RECEIVED
Jan 04 2021
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Honorable William H. Seals, Jr., Circuit Court Judge

LEONARD BROCKINGTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000752

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SAMUEL KEY
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX

INDEX i

TRANSCRIPT OF TRIAL HELD APRIL 21-24, 2014 1

APPLICATION FOR POST-CONVICTION RELIEF 395

RETURN 409

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING HELD MARCH 7, 2019 414

ORDER OF DISMISSAL 456

INDICTMENT 475

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	No. 2012 GS 21 00447
STATE OF SOUTH CAROLINA	)	
	)	
	)	
	)	
versus	)	TRANSCRIPT OF RECORD
	)	
	)	
	)	
LEONARD EUGENE BROCKINGTON	)	
	)	
Defendant	)	

Florence, South Carolina

April 21-24, 2014

B E F O R E:

HONORABLE MICHAEL G. NETTLES, Judge, and a Jury

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

For the State: PATRICIA SINGLETON PARR, Esq.
ROBERT N. WELLS, Esq.
Assistant Solicitors

For the Defendant: HENRY M. ANDERSON, JR., Esq.

Reporter Present: KESHIA REED

HARRIET P. BENNETT
Reporter, S. C. Court Administration
46 Regency Oaks Drive
Summerville, S.C. 29485

I N D E X

		Direct-Redirect	Cross-Recross
Jury voir dire	7		
Jury selection	28		
Motions	35		
IN CAMERA			
Chad Collins			
By Mr. Wells		54	
No Cross Exam.			
Motions Continued	72		
Preliminary charges by the Court	74		
Opening Statements			
By Mr. Wells	81		
By Mr. Anderson	88		
MARI ANDERSON			
By Mr. Wells		92-103	
by Mr. Anderson			100
AMY ANDERSON			
By Mr. Wells		104	
No Cross Exam.			
SHARI NICHOLS			
By Mr. Wells		108-117	
By Mr. Anderson			113
Jorgen Waldermo			
By Mr. Wells		121-146	
By Mr. Anderson			134

INDEX CONTINUED:		Direct-Redirect	Cross-Recross
JEANENE WALDERMO			
By Mr. Wells		148	
By Mr. Anderson			157
JAMIE SHEFTON			
By Ms. Parr		165	
By Mr. Anderson			178
Minor [redacted]			
In Camera	190		
By Ms. Parr		191	
By Mr. Anderson			203
DR. ALICIA BENEDETTO			
By Ms. Parr		219	
Video played	228		
By Mr. Anderson			235
DR. SUSAN LUBEROFF			
By Ms. Parr		246	
By Mr. Anderson			253
HEATHER SMITH			
By Ms. Parr		254-276	
By Mr. Anderson			266
VINCE HANNA			
By Ms. Parr		282	
By Mr. Anderson			286
CHAD COLLINS			
By Mr. Wells		292-302	

INDEX CONTINUED:

		Direct-Redirect	Cross-Recross
By Mr. Wells			300
Video played	297		
Motions	322		
Disc. w/Defendant by the Court	325		
Jury charge Disc.	328		
Closing Arguments:			
By Ms. Parr	332		
By Mr. Anderson	350		
Charge on the Law by the Court	363		
Jury question	377		
Jury question	377		
Jury question	380		
Jury question	381		
Allen Charge by the Court	381		
Jury question	383		
Verdict	398		
Sentencing	388		

EXHIBITS

For the State:		For ID	In EV
1	Ark Intake form		148
2	Diagram		202
3	DVD, Ark Interview		226
4	DVD of Defendant interview		297

Court's Exhibits

1	Various documents	page 47
2	Jury note	377
3	Jury note	378
4	Jury note	381
5	Jury note	384
6	Jury note	388

(The within matter came before the Court for hearing on April 21, 2014)

THE COURT: Good morning, everybody. Please be seated.

Ladies and gentlemen, I'm Michael Nettles. I'm the Resident Judge of the Twelfth Judicial Circuit which encompasses Florence and Marion County.

You have been asked to participate in a one week term of General Sessions Court, which is criminal court. The people who appear before you are accused of committing a crime. That is the subject matter we are dealing with today.

(Jury roll call)

(Jury panel sworn by the Clerk)

THE COURT: Ms. Parr, you may call your first case.

SOLICITOR: Thank you, Your Honor. May it please the Court?

The State calls Leonard Brockington, Indictment 2012 GS 21 447.

Your Honor, would you like for me to state what the charges are?

THE COURT: You can. Very well.

SOLICITOR: The Defendant has been charged and indicted for criminal sexual conduct with criminal sexual conduct with a minor in the first degree and lewd act upon a

child.

THE COURT: Thank you. Ladies and gentlemen of the jury panel, Mr. Brockington, as Ms. Parr as indicated, has been charged with criminal sexual conduct with a minor in the first degree and lewd act on a minor, and these offenses arise out of allegations of criminal activity that took place between January first, 2011, and October third of 2011.

Ladies and gentlemen of the jury, I hold in my hand the Indictment which is essentially a piece of paper that starts the criminal process.

I want to tell you from the very outset that just by virtue of the fact that Mr. Brockington has been indicted is not any evidence whatsoever. He is presumed innocent, and we will start from that frame of reference.

Ladies and gentlemen of the jury, each of you has been qualified, and I'm going to ask you some questions to determine whether there is any reason why you could not be fair and impartial with regard to the trial of this case.

Is anyone related to the Defendant, Leonard Eugene Brockington? Are you related to him by blood or marriage, or have a close business, personal or social relationship with Mr. Brockington? If so, please stand.

(No response)

THE COURT: No response.

I'm going to ask you whether or not any of you are related by blood or marriage, has a close social, business or personal relationship with any of these potential witnesses, and pay very close attention:

Investigator Chad Collins, Florence County Sheriff's Department; Vince Hanna, Florence County Sheriff's Department; Jorgen Waldermo, Charlotte, North Carolina; Mikala Waldermo, Charlotte, North Carolina.

Jeanene Waldermo, Charlotte, North Carolina; Karen Waldermo, Charlotte, North Carolina; Heather Smith, Columbia, South Carolina; Dr. Alicia Benedetto, Columbia, South Carolina.

Dr. Susan Luberoff, Columbia, South Carolina; Jamie Shefton, Florence, South Carolina; M.G. [redacted], Florence, South Carolina; Staci Parker, Florence, South Carolina.

Once again is anyone related by blood or marriage or has a close social, business or personal relationship with any of these witnesses? If so, please stand.

(No response)

THE COURT: No response.

THE COURT: Ms. Parr, I'm going to ask you, if you would, to stand and identify yourself and others in the Solicitor's Office, if you could.

SOLICITOR: Your Honor, I'd like to add the name of Amy Anderson.

THE COURT: Amy Anderson. Anyone related by blood or marriage or has a close social, business or personal relationship with Amy Anderson? If so, please stand.

(No response)

THE COURT: No response.

SOLICITOR: Thank you. My name is Patricia Singleton Parr, and assisting me is Robert Wells.

(Naming other persons in the Solicitor's Office)

THE COURT: Very good. Is anyone related by blood or marriage or has a close business, social or personal relationship with any of these lawyers?

Some of these lawyers have been engaged in private practice. Have any of them served as your attorney while they were in private practice? If so, please stand.

(Juror standing)

THE COURT: Yes, maam. If you could come forward.

(Juror coming forward with counsel)

CLERK: This is Juror Number 157.

THE COURT: Yes, maam. Your full name?

JUROR: Ginger Larrimore. Robert Wells using my CPA firm. He's their client.

THE COURT: Okay.

JUROR: Would you consider that a reason?

THE COURT: Well, I think that would mean you have more of a business relationship. I will excuse you from service on this case, but I'll ask you to stay here with the jury because we have another case that does not involve Mr. Wells.

She is excused for purposes of this trial, and she will stay with us for the second jury selection.

(Juror excused)

THE COURT: Mr. Anderson, I'm going to ask if you could stand and face the jury panel by yourself and introduce yourself and the members of your office.

MR. ANDERSON: My name is Hank Anderson, and I practice by myself. Seated there in the blue shirt is my client, Leonard Brockington. (Naming members of his office)

THE COURT: Very good. Is anyone related by blood or marriage to any of these individuals? Do you have a close social, business or personal relationship with him, or have you been represented by Mr. Anderson in the past, or do you have an ongoing case with him?

And, if so, please come forward.

(Juror standing)

Please come forward, sir.

(Juror coming forward with counsel)

CLERK: Juror Number 2.

THE COURT: Your full name, sir?

JUROR: Edward Addison. I wasn't sure if I understood everything you said. Ms. Parr and I are church members.

THE COURT: You go to the same church?

JUROR: Yes, sir.

THE COURT: In all seriousness, do you eat dinner at her house or visit?

JUROR: No, sir, but we're social friends.

THE COURT: Okay, have you eaten dinner at her house?

JUROR: I have attended an event at her house.

THE COURT: And has she ever come to your house?

JUROR: No.

THE COURT: Okay, and if you were called upon to serve on this jury, the fact that you know her and are social friends with her, could you set that relationship aside and give the State and Defendant a fair and impartial trial?

JUROR: Oh, absolutely.

THE COURT: The fact that Ms. Parr might take a certain position in this case, do you think you might give a greater weight to that position just by virtue of the fact that you know her?

JUROR: No.

THE COURT: You feel that you can be fair and impartial, and you can base your decision on the evidence or the lack

of evidence in this case, together with the law as I will charge it to you? Do you think you can do that?

JUROR: Yes, sir.

THE COURT: And you feel as though you can be fair and impartial?

JUROR: Yes.

THE COURT: You are qualified to serve. Please stay with us.

(Juror returning to seat in Courtroom. Another juror coming forward.)

CLERK: Juror Number 114.

THE COURT: Yes, sir, name and number?

JUROR: My number is 114, and my name is Charles Paine. I know Ms. Parr. We go to the same church.

THE COURT: Would you consider her to be a close personal friend?

JUROR: I would think so.

THE COURT: All right, and do you see her on a weekly basis?

JUROR: Just on Sunday. That's all.

THE COURT: Has she ever come to your home?

JUROR: No.

THE COURT: Have you ever gone to her home?

JUROR: No.

THE COURT: If you were called upon to serve on this

jury, could you set aside the fact that you go to the same church and give both the State and the Defendant a fair and impartial trial?

JUROR: Yes.

THE COURT: Could you base your decision on the evidence or lack of evidence presented in this case and the law as I charge it to you and give everybody a fair trial?

JUROR: Yes.

THE COURT: The fact that you know Ms. Parr and she might take a position as an advocate in this case, would you give what she has to say and her position greater weight than what the Defense might have to say by virtue of the fact that you know her.

JUROR: No.

THE COURT: And could you be fair and impartial?

JUROR: Yes, sir.

THE COURT: Thank you, sir. You are qualified to serve.

(Juror returning to seat. Another juror coming forward.)

CLERK: Juror 105.

THE COURT: Yes, sir, your name?

JUROR: Gene M. Norris.

THE COURT: You work at the post office, 105?

JUROR: Uh hm.

THE COURT: All right.

JUROR: I believe Mr. Anderson helped my son to buy a gun and with the charges or whatever. I'm not sure. See, my wife handled it . .

THE COURT: All right.

JUROR: . . and I don't even know if that's the same lawyer. The fellow's name was Hank.

THE COURT: But you don't even know him. Correct?

JUROR: I wouldn't know him if he walked in the door.

THE COURT: All right. If called upon to serve on this jury, could you set aside the fact that this might be the lawyer who represented your son?

JUROR: Yes.

THE COURT: And give the State and the Defendant a fair and impartial trial?

JUROR: Yes.

THE COURT: All right, sir. Thank you.

JUROR: I wasn't sure that was him. (Returning to seat)

THE COURT: He said his name was Hank, and he made a lasting impression on him, Mr. Anderson.

Ladies and gentlemen of the jury panel, has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case? If so, please stand.

(No response)

THE COURT: No response.

If any member of the jury panel aware of any bias toward . .

(Juror standing)

THE COURT: Yes, if you would come forward.

(Juror coming forward)

CLERK: Juror Number 133.

JUROR: My name is Jared Smith. I don't know if this would have any bearing or not, but my son in law is the Assistant Attorney General, and his focus is on internet children's porn.

So I wanted you to know.

THE COURT: The central question is whether or not you can listen to the evidence in this case or lack of evidence in the case and pay attention to the law as I charge it to you, giving the State and the Defendant a fair and impartial trial.

That is the inquiry, if you can do that and give the State and Defendant a fair and impartial trial.

JUROR: Yes.

THE COURT: By virtue of the fact that your son is working for the Attorney General's Office, doing that, could you set that aside and give both the State and the Defendant a fair and impartial trial?

JUROR: Yes.

THE COURT: Thank you, sir. You are qualified to serve.

(Juror returning to seat in Courtroom)

(Another juror coming forward)

CLERK: Juror Number 76.

THE COURT: Yes, sir.

JUROR: I can't make a clear and conscientious decision. (Name not audible)

THE COURT: So what you are saying is that -- let me ask you this. If called upon to serve on the jury, could you listen to the evidence in this case and the law as I charge it to you and give both the State and the Defendant a fair and impartial trial?

JUROR: No, sir. I can tell you that honestly.

THE COURT: Well, in view of that, I am going to excuse you for the purpose of this trial, but you need to stay with us. There is another type case that will be tried as well today.

She is excused for purposes of this trial.

(Juror excused from this trial)

Is there any member of the jury panel who has any bias or prejudice toward either the State or the Defendant in this case? If so, please stand.

(No response from any juror)

THE COURT: No response.

Is there any member of the jury panel who was a member of the Grand Jury which issued the Indictment in this case? If so, please stand.

(No response)

THE COURT: No response.

Is there any member of the jury panel a law enforcement officer or have a family member who is a law enforcement officer or former law enforcement officer? If so, please stand.

(Juror standing)

THE COURT: Yes, sir. What is your situation?

JUROR: My father in law is a SLED Agent.

THE COURT: Thank you.

Yes, sir, if you could come forward.

(Juror coming forward)

CLERK: Juror Number 105.

THE COURT: Yes, sir.

JUROR: My son just recently graduated from the Criminal Academy and is going to be a DNR officer.

THE COURT: You know what they call them? They call them the squirrel police.

JUROR: I call him a grouper trooper. Yes, sir.

THE COURT: If you are called upon to serve on this jury, could you set aside the fact that your family member has just graduated from the Law Enforcement Academy, and

listen to the evidence in this case or lack of evidence, and listen to the law as I charge it to you, and give both the State and the Defendant a fair and impartial trial?

JUROR: Yes, sir.

THE COURT: The fact that your relative is involved in law enforcement, would that give you any type of bias toward the State?

JUROR: No, sir.

THE COURT: You are qualified to serve.

(Juror returning to seat)

(Another juror coming foward)

CLERK: Juror Number 28.

THE COURT: Yes, sir, your name?

JUROR: Clayton C. Cosby.

THE COURT: All right, Mr. Cosby.

JUROR: My granddad was a Deputy Sheriff in Texas if that is relevant.

THE COURT: That is a very important relevance. If called upon to serve on this jury, could you set aside the fact that you have a member of your family who was involved in law enforcement -- set that aside and listen to the evidence presented or the lack of evidence and the law as I charge it to you and give both the State and the Defendant a fair and impartial trial? Could you do that?

JUROR: Yes, sir.

THE COURT: You are qualified to serve. Thank you.

(Juror returning to seat)

CLERK: Juror Number 150.

(Juror coming forward)

THE COURT: Yes, sir. Your full name?

JUROR: Marcus Williams. My uncle serves on the Hartsville Police Department.

THE COURT: Okay, and if called upon to serve on this jury, could you set aside the fact that you have a relative in law enforcement and give both the State and the Defendant a fair and impartial trial? Could you listen to the evidence or lack of evidence presented in this case, listen to the law, and give the State and Defendant an impartial verdict?

JUROR: Yes, Your Honor.

THE COURT: You are qualified to serve. Thank you.

(Juror returning to seat)

THE COURT: Ladies and gentlemen, you have heard what the allegations are against Mr. Brockington and the time frame in which this took place, within Florence proper and within Florence County.

With that basic information, is there anybody in the jury panel who has heard or read or seen anything concerning this matter? If so, please stand.

(No response from any juror).

THE COURT: No response.

Is there any member of the jury panel who is a member of a group whose primary purpose is the promotion of law enforcement? I think just about every sheriff's department in the State has like a Sheriff's Association. I think The troopers may have such an organization, and there are other organizations like MADD, Mothers Against Drunk Driving, SADD, Students Against Drunk Driving, CAVE, Citizens Against Violent Crime.

Is there anybody on this jury panel who is a contributor to or member of any of these organizations that are associated and promote law enforcement? If so, please stand.

(No response from jurors)

THE COURT: No response.

All right. Does any member of the jury panel know of any reason whatsoever why you cannot serve as a juror on this case, with particular emphasis being placed on your ability to be fair and impartial to both the State and the Defendant? If so, please stand.

(No response)

THE COURT: Any additional questions from the State?

SOLICITOR: May I approach?

THE COURT: Yes.

(Conference at the bench between counsel and the Court

off the record)

THE COURT: I read question number one and I'm not going to ask that. On the record, I'm not going to ask that.

MR. ANDERSON: Her question . .

THE COURT: Her question number one.

Does any member of -- do you or any member of your family have any charges pending in Marion or Florence County? If so, please stand.

(No response from jurors)

THE COURT: There is no response.

I think questions 5 and 6 have been adequately . .

(Juror standing)

THE COURT: Yes, maam, if you will come forward?

JUROR: Would you repeat your question?

THE COURT: Have you or a member of your family been prosecuted in Marion or Florence County?

JUROR: Have been prosecuted?

THE COURT: Yes, maam. If you could come forward?

(Juror coming forward)

JUROR: (Statement inaudible) A family member.

THE COURT: What was his name?

JUROR: Antoine Hines.

THE COURT: And when was that?

JUROR: In '66.

THE COURT: If called upon to serve on this jury, could you listen to the evidence in this case or the lack of evidence, listen to the law I charge to you, and give everybody a fair and impartial trial?

JUROR: Yes.

THE COURT: You're qualified to serve.

(Juror returning to seat in Courtroom. Bench conference following.)

MR. WELLS, That's the reason we wanted you to ask Number Five.

THE COURT: I've asked it a thousand diferent ways.

MR. WELLS: Sometimes a juror will say they just can't pass judgment on anyone.

THE COURT: Do you have an objection to that?

MR. ANDERSON: I don't believe it's really necessary.

THE COURT: I don't want to get into religious aspects of it but that objection is noted for the record.

(Another juror standing)

THE COURT: yes, maam, your name and number?

CLERK: This is number 122.

(Juror coming forward)

THE COURT: Yes, maam.

JUROR: My husband has a cousin who has been convicted of statutory rape. I don't know if that is relevant to us here.

THE COURT: Well, that is very relevant. If you were called upon to serve on this jury, could you set aside the fact that you have a relative by marriage that was convicted under those facts?

The facts of every case are different. Could you set that aside and listen to the evidence presented in this case or the lack of evidence, listen to the law as I will charge it to you, and give the State and Defendant a fair and impartial trial? Could you do that?

JUROR:Yes.

THE COURT: You are qualified to serve. Thank you.

(Juror returning to seat)

THE COURT: I am specifically not going to ask Number 6 as there are a number of questions that cover that.

Ladies and gentlemen of the jury panel, is there any member of your immediate family who is a psychiatrist or a counselor?

(Juror standing)

THE COURT: Yes, sir.

CLERK: Juror Number 70.

THE COURT: Yes, sir, your name?

JUROR: Tom Huff. You know, we handle subjects like this within our organization, and -- but we go by the Bible standard that there has to be two verifiable and credible witnesses.

THE COURT: Okay.

JUROR: Because in this case you have to have witnesses . .

THE COURT: The ultimate question is whether or not you can follow the law as I charge it to you. You may have some idea what the law is, but you must disregard that and apply the law as I charge it to be.

JUROR: My conscience wouldn't allow -- once the offense has been presented, it would be up to my conscience to dismiss it unless I think it is viable to the case, and I want to -- do you understand what I mean?

THE COURT: What I'm going to do is excuse you for the purpose of this action and for the purpose of this term of Court.

I will transfer you to a civil term of Court, and you will receive notice. You are free to leave at this time.

He is excused from this term of Court and transferred to Common Pleas.

CLERK: Yes, sir.

(Juror excused)

(Another juror coming forward)

CLERK: Juror 116.

THE COURT: Ms. Player.

JUROR: I have my Master's in counseling.

THE COURT: You are certainly not disqualified, but

my question to you is, could you listen to the evidence presented in this case and the law as I charge it to you, and give the State and Defendant a fair and impartial trial?

JUROR: Yes, sir.

THE COURT: Thank you. You're qualified to serve.

(Juror returning to seat)

(Another juror standing)

CLERK: Juror Number 159.

(Juror coming forward)

THE COURT: Yes, maam, Ms. Hall.

JUROR: I have a step-sister who is a child psychologist in Columbia for the State.

THE COURT: Okay. If you were called upon to serve on this jury, could you set aside that you are related to someone involved in counseling and give the State and the Defendant a fair and impartial trial?

JUROR: Yes.

THE COURT: You are qualified to serve.

(Juror returning to seat)

(Another juror coming forward)

CLERK: Juror Number 38.

THE COURT: Yes, maam.

JUROR: I have a daughter who is seeing a psychologist.

THE COURT: Okay. The question really is whether or not you have a relative who is a psychiatrist or a psychologist. So you are qualified to serve. Thank you very much.

(Juror returning to seat)

(Another juror coming forward)

CLERK: Number 28.

THE COURT: Your name?

JUROR: Clayton Cosby.

THE COURT: Mr. Cosby?

JUROR: My aunt is a retired worker with troubled teens.

THE COURT: Would that affect your ability to be fair and impartial in this case?

JUROR: No, sir.

THE COURT: You are qualified to serve. Thank you.

(Juror returning to seat)

THE COURT: Madam Clerk, you can give us a jury. The strikes are five and ten. Is that your understanding, Mr. Wells?

SOLICITOR: Yes, it is.

THE COURT: So the strikes are five and ten.

Ladies and gentlemen of the jury panel, if your name is called, come and stand right there and face the back of the Courtroom.

Bring your personal belongings with you.

(Brief pause in the proceeding)

THE COURT: The Bailiff has called my attention to an issue with regard to Juror Hudson.

(Juror 72 coming to the bench to speak with the Court)

THE COURT: This is a situation that you've got that is not an exemption but we're going to delay your service so you can arrange for somebody else to do that while you serve. Since you work outside the home, you do not fall within the exemption.

I will excuse you for this term of Court, and you'll receive a note when you are to come back.

And your full name?

JUROR: Teresa Hudson.

(Juror excused)

THE COURT: Very good. Madam Clerk, you are recognized.

(Whereupon, a jury was seated in the following manner:

Number 16, Michael Brooks, excused by the State;

Number 96, Sherry Miles, excused by the Defendant;

Number 92, William K. McCallister, seated;

Number 75, Virber A. Jackson, seated;

Number 38, Mary E. Dillah, excused by the State;

Number 47, Andrew P. Flynn, seated;

Number 72, excused by the Court;

Number 110, Bruce A. Pech, seated;

Number 84, Terrell Lane, excused by the Court;

Number 25, Amenda K. Cockfield, excused by the Defendant;

Number 53, Robert E. Gainey, excused by the State;

Number 122, Jessica L. Rich, excused by the Defendant;

Number 45, Britney S. Fields, excused by the State;

Number 95, Cassandra S. McQueen, seated:

Number 5 9, Stephen T. Hall, seated;

Number 136, George A. Stephenson, seated;

Number 40, Corinne A. Edwards, seated;

Number 54, Bobby Gamble, seated;

Number 154, Dena K. Yarborough, excused by the Defendant;

Number 28, Clayton C. Cosby, seated;

Number 44, Susan C. Evans, seated;

Number 32, Edward R. Daisy, excused by the Defendant;

Number 33, Carolyn B. Daniels, seated.)

THE COURT: Strikes are one and two on the alternates -- two alternates. One and two on each.

(Whereupon, alternate jurors chosen as follows:

Number 158, Joe W. Pearce, Jr., excused by the Defendant;

Number 9, William Burden, Jr., excused by the State;

Number 145, Lauren E. Weatherford, seated as alternate;
Number 133, Kenneth J. Smith, excused by the Defendant;
Number 11, Latonya S. Bartell, seated.)
(Transcription Note; Jury strike sheet attached)
THE COURT: Any objections with regard to the jury selection process, from the State?
SOLICITOR: None from the State.
THE COURT: From Defense?
MR. ANDERSON: No, Your Honor.
THE COURT: Very good. The balance of the jury panel, we're going to ask that you go to the fifth floor Courtroom. The Bailiff will escort you down there to the Fifth Floor Courtroom.
There will be another case, another jury panel, selected.
You are free to leave at this time.
(Jurors not selected for this trial excused from the Courtroom)
(Conference at the bench between counsel and the Court off the record)
THE COURT: Bear with us just one moment.
(Brief pause in proceeding)
THE COURT: Mr. Andrew Flynn, I'm going to ask if you could serve as the Foreman of this jury. I am going to ask Mr. Hall to switch chairs with you.

Mr. Flynn, when it comes time to deliberate you will have one vote, but you have been given an additional responsibility which is to preside over the deliberation process.

Essentially that means to just ensure that everybody's voice is heard in the deliberation process. You are to ensure that.

In addition to that, if there are questions that develop amongst you during the trial of this case or any concerns that you have, I will ask the bailiff to make those note pads available, and you reduce them to writing. Then give it to Mr. Sammy, the Bailiff, and he will give it to me.

If there is a question or concern I can help you with I will be happy to do that. That goes through the process of the trial and through the deliberation process.

If there are questions that come up, relate it to the Foreman. You can write it down and give it to the Bailiff. If it's something I can help you with, I'll be happy to do that.

There are certain things that -- we are going to recess for this afternoon and come back and start this trial in the morning. I'm going to ask you all to be here in this Courtroom at nine thirty sharp. You will need to be here a little bit earlier. Sometimes in this Courthouse

or this building, it can be pretty busy. Sometimes the elevators are a little slow. So I want everybody to be here on time.

You also have been given some very attractive juror badges, and I'm going to ask you to display those. The reason why we're doing that is because in this building, the way it is configured, sometimes lawyers and parties and witnesses travel in the same elevators, and sometimes they can be discussing the case.

You are required to make your decision by what transpires in the confines of this Courtroom, and that can pose a problem.

In addition, people need to be able to identify you as a juror to avoid those type problems, and, in addition to that, if anyone would try to contact you about this case that is strictly illegal. If someone was to say, well, you are on this jury and I want to talk to you about that -- I don't anticipate that would happen, but if they do it is going to be very important that you identify them, if you can. Report them to me and I will deal with them. That is inappropriate.

In addition to that, I give each of you instructions not to do any independent investigation. You know there is not anything in the world you can't put on the computer and do research, investigate any of the personalities, any

of the lawyers, any of the witnesses. Don't ask anything or put anything on there; don't do any independent internet investigation.

You don't even know -- we only know where this thing allegedly took place, where the allegations arise out of at a point in time, and it is just allegations.

We don't know anything about that, but do not do any independent investigation. If as the case progresses you hear about a particular place, don't go and look or do any independent investigation.

You will make your decision from what transpires here in this Courtroom and the law as I charge it to you.

There is such a thing, and I've tried to avoid it in my later years. Say Facebook and Tweeter or Twitter or whatever it is. That has no place in this Courtroom. Do not put anything about your involvement in this case on Facebook, Twitter -- and there are some other ones out there, but the bottom line is do not put anything about your involvement in this case on there. Do not do that.

Do not discuss the case amongst yourselves or with anyone else.

Mr. Foreman, I'm going to ask you to enforce that rule. There will definitely be periods of time where you are in the jury room together, and you all can talk about anything you want to.

You can talk about Carolina baseball, about the beach; talking about spring break; talk about anything but you can't talk about this case.

You can't talk about the lawyers, can't talk about the witnesses. There will be a time after you hear all of the evidence and my charge on the law that you can begin deliberations. Until then I'm going to ask you to enforce the rule that there be no discussion amongst yourselves about anything having to do with this case. I ask that you enforce that rule.

In addition to that, any one of you with significant others, when you come home your spouse will say, well, tell me what happened with your jury service.

This is one occasion where you can tell them I have been ordered not to talk about it, and do not do that because your significant spouse or significant other may have an opinion about this type litigation.

You need to base your decision on what transpires here in the Courtroom, not someone else's view of this type case.

I'm going to at this time ask that you be excused. You are free to leave for the day. Everybody understands you are to be back here in this Courtroom at nine thirty in the morning. One of the Bailiffs will assist you in the jury room, but be here and be here on time. You're free

to leave at this time.

Everyone remain seated while the jury exits the Courtroom.

(Jury excused for the balance of the day)

THE COURT: How long do you anticipate the motions taking? How many motions do we have, Ms. Parr?

SOLICITOR: I believe four.

THE COURT: All right. How long do you anticipate that will take?

MR. WELLS: I think it depends a lot on whether you will want to hear the statements actually played or not.

THE COURT: Right.

MR. WELLS: If they are played it will take some two and a half hours. If they are not played in full, it'll be considerably shorter than that.

THE COURT: All right. Okay. Mr. Anderson, do you have an idea as to how long it will take?

MR. ANDERSON: Your Honor, I've filed three motions, and I'm going to have to make a fourth oral motion. I agree with Mr. Wells' assessment. I think for one of the motions you are going to have to hear the entire tape, and that is going to probably take -- all total, I think the motions will probably take two hours.

THE COURT: All right. Very good.

We're going to recess until two thirty, and obviously

we won't do anything other than the motions today and reconvene at nine thirty in the morning, but we will be back at two thirty sharp.

MR. ANDERSON: This floor, Your Honor?

THE COURT: This floor.

(Whereupon, the Court stood in recess until 2:30 P.M., when the matter was continued.)

THE COURT: Please be seated. Good afternoon.

Mr. Anderson, you are recognized. I understand there are some motions you have before the Court.

MR. ANDERSON: Yes, sir, Your Honor. May it please the Court?

First of all, I'd like to make an oral motion, Your Honor, to prohibit the State from referring to the young girl as the victim in this case.

Your Honor, certainly if this was a burglary and a house had been broken into and you could prove the house had been broken into, you could prove something had happened. Something was stolen or somebody had been shot or something, and then certainly you could call him a victim, but in this case, Your Honor, the little girl says this is what happened.

Obviously, my client has not been found guilty of anything so, Your Honor, I would object to the State referring to the young girl as a victim in this case.

THE COURT: Ms. Parr, what do you have to say about that?

SOLICITOR: Your Honor, we request that we be allowed to refer to her as the victim in this case. Your Honor, in all cases if there is an allegation that something has occurred and they have not been found guilty, they are referred to as victims.

This is no different than that, and it is for a jury to decide guilt. She has indicated that this occurred, and under the law she can be referred to as such.

THE COURT: Mr. Wells, would you like to weigh in on that?

MR. WELLS: I agree with Ms. Parr. I think there are times so the jury knows who you are referring to, it is appropriate. There are no allegations with regard to the younger sister, and I think at times it can differentiate who you are referring to -- that you are referring to the victim in that regard.

I mean, I don't see there is any difference in this case from any other. It is up to the jury to decide whether this man did this or not. She would be the victim as far as this case is concerned.

THE COURT: All right. What . .

MR. ANDERSON: Your Honor, . .

THE COURT: . . I am going to do -- yes, sir?

MR. ANDERSON: I was just going to say if they want to refer to her as the prosecuting witness, we have no objection to that.

THE COURT: Okay, I'm not going to make an absolute ruling at this time. However, if you make reference to her as being a victim, I might clarify to the jury with some sort of curative charge.

You know, that whether she's a victim or not will be resolved by you. But let's see how that develops, and I'm going to -- Mr. Anderson, I'm going to ask that you object at the appropriate time and we will deal with it at that time.

MR. ANDERSON: Your Honor, the next objection I have or the motion I filed -- I would object to the State qualifying the person who conducted the interview as an expert. Your Honor, recently there has been a case, State versus Kroma, and in there it specifically says -- they are referring to a forensic interviewer -- it says in there in considering the ongoing issues developing from their use at trial by the State, we can envision no circumstances where their qualification as an expert at trial would be appropriate.

Your Honor, the words forensic interviewer is actually a misnomer. The use of the word forensic indicates that the interviewer adduces evidence suitable for use in the

Court.

Judge, we would object to the interviewer being qualified as an expert in this case. I think the Supreme Court case I just cited from 2013, Your Honor, says there is no need to . .

THE COURT: Essentially, it would be just like a police officer interviewing someone with regard to a case. They are just a fact witness.

MR. ANDERSON: Yes, sir.

THE COURT: What is the State's position in that regard?

SOLICITOR: Your Honor, we believe that the forensic interviewer or the person who did the interview should not be qualified as a forensic interviewer.

THE COURT: So we agree on that?

SOLICITOR: Yes, but I may call her later as an expert in another area. But as a forensic interviewer, I do not intend to qualify her as an expert.

THE COURT: The ruling of the Court is that -- what is her name?

SOLICITOR: Dr. Alicia Benedetto.

THE COURT: All right, Ms. Benedetto will not be qualified as an expert nor are you to refer to her as an expert.

SOLICITOR: In the area of forensic interviewer.

THE COURT: That's correct. You say you may intend to offer her as an expert in another area, and, if so, what is it?

SOLICITOR: Yes, Your Honor. We intend to offer her as a clinical psychologist in child sexual -- child sexual assault.

THE COURT: Okay, very good.

Mr. Anderson, you are recognized.

MR. ANDERSON: Your Honor, another motion that I filed was a disclosure of her counseling records, Your Honor, and it is our understanding that there is someone here today -- Ms. Parr said that she was going to have the records turned over to you to conduct an in-camera hearing, so I think it may be . .

THE COURT: Okay.

SOLICITOR: Your Honor, Ms. Heather Smith is in the Courtroom today, and she is available.

THE COURT: So essentially, if I understand you correctly, you want me to view the records to determine whether there is any exculpatory evidence. Is that correct, or have you turn over the records?

SOLICITOR: It is for you to determine whether or not there is exculpatory in order for us to get a copy of the records.

MR. ANDERSON: Yes, we know the Solicitor's Office has

not looked at any of these records.

THE COURT: Okay.

SOLICITOR: Under the case law, the procedure is that the Court make the determination in an in-camera hearing.

THE COURT: I'll be happy to -- do we have the records? I'd like to have them at this time.

SOLICITOR: Your Honor, she says these are the original records.

THE COURT: Thank you.

(Brief pause in the proceeding)

THE COURT: I assume that the Defense Counsel knows the natural mother of the child was charged with abuse and neglect because of her failure to report the event?

MR. ANDERSON: Your Honor, in Family Court, but any type of criminal procedure is . .

THE COURT: But you are aware of the fact that there was restricted visitation?

MR. ANDERSON: Your Honor, not that has been ongoing. I know at first, because there was a child protective services plan, and there was a hearing in Family Court. The plan was put into effect.

However, the D.S.S. Trial Judge also specifically has said there is a private action going on as well, and certainly I am not privy to anything going on in the private action, so I don't know what's happened since the D.S.S.

case was heard.

(Pause in the proceeding)

SOLICITOR: May it please the Court?

THE COURT: Yes.

SOLICITOR: Mr. Anderson represented the Defendant in the D.S.S. cause of action.

MR. ANDERSON: I represent my client, Your Honor, not the natural mother.

THE COURT: All right.

(Pause in proceeding continued)

THE COURT: All right. This section of the report is called Section L, Mental Status Exam. I think to some extent it is exculpatory because it goes through -- as to all of her appearance, hygiene, her activity during the interview, her affect, mood, speech, thought process, her thought content, hallucinations -- whether they exist or not -- delusions, and it goes through a comprehensive list.

To the extent those are normal, I think that could be construed as being exculpatory, and so these three sheets I am going to turn over to the Defense.

I'm going to allow the State to look at them and then I'm going to order that he be given a copy of these three sheets so far.

You all can come up and take a look at them.

(Pause in proceeding continued)

MR. WELLS: We'll just go and copy them.

THE COURT: That will be good.

(Pause continuing)

THE COURT: I'm going to order that this be disclosed to the Defendant because it talks about preparation for testimony and the fact that she has been brought into the Courtroom to practice testimony and that sort of thing, to the extent that could affect her testimony.

I would allow the Defendant to review those.

(Pause in proceeding continued)

THE COURT: This Heather Smith -- I assume you intend on calling her as an expert?

SOLICITOR: No. Actually, Your Honor, we are not.

THE COURT: Well, this initial clinical assessment can be exculpatory in that there are a couple of things in there that talk about her having some normalcy. I think some of it could be exculpatory.

In addition to that, there is a reluctance by her to talk. There was different forms of therapy, non-direct play therapy, and those are things that are valid for the Defense to talk about with anybody who is going to testify about the child's condition, the fact that there was some reluctance in that regard.

I think some things need to be explored by the Defense. I'm going to allow that to take place. This initial

clinical assessment, I'm going to allow that to be produced as well.

(Pause in proceeding continued)

THE COURT: I'm going to allow this that refers to 2013 to be -- so these three. The initial assessment -- one is an initial assessment, and one is a report of a particular event.

(Pause continued)

COURT: Is the State or the Defense saying this transcript of the State of South Carolina -- the South Carolina Department of Social Services versus Karen Waldermo -- have you all seen this? Has everybody seen this transcript?

MR. ANDERSON: I have seen this.

SOLICITOR: I have not seen this.

MR. ANDERSON: If it is North Carolina, yes, I have seen it.

THE COURT: Okay, I think this is the South Carolina . .

(Discussion between counsel and the Court off the record)

(Pause continues)

THE COURT: This addendum to the Waldermo case of November 8, 2012, to the extent that it contemplates a custody battle and the fact that Karen Waldermo maintains the

event never took place, I believe that to some extent could be exculpatory.

(Pause continued)

THE COURT: Does everybody have the custody and visitation agreement?

MR. ANDERSON: I think I do.

THE COURT: It says final agreement.

MR. ANDERSON: Is that from '08, Your Honor?

THE COURT: Actually, what I have is not dated.

MR. ANDERSON: Are you saying it could be from '08?

THE COURT: Well, I don't know what it is. It says final agreement, custody and visitation. The parties agree Jorgen Waldermo shall have primary physical and legal custody of the minor children, and it goes on to talk about visitation.

MR. WELLS: Could I see that for a moment?

THE COURT: Tell you what, that and the Order of Intervention -- those clearly are discoverable, and I will allow you all both to have a copy.

SOLICITOR: I think I gave you a copy of the Order of Intervention.

(Pause continued)

THE COURT: I am going to allow this interview outcome to be disclosed to the Defendant. It talks about the manner in which these allegations came out. Just by virtue

of the nature of the allegations, she is alleging some things happened and some things didn't.

I think that in order to adequately cross examine the alleged victim and anybody who testifies about this -- I think the Defense needs to know how it came out in the first instance.

Also within this interview outcome, it talks about a M.A. who was not sexually abused.

MR. WELLS: That is the younger sister.

THE COURT: So I think those are exculpatory to that extent, and I'm going to allow that to be distributed to the Defendant.

SOLICITOR: Is that the forensic interview on M.A.

THE COURT: Okay, I don't know it all. I just know what you all have provided to me, and that one is exculpatory to the extent that M.A. denies there was any sexual abuse.

Mr. Wells, I have given you each of these documents piecemeal . .

MR. WELLS: Yes.

THE COURT: . . and I'm going to let you put on the record what has been disclossed to the Defense.

MR. WELLS: Mr. Anderson says he has this so you need not copy this.

Everything that you have asked to be disclosed, I've

made two copies and given it to Mr. Anderson and Ms. Parr with the exception of one thing Mr. Anderson said he had that Ms. Parr did not, so I made only one copy of it.

MR. ANDERSON: Your Honor, to be more specific, that is a transcript of the D.S.S. hearing. I participated in that hearing so I do have a copy of that.

THE COURT: All right. Well, Mr. Wells, what I'm going to ask you to do, and you don't necessarily have to do that now is to make a copy of everything I have ordered to be disclosed in this file, and you make that a part of the record.

MR. WELLS: If we can put all of that together.

REPORTER: I can.

MR. WELLS: Do you want me to do that now?

THE COURT: Just at any time. I think it needs to be a part of the record, all that I've ordered to be disclosed.

MR. WELLS: Yes, sir.

(Various documents named by the Court from D.S.S. Records marked Court's Exhibit 1)

THE COURT: All right, Mr. Anderson, you are recognized.

MR. ANDERSON: May it please th Court? I was given a witness list this morning by the State of potential witnesses they intend to call.

Your Honor, one is a Dr. Susan -- I don't know how to pronounce her last name.

THE COURT: It looks like Luberoff.

MR. ANDERSON: It's L U B E R O F F, out of Columbia, South Carolina.

Your Honor, I had anticipated that the counseling records that you just gave me were from her. However, they are not. They are from Heather Smith out of Columbia, South Carolina.

Your Honor, if a report has been prepared by Susan Luberoff, I would certainly ask that I be given that. I don't know what she does or what she has to do . .

THE COURT: Do you anticipate calling her as a witness, Ms. Parr?

SOLICITOR: Yes, Your Honor. I have given him that -- the physical examination or medical examination of the child.

THE COURT: Ms. Parr, for the record, I will ask that you respond to me and not talk to Mr. Anderson.

SOLICITOR: May it please the Court? You Honor, Dr. Luberoff is the medical examiner and that is a copy of her assessment, which was provided to defense counsel when we provided the forensic evidence.

THE COURT: Do you have that report before you, Ms. Parr?

MR. ANDERSON: I think I do have it. I did not know that was her name. Her handwriting is about like mine, Your Honor.

THE COURT: Do you have a copy of that right there before you, Ms. Parr?

SOLICITOR: I do.

THE COURT: Show that to him and refresh his memory so he can make a determination of whether or not he has it.

MR. ANDERSON: I did not know that was Susan Luberoff, Your Honor, and I apologize.

THE COURT: So we agree that you do indeed have that report, Mr. Anderson, is that correct?

MR. ANDERSON: I do.

THE COURT: And if that satisfies that, you may proceed.

MR. ANDERSON: Your Honor, the last motion I filed was to prohibit the out of Court statements that were made by the child, pursuant to 17 23 175, and also, Your Honor, to prohibit the showing of the videotape that was done at the Ark Center in Columbia.

THE COURT: And the grounds for that?

MR. ANDERSON: Your Honor, it is kind of -- there is more than one step to it, Your Honor.

First of all, as I've already mentioned, the Kromah case -- Your Honor, in that case it says the kind of case

-- it specifically says the kinds of statements -- the Supreme Court says, by way of example, the kind of statements the forensic interviewer should avoid at trial. The child is told to be truthful. A direct opinion as to the child's veracity, and any statement that directly vouches for the child, such as stating the interviewer has made a, quote, compelling finding of abuse, unquote.

Any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter or an opinion the child's behavior indicated the child was telling the truth.

Your Honor, when they interview a child, one of the first things they do is I am now going to talk to you about telling the truth versus telling a lie.

Another problem I have with it, Your Honor, is that the child is never put under oath when they are giving their statement.

Another problem I have with it, Your Honor, is that the child is not subject to cross examination at the time she is making the statement.

Your Honor, the -- of course, the Court has come out -- the Supreme Court has come out with the Crawford case, Crawford versus Washington, and that says, you know, the Defendant has a right to confrontation. Your Honor, if that out of Court statement is put into evidence . .

Let me interrupt you, Mr. Anderson. First of all, we know that in order for the -- in order under our law for the case to go forward the victim is going to have to testify, so Crawford doesn't really apply, does it?

MR. ANDERSON: Your Honor, I think Crawford does apply if they are going to show the taped interview of her at the Ark Center.

At the time she made the statement, Your Honor, there was no defense counsel present. She was not under oath, and there are certain questions that were asked of her in the interview that are prohibited by Kromah.

THE COURT: All right, and, of course, Crawford quite typically is where you try to introduce out of Court statements without benefit of a witness to cross examine.

In this case, she is going to testify, and you would have an opportunity to cross examine her, but, first of all, let me hear from you, Ms. Parr.

Do you anticipate playing these interviews?

SOLICITOR: Yes, Your Honor, the State is prepared to go to an in-camera hearing to have that qualified to go in.

Your Honor, there is also State versus Neal, which addressed the argument that counsel has made, including Crawford versus Washington.

It simply says that in regard to cross examination

the confrontation clause guarantees only an opportunity for cross examination, and not cross examination that is effective in whatever way and to whatever extent might be wished.

So it is really the opportunity to cross examine, and this is a case I would like to pass up to the Court which specifically dealt with the forensic interview and admission of the examinee as well.

That case was also cited in an unpublished Opinion that was filed on June 26, 2013, and that is State versus Anthony Tillman, an unpublished Opinion.

THE COURT: All right. Mr. Wells, you are very experienced. You've been doing this for a while. What is your position with regard to the law as far as the admissibility of these type interviews?

MR. WELLS: Your Honor, I think there is a statute that specifically says in these interviews where you have a proper examiner, and we clearly plan to prove in this case, if it's a child victim under twelve and the child victim testifies during the trial . .

THE COURT: And it is a requirement that the victim testify before . .

MR. WELLS: We plan to do that, and, I mean, the law is very clear. The statute says that, and the Court of Appeals in that case specifically said it was proper to do

this.

THE COURT: But you do agree that if I would rule it was admissible, it would certainly be appropriately redacted with regard to what is in all of these reports where it talks about you need to tell the truth, and there is a whole section talking about truthfulness, and all of those things indirectly bolsters the testimony.

Do you anticipate redacting those?

MR. WELLS: No, we don't, but Ms. Parr is a better expert on this particular video than I am although I have watched it once. I really can't remember what all is in there, but I don't think the statute indicates that it has to be redacted.

I mean, I don't see that there is anything inappropriate in there. I mean, you would honestly hope that the child would be told to tell the truth.

SOLICITOR: We've got the video ready for you to view the video.

THE COURT: Let's see it. It's just one video?

MR. WELLS: Yes, sir, Your Honor.

THE COURT: And that's the last thing we have to take up?

MR. WELLS: The only other thing is that we would call -- I think this will be fairly brief. At the time of the giving of the statement, the Defendant was not in custody,

I don't believe. In fact, he was not arrested until some three days later.

So it is clearly a voluntary statement, and we can briefly put that in evidence.

THE COURT: Then let's do that first and then we'll take a look at the video.

MR. WELLS: Okay.

SOLICITOR: Before we do that, also -- before we put the video in, I think -- I would make that clear if I put the forensic interview up so she can tell you what she did and in compliance with the statute.

THE COURT: Let's do the Jackson v. Deno. Any objection to that, Mr. Anderson?

MR. ANDERSON: No, Your Honor.

THE COURT: Let's deal with that then.

You may call your first witness.

MR. WELLS: Investigator Chad Collins.

THE COURT: Investigator Collins, how you doing?

CHAD COLLINS, being duly sworn, testified as follows, out of the presence of the jury:

CLERK: Please take the stand and state your full name for the record.

THE COURT: Get close to that microphone and speak up loud and clear so I can hear everything you've got to say.

WITNESS: Yes, sir. Chad Collins.

DIRECT EXAMINATION

BY MR. WELLS:

Q. Investigator Collins, with whom are you employed?

A. The Florence County Sheriff's Office.

Q. And were you so employed with them back in October of 2011?

A. Yes, sir, I was.

Q. And what particular areas do you investigate?

A. I investigate homicide, child abuse, sexual assault and rape cases.

Q. And in that regard, did you receive a report of a possible child assult or possible child sexual assault?

A. Yes, sir, on October third of 2011, I was contacted by Sergeant Vince Hanna of the Florence County Sheriff's Office to respond to Delmay Elementary School located on Casper Drive in Florence County, to meet with D.S.S. on a case that had been reported to them.

Q. All right, and as a result of your investigation, did you determine the perpetrator to be the Defendant in this case, Leonard Brockington?

A. Yes, sir.

Q. As a result of that, did you attempt to contact him about coming in for an interview?

A. Yes, sir. On the sixth of October of 2011, I made

contact with Mr. Brockington and asked if he would mind coming to the Sheriff's Office in order to talk with me. He agreed to come in on the seventh, which would be the next day, of October of 2011.

I met Mr. Brockington out in the foyer and brought him into one of the interview rooms we have closest to the forensics office in the Sheriff's Office.

Q. All right. At that time was the Defendant under arrest or in custody?

A. He was not.

Q. In fact, was he -- would he have been able to leave at any time?

A. Yes, sir.

Q. And after the interview was over, did you allow him to leave?

A. Yes.

Q. And was it a later time when you placed him under arrest -- another day?

A. Yes.

Q. In that regard -- at the beginning of the interview, did you advise him of any rights -- at the beginning?

A. Not at the beginning, no.

Q. All right. And before the interview was over, did you at that time advise him of his rights -- later on in the interview?

A. Yes. During the conversation it got to the point where he was talking specifically about what he was there for, and at that time I felt it was in his best interests to advise him of his Miranda Rights.

Q. All right. Now, was there any pressure or force for him to make the statement?

A. No, sir.

Q. Or any coercion?

A. No.

Q. Was in fact this statement video-taped?

A. Yes, sir, it was.

Q. And do we have the actual disc on the video tape, the original?

A. Yes, sir. It was turned over to the Solicitor's Office.

Q. All right.

MR. WELLS: The only other thing I guess I would ask him -- I would advise the Court -- we are redacting this part.

BY MR. WELLS:

Q. Toward the end of this interview, was a polygraph mentioned?

A. Yes, sir, it was.

Q. And there was nothing really of substance after the polygraph as far as what he said?

A. No, sir.

MR. WELLS: If I understand correctly, what we plan to do -- I think Ms. Parr and Mr. Anderson -- Mr. Godlowe will play the equipment for us, and they have agreed on a point that we would stop before the polygraph would be mentioned.

Is that correct?

MR. ANDERSON: I think that is correct.

MS. PARR: That is correct, Your Honor.

MR. WELLS: That is basically it, Your Honor, and we can play that if you want.

I'm not sure it's necessary. As I say, it's a self-serving statement, not a confession; but I do feel it should be played in fairness to both sides.

THE COURT: All right. Mr. Anderson?

MR. ANDERSON: Your Honor, I don't have any questions for Mr. Collins.

THE COURT: Mr. Anderson, do you have any motions to suppress this what the State has characterized as a self-serving statement?

MR. ANDERSON: No, sir.

THE COURT: You agree that it is admissible and that it was given pursuant to Miranda and in fact he was not in custody?

MR. ANDERSON: Your Honor, . . .

THE COURT: And it's exculpatory?

MR. ANDERSON: Well, in the very beginning it was not but later he was given Miranda and continued to talk with Investigator Collins. I think it is admissible, Your Honor.

THE COURT: Okay, very good. It is indeed admissible and I would order the tape be redacted and that everybody be on top of that.

If there is any discussion about a polygraph, then, you know, it would be a mistrial because just the word polygraph is going to indicate to -- that word alone indicate to the jury that there is a polygraph with an adverse result and, therefore, that that's why we are here.

