 decide whether the State has met its burden of proof with
18 respect to each case independent of the other.

19 Now, ladies and gentlemen, again, I've told you any
20 number of times, the State has the burden of proving each
21 and every element of each offense beyond a reasonable
22 doubt. Now, a reasonable doubt is defined as -- proof
23 beyond a reasonable doubt is defined as proof which leaves
24 you firmly convinced of the Defendant's guilt.

25 Now, there is nothing on the face of this earth that

1 you can know with absolute certainty. And the law doesn't
2 require that the State prove its case beyond any possible
3 doubt. However, if you are convinced after your review of
4 the evidence that the Defendant is guilty, then -- if you
5 are firmly convinced of the Defendant's guilty, then under
6 your oath, you would find the Defendant guilty. However,
7 if after your review of the evidence you find that there
8 is a real possibility, a real possibility that the
9 Defendant is not guilty, then under your oath, you would
10 find the Defendant not guilty.

11 Now, ladies and gentlemen, something happened in this
12 case or failed to happen that I need to point out to you
13 because it's important. In this case, the Defendant
14 elected not to testify. Now, the State has the burden of
15 proof. The Defense has no burden of proof. And under our
16 Constitution, each and every one of us has the right to
17 remain silent. The Defendant elected to exercise that
18 right to remain silent. Now, because he chose to exercise
19 a Constitutional right that we all enjoy, you can't hold
20 that against him. That is such a sacred right, that, in
21 fact, you can't discuss that in your room.

22 Now, ladies and gentlemen, you are going to determine
23 what the facts are in this case based on your review of
24 the evidence. You saw the evidence. You will use your
25 common sense and you will collectively determine what

1 evidence is credible and what evidence is valuable.
2 You'll give weight to the evidence in your own discretion.
3 You will decide what was important and what was not
4 important. You will decide what should be given great
5 value and what should be discarded. Also, with witnesses,
6 you'll determine who's credible and who is not credible.
7 Who is to be believed and who is not to be believed.
8 Again, you use your common sense to determine who's
9 believable and who's not.

10 In your own personal experience, you have some skills
11 inherently that you can use to determine whether
12 somebody's believable or not. You can look at that person
13 and the way they testify. You can look at their facial
14 expressions and their body language. You can listen to
15 what they had to say, how they had to say it. You can
16 determine whether that person had anything to gain or
17 anything to lose as a consequence of his or her testimony.
18 And from that, you'll determine whether a witness was
19 credible or not.

20 Ladies and gentlemen, you also heard testimony from
21 expert witnesses. Like I told you before during the
22 trial, expert witnesses' testimony have no greater weight
23 than any other piece of evidence that you received. You
24 decide what weight and what value it has. You also heard
25 the testimony of children in this case. Now, children,

1 because of their age, because of their maturity level may
2 or may not fully appreciate and understand what's going
3 on. You have to make a determination as to whether or not
4 those children were capable and whether they were
5 believable in entering their testimony. Children may have
6 a different way of perceiving the world. You may
7 determine whether, in fact, they have the capacity to
8 understand the difference between right and wrong, have
9 the capacity to know the difference between the truth and
10 a lie. You will look at the questions that were presented
11 and determine whether, in fact, they fully had the ability
12 to understand and appreciate the questions that were posed
13 to them. And you'll determine what weight a child's
14 testimony has just like any other piece of everyday that
15 you may receive in a case.

16 Now, when you hear evidence in a case, ladies and
17 gentlemen, it's going to take one of two different forms.
18 It's either going to be direct evidence or it's going to
19 be circumstantial evidence. Now, the law does not prefer
20 direct evidence over circumstantial evidence or
21 circumstantial evidence over direct evidence. You decide
22 what weight either direct or circumstantial evidence has.
23 Direct evidence, ladies and gentlemen, is evidence which
24 immediately establishes a fact to be proven.
25 Circumstantial evidence is proof of collateral facts or a

1 chain of facts that when taken together prove the main
2 fact to be proven.

3 Now, that's a simple definition, but I find it's
4 easier to conceptualize if I give you an example. So
5 let's imagine that on a January morning, you are in your
6 house and you are going to bed. And you pass by your
7 front window or your front door and you look out on your
8 front yard or in front of your house or apartment and you
9 see there's no precipitation on the ground. The next
10 morning, you get up and you walk past that very same
11 window or door and on the ground, you see a blanket of
12 snow. And in that snow, you see footprints which led to
13 your door and then lead away. In that set of
14 circumstances, you've got direct evidence that it snowed
15 last night because the snow is right there, you can feel
16 it, you can touch it. It's immediately established by its
17 presence. But you have circumstantial evidence that
18 someone either late that night or early that morning
19 walked to your door and then walked away. Now, you can't
20 see that person, you can't talk to them. You can't have a
21 conversation with them. You can't touch them. But you
22 know as a consequence of the timing of that snowfall and
23 the appearance of the footsteps in the snow that somebody
24 must have come to your door and walked away. That's
25 circumstantial evidence.

1 Now, ladies and gentlemen, again, the law doesn't
2 prefer direct over circumstantial evidence. You decide
3 what's important. However, to the extent that the State
4 relies upon circumstantial evidence, all of the
5 circumstances when taken together must point conclusively
6 to the guilt of the accused beyond a reasonable doubt. It
7 cannot create a mere suspicion.

8 All right. Let's talk about the charges that are
9 before the Court, ladies and gentlemen. As you know,
10 there are two charges that we have previously talked
11 about, criminal sexual conduct with a minor in the second
12 degree, criminal sexual conduct with a minor in the third
13 degree.

14 Now, before we get started, I'm going to read the
15 statute to you, okay, but I need to read for you a
16 definition first because it's relevant to the statutory
17 requirements for criminal sexual conduct with a minor in
18 the second degree. So ladies and gentlemen, that term is
19 sexual battery. And sexual battery means sexual
20 intercourse, cunnilingus, fellatio, anal intercourse or
21 any intrusion, however slight of any part of a person's
22 body or any object into the genital or anal openings of
23 another person's body except when such intrusion is
24 accomplished for medically recognized treatment or
25 diagnosis.

1 Ladies and gentlemen, I give you that definition so
2 that you can fully appreciate and understand the elements
3 of criminal sexual conduct with a minor in the second
4 degree. And that's defined as follows: A person is
5 guilty of criminal sexual conduct with a minor in the
6 second degree if one, the actor engages in sexual battery
7 with a victim who is 14 years of age or less, but who is,
8 at least, 11 years of age. Or two, the actor engages in
9 sexual battery with a victim who is, at least, 14 years of
10 age, who is less than 16 years of age and the actor is in
11 a position of familial, custodial or official authority to
12 coerce the victim to submit or is older than the victim.

13 Ladies and gentlemen, the next charge that is before
14 you for your consideration is criminal sexual conduct with
15 a minor in the third degree. A person is guilty of
16 criminal sexual conduct with a minor in the third degree
17 if the actor is over 14 years of age and the actor
18 willfully and lewdly commits or attempts to commit a lewd
19 or lascivious act upon or with the body or its parts of a
20 child under 16 years of age with the intent of arousing,
21 appealing to or gratifying the lust, passions or sexual
22 desires of the actor or the child.

23 All right, ladies and gentlemen, those are the
24 definitions of the two charges that are before you today.
25 Now, I'm going to show to you the verdict forms that I

1 will give you to go back into your jury room. There's a
2 verdict form for each of the charges, or each of the
3 indictments that you will have to consider. And those are
4 the same. The only difference is they relate to separate
5 and distinct charges. So let's look at it real quick.
6 All it has is the caption and it has verdict and then it
7 explains which charge it is. The one I'm looking at, just
8 by way of example, is criminal sexual conduct with a minor
9 in the third degree. Then you'll see it says, we, the
10 jury, by unanimous agreement find the Defendant. Now,
11 understand in that first sentence there's an important
12 word in there and that's unanimously. Your verdict must
13 be unanimous. All 12 of you must agree on the verdict.
14 It can't be 11 to one or 10 to two. All of you must agree
15 on the verdict that you reach in this case. Also,
16 understand your verdicts must be based on the evidence
17 that was presented at trial and the law as I give it to
18 you. It can't be based on prejudice, passion or sympathy
19 or caprice or bias. It can be based on nothing but your
20 reasoned calculation and your reasoned consideration of
21 the evidence that was presented at trial in this case.

22 So, ladies and gentlemen, you'll have two options,
23 not guilty or guilty. I don't put them in any particular
24 order. I prepared the verdict forms. When I've got two
25 choices, I'm going to put one first and one second. So

1 don't take away from me that I have any preference or I
2 have any desire for you to find in any particular way. I
3 don't. There's no hidden message in here. But you can
4 find either not guilty or guilty.

5 If you find that the State has not met its burden of
6 proof proving each and every element of the offense beyond
7 a reasonable doubt, then you would find the Defendant not
8 guilty.

9 And Mr. Smith, you would simply check or initial
10 beside not guilty and then sign as the foreperson of the
11 jury indicating that the jury had reached a unanimous
12 verdict.

13 After you have considered and come to a decision on
14 one of the charges, then you will move to the next. And
15 the analysis will be the very same.

16 So ladies and gentlemen, that's all I have to tell
17 you. Now, I'm going to send you back to your jury room.
18 I'm going to ask you not to start your deliberations yet
19 because this is the opportunity for counsel to take
20 exception to anything I've said. If I've misstated
21 something or I've in error left something out of the
22 charge that should have been included, then they'll tell
23 me that. And if I've let anything out or I need to
24 correct anything I've said, I'll bring you back out and
25 I'll recharge you. But you will know -- you'll know when

1 it's time to start deliberations because what's going to
2 happen is I'm going to send the bailiff back to the jury
3 room with these verdict forms and he'll give you these
4 verdict forms and tell you to begin your deliberations.
5 If you don't have these verdict forms in your hands, then
6 it's not time to begin your deliberations yet, so that
7 will be your signal. Don't start before you get the
8 verdict forms.

9 Okay. You may return to your jury room.

10 (WHEREUPON, the jury left open court at
11 approximately 11:45 p.m.)

12 THE COURT: Exceptions to charge?

13 MR. BOGGS: None from the Defense, Your Honor.

14 MS. ODOM: No, sir.

15 THE COURT: Okay. All right. Ladies and gentlemen,
16 counsel and parties, I commend all of you for having tried
17 an excellent case and having been civil throughout the
18 trial. I truly appreciate it. I appreciate parties being
19 prepared and trying excellent cases. Good luck to both of
20 you.

21 If you will, please, just inventory the evidence and
22 make sure that everything is there and nothing that is not
23 supposed to be is not there. And I'm going to give these
24 verdict forms to the bailiff. When y'all are done doing
25 the inventory, you can give those to the bailiff and he'll

1 include those as well.

2 I am going to dismiss the alternate, Mr. Rausch,
3 informally from chambers. Okay. Good luck to you. We'll
4 be in recess until we get a verdict.

5 (WHEREUPON, deliberations began at approximately
6 11:49 a.m.)

7 THE COURT: Okay. We have received a note from the
8 jury. I've gone over the same with counsel. My intention
9 is to bring the jury back in and respond specifically to
10 the note that has been sent to me. I'm going to make the
11 note a Court's Exhibit so that it can be in the record.

12 Will you bring the jury in?

13 (WHEREUPON, the jury entered the courtroom at
14 approximately 12:40 p.m.)

15 THE COURT: Okay, ladies and gentlemen, I got your
16 note, so I'm going to go through it one by one.

17 We would like to see Minov's testimony. I don't
18 have the technology to produce a transcript. I wish I
19 did. I know on TV you see that, but in real life, we
20 usually don't have the opportunity, the ability to do
21 that. The court reporter's in here and she is taking
22 everything down, but it takes her potentially days to get
23 that back to us.

24 Now, we can listen to it. If you want to listen to
25 it, you let me know and we'll come back in the courtroom

1 and we'll play it because everything is audiotaped. It's
2 my understanding from the court reporter that that's about
3 an hour's worth of testimony. We can come back in and
4 listen to it all.

5 Now, your second question, We would like to see the
6 doctor's report and testimony. Same thing with respect to
7 her testimony. I don't know how long that's going to
8 last, but you remember when she was on the stand. My
9 recollection is maybe it's half an hour. With respect to
10 the doctor's report, I can't give you anything that wasn't
11 entered into evidence. If it wasn't admitted as an
12 exhibit and entered into evidence, then I don't have the
13 ability to give it to you. So I can't give you something
14 that is outside the record. There was testimony regarding
15 the report and questions were asked and answers were
16 elicited, so you'll have to rely upon your recollection
17 with regard the evidence that was presented.

18 The same thing with police reports. I can't give you
19 the police reports because they weren't admitted into
20 evidence. Now, ladies and gentlemen, the reason for that
21 is because under the rules of court, police investigation
22 reports are not admissible as a matter of public policy.
23 And there are a lot of reasons for that and I don't go
24 into that. But again, there were questions that were
25 posed based on police reports. Again, that which was

1 admitted into evidence along with testimony is what you
2 must rely on.

3 Then a more minor subject, the lie detector test.
4 I'm not sure where you're going with that. I don't know
5 what you're asking me about that. First of all, lie
6 detector tests are not admissible in court because they're
7 notoriously unreliable. Now, if you're asking me was a
8 lie detector test performed, the answer is I don't know.
9 I have no clue whatsoever. And if you're asking me can we
10 perform one, the answer is no. It would be additional
11 evidence and it would be additional evidence that was
12 clearly inadmissible. Again, I don't know what you're
13 asking me about that, but there's one thing I can tell you
14 with absolute certainty and that is it's irrelevant to
15 your determination in this case. Okay. It's absolutely
16 irrelevant. Put that out of your mind.

17 Okay. So I'll ask y'all to go back to your jury room
18 and begin your deliberations. I know the answers that
19 I've given you may be a little unsatisfactory, but that's
20 all I can give you. If you want to listen to that
21 testimony, then send a note back out and we'll queue up
22 the tape so that it starts and we'll sit in here and we'll
23 listen to it. Okay. So return to your jury room, please.

24 (WHEREUPON, the jury left open court at
25 approximately 12:43 p.m.)

1 THE COURT: All right, Counsel, we'll be in recess
2 until we hear back from them. All right.

3 (WHEREUPON, Court's Exhibit No. 1 was marked for
4 identification.)

5 THE COURT: All right. Ladies and gentlemen, I
6 received an additional note from the jury, which says,
7 quote, We are deadlocked, end quote.

8 I'm going to make this Court's Exhibit No. 2.

9 (WHEREUPON, Court's Exhibit No. 2 was marked for
10 identification.)

11 THE COURT: I'm going to bring the jury out and give
12 them an Allen charge directing them to continue their
13 deliberations.

14 So having said that, you need to put anything on the
15 record?

16 MR. BOGGS: No, sir.

17 THE COURT: All right.

18 (WHEREUPON, the jury entered the courtroom at
19 approximately 2:07 p.m.)

20 THE COURT: All right. Ladies and gentlemen, I've
21 received your note and I sympathize with you. I recognize
22 this is a difficult case and it's difficult to come to a
23 resolution. It's hard enough for two people to agree on
24 anything, so it's particularly difficult, oftentimes, for
25 12 people who have just met each other and have been

1 thrust into a jury room to deliberate to agree on a
2 verdict in the case. So I sympathize with you in that
3 regard. I sympathize with you because I recognize this is
4 a very difficult decision for each of you to make, both
5 collectively and personally.

6 But I do want to impress upon you that there have
7 been many resources that's been brought to bear this week
8 to bring this case to trial. The State of South Carolina,
9 the County of Pickens, the parties to this case have
10 expended substantial and significant resources to bring
11 this case to trial. If you were to fail to come to a
12 verdict in this case, then this case would simply have to
13 be tried again. Twelve other people in the county of
14 Pickens would come to trial and would hear the same
15 witnesses, the same evidence, same arguments and would be
16 tasked with deliberating on the case. Now, there are no
17 12 other people in the county of Pickens who are more
18 capable, who are more able, who are more competent to
19 reach a decision in this case than you are.

20 Now, I recognize that it's a very difficult decision
21 to make, but these parties deserve finality and they
22 deserve a decision. So I would ask you to return to your
23 jury room and continue deliberations. Those of you who
24 may be in the minority, I would ask you to consider the
25 position of the majority. Those of you who are in the

1 majority, I would ask you as well to consider the position
2 of the minority again and see if you can come to some
3 resolution in this case. I know that's not what you
4 wanted to hear when I brought you back out there, but,
5 again, this is important and a lot of resources have been
6 expended to get to this point in time. And these parties
7 deserve a verdict. So I ask you to return to your jury
8 room and attempt to come to a verdict. Thank you very
9 much.