MR. ANDERSON: Your Honor, that was just talked about but none was ever given.

THE COURT: If you say polygraph, it's going to poison the whole process. So don't let anything be said about a polygraph.

MR. WELLS: Yes, we understand that. It is at the very end of the interview.

THE COURT: You understand that you aren't going to talk about the word polygraph. It won't come out of your mouth?

WITNESS COLLINS: No, sir.

THE COURT: Okay.

MR. WELLS: That's all, Your Honor.

THE COURT: We are ready for the interview, and you may step down.

(Witness Collins excused from stand)

SOLICITOR: Your Honor, do you want us to put on the record her qualifications?

THE COURT: Let's just look at the video and then we can do that.

(Whereupon, the video of the interview with the child was played for the Court)

THE COURT: Mr. Anderson, let me see the case you were talking about as far as bolstering of testimony.

(Brief pause in the proceeding)

MR. ANDERSON: It has got a footnote six that talks -- I realize the pages aren't numbered but the case I gave you is on page 15 and 16.

THE COURT: All right.

MR. ANDERSON: It has a footnote six on the bottom and then on the next page.

(Pause continued)

THE COURT: Footnote what?

MR. ANDERSON: Footnote six at the top of that page where it talks about -- the very next page also.

(Pause continued)

SOLICITOR: Your Honor, we would note that that is

not a majority Opinion.

THE COURT: My opinion -- and I'm going to hear arguments from counsel, but my opinion is that the interview itself is appropriate pursuant to the statute, 17 23 175.

However, there are some concerns, and I'll be glad to hear from the Defense in this regard, but, of course, the language in this Opinion, the fact that it is inappropriate for an interviewer to say, I told her to tell the truth -- of course, the prelude to this thing, the statement was made, I want you to tell what was real. I want you to tell what's the truth.

You have an objection to that, and I don't know whether that would be helpful to the State or to the Defense, but the bottom line is it was said, and she is not rendering an opinion about what was ultimately said in the prelude.

But she did say, you need to tell the truth. I don't necessarily see the harm in that. What do you think, Mr. Anderson?

MR. ANDERSON: Your Honor, I'm going to object to it, and I -- for several reasons, Your Honor.

First of all, I think that the Proveaux and also the State versus Jimmy Paul Gurley that was heard in 2012 -- that case says the assessment of the witness' credibility is exclusively in the province of the jury.

A witness is generally not allowed to testify . .

THE COURT: Mr. Anderson, what I'm -- I understand that is what the rule is. That's always been what the rule was, that whether or not a witness is telling the truth is ultimately for the jury to decide, and . .

MR. ANDERSON: In the interview -- be real and tell the truth. Also in the written report, she said in her opinion it's compelling. She's got that checked. The most important thing is be real and tell the truth. You know you have to tell me the truth today is what she asked her.

THE COURT: All right, now, we're talking about two different things.

We're not talking about the report. We're talking about the interview that we saw.

MR. ANDERSON: Also, Your Honor, I think that other portions of the interview are inappropriate.

THE COURT: We're talking about the truthfulness.

MR. ANDERSON: Her telling her to be real and tell the truth -- important to tell the truth today.

THE COURT: What do you think about -- that's a little bit different because what these cases are talking about are expert interviewers that get up there and say, it is not only right but it's common for them to deny it at first and then they go on, and thinking about what she said, I

believe she's telling the truth.

That is different than her saying, you need to tell the truth. Do you understand what I'm saying?

MR. ANDERSON: I understand that, Your Honor, and I would repeat something I said before. She was not put under oath, Your Honor. She's not being sworn in.

THE COURT: Do you think you have to swear somebody in to -- for it to be a prior statement?

MR. ANDERSON: Your Honor, I think that it is improper and I object to that being shown to the jury.

THE COURT: All right. What is the State's position in that regard?

SOLICITOR: Your Honor, in regards to the child being told to only tell what is true and what is real, the Doctor makes no comment as to whether she believes the child.

In the beginning she just laid down the ground rules, and that is no different than when she comes in to testify and we tell her really, just tell what really happened, and she makes no comment or any encouraging thing that she believes her or she doesn't believe her.

It evolves to the point that in her report . .

THE COURT: We're not talking about the report now. We'll talk about that later.

All right, . .

MR. WELLS: Your Honor, I wanted to add this. When -- I mean, it seems to me that when you put the child witness up on the stand you have to ask the child -- you don't know if the child understands what an oath is -- if the child understands they are supposed to tell the truth or they can be punished if they don't tell the truth.

That is what is asked in any case, and I don't see the difference here. I think she feels like it's something she has to ask one time, not over and over -- you know you are supposed to tell the truth.

I think that is proper, and I guarantee you in any case that would be admitted in cases like this. That is not giving her opinion the child is telling the truth, but it is something the jury needs to see where the child is told . .

THE COURT: The question is still up to the jury as to whether or not what she said was actually the truth, so you are protected on the record in all respect in that regard.

I think just by virtue of the fact that she said to tell the truth does not render it inadmissible.

One of the things that concerns me to some extent is the recap at the end. She goes back and is sort of saying, all right, now let me recap what you've said. I do

think there is a problem with that.

What is the State's position on that?

MR. ANDERSON: Before we get to that . .

THE COURT: Well, we're going in my order and then you can say whatever. Let's get to that.

I want to hear what you've got to say about that, her recapping what went on at the end of that.

MR. ANDERSON: Your Honor, as far as that's concerned, yes, I do have an objection to that. I think throughout the entire case it is brought up over and over. That is brought up five times, this happened and this happened -- this happened here, even though we're innocent.

So, yes, at the very end absolutely. I think that is just improper bolstering of what was said up to that.

THE COURT: All right. I'm going to allow you to talk with Ms. Parr about that. She just recaps. I have a tendency to not allow that in.

There is no much there that is exculpatory because once again she denies that he touched her.

MR. WELL: I have seen that in many cases, Your Honor.

THE COURT: So right there where she comes back in to recap, you ought to redact it after that.

MR. ANDERSON: Your Honor, I see no relevance whatsoever to the drawing of the picture.

THE COURT: Let's do one thing at a time.

MR. ANDERSON: Your Honor, you said do I want to stop right there.

THE COURT: I said -- right, you don't.

MR. ANDERSON: I want to stop the whole thing but if that's where we are right now, then yes.

THE COURT: Okay. Well, I agree. I will redact it where the recapping starts.

Now let's talk about the drawing of the picture.

MR. ANDERSON: I think we should stop right there. I mean, what possible relevance could her drawing something do anything other than draw sympathy from the jury?

THE COURT: Well, I think it's exculpatory. When you have a child who has been raped or abuse, they show usually some monster figure, and to the extent it's not that it shows she's a healthy normal person who draws a normal first grade picture.

I don't know why they did that. It seems sort of -- I don't know if that's why they do it or not.

If you don't want the picture in, I think it is indeed irrelevant. The only relevance would be that she is a normal healthy child who drew a normal house that didn't have a monster molest her.

MR. ANDERSON: I would like for it to be out, Your Honor.

THE COURT: Then I agree. What does the State have to

say about that? How would it be relevant?

SOLICITOR: Well, in terms of relevancy, I don't believe it is relevant to the ultimate issues. It was just a time period when Dr. Benedetto wanted to see if there were any other questions she needed to ask, and that was just passing the time away.

THE COURT: It is certainly irrelevant. I would ask you here if there is any kind of diagnostic significance to that?

(TRANSCRIPTION NOTE: Response by unknown person, none at all.)

THE COURT: Then we will redact that.

MR. WELLS: So we understand, we will end the tape where she walks out to leave the child?

THE COURT: That's right. While that's not your motion, you would at least agree with that redaction?

MR. ANDERSON: I would agree with that redaction.

THE COURT: All right. Any other specific objections from the Defense with regard to the tape?

MR. ANDERSON: Yes, sir, Your Honor. Of course, I was not in the Legislature when that was passed, but I do think an argument could be made for the statements to come in but not the videotape itself to come in.

I would object on those grounds. Your Honor, also, under State v. Jarvis, 314 South Carolina 17 or 443 South-

eastern Second 566, if proper corroboration testimony is cumulative to the victim's testimony it cannot be harmless. It is precisely this cumulative effect which enhances the devastating impact of improper corroboration.

If the little girl testifies -- obviously we won't have the problem if she doesn't -- then the videotape and then Dr. Benedetto testifies, that would -- we would have heard the same thing three times.

I think that that is improper corroboration.

THE COURT: What does the State have to say about all of that? I mean, it is clearly one of the doctors -- she is going to be able to testify as to the date and time and circumstances of the report. She's not going to be able to re-go over all of that. The law is clear on that.

Isn't that your understanding?

SOLICITOR: Yes.

THE COURT: She can testify to a report that was given on this date and these were the circumstances of the report; date, time and circumstances of the report.

SOLICITOR: And she can say what she observed of the girl's or the child's demeanor, but that's it. But not . .

THE COURT: That's correct. Not anything about the facts.

SOLICITOR: Yes, sir.

THE COURT: What do you think about the fact that the child is going to say -- in order for the video to come in, she has got to testify, so clearly -- you know, the case law is very clear that you cannot show the video without giving the Defense the opportunity cross examine, so we know we've got to have her testify live before the video.

And statute says that, so that's where we are.

Then the counselor can testify as to the date, time, circumstances of the -- I think that is all appropriate, and you are protected on the record in that regard.

Can you think of anything else?

One of the things that causes me some concern is that there was -- someone could argue that there might have been some leading with regard to how she touched the skin; how he had clothes on and there was skin.

I think those are things that could be argued to the jury was clearly leading in that regard, but I don't think it is in the interview to the extent that it cannot be played.

Anything else with regard to the video from the State?

SOLICITOR: Nothing from the State.

THE COURT: Anything from the Defense?

MR. ANDERSON: No, Your Honor.

THE COURT: All right. Any other motions from the State?

SOLICITOR: Yes, Your Honor, a motion to clear the Courtroom of spectators during Minor testimony.

THE COURT: Any objection from the Defense?

SOLICITOR: Other than the Defendant.

THE COURT: He's going to be here. I can promise you that.

MR. ANDERSON: What does she mean by spectators?

THE COURT: I think she means anybody who is not a lead investigator or the Defendant. I think your staff would be able to be in here, but I think she's talking about people -- I don't think there's anybody else other than the lead investigator, you, your staff and the Defendant would be in here.

Anybody else you want in here?

MR. ANDERSON: No, Your Honor, other than what you've just stated.

THE COURT: Okay.

SOLICITOR: I think Minor would feel more comfortable if Ms. Heather Smith was in the Courtroom.

THE COURT: Well, it is your motion to clear the Courtroom.

SOLICITOR: Yes, sir, but I was talking about spectators not appropriate to this case.

MR. ANDERSON: Your Honor, one of my motions would be to exclude witnesses who will be testifying.

MR. WELLS: Of course, we would take up about who is in the Courtroom at the time anybody testifies anyway when we know who will be here at that time.

THE COURT: Well, I'll grant your motion. When she testifies you can be here, Mr. Wells can be here, lead investigator can be here, Mr. Anderson, Ms. Goldman and the Defendant.

SOLICITOR: Under the statute, Your Honor, the victim's parents . .

THE COURT: Yes, the victim's parents.

All right.

MR. ANDERSON: Your Honor, that would be the father and not the step-momma?

THE COURT: That is a good question.

SOLICITOR: Your Honor, she . .

THE COURT: The natural father can be here.

All right. Any other motions from the State?

SOLICITOR: No, Your Honor.

THE COURT: Any other motions from the Defense?

MR. ANDERSON: No, Your Honor.

THE COURT: Do you all have a lot of documentary evidence to introduce?

SOLICITOR: The State does not.

THE COURT: How about the Defense?

MR. ANDERSON: None at this time, Your Honor.

THE COURT: All right. Very good. We will reconvene at nine thirty in the morning.

Madam Clerk, we have not sworn the jury so make sure we do that in the morning.

We'll stand at ease until nine thirty tomorrow morning.

(Whereupon, the Court in recess until April 22, 2014, when the matter was resumed)

THE COURT: Good morning, everybody. Please be seated.

Anything from the State before we proceed?

MR. WELLS: Your Honor asked me to have copies made of all of the records, the counselor records, that were turned over to the State and Defense.

I would pass this copy up for the Court's record.

THE COURT: Very good.

(Records previously identified as Court's Exhibit 1)

THE COURT: Anything from the Defense before we proceed?

MR. ANDERSON: Yes, Your Honor. May it please the Court?

As to potential witness other than the lead investigator, I would respectfully ask that they be removed from the Courtroom until they are actually called to testify.

THE COURT: Okay. What is the State's position on that?

SOLICITOR: Your Honor, we would object to the sequestration.

THE COURT: Due to the nature of these offenses, I do think it is appropriate to do that. I would ask that all witnesses for the State and Defense to be sequestered. I am just going to allow the victim's natural father to be in here and the lead investigator. The Defendant obviously can be here, but otherwise everyone else is going to be removed from the Courtroom.

The Sequestration Order is also going to prohibit witnesses from discussing their testimony with other witnesses and I ask, Ms. Parr, that you talk to your State's witnesses and make sure they understand in a clear way they are not to discuss in any way anything that has transpired here in this Courtroom.

And, Mr. Anderson, I would ask you to do the same with regard to Defense witnesses.

MR. ANDERSON: Yes, sir.

(Courtroom cleared as ordered by the Court)

THE COURT: Anything further before we proceed?

SOLICITOR: Thank you, Your Honor. One matter if we may approach?

(Conference at the bench between counsel and the

Court off the record)

THE COURT: We have conducted appropriate voir dire and if you call someone who was not on the voir dire that would be the time to object to it.

All right. Are we ready for the jury?

(Brief pause)

(Whereupon, the jury returned to the Courtroom and were sworn by the Clerk for purposes of their service in the trial of the case)

THE COURT: Thank you for being here and on time. I see everyone has displayed their jury badges. Thank you for doing that.

Mr. Foreman and ladies and gentlemen of the jury, we are here again on the case that is 2012 GS 21, 00447, the State of South Carolina versus Leonard Eugene Brockington.

I want to talk with you a little bit about that. Some of you may have served on a criminal jury before, a General Sessions jury, and some of you may have served in other cases.

I want to talk with you a little bit about what to expect and some of the ground rules.

I hold in my hand this Indictment where the State of South Carolina has accused Leonard Eugene Brockington with these two criminal offenses. What I hold in my hand as the Indictment is simply the written document that starts

these proceedings, and it has absolutely no evidentiary value whatsoever.

The State has accused him of violating the criminal codes of South Carolina but as Mr. Brockington sits there at the defense table he is presumed just as innocent as me or you.

Let's start from that frame of reference. There are constitutional safeguards that come into play, one of which is that the State has the burden of proof. They are the ones who have resources to gather up the evidence to present to you in this proceeding.

The Defendant need not do anything. He need not present any witneses. He need not testify. If you think about that, our Forefathers when they wrote the Constitution made it that way because quite often it is impossible for someone to prove their innocence. In the United States of America that is not required.

The third thing I want to remind you of is that in a criminal case the State has the highest burden of proof known to our judicial system. It is proof beyond a reasonable doubt.

A reasonable doubt is the kind of doubt that would cause a reasonable juror to hesitate to act. That doesn't mean it is beyond all doubt. You can have a doubt about anything, but it is a very real substantial doubt.

I will explain reasonable doubt in greater doubt at the conclusion of the case, but it is a very high burden of proof.

The State must prove each and every element of the offense beyond a reasonable doubt.

As we start this proceeding, the lawyers are going to have an opportunity to make an opening statement. Mr. Wells for the State will stand up and kind of tell you a little bit about this case and what they have to prove; sort of give you a roadmap of what you can expect and the evidence that is going to be presented.

The Defense is also going to have an opportunity to give an opening statement. Once again, he is not required to do so but he is given the opportunity to if he elected to do so, and I anticipate he will.

He will talk to you a little bit about the case, some of the things about the law, the Constitution, and any defenses you might have.

After the opening statements, we will begin taking evidence in this case. Given the rules of criminal procedure, the State goes first since they have the burden of proof. They will call witnesses to the witness stand and they will take full testimony which is evidence.

Other forms of evidence are documentary evidence, photographs, various stipulations of counsel. There are a

number of different forms of evidence. The one you will hear most is oral testimony. Pay very close attention to these witnesses as they take the witness stand.

Ladies and gentlemen of the jury, you and I have certain roles to fill. I am the arbiter of the law. That means that I determine what evidence you are given here, preside over the proceeding, and at the conclusion of the case I charge you the law.

You have a very awesome responsibility in that you are to be the arbiter of the facts. In every case that is tried in this Courtroom, there is a dispute about the facts. There is a difference with regard to the inferences that can be drawn from the facts.

But in every case there is a factual dispute, and you are the ones who are going to resolve those differences and to determine where the truth lies; to determine whether or not the State has met their burden of proof.

In every trial that takes place when the witnesses take the witness stand you are going to hear the lawyers -- it happens in every trial I have presided over or participated in -- where the lawyers say, I object; I have to take up a matter of law with the Court.

This is a proceeding that is governed by rules of evidence and criminal procedure. It is my duty to determine what you get to hear.

When they make those objections, quite often I will call the lawyers up here and we will talk about the procedural or legal objections that they have. These conversations take place outside of your presence or sometimes I will ask you to return to the jury room.

There is a reason behind that because in making my ruling on admissibility of evidence sometimes I may have to comment on the facts. Of course, the law doesn't allow me to comment on the facts because it is your province to determine what the facts are.

For those reasons, sometimes the conversation will take place outside of your sight, and I promise you one thing. If at the conclusion of the case you have some question about some of the things we talked about, after the verdict has been rendered in this case, I can share that with you, but it would be inappropriate for me to do that before the verdict is rendered since you have the responsibility to base your decision on the facts that come from this witness stand, uninfluenced by any other factors.

Ladies and gentlemen of the jury, you are called upon to determine necessarily the believability of witnesses. I will go into great detail about this at the conclusion, but let me just tell you from the very outset that in evaluating the believability of witnesses what you need to do is to bring your good common sense into the Courtroom.

You may believe one witness against many witnesses. You may believe one witness as against one. You may believe all of what a witness says, none of what a witness says, or a part thereof.

Ask yourself when the witnesses testify if they have an interest in their testimony. Is there a bias or is there a prejudice?

In addition to whether they may have an interest, a bias or prejudice, it is also important for you to pay attention to the way they testify. The law says you can pay attention to their demeanor.

Any of you who, like myself, have teenage children or in their twenties, when you talk to them and speak with them about something it is important to listen to what they say, but it is also important to look at the way they act when they talk.

The law say that you can use your good common sense to evaluate whether or not a witness is telling the truth.

I will tell you how awesome your responsibility is. These are very, very serious charges here today, and if I make an error with regard to what you get to hear or in my charge in an inappropriate fashion, those are very easy things to be corrected.

One thing, Mr. Foreman and ladies and gentlemen, that you need to understand is that if there is an error with

regard to the findings of fact, quite often that cannot be corrected. So that is why serving as a juror here today is a very important thing.

It is important to the State of South Carolina, and it is important to the Defendant.

I ask that you pay very close attention. You have taken a very solemn oath to listen to the evidence that comes from the witness stand and determine what the truth is and apply it to the law as I charge it to you.

At the conclusion of the evidence, the lawyers will have an opportunity to give closing arguments. These closing statements are truly argumentative in nature. They are very similar in form to the opening statements where the lawyers stand up before you and give a summary presentation.

But these arguments at the close of the evidence are truly argumentative in nature because at that point in time the evidence will have been presented and they get to speak to the evidence that supports their relative positions.

What they have to say is not evidence. I promise you though that it will aid you immensely in your deliberation process so pay very close attention to them.

At the conclusion of that, I will charge you the law. I'm going to ask that you not take notes. Everyone needs

to pay very close attention when the witnesses testify.

This is a very important matter. You are participating in a time-tested system, taken a very solemn oath to listen to the evidence and apply it to the law. I am convinced you will do that.

Mr. Wells, you are recognized.

MR. WELLS: Thank you, Your Honor. May it please the Court, ladies and gentlemen of the jury?

Certainly the State also would like to join in with what the Judge said and thank you for your willingness to be here with us on this particular case as jurors. This is not going to be a pleasant experience necessarily. All that we ask you to do is to listen to the evidence as it comes from the witness stand and to determine the truth and render a verdict.

Now, my name is Rob Wells, and I will be prosecuting the case with Patricia Singleton Parr. We are trying this case together for the State. I will be questioning some witnesses, and Ms. Parr will be questioning some witnesses, and, of course, Mr. Anderson is the attorney for the Defendant in this case, Leonard Brockington.

Now, I want to talk to you briefly about this case as far as what the charges are and what the State is going to prove, and the State will prove this case beyond a reasonable doubt.

Let me give you some background and advise you about some of the witnesses who will be called in this case. This is sort of a roadmap of this particular case.

Now, the charges in this case are very serious. The first charge is criminal sexual conduct with a minor, in the first degree.

The State must prove in this case that the Defendant engaged in a sexual battery with a child under the age of eleven years old.

Again, as I said, the Defendant is charged with a sexual battery, and a sexual battery based on the statute can be defined or some of the things are sexual intercourse, cunnilingus or fellatio. In this particular case, what the State will be intending to prove is that the Defendant committed fellatio with the little girl in this case, Minor [redacted], and that she was six years old at the time. This was back in 2011.

Now, some of you may -- excuse my language, and I hate to be blunt about this, but some of you may not understand what fellatio is. Fellatio, as we intend to prove, is that the Defendant made the six year old child to suck his penis.

The second charge is lewd act on a minor. Again, involving the same victim.

In a lewd act on a minor, you can also include oral

sex and it can be including lesser things, involving an improper touching.

For a Defendant to commit a lewd act on the body of a child under age six, he must be over age fourteen, and it may be to satisfy his own sexual lust, which may involve improper touching, for example.

One of the things the State intends to prove is that the Defendant made the child, Minor touch his penis, and for his own state of gratification to do certain things to it.

This was in 2011 and when the child was six years old.

I want to give you some of the background here as to, again, what the State intends to show, where we're coming from and the relationship to these parties.

Now, there are actually two children who are involved, and the abuse we intend to prove is on the older child, Minor who at the time the crimes occurred was six years old and has just turned nine.

She has a younger sister, M.A. who is two years younger than she is, and there are no allegations at all that M.A. the younger child, was abused, but only the older child, Minor

The parents of these two young children are Jorgen Waldermo, who is sitting right here, and Karen Waldermo.

Jorgen was originally a native of Norway, and he came to the U.S. to study at the University of South Carolina where he graduated, and while he was over here he subsequently met his wife, at that time, Karen, and they were married and had these two children.

Then they had problems and were separated, and they were divorced in 2009. The two children then, based on the custody -- the custody was granted to the mother. They lived with the mother, with the father having visitation rights.

Subsequently since that time, and I believe in 2010, or maybe 2011, he met -- anyway, subsequent to his divorce he met his present wife, Jeanene, and they are now married, so he has another wife named Jeanene.

In any case, the way he became involved back in 2011 is the Defendant apparently was a friend of the mother, Karen, and he stayed from time to time at her house.

So it is for that reason that the Defendant had access to the children. That would be his relationship with the girls.

Now, some of the people that we'll be calling as far witnesses -- what really started the ball rolling was on September 24th of 2011 that was the child, Minor [redacted] first disclosure, and a child who was older whose name is M.G. M.G. [redacted] -- she lived across the street and even

though she was older she was playing with [redacted] from time to time.

On a particular occasion they were in the house where the Defendant was staying and some incident occurred with the Defendant. After that, the child disclosed to [redacted] for the first time that she was sexually abused.

I will tell you this up front. I will not be allowed to ask [redacted] to tell us exactly what [redacted] told her. She will testify as to the fact that the child reported sexual abuse, and the only details we can go into is the time and place that it occurred.

For that reason, we will be someewhat lengthy in what we can ask her in that regard, but that was when the first disclosure was made to [redacted]

She will relate what happened after that occurred. So she went home and her mother happened to be out of town on that particular day which was a weekend, but after talking with her mother then her mother was on the phone to another alleged contact, another neighbor, Staci Carter, who was recently married and now is Staci Parker.

But she contacted her. She lived next door to the mother Karen, and she thought Staci might know the mother better than they did. So they notified -- they called up Staci, and Staci came over and spoke to [redacted]. When the mother, Karen, came home, she talked to her about

what had been told.

Subsequently, on that particular weekend the father called to talk to the daughters, and he and Karen, the mother, then had some conversation about the allegations that had been made.

Because he was concerned it was arranged where the children would come up and stay with him and his wife the next week. They at that time lived in Charlotte.

It was on that weekend -- that was the first time the child disclosed to the father for the first time that she had been abused sexually.

At that point, the father called his ex-wife, Karen, to say he was going to call the law enforcement about it. He did. He called the Florence Police Department, and he arranged to bring the children on that Monday to their school.

Anyway, when he got involved he also called D.S.S., and a representative of D.S.S. met them out at the school. Also a police officer came to the school, and that is when the investigation started in this particular matter.

The D.S.S. worker talked to the child, a Complaint was made. At that time, it had been decided the child should no longer live -- the children should no longer live with the mother, and custody changed for that time being for them to live with the father and his present

wife.

Now, obviously the most important witness in this case would be the child herself, who has just turned nine and who will be testifying about what happened to her when she was six years old.

This type thing is difficult for a child, to have to get up on the witness stand and testify before you ladies and gentlemen of the jury, and we will try to have the Courtroom cleared of everybody except those who are necessary in that regard to try to make it easier on the child.

So we ask you to listen very closely to her testimony when she takes the stand.

Now, as I told you, we cannot go into detail as to what the child told the outcry witness. There is one incentive in that regard. Once the child takes the stand and testifies, if she was under the age of twelve when this occurred, if the child was examined as she was by a forensic examiner who was trained in this particular area, it was videotaped.

In other words, the forensic interviewer questioned her as to what occurred, and based on the statutes of South Carolina once the child has testified then we can play the interview for you, the interview the forensic interviewer had with the child when the investigation was taking place or during that period of time.

We do plan to do that in this particular case and we would ask you to give very careful attention to that interview as well as the child is dealing with the forensic interviewer.

There will also prior be some testimony from other counselors, and finally the Court is going to call the investigator in this particular case. Through him we will show you a statement that he took from the Defendant in this case, and in fact it is a self-serving statement, and you should view that particular statement that he made to law enforcement and make your own conclusions in that regard to get the whole picture in this particular case.

I think, ladies and gentlemen, that kind of gives you a ballpark format as to what the State intends to attempt to prove in this particular case. I believe it does. It is very important that you give careful attention to the evidence, to the witnesses who testify, so that you can reach a verdict that speaks the truth at the end of this trial.

Again, thank you very much.

THE COURT: Thank you, Mr. Wells.

Mr. Anderson, you're recognized.

MR. ANDERSON: You heard the Judge say just a few minutes ago that no one is required to prove their innocence. Leonard Brockington is not required to prove his innocence.

As the Judge stated, there is oftentimes when you cannot prove your innocence. In 1692 or 1693 in Massachusetts testimony came out about people consorting with the devil and practicing witchcraft.

The first accusers were a nine year old girl and an eleven year old girl.

Throughout that investigation in Salem they even questioned a four year old girl. When all of it was said and done, a hundred and fifty men and women had been sent to jail. Over twenty men and women had been hung over the accusations of a nine year old, an eleven year old and even talking with a four year old.

The State has told you a little bit about this case and what they think is going to happen. The State has said the little girl may take the stand -- they anticipate she will take the stand. They need her to take the stand, and she's going to say that my client, Leonard, made her touch him on two occasions.

They also -- the little girl is also going to testify he made her perform oral sex or give him a blow job or whatever you want to call it.

Other than that, the State has -- that's it. The Judge told you in his remarks that Leonard doesn't have to prove a thing. Sometimes you can't prove you didn't do something, but the State has the accusations of a six

year old girl; that she told a friend and she told a counselor, said it on tape, and started things, but it is her words, her accusation, and what you will hear, I think, on cross examination is that she didn't like Leonard. She didn't like him. You will hear that the mom didn't believe it.

You will hear that the girl made several inconsistent statements. You will hear the girl said some things and later denied them.

You will hear that the girl didn't say some things and then later brought them up at another time.

You won't hear anybody get up there and say they saw this happen. You won't hear anybody get up there and say, you know, we've got some DNA. We've got something from the Defendant.

You won't hear anybody say they have any physical evidence. You're not going to hear any of that. What you will hear is a six year old girl saying this is what he did.

In October of 2011 Leonard got a call from the Sheriff's Office. The very next day he voluntarily went to the Sheriff's Office and said, hey, what's going on? And from that day to this day Leonard has been living this nightmare. He can't wake up from it.

Sure, in Leonard's mind he said things like, you know,

I'll go talk to Chad Collins and ask him what's going on, and this will all be over. But it wasn't.

Leonard later got arrested on these charges. He said after talking with some friends and family of mine, I could be facing up to fourteen years, and I'm sure if I go and talk to friends and family who know me will say this is preposterous; there's no way in the world Leonard would do that. That's what the boys I've coached, my family and friends would say.

When Leonard and I were going over the evidence, he said, there's no physical evidence. No, sir. No eyewitnesses. No,sir.

He said once they know this, the nightmare is going to be over. There is nothing in the world they've got other than this little girl saying this, so this will be over. But it's not.

You will hear, I anticipate, that the little girl went to a counselor in North Caroina. She went to that counselor for a year, and over that year's time the little girl refused to talk about this. Wouldn't talk about it or bring it up.

So the counselor was changed and she went to another counselor, and now she is ready to testify about this.

I think you will also hear that dad didn't have custody before this happened, and he has custody now.

You will hear the dad was paying some Eleven Hundred Dollars a month for child support but he's not paying any child support now.

I think that after you hear everything, not only from direct examination testimony but also from cross examination testimony, you will agree that Leonard didn't do this. Of course, Leonard can't prove he didn't do it, but, as the Judge said, sometimes you can't prove you didn't do a thing.

He doesn't have to prove anything. The State does.

Thank you.

THE COURT: Thank you, Mr. Anderson.

The State is recognized. You can call your first witness.

MR. WELLS: We would call M.G. [redacted].

THE COURT: Miss Anderson. Yes, maam, please come forward.

I'm going to ask you to come forward and place your left hand on the Bible and raise your right hand while the Clerk administers the oath.

M.G. [redacted], being duly sworn, testified as follows:

CLERK: Have a seat and state your full name for the record, please.

THE COURT: Have a seat on the witness chair and pull

up real close to that microphone. I'm going to ask you to speak loud and clearly so that we can hear everything you've got to say.

Let's start with your full name, please.

WITNESS: M.G. [redacted].

THE COURT: Thank you. Mr. Wells, you are recognized.

DIRECT EXAMINATION

BY MR. WELLS:

Q. M.G. [redacted] how old are you?

A. I'm fourteen years.

Q. So back in 2011, you were then about twelve years old?

A. Yes, sir.

Q. Now, what grade are you in school right now?

A. I'm a freshman in high school.

Q. And where do you go to school?

A. (Inaudible response)

Q. And where do you live?

A. (Inaudible response)

Q. Is that in the West Florence area?

A. Yes, sir.

Q. All right. Have you lived there for a number of years?

A. Yes, sir, all my life.

Q. Now, do you know in this case the victim, a little

girl, [redacted] Minor

A. Yes, sir.

Q. All right, and how do you know Minor

A. She was our neighbor, and I used to play with her when she lived there, me and Easley Parker.

Q. All right. Now, back in 2011, you were twelve years, and about how old would she have been?

A. Six.

Q. Now, who was the other person that you played with that you mentioned?

A. Easley Parker.

Q. And was he about the same age as she was?

A. I think she was a year older.

Q. All right. Now, he was a boy that you would play with as well in the neighborhood?

A. Yes, sir.

Q. Now, did Minor have any other brothers or sisters who lived there with her?

A. She had a sister, M.A.

Q. All right, and was she younger or older?

A. Younger.

Q. About how much younger than she?

A. I want to say maybe two years.

Q. Now, did Minor live with her parents?

A. Yes, with her mom.

Q. Do you remember what her mom's first name was?
A. . .
Q. If you can't remember, that's all right.
A. Karen.
Q. Now, back in 2011 was there another man who stayed in the house with Minor
A. Yes, sir.
Q. Is he here in the Courtroom?
A. Yes, sir.
Q. Do you see him in the Courtroom?
A. Yes, sir.
Q. Just point him out.
A. (Witness complying)
Q. And did you know him by any particular name?
A. Leonard.
Q. And this will sound like a really dumb question but I have to ask you because of the way the particular statute is written.

At that time was he, the Defendant, over the age of fourteen years?
A. Yes, sir.
Q. As I say, I know that sounds dumb, but we have to put that on the record.

Now, I want to turn your attention to Saturday, September 24th of 2011, the date on which Minor made a

disclosure to you.

Now, what were you and Minor doing that particular day?

A. We were, you know, just doing all girl stuff, playing.

Q. And that was in the house where she lived?

A. Yes, sir.

Q. All right. Now, were any other children present in the house?

A. M.A. was there.

Q. And were you actually playing with M.A. or just with Minor

A. I was playing with Minor

Q. Was Minor 's mother, Karen, present in the house at the time?

A. No, sir.

Q. Now, was the Defendant present in the house during that time?

A. Yes, sir.

Q. Now, prior to the disclosure did anything happen involving the Defendant and Minor

A. Um, he started yelling at her. We were in the room and he was yelling at her.

Q. Could you understand why he was yelling at her?

A. I don't remember. I just know he was yelling at her.

Q. Now, did the Defendant stay in the room with the two

of you?

A. No, sir.

Q. Now, after the Defendant left the room, did Minor subsequently make a disclosure to you?

A. Yes, sir.

Q. And without going into details, was it in the nature that she had been sexually abused by the Defendant?

A. Yes, sir.

Q. Now, when she was telling you this, did she make any kind of hand gestures?

A. Yes, sir.

Q. Show us what that was.

A. (Witness complying)

Q. Now, the one thing I can ask you as far as details is did Minor indicate where this incident occurred? Where any of this sexual abuse had occurred?

A. Yes, sir, . .

Q. Go ahead. I mean, as far as the location or the place where this occurred? Did she mention anything in that regard?

A. She said he made me do this, and that's how she explained it.

Q. Well, did it occur like in the house or somewhere else?

A. She said in the living room chair is where it was at.

Q. Were you familiar with that living room chair?
A. I had seen it before, but, I mean, . .
Q. Okay. After Minor told you these things happened, how did it make you feel?
A. I was real nervous and scared.
Q. What did you then do?
A. I went and walked around the neighborhood but I didn't tell anybody. I was just trying to think, everything was -- and then I went home and told my mom.
I called my mom and told her and . .
Q. Let me stop you. Was your mom at home at the time?
A. No, she was at the beach.
Q. I believe she was celebrating a birthday, is that right?
A. Yeah.
Q. So you called her and told her what Minor had told you?
A. Yes, sir.
Q. All right, and did your father get on the phone too?
A. Yeah, I told my mom and and my dad got on the phone and talked to me and Staci.
Q. And among the three of you, what was decided should be done as far as telling anybody else?
A. That Staci would talk to Karen.
Q. So the next thing that was --, the next person you all

talked to was who?
A. Staci. My mom told my dad and my dad called Staci.
Q. Let me stop you again. Who is Staci?
A. Parker -- she was my neighbor.
Q. All right, let me just ask you, where did you live in relation to Minor and her mother?
A. We were right across the street.
Q. You lived across the street, and where did Staci live?
A. Across the street from me. They lived beside each other.
Q. So Staci's house was next door to Minor is that right?
A. Yes, sir.
Q. All right, and after Staci was called, did she actually come over and talk with you?
A. Yes, sir.
Q. All right. What -- do you remember what condition you were in when Staci came over?
A. I was panicking. I was really scared.
Q. And was it agreed that Staci would be the one to contact Minor s mother?
A. Yes, sir.
Q. If you would, answer any questions Mr. Anderson has. Thank you.

THE COURT: Cross examination, Mr. Anderson.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. M.G. [redacted], do you remember talking with Investigator Collins?

A. Yes, sir.

Q. Investigator Collins is right here?

A. Yes, sir.

Q. As a matter of fact, I believe maybe two weeks after this date that Mr. Collins and another lady who works with D.S.S., Ms. Shefton, came to your house. Is that right?

A. Yes, sir.

Q. And they sat down with you, I think at your kitchen table?

A. Yes, sir.

Q. I think your mom was present, your dad was present?

A. Yes, sir.

Q. You remember that?

A. Yes, sir.

Q. You remember they were asking you questions about this case?

A. Yes, sir.

Q. Do you remember telling them that Easton was also present; that you all dressed him up?

A. I think he was before this happened.

Q. Do you remember telling Investigator Collins that Minor went to her mom's bedroom door and knocked on her bedroom door to ask a question?

Do you remember that?

A. I don't recall.

Q. And that that's when Mr. Brockington actually yelled, or that's when Leonard yelled?

A. I just remember he yelled at Minor but I don't remember Minor . .

Q. You don't remember her leaving her room and going to ask her mom a question?

A. I don't remember.

Q. So Leonard just out of the blue . .

A. I remember her leaving or something but I don't remember the reason.

Q. Have you discussed this case with anyone since October of 2011?

A. No, sir.

Q. Is it fair to say that was about two and a half years ago?

A. Yes, sir, almost three.

Q. So almost three?

A. Yes.

Q. This year will be three?

A. Yes, sir.

Q. You are fifteen now?
A. I'll be fifteen in a month.
Q. So you soon have a birthday?
A. Yes, sir.
Q. When this happened, you were twelve, and since then thirteen and fourteen?
A. Yes.
Q. Soon fifteen?
A. Yes, sir.
Q. And since this happened, you have gone, I guess, to middle school, is that right?
A. Yes, sir.
Q. You are now at West Florence?
A. Yes, sir.
Q. And a lot has been going on the last two and a half years?
A. Uh hm.
Q. You remember one time asking Leonard to help you with your cat because it had gotten a plug stuck on it when you were playing with a rod and reel?
A. No, sir.
Q. Do you remember asking him to come over and help you get the plug out of the cat?
A. No.
Q. Okay. Do you remember telling Investigator Collins

and Investigator -- excuse me, the D.S.S. worker, Ms. Shefton, that Minor [redacted] and Easton played naked together, had a naked party?

A. No, sir.

Q. Had a naked dancing party?

A. No, sir.

Q. Okay. Your Honor, that's all the questions I have.

THE COURT: Any Redirect, Mr. Wells?

MR. WELLS: One moment, Your Honor.

(Brief pause in proceeding)

MR. WELLS: Briefly.

REDIRECT EXAMINATION

BY MR. WELLS:

Q. Let me ask you one thing real briefly. Mr. Anderson asked you about did they have a naked party. Is what you recall that Easton had his shirt off?

A. Yes, sir.

Q. And is that the extent of it?

A. That's all I know. I wasn't there.

Q. Thank you.

THE COURT: All right, you can step down.

(Witness excused from stand)

MR. WELLS: The next witness will be the mother of this girl. Once her mother testifies, is there any objection to her being excused?

THE COURT: Any objection, Mr. Anderson?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: They will be free to leave.

Ms. Anderson, please come forward.

AMY ANDERSON, being duly sworn, testified as follows:

CLERK: Have a seat on the witness stand and state your full name for the record.

THE COURT: Ms. Anderson, pull up real close to that microphone and speak loudly and clearly so we can hear everything you've got to say.

Let's start with your full name.

WITNESS: Amy Jeannine Anderson.

THE COURT: Thank you. Mr. Wells, you are recognized.

DIRECT EXAMINATION

BY MR. WELLS:

Q. Amy, what is your relationship to M.G. [redacted] M.G. [redacted]?

A. I'm her mother.

Q. And do you work outside the home?

A. Yes, sir.

Q. Where do you work?

A. Days Inn Restaurant.

Q. And are you familiar with back in 2011 when Minor [redacted] and

M.A. [redacted], two little girls, and their mother, Karen, lived close to you?

A. Yes, sir.

Q. All right, and where did they live in relation to you?

A. Across the street.

Q. Now, did you live in your house first or did they live there first?

A. (Inaudible response)

Q. Now, did any other relative of the mother, Karen, live there in that house?

A. Her parents -- well, her mother and stepfather.

Q. All right, they lived there first, and subsequently Karen and her children moved in and the parents then moved out?

A. Yes, sir.

Q. And was it back in 2011 when the Defendant moved in for the first time?

A. Yes, sir.

Q. Your daughter, M.G. [redacted], played with Minor [redacted] some of the time?

A. Yes, sir.

Q. And would she also play with Easton from time to time?

A. Yes.

Q. Who was Easton?

A. My other friend's -- my neighbor across the street, her son.
Q. Where would they normally play?
A. In the yard. Sometimes they would go in each others' homes.
Q. Now, on the weekend of September 24th, 2011, did you have occasion to go down to the beach to celebrate your birthday with some friends?
A. With my mother and my sister.
Q. And some time that day did you have occasion to receive a rather disturbing phone call from your daughter?
A. Yes, sir.
Q. And do you remember about what time of day it was?
A. It was early afternoon, I think. Probably around twelve or one -- somewhere around there.
Q. All right.
A. I don't know the exact time.
Q. And was basically the nature of the call that Minor had disclosed to your daughter being sexually abused?
A. Yes, sir.
Q. All right, and there were details she had been told?
A. Yes, sir.
Q. Don't go into those things. Okay?
A. Okay.
Q. All right. Now, how did M.G. sound over the

phone to you?

A. She was very upset. She was talking real fast, and I was trying to calm her down and ask her to talk -- since I wasn't there, to let me speak to her daddy.

And she was embarrassed and said, oh, no, and I said, let me speak to your daddy, everything will be fine. She was scared.

And so then I told her daddy to talk to her, and I kind of told him what she had told me.

Q. Now, after you talked to her father, was it determined that your husband and M.G. [redacted] would contact anybody else to tell them what occurred?

A. Yes. I had told my husband they needed to contact Staci across the street because her child played with them as well.

Q. And so that is what you told them to do, is that right?

A. Yes, sir.

Q. Now, during the time when you saw Minor [redacted] play with your daughter, did you ever notice Minor [redacted] doing anything inappropriate as far as normal for a six year old?

A. No.

Q. Thank you very much. Answer any question that Mr. Anderson has.

THE COURT: Mr. Anderson, Cross Examination.

MR. ANDERSON: I don't have any questions, Judge.

THE COURT: Ms. Anderson, you may step down and you are free to leave when you feel it is appropriate to do so.

(Witness excused by the Court)

(Brief pause in the proceeding)

THE COURT: Yes, maam, please come forward.

SHARI NICHOLS, being duly sworn, testified as follows:

CLERK: Please be seated and state your full name for the record.

THE COURT: Have a seat in the witness chair and pull up real close to the microphone. Speak loudly and clearly and slowly in order that we can hear everything that you have to say.

Let's start with your full name.

WITNESS: Staci Parker Nichols.

DIRECT EXAMINATION

BY MR. WELLS:

Q. Back in 2011, you were Staci Parker?

A. Yes, sir.

Q. And have you recently married since your last name is Parker now?

A. Yes, sir,I have.

Q. All right, very good. Now, what type of work do you do?

A. I'm a registered nurse at Kershaw Health.
Q. All right. Now, did you formerly live on Sweeney Drive in Florence?
A. I did.
Q. And did you live there back in 2011?
A. I did.
Q. When did you first move in there?
A. I moved in there in 1999.
Q. All right. Now, did you also have a son who was living with you back in September of 2011?
A. I did.
Q. And what was his name?
A. Easton.
Q. All right. Now, is he a similar age to the victim, Minor [redacted], in this case?
A. He is a couple of years younger than Minor [redacted].
Q. Okay. Back in 2011, did he play with Minor [redacted] and her younger sister, M.A. [redacted]
A. Very frequently.
Q. Now, where did you live in relationship to Minor [redacted] and her family?
A. Right next door.
Q. What is the name of Minor [redacted] and M.A. [redacted] mother?
A. Karen.
Q. And did you know her?

A. I did.
Q. Now, did any other relatives live in the house prior to Karen moving in with her children?
A. Karen's mother and stepfather. They lived there before they moved there.
Q. All right. After they moved in, did the parents move out?
A. Yes, sir.
Q. Now, may I assume that Karen was already divorced from her previous husband, Jorgen, when she moved in there? Is that correct?
A. I don't recall if they were completely divorced at that time but they were not together when she moved in.
Q. All right. Now, are you familiar with the Defendant in this case, Leonard Brockington?
A. Just by seeing him. By acquaintance.
Q. All right, and when did you first meet him?
A. I met him when he was at Karen's house and we would be out in the yard.
Q. All right, and was that back in 2011?
A. Yes, sir.
Q. How did you meet him? Do you remember?
A. Just the children would be outside playing, and he would be outside as well. I would be outside watching my kids.

Q. All right. When you first met the Defendant, did he do anything to make you feel uncomfortable?

A. At one point he was sitting in the side yard and I was sitting in my yard, and the children were riding their bicycles around the driveway, and he was taking pictures on his cell phone, saying he was sending it to his mother because it was so cute.

I just thought it was strange.

Q. All right, and did you bring the child back in the yard?

A. Yes. I told him to come back over.

Q. All right. Now, during the time -- during that time period when you would see Minor did you ever see her act inappropriately for a six year old child?

A. Not in my presence.

Q. All right. Now going back, on September 24, 2012, did anything out of the ordinary happen as far as a disclosure made to you by another neighbor?

A. I was called over by my neighbor, Kirby Anderson. His daughter, M.G. [redacted], had been over and had told him what had happened, what had been told to her.

So I walked across the street . .

Q. To their house?

A. . . to talk to them.

Q. All right. When you arrived there, how did M.G. [redacted]

appear to you?

A. M.G. [redacted] was upset, she was crying; didn't know what to do or what she should do, she told me.

Q. All right. As a result of receiving that information what was the next thing that was done as far as contacting anybody else?

A. At that point Karen was not home, and since I had a closer relationship with her than Kirby, I decided I would tell Karen what the child had told M.G. [redacted].

Q. Now, did Karen subsequently come home on that particular day?

A. She did. It wasn't too much longer after that.

Q. Did the Defendant appear to be home at the time?

A. If he was, he wasn't where I saw him.

Q. And did you actually tell her outside or go inside?

A. I did. I called her over and told her I needed to talk to her, and we went up under my carport and I then explained to hero what Minor [redacted] had told M.G. [redacted].

Q. How did Karen react when you told her that?

A. She was pretty nonchalant; said that she wasn't sure that Minor [redacted] was telling the truth, and that she would look into it.

Q. And do you know if she immediately stopped the Defendant from coming to her house?

A. She did not.

Q. Now, did you advise Karen she should tell anybody else about this?

A. I told her I thought she should call Minor dad because if she was telling other people she would probably subsequently tell her father.

Q. Now, did Karen work during that time period?

A. Not to my knowledge.

Q. Now, after you had that conversation with her, did she ever talk with you again?

A. No, sir. I moved shortly after that.

Q. Just one other thing and I'll sit down.

I believe you indicated that the mother -- when you told her this, she just appeared to be nonchalant. What did you mean by that?

A. Um, she wasn't visibly upset by the news. She didn't act shocked by the news. She was just, you know, Minor has been known to tell lies. She just kind of downplayed it.

Q. All right. If you would, answer any questions Mr. Anderson might have.

THE COURT: Mr. Anderson, you are recognized.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Ms. Parker, do you know Chad Collins?

A. Yes, sir.

Q. I think he came to your residence. Is that right?
A. Yes, sir.
Q. And can you see him over that podium?
A. Yes, sir.
Q. And did a D.S.S. worker also come?
A. . .
Q. A Jamie Shefton -- does that ring a bell?
A. I think so.
Q. And they sat down and discussed with you what you had heard and what you observed?
A. Yes, sir.
Q. Okay. You said you had lived there, I guess, since 19 . .
A. Ninety-nine.
Q. . . and this happened when you had been there twelve or thirteen years?
A. Yes, sir.
Q. So you had had an opportunity to live next door to Karen how long?
A. Since she had moved in.
Q. And when did she move in?
A. I don't recall the exact date she moved in.
Q. Was M.A. [redacted] with her?
A. Yes, the children were both with her when she moved in.

Q. And M.A. was four in 2011?
A. Yes, sir.
Q. And I think Minor was six?
A. I believe so.
Q. So they had lived next door to you for a few years?
A. Probably a year.
Q. Okay. Karen had custody of the two girls at that time?
A. Yes.
Q. Do you know whether they ever left and went to visit with their dad?
A. They did.
Q. How often would they go?
A. I don't recall. I didn't pay that much attention to that.
Q. You indicated earlier they played with your son a good bit?
A. Yes.
Q. So I guess when they were playing with your son they wouldn't have been off visiting their dad?
A. No, I mean they would just have been at their house. They were -- we were just neighbors. They would come over and play in my yard. My son would go play in their yard, or they would come and play in our house with our toys. They just played like neighbors play.

Q. So in September of 2011 you had no reason to doubt that Karen was a good mom, did you?
A. No, sir.
Q. You had no reason to question her judgment, did you?
A. No, sir.
Q. So you felt safe sending your son over there to play with her children?
A. Yes.
Q. Were you ever made aware that your son had been caught in the closet with Minor
A. Yes, she told me that one time.
Q. That the two of them were caught playing in there naked?
A. Yes, sir.
Q. And when was that?
A. The summer of that year.
Q. Between July and August of 2011?
A. I suppose. I don't recall the exact dates of those things.
Q. But it did happen certainly?
A. Yes, it was prior to that.
Q. And you said that when you told Karen what had happened she -- if I'm remembering right -- she was not shocked?
A. Yes, sir.

Q. Is that right?
A. Yes, sir.
Q. And she said that sometimes Minor would make things up?
A. Yes, sir.
MR. ANDERSON: Court's indulgence for just one moment, Your Honor.
(Brief pause in proceeding)
MR. ANDERSON: Your Honor, if it please the Court? I don't have any more questions.
THE COURT: Any Redirect?
MR. WELLS: A couple of questions.
REDIRECT EXAMINATION
BY MR. WELLS:
Q. So in other words, when you told Karen about this, she continued to live with her boyfriend. Is that right?
A. Yes, sir.
Q. That's all.
THE COURT: Very good. You may step down.
(Witness excused from stand)
MR. WELLS: Your Honor, in order to clarify with some witnesses where they are in position, could I have a short break?
THE COURT: Certainly. Mr. Foreman, ladies and gentlemen of the jury, I'm going to allow you to go back to your

jury room and refresh yourselves.

Do not discuss the case. Mr. Foreman, I'm going to ask that you enforce that rule. Do not discuss the case.

Everyone remain seated as the jury exits.

(Jury excused from Courtroom)

THE COURT: Anything from the State before we recess?

SOLICITOR: No, Your Honor.

THE COURT: From the Defense?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: We'll stand at ease for a short moment.

(Whereupon, the Court took a brief recess, after which the matter continued)

THE COURT: Anything from the State before we proceed?

MR. WELLS: If I could check on Ms. Parr -- just one second.

(Brief pause)

THE COURT: Anything further from the State?

MR. WELLS: No, Your Honor.