10 (WHEREUPON, the jury left the courtroom at
11 approximately 2:11 p.m.)

12 THE COURT: All right. Yes, sir?

13 MR. BOGGS: Judge, I'd ask you to do in addition to
14 that something in the language that they don't have to
15 compromise their position. Some of the jurors may have
16 interpreted that as they've got to get a verdict. And I
17 think the Allen charge purpose is just to tell them that
18 nobody is going to be any better than that. I'm afraid a
19 couple of them possibly could say we're supposed to get a
20 verdict. We've got to get a verdict today.

21 THE COURT: I understand.

22 MR. BOGGS: If the Court would consider just in
23 addition, you don't have to compromise your position,
24 something along that language. I'm sorry, I don't have --
25 I've heard it before, but I don't have it to present to

1 the Court. I apologize for that.

2 THE COURT: I understand exactly what you're saying
3 and I understand your concern as well. I recognize that I
4 didn't give that particular language, but I don't think I
5 suggested to them that they were going to be held hostage
6 until they came to a verdict.

7 MR. BOGGS: Oh, no, sir.

8 THE COURT: I think -- and I stand to be corrected by
9 an appellate level court, but I think that I gave a proper
10 recitation of the law related to the Allen charge. And I
11 do understand that the Allen charge may have been
12 coercive, but I think under the law it's designed to be
13 somewhat coercive to provoke the jury to reconsider
14 everyone's perspective positions. I don't think that I
15 gave any suggestion that anybody had to change their
16 opinion. I only ask that they consider the other person's
17 position.

18 MR. BOGGS: I understand.

19 THE COURT: And what I don't want to do is say you
20 don't have to compromise your principles or your position.
21 I didn't suggest that they did and if I bring them out
22 here and say specifically you don't have to compromise
23 your position, then, essentially, what they're hearing
24 from me is you don't really have to come to a verdict in
25 this case. And I don't want to give them that signal

1 either. So I recognize your objection and your request,
2 and I respectfully deny the same. I think if I tell them
3 that, then there's a hundred percent chance that they're
4 going to continue to be hung. All right. Thank you.

5 (WHEREUPON, court was in recess awaiting a
6 verdict.)

7 THE COURT: My understanding that we have a verdict
8 from the jury.

9 Is the State ready to receive the verdicts?

10 MS. ODOM: Yes, sir.

11 THE COURT: Is the Defense ready to receive the
12 verdicts?

13 MR. BOGGS: Yes, sir.

14 THE COURT: All right.

15 (WHEREUPON, the jury entered the courtroom at
16 approximately 3:28 p.m.)

17 THE COURT: All right. Mr. Smith, has the jury
18 reached a unanimous verdict, sir?

19 MR. FOREMAN: Your Honor, we have.

20 THE COURT: If you would please hand the verdict form
21 to the clerk of court.

22 Okay. Mr. Welborn, you may publish the verdict, sir.

23 VERDICT

24 THE CLERK: State of South Carolina vs. Charles
25 Brandon Rampey, the case number 2016-GS-39-1538, criminal

1 sexual conduct with a minor third degree, we, the jury,
2 unanimously by agreement find the Defendant guilty. Case
3 number 2015-GS-39-1160, criminal sexual conduct with a
4 minor second degree, we, the jury, by unanimous agreement
5 find the Defendant not guilty.

6 Is that your verdict and is it still your verdict, so
7 say you all by raising your right hand.

8 (WHEREUPON, all members of the jury raised their
9 right hand.)

10 THE COURT: Thank you very much.

11 Anything further for this jury?

12 MR. BOGGS: Nothing from the Defense, Your Honor.

13 MS. ODOM: No, sir.

14 THE COURT: Okay. All right. Ladies and gentlemen,
15 I thank you very much for your service on this jury. I am
16 going to come back to the jury room and dismiss you less
17 formally. But I know this was a hard verdict to arrive
18 at. I also know that y'all took a lot of time and you
19 were very conscientious about it.

20 I do want to ask you a question just to clear up the
21 record to make sure this was a verdict at which you each
22 arrived by a unanimous agreement. I gave you an Allen
23 charge. There was a question and there always is a
24 question as to whether or not an Allen charge is coercive.
25 So I'm going to ask you now and you can just show me by a

1 show of hands, is there any one of this jury who feels as
2 though you compromised a firmly-held position and simply
3 agreed to go along with the remaining juries?

4 (There was no response.)

5 THE COURT: Okay. Thank you very much, ladies and
6 gentlemen. I appreciate that. If you would please return
7 to your jury room. I'm going to be in there in just a
8 second and I'm going to release you. I promise you I'm
9 not going to be very long. Thank you.

10 (WHEREUPON, the jury left the courtroom at
11 approximately 3:32 p.m.)

12 THE COURT: All right, Counsel, what I'm going to do
13 is I'm going to go release the jury. Then I'll come back
14 out for sentencing and any post-trial motions, okay.

15 (WHEREUPON, a short break was taken.)

16 THE COURT: Okay. All right. You may proceed to
17 sentencing.

18 However, Mr. Boggs, do you have any post-trial
19 motion, sir?

20 MR. BOGGS: Just on the guilty verdict, Your Honor.
21 There may have been testimony that fit right into that
22 statute. It seems to me that all the testimony was on
23 criminal sexual conduct second unless you incorporate that
24 and reduce it, the actual elements of CSC three. I don't
25 remember if they had any testimony about the fondling or

1 anything like that.

2 THE COURT: I do specifically remember testimony
3 where there was an offer to touch his private parts that
4 she put into evidence. And there was evidence of
5 additional feeling and fondling that she specifically
6 testified to. Now, certainly, the Defense can take the
7 position that it wasn't wasn't credible, but certainly
8 that's a determination for the jury.

9 MR. BOGGS: It's a little bit late for that one.

10 THE COURT: I respectfully deny your motion, sir.
11 Anything further?

12 MR. BOGGS: No, sir.

13 THE COURT: Okay. All right. You have the sentence
14 sheets, Ms. Odom?

15 All right. Ms. Odom, is there anything additional
16 that you need to put on the record regarding sentencing?

17 MS. ODOM: Yes, sir, Your Honor. Briefly his
18 criminal history, in 2009, he pled guilty to public
19 disorderly conduct, originally charged as a solicitation
20 of a minor where he exposed his penis to a teenager at the
21 Wal-Mart parking lot here in Pickens County --

22 MR. BOGGS: Judge, I object to that.

23 THE COURT: Yes, sir.

24 MR. BOGGS: You asked for the record, not a
25 recitation of the facts of that.

1 THE COURT: Okay. I'll grant her some latitude in
2 that regard. I understand. I'm going to take into
3 consideration not necessarily the facts because I
4 recognize they might not necessarily be an accurate
5 betrayal of the event. However, insofar as this is
6 advocacy for the State, I'll give them the opportunity to
7 advocate and I'll give you the opportunity to do the same.

8 Yes, ma'am.

9 MS. ODOM: Thank you, Your Honor. Also, later in
10 2009, he was convicted of entering premises after warning
11 in a criminal domestic violence charge, first offense. He
12 also has another pending CSC second with a minor charge
13 that he was arrested for a few months after he made bond
14 on the current charges.

15 And Your Honor, the victim is not present here in the
16 courtroom. She went back to school today. But at the
17 appropriate time, I can make a brief statement on her
18 behalf.

19 THE COURT: Okay. Let me make sure that I'm clear on
20 this. On the criminal sexual conduct with a minor in the
21 third degree, the maximum possible penalty is 15 years; is
22 that correct?

23 MS. ODOM: Yes, sir.

24 THE COURT: Is that your understanding, Mr. Boggs?

25 MR. BOGGS: Zero to 15.

1 THE COURT: All right. I'd be happy to hear the
2 statement at this time.

3 MS. ODOM: And I don't have a written statement, but
4 I've met with her several times over the past year. And I
5 just wanted you to let her know that this does mean a lot
6 to her. That she has dealt with this and she has really
7 struggled with this and she does miss her family. And
8 while she never wanted it to come -- she -- I have never
9 heard her say I want him to go to prison or I want him to
10 walk out and get nothing, she has never discussed that
11 with me. But as the State, we feel like a substantial
12 amount of prison time is appropriate and that's what we
13 would be asking for.

14 THE COURT: All right. Thank you very much. I
15 appreciate it.

16 Mr. Boggs.

17 MR. BOGGS: Thank you, Your Honor. My client is 28,
18 he's got four children at home. His family is here. His
19 wife is --

20 Stand up, Lori.

21 This is his wife. They have a child. She has
22 another child from a prior marriage. Brandon got custody
23 of his two children that lived with him, got custody
24 through the Family Court.

25 These are his parents, sister, brother-in-law and

1 other relatives. They've been here, you've seen,
2 throughout this entire trial.

3 Judge, I think this is readily apparent this is a
4 compromised verdict. And I don't want to make light of
5 it, but that's exactly what it is.

6 He was charged in February of 2014 with CSC. That's
7 all he was charged with. A week before we were to go to
8 trial last month, they slipped this CSC three indictment
9 in. I don't know what caused them to do that at that
10 point. But as you saw, we did the arraignment yesterday,
11 I guess it was. We've been fighting the CSC two because
12 that's what they harped on. Then at the last minute, as a
13 safety net, they put in this CSC three in the event the
14 CSC two fell apart, which it did because they couldn't
15 prove it, which is exactly what happened.

16 Brandon works. He's been on an ankle brace monitor
17 two and a half years. In fact, the man you just talked to
18 from Eagle Eye --

19 THE COURT: Yes, sir.

20 MR. BOGGS: -- monitors him. And they have never had
21 one problem. In fact, he offered to come to court to
22 recommend the ankle bracelet be removed, which we were
23 going to do, but his trial was coming up in July. And we
24 were going to be in trial before we could get to court on
25 a motion hearing, so we didn't pursue it at that point.

1 He has cooperated with authorities. He has shown up
2 every time or had me call the solicitor any time he's been
3 noticed up for an appearance. This is a tragedy and
4 Brandon maintains his innocence. His family maintains his
5 innocence. There's a lot that we couldn't bring out.
6 There's a lot that -- or really procedural matters that
7 wouldn't have been relative under the legal parameters of
8 this trial, but could have had an impact outside the box.
9 And that deals with ~~Minor~~ and things that she's said and
10 done. But again, didn't go directly inside the box, but
11 could have shed light on the situation in kind of an
12 ancillary way.

13 Judge, he doesn't need to go to jail. He's got
14 health problems. I realize the seriousness of this
15 charge. If this is the only thing he had been charged
16 with or if he had been charged with this back in February
17 of 2014 and they alleged all along that this had occurred,
18 I don't know what my position would be. But as a safety
19 net where the jury's obviously done a compromised verdict,
20 I hope the Court will take that into consideration.
21 Again, Brandon works. He works every single day. He's a
22 good provider for his family. He and Lori have been
23 taking care of five for a while, certainly, the other
24 four.

25 DSS intervened. They did remove the children for a

1 while from them. They got custody back yesterday in
2 Family Court right below where we're sitting right now.
3 Judge, I don't know, generally, I can run off at the
4 mouth. You've heard me talk enough, but I'm a little bit
5 at a loss for words. But I think you understand where I'm
6 coming from. He doesn't have a serious record. It's just
7 unfortunate that this ended up the way it did.

8 We could have brought in -- well, I'm not going to
9 say that. Never mind. I'm not going to throw stones on
10 issues outside that box like e-mails and texts and all
11 that stuff. It's ironic. Minor made that for him a
12 couple months ago and sent it to him with a note saying I
13 hope you like this. And that's been going on. She's been
14 sending things to him through her mother. It makes it
15 seem like the complete antiphrasis of her coming in and
16 testifying against him today.

17 But I'm not going to belabor the point. You know
18 where I'm coming from. I'm going to ask you to be as
19 lenient as you can. If there's any way the Court would
20 consider -- and I've got to ask you, for a sentence that
21 could be served on house arrest. Let him get this -- if
22 it turns out to be he needs this valve or whatever you
23 call it, at least, he would be under the care of the
24 physician that's been taking care of him. Thank you.

25 THE COURT: Mr. Rampey, is there anything you would

1 like to say, sir?

2 MR. BOGGS: If you want to, you have the opportunity
3 to address the Judge. If you don't want to or can't, then
4 don't.

5 MR. RAMPEY: Sir, I just want to say I'm innocent. I
6 -- even though my -- she's still like a daughter to me,
7 Minor. you know. And I don't disown her. It hurts me,
8 you know, for her to do something like this to me. I
9 still consider her my daughter. I got her name on me and
10 everything along with all my other four kids. I love her
11 with all my heart just like I do my other four. And it
12 just floors me that she would do this to me.

13 MR. BOGGS: Thank you, Your Honor.

14 THE COURT: All right, I appreciate it.

15 Has Mr. Rampey done any prior time on this offense?

16 MR. BOGGS: One day.

17 THE COURT: One day? Does that sound right? Does
18 the State have any different number than that?

19 MS. ODOM: I think that was it on this charge.

20 SENTENCE OF THE COURT

21 THE COURT: Well, I'm going to give you credit for
22 any and all the time that may have been served. I
23 recognize this is very difficult on the entire family.
24 It's a tragedy all around. There's no question but it's
25 -- that it's a tragedy on Minor Regardless of what you

1 think her motives were or what happened to her or didn't
2 happen to her, it certainly has visited upon her harshly.
3 I recognize for the collective family that it's difficult,
4 too. I'm sorry that all of you find yourselves in this
5 position.

6 I don't presume to second guess jury verdicts.
7 Whether it was a compromised verdict or not, I don't know.
8 I asked them a specific question at the close of the trial
9 after they had returned their verdict to make sure that
10 they had not, in fact, compromised their closely-held
11 beliefs to simply arrive at a verdict. And they indicated
12 clearly they did not. And I must take them at their word.
13 They had every opportunity to answer that.

14 Again, in my capacity as the judge, I don't second
15 guess juries. And it's my job at this point to sentence
16 in accordance with the law and in context with what the
17 jury found. The jury found that, Mr. Rampey, you had
18 molested a 12-year-old girl. That's what they found. And
19 I must, I must under my responsibility as an officer of
20 the court and as a judge holding an office in the State of
21 South Carolina sentence in that context.

22 These are not the types of crimes that we sentence
23 home incarceration on. They just aren't. That's an
24 unreasonable expectation. There's nothing on the face of
25 this earth that we need to hold more dear and precious

1 than our children. And in that context, I issue the
2 following sentence.

3 Mr. Rampey, you're sentenced to the State Department
4 of Corrections for a period of 13 years, concurrent with
5 any other time that you may be serving or will serve to
6 the extent that I have the authority to issue that and
7 credit for any time that you may have served. I wish you
8 luck, sir.

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CERTIFICATE OF REPORTER

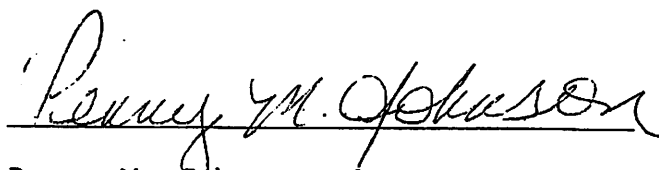
STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in Court of General Sessions for Pickens County, South Carolina, on the 31st day of August and 1st day of September, 2016.

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

January 11, 2017



Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

WITNESSES

Terry Marvin Nix

Pickens County Sheriff's Office

2/26/2014

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

DOB: 10-18-87

SS# 247-73-7436

ACTION OF GRAND JURY

~~TRUE BILL~~

Date

JUL 19 2016

[Signature]
Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-39-SSO

1538

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

JUL 19 2016

TERM 2016

THE STATE

vs.

CHARLES BRANDON RAMPEY

Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR
3RD DEGREE

VIOLATION § 16-03-0655(C)

253

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

At a Court of General Sessions, convened on

JUL 19 2016

the Grand Jurors of Pickens

County present upon their oath:

That CHARLES BRANDON RAMPEY did in Pickens County, on or about or between the dates of November 1, 2012 and December 31, 2013, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of H.M.G., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655(C) of the South Carolina Code of Laws (1976) as amended.