THE COURT: From the Defense?

MR. ANDERSON: No, sir.

THE COURT: Bring the jury.

(Note returned to the Courtroom from the jury)

THE COURT: All right, a question has been posed, does it make any difference as far as high school with two

witnesses? They have not had contact with since.

The question was asked in about five or six different ways, if there was any reason why they could not be fair and impartial; have a close personal, business or social relationship with any of these witnesses.

I don't know what we could have done to ensure that further. However, my inclination is to call the two jurors out and call that to the Foreman's attention, and ask them if the fact that you knew them in high school, would that affect their ability to be fair and impartial.

What do you say about that, Mr. Wells?

MR. WELLS: I think that would be appropriate.

THE COURT: Mr. Anderson?

MR. ANDERSON: I think that would be the appropriate procedure, Your Honor.

THE COURT: We'll have -- just get the Foreman to have the jurors come out one at a time. Bring those jurors out one at a time.

BAILIFF: Yes, sir.

(Juror coming into Courtroom, Number 59, Stephen Hall)

THE COURT: Right there would be fine. Mr. Hall, how are you doing?

I have information from the Foreman that you might know one of these witnesses and that you knew them back in high school. Is that correct?

JUROR: Yes, sir.

THE COURT: The fact that you have known them in previous years, would that affect your ability to be fair and impartial and base your ruling on the evidence presented here or lack thereof, and the law as I charge it to you?

JUROR: In no way, shape or form.

THE COURT: All right. You are qualified to serve. Thank you.

(Juror Hall returned to jury room)

(Juror coming into Courtroom, Number 44, Susan Evans)

THE COURT: Your full name?

JUROR: Susan Cochran Evans.

THE COURT: All right, Ms. Evans. It's been called to my attention that you might know one of these witnesses from high school years and had a very close relationship with him.

The first inquiry is whether or not the fact that you know them from previous years -- would that affect your ability to be fair and impartial, and would you listen to the evidence presented in this case as a whole or the lack thereof, the law as I charge it to you, and give both the State and Defendant a fair and impartial trial?

Can you do that?

JUROR: Yes, sir.

THE COURT: All right, you are qualified to serve,

thank you.

(Jury returned to jury room)

THE COURT: Any further inquiry from the State?

SOLICITOR: None from the State.

THE COURT: Any from the Defense?

MR. ANDERSON: No, sir.

THE COURT: Very good. We're ready to proceed.

(Jury brought into the Courtroom)

THE COURT: Mr. Wells, you're recognized. You may call your next witness.

MR. WELLS: Your Honor, we'd call Jorgen Waldermo.

THE COURT: Yes, sir. Please come forward.

JORGEN WALDERMO, being duly sworn, testified as follows:

CLERK: Please have a seat and state your full name for the record.

THE COURT: Pull your chair up real close to that microphone and speak up loudly, clearly and slowly in order that we can hear everything you've got to say.

WITNESS: Jorgen Waldermo, W A L D E R M O.

THE COURT: Spell the first name too.

WITNESS: J Ö R G E N.

THE COURT: Mr. Wells.

DIRECT EXAMINATION

BY MR. WELLS:

Q. Where were you born and grew up?
A. Norway.
Q. And when did you first come to the United States?
A. In 1989.
Q. What was your purpose in coming to this country?
A. To attend the University of South Carolina.
Q. And did you attend and graduate from the University of South Carolina?
A. Yes.
Q. Now, while you were a student at USC, did you meet at that time your first wife, Karen?
A. Yes.
Q. Was she also a student at USC, or was she a student at another school?
A. She was a student at another school.
Q. Now, do you remember approximately what year you and your first wife, Karen, were married?
A. In 1993.
Q. Now, did you and Karen subsequently have children together?
A. Yes.
Q. How many children did you have?
A. Two children.
Q. Were they boys or girls?
A. Two girls.

Q. And what are their names?
A. Minor and M.A.
Q. How old are Minor and M.A. now?
A. Minor has just turned nine, and M.A. is seven.
Q. So they are about two years apart then?
A. Yes.
Q. Now, that means back in 2011 Minor if she's nine now, was then around six. Is that right?
A. Correct.
Q. Now, what type of work do you do?
A. I'm a computer programmer.
Q. And do you work for yourself or a particular company?
A. For a company.
Q. And how long have you done that?
A. Computer programming, thirteen years.
Q. During the period you were married to Karen, what places did you live?
A. We lived in Durham, North Carolina, in Cary, North Carolina, and Florence, South Carolina.
Q. All right. Now, was it when you and Karen were living in Florence that you had marital problems and separated?
A. That's correct.
Q. What year did you separate?
A. In 2008.
Q. And what year were you divorced?

A. In 2009.
Q. You were divorced after a year of separation basically?
A. Yes.
Q. Now, after the divorce did your two children, Minor and M.A. live with Karen with you having visitation rights?
A. That's correct.
Q. Now, after the divorce did you continue to live in Florence for a period of time?
A. Yes.
Q. And did you subsequently move to Charlotte?
A. Yes.
Q. Now, in what year did you meet your present wife, Jeanene?
A. In 2011 -- in 2010, excuse me.
Q. In 2010?
A. Yes.
Q. And you all married in late 2010?
A. Yes, in November 2010.
Q. How did you all meet?
A. E Harmony.
Q. Now, after you and Jeanene first married, where did the two of you all live?
A. We had -- I had my house in Florence, and she had a house in Charlotte and was trying to run a business at the

same time. She was back and forth a lot.
Q. What work did she do?
A. She is an interior designer.
Q. Now, when did you first learn of the Defendant?
A. That was probably in 2011.
Q. All right. Was Karen the person who made you aware of him?
A. Yes.
Q. Did she indicate what type relationship she was having?
A. Yes, that he was her boyfriend.
Q. And did she ever indicate that he was staying with her?
A. It seemed that way by what was going on as far as the logistics.
Q. All right. Did you all have a concern that you tried to help them with over the fact she was getting the children up very early to drive him to work in Sumter?
A. Yes, we had some concerns about that.
Q. And as a result of that, did you offer -- did you actually give them some money to try to help them in that regard?
A. Yes, we gave them some money to try to help with the situation.
Q. Now, let me call your attention to the weekend of

September 24th and 25th of 2011. Now, on that particular weekend did you have occasion to call Karen's house to talk with your daughters?

A. Yeah, I typically called and talked to them, so it was a normal call.

Q. All right. Now, before the call was ended, did Karen get on the phone?

A. Yes, she did.

Q. And what, if anything, did she indicate as far as some statements that had been made?

A. She said some allegations had been made but I didn't know the details, and I was somewhat concerned.

Q. Did she say who this involved?

A. Yes.

Q. And who was that?

A. Brock.

Q. And on which child?

A. On Minor .

Q. Is that a name you had called him from time to time?

A. Yes.

Q. All right. Now, as a result of hearing that information for the first time about some allegations of which you did not know the details, what steps did you then take as far as the children in that regard?

A. We drafted an Email and sent it to Karen with some

suggestions so we could safeguard everybody and make sure things were handled appropriately until we could get more information about the situation.

Q. All right. Now, as a result of that, did you also request to have the children come to your house for visitation the next weekend?

A. That was our visitation anyway, so, yes.

Q. They would have come anyway?

A. Yes.

Q. Now, on that weekend, the next weekend, which would have been around October first or October second of 2011, did Minor disclose to you about her being abused?

A. Yes. On Sunday we were sitting in the room talking about Florence. And at that time she started sharing some things that were very alarming.

Q. And did that involve sexual abuse?

A. Correct.

Q. All right. Was that the first time you had actually heard these allegations?

A. Yes.

Q. All right. Now, prior to that time had Minor ever acted like she was mad with the Defendant, Mr. Brockington?

A. I got the impression that they didn't like him, and so that's correct.

Q. But had you heard her defend him before?

A. Yeah. In one situation initially when I heard her sexual allegations, I was concerned that it was because she didn't like him. So I asked some other questions, and she made a statement.

I asked, does he spank you, and she said, no, he . .

MR. ANDERSON: Your Honor, I'm going to object.

THE COURT: Sustained.

BY MR. WELLS:

Q. But did she in fact actually defend the Defendant on other occasions as far as other things?

A. Yes, she defended him clearly.

Q. All right. Now, as a result of receiving that information that weekend, did you subsequently call Karen and tell her what you planned to do?

A. I called and told her I had to report this to the police.

Q. All right. What was her reaction?

A. She begged me not to do that.

Q. All right. Now, did you in fact on that Sunday call the Florence Police Department?

A. I called the Florence Police Department that Sunday.

Q. And what, if anything, were you isntructed to do?

A. To show up in Florence that morning and bring the kids to school.

Q. And was that Delmay here?

A. Delmay.
Q. Did you in fact do that?
A. Yes.
Q. When you came to Florence did you also contact the Department of Social Services or D.S.S.?
A. Yes, that's correct.
Q. At the school were you met by a D.S.S. worker as well as the Florence police officer?
A. That's correct, yes.
Q. And where did they have you all to go?
A. The principal's office.
Q. Now, did the D.S.S. worker subsequently talk to Minor by herself, or without you being present?
A. Yes.
Q. As a result of that conversation, did she indicate the children would no longer be allowed at that time to live with the mother and the Defendant?
A. Yes.
Q. And was custody going to be transferred to you and your wife at that time?
A. Correct.
Q. Now, you had mentioned you had had a house in Florence. Where was that house located?
A. On Brianwood Drive.
Q. All right. In October of 2011, had you sold the house?

A. I'm trying to remember when I sold it.
Q. But you were in Charlotte before that time?
A. Yes, that was in 2010 -- no, 2011.
Q. All right. Nonetheless, did you and your wife continue -- did you and your wife decide that you should live in Florence for a period of time?
A. Yes, when we heard about the situation and we didn't want to take Minor out of school, so we made arrangements to live in Florence again. We moved back to Florence full time.
Q. And was that so that Minor could finish that semester in school?
A. That's correct, and make the investigation easier for everybody.
Q. Right. Now, subsequently afer the Christmas break did you subsequently move to Charlotte at that time so the children could start a new semester in school?
A. Yes, we were given permission and we started them in school there the following semester.
Q. Now, after Minor 's disclosure in September of 2011, and during that particular time period thereafter, did you notice any different behavior on the part of Minor that concerned you?
A. Yes. Several things.
Q. If you would, just relate some of the things that

you observed?
A. She wet the bed at night, and she . .
Q. Did she do this previously?
A. She did not do it before, and in general like anger -- anger inside her that I had never seen before.
Q. How was -- can you give us an example of a way you observed her expressing her anger?
A. Yes. We brought a trampoline over to where her mom lives after we moved, and at that time she was out in the yard beating ants with a -- with like a metal rod and was really anger, really getting at them, and her mom had indicated several times she just didn't know how to handle her she was so out of hand.
Q. Okay. Did she ever do anything to demonstrate being more sexually aware?
A. Yes.
Q. What was that?
A. One time in the car she had a water bottle and started putting it down toward her vagina, like bearing toward that area, and also in the bath there were several instances with that part.

I didn't witness that myself but my wife was telling me about it.
Q. Tell us about what you actually witnessed.
A. Just the thing with the water bottle.

Q. Now, during that time frame, would the mother, Karen, have supervised visitation with her daughters?
A. That's correct.
Q. Now, during that time period how would Minor act in exchanges with her mother?
A. Very distant to her. Angry at her, and just it seemed like she didn't want to have much to do with her.
Q. Now, after Minor moved back with you and your wife and you moved back to Charlotte, I guess in January of 2012, did you seek counseling for Minor
A. Yes, a counselor in North Carolina.
Q. And how did you feel about that counselor, or did it help her?
A. It helped. It was play therapy. It was very low pressure and tried to let her work at her own pace, and it seemed like she really enjoyed that time.
Q. All right, and did she subsequently get some additional counseling?
A. Yes.
Q. And where was that?
A. At the Ark where they did the forensic interview. We were told they had some great counselors there, and we wanted her to get the utmost help so we drove to Columbia to get her into counseling there.
Q. Now, did the counseling there seem to help Minor

A. It helped a lot.

Q. Now does Minor appear to act fairly normal on a normal basis?

A. Yes, she's much better. She still wets her bed at night but she is much better.

Q. Just one final thing. Why did you change counselors?

A. It was -- we were in touch with the Ark and we actually needed to find a counselor. Karen didn't want to continue with the one in North Carolina. We had an agreement in our settlement that we would have a neutral counselor that none of us had talked to, and so we could both feel good about going there on new terms and she could figure out what was going on.

Karen was supposed to go to that counselor as well, but she hasn't made it there yet.

Does that answer your question?

Q. So it was because of the agreement -- was one of the reasons you changed?

A. Yes, we had to change counselors. We couldn't continue with the one in North Carolina.

Q. So you changed to one in Columbia?

A. Middle ground, yes.

Q. Answer any questions Mr. Anderson may have.

THE COURT: Mr. Anderson, you're recognized. Cross examination.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. How is the best way to pronounce your last name?

A. Waldermo.

Q. Mr. Waldermo, right now you're living in Charlotte?

A. That's correct.

Q. You remarried -- I think you indicated you remarried in 2011?

A. Yes.

Q. I'm sorry, in November of 2010?

A. Yes, in November of 2010. That's right.

Q. We won't hold you to a day.

A. Yes.

Q. Two girls are Minor and M.A. and you and Karen were divorced in 2009?

A. Yes, February of 2009.

Q. Separated, I guess, in 2008?

A. Yes.

Q. Then got divorced after one year separate and apart?

A. Yes.

Q. For the jury's edification, you all lived separate and apart for a year, and that is one of the grounds in South Carolina to get a divorce, if you live separate for a year. Is that right?

A. Yes, that's right.
Q. In that agreement or in the divorce you all did like a custody agreement or division of property -- things like that. Do you recall that?
A. Yes.
Q. You agreed to pay Karen, I think, One Thousand One Hundred Fourteen Dollars a month?
A. That's correct.
Q. In child support?
A. That's correct.
Q. And you also agreed to pay on a temporary basis -- I think it was four years -- alimony of Six Hundred Dollars a month?
A. Correct.
Q. At the time you all separated and signed this paperwork you, I guess, were working as a computer programmer?
A. Yes.
Q. And if I recall correctly, you were making approximately Six Thousand Dollars a year -- I mean a month. Is that right?
A. Yes.
Q. She was imputed Twenty-one to Twenty-two Hundred Dollars a month? She wasn't working at the time but she was imputed that. Is that right?
A. Imputed -- I gave her this.

Q. Capable of earning Twenty-two to Twenty-three Hundred Dollars a month?
A. I don't know.
Q. Okay. Divided the property? I mean, physical things like houses?
A. Yes, sir.
Q. And you assume a lot of credit card debt?
A. Yes, whatever was in my name.
Q. And I think that was approximately Seventy Thousand Dollars? I mean, it was a lot of credit card debt?
A. Probably not in my name but half of it probably was in my name.
Q. Okay. Now, when you and Karen separated in 2008 and later had the custody agreement in 2009, there was no reason whatsoever to think that Karen was not a good mom?
A. No, just some instability from time to time. In general a good mom.
Q. And that would be all of 2009, all of 2010, into 2011, is that right?
A. Yes.
Q. You had every other weekend?
A. That's correct.
Q. And there was a provision, like in most form Orders, that you could have other times when the parties could mutually agree?

And there were provisions for Thanksgiving, Christmas and things like that. Is that right?

A. Yes.

Q. Also, I think there was a provision that if you went out of the country you certainly could do that, I guess, if you wanted to return to Norway?

A. That's correct.

Q. Okay. Now, all of this happened in, I guess, September and October of 2011?

A. Yes.

Q. And a safety plan was enacted, and you got custody of the two children?

A. Yes.

Q. And when you got custody that was the end of the child support. Is that right?

A. I kept paying the child support.

Q. All right, when did you quit paying that?

A. I think when they told me that I could stop, and I think that was even after the emergency hearing.

Q. All right.

A. The Judge ordered it.

Q. In December were you paying it at that time?

A. No.

Q. Two or three months later you weren't paying it?

A. Yes, that was when the emergency hearing was.

Q. Now, to do the math, in 2009 about Thirteen Thousand in child support, Eleven Hundred a month. Is that right?
A. Yes.
Q. In 2010 it would be the same thing, about Thirteen Thousand? Then in 2011 up through October, about Ten or Eleven Thousand Dollars?
A. Yes, that's correct.
Q. And if you had kept on paying child support until Minor reached, I guess, high school graduation or they graduated from high school, that could have been a Hundred Fifty to Two Hundred Thousand Dollars. Is that right?
A. That's probably right.
Q. You said this first came out in September of 2011, is that right
A. Yes.
Q. And isn't it true that prior to September of 2011 Karen called you because Minor was acting out -- I think we need to get some counseling?
A. That's right.
Q. And did she tell you about an incident that happened at the DMV where she pulled her dress up and flashed people?
A. Yes, she told me about that.
Q. And that was prior to September of 2011, wasn't it?

A. That's correct.
Q. Didn't Leonard get on the phone with you and say, hey, Minor is acting a little funny; I think we ought to get her checked out?
A. Yes, he got on the phone with me and also in person one time.
Q. Okay, and that wasn't in October? That was prior to October. Right?
A. Prior -- probably two weeks before we heard something and I talked to him in person.
Q. Okay. Now, the counselor that she was seeing in North Carolina, that would be Ms. Wendy Stenbara, is that right?
A. That's right.
Q. And Minor saw her for about a year?
A. That's sounds right.
Q. And over that course of a year, Minor did not want to discuss it. Is that your understanding?
A. Yes, that's right.
Q. Refused to bring it up; didn't want to talk about it?
A. Under no pressure.
Q. And then you actually change her counselor or take her to Columbia to another counselor?
A. That's correct.

Q. Would it surprise you to know that in the counselor's notes it says Minor was brought to me for preparation of trial testimony?

A. . .

Q. Would that surprise you?

A. No, it wouldn't surprise me.

Q. Would it surprise you to know that she has seen that counselor . . .

MR. WELLS: Your Honor, we'd have to object to his using these records unless he's going to introduce them into evidence.

THE COURT: Objection overruled. He can look at the -- he's not introducing the records but he's just answering the questions. Overruled.

BY MR. ANDERSON:

Q. Would it surprise you to know she has seen that counselor twelve times?

A. No, it wouldn't.

Q. As a matter of fact, haven't you brought Minor to this very Courtroom?

A. Yes.

Q. As a matter of fact, hasn't Minor been in this building on more than one occasion?

A. Yes.

Q. Not counting yesterday or today?

A. Two occasions.
Q. Were you and Minor given any trial notebook to take home?
A. She may have. I haven't actually seen it.
Q. Something concerning court procedures? Have you done homework with her concerning court procedures?
A. Possibly but I don't remember ever doing any homework with her about that.
Maybe Jeanene did.
Q. Have you talked with her about the case?
A. Minor
Q. Yes.
A. No.
Q. She made some allegations to you in October of 2011, didn't she?
A. Minor made some allegations to me?
Q. She told you some things in October of . .
A. Yeah. Exactly. October first or second probably.
Q. As a result of that, did you later take her to the Ark Center in Columbia?
A. Yes.
Q. And that is when she saw a doctor or a psychologist?
A. Yes, not a doctor but a psychologist.

Q. Did they ask you to fill out a clinical intake sheet?

A. All that paperwork Jeanene would have done. I don't remember.

MR. ANDERSON: Your Honor, may I approach the witness?

THE COURT: You may.

BY MR. ANDERSON:

Q. Mr. Waldermo, do you recognize that?

A. Yeah, that is my handwriting.

Q. Okay. Does it have your signature on that front page?

A. Yeah. Seeing this paperwork now I remember.

Q. Okay. Is that an intake form?

A. Yes.

Q. You remember filling this out?

A. Well, vaguely. I fill out a lot of forms.

Q. Do you want to take a look at it?

A. I filled it out at age forty-four. I'm now forty-six.

Do I need to read this now?

Q. No, sir. I asked you a second ago -- your memory does not get better with time, does it?

A. No.

Q. The more time that goes by, the less likely you are

to remember events and how they happen?

A. Certainly.

Q. You took Minor to the Ark which, I guess, is the sexual abuse resource center in Columbia, is that right?

A. That's right.

Q. You took her in October of 2011?

A. It may have been October. It was several weeks after the initial allegation. The first appointment we could get, we took her there. It was recommended we take her from D.S.S.

That was their recommendation, that we take her there for the initial forensic interview and physical investigation.

Q. One of the questions they asked you on this intake interview is tell us how you came to know where there might be a problem. The child said something to you.

Tell us what it was the child said as close to the exact words that you can remember.

Do you recall that question?

A. In what context?

Q. Number eight.

A. Let me get my glasses so I can see. Yes.

Q. Do you remember filling that out?

A. Yes.

Q. And, again, to your recollection this was in October

of 2011?

A. Correct.

Q. That intake form was prepared so as to give the counselor or doctor or psychologist information about the case?

A. Yes.

Q. Did Chad Collins go to that interview also?

A. I don't think he was there. If he was, I don't remember. Maybe in the waiting room.

Q. How about Jamie Shefton?

A. She was there.

Q. Did you tell the counselor on that intake form that Minor said he had touched her?

A. I don't think so. I mean, unless she had asked me some questions. If she had, I probably would have answered them.

Q. On number eight you didn't indicate she said he had shown his front bottom and asked her to touch him? He also touched her front bottom?

A. Are you asking if I talked to Ms. Shefton?

Q. No, to the counselor about what you put on this intake form.

A. I don't remember seeing a counselor. I filled it out.

Q. Did you say that in your answer, that he had touched

her over her pajamas?
A. I said that in my answer, yes.
Q. The only reason you would have said that is if you had heard it from someone?
A. Well, yeah.
Q. You didn't make that up, did you?
A. No.
Q. Okay. Now, Minor has never indicated to you when this may have happened, has she?
A. No, not . .
Q. She didn't say it happened when it was cold in 2011?
A. No.
Q. Never said it happened in the spring of 2011?
A. That's correct.
Q. Never said it happened in the summer of 2011?
A. No.
Q. Never said it happened before school started back in 2011?
A. No.
Q. Now, you were exercising visitation with her all of 2011, weren't you?
A. Yes.
Q. Saw her a couple of times a month?
A. More than that.
Q. And the first time she said something to you was

that first weekend in October of 2011?
A. That's correct.
Q. Now, when you talked to Leonard earlier that year, he denied doing anything, didn't he?
A. It wasn't a question about that. He came to me to talk about his concerns two weeks prior to this incident.
Q. Face to face?
A. Yes, and also when I was in the house delivering a couch he took that opportunity to talk to me.
Q. Also on the phone?
A. I know I spoke with him on the phone on one occasion, so it's possible that was something on the phone, but what is clearer to me is in person.
Q. Okay.
MR. ANDERSON: Court's indulgence for a moment, Your Honor.
(Brief pause in proceeding)
MR. ANDERSON: Your Honor, that's all the questions I have. Thank you.
THE COURT: Redirect?
MR. WELLS: Just a couple.

REDIRECT EXAMINATION

BY MR. WELLS:

Q. Jorgen, a couple of things first. Mr. Anderson asked you about the fact that you no longer pay child

support.

Would you estimate that you pay now just as much with Minor and M.A. living with you and you are sending them to an expensive private school?

A. Yeah, a lot more than that.

Q. So you actually are paying more now than what you were paying in child support?

A. Yes, a lot more.

Q. All right. Now, Mr. Anderson has asked you about this particular sheet. He's been questioning you about number eight. He's asked about this, and I would just ask you to read off number eight what is written here?

A. You want me to read what I wrote?

Q. Yes, just read it after the question mark.

A. Tell us how you came to know there might be a problem. If the child said something to you, tell us what was said as close to the exact words as you can remember.

Q. Just read what you wrote. The last sentence is by Jeanene? Some by you and some by Jeanene?

A. Yes, that is by Jeanene, the last sentence.

Q. All right.

A. First mother contacted us and said her neighbor had heard from Minor about abuse. Then we talked to Minor and she told us what happened. That she, Minor said he had showed his front bottom and asked her to touch him.

He also touched her front bottom with pajamas on.

Minor -- this was the last sentence Jeanene wrote. Minor also told me that Brock made her touch him and she did masturbation motions.

Q. All right.

MR. WELLS: I would move this report into evidence.

THE COURT: Any objections?

MR. ANDERSON: Your Honor, may we . .

THE COURT: Yes, come fowward.

(Conference at the bench between counsel and the Court off the record)

MR. ANDERSON: No objection.

THE COURT: That's State's Exhibit 1, is that correct?

REPORTER: Yes.

(Intake form admitted without objection as State's Exhibit 1)

THE COURT: State's 1 is in evidence without objection from Defense.

MR. WELLS: That's all the questions I have.

THE COURT: You may step down.

(Witness excused from stand)

MR. WELLS: Call Jeanene Waldermo.

JEANENE WALDERMO, being duly sworn, testified as follows:

THE COURT: Come on forward.

CLERK: Please be seated and state your name for the record.

WITNESS: Jeanene Waldermo.

THE COURT: Have a seat in the witness chair and pull up real close the microphone. Speak loudly, clearly and slowly so we can hear everything you've got to say.

DIRECT EXAMINATION

BY MR. WELLS:

Q. Jeanene, first of all, what is your relationship to Jorgen Waldermo, who just testified?

A. He is my husband.

Q. And what year did you all meet and what year were you married?

A. In 2010 and we were married in 2010.

Q. How did you all meet?

A. We met on line, E Harmony.

Q. Okay. Now, did your husband have two daughters from a previous marriage?

A. He did.

Q. And what are their names?

A. Minor [redacted] and M.A. [redacted]

Q. About how far apart are they in age?

A. Two years or thereabouts.

Q. All right, and which is the older child?

A. Minor .
Q. All right. Now, during that time period, did the children live with their mother?
A. They did, until October of 2011.
Q. All right, and your husband had visitation rights?
A. He did.
Q. Now, at the beginning of October of 2011, did Minor have occasion to disclose to you and your husband some sexual abuse the occurred to her by the Defendant at her home in Florence?
A. She did.
Q. And as a result of receiving that information, did your husband ultimately report that to the authorities in Florence?
A. He did.
Q. And at that time, did D.S.S. determine that Minor and M.A. should at least at that time live with you and your husband?
A. Yes. They interviewed her and then told us that they had determined that.
Q. All right. Now, as a result of that change in custody did you and your husband move back to Florence for a few months?
A. Yes.
Q. Why did you all come to live in Florence for the

next few months after that was disclosed?
A. Minor was in school and with that and everything else that was going on it would just be an easier transition. She could continue in school and finish out until some period of time that made a little more sense.
Q. Did she basically finish out that semester there?
A. Yes.
Q. And was it after the Christmas break that you moved to Charlotte and put her in private school?
A. Yes.
Q. Now, what type of work do you do?
A. I'm an interior designer, and I do full time construction projects.
Q. All right. So since you were working, at that time you moved to Florence did you basically have to give up your job through that period of time?
A. That's right.
Q. And as a result of not being able to work at that time, were you the person who was probably the most around Minor when she was not in school during that time period?
A. Yeah, from the time I would pick her up from school and be with her
Q. During that time period did you observe any behavior on the part of Minor that did not appear to you to be

totally normal?
A. Yes.
Q. Okay. Now, the first thing, let me ask you about -- were you present at a doctor's exam in December of 2011?
A. Yes, I was.
Q. What, if anything out of the ordinary, occurred during that examination?
A. It was a normal exam for school where they have to do an exam, and she was laying down, and the doctor felt her arms and felt her stomach, and then just barely lifted her pants up and she froze and started crying, and that was it
Q. And did the doctor continue to try to examine her after that?
A. No.
Q. And what was some other inappropriate behavior you observed during time when you were in Florence and when you first moved back to Charlotte?
A. She and her sister take a bath and she had this little animal and she had it in the bathtub for some reason, and when I came in she was kind of putting it in what she calls her front bottom.
Q. Would that be her vaginal area?
A. Yes.

Q. All right.

A. One time she was eating her snack which was a carrot, and I came in and she had it in her mouth and she was sucking on it and kind of in a daze, and I asked her, are you okay? But it was not just eating a carrot. She was sucking on it.

Q. So she was not eating the carrot but just sucking on it?

A. Yes. It was a really long carrot like you get in a bunch, so . .

Q. Now, were there any anger issues?

A. Yes. One time when we were visiting at Karen's house and she was out in the back by the trampoline, Minor had a bat and she was like hitting the ground and said she was killing ants.

She was screaming, and then pretty much any little thing that happened to her, whether it was her homework or getting ready for bed, would get her upset.

Then there was one time when she was in a session and the counselor was reading a book about a child that had experienced some things, and Minor closed her eyes, began singing, like la, la, la, and running around the room and throwing things at the wall, just being out of control and almost like she didn't realize what she was doing.

Q. And was there any problem with bed wetting?
A. Yes. Every night she wet the bed. We would take her up in the night to the bathroom and she would still wet.
Q. And did that start during that particular time in 2011?
A. Yes, it did.
Q. Was there ever any problem with her doing anything with her hands?
A. I know she got into a lot of different odd habits. She bit her nails to where it would bleed. She rubbed her hands on her skin. She -- there was a time she would repeat everything she said, literally everything. (Portion not audible)
Q. Now, after you moved back to Charlotte, did you seek counseling for her?
A. Yes.
Q. And so she was in counseling for a period of time there in Charlotte?
A. Yes.
Q. And what type of therapy did that appear to be?
A. They call it play therapy where they are just kind of hanging out and mainly in that therapy she would do the exact same thing every single time. Anything that was different from that she would get really upset

and if they played games she would not want to play, or . .

Q. Now, did you subsequently change to another counselor in Columbia?

A. Yes.

Q. And that was at the Ark Center in Columbia, I believe?

A. Yes.

Q. All right. Now, as a result of counseling and with the passage of time, did Minor 's behavior improve as to how she is able to act now?

A. Yes.

MR. ANDERSON: Your Honor, I'm going to object.

THE COURT: Sustained.

MR. ANDERSON: That was over a long period of time.

BY MR. WELLS:

Q. Do you notice, other than the bedwetting, anything that is not normal now?

A. . .

MR. ANDERSON: Objection to leading.

Q. Tell us whether or not you observe anything that is abnormal?

A. I mean, there are subtle things, you know, some deep down things, where we tell the counselor, but in general her teachers say she is much more calm and is

capable of being there. At times before she was just sort of there, but now she engages with the other kids and even got a text from one of her best friends' mother . .

MR. ANDERSON: Object.

THE COURT: Sustained.

BY MR. WELLS:

Q. You can't tell us what that said or what someone else said.

Now, during the time back in 2011 did Karen ever talk to you about her relationship with the Defendant?

A. Did she talk to us about it?

Q. Did she ever tell you that there was a romantic relationship? Did she indicate that to you?

A. Yes.

Q. Bear with me one moment.

(Brief pause in proceeding)

BY MR. WELLS:

Q. Let me just ask one thing to clarify something. Exhibit Number 8, the intake form, is this your handwriting in the last sentence?

A. I think so, yes.

Q. And this is in your husband's handwriting?

A. Yes.

Q. If I could just ask you one final thing to make sure

we are clear on this. When did the bedwetting start? Was it before the incident in September of 2011, if you know? Before September 24, 2011, or after?

A. I think it was before.

Q. That's all.

THE COURT: Cross examination, Mr. Anderson.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Ms. Waldermo, you presently live in Charlotte?

A. Yes.

Q. And you said you met, I guess, your husband -- you met him on line?

A. Yes.

Q. Prior to that, you were decorating houses and things like that?

A. Yes.

Q. Were you friends with a girl named Heidi or a lady named Heidi?

A. She was a client, yes.

Q. You all had a close relationship?

A. She hired me to do work for her.

Q. Okay, and after that did you all have a close relationship?

A. I've gotten to know her over the years.

Q. Did she ever babysit Minor and M.A.

A. Occasionally.
Q. Are you aware that Minor asked her one time, why do my stepmom and my dad walk around naked and see each other?
A. . .
Q. Are you aware of that?
A. No, I'm not.
Q. So in May of 2011, you are not aware of any questions Minor may have asked Heidi?
A. No. I remember she asked her a question. I don't remember that question. I know that Heidi directed her to us at one time, but that's all I remember.
Q. All right. You met -- you all met in 2010 in January or February of 2010?
A. In October, I think.
Q. When did you all get married?
A. November.
Q. A quick marriage?
A. I was thirty-five and had never been married, and that is how it was. I knew who I was.
Q. So you all met in October, got married in November?
A. Uh hm.
Q. At that point in time, he had visitation with the girls?

A. He had visitation with the girls, yes.
Q. And you all would visit M.A. and Minor and they would come to Charlotte to see you?
A. No, we were -- well, sometimes, but we went to Karen's most of the time.
Q. Did he have a house in Florence at that time?
A. He did.
Q. And he elected to sell it?
A. He did.
Q. And you all moved to Charlotte full time?
A. We moved there temporarily.
Q. In 2011, where were you all primarily living?
A. In 2011?
Q. Yes.
A. It was probably fifty-fifty Florence and Charlotte.
Q. So you all had a visitation with the girls in both places?
A. Yeah. I don't think there was any restriction on where we could have visitation.
Q. At that point in time, up until October of 2011, Karen had custody of the girls?
A. Yes, sir.
Q. You all were seeing them every other weekend or maybe a little bit during the week?
A. He had every other weekends, and then they would

agree on our seeing them sometimes in between.
Q. And during the summer of 2011 you had them for maybe a couple of weeks?
A. I think so.
Q. October of 2011, allegations were made and D.S.S. put into effect the girls coming to live with you all, is that right?
A. In Florence, yes.
Q. In Florence, the rest of that semester, up until December when you went back to Charlotte, is that right?
A. Right.
Q. And that is when you started noticing things about Minor
A. No, it was prior to that.
Q. When was that?
A. Sometime post-October, before we moved.
Q. The State has already asked you about Exhibit Number 8 and what is your writing, is that right?
A. Yes.
Q. What does that question say, number eight?
A. Tell us how you came to know there might be a problem with the child; tell us what the child said as close to the exact words as you can remember.
Q. Tell us how you came to know there might be a problem is the first part of that sentence?

A. Yes. You came to know there might be . .
Q. It was in the bathtub -- did you put that on there?
A. No. That was afterward. After she told us everything.
Q. Did you tell the counselor that?
A. Which counselor?
Q. Any counselor?
A. About the bathtub?
Q. Yes, maam.
A. I don't recall.
Q. So it wasn't important enough for you to tell someone who was treating your stepdaughter?
A. We weren't being counseled by the counselor. We would meet with her occasionally, but I don't recall if I told her. I'm sure if it was part of her therapy I did.

But it had been established at that point that Minor had said something happened.

Q. Okay. I think you said you took the trampoline over there after October of 2011 and she acted mad and upset?
A. Yes.
Q. Before 2011 -- before October of 2011 did you tell anybody about that?
A. Probably, yeah. Probably a friend but not like . .
Q. Okay. Now, when she was seeing the counselor in

Charlotte and they were doing the play therapy, Minor never did talk about any allegations, did she?

A. She did not tell us what she told her but -- so I don't know.

Q. She later told another counselor in Columbia?

A. Yes.

Q. That was later, in 2013?

A. Later than 2013?

Q. It was later in 2013 after the one in Charlotte -- in 2013?

A. To the best of my memory.

Q. And that was in preparation for a trial?

A. No. That was at the request of Karen seeking a new counselor.

Q. Now, this new counselor, to your knowledge had she ever given Minor homework to do for this trial?

A. No. She gave her a book once that had in it words like (inaudible due to noise in Courtroom).

Q. And did the counselor review some stuff with her as far as this case was concerned?

A. At some point toward the end. I mean, we initially did not go to her for anything having to do with Court. I know towards the end that she had a book. I know that Minor was given the book and I read a page of it or Minor read a page of it.

MR. ANDERSON: Court's indulgence for a moment.

THE COURT: Yes, sir.

(Brief pause in proceeding)

BY MR. ANDERSON:

Q. How did you and Karen get along?

A. Karen and I got along fine. I didn't see her that often. Then after everything happened, it was -- I really didn't interact with her.

Q. That's all the questions I have.

THE COURT: Any Redirect?

MR. WELLS: Nothing further, Your Honor. Can she come down?

THE COURT: Yes, she may.

(Witness excused from stand)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, we're going to take a recess until one thirty. I'm going to ask that you be back at one thirty sharp.

Once again I'm going to remind you not to discuss the case with anyone else. Do not do any independent investigation. Avoid reading any articles or watching any news events concerning this matter.

I'll see you back at one thirty sharp. No discussion whatsoever

Everyone else remain seated while the jury exits the Courtroom.

(Jury excused for the lunch recess)

THE COURT: Anything from the State before we recess for lunch?

MR. WELLS: No, Your Honor.

THE COURT: Anything from the Defense?

MR. ANDERSON: No, sir.

THE COURT: Then we'll stand at ease until one thirty, one thirty sharp.

(Whereupon, the Court stood in recess for the lunch period, after which the matter was resumed)

THE COURT: Anything from the State before we proceed?

MR. WELLS: No, sir.

THE COURT: From the Defense?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: Let me just say for the people in the audience that this is a public forum and you have an absolute right to be here.

I have noticed throughout the testimony of these witnesses that an audible noise is made with regard to certain points that are brought out.

It isn't appropriate to do that. If someone is on the witness stand and subject to examination, by your doing that it sort of lends the idea that you disagree with what someone has said.

I would ask you and order that you not do that or make any noise. Does everybody understand that?

If you feel as if you can't restrain yourself and make an audible noise it would probably be a good idea for you to dismiss yourself.

Even though this is a public forum, you need to maintain the proper demeanor and decorum.

All right, we're ready for the jury.

(Jury returned to Courtroom)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, thank you for being here on time.

Everybody looks well fed and rested, ready to hear more testimony, and I will ask you pay close attention as the State calls the next witness.

Ms. Parr, you're recognized.

SOLICITOR: At this time the State calls Jamie Shefton to the stand.

THE COURT: Ms. Shefton, if you could come forward and place your left hand on the Bible, raising your right hand as the Clerk administers the oath.

JAMIE SHEFTON, being duly sworn, testified as follows:

CLERK: Please be seated and state your full name for the record.

THE COURT: Yes, maam. Have a seat on the witness

stand, pull up close to the microphone, and speak loudly and slowly so we can hear everything you've got to say.

I would ask that you start with your full name and spell your last.

WITNESS: My name is Jamie Shefton, S H E F T O N.

THE COURT: Thank you. Ms. Parr.

DIRECT EXAMINATION

BY MS. PARR:

Q. Ms. Shefton, in October of 2011 where were you employed?

A. With the Florence County Department of Social Services.

Q. And what did you do for the Department of Social Services?

A. I was a child abuse and neglect investigator.

Q. How long were you with the Florence County Department of Social Services?

A. I was there three years.

Q. And would you please tell us your educational background?

A. I have a Bachelor of Arts in psychology from Clemson University.

Q. And did you have any special training for your job as a child neglect -- abuse and neglect investigator?

A. Yes, maam. We have to complete a child welfare

training course, and we have to pass a test to be certified with the State of South Carolina.

We do our yearly in-services court prep, child and case interviewing, things of that nature.

Q. Okay, and were you certified with the State of South Carolina?

A. Yes, I was.

Q. Now, prior to working with the Department of Social Services, where were you employed?

A. I was employed with the Florence County Guardian ad Litem office as a case manager.

Q. And what were your duties as a case manager?

A. We had our own lay guardians who we would actually work along with and assist law enforcement with any child abuse or neglect cases that went to Family Court.

Q. Now, in your capacity as an investigator with the child abuse and neglect of the Department of Social Services, would you please tell the Court what your duties were?

A. I had to investigate cases of abuse and neglect. We, of course, would have to interview all parties involved. We had to attend multi-disciplinary staffings with law enforcement, child advocate centers and any other agencies or parties.

We would also have to make case determinations along

with our county director and program coordinator in regard to the case.

Q. When you spoke about case determination, what kind of cases were you talking about?

A. A determination of whether the report that we got was substantiated or not.

Q. Now, in your time with the Department of Social Services, how many cases did you investigate?

A. It would be in the hundreds.

Q. Okay, and would you tell us a little bit about that process?

A. Usually what we would do is we would rotate a day. I had Wednesday as my day. Also, I'd have to take calls from Friday to Sunday, so any cases that came during the weekend that became my case to get through the investigation of the case, and it would later be transferred onto a foster care case worker or a treatment case worker.

Q. And what is the treatment? Tell me about the treatment . .

A. Treatment cases are cases where the children may not be placed into State custody. They may be placed with relatives, or if the agency finds that the parents or care givers would be willing to cooperate the children can remain in the home with a safety plan, provided that they cooperate in full with the agency on the treatment goals

that are developed for the family.

Q. Let's go back to -- well, first, where are you employed now?

A. I'm with Assurant.

Q. When did you leave the Department of Social Services?

A. August of 2012.

Q. Now, let's go back to October of 2011. Did you have an occasion to become involved in the issues involving Minor [redacted]?

A. Yes, I did.

Q. Please tell us how you became involved?

A. The agency received a report that was accepted by a supervisor, and was dispatched to go out to Delmay Elementary to make contact with the alleged victim child.

Q. Okay, and please tell us when did you receive the call on which you were dispatched?

A. It was October third, and it was early morning.

Q. Was that a Monday morning?

A. It was a -- it may have been Monday. I'm not sure but it was October third.

Q. Okay, and where did you go?

A. Delmay Elementary.

Q. And is that in the County of Florence?

A. Yes.

Q. And when you got to Delmay Elementary School, who did

you see?

A. I spoke with the principal to let her know that I had a case, and we were given an office to complete the interview.

Q. And was that Ms. Lorraine Jolly?

A. Yes. We were given the office to complete the interview. Along with myself and the school resource officer, Sergeant Hanna.

Q. And was Sergeant Hanna there when you arrived, or did he subsequently come?

A. He came after.

Q. Okay, you can go on.

A. I met with Minor and began to establish a rapport with her. I just asked her about school, the interests she had, which she enjoyed Girl Scouts at the time; asking about her family.

I then went further into the assessment about her safety and well-bring. She let me know she had food, clothing, shelter.

We went further into discussing whether anyone touched her inappropriately, and she did disclose that it was on her front bottom Mr. Brockington.

I then asked her if he touched inside or outside of her clothes, and she said it was on the outside.

I asked her if anyone else ever touched her, and she

said no. I then asked if anyone put anything into her mouth or any other part of her body, and at the time she said no, and then I asked if she was asked to touch anyone else's body, and she said she touched Mr. Brockington.

I then asked if she told her mother or her father, and she said she told her mother.

Q. And did she indicate to you when she told her mother?

A. She didn't give me a time-line. She just stated she told her. She stated she told a little playmate that -- excuse me. I apologize.

She stated that she told another playmate that -- she called him Brock -- touched her as well.

I asked what did her mother do, and she said her mother said sometimes people say things to get what they want.

After she told her dad in, I guess, the weekend before the report was made; that she did tell -- that he knew about it as well.

Q. Then after you talked with Minor what did you do?

A. What I did was I contacted Sergeant Hanna, and I contacted him because there was a disclosure. Sergeant Hanna came and he heard the disclosure, and he then contacted Investigator Chad Collins.

Q. Okay. Did Investigator Collins report?

A Yes.

Q. And what did you do once a disclosure was made?

A. When a disclosure was made, we tried to assess whether the mother could protect the child, and we wanted to have Mr. Waldermo come as well to discuss the allegations.

We had them both to come up to the school individually, and we asked Mrs. Waldermo about the allegations and about the child disclosure that she told of previously, that she had been touched.

Q. I'm going to stop you right there. When you were talking to Minor who was with you?

A. It was myself, Sergeant Hanna, and then it became Investigator Collins.

Q. Okay, were any of the parents or school teachers or anybody else there?

A. No.

Q. Okay, go on.

A. After Mr. Waldermo came we explained the investigation and what we'd learned. He was upset but he just wanted to know what was the next step.

We then waited for Mrs. Waldermo to come in. She had M.A. the young child. They came in and we asked her about it, and she did say that Minor told her this but she said that Minor didn't like Brock, and that's why she thought she was making up the allegations.

Q. And then what did you do about Ms. Waldermo, Karen?

A. I asked what steps she made to protect her child,

being the child had told her previously she had been touched by Mr. Brockington, or what measures she made to make sure they were never alone or to make sure the child was supervised, and she stated she let him remain in the home because she broke her arm and needed help.

She stated that she believes he touched Minor and then Mrs. Waldermo stated her stepfather had touched her, and I asked had he been around the girls and she said yes, numerous times.

I asked her that since you stated he touched you and was inappropriate with you, why would you allow the children to be around him, and she didn't really have an answer about that.

At that time it was determined by myself and law enforcement that she couldn't protect in that capacity or if she didn't believe it, to just on the side of caution to make sure that her girls would be safe.

Q. And so tell us what is a safety plan?

A. A safety plan is a plan used by the South Carolina Department of Social Services. It's a plan at the time just for an inventive measure to be used in lieu of a treatment plan.

The plan we put in place was at the time Mr. Brockington wouldn't have any contact during the investigation. We also put in place that Mr. Waldermo would have the children

in his care until the investigation was completed, and that Mrs. Waldermo would continue to have visits with the children.

We put in a measure that the girls would continue Girl Scouts that they were doing with their mother before just to maintain some normalcy in their lives.

Q. And what was said, if anything, about the Defendant?

A. He could not have any contact with the children.

Q. And then after the plan -- so you discussed this plan with Karen Waldermo?

A. Yes, with Karen and Jorgen and law enforcement, and we signed on the plan.

Q. Okay, and did they agree that the children would remain enrolled in Delmay?

A. That's correct, and that he would remain in Florence County until the investigation was completed.

Q. Okay, and that was on October third?

A. Yes.

Q. What happened after October third in regards to the investigation?

A. After October third, it is standard that the State have a seven day staffing. The seven day staffing is to staff what is going on with the case and what needs to happen next.

It was determined that both girls needed to have a

medical exam and a forensic interview, and we had that scheduled at the Ark in Columbia.

Q. And were you at the Ark when Minor had her forensic interview and medical examination?

A. Yes, I did.

Q. Do you recall when that was?

A. I believe that would have been October 21st.

Q. In 2011?

A. In 2011, yes.

Q. And you said that was in Columbia?

A. In Columbia, yes.

Q. And after -- did you watch that forensic interview?

A. Yes, I did.

Q. How were you able to see the interview?

A. With closed circuit -- by closed circuit TV we were able to see in the room where she had her interview.

Q. But you were not in the room with her?

A. No, I was not.

Q. And after the forensic interview what did you do?

A. After the forensic interview I did call Investigator Collins. During her forensic interview, she did state that she performed oral sex on Mr. Brockington, and that wasn't anything she had disclosed to me, and so that was an additional disclosure which I called law enforcement to let him know as well, that she made that disclosure.

Q. Okay, and so after that disclosure you contacted Investigator Collins, and did you continue to have contact with the family?

A. Yes, I did.

Q. Would you please tell us in what capacity?

A. At that time they were living in a friend's condo, so I went there to make sure that home was appropriate. I had contact with the girls. I also had contact with Karen and one telephone contact with Mr. Brockington.

He was working in Sumter so he was trying to schedule a time to meet but he was working with Investigator Collins so I was directed by my supervisor to go to the Sheriff's Department to be there for that interview but he arrived earlier than the allotted time so I did view that interview on tape when it got back to the Sheriff's Department.

Q. And so how long did you follow up with the Waldermos?

A. My investigation is a forty-five day investigation or sixty if there is an extension, but it was 45 days for the case determination.

After that, their case was indicated and it went to a treatment case worker.

Q. So tell us what you mean by case indication?

A. Case indication -- indication means that the case more -- that more likely than not the allegations that we had

received were true; that the case was substantiated for sexual abuse and I believe it was neglect in regard to Mrs. Waldermo.

Q. Thank you. Now, you said the case went to a treatment plan. What do you mean by that?

A. That the children were not going to be in State custody. They were placed in the home with Mr. Waldermo before, and there was a Family Court hearing, an emergency hearing, that the Waldermos had where the Judge determined he would be given temporary custody and would be allowed to take the children to Mecklenburg County.

So what they were going to do was collaborate with the agencies for counseling services for Minor as were necessary and also with the parent here in Florence.

MS. PARR: Beg the Court's indulgence.

THE COURT: Yes, maam.

(Brief pause in the proceeding)

BY MS. PARR:

Q. Now, did you do an investigation of Jorgen's home before placing the girls there?

A. Yes. It was at the temporary residence that they had. We determined that it was appropriate. It was two bedrooms and he had it furnished for the girls, and it was determined it was appropriate for them to stay there. Being in Mecklenburg County, it was determined the case

would no longer be my case, and the Judge had determined he could have temporary custody so there was not a home study. No interstate study was done.

Q. Because the Judge made that determination?

A. Yes.

Q. Ms. Shefton, please answer any questions the Defense may have for you.

THE COURT: Mr. Anderson, you are recognized for cross examination.

CROSS EXAMINATION

BY MR. ANDERSON

Q. Ms. Shefton, I believe you testified earlier that you worked with the Department of Social Services for three years, is that right?

A. Yes.

Q. And you left in 2012?

A. That's correct.

Q. Prior to that you were with the Guardian ad Litem program?

A. Yes.

Q. I think you indicated you have a Bachelor of Arts in psychology?

A. In psychology.

Q. And where did you get that?

A. Clemson University in 1999.

Q. That's a great school.

How long did you work with the Guardian ad Litem Program?

A. Four years.

Q. So seven years total with the Guardian ad Litem and Department of Social Services?

A. Yes, sir.

Q. In the child abuse or child neglect area with the Department of Social Services?

A. Yes.

Q. You said you got your Bachelor's in psychology and you also had other training, child welfare raining. Is that right?

A. State-mandated training that you have to complete and pass the course to be certified in that capacity.

Q. Certified and then you have to do yearly, I guess, continuing education, and then you also have to do some stuff -- I guess some classes on witness interviewing, things like that?

A. Yes. Things the State approved for us to take.

Q. And I think you indicated that you have probably done hundreds of cases, is that right?

A. That's about right.

Q. Could you speak up?

A. I apologize.

Q. Do you need some water?
A. No.
Q. Okay. Now, I imagine, like anything else, every case is a little bit different?
A. That's correct.
Q. Keep speaking up for me.
I'm sure you have dealt with children from a wide variety of ages. Would that be a fair statement?
A. Yes.
Q. And M.A. when you met with her was four years old?
A. Three or four, yes.
Q. And Minor was six. Is that about right?
A. Correct.
Q. Now, this training you have done teaches you how to talk with children?
A. Correct.
Q. And words you used were establish a rapport, is that right?
A. That's right.
Q. And what do you mean by that?
A. When you establish rapport -- I'm a stranger coming to them. You don't start out asking the most difficult or the most serious questions when you are talking to a child.
When you are talking to a child you want to introduce

yourself to them and you want to be on their level. You want to establish rapport of, you know, what do they like to do and different things; their favorite colors; their neighborhood; what do they like to watch; what is their favorite food.

You ask them things about their interests, and you also talk to them about their everyday life so that they won't feel scared or defensive or trying to figure out what you may be trying to ask or if they're in trouble.