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

254
Solicitor

Shirley J. Odum 77891
BAR #

COURT'S
EXHIBIT NO. 1
IDENTIFICATION/EVIDENCE
DKT.# AB
DATE: 9-1-11

PERGAD 800-631-6969

- ① WE WOULD LIKE TO SEE HARLEY'S TESTAMONY.
- ② WE WOULD LIKE TO SEE DOCTORS REPORT & TESTAMONY
- ③ CAN WE SEE THE POLICE REPORTS
- ④ ARE MINORS SUBJECT TO LIE DETECTOR TEST?

RECEIVED

SEP 2 2011

255

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No: 2016-001905

State of South Carolina,

Respondent

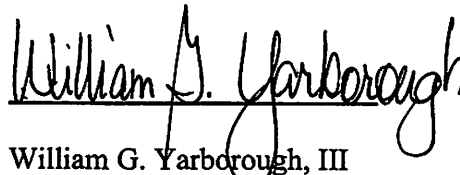
v.

Charles Brandon Rampey,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material pursuant to Rule 210 (g) SCACR.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
General Sessions Court

Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No: 2016-001905

State of South Carolina,

Respondent

v.

Charles Brandon Rampey,

Appellant.

APPELLANT'S FINAL BRIEF

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3-4
STATEMENT OF ISSUES ON APPEAL.....	5
STATEMENT OF THE CASE.....	6
STANDARD OF REVIEW.....	7-10
ARGUMENTS	
I. THE TRIAL COURT ERRED BY REFUSING TO CORRECT A COERCIVE <i>ALLEN</i> CHARGE	11-13
II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE ONLY EVIDENCE AGAINST APPELLANT WAS THE UNRELIABLE TESTIMONY OF THE ALLEGED VICTIM.....	14-15
III. THE TRIAL COURT ERRED IN CONSOLIDATING THE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE CHARGE WITH THE CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE CHARGE.....	16-17
IV. STATEMENTS IN THE SOLICITOR'S CLOSING ARGUMENT WERE IMPROPER AND PREJUDICIAL WHERE SHE VOUCHSAFED THE CREDIBILITY OF THE STATE'S WITNESSES, APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY, AND USED AN IMPERMISSABLE "GOLDEN RULE" ARGUMENT.....	18-23
V. THE TRIAL COURT ERRED IN IMPOSING AN UNECESSARILY SEVERE SENTENCE ON APPELLANT SINCE APPELLANT RECEIVED THIRTEEN (13) YEARS, ONLY TWO (2) YEARS BELOW THE MAXIMUM OF FIFTEEN (15) YEARS.....	24
CONCLUSION.....	25

TABLE OF AUTHORITIES

CASES

<i>Brown v. State</i> , 383 S.C. 506, 680 S.E.2d 909 (2009).....	9
<i>Clark v. Cantrell</i> , 339 S.C. 369, 529 S.E.2d 528 (2000).....	10
<i>Dawson v. State</i> , 352 S.C. 15, 572 S.E.2d 445 (2002).....	7
<i>Green v. State</i> , 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002).....	13
<i>Lowenfield v. Phelps</i> , 484 U.S. 231 (1988).....	7
<i>Matthews v. State</i> , 350 S.C. 272, 565 S.E.2d 766 (2002).....	10, 19
<i>State v. Edwards</i> , 298 S.C. 272, 379 S.E.2d 888 (1989).....	8
<i>State v. Harris</i> , 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009).....	9, 18
<i>State v. Lee-Grigg</i> , 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007).....	7
<i>State v. Jennings</i> , 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011).....	20
<i>State v. Mitchell</i> , 341 S.C. 406, 535 S.E.2d 126 (2000).....	8
<i>State v. Reed</i> , 332 S.C. 35, 503 S.E.2d 747 (1998).....	10
<i>State v. Rice</i> , 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006).....	8, 9, 16
<i>State v. Scates</i> , 212 S.C. 150, 46 S.E.2d 693 (1948).....	10
<i>State v. Sheldon</i> , 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001).....	10
<i>State v. Smith</i> , 276 S.C. 494, 280 S.E.2d 200 (1981).....	10
<i>State v. Smith</i> , 322 S.C. 107, 470 S.E.2d 364 (1996).....	8
<i>State v. Williams</i> , 386 S.C. 503, 512, 690 S.E.2d 62, 66 (2010).....	13
<i>State v. Williams</i> , 344 S.C. 260, 543 S.E.2d 260 (Ct. App. 2001).....	7
<i>Tappeiner v. State</i> , 416 S.C. 239, 785 S.E.2d 471 (2016).....	9, 18, 20-21
<i>Tucker v. Catoe</i> , 346 S.C. 483, 552 S.E.2d 712 (2001).....	7

<i>Vaughn v. State</i> , 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).....	9
<i>Von Dohlen v. State</i> , 360 S.C. 598, 602 S.E.2d 738 (2004).....	9

STATEMENT OF ISSUES ON APPEAL

- I. DID THE TRIAL COURT ERR BY REFUSING TO CORRECT A COERCIVE *ALLEN* CHARGE?
- II. DID THE TRIAL COURT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE ONLY EVIDENCE AGAINST APPELLANT WAS THE UNRELAIBLE TESTIMONY OF THE ALLEGED VICTIM?
- III. DID THE TRIAL COURT ERR IN CONSOLIDATING THE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE CHARGE WITH THE CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE CHARGE?
- IV. WERE STATEMENTS IN THE SOLICITOR'S CLOSING ARGUMENT IMPROPER AND PREJUDICIAL WHERE SHE VOUCHSAFED THE CREDIBILITY OF THE STATE'S WITNESSES, APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY, AND USED AN IMPERMISSABLE "GOLDEN RULE" ARGUMENT?
- V. DID THE TRIAL COURT ERR IN IMPOSING AN UNECESSARILY SEVERE SENTENCE ON APPELLANT SINCE APPELLANT RECEIVED THIRTEEN (13) YEARS, ONLY TWO (2) YEARS BELOW THE MAXIMUM OF FIFTEEN (15) YEARS?

STATEMENT OF THE CASE

On January 2, 2014, Appellant's stepdaughter made allegations that Appellant had been sexually abusing her from November 21, 2012, to December 31, 2013. Appellant was indicted for criminal sexual conduct ("CSC") with a minor in the second degree in February 2014. In July 19, 2016, the State added the charge of CSC with a minor in the third degree. (ROA, pg. 253). On August 31, 2016, Appellant had a jury trial before the Honorable Robin B. Stillwell, when the jury rendered a verdict of not guilty for the CSC with a minor in the second degree and guilty for the CSC third degree following an *Allen* charge. (ROA, pg. 236, line 9 - pg. 238, line 9). Appellant was sentenced to thirteen years in prison. This Appeal followed.

STANDARD OF REVIEW

“An *Allen* charge is an instruction advising deadlocked jurors to have deference to each other's views, that they should listen, with a disposition to be convinced, to each other's argument...” *State v. Lee-Grigg*, 374 S.C. 388, 418, 649 S.E.2d 41, 57 (Ct. App. 2007) (internal citations and punctuation omitted). “Whether an *Allen* charge is unconstitutionally coercive must be judged ‘in its context and under all the circumstances.’” *Tucker v. Catoe*, 346 S.C. 483, 491, 552 S.E.2d 712, 716 (2001) (citing *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)). An *Allen* charge cannot be directed to the minority voters of the jurors, must be even-handed, and must direct both the majority and the minority to consider the other's views. *Dawson v. State*, 352 S.C. 15, 20, 572 S.E.2d 445, 447 (2002). South Carolina courts have used various factors to determine whether an *Allen* charge was coercive, including 1) whether the charge spoke specifically to the minority jurors; 2) whether the charge included language indicating the jury “must reach a verdict;” 3) whether there was an inquiry into the jury's numerical division; and 4) the length of deliberations before the charge in addition to the amount of time between the *Allen* charge being given and the return of the verdict. *Tucker* at 494, 552 S.E.2d at 718 (citing *Lowenfield v. Phelps*, 484 U.S. 231, 237 (1988)); *Dawson* at 20, 572 S.E.2d at 447; *State v. Williams*, 344 S.C. 260, 264, 543 S.E.2d 260, 262 (Ct. App. 2001).

On a motion for a directed verdict, the trial court is to consider the existence or nonexistence of evidence rather than its weight. *Lee-Grigg* at 399, 649 S.E.2d at 47. If the State fails to produce evidence of the offense charged, a defendant is entitled to a directed verdict. *Id.* “When reviewing a denial of a directed verdict, an appellate court views evidence and all reasonable inferences in the light most favorable to the State,” *id.*, and a case is properly submitted to the jury if there is “any substantial evidence which reasonably tends to prove the guilt of the

accused, or from which his guilt may be fairly and logically deduced.” *State v. Mitchell*, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000) (citing *State v. Edwards*, 298 S.C. 272, 379 S.E.2d 888 (1989)). However, when the State’s evidence merely raises a suspicion of a defendant’s guilt, the trial court should grant a directed verdict in the defendant’s favor. *Lee-Grigg* at 399, 649 S.E.2d at 47. “Suspicion” is defined as “a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof.” *Id.* An appellate court may reverse the trial court’s denial of a directed verdict motion if there is no evidence to support the court’s ruling. *Id.*

A motion to sever is within the discretion of the trial court, and its ruling will not be disturbed on appeal absent an abuse of the discretion. *State v. Rice*, 368 S.C. 610, 613, 629 S.E.2d 393, 394 (Ct. App. 2006). Several factors are used to analyze a trial court’s decision to consolidate charges. *Id.* at 614, 629 S.E.2d at 395. “Where the offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place and character, the trial judge has the power, in his discretion, to order the indictments tried together if the defendant’s substantive rights would not be prejudiced.” *Id.*; see also *State v. Smith*, 322 S.C. 107, 109, 470 S.E.2d 364, 365 (1996). By contrast, “offenses which are of the same nature, but which do not arise out of a single chain of circumstances and are not provable by the same evidence may not properly be tried together.” Charges can be joined and tried together when they (1) arise out of a single chain of circumstances; (2) are proved by the same evidence; (3) are of the same general nature; and (4) no real right of the defendant has been prejudiced. *Rice* at 615, 629 S.E.2d at 395.

As a rule, “solicitors must confine their closing remarks to the record and the reasonable inferences that may be drawn therefrom.” *Tappeiner v. State*, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016). Solicitors must also “tailor their remarks ‘so as not to appeal to the personal biases of

the jury' or 'arouse the jurors' passions or prejudices.'" *Id* at 250, 785 S.E.2d at 477 (citing *Von Dohlen v. State*, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004)). To observe this rule, "solicitors should avoid comments that ask jurors to place themselves in the victim's—or another party's—shoes, because those types of comments tend to 'completely destroy all sense of impartiality of the jurors.'" *Tappeiner* at 250–51, 785 S.E.2d at 477 (citing *Brown v. State*, 383 S.C. 506, 515–16, 680 S.E.2d 909, 914 (2009)). This is otherwise known as a "Golden Rule" Argument and is inappropriate because it "[encourages] the jurors to depart from neutrality and to decide the case on the basis of personal interest and bias rather than on the evidence." *State v. Harris*, 382 S.C. 107, 120, 674 S.E.2d 532, 539 (Ct. App. 2009). When assessing the appropriateness of a solicitor's closing remarks, "appellate courts must determine 'whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.'" *Id* at 251, 785 S.E.2d at 477 (citing *Vaughn v. State*, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004)). Solicitor's also may not vouch for a witness's credibility because "the assessment of witness credibility is within the exclusive province of the jury" and "doing so improperly invades the province of the jury and places the government's prestige behind the witness." *Id* at 250, 785 S.E.2d at 476–77 (internal citations omitted). Additionally, "a solicitor may not vouch for the credibility of a State's witness based on personal knowledge or other information outside the record" because "[v]ouching for a witness based on outside material conveys the impression to the jury that the solicitor has evidence not presented to the jury but known by the prosecution which supports conviction." *Matthews v. State*, 350 S.C. 272, 276, 565 S.E.2d 766, 768 (2002).

"[T]he authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion." *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981). "On appeal, the trial court's ruling will not be disturbed absent a

prejudicial abuse of discretion amounting to an error of law.” *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000).

The appellate court’s task is to determine whether the trial court abused its discretion. *State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998). Sound judicial discretion must be exercised in every case with a thorough regard for what is just and proper under the circumstances. *State v. Scates*, 212 S.C. 150, 156, 46 S.E.2d 693, 695 (1948).

ARGUMENT

I. THE TRIAL COURT ERRED BY REFUSING TO CORRECT A COERCIVE *ALLEN* CHARGE.

Using the three factors from South Carolina case law, the *Allen* charge the trial court gave in Appellant's case was unconstitutionally coercive because it implied that the jury must return a verdict for the parties. For the first factor inquires whether the charge addressed the minority jurors. In this case, the trial court did not single out the minority jurors with his statements. However, the very nature of an *Allen* charge inherently puts substantial pressure on the jury, and especially the minority jurors, to render a unanimous verdict rather than remain hung. Due to the pressure an *Allen* charge brings, it is vital that the trial court should meticulously avoid any semblance of language which would imply that the jurors must or need to give a verdict on the case.

The second factor addresses this issue by analyzing whether the court's language gave the jury the impression that they must or need to give a verdict. Here, rather than adhere to the general rule against "you must return a verdict" language, the trial court told the jury during the *Allen* charge that "...these parties deserve finality and they deserve a decision." (ROA, pg. 237, lines 21-22). Later in the charge, the judge repeated that "these parties deserve a verdict." (ROA, pg. 238, lines 6-7). These phrases are coercive because they imply that the jury must return a verdict because the parties "deserve a verdict." This "deserve" language is far too similar to the problematic "must" language that renders an *Allen* charge unconstitutionally coercive.

Additionally, the trial judge stated to the jury: "If you were to *fail* to come to a verdict in this case, then this case would simply have to be tried again" (emphasis added). (ROA, pg. 237, lines 11-13). This language explicitly communicates to the jurors that they would fail by not

reaching a verdict. This was also coercive because it gave the jurors the impression that they must render a verdict or fail in their capacity as jurors.

Finally, the third factor, which looks to the length of deliberations before and after the charge, supports a finding of coercion. From the record, the jury began deliberations at 11:49 AM. (ROA, pg. 233, lines 5-6). Except for a brief three-minute interval where the jury wished to hear the testimony of the witnesses again, (ROA, pg. 233, lines 13-14; and pg. 235, lines 24-25), the jury deliberated until 2:07 PM when it indicated to the judge it was deadlocked and received the *Allen* charge. (ROA, pg. 236, lines 18-19). Following this, the jury deliberated from 2:11 PM until 3:28 PM when it gave a verdict. (ROA, pg. 238, lines 10-11; and pg. 240, lines 15-16).

The coercive impact of the *Allen* charge can be shown by the fact that the jury struggled for over two hours to reach a verdict, asking for permission to review the testimony of the victim, the examining physician, and the police reports as well as inquiring whether the alleged victim would take a lie detector test. (See Court's Exhibit 1). After the charge was given, the jury returned a verdict in a little over an hour acquitting Appellant of CSC in the second degree but convicting him of CSC in the third. This compromised verdict demonstrates that the jury, influenced by the coercive nature of the *Allen* instruction which told it that "the parties deserved a verdict," decided to "split the baby" between the two charges and give Appellant what seemed the lesser of two evils.

Further supporting this conclusion is the fact that the trial judge admitted that his charge may have been coercive. In the record, when defense counsel objects to the *Allen* charge as given, the trial judge states: "And I do understand that the *Allen* charge may have been coercive, but I think under the law it's designed to be somewhat coercive to provoke the jury to reconsider everyone's perspective positions." (ROA, pg. 239, lines 10-14). The trial court's reasoning in this

statement is incorrect. Under the law, an *Allen* charge is meant to encourage the jurors to consider everyone's views, but South Carolina courts have unanimously expressed that the charge is not to be coercive. *See State v. Williams*, 386 S.C. 503, 512, 690 S.E.2d 62, 66 (2010); *see also Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) ("A trial judge has a duty to urge, but not coerce, a jury to reach a verdict"). The fact that the judge believed that an *Allen* charge is meant to be coercive demonstrates that he did not craft his charge with the intent to urge without coercing. Rather, by the court's own statements, the judge's charge was intended to be coercive and compel the jurors to come to a verdict. This fact, coupled with how the judge twice stated that the "parties deserved a verdict" and the jury's compromise verdict, demonstrates that the *Allen* charge was impermissibly coercive. Due to this coercion, Appellant was denied due process in his trial.

II. THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT WHEN THE ONLY EVIDENCE AGAINST APPELLANT WAS THE UNRELAIBLE TESTIMONY OF THE ALLEGED VICTIM.

The trial court also erred by denying Appellant's motion for a directed verdict. A trial court should grant a motion for a directed verdict if the evidence amounts to only a suspicion of the defendant's guilt and the State fails to produce any substantial evidence. Here, there was no substantial evidence of Appellant's guilt.

The sole evidence against Appellant was the accusations of the alleged victim, his stepdaughter. Her testimony implicating Appellant became suspect by the admissions of her cousin, who was the stepdaughter's confidant that the stepdaughter planned to falsely accuse Appellant of sexual assault so she could go live with her grandmother. (ROA, pg. 181, line 12 – pg. 182, line 16). Additionally, the stepdaughter at various stages gave different accounts regarding the incidents of sexual assault as indicated by her testimony at trial, (ROA, pg. 83, line 18 – pg. 87, line 15), and in the police reports, (ROA, pg. 168, line 7 – pg. 169, line 1). These facts corroborate her cousin's admissions and severely undermine the stepdaughter's testimony, rendering her statements an inadequate foundation to deny a motion for directed verdict.

Other than the stepdaughter's testimony, the State presented no direct or circumstantial evidence tending to prove Appellant's guilt. There was no physical evidence of any penetration or injuries from the stepdaughter's medical exam (ROA, pg. 113, line 18 – pg. 115, line 9). The rest of the State's evidence was the testimony of the police officers who interviewed the stepdaughter and a general expert on child abuse.

Thus, the entirety of the State's evidence boiled down to the stepdaughter's testimony, which has been called into question by her cousin's admissions and her own inconsistencies. Even viewed in the light most favorable to the State, the evidence against Appellant was insubstantial

because it consisted solely of an unreliable witness's accusations. Therefore, the trial court erred in denying Appellant's motion for a directed verdict.

III. THE TRIAL COURT ERRED IN CONSOLIDATING THE CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE CHARGE WITH THE CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE CHARGE.

The trial court abused its discretion by allowing the charges of CSC in the second degree and CSC in the third degree to be tried together, prejudicing Appellant by encouraging the jury to give a compromised verdict. As indicated by *State v. Rice*, charges can be joined when they (1) arise out of a single chain of circumstances; (2) are proved by the same evidence; (3) are of the same general nature; and (4) no real right of the defendant has been prejudiced. *Rice* at 615, 629 S.E.2d at 395.

Here, incidents leading to the CSC second and third were separate events that were not connected by a single chain of circumstances. The stepdaughter stated that the alleged abuse began when Appellant began fondling her. (ROA, pg. 82, line 18 – pg. 83, line 3). This accusation formed the basis for the CSC third charge. The stepdaughter then said that Appellant penetrated her on an unknown number of later occasions varying from one to several. (ROA, pg. 84, line 23 – pg. 85, line 1). These statements were the basis of the CSC second charge. Thus, Appellant was accused of two separate crimes for two separate series of events.

Additionally, the State's timing indicates that it considered the charges were from two separate incidents. Appellant was originally charged with CSC second in February 2014. (ROA, pg. 246, line 6). On July 19, 2016, the State added the charge of CSC third. (See Indictment for Criminal Sexual Conduct with a Minor Third Degree dated July 19, 2016). The temporal separation between these two charges coupled with the distinct nature of each charge indicates that the State considered these charges to apply to separate and independent incidents. Since both the allegations and the charges demonstrate that the alleged incidents occurred on separate, unrelated occasions, the decision to join the charges fails on the first prong of the test.

The joinder also fails under the fourth prong of the test. Here, Appellant was substantially prejudiced by the trial court's decision to join the charges together. The State added the CSC third as a safety net a few weeks before trial in case it failed to prove the CSC second, which turned out to be the case. The jury clearly struggled regarding the evidence: it asked to have evidence played back for it (ROA, pg. 233, line 13 – pg. 235, line 25); it wanted the minor victim to take a lie detector test (See Court's Exhibit 1); it remained hung after over two hours of deliberation (ROA, pg. 235, lines 24-25; and pg. 236, lines 18-19); it deliberated for over three and a half hours before rendering a verdict (ROA, pg. 233, lines 5-6; T.R. pg. 240, lines 15-16); and in the end, acquitted Appellant of the CSC second but rendered a guilty verdict for CSC third (ROA, pg. 240, line 23 – pg. 241, line 5). Confronted with its struggles and deadlock, the jury decided to "split the baby" and find Appellant guilty of what it considered to be the lesser of two evils. Thus, Appellant was substantially prejudiced by the two charges being consolidated because it allowed the jury to give a compromised verdict. If the charges had been severed, it is likely that the jury would have found Appellant innocent of both CSC second and CSC third. Thus, Appellant's due process rights were prejudiced by the trial court not severing these charges.

IV. STATEMENTS IN THE SOLICITOR'S CLOSING ARGUMENT WERE IMPROPER AND PREJUDICIAL WHERE SHE VOUCHSAFED THE CREDIBILITY OF THE STATE'S WITNESSES, APPEALED TO THE PASSIONS AND PREJUDICES OF THE JURY, AND USED AN IMPERMISSABLE "GOLDEN RULE" ARGUMENT

When making closing arguments, solicitors are not to vouchsafe for a witness's credibility, are not to stray into appeals to a jury's passions or prejudices, nor are they to ask the jurors to place themselves in the position of the victim. *See Tappeiner v. State*, 416 S.C. 239, 785 S.E.2d 471 (2016); *State v. Harris*, 382 S.C. 107, 674 S.E.2d 532 (Ct. App. 2009). Here, State's counsel, Ms. Shannon Odom, did all three.

a. Ms. Odom inappropriately vouched for the State's expert witness's credibility and thus impermissibly bolstered the alleged victim's testimony.

In her closing argument, Ms. Odom stated that the child abuse expert, Ms. Galloway-Williams, and her testimony explained generally why children might delay reporting sexual abuse. (ROA, pg. 124, lines 17-20). However, Ms. Odom went on to say that Ms. Galloway-Williams should be believed because "[s]he's an expert. She's testified before. She testified yesterday. She's done her research. She teaches. She knows about these things." (ROA, pg. 267, lines 5 – 8). These statements indicated to the jury that special weight was to be given to Ms. Galloway-Williams's testimony because of her training and expertise. Since Ms. Galloway-Williams's testimony bolstered the alleged victim's testimony by explaining the discrepancies in her story, it was impermissible for Ms. Odom to comment that the expert was to be believed more than other witnesses due to her qualifications. Appellant was prejudiced by these inappropriate statements because it gave the jury the impression that it should accept Ms. Galloway-Williams's testimony as a sufficient explanation of the alleged victim's inconsistencies solely because she was an expert.

Later in her argument, Ms. Odom again vouched for both Ms. Galloway-Williams and, indirectly, the victim. Ms. Odom stated that:

Captain Nix said, Ms. Galloway-Williams said, there's people who are specially trained to talk to a child. Because what I'm – the answer I'm wanting or what I'm getting at may be different than what the child is thinking. And it's possible for a child to answer one way and you think they're saying something else....So there's special people at the Julie Valentine Center, that talk to children, get the answers without putting anything in their heads, anything like that without misconstruing something. (ROA, pg. 209, lines 11 – 23).

In these statements, Ms. Odom assured the jury that the testimony of “the special people at the Julie Valentine Center,” i.e. Ms. Galloway-Williams and other unidentified employees, is credible to bring out the truth regarding what the alleged victim testified about. However, this is an inaccurate statement of the evidence since Ms. Galloway-Williams never interviewed or even met the alleged victim in this case.

As the court in *Matthews v. State* stated, a solicitor may not vouch for a witness's credibility based on outside materials. *Matthews* at 276, 565 S.E.2d at 768. Here, not only did Ms. Odom's comments impermissibly bolster Ms. Galloway-Williams's general testimony on child abuse, but they convey the impression that the Julie Valentine Center employees believed the alleged victim's story and had other evidence such as the victim's interview that proved Appellant's culpability. Other than Ms. Galloway-Williams, no one from the Julie Valentine Center testified regarding the alleged victim's case or her forensic interview. No employee of the Julie Valentine Center testified that they believed the alleged victim's story, and in fact, they are not allowed to. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding that the trial court abused its discretion in

allowing a forensic interviewer to vouch for a victim's credibility). To imply otherwise impermissibly gave the jury the impression that the "special people" at the Julie Valentine Center believed the alleged victim's story based on evidence that was never entered at trial. Coupled with the inappropriate bolstering of the victim's testimony, these statements placed the State's prestige behind the witnesses and improperly influenced the jury regarding the witnesses' credibility.

The current case is similar to *Tappeiner v. State* where the South Carolina Supreme Court found that a solicitor who had mistakenly asserted that a rape crisis counselor had personally interviewed the sexual assault victim and that the counselor was someone "who can detect when someone is making something up or if there is nothing there" had strayed into impermissible territory. *Tappeiner v. State*, 416 S.C. 239, 251, 785 S.E.2d 471, 477 (2016). In *Tappeiner*, the rape crisis counselor had never personally interviewed the victim herself and only testified to general child abuse dynamics. *Id.* at 251–52, 785 S.E.2d at 477. The Supreme Court held that "the solicitor's statements were clearly improper" and prejudiced the defendant since there was little evidence against the defendant except for the testimony of the State's witnesses. *Id.* at 251–52, 785 S.E.2d at 477–78. Since the case came down to a "credibility determination between the prosecution's witnesses and the defense's witness" and there was little other evidence against the defendant, the Supreme Court found that the outcome of the trial would have likely been different but for the solicitor's improper comments. *Id.* at 253, 785 S.E.2d at 478.

Here, Ms. Odom's statements were nearly identical to those the Supreme Court took issue with in *Tappeiner*. Ms. Odom implied that Ms. Galloway-Williams personally interviewed the alleged victim when Ms. Galloway-Williams had explicitly stated she did not, (ROA, pg. 122, line 22 – pg. 123, line 6) and that these "special people" at the Julie Valentine Center got truthful answers from the alleged victim. Like *Tappeiner*, these statements impermissibly bolstered the

alleged victim's credibility by implying that the Julie Valentine Center employees both believed the victim's story and vouched for its veracity. Like *Tappeiner*, this case boiled down to a credibility determination between the Defense's witnesses and the State's, with little other evidence against Appellant, and like *Tappeiner*, but for the solicitor's inappropriate statements, the outcome of the trial would likely have been different.

b. Ms. Odom impermissibly appealed to the passions and prejudices of the jury during her closing argument, prejudicing Appellant.

Ms. Odom also consistently appealed to the passions and prejudices of the jury during her closing arguments. At the beginning of her argument, Ms. Odom stated how excited the alleged victim was that Appellant was going to be her stepfather because she wanted a dad. (ROA, pg. 206, lines 15 – 22). Ms. Odom then stated a little later that, instead of this happy father-daughter relationship, “[t]his little girl is going through a hell of a time all the way around.” (ROA, pg. 207, lines 23-24).

She then proceeded to apologize for how she has been making faces throughout the trial because she wanted to “jump up” to refute defense’s cross examination. (ROA, pg. 207, line 25 – pg. 208, line 11). She also said that she has been wanting to get up and say “Is that the best you got?” in reference to the main defense witness’s testimony. (ROA, pg. 211, line 24 – pg. 212, line 3). Additionally, Ms. Odom posed many rhetorical questions to the jury regarding the alleged victim’s story. For instance, at one point she told the jury: “You think [the alleged victim] has gone through three years of having to retell and talk to people over and over again about this? You think that’s pleasant for her to be on the stand?” (ROA, pg. 212, lines 10 – 13). Later she asked the jury: “You think that’s pleasant, going from one home into another one and you get removed again?” (ROA, pg. 215, lines 20 – 22). At another point, Ms. Odom says that the case is “really

sad to think about” and how the alleged victim “didn’t have a fighting chance.” (ROA, pg. 216, lines 7 – 14).

Finally, Ms. Odom rounds out her argument by saying that “Haleigh’s [the alleged victim] the one that’s having to go through this,” (ROA, pg. 219, line 1), and “she got up there and she poured her heart out.” (ROA, pg. 220, line 25 – pg. 221, line 1). Individually, all these statements are inflammatory appeals to the jury’s passions and prejudices. Collectively, they amounted to unfairness that denied Appellant due process.

c. Ms. Odom used an impermissible “Golden Rule” argument during the trial, encouraging the jurors to place themselves into the alleged victim’s shoes.

Finally, Ms. Odom made an impermissible “Golden Rule” argument to the jury. When trying to refute the Defense’s theory of the case, Ms. Odom told the jury: “They [the Defense] made a big deal about how she [the alleged victim] wanted to live with her grandma. *Well, yeah, don’t you think if you were getting bent over, if you were getting groped on all the time that you wouldn’t want to live there anymore, that you wouldn’t want to be there with a person who’s sexually assaulting you.* That makes perfect sense. Of course, she wants to go live with her grandma. She’s not going to get touched on over there.” (ROA, pg. 211, lines 2 – 9) (emphasis added).

Here, Ms. Odom asked the jurors to believe the alleged victim’s story because if they were in the victim’s shoes, they would want to get away from Appellant too. This argument inappropriately encouraged the jury to decide the case based on its personal interest and bias rather than an impartial verdict based on the evidence, denying Appellant a fair trial.

Collectively, Ms. Odom’s arguments that vouched for her witnesses’ credibility, appealed to the passions and prejudices of the jury, and asked the jurors to put themselves in the victim’s

shoes were prejudicial to Appellant. The case was a narrow one, the jury struggling throughout its deliberations and in the end giving a compromise verdict. There is a reasonable likelihood that but for these inappropriate arguments from Ms. Odom, the trial would have gone differently.

V. THE TRIAL COURT ERRED IN IMPOSING AN UNECESSARILY SEVERE SENTENCE ON APPELLANT SINCE APPELLANT RECEIVED THIRTEEN (13) YEARS, ONLY TWO (2) YEARS BELOW THE MAXIMUM OF FIFTEEN (15) YEARS.

The circuit judge erred in giving Appellant a thirteen (13) year sentence, which was only two (2) years below the maximum of fifteen (15), without taking into account the extenuating circumstances in this case. Prior to this case, Appellant had only two criminal convictions, a public disorderly conduct conviction and a conviction for entering a premises after a warning in a criminal domestic violence charge when he was twenty-one (21). Appellant was a hard-working provider for his family, had recently gained custody of his wife's other children from a previous marriage, and complied with the entire judicial process during the two and a half years this case lasted.

Additionally, Appellant has serious heart issues, so much so that at one point the trial was interrupted when he had chest pains and EMS had to remove him to the hospital. (ROA, pg. 138, line 24 – pg. 140, line 11). The trial court should consider several factors when determining an appropriate sentence for a defendant including the physical condition of the defendant. Here, Appellant has severe medical problems that could be aggravated by an extended stay in prison. Appellant's medical issues, coupled with his lack of criminal history, strong family record, and compliance with the judicial system should have been taken into account when determining his sentence. However, by giving Appellant an unnecessarily severe sentence, the trial court erred by ignoring these mitigating factors and abused its discretion.

CONCLUSION

The trial court erred by refusing to correct its compulsory *Allen* charge and by denying Appellant's directed verdict motion when the state produced no substantial evidence of guilt. Additionally, the trial court erred in by consolidating the CSC second charge with the CSC third charge, encouraging the jury to give a compromised verdict. The solicitor's closing argument was improper by bolstering witnesses, appealing to the jurors' passions and prejudices, and using an impermissible "Golden Rule" argument, prejudicing Appellant. Finally, the trial court erred in not taking into consideration the many mitigating circumstances regarding Appellant's crime and abused its discretion by imposing an unnecessarily severe sentence.

As a result of these errors, Appellant's sentence should be reversed, and the case should be remanded for a new trial.

RESPECTFULLY SUBMITTED THIS

8th DAY OF January, 2018.

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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2016-001905

THE STATE, ...RESPONDENT,

v.