You just want to let them know that I'm here and I'm here to check on you. You just start with your questions from there.

Q. You want the child to be comfortable, is that right?

A. Exactly.

Q. You want the child certainly to be truthful and honest with you?

A. Yes.

Q. And how long do you think you spent with Minor in the principal's office establishing that relationship?

A. Initially it was probably about an hour, and then I would have the investigator come in, the parent come in, and we still were talking, just making her comfortable.

Q. So you talked with Minor for about an hour, and you asked her a specific question about what had happened that -- or what had come out over the weekend, is that correct?

A. That's correct.
Q. You specifically asked her did Leonard touch her?
A. No, I asked her did anyone ever touch her.
Q. And what did she say?
A. She said Brock.
Q. And then you proceeded to say, where did he touch you?
A. That's correct.
Q. And she said her front bottom?
A. That's correct.
Q. You then proceeded to say inside your clothes or outside your clothes?
A. Yes, I did.
Q. She said outside the clothes?
A. Yes.
Q. You asked her if he had ever or anyone had ever put anything in her mouth?
A. Yes, I did.
Q. What did she say?
A. She said no.
Q. You asked if she had been made or forced to touch someone, is that right?
A. Yes.
Q. And she said yes?
A. Yes.
Q. And this was on October third?

A. That's correct.
Q. Based on the safety plan, I think later you said you did follow-ups?
A. Home visits, yes.
Q. And as a matter of fact, did you actually go to see Minor later on that night?
A. No, I did not.
Q. All right. Did you go later in the week and check on her?
A. Yes, we did.
Q. And you actually went to her apartment, is that right?
A. Yes.
Q. And I think you met with Minor in her bedroom?
A. Yes.
Q. You again established, I guess, a little bit of a rapport with her?
A. Yes, she was showing me her new bed and the sheets, and the girls were excited about that and jumped on the beds.

We were just asking how she was doing, and she had a Girl Scout meeting and we didn't discuss any of the allegations because we were just doing our standard visit with her, talking to her.

Then later I came back and met with Mr. Waldermo and his wife, Jeanene.
Q. Did you meet with her again and ask her questions?

A. Not about the abuse or her allegations, no.
Q. You did not?
A. No.
Q. Do you recall writing notes on this?
A. . .

MR. ANDERSON: Your Honor, . .

(Conference at the bench off the record between counsel and the Court)

(Brief pause in the proceeding)

BY MR. ANDERSON:

Q. You recall going to her house?
A. Yes.
Q. When was that?
A. (Response inaudible)
Q. Maam?
A. If you'll bear with me while I go through my notes? I saw them on October 13th, . .
Q. Did you say October 13th?
A. October 13th is correct.
Q. Okay. Any other time?
A. I'm looking here. No other time until we had the forensic at the Ark. So October 13th and I believe on the 21st.
Q. I'll hand you that copy and get my copy back from you. So you did meet with her on 10 13, is that right?

A. That's correct.
Q. And that was at her house?
A. Yes.
Q. The house had been set up?
A. That's correct.
Q. In your notes, you indicate you had a face to face conversation with her, is that right?
A. Yes.
Q. And did she also disclose to you on the 13th that Leonard had touched her?
A. Where are you looking? What are you looking at?
Q. The top of the page says 12 26 -- right here -- I'd guess that is when it was faxed.
A. Yes.
Q. A little bit further down?
A. Okay.
Q. Is that right?
A. Yes, I see that.
Q. And then it says on 10 13 11 case worker -- C W -- is that the case worker?
A. Yes.
Q. Face to face contact with Minor [redacted] is that right?
A. Yes.
Q. The third paragraph under that . .
A. I see that, yes.

Q. So did Minor make any additional disclosures?
A. Yes.
Q. Still maintains Leonard Brockington made her touch his private parts and he touched her?
A. Yes.
Q. So that would have been the second time that you asked her about this incident?
A. What do you mean?
Q. Okay, one on 10 3, one on 10 13?
A. Yes.
Q. And she says he touched my front bottom so on 10 13 she still says he touched her?
A. Yes.
Q. At no time, even on 10 13 or 10 3 -- on 10 3 or on 10 13 did she ever say anything about he made me put anything in my mouth? She never said that?
A. She did not.
Q. Did you ever talk with Michelle Cooper about this matter?
A. Yes, I did.
Q. Leonard Brockington was actually seeing Michelle Cooper?
A. At the time I did not know that until I saw the taped statement. Michelle talked with me about the case until our county director became involved with her knowing

Mr. Brockington.

Q. At that point in time was Michelle a case worker with D.S.S.?

A. Yes, she was.

Q. Did you ever talk with her children?

A. No, I did not.

Q. Did anybody ever talk with her children?

A. I don't recall.

Q. Did you specifically talk to Michelle about this case?

A. Yes, I did. One day an investigator called me regarding a taped statement from her. He met with the director who pulled me aside to ask me, what's going on, and I told her that Mr. Brockington stated in his taped interview that he knew her; that she was a good girl; that she was a good girl and he had dated her in the past, and she said, yes, we did date in the past.

Q. Did you ever discuss these allegations with her?

A. Yes. She said that he called her a few nights before the report was made and stated that they're saying I touched her.

He said he told her in the past -- he said, I'm having some issues with the little girl.

Q. He had told Michelle that earlier?

A. Yes. I don't know if it . . .

MS. PARR: Your Honor, I would object. That's hearsay.

THE COURT: What is the Defense's position?

MR. ANDERSON: I'm just asking a question, Your Honor.

THE COURT: I would ask that you rephrase the question.

BY MR. ANDERSON:

Q. I'll move on to a different topic. You said you did not talk to Michelle's children?

A. I did not.

Q. And you never talked directly with Mr. Leonard Brockington, have you?

A. On the phone we spoke because we were going to set up a meeting, and he was working in Sumter, and he said, he would see if he could get Saturday off and we could be able to meet.

Q. And you never talked with any of his friends or family?

A. No, I did not.

Q. Haven't talked to any of his neighbors?

A. I did not talk with the neighbors in Karen Waldermo's neighborhood.

Q. Are you aware he had another residence as well?

A. No, I did not. He stated he stayed with her.

Q. You ever talk with any of his children or anything

like that?

A. No, I did not.

Q. And you said you did not know he had another residence so certainly you didn't go to his house then?

A. No.

MR. ANDERSON: Your Honor, I don't have any additional questions.

THE COURT: Any Redirect.

SOLICITOR: No further questions of this witness.

THE COURT: You may step down. Thank you.

(Witness excused from stand)

MR. ANDERSON: I have no objection to her being released.

THE COURT: You are free to leave. Thank you, maam.

SOLICITOR: May we approach?

THE COURT: You may.

(Conference at the bench between counsel and the Court off the record)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, I'm going to ask you to go to your jury room for just one second. Again, do not discuss the case.

(Jury excused from the Courtroom)

THE COURT: All right, given the very sensitive nature of this matter, the minor child is going to now be testifying -- I'm going to ask that everyone that is not

a party to this action leave the Courtroom at this time, and Defense Counsel and the Solicitor can get anybody to come back in after the testimony.

But while she's testifying I ask that you exit the Courtroom.

Very good.

(Brief pause in the proceeding)

THE COURT: Yes, maam. I'm going to ask you if you could to come have a seat in the witness chair. What is your full name?

WITNESS: Minor [redacted].

THE COURT: Okay, good. You know why you're here, you've spoke with your lawyer, Ms. Parr, about this. You understand why you're here, don't you?

WITNESS: Uh huh -- yes.

THE COURT: And Ms. Parr is going to ask you some questions, Mr. Anderson is going to ask you some questions, and you understand it is very important that you tell the truth.

Do you understand that?

WITNESS: Uh hm.

SOLICITOR: Say yes.

WITNESS: Yes.

THE COURT: And do you understand that if you don't tell the truth that there are ramifications for that and

you would be in trouble? Do you understand that?

WITNESS: Yes.

THE COURT: Will you tell the truth if asked questions here today?

WITNESS: Yes.

THE COURT: Very good.

Any further query from the State?

SOLICITOR: None from the State.

THE COURT: Any from the Defense?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: Very good. I'm going to -- Ms. Parr, I am going to ask that you ask her to stand up -- if you can ask her to come out of the witness stand and you can stand there right with her until the jury is seated, and then she can put her left hand on the Bible and raise her right -- you can show her how to do that.

SOLICITOR: I'm just going to stand right here.

THE COURT: We're ready for the jury.

(Jury brought into Courtroom)

THE COURT: Yes, maam. I'm going to ask if you could to place your left hand on the Bible and raise your right hand as the Clerk administers the oath.

Minor [redacted], being duly sworn, testified as follows:

CLERK: Go around and have a seat in that chair and

say your name, please.

THE COURT: Yes, have a seat in that witness chair and pull up real close to that microphone. All right, I'm going to ask that you speak loud and slowly, and let's start with your full name

Tell us what your name is.

WITNESS: Minor [redacted].

THE COURT: Very good. Keep it up. You're doing real good.

Ms. Parr.

DIRECT EXAMINATION

BY SOLICITOR:

Q. Minor how old are you?

A. Nine.

Q. And when is your birthday?

A. April 15th.

Q. Okay, and do you know what year you were born in?

A. In 2005.

Q. Good, and what is the most important rule about talking in Court?

A. Tell the truth.

Q. Now, another important rule is that if you don't understand the question say you don't understand or ask us to repeat it or say it another way. Okay?

A. Uh hm.

Q. And if you would remember to say yes and no.
Where do you go to school?
A. Trinity Episcopal School.
Q. Where is that located?
A. Charlotte.
Q. What grade are you in?
A. Third.
Q. Where do you live?
A. Charlotte.
Q. Do you know your address?
A Two zero one four (inaudible).
Q. And who lives at your house?
A. My stepmom, my friend, my dad, my sister, and me.
Q. Good, and do you have any pets?
A. Yes.
Q. How many pets do you have?
A. One.
Q. And what kind of pet is it?
A. A dog.
Q. What's your dog's name?
A. Pete.
Q. What kind of dog is Pete?
A. I don't know.
Q. Okay, is it a big dog or a little dog?
A. Medium.

Q. A little dog?
A. Medium.
Q. Now, what are some of the things you like to do for fun?
A. Play, ride my bike and color.
Q. And color -- okay. What sort of things do you like to color?
A. Pictures.
Q. Okay, and do you like to draw pictures as well?
A. Yes.
Q. Okay. Now, Minor [redacted] back when you were six, do you remember where you were living at the time?
A. Not when I was six.
Q. Not when you were six, okay. Back when you were six you went to a place called the Ark. Do you remember that?
A. No.
Q. Okay, I know that was a long time ago. Do you remember going to see or starting to see Ms. Heather?
A. Yes.
Q. Now, when you went to the Ark, when you were six, do you remember what you talked to Alicia about?
A. . .
Q. Do you remember?
A. Yes.

Q. And would you please tell us what did you talk to Alicia about?
A. . .
Q. Do you remember what you talked to them about?
A. Yes.
Q. What did you talk to Ms. Alicia about?
A. About Brock.
Q. Okay, and what did you tell Ms. Alicia?
A. I . .
Q. Minor do you need some water?
A. No.
Q. Okay. Now, I need you to sit and think about it. You said you talked to Ms. Alicia about Brock. Who is Brock?
A. Um, my mom's old boyfriend.
Q. Okay. Now, Minor I need you to talk nice and loud so we can all hear you. Okay?
A. Uh hm.
Q. Do you need a minute?
A. . .

MS. PARR: May I approach her, Your Honor?

THE COURT: Okay.

MR. ANDERSON: Your Honor, I . .

THE COURT: I thought you were asking to approach the bench. Obviously if you're going to be discussing the

matter then you need to do it in such a way that we can all hear it.

(Discussion at the bench off the record between counsel and the Court)

BY SOLICITOR:

Q. Now, Minor this is really hard, but I need you to tell us -- you told us who Brock is. You said Brock is who?

A. He's my mom's old boyfriend.

Q. He's your mom's boyfriend?

A. Old one.

Q. You have to talk loud for us to hear you. Okay? Now, would you please say it again?

A. My mom's old boyfriend.

Q. He's your mom's boyfriend?

A. Old boyfriend.

Q. Old boyfriend. Okay, and do you see Brock in the Courtroom today?

A. Yes.

Q. Okay, and where is he? Can you point him out?

A. . .

SOLICITOR: Let the record reflect that she has identified the Defendant in this matter as Brock.

BY SOLICITOR:

Q. You said you talked to Ms. Alicia about Brock. What,

if anything, did Brock do?

A. He -- can you ask it again?

Q. What did you talk to Ms. Alicia about that Brock did?

A. He touched me.

Q. Can you say it louder?

A. He touched me.

Q. You say he touched you?

A. Yes.

Q. Would you please tell us how he touched you?

A. With his hand.

Q. All right, was it on top of your clothes or under your clothes?

A. On top.

Q. On top of your clothes. Okay, what else did Brock do?

A. . .

Q. Did Brock have you do anything to him?

A. Yes.

Q. What did Brock do? What did he have you do to him?

A. Same thing.

Q. You said the same thing. What do you mean the same thing?

A. The same thing as he did to me.

Q. And what would that be?

A. Touch him.
Q. And where did you have to touch him?
A. His bottom.
Q. Okay, and which bottom would that be?
A. Front.
Q. His front bottom? Okay, and how did you touch him?
A. My hand.
Q. With your hand, and how did you touch him with your hand?
A. He told me.
Q. What did he tell you to do with your hand?
A. . .
Q. If you want to show us, you can do that.
A. He -- I don't remember.
Q. Do you really not remember?
A. Yeah. His private part.
Q. Okay. So he had you touch him on his private part, and what part would that private part be?
A. His front.
Q. Okay, and was that on top of his clothes or under . .
A. On top of his clothes.
Q. And did you touch his skin or not his skin?
A. His skin.
Q. Okay, and what did you do when you touched his skin?

A. Which time?
Q. Which time -- was there more than one time?
A. Yes.
Q. Okay. Tell us one time. Tell us about one time.
A. On the flower chair in the living room.
Q. Okay, this was on the flower chair in the living room?
A. Yes.
Q. And whose house was this at?
A. My mom's.
Q. Okay, was that on Sweeney Drive?
A. Yes.
Q. And what happened on the flower chair in your mom's house?
A. . .
Q. What did Brock have you do on the flower chair?
A. Touch him.
Q. Okay, and that's when you touched his private part?
A. Yeah.
Q. And what did you touch his private part with?
A. My hands.
Q. Okay, and you said you touched his skin?
A. That time both.
Q. And tell us, was there another time?
A. Yes.

Q. And where was it that time?
A. In the kitchen.
Q. And what happened in the kitchen?
A. He made me suck it.
Q. Okay, and what was it he made you suck?
A. His bottom.
Q. And which bottom was that?
A. Front.
Q. His front bottom. Now, how did you know to suck it?
A. He told me.
Q. Do you recall what he told you?
A. To suck it.
Q. And was there anybody else in the kitchen too?
A. No.
Q. Where was your -- were your mom and M.A. at home?
A. Yes.
Q. Okay, where were they?
A. . .
Q. Were they in another room?
A. Would you ask it again?
Q. When you were in the kitchen and Brock had you suck it, where . .
A. They were at the gallery.
Q. So they were not in the house?
A. No.

Q. Now, Minor what did Brock tell you when he told you to suck it?
A. He told me that white stuff would come out of it.
Q. And did you see any white stuff?
A. No.
Q. Okay. Do you know what happened to the white stuff?
A. I don't remember.
Q. Do you recall what it looked like? What his bottom looked like?
A. I don't know how to explain it.
Q. You don't know how to explain it?
A. No.
Q. So you've told us about a time in the flowered chair that he made you touch him, and then you told us in the kitchen where he made you suck it. Was there another time?
A. No.
Q. Okay.

SOLICITOR: May I have a moment?

THE COURT: Yes.

(Brief pause in proceeding)

BY SOLICITOR:

Q. Now, Minor you talked about Brock's bottom. Now, is that -- what do people do with their front bottom that you are referring to?

What do boys do with their front bottom that you are referring to?

A. Use it to wee wee.

Q. Beg your pardon?

A. Use it for wee wee.

THE COURT: Ask her to keep our voice louder so we can hear.

BY SOLICITOR:

Q. You talked about his front bottom, is that correct?

A. Yes.

Q. Okay, and I'm going to show you this picture and you can let us know -- can you come and circle the front bottom on the boy's picture that you were talking about?

A. (Witness complying)

Q. Okay, so that's the part he made you suck and to touch?

A. Yes.

Q. Okay, you can have a seat.

SOLICITOR: Your Honor, the State would move to enter into evidence State's Exhibit Number 2.

THE COURT: Any objection?

MR. ANDERSON: No, sir.

(Drawing entered in evidence without objection as State's Exhibit 2)

THE COURT: State's 2 in evidence without objection

from Defendant)

SOLICITOR: May I have a moment, Your Honor?

BY SOLICITOR:

Q. Minor would you please answer any questions Mr. Anderson may have for you?

A. Yes.

THE COURT: Mr. Anderson, you're recognized.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Minor I'm going to stand back here, and in that way if I can hear you I know that everybody else can hear you. Okay?

A. Yes.

Q. Was that a yes?

A. Yes.

Q. Okay, I've got a pink tie on. Your sister, M.A. is that her favorite color?

A. Yes.

Q. I think you said earlier you are eight years old?

A. Nine.

Q. Nine -- that's right. You turned nine on April 15, is that right?

A. Yes.

Q. Right now you live in Charlotte?

A. Yes.

Q. You live with your dad, and he's right here?
A. Yes, sir.
Q. And you live with your stepmom?
A. Yeah.
Q. And you live with your sister, M.A. [redacted]
A. Yes.
Q. And M.A. [redacted] is seven?
A. Yes.
Q. I think you said you have a dog, Pete?
A. Yes.
Q. A medium dog?
A. Yes.
Q. I don't know what kind of dog he is but he's medium?
A. Yes.
Q. What does Pete like to do?
A. Go down to the tennis court.
Q. Do you all have a tennis court at your house or in your yard?
A. No, down the street.
Q. Is there like a park down the street?
A. Yes.
Q. Now, this past weekend was Easter. Do you know that?
A. Yes.
Q. And did you get anything from the Easter Bunny?
A. No.

Q. The Easter Bunny didn't bring you anything?
A. No.
Q. No candy?
A. No.
Q. A card?
A. No.
Q. Nothing?
A. No, nothing.
Q. All right, let me ask you this. Have you lost any teeth in the last year or two?
A. What?
Q. Have you lost any teeth?
A. Yes.
Q. When you lose a tooth do you put it under your pillow?
A. No, on my nightstand.
Q. On your nightstand and does the tooth fairy bring you some money?
A. Yes.
Q. How much do you get for it?
A. Five Dollars.
Q. That's a lot of money, isn't it?
A. Yeah.
Q. All right, and let me ask you this. This past year at Christmas, did Santa come to see you?

A. Yes.
Q. Did he bring you lots of toys?
A. No.
Q. No? You didn't get any coal, did you?
A. What?
Q. You didn't get any lumps of coal? You've been a good girl?
A. Yeah.
Q. Okay. How about M.A. [redacted] Did she get stuff?
A. Yes.
Q. Now, M.A. [redacted] -- I want to ask you some questoins about what happened a long time ago. Okay?
A. Yes.
Q. Now, you indicated that Brock is your mom's old boy-friend, is that right?
A. Yes.
Q. I guess they dated back in 2011?
A. . .
Q. Does that sound right?
A. Yes.
Q. A couple of years ago?
A. Yes.
Q. Okay. At some point in time after this came out, you moved in with your dad and stepmom?
A. Yes.

Q. And then later you all moved to Charlotte?
A. Yes.
Q. Who is your best friend in Charlotte? Who is one of your best school friends?
A. Meg.
Q. Meg?
A. Uh huh.
Q. How old is Meg? Is she also nine?
A. Yes.
Q. Is she in the same grade as you?
A. Yes.
Q. What grade are you in?
A. Third.
Q. Okay, are you making good grades?
A. Yes.
Q. What is your favorite subject in school?
A. I don't know.
Q. Are you good in spelling?
A. I don't do spelling.
Q. How about math? Do you do any math or writing?
A. Yes.
Q. Do you do after-care? Do you stay at school afterward or do you go home?
A. (Inaudible)
Q. You stay after school?

A. Yes.
Q. Does Meg stay after school?
A. Yes.
Q. After you first moved to Charlotte, Minor I guess in December of 2011, sometime maybe two years ago, do you remember meeting with a Mrs. Wendy Keller?
A. Yes.
Q. You met with Mrs. Wendy for a long time?
A. Yes.
Q. For about a year. Is that right?
A. Yes.
Q. Now, when you were meeting with Mrs. Wendy, did you do things like play therapy?
A. Yes.
Q. And I don't know what play therapy, so what did you all do? What is play therapy?
A. We played.
Q. Sounds like fun. What did you all play?
A. Different things.
Q. Did you all play hide and seek?
A. No.
Q. Did you play crossword puzzles or anything like that?
A. No.
Q. What was your favorite thing to play in play therapy?

A. I don't remember.
Q. Okay. That was a long time ago.
Now, you met with Ms. Wendy for about a year, and later you left and went and met with Ms. Heather. Is that right?
A. Yes.
Q. Now, you've been talking with Ms. Heather for about a year now?
A. Yes.
Q. Okay. You and Ms. Heather have done a lot of things together, haven't you?
A. Yes.
Q. Ms. Heather may have given you like a notebook to take home with you. Do you recall if she did that?
A. No.
Q. She didn't give you a notebook?
A. No.
Q. Did she ever talk to you about coming to Court?
A. Yes.
Q. Did she ever maybe give you some homework to work on?
A. Yes.
Q. She did? Did she give you like some sheets of paper to take home with you?
A. No.

Q. What kind . .
A. Well, yes.
Q. What kind of homework did she give you?
A. Squeezing for like five seconds and then relaxing.
Q. Kind of like breathing and then relaxing -- things like that?
A. Yes.
Q. Okay. Did you and her talk about coming to Court?
A. Yes.
Q. And one day you came in this Courtroom, didn't you?
A. Yes.
Q. Did you sit right there where you're sitting?
A. Yes.
Q. Did you talk to Mrs. Parr?
A. Yes.
Q. Was Ms. Parr standing up closer or was she standing back here?
A. Back there.
Q. Where her table is?
A. Yes.
Q. How about Mr. Chad? Did he come?
A. No.
Q. You know who Mr. Chad is?
A. Yes.
Q. The good-looking one over there?

A. . .

Q. You don't have to answer that.

Did you come in this Courtroom more than once?

A. Yes.

Q. How many times have you been here and talked about this case?

A. Uh, a couple.

Q. A couple? Two or three?

A. Yes.

Q. Have you done that this year?

A. Yes.

Q. And you've also met with Ms. Alicia and watched a tape?

A. Yes.

Q. Now, when you and Ms. Parr, this lady right here that asked you questions earlier -- when you and Ms. Parr came in here and talked, did she ask you the same questions she asked you today?

A. Yes.

Q. Okay, and she's done that two or three times?

A. Yes.

Q. She would ask you questions and you would answer?

A. Yes.

Q. Okay. She would ask you questions about Brock?

A. Yes.

Q. She would ask you questions about what happened?
A. Yes.
Q. Now, do you remember talking with some other people in this case? Do you remember with a nice black lady named Ms. Jamie with D.S.S.?
A. Yes. I don't . .
Q. You do?
A. No.
Q. You don't remember her?
A. No.
Q. Okay. When your stepmom and your dad go on a date does Wendy ever babysit you?
A. No.
Q. She doesn't babysit you?
A. No.
Q. Do you know who she is?
A. Yes.
Q. She's a lady who lives up in Charlotte?
A. I don't know where she lives.
Q. Okay. Does . .
A. Yes, she does.
Q. She does babysit?
A. Yes.
Q. Okay, did you ever ask Ms. Wendy about seeing your dad and your stepmom be naked together and whether

that was okay?

A. No.

Q. Okay. I think I may have misspoke -- Heidi -- I think the name was Heidi.

A. Henny.

Q. Henny?

A. Yes.

Q. How do you spell Henny?

A. H E N N Y.

Q. Has she ever babysat you?

A. Yes.

Q. That would be in Charlotte?

A. Yes.

Q. When your dad and your stepmom maybe went out to dinner or something like that?

A. Yes.

Q. Did you and her play when you were there together? You and her and M.A. [redacted]

A. Yes.

Q. Do you recall ever asking her about seeing your dad and your stepmom naked?

A. No.

Q. No? All right. Minor [redacted] I know this happened a long time ago, in October of 2011. That was several years ago. This gentleman over here, Mr. Chad, and another

officer came to Delmay, and they talked to you. Do you remember that?

A. No.

Q. Do you remember your dad coming to Delmay?

A. What?

Q. Your dad coming to Delmay?

A. No.

Q. You remember your mom coming to Delmay?

A. When?

Q. It would have been a day when all of them were there together. Your mom would have been there, your dad would have been there, your stepmom -- what do you call your stepmom? Nana or Nene?

A. Nene.

Q. She would have been there, your dad would have been there, another officer would have been there. Do you remember that?

A. Uh uh.

Q. You don't remember talking to them about Brock either, do you?

A. When?

Q. In October of 2011 when all of them were at Delmay?

A. No.

Q. Okay. You do remember going to the Ark Center, is that right, and meeting with Ms. Alicia?

A. Not Ms. Alicia.
Q. What's her name?
A. Ms. Alicia's name?
Q. Well, I thought you saw Dr. Alicia. She got you to draw for her and you all sat on the couch and talked?
A. I don't remember.
Q. You don't remember?
A. No.
Q. Do you remember talking with her about Leonard, Mr. Brock?
A. Yes. No.
Q. No? Ms. Alicia -- I'm trying to see if this will help you.

She took you into a room and there were two couches, and you sat on one and she sat on one, and she had a chart very, very similar to this, and she drew some pictures. You remember that?

A. No.
Q. Okay, that's fine.

MR. ANDERSON: Your Honor, could I have the Court's indulgence for a second?

THE COURT: Yes.

(Brief pause in proceeding)

BY MR. ANDERSON:

Q. Minor [redacted] you don't remember talking with Miss Alicia

or Dr.Alicia?

A. No.

Q. Do you remember watching a video of yourself and Dr. Alicia?

A. Yes.

Q. You do?

A. Yes.

Q. And on that video she asked you questions?

A. Yes.

Q. Do you remember that?

A. When she asked me questions?

Q. Yes.

A. No.

Q. You don't remember questions or you do remember questions?

A. I don't remember when she asked questions.

Q. Okay, did you answer questions?

A. Yes.

Q. Did she ask you questions about your house and your family and your mom?

A. Yes.

Q. She ask you questions about your dad?

A. Yes.

Q. Any questions about dogs? I remember you had a dog named Applesauce. Do you remember that?

A. Yes.
Q. What kind of dog was Applesauce?
A. A Golden Retriever.
Q. So he was a big dog?
A. Um, medium.
Q. Medium, and you had another dog at that time too, didn't you?
A. Yes.
Q. What kind of dog was that?
A. I don't know.
Q. Medium, small?
A. Small.
Q. So you do remember talking with Ms. Alicia or Dr. Alicia?
A. No.
Q. Do you remember her asking you questions about Mr. Brock or Leonard?
A. No.
Q. You remember her asking you questions about what had gone on with Leonard?
A. No.
Q. Do you remember talking with her at all about Brock or Mr. Brock here?
A. No.
MR. ANDERSON: Your Honor, I don't believe I have any

more questions.

THE COURT: Any Redirect?

SOLICITOR: No, sir. We would ask that she be allowed to leave.

THE COURT: You may leave at this time. Thank you, maam.

(Witness excused from stand)

SOLICITOR: Your Honor, at this time we would call Alicia Benedetto to the stand.

THE COURT: Yes, maam.

MR. ANDERSON: May we come forward?

THE COURT: Yes.

(Conference at the bench between counsel and the Court off the record)

THE COURT: All right. Mr. Foreman and ladies and gentlemen of the jury, this next witness is going to be fairly lengthy. I'm going to ask you to retire to the jury room and refresh yourselves.

Then we'll come back for the afternoon session. Do not discuss the case.

Everyone remain seated while the jury exits the Courtroom.

(Jury excused from Courtroom)

THE COURT: We'll stand at ease for about five minutes but I don't want to have to hunt you, Ms. Parr.

Anyone you want to talk to you can bring in here.

(Whereupon, the Court took a brief recess, after which the matter was continued)

THE COURT: Please be seated. Anything from the State before we proceed?

SOLICITOR: No, Your Honor.

THE COURT: Anything from the Defense?

MR. ANDERSON: No, Your Honor.

THE COURT: We're ready for the jury.

(Jury returned to Courtroom)

THE COURT: Ms. Parr, you are recognized. You may call your next witness.

SOLICITOR: At this time we would call Dr. Alicia Benedetto.

THE COURT: Ms. Benedetto, if you would come forward and place your left hand on the Bible and raise your right hand while the Clerk administers the oath.

ALICIA BENEDETTO, being duly sworn, testified as follows:

CLERK: Please be seated and state your full name.

THE COURT: Have a seat in that witness chair, pull up to the microphone and speak loudly, clearly and slowly so that we can hear everything you've got to say.

Let's start with your full name and we'll get you to spell the last name.

WITNESS: Yes, Your Honor. My name is Alicia Benedetto. The last name is B E N E D E T T O.

THE COURT: Ms. Parr, you are recognized.

DIRECT EXAMINATION

BY SOLICITOR:

Q. Dr. Benedetto, where are you employed?

A. I'm a licensed clinical psychologist with the South Carolina Department of Mental Health in Columbia.

Q. And how long have you been employed with the South Carolina Department of Mental Health?

A. Since 2000 actually

Q. And what services do you provide?

A. As part of my employment, I'm actually the Director of the assessment and resource center in Columbia, and that is a child abuse evaluation clinic, a nationally accredited children's advocacy center, which means that we provide evaluations and interviews to law enforcement and the Department of Social Services when there are allegations of abuse.

Q. And as part of that, do you conduct forensic interviews?

A. Yes, I do.

Q. And what is a forensic interview?

A. It's an interview -- as I said, our interviews are done at the behest of law enforcement agencies throughout

the State as well as the Department of Social Services, so they will request that we conduct an interview of a child -- sometimes a vulnerable adult but usually of children, to assist in -- as part of their investigation. It's a investigation interview.

Q. And tell us how a forensic interview is conducted to assist possible child abuse or sexual abuse cases?

A. All of our interviews are recorded. First of all, they are done at center which is designed to be a child-friendly environment.

So, in other words, as opposed to the olden days when children would be interviewed at the police station and things of that sort. It provides a better environment for interviewing children.

The interviews, as I said, are recorded. The only person in the room is the child and the interviewer, for example, myself, and the interviews are kept and a report is generated.

Then all of that goes to law enforcement.

Q. Now, is the child -- well, what are the guidelines set up for these interviews?

A. The most important thing that we try to get across to children is that we want to right idea in the interview. It is very important. We are a neutral agency, trying to help get accurate information from the child, whatever

that information may be.

So we will ask them to please make sure that we are understanding things correctly, to tell the truth, and a part of telling the truth is to correct us if we get something wrong.

We encourage a child to correct us if we didn't understand something correctly -- that kind of guideline.

Q. And is the child informed of these guidelines?

A. Yes.

Q. Now, where are the interviews conducted?

A. At the Ark, and we also let children know that the interviews are being recorded. That is something we feel is important for them to be aware of. They are conducted at the Ark on the premises.

Q. Are the parents allowed in the interview?

A. No. As I said, the only person in the room is the interviewer with the child.

Q. Now, who usually will set up an interview?

A. The investigating agency. So, for example, if the investigator from law enforcement or the Department of Social Services is there, they are able to watch from a remote location.

Q. Now, what, if any, measures are used to assess a child's mental competency?

A. The entire interview is a matter of assessing the

child's ability to understand your questions, so even when we go out to the waiting room to get the child we are getting a sense of that child's comfort and confidence, their narrative skills, their ability to answer questions, if they are willing to come with the inteviewer.

We are constantly assessing whether the child is developmentally at the level of their chronological age, or whether there are some facts that might be or have an impact on their ability to relate information to us.

Q. Now, do you obtain the child's family or social history?

A. We do have a -- what we call a care-giver report form that is filled out in general by whoever brings the child to the center, and it basically gives us just a little background information about things like what grade the child is in, any developmental delays that we should be aware of.

For example, does the child have any speech issues or autism-spectrum disorder. It's just anything that we would to know prior to the interview -- that sort of thing.

Q. And do you also obtain a medical history as well?

A. I believe our physician obtains the medical history. Yes, maam.

Q. Now, what kind of questioning format do you use?

A. We use -- as I said, we want to make sure we are getting the right information, so we try to ask as many open-ended questions, non-leading questions, as possible.

Our questions are intended to elicit information from the child rather than telling the child any information.

Q. Now, when assessing child who is so abused, how do you determine a child's knowledge of his or her event?

A. At the start of our interview, it involves asking a child what they call parts on the body, and we use simple drawings that are anatomically correct of a child, male and female, and we use those because at the point that those are introduced they are really about labeling parts of the body -- what do you call eyes and different parts, as well as private parts or the genital areas, so that we can compile some language for body parts which we may or may not need in the interview.

Q. Did you do that in this particular case?

A. I did.

Q. Now, on what date did you conduct a forensic interview with Minor [redacted]?

A. It was on October 21st of 2011.

Q. Okay, and where was that interview conducted?

A. At the Ark assessment and resources in Columbia.

Q. And what agency referred Minor for the interview?

A. Minor was referred by the Florence County Department of Social Services as well as law enforcement, the Florence County Sheriff's Office.

Q. And in your opinion, did Minor appear to be competent?

A. Yes, she was a very bright and articulate child. Yes, she was fully able to participate in the interview.

Q. Okay. Was anything used in the inteview with Minor to prevent any type of influence?

A. Again, we asked non-leading questions to make sure we are getting the right idea. We would say things like, did I understand that right, to make sure we're getting things correctly.

So there will be frequent checking in. Some children are more prone to just go along with what the adult in the room is saying, and, of course, this is a very foreign experience.

This is not an experience like a child has ever had before. It's a place they've never been, being interviewed by someone they never knew before, who takes them in a room and starts asking them questions.

So we want them to understand they are the expert on themselves and we really want the information from them, rather than telling them the information ourselves or getting the wrong idea.

Q. What, if anything, did Minor relate to you concerning the time frame of the incident?

A. Minor was six at the time I inteviewed her, and I did not therefore ask her a lot of questions about time.

I did ask her about some -- about location.

Q. And was she able to give locations?

A. Yes.

Q. And what did she say in regard to you about places or locations that the sexual assault occurred?

A. She said it occurred at the one story house where her mother lives.

Q. Now, did you document the time disclosure in any form?

A. Yes. As I said, it is memorialized on a DVD, and we also compile reports.

Q. And I'm going to show you -- do you recognize this?

A. Yes.

Q. How is it that you are able to recognize it?

A. It is a copy of the DVD from the Ark.

SOLICITOR: Your Honor, the State would move this into evidence as State's Exhibit Number 3.

THE COURT: Any objection from Defense?

MR. ANDERSON: No, Your Honor.

THE COURT: State's Exhibit 3 in evidence.

(DVD of interview admitted without objection as State's Exhibit 3)

BY SOLICITOR:

Q. I want to ask you one more question before we publish the interview.

Was there anything about Minor disclosure that caused you to believe it was the result of third-party influence?

A. No. That is something we would very carefully explore to make sure that there doesn't appear to be influence of either a parent or some other source, or motivation by the child.

Nothing that she stated to me supported that.

Q. And was there anything in her disclosure that was affected in any way by suggestibility or coaching?

A. Well, you know, that is a question obviously for the jury to determine. As far as things that we look for in the inteview; for example, is the child able to correct the interviewer when the interviewer maybe gets something wrong, and Minor was able to do that sort of thing.

So she would make sure that I was getting the right idea and spelling things right, and that sort of thing, so ..

Q. And was Minor able to give you details?

A. Yes.

Q. Now, from your personal obseryations of Minor be

behavior or demeanor during the interview -- what were your personal observations of her behavoir and demeanor during the interview?

A. As I said, she was a very bright and articulate child. She was, I would say, a little bit slow to warm up, even when I went up to her in the waiting room.

She was a little bit hesitant. Again, she really didn't understand why she was there, and it was a situation that was new.

It was a foreign situation, but gradually through talking with her she warmed up some and became much more engaged.

There were points in the interview when the subject matter was difficult for her to talk about and she was much more subdued. Her voice tone would get very quiet, like she clearly did not want to answer certain questions, and then when we would talk about neutral matters again, she would again become much more engaged.

SOLICITOR: Your Honor, at this time I would ask permission to publish the video for the jury.

THE COURT: You may do so.

(Whereupon, the video of the forensic interview was played for the jury)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR:

Q. Dr. Benedetto, please tell us a little bit about your educational background.

A. Sure. My undergraduate degree is from New York University. My Master's and Doctoral Degree are from St. John's University which is also in New York.

Q. And in what was your Doctoral Degree?

A. Clinical Psychology.

Q. Okay, and what is your current employment again?

A. At the Assessment and Resource Center which is a program of the Department of Mental Health.

Q. Now, you are also the chief psychologist?

A. When I started at the Ark, I was chief psychologist there for a number of years, twelve years, I guess, and some sixteen months ago I became Director of the Ark.

Q. Have you presented in the area of child sexual abuse in Columbia?

A. Actually, the Ark provides a training of two child abuse professionals throughout the State. We are the center that provides training to law enforcement investigators and D.S.S. case workers throughout the State to train them in areas related to child abuse, dynamics of child sexual abuse, child development, child language skills, things that individuals involved in evaluation would benefit from.

Q. And, Dr. Benedetto, have you been qualified in Court before?

A. Yes.
Q. Can you tell us in which Courts?
A. I've been qualified throughout South Carolina many times in Family Court, as well as in General Sessions Courts, as well as in Courts Martial for the Army a number of times.
Q. Okay. Would you please tell us what type of testimony you have provided in those venues?
A. Expert testimony relative to child abuse.
SOLICITOR: Your Honor, at this time the State would move to have Dr. Benedetto qualified as a clinical psychologist in the area of child sexual abuse, sexual assault.
THE COURT: Any query with regard to her qualifications?
MR. ANDERSON: No, sir.
THE COURT: I will indeed so qualify her as a clinical psychologist in the area of child sexual abuse.
Mr. Foreman, ladies and gentlemen of the jury, normally a witness can only testify as to what they have seen, heard, smelled as a lay witness.
However, if a witness is qualified as an expert witness because of education in some field, discipline or art, the Court can qualify them as an expert, and they can advise as to their opinions.
Just by virtue of the fact that they are experts does

not mean that you have to believe their testimony. You evaluate the testimony of expert witnesses just in the same way as lay testimony.

I will charge you in greater detail about that at the end of the trial.

Ms. Parr.

BY SOLICITOR:

Q. Among child abuse professionals, what is meant by the term late disclosure? What does it mean?

A. Well, one thing that we know about children and the way they disclose, about sexual abuse, particularly when it is abuse within the family, is that children routinely delay disclosure of abuse.

So it is kind of counter-intuitive to us as adults because if we think of it as adults we imagine if someone sexually harmed or assaulted us in some way that we would have recourse and we would immediately tell somebody, and it seems like the natural thing to do.

But what has been documented time and time again is that children do not routinely report immediately, and, in fact, it is rare that a child will immediately report.

Delays can be from hours to days to years, and some individuals who are victimized do not even tell during childhood.

Q. And so how common is late reporting among victims of

sexual abuse?

A. Extremely common. Studies have shown that the majority of children do not immediately disclose. In fact, a large percentage do not disclose during childhood.

Q. Now, what factors do you believe lead to late disclosure?

A. Well, you know, each child's situation is different, and children will choose when they disclose. There can be lots of factors that bear on that.

One factor is with the relationship to the person who was abusing him or the perpetrator in the situation.

Another factor is whether or not threats have been made, whether or not there is support for an outcry by the child. If they do make an outcry, what is the response of the system around them? Are they protective or not protective?

Depending on the age of the child, they can have worries about what will happen to them, what will happen to somebody that they may care about; whether they will be removed from the home -- lots of worries.

Q. And how may a child disclose if the perpetrator is in the family or lives in the home?

A. That is certainly the most difficult situation, the continuing relationships that a child can have with someone. Then the child is least likely to disclose to someone who

is in a care-giving role in the family.

Q. Now, based upon your professional experience, can you give us some examples of situations where you have seen late disclosure?

A. It really depends on the child and their situation, but I have seen everything from children who because of a situation may tell immediately.

For example, if it's a stranger attack. Where a teen-ager is assaulted, that child may go immediately to the police or to adults and disclose; whereas, a younger child may not understand what is happening. They sort of have to figure out who to tell and when to tell; what may happen if they tell.

It really depends on many things. I have seen every-thing from someone who told virtually immediately and those who did not tell for many years.

Q. Now, what is meant by the term piece-meal or partial disclosure and why may this occur?

A. That refers to the fact that children will often tell part of a disclosure and sort of test the waters to see what the response of the system is.

We think of the disclosure of child sexual abuse as a process, rather than simply an incident. So a child may tentatively tell someone a little bit about something and see what happens, and then they from the response decide

whether or not to tell more about it.

Thay may tell more or different parts of the whole picture to different individuals, based on their comfort level, based on the way the question is asked.

So somebody might think they are getting everything but maybe hasn't asked quite the right question to get quite the right information. A child may tell one person part of the picture and then another another part. That is one of the reasons we do forensic interviews, to try to consolidate that.

Q. Do you ever expect a complete disclosure when interviewing a child?

A. No. No, we don't. That doesn't necessarily mean a disclosure is incomplete, but we -- it is certainly not atypical to get sort of a partial disclosure in an interview setting when a child is meeting someone they have not met before, and then for them to perhaps disclose more or even pieces, even after a number of years.

Q. Do children necessarily recall the chronological order of events in cases of ongoing sexual abuse?

A. No. Just like adults, they are not very good at placing things chronologically. Children are certainly not good with time, particularly a child of Minor [redacted] age of six. A much older child might be better at that, but with a very young child you would not expect them to be

able to give you, for example, dates or years when things happen, or even which happened first. Recall that the child doesn't necessarily understand what is happening at the time and isn't making a mental note of I should remember what day or what time it is so I can report this.

They are just in the moment, and at a later point decide to tell. They may not be very accurate which is why we don't ask questions about that.

Q. One last question. What role does family play in a child's disclosure?

A. A family is obviously important in the child's world. The relationship to the members of that family are very important to them, and that can certainly have an impact on who they tell, when they tell, if they tell, how they feel after they've told, whether or not they maintain the disclosure or recant it.

All of those factors are affected by the response of family members and the child's relationship to this individual.

Q. Dr. Benedetto, would you please answer any questions Mr. Anderson may have for you.

A. Certainly.

THE COURT: Mr. Anderson, you are recognized.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Dr. Benedetto, when you bring a child or a teenager into the office with a care-giver, do you get them to fill out a questionnaire?

A. Yes. Whoever has brought the child with them is asked to complete a brief questionnaire.

Q. Was that done in this case?

A. Yes.

Q. Did you use that questionnaire to help you to formulate questions?

A. Only to the extent -- yes, to some extent. As I said, it asks questions about the child's development. It asks when the care-giver first became aware of the allegations. It asks what the child was told about coming in that day.

Those are things we know ahead of time, so, yes.

Q. Do you have any other collateral information?

A. It depends. Sometimes that is actually the only piece of information we have. Sometimes we have an incident report from law enforcement. Sometimes we will have records if the child has been hospitalized or something of that nature. It just depends on the case.

Q. In this case, did you look at any collateral information?

A. The only collateral information I had in this case was an incident report from law enforcement.

Q. And the Ark intake sheet?

A. Right, the care-giver questionnaire which I previously mentioned, and the incident report.

Q. The law enforcement records, what would those have been?

A. . .

Q. The incident report?

A. That's correct.

Q. Anything else?

A. Not that I'm aware of.

Q. And this interview was done on 10 21 2011?

A. That's correct.

Q. This allegedly came out for the first time the end of September or first of October of 2011?

A. I would have to reference the incident report.

Q. The incident report said they were called to Delmay on October third of 2011?

A. That's what I'm reading, yes.

Q. So eighteen days later you saw her at the Ark?

A. That's correct.

Q. You also interviewed her little sister, is that right?

A. I was -- I don't recall if M.A. [redacted] was interviewed. She probably was.

Q. If you don't recall doing her interview, could someone else have done it in your facility?

A. Yes.

Q. When you got Minor in the room you started establishing a rapport with her?

A. That's correct.

Q. How would you describe establishing a rapport?

A. Part of the interview is establishing that child's comfort, the child's ability to communicate and getting a sense of their competence.

Some children are very talkative. Others are very quiet. We try to establish what kind of child are we dealing with and then try to get them to provide something other than just a yes or no response.

We try to reach them and talk to them a little bit.

Q. And showing Minor pictures in this case, is that a way of getting the child to warm up to you?

A. It's a way of -- it is actually just a tool to engage the child in something that is kind of interesting to the child, and also takes away from the fact that you are not just kind of sitting there, staring at them.

It takes the attention off of them, and interesting to a young child, more than just a conversation.

Q. You asked her who she lived with, is that right?

A. Yes.

Q. And she said her dad, her mom, M.A.

A. She described a couple of households.

Q. She described two of her mom, actually an aprtment

and a house. Then she also described one in Charlotte. Is that right?

A. Yes.

Q. And you asked her who lived with her mom, is that right?

A. Yes.

Q. And she said her mom was Karen, is that right?

A. That's correct.

Q. And you asked her who lived with her mom, and she said she and M.A. did, is that right?

A. Yes, that's my recollection.

Q. You just saw the interview. Is that right?

A. Yes, and I think she mentioned that, yes. Yes, she did.

Q. She didn't say Leonard Brockington lived there, did she?

A. No, at that point she did not.

Q. Now, later on you put some diagrams up and asked her what the body parts were, is that right?

A. Yes.

Q. You talked about touches, tickles, kisses, things like that?

A. That's right.

Q. Later on you asked her if there were some parts you were not supposed to touch on a guy, and some parts you

were not supposed to touch on a girl?
A. I asked her if she had some body parts she would consider private, yes.
Q. And did you also ask her if there are some parts that are not supposed to be touched, or did you tell her that?
A. I asked her if there were some parts she would consider private parts that others should not touch.
Q. She showed three on a girl and two on a guy, is that right?
A. Yes.
Q. And then you specifically said, has anyone ever touched you, and what did she say?
A. She said -- she shook her head no.
Q. All right. You asked if anybody had ever touched her on the top part of her body, I guess, and what did she say?
A. She said no or shook her head, I believe.
Q. All right. Her bottom front -- what did she say?
A. Shook her head no.
Q. Bottom, I guess, back?
A. I believe she also shook her head no.
Q. Later you asked her has anyone ever asked her to touch them or had she ever touched someone, is that right?
A. I asked her if anyone had ever asked her to touch them on their private parts.

Q. And that's when she said Mr. Brockington?
A. Yes.
Q. She said skin on skin, is that right?
A. I asked her on clothes or skin, and she said skin.
Q. One time in the bedroom, is that right?
A. I asked her to describe a time she remembered, and she talked about a time in the bedroom.
Q. One time in the living room in a chair?
A. Right.
Q. In the flowery chair?
A. That's right.
Q. And then one time in the kitchen, is that right?
A. Those were the locations she described, that's correct.
Q. When she was talking about the kitchen she never did say where her mom or where her little sister were, did she?
A. No, I did not ask her that.
Q. And she didn't volunteer that, did she?
A. No.
Q. I think later after you talked about the kitchen and two times in the house, you asked if he touched her. Is that right?
A. Yes.
Q. And what did she say?

A. She said no.
Q. I think you asked her did he ever try to and she not like it, and what did she say?
A. If I had asked that I would have said did he ever try to and you didn't let him.
Q. I'm sorry, let him.
A. That's okay, and she said no.
Q. Later on in the interview she told you that she didn't get along with Mr. Leonard Brockington?
A. . .
Q. Is that right?
A. Um, I asked if she got along with him, and she shook her head no.
Q. There towards the end you asked her, I guess, a generalized question, has anyone ever touched you. Is that right?
A. I asked her if somebody else had ever made her touch them. An important part is obviously determining whether there are other perpetrators or alleged perpetrators involved, so I asked her if somebody else had ever made her touch them.
Q. And you also asked if anybody else had ever touched her. Right?
A. Yes.
Q. And she said no to both of those?

A. She did.
Q. Then you followed up the question with, if someone touched you, who would you tell, and the first person she said was her mom, is that right?
A. That's correct.
Q. That's Karen?
A. Yes. That's what she said.
Q. Now, earlier on when you were talking to her, you asked her who she lives with in Charlotte or who lives in the house in Charlotte?
A. Yes.
Q. And she said my dad, my stepmom, M.A. [redacted] and she also said Heidi. Is that right?
A. Yes.
Q. That Heidi lived with them in Charlotte?
A. She indicated something about Heidi's house and it sounded like Heidi was staying with them.
Q. Okay. Any idea whether or not Heidi is an adult or how old she is?
A. I do not know.
Q. After you were qualified as an expert, Ms. Parr asked you several hypothetical questions. She asked you about delayed reporting. She asked you about late disclosure.
One thing you said was that if a person lived in the home sometimes that would cause late reporting or late

disclosure. Is that right?

A. . .

Q. And talking about the person, the perpetrator.

A. Right. I think I said if it's someone in care-giving role or someone who is in the home, someone that the child looks to as an adult who is sometimes responsible for their care.

Q. You never heard that Leonard was responsible for her care, did you?

A. I never asked her about his care-giving responsibilities, so, no.

Q. She never said he had a care-giving role, did she?

A. No.

Q. Did she say he doesn't live in the home?

A. She didn't say he doesn't live there, but when I asked her who lives in the home she said her mom, and when I asked her later, after she mentioned him -- I said, did he stay there sometimes, and she nodded her head yes.

Q. Well, when you asked her questions about the apartment in Florence, what did she say?

A. . .

Q. Her dad and step-mom and . .

A. Right, her dad, her step-mom and her sister, and I believe that was it.

Q. All right, and then when we got to Charlotte she listed

everybody. Right?
A. She did.
Q. I mean, she volunteered it. So when you asked her that question about Florence, she did not say Leonard lived there, did she?
A. No. I don't know whether he lived there or not.
Q. Okay. When you were talking, after you had been qualified as an expert, about sometimes children mess up chronological events, sometimes they don't have the correct information as to time, date and place.

You said that is not unusual?
A. I did say that, yes.
Q. You said late reporting is extremely common, and a large percentage of children don't disclose at first?
A. Yes, that's correct. I did say that.

MR. ANDERSON: Court's indulgence for a moment, Your Honor.

(Brief pause in the proceeding)

MR. ANDERSON: Your Honor, that's all the questions I have at this time.

THE COURT: Any Redirect?

SOLICITOR: No, Your Honor.

THE COURT: You may be excused. Thank you very much.

(Witness excused by the Court)

THE COURT: All right.

SOLICITOR: Your Honor, we would call Dr. Susan Luberoff.

THE COURT: Yes, maam. Please come forward. I'm going to ask you, if you could, to place your left hand on the Bible and raise your right hand as the Clerk administers the oath.

SUSAN LUBEROFF, being duly sworn, testified as follows:

CLERK: Please be seated and state your full name for the record.

THE COURT: Be seated and pull up real close to that microphone. Speak loudly and clearly and slowly so that we can hear everything you've got to say.

Would you state your full name and have a seat.

WITNESS: I'm Susan Luberoff.

THE COURT: Very good. Ms. Parr, you're recognized.

DIRECT EXAMINATION

BY SOLICITOR:

Q. Dr. Luberoff, would you tell us about your educational background and training?

A. Yes, maam. I am a pediatrician. I graduated from the University of South Carolina School of Medicine in 1983, the third class to graduate there.

And I completed a three year pediatrics residency at Children's Hospital, Richland Memorial, in 1986.

I have since then worked as a pediatrician. I have had extensive extra training in the field of child abuse pediatrics.

I am board certified as a pediatrician and board certified in the pediatric sub-specialty of child abuse pediatrics.

Q. And have you been qualified as an expert in the field of child abuse pediatrics?

A. I have.

Q. And how many times have you testified in Court?

A. Over a hundred.

MR. ANDERSON: May it please the Court, I have no objection to her being qualified as an expert.

THE COURT: Thank you. Mr. Foreman and ladies and gentlemen of the jury, she is qualified as an expert to give her opinion on pediatric child abuse.

I will charge you in greater detail as to how to evaluate that testimony at the end of the case, but she is allowed to render an opinion in that field.

Ms. Parr.

BY MS. PARR:

Q. Dr. Luberoff, have you had an occasion to do an examination on Minor [redacted]?

A. I did.

Q. And tell us about how you were brought into this case?

A. I work at the Assessment and Resource Center, a facility that does evaluations of children suspected of having been physically or sexually abused or neglected, and I do the medical part of that evaluation.

Minor was referred to us through the Department of Social Services, and as part of that referral I did her medical exam.

Q. Okay. Would you please tell us what type of examination you performed?

A. When we see children at the Ark, the Assessment and Resource Center, we do a head to toe complete physical exam, looking for any evidence of abuse. Physical abuse, sexual abuse.

So it is a good head to toe exam of every inch of the skin; looking in the ears, the mouth, listening to the heart, and a careful examination of the genitalia.

We use a piece of equipment called a culdoscope which is like a set of binoculars with a bright light so we can see the genitalia very close-up and very brightly.

We get a height and weight. It is generally just a real good head to toe physical examination where we see everything there is to see on that child.

Q. Prior to doing that examination, do you obtain a medical history?

A. Yes.

Q. And did you do that in this particular case?
A. Yes.
Q. And what, if anything, were you told in order for you to do your examination?
A. The medical history -- we have a form for the parents to fill out that has several questions about past medical history, surgeries, injuries, behavioral problems the child might be exhibiting, and that sort of thing, and so in that process we did have some history that was given by the father and step-mother.
Q. And did you also get some history as to why Minor was brought there?
A. Yes, I had the information at the time the appointment was set up on the reason the interview was set up, and on the same day I did her examination she also did the interview.

So I also had information from the interview to help me about what she was reporting or evidence I might need to obtain.

Q. And what information did you utilize that you were provided?
A. I utilized all of that information to do my examination.
Q. All right, and what specifically were you told about the alleged abuse?

A. . .
Q. The reason for her examination?
A. At the time of intake?
Q. Yes.
Q. At the time of intake the D.S.S Information that we were given was that she had made an allegation that she had -- that someone had exposed himself to her and touched her inappropriately; that she had been asked to touch the person's penis.
Q. Now, based upon that, when you did your examination would you please tell us your findings?
A. Yes. I did my examination, and everything on Minor in her exam was normal.
Q. And what do you mean by normal?
A. I mean that any injuries that were of concern were clean. No evidence of neglect. I saw no evidence of it. Her teeth were in good condition. Her genital area was normal. She had no evidence of injury or discharge that would suggest a sexually-transmitted infection.

Her development was normal in that for her age she could carry on an age-appropriate conversation, follow instructions and interact appropriately during the exam.
Q. Okay. Now, tell us, would you ever expect to find evidence of trauma following a sexual assault?
A. No. We rarely find evidence of trauma involving sexual

assault on children, even if the genitalia are involved in the sexual assault.

If there is injury, that injury usually will heal quickly within a matter of days, and so a sort of window of opportunity to see injuries is short in the vast majority of cases.

Most of the time, by the time the child gets to th Ark for an evaluation -- by the time it comes to someone's attention and they come, if there was an injury it has then healed.

In this particular case, the history didn't involve actions we would expect to cause injuries. I certainly was not surprised to find a normal exam.

Q. Okay, and what about with allegations such as in this case of oral penetration. Would you expect to find any evidence of that?

A. Every once in a while a child who has had oral penetration with an object or penis -- there might be some mild bruising in the mouth. The child can catch sexually transmitted infections, and you can see evidence of that, but, again, usually an injury to the mouth resolves very, very quickly, really within a matter of just a couple of days, if there is any.

I did testing of [redacted] for sexually transmitted infection, and those tests did not show any evidence of any

infection.

Q. Now, could a normal exam still be consistent with Minor [redacted] medical history of abuse or assault?

A. Yes.

Q. Would you please explain?

A. We usually don't find any -- when a child has undergone a sexual assault, particularly the kinds of acts that Minor [redacted] described, it is normal for us to find a normal exam.

SOLICITOR: Beg the Court's indulgence for a moment.

(Brief pause in the proceeding)

BY SOLICITOR:

Q. Dr. Luberoff, please answer any questions Mr. Anderson may have for you.

THE COURT: Mr. Anderson, you are recognized.

Before that, ladies and gentlemen, we are getting -- before we do that, we are getting in the short rows for testimony today. Rather than go to the jury room, I just want you to stand up and stretch just a little bit.

Please stand up and stretch right where you are.

(Brief pause)

We've gone a little longer than Baptist preaching so I think you needed a little break. Very good.

Mr. Anderson, you may proceed. You are recognized.

MR. ANDERSON: Thank you.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Dr. Luberoff, you performed a medical exam on Minor [redacted] is that right?

A. Yes.

Q. You also performed one on M.A. [redacted] is that right?

A. I don't recall whether I did or not.

MR. ANDERSON: Your Honor, may I approach the witness?

Q. Are you aware that Minor [redacted] had a younger sister?

A. Yes.

Q. Is her name M.A. [redacted]

A. Yes, to my recollection.

Q. If you would, is this your initials on the bottom?

A. Yes. This is a medical record of my exam on M.A. [redacted]

Q. So that being the case, would you have done one then?

A. Yes.

Q. Was that in addition -- my handwriting is worse than yours.

A. Thank you.

Q. Another reason there might be a normal exam is because nothing happened. Is that right?

A. Yes.

Q. Thank you.

THE COURT: Any Redirect?

SOLICITOR: No, Your Honor.

THE COURT: You may be excused, and you are free to leave.

(Witness excused)

SOLICITOR: Heather Smith.

THE COURT: Yes, maam. Ms. Smith, please come forward. I'm going to ask if you would come forward and place your left hand on the Bible and raise your right hand sa the Clerk administers the oath.

HEATHER SMITH, being duly sworn, testified as follows:

CLERK: Please be seated and state your full name for the record.

THE COURT: Get real close to the microphone and speak real loudly, clearly and slowly so we can hear everything you've got to say.

WITNESS: Heather Marie Smith.

THE COURT: Ms. Parr, you're recognized.

DIRECT EXAMINATION

BY SOLICITOR:

Q. Ms. Smith, where are you employed?

A. I work at the Assessment and Resource Center, also known as the Ark.

Q. What do you do for the Ark?

A. I conduct forensic interviews and also provide short term treatment and coordinate treatment services.

Q. And would you please tell us about your educational background?

A. Sure. I have a Bachelor's Degree from the University of South Carolina in psychology. I have a Master's Degree in counseling from the University of South Carolina School of Medicine.

I am a licensed professional counselor in the State of South Carolina.

Q. You said you are currently employed with the Ark?

A. Yes.

Q. Would you please tell us what services you provide at the Ark?

A. I provide forensic evaluation interviews. I also provide short term treatment, some short term family therapy, and also coordinate treatment for those who need services following forensic interviews.

Q. And have you testified in Court before?

A. Yes, I have.

Q. And how many times?

A. Between fifty and seventy-five.

Q. And have you been declared an expert?

A. Yes, I have.

SOLICITOR: Your Honor, at this time the State would move that Ms. Smith be declared an expert in assessment and treatment of child sexual abuse.

MR. ANDERSON: I have no objection, Your Honor.

THE COURT: All right. She is so qualified, and she is allowed to render her opinion in this field.

You are recognized, Ms. Parr.

BY SOLICITOR:

Q. Now, Ms. Smith, would you please tell us about the different models of child sexual assault or child sexual abuse treatment?

A. The best practice model currently in place is what we call trauma focused cognitive behavioral therapy. We use the acronym TFCBT for short so that we are not saying such a long label, and it is the next practice model in a skills phase, a training model, so that children even as young as four can learn how to learn skills to help them so that they can kind of regulate their own behavior and their own emotions, to feel better.

So there is a skill-based learning and training model to teach children in the child service model -- you teach children how to regulate their own emotions, what copeing skills they can use that fit their personality, to help them feel better, and if they are having negative emotions such as anger or intense sadness or anxiety, to be able to regulate those emotions.

We teach them how to do that. There are certain techniques you can use such as deep-breathing, finding some

support resources where they are living, to talk to someone, and as part of that model we also practice those skills and routine them so that children really know how to regulate their emotions and be able to feel better.

Q. And tell us about play therapy?

A. Play therapy is used for younger children, nine and under, typically. Play therapy is more non-directive. In trauma of this kind you use non-directive because you're not teaching and training, reviewing and practicing, so it's not a lot of direction to the child of ways to practice the concepts and practice the skills.

In play therapy, it is more non-directive, so you let the child lead the therapy. So if you were playing with different types of toys, children often will express emotion but we allow the child to go with whatever they are playing with.

Whereas, in trauma settings, it goes into trying to teach the child skills. It is specific to teaching skills.

Q. And what does forensically sensitive mean?

A. Forensically sensitive therapy is just having an awareness that there is a court -- a pending court case. That could be a criminal case, that could be in Family Court, a Family Court case, so that as a therapist if I know there is a pending criminal case I am aware of the question I'm asking the child so that I am not contaminating

any type of picture or court case, any type of court case.
Q. And how do you do that?
A. Basically you just -- as a therapist you maintain an awareness. I might reach out to the court staff or someone from law enforcement, or the Department of Social Services, in order to know what is going on and when it's happening.

It is just so that I am not contaminating anything in that process.

Q. Now, you were seeing Minor as a therapist, is that right? You've been her therapist?
A. Yes.
Q. When did you start seeing her?
A. I began seeing Minor in October of 2013.
Q. And what was the purpose of your seeing her at that time?
A. Minor was referred to me by Dr. Alicia from the Ark, Dr. Alicia Benedetto, following -- she had been in play therapy for almost a year prior to that, and Dr. Benedetto referred her to me for the trauma model so that she could learn the skills and be able to practice them.
Q. And when was this?
A. October 2nd of 2013.
Q. Okay, so she was just referred this past October?
A. Yes.
Q. And when did she . .

A. I apologize, maam. May I make a correction?
Q. Yes.
A. She was actually referred in February of 2013, and October of 2013 is when the court-preparation, the specific court-preparation services began.

I apologize.

Q. Now, when she was referred in October of 2013, tell us what did you do on receiving that referral from Dr. Benedetto?
A. That was in February of 2013, and I began to see Minor for trauma focused cognitive behavioral therapy, and that was a referral to Family Associates which is a private practice clinic that I practice out of.

Because at the Department of Mental Health they use the assessment and resource center -- we do not do long term treatment there; we only do short term treatment, so I began seeing her at the private practice clinic and then transitioned her over to the Department of Mental Health in October.

Q. Now, when you saw her in private practice in February of 2013, could you please tell us the nature of that?
A. Sure. I always begin by doing the clinical assessment so I am assessing Minor for her current functioning, how is she doing in school and at home; what are her parents noticing, what are her teachers noticing -- anything

that I need to work on with her.

So I conducted clinical interviews with her mother; sorry, her father and her step-mother, and with Minor That was my first session.

Subsequently, I met with her for about eight sessions where I -- they weren't all weekly. They were -- some of them were weekly and then I would move it to once a month. I gave her a summer break so she could have a break for the summer.

And that is when I met with her on emotional relations, identifying feelings and how to regulate emotions; learning copeing skills and practicing them. I even met with her care-givers to teach them how to remind Minor to use them at home.

It is very important for children that are experiencing anxiety, negative emotions, anxiety, anger, sadness, so I did that with Minor and she was able to learn the skills and practice them.

She is intelligent, and she was able to learn and master the concepts and be able to practice them at home.

Q. And what type of -- give us some examples of what kind of copeing skills she had to work with?

A. I started out teaching her a deep-breathing technique because the research tells us that the more oxygen you can get to your brain the more relaxed you can be.

So we often practice that, but deep-breathing techniques to help when she was experiencing intense feelings of sadness, anxiety or anger. She could even do them at school if she needed to.

I also helped her to identify some skills that she could use if she was maybe thinking about some negative thoughts too often; that she could watch a movie or she likes to sing and dance, and she could use that.

Art is a big stress reliever for her, so we talked about art projects to use as copeing skills.

Q. And when she first came to you, how did you assess that she needed to work on these particular matters?

A. Well, the copeing skills are actually geared toward the individual child. Really, what works for them.

Some kids don't like to draw; they would rather read. Some children -- for Minor , those are the things that worked for her. It is more -- you know, first, I had to identify what the feelings were that she was experiencing.

For Minor it was anxiety, anger and sadness, and we talked about scenarios that addressed those feelings and how to know when you are starting to feel a negative emotion so you can use a skill before it really gets out of control.

Q. And over time, were you able to help alleviate some of those feelings?

A. Yes, she did improve.

Q. And how were you able to evaluate or assess her improvement?

A. Well, she would tell me that she felt better; tell me she is not experiencing intrusive thoughts. Children at school sometimes have negative thoughts at school that really prevent them from learning because they are thinking about something negative all the time.

So having some intrusive thoughts that are negative, let me do these things at school to stop that so I can focus on school, can focus better at school.

Then checking in with her care-givers to see if she is experiencing any physical symptoms. One of Minor symptoms was nighttime bedwetting, and that actually did improve. So she stopped wetting the bed, and it made her very proud that she was able to do that because it was embarrassing to her.

That was -- checking in with care-givers, checking with teachers to see what they were seeing -- that type of thing.

Q. Okay. When you did your assessment, your initial assessment, did you determine a diagnosis?

A. Yes, I did. Minor met the criteria of what we call DSM four in the Diagnostic and Statistical Manual that health professionals use to diagnose.

She met the criteria for post-traumatic stress disorder.

Q. What were some of her -- you mentioned a lot of negative thoughts, anxiety. Can you explain what those were?

A. She -- Minor did not -- part of my therapy -- I do not necessarily know the exact thoughts or the exact reasons she might be feeling anger or sadness. She was avoidant. She didn't really want to talk to me about a lot of things. She was very uncomfortable.

So I didn't really need to get what we would call details of things necessarily, but she did confirm that she would think about bad things that had happened often, or things that would cause her to be nervous, upset, and not really able to be relaxed or calm or feel settled.

Q. All right. Now, after you -- you said you focused on trauma-focused cognitive behavior therapy for your profile, and then you moved to forensically sensitive therapy?

A. I began with forensically sensitive therapy only because I knew there was going to be some court cases, and both family and criminal.

Q. So you did that purposefully?

A. Yes.

Q. And then you moved toward the trauma focus?

A. It is all really wrapped in the same thing. Forensically sensitive therapy means the therapist being aware

that there are pending court cases, and just really knowing that there are court cases that the child needs to testify or be a part of in the family; it is really just an awareness that you keep a focus on so you are not contaminating that process.

It is very important not to contaminate a court process.

Q. So it was in October that you said you started the court preparation?

A. Yes. It was in August of 2013 that I became aware that a trial date had been set for the criminal case. I think that was continued for some months, but -- it was set I believe for November of 2013 but it was continued.

Once I realized there was a court date set I began the court preparation services which is a short term therapy. It is psycho-education so it is education where you use a handbook. It's called a Court Handbook that is used in our State with small victims.

It just goes through what is a courtroom, the people involved who are at the courthouse, bringing her to the courtroom and introducing her to the courtroom -- that type of thing.

So it is just education to help her to feel more comfortable.

Q. And why is this important?

A. Well, court-testifying is nerve-wracking. I am nervous right now, and, say, for a child it is even more because they don't understand the court process. You know, it's a big room, a small child.

So preparing them actually just helps them feel more relaxed, be more comfortable, be able to even talk into a microphone. That's unusual for a child.

So just having them practice that and educating them reduces the trauma of having to testify.

Q. Now, in your court preparation do you talk about the case itself or what . .

A. No, I do not. In terms of preparing her for the questions and her actual testimony, that is left up to the Solicitor's Office.

I just helped her practice in the microphone, talking about her name, school, things she likes to do, just to practice speaking in front of people to gather some confidence and know what to do.

That if she doesn't understand the question or if something is confusing, that she can-- that she has the right -- oftentimes children don't even know that they can say I don't understand or can you repeat that because they are kind of taught to obey and follow the rules.

So teaching her that she is allowed to ask someone to repeat a question and that type of education is what we do.

SOLICITOR: Beg the Court's indulgence for a moment.

(Brief pause in the proceeding)

BY SOLICITOR:

Q. And are you still providing services to Minor

A. Yes.

Q. Would you please answer any questions Mr. Anderson may have for you?

A. Yes.

THE COURT: Mr. Anderson?

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Ms. Smith, earlier I think you might have gotten a little mixed up on your dates. The first time you met her was in March of 2013?

A. In February.

Q. Was that when you got the referral or was it when you actually met with her?

A. My first meeting -- that was my first appointment.

Q. Do you have a copy of that appointment?

A. That would be the initial clinical assessment. February 8th.

MR. ANDERSON: May I approach, Your Honor?

THE COURT: Yes.

Q. What does that look like? I just did not see a date on this.

A. The date is on the consent form.
Q. Never mind. What you are talking about is the initial clinical assessment of 3 1 13?
A. No.
Q. But you did see her on 3 1 13?
A. Yes, I did.
Q. Is that right?
A. Yes.
Q. So it wasn't February but March?
A. Actually, I saw her February 8th, February 15th, February 20th and then March first.
Q. All right. In your initial assessment you reviewed records?
A. Yes.
Q. What had previously been done by Wendy Scledera?
A. I reviewed the Ark forensic report written by Dr. Alicia Benedetto, the forensic interview, the Florence County Family Court Order, the Guardian ad Litem report, a deposition from the previous therapist, Wendy Scledera.
Q. Now, I think in your report you prepared, on page -- Wendy Scledera had seen her at a counseling center?
A. That's correct, in North Carolina.
Q. She was seen there for about a year?
A. Yes.
Q. That's when they were doing play therapy?

A. That's correct.
Q. She remained avoidant about talking about anything concerning my client, Leonard Brockington?
A. That is my understanding.
Q. And you see her evidently several more times in February?
A. Yes, I saw her three times in February.
Q. And again on March first?
A. Correct.
Q. The next note I have is August 16th. Would that be about right?
A. I saw her April third, April 22nd, May 15th, May 30th, June 16th and then August 30th.
Q. Let's talk about the one that I have.
A. Okay.
Q. That was just -- the top of it says focused and check court assessment?
A. Yes.
Q. You asked her about her summer break and how she'd been doing and things like that?
A. Yes.
Q. Things that were ongoing?
A. Correct.
Q. And did you at any time after that prepare or do a checklist of -- this says section J, strengths, needs,

abilities, preferences. When did you do that?

A. It was part of the court preparation assessment that was done at the Department of Mental Health. The Department of Mental Health has standards for paperwork, and because it's a state agency, so it is a ten page document we are required to fill out and that is part of a section with strengths, needs, preferences, and it is in order to develop a treatment plan.

Q. When was that done?

A. That was October 2nd of 2013.

Q. And it has a mental exam status, appearance . .

A. Correct.

Q. . . is activity appropriate, attitude during interview, affect appropriate to the situation, mood (reading from form).

Speech, tone -- next page, thought process normal, content normal. No evidence of hallucinations. Does that -- memory is intact according to check list. Concentration calculation -- able to concentrate.

Fund of knowledge, above average.

A. That's correct.

Q. All of those?

A. Yes.

Q. And, of course, the memory could be intact for more recent or immediate -- you said intact, is that right?

A. That's correct.
Q. Going back to the other page, appearance and hygiene, you've got neat and clean checked.
A. That's correct.
Q. All of it appeared to be normal for a eight or nine year old child?
A. Correct.
Q. Also, on October second, you've got the interpretative summary?
A. Correct.
Q. [redacted] is an eight year old white female who was referred for short term therapy to prepare her for testimony in a criminal court case. Does that indicate the year before?
A. Yes.
Q. Later it says pending criminal court case and a requirement that [redacted] testify. The Ark recommends that we provide services as well as other things for the family?
A. Yes.
Q. You saw her again on -- is October fourth right?
A. I saw her on different days, and I can go through them if you like.
Q. The next one was October fourth, is that right?
A. That's correct.
Q. And that is when you actually gave her the court

notebook?

A. Yes.

Q. And I think you indicated earlier . .

A. It is a State-wide notebook that is used to prepare a child or children for testimony.

Q. I think said you went over a couple of things with her and sent a few pages home with her?

A. I sent the whole entire book, yes.

Q. For her to do some homework?

A. Yes.

Q. That is -- I think that is to acclimate them to know what is going on?

A. Right.

Q. Who the players are?

A. Really it outlines every person that can be in the Court, references where she would be sitting where people like her family would be sitting, where the jury is sitting.

It is a very -- it is all about education and letting her know what to expect.

Q. Where the Judge is sitting?

A. Where the Judge is sitting.

Q. Where the Court Reporter . .

A. Yes, even the bailiff.

Q. Is there a courtroom in the book?

A. I don't remember. I don't think it is.
Q. You saw her on 10 16, is that right?
A. Yes.
Q. That is -- it has F and then a mark -- court education learned at home?
A. Yes.
Q. One of the homework assignments talked to her about what will happen in Court and reminded her of her copeing skills?
A. That's correct.
Q. And the next one I've got is 11 6 of 2013. Court introduction in Florence?
A. That's right.
Q. She went back there?
A. Yes.
Q. And if you're making this note, you came with her?
A. I did.
Q. Met with Minor in Courtroom in Florence. Did you actually come to this Courtroom?
A. I cannot remember what Courtroom it was. It looked similar to this one.
Q. All right. Introduced her to the setting, went over the notebook?
A. Yes.
Q. Ms. Parr talk with her?

A. Yes.
Q. Did Ms. Parr actually take her to the witness stand?
A. She did, and she practiced talking into the microphone on that occasion, and was able to sit in all the different seats and get a different perspctive. Even in the Judge's chair.
Q. Did Ms. Parr ask her any questions?
A. On that occasion she did not. She only asked her questions about school, family, pets, that kind of thing.
Q. The next one I have is November 13th. Is that right?
A. That's correct.
Q. And that is when you came with her to the Courtroom to talk about what was going on?
A. Yes.
Q. Is that a fair assessment?
A. Yes.
Q. Then 11 20 -- is that right?
A. Yes.
Q. Again meeting at the Courtroom?
A. Yes.
Q. Actually reviewing the video done at the Ark Center?
A. That's right.
Q. That was Minor actually reviewing it?
A. Right. Minor -- it was on a DVD player attached to a TV, and she watched her interview with Dr. Benedetto.

Q. About a forty-two to forty-five minute interview?
A. That seems right.
Q. You encouraged her to ask any questions of Ms. Parr then?
A. Afterwards, yes.
Q. Did Ms. Parr ask her any questions?
A. Ms. Parr was not present during the video or watching the video. She later met with Ms. Parr in her office to ask any questions.
Q. Were you there at that time?
A. I was not.
Q. Do you know whether or not any questions were asked and what were the answers?
A. I do not know. I did not witness any questions being asked. It is my understanding that questions about the incidents were asked, but I don't know what those were.
Q. On 11 12, more Court preparation?
A. Yes.
Q. Talked about, I guess, the delay?
A. Yes, and her frustrations with the delay.
Q. I think there were more Court preparation?
A. Continuing to keep the rapport and make sure she is using the copeing skills learned so that she could maintain, you know, improvement.

Q. Met two weeks later, talking about the Christmas break into the next year, and continued Court preparation?

A. Continuing rapport and just to check in.

Q. Then on January 15th, and that was in 2014?

A. Yes.

Q. Talked about Court preparation, false feelings, and thing like that. Court was coming up?

A. . .

Q. Then on April second, did you meet with her?

A. Yes, April second, again at the Courthouse here.

Q. Three weeks ago?

A. Yes.

Q. Again what did you all do here?

A. Sure. We -- she came back into the Courtroom. She was able to talk into the microphone, sit in the seats, and then I stepped out and Ms. Parr then worked with her so I'm not exactly sure what they did because I wasn't present.

I waited in another room until that was finished. Minor did not want a lot of people to be in the Courtroom when someone asked her questions, so I respected that.

MR. ANDERSON: Court's indulgence, Your Honor.

(Brief pause)

MR. ANDERSON: Your Honor, that's all the questions I have.

THE COURT: Any Redirect?

REDIRECT EXAMINATION

BY SOLICITOR:

Q. Ms. Smith, the diagnostic form that Mr. Anderson asked you about and the bottom where it says mental status exam . .

A. Yes.

Q. . . at the bottom it asked about sleep patterns. Did you make a notation on that?

A. Yes, nightmares.

Q. And did you go into the content of the nightmares?

A. No.

Q. And would you please read that whole section?

A. . .

MR. ANDERSON: Your Honor, I would object at this time. I don't believe that is a collateral matter to something that was brought up on Cross?

MS. PARR: Your Honor, he read part of it. He did not read all of it.

THE COURT: I'll allow it.

BY SOLICITOR:

Q. Could you read this?

A. [redacted] is an eight year old white female referred for short term therapy, to prepare her for court testimony in a criminal court case.

She has been seen previously by a therapist for trauma behavior therapy with Forensic Family Associates, and progress was positive with a reduction of post-traumatic stress disorder symptoms.

She was better able to focus, able to reduce intrusive thoughts and anxiety reported last at school. With the pending court case and requirement that we supply short term education and support of therapy. Work was recommended at the Ark to provide these services with victim advocacy to the family.

Q. That's all I have.

THE COURT: You may step down. You are free to now leave.

(Witness excused)

THE COURT: Any further witnesses?

SOLICITOR: Your Honor, I think this will be a good time to break.

THE COURT: I'm not asking if this would be a good time for that. I'm asking if you have anymore witnesses.

SOLICITOR: I have no more witnesses today, Your Honor.

THE COURT: But do you have any more witnesses?

MR. WELLS: Your Honor, we have two more witnesses, both law enforcement officers. Their testimony will be -- the second one will be lengthy.

THE COURT: That's what I want to know. Very good.

All right, Mr. Foreman and ladies and gentlemen of the jury, we will now recess for the evening. We're going to ask that you be back at nine thirty, nine thirty sharp, and do not discuss the case.

I will reiterate to you from the jury selection on forward that you are to base your decision on what transpires here in this Courtroom.

I anticiate there will probably be some newspaper article written about these proceedings, and I will point out two things to you.

Number one, you haven't heard everything that took place, and you don't need to hear someone else's version of what transpired. You need to base your decision on what transpires here in this Courtroom.

So if there is any news coverage in the Florence Morning News or any other local newspaper or the State paper -- I don't anticipate that will be the case, but more than likely in the Florence Morning News -- do not read the article.

You need to base your decision on what takes place here today and the balance of the testimony that is going to transpire in this trial.

Once again, do not engage in any kind of independent investigation or internet research. Don't go and do anything outside of this Courtroom.

You must base your decision on what transpires here in this Courtroom.

Do not discuss the case amongst yourselves or with anyone else. No social media whatsoever.

Everyone remain seated as the jury exits.

(Jury excused for the evening recess)

THE COURT: Anything from the State before we recess for the evening?

MS. WELLS: Your Honor, one thing, and I do need to put this on the record, regarding the Defendant's status.

THE COURT: What is the situation as far as him being out on bond?

Mr. Anderson, have you spoken with his bondsman about whether or not he would continue him on bond? The bond was actually concluded with his appearance in Court.

Have you spoken to him about that?

MR. ANDERSON: No, sir, Your Honor, I have not. However, I can go and call him. He's been here every time the Court has been in session.

THE COURT: All right.

MR. ANDERSON: Your Honor can see from behind us that he has extensive family here. He's living with his mom, this nice lady right there.

THE COURT: All right, I'm going to allow him to go home, but you understand that if you do not appear that is

a separate charge and you can be incarcerated for an additional period of ten years.

DEFENDANT: I'll be here.

THE COURT: And do you also understand that if you don't show up, we will go forward without you?

DEFENDANT: I understand.

THE COURT: I'll allow it.

Be here in the morning at nine thirty, nine thirty sharp.

Anything else?

MR. WELLS: No.

THE COURT: Anything from you, Mr. Anderson?

MR. ANDERSON: No, sir.

THE COURT: Just one thing, and I know it's premature to do this, but since we have a moment or two, Mr. Wells, what is your idea with regard to offenses to be charged?

As to criminal sexual conduct in the first degree, do you have an opinion with regard to any lesser included offenses?

MR. WELLS: At this time in this case, I think that would be all you could charge.

THE COURT: I think so, because I think the law is very clear that lewd act is not a lesser included offense. That would only apply if there was some physical altercation. I think it is either criminal sexual conduct in

the first degree or nothing.

Mr. Anderson, I will be interested in hearing what you have to say about that.

MR. ANDERSON: I agree with Your Honor.

THE COURT: I think it's either that or nothing, and the verdict form is going to have criminal sexual conduct with a minor, first degree, and lewd act, for the appropriate resolutionS.

We will have -- we will conclude the State's testimony, and we will obviously have motions. Then the Defendant will have an opportunity to present their defense, and the Defendant will have an opportunity to take the witness stand if he would like to.

Mr. Anderson, I will talk with him on the record tomorrow to determine whether or not he wishes to take the witness stand, and I am certain you have discussed that with him and will continue to do so until this matter is concluded.

I'm going to ask you to do that because I will ask him on the record what his decision is.

Anything further from the State?

MR. WELLS: No, sir.

THE COURT: From the Defense?

MR. ANDERSON: Nine thirty sharp.

(Whereupon, the Court stood in recess for the evening, and the matter was continued on April 23, 2014)

THE COURT: Please be seaed. Anything from the State before we proceed?

SOLICITOR: No, Your Honor.

THE COURT: Anything from the Defendant?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: We're ready for the jury.

(Jury returned to Courtroom)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, everybody looks very rested, and I thank you for being here and being here on time.

The State's recognized. You may call your next witness.

SOLICITOR: Your Honor, at this time we would call Sergeant Vince Hanna.

THE COURT: All right, Sergeant, if you could come forward and place your left hand on the Bible and raise your right hand as the Clerk administers the oath.

VINCE HANNA, being duly sworn, testified as follow:

THE COURT: Have a seat in that witness chair and pull up real close to that microphone. Talk loudly and clearly and slowly so we can hear everything you've got to say.

Begin with your full name.

WITNESS: My name is Vincent Isiah Haynes.

DIRECT EXAMINATION

BY SOLICITOR:

Q. Sergeant Hanna, where areo you employed?

A. The Florence County Sheriff's Office.

Q. And what do you do for the Florence County Sheriff's Office?

A. I'm currently assigned to the School Resource Office Division as a supervisor.

Q. How long have you been with the Florence County Sheriff's Office?

A. Twenty years.

Q. And did you have to undergo training for your job?

A. Yes, maam. I finished training in law enforcement from the South Carolina Criminal Justice Academy, and I have two basic school resource officer certifications and national certification.

Q. And how long have you been a school resource officer?

A. Seven years.

Q. And prior to that, what was your assignment?

A. I worked with the Forensic Division and the Community Enforcement Team.

Q. And you were basically a deputy with the Florence County Sheriff's Office?

A. Yes, maam.
Q. Now, as a school resource officer, would you please tell us what your duties are?
A. I supervise the officers who are in the high schools and middle schools throughout Florence County. I also handle all the complaints in incidents that happen at the elementary schools in Florence County.
Q. Are there -- you said all the schools in FLorence County?
A. Within the County, not the City.
Q. Not the City -- okay. Now, on October third of 2011, did you have an occasion to respond to a call?
A. Yes, maam.
Q. Where was that call from?
A. That call was at Delmay Elementary School.
Q. Okay, and is that in the County of Florence?
A. That is actually a city school, and the incident that took place took place in the County, so it gave us jurisdiction over the incident.
Q. Now, when you responded to Delmay, do you recall what time you responded?
A. Yes, it was eleven A.M. Eleven O seven A.M.
Q. And when you responded, what did you find?
A. I got to the principal's office to meet a D.S.S. worker.

Q. And what D.S.S. worker did you meet?
A. Jamie Shefton.
Q. And what did you find when you arrived?
A. I spoke with Jamie Shefton and the six year old, Minor in the principal's office, and we spoke about an incident that took place at her residence.
Q. Okay, and you said that Minor was in the principal's office?
A. Yes, maam.
Q. And do you recall how long you were in the principal's office with her?
A. I think it was a little over an hour.
Q. Okay.
A. We had to wait on the investigator.
Q. Okay, so you waited on an investigator?
A. Yes, maam.
Q. Now, did you talk to Minor
A. Yes, maam.
Q. And what did she disclose to you?
A. She disclosed to me that on several occasions that the Defendant touched her private area and what she calls her bottom. Also on occasion she had touched his private area.
Q. And who did she identify as the perpetrator?
A. Mr. Leonard Brockington.

Q. Now, as a result of getting this information from Minor what did you do?
A. I contacted Investigator Chad Collins.
Q. And did Investigator Collins respond to Delmay?
A. Yes, maam. He came to the school.
Q. And what -- did you have any further involvement after Investigator Collins came?
A. No, maam. I was just there for support.
Q. Were you there when Minor s parents came?
A. Yes, maam.
Q. Did you interview them?
A. No, maam.

SOLICITOR: Could I ask the Court's indulgence for a moment?

(Brief pause in proceeding)

BY SOLICITOR:

Q. Sergeant Hanna, would you please answer any questions that Mr. Anderson may have for you?
A. Yes, maam.

THE COURT: Mr. Anderson, you're recognized.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Officer Hanna or Sergeant Hanna -- is that right?
A. Yes.
Q. Twenty years with law enforcement?

A. Yes, sir.
Q. Seven as, I guess, an SRO -- school resource officer?
A. Yes, sir.
Q. Thirty years with the Sheriff's Office prior to that?
A. Yes, sir.
Q. Now, as far as your training, you said you have gone to the Academy?
A. Yes, sir.
Q. Is that the State Law Enforcement Academy in Columbia?
A. Yes, sir.
Q. Eight, ten, twelve week course -- how long is it?
A. Ten weeks.
Q. You've been to that?
A. Yes.
Q. You certainly passed?
A. Yes, sir.
Q. While you were there, did they teach you various things like how to shoot a gun, how to drive a car, and legal stuff -- how to write a report, defensive tactics or maybe hand to hand stuff?
A. Yes, sir.
Q. Also some physical -- I think they make you run and do some things like that?
A. Yes, sir.

Q. And you said you've also gotten some additional training; that you are a state-certified SRO and a nationally certified SRO?
A. Yes, sir.
Q. What did that training consist of?
A. It consisted of -- they teach us the basics and the advanced of being an SRO, being -- educating students on modern-edge stuff and also being a counselor for students and teachers in any situation that comes up when someone breaks the law.
Q. I'm not trying to put you on the spot here, but how old are you?
A. Forty-six.
Q. Things have changed a lot since you and I were in school, haven't they?
A. Yes, sir.
Q. Kids are saying things, doing things in elementary school that they weren't doing thirty years ago. Is that an accurate statement?
A. Yes, sir.
Q. Students saying things in the hallway that you were not hearing thirty years ago. Do you agree with that?
A. Yes, sir.
Q. Students are over-hearing older kids talk about certain things in the hallways or in the bathrooms or places

like that. Do you agree with that?
A. Yes, sir.
Q. Now, in this case, you said you got a call to go to Delmay on October third of 2011. Is that right?
A. Yes, sir.
Q. And once you got there, was Ms. Shefton there?
A. Yes, sir.
Q. Was Ms. Shefton at that time working with D.S.S.?
A. Correct.
Q. Child protective services?
A. Yes, sir.
Q. Now, were you aware of any of her qualifications?
A. No, sir.
Q. But she did work for D.S.S.?
A. Right.
Q. Did she talk to the child first?
A. I'm not aware, sir.
Q. Was she talking to the child while you were in the room?
A. Yes, sir.
Q. I mean, you said you were there for about an hour?
A. Yes, sir.
Q. Now, you said that on several occasions he touched her private area? Is that right, what she told you?
A. Yes.

Q. Did she tell Ms. Shefton that?
A. Ms. Shefton was in the room when she told me.
Q. All right. Now, several times -- several times has different meanings. How would you define several times?
A. . .
Q. I mean, she said several times. Is that one time, four times, seven times?
A. Well, we let her go ahead and disclose, and I did an initial report. The investigator actually follows up on how many actual times.
Q. But you wrote a report in this case, is that right?
A. Yes.
Q. Do you have that report with you?
A. Yes, sir.
Q. What does your report indicate as far as -- you wrote several occasions, is that right?
A. Yes, sir.
Q. So primarily he touched her on what she called her bottom on several occasions?
A. Yes, sir.
Q. All right. So I'll ask you again, how did you come up with the words several occasions?
A. Well, she said he touched her several times.
Q. That was her language?
A. Yes, sir.

Q. So she could have been referring to two times or could have been referring to ten times?

A. Well, we asked her after she said several, more than once, and she said yes. We said, how many, and she couldn't remember.

So that was . .

Q. Now, at any time during this interview did she ever say he had put her mouth on her, did she?

A. No, sir.

Q. And at any time did she ever say I put my mouth on him, did she?

A. No, sir.

Q. And she never disclosed that to Ms. Shefton, did she?

A. Not when I was there.

Q. And you said you were in there for about an hour?

A. Yes, sir.

Q. That's all the questions I have.

THE COURT: Any Redirect?

SOLICITOR: No, Your Honor.

THE COURT: You may step down

(Witness excused from stand)

SOLICITOR: May Sergeant Hanna be excused?

THE COURT: Any objection to that?

MR. ANDERSON: No, sir, Your Honor.

(Witness excused)

MR. WELLS: The next witness will be Investigator Collins.

THE COURT: Investigator Collins, if you would come forward, and I will ask you to place your left hand on the Bible and raise your right hand.

CHAD COLLINS, being duly sworn, testified as follows:

CLERK: Please have a seat and state your name for the record.

WITNESS: Chad Collins.

CHAD COLLINS, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WELLS:

Q. Investigator Collins, where are you employed?

A. Florence County Sheriff's Department.

Q. How long have you been there?

A. Fifteen years.

Q. And what are your duties with the Florence County Sheriff's Department?

A. My main responsibilities at this time are to investigate homicides, child sexual assault and abuse cases, and sexual assault cases in the investigations division.

Q. Let me call your attention back to October third of

2011. Did you happen to receive a call that particular day to investigate the sexual assault of a child?

A. Yes.

Q. All right, and where were you asked to go?

A. I was asked by Sergeant Hanna of the SRO Department to go to Delmay School located in Florence.

Q. And was Sergeant Hanna there when you arrived?

A. Yes, sir, he was.

Q. And what did you do when you arrived at the school?

A. At that point, I tried to get as much informatoin as I could. I spoke with the Deputy and I also spoke with Jamie Shefton. They gave me the particulars of the case; that the child, Minor [redacted], had alleged she had been touched by a household member, and also that he had touched her.

Q. And what was the name of the person provided to you?

A. Yes, it was.

Q. And who was that?

A. Leonard Brockington.

Q. All right. What, if any, action did you all take after you received that information?

A. I spoke with Ms. Karen Waldermo, the mother of Minor [redacted] -- Minor [redacted] was residing with her at the time at 2708 West Sweeney Drive in Florence County. The father, Jorgen Waldermo, was already present at the school.

Q. So after you made a call to Karen Waldermo to come to the school, did she in fact do so?

A. Yes, she did.

Q. What happened as far as with Karen after she arrived?

A. When she arrived at the school, she was somewhat surprised and we explained to her why we were there. She seemed very anxious, almost into a panic attack. We had to actually had to call the school nurse to check her.

Q. But you did advise her what was going to occur at that point?

A. Yes, we did.

Q. All right. Now, at that time was D.S.S. asked to do a safety plan for the child at that particular time, for Minor

A. Yes, we asked them to set up a plan.

Q. And that was being done by the D.S.S. worker, is that right?

A. Yes.

Q. Now, as a result of that particular information, what did you do as far as making contact with the Defendant, Leonard Brockington?

A. What I try to do normally is to see if I can arrange a forensic interview to get as much information as I can. At that time, there were no appointments available in Florence. We were able to schedule one through the D.S.S.

at the Ark in Columbia. It was scheduled for a much later date.

I was able to make contact with Mr. Brockington by phone. Give me just a second now.

I made contact with Mr. Brockington oon October 6th of 2011 by phone and asked if he would come into the Sheriff's Office and talk with me, and he agreed to come.

Q. Was he under arrest at that particular time?

A. No, sir, he wasn't.

Q. All right, and did he in fact come to your office?

A. Yes, on the 7th he did show up.

Q. And where did you meet with him?

A. I met with him in the lobby and walked him to an interview room that we had set aside for talking with people, and I just explained why he was there.

Q. Okay, and in that regard was he in custody at the time?

A. No, sir, he was not.

Q. And, in fact, was he allowed to leave once the interview was over?

A. Yes, sir.

Q. So for that reason you did not advise him of his rights at the beginning of the interview?

A. No, sir.

Q. And later on as things came up did you at some point

go on and give him his Miranda Rights?
A. Yes. During the interview it became clear that I needed to ask him some direct questions, and I did advise him of his Miranda Rights.
Q. Very good. Now, was the interview that you had with him taped?
A. It was.
Q. All right. Now, after the interview had been completed, have you viewed the tape?
A. Yes, sir, I have.
Q. And based on your training and experience in law enforcement, and from interviewing people, tell us whether or not you saw anything at all about his demeanor that gave you any pause at all?
A. He was very anxious in the interview room and nervous. He shifted about in his chair quite a bit. When I asked him several direct questions it appeared that he would try to change the subject on me several times.
Q. Let me show you -- is this the DVD that was recorded as far as the interview with Leonard Brockington, the Defendant?
A. Yes, it is, and that is my handwriting.
MR. WELLS: Your Honor, at this time we would move to play -- well, we'd first move to introduce this into evidence.

THE COURT: Objection from the Defense?

MR. ANDERSON: No, Your Honor.

THE COURT: And that is State's Exhibit 4 in evidence without objection.

(DVD of Defendant Interview admitted without objection as State's Exhibit 4)

MR. WELLS: Your Honor, we would move at this time to play the DVD up to a certain point as far as the relevant parts related to this trial.

THE COURT: You may do so.

(Whereupon, portion of DVD played of interview of Defendant for the jury)

BY MR. WELLS:

Q. Now, Investigator Collins, subsequent to that interview, what did you do thereafter as far as talking with other potential witnesses?

A. Jamie Shefton and I kind of worked in tandem on this one. We went out and spoke with Staci Parker on the 11th of October.

Q. She being the neighbor who lived next door to the girls?

A. Yes, sir.

Q. Tell us about that.

A. We met with her and talked with her briefly about her son playing with Minor and M.A. Ms. Parker stated

she didn't observe any sexual behavior out of M.A. when she was playing at her house.

After that, we went and spoke to M.G. who lives across the street, the first person Minor disclosed to.

Q. All right, and what, if anything, did he indicate basically?

A. She told us that on a particular day that she and Minor and M.A. were playing. They were playing at Minor 's house.

Q. Did you make a mistate in your report as far as what you put . .

A. I did. When I was typing up notes on that particular day, I placed in my notes that M.G. said she played with Minor and M.A. sometime on 9 24. I put in M.G. M.G. house when I should have put in they were playing at Minor 's house.

They were playing -- M.G. claims they were playing dress-up and Minor went to go knock on the bedroom door, and M.G. said she heard yelling from behind the door, and she asked Minor -- she said it was a male voice.

She said to Minor does he always yell at you like that, and Minor then broke down and told M.G. what happened.

Q. And that was the sexual abuse as far as the Defendant

on her, is that right?

A. That was what M.G. [redacted] claimed, yes.

Q. Now, did you also meet with the father at D.S.S. to discuss the matter with him with Ms. Shefton?

A. Yes, I did.

Q. And did he relate to you about he knew about the situation or what he had found out?

A. That's correct.

Q. And that is what he testified to in Court?

A. Yes, sir.

Q. All right. Now, when was the forensic interview of Minor [redacted] -- when did that take place?

A. The 21st of October of 2011.

Q. At the Ark?

A. Yes.

Q. And were you subsequently provided with a copy of the interview that was taped of the child with the forensic interviewer?

A. Yes, I was.

Q. And that was played in Court yesterday?

A. Yes, it was.

Q. All right. Now, as a result -- did you yourself look at the tape?

A. Yes, I did.

Q. As a result of talking with all of the witnesses, viewing

the child's statement with the forensic interviewer, did you have occasion then on November 7, 2011, to obtain arrest warrants against the Defendant for criminal sexual conduct in the matter?

A. Yes. Prior to that point, from hearing the interview at the Ark, I was not aware of the allegation of oral sex. The only allegation I had up to that point was Mr. Brockington touching Minor and her touching Mr. Brockington.

After seeing the Ark information and seeing the video of Minor being interviewed, I was made aware of the oral sex allegation at that point.

On the 7th of November I did speak with Judge Timmons at the Sheriff's Office.

She was the resident magistrate at the office, and I talked to her about obtaining a warrant for his arrest.

Q. And was he subsequently arrested on November 14th of 2011?

A. Yes.

Q. Please answer any questions Mr. Anderson has?

A. Yes.

THE COURT: Mr. Anderson.

CROSS EXAMINATION

BY MR. ANDERSON:

Q. Investigator Collins, I'm going to hand you two warrants.

A. Yes, sir.
Q. Are those the two warrants you obtained against Mr. Leonard Brockington?
A. Yes, sir, they are.
Q. What is the address where the Defendant resides?
A. At 1414 Malfor Drive.
Q. Certainly not Sweeney Drive?
A. No, sir.
Q. What is the date that was served on him?
A. The 14th of December of 2011.
Q. So not November?
A. No, sir.
Q. December?
A. Yes, sir.
Q. More than a month after you talked with Ms. Timmons?
A. Yes, sir.
Q. With Judge Timmons, I should say.
A. Yes, sir.
Q. I believe you said you've been at the Florence County Sheriff's Office for fifteen years?
A. Yes.
Q. How did you start off?
A. I started off as a patrolman. Went to the Academy, of course, and was on the road for approximately two years. Went to a school as SRO at South Florence High

School for five years and was promoted to investigations in 2005.

Q. So for the last nine years you've been an investigator?

A. Yes, sir.

Q. And at the time this happened some six years?

A. Yes, sir.

Q. How many calls do you think you get a year?

A. I average -- when I first started investigations I was averaging somewhere around seventy cases a month. I am now down to probably thirty cases a month.

Q. So to begin with, you were getting six to eight hundred cases a year?

A. On average, yes.

Q. And then lately, I guess, maybe three hundred and fifty to five hundred cases a year?

A. It has come down considerably, yes, sir.

Q. Now, you first got the call on October third, 2011?

A. Yes, sir, I did.

Q. I got you're briefed by Sergeant Hanna and you worked with Jamie Shefton?

A. Yes.

Q. You didn't talk to the little girl, did you?

A. No, sir, I didn't.

Q. And you did that because you don't want to influence

her in any way. Is that right?

A. That's correct.

Q. Mr. Waldermo, Jorgen, was already there?

A. Yes, sir.

Q. Was his wife, Jeanene, there?

A. When I first entered the room, I didn't see her but she came in afterwards and we talked to Mr. Waldermo.

Q. Then after some things were said, you agreed that Karen would come?

A. Yes, we did.

Q. And Karen came and I think he brought M.A. with her. Is that right?

A. If I recollect -- I can't remember how M.A. arrived. I'm not sure if she was with Waldermo or she came in with her.

Q. D.S.S. drew up a safety plan?

A. Yes, sir.

Q. And in the safety plan, if you recall -- you may not but one of the things Karen wanted was for them to continue to go to Girl Scouts?

A. Yes.

Q. And she had been active in Girl Scouts, I guess, with the girls?

A. Yes, sir.

Q. While we're on that subject, did you ever go and talk

with anyone at Girl Scouts?
A. No, sir, I did not.
Q. About these allegations?
A. No, sir, I did not.
Q. So then you were at the Ark, and then I think you said you went to talk to Leonard Brockington, but before we get to that you set up the interview with the Ark?
A. Yes, sir.
Q. You wanted to get one in Florence?
A. Yes.
Q. Nothing was available so you had to go out of town?
A. That, and it was a little bit more convenient for the Waldermos.
Q. Two weeks later is when the interview was actually set up?
A. Yes, sir.
Q. Now, earlier you testified -- you said at first I didn't know that there was anything about oral sex. The allegations I received on October third were he touched me and I touched him?
A. That's true.
Q. And then you went back and followed up on October 13th, 2011, and still consistent -- he touched me and I touched him?
A. As far as I remember,yes.

Q. No mention of any oral sex at Delmay, no mention of oral sex ten days later on October 13, 2011, when the follow-up was done?

A. As far as I remember, yes.

Q. The first time anything about oral sex was when she goes to the Ark and meets with Alicia Benedetto, is that right?

A. Yes, that's true.

Q. On 10 6, three days later which would have been a Thursday -- if I have this right . .

A. Sounds right.

Q. So October third was a Monday so October 6th would be Thursday -- you called Mr. Brockington, and Leonard didn't go, you know what, Investigator Collins, I'm busy right now?

A. No, sir.

Q. Investigator Collins, I'll be there; what time, and it was set up the next day?

A. That's right.

Q. So the next day by my calculations you all talked about thirty minutes?

A. That's about right, yes, sir.

Q. Any questions you asked him he answered?

A. He did.

Q. Any questions you asked him about [redacted] as far as

him touching her -- I did not do this. Right?