CHARLES BRANDON RAMPEY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
Table of Contents.....	i
Table of Authorities	ii
Respondent's Statement of Issues on Appeal	1
Statement of the Case.....	2
Statement of Facts.....	3
Arguments:	
I. The trial judge did not err in denying Appellant's request to modify her <u>Allen</u> charge because the instruction was not unconstitutionally coercive and, even if the instruction was improper, any alleged error is harmless because the trial judge polled the jurors to confirm the jurors did not feel coerced into reaching a verdict by compromising their principles or positions.....	15
II. The trial judge properly denied Appellant's motion for a directed verdict because the State provided direct evidence of his guilt.....	19
III. The trial judge properly allowed the State to present evidence of and pursue charges for both criminal sexual conduct in the second degree and criminal sexual conduct in the third degree because Appellant failed to request separate trials for the charges. Regardless, the charges were correctly tried together because the evidence supporting both indicated: they arose out of a single chain of circumstances; were proven by the same evidence; were of the same general nature; and Appellant was not unfairly prejudiced.....	20
IV. Appellant failed to preserve for appellate review any issues concerning the State's alleged improper bolstering, vouching, or alleged "golden rule" violations because he did not object to these comments at trial. Regardless, these statements were not improper comments and were only made because Appellant "opened the door" to these issues by raising them during his closing argument.....	23
V. The trial judge did not abuse her discretion in sentencing Appellant to thirteen years' incarceration where the sentence was within the	

statutory range, Appellant had prior convictions and pending charges for similar acts, and Appellant was convicted of a serious offense.....	29

Conclusion	31

TABLE OF AUTHORITIES

Cases:

<u>Allen v. United States</u> , 164 U.S. 492 (1896)	i, 15
<u>Brown v. State</u> , 383 S.C. 506, 680 S.E.2d 909 (2009)	25
<u>Green v. State</u> , 351 S.C. 184, 569 S.E.2d 318 (2002).....	16
<u>Humphries v. State</u> , 351 S.C. 362, 570 S.E.2d 160 (2002).....	25, 26
<u>Lowenfield v. Phelps</u> , 484 U.S. 231 (1988).....	15, 16
<u>State v. Barton</u> , 325 S.C. 522, 481 S.E.2d 439 (Ct. App. 1997).....	30
<u>State v. Bryant</u> , 372 S.C. 305, 642 S.E.2d 582 (2007)	24
<u>State v. Caldwell</u> , 300 S.C. 494, 388 S.E.2d 816 (1990).....	25, 26, 28, 29
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	19
<u>State v. Commander</u> , 396 S.C. 254, 721 S.E.2d 413 (2011).....	15
<u>State v. Copeland</u> , 321 S.C. 318, 468 S.E.2d 620 (1996).....	25
<u>State v. Cutro</u> , 365 S.C. 366, 618 S.E.2d 890 (2005)	21
<u>State v. Douglas</u> , 369 S.C. 424, 632 S.E.2d 845 (2006)	25
<u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003)	20, 21, 22, 26
<u>State v. Ferguson</u> , 221 S.C. 300, 70 S.E.2d 355 (1952)	30
<u>State v. Franklin</u> , 267 S.C. 240, 226 S.E.2d 896 (1976).....	31
<u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002).....	25
<u>State v. Groome</u> , 274 S.C. 189, 262 S.E.2d 31 (1980)	24
<u>State v. Heath</u> , 232 S.C. 384, 102 S.E.2d 268 (1958).....	24
<u>State v. Hicks</u> , 377 S.C. 322, 659 S.E.2d 499 (Ct. App. 2008)	30
<u>State v. Jones</u> , 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996).....	21
<u>State v. Kelley</u> , 319 S.C. 173, 460 S.E.2d 368 (1995).....	25
<u>State v. King</u> , 334 S.C. 504, 514 S.E.2d 578 (1999)	20, 22
<u>State v. Kromah</u> , 401 S.C. 340, 737 S.E.2d 490 (2013)	27
<u>State v. Lee-Grigg</u> , 374 S.C. 388, 649 S.E.2d 41 (Ct. App. 2007).....	15, 16
<u>State v. McDonald</u> , 343 S.C. 319, 540 S.E.2d 464 (2000)	24
<u>State v. Odems</u> , 395 S.C. 582, 720 S.E.2d 48 (2011).....	19
<u>State v. Peer</u> , 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996)	15
<u>State v. Rice</u> , 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006)	22
<u>State v. Russell</u> , 345 S.C. 128, 546 S.E.2d 202 (Ct. App. 2001).....	20
<u>State v. Shuler</u> , 344 S.C. 604, 545 S.E.2d 805 (2001).....	25
<u>State v. Sidell</u> , 262 S.C. 397, 205 S.E.2d 2 (1974).....	30
<u>State v. Simmons</u> , 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002)	21
<u>State v. Smith</u> , 322 S.C. 107, 470 S.E.2d 364 (1996).....	21
<u>State v. Tucker</u> , 324 S.C. 155, 478 S.E.2d 260 (1996)	21
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006)	19
<u>State v. Williams</u> , 263 S.C. 290, 210 S.E.2d 298 (1974).....	21

<u>Tucker v. Catoe</u> , 346 S.C. 483, 552 S.E.2d 712 (2001).....	15, 16, 17
<u>United States v. Young</u> , 470 U.S. 1 (1985)	26
<u>Vaughn v. State</u> , 362 S.C. 163, 607 S.E.2d 72 (2004).....	26, 27, 29

STATEMENT OF ISSUES ON APPEAL

- I. The trial judge did not err in denying Appellant's request to modify her Allen charge because the instruction was not unconstitutionally coercive and, even if the instruction was improper, any alleged error is harmless because the trial judge polled the jurors to confirm the jurors did not feel coerced into reaching a verdict by compromising their principles or positions.
- II. The trial judge properly denied Appellant's motion for a directed verdict because the State provided direct evidence of his guilt.
- III. The trial judge properly allowed the State to present evidence of and pursue charges for both criminal sexual conduct in the second degree and criminal sexual conduct in the third degree because Appellant failed to request separate trials for the charges. Regardless, the charges were correctly tried together because the evidence supporting both indicated: they arose out of a single chain of circumstances; were proven by the same evidence; were of the same general nature; and Appellant was not unfairly prejudiced.
- IV. Appellant failed to preserve for appellate review any issues concerning the State's alleged improper bolstering, vouching, or alleged "golden rule" violations because he did not object to these comments at trial. Regardless, these statements were not improper comments and were only made because Appellant "opened the door" to these issues by raising them during his closing argument.
- V. The trial judge did not abuse her discretion in sentencing Appellant to thirteen years' incarceration where the sentence was within the statutory range, Appellant had prior convictions and pending charges for similar acts, and Appellant was convicted of a serious offense.

STATEMENT OF THE CASE

In February of 2014, the Aiken County Grand Jury indicted Appellant for second-degree criminal sexual conduct (CSC) with a minor. On July 19, 2006, the Grand Jury issued a separate indictment for third-degree CSC with a minor. On August 31, 2016, Appellant proceeded to a jury trial before the Honorable Robin B. Stilwell. Thomas Boggs, Esquire, represented Appellant; assistant solicitor Shannon Odom, Esquire, represented the State. The jury acquitted Appellant of second-degree CSC but found her guilty of the third-degree charge. The trial judge sentenced Appellant to thirteen years' incarceration.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

Trial Testimony

On January 2, 2014, Deputy Van Massingill of the Pickens County Sheriff's Office went to Easley Baptist Hospital to investigate a report claiming Victim had been sexually abused by Appellant, her stepfather. Deputy Massingill met with Victim and her grandmother, at which time the former complained of multiple instances of abuse occurring within the previous year at two separate locations in Pickens County. (R.p.44, line 18–R.p.46, lines 10).

Kathryn Hinton, Victim's maternal grandmother, recalled Appellant began dating Victim's mother (Mother) sometime between 2008 and 2009, after which Victim, Mother, and her younger siblings moved in with Appellant and his two children. Victim and her sister often stayed with Hinton while Mother worked, but often Appellant would call Hinton and arrange to pick the children up for the day. On January 2, 2014, Appellant made one such call and arranged with Hinton to pick the children up shortly thereafter. When Hinton informed Victim of the arrangement, Victim started crying and informed her she had been abused by Appellant. (R.p.48, line 25–R.p.53, line 9).

After Victim reported her abuse, she moved in with Hinton and her husband. Victim lived with the couple for "a year or two" before moving in with her sister's grandmother and later a family friend. Hinton had a close relationship with Victim, claiming she "raised" her, and recalled Victim had started asking to move in with her sometime during the fall of 2013. However, Mother refused to agree with such an arrangement. (R.p.53, line 18–R.p.56, line 24).

When Mother and Appellant first started dating, she was excited to have him in her life. Victim had never known her biological father and hoped Appellant could fulfill that role for her. Within a few years, that dynamic changed. Victim testified she was 11 or 12 when the Appellant began abusing her, sometime around her birthday in June of 2013. At that time, she spent most

of her days either with Appellant and her siblings at home or with Hinton at her house. The first incident involved Appellant summoning Victim into a room and forcing her to touch his penis. In another incident, Appellant forced her into a bathroom and forced her to touch his penis with his hands, perform oral sex, and then took her to the bedroom and anally raped her. When Victim told him to stop or tried to scream, Appellant covered her mouth and threatened to isolate her from her grandmother, take her possessions, and insert his penis deeper into her anus. This assault lasted approximately two hours. On another occasion, Appellant pulled down her pants and performed oral sex. (R.p.58, line 14–R.p.67, line 4).

Around autumn of 2013, the family moved to a new home. However, the abuse continued. Victim recalled two specific incidents of abuse around Christmas. During the first instance, the family had just purchased a Christmas tree and Appellant and Victim brought it into the house. When Victim went outside, Appellant followed her to the screened-in porch and forced her to engage in both oral and anal sex. The second assault occurred on Christmas day when Appellant took Victim into the bathroom, put lotion on her hands, and forced her to manually stimulate his penis until he ejaculated. On both occasions, Mother and the other children were elsewhere in or around the home. (R.p.67, line 5–R.p.70, line 2).

Victim recalled reaching her breaking point with the abuse on January 2, 2014 after realizing Appellant would likely abuse her later that day. She remembered speaking to police officers that day and in the following weeks, detailing many of the incidents of abuse which occurred. (R.p.70, line 3–R.p.72, line 18).

On cross-examination, trial counsel questioned Victim about: (1) her smiling in pictures taken around Christmas of 2013; (2) her desire to live with Hinton; (3) Victim's disagreements with Mother; (4) Mother's divided attention among the children living with her; (5) Victim's

friendship with Appellant's young niece (Niece), Victim's best friend at the time she reported the abuse. Trial counsel's questions implied: (1) Victim fabricated the abuse she reported to police to live with Hinton, a less-restrictive parental figure who could provide her with more attention; (2) Victim told Niece she wished to fabricate the charges to live with Hinton; (3) each time Victim met with investigators, she recalled additional instances of abuse; (4) the details of the assaults differed in Victim's trial testimony from what she reported to police, namely that Victim reported penetration of her "privates" (vagina) instead of her anus; (5) Victim's medical exam, performed at the end of January 2014, did not uncover physical evidence of abuse; (6) Appellant dyed her hair, wore different clothes, and stopped interacting with Niece after moving in with Hinton. Victim conceded she may have said "private" instead of "butt" due to her young age and confusion, but definitely intended to communicate she had anal sex, not vaginal sex, with Appellant. Trial counsel also questioned Victim about her meeting with Sarah Davis, a counselor at the Julie Valentine Center. (R.p.73, line 15–R.p.96, line 19).

Dr. Mary Crosswell, the child abuse pediatrician who evaluated Victim for physical indicators of abuse also testified. She failed to find any physical evidence of sexual assault in either Victim's vagina or anus but noted such findings were not uncommon: less than three percent of exams performed on child sexual abuse victims uncover physical evidence of such sexual assault due to the physical resilience and quick healing possessed by children. (R.p.99, line 17–R.p.115, line 13).

Dr. Shauna Galloway-Williams, executive director of the Julie Valentine Center, testified as an expert in child sexual abuse dynamics and disclosure. She explained the Julie Valentine Center is a nonprofit organization providing prevention, education, crisis intervention, advocacy, and therapeutic services for abused children. She clarified she never talked to Victim or

reviewed any of the police reports associated with her case: her sole purpose at the trial was to “provide education and information about the dynamics of child sexual abuse . . . as a blind expert witness.” (R.p.116, line 8–R.p.124, line 16).

Dr. Galloway-Williams testified various factors differentiate cases of child sexual abuse from those of adults. She explained the concept of “delayed disclosure,” which means children often will not disclose abuse right away, waiting hours, days, weeks, years, or sometimes never disclosing received abuse. Abused children fear the consequences of reporting, often believing they are somehow at fault and will be punished for the abuse. Additionally, reporting is complicated when the abuser often has a close relationship with the abused, because children may have parts of a relationship with the abuser they actually appreciate and enjoy, so they do not want to lose those parts of the relationship or act in a way they feel might hurt the abuser. Abusers are often the individuals who give abused children the most attention and affection they receive from anyone, so loss of such a relationship is a source of great anxiety for those children. If the abuser is a member of the family, the prospect of destroying the family only deepens such anxiety. Finally, children often lack the vocabulary or conceptual understanding of what happened to them or communicate these events to others because they have not been educated about abuse or their reproductive organs. (R.p.125, line 9–R.p.138, line 23).

Dr. Galloway-Williams also explained the potential impacts of abuse on victims. Abused children may act out, or drastically change their appearance and behavior. They may cut ties with friends and family, or become promiscuous because sexual behavior was introduced and normalized at a young age. (R.p.141, line 13–R.p.142, line 9).

On cross-examination, Dr. Galloway-Williams reiterated she never met with Victim or reviewed any reports associated with her case and that her testimony was limited to the general dynamics and behaviors of abused children. (R.p.142, line 14–R.p.143, line 3).

Captain Marvin Nix was an investigator with the special victims unit of the Pickens County Sheriff's Office at the time Victim reported her abuse. During their initial meeting, Victim appeared shy and told him the abuse started when she was 11 years old. The abuse occurred at both homes in which the family resided during that period. Based on this information, Captain Nix referred Victim to the Julie Valentine Center so she could meet with specialists trained to interview and provide services for child victims of sexual abuse. Captain Nix testified he met with Victim on several occasions, but during all their interviews Victim provided information which was fairly consistent throughout. However, Captain Nix did recall that Victim provided some additional information in their subsequent meetings and admitted he may have written in his notes that Victim's recollection was "different" than what she initially provided.¹ (R.p.159, line 1–R.p.169, line 22).

At the conclusion of the State's case, trial counsel moved for a directed verdict based on the State's alleged failure to provide sufficient evidence of guilt. The trial judge denied the motion, finding the State had presented enough evidence of guilt to justify his ruling. (R.p.172, line 13–R.p.173, line 13).

Niece, the sole defense witness, testified she and Victim were very close before the latter reported Appellant's sexual abuse, viewing Victim like a sister. During the fall of 2013, Victim told Niece she wanted to live with Hinton because she believed Hinton would have more lax

¹ On cross-examination, trial counsel claimed Captain Nix wrote in his notes that Victim's initial recollections of the abuse "differ[ed]" from when told him in later meetings. However, trial counsel failed to submit these notes into evidence. See *Ex parte Morris*, 367 S.C. 56, 64, 624 S.E.2d 649, 653 (2006) ("It is well established that counsel's statements regarding the facts of a case and counsel's arguments are not admissible evidence.")

rules and she “got everything she wanted” when visiting Hinton. Victim asked Mother whether she could move in with Hinton and Mother rejected the idea. On December 26, 2013, Victim and Niece were playing in the latter’s room when Victim stated she “was thinking” of telling a lie about Appellant in order to convince Mother to allow her to move in with Hinton. She believed Victim would go through with the plan because Victim usually did the things she claimed she would but was too scared to tell anyone. Niece did not tell anyone about the conversation until after Appellant was arrested and released on bond. (R.p.176, line 15–R.p.184, line 9).

On cross-examination, Niece stated she was 12 years old and was 9 or 10 at the time Victim reported the crime. She had not seen Victim since the latter reported the abuse, but losing contact with her “sister” did not bother or affect her. She claimed she first told her mother about Victim’s December 26, 2013 statements in the summer of 2013. When the State informed Niece summer of 2013 was inconsistent with the date Niece claimed Victim made the statements, she claimed she did not “know when this happened” and did not know when Appellant was released on bond, which the State pointed out was February 26, 2014. Niece never spoke with law enforcement about this information and was unaware her mother spoke with law enforcement numerous times and never informed them of the alleged conversation between Victim and Niece. (R.p.184, line 17–R.p.188, line 16).