A. That was the response, yes.

Q. In the interview, he said I don't have my license but here is why I don't have my license? He said that too?

A. He did.

Q. He said I don't have a record?

A. That's true, he did.

Q. He told you he was working?

A. Yes.

Q. So he could get his own house?

A. Yes, sir.

Q. He told you that he had called Jorgen and said, look, something ain't right here?

A. Yes.

Q. He told you he talked with Mr. Jorgen Waldermo and said you all need to get this checked out?

A. Yes, he did.

Q. He told you that he had concern about the little girl's actions?

Q. Yes.

Q. Told you he had coached Little League baseball for fourteen years?

A. Yes, sir.

Q. Told you he would not do this; matter of fact, he would kill a guy who did that if they had done this to

one of his children?
A. Yes, sir.
Q. Later at some point in time during that interview, maybe after fifteen or twenty minutes -- I'm not saying you did anything wrong but I just want to read you these rights?
A. Yes, sir.
Q. So you did?
A. Yes.
Q. And he continued to talk to you?
A. He did.
Q. He didn't say, I don't feel comfortable, and I don't want to go any further?
A. No.
Q. He didn't do that?
A. No, sir.
Q. He continued to talk to you and you asked him some of the same questions again, and he continued to answer?
A. That's correct.
Q. Now, you said you went and talked with a neighbor shortly after that on -- let me back up for a second.

When you were talking to Leonard, he said to you on Saturday before all this came out there were about four or five kids playing and I think Karen was in there taking a shower, if I remember right, and four or five kids were

getting ready to barge in the door. I didn't know if she was naked but I said, whoa, whoa. Is that right?

A. Yes, sir.

Q. He told you Minor got mad at him?

A. Uh hm.

Q. Now, on October 11th, you went to talk to Ms. Staci Parker?

A. Yes, sir.

Q. When I say October 11th, I mean October 11 of 2011. She basically told you that she was approached by M.G. M.G. . .

A. Yes.

Q. . . and they wanted me to talk with Karen because I am friendly with her?

A. Yes.

Q. She said she told him not to act flirtatious in front of me and I didn't see anything untoward with Minor Is that what you talked about, you and she?

A. Yes, sir, and she denied seeing any sexual behavior out of Minor

Q. Right. You go across the street and talk with M.G. M.G. , is that right?

A. Yes, sir.

Q. Now, when you were talking with her, you said, how you doing; do you feel comfortable; I want you to be

comfortable.

I want you to tell me anything and everything that you can remember. I want you to tell me everything in as clear and as precise and in as much detail as you can tell me. Is that right?

A. That would be fair.

Q. Not keep it short and sweet; I ain't got time for all this?

A. No, I wouldn't tell them that.

Q. You probably would tell them after being in law enforcement as long as you have, and after being an investigator as long as you have, hey, if something comes up or if anything at all comes to mind, here's my card; give me a shout. Is that right?

A. Yes, sir. I did.

Q. And as an investigator one of the things you're taught in the Academy is to take notes. Is that right?

A. Yes, sir.

Q. Put them in a report?

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. And when you write the reports, of course, you want them to be as truthful, as accurate and as complete as possible. Is that a fair statement?

A. Fair statement.
Q. And the reason you want to do that is -- well, one reason, God forbid, if something happened to you down the line another investigator would have to take it up, and if you hadn't written it down he would say what can I do now
A. Right.
Q. So you've got the notes and you've got the report, haven't you?
A. Sure.
Q. And this was October of 2011, and we're now April of 2014. My memory doesn't get better with time. How about yours?
A. No, sir.
Q. So you need to be able to go back and look at your notes and reflesh your memory. Would that be a fair statement?
A. Absolutely.
Q. All right. Anywhere -- I'm sorry. Let me back up. Sitting with M.G. [redacted] at her house, her mom and dad were present?
A. Yes.
Q. Two parental figures?
A. Yes.
Q. At any time do you say, oh, man, M.G. [redacted] -- she was some kind of upset when this went down a couple of

weeks ago?

A. No, sir, I did not annotate that.

Q. Did Amy Anderson say, man O man, when my daughter called me at the beach, she was some kind of upset?

A. She made a verbal statement but I did not annotate that, no.

Q. Now, you also -- like a good investigator will do, you wrote handwritten notes?

A. I did.

Q. In your handwritten notes, did you say anything at all about the statement Amy Anderson made?

A. I can't remember.

Q. You want me to show it to you?

A. If you want to show it to me, sure.

Q. Do you recognize that?

A. I do.

Q. Is that your handwriting?

A. Yes, it looks like mine.

Q. October 11, 2011.

A. Uh hm.

Q. Is that when you interviewed her?

A. Yeah, the people who were there. M.G. [redacted] and Amy and Kirby Anderson.

Q. Anywhere in there do you say Amy said that?

A. No, sir.

Q. When you were talking with Staci Parker, she indicated to you that Karen actually defended Mr. Brockington, didn't she?

A. Yes.

Q. Someone who had custody of two little girls for three years prior to this defended Mr. Brockington?

A. Yes.

Q. Now, when you were talking with M.G. [redacted], and Mr. Wells asked you about this -- you are correct that they were playing at M.G. [redacted] house when you made a mistake, and they were actually playing at Minor [redacted] and M.A. [redacted] house?

A. Yes, sir. That was a slight on my part, yes.

Q. And the next thing you wrote -- do you have a copy of your report?

A. Yes, sir.

Q. Inside and playing school, they also dressed up Eason who was playing. Minor [redacted] went to Karen Waldermo's door, knocked on it to ask a question. She heard Leonard Brockington yelling at Minor [redacted]

That is what you wrote, is that right?

A. Yes.

Q. You wrote that in handwritten notes and were retyping this report within how many days afterward? A week, two weeks, three weeks?

A. I'd say three to four weeks.
Q. When it was still fresh in your mind?
A. As much as it could be with the notes I had written down as well.
Q. Leonard said on tape that four or five kids tried to get in the room and she was in there taking a shower, and I jumped up and said, whoa, whoa, and Minor got mad.

Inside playing school and dressed up Eason who was present playing. Minor went to Karen Waldermo's door and knocked on it to ask a question, and she heard Leonard Brockington yelling at Minor

She didn't say Brockington was in the room and yelled through the door, did she?
A. Not to my memory.
Q. She didn't say Karen Waldermo was not there. She didn't say that, did she?
A. Not to me that day. No, sir.
Q. Leonard said he yelled for Minor not to go in there, and M.G. said she yelled at Minor not to go in there?
A. That's correct, to the best of my memory, yes.
Q. On October 10th you also met with Jorgen Waldermo and his wife, Jeanene, at the D.S.S. Office?
A. Yes.
Q. You spoke with both of them at that time?

A. Yes.
Q. He told you that he knew about this in September?
A. Yes.
Q. You later called in Ms. Heidi Smith, is that right?
A. Yes.
MR. WELLS: Your Honor, I'd have to object. She is not present and has not testified at the trial.
THE COURT: I'm going to allow him to ask the question but he can't testify to what somebody else said.
BY MR. ANDERSON:
Q. Did you talk with Ms. Heidi Smith?
A. Yes.
Q. Did you ask her questions?
A. I spoke with her briefly, yes.
Q. As a result of those questions, did you ask her if she'd ever babysat for the Waldermos?
A. I did.
Q. Did she indicate she . .
MR. WELLS: Your Honor, I'd have to object to what she said.
THE COURT: That's all the questions I'll allow as to that.
The objection is sustained.
MR. ANDERSON: I'll move on, Your Honor.
Q. I know that on October third you went to Delmay. I

know that on October 6th you called Leonard; on October 7 you interviewed him.

I know that on October 11 you talked to Staci and went across the street and talked to M.G. [redacted]. Two days later Mr. and Mrs. Waldermo and D.S.S.

After that, you went -- when you heard about the Ark you later went and got a warrant?

A. Yes, sir.

Q. And at any point in time, did you get Karen Waldermo to come in and give you a statement?

A. Based on how she reacted at the school and her defensive attitude, I didn't feel it would be helpful to either Mr. Brockington or the child.

So, no, I did not.

Q. At any point in time, did you go this job and say, hey, let me ask you a couple of questions about Leonard Brockington?

A. No, sir.

Q. Any point in time did you try to track down any former baseball players or any of their families to ask them about Mr. Brockington?

A. No, sir.

Q. He said on the tape Cheryl Cooper is a D.S.S. worker, and she's a doll baby. Sometimes she was called out on calls and I'd babysit her kids. I'd like to take her

home with me, she's a doll baby.

Did you ever go and talk to Cheryl Cooper -- sorry, Michelle Cooper?

A. No, I didn't.

Q. Did you put that anywhere in your notes?

A. No, sir, I did not.

Q. Were Michelle Cooper's children given a forensic interview?

A. . .

MR. WELLS: Your Honor, I would object.

THE COURT: I overrule your objection. You may answer that question.

A. I'm sorry. Would you repeat that?

BY MR. ANDERSON:

Q. Were her children given a forensic interview?

A. They were on a separate incident that was later on.

Q. Any allegations against Leonard Brockington?

A. No, sir.

Q. Did Michelle say anything squirrelly or funny about Leonard Brockington?

A. . .

MR. WELLS: Your Honor, I'd have to object to what she said.

THE COURT: I'll sustain the objection.

Q. Did you talk to Mr. Brockington's ex-wife?

A. No, sir.
Q. Did you go to Leonard Brockington's house?
A. No, sir.
Q. Did you go to Minor [redacted] house and say, you know what? I heard about a flowery chair in the den. I'd like to look and see if there is a flowery chair in the den?
A. No, sir.
Q. Go in the kitchen and say, you know, I've heard some stuff about this kitchen. I'd like to know how open is it and could you see in it from the back yard; how big is it? Did you do that?
A. No, sir.
Q. There were some allegations -- of course, they did change, but there were some allegations about a bedroom. Did you go in that bedroom and check it out?
A. No, sir.
Q. And in your warrant you allege this thing happened between January and September?
A. Yes, sir.
Q. Did you ever try and ask Minor [redacted] did this happen when it was cold? Did this happen when it was warm? Did it happen in school, did it happen over the summer?
Did you ever do that?
A. I did not.
Q. Did you ever go to Karen's house and look for anything

on the internet, see if there were pornographic magazines, pornographic tapes, anything like that?

A. There were no allegations made of pornography.

Q. Was the child ever asked about pornography?

A. I believe in her interview she was not asked about that.

Q. Did you ever ask her?

A. I did not.

Q. Did you ever go to Leonard's house and inspect his house?

A. Again, there were no allegations made about pornography. No, I did not.

Q. You ever talk to any of Leonard's neighbors over there at 1414 Laker Drive?

A. No, sir.

Q. Did you ever check with after school care? Minor said she would go to Ebenezer and she would go to somewhere else. Did you ever check there to see if Minor or M.A. ever mentioned anything at all about something funny going on?

A. No, sir.

Q. Mr. Wells talked to you and you said, hey, when you interviewed Mr. Brockington he appeared anxious, he appeared nervous?

A. I asked him several direct questions and he would

try to change the direction.

Q. You recall that?

A. Yes, sir.

Q. Do you recall Dr. Benedetto testifying?

A. I do.

Q. Do you recall her ever looking at me a single time when I asked her a question?

A. If she did, I did not see it. I can't say.

Q. As a matter of fact, she looked this way the whole time, didn't she?

A. I can't recall where she looked the whole time, Mr. Anderson.

Q. I came over here and just sat down by my legal assistant a couple of times. Did you see that?

A. I did see that.

Q. One time I was hoping maybe she would look at me, the whole way over here, and did she turn and face me?

A. Again, I didn't see -- I didn't pay attention to that.

Q. I asked her several questions, and did she give me a direct answer or did she ramble on? Then one time I said . .

MR. WELLS: What he's asking calls for speculation on the part of the witness.

THE COURT: I think he can assess whatever he asks.

I'll allow him to answer that.

BY MR. ANDERSON:

Q. Did you answer? Did she give me a direct answer? Give me a yes or no answer?

A. Again, I can't recall her complete testimony.

Q. One could argue, couldn't they, Investigator Collins, that she was anxious, maybe a little nervous?

When I asked a direct question, she changed the subject and went elsewhere, and would you argue that about Dr. Alicia Benedetto?

A. I wouldn't know whether to argue that or not.

MR. ANDERSON: Beg the Court's indulgence, Your Honor.

(Brief pause in proceeding)

MR. ANDERSON: Your Honor, no more questions.

THE COURT: Any Redirect?

MR. WELLS: Just a few questions.

REDIRECT EXAMINATION

BY MR. WELLS:

Q. Investigator Collins, would you say that Dr. Benedetto looked directly at the jury when she answered questions?

A. Yes, she was directing her comments to the jury.

Q. And when you interviewed the Defendant, was there a jury present in the room?

A. No, there was not.

Q. Were you the only one present?

A. Yes, sir, I was.
Q. Did he at one point look like he was doing something with his pocket during the interview?
A. It appeared he was pulling them out of his pocket and holding onto his keys.
Q. Now, when you do a case like this, are you going to make notes, and is it possible for you to write down everything you are told?
A. No, sir, not everything.
Q. You only write down the most important things?
A. I do.
Q. I mean, one of the most important things in this particular case would be talking with the neighbor and the outcry witness across the street, as far as the allegations against the Defendant?
A. Yes.
Q. Did you consider the fact that the twelve year old was upset when she did talk would be one of the important things to write down?
A. I wouldn't think so. At the time, the information would be more important.
Q. Do you recall anybody telling you that?
A. Yes, Ms. Anderson told me her daughter was very upset the time she called her.
Q. That's all.

THE COURT: You may step down.

(Witness excused from stand)

THE COURT: You may call your next witness.

SOLICITOR: Your Honor, the State would rest at this time.

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, we have some matters of law to take up so I am going to ask you to return to the jury room once again.

Do not discuss the case. Mr. Foreman, I would ask you to enforce that.

Everyone remain seated as the jury exits the Courtroom .

(Jury excused from Courtroom)

THE COURT: We'll take about a five minute recess, and when we come back we'll continue.

(Court took brief recess, after which the matter was then continued)

THE COURT: Please be seated. All right, I'll be happy to entertain motions at this time.

MR. ANDERSON: Your Honor, may it please the Court? In behalf of Mr. Brockington, the first motion would be -- it relates to Warrant N274311, criminal sexual conduct with a minor under eleven years of age.

Your Honor, we would ask for a directed verdict at this time. Judge, in the very beginning she would not

answer any questions when Ms. Parr was talking to her. Ms. Parr asked her questions, and she repeatedly said I don't know or I don't remember.

After she worked with her for several minutes, she did say that something did happen.

Your Honor, in Cross Examination when I was talking to her, she could not remember talking with Ms. Benedetto or remember meeting people at Delmay School, or what things were discussed or talked about.

She was not giving me a direct answer, and, Your Honor, based on that, I would ask that that charge be dismissed.

THE COURT: Be glad to hear from the State.

SOLICITOR: Your Honor, we believe that the charge should not be dismissed. She testified on Direct he made her suck his private penis. That was clear. That was also -- she also disclosed that during the forensic interview.

Your Honor, she was a very young child. These things happened when she was six. She has just turned nine now.

Your Honor, she was uncomfortable being here, and she had to become acclimated to where she was.

For those reasons, we would ask that it not be dismissed -- that the warrant not be dismissed.

THE COURT: Mr. Anderson, what you said is absolutely true. It wasn't lost on me, nor the jury, and I anticipate you are going to explain that to the jury in no uncertain

terms.

However, I do believe it's a question of fact. I think, taking everything into consideration, there is at least a scintilla of evidence that that happened just based on her testimony and her testimony alone.

There are some inconsistencies in what she said, some inconsistencies in the manner in which she testified and the manner of reporting. I think all those things can be pointed out.

This is a classic question for a jury to resolve.

Anything further from the Defense?

MR. ANDERSON: Yes, I would make the same motion as far as the lewd act, but I understand that that evidence did come out.

Your Honor, I would make that motion as well as to the other warrant, Warrant Number 274312. Again, a lot of inconsistencies. First she denied it, and later she -- on Cross Examination she denied it.

Matter of fact, I would go one step further. She told about two instances, and then when she testified she only told about one instance as far as lewd act is concerned.

Your Honor, I would just make that motion as far as that is concerned.

THE COURT: All right. Anything further, Ms. Parr?

SOLICITOR: No, sir.

THE COURT: I do think both of them are questions of fact for the jury to resolve, and, Mr. Brockington, I'm going to ask if you could stand for me.

At this time, I'm going to explain to you certain of your rights. If you do not understand anything I say, or if you want me to explain anything in more detail please let me know.

Do you understand?

DEFENDANT: Yes.

THE COURT: We have now reached the stage of the trial where you may present your Defense. You have a right to claim the protections given to you under the Fifth Amendment to the Constitution of the United States, which states in relevant part, no person shall be compelled in any criminal case to be a witness against themself.

That means you cannot be required to testify in this case.

You have a right to testify in your own behalf if you elect to do so. However, no one can make you testify. This is a personal right and no one can waive this right except you.

If you decide to testify you would be subject to the same rules that govern other witnesses, and you may be examined and cross-examined on any relevant issue in this case. In addition, if you have any convictions concerning any

dishonesty or false statement or crimes punishable by imprisonment for more than one year and the Court determines that the probative value of admitting this evidence outweighs the prejudicial effect to you, the Solicitor will be able to intoduce that record to attack your credibility.

I understand based on the statements that you do not have a record.

DEFENDANT: No, sir, I do not.

THE COURT: Clearly, your lawyer has discussed that with you.

If you decide to testify, this decision on your part must be freely, voluntarily and intelligently made, with knowledge of the protections given to you by the Fifth Amendment of the Constitution, and you must understand the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they cannot give the fact that you did not testify any consideration whatsoever, and that there is to be absolutely no prejudice to you because you did not testify.

That is left entirely up to you, whether or not to testify. You may talk with your attorney, your family members, or anyone else, but the final decision is left entirely up to you.

DEFENDANT: I understand that, Your Honor.

THE COURT: Do you have any questions about what I have

explained to you?

DEFENDANT: No, sir. I think I completely understand everything you are saying.

THE COURT: All right. Have you discussed this matter with your lawyer?

DEFENDANT: Yes, I have.

THE COURT: Do you need any additional time to discuss it with him?

DEFENDANT: No, I don't think so.

THE COURT: Do you wish to testify?

DEFENDANT: Well, I mean, my talk with Chad pretty wells sums up anything that I could add. I mean, that is basically what I know, and I don't think I could add anything, so I'm not going to testify.

THE COURT: Very good. Thank you.

DEFENDANT: Thank you.

THE COURT: All right. Mr. Anderson, do you anticipate calling any witnesses?

DEFENDANT: Your Honor, may it please the Court? I've talked with Leonard in detail about him testifying. We also talked about calling witnesses.

Your Honor, to answer your question, I'd like just a minute or two to discuss it with his family. As I expressed in opening remarks to the jury, this is an extremely serious case, Your Honor, and I want it to be totally his decision

after talking with his family.

If you could just give me a moment or two?

THE COURT: Certainly. We will sit right here.

(Brief pause)

(Conference at the bench between counsel and the Court off the record)

THE COURT: We're going to stand at ease for ten minutes.

(Court took brief recess, after which the matter was continued)

THE COURT: Please be seated. You all can resume your place, and we'll go over the charge.

All right, I'll go over what I intend to charge -- nothing very unusual.

I'm going to charge the fact that an indictment is not evidence, presumption of innocence, reasonable doubt, duty of the jury and trial judge.

Direct and circumstantial evidence, credibility of witnesses and expert witnesses, failure of Defendant to testify and prior inconsistent statements.

I'm going to -- I would like to hear what counsel has to say about charging the law with regard to statements, Miranda, voluntariness and all.

You know, we've got a statement here where Miranda is given but this is a very unusual situation in that the

statement is not inculpatory. Mr. Anderson, I'd like to hear what you have to say about it first, whether we even get into the issue of the voluntariness.

I don't think that is really the issue, but do you request that I charge how the jury is to evaluate a statement that is given? If so, I will be happy to do that. I just under these circumstances do not believe it is necessary.

MR. ANDERSON: I would agree, Your Honor.

THE COURT: What does the State say about it?

SOLICITOR: The State would agree.

THE COURT: Very good.

I'm going to charge the law about how to evaluate the testimony of a child.

I'm going to charge the substantive law of first degree criminal sexual conduct with a minor and lewd act on a minor.

Any special requests by the State?

SOLICITOR: Yes, Your Honor. I passed one up, a request to charge based upon the statute, 16-3-657.

THE COURT: All right. That has been chargd before, and it was charged in a case very similar to this, and the Supreme Court said it was not error to charge it, but that doesn't necessarily mean that I ought to charge it.

What do you think about the argument, or at least the position that that really -- whether or not the jury is

to believe the child is really -- whether or not that is proved beyond a reasonable doubt is left up to the jury, and I think that is sort of in the jury's province to say that.

SOLICITOR: Your Honor, . .

THE COURT: The law says it doesn't have to be but one, but I'm not real sure whether the jury needs to be made aware of that or not.

What do you think about that, Mr. Anderson?

MR. ANDERSON: Your Honor, I agree with what you've said, Your Honor.

Also, in your opening remarks, no one is required to prove themself innocent. Often it is the case that you can't prove yourself innocent.

I think --I don't think it should be charged, Your Honor.

THE COURT: All right.

SOLICITOR: Your Honor, the reason we ask that it be charged, Your Honor, is that it is good law in South Carolina.

It has not been found to be unconstitutional by either the Supreme Court or Court of Appeals. Your Honor, the rationale of it is . .

THE COURT: You read what the Supreme Court said about it -- said it's not error to charge it but it didn't say

that you should.

SOLICITOR: Correct, Your Honor, but the State would ask that it be charged.

I mean, you never have anybody who is going to say they've seen this happened. It is always something that's done when it's just the child and the perpetrator.

THE COURT: All right, and I think that is what you ought to tell the jury.

I'm not going to charge it.

Anything else, from the Defense?

SOLICITOR: Would you please note our objection?

THE COURT: Yes, your objection is noted.

MR. ANDERSON: Nothing from the Defense, Your Honor. I would ask if you want me to rest on the record or what do you want me to do when the jury comes out?

THE COURT: I will recognize you, and I assume the appropriate thing is you just rest, and then we will proceed with closing arguments.

MR. ANDERSON: Yes, Your Honor.

THE COURT: Very good, and obviously the State goes first. Are you going to present the closing argument?

SOLICITOR: Yes, Your Honor.

THE COURT: Very good, we're ready for the jury.

(Jury returned to Courtroom)

THE COURT: Mr. Anderson, you are recognized.

MR. ANDERSON: Your Honor, at this time the Defendant would also rest.

THE COURT: Very good. Mr. Foreman and ladies and gentlemen of the jury, you have heard all the evidence to be presented in this case.

As I mentioned in the very beginning, this is the time where the lawyers have an opportunity to present closing arguments which are very similar in form to the opening statements.

These are truly argumentative in nature, because you have heard all the evidence to be presented in the case, and the lawyers will give arguments that support that respective positions and inferences to be drawn from that.

Although it is not evidence, it will aid you immensely in the deliberation process. You and I have been involved in the case since Monday, and they've been involved in it for months at this juncture.

So pay very close attention. The procedure under the circumstances it that the State goes first.

Ms. Parr, you're recognized.

SOLICITOR: Thank you, Your Honor.

Ladies and gentlemen of the jury, in behalf of the State of South Carolina I would like to take this opportunity to thank you for your service in this case.

This is a very important case not only to the State

but to Minor as well as to the Defendant.

At this time, I would like to tell you a little bit about the law that I think the Judge will charge to you, and after talking with you about the law I will go into more of the details of the case and what is involved.

As the Judge told you at the beginning of the trial, the State carries the burden of proof, and that burden of proof is beyond a reasonable doubt.

Now, a reasonable doubt is a doubt that would cause a reasonable person to hesitate to act.

The Judge also told you about using your common sense, and, in this particular case as in all cases, it will aid in your determination of the facts as well as the credibility and believability of the witnesses.

You will also hear a charge about presumption of innocence. In criminal matters, the Defendant will always be presumed to be innocent. That is true in this particular case.

You will hear also a charge about evidence, about direct and circumstantial evidence. The Judge will also charge you about your duties as jurors and his duty as the Judge.

Your duty is to determine the facts in this case. He will charge you on the law also with regards to expert testimony. When the experts testified, he gave you the law on expert testimony at that time. He will charge you in

more detail concerning expert testimony.

You heard earlier about credibility of witnesses. He hsa told you that you would be the judge of determining credibility of witnesses. That means believability, and the Judge will charge you that as well.

He will also give you a charge on prior inconsistent statements.

Now, the substantive law in this case and what I call the meat of the case is what the Defendant is charged with. He is charged with criminal sexual conduct with a minor in the first degree.

We believe the law is that a person is guilty of criminal sexual conduct with a minor in the first degree if he engages in a sexual battery with a victim who is under the age of eleven years.

The Judge will also give you the charge as to what constitutes a sexual battery. Section 16-3-651 of the South Carolina Code defines sexual battery as sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, into any part of a person's body or of any object into the genital or anal openings of another's persons body, except when the intrusion is accomplished for medically-recognized treatment.

For the purpose of this trial, the sexual battery that we are concerned with is fellatio. It is defined as the

oral stimulation of the penis or to suck the penis.

The Defendant is also charged with committing a lewd act upon a child under the age of sixteen. Under the laws of South Carolina, it is unlawful for a person under the age of fourteen to be used to wilfully and lewdly commit or to attempt to commit a lascivious act upon the body or its parts of a child under the age of sixteen with the intent of appealing to or gratifying the lust or passion of that person of the Defendant or of the child.

So we believe that is the law in this particular case that the Judge will charge you.

Now, you have heard from numerous witnesses in the past couple of days in regards to this matter, and at the beginning of the case Mr. Wells gave you a synopsis of what we intended to show.

We believe that on or about September 24 of 2011 that this incident came to light by the Defendant, Leonard Brockington, also referred to as Brock, when Minor [redacted] the victim in this matter, was six years old.

Her mother and father, Jorgen and Karen Waldermo, got separated in 2008 and divorced in 2009. After the separation, the children stayed with Karen, with Jorgen having visitation rights.

Then Jorgen remarried in 2010, and the children remained with Karen. Karen became involved with the Defendant,

Leonard Brockington, the subject of this action, in some part of the early part of 2011.

On September 24th of 2011, Minor [redacted] was at home and the Defendant was there, as well as the mother, Karen, and her sister, M.A. [redacted] and M.G. [redacted], a twelve year old friend and neighbor.

There was some mention that Eason may have been there as well. They were playing, and Minor [redacted] went to her mother's door and was knocking on the bedroom door when the Defendant yelled at her. At that time, M.G. [redacted] asked, has he always yelled at you like that? She was alarmed, and at that time Minor [redacted] said to M.G. [redacted] there were other things he did to her.

She told her that he makes her touch his private part, and she not only told her what he did but she demonstrated. She did not come out and say that it was masturbation, but she actually showed her what he made her do.

Minor [redacted] told her, and M.G. [redacted] became upset and she left after she found out about it, and she went home. I think first she said she walked around the neighborhood to try to decide what she needed to do. We're talking about a twelve year old who had just been given some devastating news.

She goes on home, and her mom is out of town, but she calls her mom. She didn't want to tell her dad because she

was embarrassed. She's twelve.

M.G. [redacted] calls her mom, and her mom gets her dad on the phone. They talk and she asks her dad to contact Staci Parker -- she's now Staci Nichols. Staci is alarmed, and they all say how upset M.G. [redacted] was.

Staci said she was visibly upset and crying. Her mom said she was upset on the phone when she was talking to her, and M.G. [redacted] testified that she was upset at what she had heard.

It was decided that Staci would tell Karen when she got home. They waited for Karen to get home, and then when she did Staci Parker Nichols told her what Minor [redacted] had revealed to M.G. [redacted].

Instead of being upset or concerned, she defended -- Karen defended the Defendant, Brock.

Staci said she told her, well, you need to tell Jorgen, and so this continued. She didn't tell Jorgen that night. Jorgen called on Sunday as he normally called on the weekends when he didn't have the children.

He calls, he talks to the girls, and then after he finished talking to the girls Karen tells him that Minor [redacted] had made an allegation about the Defendant. She didn't give him any details or anything of that nature.

The next weekend, the weekend of October first, on that Sunday while the girls are visiting on their regular

visitation in Charlotte, they are talking about how things were going in Florence, talking about Florence Minor tells him, but she doesn't go into any details.

She tells him that Brock had made her touch him and that he touched her.

He, like any parent, was very concerned, and what did he do? He called Karen and told her what Minor told him, and he immediately calls the police department. The police department tells him to take the child back to school and not to the parent's house.

At that time, law enforcement arrives at Delmay and talks to Minor along with Jamie Shefton of the Department of Social Services.

Ms. Shefton told us -- you know, she had worked as a case worker in child services for probably seven or eight years, four years in the Guardian ad Litem program and some three years with the Department of Social Services and Child Protective Services.

She got just enough information to see if there was something that they needed to act upon. She said they had talked to Minor for about an hour. She was trying to es-tablish a rapport because this is a six year old -- trying to get some information, and that's what she did.

And once they got enough information that something happened, that is when they called Chad -- Investigator Chad

Collins.

Investigator Collins at that time talks with Mr. Waldermo and his wife, Jeanene, as well as Karen, once she arrived.

Jamie Shefton at that point was charged with making a determination of whether or not these children were protected or could be protected in the home of the mother, Karen.

Based upon her conversation with Karen, talking with Minor [redacted] a determination was made to do a safety plan and put these children temporarily in the home of their father.

She found out that Minor [redacted] had reported it to her mom, Karen, and she told her, well, sometimes people just make things up if they want something.

She continued to let him stay at her home. She did not report him to D.S.S. or law enforcement or do anything of that nature. She did not make him leave her house.

She also reported that she put her children or left them in the care of her step-dad who she alleged had sexually assaulted her.

So based upon that, it was determined that Minor [redacted] and M.A. [redacted] well being should not be left with Karen at that time.

Investigator Collins did not question Minor [redacted] but he instead made an arrangement for her to have a forensic

interview which was held at the Ark.

One other thing I'd like to go back and tell you about Staci Parker Nichols -- when asked upon the stand, she made a comment that she never saw anything inappropriate about Minor actions or saw her acting out sexually or doing anything out of the way. She lived next door, in close proximity, and Minor would play at her house.

Ms. Parker Nichols said on that stand that one time she was very uncomfortable with the Defendant when she saw him taking a picture of her young son, Eason, and she said when she confronted him about it he said he wanted to send it to his mother because it was cute.

Now, going back to Jorgen Waldermo, he tried to be a supportive father. Although Mr. Anderson harped on the fact that now you have custody and you don't hve to pay the child support, which is true. Not only that, but he had been paying alimony as well.

Even when he got temporary custody of the children, he continued to pay. He didn't stop until the Court told him he didn't have to pay child support any more.

He gave her -- he assisted them in paying them so the Defendant could get his license back. He lent them money.

So why was he -- if he was not just trying to help out his ex-wife and the Defendant, but he was trying to make it easier on his children.

He thought if he helped them, then Karen would not be getting the children up so early in the morning to take the Defendant to Sumter and picking him up, for him to work. I'm not sure how many ex-husbands would do that, but he did. Because he was being a good dad and he thought he could help.

As soon as Jorgen found out the details of the disclosure that Minor made, he did the right thing. He even changed his life around and moved back to Florence temporarily so that the children could stay in the same school, continue their same activities.

He put her in counseling to deal with all that she had had to deal with, and she has been in counseling continuously since these allegations were disclosed.

Jeanene Waldermo even gave up her job as an interior decorator so she could be and take care of Minor and her sister, M.A. because they love the children and wanted to do what they thought was best for them.

It wasn't about the money, as Mr. Anderson made out that he would get out of paying the money, because he has the girls in private school and he meets all of their financial needs which is more than his child support was.

So it is not about the money but the father doing what he thinks best for his children.

Minor who was six years old at the time, and who had

just turned nine when she took the stand, came forward and told you about the things that happened to her by the Defendant.

Now, I know they will say her statements were inconsistent, or she told some people some things and then told others other things. She told earlier about the Defendant touching her immediately -- well, not immediately, but she told he had touched her. Then she told someone else that he did not. The next time she did not recall or she did not disclose that he had touched her.

But when she first told, she did disclose that he had touched her between her legs, on her front bottom, with her pajamas on, on top of her clothes.

Now, if that didn't happen, why did the Defendant say the same thing? He says he did it by accident, if you listened to his statement, but he corroborates what she said. He corroborates what she said.

So we know she didn't make that up. She was embarrased to tell her daddy the Defendant made her suck his penis or his front bottom as she referred to it. What six year old wouldn't be? What twenty year old wouldn't be?

She told just enough to him so someone could protect her. She didn't tell Jamie Shefton and Sergeant Hanna on that Monday morning, but they didn't question her to any extent because they knew she was going to have a forensic

interview, and that's the first time Minor had met any of them, so she's not going to disclose all of that.

Once she had a forensic interview with Dr. Benedetto. She described to you how she was trying to make her comfortable, and you had an opportunity to see her, and at that time she disclosed that he made her such his penis. She gave a lot of detail.

Going back to Minor 's testimony on the stand, yes, at the beginning she was very hesitant. But what nine year old wouldn't be? She comes in this Courtroom and had to sit on the witness stand, and she could barely see over the witness stand.

But she had to tell strangers what the Defendant who she identified did to her. No child should ever have to go through that.

She did, and she told you in her own words, and when things weren't correct she corrected them, so she wasn't making anything up.

They say, well, you know, she didn't like him, and he even said he knew they didn't like him. He said that all the time, and that that is why she made this up.

The interesting thing being that if a six year old doesn't like you, they are not going to be grabbing your penis. They're going to be trying to get away from you, and saying the things he wants you all to believe.

If you listen to the way he described her, she's a six year old sexual thing. Children just do not formulate an idea like that or in that manner and with that amount of detail, and it has been consistent for the past three years, but that's what the Defense would have you to believe.

Even though she may not have liked him, at one point she did defend him on one thing that was said. She said, oh, no, he didn't do that.

So if she was making it up, she could have added more stuff to it. But she didn't. She just told you, like a child would -- she told you what he did.

There was -- Mr. Anderson will talk to you about her coming to the Courtroom and Heather Smith working with her -- she coming and sitting in the witness chair, talking to me. I will tell you it is not uncommon. There is not a case, even with adults, where we don't do that. We do that with witnesses so we will know what they say occurred before we put them on that witness stand.

If a prosecutor told you they never talked to their witnesses, I would bet my firstborn that that is not true. That is no different with Minor Yes, she came to the Courtroom at couple of times because she needed to feel confident. She needed to have a feeling that she had some control over something because she knew and she had been told in her courtroom notebook that children witnesses are

given-- something put out by the State of South Carolina -- so they could understand what is happening.

She has already had to deal with a new scenario, and so they do not feel like they are being abused all over again. It is important for them to have some control, so they are given as much information as they could possibly have to make them feel comfortable in a situation that is so not normal for them. That is why she came to the courtroom.

Now, you heard from Dr. Alicia Benedetto, and I find it kind of interesting when Mr. Anderson asked Investigator Collins, well, she avoided answering me and she didn't look at me, look me in the face.

You know what? She didn't, because she was looking at you because you are the ones that had to hear and understand what she was testifying to. She kept eye contact with you as jurors, the most important persons in this courtroom, so you could hear what she said. That was by design, not because she was nervous, or that she was avoiding defense counsel's questions.

Because she answered the questions. She may not have given him the answers he wanted, but she answered them.

She has been doing this for a long time, and she was well aware as a clinical psychologist in this particular area of the signs to look for in disclosures.

She told you there was no sign of third party influence or coaching, and the way she knew that was that she looked for the details. Minor gave a lot of details. She said Minor self corrected so when she said something, she said, oh, no, that wasn't correct.

That was a sign, she said, that there was no influence. She also told us about the vague disclosures and how some children will tell immediately and some say I don't know, not want to talk about it.

That it is not unusual if the perpetrator is a part of the family for it to take years to tell. Sometimes child victims do not tell until they are adults. So that is not unusual.

She also told you that children don't often disclose immediately. They don't come out and say, oh, this happened, blah, blah, blah, blah. They will tell a little bit and then some more before they actually tell everything that had happened.

We still may not know everything. She also concluded that children do not know times that things happen, and the date that things happened is not an element of the crime.

We have knowledge that he was staying there in 2011, and we know that the children did not go back there after October first because that is when she was with her father. That much we do know.

Well, we do know that it occurred in 2011. You heard from Dr. Susan Luberoff, who is a pediatrician and expert in the area of child abuse pediatrics.

She indicated that there was no physical damage, but in this particular case she would not have expected to have that because of the type of allegation that it was. Oral penetration by the Defendant. She saw no injury to the mouth but she said the mouth heals quickly, and also there was no allegation that the Defendant penetrated Minor vaginal area or anal area.

So there would be no evidence there, but she said although it was a normal exam that that doesn't mean there was not a sexual abuse in this particular case. In fact, she said in most cases there is no physical evidence.

And then you heard from Heather Smith who is a licensed counselor and was declared an expert in assessment and treatment of child sexual abuse.

Ms. Smith has been treating Minor since, I believe, March of 2013, so a little over a year.

Prior to that, Minor went to the counselor there in Charlotte for play therapy, and to address some issues she was having with this disclosure of sexual abuse. She was still having some anger issues and other issues as a result.

So Heather Smith used a different type of therapy with Minor Heather found a diagnosis of post-tramatic stress

disorder. You heard that from the stand, and defense counsel asked her about that.

Now, if nothing happened to Minor why did she have post-traumatic stress syndrome? I submit to you that she did because of the horrific acts the Defendant made her do. That's why she had it.

Ms. Smith also told you that she initially met with her on eight sessions, and that with trauma focused cognitive behavioral therapy in order to help her learn to regulate her emotions and help her with her copeing skills, the negative and intrusive thoughts that she had had.

Also, to help her find support so she could be more in control and help her with her breathing when she was feeling sad and having nightmares as well.

She worked with her on that over this past year, and she indicated that these things are symptoms she has seen since she has been working with Minor

It was after Minor has gone to this treatment that she was able to discuss what the Defendant had done to her instead of avoiding it as she had with the prior counselor.

Ms. Smith told you that trauma focused cognitive behavioral therapy is phase-based, and that you go through phases to get to a particular point; that once she got to that point, she was actually made to prepare for Court so she would be able to sit on that stand and tell you what

happened to her.

It was nothing magic. It was a process, and she did that so Minor could testify, which she did.

Ladies and gentlemen, this type of action is never done with an audience. No one saw the Defendant do these particular acts. Perpetrators just don't do this in front of anyone else.

In all the years I have been doing this, I have never had one time someone saw the perpetrator do this to a child, but it doesn't matter. A person who abuses children generally likes to be around children.

The Defendant told you he was a coach. Not all coaches abuse children, but those persons who are attracted to the children put themselves in those positions.

The Defendant even said, oh, children love me; I love children. He talked about Michelle Cooper, who worked at D.S.S. -- he loved her little girl. He wanted to take her home.

So he tried to put himself always around children. I submit to you . .

THE COURT: Let's have quiet.

SOLICITOR . . that he did that and put himself in this position. We believe also that he knew this may come out eventually, and so what did he try to do with Investigator Collins? You know Michelle Cooper? She works at

D.S.S. and we are friends. He said, I have been telling her all these things that have been going on.

Now, if these things had not been happening, why would he have gotten out there earlier and spoke to that person? I submit to you that he was thinking if I tell it gets the spotlight off of me. I'll put it on the child.

He kept saying, well, I don't know why in the world she would say these things. Where did she get it from? Well, I can tell you were she got it from. She got it from him.

I ask you to recall his demeanor when he gave his statement to Investigator Collins. Think about his body language and some of the things he kept saying. It doesn't make sense.

Now, ladies and gentlemen, this is the last time I will get to come before you but I would ask that when you are deliberating that you think about a six year old child coming in here and telling you about these horrific acts that have occurred to her.

They occurred to her, and once you have an opportunity we would ask that you find the Defendant, Leonard Brockington, guilty of criminal sexual conduct with a minor, first degree, and lewd act on a minor.

Thank you.

THE COURT: Mr. Anderson, you're recognized.

MR. ANDERSON: The Judge in his opening remarks to you all said no man is required to prove himself innocent. A

lot of times a man can't prove himself innocent.

I briefly told you about some children in 1692 at the Salem Witch Trials, and I'm not going to go back over it again. I'm sure you remember it. A nine year old girl, an eleven year old girl -- people were put in jail and people were hung.

I've studied about this case, and I was reminded of something that happened to me. I know when the Judge read out the Indictment and when Ms. Parr read out the Indictment a lot of words came out, CSC with a minor under the age of eleven, lewd act on a child under the age of eleven.

Probably a word that came to your mind was predator or child molester, pervert.

When my daughter was eleven, she was at Royal Elementary School. I didn't go to Royal a lot. I didn't have to as my wife normally took care of that.

I had to pick Emily up for a dentist appointment. I go to Royal, hey, I'm here to pick Emily Anderson up. Hey, I'd like to pick my daughter up, I'm Hank Anderson. Who is your daughter? Emily Anderson -- I'm her dad. Can I see some ID? Sure, I'm Hank Anderson here to pick up my daughter.

Well, how old is she? She's eleven. What is her teacher's name? I say, I don't know. I don't know what her teacher's name is.

They just sat there and looked at me, and word was sent down to Emily's classroom and she came down the hall. She saw me and brightened, Papa -- then I pick her up, and then the lady said, oh, all right; this guy is okay; he's legit. It was like that.

That is human. We as men and women are supposed to protect children. That is what we do, protect children.

Mr. Wells said and several people have said what could possibly be worse than what happened to that little girl? If an innocent man goes to jail, that's one thing that could be worse.

My dad is still alive, I'm happy to say. He had a tough go but he's doing fine now and I get to spend more time with him. He and I were talking about this case last night, and he said, son, what's going on, and I said, well, dad, it's kind of a crazy case, and, I said, this six year old girl has made this allegation on my man, who is fifty-two.

Well, what did she say, son? Well, dad, originally she -- she originally said when she's talking to a neighbor -- she says, hey, this man yells at me a lot; yells at me all the time; he touched me and makes me touch him.

Well, why does the little girl say that, son? I say, yes, sir, dad, but that is really not what happened as far as I know. I said, Chad Collins' notes reflect that the girl said her momma wasn't home, but his comments reflect

she was at home.

Now, of course, when I asked the girl on the stand if she had talked about her testimony, she said no; I haven't reviewed it since this happened in 2011. I said Chad Collins is going to come testify he talked with the little girl and a lot of others as well talked with her.

Another thing is that Leonard Brockington is going to testify or be able to say that four or five kids were playing and they got ready to run into his bedroom, and he said, oh, whoa, whoa, don't go in there; that the momma was home, and my client did raise his voice at them but I think I can straighten that out.

Well, what else happened? I said, well, her mom is going to come and say she was upset, but the next door neighbor, Ms. Parker, is going to say she was not. She is probably going to say my client made her uncomfortable because he took a picture of her son.

I said, dad, you know, law enforcement certainly didn't go and try to obtain my client's cell phone or go to my client's house; didn't check to verify any of that or if there's pictures of small children on this man's phone, or of Easton riding his bicycle.

He said, all right, what else happened, and I said, well, the young lady talked to the mother of the child, and she said -- this, of course, is the same lady who had custody

of the children since they were divorced in 2008. He said, so she had custody in '09, '10, '11, and I said, yes, sir. Any problems about her custody? No, sir. She had the kids in Girl Scouts.

My dad said, well, son, are there any eyewitnesses? I said, no, sir. Any physical evidence? No, sir.

Is there any evidence whatsoever this guy did this other than the little girl? I said, no, sir.

I said, dad, his witnesses would come and say he told me this and he told me that, and he said, son, define reasonable doubt for me.

I said, dad, a reasonable doubt is any type of doubt that would make a reasonable person hesitate to act, and he said, sort of explain it to me in laymen's terms, and I said, if it would cause you concern or cause you to think about it more, that could be a reasonable doubt.

And he said, what did the little girl so? I said, dad, to be quite honest with you, everything about the little girl seemed inconsistent. Her statement is consistently inconsistent. I said, but let me tell you about her dad first. Her dad seems to be a nice enough guy. I don't think he really knew what was going on.

I got to cross examine him and I asked him, do you remember an incident that happened somewhere when Minor [redacted] had pulled up her dress, and he said, yeah, I remember that.

Did her mom tell you about that? Yeah, her mom told me about that.

I said, her dad -- I asked her dad, did she ever say, hey, I think we ought to put her in counseling? He said, yeah, I think she told me that.

Did Lecnard ever come to you before this came out and say something is not right with your daughter and things just don't add up; you need to put her in counseling or do something with her? Yeah, he said that to me.

My dad said, son, why would someone self-report or someone say, hey, I'm doing this to your child and you might want to get her checked out? Why would someone do that? I don't know, dad -- doesn't make any sense to me.

The State said Minor defended Brock. Well, if he had done this terrible thing to her, why would she defend him? Why would she defend him?

Minor said -- the State said I'm going to come up here and say things, and I am, because it's important.

The State tried to gloss over stuff but I know you all heard it. I heard it. Jamie Shefton meets with her. Now, Jamie has got a bachelor's in Arts from Clemson University in psychology. Employed by D.S.S. and previously been a Guardian ad Litem, worked with children.

She talked about establishing a rapport, establishing contact. When Dr. Benedetto testified she went in the room

with her and the tape was forty-two minutes, start to finish -- forty-two minutes. Jamie meets with her for an hour, fifteen to eighteen minutes longer.

Did he touch you? Yes. Did you touch him? He made me touch him.

Did he put anything in your mouth? No. Did he put his mouth on you? No.

Sergeant Hanna comes in the room or was in the room -- he touched me several times. Nothing about oral. That's it.

Days later, he goes to her house in Florence and talks to her again. Goes to her bedroom, having a good time and cutting up, puts the child at ease.

Tell me again what happened. He touched me, I touched him. Anything else you want to tell me? No. No mention of oral sex.

No mention of him putting his mouth on her or her putting her mouth on him.

Now, she goes to the Ark. She mentions the bedroom, she mentions the flowered chair, she mentions the kitchen, and at no point in time does she ever say, oh, yeah, and while we were in the kitchen -- bedroom, den in the chair, kitchen -- more preparation, watches the tape.

Ms. Parr asks her questions. They go over her testimony. She comes up here and testifies, the little girl does. I'm sorry, let me back up.

Goes to the Ark. Kitchen, bedroom, den. Comes up here and testifies, nine years old now.

At first she doesn't want to say anything, and then she says he touched me. I turned around and looked at my paralegal and said, did she just say he touched her? Yes.

When she was at the Ark Dr. Benedetto, the expert they qualified, said they talked and she asked, did he touch you? No. Did he touch your top part? Shook her head no. Did he touch your private parts? Shook her head no. Did he touch your back? Shook her head no.

A few minutes later, I want to get this straight. Did he touch you? No. Anywhere? No. End of the interview, has anyone ever touched you? No. Anyone ever made you touch them? No.

Ladies and gentlemen, if you're four or if you're fourteen, or if you're thirty-four, the truth is always consistent.

I'm never nervous when I tell the truth but when I would tell my mom and dad a fib I would get a little bit nervous. When I tell the truth I'm comfortable. The truth is the truth is the truth. No matter how old you are.

The only thing consistent about her testimony is that it is always inconsistent. Always inconsistent. It's never the same.

The State wants to tell you, she told the same thing. No, she didn't.

The first time was he touched me, I touched him; no oral sex. The second time, he touched me, I touched him; no oral sex. She's at the Ark Center, he never touched me but there was oral sex in the kitchen.

When she comes up here and testifies, it is back to he touched me, I touched him. Consistently inconsistent -- it is always inconsistent.

Karen Waldermo, why haven't we heard from Karen? As I said earlier, that's the lady who raised her, the lady who spent time with her. The lady who had her in Girl Scouts. The lady who said I don't think he did it.

Why wasn't she talked to, why wasn't she interviewed?

Leonard has no duty here whatsoever. He has not had any duty. The State does. Why didn't they talk to Karen.

Karen, what's in your house; where do you take the girls; who are their teachers so we can go talk to them. Why wasn't that done?

You know, I know you may have some questions about where did all of this come from. Well, we've heard testimony about a naked dancing party with Minor We've heard testimony she went to a public school.

I asked Officer Hanna, Officer Hanna, have things changed? Yeah. Things said in the hallways now? Yep. Older kids say some things? Yeah.

Did he ask her, Minor what kind of TV shows to you watch?

Do you get on the internet?

I heard just a few minutes ago that she goes to a private school, and I guarantee you they have the internet in a private school. They've got it in public schools.

Do you ever watch any videos? Have you ever been exposed to pornography? Why would not a counselor ask that? Why wouldn't Dr. Benedetto say, Minor have you ever seen naked people? Have you seen what I call pornograhy?

Why didn't they go to Leonard's? Why didn't they go and say we just want to look around and check things out? Let us check out some other stuff. That's fine, go ahead.

Minor what kind of TV shows do you watch? No one has asked her that.

He doesn't have the burden of proof. Sometimes you just can't prove you didn't do it, but you hope -- man, if they do this and do that, I'll be all right. But it wasn't done.

Let's talk about what you did and what you didn't do.

Did you go to Minor 's house? No, I didn't. Did you verify a flowered chair in the den? No, I didn't.

Of course, Dr. Benedetto says one of the ways I know she is telling the truth is she can tell us a place. Well, why didn't they say, dadgum it, let's look at Karen's house? How hard is that? Why not go check the bedroom out? How hard is it to check the kitchen out? It's not that hard.

It could be, I went in the house and there ain't no

flowery chair. There ain't no chair in the den, much less a flowery one. How hard would that be?

Sometimes you can't prove you didn't do it, but they had the means. Did you go and talk to these people? No.

You were at Delmay, and did you talk to her teachers? No. Did you talk to her Girl Scout leader? No. Did you talk with anybody other than her dad, her stepmom, the neighbor, the twelve year old across the street?

Did you talk to Leonard's family? No. Did you talk to his ex-wife? No. Did you talk to his kids, his grand-kids? No. Talk to anybody at his work? No.

Folks, this has been going on for two and a half years. It hasn't exactly been a secret. I did not hear one person get up here and say, you know what, way back when, he did the same thing to me.

I have not heard anybody else say this happened to them. I heard Leonard say in his statement, I didn't do this, I did not do this.

What more can he say? What more can he come in and say but, no, man, I didn't do it. But he can't prove it. He was hoping law enforcement would do that. Go and search my house. Go through my phone.

Speaking of that, where was he living? Leonard said on the tape that when this came out I got out of there. I haven't been back. He wasn't living on Sweeney Drive, but 1414

(Inaudible) Drive. But he said when this came out, he left that address and didn't go back. He laid it on the table that he got out and hasn't been back.

You heard him talking about Michelle Cooper, called her doll baby -- love her, love her kids.

Asked Chad, did you talk to Michelle Cooper about this? Yeah, I did. Did she say Leonard did it? No. Did you do a forensic interview on her children? Yeah, I think that was done. Did it say anything about Leonard? No.

Leonard even said on the tape that he even babysat her kids. She'd get called in and I would spend the night at her house.

Why did you pick Minor There's a four year old that lives there. Why not pick both of them? Why not more than one?

Dr. Benedetto testified to a lot of things. She testified to what she observed. She was then qualified as an expert.

One thing I didn't hear her say is that when a child is abused, their testimony will be consistently inconsistent. I never heard her say that.

Let's talk about late reporting, especially when it's a care-giver. Did Dr. Benedetto say Leonard was a care-giver to Minor No, She didn't.

Sometimes the reporting will be delayed if they live

in the home.

In talking with her, Dr. Benedetto said, how many houses do you have? I have three. Who lives there? My momma, Karen, my sister, myself.

I have a home in Charlotte. Who lives there? Heidi -- and I'm going to mention Heidi again -- Heidi, my dad, my stepmom, my sister and I.

Do you have another house? I have one in Florence where my dad and my stepmom and my sister and I live. She never said Brock lived there or that Brock was a care-giver.

When I was asking Ms. Waldermo about Heidi, are you friends with her? Well, not really. She comes to my house. Does she ever babysit for you? Well, maybe once or twice.

Who lives in your house in Charlotte? Well, we live with Heidi. Why not just say it? Why not just say it? Heidi is a friend of mine or was at least back then.

What are you trying to hide? I don't know, and I'm not saying she's trying to hide anything, but why not just say Heidi was a friend and we lived with her?

When I was talking to M.G. [redacted], the mother wasn't home? No, her mom wasn't home Later Chad said she was at home.

Leonard said in the statement even before they talked to M.G. [redacted] that the mom was home, was about to take a

shower. Leonard has been consistent.

He said I didn't do it -- I did not do it. Like I told my dad, there's something funny here. I told him this isn't good. Something is not right here.

This is a man who cannot prove his innocence but he is not required to.

My dad and I, we finished up our conversation and my dad looks at me and goes, son -- Sunday was my birthday, dad -- no, not that -- it was Easter. He said, the most perfect man who ever lived was falsely accused. He said, son, he was falsely accused.

Leonard didn't do this. Everything I've talked about -- reasonable doubt. You don't have to have ten of them. You only have to have one reasonable doubt.

He is not guilty. Thank you.

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, you have heard all the evidence, you've heard the closing arguments.

The next thing, and pay very close attention to this, is I charge you the law.

The Indictments allege two different offenses, criminal sexual conduct with a minor, first degree, and lewd act on a child.

I remind you that the fact that the Defendant was arrested and indicted is not evidence. It cannot be considered

by you as evidence, nor does it create any presumption of guilt. This document is simply the formal written instrument that contains the charges made against the Defendant. It is the formal document by which this case is brought into the Court.

Each Indictment charges a separate and distinct offense. You must decide each Indictment separately on the law that is applicable to it. You should not be influenced by your decision on any other Indictment. The Defendant may be acquitted or convicted on any or all of the offenses charged.

You will be asked to write a separate verdict of guilty or not guilty on each Indictment.

The Defendant has pled not guilty to this Indictment, and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove themself innocent.

I charge you that this is an important rule of law in a criminal trial that no matter the seriousness of the charge or what it might be that the Defendant is presumed to be innocent of the crime for which the Indictment was issued until guilt has been proven by evidence satisfying you, the jury, of that guilt beyond a reasonable doubt.

The Defendant's innocence does not end when you begin

your deliberations but it accompanies the Defendant on throughout the trial until you reach a verdict of guilt based on the evidence of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, and it remains with the Defendant until it has been stripped from the Defendant's shoulders by evidence satisfying you of his guilt beyond a reasonable doubt.

The presumption of innocence is not a mere legal theory, not just a legal phrase, but it's a substantial right to which every Defendant is entitled until you, the jury, are satisfied from the evidence of his guilt beyond a reasonable doubt.

What is a reasonable doubt in the law? A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have been jurors in civil cases where you were told it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence.

In criminal cases the State's proof must be more powerful than that. It must be beyond a reasonable

doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty. In the criminal case, the law does not require proof beyond every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced of the Defendant's guilt of the crime charged, you must find the Defendant guilty. If, on the other hand you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of every reasonable doubt and find him not guilty.

I remind you that during this trial you and I have certain duties to perform. As the Trial Judge it is my responsibility to preside over the trial of this case. I also have a duty to rule on the evidence offered during this trial.

You are to consider all of the competent evidence before you. You must disregard anything that is not in the record. You are to consider only the testimony which was presented from the witness stand and exhibits which have been made a part of the record in this case, as well as stipulations of counsel.

I also have the additional duty to charge you the law applicable to this case. As the Presiding Judge, I am the

sole judge of the law, and it is your duty to accept and apply the law as I state it to you.

You may have some idea of what you think the law is or what it ought to be, and if that idea does not agree with what I tell you the law is, you must disregard your idea because you are sworn to accept and apply the law as I charge it to you.

In every case that is tried in this Courtroom, the jury becomes the sole judge of the facts in the case. The Trial Judge may not comment on or make any statement to the trial jury about the facts in a case.

Since you are the sole judges of the facts in the case you are not to infer from anything I have said during the progress of the trial in ruling upon admissibility of the evidence or otherwise, or anything I say now during this instruction to you, that I had any opinion about the facts of the case. The law simply does not allow me to have an opinion about the facts.

This is a matter solely for you to determine, and as jurors it is your duty to determine the effect, value, the weight and truth of the evidence presented during this trial.

There are two types of evidence which are generally presented in the trial of a case, direct and circumstantial evidence.

Direct evidence is the testimony of a person who is

claiming to have actual knowledge of a fact, such as an eye witness. It is evidence which immediately establishes the main facts to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred.

Circumstantial evidence is based on inference and not on personal knowledge or observation. A crime may be proven by circumstantial evidence. The law makes no distinction between the weight or the value to be given to circumstantial evidence, nor is a greater proof of circumstantial evidence than of direct evidence.

However, to the extent the State relies on circumstantial evidence, all the circumstances must be consistent with each other, and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt.

If the circumstances merely portray the Defendant's behavior as suspicious, the proof has failed.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt, and this burden rests on the State regardless of whether the State relies on direct or circumstantial evidence, or on a combination of the two.

You should weigh all of the evidence in the case,

and after weighing all the evidence if you are not convinced of the guilt of the Defendant beyond a reasonable doubt you must find the Defendant not guilty.

Mr. Foreman, ladies and gentlemen of the jury, necessarily you must determine the credibility of witnesses who have tetified in this case. Credibility simply means believability.

It becomes your duty as jurors to analyze the evidence and determine which evidence convinces you of its truth.

In determining the credibility of witnesses who have testified in this case, you may believe the testimony of several witnesses or several witnesses as against only one. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of the same witness.

You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness exhibited to you any interest, bias, prejudice or other motive in this case.

You may also consider the appearance of the witness on the witness stand, their demeanor.

The rules of evidence ordinarily do not permit witnesses to testify to opinion or conclusions. An exception to this rule is witnesses we call expert witnesses, a witness

who by education or experience has become an expert in some art or science or calling, and they may state an opinion as to relevant material matters in which the witness may be an expert, and they may state reasons for their opinions.

Now, you must consider any opinion by an expert in the case the same as any other evidence and give it the weight you believe it deserves. If you decide the opinion of an expert is not based on sufficient education or experience, or if you conclude the reasons given in support of the opinion are not sound, or the opinion is outweighed by the other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight than that of other witnesses because the witness is an expert. Further, you are not required to accept an expert's opinion even though it is uncontradicted.

Ladies and gentlemen of the jury, I instruct you and emphasize that the fact that the Defendant did not testify is not a fact to be considered by you in any manner in your deliberations and in your consideration on the question of guilt or innocence, and it must not be considered by you in any manner whatsoever.

A Defendant has a constitutional right to remain silent, and assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you must draw no conclusions whatever from the fact that the

Defendant in this case did not testify. The fact that the Defendant did not testify should not even be discussed in the jury room.

Mr. Foreman, I'm going to ask that you enforce that rule that there be no discussion. It is not relevant, and the reason for that is the burden of proof rests on the State to prove guilt beyond a reasonable doubt. The Defendant has no burden to prove anything.

There has been evidence presented that witnesses have made prior statements which are not consistent with the witnesses' present testimony. You may use this evidence to decide whether you believe the witness.

You may also use evidence of earlier contradictory statements to determine the truth in this case. It is up to you to decide whether to believe an earlier statement or the evidence and testimony given at trial. If a witness is shown to have knowingly testified untruthfully to a material matter, you may consider that in determining whether to trust the witness' testimony as to other matters.

You may reject all or a part of the testimony of the witness and give all of a part of the testimony the weight you think it deserves.

During this trial you have heard testimony from a child. Where a witness is a child, you must determine, as with any witness, whether the testimony is believable.

In deciding believability, you may consider not only matters that I have already discussed with you, but you may also consider the age of the child, her ability to observe and to remember facts, the child's ability to understand and to answer questions.

Because young children may not fully understand what is happening here, it is up to you to decide whether the child understood the seriousness of appearing as a witness in a criminal trial, whether the child understood the questions, whether the child has a good memory, whether the child understands the difference between a lie and telling the truth.

Young children may be influenced by the way a question is asked, and it is up to you to decide whether the child understood the questions asked.

I am now going to charge you the substantive law on which the Defendant has been charged.

First degree criminal sexual conduct with a minor. The Defendant has been charged with criminal sexual conduct with a minor.

The State must prove beyond a reasonable doubt that the Defendant engaged in sexual battery with the Defendant.

Sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight,

of any part of a person's body or of any object into the genital or anal opening of another person, except when the intrusion is accomplished for medically recognized treatment or diagnosis.

The State must then prove beyond a reasonable doubt that the victim was less than eleven years old at the time of the sexual battery.

Consent, willingness, indifference on the part of the minor, if any, as to what was taking place does not in any way affect the charge of criminal sexual conduct with a minor because an unmarried woman under the age of fourteen cannot legally consent to sexual intercourse.

I charge you the law with regard to lewd act on a minor. The Defendant has been charged with committing a lewd act on a minor. A minor is a person under the age of eighteen.

The State must prove beyond a reasonable doubt that the Defendant was over the age of fourteen.

Next, the State must prove that the Defendant wilfully and lewdly committed or attempted a lewd or lascivious act on or with the body or its parts of a child under the age of sixteen years with intent to arouse, appeal to or gratify the lust, passion or sexual desire of the Defendant or the child.

Wilfully means voluntarily intending a specific

intent to do something the law forbids. Lewd means obscene, indecent, lecherous.

Lascivious means to incite lust, lewd, indecent or obscene, intended to deprave the morals with respect to sexual relations.

Bear with me as I come forward to share with you the verdict form.

Mr. Foreman, I'm going to stand as I go over this form with you. Before I go any further, I want to ask the alternates to go into the jury room. You all stay and be seated in there.

(Alternates excused from Courtroom)

This is a document that says State of South Carolina versus Leonard Eugene Brockington, and it says General Sessions Court, which is criminal court, and it has the Indictment Number here.

There are two charges, criminal sexual conduct with a minor, first degree. We, the jury find that the Defendant is not guilty or guilty, by unanimous consent.

Lewd act on a minor. We, the jury, find by unanimous consent find the Defendant is not guilty or guilty.

It must be by unanimous consent. It cannot be eleven to one or six to six, eight to four. Everyone has to agree.

I'm going to leave this with you, Mr.Foreman.

Now, there are some things that might come up during your deliberations. I don't anticipate any question because I watched you all and you all paid attention when the evidence was presented.

You all have the tools to decide the case. I know it is a difficult thing to do but you all have the tools to do it.

I have charged you the law and the law is fairly straight forward. You all paid very close attention.

But if there are any questions or if a question comes up I will ask that you reduce it to writing and give it to the bailiff, Mr. Foreman. If it is something I can answer, I will be happy to do that.

Let me tell you from the outset that factual questions -- I can't answer anything about the facts. I cannot answer the tough factual questions for you.

However, if the question has to do with the law, I can help you with that.

If a question develops and I'm not sure if it is a question of law or fact, write it down, and if I can help you I will.

The other thing I want to mention to you, Mr. Foreman, you are in charge to preside over deliberations, and that simply means you make sure everybody's voice is heard.

If someone gets up to go use the bathroom, stop your deliberations. Everybody has to participate in all of the deliberation process.

Every time I've sent you out of the room I have told you not to begin your deliberations. Once again, I will ask you not to begin your deliberations.

I must talk with the lawyers and determine whether or not they have an objection to what I have charged you as to the law. Do not begin deliberations until you have received instructions to do so from the bailiff.

I ask that you return to the jury room at this time.

(Jury excused from Courtroom)

(The Court having discussion with alternate jurors, after which alternates were excused)

THE COURT: Any objection with regard to the jury charge from the State?

SOLICITOR: No, Your Honor.

THE COURT: Any from the Defendant?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: Come forward and take a look at the documentary evidence. Mr. Wells, I'm going to ask if everything that's in that pile is in evidence?

MR. WELLS: Yes, sir.

THE COURT: Mr. Anderson, is everything there in evidence?

MR. ANDERSON: No, sir.

THE COURT: Everything in that pile is in evidence?

MR. ANDERSON: Yes, sir.

THE COURT: Anything in that pile not in evidence?

MR. WELLS: No, sir.

(Jury instructed to begin deliberations at 1:26 P.M.)

THE COURT: Stay with us in case they have any questions, and we'll stand at ease.

(The Court stood at ease for brief period before the matter was resumed)

THE COURT: Please be seated. Set up the video. They want to see the video.

(Jury returned to Courtroom)

THE COURT: I understand you wish to view the video again. I'm going to make this note a part of the record.

(Jury note marked Court's Exhibit 2)

THE COURT: The request is to see the Ark video.

(Video shown to jury. Jury continued deliberations and the Court stood at ease until 5:19 P.M.)

THE COURT: Please be seated and come forward.

(Conference at the bench off the record between counsel and the Court)

THE COURT: We're ready for the jury.

(Jury returned to Courtroom)

THE COURT: Mr. Foreman, the question has been posed,

does the split jury on one charge invalidate a unanimous decision on the other?

The answer to that is no, and I ask that you continue to deliberate. Very good.

You may return to the jury room.

(Jury returned to jury room.)

THE COURT: All right, we'll stand at ease, and I'll make the note a part of the record.

(Jury note marked Court's Exhibit 3)

THE COURT: We'll stand at ease.

(Ccurt stood in recess until 5:29 P.M., when the jury was brought into the Courtroom.)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, you all have worked hard. You've been here all day and for that we are appreciative.

These are very important matters. It is important to the State of South Carolina. It's important to the Defendant, and I wanted to talk with you a little bit about your deliberations.

It is six o'clock in the evening. Mr. Foreman, do you anticipate you are at a spot where you are near reaching a conclusion, or do you feel as though it would be better for us to recess for the evening and come back at nine thirty in the morning?

FOREMAN: It might be better to come back at nine

thirty in the morning.

THE COURT: Very good. We will do that and allow you all to get a good night's sleep.

Once again, do not discuss this case. I anticipate there might be something in the news or some other news media.

If it were to be on the news or in the paper, I would ask that you pay it no attention and divert your attention from it. Do not do any investigation. Do not put anything on the social media.

Do not discuss the case with any of your family members, your friends, and I will ask you to be back at nine thirty tomorrow morning here on this floor -- nine thirty in the morning.

Bring your attractive jury badges with you. Florence County is a little bit poor, and it doesn't have stickum on it. You may need to use a pin or extra tape. Do that and do not stay around the common areas. Come directly to the Courtroom and don't begin deliberations until all of you are convened. I'll call you into the Courtroom and you can begin at that time.

Everyone remain seated as the jury exits.

(Jury excused for the evening)

THE COURT: Anything from the State before we recess?

SOLICITOR: No, Your Honor.

THE COURT: Anything from the Defense?

MR. ANDERSON: No, sir, Your Honor.

THE COURT: All right. Mr. Brockington, I want to re-emphasize that I'm going to allow you to remain on bond but they have already reached a verdict with regard to one offense, and if it's not guilty on both of them and you go and we have to put the U. S. Marshall on you we'll have you by sundown and you will spend ten years for not showing up.

DEFENDANT: Your Honor, I understand that.

THE COURT: Under any set of circumstances if you don't show up we're going to get you. You understand that?

DEFENDANT: Yes, sir.

THE COURT: Will you be here at nine thirty?

DEFENDANT: I'll be here at nine fifteen.

THE COURT: All right, we'll stand at ease until nine thirty in the morning.

(Court stood in recess at 6:05 P.M., and the matter was continued on April 24, 2014)

(Transcription note: Reporter notes indicate the jury began deliberations at 9:29 A.M.)

(Other matters came before the Court until 11:08 A.M., when the matter was continued)

THE COURT: All right, we have received a note from the jury that says, we are split on one decision and unanimous on one. How long do you want us to deliberate?

And the last words say unanimous on charge.

They have reached a verdict on one and are not unanimous on the other. I will make this note a part of the record.

(Jury note marked Court's Exhibit 4)

THE COURT: I will bring them back and give them an Allen Charge and tell them to resume deliberations.

We're ready for the jury.

(Jury returned to Courtroom)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, thank you for being here and being here on time, for going forward with deliberations.

I have received a note from the Foreman in the case that you have not been able to reach a verdict on one of the counts.

Please pay close attention as I charge you on the law that governs this situation.

Ladies and gentlemen, you have stated that you have been unable to reach a verdict in this case. As I have instructed you earlier, the verdict of the jury must be unanimous.

When a matter is in dispute it isn't always easy to reach a verdict or even for two people to agree. When twelve people must agree it becomes even more difficult. In most cases absolute certainty cannot be reached or

expected but you have a duty to make every reasonable effort to reach a unanimous verdict.

In doing this, you should consult with one another, express your own views and listen to the views of the fellow jurors.

You should tell each other how you feel, why you feel that way. Discuss your differences with open minds.

Although the verdict of a jury must be unanimous, every one of you has a right to your own opinion. The verdict you agree to must be your own verdict, from your own convictions.

You should not give up your firmly-held beliefs to merely be in agreement with fellow jurors, but you are to consider -- the majority should consider the minority's position, and the minority should consider the majority's position.

You should carefully respect the opinions of each other and re-evaluate your positions for reasonableness, for impartiality. Lay aside all outside matters and re-examine your positions based on the law of this case.

If you do not agree on a verdict that means I must declare a mistrial. In that case it does not mean that anybody wins. It just means that at some point in time in the future I will try this case with some other jury sitting where you are now.

The same participants will come. The same lawyers will ask basically the same questions, get basically the same answers, and we will go through this whole process again.

You were selected in the same manner and from the same source as any future jury will be, and there is no reason for me to suppose that the case will ever be submitted to twelve more intelligent, impartial, conscientious or competent jurors, or that more evidence will be produced or that clearer evidence will be produced by one side or the other.

I would therefore ask that you return to the jury room and resume deliberations.

Everyone else remain seated as the jury exits the Courtroom.

(Jury excused to resume deliberating)

(Other matters taken up in the Courtroom until this case was resumed at 12:29 P.M.)

THE COURT: Mr. Foreman and ladies and gentlemen of the jury, a question has been posed, can we have transcripts of the trial.

The answer is no. It would take weeks to do that, but you can -- if there is a specific portion of the testimony you would like heard you can make that request and we will try to accommodate you in that regard.

Please return to your jury room and continue your deliberations.

(Jury excused from Courtroom)

THE COURT: We'll stand at ease and make the note a part of the record.

(Jury note marked Court's Exhibit 5)

(Court stood at ease until 12:29 P.M.)

THE COURT: Madam Court Reporter, we have received a note from the jury, could we watch the Ark video from the part where she starts talking about hugging and kissing.

I would suggest that it might be easier to play the whole thing. What is your position on that?

MR. WELLS: Your Honor, we can do it any way you like. I guess we could fast forward through to some point.

THE COURT: Do you have an objection to playing the whole thing?

MR. WELLS: No objection to playing the whole thing, Your Honor.

THE COURT: Mr. Anderson, do you have any objection to playing the whole thing?

MR. ANDERSON: Your Honor, I think it would be easy to do, to get to that part and start there.

THE COURT: It might take longer for us to figure

out where to do it than simply play the whole thing. I mean, it's not going to be a surprise to anyone who has watched it. We've watched it three times.

(Brief pause in the proceeding)

THE COURT: Let's play the whole thing. Just crank it up.

The part they want to not play is just the initial part of it.

Mr. Anderson, do you have any objection to playing the whole thing?

MR. ANDERSON: They asked a specific question, so I would object.

THE COURT: Let's see if we can agree to where hugging and kissing start.

(Brief pause)

THE COURT: Would you agree to that, Mr. Anderson?

MR. WELLS: I pretty much know where it all is now. This is where I think . .

(Discussion between counsel and the Court off the record)

THE COURT: Mr. Anderson, if you could go over there and look at it and see if you can reach an agreement on where to start?

MR. WELLS: I think that's it.

THE COURT: Mr. Anderson, do you agree to the place

where it needs to start?

MR. ANDERSON: Yes, sir.

THE COURT: Let's bring the jury out.

(Jury returned to Courtroom)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you requested to see the Ark video where she starts talking about hugging and kissing. I think we have it at that point.

Please pay very close attention to it.

(Requested portion of Ark video played for the jury)

THE COURT: Mr. Foreman, ladies and gentlemen of the jury, you may return to the jury room.

(Jury excused to continue deliberations)

THE COURT: We'll stand at ease.

(Court stood at ease until 2:01 P.M.)

THE COURT: I've got a message from the jury that we are unanimous on charge two. We are deadlocked on charge one, criminal sexual conduct with a minor, first degree.

(Jury note marked Court's Exhibit 6)

THE COURT: To the individuals in the Courtroom, if you feel you cannot maintain your emotions -- I don't want any kind of gasp. I don't want any reaction whatsoever, and if there is a reaction I'm going to ask the Deputy if anybody says anything or there is any kind of

noise to take you into custody, and we will deal with you sometime the latter part of this week. Take them into custody.

Does anybody not understand that? (No audible response) Very good.

Bring the jury.

(Jury returned to Courtroom)

THE COURT: Mr. Foreman, have you reached a verdict?

FOREMAN: No, sir.

THE COURT: Have you reached a verdict with regard to one of the offenses?

FOREMAN: Yes.

THE COURT: And is that indeed unanimous?

FOREMAN: Yes.

THE COURT: Do you have the verdict form?

FOREMAN: I did not bring in the form.

THE COURT: The bailiff will get that for us. Hand it to me.

Is this the verdict form?

FOREMAN: Yes.

THE COURT: Today is the 24th. All right. Mr. Foreman, ladies and gentlemen of the jury, is this verdict with regard to lewd act on a minor unanimous?

FOREMAN: Yes. (Affirmative responses heard)

THE COURT: I will ask the Clerk to publish the

verdict.

CLERK: State of South Carolina, County of Florence. General Sessions, Twelfth Judicial Circuit.

State of South Carolina versus Leonard Eugene Brockington, Case 2012 GS 21 447.

As to Count One, criminal sexual conduct with a minor, first degree, there is no verdict.

As to Count Two, lewd act upon a minor, we, the jury, by unanimous consent, find the Defendant guilty.

Foreman Andrew Flynn, dated April 24, 2014.

Members of the jury, if this is your verdict, raise your right hands.

THE COURT: Mr. Foreman, you indicated in a note you were hopelessly deadlocked with regard to Count One, is that correct?

FOREMAN: Yes, sir.

THE COURT: Any additional requests from the State?

SOLICITOR: None from the State.

THE COURT: Any from the Defense?

MR. ANDERSON: No, sir, Your Honor.

(Jury excused by the Court)

(Jury note marked Court's Exhibit 6)

THE COURT: Anyone who wishes to leave may leave. I'll ask the Defendant to come forward.

Ms. Parr and Mr. Wells, with regard to sentencing,

I will be glad to hear from either or both of you.

SOLICITOR: Your Honor, the Defendant does not have a prior record, and we would ask that you hear from Mr. Waldermo.

THE COURT: Yes, sir. Your full name again?

MR. WALDERMO: Jorgen Waldermo.

THE COURT: I'll be glad to hear from you, and I ask that you address your comments to me and not to the Defendant.

In these matters, I need to talk directly to you, you to me, and you are not to speak directly to him.

I'll be glad to hear what you've got to say.

MR. WALDERMO: I would like to thank the jury for taking that much time over the verdict.

As for my daughter, it took a lot of courage for her to stand here on Tuesday. I feel like she was heard and understood. I think her words were truthful. I've watched her since this occurred for almost three years now, and she has made it clear to me what happened.

I am so thankful that justice is done, and wish there were protective measures to prevent these things from happening which is extremely important, because who knows what could happen in the future.

Hopefully things will be set right.

THE COURT: Anything else?

MR. WALDERMO: Nothing else. Thank you, Your Honor.

THE COURT: Anything further from the State?

SOLICITOR: Nothing further, Your Honor.

THE COURT: Mr. Anderson, I'll be glad to hear from you.

MR. ANDERSON: Thank you. May it please the Court?

As the Court heard and saw on the video played in the Courtroom, my client denied these allegations.

We understand the jury has reached a verdict. There is no question of what the jury has done in the case.

Judge, from everything I've read and everything I have heard, from the witnesses and experts, this is behavior that if it is going to manifest itself it will manifest itself at an early age.

If someone has that propensity or is a person who would do this, they don't wait until they are fifty-two or fifty-three years old.

He's never been accused of anything like this, and you heard him say he coached kids in baseball, couched a hundred sixty or hundred and eighty kids. One of the witnesses who was sequestered and who has been here all along is a former baseball player he coached.

Your Honor, when he was arrested on this charge, he went to jail and was released. I think he spent one or two days in jail. Maybe two days.

Your Honor, when this happened he had the job in Sumter but he has been released from that job. He has found another one and has been working since then.

Your Honor, his mother has been here every day, sitting on the front row most days. She is on the second row today. Her right arm is completely in a cast. He has lived with her and taken care of her.

He has two sons and a daughter who have been here all week. They have certainly been supporting him, Your Honor.

We were hoping for a better outcome, but we understand what happened.

Your Honor, as you are aware, if you're convicted of a lewd act, that carries a lifetime monitoring to my understanding. Also, Your Honor, if convicted of a lewd act -- of course, that is a sex crime, and you have to register twice a year wherever you are living.

Your Honor, I would ask you to keep that in mind. He is going to have to have lifetime monitoring and he will have to register twice a year with the Sheriff's Office wherever he resides.

Please be as lenient as possible.

THE COURT: Mr. Brockington, I'll be glad to hear anything you have to say.

DEFENDANT: Yes, Your Honor.

THE COURT: Direct your comments to me and not to anyone else.

DEFENDANT: I accept what the jury has given me. I still maintain my innocence but I'll take my punishment. The only concern I really have is my mother. I take care of her. I don't know what we're going to be able to do with her.

As Mr. Anderson said, I have never been in any trouble with the law my whole life, and I'm almost fifty-five years old.

Unfortunately, things turned out the way they did, and I just ask that you be as lenient with my sentence as you possibly can.

THE COURT: All right. Do we have a sentencing sheet?

SOLICITOR: I'm sorry, Your Honor.

(Brief pause in the proceeding)

THE COURT: Mr. Brockington, one of the things I feel compelled to say is that the Solicitor's Office did a very fine job, and your lawyer was a tremendous advocate on your behalf.

The fact that he's done such a good job the -- if you had been convicted of criminal sexual conduct with a minor, your sentence would have been a minimum mandatory twenty-five years with no parole.

I understand the maximum -- even if you had been the President of the United States and been before me, been convicted of that, the least you could get was twenty-five years, and you would serve that day for day.

Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: Do you also understand that the lesser offense in count two is not an included offense, but in that instance if you are convicted you could receive fifteen years.

Do you understand that?

DEFENDANT: Yes.

You also understand all the ramifications? Your lawyer has spoken to you about that, hasn't he?

DEFENDANT: Yes, sir.

THE COURT: All right.

Mr. Brockington, on Indictment 2012 GS 21 00447, lewd act, the sentence of the Court is you be committed to the State Department of Corrections for a period of fifteen years.

Sexual offender registry and GPS monitoring.

Good luck to you.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

CERTIFICATE

I, HARRIET P. BENNETT, Court Reporter for South Carolina Court Administration, hereby certify that the foregoing Transcript was prepared from the records of Keshia Reed to the best of my ability, having been heard in the Court of General Sessions for Florence County on April 21-24, 2014.

FURTHER, I certify that I am neither of kin nor of counsel, nor do I have any interest in the outcome of the same.

October 28, 2014

Harriet P. Bennett

FORM 5

FILED

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE)

2015 APR 13 PM 3:0
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

SF. #359727

LEONARD EUGENE BROCKINGTON) 20 15 CP 21 1086
Full name and prison number (if any) of Applicant.)
)
v.) APPLICATION FOR
)
State of South Carolina) POST-CONVICTION RELIEF
)

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention EVANS CORRECTION INSTITUTION BENNETTSVILLE, S.C.

2. Name and location of Court which imposed sentence FLORENCE COURT HOUSE, IRBY STREET FLORENCE, S.C.

3. Name(s) of co-defendant(s) (if any) NONE

4. The indictment number or numbers (if known) upon which and the offenses for which

sentence was imposed:

(a) INDICTMENT/CASE# 2012-GS-21-00447

(b) A/W # M274312 CDR CODE 2468

(c) S.C. CODE 16-15-0140

5. The date upon which sentence was imposed and the terms of the sentence:

(a) APRIL 24, 2014

(b) 15 YEAR DEPARTMENT OF CORRECTIONS

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty SEE ATTACHED PAGE #6

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES APPELLATE CASE# 2014-000989

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. FLORENCE COUNTY

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. NONE

ii. HAVEN'T HEARD ANYTHING YET, JUST MY

iii. APPOINTED LAWYERS NAME

(c) the date of each such result:

i. NONE

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. NONE

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

**10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) MOTION of DISCOVERY NEVER GIVEN TO ME, D. NOT ALLOWED TO PLEA

(b) NO EVIDENCE, JUST HEARSAY

(c) GROSS NEGLIGENCE ON MY LAWYERS PART D. CONFLICTS of INTREST.

***11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE ATTACHED SHEET #11

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii.

iii. N/A

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i.

ii. N/A

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____ N/A

iii. _____

XXXX 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) GROSS NEGLIGENCE ON MY LAWYERS PARTS, EVIDENCE THAT

(b) SHOULD HAVE BEEN OBTAINED BUT WASN'T, TWO OTHER

(c) LITTLE GIRLS TESTIMONY THAT WAS ALSO SEIZED FROM THEIR HOME FORENSIC TESTED. SARAH BREE ANN COOPER.

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? WAS NOT GIVEN THE OPPERTUNITY TO PLEA!

(b) your trial, if any? YES AT MY TRIAL

(c) your sentencing? YES

X (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES (THE ONLY THING THAT HAS HAPPENED IS THAT A LAWYER HAS BEEN APP. TO MY APPEAL.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. HANK ANDERSON FROM ANDERSON LAW FIRM 265 W. EVANS ST.

ii. FLORENCE, S.C. 29501-3464
* DAVID ALEXANDER (APPOINT TO MY CASE)

iii. COLUMBIA S.C.
DIVISION OF APPELLATE DEFENSE

(b) the proceedings at which each such attorney represented you:

i. HANK ANDERSON AT MY TRIAL

ii. _____

_____

iii. _____

_____

19. State clearly the relief you seek in filing this application: SEE ATTACHED SHEET #19

MY CONVICTION OVERTURNED OR A NEW TRIAL

IF I GET A NEW TRIAL I WANT A FAST & SPEEDY TRIAL.

20. Are you now under sentence from any other court that you have not challenged?

NO

_____

_____

FILED
2015 APR 13 PM 3:08
CONNIE REEL-SHEALY
CCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of)

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Leonard Eugene Buchanan

SWORN to and subscribed before me this 10th day of April, 2015.

S Outlaw (L.S.)
Notary Public

My Commission Expires: 2/24

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Leonard Eugene Buckington
Applicant

SWORN or affirmed to and subscribed before me this 10th day of April, 2015

S Outlaw
Notary Public

My Commission Expires: 2/24

FILED
2015 APR 13 PM 3:08
CONNIE REEL-SHERMAN
CCCP & GS
FLORENCE COUNTY, SC

#6 I was found guilty by a jury. I was never given a opportunity to plea. I was arrested and then [illegible] out. I waited 2½ years before I went to trial.

FILED
2015 OCT 26 P 3:08
FLORENCE COUNTY
CLERK OF COURT

#11(a) I was not allowed to offer a "not guilty" plea. My lawyer did not show me my motion of discovery though it is my right to have access to it.

(b) No physical evidence was presented, only heersay. Though the little girl testified; her testemony was not consistent. My trial transcript will demonstrate this. Though the solicitor had 2½ years to work with the little girl, her testimony was inconsistent. My lawyer even asked similar questions to which inconsistent answers were given. I was never investigated by the Florence Co. Sheriff's Dept., nor was I questioned by Florence County D.S.S.. D.S.S. indicated that I was living with this child's mother. This is not accurate. If they had investigated they would have found that my actual address of residence was:
1414 Laufer Dr. Florence S.C.

(c) I am citing gross negligence on the part of my lawyer. My lawyer indicated that there was a 99% chance that the case would never see trial. Nonetheless he kept asking for further payment finally totalling $15,000. Also there was evidence that would have helped my case. There was evidence that would have placed doubt upon the solicitor's case.

Continued #11 (c) My lawyer declined to call witnesses for the defense because that would have allowed the State would offer it's closing arguments last. I followed his advice against my inclination. There were medical records I requested that he use, he neglected to get them. In court I asked about the medical issue I have and he said that he had no way of proving that I had a medical issue. But my medical issue could have been proved in court if my lawyer had followed my instructions and acquired my medical records. I paid my lawyer $15,000 and he had 2½ years to prepare my defense. He neglected to do so and had to cram his preparations into one weekend. Only AFTER my lawyer accepted my $15000 did he reveal that he had never worked a case like mine. My lawyer failed to warn me of this inexperience.

(d) 1. Conflict of interest. The Investigater; Chad Collins works in the same office as my estranged stepsister Hellen Cain who hates me. She has an unrealistic attitude toward me such as blaming me for her father's death even though he died of natural causes. I believe the investigater recieved and used inaccurate and biased information that negatively and dishonestly reflected upon my character

#11(d).2 Continued

The Judges own sister served as Guardian ad Liteum in this case. Thus it is reasonable to assume the Judge would have had a cause for bias.

#19

I feel that it is clear that this case should never have had gone to trial. The child's testimony should have indicated that she was not a valid witness. Additionally, the Judge told the State not to show a video of an interview of the child (a forensic interview), because the child did not behave in a manner that would have indicated that she was sexually abused. Thus denying possibly favorable evidence for the defense. I am in prison for a crime that I did not commit. What I want is the following:

1. My conviction overturned
2. A new trial granted
3. My lawyer to return the fee I paid because I am of the opinion that his services and actions did not warrant such a fee.

1. I Leonard Eugene Brockington want the State of South Carolina to know who I am. I want the State to know that they have an innocent man in prison.

Though I am not a wealthy man, but I am a good man, a good father and grandfather. I have been unjustly taken from my family. I would never have done anything to harm a child. I love kids; mine or anyone's for that matter. I coached baseball for fourteen years winning thirteen championships. I traveled from town to town for years with care and responsibility for these kids foremost on my mind. Anyone who knew me would never have thought I done what I was to be convicted of. Many of the children that I coached saw me as a father figure. It takes a special person to fill that role. I have had kids come up to me and thank me because they felt that were it not for me, they would not be where they were in sports. Its a great feeling to know that something I did for nothing meant something to someone's child.

2. When this little girl started doing things that no child at six years old should do, I asked a DSS case worker named Michelle Head about what I was supposed to do. Following the caseworker's advise, I spoke with the child's mother Karen.

Karen said that the child had demonstrated sexual behavior prior to my noticing it. Karen was going to take the child to see a counselor but the girl's father did not think she needed to do so.

I believe that the behavior that she engaged in more than warranted counselling at the very least. I asked the child where she learned that from but she would not tell me. Later I found out that she had stayed with her father who lived with three or four gay men after he and Karen had seperated. I feel that such a sexually charged environment was not in the child's best interest. The child accused me of touching her. I did not do this. I feel that the true cause has not been explored because the State made no effort to investigate. A full and proper investigation will discover the cause and clear my good name. This is the step by step of what happened.

1. After the child grabbed my private parts, I go to a DSS Caseworker with whom I had a prior relationship. She advised me to speak with the childs mother Karen because the child may have been abused.
2. After speaking with Karen, I learned that the child had displayed strange behavior such as exposing herself in public. My lawyer has a signed Statement attesting to this.

She had previously discussed this with her ex-husband. They had called a causelor, but he decided that the child did not need help

3. The child had demonstrated this behavior in front of her mother.
4. I have spoken to the child's father on several occasions regarding this behavior
5. The point I wish to make is this; the parents displayed a questionable attitude toward a behavior that most if not all parents would have been very keen to get to the bottom of.

As a parent, if my child came to me and told me that someone had touched or harmed them in any way or had demonstrated questionable behavior such as this, I would have sought immediate action and not waited weeks to have forensic testing done. This child's dad never confronted me regarding this. The Investigaters reports say that he did. This is a lie. A check of his phone records would show that he never confronted me by phone nor at my residence because he did not know where I live. Weeks prior to allegations surfacing; the father told Karen that he wanted custody of the kids. He was paying $1800/month Child support and alimony. I feel that these accusations that were leveled against

me so that there would be cause for Karen to lose custody of the kids.

This case needs to be overturned. I am an innocent man doing time for a crime that I did not commit. I ask the court to reexamine this case. The Court will find that I offer the truth. I ask the court to do the right thing and set one innocent man free.

FILED
2018 APR 13 PM 3:08
CONNIE REEL SILLS
CCCP & GS
FLORENCE COUNTY, SC

Sincerely,

Leonard Eugene Brockington

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
Leonard Eugene Brockington, #359727, Applicant, v. State of South Carolina, Respondent.	)	2015-CP-21-1086 **RETURN**

In response to the post-conviction relief application filed on April 13, 2015, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the April 2012 term of the Florence County Grand Jury for one count of Criminal Sexual Conduct with a Minor First Degree and one count of Lewd Act on a Minor Child (2012-GS-21-0447). Applicant was represented by Henry M. Anderson, Jr., Esquire. At a jury trial Applicant was convicted of Lewd Act on a Minor and was sentenced by the Honorable Michael G. Nettles for fifteen (15) years imprisonment.

Applicant filed a timely notice of appeal. This appeal was perfected by David Alexander, Esquire, of the South Carolina Office of Appellate Defense. This appeal is still pending with the South Carolina Court of Appeals.

II.

In his application for post conviction relief, Applicant alleges he is being held in custody

unlawfully for the following reasons:

1. Ineffective assistance of counsel:
    a. "Motion of Discovery never given to me."
    b. "No Evidence, Just Hearsay."
    c. "Gross Negligence on my lawyers part."
    d. "Conflicts of Interest."
    e. "Not Allowed to Plea."

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

For purposes of this Return, Respondent interprets Applicant's allegations as claims of ineffective assistance of counsel. Respondent asserts that Applicant's allegation of ineffective assistance of trial counsel is without merit. Respondent also asserts that Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115,

386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. As such, Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore, either expressly admitted, qualified or explained is hereby denied.

[Signature on following page]

V.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

By:_____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

August 18, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	
	)	**2015-CP-21-1086**
	)	
LEONARD E. BROCKINGTON, #359727	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent,	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 18th day of August, 2016.

Deonna Rogers, Legal Assistant
For Respondent

State of South Carolina	)	Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-CP-21-01086
	)	
	)	
Leonard E. Brockington,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
The State of South Carolina,	)	
	)	
Defendant.	)	
	)	

March 7, 2019
Florence, South Carolina

B E F O R E:

The Honorable William H. Seals, Jr., Judge

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

Jonathan Waller, Esquire
Attorney for the Applicant

Samuel L. Key, Esquire
Attorney for the State

Krystal J. Smith
Circuit Court Reporter

I N D E X

WITNESS/DESCRIPTION	PAGE NUMBER
Leonard Brockington	
Direct by Mr. Waller	6
Cross by Mr. Key	22
Redirect by Mr. Waller	24
Applicant Rests	24
Henry M. Anderson, Jr.	
Direct by Mr. Key	25
Cross by Mr. Waller	31
Redirect by Mr. Key	35
State Rests	35
Arguments of Counsel	
Mr. Waller	35
Mr. Key	39
Court Reporter Certification	42

E X H I B I T S

NO.	DESCRIPTION	ID.	EV.

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption or change in thought
ellipses	. . .	trailing off
[*ph*]		phonetically written
[*sic*]		written as said

MARCH 7, 2019

(WHEREUPON, the proceedings began at 10:39 a.m.)

THE COURT: All right. I am ready when you are. Yes, sir?

MR. KEY: May it please the Court.

THE COURT: Sure.

MR. KEY: This is Leonard Eugene Brockington versus the State of South Carolina, Case Number 2015-CP-21-1086. Mr. Brockington filed this PCR application on April 13th, 2015. The applicant is currently incarcerated at the South Carolina Department of Corrections pursuant to orders -- to an order of the Florence County Clerk of Court.

He was indicted at the April 2012 term of the Florence County Grand Jury for one count of first-degree criminal sexual conduct with a minor and one count of lewd act on a minor. He was represented by Henry M. Anderson, Jr., and he proceeded to a jury trial before Judge Michael G. Nettles.

He was convicted of a lewd act on a minor and was sentenced by Judge Nettles for 15 years' imprisonment. He filed a timely notice of appeal, which was perfected by David Alexander of the South Carolina Office of Indigent Defense, Appellate Division.

In his PCR application, he alleges ineffective assistance of counsel. He is present today and represented by Mr. Jonathan Waller and, at this time, I will hand it over

to Mr. Waller.

THE COURT: All right. Mr. Waller?

MR. WALLER: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, sir.

MR. WALLER: Judge, for the record, Mr. Brockington was -- the jury was hung on the CSC with a minor charge. Judge, he and I have discussed that if we are successful here today, the State could continue to prosecute him on that charge because it wasn't a not guilty, it was a hung jury, and so they, I guess, elected not to, up to this point, retry him on that charge, but if we're successful today, they certainly have that option. He does understand that and still wishes to proceed, Your Honor, so I would call Leonard Brockington.

THE COURT: All right.

THE APPLICANT: Thank you.

THE CLERK: Place your left hand on the Bible and raise your right hand as much as you can.

THE APPLICANT: My right hand.

THE CLERK: Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE APPLICANT: I do.

Thank you, sir.

THE BAILIFF: Okay.

LEONARD BROCKINGTON, being

first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WALLER:

Q: Good morning, Mr. Brockington.

A: Good morning.

Q: How are you today?

A: So in everything okay.

Q: All right. Mr. Brockington, I want to -- I guess I want to take you back to where you were first arrested on these charges. Okay? Do you recall that?

A: Yeah.

Q: Okay. And you weren't -- you weren't arrested immediately after these allegations were made; is that right?

A: No.

Q: Okay. You met and talked with law enforcement?

A: I talked to law -- law enforcement one time, yeah.

Q: Okay. You actually reported some -- some issues at -- at some point prior to -- to these allegations coming out; is that right?

A: That's correct. I was --

Q: Okay. Tell us about that.

A: I was in a relationship with this little girl's mother, and the little girl was only six years old. Her father had left her and her daughter or her sister rather when she was four and the other little girl would have been two. And I

was watching TV one night and the little girl came up to me and took her hands and stuck it in her pants, played with herself, and then wanted me to smell her finger.

And I've got kids. I've raised three kids. Six-year-old kids just don't do that. So it alarmed me. So Michelle Cooper at that time -- I think she's married now -- worked for DSS, which I had dated in the previous and knew her two kids very well. So I went to Michelle and I said, look, this happened. What should I do? And she said, well, you need to go to the --

MR. KEY: Objection, Your Honor.

THE COURT: Sustained. You can't say what somebody else said.

MR. WALLER: Mr. Brockington --

THE APPLICANT: Oh, okay. Okay.

MR. WALLER: You can't say what someone else said.

THE APPLICANT: Okay.

BY MR. WALLER:

Q: So --

A: But any -- okay. Well, let me rephrase that then.

Q: Let me -- let me ask you and I'll get all this information out.

A: Okay.

Q: You went and talked to Ms. Cooper?

A: Right.

Q: Okay. And based on your conversation with Ms. Cooper, what did you do after that?
A: I confronted the mother about it.
Q: Okay.
A: And I was kind of cautious about that because that's somebody else's kid. You know what I'm saying? And I asked her about it, and she said, yeah, she has done me like that. And I said, well, you don't think she's -- she's strange, that that's strange? And she said, yeah, that she had went to the father of the kid and they were going to send this little girl for counseling. And I forgot the lady they were going to carry her to, but she said that her husband --

MR. KEY: Objection, Your Honor.

THE COURT: Sustained.

THE APPLICANT: Okay.

MR. WALLER: All right.

THE APPLICANT: Okay.

MR. WALLER: All right. Let me -- let me jump in here, Mr. Brockington.

THE APPLICANT: All right.

BY MR. WALLER:
Q: All that you were just testifying about, all that took place --
A: Right.
Q: -- before these allegations were raised; is that right?

A: Right.

Q: Okay. About how long, if you recall?

A: Probably about a month or two.

Q: Okay. Ultimately, you were -- you ended up being arrested?

A: Right.

Q: Okay. And who was your attorney?

A: Hank Anderson.

Q: Okay. What did you -- how long after you got arrested did you -- did you hire Mr. Anderson?

A: So when I went and talked with Chad Collins the first -- which I only talked with him one time. I asked Chad did I need a lawyer and he said he couldn't answer that. He couldn't.

So I talked to Michelle because I've never been in trouble with the law before in my life for anything. I mean maybe other than traffic tickets or whatever. So I didn't know anything about the law or the lawyer or nothing. So I asked Michelle, and she recommended Hank. So that's when I went and talked with Hank. Matter of fact, Michelle went with me to talk with Hank.

Q: Okay. After you hired Mr. Anderson, what -- you had two charges at that point; right?

A: Right. Yeah.

Q: Okay. Now, did you -- were you out on bond?

A: Yeah. I bonded out, yeah.
Q: All right. So you were out. What -- what did you and Mr. Anderson talk about?
A: Well, I -- I explained to him exactly what was -- what was said, what was done, what I done as far as my part, just what I'm telling you now, and this thing went on for two-and-a-half years before they decided -- decided to try me. It ended up costing me my job because, you know, they say that you're innocent until proven guilty, but that's not true. If you're arrested, it's on your record right then. It's just the opposite.
Q: Okay.
A: So I ended up losing my job, which later on -- and I didn't know whether to try and get another job or not because I didn't know whether I was going to go to trial next week, next month, and it blew my mind that it was two-and-a-half years. So just before we went to court, I went ahead and got another job, and I ended up losing that one.
Q: Okay. So let me --
A: So --
Q: Let me ask you this.
A: -- my life is kind of in limbo.
Q: Let me ask you this. The previous issues you just testified to --
A: Right.

Q: -- you were just making Mr. Anderson aware of those?
A: Yeah.
Q: Okay. Did you ask him to do any investigation or anything based on what you told him?
A: Well, yeah, I asked him to -- I asked him to -- somehow or another, my -- the girl that I was dating with, she got -- went to the health department to get some birth control and she got tested for STDs and ended up with chlamydia. So I figured I had it too.

So I went to the health department in Sumter because that's where I was working at the time in Sumter and I got tested, and the way they do it in Sumter -- they give you a date and a number and you're supposed to call that particular day to get your test results, which I failed to do because I was at work. So I asked Hank if he would get that, which he never did.

Q: Okay. And you thought that that might help you?
A: Well, I figured that might would help me, being that I -- the video -- I never seen it until the day I went into court.
Q: Okay.
A: Which, I guess, was the only evidence they had against me, which, I guess, would be considered my motion of discovery, but I never was given that. Hank was supposed to get me a copy, but he never did.

Q: Okay. We're going to circle back to that in just a minute.
A: Okay.
Q: You asked Mr. Anderson to get some of your health records?
A: Yeah. I asked him to, yeah.
Q: Okay. Did you think that would help you in your defense of these allegations?
A: I figured it might. It wouldn't hurt.
Q: Okay. Do you -- to your knowledge, did he ever get those records?
A: No, he did not.
Q: Okay.
A: Matter of fact, the day that I walked down to court, we were going to court. The day I walked down the aisle and I asked him about it, he said I couldn't prove that. And I'm thinking, well, how the heck can't I prove it? If I went to a state health department, they would have records of that. So, anyway.
Q: All right. Was there -- were you involved in the DSS case?
A: Yes.
Q: Okay.
A: DSS carried me to put me on trial for unfit parent.
Q: Okay.

A: And Hank told me right off the bat that we wouldn't win that, but I found some issues with that too because the guardian *ad litem* lied on the stand and said she talked with me, and I never talked to that woman before in my life.

Q: So you were -- you were living with this child's mother at the time?

A: No.

Q: You were not living with her?

A: No. I had my own place.

Q: Okay. So you weren't -- you weren't in the house at all times?

A: No. I didn't get my mail there. My clothes wasn't there.

Q: Okay. But you remained as a defendant in the DSS case because --

A: That's right because DSS in Florence never investigated me. I never talked to her until the day in court. That's the other thing that blew my mind is because when DSS carried me as an unfit parent, the DSS worker that testified had nothing to do with the case.

Q: Okay. Were -- were you provided with any documents or any -- any discovery in that DSS case?

A: To be honest with you, I can't -- I got -- I got papers on it, but I don't know exactly what I got because once I got incarcerated, I left all that. I didn't have a chance to

carry it with me.

Q: Okay. Do you know if Mr. Anderson had copies of all the DSS paperwork?

A: I -- I'm sure he would have, yeah, but now, I'm not aware of that.

Q: Did y'all talk about the DSS -- the paperwork from the DSS case?

A: Well, Hank said that he would go with me to that and then that way he could see what they had, which I knew what they had. They didn't have nothing on me. There was nothing to have.

Q: Did he represent you at the DSS case?

A: Yeah.

Q: Okay. All right.

A: Yeah.

Q: And you testified a second ago that the -- the -- I believe you said the guardian *ad litem* in the DSS case never contacted you?

A: Never contacted me. She said that she called me. All he would've had to do was pull her phone records. You're lying. Show me.

Q: How about the -- how about the DSS caseworker?

A: No, never talked with her.

Q: Okay.

A: Never seen her until the day I walked in court, other

than -- other than the DSS worker from Marion County.

Q: Okay.

A: Because Chad Collins -- I don't know how he done it. When I told him that I talked with Michelle, he went after Michelle. He went after Michelle. Matter of fact, he recorded the conversation with her at --

MR. KEY: Objection, Your Honor.

THE COURT: Sustained.

THE APPLICANT: Okay.

MR. WALLER: Okay.

BY MR. WALLER:

Q: Mr. Brockington, now what -- when you met with Mr. Anderson -- how many times do you think you met with him?

A: That I met -- oh, quite a few times. Matter of fact, that was one of the red flags that -- that -- because I kept going to see him and, basically, he told me I don't mind seeing you, but there's nothing I can tell you.

Q: Okay.

A: And what surprised me is the Solicitor's Office -- you could hit it with a rock from his office.

Q: Okay.

A: And I couldn't understand why he couldn't find out anything.