Closing Statements

During its closing, the State explained the difference between the second and third degree CSC with a minor charges, stating the latter charge applied to the “touching, groping, [and] fondling” occurring between Appellant and Victim, while the former applied to Appellant’s

sexual battery of Victim's body, including the anal intercourse and cunnilingus. (R.p.191, line 16–R.p.194, line 10).

During his closing, trial counsel focused his efforts on discrediting Victim's testimony. He claimed Victim fabricated the reports of assault so she could live with Hinton, whom he claimed was a less-strict parental figure. He supported his allegations by pointing out what he claimed were inconsistencies with Victim's testimony; her gradual reveal of additional incidents of assault over successive police interviews. He also claimed Victim originally reported vaginal penetration but changed her story to anal intercourse over the course of her interviews. Trial counsel continued to discuss other evidence he felt disproved Victim's allegations: (1) Victim appeared joyful in pictures taken on Christmas Day 2013; (2) Victim's medical examination failed to uncover physical evidence of abuse; (3) Niece's testimony. (R.p.194, line 16–R.p.206, line 11).

Eventually, trial counsel discussed Dr. Galloway-Williams's testimony, stating:

I'm not going to go through the testimony of all the witnesses, but I was a little bit thrown because I never really grasped the last lady that testified yesterday, can't remember her name. I'm not even sure why she was here. [She] never talked to [Victim]. [She] never ready any reports on [Victim]. [She] never [saw] anything related to [Victim]. She gave just a boilerplate testimony. . . .

If that lady - - again, I can't remember her name, I apologize for that. But if she wanted to tie this in, all her dynamics, I think is what she called them, to [Victim], why didn't she interview [Victim]? Why didn't she, at least, read the reports on [Victim]? So I submit her testimony – I mean, it took up about 30 minutes, but other than that, it didn't do anybody any good."

(R.p.202, line 16–R.p.203, line 15).

He also discussed the plausibility of Victim's assaults occurring while other people were in the vicinity of the home, stating:

The other thing that bothered me so much in [Victim]'s testimony [were] her assertions that on numerous occasions she was sexually assaulted with multiple

people in the house. Where were your siblings? They were running around. Where was your momma? Oh, she was vacuuming. Common sense. Common sense. Oh, he assaulted me Christmas morning before we went to my aunt's with all these people right there. Do you believe that? Does your common sense tell you to believe that? That's up to you. You can put whatever weight you want to in any of this testimony. Is that common sense? Does the story make sense? No. Does her story support any piece of evidence? [The medical evidence] says no.

(R.p.205, lines 8–20).

In its reply, the State sought to correct trial counsel's misrepresentations and summarize the evidence presented. The State argued trial counsel's closing was not in itself evidence nor based on the evidence presented at trial. It stated:

One thing I don't want you to get confused about is any of the testimony that came from the stand. Man, oh, man. Let me just go ahead and apologize to you right now. I've been told all my life that whatever I'm thinking is written on my face. So if I made any kind of faces or looked a little flustered during the trial, I'm sorry, because I can't hide anything. . . .

So I'm sorry if I've made any kind of face that offended you, it's been all I could do not to jump up and say that's not what they said. That's not the testimony. No. Listen to it. Play it back if you need to. Anything I say, anything [trial counsel] says, not testimony, not evidence. The [trial] [j]udge told you. When I objected and said he's misstating that, the [trial] [j]udge said anything the attorneys say, not evidence. If you want to listen to it again, you can. But he keeps saying [Victim] said five times in her vagina, five times. No, she didn't. She never said that. Never said that he stuck his penis in her vagina from the very beginning.

(R.p.207, line 25–R.p.208, line 20). She also explained the purpose of Dr. Galloway-Williams's testimony, stating:

And that last witness yesterday that testified, [trial counsel] said [he didn't] know why she testified Well, she discussed some things and was able to explain things that normal people may not think about. Because when you think somebody is getting sexually assaulted, somebody is being bent over [and] made to have sex against their will, surely, they're going to go tell somebody right away. Ms. Galloway-Williams said it's not always the case. She's an expert. She's testified before. She testified yesterday. She's done her research. She teaches. She knows about these things. And for a child, it is different for them. It is different for a little girl going through this than it is for a grown woman. A little girl who wants a father, who wants a family, it is so different.

So she was there to try to explain how things could be different, how a child may not necessarily tell the second something happens. How they're going to be conflicted inside and think well, I kind of want my family to stay together or I don't want my mom to be mad at me. You know, she's got a lot of things going through her head that she doesn't understand. You heard the doctor testify, she's getting ready to go through puberty. . . . This little girl is going through a hell of a time all the way around. Of course, she was confused.

. . . .

Captain Nix said, Ms. Galloway-Williams said, there's people who are specially trained to talk to a child. Because what I'm - - the answer I'm wanting or what I'm getting at may be different than what the child is thinking. And it's possible for a child to answer one way and you think they're saying something else. Like the perfect example Ms. Galloway-Williams said . . . where did he touch you. Well, that can mean on your body, that can mean in the house, that can mean in the city. So there's special people trained at the . . . Julie Valentine Center, that talk to children, get the answers without putting anything in their heads, anything like that without misconstruing something.

(R.p.206, line 23–R.p.207, line 24; R.p.209, lines 11–23).

The State also addressed Victim's desire to live with her grandmother and her efforts to do so throughout the fall and winter of 2013, arguing:

They made a big deal about how she wanted to live with her grandma. Well, yeah, don't you think if you were getting bent over, if you were getting groped on all the time that you wouldn't want to live there anymore, that you wouldn't want to be there with a person who's sexually assaulting you. That makes perfect sense. Of course she wants to live with her grandma. She's not going to get touched on over there.

(R.p.211, lines 2–9).

Jury Instructions

Following closing arguments, the trial judge instructed the jury on the law applicable to the case. Neither party objected to the charges as given. Approximately one hour later, the jury returned and submitted three questions: (1) whether they could review a transcript of Victim's testimony; (2) whether they could review a transcript of Dr. Crosswell's testimony and her

reports; (3) the possibility of submitting Victim to a lie detector test. The trial judge informed the jury transcripts of the testimony were unavailable, but they could listen to the audio recordings of the testimony if they so desired. He also rejected the request for a lie detector test, noting they are “notoriously unreliable” and inadmissible. The jurors returned to the jury room and continued deliberating. Approximately an hour and a half later, the trial judge received a note stating the jurors were deadlocked. The jury returned to the courtroom, where the trial judge provided the following Allen charge:

All right. Ladies and gentlemen, I’ve received your note and I sympathize with you. I recognize this is a difficult case and it’s difficult to come to a resolution. It’s hard enough for two people to agree on anything, so it’s particularly difficult, oftentimes, for 12 people who have just met each other and have been thrust into a jury room to deliberate to agree on a verdict in the case. So I sympathize with you in that regard. I sympathize with you because I recognize this is a very difficult decision for each of you to make, both collectively and personally.

But I do want to impress upon you that there have been many resources that’ve been brought to bear this week to bring this case to trial. The State of South Carolina, the County of Pickens, the parties to this case have expended substantial and significant resources to bring this case to trial. If you were to fail to come to a verdict in this case, then this case would simply have to be tried again. Twelve other people in the county of Pickens would come to trial and would hear the same witnesses, the same evidence, same arguments and would be tasked with deliberating on the case. Now, there are no 12 other people in the county of Pickens who are more capable, who are more able, who are more competent to reach a decision in this case than you are.

Now, I recognize that it’s a very difficult decision to make, but these parties deserve finality and they deserve a decision. So I would ask you to return to your jury room and continue deliberations. Those of you who may be in the minority, I would ask you to consider the position of the majority. Those of you who are in the majority, I would ask you as well to consider the position of the minority again and see if you can come to some resolution in this case. I know that’s not what you wanted to hear when I brought you back out there, but, again, this is important and a lot of resources have been expended to get to this point in time. And these parties deserve a verdict. So I ask you to return to your jury room and attempt to come to a verdict. Thank you very much.

(R.p.221, line 20–R.p.238, line 11).

Following the Allen charge and the jurors returning to their deliberations, trial counsel requested additional language for the charge clarifying jurors were not required to “compromise their position[s].” The trial judge acknowledged trial counsel’s concern, admitting the Allen charge “may have been somewhat coercive,” but some coerciveness is inherent in every such charge. He believed the charge did not give “any suggestion that anybody had to change their opinion” because it only asked the jurors to consider opposing positions. He further felt that giving the additional instruction would communicate to the jury they did not really have to put effort into reaching a verdict, a message he sought to avoid. Approximately an hour and twenty minutes later, the jury returned with their verdict of guilt for third-degree CSC with a minor. Before releasing the jury, the trial judge, seeking to confirm the Allen charge did not unduly coerce the jurors into reaching a verdict, asked them to raise their hands if any of them felt they “compromised a firmly-held position and simply agreed to go along with the remaining [jurors]” in reaching they verdict. None of the jurors raised their hands. (R.p.238, line 12–R.p.242, line 11).

Post-Trial Motions

Following the verdict, the trial judge asked trial counsel whether he had any post-trial motions. He expressed concern with the guilty verdict, stating he recalled evidence supporting second-degree CSC with a minor but did not recall whether there was evidence of third-degree CSC with a minor. The trial judge informed him such evidence was presented, with him specifically remembering testimony of an instance of abuse in which Victim was forced to touch Appellant’s penis and additional instances of “feeling and fondling.” Although trial counsel failed to articulate a specific motion, the trial judge denied it. (R.p.242, line 18–R.p.243, line 12).

Sentencing

Before sentencing Appellant, the trial judge asked the State for any additional information relevant to such a determination. The State revealed that in 2009, Appellant pled guilty to public disorderly conduct, originally charged as solicitation of a minor, when he “exposed his penis to a teenager at the Wal-Mart parking lot” in Pickens County. Trial counsel objected, stating the trial judge asked for his criminal record, “not a recitation of the facts” The trial judge decided to give the State some latitude when reciting Appellant’s criminal history. The State also presented a 2009 conviction for entering a premises after warning in a criminal domestic violence charge. At the time of trial, Appellant also had another pending second-degree CSC with a minor charge, for which he was arrested a few months after making bond in the instant case. (R.p.243, line 13–R.p.244, line 14).

Trial counsel argued against a lengthy sentence, claiming it was “readily apparent” the jury reached a “compromised verdict,” and the State had added the third-degree CSC with a minor indictment only a month before trial, likely as a “safety net” to ensure the jury convicted Appellant of something. He added Appellant’s strong familial relationships, along with his health problems, justified leniency. (R.p.245, line 17–R.p.249, line 13).

The trial judge, recognizing the trauma Victim had suffered, the seriousness of the facts, and noting the jury had denied their verdict was the result of compromise, sentenced Appellant to thirteen years’ incarceration—two years shy of the statutory maximum. (R.p.249, line 21–R.p.251, line 8).

ARGUMENT

I.

The trial judge did not err in denying Appellant's request to modify her Allen charge because the instruction was not unconstitutionally coercive and, even if the instruction was improper, any alleged error is harmless because the trial judge polled the jurors to confirm the jurors did not feel coerced into reaching a verdict by compromising their principles or positions.

Appellant argues the trial judge erred in denying trial counsel's request for the modified Allen charge language. The State disagrees. The trial judge gave the jury a charge that reflected the current and correct law in South Carolina, based on the language of Allen and consistent with South Carolina law.

"Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence only if that failure was prejudicial to the defendant. State v. Commander, 396 S.C. 254, 270, 721 S.E.2d 413, 422 (2011).

"An Allen charge is an instruction advising deadlocked jurors to have deference to each other's views, that they should listen, with a disposition to be convinced, to each other's arguments." State v. Lee-Grigg, 374 S.C. 388, 418 n.1, 649 S.E.2d 41, 57 n.1 (Ct. App. 2007) (internal quotation marks omitted), aff'd 387 S.C. 310, 692 S.E.2d 895 (2010). "Whether an Allen charge is unconstitutionally coercive must be judged in its context and under all the circumstances." Tucker v. Catoe, 346 S.C. 483, 490, 552 S.E.2d 712, 716 (2001) (quoting Lowenfield v. Phelps, 484 U.S. 231 (1988)).

“In South Carolina state courts, an Allen charge cannot be directed to the minority voters on the jury panel.” Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002). “Instead, an Allen charge should be even-handed, directing both the majority and the minority to consider the other’s views.” Id. “A trial judge has a duty to urge, but not coerce, a jury to reach a verdict.” Id. In Tucker, the Supreme Court of South Carolina adopted the standard established by the United States Supreme Court in Lowenfield to determine whether an Allen charge is unconstitutionally coercive. Those factors are:

- (1) Whether the charge spoke specifically to the minority juror(s);
- (2) The language of the charge, including statements such as “You have [] to reach a decision in this case”;
- (3) Whether the trial judge inquired into the jury’s numerical division, a question generally considered coercive; and
- (4) Weighing the length of time between the issuance of the Allen charge and the jury’s return of a verdict (with verdicts returned “shortly after” the supplemental charge suggesting a possibility of coercion) against trial counsel’s failures to object either to the charge itself or an inquiry whether the jurors believed further deliberation would result in a verdict.

Tucker, 346 S.C. at 492, 552 S.E.2d at 716 (citing Lowenfield, 484 U.S. at 237).

Initially, the State would note Appellant argues the trial judge’s admission that his charge “may have been somewhat coercive” is not only taken out of context, but also demonstrates Appellant’s misunderstanding of the legal requirements for an Allen charge. The trial judge did say he thought the charge was somewhat coercive, but he correctly noted that some degree of coercion is present in every Allen charge. By its very nature, an Allen charge is a request for deadlocked jurors to open themselves up, with a “disposition to be convinced, to each other’s arguments.” Lee-Grigg, 374 S.C. at 418 n.1, 649 S.E.2d at 57 n.1. An appellate court is only concerned with whether such a charge is unconstitutionally coercive. See Tucker, 346 S.C. at 491, 552 S.E.2d at 716.

On the merits, analyzed under the Lowenfield factors, the trial judge's Allen charge was not unconstitutionally coercive. The trial judge spoke to both the majority and minority jurors, without knowledge of or questioning their numerical division, and asked them to "consider the position" of the other side. He never told the jury they were forced to reach a decision in the case: while he did state the parties "deserve[d] finality," he clearly asserted that he was only asking the jurors to return to the jury room and "attempt" to reach a verdict also informed the jurors that if they failed to reach a verdict, the case would simply be retried.

The final factor, the length of time between the Allen charge and the jury's verdict, also supports its constitutionality. While it is true the jury only deliberated from 2:11 p.m. to 3:28 p.m. after receiving the charge, such a period was very reasonable in that situation. The pre-Allen deliberations occurred from 11:45 a.m. to 12:40 a.m., and 12:43 p.m. to 2:07 p.m., totaling 2 hours, 19 minutes. Over a third of the jury's deliberations occurred after the trial judge issued the charge.

In Tucker, the Supreme Court of South Carolina stated the post-Allen deliberation period, approximately an hour and a half, was a "relatively short period of time" in that case because deliberations in that case began at 1:33 p.m. on the first day of deliberations, the jury became deadlocked around 5:00 p.m. that day, and the jury received an Allen charge around 11:00 a.m. on the second day, returning with a verdict around 12:27 pm. In total, the jury deliberated for approximately eight and a half hours, over half of that deadlocked before receiving the Allen charge. Id. at 485–88, 494, 552 S.E.2d at 713–14, 718. Here, unlike Tucker, the post-Allen discussions constituted a significant portion of the jury's deliberations. Moreover, unlike Tucker, the jurors here spent a minority of the deliberations "deadlocked."

Finally, the most important evidence that the jurors were not coerced are the jurors themselves: after the verdict, the trial judge asked them whether any of them felt they “compromised a firmly-held position and simply agreed to go along with the remaining jur[or]s.” The language of the question was nearly identical to that requested by trial counsel in his supplemental charge. More importantly, none of the jurors claimed they felt they compromised their positions, demonstrating they were not unconstitutionally coerced. Accordingly, the trial judge did not err in denying trial counsel’s request for a supplemental Allen charge.

II.

The trial judge properly denied Appellant's motion for a directed verdict because the State provided direct evidence of his guilt.

Appellant argues the trial judge erred in denying trial counsel's motion for a directed verdict because the "only evidence" of his guilt was the "unreliable testimony of the alleged Victim. The State disagrees with this allegation of error: the trial judge properly denied the motion because there was direct evidence of Appellant's guilt.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. When reviewing a denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Cherry, 361 S.C. 588, 593–94, 606 S.E.2d 475, 477–78 (2004). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury." Id. (emphasis added). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Odems, 395 S.C. 582, 586, 720 S.E.2d 48, 50 (2011).

Unsurprisingly, Appellant argues Victim was not a credible witness. Regardless of Appellant's bias towards Victim, her testimony is direct evidence of his guilt. Because there is direct evidence of Appellant's guilt, the trial judge properly denied trial counsel's motion. See Cherry, 361 S.C. at 593–94, 606 S.E.2d at 477–78.

III.

The trial judge properly allowed the State to present evidence of and pursue charges for both criminal sexual conduct in the second degree and criminal sexual conduct in the third degree because Appellant failed to request separate trials for the charges. Regardless, the charges were correctly tried together because the evidence supporting both indicated: they arose out of a single chain of circumstances; were proven by the same evidence; were of the same general nature; and Appellant was not unfairly prejudiced.

Appellant argues the trial judge erred in permitting the State to pursue Appellant's second and third degree CSC with a minor charges simultaneously, "prejudicing Appellant by encouraging the jury to give a compromised verdict." The State disagrees: trial counsel never moved to sever the charges and thus this issue is not preserved for appellate review. Moreover, the charges were properly tried together because: (1) they arose out of a single chain of circumstances; (2) were proved by the same evidence; (3) were of the same general nature; and (4) no real right of Appellant was prejudiced by the combined trial.

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues not raised and ruled upon in the trial court will not be considered on appeal." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693–94 (2003). A party need not use the exact name of a legal doctrine to preserve it for review, but it must be clear in the record that the argument was presented on that ground. State v. Russell, 345 S.C. 128, 133, 546 S.E.2d 202, 205 (Ct. App. 2001). Further, "[t]o preserve an issue for appellate review, an objection must be timely made, which usually requires it to be made at the earliest possible opportunity." State v. King, 334 S.C. 504, 510, 514 S.E.2d 578, 581 (1999). "A party may not argue one ground at trial and an alternate ground on appeal." Dunbar, 356 S.C. at 142, 587 S.E.2d at 694.

A motion for severance is addressed to the sound discretion of the trial court, and the trial court's ruling will not be disturbed on appeal absent an abuse of that discretion. State v. Simmons, 352 S.C. 342, 350, 573 S.E.2d 856, 860 (Ct. App. 2002) (internal citations omitted). Generally, when offenses charged in separate indictments are of the same general nature involving connected transactions closely related in kind, place, and character, the trial judge has the discretion to order the indictments tried together, but only so long as the defendant's substantive rights are not prejudiced. State v. Cutro, 365 S.C. 366, 374, 618 S.E.2d 890, 894 (2005); State v. Smith, 322 S.C. 107, 470 S.E.2d 364 (1996); State v. Williams, 263 S.C. 290, 210 S.E.2d 298 (1974). Criminal charges may be consolidated where they (1) arise out of a single chain of circumstances, (2) are proved by the same evidence, (3) are of the same general nature, and (4) no real right of the defendant has been prejudiced. State v. Tucker, 324 S.C. 155, 164, 478 S.E.2d 260, 265 (1996). "Offenses are considered to be of the same general nature where they are interconnected." State v. Jones, 325 S.C. 310, 315, 479 S.E.2d 517, 519 (Ct. App. 1996).

Initially, the State would note this issue is not preserved for appellate review. The trial judge could not have erred in failing to sever the charges because Appellant never requested such action. The closest Appellant came to addressing this issue was after the jury returned its verdict, when trial counsel questioned the propriety of the third degree CSC with a minor charge because he could not recall whether the State presented evidence supporting its inclusion. Not only was evidence supporting this charge presented during the trial (as noted by the trial judge, but this ground, the existence of evidence, is a separate issue from the alleged prejudice of trying the charges. Accordingly, this issue is not preserved for review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693–94.

Even if this issue were preserved for review, Appellant's argument fails on its merits. In his brief, Appellant concedes two of the four factors supporting consolidation: the charges were proved by same evidence and were of the same general nature. Appellant argues the events were not connected by a single chain of circumstances, but this claim is contradicted by the evidence at trial. Victim testified she was subjected to both Appellant fondling her and Appellant forcing her to fondling him throughout the period of abuse. Notably, Victim claimed that on Christmas Day, 2013 Appellant forced her to manually stimulate his penis, an incident separate from the allegations supporting the second degree CSC with a minor charge.

Finally, there is no evidence Appellant was prejudiced by the State trying the charges simultaneously. In State v. Rice, 368 S.C. 610, 629 S.E.2d 393 (Ct. App. 2006), this Court found a defendant was not prejudiced by combined trial for his trafficking in cocaine and murder charges. Notably, the cocaine was found during the traffic stop initiated because they suspected Rice of his victim's murder. Moreover, the State surmised Rice's motive for murder was in part to retrieve cocaine and money which the victim stole from him. The Court found presentation of the cocaine trafficking evidence was "necessary for a full presentation of the case without fragmentation."

Here, the evidence of both the second and third degree CSC with a minor charges were inextricably linked because they were part of the same pattern of abuse. They occurred in the same places, involved the same actors, and together presented the full scope of Appellant's sexual abuse.

Accordingly, the trial judge did not err in allowing the State to prosecute the second and third degree CSC with a minor charges simultaneously.

IV.

Appellant failed to preserve for appellate review any issues concerning the State's alleged improper bolstering, vouching, or alleged "golden rule" violations because he did not object to these comments at trial. Regardless, these statements were not improper comments and were only made because Appellant "opened the door" to these issues by raising them during his closing argument.

Appellant argues the State, in its closing argument: (1) "inappropriately vouched" for Dr. Galloway-Williams which, through a chain of causation, "impermissibly bolstered" Victim's testimony; (2) appealed to the jurors' passions and prejudices; and (3) used an "impermissible 'Golden Rule'" argument, encouraging the jurors to put themselves in Victim's shoes. First and foremost, these issues were not raised at trial and are not preserved for appellate review. Further, even if these issues were preserved, the statements were proper, direct responses to trial counsel's closing designed to appeal to the logic, not emotions, of the jurors. At worst, these statements were invited replies to trial counsel's abusive, victim-shaming comments made during his closing.

The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007); see State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958) ("Necessarily the conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

Likewise, decisions as to whether to admit or exclude evidence are generally left to the sound discretion of the trial judge. State v. Groome, 274 S.C. 189, 190-91, 262 S.E.2d 31, 32 (1980). As a result, an appellate court will not reverse a trial judge's decision to admit or

exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-48 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice.").

"A solicitor's argument concerning the credibility of the State's witnesses based on the record and its reasonable inferences is not error." State v. Caldwell, 300 S.C. 494, 505, 388 S.E.2d 816, 822 (1990). "A solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002).

However, "[a] solicitor's closing argument must not appeal to the personal biases of the jurors," and further "may not be calculated to arouse the jurors' passions or prejudices." State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996). "A Golden Rule argument asking the jurors to place themselves in the victim's shoes tends to completely destroy all sense of impartiality of the jurors, and its effect is to arouse passion and prejudice." Brown v. State, 383 S.C. 506, 515-16, 680 S.E.2d 909, 914 (2009). Improper vouching or bolstering "occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." State v. Shuler, 344 S.C. 604, 630, 545 S.E.2d 805, 818 (2001).

Further, “[i]mproper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.” Humphries, 351 S.C. at 373, 570 S.E.2d at 166. “The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” Id. As a result of this inquiry, courts may find conduct that would otherwise be improper may be excused under the “invited reply” doctrine if a party’s conduct was an appropriate response to statements or arguments made by the opposing party. United States v. Young, 470 U.S. 1, 13 (1985); Vaughn v. State, 362 S.C. 163, 169, 607 S.E.2d 72, 75 (2004).

Preservation

In the instant case, trial counsel failed to object to any of the complained statements. Thus, any alleged error is not preserved for appellate review. See Dunbar, 356 S.C. at 142, 587 S.E.2d at 693–94.

Alleged Bolstering/Vouching

Appellant claims the State’s comments regarding Dr. Galloway-Williams’s expertise and qualifications constituted improper bolstering. However, the State’s comments focused solely on her impeccable credentials, information presented to the jury when she was qualified at trial. A solicitor’s comments about a witness based on the record and reasonable inferences therefrom is not improper bolstering. See Caldwell, 300 S.C. at 505, 388 S.E.2d at 822. Thus, it was entirely appropriate for the State to argue the jury should trust the accuracy of her testimony.

Appellant also claims these statements had the impact of indirectly “vouching” for Victim because the State referenced the Julie Valentine Center in its closing, which both employed Dr. Galloway-Williams and interviewed Victim and other employees of the center

were not identified at trial. Appellant complains this statement was meant to confuse the jury and imply Dr. Galloway-Williams met with Victim and believed her testimony. However, these assertions show ignorance of the record. During her testimony, Dr. Galloway-Williams repeatedly stated she never met with Victim and that her testimony was focused on providing information about child sexual abuse dynamics and general issues involving the discovery of such abuse, including delays in disclosure and the gradual reveal of individual incidents of abuse. Further, Dr. Galloway-Williams was not the only employee of the Julie Valentine Center mentioned at trial: Victim testified Sarah Davis was the interviewer whom met with her about her case and the incidents of abuse.

Ironically, the State only discussed Dr. Galloway-Williams's credentials and testimony because trial counsel, in his closing, complained her testimony was a pointless because she never spoke directly with Victim or read any of the reports associated with her case. Under South Carolina law, forensic interviewers are not permitted to testify about a child victim's veracity or believability.² The State, in compliance with South Carolina law, provided an expert witness with no direct connection to Victim to explain the nuances of child abuse dynamics. The State's closing only emphasized these points, and that certified counselors, including Davis, understand the nuances of working with child victims. Not only were these comments necessary, but they were an invited reply to trial counsel's careless misrepresentation. See Vaughn, 362 S.C. at 169, 607 S.E.2d at 75. Accordingly, the State's comments did not constitute improper bolstering nor did they indirectly vouch for Victim's veracity.

Alleged Appeals to Passions and Prejudices of Jurors

Appellant argues several of the State's comments improperly appealed to the passions and prejudices of the jurors, including: (1) the State's use of rhetorical questions; (2) comments

² See State v. Kromah, 401 S.C. 340, 360, 737 S.E.2d 490, 500 (2013).

that Victim was excited Appellant would be her stepfather because she wanted a dad; (3) pointing out Victim had been through a traumatic time due to the abuse, repeated recounting of abuse, and the constant changes to her living situation; and (4) a violation of the “Golden Rule,” the statement,” you don’t think if you were getting bent over, if you were getting groped all the time, that you wouldn’t want to live [in Victim’s home] anymore, that you wouldn’t want to be there with a person who’s sexually assaulting you”

However, the State’s arguments were entirely proper. The State’s comments about Victim hoping Appellant would be a father-figure in her life originated in her trial testimony, as did the information regarding: her abuse, her repeated meeting with law enforcement and counselors about the abuse; and the changes in her living situations. Thus, this information was a summary of items already in the record. See Caldwell, 300 S.C. at 505, 388 S.E.2d at 822.

Moreover, the remainder of the State’s comments, including the State’s alleged “Golden Rule” violation, were made in direct response to trial counsel’s closing. Trial counsel’s theory of the case was that Victim fabricated the allegations against Appellant to move in with Hinton, where she would live with less rules and do whatever she wished to do. To support this claim, he points to facts such as: (1) Victim’s repeated requests throughout the fall and winter of 2013 to move in with Hinton; (2) Victim smiling in a Christmas picture taken the day of one of the assaults; (3) Victim claimed she was abused while other people were in or around the home; and (4) the lack of physical evidence of abuse. In each of these situations, trial counsel appealed to the “common sense” of jurors.

In its reply, the State sought only to rebut trial counsel’s “common sense” arguments. The State argued Victim lost much more than she gained by informing police of the abuse and sticking to that story in the intervening years. For example, trial counsel argued Victim’s

repeated requests to live with Hinton illustrated her to desire to live with Hinton and her willingness to make up allegations of abuse to do so. The State's "Golden Rule" violation was merely a counterpoint to this argument: logically, if Victim was abused, she would try to move out of Appellant's home and into Hinton's. The State emphasized logic drove this conclusion, pointing out it made "perfect sense" Victim, like any abused child, wanted to move into a home where she would not be abused.

The State's arguments were based on the evidence presented at trial and the logical conclusions derived from said evidence. See Caldwell, 300 S.C. at 505, 388 S.E.2d at 822. Trial counsel invited these statements through his own closing argument. See Vaughn, 362 S.C. at 169, 607 S.E.2d at 75. Accordingly, Appellant was not unfairly prejudiced by the complained statements.

V.

The trial judge did not abuse her discretion in sentencing Appellant to thirteen years' incarceration where the sentence was within the statutory range, Appellant had prior convictions and pending charges for similar acts, and Appellant was convicted of a serious offense.

Appellant argues the trial judge erred in sentencing Appellant to thirteen years' incarceration, just two years shy of the maximum sentence. He contends this sentence was extreme because he: (1) had "only two" prior criminal convictions for public disorderly conduct and entering a premises after a warning in a criminal domestic violence charge; (2) was a hard-working provided for his family; (3) had obtained custody of his wife's other children from a previous marriage; (4) complied with the judicial process in the years subsequent to Victim reporting the abuse; and (5) suffered from "serious heart issues." The State disagrees with this allegation error. The trial judge properly exercised his discretion in awarding Appellant his sentence.

The trial judge has broad discretion in imposing a sentence within the statutory limits. State v. Sidell, 262 S.C. 397, 398, 205 S.E.2d 2, 3 (1974). "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." State v. Hicks, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. State v. Ferguson, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to disturb a sentence that is within the limits prescribed by statute." State v. Barton, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997).

Here, the trial judge's sentence was appropriate, given the seriousness of the crime and Appellant's criminal history. As noted above, Appellant's public disorderly conduct conviction involved him exposing his penis to a teenager in a Wal-Mart parking lot. Combined with his entering a premises after warning in a criminal domestic violence charge and his pending CSC second with a minor charge, the record indicates Appellant was, and is, a dangerous man with a careless disregard for the law, especially at home.

Moreover, Appellant fails to allege his sentence is the result of prejudice, oppression, or corrupt motive from the plea judge. Thus, there is no justifiable basis for this Court to review the merits of Appellant's claim. See State v. Franklin, 267 S.C. 240, 246, 226 S.E.2d 896, 898 (1976) ("[T]his Court has no jurisdiction to review a sentence, provided it is within the limits provided by statute for the discretion of the [plea] court, and is not the result of prejudice, oppression[,] or corrupt motive."). Accordingly, this Court should not grant relief on this issue.

CONCLUSION

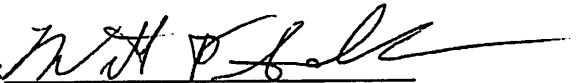
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

January 26, 2018

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2016-001905

THE STATE, ...RESPONDENT,

v.

CHARLES BRANDON RAMPEY, ...APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and 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.”

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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by sending two copies of the same to:

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I further certify that all parties required by Rule to be served have been served this 26th day of January, 2018.



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Charles Brandon Rampey, Appellant.

Appellate Case No. 2016-001905

Appeal From Pickens County
Robin B. Stilwell, Circuit Court Judge

Unpublished Opinion No. 2020-UP-245
Submitted November 1, 2019 – Filed August 19, 2020

REVERSED

William G. Yarborough, III, of William G. Yarborough
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Attorney General Alan McCrory Wilson, and Assistant
Attorney General William Frederick Schumacher, IV,
both of Columbia, and Solicitor William Walter Wilkins,
III, of Greenville, for Respondent.

PER CURIAM: Reversed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Taylor*, 427 S.C. 208, 215, 829 S.E.2d 723, 727 (Ct. App.

2019) ("South Carolina approves the use of a modified *Allen*^[1] charge, which must be neutral and even-handed, instruct both the majority and minority to reconsider their views, and cannot be directed at the jurors in the minority."); *Tucker v. Catoe*, 346 S.C. 483, 492-94, 552 S.E.2d 712, 717-18 (2001) (per curiam) (providing the following factors to consider in determining whether an *Allen* charge is unconstitutionally coercive: (1) whether the charge spoke specifically to the minority juror(s); (2) whether the trial court included in its charge any language such as "You have got to reach a decision in this case"; (3) whether there was an inquiry into the jury's numerical division; and (4) the timing of the returned verdict after the charge); *Taylor*, 427 S.C. at 218, 829 S.E.2d at 729 ("The *Tucker* criteria have never been deemed comprehensive."); *id.* ("The most troubling thing about the charge . . . is what it did not say: it did not tell the jurors they should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict, an essential message that sometimes saves borderline charges from crossing the line into coercion."); *id.* at 219, 829 S.E.2d at 729 ("The charge . . . also overemphasized the cost and expense of a retrial."); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (noting the court need not address remaining issues when the prior issue is dispositive).

REVERSED.²

HUFF, WILLIAMS, and MCDONALD, JJ., concur.

¹ *Allen v. United States*, 164 U.S. 492 (1896).

² We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Sep 03 2020

SC Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2016-001905

THE STATE, ...RESPONDENT,

v.

CHARLES BRANDON RAMPEY, ...APPELLANT.

RESPONDENT'S PETITION FOR REHEARING

On August 19, 2020, this Court issued an unpublished opinion in which it reversed Appellant's conviction for third-degree CSC with a minor. State v. Rampey, 2020-UP-245 (S.C. Ct. App. Filed August 19, 2020). This unpublished opinion, without referencing specific language upon which this Court based its reversal, found the trial judge erred in charging the jury pursuant to Allen v. United States, 164 U.S. 492 (1896). Due to the limited information within the opinion itself, and the fact that the Court issued this reversal without oral argument, the State is unsure of the exact basis upon which this opinion was issued. However, the State believes the facts presented in its brief show that the Allen charge issued in this case was, without question, not coercive to the jurors. Pursuant to Rule 221(a), SCACR, Respondent, the State, respectfully petitions for rehearing because the State believes this Court misapprehended and overlooked the facts, law, and standard of review in reaching its rulings on both issues.

The Allen Charge Provided by the Trial Judge

The trial judge provided the following Allen charge to the jury:

All right. Ladies and gentlemen, I've received your note and I sympathize with you. I recognize this is a difficult case and it's difficult to come to a resolution. It's hard enough for two people to agree on anything, so it's particularly difficult, oftentimes, for 12 people who have just met each other and have been thrust into a jury room to deliberate to agree on a verdict in the case. So I sympathize with you in that regard. I sympathize with you because I recognize this is a very difficult decision for each of you to make, both collectively and personally.

But I do want to impress upon you that there have been many resources that'[ve] been brought to bear this week to bring this case to trial. The State of South Carolina, the County of Pickens, the parties to this case have expended substantial and significant resources to bring this case to trial. If you were to fail to come to a verdict in this case, then this case would simply have to be tried again. Twelve other people in the county of Pickens would come ot trial and would hear the same witnesses, the same evidence, same arguments and would be tasked with deliberating on the case. Now, there are no 12 other people in the county of Pickens who are more capable, who are more able, who are more competent to reach a decision in this case than you are.

Now, I recognize that it's a very difficult decision to make, but these parties deserve finality and they deserve a decision. So I would ask you to return to your jury room and continue deliberations. Those of you who may be in the minority, I would ask you to consider the position of the majority. Those of you who are in the majority, I would ask you as well to consider the position of the minority again and see if you can come to some resolution in this case. I know that's not what you wanted to hear when I brought you back out there, but, again, this is important and a lot of resources have been expended to get to this point in time. And these parties deserve a verdict. So I ask you to return to your jury room and attempt to come to a verdict. Thank you very much.

(R.p.221, line 20–R.p.238, line 11).

Analysis

“An Allen charge is an instruction advising deadlocked jurors to have deference to each other's views, that they should listen, with a disposition to be convinced, to each other's arguments.” State v. Lee-Grigg, 374 S.C. 388, 418 n.1, 649 S.E.2d 41, 57 n.1 (Ct. App. 2007) (internal quotation marks omitted), aff'd 387 S.C. 310, 692 S.E.2d 895 (2010). “Whether an

Allen charge is unconstitutionally coercive must be judged in its context and under all the circumstances.” Tucker v. Catoe, 346 S.C. 483, 490, 552 S.E.2d 712, 716 (2001) (quoting Lowenfield v. Phelps, 484 U.S. 231 (1988)).

“In South Carolina state courts, an Allen charge cannot be directed to the minority voters on the jury panel.” Green v. State, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002). “Instead, an Allen charge should be even-handed, directing both the majority and the minority to consider the other’s views.” Id. “A trial judge has a duty to urge, but not coerce, a jury to reach a verdict.” Id. In Tucker, the Supreme Court of South Carolina adopted the standard established by the United States Supreme Court in Lowenfield to determine whether an Allen charge is unconstitutionally coercive. Those factors are:

- (1) Whether the charge spoke specifically to the minority juror(s);
- (2) The language of the charge, including statements such as “You have [] to reach a decision in this case”;
- (3) Whether the trial judge inquired into the jury’s numerical division, a question generally considered coercive; and
- (4) Weighing the length of time between the issuance of the Allen charge and the jury’s return of a verdict (with verdicts returned “shortly after” the supplemental charge suggesting a possibility of coercion) against trial counsel’s failures to object either to the charge itself or an inquiry whether the jurors believed further deliberation would result in a verdict.

Tucker, 346 S.C. at 492, 552 S.E.2d at 716 (citing Lowenfield, 484 U.S. at 237).

Pursuant to the Tucker factors, two of the Lowenfield factors immediately favor the State: the trial judge’s charge neither spoke specifically to the minority jurors, nor did he inquire into the jury’s numerical breakdown. Even Appellant does not contest these factors in his brief: Appellant directly concedes the first factor and fails to mention the third¹ factor.

¹ In his brief, Appellant refers only to three Lowenfield factors in his brief, and states the length of the jury’s deliberations is the third factor. (Br. of Appellant pp.11–12)

The fourth factor, the length of time between the issuance of the Allen charge and the jury's verdict, also supports the charge's constitutionality. While it is true the jury only deliberated from 2:11 p.m. to 3:28 p.m. after receiving the charge, such a period was very reasonable in that situation. The pre-Allen deliberations occurred from 11:45 a.m. to 12:40 a.m., and 12:43 p.m. to 2:07 p.m., totaling 2 hours, 19 minutes; over a third of the jury's deliberations occurred after the trial judge issued the charge. In Tucker, the Supreme Court of South Carolina stated the post-Allen deliberation period, approximately an hour and a half, was a "relatively short period of time" in that case because deliberations in that case began at 1:33 p.m. on the first day of deliberations, the jury became deadlocked around 5:00 p.m. that day, and the jury received an Allen charge around 11:00 a.m. on the second day, returning with a verdict around 12:27 pm. In total, the jury deliberated for approximately eight and a half hours, over half of that deadlocked before receiving the Allen charge. Id. at 485–88, 494, 552 S.E.2d at 713–14, 718. Here, unlike Tucker, the post-Allen discussions constituted a significant portion of the jury's deliberations. Moreover, unlike Tucker, the jurors here spent a minority of the deliberations "deadlocked."

As to the second factor, the charges, overall, conveyed the appropriate, constitutional charge to the jury. The trial judge never told the jury they were required to reach a decision in the case: while he did state the parties "deserve[d] finality," he clearly asserted that he was only asking the jurors to return to the jury room and "attempt" to reach a verdict also informed the jurors that if they failed to reach a verdict, the case would simply be retried. This is a drastic difference from the Allen charge presented in the Taylor case, cited by this Court in its opinion. In State v. Taylor, 427 S.C. 208, 829 S.E.2d 723 (Ct. App. 2019), the trial judge repeatedly told the jurors they "should come to a decision" in that matter. Id. at 211–12, 829 S.E.2d at 725. In

fact, the Taylor court itself explained, “[t]here is a glaring difference between the trial court’s obligation to tell jurors they have a duty to attempt to reach a unanimous verdict and telling them they ‘should come to a decision.’” Id. at 215, 829 S.E.2d at 727. Notably, the Taylor court found that the trial judge’s instructions “skirt[ed] close” to prohibited language; thus, the trial judge’s instruction, which utilized the “attempt” language also found in Taylor, were safely within the realm of acceptable, non-coercive instructions which did not violate the second Lowenfield factor. See id.; also State v. Logan, 405 S.C. 83, 90–91, 747 S.E.2d 444, 448 (2013) (“A jury charge is correct if, when read as a whole, the charge adequately covers the law.”) (citing State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 604 (2011)).

Accordingly, the traditional Tucker/Lowenstein factors all weigh against this Court’s reversal of Appellant’s conviction.

Taylor and its Expansion of Tucker

The State believes, based on the limited information available in this Court’s unpublished opinion, this decision to reverse Appellant’s conviction is based primarily upon this Court’s consideration of an additional factor to the four stated in Tucker: the absence of language instructing the jurors they “should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict.” See Taylor, 427 S.C. at 218, 829 S.E.2d at 729. However, this Court’s creation of this new factor and application of it to both the instant case and Taylor is problematic for several reasons.

First, it is worth emphasizing that Taylor appears to create a “new” fifth factor which, without consideration of the other Lowenstein factors, is a basis for reversing a verdict. This interpretation of Taylor appears to be confirmed in the Court’s unpublished opinion of the instant

case, in which it fails to perform any analysis of the traditional Lowenstein factors and skips directly to portions of Taylor from which the State draws this interpretation:

The Tucker Criteria have never been deemed comprehensive. . . . The most troubling thing about the charge . . . is what it did not say: it did not tell the jurors they should not surrender their conscientiously held beliefs simply for the sake of reaching a verdict, an essential message that sometimes saves borderline charges from crossing the line into coercion.”

See Taylor, 427 S.C. at 218–19, 829 S.E.2d at 729.

The addition of this factor, which ignores and/or trumps the other factors, is problematic for two main reasons. First, Allen and its progeny consistently emphasize that the constitutionality of an Allen charge must be considered “in its context and under all the circumstances.” See, e.g., Lowenfield at 237. Second, the consideration of language instructing jurors to not surrender their conscientiously held beliefs simply for the sake of reaching a verdict is already a part of the Lowenfield test. For example, the Tucker court, when determining whether the Allen charge spoke specifically to the minority jurors, explained that the trial court’s instruction that jurors “should not do ‘violence to his or her own conscience’ in order to reach a verdict” was language weighing against a finding of coercion. See Tucker at 492–93.

Notably, the cases upon which Taylor relies are distinguishable from it and do not support its addition of the fifth factor. In fact, these cases are entirely consistent with the traditional treatment of “conscience” instructions within the Tucker framework. In Buff v. S.C. Dep’t of Transp., 342 S.C. 416, 537 S.E.2d 279 (2000), the Supreme Court considered instructions related to S.C. Code § 14-7-1130, which provides that if a jury reports deadlock to the trial court a second time, “it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of law.” 342 S.C. at 419-20, 537 S.E.2d at 281. The significant fact for the issue on appeal was whether the jury expressed consent to

further deliberations. 342 S.C. at 423, 537 S.E.2d at 283. The referenced statute has the dual purpose of “prevent[ing] forced verdicts, and to prevent undue severity of jury service.” 342 S.C. at 402, 537 S.E.2d at 281 (quoting State v. Freely, 105 S.C. 243, 247, 89 S.E.643, 644 (1916)) (emphasis added). The inquiry for error does not share the same focus as that of review of an Allen charge. Id. See also State v. Barnes, 402 S.C. 135, 139, 739 S.E.2d 629, 631 (2013) (finding relief due under the statute where jury did not consent to being sent out again). At any rate, the Court did not pass on the propriety of an Allen charge. Thus, the case lends no direct and necessary support to the Court’s reasoning.

Further, in Blake by Adams v. Spartanburg Gen. Hosp., 307 S.C. 14, 413 S.E.2d 816 (1992), the Supreme Court considered the effect of bailiff comments to the juror that “urg[ed] the jury to reach a verdict,” including “the trial judge did not like a hung jury, and that a hung jury places an extra burden on taxpayers.” 307 S.C. at 16, 413 S.E.2d at 817. In distinguishing bailiff comments from a judge’s charge, the court noted “a trial judge has the duty to ensure that no juror feels compelled to sacrifice his conscientious convictions in order to concur in the verdict.” 307 S.C. at 18, 413 S.E.2d at 818. The court also found “the bailiff’s remarks were not offset by a statement that each juror should not surrender his conscientious convictions merely to reach an agreement,” consequently, “under the facts of this case,” it found no abuse of discretion in granting a new trial. Id. The Supreme Court did not pass on the propriety of an Allen charge, or even accept the bailiff comments would not be error if the additional language was included. Blake does not support the necessity of the language in an actual Allen charge. As with Buff, the Blake opinion does not lend direct and necessary support to the Court’s reasoning.

The last, and perhaps most significant, problem with Taylor and its application to the instant case is that by ignoring the totality of the circumstances surrounding the charge, this

Court also ignores arguably the most important evidence that jurors were not unconstitutionally coerced: confirmation by the jurors themselves. After the jury rendered its verdict, the trial judge, seeking to confirm the Allen charge did not unduly coerce the jurors into reaching a verdict, asked them to raise their hands if any of them felt they “compromised a firmly-held position and simply agreed to go along with the remaining [jurors]” in reaching their verdict. None of the jurors raised their hands. (R.p.238, line 12–R.p.242, line 11). This action by the trial judge actually sets this case apart from Tucker and other South Carolina cases involving the Allen charge because none of the other cases involved confirmation from jurors themselves that they were not coerced. This Court’s opinion overlooks this critical piece of evidence which shows, even without the language requested by Appellant, the jury’s verdict was unaffected by the trial judge’s instructions.

In summary, the State accepts and acknowledges that language instructing jurors to not compromise their beliefs simply to reach a unanimous verdict is an important consideration when determining the constitutionality of an Allen charge. However, the State believes that pursuant to Tucker and other Allen cases, it is best utilized within the traditional Lowenfield framework. By failing to consider the totality of the circumstances surrounding the Allen charge in the instant case, this Court assumed the jurors were improperly coerced into their verdict despite the jurors themselves indicating the opposite.

Conclusion

For the reasons stated above, Respondent petitions for rehearing pursuant to Rule 221(a), SCACR, and requests this Court reinstate Appellant’s conviction for third-degree CSC with a minor.

Respectfully submitted,

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September 3, 2020

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Sep 03 2020

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Honorable Robin B. Stilwell, Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2016-001905

THE STATE, ...RESPONDENT,

v.

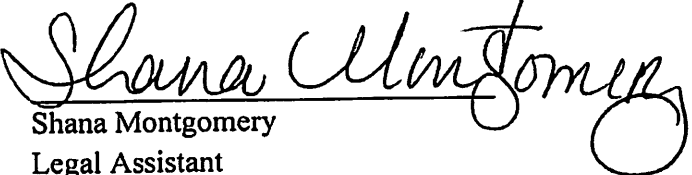
CHARLES BRANDON RAMPEY, ...APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Petition for Rehearing on Appellant via electronic email to the address listed by the attorney in AIS, and by depositing one copy of the same in the United States mail, postage prepaid, to:

William G. Yarborough, III
522 N. Church Street
Greenville, South Carolina 29601

I further certify that all parties required by Rule to be served have been served this 3rd day of June, 2020.



Shana Montgomery
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The South Carolina Court of Appeals

The State, Respondent,

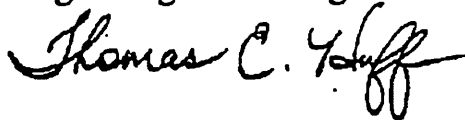
v.

Charles Brandon Rampey, Appellant.

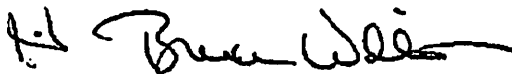
Appellate Case No. 2016-001905

ORDER

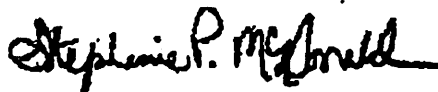
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
William G. Yarborough, III, Esquire
William Frederick Schumacher, IV, Esquire
William Walter Wilkins, III, Esquire
The Honorable Robin B. Stilwell

FILED
Sep 16 2020