Q: Did y'all ever -- what -- what did y'all discuss as potential defenses you might have to these charges?

A: Well, he -- he basically said that they didn't have anything. He told my family and my mother, which has passed away, that -- excuse me -- that it probably wouldn't even go to trial. And then I got that phone call saying that I was going to court, but he -- you know, I talked with him probably eight or ten times.

Q: Okay. Did y'all -- y'all were discussing, you know, how you were going to --

MR. WALLER: Your Honor, may I approach the witness?

THE COURT: You may.

(WHEREUPON, counsel approached the witness with a cup of water.)

BY MR. WALLER:

Q: Y'all were discussing how you were going to --

A: I could use some of that.

Q: Here you go.

A: Thank you.

Q: Y'all were discussing how you intended to defend against these allegations. Were there any -- any specific things y'all talked about as far as investigation he was going to do or anybody he was going to talk to?

A: Well, Hank -- Hank told me that he knew a lady and he was going to hire her. He said he was going to probably have to give her $1,000 to basically testify or at least tell him why somebody -- why a child that age would say something like

that, but I don't know whether he ever did. I've never -- he never told me whether he talked with her. I don't know her name. That's something he'll have to answer.

Q: Did you understand if that was an expert of some kind?

A: I took it that it was somebody that dealt with that particular kind of thing, yeah.

Q: Okay. All right. Back to -- you mentioned earlier talking about the discovery in your case. What -- what were you -- what were you provided with?

A: Nothing.

Q: Okay. Did you and Mr. Anderson discuss or go over some discovery?

A: Well, I mean basically he said the only thing that they really had was the video of the little girl.

Q: Okay.

A: And he basically told me what was in it, but there was a little more in it than what I thought it was once I got in court and saw it.

Q: Okay. When was the first time you saw the video?

A: In court.

Q: Okay.

A: When I was being tried.

Q: You didn't see it before?

A: Never.

Q: Okay. Did you ask to see it?

A: Yeah. I asked for a copy of it. He said he could get me a copy of it. I never got it.
Q: Okay. You said you met with him several times. Did you ask --
A: Yeah.
Q: -- at any of those meetings if you could watch it?
A: Yeah.
Q: Okay.
A: I never watched it.
Q: Okay. When you were sitting there with him at his office, did you ask if you could watch it right then?
A: Well, I mean I didn't know whether he had it then or not. I mean he said he was going to get it. I didn't know how long it was going to take or anything like that.
Q: Okay. So essentially, your understanding was I don't know anything about these allegations because I certainly didn't commit that and that's --
A: Right.
Q: That what y'all's defense was?
A: Yeah. I mean I know I -- I know I didn't commit those acts.
Q: Okay.
A: You know there's a whole saying now that I'm in prison. Everybody in prison claims they're innocent, but that's not true. Ninety percent of the people that I'm incarcerated

with will tell you that they committed the crimes. Matter of fact, when I went up for parole, I basically felt like they wanted me to admit that I committed it, and I'm not admitting something that I didn't do. I'll die. You can put me in my grave first.

Q: Okay. All right. Mr. Brockington, did Mr. Anderson -- did you ever ask Mr. Anderson to talk to any of -- any witnesses or family members or coworkers or anybody?

A: I gave him some, but his defense -- he said the best defense that I had was because they didn't have anything really. He said that what he preferred to do was to not call any witnesses because if he called at least one witness, then he -- when closing arguments, he would have to go first. And he said -- he led me to believe -- and this came out of his mouth -- that jurors -- I mean jurors tend to listen more to the last person that talks, basically is what he was saying.

Q: Okay. I'm not talking about at the trial. I'm talking about when y'all were getting ready for the trial.

A: That's what he told me before we got ready for trial.

Q: Did you -- did you ask him to talk to any -- any people?

A: I told him -- I told him what my life was, that I coached Little League baseball for 14 years and I've been around kids all my life. I traveled around this state with kids and I've never had anybody to say anything like that about me.

Q: Okay.
A: So, yeah, it hurt my feelings a lot.
Q: Do you know if he contacted anybody, any witnesses?
A: I'm not aware of it.
Q: Mr. Brockington, I think I've asked you all the questions that I have. Is there anything you think I've left out or neglected to ask that the judge needs to know about Mr. Anderson's representation of you?
A: Well, I think -- well, I think Mr. Anderson let -- let Chad Collins off very light because if you'll notice I said earlier about the DSS from Marion County and I guess you're wondering, well, how did Marion County get into it. Chad Collins was following Michelle around --
MR. KEY: Objection, Your Honor.
THE COURT: Don't say what somebody else said.
THE APPLICANT: Okay.
BY MR. WALLER:
A: But anyway, Chad Collins filed a complaint on Michelle --
MR. KEY: Objection.
BY MR. WALLER:
A: -- because she was involved with me.
MR. WALLER: Hang on, Mr. Brockington.
THE COURT: And what's your grounds?
MR. KEY: It's an out-of-court statement.

THE COURT: He didn't say what somebody said. I think he said somebody filed --

MR. KEY: He said he filed a complaint.

THE APPLICANT: With DSS.

THE COURT: He didn't say what the complaint said or what somebody else was saying --

MR. KEY: Okay.

THE COURT: -- out of court. He just filed a complaint.

MR. WALLER: That's correct, Your Honor.

THE COURT: Overruled.

BY MR. WALLER:

A: Anyway, they came and DSS from Marion came and snatched Michelle's two kids up.

Q: Okay.

A: And on the stand, Mr. Anderson asked Chad did -- were those kids forensic tested. Chad Collins said he thought so, which I mean if I stand there and I see you shoot somebody, I know you shot somebody, but Chad Collins was at the -- at the forensic interview; so he knew those kids were tested.

Q: So you think there were -- there were issues with the investigation?

A: Yeah.

Q: You think it was -- it was cleaned, so to speak?

A: Yeah. Yeah.

Q: All right. Is there anything else that Judge Seals

needs to be aware of?

A: I don't think. I think you pretty well covered --

Q: Okay.

A: -- most everything.

MR. WALLER: Please answer any questions Mr. Key has for you.

THE APPLICANT: Okay.

MR. KEY: One moment, Your Honor.

THE COURT: Sure.

(WHEREUPON, there was a pause in the proceedings.)

MR. KEY: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. KEY:

Q: Mr. Brockington, did you ever find out the test results of the health department's report?

A: Yes.

Q: Okay. And what were those test results?

A: They were negative.

Q: They were negative?

A: Yeah.

Q: Okay. How could that have helped in your defense?

A: Well, based on the allegations, that's not -- that wouldn't have helped me being negative. If it would've been positive, it might have.

Q: Okay. And were you convicted of the CSC first charge?
A: No.
Q: Okay.
A: No.
Q: Do you -- you said you gave Mr. Anderson some -- some names of witnesses. Were those character witnesses?
A: Yes.
Q: Were there any fact witnesses that you gave him?
A: Well, I wanted him to call -- if he was going to call witnesses, I wanted Michelle's two kids to testify, but see, on the stand, Chad Collins said that that was two different cases, but Marion County DSS told me that the two cases were intertwined.
Q: And I believe you said you met with Mr. Anderson eight or ten times?
A: Yeah. I mean quite a few times.
Q: Okay. In those meetings, did he -- did y'all discuss what defenses you would go for on trial?
A: Well, basically what I told -- just told -- got through saying, yeah, what the line of defense that he wanted to take and, whether I thought it was right or wrong, I hired him as my attorney. I expected him to represent me in the best way that he could.
Q: So you didn't have a problem with going forward?
A: No. Uh-uh. If that's the way he wanted to do it,

that's what I was paying him for.

Q: Okay.

MR. KEY: No further questions, Your Honor.

THE COURT: All right. Mr. Waller?

MR. WALLER: Just very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. WALLER:

Q: Mr. Brockington, when did you find out about those test results?

A: Matter of fact, maybe -- what? -- about three or four weeks ago you mailed me a copy of it.

Q: Okay.

MR. WALLER: Nothing further. Thank you.

THE COURT: All right. You may step down.

THE APPLICANT: Thank you.

THE COURT: Call your next witness.

MR. WALLER: Nothing further from the applicant, Your Honor.

THE COURT: The State is recognized.

THE APPLICANT: You might want to move that cup.

THE BAILIFF: I'll get it.

THE APPLICANT: Okay. Thank you.

THE COURT: Yes, sir.

MR. KEY: The State would call Hank Anderson.

THE COURT: All right.

THE CLERK: Do you swear or affirm that the testimony you give will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

HENRY M. ANDERSON, JR., being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KEY:

Q: Good morning, Mr. Anderson.

A: Good morning.

Q: Were you hired or retained by Mr. -- or appointed or retained in this case?

A: I was retained.

Q: You were? Okay. And did you represent Mr. Brockington in the DSS proceedings?

A: Yes, sir.

Q: And in his criminal case?

A: Yes, sir.

Q: So you were aware of the DSS proceedings?

A: Yes, sir.

Q: Okay. How many times did you and Mr. Brockington meet to get ready for the criminal trial?

A: A lot of times. I mean probably more than 12 or 15 times. I mean we met often.

Q: Did you and Mr. Brockington discuss what defenses y'all

would pursue at trial?

A: Yes, sir.

Q: Okay. Could you briefly -- briefly summarize what the defenses y'all decided to go forward on?

A: The only evidence that they had against Leonard was the little girl. I mean they had nothing to corroborate it, no DNA, no -- I mean they had absolutely nothing. The only thing they had was the little girl's testimony, and I mean I don't -- I don't think Leonard did it.

I'll go to my grave, I don't think Leonard did it. I don't think he had anything to do with it. I don't think you wake up when you're 50-some years old and go, hey, I think I'll go molest a little child today. You just don't do that.

But I mean our defense was that he didn't do it, and her testimony was so inconsistent. She had given two or three statements, the little girl had, and then she quit testifying at all. I mean she didn't want to talk about it. She shut her, I guess, counselor down and just would not talk about the event. So the case just lingered and lingered and lingered because the little girl wouldn't testify.

But I mean our defense the entire time was, you know, this little girl was the only evidence that they've got and even her statements are inconsistent. Every time she gives a statement, it's different than the previous one she gave.

Q: Were you able to cross-examine the victim in this case

on those inconsistencies?

A: Well, yes and -- when she testified, she gave another statement that she had never said before. So her trial statement was totally different from anything she had told law enforcement, anything she had told her dad, anything she had told, like, the -- they didn't use the Care House or the Durant Center. They used some child's advocacy in Columbia.

Q: The Arc Center?

A: The Arc Center. They -- it wasn't anything she had told them. When she testified, it was totally different. So I mean I did ask her some questions. I mean I don't think you can really hammer a six- or seven-year-old child, but I did ask her a lot of questions.

Q: And was the video of the Arc interview played at trial?

A: It was.

Q: Were you able to have portions of it redacted?

A: Yes, sir.

Q: So did you have the Arc interview video before trial?

A: Yes, sir.

Q: Did Mr. Brockington ever ask to see it?

A: While he was testifying, I looked back through my notes. I don't see in my notes where he and I ever went over the interview. I did see several letters where I sent him stuff and asked him to pay attention to stuff in the discovery. So I know I sent him a copy of the written discovery, but I

don't see where he and I ever went over the video.

Q: Okay. Did -- did Mr. Brockington ask you to interview any potential witnesses in this case?

A: He and I talked about witnesses and I did meet with some witnesses and talked to them. I mean his sister came to the office a couple of times, and the witnesses that he and I talked about were -- we talked about Karen. Of course, that was the mother of the child. She didn't think that he did it.

We talked about Michelle Poston. We talked about his ex-wife. We talked about his ex-mother-in-law. And then we also talked about some kids that he had coached because, as he testified earlier -- I've got it right here in my notes.

He coached for 14 years as a Little League baseball coach, and some of them actually came to court and sat in on the trial, and I was going to have to subpoena -- I mean not subpoena, but sequester some of them if we were going to use them as a witness, but we didn't actually call any witnesses.

Q: Were you able to bring any of that out without calling the witnesses?

A: I mean I -- yes. I mean we weren't able to bring a lot out. You know, Monday morning quarterback, hindsight is 20/20. Looking back at it, if I could change one thing, I would have called some witnesses to testify on his behalf.

I mean I thought the trial went extremely well, but it's

kind of like, well, other than that, Mrs. Lincoln, how did you enjoy the play? You know, I mean he got found guilty. So the trial didn't go well, but I thought at the time we did a good job with bringing out the inconsistencies.

Q: And he was originally charged with CSC first and lewd act?

A: Yes, sir.

Q: Did you -- was he found guilty of both charges?

A: No, sir.

Q: Okay. So were you successful on the CSC charge?

A: Yes, sir.

Q: Okay. Which charge was more serious?

A: The CSC charge.

Q: Okay. Did you focus on that in preparing for the trial?

A: I mean I -- I didn't think they'd find him guilty of one and not guilty or not make up their mind on the other. I thought it would be an all or nothing. So we tried it as if it didn't happen; this little girl is making it up.

Q: Okay. And you were able to bring that out through cross-examination?

A: We tried.

Q: Okay. Did he ever ask you to look into any medical records?

A: He did, but I mean the fact that he was negative or positive, the little girl didn't have an STD and she had

never indicated that he had had sex with her. It was -- her allegations were that he made her, I guess, give him oral sex and then at one time he made her masturbate him or something. I mean it was never that they had had, like, intercourse, but it was -- so I mean it wouldn't have shown anything, in my opinion.

Q: Okay. So on your professional judgment, you didn't believe those records would be helpful?

A: No, sir.

Q: Did he ever -- did Mr. -- did you ever see a need to hire an expert in this case?

A: I talked with a girl that worked at the Care House in Florence. Her husband is my banker and I've got a really good relationship with him and I've known her for a long time. So I talked with her about it and she said a lot of the same things that I already knew, you know, that most people that do things like this, they exhibit it when they're teenagers, when they're in their 20s, 30s. They don't -- it doesn't happen when you're in your 50s.

Q: So you didn't need to hire an expert because you had talked to one?

A: I didn't think so. No, sir.

Q: Okay. Did you receive all of the discovery in this case?

A: Yes, sir.

Q: Did you go over the discovery with Mr. Brockington?

A: Yes, sir.

Q: Okay. Did he ever ask to have copies of the discovery?

A: I don't know if he asked for them. I sent him the discovery. I have got notes in the file where, like, on January the 31st of 2012, I sent a letter to him.

Enclosed please find a copy of the discovery. Please look at the second page of the discovery. Then, you know, please play -- please pay close attention to the summary that's contained on pages 4, 5, 6, 7, and 8. I'm also enclosing the forensic interview, as well as other information.

You know, so my notes indicate that I sent him stuff. I mean I have no reason to believe that I sent that letter but then didn't enclose the discovery.

MR. KEY: No further questions, Your Honor.

THE COURT: All right. Cross?

MR. WALLER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WALLER:

Q: Mr. Anderson, I think you testified that the -- the only evidence was really the girl's testimony on various statements?

A: Correct.

Q: There were several witnesses who were called to testify

for the State and testified kind of generally about child sexual assault victims and just -- just in general. Do you recall that?

A: I do.

Q: Did you ever consider hiring an expert kind of the opposite of what you've just talked about, that people in their 50s don't just all of a sudden start molesting children?

A: I didn't think about that.

Q: Okay.

A: I didn't consider that, I guess would be the right answer.

Q: When you and -- what did you learn in your investigation about the parents' reactions when these allegations were first made?

A: The mother of the child didn't believe Leonard -- I mean didn't believe that Leonard had done anything. She didn't believe her daughter. The father, of course, I guess took his daughter's side of the story and filed a custody action and got custody of her, and that was -- we tried to show, you know, he had a lot to gain by it because he didn't have to pay child support anymore and he got to see his daughter more and he actually got child support from his ex-wife.

Q: And he was paying a pretty significant amount of child support; is that right?

A: Yes, sir.
Q: Okay. The stepmother didn't necessarily take them -- take the allegations very seriously either; is that right?
A: I think so. Yes, sir.
Q: There was a DSS case for neglect opened against her because she didn't take the allegations seriously?
A: Yes, sir.
Q: Okay. Did you -- did you bring that out at trial as best you could?
A: I think so. Yes, sir.
Q: All right. Have you -- you've tried these type of cases before, CSC cases?
A: Yes, sir.
Q: Okay. What is your understanding of the limitations that a forensic interviewer can testify to?
A: When we tried Leonard's case, there had just been some changes in the law and we filed some motions beforehand that, you know, they couldn't say, well, in my opinion, that the child is telling the truth.
Q: Okay.
MR. WALLER: Your Honor, may I approach the witness?
THE COURT: You may.
MR. WALLER: 227.
THE APPLICANT: What?
MR. WALLER: 227 --

THE APPLICANT: Okay.

MR. WALLER: -- is the page number.

Your Honor, I'm going to ask a question about page 227.

THE COURT: Okay.

BY MR. WALLER:

Q: Mr. Anderson, there's two questions on that page.

The first one says: Was there anything about Michaela's disclosure that caused you to believe that it was a result of third-party influence?

And the other is: Was there anything in her disclosure that was affected in any way by suggestibility or coaching?

Did you feel that that was a kind of roundabout way of asking if the girl could be believed?

A: Probably a backdoor way.

Q: Okay. Was there a trial strategy behind not objecting to those questions?

A: No, sir.

Q: Okay.

A: I should've objected.

MR. WALLER: I beg the Court's indulgence, please.

THE COURT: Yes.

MR. WALLER: Thank you, Mr. Anderson. I have nothing further.

THE COURT: All right. Redirect?

MR. KEY: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. KEY:

Q: Mr. Anderson, you -- you just testified that you had previously tried CSC cases before?

A: Yes, sir.

Q: And in CSC cases, is there ever -- are those normally circumstantial evidence cases?

A: Yes, sir.

Q: Did you discuss -- did you explain that to Mr. Brockington?

A: Yes, sir.

MR. KEY: No further questions.

THE COURT: All right. Anything further?

MR. WALLER: Nothing further, Your Honor.

THE COURT: All right. If you'll call your next witness.

MR. KEY: The State would rest.

THE COURT: All right. Anything you'd like to put on the record, Mr. Waller?

MR. WALLER: Your Honor, certainly we would ask that you, you know, consider the full record prior to reaching your decision. Judge, I think three -- three important things -- three important things that came out factually today.

Both Mr. Brockington and it seems that Mr. Anderson

agreed with him that Mr. Brockington did not have a chance to view the forensic interview prior to the trial.

Mr. Anderson testified that he should've called some witnesses. Obviously, that is hindsight, Your Honor, but that was his testimony.

And I believe page 227 of the transcript I think is very important, Your Honor. That's a psychologist who conducted a forensic interview of this child. Specifically was asked to kind of in a roundabout way did you -- did you believe what the child was saying. They asked it, basically eliminating the things that would make it non-believable. Your Honor, I think that was an improper comment.

So I would ask Your Honor to consider those issues before reaching your decision.

THE COURT: Were those issues brought up on appeal?

MR. WALLER: They were not, Your Honor. I don't believe they were preserved. It was an Anders brief that was filed and I believe it's -- my review of everything is that those -- because there was no objection, they would have not been preserved for an appeal and they would not have been reviewed.

What was reviewed on appeal was the introduction of the video, and that was certainly -- that issue was certainly upheld. I know the video was heavily redacted, but those issues were not objected to. They were not preserved, and I

think that's the issue we have for the PCR.

If they had been objected to -- certainly that's all Mr. Anderson can do, you know, object, let the judge make a ruling, and then go on to the appeal. But I think by not objecting, which is what his testimony was, and that he did not have a strategy for not objecting, he should've objected, I think that's very important today and I think that's the issue here.

THE COURT: And would it have made a difference if he would've objected to those two parts and perhaps it had been redacted during the trial?

MR. WALLER: I do believe it would have, Judge. I mean this -- as Mr. Anderson testified to, there were at least three different versions of the story, including a new one at trial.

When you have an adult who is qualified as an expert who, you know, was introduced as Dr. Benedetto, that is going to make the jury have -- you know, certainly take their -- give them more credibility. And if that person is then vouching for the credibility of the child's story, that is no longer the child's testimony. Now it's -- now it's -- the jury should believe it because this doctor is telling them this is what happened. So I think that would have certainly had an outcome on the trial.

Judge, clearly, looking at the -- looking at the verdict

of the jury, the jury was conflicted on the -- you know, the veracity of the claims because the child had certainly made allegations that had led to a charging of the CSC. So I think the vouching for the -- the impermissible vouching for the child's credibility certainly would have affected the outcome of this case.

THE COURT: All right. Would the State like to respond to that for the record?

It looks like it only came up with basically one question on page 227 of the transcript when the question was: Was there anything about victim disclosure that caused you to believe it was the result of third-party influence?

MR. WALLER: Your Honor --

THE COURT: She said no. And then there's another question: Was there anything in her disclosure that was affected in any way by suggestibility or coaching? Which I guess is about the same thing, and she said no. So in essence, that is --

MR. WALLER: Yes, sir.

THE COURT: -- the only area --

MR. WALLER: Yes, sir.

THE COURT: -- of concern.

MR. WALLER: There were those two questions and this was the only expert witness that was asked this type of question.

THE COURT: Right.

MR. WALLER: But she was the only one that conducted a forensic interview. Your Honor, this was kind of right after -- after the change in the law.

THE COURT: Right.

MR. WALLER: And I don't believe or we're certainly not supposed to see anybody qualified as an expert in forensic interviewing anymore, but this was in transition, but obviously, you know, Mr. Anderson is required to be aware of it and to make the appropriate objections or objection.

THE COURT: But at the same time, in this trial we did have the victim testify --

MR. WALLER: We did.

THE COURT: -- in full?

MR. WALLER: We did, Your Honor.

THE COURT: So the key would be whether it would make a difference or would not.

MR. WALLER: That's correct, Your Honor.

THE COURT: Or whether this is prejudice or not.

MR. WALLER: Yes, sir.

THE COURT: All right. Let me hear from the State.

MR. KEY: Your Honor, I think Mr. Anderson had testified today that he clearly had a strategy to attack the -- the child victim's allegations. He -- he also said he should've objected in those two situations, in those -- to those two questions being asked of Dr. Benedetto. I believe on cross-

examination he also questioned her, not about that specific instance, but on other credibility issues with the witness.

Mr. Anderson also had the Arc interview redacted to exclude anything irrelevant. He was able to cross-examine the child victim in this case. He -- he testified today that her testimony on the stand was completely different than anything that she had said before. The video was played and it was different than what she testified to that day.

Even with those two -- two places where he failed to object, the jury still believed on -- believed that he did one of the acts, but did not commit the more serious CSC first act. So even with that bolstering, the jury still found him not guilty on one of the charges. So she -- it didn't raise to the effect of, well, the expert said this. We're going to act on what just the expert said. We're going to view the facts as a whole.

I'd also just add that Dr. Benedetto was not qualified as a forensic psychologist. She was qualified as an expert in child sexual abuse. There is case law that says that an expert in child sexual abuse is different than a forensic interviewer. That has been allowed in recent cases.

So the State would just rest -- would say that in these two situations, Mr. Anderson may have been deficient. Overall, Mr. Brockington was not prejudiced in Mr. Anderson's representation.

THE COURT: All right. I'll take it under advisement and let you know something.

MR. WALLER: Thank you, Your Honor.

THE COURT: Thank you.

(WHEREUPON, the proceedings ended at 11:30 a.m.)

--- END REQUESTED TRANSCRIPT ---

State of South Carolina)

) Certificate

County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 41, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 7th day of March, 2019.

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

s/*Krystal J. Smith*

Court Reporter

Florence, South Carolina

August 2, 2020

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT
Leonard Brockington, #359727, Applicant, v. State of South Carolina, Respondent.	2015-CP-21-1086 **ORDER OF DISMISSAL**

FILED
2020 APR 29 PM 4:18
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

This matter is before the Court pursuant to a post-conviction relief (PCR) action commenced by Leonard Brockington (Applicant) on April 13, 2015. In his PCR application, Applicant alleged various allegations of ineffective assistance of trial counsel. The State submitted its return on August 18, 2016.

An evidentiary hearing convened on March 4, 2019, at the Florence County Courthouse before the undersigned. Applicant was present and represented by Jonathan D. Waller, Esquire. Assistant Attorney General Samuel L. Key represented the State. Applicant and his former trial counsel testified at the hearing. After hearing the testimony presented at the PCR hearing and a full review of the record, the Court finds, as explained below, Applicant's allegations are without merit, denies relief, and dismisses the action with prejudice.

I. FACTS & PROCEDURAL HISTORY

In March 2012, the Florence County Grand Jury indicted Applicant for one count of first-degree criminal sexual conduct (CSC) with a minor and one count of lewd act on a minor (2012-GS-21-0447). Henry M. Anderson, Jr. (Counsel), of the Anderson Law Firm, PA represented Applicant. Assistant Solicitors Patricia S. Parr and Robert N. Wells prosecuted the case. Applicant's case proceeded to a jury trial before Judge Michael G. Nettles on April 21–24, 2014.

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

Applicant was charged with committing first-degree CSC with a minor and lewd act on his then-girlfriend's six-year-old daughter (Minor). At trial, Minor was nine-years old. (Tr. 192). Minor's parents were divorced, and she lived with her mother (Mother). (Tr. 123-24). Minor's father (Father) lived in Charlotte, North Carolina, and was remarried. (Tr. 124). Applicant and Mother were dating at the time of the incident. (Tr. 125).

In the fall of 2011, Minor disclosed to a friend that Applicant had sexually abused her. (Tr. 97). Minor's friend reported the disclosure to her parents, who then called a neighbor who was friends with Mother. (Tr. 98-99). The neighbor called Mother and told her of Minor's disclosure. (Tr. 112).

Mother told the neighbor she was not sure if Minor was being truthful and assured the neighbor she would look into the matter. (Tr. 112). However, on a visitation with Father, Minor disclosed the allegations to him. (Tr. 127). Father called the police and the Department of Social Services (DSS). (Tr. 128). Upon receiving this information, DSS removed Minor from Mother's custody and granted custody to Father. (Tr. 173-74). Until Minor's forensic interview, Minor only disclosed inappropriate touching. However, during her forensic interview, Minor claimed Applicant made her perform oral-sex on him. (Tr. 175). Minor testified at trial, and the video of the forensic interview was introduced and played for the jury.

The jury did not reach a verdict on the first-degree CSC with a minor charge; however, the jury convicted Applicant of lewd act. (Tr. 388). Judge Nettles sentenced Applicant to fifteen years' imprisonment for lewd act. (Tr. 392-93). Applicant appealed.

Appellate Defender David Alexander perfected Applicant's appeal by filing an *Anders*[1] brief to the Court of Appeals. The following issue was briefed to the court of appeals for *Anders* review:

> Whether the admission of the video of the complainant's forensic interview violated [Applicant's] right to confront the witnesses against him?

The Court of Appeals dismissed the appeal on October 5, 2016. *State v. Brockington*, Op. No. 2016-UP-416 (S.C. Ct. App. filed Oct. 5, 2016). The case was remitted back to the circuit court on October 28, 2016.

Applicant commenced this PCR action on April 13, 2015. In his original PCR application, Applicant alleged:

1. Ineffective assistance of counsel:
    a. Counsel failed to provide the discovery to Applicant;
    b. Insufficient evidence;
    c. Counsel's representation was grossly negligent;
    d. Conflict of interest; and
    e. Applicant was not allowed to plead guilty.

The State submitted its return on August 18, 2016. Thereafter, an evidentiary hearing into the matter was held on March 4, 2019. At the conclusion of the PCR hearing, PCR counsel moved to add the following allegations based upon the evidence presented:

    f. Applicant did not have an opportunity to testify at trial;
    g. Applicant did not have an opportunity to view Minor's forensic interview before trial;
    h. Counsel admitted he should have called witnesses at trial; and
    i. Counsel failed to object to Dr. Alicia Bennedetto's impermissible bolstering testimony at page 227 of the transcript.

[1] *Anders v. California*, 386 U.S. 738 (1967).

II. PCR TESTIMONY

Applicant's Testimony

Applicant testified he was in a relationship with Mother, and Minor was six-years-old at the time of the incident. Applicant recalled Minor's parents split-up when their children were four and two. Applicant testified Minor displayed some sexual behavior that alarmed him, so he contacted his ex-girlfriend, Michelle Cooper, who worked for DSS to ask her advice on what to do. Applicant testified he also asked Mother about the behavior. Applicant testified these events happened about a month or two before Minor made the criminal allegations against him. Applicant testified once Minor made the disclosures, he hired Counsel at Cooper's recommendation. Applicant testified Counsel was able to get him released on bond.

Applicant testified he and Counsel discussed Applicant's version of events. Applicant stated he waited two-and-a-half years for trial, and he lost his job due to his arrest. Applicant testified he asked Counsel to investigate based on what Applicant told him occurred. Applicant asked Counsel to investigate Mother because she had chlamydia, and he had gotten tested around the time of the alleged incident. Applicant stated Counsel never got the medical records from his test. However, Applicant stated he has now seen the test results which turned out to be negative, and he agreed the test results would not have helped his defense at trial. Applicant testified he never saw Minor's forensic interview until the day of trial because Counsel never provided a copy to him.

Applicant testified he was involved in a DSS case against Mother in which DSS claimed Mother was an unfit parent. Applicant testified he was not living in the house with Minor and Mother but had his own residence. Applicant stated he was named in the DSS case against Mother but DSS never investigated him, and he never talked to the DSS caseworker or saw her until the

day of court for the DSS case. Applicant stated he was provided some papers regarding the DSS action, but he did not know exactly what it was. Applicant testified he and Counsel talked about the DSS paperwork, and Counsel represented him at the DSS hearing so Counsel could know what information DSS had about Applicant.

Applicant stated he met with Counsel quite a few times, and Counsel told Applicant he did not mind seeing him, but there was nothing Counsel could tell him during that time. Applicant did not understand why Counsel could not find out anything about his case. Applicant testified Counsel told him and his family the State did not have any evidence against Applicant, and the case probably would not go to trial. Counsel then called Applicant notifying him he was going to trial. Applicant stated he met with Counsel probably eight to ten times.

Applicant testified Counsel told him Counsel knew a lady Counsel would hire to testify or consult with as to why a child Minor's age would make these allegations. However, Applicant did not know if Counsel actually did that, and Applicant did not know her name. Applicant testified he understood her to be an expert of some kind. Applicant testified he never received the discovery in his case, but Counsel told him the only thing the State had was a video of Minor. Applicant stated Counsel described what was on the video, but Applicant never actually saw it. Applicant stated he asked for copy of the video but never received one. Applicant stated that when the video was played for the jury, there was more on the video than he expected.

Applicant recalled the defense strategy was that he did not do what was alleged and he did not know anything about the allegations. Applicant asked Counsel to investigate some witnesses, but Counsel did not want to lose the last closing argument. Applicant stated Counsel told him jurors listen more to the last person who talks. Applicant told Counsel that he coached little league baseball, had been around children all his life, and no one ever said anything like these allegations

about him before. Applicant was unaware if Counsel ever contacted any potential witnesses. Applicant stated he wanted Cooper's children to testify at trial. However, Applicant stated he hired Counsel to defend him, and he was fine with Counsel's decision to preserve last closing argument. Applicant did acknowledge he was not convicted of first-degree CSC with a minor, and he stated he understood he could be retried for first-degree CSC with a minor if PCR was granted.

Counsel's Testimony

Counsel testified he was retained to represent Applicant in the criminal matter, and he also represented Applicant at the DSS proceedings. Counsel testified he met with Applicant often, more than twelve-to-fifteen times. Counsel recalled the only evidence the State had was Minor, and the State had nothing to corroborate her testimony. Counsel testified he did not think Applicant was guilty—Counsel did not think Applicant just one day decided to start molesting children. Counsel testified Minor's testimony was inconsistent—she gave two or three statements and then did not want to talk about the incident at all. Counsel recalled the case lingered because Minor did not want to testify. Counsel stated the defense strategy the entire time was to emphasize that Minor's inconsistent statements and testimony were the State's only evidence.

Counsel testified he cross-examined Minor on the inconsistencies; specifically, she gave another statement in testimony she had never said before—not to law enforcement, her father, or during the forensic interview. Counsel testified he did ask Minor some questions, but he did not want to hammer the young child in front of the jury. Counsel recalled the video of the forensic interview was played at trial, but certain portions were redacted from the original video. Counsel successfully argued certain portions of the video should be redacted. Counsel testified he provided all written discovery to Applicant, but he was unsure whether he and Applicant ever viewed the forensic interview together. Counsel recalled Applicant telling him about some potential witnesses, and he met with some of those witnesses. Counsel stated that in hindsight, he would have called

witnesses at trial, but during trial he did not call any witnesses because he thought the trial was going well. However, Counsel stated he was able to bring out much of the information the defense witnesses would have testified to without having to call them.

Counsel testified he felt he successfully defended Applicant on the CSC charge because the jury could not reach a verdict on that charge. Counsel testified he felt as though the jury would convict Applicant of both crimes or not at all, and he tried to highlight Minor's inconsistencies throughout trial. Counsel testified Applicant asked him to look into the medical records, but Minor did not have an STD and never indicated she and Applicant ever had intercourse. Counsel stated the medical records would not have shown anything useful for the defense, and Counsel did not believe the records would have been helpful.

Counsel testified he talked to a woman he knows with expertise in child sexual abuse cases. She explained to Counsel Applicant's alleged behavior is not something that just starts at a certain age. Counsel testified he received all the discovery and reviewed it with Applicant. Counsel testified his notes indicate he sent letters to Applicant with the discovery and notified Applicant of particular areas he wanted Applicant to review.

Counsel testified he did not seek to hire an expert, but, rather, he chose to show Mother did not believe the allegations and did not think Applicant had done anything. Counsel stated he tried to show Father simply took Minor's word, filed a custody action, and got custody. Counsel explained he tried to show Father had a lot to gain from the allegations because Father did not have to pay child support anymore, and he got custody. Further, Minor's stepmother did not take the allegations seriously, and Counsel highlighted this at trial.

Counsel stated he has tried child-sex cases before. However, there were recent developments in the law regarding child-sex cases around the time of Applicant's trial, and he filed

motions arguing the interview did not show Minor was telling the truth. Counsel stated he did not have a strategy for not objecting to Dr. Bennedetto's testimony that she did not believe Minor was influenced by a third-party or coaching.

III. DISCUSSION

This Court has reviewed the record and heard the testimony at the PCR hearing. This Court has observed the evidence and witnesses presented at the evidentiary hearing, judged their credibility, and weighed their testimony accordingly in its discussion below. Set forth below are findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2014).

1. Ineffective Assistance of Counsel

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To establish prejudice, the applicant must prove "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625.

"In assessing prejudice under *Strickland*, the question ***is not*** whether a court can be certain counsel's performance had no effect on the outcome . . . ." *Harrington v. Richter*, 562 U.S. 86, 111 (2011) (emphasis added). "Instead, *Strickland* asks whether it is 'reasonably likely' the result

would have been different." *Id.* (quoting *Strickland*, 466 U.S. at 696). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112.

Applicant alleges Counsel was ineffective because: (a) Counsel failed to provide the discovery to Applicant; (b) insufficient evidence; (c) Counsel's representation was grossly negligent; (d) conflict of interest; (e) Applicant was not allowed to plead guilty; (f) Applicant did not have an opportunity to testify at trial; (g) Applicant did not have an opportunity to view Minor's forensic interview before trial; (h) Counsel admitted he should have called witnesses at trial; and (i) Counsel failed to object to Dr. Alicia Bennedetto's impermissible bolstering testimony at page 227 of the transcript. For the reasons discussed below, the Court concludes Counsel was not constitutionally ineffective.

a. Counsel failed to provide discovery to Applicant

Applicant asserts Counsel was ineffective for failing to provide him with all the discovery of his case. Applicant asserts he never received a copy of the discovery, and he specifically asked Counsel for a copy of Minor's forensic interview; however, Counsel never showed him or provided a copy of the forensic interview. Based on the testimony presented at the PCR hearing, the Court finds this allegation without merit.

As stated above, Applicant testified Counsel never provided him with the discovery in his case. However, Counsel testified he provided Applicant with all the written discovery of the case, and Counsel's notes indicated he sent Applicant the discovery with a letter notifying Applicant of certain portions of the discovery he wished to discuss with Applicant. The Court finds credible Counsel's testimony he provided Applicant with all written discovery in the case.

Applicant testified he never saw Minor's forensic interview until the day of trial because Counsel never provided a copy of the video to Applicant. However, Applicant testified Counsel

told him the State's only evidence in the case was Minor's testimony and Minor's forensic interview. Further, Applicant testified Counsel described to him the forensic interview, but when the video was shown to the jury at trial, the video contained more than what Applicant expected it to. Counsel testified he was unsure whether he and Applicant actually viewed the forensic interview together.

Applicant's own testimony shows that he was aware of the forensic interview before trial, and Counsel described to Applicant what was on the video. Counsel's conduct of notifying Applicant of the forensic interview's existence and describing what the forensic interview portrayed to Applicant was not deficient.

Applicant has failed to show prejudice resulted from Counsel's alleged deficiency in failing to show or provide Applicant a copy of the forensic interview. The transcript shows Counsel vigorously attacked the admissibility of the forensic interview pretrial. (Tr. 49–53; 60–69). While the trial court ultimately ruled the video was admissible, the trial court ruled certain portions of the video were inadmissible and had to be redacted—the forensic interviewer's recap of Minor's testimony was impermissible bolstering, and Minor's drawing of a picture was irrelevant. (Tr. 65–66). Counsel clearly had a trial strategy for attacking the admissibility of the forensic interview, and Applicant has failed to show how Counsel's alleged deficiency of not showing or providing a copy of the forensic interview to Applicant prejudiced him.

Because Counsel reasonably notified and described the forensic interview to Applicant, Counsel was not deficient. Further, Applicant has failed to show prejudice resulted from Counsel's alleged deficiency because the transcript shows Counsel had a valid trial strategy for attacking the admissibility of the video and was partially successful because inadmissible portions of the video

were redacted. Therefore, Counsel was not constitutionally ineffective and this allegation is denied and dismissed with prejudice.

b. Insufficient evidence

Applicant's insufficient evidence allegation is without merit. Subsection 17-27-20(A)(6) of the South Carolina Code provides in pertinent part, "[T]his section ***shall not*** be construed to permit collateral attack on the ground that the ***evidence was insufficient to support a conviction.***" (emphasis added). Because Applicant's allegation of insufficient evidence is not a cognizable claim for PCR, the Court denies this allegation and dismisses it with prejudice.

c. Counsel's representation was grossly negligent

The Court interprets this allegation as a general allegation of ineffective assistance of counsel, and the Court's discussion of this allegation can be found throughout Section 1 of this order.

d. Conflict of interest

Applicant presented no evidence at the PCR hearing to support his conflict of interest allegation. Because there was no evidence presented to support this allegation, the Court finds this allegation was waived and dismisses it with prejudice.

e. Applicant was not allowed to plead guilty

Applicant asserts trial counsel was ineffective because Applicant was never allowed the opportunity to plead guilty. The Court disagrees.

As stated above, Applicant testified that when he met with Counsel, Counsel told him he did not think the case would go to trial because the State's only evidence was Minor's testimony and the forensic interview. However, Applicant learned the State was calling the case to trial. There was no evidence presented at the PCR hearing that the State ever made a plea offer for Applicant to plead guilty, or if Applicant ever requested Counsel to enter into plea negotiations with the

State. Therefore, Applicant has failed to show Counsel was deficient because Applicant never requested Applicant enter into plea negotiations.

Applicant has failed to show prejudice resulted from his inability to plead guilty because he never testified he would have chosen to plead guilty rather than proceed to trial. Additionally, if Applicant had chosen to plead guilty to his charges without negotiation or recommendation, the least amount of time he could have received was twenty-five years for first degree CSC with a minor. *See* S.C. Code Ann. § 16-3-655(D)(1) ("A person convicted of a violation of [first-degree CSC with a minor] is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty-five years . . . ."). However, the jury was unable to reach a verdict as to that charge. Applicant received fifteen years for lewd act, which is less than the minimum he could have received if he had pleaded guilty to his charges. Therefore, this Court is not convinced Applicant would have chosen to plead guilty rather than proceed to trial on his charges.

Based on the foregoing, Applicant has failed to show Counsel was constitutionally ineffective. Therefore, this allegation is denied and dismissed with prejudice.

f. Applicant did not have the opportunity to testify at trial

Applicant asserts Counsel was ineffective because Applicant did not have the opportunity to testify at trial. The Court disagrees.

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689: "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action

or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992).

Applicant testified Counsel did not want to lose the last closing argument because Counsel believed jurors listen more closely to the last person who talks. However, Applicant never testified Counsel refused to let him testify. To the contrary, Applicant stated he hired Counsel to defend him, and he was fine with Counsel's decision not to put up a defense. Applicant has failed to meet his burden of proof as to deficiency because Counsel never refused to let Applicant testify. Further, Applicant has failed to show prejudice because he agreed with Counsel's strategy of not presenting a defense. Therefore, Counsel was not constitutionally ineffective, and this allegation is denied and dismissed with prejudice.

g. Applicant did not have an opportunity to view Minor's forensic interview before trial

Applicant asserts Counsel was ineffective because Applicant did not have the opportunity to view the video of Minor's forensic interview before trial. The Court has addressed this allegation above in section 1(a) of this order.

h. Counsel admitted he should have called witnesses at trial

Applicant asserts trial counsel was ineffective for failing to call available witnesses in Applicant's defense at trial. In support of this allegation, Applicant relies on Counsel's testimony that, in hindsight, he should have called defense witnesses. The Court disagrees.

Applicant has failed to show Counsel's strategy for not calling the witnesses at trial was unreasonable, and therefore the Court finds Counsel was not deficient. In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of

hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

While Counsel testified that in hindsight, he should have called witnesses at trial, Counsel testified he felt he successfully defended Applicant on the first-degree CSC charge because the jury could not reach a verdict on that charge. Counsel reasoned the jury would either convict Applicant of both charges or not at all because both charges hinged on Minor's credibility. However, the jury convicted Applicant of lewd act. This Court finds Counsel was not deficient for failing to call the available witnesses because he felt he attacked Minor's inconsistent statements enough to receive a favorable result. Indeed, Counsel's strategy did produce a favorable result on the more serious charge, and this Court finds Counsel's strategy at the time of trial reasonable.

Further, the only testimony presented at the PCR hearing was from Applicant and Counsel. As such, Applicant has failed to meet his burden of proof regarding prejudice because Applicant did not call any other witness or otherwise introduce the witnesses' testimony for this Court's review. *See Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (stating to support a claim that trial counsel was ineffective for failing to call potential witnesses, "a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony" because "[t]he applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice"). Therefore, anything the witnesses would have testified to had they been called at trial is mere speculation because they did not testify at the PCR hearing.

Applicant has failed to prove Counsel was deficient for failing to call the available witnesses at trial because Counsel articulated a reasonable strategy for not doing so at the time of trial—he felt he attacked Minor's inconsistent statements enough to receive a favorable verdict.

Applicant has further failed to show prejudice because none of the witnesses who could have testified at trial testified at the PCR hearing. Accordingly, this Court denies relief on this allegation and dismisses it with prejudice.

i. Counsel failed to object to Dr. Alicia Bennedetto's impermissible bolstering testimony at page 227 of the transcript

Applicant asserts trial counsel was ineffective for failing to object to Dr. Benedetto's impermissible bolstering testimony. The Court disagrees.

"[A] forensic interviewer may not be permitted to give testimony that improperly bolsters the credibility of the victim." *Briggs v. State*, 421 S.C. 316, 323, 806 S.E.2d 713, 717 (2017). "[A] witness may not give an opinion for the purpose of conveying to the jury—directly or indirectly—that she believes the victim." *Id.* at 324, 806 S.E.2d at 717.

On direct-examination, the State asked Dr. Benedetto:

> Q: Was there anything about [Minor's] disclosure that caused you to believe it was the result of third-party influence?
> A: No. That is something we would very carefully explore to make sure that there doesn't appear to be influence of either a parent or some other source, or motivation by the child. Nothing that she stated to me supported that.
> Q: And was there anything in her disclosure that was affected in any way by suggestibility or coaching?
> A: Well, you know, that is a question obviously for the jury to determine. As far as things that we look for in the interview; for example, is the child able to correct the interviewer when the interviewer maybe gets something wrong, and [Minor] was able to do that sort of thing. . . .

(Tr. 227). At first glance, this line of questioning by the State seems objectionable as eliciting improper bolstering testimony. However, a closer view of our Supreme Court's analysis in *Briggs* is necessary in deciding this issue. 421 S.C. 316, 806 S.E.2d 713.

In *Briggs*, our Supreme Court was asked whether trial counsel's failure to object to a similar line of questioning of a forensic interviewer constituted ineffective assistance of counsel. 421 S.C.

at 325-27, 713 S.E.2d at 718-19. The forensic interviewer testified she did not find any evidence suggesting the victim had been coached. *Id.* at 326, 806 S.E.2d at 718. The Court stated, "This testimony was ***arguably*** offered for the purpose of conveying the witness's opinion about the credibility of the victim, and thus ***could*** be improper bolstering." *Id.* (emphasis added). However, the *Briggs* Court also reasoned:

> Under certain circumstances, it may be proper for the State to ask an expert about coaching. For example, if defense counsel accused the child's mother or father in opening statement or on cross-examination of coaching the child to make an accusation they knew to be untrue, such a line of questioning to an expert could be admissible.
>
> One can even envision a scenario in which ***coaching is implied, or otherwise becomes an issue without such a direct accusation.*** Under ***any*** of those circumstances, where the testimony is offered to address coaching as a disputed issue, it may be reasonable for counsel to decide not to object.

Id. (emphasis added). The Court ultimately declined to hold trial counsel's failure to object to the line of questioning deficient because trial counsel himself made whether someone coached the victim to make a false accusation an issue in the case. *Id.* at 327, 806 S.E.2d at 719.

In the instant case, in opening argument, Counsel argued:

> [Minor] went to a counselor in North Carolina. She went to that counselor for a year, and over that year's time [Minor] refused to talk about this. Wouldn't talk about it or bring it up. So the counselor was changed and she went to another counselor, and now she is ready to testify about this.

(Tr. 91). Counsel also argued:

> [Y]ou will also hear that [Father] didn't have custody before this happened, and he has custody now. You will hear [Father] was paying some [e]leven [h]undred [d]ollars a month for child support but he's not paying any child support now.

(Tr. 91-92).

On cross-examination, before Dr. Benedetto's testimony, Father admitted that prior to Minor's allegations in September 2011, Mother advised him Minor was acting out and stated she felt Minor needed counseling. (Tr. 138). Father also admitted Applicant spoke to him on the phone regarding Minor's behavior. (Tr. 139). Father then stated Minor saw a counselor in North Carolina for about a year and would not speak about the incident "[u]nder no pressure." (Tr. 139). Then, Father moved Minor to a counselor in Columbia, South Carolina. (Tr. 139). Counsel then elicited through Father that Minor saw the Columbia counselor "for preparation of trial testimony." (Tr. 140). Father admitted he brought Minor to the courtroom two times prior to trial, and Minor was given a trial notebook to take home. (Tr. 140-41).

On cross-examination, before Dr. Benedetto's testimony, Minor admitted Heather Smith, her second counselor, talked to her about coming to court and gave her homework to work on. (Tr. 209). Minor also admitted she went to the courthouse more than once and practiced her testimony with the solicitor prosecuting the case before trial. (Tr. 210-11).

Before Dr. Benedetto testified, as stated above, Counsel argued in opening Minor went to a counselor for a year and would not speak of the incident until she was taken to a different counselor. Counsel also argued Father gained custody of Minor and ceased paying child support because of Minor's allegations. Counsel elicited on cross-examination of Father that Minor would not speak to the initial counselor because she was "[u]nder no pressure." (Tr. 139). Further, Minor admitted to practicing her testimony at least two times with the solicitor prosecuting the case.

This Court finds Counsel's trial strategy created a situation "in which coaching is implied, or otherwise becomes an issue . . . ." *Briggs*, 421 S.C. at 326, 806 S.E.2d at 718. While Counsel did not articulate a reason for failing to object to the State's questions and Dr. Benedetto's testimony, this Court finds Counsel was not deficient because, as our Supreme Court found in

Briggs, Dr. Benedetto's testimony was not impermissible bolstering testimony. Counsel cannot be found deficient for failing to object to admissible testimony. *See e.g. Green v. State*, 351 S.C. 184, 194, 569 S.E.2d 318, 323 (2002) (finding trial counsel was not deficient for failing to object to a proper charge pursuant to *Allen v. United States*, 164 U.S. 492 (1896)).

Applicant does not argue Counsel's trial strategy which opened the door to Dr. Bennedetto's testimony regarding coaching was unreasonable; however, it is clear from Counsel's testimony his strategy was to attack Minor's inconsistent statements to show the jury she was not a credible witness because the case against Applicant hinged on Minor's credibility. This Court finds Counsel's strategy to imply Minor had been influenced by Father and coached by the second counselor and the prosecuting solicitor reasonable. This strategy's reasonableness is evinced by the jury's inability to convict Applicant of first-degree CSC with a minor. Because Counsel was not deficient for failing to object to the questioning he reasonably opened the door to, he was not constitutionally ineffective.

CONCLUSION

The Court finds Counsel's representation was not constitutionally ineffective. Therefore, based on the foregoing, the Court denies relief on the allegations and dismisses this PCR action with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a

notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appeal.

THEREFORE:

1. The Court denies relief and dismisses the action with prejudice; and
2. Applicant shall be remanded to the custody of the State.

AND IT IS SO ORDERED.

WILLIAM H. SEALS, JR.
Presiding Judge
Twelfth Judicial Circuit

April 23, 2020.

FILED
2020 APR 29 PM 4:18
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Chad Collins — Florence County Sheriff

Patrica S Parr

ARREST WARRANT NUMBER

M274311 M274312

ACTION OF GRAND JURY

TRUE BILL

Kimberly Bonello
Foreperson of Grand Jury
Date: 3-29-12

VERDICT

Foreperson of Petit Jury *Date:*

DOCKET NO. 2012-GS-21-00447

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

APRIL TERM 2012

THE STATE

vs.

LEONARD EUGENE BROCKINGTON

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE
AND
LEWD ACT ON A MINOR CHILD

nolle pros CSC w/ mvm 1st
hung jury on this count
A convicted of lewd act.

FILED
2012 MAR 29 PM 1:06
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE
AND
LEWD ACT ON A MINOR CHILD

At a Court of General Sessions, convened on MARCH 29, 2012 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

That Leonard Eugene Brockington did in Florence County, State of South Carolina, between January 1, 2011 and October 3, 2011, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the First Degree by engaging in sexual battery with a minor who is less than eleven (11) years of age, to wit: had a 6 year old victim perform oral sex on him . whose date of birth is [redacted] in violation of Section 16-3-655(A)(1), [formerly Section 16-3-655(1)], S. C. Code of Laws, 1976, as amended.

COUNT TWO- LEWD ACT ON A MINOR CHILD

That Leonard Eugene Brockington, being over fourteen years of age , did in Florence County between January 1, 2011 and October 3, 2011, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: 6 years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: had 6 years of age victim perform oral sex on him, in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR