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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of General Sessions
Donald Hocker, Circuit Court Judge

Appellate Case No. 2019-001477

The State, ... Respondent

v.

Brandon Jerome Clark, ...Appellant.

Record on Appeal

Cameron Jane Blazer

Blazer Law Firm
1037 Chuck Dawley Blvd. D100
Mount Pleasant, SC 29464
843-732-4441
843-989-0042 (fax)
Email: cameron@blazerlaw.com

Attorney for Appellant Brandon Clark

ALAN WILSON
Attorney General

William F. Schumacher, IV
Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3713
Email: BSchumacher@scag.gov

Attorneys for Respondent

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2017-GS-39-02245
	)	
	)	
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
BRANDON JEROME CLARK,	)	
DEFENDANT.	)	
_____	)	

August 19, 20, 21, and 22, 2019
Pickens, South Carolina

B E F O R E:

THE HONORABLE DONALD B. HOCKER, JUDGE; and a jury.

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

BRITNI M. MCCALL, ESQ.
B. SCOTT TODD, ESQ.
Assistant Solicitors

JENNY L. BARWICK, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

1 minutes. And y'all kind of gather your thoughts.

2 (WHEREUPON, a break was taken.)

3 MS. MCCALL: Your Honor, if I may pass up the written
4 motions that we are going to be presenting. Ms. Barwick
5 has a copy of those.

6 THE COURT: All right. Now, it's -- it's my
7 understanding, at least, talking with you folks in
8 chambers that the forensic interview, it's -- it's been
9 agreed that that would come in and, certainly, the video
10 shown to the jury.

11 What is at issue is the -- is the transcript;
12 correct?

13 MS. MCCALL: That is correct, Your Honor.

14 MS. BARWICK: Judge, we're consenting to the forensic
15 interview being played for the jury on the condition that,
16 one, the child testifies; two, the forensic interviewer
17 testifies; and three, the transcript.

18 THE COURT: Okay. But if I were to -- if I were to
19 rule that the transcript does not come into evidence,
20 then, Ms. Barwick, are you telling me then you're not
21 agreeing to the forensic interview being played?

22 Consequently, I'm going to need to look at the
23 forensic interview to make sure that it complies with the
24 statute. Or do you need a moment to ponder on that
25 question?

1 MS. BARWICK: If -- if you don't mind, let me ponder
2 on that a little bit, Judge.

3 THE COURT: Sure. That's fine. That's fine.

4 MS. BARWICK: We can address -- I can ponder two
5 things at one time, if you would like.

6 THE COURT: All right. Multitask, that's what I like
7 in a lawyer.

8 Okay. Let's go to the next issue. Then we can come
9 back to the forensic interview.

10 MR. SCOTT: Your Honor, first -- the first motion we
11 would bring up is the rape shield. I don't believe the
12 Defense is going to have an issue with this. But just to
13 preserve all appellate issues --

14 THE COURT: Okay. Sure.

15 MR. SCOTT: -- we would, you know, ask that the
16 limited admissibility of opinion evidence, reputation, or
17 specific instances of sexual activity by the victim with
18 persons other than -- other than the Defendant. We've
19 received no notice this would be an issue. But, again,
20 just to cover all our bases.

21 THE COURT: Okay. Ms. Barwick, do you believe that
22 there's going to be something brought out from your side
23 that may create an issue with the rape shield statute?

24 MS. BARWICK: With the rape shield statute, no, Your
25 Honor.

1 to 3/2017, Your Honor. So it is similar in time because
2 that's the notice we were given as to what dates the
3 allegations allegedly occurred.

4 Further, law enforcement did find it necessary to do
5 a rape kit. And they ended up doing it on April 13th.
6 However, that was 24 days after the child reported and was
7 at the hospital available for a rape kit that her dad told
8 her she could not have.

9 THE COURT: All right. Everybody be at ease for just
10 a few minutes.

11 (Pause.)

12 THE COURT: All right. Let's go back on the record.

13 Let's jump back to the first issue, Ms. Barwick.
14 Have you made a decision on the issue of the forensic
15 interview coming in and the transcript?

16 MS. BARWICK: Yes, sir. We're fine with that, as
17 long as those three conditions are met.

18 THE COURT: Okay. But if I -- but, again, going back
19 to my --

20 MS. BARWICK: The other two, the victim testifies and
21 the forensic interviewer testifies. If you don't allow
22 the transcript, we'll -- we'll still consent to it.

23 THE COURT: Okay. And stipulate that the various
24 factors in 175 have been met, State?

25 MS. MCCALL: Yes.

1 THE COURT: Defense?

2 MS. BARWICK: I -- I'm not stipulating to it. I'm
3 not opposing them.

4 THE COURT: Okay. Well --

5 MS. BARWICK: And I'm not going to object to the
6 video coming in.

7 THE COURT: Okay.

8 MS. MCCALL: And then, at that point, you would have
9 to make a ruling, I think. If she's not stipulating that
10 there are these particularized guarantees of
11 trustworthiness, then I believe you would have to watch
12 the video and make that determination.

13 THE COURT: Yeah.

14 And -- and I'm not -- I'm not forcing you,
15 Ms. Barwick, to stipulate. But if you're not stipulating,
16 which is fine, then I will have to -- to look at the --
17 the interview and make those findings -- findings under
18 175.

19 MS. BARWICK: Yes, sir, Your Honor. I understand
20 your position. I just can't simply --

21 THE COURT: That's fine.

22 MS. BARWICK: -- stipulate that this is a credible --
23 it met the factors.

24 THE COURT: I would not want any lawyer to stipulate
25 to something they don't feel comfortable with.

1 How long is the interview?

2 MS. MCCALL: Roughly, 40 minutes.

3 THE COURT: All right. Let me ask you this. Would
4 it be -- would you anticipate it in your order of
5 presentation, Solicitor, that the forensic interview would
6 come in today?

7 MS. MCCALL: I would anticipate so, Your Honor. It's
8 going to be the -- the second witness -- excuse me -- will
9 be my forensic interviewer. So it would be after her
10 testimony.

11 THE COURT: Okay. So I'll just need to look at it
12 over -- over lunch. If you can get me -- get me a copy,
13 that would --

14 MS. MCCALL: Would you like me to hand that up now?

15 THE COURT: Yes, please.

16 MS. MCCALL: Thank you.

17 And that is the original, Your Honor. Would you
18 prefer a copy, or is the original --

19 THE COURT: Well, do you trust me with the original?

20 MS. MCCALL: I do, Your Honor.

21 THE COURT: Okay. Let's put on -- whatever you want
22 to put on the record as it relates to the transcript that
23 was prepared from the -- the video.

24 Ms. Barwick, I believe you want the transcript in.

25 MS. BARWICK: Yes, Your Honor.

1 And before we go to that, too, I wanted to put on the
2 record that you did disclose to me last week on Thursday
3 afternoon that Scott Todd, who is sitting second chair,
4 was a former law clerk of yours. I did not have a problem
5 with that. I discussed the matter with my client. And he
6 does not have a problem with that either. And he is
7 waiving any kind of objection he might have as to that.

8 THE COURT: Okay. Thank you very much for bringing
9 that up.

10 Because I -- after your e-mail, I really hadn't given
11 it any other thought.

12 So thank you for bringing that up.

13 MS. BARWICK: You're welcome, Your Honor.

14 Ms. McCall -- I -- I believe it was back last spring
15 sometime, Ms. McCall and I had exchanged some e-mails and
16 phone conversations about things maybe we could stipulate
17 to and not stipulate to. She said that she did not have a
18 problem with the transcript coming into evidence. And she
19 confirmed that in an e-mail to me. I can go pull the
20 date, if Your Honor would like.

21 And then later on --

22 And, Ms. McCall, correct me if I'm wrong.

23 It was a few weeks later, she says that she's no
24 longer willing to stipulate to it because she couldn't
25 find any case law that would allow it to come in.

1 In -- in my opinion, Your Honor, you can't -- you
2 can't unstipulate to something once you've stipulated to
3 it.

4 Your Honor, also, my expert relied in part on reading
5 the transcript in basing her opinion. Furthermore, it --
6 it just comes down to a common sense kind of argument,
7 Judge. You want the jury to know what is being said in
8 that video, but you don't want them to have it.

9 Yes, the video is probably best evidence. You can
10 see and hear. But you're talking about 42 minutes of
11 video where it's not just important what the alleged
12 victim is testifying to or answering, it's not -- her
13 answer isn't the only thing that's important. What's
14 important is the questions. Because the manner in which
15 the questions are being asked are unreliable.

16 And, Judge, going back to that video -- if I don't
17 trip myself in the process of it. Let me pull that
18 statute real quick.

19 Your Honor, the forensic interview statute, South
20 Carolina Code Section 17-23-175 says, In a General
21 Sessions court proceeding of a -- or a delinquency
22 proceeding in Family Court, an out-of-court statement of a
23 child is admissible if an audio and visual recording of
24 that statement is preserved on film.

25 So it's not saying -- that statute doesn't say the

1 only thing that is admissible is the video of it. It
2 doesn't say the transcript isn't allowed. It says that
3 statement comes in. It doesn't say which manner it can
4 come in. It doesn't exclude any manner of it coming in.
5 But it has to be audio and video recorded.

6 Now, Ms. McCall is going to cite to you State v.
7 White for the proposition that it doesn't come in. In
8 State v. White -- and that case number is 416 S.C. 135 or
9 784 S.E.2d 695. What that case law, Judge, was the State
10 was trying to introduce a video that had some inaudible
11 portions. The Court had the court reporter listen to the
12 video during a break and provide a transcript, which then
13 got submitted to the jury.

14 The Defendant in that case argued not just that that
15 transcript shouldn't have come in, but the actual forensic
16 interview itself, the video should not have come into
17 evidence. And the Court said that it was fine for that
18 transcript to come in. And it said, Therefore, there is
19 an important difference between using a transcript to
20 assist the jury in listening to the statement and using
21 the transcript to replace an inaudible statement.

22 So it's not replacing it. It's assisting the jury.
23 Because you have 12 jurors back there, 14 if you count the
24 alternates, trying to listen to 42 minutes of video. And
25 I can promise you every single time I listen to that

1 video, I heard something different that didn't stick out
2 to me before.

3 And those are the things that my expert's going to
4 refer to in her testimony. And it would be a lot easier
5 for the jury to say, okay, well, let me read that, instead
6 of 42 [sic] jurors trying to hit pause, rewind,
7 fast-forward. It's judicial efficiency.

8 I just don't understand the argument of we're not
9 going -- I -- I want the jury to hear what's being said,
10 but I don't want them to be able to hear it. If you
11 really want them -- all people are different in how they
12 do things. I'm a reader. You can say something to me.
13 I -- I probably won't get it the first or second time.
14 But if I sit down and read it by myself without a bunch of
15 people hovering over me, I'm going to get it a lot better.

16 This is a sealed transcript done by a certified court
17 reporter, who's certified everything's correct, just like
18 in State v. White, Your Honor. And that probably wasn't
19 sealed, but it was a certified court reporter.

20 Also, this is going to expedite the trial. I think I
21 already went through that.

22 If they're asserting the material in the interview is
23 the truth, how is the State prejudiced by that transcript
24 going back into the courtroom [sic]? They're not. We're
25 just letting the jury be able to absorb the information

1 that was given in the interview, not just the answers, but
2 the questions.

3 THE COURT: Do we have the -- can you hand me the
4 actual transcript so I can just take a look at it?

5 Or if you have a copy, that's fine. I just want to
6 kind of look at the format.

7 MS. BARWICK: I think I killed a bunch of trees in
8 this trial prep, Judge. You'll have to forgive me.

9 Can I approach?

10 THE COURT: Sure. Just -- just hand me a copy.
11 That's fine. You can leave the original sealed up.

12 MS. BARWICK: And, Judge, basically, in summary, what
13 I'm telling you is that I need that transcript to be able
14 to present a full and complete defense by arguing that
15 that video is not, one, reliable; and, two, that it would
16 taint any future testimony of this child.

17 THE COURT: Okay. Solicitor.

18 MS. MCCALL: Thank you, Your Honor.

19 I'll try to address all of the points that she made
20 without leaving out any.

21 As to what Ms. Barwick just stated that the video is
22 not reliable. If she is alleging that the video is not
23 reliable, then how does it follow that the transcript that
24 she is presenting is reliable? So I think that -- that
25 argument is void.

1 The video here, Your Honor will make a determination
2 about whether or not we can rely on that video. And, if
3 so, then the jury gets to see that video.

4 The best evidence rule states that where we have the
5 evidence that presents the best presentation of what took
6 place, that is what is to go before the jury. And in this
7 case, it is the audio and video recording of the forensic
8 interview as it stands.

9 The jury is the best party to evaluate that video and
10 make a determination using all of their senses, their
11 sight, seeing, obviously, body language, as well as their
12 hearing to hear what was said.

13 Certainly, court reporters are a valuable asset and a
14 tool. But in this case, the jury is the one making the
15 determination about what is said on that video and what is
16 taking place.

17 And I do believe that presenting the jury with both
18 the video as well as a transcript, one, I think Ms. --
19 Ms. Barwick argued that it was going to expedite the
20 process, but I would argue that it could, actually, delay
21 the process. Because they could, certainly, sit and --
22 and spend a great deal of time reading through that
23 transcript, each individual juror, which could delay the
24 trial. But, more importantly, they would not be seeing
25 the best evidence, which is, also, the -- the visual of

1 what's taking place.

2 She, also, mentioned that the questions in this
3 interview are important as well as the answers, and that's
4 why the transcript is needed. I'm not sure how the
5 questions aren't, also, visible on this audio and video
6 recording that the -- that the recording would show.

7 And then, furthermore, I just want to back up. I
8 did, initially, say that I would review the transcript.
9 And, at that point in time, I did not know of a specific
10 objection that I had to that. But it is reflected in our
11 e-mail conversation that, You have no objection to the
12 admissibility so long as you are provided an electronic
13 copy and you verify the E-transcript is accurate. Those
14 are Ms. Barwick's words.

15 My concern now is that having this transcript, it is
16 difficult for me to say, yes, this transcript is accurate
17 as to what is being said. Because as I've stated, there
18 are some statements that could be taken out of context or
19 they could be not necessarily inaudible, but it could be
20 difficult to know what word is being said by this
21 five-year-old in this video.

22 So I do think that given that, it is important that
23 we -- we view the context as a whole in this recording and
24 allow the jury to make the determination about what is
25 being said by both the interviewer and the child, the

1 interviewee. And that would be best accomplished by them
2 seeing only the forensic interview recording.

3 THE COURT: Okay. What is that -- the State v.
4 White? Ms. Barwick gave the cite and I didn't --

5 MS. BARWICK: It's 416 S.C. 135.

6 THE COURT: Okay.

7 MS. BARWICK: And, Judge, when appropriate, I'd like
8 to respond.

9 THE COURT: Sure. Yeah. I think --
10 Solicitor, are you finished?

11 MS. MCCALL: Yes, Your Honor.

12 THE COURT: All right. Yeah. You may respond.

13 MS. BARWICK: The only reason to introduce into
14 evidence the video, not the transcript, is because you're
15 trying to appeal to the emotions of the jury of seeing a
16 little girl, instead of, actually, listening to what's
17 being said. If you want the jury to know what's being
18 said in that video, what's the harm in sending back the
19 transcript? It's a certified, sealed transcript. It's
20 certified, Judge. That's the court reporter certifying
21 it's correct.

22 And like Ms. McCall just said, there's some -- a
23 little bit of inaudible portions. Well, Judge, that's the
24 same thing that happened in State v. White. And that's
25 why the Judge ordered a transcript.

1 THE COURT: Okay.

2 MS. MCCALL: Your Honor, if I may just respond
3 briefly. And I had one other comment that I, actually,
4 forgot to make regarding the expert witness that she is
5 going to present. I, certainly, don't think that that
6 should be a determination at this point.

7 I would argue that the expert won't even be allowed
8 to comment on the forensic interview. As I'm sure you're
9 aware in these cases, we, generally, present experts that
10 are blind to the facts of this case in order to protect
11 any argument against the commenting on the veracity of a
12 child's statement.

13 So I, certainly, would argue that that is not a
14 consideration for why this transcript should be admitted,
15 at this point, is for her expert to be able to rely on
16 that.

17 THE COURT: And, you know, it may very well be that
18 when -- when it comes time to put up the Defense expert,
19 we may very well need to have some in-camera testimony
20 from your expert just to see if you're wanting your expert
21 to refer to the interview via the transcript. Then we
22 probably would need some in-camera testimony just to make
23 sure that we're not crossing over the -- the line of an
24 expert vouching for the credibility of the -- the child.
25 But we can, certainly, get into that.

1 I'll probably -- I want to read this State v. White.
2 And I'll probably take this under advisement. It looks
3 like I'm going to have a busy lunch -- lunch break.

4 Okay. Let's go to -- all right. The rape shield
5 statute doesn't look like that's going to be an issues, at
6 least, at the present time.

7 Now, this third-party guilt -- and I have read the --
8 I've read the motion. And I'll just -- I'll probably need
9 to take that under advisement as -- as well.

10 Anything you want to add to your motion on the issue
11 of third party -- third-party guilt?

12 MS. BARWICK: No, Your Honor.

13 Will we have a decision before we go to the jury?

14 THE COURT: Oh, yes.

15 MS. BARWICK: Okay.

16 THE COURT: Yeah. I will have a decision --
17 hopefully, I will have a decision for you when we come
18 back after lunch, unless I just run out of time since I
19 have to look at the interview. And so I may -- may run
20 out of time and have to let you know something a little
21 bit later on.

22 MS. BARWICK: Can I e-mail you the order?

23 THE COURT: Oh, yeah. I don't -- again, I don't have
24 a problem with you getting these records from DSS and the
25 school, again, under the protection that they're not to be

1 case, and it's totally surrounding an unfounded DSS
2 investigation.

3 THE COURT: All right. Thank you.

4 Ms. Barwick.

5 MS. BARWICK: Thank you, Your Honor.

6 The law enforcement officer's -- the investigating
7 officer's own incident report says the parents would not
8 consent to the rape kit. It doesn't say anything about
9 the hospital won't do it. It says the parents would not
10 consent to the rape kit. That's what their own incident
11 report says.

12 Further, this DSS dictation, it was August 11th of
13 2017, which was about four -- a little over four months
14 after the allegation was made against my client. My
15 client was -- immediately left the home and had no contact
16 whatsoever. That's uncontroverted. He had no contact
17 whatsoever with either of these two girls because these
18 parents would not allow that, not that he wanted to.
19 But --

20 THE COURT: What -- is there any relationship between
21 the Defendant and the alleged victim?

22 MS. BARWICK: Yes, Your Honor.

23 It is -- he is the mother's boyfriend. But they --
24 as soon as the allegations came up, they separated.

25 THE COURT: Okay. Now, is mom and father in the

1 home?

2 MS. BARWICK: They're separated -- mom and dad don't
3 live together.

4 THE COURT: Okay.

5 MS. BARWICK: And dad has his own girlfriend, who is
6 Sarah Harris, Your Honor.

7 THE COURT: All right.

8 MS. BARWICK: And, now, in this DSS report that the
9 State gave me in discovery, on the August 11th, 2017
10 dictation, it says, Caseworker stated that she was making
11 contact. She met up with Brandon. Brandon being the
12 father, and Brandon is, also, my client. They're both --
13 Brandon Jerome is my client. Brandon Jade is the father.
14 They're -- and he goes -- father goes by "BJ."

15 So caseworker stated that she was making contact with
16 Brandon. Caseworker read the allegation to Brandon.
17 Brandon being the father. And Brandon stated that
18 [REDACTED] -- being the younger sister -- had been taken to
19 the ER to the doctor.

20 Brandon stated that he does not wipe [REDACTED] and that
21 she has to do it herself when she's at his home. Brandon
22 stated that he's careful about that due to [REDACTED], the
23 older sister, having been sexually molested -- or sexually
24 abused.

25 Caseworker Rampey made initial face -- face contact

1 with Brittany Hudson, being the mother, [REDACTED]
2 being the younger sister, and [REDACTED] being the
3 older sister. Caseworker provided all [inaudible] and
4 discussed the following allegations. [REDACTED] was
5 taken to the hospital after [REDACTED] complained that her
6 butt hurt, which is the same thing that caused the
7 disclosure in this case. [REDACTED] was complaining that
8 her butt hurt to her father. And her father said, How
9 come? And then all these allegations came out.

10 And -- and both parents, initially, thought
11 [REDACTED]'s problems were because of hygiene issues and not
12 wiping properly, such as the case in the younger sister.

13 There was -- [REDACTED] was taken to the hospital.
14 [REDACTED] complained that her butt hurt. There was some
15 vaginal irritation.

16 There's concern that [REDACTED] may have been sexually
17 abused due to allegations that the family has an open DSS
18 case for sexual abuse to A [REDACTED]'s sister, being the victim
19 in this case. [REDACTED] has reportedly not had contact with
20 her sister's abuser in six months. She has been with her
21 father for the past three days.

22 Ms. Hudson does not believe that Mr. Gantt -- being
23 father, and Ms. Hudson being the mother. Mother does not
24 believe that father would abuse [REDACTED], being the younger
25 sister. Mr. Gantt's paramour, also, lives in Mr. Gantt's

1 MS. MCCALL: No, Your Honor.

2 THE CLERK: I've got one back here.

3 THE COURT: Thank you.

4 (WHEREUPON, a lunch break was taken.)

5 THE COURT: Okay. We are back on the record in the
6 State v. Clark case.

7 I'll address a couple matters. I just e-mailed y'all
8 just indicating that I had made the change on the -- on
9 both of those orders that, Solicitor, you had addressed
10 before I even saw your -- your e-mail. So I made that
11 correction.

12 And concerning the -- the transcript of the forensic
13 interview, I have viewed the -- the video in its entirety.
14 And in looking at the statute, 17-23-175, I don't believe
15 the statute contemplates putting the transcript in the
16 record along with the video, unless as we found in the
17 State v. White case, the video is of poor quality that --
18 to aid the jury. Then I think under that situation the
19 transcript could come in.

20 So what I'm going to do, even though I viewed it on
21 my laptop -- or my law clerk's laptop, and it looked like
22 it was of pretty decent quality. I'm going to wait
23 until -- however you guys are going to play it in the
24 courtroom, make sure that the jury can -- can see and hear
25 it. And if there's some issues, then I would possibly

1 consider having the transcript to go in just to aid the
2 jury.

3 So I'm not going to make a definitive ruling until
4 the forensic interview is played in its entirety. But it
5 was pretty good quality on my laptop. I -- I would
6 imagine whatever you play here in the courtroom, probably
7 the sound will even be a little bit better than what's on
8 the laptop.

9 So I'll make a definitive ruling on the transcript
10 once the forensic interview is -- is played to the jury.

11 All right. What else do we need to address before we
12 bring the jury out?

13 MS. BARWICK: What's your position on jurors taking
14 notes, Judge?

15 THE COURT: I don't allow them to. And -- and the
16 reason why -- of course, as we all know, in capital cases,
17 it's -- it's required. But I have found that jurors in
18 taking notes are more attuned to the note taking, as
19 opposed to, actually, listening to what is being brought
20 out by way of testimony, or -- or whatever.

21 So I, typically, do not allow note taking by the --
22 by the jury.

23 MS. BARWICK: And what about our third-party guilt
24 issue?

25 THE COURT: I thought we were going to just put that

1 MS. MCCALL: I just had one thing that I wanted to
2 clarify with you from chambers. We -- you mentioned that
3 you don't want the -- the term "forensic" mentioned with
4 the forensic interviewer. I have spoken with her about
5 that and -- and told her that -- that "forensic" is not to
6 be mentioned. She wanted me to ask -- obviously, her
7 title was forensic interviewer.

8 Do you want her to just, also, not state that either,
9 just interviewer?

10 THE COURT: Don't state that. Just state --

11 MS. MCCALL: Okay.

12 THE COURT: -- that she works at whatever facility
13 that was used. And that I interview children when
14 allegations are made, and here -- here's what I did.

15 MS. MCCALL: Okay. Great.

16 Thank you, Your Honor.

17 THE COURT: All right. So going back to the forensic
18 interview, I have reviewed it. In light of 17-23-175,
19 based upon the totality of the circumstances as presented
20 by the video, I find that there is a guarantee of
21 trustworthiness and the other factors as outlined in the
22 statute I believe have been met to allow the video into
23 evidence and played for the jury.

24 And coupled with the fact that even though,
25 Ms. Barwick, you did not stipulate as to the various

1 elements under the statute, you had no objection to the
2 video coming in. So that, certainly, played into it --
3 into my ruling as well.

4 And, again, I'll make a definitive ruling on the
5 transcript once the interview is -- is played.

6 All right. Anything else before we bring the jury
7 out?

8 MS. MCCALL: Your Honor, may I have the court
9 reporter pre-mark these exhibits?

10 THE COURT: Yeah. Take your time.

11 MS. MCCALL: Thank you.

12 (WHEREUPON, State's Exhibit Nos. 1, 2, and 3 were
13 marked for identification only.)

14 MS. MCCALL: Your Honor, may I have just two or three
15 minutes to show my forensic interviewer the disc? I just
16 want her to confirm that this is it since you had the
17 copy.

18 THE COURT: Sure.

19 MS. MCCALL: I gave you my original and I just want
20 her to be able to confirm.

21 THE COURT: Not -- not a problem.

22 MS. MCCALL: Thank you.

23 THE COURT: Not a problem.

24 MS. BARWICK: Judge, the DSS caseworker is here. I
25 don't know if you want her to -- or the DSS investigator

1 bit more.

2 There you go. Good.

3 THE CLERK: Is that a little better?

4 THE COURT: Okay. Now, A [REDACTED], it's real important
5 that you speak up loud. I don't want you screaming into
6 the microphone. But I want to make sure -- because it's
7 very important that we all hear you. So speak up loud.
8 And speak up clear for us. Okay.

9 THE WITNESS: Okay.

10 THE COURT: Okay. Good.

11 You may proceed, Solicitor.

12 MS. MCCALL: Thank you, Your Honor.

13 DIRECT EXAMINATION

14 BY MS. MCCALL:

15 Q Miss [REDACTED], what do people call you?

16 A [REDACTED] or [REDACTED].

17 Q What do you prefer to be called?

18 A [REDACTED]

19 Q Okay. And how old are you, [REDACTED]

20 A [REDACTED]

21 Q When is your birthday?

22 A [REDACTED]

23 Q And are you starting school soon?

24 A I'm starting school tomorrow.

25 Q And where will you be going to school at?

1 A Pickens Elementary.

2 Q What grade will you be in?

3 A Second grade.

4 Q Are you excited?

5 A Yeah.

6 Q What are some fun things that you like to do, [REDACTED]

7 A Play dolls with my little sister, play, and watch TV
8 at my momma's house and Kaylee's [phonetic] house.

9 Q You said you have a little sister, what's her name?

10 A [REDACTED].

11 Q And how old is [REDACTED]?

12 A Five.

13 Q [REDACTED] how do you feel today?

14 A Sad.

15 Q Okay. And what are you sad about?

16 A (There was no verbal response.)

17 Q Okay. Have we ever met before, [REDACTED]

18 A Yes.

19 Q Do you remember how many times?

20 A No. No, ma'am.

21 Q Have you been to the courthouse before?

22 A Yes.

23 Q Who do you live with, [REDACTED]

24 A Both of my parents.

25 Q Okay. Do they live together?

1 A No.

2 Q Tell me about that.

3 A I don't know.

4 Q So your parents don't live together. Do they each
5 have their own houses?

6 A Yeah.

7 Q Okay. And how often do you stay with your mom?

8 A I don't know.

9 Q All right. Do you spend the night with both your mom
10 and your dad some?

11 A Yeah.

12 Q When you were five years old, do you remember who you
13 lived with?

14 A My mom.

15 Q Okay. Did you stay with your dad some when you were
16 five, too?

17 A Yeah.

18 Q At your mom's house, who all lived there when you
19 were five?

20 A Her -- her -- her, and me, and my sister. And that's
21 all.

22 Q Has anyone else ever lived at your mom's house with
23 you, and your sister, and your mom?

24 A No. No, ma'am.

25 Q Who is Brandon Clark?

1 A The person who [inaudible] --

2 THE COURT: Now, [REDACTED] you need -- you need to speak
3 to where we can hear you and understand you. Okay.

4 THE WITNESS: The person who did this stuff to me, I
5 think.

6 BY MS. MCCALL:

7 Q Did what stuff to you, [REDACTED]

8 A Inappropriate stuff.

9 Q Tell me about that.

10 A One night, he pulled down my --

11 THE COURT: Okay. [REDACTED] I -- I know this is -- this
12 is difficult. But it's so, so important that you speak to
13 where we can understand you.

14 We've got a lady right here that's taking down
15 everything that all of us are saying. And if she doesn't
16 understand what we say, then she can't take it down.

17 And then these people here, the jury, they need to
18 hear you and understand you. And, of course, I do, too,
19 the lawyers do.

20 So try your very, very best to speak loud, slow, and
21 clear so we can hear you. Is that -- is that okay?

22 THE WITNESS: Yes.

23 BY MS. MCCALL:

24 Q [REDACTED] tell me what he did to you that was
25 inappropriate.

1 A He pulled down -- he pulled down my pants and peed in
2 my private.

3 Q Okay. You said he peed in your private. Tell me
4 about that.

5 A That's all -- all I know.

6 Q Okay. Did he do anything else to you?

7 A No, not that I know of.

8 Q Where did this happen at?

9 A Home.

10 Q Where at at home?

11 A In my momma's house downstairs in the living room.

12 Q Tell me about how it started.

13 A I was -- I was in my bed. He picked me up and took
14 me downstairs. And he pulled down my pants and peed in my
15 private.

16 Q Tell me every detail about what happened.

17 A That's all I know.

18 Q Now, Brandon Clark, do you recognize him in the
19 courtroom today?

20 A Yes.

21 Q Where is he sitting?

22 A Over there.

23 Q And what do you call him?

24 A "B" for short.

25 THE COURT: All right. Let the record reflect she

1 identified the Defendant, Brandon Clark, in the courtroom.

2 BY MS. MCCALL:

3 Q [REDACTED] did B ever live at your mom's house with you,
4 and your sister, and your mom?

5 A Yes.

6 Q Did you just tell me earlier that he did not live
7 there?

8 A I think so.

9 Q Okay. So did he -- did B live at your house with
10 you?

11 A Yes.

12 Q Okay. When B had you on the couch in the living
13 room, I want you to tell me every detail of what happened
14 to you?

15 A He pulled down my pants and peed in my private.

16 Q Do you remember telling anyone that he stuck his
17 fingers inside of you?

18 MS. BARWICK: Judge, I'm going to object. This is
19 leading.

20 THE COURT: Okay. That -- that would be somewhat
21 leading.

22 If you would, rephrase the question.

23 MS. MCCALL: Certainly, Your Honor.

24 MS. BARWICK: And it's been asked and answered as
25 well --

1 THE COURT: Okay.

2 MS. BARWICK: -- a few times.

3 MS. MCCALL: Your Honor, if I could just have a
4 little bit of leeway with her since she is seven.

5 THE COURT: I'll allow a little leeway --

6 MS. MCCALL: Thank you, Your Honor.

7 THE COURT: -- I will.

8 Thank you.

9 BY MS. MCCALL:

10 Q Do you remember how old you were when B lived with
11 you at your mom's house?

12 A Five, I think.

13 Q Okay. Do you remember your birthday party when you
14 were five?

15 A It was a sugar and shimmer one.

16 Q What was that, [REDACTED] I'm sorry. I couldn't hear
17 you.

18 A It was a sugar and shimmer one.

19 Q Tell me what that is.

20 A Shimmer and shine are these two genies. And they
21 help their friend, Leah.

22 Q And did -- this that B did to you, was it before or
23 after your fifth birthday party?

24 A I don't know.

25 Q When B did this to you at your mom's house, tell me

1 what happened afterwards.

2 A He took me back upstairs and put me in my bed.

3 Q Did he say anything to you?

4 A Not that I know of, no.

5 Q After this happened, did you tell anyone?

6 A I told my mommy and my daddy.

7 Q Okay. Do you remember when you told them?

8 A No.

9 Q Do you remember what happened when you told them?

10 A No.

11 Q Do you remember being interviewed by anyone about
12 this?

13 A Not that I know of.

14 Q Do you remember being in a room with a lady and that
15 being recorded?

16 A Uh-huh.

17 Q Tell me about that.

18 A Her name was Amber, I think.

19 Q Okay.

20 A And that's pretty much all I know. And that she --
21 she talked about it with me. And she let me draw on this
22 board.

23 Q The things that you told to Amber, is that really
24 what happened that night?

25 A Some of them.

1 Q Okay. Tell me what that means.

2 A Most of them.

3 Q Okay. Well, tell me what did happen that night that
4 you told her -- or tell me -- I'm sorry. Let me ask you
5 another question.

6 [REDACTED] tell me what you told Miss Amber that was true.

7 A I forgot.

8 Q Okay. Do you remember what you told her that wasn't
9 true?

10 A No.

11 Q Did you tell Miss Amber that you drove a car?

12 A I don't remember telling her.

13 Q Okay. If you told her that you drove a car, would
14 that be true?

15 A No.

16 Q Do you remember telling her that B has a camera in
17 his eyes?

18 A No.

19 Q Do you think B has a camera in his eyes?

20 A No.

21 Q Tell me about that and why you would have said that.

22 A I don't know.

23 Q Did you ever see B and your mom fight?

24 A I don't know. Not that I know of.

25 Q [REDACTED] do you ever remember going to the hospital

1 after you told your dad about this?

2 A No.

3 Q When was the last time that you saw B before today?

4 A I don't know.

5 MS. MCCALL: I beg the Court's indulgence just a
6 moment, Your Honor.

7 THE COURT: Sure. Take your time.

8 (Pause.)

9 BY MS. MCCALL:

10 Q [REDACTED] I want you to tell me about when you said that
11 B peed on you. What do you remember about that?

12 A Basically, that he peed on me. He peed on me. And
13 he pulled down my pants, peed on me. And I don't know
14 what else. I forgot.

15 Q Do you remember what it felt like?

16 A No.

17 MS. MCCALL: All right. Miss [REDACTED] I don't have any
18 more questions for you. Please answer anything that
19 Ms. Barwick has for you.

20 THE COURT: Cross-examination, Ms. Barwick.

21 MS. BARWICK: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. BARWICK:

24 Q [REDACTED] do you care if I sit down and talk to you?

25 A Yeah.

1 Q You care? You don't want me to?

2 A (There was no response.)

3 Q Would you rather me stand?

4 A No. I mean, if you're not -- if you're not taller,
5 then I guess so.

6 Q All right. I -- I just want to make you comfortable.
7 We just had this conversation, but we'll have something
8 similar now. What if I asked you what the meaning of
9 exceptional was?

10 A I wouldn't know.

11 Q Okay. What if I told you that I have on a red dress?

12 A It would probably be pretty.

13 Q You think it'd be better if it was a red dress,
14 instead of a black suit?

15 A I guess so.

16 Q Yeah.

17 What if I had -- what -- if I told you I have black
18 hair, what would you say?

19 A It would probably be pretty.

20 Q Prettier than yellow hair?

21 A I like blonde hair more.

22 Q Oh.

23 A And brown hair.

24 Q And brown hair.

25 Okay. And if I -- if I said I had a red dress on,

1 that would -- that would be wrong; right? That's not
2 correct.

3 A No, that's not.

4 Q Would you feel comfortable correcting an adult if
5 they said something wrong?

6 A No.

7 Q Okay. So if they said something that wasn't the
8 truth, would you correct them?

9 A Yes, probably.

10 Q But you said "no" at first, and then you said, "yes
11 probably."

12 A (There was no response.)

13 Q That's okay. You can correct me. I get corrected
14 all the time. Did you know that?

15 A No. I didn't know that.

16 Q And my little girl makes sure to do it as often as
17 she can. So you can correct me. Okay.

18 A Okay.

19 Q You've talked to a lot of people about this, haven't
20 you?

21 A Yes.

22 Q Yeah.

23 You've talked to your mom.

24 A Yeah.

25 Q Did you talk to her a lot about it?

1 A I don't know.

2 Q You don't know if you've talked to her a lot?

3 A No.

4 Q You've talked to your dad about it?

5 A Yes.

6 Q Have you talked to him about it a lot?

7 A I've talked to him a little bit about it, and my
8 momma a little bit about it.

9 Q And you talked to your -- is your dad still dating
10 Sarah? Are they still together? Is Sarah in the
11 courtroom?

12 A Yes.

13 Q Are they still together?

14 A No.

15 Q Did you talk to Sarah about this?

16 A I don't know.

17 Q Did you talk to the nurse at the hospital about this?

18 A I -- I don't really know.

19 Q Did you talk to a police officer about this in a
20 uniform?

21 A Not that I know of, no.

22 Q And do you know what I mean by "uniform"?

23 A Like that he's wearing, a matching outfit?

24 Q That's right.

25 Did you talk to anybody who was wearing an outfit

1 like his, maybe a lady police officer?

2 A Not that I know of.

3 Q Did you talk to a doctor about this?

4 A Not that I know.

5 Q Did you talk to Miss Britni about this?

6 A Yes.

7 Q Okay. Did you speak with Mr. Scott about this?

8 A Not that I know of.

9 Q Okay. And -- and how many times did you speak with
10 Miss Britni?

11 A A little bit.

12 Q More than one time?

13 A Yeah.

14 Q More than two times?

15 A I don't know.

16 Q Okay. If I said more than five times, would that be
17 too many?

18 A Yes.

19 Q Okay. So about two times or three times?

20 A About four or one times, I think.

21 Q Okay. Did Miss Britni ever have you watch a video?

22 A Yeah.

23 Q What video did she have you watch?

24 A The one with me telling Miss Amber what happened.

25 Q I didn't quite understand you, [REDACTED] Will you help

1 me understand what you said?

2 A So I was talking to Miss Amber about it.

3 Q Yeah.

4 So Ms. Britni showed you a video where you were
5 talking to Ms. Amber about what happened?

6 A Yes.

7 Q How many times did you see that video?

8 A Just once.

9 Q Okay. What'd Miss Britni say when y'all were
10 watching that video together?

11 A Nothing really.

12 Q Okay. You -- you said a few times -- and -- and I
13 just need your help understanding. You said a few times
14 that that's all you know, or that's all I think. Has
15 anyone told you what they know about it?

16 A Not that I know of, no.

17 Q Okay. Has anyone told you what to say here today?

18 A No.

19 Q Okay. When you talked to Miss Amber, when she was
20 recording you, did anyone tell you what to say that day?

21 A Not that I know of.

22 Q Okay. [REDACTED] I really appreciate your patience with
23 me. Sometimes I forget what I'm going to ask, so that's
24 why I have to look at my notes. Okay.

25 A Okay.

1 Q After you told your dad about what happened, did you
2 ever see Brandon again?

3 A Not that I know of.

4 Q Okay. So he never came around after that?

5 A Not that I know.

6 Q You said you didn't remember if it happened before or
7 after your fifth birthday. Do you know if it happened
8 before or after your fourth birthday?

9 A Not that I know of.

10 Q Do you know if it happened before or after your third
11 birthday?

12 A I don't know when it happened.

13 Q You don't know when it happened to you?

14 A No.

15 Q Okay. I'm almost done, I promise. Okay.

16 A Okay.

17 Q When Miss Britni -- today, when you were sitting up
18 there just a few minutes ago, she asked you if you knew
19 who Brandon was. And you said he was the person who did
20 stuff to you. And then you said, "I think." What did you
21 mean by that?

22 A That he did do it to me.

23 Q Okay. When -- but why did you say, "I think"?

24 A I don't know.

25 Q Okay. Do you know what we're doing here today?

1 A Talking about what he did to me.

2 Q And how do you know that that's why you're here?

3 A Miss Britni told me.

4 Q Miss Britni said that you're here to talk about what
5 Brandon did to you?

6 A Yes.

7 Q Okay. Did Miss Britni tell you anything else that
8 you were supposed to talk about?

9 A Not that I know of.

10 MS. BARWICK: Okay. [REDACTED] thank you so much for your
11 time today.

12 THE WITNESS: You're welcome.

13 MS. BARWICK: And have fun tomorrow. Okay.

14 THE WITNESS: Okay.

15 MS. BARWICK: All right. Thank you.

16 No further questions.

17 THE COURT: Solicitor, any redirect?

18 MS. MCCALL: Just briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. MCCALL:

21 Q Miss [REDACTED] are you nervous here today?

22 A Yes.

23 Q Are you having a hard time remembering --

24 MS. BARWICK: Judge, leading.

25 THE COURT: I -- I don't find that to be leading.

1 You may proceed.

2 MS. MCCALL: Thank you, Your Honor.

3 BY MS. MCCALL:

4 Q Tell me what kind of emotions you're -- well, do you
5 know what "emotions" means?

6 A No.

7 Q Explain to me how you're feeling today.

8 MS. BARWICK: Judge, this has been asked and answered
9 the first time around.

10 MS. MCCALL: Your Honor, I just wanted her to
11 elaborate on it.

12 THE COURT: Okay. She did answer on direct. I'll
13 allow her to go into it a little bit.

14 You may proceed.

15 THE WITNESS: Sad.

16 MS. MCCALL: Thank you, Miss [REDACTED]

17 I don't have anything further, Judge.

18 THE COURT: Okay. [REDACTED] you can step down.

19 Thank you.

20 All right. Solicitor, have you got another witness?

21 MS. MCCALL: Yes, Your Honor.

22 The State calls Amber Hiott Cheney -- her name has
23 changed -- to the stand.

24 And I'm going to grab her from outside.

25 THE COURT: Okay.

1 THE CLERK: If you would, place your left hand on the
2 Bible and raise your right.

3 WHEREUPON,

4 AMBER HIOTT CHENEY,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 If you would, have a seat.

8 And state your name for the record, please.

9 THE WITNESS: Amber Hiott Cheney.

10 DIRECT EXAMINATION

11 BY MS. MCCALL:

12 Q Ms. Cheney, where did you work on March 28th of 2017?

13 A Julie Valentine Center.

14 Q And what is the Julie Valentine Center?

15 A It's a child advocacy center and rape crisis center.

16 Q On March 28th of 2017, did you meet [REDACTED] [REDACTED]

17 A I did.

18 Q And what did you do when you met with her?

19 A I interviewed her.

20 Q Okay. And in that interview -- would you have
21 recorded audio and visually that interview?

22 A Yes, ma'am, I would have.

23 Q And what is the purpose of those interviews?

24 A An interview is a child-friendly approach to try to
25 get information as part of an active investigation. But

1 it's a neutral, fact-finding, non-biassed interview.

2 MS. MCCALL: Your Honor, may I approach the witness?

3 THE COURT: You sure can.

4 BY MS. MCCALL:

5 Q Ms. Cheney, I'm going to show you what has been
6 pre-marked as State's Exhibit No. 1. Do you recognize
7 that?

8 A Yes, ma'am.

9 Q And what is that?

10 A This is a copy of the interview that I did with
11 [REDACTED] on March 28th of 2017.

12 Q And how do you recognize what that is?

13 A So, first off, it has her name on there, and it has
14 the date. And it has that a copy was made by Julie
15 Valentine Center. And then it has the initials of the
16 person who made the copy. And then I, also, viewed it
17 prior to coming on the stand.

18 Q Is that a true and accurate depiction of the
19 interview that took place on March 28th of [REDACTED]

20 A Yes, ma'am.

21 MS. MCCALL: Your Honor, at this time, the State
22 moves to enter this recording into evidence. And we would
23 hold off on playing that -- publishing it to the jury
24 until a later time.

25 THE COURT: Okay. Subject to previous discussions.

1 Anything in addition, Ms. Barwick?

2 MS. BARWICK: Nothing in addition, Your Honor.

3 THE COURT: Okay. Thank you very much.

4 So admitted into evidence, State's Exhibit No. 1.

5 MS. MCCALL: Thank you, Your Honor.

6 (WHEREUPON, State's Exhibit No. 1 was admitted into
7 evidence.)

8 BY MS. MCCALL:

9 Q Ms. Cheney, I'm, also, going to show you State's
10 Exhibit -- pre-marked State's Exhibit Nos. 2 and 3. Do
11 you recognize those?

12 A Yes, ma'am.

13 Q And what do those depict?

14 A So during the interview process, we can use different
15 aids. And these are anatomical drawings that I used
16 during the interview with [REDACTED] on March 28th.

17 Q And do those fairly and accurately depict those
18 anatomical drawings that were created during the
19 interview?

20 A Yes, ma'am.

21 Q And how do you recognize exactly what those are?

22 A So after I completed each interview, I would label it
23 with the child's name, the date of the interview, and,
24 also, initial it in the bottom left-hand corner. And all
25 of those things are there.

1 MS. MCCALL: Your Honor, at this time, the State
2 moves to enter and publish State's Exhibit Nos. 2 and 3
3 into evidence.

4 THE COURT: Okay. Subject to previous discussions.
5 Anything in addition, Ms. Barwick?

6 MS. BARWICK: No, sir.

7 THE COURT: Okay. Thank you.

8 State's Exhibit Nos. 2 and 3 into evidence for the
9 State.

10 MS. MCCALL: Thank you, Your Honor.

11 (WHEREUPON, State's Exhibit Nos. 2 and 3 were admitted
12 into evidence.)

13 BY MS. MCCALL:

14 Q Ms. Cheney, will you, please, explain what we're
15 viewing in this exhibit?

16 A Sure. So this is the female anatomical drawing that
17 we used during the interview with [REDACTED]. And so,
18 basically, as part of the protocol, you go through and get
19 them to identify each body part so that they can tell what
20 language they use for those body parts.

21 And so excuse the sloppy handwriting. But that's the
22 notes that I took while she told me what those body parts
23 were and what she called them.

24 Q And can you tell the jury what Miss [REDACTED]
25 identified and how she identified the private areas on

1 this anatomical drawing?

2 A Sure. So she identified the mouth as the mouth. But
3 then she went on to identify the vagina as a butt, and
4 then the actual buttocks as a butt as well.

5 Q Now, I'm going to show you State's Exhibit No. 3.
6 Will you explain what we are seeing in this visual?

7 A This is, once again, an anatomical drawing, but it's
8 the male version that I used during the interview with
9 [REDACTED]. And, once again, it's all the labels of the
10 body parts and what she called them.

11 Q And can you, please, explain what Miss [REDACTED]
12 identified the private parts of the male anatomical
13 drawings as?

14 A She identified the penis as a butt and then the
15 buttocks as a butt.

16 MS. MCCALL: Thank you.

17 THE WITNESS: You're welcome.

18 MS. MCCALL: Ms. Cheney, I have no further questions.
19 Thank you.

20 THE COURT: Ms. Barwick, any cross-examination?

21 MS. BARWICK: Judge, I'd like to cross-examine her
22 after we play that video for the jury.

23 THE COURT: Okay. Solicitor, your plan to play the
24 video would be when?

25 MS. MCCALL: Your Honor, I was just going to wait

1 until Ms. Cheney was done with her testimony so she did
2 not have to sit through it. But, certainly, if you rule
3 otherwise --

4 THE COURT: Well, I think in order for Ms. Barwick to
5 conduct what she believes to be cross-examination, I think
6 we probably need to play the video.

7 Let's do this. Ladies and gentlemen, it's my
8 understanding this video is approximately 40 minutes in
9 length. So let's go ahead and take a short break. And
10 then we'll bring you back out and we'll play this -- play
11 this video. Okay.

12 And, again, I remind you, ladies and gentlemen, no
13 discussion about anything related to this case. And we'll
14 get you back out shortly. Okay.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 3:31 p.m.)

17 THE COURT: Okay. We'll take about a 10-minute
18 break.

19 You're free to step down. You just can't talk to
20 anybody about your testimony. But you're free to move
21 around, if you like.

22 THE WITNESS: Okay. Perfect.
23 Thank you.

24 (WHEREUPON, a break was taken.)

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

1 please.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:46 p.m.)

4 THE COURT: Let the record reflect the jury is back
5 in.

6 Solicitor, are you ready?

7 MS. MCCALL: Yes, Your Honor.

8 Thank you.

9 THE COURT: Ladies and gentlemen, if you need the
10 volume adjusted, just kind of make -- give us some
11 indication and we can do that. We want to make sure
12 everybody can -- can hear what is on this video. Okay.

13 (WHEREUPON, State's Exhibit No. 1 was played in open
14 court.)

15 THE COURT: Solicitor, do you have any further
16 direct?

17 MS. MCCALL: None, Your Honor.

18 THE COURT: Okay. Cross-examination.

19 MS. BARWICK: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. BARWICK:

22 Q Ms. Hiott, what's your new name?

23 A My new name is Amber Hiott Cheney.

24 Q How do you spell that?

25 A C-H-E-N-E-Y.

1 Q Like Dick Cheney?

2 A Yes, ma'am.

3 Q Now, in the beginning of your testimony, you were
4 describing your role in interviewing this child. And you
5 said you're supposed to be neutral and unbiased; is that
6 correct?

7 A Correct.

8 Q But, yet, you work for a child advocacy center. You
9 advocate for children at that center; is that not correct?

10 A Well, the child advocacy center helps with those
11 investigations. And so they're there to assist in any
12 investigation, whether that be that the -- the findings
13 are found or they're not found.

14 Q Okay. And -- but it's called a child advocacy center
15 that you work for?

16 A I did at the time, yes, ma'am.

17 Q Okay. At the time of the interview?

18 A Yes, ma'am.

19 Q And at the time, was there an advocacy center for
20 those who have been falsely accused?

21 A Not that I'm aware of.

22 Q Okay. So you're working for a center that advocates
23 for children, yet, you're telling the jury that you did a
24 neutral and unbiased interview of the child?

25 A Correct --

1 MS. MCCALL: Objection.

2 Your Honor, may we approach to address --

3 THE COURT: Sure.

4 MS. MCCALL: -- some earlier rulings.

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: Madam Forelady, and, ladies and gentlemen
7 of the jury, this is one of those times where I -- I had
8 told you previously that we will need to send you out to
9 the jury room.

10 So if you'll go back to the jury room. Hopefully, we
11 can get you back in shortly. Again, I remind you, no
12 discussion about this case.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 4:31 p.m.)

15 THE COURT: All right. Solicitor, you wanted to put
16 your objection on the record?

17 MS. MCCALL: Yes, Your Honor.

18 I'm just concerned that this testimony is getting
19 outside the scope of what you had earlier addressed
20 regarding the testimony of this interviewer. Admittedly,
21 this is your ruling addressing the forensic interviewer.
22 It is something that I have not seen recently as far as
23 limiting the word "forensic," and how much the forensic
24 interviewer can get into. And per the case law, of
25 course, her testimony is very limited to begin with.

1 And my concern was only that I just don't want the
2 Defense to go too far over what you or any -- you know,
3 further than what you intended for this witness to testify
4 to, which is simply the admissibility of the forensic
5 interview, and nothing regarding the credibility, or
6 commenting on the veracity of the child's statement.

7 THE COURT: Right.

8 Certainly, I think we're all very much in agreement
9 that we can't get into any testimony concerning this
10 witnesses vouching for the credibility of the child.

11 Ms. Barwick.

12 MS. BARWICK: Judge, you can't open a door and not
13 expect someone to walk through it. Her -- on her own
14 direct examination of Ms. Cheney, Ms. Cheney said, I am
15 supposed to be neutral and unbiased. And I work for a
16 child advocacy center. So I addressed that. I'm ready to
17 move on.

18 THE COURT: All right. Do you intend to spend a lot
19 of time on this --

20 MS. BARWICK: I'm going to ask her about what was
21 said in the interview. I'm not going to ask her about
22 reliability, truthfulness, untruthfulness. I'm just going
23 to ask her what's in the interview so that -- because I do
24 believe some of the portions were unclear. So I'm going
25 to ask her about it.

1 And I'm going to ask her about who she spoke with
2 before she did the interview, who she met with afterwards
3 or -- during the breaks, who she got the history from.

4 THE COURT: Well, now, granted, this is
5 cross-examination and there is some -- some latitude here.
6 But as far as what she did before and after --

7 MS. BARWICK: Judge, the -- I'm sorry.

8 THE COURT: No. Go ahead.

9 MS. BARWICK: The jury should know what she knew
10 before she went into that interview. Because willingly
11 maliciously or not, you ask those questions and you find
12 out that information so that you can then go and conduct
13 that interview. It influences how you conduct that
14 interview.

15 So the jury should be able to hear what is
16 influencing these question.

17 THE COURT: Well, I mean, I have to assume that
18 Ms. Cheney had to get some background information in order
19 to ask the -- the questions.

20 Let's go ahead and just -- let's -- since we're
21 in-camera outside the presence of the jury, go ahead and
22 let's see what you're going to do with this and...

23 CROSS-EXAMINATION

24 BY MS. BARWICK:

25 Q Okay. When you interview children --

1 MS. BARWICK: Well, I would have went into that
2 neutral and --

3 THE COURT: Right.

4 BY MS. BARWICK:

5 Q Okay. When you interview children, is it not the
6 best practice to ask non-leading and open-ended questions?

7 A That is correct.

8 THE COURT: Okay. And let me -- let me just stop
9 you. As part of the -- one of the factors under 175 is
10 that even though I didn't -- I didn't detail each factor
11 in my ruling, that is one of the things that I need to
12 find, that there was no leading questions. I didn't think
13 Ms. Cheney throughout the interview really asked any
14 leading questions. That -- that was -- that's one of the
15 bases for my ruling for allowing the interview to come in.

16 MS. BARWICK: Judge, it's not just leading questions,
17 it's open-ended questions that need to be asked during
18 these forensic interviews. Over and over and over and
19 over again, there were yes-no questions.

20 And there were questions assuming an answer that
21 hadn't been given yet. And there's been examples. And I
22 was going to go through them.

23 THE COURT: Okay. You may proceed.

24 THE WITNESS: I can comment on -- I mean, I don't
25 know if you want me to --

1 THE COURT: Well, yeah.

2 I mean, what was your last question that you were
3 asking her?

4 MS. BARWICK: I asked, is it best practice to ask
5 non-leading and open-ended questions?

6 THE COURT: Okay. And you can respond to that,
7 ma'am.

8 THE WITNESS: Yes. Interviewers are trained to
9 utilize a spectrum of non-leading questions.

10 BY MS. BARWICK:

11 Q Okay. And you set up the rules from the beginning;
12 correct?

13 A Correct.

14 Q And the -- one of the rules of the interview that I
15 heard is if you got something wrong -- if you, as the
16 interviewer, got something wrong, the child was to correct
17 you?

18 A Yes, ma'am.

19 Q And doing an example, you said, The little girl is
20 feeding the puppy pizza.

21 And she said, I don't know.

22 And you said, Well, what is the little girl feeding?

23 And she said, Ice cream.

24 You're like, Thanks for correcting me.

25 Was that a correction?

1 A That was not her correcting my statement, but that
2 was her answering the question.

3 Q Right. So she wasn't able to correct you in that
4 example?

5 A Correct.

6 Q And, oftentimes, throughout your interview, isn't it
7 true that you paraphrased what the child said or what you
8 thought the child said and said, Isn't that right?

9 A Yes. I paraphrased to clarify.

10 Q And the better non-leading, open-ended question is,
11 I'm sorry, I didn't understand what you said. Can you
12 help me understand? Isn't that the better way to ask
13 that?

14 A In my training, it was fine to paraphrase.

15 Q So not exactly say exactly what the child said and --
16 said, did I get that right?

17 A Yes. That's how I was trained, yes, ma'am.

18 Q Is that an open-ended question?

19 A That's a technique that we use in interviewing
20 children.

21 Q Please answer my question "yes" or "no," and then
22 explain. Is that an open-ended question?

23 A It is not. But it's a technique that's utilized when
24 interviewing children.

25 Q And the best practice is, as you just testified, to

1 ask open-ended questions; is that not correct?

2 A Yes.

3 Q Okay. This child told you at the beginning of the
4 interview it happened one time; isn't that correct?

5 A Yes, ma'am.

6 Q Okay. All those drawings the child kept asking to
7 keep -- because you -- and you wouldn't let her keep them
8 because you needed to keep them. Where did you put those
9 drawings?

10 A They are housed at the Julie Valentine Center.

11 MS. BARWICK: Judge, we -- we have an issue with
12 that. Because I've been asking that from the solicitor's
13 office since day one of this trial. And she said that
14 they don't have them.

15 MS. MCCALL: Your Honor, we requested everything from
16 the Julie Valentine Center. We requested all the
17 drawings, any visual from the interview. They sent us
18 only the two that we received. We then followed up and
19 asked again if there were any other drawings, or anything
20 else kept from that interview. And we were told, no, that
21 was all that was in the file.

22 So I -- I only have the information that they
23 provided me, Your Honor.

24 THE COURT: All right. Ms. Cheney, are you still
25 with the --

1 THE WITNESS: I am not, no, ma'am -- no, sir.

2 THE COURT: So you wouldn't be in a position to
3 respond insofar as the drawings that the child did not
4 being provided?

5 THE WITNESS: Correct. I can't respond to that, no,
6 sir.

7 BY MS. BARWICK:

8 Q Is it the common practice of the Julie Valentine
9 Center to destroy evidence and not give it to the
10 solicitor's office?

11 A No, ma'am. I -- I will say, in all court cases that
12 I've testified in, they've never brought in those
13 drawings, except one time. And it was because the child
14 drew an object that was related to their abuse.

15 Q Fair enough.

16 But we don't know what's -- I don't know what's in
17 those drawings. Do you remember what's in those drawings?

18 A Not 100 percent, no, ma'am.

19 MS. BARWICK: Okay.

20 THE COURT: All right. Here's -- here's what I'm
21 going to do.

22 First of all, Solicitor, if you can get your
23 investigator to contact the center and just see where
24 these drawings are, see if you can get your hands on
25 those.

1 I'm going to allow this line of questioning.

2 Certainly, you have the right in redirect to -- to
3 follow-up on anything that Ms. Barwick asks.

4 As far as being a neutral interviewer, I mean,
5 that's -- I guess she -- I don't know if I would
6 necessarily classify it as opening the door. But I'll
7 allow this -- this line of testimony.

8 And, certainly, Solicitor, you can -- you can
9 redirect in direct response to whatever Ms. Barwick asks.

10 MS. MCCALL: Your Honor, if I may just put it on the
11 record. There is a case directly on cite, State v.
12 Anderson, it's referenced with forensic interviews. And
13 it -- it directly says that there is to be no testimony to
14 such things as technique.

15 And it's my understanding that she is
16 questioning Ms. Cheney on technique --

17 THE COURT: Let me see that case.

18 MS. MCCALL: And I apologize that my notes are on
19 there.

20 THE COURT: That's all right.

21 MS. BARWICK: Judge, I think that's when the State is
22 trying to introduce evidence as technique, not
23 cross-examining about the failed technique.

24 THE COURT: All right. Now, I'm not sure if it's
25 this case or not, but as far as the -- and the technique

1 has a name that --

2 MS. BARWICK: Methodology.

3 THE COURT: Well, but there's, actually, a name and
4 maybe even an acronym.

5 MS. MCCALL: ChildFirst. It used to be RATAAC.

6 THE COURT: Yeah. RATAAC. That's right.

7 You can't go into that.

8 MS. BARWICK: No, sir. I wasn't planning on it.

9 THE COURT: Well, I know.

10 MS. BARWICK: And, in fact, Judge, if you look back
11 at that State v. White case we were talking about earlier
12 about the transcript, it says a forensic interviewer can
13 be qualified as an expert in the dynamics of child abuse,
14 even -- but even though it's better practice not to do
15 that. So, you know, you get to the edge.

16 But, again, if I can't effectively cross-examine this
17 witness, I can't effectively represent my client and put
18 up a defense. We have to be able to attack -- attack the
19 methodology.

20 MS. MCCALL: Your Honor, if I may. It's just my
21 understanding that that's an argument that is to be made
22 prior to the admission of this testimony. And this
23 witnesses testimony is to -- to authenticate and enter
24 this video. And it should be limited very closely to
25 that.

1 THE COURT: Okay. Here -- here's what we're going to
2 do in camera, even though the video has already been put
3 into evidence.

4 Solicitor, I want you to get into her training and
5 background and just for -- in camera, not before the jury.

6 And I'm not going to allow any cross-examination
7 related to techniques. You can get into whether or not
8 she believes herself to be a neutral person in light of
9 the child advocacy center, but no -- no cross-examination.

10 The case is clear, it says no testimony. It doesn't
11 say no direct testimony. It says no testimony concerning
12 techniques. And that would get in -- into the RATAC. But
13 I need to have that in the record to provide some validity
14 to my admission of this video into evidence.

15 If you want to get -- profer anything else related to
16 technique, here's your chance to do it. You do that. And
17 then I'll let the Solicitor get into training and
18 background.

19 MS. BARWICK: Yes, Your Honor.

20 And -- and just for the record, State v. Anderson,
21 the purpose behind that is to prevent improper bolstering.
22 I'm not trying to bolster. I'm trying to say that the
23 technique that was used may have influenced it the other
24 way.

25 THE COURT: Right. I understand.

1 MS. BARWICK: So I can't ask about best practices?

2 THE COURT: Nothing -- nothing related to any
3 techniques that -- that she used during the course of the
4 interview.

5 MS. BARWICK: That she used during the course. I can
6 ask general terms about best practices?

7 THE COURT: Well, best practices would be techniques.
8 And I think that would not be -- that would not be
9 permissible. But I'll allow you in camera so you've got a
10 good record if you want to ask her anything else related
11 to the techniques.

12 MS. BARWICK: Yes, Your Honor.

13 CONTINUED CROSS-EXAMINATION

14 BY MS. BARWICK:

15 Q I already went through best practices and I went
16 through the rules in the beginning that you set out that
17 you already testified to.

18 MS. BARWICK: Can I go into that? She -- she talked
19 about her own technique, Judge.

20 THE COURT: I know she -- she -- but I'm not allowing
21 her before the jury. She's talked about techniques when
22 the jury was sent out during our in camera.

23 MS. BARWICK: She talked about technique in her -- in
24 the video -- the video at the very beginning. I have
25 three rules. You need to tell the truth, which Anderson

1 doesn't allow her to do. You need to --

2 MS. MCCALL: Your Honor, if I -- she did not say
3 tell --

4 MS. BARWICK: I need to finish.

5 MS. MCCALL: -- the truth --

6 MS. BARWICK: You need to tell me the truth. It's
7 really important you tell me the truth. Anderson,
8 specifically, says you can't do that.

9 Then she said, If you don't understand what I'm
10 asking you, you need to tell me.

11 And then the third is, you need to correct me.

12 So she's setting out the rules. She's setting out
13 her technique. I should be able to cross-examine -- it --
14 it's on the video. It's in front of the jury. For me not
15 to be able to cross-examine her on her technique shuts me
16 completely down when the door's been open.

17 MS. MCCALL: Your Honor, I'm sorry.

18 To clarify, she did not say, You need to tell me the
19 truth. That is not allowed. They say, please -- we only
20 talk about things that really happened in here. Can you
21 promise to do that? So that --

22 MS. BARWICK: It's semantics --

23 THE COURT: I didn't remember her, specifically,
24 saying, you need to tell me the truth. Because if she had
25 have, then I would have expected some motion to redact

1 that from the video. I just didn't recall that -- hearing
2 that.

3 Again, you can -- you can -- since we've got the jury
4 out, you can ask her anything that you want to proffer on
5 the record concerning her techniques. But I'm not going
6 to allow that before the jury.

7 And then I do want the Solicitor to get into her
8 training and background outside the presence of the jury.

9 MS. MCCALL: Yes, sir.

10 BY MS. BARWICK:

11 Q So you set up the rules in the very beginning; is
12 that correct?

13 A Correct.

14 Q And you said, So, [REDACTED] while we're in the room
15 today, it's really important that we only talk about
16 things that really happened; correct?

17 A Yes.

18 Q And you said, Do you promise that you will only talk
19 to me about things that really happened?

20 A Correct.

21 Q And part of that means that if I ask you a question
22 and you know the answer, I want you to tell me everything
23 you know about that question; is that correct? You
24 instructed her as to that?

25 A I don't have a transcript in front of me, but, yes,

1 that's the general, yes.

2 Q Okay. And then you said, So let's practice. If I
3 were able to -- if I were to ask you what is this puppy's
4 name, what would you say?

5 A Yes.

6 Q And -- and she says, I don't know; isn't that
7 correct?

8 A Yes.

9 Q Okay. So that's an I don't know. That's not testing
10 if she knows the difference between truth and not truth;
11 right?

12 A In our training, we don't test between truth and not
13 truth.

14 Q But you tell her that it's important that she only
15 tells the truth?

16 A We set the ground rules, but we don't do testing on
17 those things.

18 Q Okay. And then you said, It's, also, important that
19 you understand my questions. So if I ask you something --
20 and this is after you asked about the puppy. So if I ask
21 you something that you don't know what I mean, you can
22 say, I don't understand. Is that another rule you put out
23 there?

24 A Correct.

25 Q So let's practice this other thing. So if I were to

1 ask you, [REDACTED] is there foliage in this picture, what
2 would you say? And then --

3 A That's a question I would ask, yes, ma'am.

4 Q Yeah. And it's, also, important that I get things
5 right. So if I say something wrong or mixed up, you can
6 correct me.

7 A Yes. That's another rule, yes, ma'am.

8 Q Okay. And then you gave her the example about the
9 little girls feeding the puppy a pizza; correct?

10 A Correct.

11 Q And you asked her what she would say. And she said,
12 I don't know; is that correct?

13 A Correct.

14 Q So she wasn't able to correct you and tell you that
15 the puppy was not eating pizza, that the puppy was,
16 actually, eating ice cream?

17 A Right. She just said, I don't know. And then when I
18 asked her directly, she was able to answer.

19 Q And, again, you paraphrase what the child said often.
20 And, in fact, I think I counted about eight different
21 times that you asked, Isn't that right? Did I -- did I
22 get that right?

23 A Did I get that right, yes, ma'am.

24 Q Okay. Did she ever tell you, no, you didn't get it
25 right?

1 A Not that I'm aware of. But I don't have the
2 transcript in front of me.

3 Q Okay. And then, in fact, it took you -- her
4 25 minutes into the video to correct you and tell you that
5 she would prefer to be called [REDACTED], and not [REDACTED]

6 A I know she corrected me about that. But I'm not sure
7 about the time frame.

8 Q It was pretty well into that interview, wasn't it?

9 A It was later on in the interview, but I don't know
10 the exact time stamp.

11 Q And it was as you were leaving the room?

12 A Correct.

13 Q Okay. Before you started the interview, who did you
14 speak with?

15 A So I spoke with Courtney Mucklin from Pickens County
16 DSS -- well, actually, hold on one second.

17 Yes. That's correct.

18 Q You didn't speak with Sergeant Elrod with the Pickens
19 Police Department?

20 A I did not speak with him [sic]. I received a report
21 from him.

22 Q Okay. So before the interview, what did you review?

23 A Sure. So I review any incident reports that they
24 would send over. So I would have gotten an incident
25 report in this particular case from Pickens Police

1 Department. And in this particular case, I spoke with
2 Courtney Mucklin because she was the one present during
3 the interview.

4 Q Okay. And you reviewed these things because they
5 would -- and you spoke with Courtney because they would
6 have affected how you performed the interview; isn't that
7 correct?

8 A No. It doesn't impact the way I perform the
9 interview.

10 Q So why would you talk to them beforehand?

11 A So, basically, it gives me information so that I know
12 going in how I can conduct the interview. But it doesn't
13 change the format.

14 Q Say that again for me.

15 A So interviewers are trained on a protocol. And we --
16 it's a semistructured protocol --

17 Q Well, no. I -- I just want you to say what you just
18 said again because I didn't hear it --

19 A I have pregnancy brain right now. So I cannot repeat
20 exactly what I just said.

21 Q Okay. So you said that --

22 A I'm sorry.

23 Q -- you read the information from what?

24 A I honestly can't remember what I just said.

25 Q Well, if you don't use the information that you gain

1 from talking to someone or reading a report, then why do
2 you do it beforehand?

3 A It's a best practice that I was trained in so that we
4 understand the dynamics of the child's household, if they
5 have any learning disabilities, those types of things.

6 Q And you, also, learn about all the allegations
7 beforehand through that incident report. So you knew
8 about all the allegations and everything that was outlined
9 in that incident report before you went in?

10 A I did know about the allegations, yes, ma'am.

11 Q Okay. And that's why you knew to ask the questions
12 that you asked?

13 A Well, as you notice, I only brought in information
14 that [REDACTED] brought into the room. And that's how we're
15 trained on. So if she had never brought up a -- a sexual
16 incident happening or a particular -- an alleged
17 perpetrator, I would have never been able to explore those
18 things with her.

19 Q But you would agree under the best practice for the
20 non-leading and open-ended questions when you go to
21 paraphrase and say, isn't that right, that is not an
22 open-ended question?

23 A It's -- as I mentioned before, interviewers are
24 trained on a spectrum of non-leading questions. And yes
25 or no questions are involved in those and paraphrasing is

1 part of the technique that we're -- we're trained to use.

2 Q But it's not an open-ended question, which is best
3 practice.

4 A Well, yes, even though it's not open-ended as in like
5 tell me about that, it is on a spectrum of non-leading
6 questions.

7 Q But it's your words that you're trying to pair it
8 back to her, based on what you think you heard her say?

9 A I'm not sure what that -- what your question is.

10 Q So when you're paraphrasing, it's you putting into
11 your own words what she said. They're not her words.

12 A I'm utilizing her words, but condensing it.

13 Q So you're paraphrasing it to what's important to you?

14 A To where I'm trying to clarify to make sure I
15 understood correct.

16 Q Okay. And whenever you mentioned anything about
17 someone doing something to her, you kept saying the word
18 "B." You didn't say this person. You kept referring to
19 him as "B"; is that not correct?

20 A I did that because she brought that into the room.
21 And I wanted her to know that I was talking about him, not
22 any person.

23 Q Okay. But you could have said "this person."

24 A I think with children, you have to be direct. And
25 we're trained so that if she says this is the person that

1 did this to her -- what we, also, know is that children
2 can have multiple offenders. So I'm asking about this
3 person that she has brought into the room.

4 Q And children have multiple offenders?

5 A They can, yes, ma'am.

6 Q And she said it only happened one time. That's what
7 she said at minute six of the video; isn't that right?

8 A Yes, ma'am.

9 Q And at minute six, she, also, said that no one came
10 downstairs; right?

11 A (There was no response.)

12 Q She said she screamed and no one came down the
13 stairs?

14 A I recall. But, once again, I don't have the
15 transcript in front of me.

16 Q But you just watched the video. You don't recall
17 that?

18 A I do recall. But you're saying, like, specific
19 times, so I'm saying that --

20 Q Okay. Fair enough.

21 A -- I don't know the time.

22 Q So in the beginning of the video, she says that she
23 screamed and nobody came downstairs; right?

24 A Yes, ma'am.

25 Q And then at the end of the video, she says Lily, her

1 sister, came downstairs?

2 A Yes, ma'am.

3 Q Okay. And Lily is a nickname given to her sister; is
4 that --

5 A From what I recall, yes, ma'am.

6 Q Okay. Who is observing the video -- or the forensic
7 interview?

8 A Courtney Mucklin with Pickens County DSS.

9 Q And that's who you went and spoke with during the
10 break?

11 A Yes, ma'am.

12 Q And what was the purpose of speaking with her?

13 A So, as I mentioned, the interview is a fact-finding
14 piece of an investigation. So I'm not doing it for me or
15 for the Julie Valentine Center. It's for -- we're doing
16 it for the people who are investigating the allegations at
17 hand.

18 So since she was present, I went to ask her, are
19 there any other questions that you would like for me to
20 ask?

21 Q And what questions did she want you to ask?

22 A I don't have a note pad where I wrote those down,
23 specifically. But it would be any question that happened
24 after I came back from the break.

25 Q Do you know who spoke with the child about the

1 incident beforehand?

2 A Could you elaborate?

3 Q Yes. That was a poorly -- poorly worded question on
4 my part. I'm sorry for that.

5 When the child came in when you were getting the
6 background and information, did you find out who all this
7 child had disclosed to and how many times she had done it?

8 A I can't testify to that. Because when I received my
9 records from the Julie Valentine Center, I just received
10 my report and not the background information. And so I
11 don't have that typed here. So I'm not a hundred percent
12 sure.

13 Q So you don't know if she talked to her father, her
14 father's girlfriend, her father's sister, her father's
15 other sister, her father's mother, her own mother?

16 A That's information that could have been given to me.
17 But right now, I can't testify to that.

18 Q Okay. So the -- how she started to tell you about
19 it, you said -- asked her the question, Tell me everything
20 you did from the time you woke up this morning until the
21 time you got here.

22 And then she said, B stuck his finger in my butt.

23 Is that correct?

24 A Yes.

25 Q There was no transition. She went straight to it.

1 She knew what she was in there to tell you?

2 A Yes.

3 THE COURT: Can I -- can I just stop you? I'm
4 looking at the -- the transcript. It was sticking a
5 finger in my mouth is what she said in response to, Tell
6 me everything from the time you got up until the time you
7 got here.

8 MS. BARWICK: Okay.

9 THE WITNESS: Thank you.

10 It's kind of hard to answer these without a
11 transcript.

12 MS. BARWICK: That's right.

13 The transcript's very helpful, Judge. And I know
14 you're looking at it up there. That's why the jury needs
15 this. I -- I wish I would be reconsidered.

16 THE WITNESS: I'm answering questions about it,
17 though.

18 MS. BARWICK: Yeah.

19 It would be helpful for all of us to have a
20 transcript, including -- anyways.

21 BY MS. BARWICK:

22 Q But she delved right into it?

23 A Correct. And that has happened in many interviews
24 that I've done with children.

25 Q The -- she said that the pee felt cold like ice

1 cream. Does pee feel cold like ice cream?

2 A I -- are you asking me if I know what pee feels like
3 on me?

4 Q Yes.

5 A I'm sorry. This is --

6 MS. MCCALL: Your Honor, just to be clear, you don't
7 want me to object during this proffer testimony; correct?

8 THE COURT: No. You don't need to object.

9 MS. MCCALL: Okay. I thought so. I was just making
10 sure.

11 THE WITNESS: I'm confused by the question.

12 BY MS. BARWICK:

13 Q What does pee feel like? He said -- she said my
14 client peed on her. Is pee cold like ice cream?

15 A I've never had someone pee on me before.

16 Q Is a bodily fluid cold like ice cream?

17 A Not that I'm aware of, no.

18 Q And -- and normal body temp is 98.6, isn't it?

19 A Yes, ma'am.

20 Q Okay. And she likes coloring a lot, doesn't she?

21 A Yes, ma'am.

22 Q She wanted to keep coloring and coloring and
23 coloring. And then -- is that right?

24 A Yes, ma'am.

25 Q Okay. And then you come in from your break and she's

1 still coloring. And then you said -- do you remember what
2 you said?

3 A I do not.

4 Q You said, I'll let you keep coloring, if you
5 promise -- or if you keep answering my questions. Did you
6 not say that?

7 A I believe I did. But, once again, I don't have the
8 transcript. So I can't testify to the exact phrasing.

9 MS. BARWICK: And for the record, I believe that was
10 at minute 29.

11 BY MS. BARWICK:

12 Q She told you that she didn't like B telling her what
13 to do, that only her mom, and dad, and nanny should do
14 that; right?

15 A From what I recall, yes, ma'am.

16 Q And she said that B puts her in time out -- or that B
17 always puts her in time out, puts her in the corner, tells
18 her to go lay down; is that right?

19 A From what I recall, yes, ma'am.

20 Q She, also, said later on in the interview that she
21 was dreaming about this; is that correct?

22 A I believe she said that she told her mother that she
23 was dreaming about it, if I remember that correctly. She
24 said, I told her that I was dreaming about it.

25 MS. BARWICK: Judge, if we have to go back and play

1 this --

2 BY MS. BARWICK:

3 Q What I have is that you talked to your mommy.

4 Yeah. And then she says -- and I'm on Page 17. But
5 not B, because he was there.

6 You didn't talk to B. You told your mommy. When did
7 you tell your mommy?

8 A long time ago.

9 Uh-huh, tell me what you told her.

10 I told her that B -- I was dreaming it, though.

11 A Right. I told her B -- I was dreaming it. That's
12 what I -- that's how I interpreted that. That she told
13 her mother that it was B and that she was dreaming it.

14 Q So you would agree that your interpretations and your
15 paraphrases could be something different than what the
16 child was saying or meaning?

17 A Well, we'd have to have [REDACTED] in here to ask her
18 what she meant by that. Because yours would, also, be an
19 interpretation as well.

20 Q And that's right. That's the danger of paraphrasing;
21 is that not right?

22 A That's why you follow-up with, "is that correct," so
23 that you get that clarification.

24 Q And every time you said, "is that correct," she said
25 "yes"; correct?

1 A From what I recall. But I don't have the transcript.

2 Q And this child had an inability to correct you; isn't
3 that correct?

4 A No. She corrected me.

5 Q When?

6 A As you saw that she corrected me -- if she could
7 correct me about her name, she could correct me at other
8 times.

9 Q And that was well into the interview when you were
10 calling her the wrong name the whole time?

11 A I had been told that her nickname was [REDACTED] So she
12 was telling me right then she wants to be called [REDACTED].

13 Q So you did come into the court -- or into the
14 interview with some kind of knowledge that you were
15 bringing in that could have changed things up a little
16 bit?

17 A I wouldn't say her name would change the things, no.

18 Q So you were told her name was [REDACTED] And she didn't
19 correct you about her name until minute 25 -- or very much
20 into the interview?

21 A Correct.

22 Q Okay. So let's go back --

23 MS. BARWICK: And I'm referring to the transcript,
24 which I'd like to introduce, at least, as a Court's
25 Exhibit at this point.

1 THE COURT: Well, what I'm going to do concerning the
2 transcript, I'm just going to -- I'm going to keep it
3 under advisement and just see how things go. And it'll
4 either be one of two things. I'll allow it as an -- as an
5 evidentiary exhibit or, at a minimum, as a Court's
6 Exhibit. But I'm going to --

7 MS. BARWICK: Yes, sir.

8 THE COURT: -- reserve ruling on that for right now.

9 MS. BARWICK: And I was just asking for the Court's
10 Exhibit so that we could know what we're referring to
11 here.

12 BY MS. BARWICK:

13 Q But you said, Tell me what you told her, talking
14 about her mom. And is it not correct the minor said, I
15 told her that B -- I was dreaming about it, though. Is
16 that not what was said?

17 A That's what I recall, yes, ma'am.

18 Q When she had to drive her mom to the hospital, you
19 had to remind her to tell the truth; right?

20 A Yes, ma'am -- well, not to tell the truth about -- we
21 only talk about things that really happened.

22 Q And things that really happened are the truth; right?

23 A I suppose you could say that. But I can't attest to
24 truth while I'm on the stand.

25 Q Right. So saying it really happened is just a round

1 about way of saying it's important that you tell me the
2 truth?

3 A Truth can be subjective. So things that really
4 happened are, like, concrete, tangible things.

5 Q As the child perceives them?

6 A As the child can relay them and perceive them, yes,
7 ma'am.

8 Q Okay. So, in essence, saying, only tell me the
9 things that really happened is the same thing as telling
10 the child, tell me the truth?

11 A I don't -- I think there's a difference, which is why
12 it's allowed to say that versus saying, tell me the truth.

13 Q Is that not just a newfangled way of changing it up
14 to get around the case -- the recent case law that's been
15 out?

16 A I can't testify to that because I didn't make the
17 protocol. All I can say is that I was trained in that
18 you're allowed to say, tell me about things that really
19 happened.

20 Q She said she watched naked videos of people with her
21 mom; is that correct?

22 A Near the end of the interview, she did, yes, ma'am.

23 Q Okay. And she said she had to drive her mom to the
24 hospital. And that's when you reminded her to only talk
25 about things that really happened?

1 A Correct. Yes, ma'am.

2 Q And then she turned around and said that Brandon had
3 cameras in his eyes?

4 A She did, yes, ma'am.

5 Q Did you, again, instruct her to only talk about
6 things that really happened?

7 A Not at that time, no, ma'am.

8 Q Okay. So she'd broken that rule twice now; right?

9 A Sure.

10 Q Okay. She said he peed on her with his big fat butt
11 and then smacked her butt; is that correct?

12 A From what I remember, yes, ma'am.

13 Q On the video, she -- okay. And you watched the
14 video?

15 A I did, yes, ma'am.

16 Q Okay. Do we pee with our butts?

17 A I don't pee with my butt. I don't know what you do.

18 Q Do people pee with their butts?

19 A No, they do not. No, ma'am.

20 Q Okay. So that's another -- talking about something
21 that doesn't really happen?

22 A Well, there, it was -- that's why I clarified with
23 the anatomical drawings. Because she called multiple
24 things butt.

25 Q I understand that. But up here, she said he peed on

1 me with his big fat butt, and then she smacked her own
2 butt; is that not correct?

3 A She did smack her own butt, yes, ma'am.

4 Q After she said that statement?

5 A It was after, yes, ma'am.

6 Q Okay. You asked her, Did he say not to talk about
7 it?

8 A Correct.

9 Q Is that not implying an answer with the question?

10 A No. That's a "yes" or "no" question that she could
11 elaborate on.

12 Q Did -- did that question ask for elaboration?

13 A It -- depending on how she answered it, I would have
14 said, tell me about that.

15 Q But you asked her, specifically, Did he say not to
16 talk about it? And that implies an answer, does it not?

17 A You could still answer that with "yes" or "no."

18 Q Is that an open-ended question, which is best
19 practice?

20 A It's on that spectrum of non-leading questions that I
21 mentioned before.

22 Q What would have been the better way to ask that
23 question?

24 A I'm not a hundred percent sure.

25 Q You can't think of any better way to ask that

1 question?

2 A I probably could. But, at the same time, I'm not in
3 that interview at the time. So I'm not going to -- I
4 don't know how to reenact that moment.

5 Q Well, would the better way to have said it is, did
6 anyone tell you not to talk about it?

7 A That's one way you could have asked it, yes, ma'am.

8 Q But you implied he told -- that he was the one who
9 told her not to talk about it?

10 A I really need the -- I can't testify to the
11 transcript -- like, I need the transcript in front of me
12 to be able to mention those -- those caveats of what
13 you're talking about.

14 Q If you said -- if your question was, Did he say not
15 to talk about it, that is not the best way to ask that
16 question without --

17 A There could have been other ways to ask the question.

18 Q Okay. So then you go through the whole drawings.
19 And that was, what, about three minutes long?

20 A I'm not sure. I wasn't timing it. But --

21 Q An estimate's fine.

22 A Sure. Around that time.

23 Q All right. And then the first question you ask after
24 doing those drawings for three minutes is, So you were
25 telling me the places that B touched you with fingers.

1 Are they on here?

2 A Correct. So getting clarification.

3 Q Is that not implying an answer with your question?

4 A It's not. That's general practice with any forensic
5 interview that you'll see.

6 Q Would the question not have been better to say, here
7 are the drawings. Have you ever been touched in any of
8 these places? Who touched you there?

9 A So that's a technique that you utilize if a child has
10 not made a disclosure. But since she's already made a
11 disclosure, I can reference the things that she's told me
12 about. That's a part of the interview process.

13 Q But if she already told you about it, why are you
14 asking it again?

15 A To, once again, clarify where on the body. As I --
16 as I mentioned, she's named a butt for two different body
17 parts. So I'm trying to clarify where on the body.

18 Q So if you're trying to clarify something that's
19 already been said, would the open-ended question not have
20 been the better practice?

21 A No. Because I'm wanting to ask in that specific
22 moment, like, what she's already referenced.

23 Q It's because you're wanting an answer.

24 A We're wanting an accurate answer.

25 Q And an accurate answer, best practice, is brought

1 about by an open-ended question?

2 A Well, once again, I've talked about this spectrum of
3 non-leading questions. And sometimes children, based off
4 of their developmental age, will need some more direction
5 or guidance versus just telling about that --

6 Q But you start broad and then you go narrow; is that
7 not correct?

8 A That's what I did in the beginning. And once she
9 went to the specifics, then I can reference those.

10 Q So when you're asking for clarification, which you
11 said you did after three minutes of doing this anatomical
12 drawing, then you say, tell me -- so you were telling me
13 the places that B touched you with his fingers. Are they
14 on here?

15 A Yes. That's an appropriate question, based off the
16 protocol of interviewing.

17 Q That's a leading question, isn't it?

18 A It is not a leading question. A leading question
19 would be, so here's the butt on this photo. Is that where
20 he touched you? I did not ask that.

21 Q But your question assumes that he touched her.

22 A She's told me that he touched her.

23 Q But your question assumes that he touched her.

24 A So I've -- I'm not understanding your questioning.
25 Because if you know anything about interviews or the

1 training of interviews -- I'm sorry. I was about to use
2 the "F" word, not the bad "F" word, but the other.

3 THE COURT: If you want to use the "F" word --

4 THE WITNESS: Can I use it now?

5 THE COURT: -- in this in-camera proceeding, the jury
6 is not in here.

7 THE WITNESS: Okay. I -- she just told me not to say
8 "forensic."

9 THE COURT: I understand.

10 THE WITNESS: So in training for forensic
11 interviewing -- gosh, I've lost my train of thought now.
12 We're -- we're getting information. And that's not a
13 leading question because she's already presented it into
14 the room.

15 So, for example, if I were just to ask the open-ended
16 question that you just -- just suggested, I would then
17 have to say -- like, go through again everything that
18 she's already told me. In a child-friendly interview,
19 you're not trying to get them to share that information
20 over and over and over again. Because she's already told
21 me that information. And that's the information that I'm
22 trying to get at.

23 BY MS. BARWICK:

24 Q Would it have been difficult to say, did anyone touch
25 you on any of these parts? Which parts? Who did it?

1 A Once again, I could have used that approach. But
2 because she had already brought it into the room, that's
3 allowed in forensic interviewing.

4 Q But you said that the only reason you did that is
5 because she already brought it up. Then I asked why you
6 asked her again. And you said you needed clarification.
7 So if you needed clarification, why weren't you asking an
8 open-ended question?

9 A I needed clarification about the two butts. Because
10 she talked about being touched on her butt and pointing to
11 certain areas. So, once again, I was clarifying that.

12 Like I said, a leading question would have been, you
13 said that he touched you on your butt. Which one of these
14 butts did he touch you on? That would have been a leading
15 question, based off forensic interview protocol.

16 Q And then you asked, Did he do anything to your
17 boobies?

18 A Correct.

19 Q So, again, that's not an open-ended question.
20 Because you've already asked her to show where on that
21 diagram he touched her. And she didn't indicate that. So
22 then you asked a direct question, did he touch your
23 boobies.

24 A Well, correct. Because forensic interview protocol,
25 once again, explores other things. Because the process of

1 disclosure is different for each child. So, sometimes,
2 they need to be prompted to talk about things that
3 happened.

4 Q And then at minute 24, you go from, So what did he
5 pee on you with?

6 And she said, His butt.

7 Is that on here?

8 And she indicates.

9 Okay. Did he make you do anything to his butt?

10 Does that not imply the answer, Did he make you do
11 anything to his butt?

12 A No. That does not imply an answer. Implying an
13 answer would be like, he made you do something to his
14 butt, didn't he? That would be implying.

15 Q Isn't the better way to ask that, did he make you do
16 something to his body? What did he make you do to his
17 body?

18 A You could have asked it that way, yes, ma'am.

19 Q Okay. And then if she said, his butt. So he made
20 you do something to his butt or something else? Giving
21 her choices, is that not a method y'all use?

22 A That -- we can give choices, yes, ma'am.

23 Q But choices weren't given in your "yes" or "no"
24 questions?

25 A There -- there are choices in "yes" or "no"

1 questions.

2 Q What were the options you gave her in your "yes" or
3 "no" questions?

4 A She's allowed to respond however she would like with
5 that.

6 Q But normally -- and the more appropriate and best
7 practice way is to say, did this happen, or did this
8 happen, or something else to allow them --

9 A That's what's called a multiple choice question
10 versus a "yes" or "no" question. So I was utilizing "yes"
11 or "no" questions. You're referring to a multiple choice
12 question.

13 Q Okay. And --

14 A And multiple choice is more direct than a "yes" or
15 "no" question. Because then they feel like they can only
16 respond with those particular choices.

17 Q But the only response you're giving her is, did this
18 happen? "Yes" or "no." She doesn't get an option to
19 explain it.

20 A Yes, she does. If she says, "yes," then I say, tell
21 me about that.

22 Q But you didn't say tell me about that after your
23 "yes" or "no" questions.

24 A Can you tell me what I said?

25 Q Okay. Did he make you do anything to his butt?

1 Yeah. He told me to stick his fingers in my butt --
2 in his butt.

3 He told you to stick your fingers in his butt?

4 She didn't ever mention anything about her fingers,
5 did she?

6 A Ma'am, I'm really sorry. But not having this
7 transcript, I -- I'm starting to get a little frustrated
8 with how you're asking these questions. Because I don't
9 have it in front of me to respond.

10 Q So it's possible that you would have mis-paraphrased
11 what she said?

12 A It's possible for anyone to paraphrase wrong, yes,
13 ma'am.

14 Q And that's why paraphrasing is dangerous?

15 A I would say that's why you allow them to correct you.

16 Q But this child's incapable of correcting you.

17 A She's capable of correcting me.

18 Q Rule one in -- in the very beginning -- rule three
19 that you gave her, she didn't correct you when you were
20 trying to explain to her the importance of correcting you.

21 A Rule one was I don't know. And she was able to do
22 that.

23 Q I -- I'm talking about rule three. I misspoke. Rule
24 three was, correct me if I say something wrong. And she
25 couldn't correct you.

1 A She said, I don't know, which was her answer.

2 Q Which was not a correction. You've already testified
3 it wasn't a correction.

4 A Correct.

5 MS. BARWICK: So -- and I would profer based on
6 Court's Exhibit whatever it is Page 27, Line 19 through
7 25. The minor says, Yeah. He told me to stick his
8 fingers in my butt -- in his butt.

9 He told you to stick your fingers in his butt?

10 Yeah. But I didn't want to.

11 She never said anything about your fingers -- or her
12 own fingers.

13 THE WITNESS: Is that a question?

14 MS. BARWICK: No. It's not --

15 THE WITNESS: Okay.

16 MS. BARWICK: -- it's just me proffering it for the
17 record to --

18 THE COURT: Well, again, this -- at a minimum, this
19 transcript is going to be a Court's Exhibit, if not a
20 trial evidentiary exhibit. So the whole transcript will
21 be a part of the record in some fashion.

22 MS. BARWICK: Yes.

23 Thank you, Your Honor.

24 BY MS. BARWICK:

25 Q At the end, you asked her if anyone told her to

1 say -- or told her to tell you anything. And she said
2 that her mom, her dad, and her nanny told her what to say
3 to you. Is that not correct?

4 A I believe so, yes, ma'am.

5 Q And then you asked her, What did they tell you to
6 tell me?

7 A I think I said, Tell me what they -- something of
8 that nature --

9 Q Yeah. Tell me what they told you to tell me. And
10 she said, It's all about B; is that correct?

11 A I -- I can't testify to -- if that's exactly what she
12 said because I don't -- I can't remember that specific
13 line from the video.

14 Q Okay. But you watched the video?

15 A I did. But I don't have a -- a memory of, like,
16 that's exactly what she said.

17 Q Right. And you conducted the interview?

18 A Yes, ma'am.

19 Q And you watched the interview --

20 A Yes, ma'am.

21 Q -- today?

22 And you probably watched it a few times preparing for
23 your testimony today.

24 A Yes, ma'am.

25 Q And you don't remember any of that?

1 A Well, I -- you're asking verbatim quotes. And that's
2 why I'm saying, like, I can't say that's exactly what she
3 said.

4 Q That's right.

5 On another time, she said something that -- it
6 happened in real life. And you said, How do you know it
7 happened in real life?

8 And she said, Well, I heard it.

9 So she can't distinguish between what she hears
10 and -- from other people and what, actually, happened?

11 A She answered the question.

12 Q What do you mean by that?

13 A Like, she answered the question the way she did. But
14 I can't testify to what that means about her intellectual
15 ability.

16 Q But she did say it happened in real life. And she
17 only knew about it because she heard about it?

18 A Correct.

19 Q And then at the end when you said, No, no -- when she
20 started talking about dreaming about it, you said, But
21 what you told me is the truth; right? Or it is what
22 really happened?

23 A I would have said something along those lines, yes,
24 ma'am.

25 Q Okay. So when she said -- and you -- she started

1 talking about her mom, her dad, and her nanny told her
2 what to say, to say it was all about B, you turned around
3 and said, Is that what really happened? Or something
4 along those lines; right?

5 A From what I remember, yes, ma'am.

6 Q And she said, Yes, but I really did drive my mom to
7 the car -- or to the hospital. That was her response?

8 A From what I recall, yes, ma'am.

9 MS. BARWICK: Judge, I have no further questions.

10 THE COURT: Okay. Solicitor, if you'll get on the
11 record some basics of training and background.

12 MS. MCCALL: Certainly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MCCALL:

15 Q Ms. Cheney, can you explain for the Court your
16 educational background?

17 A Sure. So I received my Bachelor's in Psychology from
18 Winthrop University in 2011. And I received my Master's
19 of Clinical Mental Health Counseling from Winthrop
20 University in 2014. And I'm currently a licensed
21 professional counselor in the state of South Carolina.

22 Q What training, in addition to that educational
23 background, have you had to go through in order to be a
24 licensed counselor, or to obtain any other certifications
25 that you have?

1 A So as part of being a licensed professional counselor
2 in the state of South Carolina, we undergo yearly
3 continuing education units to -- to stay abreast of all
4 the new developments in the counseling field. And to
5 become a forensic interviewer, I had to go through a
6 40-hour ChildFirst South Carolina training.

7 Q Okay. What type of experience have you had as a
8 professional in this field?

9 A Sure. So my entire field besides a six-month stint
10 at a drug and alcohol abuse center has been in the field
11 of sexual trauma. And so I originally started at Sexual
12 Trauma Services of the Midlands as an adult therapist.

13 And then I moved to the Phoenix Center for drug and
14 alcohol abuse and use. And then I went to the Julie
15 Valentine Center and was trained in forensic interviewing.
16 I, eventually, transitioned to become an adult therapist
17 there.

18 And then I'm currently serving as the program
19 director at a psychiatric residential treatment facility
20 for sex offenders that are juveniles.

21 Q How many forensic interviews would you say that
22 you've conducted throughout your career?

23 A I believe the number is 222. But I know it's 200 --
24 over 220.

25 Q And have you ever testified in court?

1 A Yes, ma'am.

2 MS. MCCALL: Your Honor, I think that should suffice.

3 THE COURT: Okay. Thank you.

4 MS. MCCALL: Thank you.

5 THE COURT: All right. Now, when we bring the jury
6 out, I will allow cross-examination only on the issue of
7 neutrality. I guess to some extent maybe the witness did
8 open up the door on that. But I'm -- I'll -- you've got
9 the record protected as far as all the other areas that
10 you went into. So I -- I'll allow that. And then we'll
11 adjourn for the evening.

12 And I'll say this now, I mean, you know, the -- the
13 forensic interview is fair game insofar as closing
14 argument goes. I mean, you can -- certainly, both sides
15 can argue the good and the bad with that. So I'll just
16 make that as an observation.

17 Okay. Let's -- let's bring the jury out.

18 MS. BARWICK: Judge, can we approach while they're
19 bringing them in?

20 THE COURT: Sure.

21 (WHEREUPON, a bench conference was held.)

22 (WHEREUPON, the jury came into open court at
23 approximately 5:24 p.m.)

24 THE COURT: All right. Madam Forelady, ladies and
25 gentlemen of the jury, thank you for your patience.

1 Sometimes, things go a lot longer than we plan. I
2 think there's going to be just a little bit more testimony
3 from Ms. Cheney. And I don't anticipate it being long.
4 And then we're going to go ahead and adjourn for the
5 afternoon.

6 So, Ms. Barwick, you may proceed.

7 MS. BARWICK: Thank you, Your Honor.

8 CONTINUED CROSS-EXAMINATION

9 BY MS. BARWICK:

10 Q Ms. Cheney, when we had the jury step out, I had
11 asked you -- you said that you were supposed to do a
12 neutral and unbiased interview of this child?

13 A Correct. Yes, ma'am.

14 Q Okay. And you work for a child advocacy center?

15 A I did, yes, ma'am.

16 Q Okay. At the time you were giving this interview?

17 A Correct. Yes, ma'am.

18 MS. BARWICK: Judge, can we approach really quickly?

19 THE COURT: Sure.

20 (WHEREUPON, a bench conference was held.)

21 BY MS. BARWICK:

22 Q Before going into that interview, who did you speak
23 with?

24 A So as part of normal interview protocol --

25 MS. BARWICK: Judge, I'm going to object as to what's

1 normal.

2 THE COURT: Right. Just tell -- just answer the
3 question. Just say who you -- who you talked to in
4 advance of the interview.

5 THE WITNESS: So I spoke with Courtney Mucklin from
6 Pickens County DSS. They were one of the referral sources
7 to the child advocacy center. And I, also, received
8 reports from Officer Elrod with Pickens Police Department.

9 BY MS. BARWICK:

10 Q And -- and that report you received from Officer
11 Elrod, it had -- it had [REDACTED]'s statement in it; is
12 that correct?

13 MS. MCCALL: Objection, Your Honor. I believe this
14 goes to what we just discussed.

15 THE COURT: Well, she can't -- I don't want any
16 content. She can say who she talked to, what she saw.
17 But I just don't want any content testified to.

18 MS. BARWICK: Right. As to the -- as to the video?

19 THE COURT: Right. As to anything that she -- that
20 she came into contact with in advance of the interview,
21 she can say what it is without going into whatever was
22 said by a person, whatever contents --

23 MS. BARWICK: Yes, Your Honor.

24 THE COURT: -- in -- in a statement, whatever. But
25 she can't go into that.

1 MS. BARWICK: Okay.

2 BY MS. BARWICK:

3 Q So you reviewed a police department incident report?

4 A Correct.

5 Q And it had various peoples statements? I'm not
6 asking you what those statements are.

7 A Right. It was an -- an incident report. So it had
8 information about the case being investigated.

9 Q Okay. And inside of that incident report were
10 statements -- and I'm not asking what those statements
11 were -- of the mother of [REDACTED]?

12 A I did not review the incident report prior to coming
13 here today. So I cannot testify to what was in that
14 incident report.

15 Q Okay. So you received the incident report from the
16 Pickens Police Department?

17 A Yes, ma'am.

18 Q Okay. And you reviewed those prior to beginning the
19 interview?

20 A Yes, ma'am.

21 Q And you spoke with the DSS caseworker prior to
22 beginning the interview?

23 A Correct. Yes, ma'am.

24 Q And the DSS caseworker watched the interview through
25 a live feed during the interview?

1 A Correct. Yes, ma'am.

2 Q And those portions when you stopped the interview,
3 they were to go talk to that DSS caseworker?

4 A Correct. Yes, ma'am.

5 Q And the reason you reviewed that material beforehand
6 is because you use that information to conduct the
7 interview; is that correct?

8 MS. MCCALL: Objection, Your Honor.

9 THE COURT: I'll -- I'll overrule you.

10 You can ask that one question.

11 MS. BARWICK: Yes, Your Honor.

12 THE WITNESS: Can you repeat the question?

13 BY MS. BARWICK:

14 Q Yes.

15 And -- and the reason why you view that information,
16 and talk to the DSS case worker, and look at the police
17 department incident report is because you use that
18 information during your interviews?

19 A It's helpful information to know before you go into
20 an interview, yes, ma'am.

21 Q And it's helpful to know because you need it to
22 conduct your interview?

23 A It's part of the protocol that you would get that
24 information prior to conducting the interview so that you
25 walk into your job knowing what your job is there today --

1 that day.

2 Q And the best way to give an unbiased interview is not
3 to have any prior knowledge from a bunch of outside
4 sources, to just talk to the alleged victim; right?

5 A That's not what I was trained in protocol, no, ma'am.

6 Q Okay. So you did go into the interview with a bias
7 based on the information you gathered before going in?

8 A No, ma'am.

9 Q You couldn't unlearn that information before you
10 interviewed the child, could you?

11 A I have the information. But I go in allowing that
12 child to say what -- what they are there to talk about.
13 So I don't use leading questions and bring information
14 into the room that I obtained.

15 MS. BARWICK: Judge, I'm going to object to that, and
16 strike that last statement.

17 THE COURT: Well, the question was asked.

18 Any -- anything further?

19 MS. BARWICK: No, Your Honor.

20 THE COURT: Okay. Thank you.

21 Anything on redirect?

22 MS. MCCALL: Nothing, Your Honor.

23 THE COURT: Thank you, ma'am.

24 You can step down.

25 THE WITNESS: Okay. Thank you.

1 THE COURT: All right. Ladies and gentlemen, we're
2 going to go ahead and break for the evening. Get you a
3 good night's rest. Remember all of my instructions that
4 I've given you.

5 And we're going to start back at 10:00 in the
6 morning. Have a good evening. See you in the morning.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 5:30 p.m.)

9 THE COURT: Thank you.

10 We'll start back at 10:00 in the morning.

11 (WHEREUPON, the proceedings were concluded at
12 approximately 5:31 p.m., to be reconvened on
13 Tuesday, August 20, 2019.)
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1 TUESDAY, AUGUST 20, 2019

2 THE COURT: All right. We're back on the record.

3 Ms. Barwick. You're standing, so I suspect you have
4 a matter for the Court.

5 MS. BARWICK: Well, yes, Your Honor. I have a few.
6 But I, also -- the primary purpose of me standing right
7 now, I -- I wanted to inform the Court -- I already
8 informed Ms. McCall -- on the ride up in the elevator up
9 here -- I knew my client's sister was coming in to town.
10 And I rode up in the elevator with a woman that I believed
11 to be my client's sister. I said, Are you Brandon's
12 sister?

13 She said, No.

14 And then we -- she came up to the same floor. And
15 she went right, and I went left. And she's one of the
16 jurors.

17 THE COURT: Oh, okay.

18 MS. BARWICK: I -- I just wanted to be candid with
19 the Court and Ms. McCall.

20 THE COURT: Sure. Right. And -- and I appreciate
21 that.

22 I mean, from -- certainly, inadvertent, not
23 intentional by any means. And I really don't think -- I
24 mean, I can bring that juror out and just ask them does
25 that have any influence on you. But, really, I don't

1 see -- from what you're telling me, I don't think we need
2 to deal with it.

3 Solicitor?

4 MS. MCCALL: No, Your Honor. I don't have any issue
5 with it.

6 THE COURT: It's -- it's one of those things where,
7 you know, juries, and lawyers, and the public have to
8 share the same elevator. And incidental contact happens
9 sometimes, so.

10 MS. BARWICK: Yes, sir.

11 THE COURT: But I appreciate you informing me.

12 MS. BARWICK: Yes, sir.

13 And then I believe DSS sent you some records last
14 night. We weren't -- she sent them to you, and not us.

15 THE COURT: I haven't gotten them yet. I mean, I
16 checked my e-mail about 15 minutes ago before I came in
17 here. And let me check again.

18 MS. BARWICK: It might be in your bulk or junk mail.

19 THE COURT: Let me -- let me check again.

20 MS. MCCALL: Your Honor, it looks like her e-mail to
21 you is at 5:08 p.m. --

22 THE COURT: Okay.

23 MS. MCCALL: -- from a Julie Rau, R-A-U.

24 THE COURT: My -- my computer, for some reason, does
25 not want to connect to the Internet.

1 MS. MCCALL: I think that may be a common problem up
2 here for judges.

3 THE COURT: I know Madison had an issue yesterday.

4 THE CLERK: Are you plugged in?

5 THE COURT: Yeah. Everything's on.

6 (Pause.)

7 THE COURT: Well, let -- let me do this. Let me go
8 back to Judge Gravely's office. Because I was able to get
9 on the Internet there. And let me just see what -- see
10 where we are. So everybody be at ease for just a minute.

11 (WHEREUPON, a break was taken.)

12 THE COURT: I have not received it. Chances are
13 when -- a lot of times when you type in our e-mail
14 addresses, and don't put in double "C" for sccourts -- so
15 make sure it's DHockerJ@sccourts.org. It's got two "C's"
16 dot org. And chances are that's what -- she just put one
17 "C" in. That's what a lot of people do, so.

18 MS. MCCALL: DHockerJ@sccourts.org.

19 THE COURT: It's two "C's"?

20 MS. MCCALL: Yes, sir.

21 THE COURT: I haven't gotten it. So I don't know
22 what happened.

23 MS. MCCALL: Me either.

24 And it wouldn't be in your junk e-mail folder?

25 THE COURT: We looked.

1 MS. MCCALL: Okay.

2 THE COURT: We looked.

3 MS. MCCALL: I -- may I step out and call her and
4 have her send it again?

5 THE COURT: Sure.

6 MS. MCCALL: To the same e-mail address? Is that the
7 best --

8 THE COURT: Yes.

9 MS. BARWICK: Judge, can she -- can she send it to
10 the attorneys? Because we got an e-mail. But she didn't
11 put the attachment on it because she was only going to
12 send it to you.

13 THE COURT: Yeah.

14 Do this, have her send it to me. And, also, send it
15 to Madison. And -- and Madison's would be DHockerLC for
16 law clerk.

17 MS. MCCALL: Okay.

18 THE COURT: Send it to both. And maybe it'll end up
19 with one of us.

20 (Pause.)

21 THE COURT: It just miraculously popped up.

22 MS. MCCALL: Sometimes it takes a while.

23 THE COURT: Along with some other e-mails that were
24 sent out yesterday. So that's strange.

25 So during a break, I'll see if we can get them

1 printed out for you.

2 MS. BARWICK: The -- the problem is, Judge, that
3 those DSS records, you were waiting on to determine
4 third-party guilt. And she's ready to put those witnesses
5 on the stand.

6 THE COURT: Okay.

7 MS. MCCALL: So, Your Honor, we would -- I believe we
8 would need to make the determination about the DSS
9 records, as well as that unrelated case with one of the
10 witnesses that we, also, discussed.

11 THE COURT: Right. Okay. Well, I guess what we're
12 going to need to do is, first of all, review these
13 records. I don't know how voluminous they are. Let me
14 just -- let me read her e-mail first.

15 (Pause.)

16 THE COURT: Okay. Julie has just requested whether
17 or not I wanted her to bring copies or the e-mail version.
18 I think the e-mail version is fine.

19 So I guess what we need to do is I need to afford
20 them to you guys, give you a little bit of time to look at
21 them. And then -- then we're going to need to flesh out
22 whether or not I'm even going to allow the Defense to get
23 into third-party guilt or not. So we're going to need
24 some time.

25 I'm kind of -- kind of inclined to possibly cut the

1 jury loose for a while, instead of keeping them back in
2 the room.

3 I'm -- I'm envisioning -- and y'all correct me if I'm
4 wrong. I'm envisioning needing some time, one, for y'all
5 to look at these records, for me to look at these records,
6 and then for us to -- to flesh out all of these points
7 raised by the Defense as to third-party guilt. And then
8 for me to make a determination whether I'm going to even
9 allow any of that.

10 MS. BARWICK: And to proffer evidence from the chief
11 DSS investigator as to -- if it's considered unfounded
12 what the basis was and what investigation was done.

13 THE COURT: Yeah. So we may even need to take some
14 in-camera testimony. So --

15 MS. MCCALL: I, certainly, do agree, Your Honor, that
16 it is going to take some time, regardless.

17 But I do have a case that I would like for you to
18 review. I'll show it to -- to Ms. Barwick. And it's
19 directly on point with, at least, the unfounded case that
20 it is not supposed to be --

21 THE COURT: Right.

22 MS. MCCALL: -- disclosed at all.

23 THE COURT: Right.

24 MS. MCCALL: I'll show her this, and then hand it up
25 to you, if you'd like to review that as well.

1 THE COURT: Okay. Well, here's -- here's what I'm
2 going to do. I'm going to go ahead and bring the jury out
3 and cut them loose until 2:00. And that'll give us enough
4 time to -- to do whatever work we need to do and then
5 break for lunch.

6 MS. MCCALL: Certainly.

7 MS. BARWICK: Yes, sir.

8 THE COURT: Or maybe even 2:30. I think that's what
9 we're going to need to do.

10 All right. Let's bring the -- the jury out, please.

11 (WHEREUPON, the jury came into open court at
12 approximately 10:28 a.m.)

13 THE COURT: Let the record reflect the jury is back
14 in.

15 Good morning, ladies and gentlemen.

16 We've had some -- some developments. Maybe that's
17 not exactly the correct word to use. But some things that
18 we're going to have to work on in this case. And I'm
19 going to have to cut you loose and have you come back at
20 2:30. I, certainly, don't want to leave you back in the
21 room. I don't know if I have enough candy to fill up the
22 container for y'all to stay that long.

23 I'm sorry. If I had known this -- it's no one's
24 fault. It's just some legal issues. When you have good
25 lawyers like I have, they, typically, will work the Judge

1 pretty hard. And that's what they're doing, which is
2 fine. That's -- that's part of the job. There's some
3 things we need to look at and flesh out. And, certainly,
4 if I had known that yesterday, then I would not have had
5 you come in today, but I didn't know that.

6 So I'm going to go ahead and -- and excuse you,
7 but -- and have you come back at 2:30 today. And we'll --
8 we'll start back and try to get as much work as we can in.

9 Okay. That's just -- that's just the way these
10 things go sometimes. We never can predict. And, again,
11 it's no one's fault.

12 So have a good morning, good lunch. And we'll see
13 you back at 2:30.

14 Okay. Thank you.

15 (WHEREUPON, the jury was excused from open court at
16 approximately 10:30 a.m.)

17 THE COURT: All right. Everybody be at ease. I'm
18 going to just see how many pages this is.

19 MS. BARWICK: And, Judge, a lot of it might be what
20 we already have. Because, remember, we had 36 of the 54.
21 But we didn't -- but they redacted the page numbers of
22 what we had.

23 THE COURT: Right, right.

24 Okay. Well, she -- the attachment she has sent me is
25 141 pages.

1 So can I just -- can I send them --

2 MS. MCCALL: Certainly.

3 THE COURT: -- since your office is here, hers is
4 not. Can I just send them to -- to one of y'all?

5 MS. MCCALL: Yeah. Absolutely. And we won't look at
6 them. We'll just pass them on to you.

7 THE COURT: Well, that's fine. You go ahead and look
8 at them.

9 MS. MCCALL: Well, my concern, Your Honor, is the --
10 is the unfounded case. I don't want to look at that.
11 Because, based on the case law that I've seen, we are not
12 even supposed to have a copy of that. So I just don't
13 want to be in any violation as far as -- as that goes
14 until you make a direct ruling on that, so.

15 THE COURT: Okay. Well, in looking at the statute
16 yesterday, it looks like -- I mean, I was within the
17 statute to issue an order -- issue a protective order.

18 Are you suggesting, Solicitor, that maybe the Court
19 was in error?

20 MS. MCCALL: No, Your Honor. I'm -- I'm uncertain.
21 The way I -- I just wanted to present the case. And the
22 way that I read it, in that particular case, is just that,
23 essentially, the -- the unfounded case should have been
24 destroyed is -- is what that -- that case seems to
25 indicate. I just saw that this morning, that case.

1 So I wasn't aware of that yesterday. And -- and,
2 certainly, you may interpret it or read it differently. I
3 just wanted to present that for the Court just so we would
4 be aware of it.

5 THE COURT: Okay.

6 MS. BARWICK: Maybe we should publish for the record
7 what the case is.

8 THE COURT: The case that the Solicitor's handed to
9 me is Beattie v. Aiken County DSS. And the cite is 319
10 S.C. 449. It was a 1995 case.

11 (Pause.)

12 THE COURT: Well, under Beattie, Notwithstanding --
13 that's what it says, Notwithstanding Section 20-7-690,
14 which I think was one of the two statutes that I looked at
15 yesterday -- no, it was not. The motion to quash a
16 subpoena filed by Ms. Rau yesterday does not even cite
17 20-7-650 or 690.

18 But this case says, Notwithstanding 20-7-690 or any
19 other provision of law, no information contained in
20 unfounded reports may be disclosed under any circumstance.
21 That's pretty clear language.

22 MS. BARWICK: Judge, I would have to read the entire
23 case --

24 THE COURT: Yeah.

25 Ms. BARWICK: -- to see what context it -- it was --

1 THE COURT: All right.

2 MS. BARWICK: If Ms. McCall could possibly print out
3 a copy of it for me.

4 MS. MCCALL: I will, Your Honor, when I get back to
5 the office. I just did that before I came in here, just
6 briefly found it.

7 And in that case, it's, actually, the party involved
8 that is requesting the unfounded case. And they even --
9 the Court even goes on to say even the party who's been
10 accused is not entitled to this information.

11 So I, certainly, will provide a copy when I can go
12 back to the office.

13 THE COURT: All right. Well, let's -- let's do this.
14 Let's -- let's take about a 15-minute break and -- to see
15 if you can get a copy.

16 Let me -- I'll scroll through what she sent me and
17 see if it is in any way divided up, the -- the case
18 involving the -- the alleged victim in this case and then
19 the unfounded case concerning the younger sister, see if
20 it's broken down somehow or another.

21 MS. BARWICK: And, Your Honor, what I read to the
22 Court yesterday came from the DSS investigation as to this
23 sister. Those dictation notes were in -- the dictation
24 notes about the other sister were in the case file
25 regarding this --

1 THE COURT: Right. And -- and evidently -- I mean, I
2 don't have an explanation for it, other than it just
3 inadvertently -- part of the unfounded case got into the
4 founded case for whatever reason, I mean, so.

5 All right. Let's take a 15-minute break. And we'll
6 see if you can get that case. And we'll go from there.

7 (WHEREUPON, a break was taken.)

8 (WHEREUPON, Court's Exhibit No. 1 was marked for
9 identification and admitted into evidence.)

10 THE COURT: All right. We are back on the -- the
11 record.

12 I had a conference with the lawyers in chambers on
13 this issue of the Defense's request for third-party guilt
14 evidence. And in reviewing the Defendant's memorandum
15 that lists out 12 points on the issue of third-party
16 guilt -- and I informed Counsel that even taking all of
17 those as true, I do not believe that that would be
18 sufficient enough for me to allow any of that evidence to
19 come before the jury and, ultimately, charge the jury on
20 third-party guilt.

21 And, Ms. Barwick, you had -- I think we had agreed
22 that we'd go ahead and just put your memorandum as a
23 Court's Exhibit. And your -- your statement to the Court
24 that you would have witnesses to bring out those 12 points
25 on your third-party guilt request and that we would not

1 need to bring those witnesses in. And -- and I accept
2 that.

3 Is that -- is that correct?

4 MS. BARWICK: Judge, the -- the one other thing that
5 I added as to third-party guilt, the -- the two prongs is
6 to the exclusion of other people. And I wanted to add to
7 my memo the last portion. And I spoke about this in -- in
8 chambers. The last part of the forensic interview where
9 the child said, Nobody else did this.

10 So that leads it to believe it's one person, it's not
11 two possible co-conspirators. It's just one person. And
12 especially given the family dynamics, one being father,
13 one being mom's boyfriend that there's no argument for a
14 co-conspiracy there.

15 Your Honor, I was, also, going to put up -- because I
16 think you took into your consideration -- as to the
17 unfounded case involving the younger sister, you took into
18 consideration that it was unfounded. I was prepared to
19 proffer testimony from the DSS investigator on that
20 unfounded case and the DSS investigator's supervisor that
21 nothing else was done.

22 It -- it was mentioned that this child had these
23 issues, had vaginal irritation, had a sitz bath, had
24 medication. But that was the extent of that
25 investigation. And it didn't go any further.

1 THE COURT: Okay.

2 MS. BARWICK: And -- and I believe it wasn't reported
3 to law enforcement. So if we could take those facts as
4 true and you would still -- if those -- even if those
5 facts were true and I was able to proffer testimony as to
6 that, I understand Your Honor's ruling is that you still
7 would not let me get into third-party guilt; is that
8 correct?

9 THE COURT: Right. I just don't believe it -- it
10 really rises to the level that I believe is necessary to
11 allow third-party guilt evidence to come in, even taking
12 that as true.

13 So I'll allow you -- I just want everybody to be
14 cognizant of the time. I'm going to allow you to put up
15 any witnesses for some brief testimony. And, also, the
16 141 pages from DSS that was e-mailed to me, there's one
17 copy. And I need that copy to be marked as a Court's
18 Exhibit. We'll mark your memo as Court's Exhibit No. 1,
19 and the DSS records as Court's Exhibit No. 2.

20 So I think, Ms. Barwick, you have possession of that.
21 So sometime before we finish up this morning, I just need
22 you to get that to the court reporter.

23 MS. BARWICK: And, Judge, I hope you don't mind.
24 I -- I highlighted some portions as I was noting that.

25 THE COURT: I -- I don't have a problem with that.

1 MS. BARWICK: And, again, those witnesses aren't
2 going to be here by the time that you need to leave.
3 One's coming from Oconee County. So if -- if Your Honor's
4 to accept what I just said as true, even if you were to
5 accept that as true that no investigation was done
6 whatsoever other than to note that this girl had this
7 vaginal irritation, went to the doctor, and got pain
8 medication, and had a prescribed sitz bath, and that this
9 child had been reporting her butt hurt before that
10 irritation was found. If you take all of that as true and
11 you are still denying my motion, I don't see a reason to
12 put up witness testimony.

13 THE COURT: Okay.

14 MS. BARWICK: And then what time were you trying to
15 leave, Judge?

16 THE COURT: Not quite yet.

17 MS. BARWICK: If I could put some more things on the
18 record so we can clear it up.

19 THE COURT: Sure.

20 MS. BARWICK: And when the jury comes, we can get
21 going.

22 THE COURT: Yeah. Let me -- hold that thought for
23 just a minute.

24 MS. BARWICK: Yes, sir.

25 I can call off my witnesses then, Judge.

1 THE COURT: Yeah.

2 (Pause.)

3 THE COURT: Ms. Barwick, I'll be glad to hear from
4 you.

5 MS. BARWICK: Yes, Your Honor.

6 I, also, have already previously marked Court's
7 Exhibit No. 1. And this was a denial of my ex parte
8 motion for the release of medical records. I'm just going
9 to enter this into evidence to show that it was denied
10 just to -- to protect. I had made an ex parte motion for
11 both children's medical records to Judge Verdin, the
12 administrative judge. And she denied that.

13 So I would like to preserve that -- that denial of
14 that motion.

15 THE COURT: That would be Court's Exhibit No. 3?

16 MS. BARWICK: It's Court's Exhibit No. 1, Your Honor.

17 THE COURT: Okay. So we'll -- we'll mark your memo
18 as Court's Exhibit No. 3 on third-party guilt.

19 MS. BARWICK: And I'm sorry. I just got it done
20 beforehand.

21 THE COURT: That's fine.

22 MS. BARWICK: And -- and I'd like to renew that
23 motion for those records. I understand Your Honor's
24 ruling will probably be no since we can't get into
25 third-party guilt.

1 THE COURT: All right.

2 MS. BARWICK: Is your ruling no on those records,
3 Your Honor?

4 THE COURT: On what records?

5 MS. BARWICK: The records -- the Easley Pediatric's
6 and Easley -- Baptist Easley Hospital--

7 THE COURT: Yeah. I'm -- yeah. I'm not going to go
8 behind Judge Verdin's order.

9 MS. BARWICK: Yes, sir. I just wanted to make sure I
10 preserved for appeal.

11 THE COURT: Sure.

12 MS. BARWICK: All right. Then as far as going back
13 to the methodology, Your Honor, I'm not arguing with your
14 ruling. I would just like to put my reasoning for the
15 record.

16 THE COURT: Sure.

17 MS. BARWICK: When I consented to the forensic
18 interview, I personally did not stipulate to the factors
19 listed in 17-23-175 as I did not believe the video
20 possessed any particularized guarantees of
21 trustworthiness. The factors in that statute that I had
22 the most trouble with were whether it was elicited by
23 leading questions.

24 And as -- through my cross-examination, it's apparent
25 that I believe that they were elicited by leading

1 investigation -- or questions. Also, whether the
2 statement presented a detailed account of the alleged
3 offense and whether any statement -- that statement had
4 internal coherence.

5 So those were the prongs -- the three prongs I have a
6 problem with under that statute. I know at the beginning
7 of the trial, I intended to call an expert attacking the
8 methodology that was used creating an unreliable
9 disclosure and that any future disclosures by those
10 unreliable methods would have tainted the witness as any
11 further testimony as to what occurred. I would not have
12 consented to the introduction of the forensic interview
13 had I known I would not be permitted to attack the
14 methodology.

15 We are arguing that what we heard from the child in
16 her out-of-court statement is not the testimony of the
17 child, but the product of the power of suggestion of the
18 interviewer. And -- and whether that power was purposeful
19 or by accident, the power of suggestion was there.

20 So what we heard is the interviewer's interpretation
21 and -- and what she thought happened. And we didn't,
22 actually, get to hear the child. So we're not attacking
23 the child's credibility. We're simply attacking the
24 methodology.

25 We're attacking the totality of the circumstances

1 surrounding the making of the statement. Because those
2 circumstances don't guarantee trustworthiness of the
3 statements. That is essential for us to be able to
4 cross-examine, to attack the method in which the
5 interviewer got the answers she got.

6 That's why you don't allow leading questions on
7 direct. You don't want to taint that witness by
8 suggesting an answer that might not necessarily be their
9 answer.

10 We're attacking the methodology so we can argue that
11 the child's statements -- and we're going to do -- we were
12 planning on doing this through our expert. You haven't
13 ruled as to that. But we are planning on attacking the
14 methodology so we can argue that the child's statements
15 are not, in fact, hers, but those of the interviewer due
16 to undue influence and suggestion.

17 State v. Anderson said that the interviewer cannot
18 talk about the importance of telling the truth and that we
19 only tell the truth -- or the purpose of the interview --
20 this type of -- and to say it's unbiassed and neutral --
21 essentially, in -- in what State v. Anderson said that --
22 essentially, says because we're saying we did it right and
23 this was the child's answer, that means the child must be
24 telling the truth. And that was the danger that Anderson
25 was trying to prevent.

1 In this particular case, she got up -- their own
2 witness got up and testified as to the procedures -- or
3 she got up and testified saying she's neutral and
4 unbiased. And then she turned around in the video and
5 explained to the child the importance of telling us things
6 that really happened, which is just another way of saying
7 to tell the truth. It's just beating around the bush.
8 So -- and then she was -- proceeded to lay out several
9 other rules, all of which Anderson said you're not
10 supposed to lay out the rules.

11 So it's our position that she, in fact, opened the
12 door. And then that should allow us the ability to
13 question her methodology.

14 Further, in State v. Kromah, that ruling -- that's
15 401 S.C. 340 -- said that the forensic interviewer may
16 properly testify regarding the time, date, and
17 circumstances of the interview. Any personal observations
18 regarding the child's behavior, or demeanor, or a
19 statement as to the events that, actually, occurred within
20 the personal knowledge of the interviewer.

21 I was attempting to get into what the interviewer
22 read and spoke about prior to the interview and during the
23 interview. And I wasn't allowed to get into the specifics
24 of it, just that she did talk and review documents, but
25 not what the substance of that document in conversation

1 was to get out to the jury the information that the
2 interviewer went in and -- to formulate the way she
3 conducted the interview.

4 We've already talked about third-party guilt.

5 And then I wanted to get in the transcript.

6 Do you want me to go ahead and get into my transcript
7 argument?

8 THE COURT: Sure -- well, let me just -- just make
9 one comment. And, again, I already ruled that under
10 17-23-175, those various factors were met to allow the
11 admissibility of the forensic interview into evidence.

12 And notwithstanding the fact that you did not
13 stipulate to 175, I don't recall that there was any motion
14 to redact any portions of the forensic interview that --
15 that I can recall. At least, my notes do not reflect
16 that.

17 Let me just --

18 Solicitor, do you want to make any -- put anything on
19 the record in response to anything that Ms. Barwick has --
20 has brought out so far on the record?

21 MS. MCCALL: Nothing, Your Honor.

22 THE COURT: Okay.

23 MS. MCCALL: Just to -- to emphasize that we,
24 obviously, agree with Your Honor that the forensic
25 interview was admissible and did meet those factors.

1 THE COURT: All right. Now, Ms. Barwick, do you want
2 to get into the transcript?

3 And I'll be glad to take argument. As I said
4 yesterday, that is still under advisement whether or not
5 that's going to -- it's one of two things. It's either
6 going to be marked as an evidentiary exhibit and the jury
7 is going to be able to read it, as they so choose. Or the
8 other option is it's going to be marked as a Court's
9 Exhibit and be a part of the -- the record in this case
10 for future use.

11 But I'll be glad to -- to hear any argument now if
12 you want to make it, or wait until it's time when I'm
13 about ready to make a ruling and then I can take your
14 argument, either way.

15 MS. BARWICK: What time do you have to leave, Judge?

16 THE COURT: I'm still good.

17 MS. BARWICK: Why don't we do it now since we have
18 nothing else to do.

19 THE COURT: Okay.

20 MS. BARWICK: Just judicial efficiency.

21 THE COURT: Okay. That's what it's all about.

22 MS. BARWICK: Frank Eppes -- do you know Frank Eppes,
23 Your Honor? Do you know Frank Eppes?

24 THE COURT: Oh, yeah. Now, we're on the record,
25 so --

1 MS. BARWICK: Yes, Your Honor. I'll have to tell you
2 later on what he -- he thinks about judicial efficiency.

3 THE COURT: Okay. I can imagine.

4 MS. BARWICK: Your Honor, in -- and I apologize when
5 I'm reading, I'm trying to make sure I get all my points
6 out for you.

7 THE COURT: Sure, sure.

8 MS. BARWICK: And for the record, of course.

9 Ms. Cheney even stated how much the transcript would
10 have been beneficial in her testimony. Ms. Cheney, a
11 person who not only conducted the interview, who is a
12 professional intelligent woman, conducted the interview,
13 watched it, prepared for this trial, watched it in here
14 immediately before I cross-examined her, couldn't remember
15 what was said in that interview.

16 THE COURT: Okay.

17 MS. BARWICK: The jury is not going to be able to
18 remember what was said in that interview. And I can start
19 talking about it. But their faces are going to glaze over
20 probably worse than what Ms. Cheney's did. Because she
21 was frustrated because she couldn't follow what I was
22 questioning because she couldn't remember exactly what was
23 said.

24 And the fact that she couldn't remember exactly what
25 was said, that would take super human power to be able to

1 do that, no doubt about it. But the fact that she
2 couldn't do it after all -- watching it so many times for
3 her to turn around and say, well, yeah, I paraphrased what
4 the child said and then I asked her, did I get that right?
5 So X, Y, and Z and A, B, and C are true, did I get that
6 right?

7 Well, she can't accurately paraphrase what the kid
8 says if she doesn't know what the kid says. And she can't
9 remember it because it's impossible to do that. And --
10 and what that does is it creates a situation of suggesting
11 the answer to the child, which is the definition of a
12 leading question.

13 The jury needs to be able to read it. The jury needs
14 to be able to read that there was three minutes -- and I
15 went through all that yesterday to show why they need that
16 transcript. Because she goes for three minutes of doing
17 drawings and then comes back and says, So you were telling
18 me he touched you. Where did he touch you? Is it on
19 here? That was a huge leap. And those kind of details
20 can't be picked up by simply watching the video. She
21 couldn't even pick it up by watching the video and
22 watching it several times.

23 That's an impossible task to ask the jury. And if
24 they're going to convict my client or not convict my
25 client, they need tools to be able to help them understand

1 what was being said. And it's -- all we're doing is
2 giving them what was said. What is the harm and prejudice
3 of letting the jury see that?

4 This whole best evidence rule, why is the video
5 considered the best evidence? Why isn't a sealed
6 certified transcript considered the best evidence? And,
7 you know, we go back to 803 a lot of times -- or I'm
8 sorry, 403. By excluding the transcript, the Court is
9 doing just the opposite of Rule 403. Relevant evidence
10 can be excluded on prejudice, confusion, or waste of time.
11 This transcript is relevant. It helps prevent unfair
12 prejudice. It helps prevent confusion. And it helps
13 prevent waste of time.

14 We wasted a lot of time yesterday afternoon trying
15 to -- me to even be able to even cross-examine her as to
16 what was said because she -- she couldn't say it. I think
17 she probably said about four or five times, this would be
18 really helpful if I had a copy of the transcript. Can we
19 imagine what the jury is going to be feeling, especially
20 when 12 of them are going to try to go through 42 minutes
21 of vide and pause. Wait, Ms. Barwick said this. Let's
22 make sure that this was said, and have to go rewind.

23 And they can't take notes the whole time. And I
24 wouldn't want them to take notes. Because then they
25 wouldn't be able to watch. Now, they can watch and then

1 they can read.

2 THE COURT: Let me ask you this, even though what the
3 child said in the -- in the interview in the video is not
4 testimony, it's -- it's similar to testimony. It's not
5 testimony like on the witness stand, but it's similar. We
6 never provide a transcript of a witnesses testimony to the
7 jury.

8 They can, certainly, always come back and ask to have
9 it played. And they can listen to it. So -- and I'm
10 just -- I'm just -- a thought has just kind of been in my
11 mind. Would that almost be -- if we provided them -- and
12 I may very well provide the transcript of the video to
13 them.

14 But isn't that almost like providing a transcript of
15 a witnesses testimony to the jury? Isn't that -- I mean,
16 it's not exactly the same, but isn't it akin to that
17 almost?

18 MS. BARWICK: I don't think so, Judge. And I
19 don't -- and even if it were, I don't think there's a rule
20 saying you can't do that. Is there?

21 THE COURT: Well --

22 MS. BARWICK: And -- and I might just not know.

23 THE COURT: Yeah.

24 MS. BARWICK: I don't think there is a rule that says
25 you can't do that.

1 THE COURT: I've never --

2 MS. BARWICK: I looked it up. I couldn't find it.

3 THE COURT: Yeah. I've -- I've never done it. And
4 you may very well be right.

5 MS. BARWICK: And in that White case, that's exactly
6 what was done. And granted, not the whole thing's
7 inaudible. But there's a bunch of portions where she's
8 mumbling just like she did in her testimony yesterday.
9 There's a bunch of mumbling.

10 And then there's a bunch of rapid, rapid, rapid. And
11 you're -- you can't possibly -- the words coming out
12 before the next words and the next words. You can't
13 digest what's being said before she's on to something
14 else.

15 THE COURT: The White case doesn't tell us, does it,
16 exactly to what degree or to what extent the -- the video
17 was inaudible or of poor quality?

18 I don't -- when I looked at the case yesterday, I
19 don't recall it really explaining. It just -- it just
20 indicated in some fashion that the audio was poor quality,
21 or a lot of instances of being inaudible, but no really
22 details.

23 MS. BARWICK: And we have to keep that White case in
24 perspective here. That is when the State was trying to
25 introduce the interview itself, which the Defense had an

1 objection to. And then the Defense said, I object to the
2 transcript. It wasn't -- it wasn't the opposite way where
3 the State's objecting to the jury being able to read what
4 they introduced.

5 And backing it up a little bit, all that case says is
6 you can't replace the interview -- the video with the
7 transcript. It doesn't say you can't -- it says you can
8 give the transcript to the jury.

9 THE COURT: Okay.

10 MS. BARWICK: And it's not based on audible or -- it
11 doesn't say you can only give it to the jury if portions
12 are inaudible. It says if portions are inaudible, you can
13 give it to the jury.

14 The forensic interviewer admitted to paraphrasing,
15 shortening, and putting the child's words into the
16 interviewer's own words in order to confirm what the child
17 said. We need to be able to show is that what the child
18 said? And is her answer now being influenced by that
19 question of an improper paraphrase of what the child said
20 earlier?

21 The jury is not going to be able to figure out what
22 the child said earlier when you have the main, strong
23 component of that interview being a professional adult who
24 the jury is looking at as a professional adult saying, oh,
25 what was really said is this. So you forget what was,

1 actually, said. The transcript is going to aid in that
2 and prevent that harm from occurring.

3 The interview without the transcript is confusing,
4 hard to follow. There's not transitions. They're
5 bouncing around from all different kinds of concepts.
6 This will allow them, the jury, to go back and reflect,
7 okay, they were talking about this subject at the
8 beginning, and then at the third mark, and then at the
9 halfway mark, and they can go back and reference.

10 And the best evidence rule says, To prove -- to prove
11 the content of a writing, recording, or photograph, the
12 original writing, recording, or photograph is required,
13 except as, otherwise, provided in the rules or by the
14 statute. That video -- it doesn't say you can't put in
15 other evidence as well. That video is in evidence. The
16 original video is in evidence. That doesn't -- that rule
17 doesn't say you can't put the transcript in, too.

18 Without having that transcript in, it will -- my
19 closing argument will take days. Because I'll have to
20 reference every single --

21 THE COURT: Oh, I -- Ms. Barwick, I don't think
22 your --

23 MS. BARWICK: I understand.

24 THE COURT: -- closing argument will take days.

25 MS. BARWICK: And -- and, of course, I'm being

1 facetious there and exaggerating.

2 THE COURT: I know.

3 MS. BARWICK: But it -- it will take an inordinate
4 amount of time. And the jury will probably go to sleep
5 before I can point out all the inconsistencies and
6 problems with that video.

7 THE COURT: All right. Thank you.

8 Solicitor, do you want to respond?

9 MS. MCCALL: Yes, Your Honor. And I will try my best
10 to be brief and -- and address directly.

11 THE COURT: Okay.

12 MS. MCCALL: The best evidence is what we go by here.
13 There's a reason that there is case law and statutes that
14 address this forensic interview and what is required in
15 order to show it. We have shown that to the jury. We
16 haven't read the transcript in, fortunately.

17 I know Ms. Barwick mentions that she spent so much
18 time questioning a witness yesterday based off of the
19 transcript. Well, that evidence, also, wasn't admissible
20 in trial because it's not proper testimony to ask the
21 forensic interviewer. Those questions that she was asking
22 her aren't appropriate. So it's not necessary that we
23 have a transcript to go line by line and see what was
24 said.

25 It's important for the jury to be able to see the

1 context of what happened, the body language. They can see
2 for themselves that there was a break in time between what
3 Ms. Barwick referenced with her -- the child drawing and
4 then the forensic interviewer coming back to a statement
5 that was made later. They can see that by watching it.

6 And, in fact, I think that's a much better example of
7 what happened than them reading it and possibly -- I'm not
8 even sure how it's noted in the transcript, but maybe
9 saying, you know, three minutes passed and then this was
10 mentioned. So -- so it doesn't even properly, I think,
11 reflect what -- what the forensic interview showed.

12 I think you make a great point, also, that we don't
13 allow a witnesses testimony to be transcribed and that to
14 be entered into evidence. They -- certainly, the jury can
15 come back out and have that testimony read back to them,
16 just as they can have the forensic interview replayed to
17 them.

18 But they've been shown this certain piece of
19 evidence, which is the reporting. And it's very important
20 that if they have questions based on their viewing of that
21 that they then come back out and see the actual evidence
22 that was presented in trial, as opposed to some other
23 recitation.

24 There are so many details that can't be picked up by
25 simply reading a transcript that are most important that

1 they see this evidence. And I think Ms. Barwick made a
2 point about the child mumbling in part of the transcript.
3 Well, that is -- that's accurate. But if the jury can't
4 determine by watching the video what the child was saying,
5 how can someone transcribing that recording be able to
6 determine what was said in -- in the recording?

7 THE COURT: Right.

8 Now, I think -- and I've not read the transcript.
9 I've just looked at the court reporter's certification.
10 But I think Ms. Barwick indicated yesterday that there are
11 parts in the transcript that inaudible is indicated.

12 Is that correct?

13 MS. BARWICK: That is correct, Your Honor.

14 THE COURT: Okay.

15 MS. MCCALL: And -- and that -- like I said, that
16 very well may be true. I'm not saying they're not. But
17 she, also, made a point that Ms. Cheney yesterday when she
18 was saying, I don't have the transcript in front of me. I
19 don't remember. That is accurate.

20 But there was a -- and I don't remember the
21 particular words that were used. But there was a time
22 when they were discussing something that the child said
23 about a dream, and how she told her mom. And it was a
24 dream. And even Ms. Barwick and Ms. Cheney had some
25 discussion about what the child meant, or what was said.

1 And I think they both can interpret that differently. And
2 how does a transcript properly show what the child
3 indicated and meant when two very -- very educated and
4 smart minds can, also, differ on that indication -- or on
5 that statement?

6 So I think the transcript wouldn't properly indicate
7 the other factors and how a jury would interpret that
8 statement that was made by the child.

9 MS. BARWICK: And that's what's so good about the
10 transcript is they don't have to interpret what the child
11 was saying, just like the interviewer is on video
12 interpreting what the child is saying. They get to read
13 what the child, actually, said, instead of having to
14 listen to what the interviewer thought the child said.

15 MS. MCCALL: But, Your Honor, that is the actual
16 point of a jury is to determine the facts of the case and
17 determine what a child said. It's not for someone who is
18 sitting in a room watching this video by themselves and
19 typing what they think they hear. It's for the jury to
20 watch this child and see how her body language is, how she
21 reacts to a question, and then make the determination as
22 to what she means and what is being said there.

23 MS. BARWICK: Judge, to say it's -- it shouldn't be
24 left up to somebody to type what they think the child
25 said -- this is a transcript. It's funny that we're

1 saying a transcript isn't accurate when this whole
2 proceeding's being transcribed.

3 MS. MCCALL: And to point out, Your Honor, that our
4 court reporter is working on behalf of the State. This
5 transcript is prepared at the Defense's production.

6 So I'm not accusing anyone of doing anything
7 improperly at all. But there is a difference to be made
8 with a transcript that is made outside of the presence of
9 Your Honor, and outside of the court system, and -- and
10 done as a defense exhibit, Your Honor.

11 MS. BARWICK: Transcripts done by non-state court
12 reporters are all the time admitted into evidence for
13 impeachment testimony at civil trials, Family Court
14 trials, any kind of trials. It doesn't have to be a state
15 employee.

16 THE COURT: Right. I mean, certainly, de bene esse
17 depositions are -- are in evidence all the time. I would
18 recognize that.

19 Okay. Well, I'll --

20 MS. BARWICK: And, Judge --

21 THE COURT: That's all right.

22 MS. BARWICK: This is what -- this is impeachment
23 evidence. This is impeaching what that forensic
24 interviewer's on the interviewing [sic] saying the child
25 did.

1 THE COURT: Okay.

2 MS. MCCALL: And just one final point, Your Honor.

3 And I promise I will sit down and let you go to lunch.

4 I think it's important to just, also, remember that
5 we are not impeaching the -- the forensic interviewer.

6 This is a tool that is used for the jury to see just as
7 we -- we so properly noted yesterday. It's not
8 appropriate to question the technique of the forensic
9 interviewer in these proceedings.

10 So anything that would be used to even question
11 that -- that process is inappropriate. And -- and so that
12 the recording would be most appropriate.

13 THE COURT: Okay.

14 MS. MCCALL: Thank you, Your Honor.

15 THE COURT: All right. Thank you very much.

16 MS. BARWICK: Enjoy your lunch.

17 THE COURT: We're going -- I'm going to -- I'm going
18 to keep it under advisement and keep y'all on the edge of
19 your seats. And I'll -- I'll let you know something as
20 soon as I can.

21 And we'll -- we'll break for lunch, and start back at
22 2:30.

23 Solicitor, can you just kind of give me a game plan
24 for this afternoon as far as witnesses?

25 MS. MCCALL: Certainly. I've taken some out of order

1 because some have to come today.

2 THE COURT: Okay.

3 MS. MCCALL: We do have a doctor that we have to get
4 in today as our medical expert.

5 THE COURT: Okay.

6 MS. MCCALL: I have instructed her to be here at 4:00
7 p.m. in order to -- to, hopefully, get through -- I'm
8 hoping four witnesses this afternoon before her.
9 Hopefully, they'll be short, especially with the exclusion
10 of the evidence you ruled on. So possibly five witnesses.

11 THE COURT: Okay. Sounds good.

12 Y'all have a good lunch. I appreciate your hard
13 work.

14 And we'll see you at 2:30.

15 (WHEREUPON, Court's Exhibit Nos. 2 and 3 were marked
16 for identification and admitted into evidence.)

17 (WHEREUPON, a lunch break was taken.)

18 THE COURT: Are we -- are we ready to get started?

19 MS. MCCALL: Your Honor, we are. Our witness is,
20 actually, walking up the stairs now -- or the elevator.
21 So he should walk in any moment. And then we're ready.

22 THE COURT: Okay. We'll wait for him to get in the
23 courtroom and then we'll bring the jury in.

24 MS. MCCALL: Thank you, Judge.

25 MS. BARWICK: Judge, a few things, if we're -- have

1 time.

2 THE COURT: Sure.

3 MS. BARWICK: And these are easy ones, Judge.

4 THE COURT: Excuse me?

5 MS. BARWICK: These are -- these are easy ones.

6 These won't take a whole lot of time.

7 THE COURT: Okay. Let me make a -- a red letter note
8 of that.

9 MS. BARWICK: Yes, sir. Before Ms. McCall goes into
10 any -- if we could shut that -- is the jury out there?

11 THE COURT: No, no. They're in their room. They
12 can't hear.

13 MS. BARWICK: If -- before Ms. McCall goes into any
14 evidence of flight, I'd like to have an in-camera hearing
15 on that.

16 THE COURT: Okay.

17 MS. BARWICK: And then, too, the mom and the dad both
18 reference my client dating a 17 and 18-year-old in their
19 recorded statements to the officer. Mom said he dated 17
20 and 18 -- young girls 17 and 18 in the past. And then dad
21 says, yeah, my child's mother reported to me that he used
22 to date younger chicks. I would ask that that be kept out
23 of evidence.

24 THE COURT: Okay.

25 MS. MCCALL: Your Honor, we don't have any intention

1 of admitting or questioning either witness on that
2 information.

3 As far as flight goes, the one witness that would be
4 testifying to that, we intend to call tomorrow -- well,
5 let me confer with my co-counsel.

6 (Pause.)

7 MS. MCCALL: Would be -- that witness would be
8 appearing tomorrow. So if you want to have that in-camera
9 hearing, that would be tomorrow.

10 THE COURT: Yeah. We can talk about that. Just
11 remind me and give me whatever you want to give me on the
12 issue of flight. Typically, it's not brought out. But
13 there are some exceptions to -- to the rule. Typically,
14 it's not. But, you know, we can, certainly, take a look
15 at it.

16 Okay. And your witness just came in?

17 MS. MCCALL: Yes, Your Honor.

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

20 (WHEREUPON, the jury came into open court at
21 approximately 2:41 p.m.)

22 THE COURT: Let the record reflect the jury is back
23 in.

24 Good afternoon, ladies and gentlemen.

25 I hope you had a good long break today. And we are

1 ready to get -- get to work this afternoon.

2 Solicitor, you want to call your next witness?

3 MR. TODD: The State would call Brandon Gantt.

4 THE CLERK: If you would, place your left hand on the
5 Bible and raise your right.

6 WHEREUPON,

7 BRANDON GANTT,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you, sir.

10 If you would, have a seat.

11 And state your name for the record, please.

12 THE WITNESS: My name is Brandon Gantt.

13 DIRECT EXAMINATION

14 BY MR. TODD:

15 Q How are you today, Brandon?

16 A I'm fine.

17 Q Brandon, where do you currently work?

18 A Martin Printing. And I do a side job for Lingerfelt
19 [inaudible], too.

20 Q Okay. Are you married currently?

21 A No.

22 Q Do you have any children?

23 A Two.

24 Q What are their names?

25 A [REDACTED] and [REDACTED] [REDACTED]

1 Q How old are they?

2 A Five and seven.

3 Q Who's -- which one's five, and which one's seven?

4 A [REDACTED] seven, and [REDACTED]'s five.

5 Q Okay. How would you describe [REDACTED]?

6 A A normal seven-year-old.

7 Q What grade is she in?

8 A She just started second today.

9 Q Okay. Who is [REDACTED] and [REDACTED]'s mother?

10 A Brittany Hudson.

11 Q Are the two of you together today?

12 A No.

13 Q How long were y'all together?

14 A About eight, nine years.

15 Q Eight or nine years?

16 A Uh-huh.

17 Q Where were you living in March of 2017?

18 A In Easley on Lucky Street.

19 Q Okay. Were you living with Brittany Hudson then?

20 A No.

21 Q Would [REDACTED] and [REDACTED] come stay with you at that
22 address?

23 A Yes.

24 Q How would you describe your coparenting with
25 Brittany?

1 A We coparent well. We work around each others
2 schedules and, basically, didn't really need too much help
3 from anybody else. Sometimes, we did, but not a lot.

4 Q Okay. Now, when [REDACTED] would come stay with you at --
5 was it Lucky -- what was the --

6 A Lucky Street.

7 Q Lucky Street. Do you recall a time on March 20th
8 where [REDACTED] disclosed sexual abuse?

9 A Yeah. Me and Sarah were outside.

10 Q Okay.

11 A And she just came outside --

12 Q Let me --

13 MS. BARWICK: Judge, I'm going to object.

14 THE COURT: Okay. And the nature of your
15 objection -- do you want to just come up?

16 MS. BARWICK: Yes, sir.

17 (WHEREUPON, a bench conference was held.)

18 THE COURT: Okay. You maybe want to rephrase that
19 question a little bit.

20 MR. TODD: Okay.

21 BY MR. TODD:

22 Q I believe what I was saying earlier was, do you
23 recall a time when [REDACTED] disclosed sexual abuse to you?

24 A Yes.

25 Q Where did she say it happened?

1 A At her mother's house.

2 Q Okay. What was her demeanor like?

3 A She was sad. She was crying, shaky, nervous.

4 Q What did you do when she disclosed this to you?
5 Where'd you go?

6 A I called my older sister first.

7 Q Okay. After you spoke with her, where'd you go next?

8 A To the hospital.

9 Q To the hospital.
10 What hospital did you take her to?

11 A Easley Baptist.

12 Q Okay. Do you remember who you spoke with when you
13 got to the hospital?

14 A The receptionist up front.

15 Q Okay. Do you remember who went with you to the
16 hospital?

17 A It was me, [REDACTED], [REDACTED], and Sarah.

18 Q Okay. Brandon, let's just go ahead and get this out.
19 In 2009, did you plead guilty to filing a false police
20 report?

21 A Yes.

22 Q Have you had any therapy at all after this?

23 A No.

24 MR. TODD: One moment, Your Honor.

25 THE COURT: Sure.

1 (Pause.)

2 MR. TODD: Your Honor, I have no further questions
3 for this witness.

4 THE COURT: All right. Any cross-examination,
5 Ms. Barwick?

6 MS. BARWICK: I do, Your Honor.

7 Thank you.

8 CROSS-EXAMINATION

9 BY MS. BARWICK:

10 Q Mr. Gantt, in fact, your daughter, [REDACTED], said
11 that it happened on the couch downstairs at her mother's
12 home; isn't that right?

13 A Yes.

14 Q Okay. And do your daughters, either one of them,
15 have access to tablets, like, electronic devices? You
16 know what I'm talking about. iPads?

17 A Yes.

18 Q They do?

19 A Yes.

20 Q And do they have access to TV's?

21 A Yes.

22 Q And do they have access to computers?

23 A No.

24 Q Okay. What about cell phones?

25 A Cell phones -- like, old cell phones, ones without

1 service that you can put WiFi to.

2 Q Okay. So -- like, my daughter watches them on
3 YouTube?

4 A Yes.

5 Q I'm assuming your daughters do the same thing.

6 A Yes.

7 Q Okay. So they have access to the Internet to watch
8 some videos?

9 A Uh-huh.

10 Q Is that a "yes"? I'm sorry.

11 A Yes.

12 Q Who was living with you back in March of 2017?

13 A Sarah Harris.

14 Q That was your girlfriend at the time?

15 A Yes.

16 Q Y'all are no longer together?

17 A No.

18 Q And I -- did I catch you right, you said that you
19 were with the children's mother for eight to nine years?

20 A Yes, somewhere around that time.

21 Q Okay. And I believe, at one point, somebody had said
22 that common law; is that right? Were y'all common law?

23 A I don't really know the common law rules, so I can't
24 say "yes" or "no."

25 Q Okay. Fair enough.

1 And you said you were off and on for eight or nine
2 years with Brittany Hudson, your children's mother; right?

3 A Yes.

4 Q And when was that eight to nine-year period?

5 A I can't remember the exact dates.

6 Q Okay. And -- and, in fact, y'all were on and off
7 when Brittany Hudson was on and off with my client; right?

8 A No.

9 Q There was no overlap?

10 A No.

11 Q But she was on and off with my client for two years;
12 right?

13 A According to her, yes.

14 Q Okay. And then during the off periods, were you in?

15 A I was doing no more than I normally do, just taking
16 care of the children.

17 Q Okay.

18 A As far as us being in a relationship, no. Being
19 together, no. Just coparenting, yes.

20 Q All right. I understand.

21 What time of the day did this disclosure come out?

22 A What do you mean by "disclosure"? When [REDACTED] --

23 Q When she -- she told you what happened to her.

24 A If I recall right, it was around, like, 5:00, maybe
25 6:00 in the evening.

1 Q Okay. The same day you went to the hospital on March
2 20th?

3 A Yes, ma'am.

4 Q Okay. And -- and you were, what, cooking dinner?

5 A I don't recall exactly what I was doing at the
6 moment. I just know we were at home.

7 Q Okay. And isn't it right that, at first, you thought
8 it was just a matter of not wiping correctly?

9 A No. I never said that.

10 Q You didn't tell Officer Elrod you said that?

11 A I don't recall saying that.

12 Q Would it be impossible that you told Officer Elrod
13 that you thought that it was just from not wiping --

14 A I don't recall saying that.

15 Q Okay. If she testifies that you said that, would
16 that -- never mind. Strike that.

17 And -- and Brittany Hudson, the mother, she thought
18 the same thing, that it was from not wiping correctly;
19 right?

20 A I don't recall that ever being said.

21 Q Okay. Do you recall Sarah Harris -- you were present
22 when your girlfriend, Sarah, was speaking with Officer
23 Elrod; right?

24 A I wasn't in the room when she was talking to them. I
25 was outside on the phone trying to get in contact with

1 Brittany.

2 Q You and your girlfriend -- your ex-girlfriend, Sarah
3 Harris, weren't in the same room talking to Officer Elrod
4 together?

5 A Ma'am, when she talked to her herself, I was outside
6 the room trying to get in contact with her mother.

7 Q Okay. And did Sarah indicate to you that she thought
8 it was from not wiping well?

9 A No.

10 MR. TODD: Objection. That'd be hearsay.

11 THE COURT: It's been asked and answered.

12 BY MS. BARWICK:

13 Q Had your daughter, [REDACTED], been having problems
14 wiping?

15 A Not that I recall, no.

16 Q Okay. So let's talk about after she made her
17 disclosure. You had her talk to your mother?

18 A My sister.

19 Q Not your mother?

20 A My sister.

21 Q Okay. One sister or two sisters?

22 A One sister.

23 Q Just one sister?

24 A Yes.

25 Q Would you have told Officer Elrod differently?

1 A If I said anything different, I don't recall. I
2 remember calling my oldest sister and [REDACTED] talking to her,
3 then us going to the hospital.

4 Q On the phone?

5 A Uh-huh.

6 Q So --

7 THE COURT: You need to verbally say -- don't
8 "uh-huh." It's either "yes" or "no," so the court
9 reporter can pick it up.

10 BY MS. BARWICK:

11 Q So [REDACTED] spoke with your sister on the phone as
12 you were on your way to the hospital?

13 A Yes.

14 Q And did she talk to Brittany on the phone on the way
15 to the hospital as well?

16 A She talked to Brittany when we got to the hospital.

17 Q Okay. And you were talking to Brittany on the way to
18 the hospital; is that correct?

19 A No. I was talking to Brittany -- when Sarah was
20 talking to the officer in the hospital in the room --
21 where the waiting room was at, I was talking to Brittany
22 outside the waiting room in the hospital, not on the way.

23 Q Okay. And then there was a child advocate at the
24 hospital that spoke with [REDACTED] named Jennifer; is that
25 correct?

1 A I believe that's her name, yes.

2 Q And then there was a nurse as well that spoke with
3 [REDACTED]; right?

4 A Yes.

5 Q And they spoke with her about the disclosure?

6 A Yes.

7 Q Okay. And that was before [REDACTED] spoke with
8 Officer Elrod?

9 A I don't recall if it was before or after.

10 Q All right. And then [REDACTED] spoke with Officer
11 Elrod, at some point, about the disclosure; is that
12 correct?

13 A At some point she did, yes.

14 Q And then she, also, spoke with -- I think it's
15 Zack -- I can't remember his last name -- with DSS?

16 A Yes.

17 Q Okay. Did Officer Elrod ever ask you who Ashley was?

18 A I don't remember him [sic] asking me about an Ashley.

19 Q Okay. So the first mom knew about any of this was
20 when you told her what [REDACTED] told you?

21 A I don't understand what you're asking me.

22 Q That -- the first time mom found out about these --
23 mom being Brittany Hudson. The first time Brittany Hudson
24 found out about these allegations was when you told her?

25 A Yes, when I was at the hospital.

1 Q Okay. And -- and your daughter has a hard time with
2 time frames; isn't that correct?

3 A I wouldn't say so.

4 Q You didn't tell Officer Elrod that sometimes we've
5 done something yesterday and she told me that we did it
6 three weeks ago?

7 A If I said that, I don't recall that.

8 Q Okay. But it's possible that you said that?

9 A If I said that, I don't recall that.

10 Q Okay. And how many times did you meet with the
11 solicitor's office regarding this case?

12 A I think three times.

13 Q How many times did you speak with them on the phone?

14 A Three or four times.

15 Q And what about [REDACTED], how long -- how many times
16 did she speak with the solicitor's office?

17 A The same amount of times I did.

18 Q About three times?

19 A Most of the times when they talked to me, they talked
20 to both of us.

21 Q Okay. Did you get a chance to watch that video from
22 yesterday before yesterday?

23 A No.

24 Q Okay. But [REDACTED] did?

25 A I don't know if she did or not.

1 Q Were you here for [REDACTED]'s testimony yesterday?

2 A Yes.

3 Q Okay. Have you been able to have the opportunity to
4 review any of your written statements before today?

5 A No.

6 Q Okay. What about Officer Elrod's incident report or
7 supplemental reports?

8 A I'm sure I got copies of those right when everything
9 happened, or whatnot.

10 Q But you haven't reviewed it?

11 A Huh-uh.

12 Q Okay. Did you send any e-mails to Officer Elrod?

13 A Not that I recall.

14 Q Okay. And you went to the forensic interview?

15 A Yes.

16 Q And Brittany Hudson went to the forensic interview as
17 well?

18 A Yes.

19 Q And both of y'all went to the medical examination?

20 A Yes.

21 Q Okay. And at the hospital on March 20th, when that
22 disclosure was made, did you deny consent for a SANE kit
23 to be completed, or a rape kit?

24 A No, not that I recall.

25 Q You don't recall not -- refusing for it to be done --

1 A No. I don't remember refusing anything.

2 Q You don't remember telling that to Officer Elrod?

3 A I don't recall that, no.

4 Q Okay. And let's talk a little bit about that false
5 information to law enforcement conviction that you had.
6 That was the result of a pretty severe assault and battery
7 with intent to kill charge on a Danny --

8 MR. TODD: Your Honor, I would object to this.

9 THE COURT: Okay. Basically, when you get into a
10 witnesses prior record, you just get into the -- the
11 charge -- the basis for the conviction, and the time when
12 it took place, and not into any of the details of the --
13 of the case.

14 MS. BARWICK: Okay. I'll ask one more question.
15 And -- and I think it's within your ruling, Your Honor.

16 THE COURT: Okay. Well, ask it.

17 Don't answer the question until the question is
18 asked.

19 And then Solicitor Todd can have an opportunity to
20 object again.

21 Ask it.

22 But don't answer it.

23 BY MS. BARWICK:

24 Q It was a pretty big fabrication you made, wasn't it?

25 MR. TODD: Your Honor, I think he's -- we've --

1 THE COURT: Sustained, sustained.

2 MS. BARWICK: Okay. No further questions.

3 THE COURT: Thank you.

4 Solicitor, any redirect?

5 REDIRECT EXAMINATION

6 BY MR. TODD:

7 Q Brandon, when -- would [REDACTED] have had access to a
8 phone when she was five?

9 A Not a working phone, like, an old -- maybe an old
10 phone, you know, that don't charge or anything, but not a
11 working phone, no.

12 Q And just to kind of clarify, did you tell Brittany to
13 go to the hospital -- to meet you at the hospital?

14 A Yes.

15 MR. TODD: I have nothing further, Your Honor.

16 THE COURT: Okay. You can step down, sir.

17 Thank you.

18 Next witness.

19 MS. MCCALL: The State calls Brittany Hudson to the
20 stand.

21 THE CLERK: If you would, place your left hand on the
22 Bible and raise your right.

23 WHEREUPON,

24 BRITTANY HUDSON,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you, ma'am.
2 If you would, have a seat.
3 And state your name for the record, please.

4 THE WITNESS: Brittany Hudson.

5 DIRECT EXAMINATION

6 BY MS. MCCALL:

7 Q Ms. Hudson, do you work anywhere?
8 A Yes, I do.
9 Q Where do you work?
10 A At Jack in the Box.
11 Q Okay. And where do you live currently?
12 A In Pickens at Northway Apartments.
13 Q And is that in the city of Pickens or the county?
14 A City.
15 Q And in March of 2017, where did you live?
16 A The same place.
17 Q All right. Who is [REDACTED] [REDACTED] to you?
18 A She's my daughter.
19 Q And how old is she?
20 A She's seven.
21 Q Do you have any other children?
22 A One, [REDACTED] [REDACTED] And she's five.
23 Q And who's the father of those two girls?
24 A Brandon Gantt.
25 Q How would you say that your parenting relationship is

1 with Mr. Gantt?

2 A We coparent very good. We go around each others
3 schedule. And it seems good.

4 Q Okay. Do you have a standing custody order, or do
5 you just get custody of the girls at -- what -- what
6 determines that, when you have custody or when you have --
7 have the girls?

8 A I usually get them whenever he has to work and vice
9 versa, or we take turns taking them to school. And it's
10 just whoever can at the time.

11 Q Tell me a little bit about [REDACTED]'s personality.

12 A She's very bubbly. She loves to sing, and dance, and
13 draw. She's a fun-loving seven-year-old.

14 Q Did you see [REDACTED] testify yesterday?

15 A Yes.

16 Q Is that --

17 MS. BARWICK: Judge, I'm going to object.

18 THE COURT: Well, I'm not sure exactly where the
19 Solicitor's leading with this.

20 Ask your next question and see --

21 And don't answer until I tell you to.

22 Ask your next question and see if -- if maybe she --
23 Ms. Barwick is thinking where you may be going.

24 BY MS. MCCALL:

25 Q Is -- is [REDACTED]'s personality consistent with how

1 you saw her yesterday in the courtroom --

2 MS. BARWICK: Judge, I'm going to object. I'd like
3 to approach, if possible.

4 THE COURT: Okay. Come on up.

5 (WHEREUPON, a bench conference was held.)

6 THE COURT: Objection overruled.

7 MS. MCCALL: Thank you, Judge.

8 BY MS. MCCALL:

9 Q Ms. Hudson, as I was stating, as you viewed [REDACTED]
10 yesterday in the courtroom, is that consistent with her
11 normal personality?

12 A Not at all.

13 Q Okay. In March of 2017, you said that you lived in
14 the same place that you live now; is that correct?

15 A That's correct.

16 Q And who lived there with you between February 20th
17 and March 20th of 2017?

18 A [REDACTED] and [REDACTED] myself, and Brandon Clark.

19 Q Okay. And do you see Brandon Clark in the courtroom
20 today?

21 A Yes.

22 Q Okay. Is he sitting at Defense table?

23 A Yes.

24 Q How do you know Brandon Clark?

25 A I met him at my best friend's husband's birthday

1 party.

2 Q Do you recall when that was?

3 A It's been two years, or longer.

4 Q What was your relationship like after you met him?

5 A We had talked for a week or two. And we started
6 hanging out. And we became boyfriend and girlfriend.

7 Q At some point, did he move in with you?

8 A Yes.

9 Q Do you recall when that was?

10 A I do not.

11 Q Do you recall how long he lived with you?

12 A Off and on for about a year and a half, two years.

13 Q I believe you stated that he lived with you between
14 February 20th and March 20th of 2017?

15 A Yes, ma'am.

16 Q How old was [REDACTED] during that time?

17 A She was five.

18 Q When the Defendant worked with you -- lived with you,
19 did he work anywhere?

20 A He stayed in between jobs a lot.

21 Q When the Defendant lived in your house, what was your
22 relationship like then?

23 A It was a good relationship. I mean, we -- we got
24 along for the most part. We hardly ever argued. It was
25 nice.

1 Q Did [REDACTED] ever witness any arguments between you
2 and the Defendant?

3 A She witnessed one one time. But it was us just
4 arguing. And he threw a water bottle at me. And that was
5 as far as it went. Like, I went one way, he went the
6 other.

7 Q Tell me a little bit about the house that you lived
8 in -- or that you still live in and how it's laid out.

9 A I live in an apartment. It's a two-story apartment
10 townhouse. The bedrooms and the bathroom is upstairs.
11 And it's a three bedroom. And then downstairs is my
12 living room, my kitchen, and a half bathroom.

13 Q In 2017, what were the sleeping arrangements like in
14 your house?

15 A The girls slept in a room together usually. And me
16 and him slept in a room.

17 Q And at that time, how old was your younger -- your
18 youngest daughter?

19 A She was three.

20 Q If the Defendant left your room when you were
21 sleeping, would you have always woken up?

22 A No. I was a hard sleeper.

23 Q And tell me a little bit about the living room, how
24 it was set up, and what -- what type of furniture you had
25 there.

1 A I had a wrap around couch, a sectional couch and an
2 entertainment center.

3 Q During this time, did the girls have a television in
4 their room?

5 A We moved it back and forth. I had one television.
6 Because the other one, I threw it out. It quit working.

7 Q Okay. So you said you moved it back and forth. What
8 does that mean?

9 A That means sometimes when they was watching a DVD or
10 something, I would move it in there. But when they went
11 to sleep, I would bring it back into my room if we were
12 going to watch a movie.

13 Q Okay. Have you ever watched a movie with [REDACTED]
14 where the people in the movie didn't have any clothes on?

15 A No, ma'am.

16 Q Okay. To your knowledge, has [REDACTED] ever seen a
17 pornographic movie?

18 A No, ma'am.

19 Q Has your daughter, [REDACTED], ever disclosed sexual
20 abuse to you?

21 A She did when her father called me. And she talked to
22 me on the phone about the situation.

23 Q Okay. And I'm going to stop you. I just don't want
24 you to say anything more than what I ask.

25 A Okay.

1 Q Did she disclose to you where the sexual abuse
2 occurred at?

3 A Yes.

4 Q And where did she say it occurred?

5 A She said it happened in my living room on the couch.

6 Q Did she disclose to you how old she was when it
7 happened?

8 A No.

9 Q Okay. When you found out about the sexual abuse, how
10 did you respond?

11 A I left where I was at and went straight to the
12 hospital to be with her.

13 Q And did you stay at the hospital with her during that
14 time?

15 A The whole time.

16 Q At the end of that visit, did [REDACTED] and [REDACTED] go
17 home with you, or did they go home with someone else?

18 A They went home with their father that night.

19 Q When was the last time you saw the Defendant?

20 A The same day that we took her to the hospital.

21 Q Did he immediately move out of your home that day?

22 A Yes, ma'am.

23 Q Has [REDACTED] ever complained to you about her bottom
24 hurting?

25 A No, ma'am.

1 Q Okay. Did you ever have any problems with [REDACTED]
2 not wiping well after she used the restroom?

3 A There was a few incidents. But she kind of got the
4 hang of it.

5 Q Do you recall how old she was when that happened?

6 A She was about three or four when she first started
7 learning.

8 Q And when [REDACTED] was five years old, what did she
9 call her private areas?

10 A Her butt.

11 Q Did she call both the front private and the back
12 private area her butt?

13 A Yes, ma'am.

14 MS. MCCALL: Your Honor, I have no further questions
15 for this witness.

16 THE COURT: Okay. Cross-examination.

17 CROSS-EXAMINATION

18 BY MS. BARWICK:

19 Q Ms. Hudson, if law enforcement -- say, Officer Elrod,
20 she was the officer in this case; right?

21 A Right.

22 Q If Officer Elrod said, Ms. Hudson, I want to come out
23 to your house and look at your living room, would you have
24 let her?

25 A Yes, ma'am.

1 Q Okay. You wouldn't have stopped her from doing that?

2 A No.

3 Q But she never did that?

4 A No.

5 Q Okay. And back when your kids were five -- or when

6 [REDACTED] was five on March 17th of -- I'm sorry,

7 March 20th of 2017, she had access to TVs?

8 A She had access to DVD's. I don't have Internet at my
9 house.

10 Q Okay.

11 A So if she was to play with the phone, it was just one
12 that didn't work, or we watched a movie together, like, a
13 kids movie. But she didn't have access at that time.

14 Q Okay. You and her father have been together on and
15 off for eight to nine years?

16 A (There was no verbal response.)

17 Q During -- is that --

18 THE COURT: You need to verbally respond, ma'am.

19 THE WITNESS: Yes, ma'am.

20 BY MS. BARWICK:

21 Q She's just trying to take it down.

22 So during that time, did -- whenever -- and you said
23 you were on and off with my client for two years; is that
24 correct?

25 A That's correct.

1 Q And when you were on and off with my client for two
2 years, when you were off, was he out of the house?

3 A He left for about two weeks and then he had came
4 back.

5 Q Okay. And that on and off time, you never got back
6 with your children's father?

7 A No.

8 Q And since this disclosure, you never got back with
9 your children's father?

10 A No.

11 Q Okay. Since [REDACTED] was born, I want you to walk me
12 through all the difference places that you lived. I know
13 that seems like a large task. But when she was born,
14 where were you living?

15 A When she was born, me and her father was living in an
16 apartment in Easley. I don't remember the name of it.
17 And she was about a year, year and a half when I left.
18 And I went to live with my cousin. And then I lived
19 there --

20 Q Where was that?

21 A It was in between Pickens and Easley off Robert P
22 Jeanes Road.

23 Q Okay. Do you know if it was in the county or in the
24 city of Pickens?

25 A I'm thinking the county.

1 Q Okay.

2 A And then from there, I got my own place. I stayed
3 with her for two years. Then I got my own place. And
4 I've been living there for about six years now.

5 Q And that "own place" is where again?

6 A Northway Apartments in Pickens.

7 Q Okay. So when you were speaking with [REDACTED] on the
8 phone about the disclosure before you got to the hospital,
9 who else -- did you hear anybody in the background when
10 you were speaking with her?

11 A No.

12 Q Okay. And [REDACTED] spoke with somebody named
13 Jennifer at the hospital, who was a child's advocate; is
14 that correct?

15 A I remember her speaking to someone, but I can't
16 recall the name, but yes.

17 Q And do you recall explaining to Officer Elrod that
18 this Jennifer woman was trying to help [REDACTED] remember
19 when the assault occurred?

20 A I don't recall.

21 Q You don't recall that?

22 A Huh-uh.

23 Q When you got to the hospital, had the nurse already
24 spoken with [REDACTED]?

25 A I don't recall.

1 Q Okay. Do you remember the lady at the hospital being
2 the victim's -- or I'm sorry, the child's advocate say --
3 help [REDACTED] try to remember by naming what she had for
4 dinner the night of the assault?

5 A I don't recall.

6 Q So were you there when Officer Elrod was speaking
7 with Brandon Gantt and Sarah Harris about the disclosure?

8 A When I got there, they wanted to speak with me. So I
9 think that they had already spoke with them.

10 Q Okay. And then did Officer Elrod speak with Brandon
11 and Sarah Harris again?

12 A I do not recall.

13 Q And do you remember Officer Elrod asking you about a
14 woman named Ashley?

15 A I don't recall.

16 Q You don't recall her saying that this woman named
17 Ashley was in her notes?

18 A No, ma'am.

19 Q Okay. How many times did you meet with the
20 solicitor's office?

21 A Two or three times.

22 Q How many times did you speak with them on the phone?

23 A Three or four.

24 Q Each time you came to meet with the solicitor's
25 office, was [REDACTED] with you?

1 A Not every -- well, yes. [REDACTED] was with me every
2 time.

3 Q Okay. And you and Brandon Gantt weren't together, so
4 y'all came separately?

5 A Yes.

6 Q And how many times did you say you and [REDACTED] met
7 with the solicitor's office?

8 A We met three or four times.

9 Q So that was in addition to the times that Mr. Gantt
10 and [REDACTED] met with the solicitor's office?

11 A Yeah. They met separate than us.

12 Q Okay. Did you send any e-mails to Officer Elrod?

13 A No.

14 Q Did you review her incident report?

15 A No.

16 Q Did you review your written statement?

17 A No.

18 Q You went to the forensic interview?

19 A Yes.

20 Q And you went to the medical exam?

21 A Yes.

22 Q And do you remember denying to the medical examiner
23 that there was any sort of domestic violence in your
24 house?

25 A I don't recall.

1 Q You don't recall denying that to the medical
2 examiner?

3 A No, ma'am.

4 Q Okay. I'm going to ask you about some of the
5 things -- you were here yesterday during the testimony?

6 A Yes, ma'am.

7 Q And you watched the forensic interview?

8 A Yes, ma'am.

9 Q Did [REDACTED] tell you -- before you found -- so the
10 first time you heard about these allegations was
11 March 20th of 2017, when you immediately went to the
12 hospital; right?

13 A Yes, ma'am.

14 Q And [REDACTED] hadn't disclosed that to you prior to
15 that date?

16 A No, ma'am.

17 Q Did you laugh at her when she told you about it?

18 A No, ma'am.

19 Q Did you tell her that -- did you act angry when she
20 told you about it?

21 A No, ma'am.

22 Q Did you have any other reaction, except for that of a
23 supportive mother?

24 A No, ma'am.

25 Q And you did what you needed to do as soon as you

1 found out about it?

2 A Yes, ma'am.

3 Q And you got the alleged perpetrator out of the home?

4 A Yes, ma'am.

5 Q Okay. Did my client ever bust your head open?

6 A No, ma'am.

7 Q Did he ever cause you to have blood running down from
8 your face to your chest?

9 A No, ma'am.

10 Q Did he ever scratch your daughter in the face causing
11 her to have blood running down from her face to her chest?

12 A Not that I recall.

13 Q With that much blood, you would know; is that
14 correct?

15 A Correct.

16 Q Did [REDACTED] ever drive you to the hospital?

17 A No, ma'am.

18 Q Has she ever driven a car?

19 A No, ma'am.

20 Q Did she ever -- did Mr. Clark ever break any of the
21 TV's in your house, bust any of the TV's?

22 A Not that I know of.

23 Q And you would know if your TV was busted, wouldn't
24 you?

25 A Yes, ma'am.

1 Q Does Mr. Clark, my client, have cameras in his eyes
2 that you are aware of?

3 A No, ma'am.

4 Q And you've never allowed your daughter to watch
5 videos with naked people in them, have you?

6 A No, ma'am.

7 Q But your daughter accused you of those things, didn't
8 she?

9 A Yes, ma'am.

10 Q And you're saying they didn't happen?

11 A No, ma'am.

12 MS. BARWICK: No further questions.

13 THE COURT: Anything on redirect?

14 MS. MCCALL: Nothing, Your Honor.

15 THE COURT: You can step down, ma'am.

16 Thank you.

17 Next witness.

18 MR. TODD: The State would call Elaine McGowans.

19 THE CLERK: Ma'am, if you would, place your left hand
20 on the Bible and raise your right.

21 WHEREUPON,

22 ELAINE MCGOWANS,

23 after first having been duly sworn, testified as follows:

24 THE CLERK: If you would, have seat, please.

25 And state your name for the record.

1 THE WITNESS: My name is Elaine McGowans.

2 DIRECT EXAMINATION

3 BY MR. TODD:

4 Q How are you doing today, Elaine?

5 A I'm fine.

6 How are you?

7 Q Fine.

8 Thank you.

9 Elaine, where do you currently work?

10 A I am currently disabled. But I previously worked at
11 Palmetto Health Baptist Easley for 12 and a half years.

12 Q Okay. What'd you do there?

13 A I was, first, a health unit secretary. Then I went
14 down to medical records. And my last position was as an
15 administrative assistant at the medically fragile
16 children's program.

17 Q Okay. So it sounds like you spent the majority of
18 your period in the hospital.

19 A Yes.

20 Q How do you know Brandon Gantt?

21 A It's my baby brother.

22 Q It's your brother.

23 So that -- would that mean [REDACTED] and [REDACTED] are
24 your nieces?

25 A They are.

1 Q Okay. How would you describe [REDACTED]?

2 A She is a very smart seven-year-old girl, very sweet,
3 very loving, very protective of [REDACTED].

4 Q Do you --

5 A Who she calls Lee-Lee.

6 Q Do you spend a lot of time with them?

7 A I do. I kept them over this past school year. And
8 they sometimes come and I baby-sit them.

9 Q Do you recall having a conversation with your brother
10 back in 2017 in March?

11 A Yes.

12 Q And without getting into what y'all said to each
13 other, what'd you tell him to do, based on that
14 conversation?

15 A Based on what he told me?

16 Q Well, don't tell me what you -- what he said. Based
17 on your phone conversation with each other, what'd you
18 tell him to do?

19 A I told him to hurry up and get [REDACTED] -- I meant --
20 I'm sorry. To hurry up and get [REDACTED] to the hospital.

21 Q Okay. When did you see [REDACTED] in person after
22 that? When was the next time you saw [REDACTED]?

23 A It was possibly the next day.

24 Q Okay.

25 A I didn't see her that day, but possibly the next day.

1 Q Okay. Do you recall if when you saw [REDACTED], did
2 she disclose sexual abuse to you?

3 A She did. And --

4 Q Okay. Well, let me stop you right there. I didn't
5 mean to cut you off. I just want to make sure we're on
6 the same page here.

7 Did she tell you where it happened?

8 A She said at her mom's house.

9 Q Okay. What was her demeanor like when y'all were
10 speaking to each other?

11 A She was somber. And she kept saying that it wasn't
12 her fault. And I told her -- I said, I know, baby. It's
13 not your fault.

14 MR. TODD: Okay. I have no further questions.

15 THE COURT: Okay. Cross-examination.

16 MS. BARWICK: I don't have any for this witness.

17 THE COURT: Okay. You can step down, ma'am.

18 Thank you.

19 THE WITNESS: Thank you.

20 MR. TODD: Your Honor, may we take a brief break to
21 ensure that our next witness --

22 THE COURT: Okay. Is that the one that's going to --
23 that's not here yet?

24 MR. TODD: She is. But we just need to speak with
25 her briefly.

1 THE COURT: Oh, okay.

2 All right. Ladies and gentlemen, we'll take a little
3 short afternoon break. And then we'll get you back out.
4 And we'll continue on again. Again, remember all my
5 instructions.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 3:21 p.m.)

8 THE COURT: All right. We'll be in recess about 10
9 minutes.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Okay. Solicitor.

12 MR. TODD: Yes, sir. I just wanted to address
13 briefly before we continued, when we approached the bench
14 in regards to time and place.

15 THE COURT: Okay.

16 MR. TODD: So it's my -- in the forensic interview,
17 she does disclose that she was five years old when this
18 happened.

19 THE COURT: Okay.

20 MR. TODD: What we were going to ask Mr. -- or
21 [REDACTED]'s father is, when this abuse -- when did she say
22 this occurred. It's the State's understanding his
23 testimony would be two days ago.

24 THE COURT: Okay.

25 MR. TODD: And I know Ms. Barwick brought up 801(B).

1 But it's the State's position that, you know, she did
2 disclose in the forensic interview that she was five when
3 this occurred. That puts it within the time frame that's
4 listed on the indictment, which the State would prove that
5 it was two days before the hospital, which would be in
6 that period of time.

7 So we would say that it was -- it would be consistent
8 with the victim's testimony through the forensic
9 interview.

10 THE COURT: Okay. Ms. Barwick.

11 MS. BARWICK: Judge, the video clear -- it was clear
12 as day the child says, I might have been four. I might
13 have been five. The forensic interviewer said, Was it
14 before or after your birthday?

15 I don't really know.

16 THE COURT: Okay.

17 MR. TODD: Your Honor, in the forensic interview
18 report, she says -- she said she was five --

19 MS. BARWICK: That -- that report's inadmissible.
20 There's incorrect information in that report. The
21 transcript is correct.

22 THE COURT: Okay. And, again, if I refer to the
23 transcript, that's not necessarily an indication that it
24 is going to be part of the evidentiary record.

25 But would -- Solicitor Todd, would -- the statements

1 of [REDACTED] in the interview, would that be testimony?
2 Because she's not under oath. It's just -- it's that
3 unique bit of evidence that under certain circumstances
4 the law allows to come in while not under oath from the
5 witness stand.

6 MR. TODD: Your Honor, we believe it would be. That
7 would be -- the point of the forensic interview is not to
8 bolster her testimony. These are very traumatizing
9 events. Forensics are always done.

10 We would argue that it -- yes, it is part of her
11 testimony. It's in evidence. The jury has heard it. She
12 said she was five. Then it would be on us through the
13 father's testimony to establish time. And with the
14 statutory factors that are used to admit the forensic with
15 that determination.

16 THE COURT: Okay. And, Ms. Barwick, you're,
17 basically, saying that she -- she did not necessarily say
18 that she was age five in the interview. That's -- that's
19 your position?

20 MS. BARWICK: That is my position. And, Judge, even
21 yesterday, she -- I said, How old were you?

22 I don't know.

23 You don't know if you were five?

24 I don't know.

25 You don't know if you were four?

1 I don't know.

2 You don't know if you were three?

3 I don't know.

4 That was her testimony yesterday.

5 MR. TODD: And, Your Honor, that's part of the
6 forensic interview. She is a child. She's seven years
7 old. We have the forensic interview where she says, this
8 happened when I was five.

9 THE COURT: Okay. Well, let's -- let's do this,
10 unless you just need to -- if I allow it. If you need to
11 call him this afternoon -- but if you can maybe wait until
12 tomorrow and let me -- let me take a look.

13 Can you -- if I do allow it, can you wait until
14 tomorrow to put him back up, which I would allow you to do
15 if I allow that question to be asked?

16 MR. TODD: We could. But the only thing is, Your
17 Honor, we have other witnesses who would testify to time
18 as well.

19 THE COURT: Right.

20 MR. TODD: A nurse who saw her at the hospital --

21 MS. BARWICK: Judge, it's at minute 17 of the
22 forensic interview.

23 THE COURT: Okay.

24 MS. BARWICK: It -- it's right between 16 and then
25 into 17. So, [REDACTED] when this stuff happened with B, how

1 old were you?

2 I was five.

3 You were five?

4 Yeah. But I didn't turn five. But I was four. But
5 my birthday came up. It was just in -- and I was -- I was
6 like -- B was saying birthday to me -- happy birthday to
7 me.

8 Okay. And did this happen before your birthday or
9 after your birthday?

10 It was my birthday. My birthday was in -- and the
11 fourth day.

12 The fourth day. Okay. Okay.

13 And so I know how to write a four.

14 So she never really says if it's before or after.

15 MR. TODD: And, Your Honor, that would be
16 clarified -- correct me if I'm wrong.

17 But they, originally, say, Did this happen when you
18 were five?

19 Yeah, five.

20 Then --

21 MS. BARWICK: But I didn't turn five.

22 MR. TODD: But that would be clarified through
23 father's testimony.

24 MS. BARWICK: That would be bolstered for what the
25 State wants.

1 THE COURT: Well, but, again, the rule says
2 consistent. And --

3 MR. TODD: But it would not be inconsistent.

4 THE COURT: Well, I'm -- I'm still trying to find --
5 okay. Well, I mean, as Ms. Barwick just said -- said --
6 question, When this stuff happened with B, how old were
7 you?

8 I was five.

9 And the interviewer said, You were five?

10 She said, Yeah. But I didn't turn five, but I was
11 four.

12 I -- I'm going to not allow the dad to be asked how
13 old she was when this happened when the disclosure was
14 made. I don't see that -- where that is consistent.
15 Because she's saying she was either five or four the way I
16 read and remember the interview.

17 So I'm going to prevent the State from allowing that
18 question to be asked of the -- of the dad.

19 MR. TODD: Okay. Well, Your Honor, I guess while the
20 jury is out, I'll go ahead and address this just to
21 prevent from having to do it again. The next witness we'd
22 call would be the nurse who saw [REDACTED] at the hospital.

23 THE COURT: Okay.

24 MR. TODD: As part of her testimony, I would ask her,
25 did she disclosure abuse? Where? When did this occur?

1 We would argue that it would come in through her as part
2 of her medical diagnostics as far as when a SANE kit -- if
3 a SANE would be done or not.

4 THE COURT: Okay. Say that to me again, Solicitor.

5 MR. SCOTT: Okay. The next witness will be the
6 nurse. And the State does intend to illicit from her
7 time.

8 THE COURT: Okay.

9 MR. SCOTT: It's the State's belief that she would
10 say the child told me two days ago.

11 THE COURT: Okay.

12 MR. TODD: We would argue that that would come in
13 under the medical diagnosis exception of hearsay, which
14 aided her in how -- what treatment she would receive, and
15 whether or not they would have done a rape kit or a rape
16 kit would have been ordered.

17 THE COURT: Okay. Now, there -- there has been some
18 mention about a rape kit. Was the nurse of the opinion
19 that a rape kit needed to be done? And I know it was not
20 done for whatever reason. But was that her medical
21 opinion that a rape kit needed to be done?

22 MR. TODD: My -- no. Because it had been two days
23 prior.

24 THE COURT: So the nurse felt like a rape kit was not
25 needed?

1 MR. TODD: Correct.

2 THE COURT: Ms. Barwick.

3 MS. BARWICK: Then why was a rape kit done 24 days
4 later?

5 MS. MCCALL: Your Honor, if I -- if I may.

6 THE COURT: Yeah.

7 MS. MCCALL: I believe I just may have a little more
8 information on this. So there is a standard of practice
9 in South Carolina with these SANE kits, which is common --
10 they're commonly known as rape kits, sexual assault
11 examinations. There are different time frames for when
12 one should be done in an emergency setting.

13 So if -- with an adult, there's a certain time
14 period. I -- I believe it's 72 hours for an adult. It's
15 a much longer period for an adult from when, say, they've
16 alleged abuse two days prior than at the hospital in an
17 emergency setting it is best practices and standards to --
18 to do this rape kit and collect evidence. Because they
19 have a reasonable belief that there will be evidence still
20 there preserved.

21 With a child, it's a much shorter time period because
22 of the way children wipe, because of how they play, how
23 they -- so the best practice now is if it has been over
24 36 hours, they do not do a rape kit.

25 At the time, the nurse was under the belief -- it was

1 prior to the -- the big push that, actually, Prisma Health
2 has -- has done recently, which has sort solidified those
3 time frames. But it's my understanding that it was the
4 hospital and the nurses belief that if -- if it had been
5 over 24 hours with a child that an emergency rape kit, a
6 SANE kit would not be collected there at the hospital.
7 And that was the reason.

8 The child disclosed to the nurse that this abuse
9 occurred two days prior, which would be outside of that
10 24-hour period that she indicated a -- a rape kit would be
11 exercised. So they did not do that.

12 What they do with children who have been abused is
13 they then go to a child-friendly type of facility to do
14 this medical examination. Now, they house them within the
15 Julie Valentine Center.

16 And I'm not completely sure -- Dr. Crosswell, who
17 testifies later, she will be able to let us know if the
18 examination was done there at the Julie Valentine Center
19 in that doctor's office setting or if it was just in
20 another pediatrician setting. But who does that
21 subsequent exam is a pediatrician that is -- that is
22 trained or specializes in this forensic type of
23 examination for a child.

24 There at the hospital, those doctors are emergency
25 room doctors. And they're not -- they're not,

1 specifically, trained for the children. So although it is
2 a -- an examination related to this -- to the sexual
3 assault, it's not the exact -- and -- and I don't want to
4 speak out of turn. Dr. Crosswell, who will be testifying,
5 can -- can testify more, specifically, to what it entails.
6 But there is some difference between a hospital type of
7 examination and the examination that she does on a child.

8 THE COURT: Okay. Well, I'm not real concerned with
9 the fact that, okay, the rape kit was not done two days
10 after, but it was done 24 days after. What I'm concerned
11 with is am I to allow the nurse to say, we didn't do the
12 rape kit because it was two days old. And that's --
13 that's what I've got to decide.

14 MS. MCCALL: Certainly. And I do -- sorry. I do
15 believe that it is crucial testimony for the nurse in her
16 opinion of what to do at the time, which falls within that
17 medical diagnosis exception.

18 THE COURT: Okay.

19 MS. BARWICK: Judge, I think this is the State's
20 enround to get around the fact of directed verdict because
21 their indictment gives notice for a one-month time period.
22 And they're trying desperately to get into evidence that
23 it happened within that time period.

24 So if they're wanting that statement to come in only
25 for the purpose of explaining why the SANE nurse decided

1 not to do it, it should not be allowed in for the truth of
2 the matter asserted when it comes to the directed verdict
3 stage.

4 THE COURT: What -- 80 -- what is that rule, Solicitor?

5 MS. BARWICK: 801.

6 MR. TODD: 801. The medical?

7 THE COURT: Yeah.

8 MR. TODD: That is 803 -- it's 803(4).

9 THE COURT: Okay. I think under 803(4), it would be
10 allowable. And I'm going to allow the nurse to be asked
11 that for purposes of her medical diagnosis, treatment, et
12 cetera.

13 MS. MCCALL: Thank you, Judge.

14 And the State is ready to proceed whenever you are.

15 THE COURT: Okay.

16 MS. BARWICK: Judge, I don't know if it makes a
17 difference to you. Officer Elrod is on videotape saying
18 that the reason why the SANE kit wasn't done was because
19 the parents wouldn't consent to it.

20 THE COURT: I'm -- I'm sorry. Tell me that again.

21 MS. BARWICK: Officer Elrod is on video by the video
22 the State provided me -- and I believe it's at the
23 15-minute marker of mom's video interview. And Officer
24 Elrod's on the phone with someone saying, I'm not doing
25 the SANE kits because -- or the rape kits because the

1 parents won't consent.

2 THE COURT: All right.

3 MS. MCCALL: Your Honor, if I may. I don't recall,
4 specifically, what it said. But I do, also, recall in
5 that that she -- that Renee Elrod even mentioned something
6 in there about the 24-hour period. So this would,
7 certainly, be something that we could ask the nurse.

8 But it's my understanding they consult with the
9 parents. Of course, they're not going to do any medical
10 treatment without the -- the parents permission. And this
11 is a very invasive examination for a five-year-old child.
12 But they consult with them. And I would imagine they
13 probably told them this is the -- the standard of
14 practice. Do you still want us to do a rape kit? You
15 know, we don't recommend it.

16 Like I said, I don't know exactly what the
17 conversation was. We would have to ask those involved.

18 THE COURT: Well, you know, Ms. Barwick asked the mom
19 and the dad both something to the effect, did you deny the
20 rape kit being done? And they both said they did not deny
21 it. If you've got evidence from Officer Elrod --

22 MS. BARWICK: I do, Your Honor.

23 THE COURT: -- or others, then, you know, certainly,
24 that may be some proper information that you want to deal
25 with in your case possibly.

1 MS. BARWICK: But, at -- at that point, Your Honor,
2 it's already before the jury that the SANE nurse is saying
3 that the child said it happened two days ago.

4 THE COURT: Well, if the -- if the nurse testifies
5 that in her course of -- of -- you know, treatment,
6 diagnosis of the child that a rape kit would not be done
7 because it happened two days ago, I don't know how that --
8 I mean, that can come in.

9 Now, if we have other evidence, no, the decision was
10 not made by the nurse but by the parents, you can,
11 certainly, ask the nurse, isn't it a fact it was not your
12 decision that it was not done, but it was the parents
13 decision? I mean, you could, certainly, question her
14 about that.

15 And then if -- if she denies it, then, you know, if
16 you've got other evidence that, in fact, the parents did
17 deny it, then we just have conflicting evidence.

18 MS. BARWICK: Yes, Your Honor.

19 THE COURT: So I don't think what you've got -- or
20 your position doesn't necessarily alter the nurse from
21 being able to get into -- into that. So ask her and see
22 what she says.

23 You can go ahead and bring the jury in.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:56 p.m.)

1 THE COURT: Okay. Let the record reflect the jury is
2 back in.

3 Solicitor, do you want to call your next witness?

4 MR. TODD: The State would call Allison Meena.

5 THE CLERK: If you would, place your left hand on the
6 Bible and raise your right.

7 WHEREUPON,

8 ALLISON MEENA,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Thank you.

11 If you would, have a seat.

12 And state your name for the record, please.

13 THE WITNESS: My name is Allison Meena.

14 DIRECT EXAMINATION

15 BY MR. TODD:

16 Q Allison, where do you currently work?

17 A I work at the emergency department at Baptist Easley
18 Hospital.

19 Q Okay. And how long have you worked there?

20 A I've been a nurse in the ER about six and a half
21 years.

22 Q Okay. What do you do there?

23 A I am a registered nurse. So I work with all the
24 patients that we see. And then I, also, function as the
25 charge nurse.

1 Q Okay. Were you working in that capacity on March
2 20th, 2017?

3 A Yes.

4 Q Do you recall seeing a patient by the name of

5 [REDACTED]

6 A I do.

7 Q What can you tell us about her demeanor when she
8 arrived, if you can recall?

9 A I remember her as happy, and playful, and enjoyable
10 to interact with.

11 Q Now, on that day, did she disclose sexual abuse to you?

12 A She did.

13 Q Okay. Did she say when that occurred?

14 A She said that it had happened two days prior to her
15 ER visit.

16 MS. BARWICK: Judge, I'm going to object.

17 THE COURT: Okay. I think pursue this line of
18 testimony based upon what we just discussed a moment ago
19 as far as medical diagnosis and treatment. Now, I realize
20 that the answer has already been given. But go ahead and
21 lay that foundation. And then you can ask her again,
22 based upon my previous ruling.

23 MR. TODD: Certainly.

24 BY MR. TODD:

25 Q In regards to how you would have treated her

1 medically, did you have to obtain certain information from
2 her?

3 A Yes, yes.

4 Q Would one of those things you would need to know be
5 the time of when the assault occurred?

6 A Yes.

7 Q Why would time be important?

8 A The time is important because it would help us to
9 answer the question --

10 MS. BARWICK: Judge, I'm going to object again. She
11 hasn't been qualified as an expert.

12 THE COURT: Okay.

13 MS. BARWICK: Opinion testimony.

14 THE COURT: Well, what you may want to do, Solicitor,
15 is go into her qualifications. And then if you want to
16 offer her as an expert in the nursing field, then I can
17 consider that at that time.

18 MR. TODD: Okay.

19 BY MR. TODD:

20 Q Allison, at the time in 2017, do you -- what would
21 have been the timing when you would order -- when a nurse
22 would order a rape kit?

23 MS. BARWICK: Judge, again, this is going to be
24 opinion testimony.

25 MR. TODD: Your Honor, I don't --

1 THE COURT: All right. Y'all -- y'all come on up for
2 a minute.

3 (WHEREUPON, a bench conference was held.)

4 BY MR. TODD:

5 Q Allison, let's back up a little bit. Where did you
6 go to school?

7 A I went to Greenville Tech for an Associate Degree in
8 Nursing. And then I went to Chamberlain College of
9 Nursing for a Bachelor's in Nursing.

10 Q Did you say you're a registered nurse?

11 A Yes.

12 Q How long have you been working in the ER?

13 A I've been an ER nurse ever since I became a nurse,
14 which was -- I believe it would be November of 2012.

15 Q So about six years?

16 A Uh-huh.

17 Q About how many patients do you think you've seen in
18 the ER?

19 A It is very hard to say. It's -- it's a lot.

20 Q A lot.

21 Have you ever seen patients who come in regarding
22 sexual assault?

23 A Yes, quite frequently.

24 Q Quite frequently.

25 Would you say a good amount of times?

1 A Yes.

2 Q Okay. What type of training and responsibilities do
3 you have in aiding you in your responsibilities?

4 A Assessing the patient in general, asking if they have
5 any -- any injuries anywhere.

6 Q Do you have -- do -- I mean, do you do continuing
7 education hours being a nurse?

8 A Yes.

9 Q Okay. Have you ever testified in court before?

10 A No.

11 MR. TODD: Your Honor, I would move to have her
12 admitted as an expert in emergency room nursing.

13 THE COURT: Okay.

14 MS. BARWICK: Judge, I -- I think we're going to have
15 to place something on the record.

16 THE COURT: All right. Madam Forelady, ladies and
17 gentlemen of the jury, this is another one of those times
18 where I have to discuss some legal matters outside of your
19 presence. I appreciate your understanding and patience.

20 If you'll go back to the jury room, please.

21 (WHEREUPON, the jury was excused from open court at
22 approximately 4:04 p.m.)

23 THE COURT: Okay. Ms. Barwick.

24 MS. BARWICK: Thank you, Your Honor.

25 To say that she's just trained in ER nursing is not

1 enough to say the reason we didn't do a SANE kit is
2 because it was more than 24 hours.

3 THE COURT: All right. Well, I think probably we can
4 do this in camera. And let's just hear what she has to
5 say.

6 Get in -- specifically, into her prior experience
7 into -- I mean, she's already said quite frequently she
8 deals with sex assault cases. She's already said that.
9 But why don't you get into her experience, specifically,
10 with respect to -- to rape kits and making the
11 determination whether or not to have a rape kit done, and
12 have there been other cases where she's not ordered a rape
13 kit because of the length of time. Hone in on that,
14 specifically. And let's see what -- what experience she
15 has related to that. Because that's -- that's where the
16 issue is.

17 MR. TODD: Right.

18 THE COURT: No rape kit because of the time. And so
19 if you'll get into that and see what she has to say.

20 DIRECT EXAMINATION

21 BY MR. TODD:

22 Q Allison, you said you've dealt with many patients
23 who've come in alleging sexual assault before?

24 A Quite a few, yes.

25 Q Have you ever ordered that they receive a SANE rape

1 kit.

2 A It is not ever completely up to me.

3 Q Okay. What -- can you elaborate on that?

4 A Of course, the patient has to consent to it. The
5 doctor is involved --

6 Q Right.

7 A -- in that decision in talking with the patient. And
8 we have guidelines that are written out for us to go by.

9 Q Could you -- could you explain some -- what some of
10 those guidelines are that y'all go by?

11 A Okay. So right now, in the emergency department,
12 there's a sheet of paper that we look at that says --

13 MS. BARWICK: And, Judge, are we talking about the
14 guidelines presently or the guidelines two years ago?

15 THE COURT: Okay. Well, I -- I think what would be
16 relevant would be the guidelines two years ago. They may
17 still be the same guidelines today. But we need to look
18 at the guidelines from two years ago.

19 BY MR. TODD:

20 Q To the best of your knowledge, could you, please,
21 elaborate about what the guidelines would have been around
22 March of '17?

23 A And I don't remember exactly what they would have
24 been. But it was something that I would have -- that I --
25 I talked about with the doctor. And then we both went and

1 talked to the patient and the family.

2 Q Okay.

3 A And I have at times called, say, a SANE nurse.

4 Q Right.

5 A To --

6 EXAMINATION

7 BY THE COURT:

8 Q What was your last comment, ma'am?

9 A (There was no response.)

10 Q What was your last comment?

11 A I said, And I have at times called a SANE nurse in
12 that situation.

13 Q Okay.

14 A As to whether or not we would call them in to do a
15 kit.

16 Q Okay. Let me ask you this. And I don't -- how many
17 prior cases prior to [REDACTED]'s case have you dealt with
18 sex assault cases and there's been a determination whether
19 or not to do a rape kit approximately that you were
20 involved in?

21 A Some weeks, there might be three, some weeks, there
22 might be none.

23 Q I'm saying overall, approximate. Overall, prior to
24 [REDACTED]'s case?

25 A I think that if I had to take a wild guess that 25

1 over the last six and a half years as far as overall
2 patients who come for in sexual assault.

3 Q And -- and there's discussion related to whether or
4 not to do a rape kit?

5 A Yes.

6 THE COURT: All right. And -- go ahead, Solicitor.

7 CONTINUED DIRECT EXAMINATION

8 BY MR. TODD:

9 Q Your Honor -- or Allison, excuse me, so you've said
10 about 25 cases since you've been a nurse?

11 A If I had to take a wild guess, yes.

12 Q Okay. About 25.

13 And, to the best of your knowledge, what are some of
14 the determining factors in proceeding forward in saying
15 that they should get a rape kit or need to get a rape kit?

16 A One of the first factors is the length of time.

17 MS. BARWICK: Judge, she hasn't -- I don't understand
18 how she's giving opinion testimony. She hasn't been
19 qualified as an expert in SANE kits --

20 MS. TODD: This is -- for right now, we're --

21 THE COURT: Ms. Barwick, this is in camera. We're
22 trying to figure out whether or not she would be qualified
23 as an expert and be allowed to testify about this
24 decision, whether or not to do a rape kit. So we're --
25 we're still in the middle of it. Okay. And I'm going to

1 allow you to -- since we're in camera, I'll allow you
2 to -- to ask her some questions as well.

3 BY MR. TODD:

4 Q Do you want me to repeat the question, Allison?

5 A Sure, please.

6 Q Okay. I believe what I said was, about how many
7 patients -- there's 25 -- about 25, if you had to take a
8 guess. And what circumstances -- what are some of the
9 things you consider in advising them to get the SANE rape
10 kit? What are some of the factors that go into that?

11 A How long it has been since the sexual assault,
12 whether or not they want it. Those are really the main
13 things.

14 Q Okay. And around in 2017, what would have been the
15 length of time?

16 A For a child, it would have been much shorter.

17 Q And why is that?

18 A I'm -- I'm not sure that I feel comfortable answering
19 that question --

20 Q That's fine.

21 A -- since it wasn't up to me.

22 Q That's fine.

23 A Since it wasn't determined by me.

24 Q In your role, do you ever present to families the
25 option to go forward with a rape kit?

1 A I do. And I do that often with the help of the
2 people from Pickens County advocacy that we call.

3 Q Okay. Do you recall in this case in your
4 conversations with her during your treatment, did you
5 explain time to them -- to the parents?

6 A I remember that it was me and the doctor both in the
7 room talking to, of course, in this case, mainly the
8 family.

9 Q Right.

10 A Asking, you know -- asking them.

11 Q Would -- would time have been discussed with the
12 family in regards to --

13 A Yes, absolutely.

14 Q -- ordering a rape kit?

15 Would you have been -- would you have been present
16 when the child disclosed when the sexual assault occurred?

17 A Yes. I talked to her first. And then I talked to
18 her with the doctor, too.

19 Q Okay. And when was that disclosure? When did she
20 say it occurred? Sorry.

21 A She said that it occurred two days prior to the ER
22 visit.

23 Q Which would have been on March 20th was when you were
24 speaking with her at the hospital?

25 A Okay. So if -- if she was in the ER on March 20th,

1 then from what she said two days ago, we believed it was
2 March 18th.

3 MR. TODD: Okay. Your Honor, that would be the
4 testimony we would ask with regards to that topic.

5 THE COURT: All right.

6 EXAMINATION

7 BY THE COURT:

8 Q And was that outside the -- the recommended
9 guidelines for a rape kit to be done on this child?

10 A Yes.

11 Q Back in 2017?

12 A Uh-huh.

13 Q Ma'am?

14 A Yes.

15 Q Okay. And you were -- you were part of that
16 discussion and diagnosis, along with the doctor and the
17 family?

18 A Yes.

19 THE COURT: All right. Ms. Barwick, any -- any
20 examination of -- of this nurse as it relates to this very
21 limited specific issue of whether or not she would be
22 permitted to testify as to the -- even though it's come
23 out, but the -- the hearsay exception as to the medical
24 diagnosis and what the child said?

25 MS. BARWICK: Yes, sir, Your Honor.

CROSS-EXAMINATION

BY MS. BARWICK:

Q I -- I thought you said you didn't know the guidelines from 2017. Didn't you say that first?

A I don't remember exactly what they were. I know that now --

THE COURT: No. We're talking about 2017. That's what we've got to focus on. I asked you, ma'am, was -- the two days of the alleged incident, was that outside the recommended guidelines to have a rape kit in 2017. And you indicated it was.

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: I do know that whatever it was was less than two days -- less than 48 hours.

THE COURT: All right.

THE WITNESS: I don't remember exactly under that what it was.

BY MS. BARWICK:

Q So -- so it's your testimony that in 2017, the guideline was less than 24 hours -- or less than 48 hours?

A Whatever it was was less than 48 hours.

Q Whatever what was?

A Whatever the guidelines were, whether it was to do a kit if it was less than 24 hours, or to do a kit if it was

1 less than 36 hours. I know the number is less than 48.

2 Q Okay. And I had heard the Judge ask the question,
3 but I didn't quite get it. You said 25 cases. What was
4 25 cases about again?

5 A I believe he was asking about patients that I had
6 interacted with who were victims of sexual assault.

7 THE COURT: And where rape kits were discussed,
8 whether or not to do them or not is -- is the answer I
9 took it to that question.

10 BY MS. BARWICK:

11 Q And the 25 cases were decisions not to do them?

12 A No. That was a wild guess, like I said, of just the
13 number of patients that I would have interacted with as a
14 nurse.

15 Q That had them or did not have them?

16 A Either.

17 Q Okay. I understand.

18 Thank you for clarifying that for me.

19 And if the parents had said, no, we -- we want this
20 exam done and it had been outside the 48 hours, would you
21 have done it?

22 A I would have consulted with a SANE nurse, because
23 it's so hard with pediatrics.

24 Q And two days prior, meaning two days ago, that could
25 be less than 48 hours?

1 A It was in the evening that she came to the ER.

2 Q But when she said two days ago, you don't know if she
3 was referring to nighttime. Because I believe the
4 allegations in this case is that it happened in the middle
5 of the night. So you don't really know if it was more
6 than 48 hours or less than 48 hours, do you?

7 A I'm not sure how to answer that question.

8 Q If a child says it happened two days ago and today
9 is -- what's today? Wednesday [sic]. And we're in the
10 evening hours. It could have happened 36 hours ago.
11 Because two days ago means Monday. And Monday night would
12 make it less than 48 hours; right?

13 A If it had been 36 hours prior to her visit, that
14 would have been the morning of the day before. And as
15 near as we could tell, two days ago was before that.

16 Q But you don't know for sure what the child meant by
17 two days ago?

18 A We took it just to mean two days ago.

19 Q And by taking it outside of what the child is,
20 actually, saying, you could have missed some really good
21 evidence, couldn't you have?

22 A That's something I don't feel comfortable
23 asking [sic] because I'm not a SANE nurse.

24 Q That's right.

25 So let's talk about SANE nurses. What kind of

1 specialized trainings do SANE nurses need? Are they
2 licensed?

3 A They -- they have the same nursing license. It's a,
4 I believe, certification.

5 Q So what makes you not a SANE nurse and what makes
6 them a SANE nurse?

7 A They go through specialized training.

8 Q And you haven't gone through any specialized training
9 for SANE nurses, have you?

10 A No.

11 Q And the reason why you have to consult with a doctor
12 is because you're not qualified to make that decision. It
13 has to be the doctor making that decision; isn't that
14 correct?

15 A I think, obviously, the doctor's involved every time.
16 But if a kit were going to be done, it would be the doctor
17 doing it. It would not be me. Because I'm not a SANE
18 nurse.

19 Q Have you ever done a SANE exam?

20 A No, I have not.

21 Q Okay. You have no training in doing a SANE exam?

22 A I can assist the doctor.

23 Q Okay. And -- and how do you assist the doctor?

24 A By handing them things, helping with the paperwork,
25 chain of custody of the box, that type of thing.

1 Q But -- but a doctor examined this child 24 days later
2 and did the same thing that y'all would have done. And
3 you're saying no evidence would have been found 24 days
4 later?

5 A I'm not sure if I know -- well, I'm not sure if I
6 know the answer to that.

7 Q A -- a rape kit, you've seen them done. They're --
8 they're -- they're a pretty significant thing a child has
9 to go through; right?

10 A Uh-huh.

11 Q And it would be terrible to do it for no reason;
12 right?

13 A Yes.

14 Q But 24 days later done by a medical doctor -- and
15 your testimony today is that 48 hours, you wouldn't find
16 anything?

17 A I don't know the chances of finding something.

18 Q You don't know the chances of finding something. Is
19 that your testimony?

20 A I'm not aware of that. It's -- it's something that I
21 really haven't learned much about.

22 MS. BARWICK: Judge, I have no further questions.

23 THE COURT: Okay.

24 MR. TODD: Your Honor --

25 THE COURT: Let me just ask so I don't forget.

1 MR. TODD: Okay.

2 EXAMINATION

3 BY THE COURT:

4 Q Ms. Meena, do you have to be a SANE nurse to obtain
5 information from a sexual assault victim to determine when
6 the sexual assault may have taken place?

7 A No.

8 Q Okay.

9 A No.

10 Q Do you have to be a SANE nurse in order to make the
11 determination whether or not the sexual assault act took
12 place outside of the recommended guidelines for a rape kit
13 to be done?

14 A No.

15 Q Do you have to be a SANE nurse in order to
16 participate in the medical diagnosis and discussion with
17 the doctor and family to make a determination whether or
18 not a rape kit needs to be done?

19 A No, you don't.

20 THE COURT: Okay. Solicitor, just very briefly.

21 MR. TODD: Just briefly. I just wanted to say we're
22 not trying to say she is a SANE nurse. We're not trying
23 to say she's a doctor. We're just simply saying that she
24 would testify that the child disclosed it was two days,
25 which is beyond the 24-hour period. And that, you know,

1 she was just gathering information as to what to do next,
2 whether she would refer her to a SANE nurse or not. What
3 someone else would find with a rape kit or not would just
4 be -- I mean, she -- of course, she can't answer that
5 because that would be speculation what would result from
6 the SANE kit -- SANE rape kit.

7 She's a nurse who treats patients every day. She
8 gets medical information first and then refers them for
9 further treatment, which is what she did here. She got
10 information from the child that she was sexually abused
11 two days before. The next step in her treatment would be
12 to refer her to what was next.

13 THE COURT: Right.

14 MR. TODD: And I think that would come in. I don't
15 even think she would need to be an expert to testify to
16 that. Because she's gathering information as to what to
17 do next with her job, which would be to pass her on to a
18 SANE nurse for a rape kit or not.

19 THE COURT: Okay. I -- I think based upon her
20 experience of dealing with -- with sex assault cases and
21 those sex assault cases some of them dealing with -- with
22 rape kits, I don't think she needs to be an expert. I
23 think just to -- being an ER nurse and being a part of the
24 diagnosis, the information gathering, the discussion with
25 the doctor, and that sort of thing, aware of the

1 guidelines, the guidelines being -- two days being outside
2 of the guidelines in 2017. I think that's just a part and
3 parcel of her job as being an ER nurse. She's not
4 rendering necessarily any opinions that would require her
5 to be declared an expert. But I think she does have
6 sufficient training and experience to be able to tell
7 exactly what she did.

8 MS. BARWICK: Thank you, Your Honor.

9 And since we're in camera, I'm going to place my
10 objection on the record. The clear intent of Rule -- what
11 is it? -- 801(D) is that the only way a child's testimony
12 as to time and place of the assault comes in is if it's
13 consistent. This is just a back doorway of getting around
14 it, trying to avoid directed verdict. Because they need
15 to get the time.

16 This isn't -- it's not being introduced to say why it
17 was done or not done. The reason why it wasn't done --
18 she said that one of the factors is that the parents
19 didn't consent. If they consented, it would have been
20 done. So this is just a back doorway of trying to get
21 into the --

22 THE COURT: Well, and -- and I don't want to get into
23 any premature discussions about directed verdicts.

24 But time is not an element of criminal sexual
25 conduct, is it, Solicitor?

1 MR. TODD: The time --

2 THE COURT: It's -- I know time -- it's -- it's --
3 time is in the indictment. But CSC with a minor first,
4 you -- you have to have a sexual battery with a minor at a
5 certain age. Those are the elements of CSC with a minor
6 first degree.

7 MS. BARWICK: Judge, the --

8 THE COURT: And, again, I don't want to -- I'm -- I'm
9 just making a -- an observation. Give that some thought.

10 MS. BARWICK: I -- Judge, respectfully, I understand
11 what the elements of CSC are. That indictment is a
12 charging indictment. What it does is it gives notice of
13 what we're -- have to defend ourselves on.

14 THE COURT: Right, exactly. I agree with you a
15 hundred percent. But I don't think if -- because what
16 I've got to look at when -- when you do move for a
17 directed verdict, is there any direct evidence and
18 substantial circumstantial evidence as to the elements of
19 the crime? That's what I've got to make a determination
20 and -- when I consider your motion for directed verdict.
21 And I think there's -- there's case law that says time is
22 not -- is not an element.

23 So you made the comment about directed verdict. I
24 probably shouldn't even have mentioned it. I should have
25 just waited.

1 But I'm going to allow her to testify under 803(4) as
2 an exception to -- to hearsay and under the limited
3 confines that I hope the State understands and appreciates
4 that we have dealt with in this in-camera hearing.

5 I'm not exactly sure where you were with your
6 examination when Ms. Barwick objected. So you're going to
7 need to kind of figure out where you were.

8 Okay. Let's bring the jury out.

9 And I'm not being critical at all.

10 MS. BARWICK: No. I understand, Judge.

11 THE COURT: You're -- you're doing a fine job. I'm
12 not being critical. And I probably shouldn't have even
13 mentioned that.

14 (WHEREUPON, the jury came into open court at
15 approximately 4:27 p.m.)

16 THE COURT: All right. Let the record reflect the
17 jury is back in.

18 Solicitor, if you'll kind of bring us up to speed
19 since we've -- we've had this break.

20 MR. TODD: Yes.

21 CONTINUED DIRECT EXAMINATION

22 BY MR. TODD:

23 Q Allison, before we broke for the jury, you said --
24 you went through your training.

25 Do you recall seeing [REDACTED] [REDACTED] on March 20th at

1 the hospital?

2 A (There was no verbal response.)

3 Q And at some point, did she disclose a sexual assault
4 during your encounter with her?

5 A She did.

6 Q Okay. Was there consideration to do a rape kit?

7 A Yes.

8 Q Is time -- is time a factor that goes into the --

9 A Absolutely.

10 Q When did she say the assault occurred?

11 A She said it occurred two days before the ER visit.

12 Q Okay --

13 MS. BARWICK: And I'm going to object --

14 THE COURT: Right.

15 MS. BARWICK: -- as to my prior objection.

16 THE COURT: So -- so noted for the record.

17 BY MR. TODD:

18 Q What did -- what did she tell you in regard to the
19 assault for purposes of diagnosis and treatment?

20 A That somebody had --

21 MS. BARWICK: Judge, I thought we were sticking to
22 time.

23 THE COURT: Yeah. Just --

24 MR. TODD: Okay.

25 THE COURT: You're limited on -- on the time. And I

1 think that's already been brought out.

2 MR. TODD: That's fine.

3 THE COURT: So if you'll just cover with respect to
4 803(4).

5 MR. TODD: Okay.

6 BY MR. TODD:

7 Q So after you spoke with [REDACTED], what did you do in
8 response to that?

9 A I spoke with the doctor. And then I called the three
10 different agencies, Pickens County Advocacy, DSS, and law
11 enforcement.

12 Q And law enforcement.

13 Did you and the doctor conduct a physical examination
14 of the child?

15 A Yes.

16 Q And then did y'all refer her to the Julie Valentine
17 Center?

18 A Yes.

19 Q Do you -- were you the -- had the police already been
20 notified or did you notify the police? Do you know the
21 answer to that?

22 A I notified the police. I notified Pickens City
23 Police.

24 Q Okay.

25 A I don't remember hearing that they had been notified

1 prior to that.

2 MR. TODD: Thank you.

3 No further questions.

4 THE COURT: Ms. Barwick.

5 CROSS-EXAMINATION

6 BY MS. BARWICK:

7 Q What kind of physical exam did you do on the child?

8 A I was there and the doctor looked at all of her
9 private areas.

10 Q But the rape kit wasn't done?

11 A Right. It was just a physical exam to look for
12 external injuries.

13 Q Okay. Were there medical records as to this?

14 A Yes.

15 Q Okay. And I'm certain that you would have noted if
16 there was an injury in the medical records?

17 A Yes. If there was an injury, I would have put it in
18 there.

19 Q Okay. And there was no injury in this case?

20 A Right.

21 Q No injury. And she reported the incident happened
22 two days prior?

23 A Yes.

24 Q And what she described with you would have been
25 consistent with an injury. You would have expected to see

1 an injury if it happened two days prior, wouldn't you
2 have?

3 MR. TODD: Your Honor. I would object. That's
4 speculation.

5 MS. BARWICK: It's not. She's given her opinion as
6 to her abuse -- experience with sexual assault victims.

7 THE COURT: She can -- based upon her experience,
8 training, she can -- she can testify if she would have
9 expected an injury or not expected one.

10 I will overrule the objection at this time.

11 MR. TODD: Your Honor, as part of the evidence, I
12 think that --

13 MS. BARWICK: It's a speaking objection. We should
14 probably approach.

15 MR. TODD: Yeah. We'll object -- approach.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: I'm going to still overrule the objection
18 at this time.

19 BY MS. BARWICK:

20 Q Ma'am, I'm not asking you to tell me what the child
21 said. I'm asking you to think back to what the child told
22 you.

23 A Okay.

24 Q And from what she told you, would you have expected
25 to see physical injuries if it happened two days prior?

1 A Not necessarily.

2 Q But you didn't see any of them in this case, no
3 injuries?

4 A We did not see any injuries.

5 Q Okay. Did you see any scabs on her face consistent
6 with having been scratched?

7 A Not that I remember.

8 Q Okay. And if a scratch had been significant enough
9 to have blood pouring from your face down to your chest,
10 that would have been noted in your medical records; right?

11 A Yes.

12 Q And the fact that it's not noted means it didn't
13 happen; right?

14 A I did not see anything like that.

15 Q Okay. So a physical exam was done of her privates,
16 but a rape kit wasn't done. It was just an external exam?

17 A Correct.

18 Q Okay. And what are rape kits used to find? What's
19 the purpose of a rape kit?

20 A To collect evidence.

21 Q What kind of evidence?

22 A Any evidence that's there to collect.

23 Q What kind of evidence are you looking for in a rape
24 kit?

25 MR. TODD: Your Honor, I'm going to object to that.

1 That would -- I mean, we're getting into what we discussed
2 in camera.

3 THE COURT: Well, it's already been admitted that the
4 rape kit was not done and her reason for that. So since a
5 rape kit was not done, what a rape kit could produce for
6 us would not be relevant to any of the issues that we have
7 here.

8 So I'm going to sustain the objection on that.

9 BY MS. BARWICK:

10 Q One of the reasons in deciding whether or not
11 to conduct a rape kit or not is the parents consent;
12 right?

13 A Yes.

14 Q And the parents didn't consent in this case, did
15 they?

16 A It -- it was a conversation mainly between the doctor
17 and the family.

18 Q And -- and I'll allow you to explain yourself. But
19 I'm asking you a "yes" or "no" question.

20 Did the parents refuse to give consent for a rape kit
21 in this case?

22 A Ultimately, they did not consent to it, no.

23 MS. BARWICK: No further questions.

24 THE COURT: Okay. Anything on redirect?

25 MR. TODD: Just briefly.

REDIRECT EXAMINATION

BY MR. TODD:

Q Based on your conversations with [REDACTED] and her disclosure, did you recommend her to see the Julie Valentine Center?

A Yes.

MR. TODDY: Thank you.

THE COURT: You can step down now.

MS. BARWICK: Judge --

THE COURT: Oh, do you -- you need to recross?

MS. BARWICK: Yes, sir.

RECROSS-EXAMINATION

BY MS. BARWICK:

Q So you referred her to the Julie Valentine Center?

A Yes.

Q Which is a child advocacy center; correct?

A Uh-huh.

Q And they, ultimately, referred her to a rape kit. Do you have knowledge of that?

A I don't know anything about that.

MS. BARWICK: All right. No further questions.

THE COURT: All right. Now, you can step down, ma'am.

Thank you.

And you're free to leave the courthouse. However,

1 you're more than welcome to remain with us, if you like.

2 MR. TODD: The State would call Dr. Crosswell.

3 THE CLERK: If you would place your left hand on the
4 Bible and raise your right.

5 WHEREUPON,

6 MARY-FRAN RATCHFORD CROSSWELL,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you, ma'am.

9 If you would, have seat.

10 And state your name for the record, please.

11 THE WITNESS: My name is Mary-Fran Ratchford
12 Crosswell.

13 DIRECT EXAMINATION

14 BY MR. TODD:

15 Q Good afternoon, Dr. Crosswell.

16 Where do you currently work?

17 A I work for Prisma Health System in Greenville.

18 Q How long have you worked there?

19 A I have worked there for almost 13 years.

20 Q 13 years.

21 What's your job title there?

22 A I'm a child abuse pediatrician.

23 Q What type of education and training have you received
24 in your career regarding that?

25 A I received my undergraduate degree from Wake Forest

1 University. I received my medical degree from the
2 University of Louisville School of Medicine. I completed
3 a pediatric residency in Greenville and am currently board
4 certified in both general pediatrics and in child abuse
5 pediatrics.

6 Q Have you had any special training in child sexual
7 assault?

8 A Yes. I annually attend continuing medical education
9 conferences, specifically, for child sexual abuse.

10 Q About how many medical exams on child sexual assault
11 have you completed throughout your career?

12 A I would estimate that it's close to 2,000 exams over
13 the course of my career.

14 Q Have you ever been qualified as an expert in the
15 field of child sexual assault exams?

16 A Yes, I have.

17 Q About how many times?

18 A I would estimate between 40 and 50 times.

19 MR. TODD: Your Honor, at this time, the State would
20 move to offer her as an expert in the field of child
21 sexual assault exams.

22 THE COURT: Okay. And, Ms. Barwick, any examination
23 of Dr. Crosswell on the issue of qualifications?

24 MS. BARWICK: I just need some clarification. Are we
25 saying child sexual assault medical exams?

1 THE COURT: Well, I don't know.

2 Can you answer that question? You've been
3 qualified -- all right. He's offering you as an expert in
4 the area of?

5 MR. TODD: Child sexual assault medical exams.

6 THE COURT: Child sexual assault medical exams.

7 MS. BARWICK: Judge, I have no objection for her
8 being qualified as an expert.

9 THE COURT: Okay. She is qualified as an expert in
10 the area of child sexual assault medical exams.

11 Let me just offer a brief explanation to the jury.

12 Typically, ladies and gentlemen, when a witness
13 testifies, they can only testify as to what they have
14 seen, or heard, or something of that nature. And in most
15 cases -- not all cases, but in most cases, they are not
16 allowed to render any opinions.

17 However, when a -- a person such as Dr. Crosswell in
18 this case by virtue of training, education, experience in
19 a particular field and are found to be an expert in that
20 particular field will be permitted to offer opinions, if
21 so asked, in this case.

22 However, the fact that Dr. Crosswell has been
23 declared an expert does not automatically mean that you
24 are to believe her testimony over anyone else's testimony.
25 You give it the weight that you believe her testimony

1 deserves.

2 Solicitor.

3 MR. TODD: Thank you, Your Honor.

4 BY MR. TODD:

5 Q Dr. Crosswell, what do you, typically, do when you
6 conduct a child sexual assault medical exam?

7 A So, typically, I meet the child at a child advocacy
8 center. And the child is greeted by a child life
9 specialist, who walks through the entire medical exam with
10 the child. I will then meet with the caregiver who has
11 brought the child to the appointment to obtain any
12 background medical history, any symptoms the child is
13 currently having.

14 Then I will meet the child by him or herself if they
15 are developmentally appropriate to do so to get a history
16 directly from my patient about what may or may not have
17 happened. I'll then perform a head to toe physical exam
18 that is a general pediatric exam with the inclusion of the
19 use of a colposcope, which is a piece of medical equipment
20 that allows me to have a bright light source, a
21 magnification system, and the ability to photo document
22 any physical findings that I may see.

23 Once the physical exam is completed, I will order any
24 pertinent laboratory testing and make any recommendations
25 at that time.

1 Q Okay. Are you familiar with [REDACTED] [REDACTED]

2 A Yes, I am.

3 Q How? How so?

4 A I performed a medical evaluation on her on
5 April 13th, 2017.

6 Q When speaking with [REDACTED] what type of information did
7 you need to obtain from her to properly diagnose and treat
8 her?

9 A I need to understand what types -- I'm a child abuse
10 pediatrician so they're referred for reasons of abuse. So
11 I need to understand what types of abuse she may or may
12 not have experienced.

13 Q And based on what they tell you, does that affect the
14 type of examination you would do?

15 A It -- it -- the exam, typically, remains the same.
16 But it would guide my laboratory testing, depending on
17 what type of abuse she may have experienced.

18 Q For purposes of diagnosis and treatment, what did she
19 tell you about how she'd been abused?

20 MS. BARWICK: Judge, I'm going to object.

21 THE COURT: All right. Are you are wanting to go
22 into more than time and place?

23 MR. TODD: Your Honor, I would -- we might need to
24 approach.

25 (WHEREUPON, a bench conference was held.)

1 THE COURT: All right. Madam Forelady, ladies and
2 gentlemen of the jury, I need this -- it's kind of hard to
3 fully discuss this with the lawyers at sidebar because
4 I -- I don't -- I need for them to speak louder, but then
5 you're going to hear what they may say. I mentioned on
6 Monday, my -- my wife thinks I need to have my hearing
7 checked.

8 So I could hear them better if you're not here so
9 they can speak up louder.

10 Thank you again for your patience.

11 If you'll go back to the jury room, please.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 4:50 p.m.)

14 MS. BARWICK: Judge, can I take a quick break?

15 THE COURT: Sure.

16 (WHEREUPON, a break was taken.)

17 THE COURT: All right. Solicitor, let's do this --
18 it seems like we've done more in-camera hearing in this
19 case than before the jury. Go ahead and -- and ask her
20 what you had intended to ask her as it relates to whatever
21 the child may have told her. And let's see what
22 Dr. Crosswell has to say.

23 DIRECT EXAMINATION

24 BY MR. TODD:

25 Q I believe my last question was what -- what did she

1 disclose to you about how she'd been abused?

2 A So when I asked if anyone had hurt her before, she
3 said that, yes, her mother's boyfriend had. And when I
4 asked how he hurt her, she said "He stucked his hand in my
5 butt."

6 She then spontaneously said that he peed on her and
7 the pee felt like snow. He peed on her boo-boo, which is
8 a term she had designated for her buttocks.

9 Q And what would that information have aided you in
10 your treatment plan for her?

11 A Well, because of her seeing some type of fluid, my
12 concern was raised for possibility -- possible sexually
13 transmitted infection, which I then tested her for or
14 offered testing for to her parents.

15 Q You said you did offer STD testing?

16 A I did perform some on the urine. The parents
17 requested that I not do that on the blood at that time
18 because of her anxiety around needle sticks.

19 Q Okay. And did you -- you performed a medical
20 evaluation on her after she disclosed this information to
21 you?

22 A Yes.

23 Q Okay. And what did your medical evaluation reveal?

24 A My physical exam?

25 Q Right. Yes.

1 A My physical exam did reveal a normal female --
2 prepubertal female exam.

3 Q Okay. Were there any physical injuries?

4 A No, there were not.

5 MR. TODD: Your Honor, at that point, we would just
6 go and -- I would ask her would it be normal for a child
7 who'd been sexually abused to not show signs of vaginal or
8 rectal damage. But for the purposes of what the victim
9 had told her at that point, that would be --

10 THE COURT: Well, first, let -- let me make sure I
11 understand Dr. Crosswell's testimony.

12 EXAMINATION

13 BY THE COURT:

14 Q Based upon being told that she was peed on, you felt
15 like you needed to do some sort of testing for sexually
16 transmitted disease; correct?

17 A That's correct.

18 Q But for whatever reason, the parents said no?

19 A Well, no, I did do it on the urine.

20 Q Oh, you did.

21 A I did do sexually transmitted infections, gonorrhea,
22 chlamydia, and trichomoniasis on the urine. The -- to
23 complete the testing would require a blood stick. And she
24 had a lot of anxiety.

25 Q Okay. And then you did a -- a physical exam. And

1 you said it was a prepubertal exam. Abnormal?

2 A Normal --

3 Q Normal.

4 A -- prepubertal female exam.

5 Q Okay. Normal as to that.

6 And you found no sexually transmitted disease as a
7 result of the urine test; correct?

8 A Correct.

9 Q And then that was -- is that pretty much the extent
10 of your workup in this?

11 A My medical workup, yes.

12 THE COURT: All right. Ms. Barwick, do you want to
13 ask Dr. Crosswell any questions in camera?

14 CROSS-EXAMINATION

15 BY MS. BARWICK:

16 Q Dr. Crosswell, on Page 7 of your medical report, did
17 it not say "urine voided"?

18 A Okay. I don't have a Page 7. I'm not sure -- I -- I
19 did send urine from -- I don't know what you're referring
20 to.

21 Q I highlighted.

22 A Okay. That -- that's just the -- the type of
23 testing. So it's a voided urine specimen that I sent for
24 sexually transmitted infection testing.

25 Q Help me understand what that means.

1 A So it -- it's the source of the test. So as opposed
2 to a urine catheter where they stick a -- you know, a
3 catheter in to get the urine sample, she voided the urine
4 into a cup. That cup was collected and sent for
5 gonorrhea, chlamydia, and trichomoniasis testing.

6 Q Like you void --

7 A Like you void -- you void -- no, no. Void urine
8 means she urinated into a cup.

9 Q Okay.

10 A Versus a catheter specimen. So it's the type of
11 urine specimen that was received.

12 MS. BARWICK: Thank you.

13 I don't have any further questions for her.

14 THE COURT: Okay. What is your position,
15 Ms. Barwick, on her under 803(4) being allowed to testify
16 in limited form what was told to her for purposes of
17 medical diagnosis and then as a result of what -- the
18 workup that she did.

19 MS. BARWICK: Judge, my concern is the phrasing that
20 I did -- you know, I -- I listened to what the child had
21 to say. And based on what the child had to say, I went
22 into this. You know, I -- I think that would -- that gets
23 into saying, I believe what the child said. And as a
24 medical professional, I went into X, Y, and Z. It --
25 it -- it lends credence to what the child told her. And

1 that's bolstering. And that's my objection.

2 THE COURT: Yeah. Well, here -- here's what I'm --
3 I'm kind of torn with. I mean, I realize what -- what
4 State v. Rivera says. And then, of course, it cites State
5 v. Burrows, which kind of -- I don't know if Burrows kind
6 of dances around the issue a little bit. Rivera hits it
7 pretty -- pretty strong. But, of course, it's an
8 unpublished opinion and has no prejudicial effect.

9 You know, what we've -- what we've been dealing with
10 in these -- in these CSC cases is the reluctance of the
11 Court to allow people, expert or not, to testify to in any
12 way at all bolster the -- the testimony or the statements
13 of the -- of the victim.

14 And, again, I -- I see what Rivera is saying. So
15 what I'm trying to figure out is -- is try to hit some
16 happy medium. And I'm not suggesting that I feel like I
17 have an obligation to -- to make both sides reasonably
18 happy. I'm not suggesting that. But I'm trying to figure
19 out a way to allow the information in without it --
20 without us crossing over the line to where she might -- it
21 might be inferred that she is vouching for the credibility
22 of the -- of the child, if any of that makes any sense.

23 And I don't have a problem with, Solicitor, you
24 asking that follow-up question about is it unusual, you
25 know, in this situation for there to be no visible injury.

1 I think that's within her, certainly, expertise and
2 purview.

3 MR. TODD: And I would ask in front of -- I would ask
4 her how that could be. But, again, I -- I believe that
5 would be within her wealth of knowledge.

6 THE COURT: All right. Here's what I'm going to do.

7 Solicitor, I'm going to limit you to asking, based
8 upon information received, I performed these following
9 tests or I did this following workup and here were the
10 results. And the fact that I didn't find anything,
11 that -- that would not be unusual, whatever her opinion
12 is.

13 I just don't want it saying based upon what the child
14 told me. I just -- I just don't feel comfortable in
15 allowing that, regardless of the medical diagnosis going
16 beyond time and place. I just don't feel comfortable with
17 that. And I may be -- I may be wrong. So I'm trying to
18 kind of go down the middle on this and satisfy my concern.

19 So just don't ask her what the child said. She can
20 say, based upon the information I received as part of my
21 medical, you know, workup in the case, here's what I did.
22 I did urine STD testing. I did a physical exam. I didn't
23 find anything. And that's not -- that's not unusual.
24 Okay.

25 MR. TODD: How would -- would you -- would I be able

1 to ask would ordering STD testing -- is that common or
2 would that be with -- would that be acceptable to ask her
3 that?

4 THE COURT: Is that common for -- when she does a
5 workup in cases like this, is that common or uncommon?

6 MR. TODD: To always order an STD test.

7 THE COURT: I mean, yeah, she can. But I just don't
8 want the inference, well, since the child told me X, Y, Z,
9 this is why I did something. Okay.

10 Do you pretty much understand? Is that --

11 THE WITNESS: Well, I just -- I base my testing on
12 what the child -- the history I get from the child, just
13 like any other doctor orders testing.

14 THE COURT: Right.

15 THE WITNESS: So I don't know how to explain --

16 THE COURT: Well, you can say, based upon the history
17 or information I received, period, not where it came from.

18 THE WITNESS: Okay.

19 THE COURT: All right. Does that --

20 MS. BARWICK: Maybe just say, in cases such as
21 these -- because in this particular case -- in cases such
22 as these, I order STD testing.

23 THE COURT: Okay. Or -- or based upon this
24 particular case, this is -- this is what I ordered. I --
25 I can go either way. Information and history I received

1 or, based upon this particular case, this is what I did.

2 MR. TODD: I would just ask her, based on the
3 information you received in this case --

4 THE COURT: Right.

5 MR. TODD: -- what did you do?

6 THE COURT: And not where it came from.

7 MS. BARWICK: I -- I see what you're wanting to
8 accomplish, Judge. My concern is the allegation is just
9 peeing on her. So now if we take out the whole -- I'm
10 talking about for STD relevant purposes. If we do that,
11 then all the sudden, what's going on in the juries mind?
12 Whoa, is there something worse than just peeing? Because
13 peeing isn't CSC. Penetration is CSC. And if they're
14 thinking that a -- like, sex occurred, then that would
15 warrant an STD.

16 So I would almost prefer her to be able to say the
17 child said he urinated, so I ordered STD. The -- the
18 unknown being left in their mind thinking that it was
19 something worse and something consistent with CSC.

20 THE COURT: All right. Here's -- here's what I'm
21 going to ask that you fine attorneys do, take five minutes
22 and see if y'all can agree on a line of questioning that
23 both of you -- even though you're not getting maybe
24 everything that you want that both of y'all can -- can
25 live with.

1 Can you do that?

2 MS. BARWICK: I -- I would really like to do that,
3 Judge. But I -- I don't consent to any of this. And I
4 don't want to waive my ability to preserve this for
5 appeal. So I can't sit down and consent to something.

6 THE COURT: All right. Then -- then my prior -- my
7 previous ruling stands. Based upon information received
8 in this particular case, this is what I did. Not the
9 source of what was told to her and not the specifics of
10 what was told to her.

11 Again, I understand the -- the medical diagnosis here
12 saying we've been dealing with that. But going beyond
13 time and place, it just -- it concerns me. So I'm going
14 to -- I'm going to -- that limitation is -- is how we're
15 going to handle it.

16 MR. TODD: Okay.

17 THE COURT: Okay.

18 MS. BARWICK: If I could not waive my objection to
19 going down this path at all, I would much rather it come
20 out that it was an allegation of urine than, again, to
21 leave it in the minds of the jury that it was something
22 consistent with penetration.

23 So without waiving my objection, I would -- I would
24 rather that line of questioning than -- than what's being
25 proposed.

1 MR. TODD: The child -- I mean, the child's testified
2 to pee. It's never been urine. We don't know if -- pee
3 could have meant a number of things. I think by
4 clarifying that it was urine -- I think that's a twist of
5 words.

6 THE COURT: Well, I think -- when someone says he
7 peed or she peed, I mean, I think the logical conclusion
8 to reach that we are talking about -- you know, or unless
9 you're -- you're thinking she -- she thought it was pee
10 and it was something else like ejaculation.

11 MR. TODD: Right.

12 MS. BARWICK: And I would rather that than the idea
13 of thinking it was actual penetration, which meets the
14 elements of CSC.

15 THE COURT: So where does this leave us?

16 MR. TODD: Your Honor, based on my understanding,
17 when the jury comes back in, I would ask her, based on the
18 information you received in this case, what did you do
19 next? And she would say, like what she told earlier, that
20 she got the -- did a physical examination. She ordered an
21 STD test.

22 THE COURT: All right.

23 MS. BARWICK: I -- I would rather -- I would rather
24 her say that because the child told me he urinated on her,
25 I ordered an STD test.

1 THE COURT: Well, and I -- the dilemma that you're
2 in, Ms. Barwick -- and I can understand and appreciate it.
3 I don't think you can on the one hand have a blanket
4 objection to anything that this doctor says, but then on
5 the other hand say, but I want her to say this. I mean,
6 I -- to put you in a dilemma, but you can have one or the
7 other. I don't think you can have both. I don't think
8 you can say I want blanket protection on the record about
9 anything she says. But on the other hand, I think she
10 needs to say this. I don't think it can work both ways.

11 MS. BARWICK: Judge, if that's your ruling, then I
12 would rather her be able to say that the child said it --
13 the -- that he urinated on her.

14 THE COURT: Well, the child didn't say he urinated.
15 The child told you he peed; correct?

16 THE WITNESS: Correct.

17 MS. BARWICK: And I -- I'm mixing words here because
18 that's what humans do. I'm fine with using the word
19 "pee," rather than leaving into the speculation of their
20 mind an STD test was ordered because sex occurred. So
21 I -- I would -- it's a lot less dangerous to my client for
22 the word pee to come out than for it to be left up in
23 their minds. And that's what I would prefer.

24 THE COURT: All right. We -- we've beat this up
25 enough.

1 You can go ahead and ask her, based upon information
2 received, the child says that she was peed on, did an STD
3 test, a urine, and did a physical exam. It was normal and
4 no injury. That's -- that's not unusual. That's what --
5 that's what we're going to do.

6 MR. TODD: Okay.

7 THE WITNESS: Can I just make sure I understand what
8 I'm able to -- so am I able to testify as I did before
9 exactly what she said to me?

10 THE COURT: No, no, no.

11 THE WITNESS: Okay.

12 THE COURT: You can just say, based upon the
13 information I received in this case, which included the
14 child said she was peed on, I did an STD test on urine.
15 It was negative. I did a physical exam. It was normal.
16 And then he's going to ask you, finding no injury, is
17 that -- is that unusual?

18 THE WITNESS: I -- I have an issue with that because
19 she just described the pee like snow. So it's not -- I'm
20 not giving full information about what the child told me
21 and why I chose to do a sexually transmitted infection.

22 MS. BARWICK: I'll -- I'll cross-examine her on that
23 comment since the pee is being opened.

24 THE COURT: Well, and, see, there's -- all right.
25 Did the child -- okay. Never mind, never mind.

1 Do not quote anything that she said. Just based upon
2 information, this is what I did. This is my findings.

3 Let's bring the jury out, please.

4 Don't say anything about pee, or anything.

5 (WHEREUPON, the jury came into open court at
6 approximately 5:14 p.m.)

7 THE COURT: All right. Let the record reflect the
8 jury is back in.

9 Solicitor, you may proceed.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. TODD:

12 Q Dr. Crosswell, based on the information you received
13 in this case, what did you do?

14 A I performed a physical exam on my patient and ordered
15 laboratory -- laboratory studies to evaluate for sexually
16 transmitted infections.

17 Q What did your physical evaluation reveal?

18 A She had a normal prepubertal female genital exam.
19 The remainder of her physical exam was, also, normal.

20 Q So were there any physical injuries?

21 A No, there were not.

22 Q Is that normal?

23 A It is very common in child sexual abuse cases for the
24 physical exam to be normal. In -- more recent studies
25 show that less than three percent of the time are there

1 actual physical findings that are specific for child
2 sexual abuse.

3 Q So is what you're saying can a child who's been
4 sexually abused not show signs of vaginal or rectal
5 damage?

6 A That's correct.

7 Q And how can that be?

8 A Because of the -- the nature of the sexual abuse
9 either didn't cause an injury. Or the injury -- injury
10 can heal rapidly without leaving signs that are visible to
11 the eye.

12 The area of the vagina and the rectum are very
13 vascular areas, meaning they have a very rich blood
14 supply, which means that they can heal very quickly.
15 Also, it's -- it's more what we call mucous tissue. And
16 they can heal without leaving scarring.

17 Q What are some other -- if it would help you to draw
18 for the jury, what are some other common misconceptions?

19 A A lot of -- the -- the female anatomy is more
20 complicated than -- than we, typically, realize. There
21 are multiple layers of tissue that can be crossed. Many
22 people believe that the hymen, which is a -- a piece of
23 tissue that partially covers the vagina will have some
24 type of sign that something has either touched it or
25 crossed it. And that is not always the case, actually,

1 rarely the case.

2 MR. TODD: One moment, Your Honor.

3 (Pause.)

4 BY MR. TODD:

5 Q And did that conclude your involvement with this
6 case?

7 A Yes, it did.

8 MR. TODD: Thank you.

9 Please answer any questions Ms. Barwick may have.

10 THE COURT: Ms. Barwick.

11 MS. BARWICK: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. BARWICK:

14 Q Dr. Crosswell, when did you perform your examination
15 of this child?

16 A I performed the exam on April 13th, 2017.

17 Q April 13th?

18 A Yes.

19 Q And according to your information and your report,
20 the disclosure was made on March 20th?

21 A I know that she was seen in the emergency room on
22 March 20th of that year.

23 Q So that's 24 days later that you did your
24 examination?

25 A I'll have to do the math. But that sounds correct.

1 Q March has --

2 A Yes.

3 Q -- 31 days.

4 A Correct.

5 Q So -- so that's -- that's 24 days. Actually, what
6 date in April? You said the 13th?

7 A The 13th.

8 Q Okay. So 24 days later. Let's suppose -- and
9 backing up a little bit. Let's suppose that -- well,
10 isn't it true that the sooner you have a rape kit done,
11 the more likely it is you can find something?

12 A If there is an injury, the sooner that, you know, a
13 child is examined, the more likely.

14 Q Okay.

15 A Yes.

16 Q And 48 hours is a lot more likely than 24 days, is it
17 not?

18 A Yes.

19 Q Okay. And what's the difference between an external
20 physical examination and a rape kit examination?

21 A So a -- a rape kit examination is really just -- it's
22 evidence collection. So it's taking swabs for DNA,
23 plucking hairs for DNA. There's --

24 Q Whose DNA?

25 A Looking for a -- a perpetrator's DNA, but, also,

1 getting a sample of the child's DNA.

2 Q Okay. And -- and does a rape kit do the same -- is
3 that the same kind of examination you conducted?

4 A No. The rape exam -- I don't know at Baptist Easley,
5 but I -- I don't think that they use a colposcope at that
6 location.

7 Q Can you tell the jury what a colposcope is?

8 A A colposcope is --

9 THE COURT: Can you spell it first, please?

10 THE WITNESS: Sure. It's C-O-L-P-O-S-C-O-P-E.

11 A colposcope is the piece of medical equipment that I
12 described earlier. And for me, it serves three purposes.
13 It's a bright light, a form of magnification system, and
14 the -- it allows the ability to photo document any
15 physical findings.

16 BY MS. BARWICK:

17 Q Okay. And a -- in a rape kit where you're looking
18 for DNA of a -- a perpetrator, the sooner you get that the
19 better; is that not correct?

20 A That's correct.

21 Q And is it not correct that it's more likely that that
22 DNA would have been present within 48 hours than 24 days?

23 A Yes.

24 Q And collecting DNA is essential in cases like this;
25 is that not true?

1 A Not in child sexual abuse.

2 Q Okay. But to identify the perpetrator, matching DNA
3 would have been huge?

4 A In -- there's a very small subset of cases that are,
5 actually, matched. But if it had been present, it would
6 have been huge.

7 Q And it is a lot more likely within 48 hours than
8 24 days?

9 A Yes.

10 Q Okay. And -- and I lost my place.

11 Did the parents accompany the child to the medical
12 examination?

13 A Yes, they did.

14 Q And when you spoke to the child, was she alone or
15 with them?

16 A She was alone.

17 Q And -- and both parents reported to you that they,
18 initially, thought that her injuries were the result of
19 bad hygiene; isn't that correct?

20 A They reported that her symptoms were a result -- they
21 thought it was a result of poor hygiene.

22 Q Okay. And what she described to you as her symptoms,
23 is bad hygiene consistent with that?

24 A Well, the symptoms that they described were her
25 complaining of her bottom hurting. And that can be a

1 result of poor hygiene. It can, also, be a result of
2 other things, including sexual abuse.

3 Q And -- and that's why parents use diaper cream on
4 kids to create a barrier so that they don't have sore
5 butts from any kind of feces or moisture that might
6 accumulate?

7 A Right. But she is five. So they wouldn't have used
8 that type of treatment for her.

9 Q But -- but the parents thought all of this was the
10 result of poor hygiene?

11 A Correct.

12 Q And her hymen was, in fact, intact?

13 A It's not a term I use. But there was no traumatic
14 findings on her hymen.

15 Q Okay. And there was no findings whatsoever that
16 sexual abuse occurred?

17 A That's correct.

18 Q Or that there was any penetration, however slight?

19 A Which is most common in child sexual abuse. Again,
20 less than three percent of cases, actually, have specific
21 findings for child sexual abuse.

22 Q Right.

23 But a child who hasn't been sexually abused, you're
24 not going to find anything, are you?

25 A No.

1 Q And what temperature is the human body?

2 A 98.6 degrees Fahrenheit.

3 Q And are bodily fluids the same temperature?

4 A Yes, to my knowledge. I mean, unless --

5 Q You're a medical doctor?

6 A Unless they've been sitting outside, you know, I
7 don't know what --

8 Q Immediately evacuating the body --

9 A Yes.

10 Q -- or voiding --

11 A Yes.

12 Q -- the body?

13 A Yes, they should be.

14 MS. BARWICK: Okay. No further questions.

15 THE COURT: Solicitor, any redirect?

16 MR. TODD: Briefly.

17 REDIRECT EXAMINATION

18 BY MR. TODD:

19 Q Is it common for you to conduct your exam in cases
20 like this -- I believe here, you did it April -- in April
21 and the -- it was reported in March. Is that common for
22 there to be that gap?

23 A It is common. In fact, for children who've been seen
24 acutely within that 48-hour period, we recommend that they
25 wait, at least, two weeks so that we can evaluate for any

1 sexually transmitted infections, if appropriate. Because,
2 sometimes, it takes some time.

3 Q And what -- what would be the time recommended from
4 disclosure and ordering an initial rape kit?

5 A So a rape kit is only performed in the emergency room
6 when a child has presented within 48 hours of the last
7 alleged incident of contact. After that time, there's --
8 studies have shown that there's little -- minimal
9 likelihood of finding any DNA evidence on the child that
10 would help assist with the case.

11 So that's not something that I do in a child advocacy
12 center. I don't attempt to -- to get DNA on a patient.

13 Q Okay. And when you were -- when we were talking
14 about -- or when Ms. Barwick was talking with you about
15 hijack -- or hygiene. I'm sorry. Is it your testimony
16 that what -- what began as personal hygiene led to the
17 child ultimately --

18 MS. BARWICK: Judge, this is a leading question.

19 THE COURT: Well, maybe -- maybe rephrase a little
20 bit if you can, Solicitor.

21 BY MR. TODD:

22 Q What -- what is your opinion of complaints of a child
23 saying their bottom hurts?

24 A So when I'm getting a background medical history from
25 the parents, I'm getting a detailed history of any type of

1 symptoms that they might offer to explain or to just add
2 information. And, specifically, in -- in these cases,
3 they offered the fact that her bottom was hurting. That
4 is a -- a -- a physical symptom. It's one thing to note.

5 But it's -- I can't determine that etiology directly.
6 It lends support to other things -- other history. But in
7 and of itself, it's not diagnostic of one or the other.

8 Q I think I follow you. So you're saying it could
9 be -- a child's bottom hurting could be the result of
10 hygiene or sexual assault?

11 A That's correct. A child of this age, that is
12 correct.

13 MR. TODD: One moment, Your Honor.

14 THE COURT: Sure. Take your time.

15 (Pause.)

16 BY MR. TODD:

17 Q What prior medical history did you receive?

18 A What prior --

19 MS. BARWICK: Judge, I think we're getting into what
20 you said we couldn't get into.

21 THE COURT: Okay. What -- what are you -- what's
22 that question -- is that going to run afoul of what we've
23 been discussing?

24 MR. TODD: May we approach?

25 (WHEREUPON, a bench conference was held.)

1 BY MR. TODD:

2 Q Dr. Crosswell, who was [REDACTED] referred to you by?

3 A Pickens City Police Department.

4 Q Do you work with the Julie Valentine Center -- or do
5 you receive patients from the Julie Valentine Center?

6 A The -- yes. The patients are referred to the Julie
7 Valentine Center. I work for Prisma Health System, who
8 contracts with the Julie Valentine Center for patients to
9 be able to be seen there.

10 Q And did [REDACTED] come from the Julie Valentine with
11 her parents?

12 A She came to the Julie Valentine Center with her
13 parents.

14 Q And then they would -- she would -- your referral
15 came from them; is that right?

16 A Well, I have an exam room at the Julie Valentine
17 Center where I saw her.

18 MR. TODD: Okay. Thank you.

19 THE COURT: Any -- that was redirect.

20 Any recross?

21 MS. BARWICK: No, sir.

22 THE COURT: Okay. Thank you, Doctor.

23 You're free to leave. I appreciate it.

24 Okay. Ladies and gentlemen, it is 5:30. This would
25 be a good time to take our evening break. I know that

1 I've got a couple of matters I need to deal with the
2 lawyers in the morning. So how about being ready to get
3 started at 10:15.

4 I try to keep at a minimum -- I try, I may not always
5 succeed, but, at least, I try to keep at a minimum how
6 much time you have to spend in the jury room. You may say
7 that I don't do a very good job of that. And -- but I
8 appreciate your patience. I appreciate your
9 understanding.

10 So be ready to go at 10:15 in the morning. Have a
11 good evening. Get some rest. And, again, remember all of
12 my instructions that I have given you yesterday.

13 Okay. See you in the morning.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 5:30 p.m.)

16 THE COURT: Okay. I appreciate y'all's hard work
17 again. And we'll see you in the morning.

18 Let's get together about 10:00. And we can deal with
19 that flight issue and any other issues that you may -- may
20 have, or even a couple minutes before 10:00.

21 MS. MCCALL: Thank you, Judge.

22 MS. BARWICK: I'm trying to figure out timing, Judge.
23 And I know we're all anxious to leave. My expert witness,
24 one, I need to know what you'll allow her to testify to.
25 And I'm sure we can discuss that tomorrow.

1 But the reason why I'm bringing this up now is she
2 runs a clinic for indigent clients at -- it's -- it's
3 federally funded. And she's a psychiatrist there. And
4 she's doing her rounds tomorrow.

5 The way the testimony was proceeding, I really
6 thought she wouldn't be going until Thursday. And she
7 planned her schedule accordingly. I don't know how Your
8 Honor -- of course, I'll do what you tell me to do. I --
9 I -- I'm requesting that maybe we can wait until Thursday
10 morning for her testimony and have -- but that would
11 mean -- as I understand, Ms. McCall is going to rest
12 probably around lunchtime.

13 MS. MCCALL: That is correct.

14 THE COURT: Okay. Would you have any other witnesses
15 in your case that we could put up --

16 MS. BARWICK: One. And she would take about two
17 minutes.

18 THE COURT: Okay. And that's all you would have?

19 MS. BARWICK: Yes, sir.

20 THE COURT: All right. And then you're not -- I know
21 you maybe are not exactly sure, but you're only
22 anticipating maybe two witnesses?

23 MS. BARWICK: Yes, sir.

24 THE COURT: Okay. Well, we -- if we just have to
25 break early, we'll -- we'll break early. And I realize

1 the dilemma that lawyers are in sometimes in working
2 around experts schedules.

3 So we'll just -- we'll just knock off early tomorrow
4 and pick up Thursday and -- with that witness. And then
5 maybe we can get it to the -- to the jury Thursday
6 afternoon.

7 MS. BARWICK: I sincerely appreciate you being
8 willing to work with us on that, Judge.

9 THE COURT: Yeah. I will.

10 (WHEREUPON, the proceedings were concluded at
11 approximately 5:35 p.m., to be reconvened on
12 Wednesday, August 21, 2019.)
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1 WEDNESDAY, AUGUST 21, 2019

2 THE COURT: We're back on the record this morning.

3 Let me mention one thing to the attorneys. I talked
4 with Clerk Welborn. And he indicated that he was
5 approached by the Forelady of the jury. And she inquired
6 whether or not they could start writing out questions now
7 that they may have. And so when they -- when the jury
8 comes out, I'm going to respond to that question. And I'm
9 going to instruct them not to until they start their
10 deliberations.

11 Now, if they want to -- as soon as they start the
12 deliberations, if they want to start writing out
13 questions, then -- I mean, that's fine. But I don't want
14 that to start prior to their deliberations. So that's
15 just -- I bring that out to you.

16 Okay. Solicitor, you got -- how many more witnesses
17 do you have?

18 MS. MCCALL: Three, Your Honor.

19 THE COURT: Three?

20 MS. MCCALL: Yes, sir.

21 THE COURT: And anticipated to -- that we'll finish
22 up, hopefully, by lunchtime.

23 MS. MCCALL: Yes, Your Honor. I expect to be done by
24 12:00.

25 THE COURT: All right. Very good.

1 Do we need to put anything on the record before we
2 bring the jury out and call the next witness?

3 MS. MCCALL: Nothing from the State.

4 THE COURT: From the Defense?

5 MS. BARWICK: The State has informed me that they
6 don't plan on going down the road of flight.

7 THE COURT: Okay.

8 MS. BARWICK: So I -- I think that's been absolved --
9 or resolved.

10 THE COURT: All right. Well, good. I had already
11 done some -- some research into that. So I'll -- I'll put
12 that in my back pocket for the next time it -- it comes
13 up.

14 MS. BARWICK: And then the two other issues, which
15 I'm sure we can figure out later, that are remaining are
16 the transcript and what my expert can testify to.

17 THE COURT: Right, right. Okay. Very good.

18 All right. So the plan is we'll -- the State will
19 finish up their case. And then I think we'll break for
20 the day because your -- your expert's not available until
21 in the morning.

22 MS. BARWICK: I -- I have a witness that can come up.
23 I have a witness --

24 THE COURT: You said it was a very short witness?

25 MS. BARWICK: A very short witness. And I'm not sure

1 which -- because Ms. McCall's list and my list, we had
2 some of the same people. So it depends on who she calls
3 if I decide to call --

4 THE COURT: Okay. Well, if you decide to call that
5 witness, I would suggest let's just wait and do that in --
6 in the morning. You said it's short. So it's not going
7 to really affect time wise for tomorrow. So we can start
8 your case in the morning.

9 MS. BARWICK: I -- I want to make sure you understand
10 what I'm saying. There are some witnesses on her list
11 that were on my list that I didn't -- I had the one
12 witness I was going to call no matter what and -- and then
13 my expert.

14 THE COURT: Oh.

15 MS. BARWICK: I'm not sure who she's calling and not
16 calling --

17 THE COURT: Oh, sure.

18 MS. BARWICK: She has more than three. So depending
19 on what their witnesses testify, I might add one or two.

20 THE COURT: Okay. Oh, sure. That's -- that's fine.

21 And then if we need to call some of your witnesses
22 today, that's fine, or wait until in the morning. We'll
23 just kind of play it by ear.

24 MS. BARWICK: Yes, sir.

25 THE COURT: Okay. Very good.

1 Let's -- let's bring the jury out, please, sir.

2 (WHEREUPON, the jury came into open court at
3 approximately 10:22 a.m.)

4 THE COURT: Let the record reflect the jury is back
5 in.

6 Good morning, ladies and gentlemen.

7 Madam Forelady, I understand that you posed a
8 question to Clerk Welborn about starting now to write down
9 potential questions that you have. I don't want you to do
10 that until you begin your deliberations.

11 Now, when I -- when you begin your deliberations if
12 that's the first order of business is to write down
13 questions, that's fine. That's -- that's y'all's call.
14 But I don't want you to start that until the deliberations
15 begin.

16 Okay. Solicitor, do you want to call your next
17 witness?

18 MR. TODD: Yes, Your Honor.

19 The State calls Zack Wilson.

20 THE CLERK: If you would, place your left hand on the
21 Bible and raise your right.

22 WHEREUPON,

23 ZACK WILSON,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you, sir.

1 If you would, have a seat.

2 And state your name for the record.

3 THE WITNESS: Zack Wilson.

4 DIRECT EXAMINATION

5 BY MR. TODD:

6 Q Zack, how are you doing today?

7 A I'm well.

8 And you?

9 Q I'm doing fine.

10 Thank you.

11 Where do you currently work?

12 A Pickens County Department of Social Services.

13 Q How long have you worked there?

14 A October will be five years.

15 Q October will be five years.

16 What's your --

17 A Four and a halfish.

18 Q What's your job title there?

19 A I'm a family preservation caseworker.

20 Q What are some of your duties and responsibilities?

21 A Case managing and child protective services,
22 responding to on-call incidents regarding child protective
23 services.

24 Q So were you working in that capacity in March of
25 2017?

1 A I was.

2 Q Did you respond to Easley Baptist Hospital in March
3 of 2017?

4 A I did on an on-call case.

5 Q Are you familiar with [REDACTED] [REDACTED]

6 A I am.

7 Q Did you respond in reference to her?

8 A I did.

9 Q Okay. Who did you speak with when you arrived at the
10 hospital?

11 A The mother, Brittany Hudson, the father, Brandon
12 Gantt, and [REDACTED] [REDACTED]

13 Q Okay. Did [REDACTED] disclose sexual abuse to you?

14 A Yes.

15 Q What was her demeanor like when she disclosed that?

16 A She seemed pretty straightforward. She didn't seem
17 hesitant at all.

18 Q Okay. Did she say where -- whose house -- or where
19 this occurred?

20 A She said it was her mother's home.

21 MR. TODD: Okay. Thank you.

22 Please answer any questions Ms. Barwick might have.

23 THE COURT: Does the Defense have any cross?

24 MS. BARWICK: I do, Your Honor.

25 Thank you.

CROSS-EXAMINATION

BY MS. BARWICK:

Q Mr. Wilson, when you got to the hospital, was Jennifer -- is it Pagano? -- from the Pickens County child advocacy center there?

A Yes.

Q Okay. And she had already spoken with [REDACTED] at that point; right?

A I'm not sure.

Q Okay. And then there was a nurse there as well, Allison Meena?

A I don't recall her.

Q Do you have your dictations with you today?

A I don't.

Q Have you reviewed them before you testified today?

A I did.

MS. BARWICK: Okay. I don't know if Your Honor would like him to review his dictations before...

THE COURT: Mr. Wilson, do you need to review your -- your notes before Ms. Barwick asks you any more questions?

THE WITNESS: I can.

THE COURT: Okay. Do you have a copy of his --

MS. BARWICK: I do, Your Honor. Mine are highlighted.

THE COURT: Okay. Just disregard her highlighting.

1 THE WITNESS: Okay.

2 THE COURT: Just take a few minutes. And then when
3 you're ready, then Ms. Barwick can pick up her cross.

4 (Pause.)

5 THE COURT: All right. I think he's ready.

6 MS. BARWICK: Thank you, Your Honor.

7 BY MS. BARWICK:

8 Q Mr. Wilson, had Jennifer Pagano already spoken with
9 the child by the time you got there?

10 A I don't recall her telling me that.

11 Q Okay. And what about Allison Meena, she was there,
12 the nurse?

13 A Yes.

14 Q And at the hospital with you was Detective -- or I'm
15 sorry, Officer Renee Elrod?

16 A Correct.

17 Q And you spoke with the child; right?

18 A Yes.

19 Q And you and law enforcement referred her to the Julie
20 Valentine Center?

21 A I believe Officer Renee Elrod did that.

22 Q Okay. And the Julie Valentine Center is a child
23 advocacy center, is it not?

24 A Yes.

25 Q Okay. And they advocate for children over there?

1 A Yes.

2 Q Your interview -- when you were with Officer Elrod,
3 you interviewed mom; right?

4 A After interviewing the child.

5 Q Yeah. Go ahead and tell the jury which order you
6 interviewed everybody. That would be helpful.

7 A The child first, and then I spoke with the parents.

8 Q Okay. And you spoke with mom separately at some
9 point; right?

10 A Yes.

11 Q And then you spoke with dad and girlfriend
12 separately?

13 A Yes.

14 Q And did you speak with dad, and girlfriend, and mom
15 all at one time?

16 A I don't -- I don't recall speaking with all three of
17 them at the same time.

18 Q Okay. And mom's interview was recorded by Officer
19 Elrod's body cam; is that correct?

20 A I couldn't tell you that.

21 Q Okay. Do you remember Officer Elrod during mom's
22 interview, at some point, holding her finger up to you and
23 telling you to be quiet?

24 A No.

25 Q Okay. You don't remember that happening to you?

1 A No.

2 Q And [REDACTED] told you where this happened at mom's
3 house, didn't she?

4 A Yes.

5 Q And she told you it happened upstairs in her bed;
6 isn't that right?

7 A She --

8 Q You can review your notes, if you'd like.

9 A She said that he'd entered the bedroom, in her bed.

10 Q Okay. Can I review your dictations?

11 A Uh-huh.

12 Q Thank you.

13 A Uh-huh.

14 Q Did [REDACTED] not say that the incident happened when
15 the perpetrator got in the bed with her and asked her to
16 go downstairs, but she said she didn't want to. And then
17 [REDACTED] said that her sister was asleep beside her, but
18 she didn't wake up?

19 A Yes.

20 Q And that's what was said?

21 A Yes.

22 Q Okay. And [REDACTED] said that she tried to wake up
23 her mom the next morning. And then she tried to tell her
24 mom about it the next morning, but the mom didn't really
25 believe her; isn't that right?

1 A She -- I don't recall her saying that she didn't
2 believe her. But I do recall her -- I think she called
3 him a silly head.

4 Q A dummy?

5 A Something to that effect.

6 Q Okay. And when you say, "she called him a silly
7 head" or a dummy, you're referring to mom?

8 A [REDACTED] said that the mom called Mr. Clark a dummy.

9 Q Okay. And then -- all right. And given that
10 [REDACTED] said that [REDACTED] was in the bed with her, did
11 anyone talk to [REDACTED]?

12 A [REDACTED] was asleep at the time.

13 Q So you never followed back up with [REDACTED]?

14 A After the on-call initial contact, it goes on to an
15 investigator. So whether or not that happened is -- that
16 was past my part of case management.

17 Q I understand.

18 And when you were there, you didn't see Officer Elrod
19 talk to [REDACTED] at all either, did you?

20 A No.

21 Q Okay. And -- and the fact that [REDACTED] said she
22 told her mom, DSS takes it pretty seriously, don't they,
23 when a child says I reported this to my mother and then
24 mother didn't take any action to further protect her
25 child?

1 A What's your question again?

2 Q Yes.

3 DSS takes it seriously when a child tells DSS, I told
4 my mother and that mother doesn't take any necessary steps
5 to protect that child?

6 A Oh, yes.

7 Q And, in fact, they get indicated and put on a child
8 abuse registry for substantial risk of neglect for that
9 kind of behavior, don't they?

10 A Not always. And I'm not sure if that is how this
11 case played out.

12 Q Because it didn't play out that way, did it?

13 A I don't believe there are any findings against her.

14 Q Right.

15 Even though child accused mom of a -- neglectful
16 behavior, no findings were made against mom; is that
17 correct?

18 A I -- honestly, I couldn't tell you. Because, again,
19 that was beyond my part of case management.

20 Q Okay.

21 A I was just responsible for initial contact.

22 Q But that would be important to find out, wouldn't it?

23 A For me to find out?

24 Q For the State to find out.

25 A I'm pretty sure that would have been investigated by

1 the investigator.

2 Q Okay. And if no findings were made, that means that
3 that allegation is unfounded; right?

4 MR. TODD: Objection, Your Honor. I think he's made
5 it clear what his role in this is. And I --

6 THE COURT: All right. Sustained.

7 MS. BARWICK: But, Judge, if -- if we can approach.
8 I have an argument on that.

9 THE COURT: Okay.

10 (WHEREUPON, a bench conference was held.)

11 THE COURT: All right. I will allow the question to
12 be answered if it is asked as a general procedure or
13 general policy, and not as related to this case. Because
14 he's already indicated all he did was the initial contact.

15 MS. BARWICK: Yes, sir.

16 Thank you, Your Honor.

17 BY MS. BARWICK:

18 Q So, generally speaking, if a child makes an
19 allegation against their mother that they explained and
20 disclosed sexual abuse to their mother and their mother
21 didn't take any further steps to protect that child, that
22 would be investigated by a DSS investigator; is that
23 correct?

24 A Yes.

25 Q And if there is no finding against that parent, that

1 means that that disclosure was decided to be unfounded?

2 MR. TODD: Objection. I don't --

3 MS. BARWICK: I'm talking in general terms, Judge.

4 THE COURT: Well, I -- I'll allow him to answer.

5 You can explain -- do you understand the question,
6 sir?

7 THE WITNESS: Yeah.

8 If you --

9 THE COURT: Okay. You can explain.

10 THE WITNESS: If you want to say in a way it's
11 unfounded, you can. But if that disclosure was not a part
12 of the initial allegations as in the report that was
13 called in and accepted for an investigation -- and in our
14 system, it doesn't get technically counted as unfounded,
15 no. Because it was never addressed in the initial
16 allegations.

17 However, if that is information that is provided to
18 us from the point of initial contact on throughout the
19 investigation, we will look into it. If there's nothing
20 that backs it up, then it just no longer gets addressed.
21 So there's no unfounded documentation.

22 BY MS. BARWICK:

23 Q Thank you for correcting my language.

24 So if there's nothing backing it up, it just gets
25 left alone?

1 A Yes.

2 Q And no finding is entered?

3 A Yes.

4 Q Okay. Thank you for correcting me on that.

5 And -- and the father described how the disclosure
6 came about. And -- and he said that he thought it was
7 just a rash or irritation from not wiping well enough;
8 isn't that correct?

9 A Yes.

10 Q And that's the same thing mother told you she thought
11 was the issue?

12 A If I recall correctly, yes.

13 Q And -- and you might -- tell me if you need your
14 dictation notes back on this. Because I -- I know it's
15 hard to remember.

16 Per dad, he said before he got to the hospital, the
17 following people spoke to the child about the disclosure.
18 Dad; right?

19 A Yes.

20 Q Dad's girlfriend, Sarah Harris?

21 A Yes.

22 Q Dad's -- and then two aunts. He said two aunts;
23 right?

24 A I know there were two female relatives. I don't
25 remember if it was -- I thought it was an aunt and a

1 grandmother, but it could have been two aunts.

2 Q Does your dictation reflect two aunts and a
3 grandmother?

4 A Yes.

5 Q Okay. So we have dad, girlfriend, an aunt, another
6 aunt, a grandmother, and then mother before you got there;
7 right?

8 A Yes.

9 Q So that's six people this child has disclosed to
10 before any trained professionals came in to speak with the
11 child?

12 A Yes.

13 Q And mom denied to you that the child ever disclosed
14 to her before March 20th of 2017?

15 A I don't recall her denying that to me directly. But
16 according to my dictation, Mr. Gantt said that the mom
17 denied it.

18 Q Okay. And Mr. Gantt didn't believe the child had
19 told mom previous to this either, did he?

20 MR. TODD: Objection, Your Honor.

21 THE COURT: Basis for your objection?

22 MR. TODD: That's -- she's -- I mean, that's outside
23 of his role in this. I mean, he's testifying that he's
24 speaking with the child. He spoke with family members.
25 Whether or not the parents believed her or not, he has no

1 way of knowing that.

2 THE COURT: Okay. Repeat the question, Ms. Barwick.

3 Don't answer, sir.

4 Repeat that question again.

5 MS. BARWICK: I'll try my best, Judge.

6 THE COURT: All right. If you ask what did the --

7 MS. BARWICK: I -- I asked --

8 THE COURT: -- what did the father believe, unless he
9 recorded it in his notes what the father said, that would
10 be speculation. And I think it would be a proper
11 objection. And I would sustain if that were your
12 question.

13 BY MS. BARWICK,

14 Q My question is: And dad informed you that he did not
15 believe the child had told mom before the state [phonetic]
16 either? And I believe that's in your dictation.

17 THE COURT: All right. Well, take a look at your
18 notes. If -- if that's what the dad told you --

19 Are you basing your objection on speculation,
20 Solicitor?

21 MR. TODD: Yes, Your Honor.

22 THE COURT: Okay. Well, if -- if that's what the dad
23 told him, I think it would be a permissible question.

24 THE WITNESS: I don't see any mention of that in the
25 notes. It says that the mom told him that she didn't --

1 she didn't know anything about it previously. And he
2 contacted law enforcement.

3 BY MS. BARWICK:

4 Q Okay. Well -- but it -- it's possible in the
5 recorded interview of father that he said that. You're
6 not saying that wasn't said --

7 MR. TODD: I'm going to --

8 THE COURT: Now --

9 MR. TODD: -- object --

10 THE COURT: -- that would be speculation.

11 MR. TODD: Right.

12 MS. BARWICK: Yes, sir.

13 THE COURT: So I would -- I would not allow that
14 question.

15 MS. BARWICK: Okay.

16 THE COURT: So don't answer it, please, sir.

17 MS. BARWICK: All right. I'll take those back from
18 you.

19 Thank you.

20 Judge, I have no further questions for this witness.

21 THE COURT: Okay. Any redirect?

22 MR. TODD: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. TODD:

25 Q How old would [REDACTED] -- do you know how old [REDACTED]

1 would have been that day you were in the hospital when she
2 was sleeping?

3 A [REDACTED], she was born in 2013, I think. If -- that
4 was 2017, so she would have been about three, maybe four.

5 Q Okay. And [REDACTED] never told you she didn't go
6 downstairs?

7 A No.

8 Q And in your experience, have you ever had a parent
9 deny something they've been told by a child?

10 A Yes.

11 MR. TODD: No further questions.

12 THE COURT: Okay. You can step down, sir.

13 MS. MCCALL: Your Honor, at this time, the State
14 calls Renee Elrod to the stand.

15 THE COURT: Okay.

16 THE CLERK: If you would, place your left hand on the
17 Bible and raise your right.

18 WHEREUPON,

19 RENEEL ELROD,

20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 If you would, have a seat.

23 And state your name for the record, please.

24 THE WITNESS: Good morning.

25 I'm Sergeant Renee Elrod of the Pickens Police

1 Department.

2 DIRECT EXAMINATION

3 BY MS. MCCALL:

4 Q Sergeant Elrod, you said you work at the Pickens
5 Police Department; is that correct?

6 A Yes, ma'am.

7 Q Okay. And how long have you worked there?

8 A I -- I started as a reserve officer in 2012.

9 Q And what is your current title?

10 A Sergeant over road patrol.

11 Q All right. And tell me what your duties are in that
12 position.

13 A I work with individuals on a -- what -- I'm on the
14 bravo team. So I work with several officers on the bravo
15 team. I assist officers on the alpha team, [inaudible]
16 reports, take calls, patrol -- road patrol duties.

17 Q Okay. And so as part of your duties as a sergeant,
18 are you dispatched on calls that come in?

19 A Yes, ma'am.

20 Q And in March of 2017, specifically, March 20th of
21 2017, were you dispatched to Baptist Easley Hospital?

22 A Yes, ma'am, I was.

23 Q And what were the circumstances of that call?

24 A I received a call from dispatch over the radio
25 concerning a child that had been allegedly molested. And

1 so I was asked to go down to the hospital and speak with
2 them.

3 Q And when you arrived at the hospital, will you
4 explain what process you took and what you did once you
5 arrived?

6 A I spoke with -- entered the hospital ER, the nurse
7 directed me to one of the hallway rooms -- one of the back
8 rooms and spoke with me briefly, explained some stuff that
9 had -- that they had done, and that they were waiting for
10 law enforcement to show up.

11 Q And at that point, did you speak with anyone related
12 to the case that we're here about today? And that's --

13 [REDACTED] would be -- would have been the victim.

14 A Yes, ma'am. That was the victim.

15 Q Okay. And who did you speak to?

16 A I spoke with the father, the mother. There was,
17 also, a -- I believe a girlfriend was in there. And there
18 was, also, a victim's advocate that, also, stayed in
19 there. And she stayed in there the entire time I spoke to
20 the child.

21 Q Okay. You stated that you spoke to the child,

22 [REDACTED]?

23 A Yes, ma'am.

24 Q Did [REDACTED] disclose sexual abuse to you?

25 A Yes, ma'am, she did.

1 Q And did she tell you where that abuse occurred?

2 A The abuse occurred -- she stated it started in her
3 bedroom where she was asleep. And that she was told to go
4 downstairs. And then it continued downstairs.

5 Q And you mentioned her bedroom. Did she give you any
6 more specifics about where her bedroom is located or who
7 she lived with?

8 A She lived with her mom and her sister, her younger
9 sister. And her bedroom is upstairs.

10 Q And, specifically, the residence that she lived at,
11 do you know the address or where it's located?

12 A It's in Northway Apartments. I don't recall offhand
13 the -- the number. But it's Northway, which is in the
14 city limits of Pickens.

15 Q Okay. And is that, also, in Pickens County?

16 A Yes, ma'am. It's, also, in Pickens County.

17 Q After speaking with [REDACTED], who else did you speak
18 with?

19 A I spoke with the mom. And I spoke with the father,
20 the biological parents. And I, also, spoke with the
21 girlfriend of the father.

22 Q And did you speak with them altogether or separately?

23 A Separately.

24 Q So did you speak with the mom separately?

25 A Right. We -- we spoke together as groups. And --

1 and then as I would get information from them, I separated
2 everybody and spoke with them.

3 Q And were, at least, part of these conversations on
4 your body-worn camera that you wear?

5 A Yes, ma'am.

6 Q Based on your investigation that you conducted --

7 MS. BARWICK: Judge, I'm going to object.

8 THE COURT: Okay. Well, don't answer the question.

9 But ask the full question and then --

10 Because I don't -- I don't know what she's asking
11 first.

12 So don't answer it.

13 THE WITNESS: Yes, sir.

14 THE COURT: Solicitor, ask the question.

15 MS. BARWICK: Judge, I'd like to approach.

16 THE COURT: Okay.

17 (WHEREUPON, a bench conference was held.)

18 MS. MCCALL: Thank you, Your Honor.

19 BY MS. MCCALL:

20 Q As I stated -- or was beginning to -- to ask you,
21 based on your investigation, what was the next process
22 in -- in the step, and what did you recommend at that
23 point?

24 A I recommended that -- well, first, I wanted to see
25 who was available at DSS and see about them getting down

1 to me to the hospital. So I contacted them. And a DSS
2 worker did show up. And he was with me when I was talking
3 to the child.

4 We determined that the safest place would be for the
5 child to be -- remain with the father, the biological
6 father, at that time.

7 Q Did you recommend for the child to be seen at the
8 Julie Valentine Center?

9 A Yes, ma'am, I did. The process for -- for myself
10 starts with dealing with the individual, dealing with DSS,
11 and then immediately recommending them to Julie Valentine,
12 which I did.

13 Q And as part of her being recommended or referred to
14 the Julie Valentine Center, did you, also, refer her for a
15 child-friendly interview at the Julie Valentine Center?

16 A Yes, ma'am.

17 Q Did you observe the interview at the Julie Valentine
18 Center?

19 A No, ma'am. I was not able to.

20 Q Based on the progress of your investigation, did you
21 seek an arrest warrant?

22 MS. BARWICK: Judge, same objection as before.

23 THE COURT: Okay. So noted.

24 THE WITNESS: I -- yes, ma'am, I did. After
25 everything that I had gotten through -- with my

1 investigation, I did -- I did have enough.

2 BY MS. MCCALL:

3 Q Do you recall when you sought an arrest warrant?

4 A It was -- may I look at -- at my notes for the exact
5 dates?

6 Q Yes.

7 A April 13th -- April 13th or -- let me see.
8 April 14th is when I -- April 13th is when I received the
9 rest of my information -- or finished my investigation.
10 April 14th is when I requested a warrant.

11 Q And is that in 2017?

12 A 2017, yes, ma'am.

13 Q And is it standard practice in law enforcement
14 investigations to wait until the investigation is complete
15 in order to seek an arrest warrant?

16 A Yes, ma'am. For me, I -- I attempted to contact the
17 individual --

18 MS. BARWICK: Judge, I'm going to object.

19 THE COURT: Okay. And -- and that's a proper
20 objection. I'll sustain it.

21 MS. MCCALL: Correct, Your Honor. That wasn't the
22 information I was seeking --

23 THE COURT: Right. I understand.

24 MS. MCCALL: -- so I'll be more specific in my
25 question.

1 BY MS. MCCALL

2 Q Is it standard practice --

3 MS. BARWICK: Judge, we have a motion we need to take
4 up outside the presence of the jury on that.

5 THE COURT: All right.

6 MS. MCCALL: Your Honor, this -- we can approach
7 because it doesn't go to anything that was, specifically,
8 addressed --

9 MS. BARWICK: It -- it needs to go on the record.

10 THE COURT: Okay. Well, y'all -- y'all come up here
11 for just a minute. And we'll -- I'll decide what we need
12 to do.

13 (WHEREUPON, a bench conference was held.)

14 THE COURT: All right. Ladies and gentlemen, I've
15 got a matter of law I need to take up with the lawyers.
16 And go to the jury room. I'll get you back out shortly.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 10:50 a.m.)

19 THE COURT: All right. Ms. Barwick.

20 MS. BARWICK: Yes, Your Honor.

21 The answer that was given was, I attempted to contact
22 the suspect.

23 THE COURT: I think she said I attempted to
24 contact -- I'm not -- she didn't say suspect.

25 MS. MCCALL: Your Honor, I believe it was

1 "individual." She attempted --

2 THE COURT: I attempted to contact the individual.

3 Madam Court Reporter, could we just go off the record
4 for a minute and -- and can you look to see exactly what
5 she said?

6 THE COURT REPORTER: Yes, sir.

7 THE COURT: Thank you.

8 (Pause.)

9 THE COURT REPORTER: Question: And is it standard
10 practice in law enforcement investigations to wait until
11 the investigation is complete in order to seek an arrest
12 warrant?

13 Answer: Yes, ma'am. For me, I attempted to contact
14 the individual.

15 THE COURT: All right. So she didn't use the word
16 "suspect." She said, "the individual." So --

17 MS. BARWICK: I -- I think that "the individual" is
18 pretty clear on who she's trying to contact, Your Honor.
19 And -- and that's burden shifting. And it got out in
20 front of the jury. I'd move for a mistrial.

21 THE COURT: Okay. I don't think the prejudice, if
22 there does exist any prejudice as a result of that
23 response, rises to the level of creating any unfair
24 prejudice to your client to justify a mistrial.
25 She didn't say that I attempted to talk with the Defendant

1 and he refused to talk. She didn't say that I tried to
2 approach the Defendant and he fled. Nothing of that
3 nature.

4 So I don't think it rises to the level of prejudice
5 for me to grant a mistrial.

6 Now, what I can do, I can give a curative instruction
7 to the jury for the jury to disregard the last answer from
8 this witness. Sometimes, when you do that, it -- it kind
9 of creates a little -- not emphasis, but it causes it to
10 stand out a little bit. And, sometimes, it's just better
11 to leave it alone.

12 However, since you are the one who has requested the
13 mistrial, which I've denied, if you would like a curative
14 instruction, then I will honor that request.

15 MS. BARWICK: I -- I do not want a curative
16 instruction.

17 THE COURT: That's fine. And I think that's probably
18 the safe way to handle it. But you're protected on the --
19 on the record.

20 Okay. Do y'all want to take a little -- little short
21 break since the jury is out and start back in just a
22 moment?

23 MS. MCCALL: Sure.

24 MS. BARWICK: Yes, sir.

25 THE COURT: Okay. Officer, you can't talk to anybody

1 about your testimony. You can, certainly, talk about
2 anything else, if you like.

3 THE WITNESS: Yes, sir.

4 (WHEREUPON, a break was taken.)

5 THE COURT: Okay. We're back on the record.

6 Just for y'all's information, in my charge, at the
7 very beginning, I -- I charge the -- the jury that they
8 cannot take the fact that the Defendant was charged,
9 arrested, and indicted in this case -- that's not -- not
10 proof of anything.

11 So I know, Ms. Barwick, you had some concern about
12 the fact that this witness testified about, you know,
13 taking out an arrest warrant. But I do instruct the jury
14 on that.

15 All right. Let's --

16 MS. MCCALL: Your Honor, prior to bringing the jury
17 in, I just want to clarify my final question and just make
18 sure that there's no confusion and there won't be any more
19 problems, if you prefer.

20 THE COURT: Right.

21 MS. MCCALL: I'm just going to ask that same question
22 again. And I believe that Sergeant Elrod understands what
23 she can and cannot say.

24 THE COURT: Right. Okay.

25 MS. MCCALL: Thank you.

1 THE COURT: All right. Very good.

2 Thank you.

3 Let's bring the jury out.

4 (WHEREUPON, the jury came into open court at
5 approximately 11:04 a.m.)

6 THE COURT: Let the record reflect the jury is back
7 in.

8 Solicitor, you may proceed.

9 MS. MCCALL: Thank you, Your Honor.

10 CONTINUED DIRECT EXAMINATION

11 BY MS. MCCALL:

12 Q Just one final question, Sergeant Elrod. As -- as we
13 stated earlier, based on your investigation and the
14 standard of practice in law enforcement, is it -- is it
15 common to wait until you conclude your investigation in
16 order to obtain an arrest warrant?

17 A Yes, ma'am.

18 MS. MCCALL: Thank you.

19 No further questions.

20 THE COURT: Okay. Cross-examination, Ms. Barwick.

21 MS. BARWICK: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MS. BARWICK:

24 Q So when you got this arrest warrant, your
25 investigation was done?

1 A (There was no response.)

2 Q You completed it. It was over?

3 A At that moment, yes, ma'am.

4 Q Okay. And you didn't do anything else between
5 getting that warrant as far as investigating this case --
6 well, let -- let me take that question back. I'll take
7 that back.

8 Let's tell the jury what a reserve officer is. What
9 is a reserve officer?

10 A They work in the capacity of a law enforcement
11 officer for free.

12 Q They do what now?

13 A They work in -- in the capacity as a law enforcement
14 officer, but for free.

15 Q Are they certified?

16 A Yes, ma'am.

17 Q And you were certified at the time of being a reserve
18 officer?

19 A Uh-huh.

20 Q And make sure you answer "yes" or "no" for the
21 record --

22 A Yes, ma'am.

23 Q And were you working part-time as a reserve officer?

24 A It's a volunteer --

25 Q Right.

1 A -- position.

2 Q So it's part-time?

3 A It's a volunteer position, so whenever you come in.

4 Q Okay. And -- and how often were you working in that
5 position?

6 A I don't recall. I was --

7 Q Was it for, like, five hours a week?

8 A Ma'am, I don't recall.

9 Q Was it full-time, 40 hours?

10 A No, ma'am. It's a volunteer position.

11 Q Okay. You can't give any kind of estimate on average
12 how often you were working?

13 A Ma'am, I can't recall.

14 Q Okay. And how long were you working as a reserve
15 officer?

16 A Six months.

17 Q Okay. And when did you become a paid officer?

18 A February of 2013.

19 Q Okay. And that would have been about four years
20 prior to the allegations coming out and you doing your
21 investigation?

22 A I don't have a calendar in front of me. I'm sorry.

23 Q When did you say you became a paid officer?

24 A February of 2013.

25 Q Okay. And March of 2014 is -- or 2017 is how many

1 years?

2 A Four years.

3 Q Okay. And when you became an officer, what was
4 your -- your role? Were you just road patrol or were you
5 doing investigations?

6 A I became a school resource officer.

7 Q Okay.

8 A And road patrol.

9 Q Okay. And how long were you a school resource
10 officer?

11 A Approximately two and a half years, two and a half
12 years.

13 Q Okay. And then after you were a school resource
14 officer, that brings us to -- you said '13. So that
15 brings us to 2015, middle of 2015 to late 2015. When did
16 you -- when [sic] did you become after a school resource
17 officer?

18 A I went back to the road patrol.

19 Q Okay. And you were on road patrol from mid to late
20 2015 until when?

21 A I still am.

22 Q Okay. And what are the duties of road patrol?

23 A The same as I told the other young lady. I take
24 calls like any other officer. I help my teammates. We
25 investigate whatever is given to us as per calls.

1 Q And you have detectives at your police department,
2 don't you?

3 A Yes, ma'am.

4 Q Okay. And the detectives are the ones who normally
5 investigate these kind of cases, are they not?

6 A I -- I investigate what's given to me by the chief.

7 Q Okay. But you can answer "yes" or "no," and then you
8 can explain your answer.

9 Normally, at the Pickens County -- or Pickens City
10 Police Department, your detectives investigate allegations
11 of child sexual abuse; isn't that right?

12 A No, ma'am.

13 Q Okay. And -- and you write speeding tickets?

14 A Yes, ma'am.

15 Q And seatbelt tickets?

16 A Occasionally.

17 Q And driving under suspensions?

18 A Yes, ma'am.

19 Q Okay. Traffic infractions?

20 A Yes, ma'am.

21 Q Okay. How many detectives do you have at your police
22 department?

23 A Two.

24 Q And how is the role of a detective different from a
25 police officer -- a road patrol officer?

1 A I can't answer that. I've -- I've never held that
2 position.

3 Q Okay. What do -- you see what the detectives do at
4 the police department. What do they do?

5 A I can't answer that. I don't sit with them.

6 Q You don't know the role of a detective?

7 A Investigating cases, I would assume. But I don't sit
8 with them.

9 Q Okay. What time did you get to the hospital on March
10 20th of 2017?

11 A Can I look at my -- do you mind if I look at my
12 times?

13 Q No. Absolutely.

14 THE COURT: You can look at your notes. That's fine.

15 THE WITNESS: Thank you.

16 The time I arrived was 8:49 p.m.

17 BY MS. BARWICK:

18 Q Okay. And who was present?

19 A The victim, the victim's sister --

20 Q And -- and for the record, when you're saying
21 "victim," you're talking about [REDACTED]?

22 A [REDACTED], yes, ma'am.

23 Q Okay.

24 A Would you rather me say her name?

25 Q I don't care.

1 A Okay.

2 Q I just want to make sure that the record indicates
3 who we're talking about here.

4 So you said [REDACTED], [REDACTED] sister. And who
5 else?

6 A The father -- the biological father, the biological
7 mother. There was a victim's advocate there as well.

8 Q Jennifer P; right?

9 A P, yes, ma'am.

10 Q She has a complicated last name.

11 A I don't remember. I'm sorry.

12 Q And then Allison, the nurse, was there?

13 A Yes, ma'am.

14 Q And the child's advocate had already spoken to the
15 child about the allegation; right?

16 A I assume.

17 Q Okay. And you said in your report that you gathered
18 family information for several minutes, and then you
19 conducted some interviews. Who did you gather this family
20 information from?

21 A I spoke to the father. I spoke to the mother. And I
22 gathered their information on -- and I, also, spoke with
23 the girlfriend. I'm sorry. The girlfriend was there as
24 well.

25 Q Sarah Harris?

1 A Yes, ma'am.

2 Q Okay. So you gathered all this information before
3 you spoke with the child?

4 A While we were together, yes, ma'am.

5 Q Okay. And -- and the reason why you spoke to all of
6 these people before you spoke with the child is it would
7 influence what type of questions you asked; right?

8 A No, ma'am. I just gather information when I first
9 talk to individuals.

10 Q So there's no reason to get a bunch of information
11 before talking to the child?

12 A Like names and dates of birth?

13 Q I don't know. You said you spent several minutes
14 gathering family information from these individuals.

15 A Right.

16 Q So -- and the reason for doing that before you even
17 speak to the child is what?

18 A So I have it for my record.

19 Q Okay. But you can have it for your record after you
20 speak with the child; right?

21 A I just normally gather information first.

22 Q So that you can use it in your interview of the
23 child?

24 A So I have a record of people's names, dates of birth,
25 and living -- where they live, their addresses.

1 Q Okay. Let's talk about the order that you
2 interviewed everybody on -- on camera. Who did you
3 interview first on camera?

4 A I believe it was the victim, [REDACTED].

5 Q Okay. And then who did you interview?

6 A I believe it was the -- I'm not -- I don't recall
7 whether -- whether it was the mother or the father.

8 Q Did you take notes?

9 A They're all in my -- that's -- that's my report.

10 Q Okay. But when you were on the scene, you didn't
11 have a computer to write your report. Did you take
12 handwritten notes?

13 A I'm sure I did.

14 Q And, in fact, in your interview of mom -- your
15 recorded interview of mom, you asked mom about Ashley, did
16 you not?

17 A I don't recall.

18 Q Did you not watch your body camera to prepare for
19 your testimony today?

20 A Yes, ma'am. I can't recall at this moment.

21 Q And you don't recall asking Ashley anything -- or
22 asking mom about Ashley?

23 A I'm sure I did.

24 Q Okay. And who is Ashley?

25 A I believe...

1 Q It's not in your report, is it?

2 A No, ma'am.

3 Q Okay. But you told mom when mom said, Why are you --
4 I don't know Ashley. Who's Ashley?

5 You said, I just have her name in the notes. Don't
6 worry about it.

7 Is that not what you told mom on your body cam
8 recording that we could play for the jury?

9 A I don't recall.

10 Q You don't recall that?

11 A No, ma'am.

12 Q Okay. And what happened to your notes? Where are
13 they? Did you destroy them?

14 A No, ma'am. I don't -- no, ma'am.

15 Q Where are they?

16 A I would have taken everything from my notes to here.

17 Q And then what would you have done with your
18 handwritten notes?

19 A I'm not sure.

20 Q You don't know where your handwritten notes are in a
21 case like this?

22 A I don't -- I don't have them with me. This is what I
23 have. So my notes go to here.

24 Q Can you go get them?

25 A I'm not sure where they're at.

1 MS. BARWICK: Judge, can we approach?

2 THE COURT: Sure.

3 (WHEREUPON, a bench conference was held.)

4 BY MS. BARWICK:

5 Q This is an important case, is it not?

6 A Yes, ma'am.

7 Q There's a lot on the line in this case; is that
8 correct?

9 A Yes, ma'am.

10 Q And you don't know where your notes are?

11 A (There was no response.)

12 Q Did you hand them -- "yes" or "no"?

13 A No, ma'am.

14 Q And did you hand them to -- did -- did you give the
15 originals to the solicitor's office?

16 A No, ma'am.

17 Q You would have kept them?

18 A If they're not in here, then, no, ma'am.

19 Q And you don't recall asking mom who Ashley was?

20 A No, ma'am.

21 Q And you don't recall telling mom Ashley said -- or I
22 have -- you don't recall telling mom that your notes had
23 the relevance of Ashley?

24 A No, ma'am.

25 Q And you didn't tell mom that you were going to ask

1 father who Ashley was?

2 A I don't recall that.

3 Q And you might have been able to recall if you had
4 your notes; right?

5 A Possibly.

6 Q What else was in your notes that we don't have?

7 A Everything from my notes is in here.

8 Q Ashley's not in there; right?

9 A I don't recall.

10 Q You just testified Ashley's not in your --

11 A Correct.

12 Q -- incident report.

13 A And I don't recall who Ashley is.

14 Q Okay. So you said everything -- let's back it up.
15 You said everything in your notes is contained in your
16 report. That was your testimony. But your testimony
17 is -- correct?

18 A Yes, ma'am.

19 Q But then your testimony is, also, Ashley is nowhere
20 in your incident report?

21 A Correct.

22 Q What else from your incident -- or your notes didn't
23 make it into the incident report?

24 A Nothing.

25 Q But you just testified that everything in your notes

1 made it. And then you had to retract and say Ashley
2 didn't make it.

3 A I don't -- I don't have it in my report.

4 Q That's right.

5 So there's probably other things from your notes that
6 aren't in your report either, huh?

7 A No, ma'am.

8 Q Okay. You're -- you're smiling. And this is very
9 serious.

10 A It is very serious.

11 Q Are you taking it seriously?

12 A Yes, ma'am.

13 Q Let's talk about mom's statement to you. You wear a
14 body camera; right?

15 A Yes, ma'am.

16 Q You can turn it on whenever you want; right?

17 A Yes, ma'am.

18 Q And you can turn it off whenever you want?

19 A Yes, ma'am.

20 Q You recorded mom's interview to you; correct?

21 A Yes, ma'am.

22 Q And you interviewed [sic] a portion of dad's and
23 girlfriend's interview to you; correct?

24 A Yes, ma'am.

25 Q And you didn't record the portion of the interview

1 where dad and girlfriend told you about the disclosure;
2 isn't that correct?

3 A I'm not sure. If it's not on there, it's not on
4 there. But we have to manually -- they don't just
5 automatically turn on. We have the manually hit them.

6 Q Right.

7 So you chose what you wanted to record and not
8 record; right?

9 A No, ma'am. If I forget to hit it or if it's blinking
10 at me...

11 Q And you said that all this long time of getting this
12 background information before recording the victim was
13 solely to get dates of birth and contact information?

14 A Yes, ma'am.

15 Q But you, also, testified that your interview of mom,
16 and dad, and girlfriend happened after your interview of
17 the child; right?

18 A We were in a room.

19 Q Right.

20 But you interviewed the child first?

21 A Yes, ma'am.

22 Q And then you interviewed mom, and then you
23 interviewed dad and girlfriend?

24 A Yes, ma'am.

25 Q And in mom and dad's recorded interviews, you were

1 asking about contact information and dates of birth;
2 right?

3 A Yes, ma'am.

4 Q So that means you hadn't already gotten it in your
5 long time of getting family background information; right?

6 A Clarification.

7 Q You were confused as to dates of birth and telephone
8 numbers they gave you?

9 A No, clarifying.

10 Q Clarifying the telephone numbers?

11 A And dates of births.

12 Q So after the long time that you got all of these
13 details from them beforehand, you needed to do it again?

14 A Clarification.

15 Q In your incident report -- I'm referring to page --
16 the first page of your supplemental, the second portion.
17 When asked where this happened, the victim stated it
18 happened upstairs in her bed. Is that not what you wrote?

19 A You're going to the third paragraph?

20 Q I'm going to the second --

21 A Second paragraph.

22 Q Fourth line.

23 A Yes, ma'am.

24 Q So it happened in her bed?

25 A Yes, ma'am.

1 Q Did you ever go back and watch the forensic
2 interview?

3 A No, ma'am. I don't have a copy of it. I just have
4 the notes.

5 Q The notes from the forensic interview?

6 A Yes, ma'am, from the individual.

7 Q I understand.

8 And the notes indicate it happened downstairs on the
9 couch; correct? The interview -- the forensic interview
10 says it -- she says it happened downstairs on the couch.

11 A Right. And that's -- that's in my notes that she was
12 also -- she was asked to go downstairs.

13 Q Okay. But you wrote and you just testified that the
14 victim said the assault happened in her bed and she
15 also -- correct?

16 A Yes, ma'am.

17 Q And she, also, said that her sister was there?

18 A Yes, ma'am.

19 Q And you never once questioned her sister?

20 A No, ma'am.

21 Q Not once.

22 Don't you think an eyewitness would have been
23 important to ask about this case, about this allegation?

24 A The three-year-old?

25 Q Yes, the three-year-old.

1 A (There was no response.)

2 Q No, that's not important?

3 A I didn't say that.

4 Q Okay. Then don't you think it was important to
5 interview that three-year-old?

6 A Yes, ma'am.

7 Q But you didn't?

8 A At three years old, no, ma'am.

9 Q You didn't interview an eyewitness because of her
10 age?

11 A No, ma'am. I did not talk to a three-year-old -- the
12 three-year-old, no, ma'am, I did not.

13 Q Why did you not?

14 A I'm not sure.

15 Q But your investigation was complete; is that --

16 A Yes, ma'am.

17 Q Is that what you're asserting?

18 A Yes, ma'am.

19 Q Okay. You didn't record the entire portion of
20 daddy-girlfriend's interview, did you?

21 A We just talked about that. No, ma'am. Because it
22 may -- it may have just been buffering.

23 Q What do you mean "buffering"?

24 A I have to -- I have to physically turn it on. It
25 just doesn't come on automatically.

1 Q Okay. So the only portions of daddy-girlfriend's
2 interview that you, actually, recorded were talking about
3 the dad's and girlfriend's dates of birth; right?

4 A (There was no response.)

5 Q And I'm going to go through them. The next steps in
6 your investigation were the ways that they can contact
7 you, and the ways they -- you can contact them, and the
8 kids staying with dad for a little bit?

9 A Yes, ma'am.

10 Q Those are the only portions of that interview you
11 decided to record?

12 A It was not a decision -- malicious decision. It was
13 something that happened with my camera.

14 Q What happened with your camera?

15 A If I don't hit it, it won't turn back on.

16 Q What do you mean you "don't hit it"?

17 A Tap it. My apologies, tap it.

18 Q Do you mean if you don't turn -- push the on button?

19 A No, ma'am. The record button.

20 Q So if you don't push the record button, it doesn't
21 record?

22 A Correct.

23 Q And you didn't push the record button --

24 A Not intentionally.

25 Q -- on the most significant -- let me finish my

1 question. On the most significant portion of that
2 interview. Is that what you're telling this jury?

3 A I'm telling you it was not intentional.

4 Q Was the misplacement of your notes intentional?

5 A No, ma'am.

6 Q The victim's interview, [REDACTED]'s interview --

7 A Yes, ma'am.

8 Q -- you didn't record that either, did you?

9 A No, ma'am, I did not.

10 Q And that would have been hugely important to record,
11 would it not have been?

12 A Yes, ma'am.

13 Q And that wasn't purposeful either, that you didn't
14 record that?

15 A No, ma'am.

16 Q So you just -- there was not a decision not to record
17 it. You just didn't hit record?

18 A Correct.

19 Q But you've been an officer for how long?

20 A February of 2013.

21 Q And a reserve officer since when?

22 A August of 2012.

23 Q For four and a half years and you didn't think you
24 needed to hit the record button on a child's statement to
25 you?

1 A I believed that I had.

2 Q During mom's interview, she adamantly denied to you
3 that this child had previously disclosed anything to her;
4 isn't that right?

5 A Yes, ma'am.

6 Q And, in fact, your report uses the word "adamant"?

7 A Correct.

8 Q And dad even said, I don't think my child previously
9 told her mother this.

10 A Correct.

11 Q At the end of mom's interview when it's completing
12 and Zack Wilson with DSS starts talking, do you recall
13 putting your finger up -- it can be seen on camera -- and
14 telling him to be quiet?

15 A No, ma'am.

16 Q You don't recall doing that? We can --

17 A No, ma'am.

18 Q -- show that.

19 A That's fine.

20 Q Do you know why you would do that?

21 A No, ma'am.

22 Q Do you know what you were trying to keep the jury
23 from hearing?

24 A No, ma'am.

25 Q That would be a purposeful action to not have

1 something on a recording; right?

2 A No, ma'am.

3 Q This action right here doesn't mean be quiet?

4 A To let me finish a statement or what I was saying to
5 them.

6 Q If you weren't saying anything at all, if they
7 started to talk?

8 A If I'm going to finish speaking about something, then
9 that would be a proper motion.

10 Q But if you weren't speaking about anything, would
11 that have been a proper motion?

12 A If I'm attempting to --

13 Q Let's stop saying what you're attempting to do.
14 Let's answer the question.

15 If you weren't speaking and that DSS worker started
16 to say something and you went like this, you were trying
17 to keep something from being recorded, weren't you?

18 A No, ma'am.

19 Q Then what's the purpose of doing that if you weren't
20 speaking?

21 A To begin a sentence.

22 Q And then if you didn't begin a sentence after you
23 held your finger off -- up and then turned off your
24 camera, what would that have been?

25 A Wait a minute.

1 Q So after you hold your finger up and tell someone to
2 be quiet, you turn off your camera and you're trying to
3 tell this jury that you weren't trying to keep something
4 out from them?

5 A No, ma'am.

6 Q The interview of the child at the child advocacy
7 center happened on March 28th of 2017; isn't that correct?

8 A Yes, ma'am.

9 Q That was eight days after the hospital; is that
10 correct?

11 A Yes, ma'am.

12 Q And you didn't go?

13 A No, ma'am.

14 Q That's an important thing for you to go to, isn't it?

15 A If I'm able to make it, yes, ma'am.

16 Q And why weren't you able to make it?

17 A I don't recall.

18 Q It must have been something important.

19 A I don't recall.

20 Q Okay. So you pass on to -- the Julie Valentine
21 Center, the child advocacy center, you pass on to them
22 your incident report, your supplementals, and the
23 statements written by mom, dad, and girlfriend, and the
24 nurse; right?

25 A Yes, ma'am.

1 Q And it had your whole incident report and your
2 supplementals in it?

3 A Yes, ma'am.

4 Q Did it have your notes in it?

5 A No, ma'am. Because they would have been --

6 Q In your case file?

7 A Correct.

8 Q Is that what's in front of you is your case file?

9 A Yes, ma'am.

10 Q But your notes aren't in there?

11 A No, ma'am.

12 Q So the interview was on March 28th of 2017?

13 A Yes, ma'am.

14 Q And you didn't seek a warrant until April 14th of
15 2017?

16 A Correct.

17 Q And that's because you wanted to wait on the medical
18 exam; correct, which occurred the day before you sought
19 the warrant?

20 A You didn't want me to answer the question.

21 Q All right. So the medical exam was done on which
22 day?

23 A I believe, like you said, the 28th.

24 Q That was the interview. So the medical exam that
25 Dr. Crosswell did, that happened on April 13th of 2017;

1 isn't that correct?

2 A I believe so. I was not a part of that.

3 Q Okay. And then that medical exam came back
4 unfounded.

5 MS. MCCALL: Objection, Your Honor. That is --
6 that's not the appropriate --

7 MS. BARWICK: It's part of her investigation.

8 MS. MCCALL: -- testimony of what the medical exam
9 was.

10 THE COURT: Well, I -- I think what the Solicitor is
11 saying is that Dr. Crosswell never used the term
12 "unfounded."

13 MS. BARWICK: Okay.

14 BY MS. BARWICK:

15 Q Nothing showed up on that medical exam that would
16 indicate sexual abuse; isn't that correct?

17 A I cannot attest to that, because I don't have a copy
18 of that.

19 Q You didn't get a copy of the medical examiner's
20 report before you made a warrant?

21 A I was given -- I received the information in an
22 e-mail from the individual from the Julie Valentine. I
23 did not have -- I was not privy to an actual medical copy.

24 Q Okay. So let's not play word games here. So what
25 you received from the child advocacy center indicated that

1 that medical exam did not show any signs of sexual abuse?

2 A It was based on the information that I received from
3 them that there was probable cause to seek a search
4 warrant --

5 MS. BARWICK: Judge, I'm going to object.

6 THE COURT: Well, no. I mean, you -- you can't
7 select the answers that a witness gives you. If you want
8 to continue to ask her about this, that's fine.

9 BY MS. BARWICK:

10 Q Can I see the e-mail?

11 A I don't have the e-mail.

12 Q I thought you just looked down at it.

13 A No. I looked at my supplemental.

14 Q All right. And what does your -- what -- how did you
15 obtain that answer from your supplemental? What's in your
16 supplemental that says that?

17 A That I had -- that the -- I did receive the
18 information. And, at this time, there was information I
19 have for a probable cause.

20 Q Okay. And you didn't want to know the results of the
21 medical exam. What were the results of the medical exam?

22 A I'm not sure.

23 Q So you got a warrant without knowing the results of
24 the medical exam?

25 A From the forensic interview.

1 Q "Yes" or "no," and you can explain.

2 Did you seek a warrant without reviewing the results
3 of the medical exam?

4 A From the forensic interview, no -- I -- from the --
5 from the medical exam, no. From the forensic interview,
6 yes.

7 MS. BARWICK: And, Judge, if we can instruct -- have
8 an instruction phase real quick in regard to your previous
9 instructions to the lawyers.

10 THE COURT: I'm not sure what you're alluding to,
11 Ms. Barwick.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: All right. Madam Forelady, and, ladies
14 and gentlemen of the jury, I need to send you back to the
15 jury room, hopefully, for just a very short period of
16 time. And then we'll get you back out.

17 Thank you.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 11:38 a.m.)

20 THE COURT: All right. Sergeant Elrod, you were not
21 aware of this, but at the beginning of this case, I had
22 instructed the lawyers that -- that I don't allow the use
23 of the word "forensic" --

24 THE WITNESS: I'm sorry.

25 THE COURT: -- when we're dealing with the interview.

1 You didn't know that. So I'm not -- I'm not blaming you.
2 I'm not placing any fault on your part. But in response
3 to any further questions that may be asked of you, refer
4 to it as "interview" and not "forensic interview."

5 THE WITNESS: Yes, sir.

6 THE COURT: Okay. Very good.

7 All right. And let's go ahead and address on the
8 record since the jury is out, during the course of
9 cross-examination of Sergeant Elrod, the lawyers -- we had
10 a sidebar conference and -- related to the body cam video.
11 I think Sergeant Elrod indicated that she had not looked
12 at it in -- in maybe sometime. And that in order for the
13 Defense to conduct some additional cross-examination, it
14 was requested that she review that body cam video.

15 Is that, basically, what was discussed at sidebar?

16 MS. BARWICK: It was, Your Honor.

17 THE COURT: All right. And --

18 MS. BARWICK: And I have the transcript that she
19 can -- it's sealed.

20 THE COURT: I -- I think probably -- and I think
21 that's a -- a reasonable request. Maybe the State has
22 some opposition to that. And I'll let you put your
23 opposition on the record.

24 But if I do allow it, I think probably reviewing the
25 body cam video itself, as opposed to the -- reading

1 whatever transcript that you secured.

2 All right. Now, Solicitor McCall, you have some
3 opposition to that?

4 MS. MCCALL: I do.

5 I think that Ms. Barwick has questioned her regarding
6 some hand motions that Sergeant Elrod made on the video.
7 And I think that is, certainly, not adequately reflected
8 in a transcript. And she would probably need to just see
9 the video --

10 THE COURT: Right. We first talked about at sidebar,
11 which Ms. Barwick would have every right to do, is in the
12 course of cross-examining the Sergeant to play portions of
13 the video so she could see it in order to answer the
14 question. And then the State indicated that they felt
15 like then there would be other portions that would need to
16 be played.

17 So I thought the cleaner way of doing it is just to
18 go ahead during lunch break, allow Sergeant Elrod to see
19 the body cam video, and then you could cross-examine her
20 and probably wouldn't have to play in the courtroom
21 portions of the video. And I think -- I think the lawyers
22 are okay with that.

23 So -- so what you'll need to do, Sergeant Elrod,
24 is -- is get that body cam video from the State. And if
25 you could use part of your lunch to look at that. And

1 then I think you'll need to come back after lunch for
2 further examination.

3 THE WITNESS: Yes, sir.

4 THE COURT: Okay.

5 THE WITNESS: Yes, sir.

6 MS. BARWICK: I can complete a good amount of it
7 right now.

8 THE COURT: Yeah. And I just thought if you could
9 before she does that since she is being recalled back try
10 to get as much cross-examination in. And then you can
11 finish up once she's looked at the video.

12 MS. BARWICK: Yes, sir. I'd prefer that.

13 THE COURT: All right. Now, and, also, scheduling,
14 we have Shauna Galloway-Williams, who's waiting in the
15 wings to -- to testify. And, of course, we need to engage
16 in a little in-camera examination of -- of her.

17 Is she, actually, in the courthouse?

18 MS. MCCALL: She is, Your Honor.

19 THE COURT: All right.

20 MS. BARWICK: I -- and I -- obviously, I understand
21 scheduling. And the Court's been very good. I would like
22 to finish my cross-examination as much as possible.

23 THE COURT: Other than questions related to the body
24 cam video that she's going to look at over lunch?

25 MS. BARWICK: That's right.

1 THE COURT: Right. Yeah. Sure. That -- that's
2 fine.

3 But let's -- let's get the jury back out, finish up
4 right now with Sergeant Elrod. And then we'll have to
5 send the jury back out so we can engage in in-camera
6 review of Ms. Galloway-Williams.

7 Bring the jury out.

8 (WHEREUPON, the jury came into open court at
9 approximately 11:46 a.m.)

10 THE COURT: All right. Let the record reflect the
11 jury is back in.

12 I understand that one of you made some cupcakes and
13 brought them this morning. Who's the --

14 UNIDENTIFIED JUROR: Muffins.

15 THE COURT: Muffins. Okay. Well, that's -- that was
16 very nice of you, very nice of you.

17 Okay. Ms. Barwick, you want to --

18 MS. BARWICK: Yes, Your Honor.

19 THE COURT: -- start back on your cross?

20 CONTINUED CROSS-EXAMINATION

21 BY MS. BARWICK:

22 Q So you didn't review the results of the medical exam
23 before you sought a warrant?

24 A No, ma'am. I followed up with an e-mail.

25 Q Okay. And then you also -- did you review the -- did

1 you watch the forensic interview -- I'm sorry. Did you
2 watch the interview recording?

3 A I don't have a copy of that.

4 Q So you never watched the recording of the interview?

5 A No, ma'am. I didn't get a copy of it.

6 Q You made a charge without watching the recording of
7 the interview?

8 A I did not get a copy of the interview.

9 Q "Yes" or "no," and then you can explain.

10 You made a charge in this case without watching that
11 interview?

12 A Correct. And I --

13 Can I follow-up?

14 THE COURT: Yes. You can follow-up. You can explain
15 your answer.

16 THE WITNESS: Okay. So based off -- based off the
17 information with the questions -- the concerns I'd had
18 when I put in my initial request for an interview, I got
19 the results back. I got the e-mail back returned to me
20 with the information consistent with my investigation.
21 And, therefore, I went through and filed for a warrant.

22 BY MS. BARWICK:

23 Q From a third party who was summarizing what the child
24 said in the interview?

25 A Correct.

1 Q A summary about that big?

2 A I don't recall how big it was.

3 Q You don't have it in your case file?

4 A No, ma'am. I did not print off a copy of that.

5 Q What do you have in your case file? You said that is
6 your file. What is in your file? You're coming to court
7 to testify. What is in your file?

8 A My notes, everything that I had taken from my notes
9 and put on to a computer.

10 Q How long was the summary from the Julie Valentine
11 Center?

12 A I don't recall.

13 Q Was it long?

14 A I don't recall.

15 Q Was it short?

16 A I don't recall.

17 Q You didn't come here prepared to testify in front of
18 this jury?

19 A Yes, ma'am, I did.

20 Q But you don't know what it is you read that caused
21 you to do the warrant. You don't know how long it was.
22 You don't -- you don't have any recall of it. Could it
23 have been five pages?

24 A Is that a question?

25 Q Yes.

1 Could it have been five pages?

2 A It could have. I'm sorry. I don't recall.

3 Q Could it have been five lines?

4 A I can't answer that.

5 Q But it would have been best for you to watch and
6 listen to what the child, actually, said before you got a
7 warrant; correct?

8 A I did listen to her.

9 Q But she gave a second statement, one to you, one to
10 the child advocacy center. And you didn't bother to find
11 out what that child exactly said. You relied on a third
12 party?

13 A Yes, ma'am.

14 Q A third party summary?

15 A The interview between the interviewer and
16 interviewee, yes, ma'am.

17 Q The interviewer's summary?

18 A Yes, ma'am.

19 Q And you don't know how detailed that summary was or
20 how undetailed that summary was?

21 A Off the top of my head, I cannot recall.

22 Q That's right.

23 At minute and 15 of that video with mom -- I don't
24 know if that will help you or not. But you went out --
25 you're still on recording. You left mom in the room and

1 you placed a phone call. Who were you calling?

2 A In the hallway?

3 Q Yes, ma'am.

4 A Our victim's advocate.

5 Q And do you recall telling that victim's advocate that
6 the parents would not consent to the rape kit?

7 A I believe so.

8 Q So the parents would not consent to the rape kit?

9 A Correct. And that is because they did not want to
10 put her through any more trauma.

11 Q With a rape kit, you might have found some DNA;
12 right?

13 A I'm not the child's parent.

14 Q Answer my question, please. A rape kit might have
15 found DNA?

16 A Correct. But I'm not the child's parent. And,
17 therefore, I could not force them to do that.

18 Q It's your investigation.

19 A Correct. I'm not the child's parent. I cannot force
20 them to do that.

21 Q And you're being blocked from investigating the case.
22 Could you not get a court order to get that done?

23 A Correct.

24 Q So you could have got a court order, but you decided
25 not to?

1 A I went to Julie Valentine.

2 Q You could have got a court order, but you decided not
3 to; is that correct?

4 A It was a decision based off of the parents --

5 Q "Yes" or "no," and then you can explain.

6 A Yes, yes. And I chose to speak to the parents about
7 it. I'm not the child's parent, so I could not make that
8 decision. But I gave them all of the information that I
9 could at that time.

10 Q But you could make the decision to get a court order
11 to get it done?

12 A Correct.

13 Q And the rape kit could have produced DNA from the
14 perpetrator; right?

15 A Correct.

16 Q And this child claimed that he urinated on her feet,
17 her hands, her back, her privates --

18 MS. MCCALL: Objection, Your Honor. I believe that's
19 a misstatement of the evidence.

20 MS. BARWICK: It's in the interview.

21 THE COURT: Okay.

22 MS. BARWICK: It's been recorded. The juries watched
23 it.

24 THE COURT: Okay.

25 MS. MCCALL: Your Honor, I believe there's a

1 particular term that she's using, "urinated," that was not
2 in the interview.

3 MS. BARWICK: Pee.

4 THE COURT: Okay. And, of course, the jury has their
5 memory of what was said in the -- the interview and the
6 terms that the child used.

7 I just caution the lawyers to try to be as accurate
8 as you can if you are restating something that was
9 previously mentioned.

10 MS. BARWICK: Yes, sir.

11 Thank you.

12 BY MS. BARWICK:

13 Q The child stated he peed on her feet, her back, her
14 privates, her legs. That could have been found, could it
15 not have been?

16 A Correct.

17 Q That would have left DNA?

18 A Correct. I did not have that information.

19 Q Did you see any scratches on the child at the
20 hospital?

21 A No, ma'am.

22 Q And a scratch significant enough to cause bleeding
23 from the face to the chest, you would have noticed
24 something like that?

25 A Yes, ma'am.

1 Q Mom was cooperative with you, wasn't she?

2 A Yes, ma'am.

3 Q And she would have let you come out to her house and,
4 actually, go to the scene of the crime; right?

5 A I'm not sure.

6 Q Okay. Did you ever go to the scene?

7 A No, ma'am.

8 Q You never went to the scene?

9 A No, ma'am.

10 Q You could have gotten a court order to go to the
11 scene if mom said you couldn't go. You could have gotten
12 a search warrant; right?

13 A Yes.

14 Q So there's been two different versions of where this
15 occurred, one being in the bed that she shares with her
16 sister upstairs, one being downstairs on a couch. You
17 could have went there and collected DNA from the bed or
18 the couch, couldn't you have?

19 A Yes, ma'am.

20 Q You could have tried to look for it?

21 A Yes, ma'am.

22 Q And pee or urination leaves DNA; right?

23 A Yes, ma'am.

24 Q And blood if the child was cut would have left DNA?

25 MS. MCCALL: Objection, Your Honor. This is asking

1 for speculation of what it would have left.

2 MS. BARWICK: She's a law enforcement officer who
3 investigates crimes.

4 THE COURT: I -- I think she can answer if -- if she
5 knows. If she doesn't know, she can say that, too.

6 BY MS. BARWICK:

7 Q As an investigating officer who investigates crimes
8 such as these, you would know that DNA is left by blood,
9 and urine, or pee; right?

10 A Correct.

11 Q So if any of those things, actually, happened, there
12 would have been evidence for you to collect; correct?

13 A Correct.

14 Q And we could have seen if there was pee or urine from
15 my client; right?

16 A Correct.

17 Q But you didn't do it?

18 A I was not informed that there was urine -- there was
19 pee.

20 Q Because you didn't watch the interview; correct?

21 A Correct.

22 Q And it would have been important for you to watch
23 that interview?

24 A I don't have it, correct.

25 Q But you could have gotten it?

1 A Correct.

2 Q And you could have added it to your case file?

3 A Correct.

4 Q And isn't it common procedure by the Julie Valentine
5 Center to give the officer a copy of the interview?

6 A I can't speak for them.

7 Q The solicitor's office had it?

8 A Correct.

9 Q You didn't think to call them up when they e-mailed
10 you and say, hey, I'd -- I'd really like to watch that
11 before I charge him with CSC first with a minor. You
12 didn't think to call them up and ask them that?

13 A I don't recall.

14 Q You don't recall if you asked them for the video?

15 A No, ma'am. I believe I don't -- I believe I did not.

16 Q You didn't ask them for the video?

17 A Correct.

18 Q And you didn't follow-up with them to get the video?

19 A Correct.

20 Q And you charged my client with CSC first with a
21 minor?

22 A Yes, ma'am.

23 Q When you could have just as easily went to the scene
24 to verify the child's statement as being true or untrue;
25 correct?

1 A I did go to the scene. The scene was at the
2 hospital.

3 Q The assault occurred at the hospital?

4 A That's where my stuff began.

5 Q The assault occurred at the hospital?

6 A No, ma'am.

7 Q Where did the assault occur?

8 A We were told at Northway Garden -- or Northway
9 Apartments.

10 Q The mother's house?

11 A Correct.

12 Q So you didn't go to the scene of the crime. You
13 didn't -- where it allegedly occurred to confirm whether
14 or not the child was telling a true report or a false
15 allegation, did you?

16 A The scene for me starts where I find the victim.

17 Q You didn't go to the place the assault allegedly
18 occurred to gather evidence to determine if the assault
19 occurred, or whether a false allegation was being made?

20 A Correct. Because the individual was at the hospital,
21 and that's where my evidence was.

22 Q You didn't go to the scene because the child was at
23 the hospital. Is that what you're telling this jury?

24 A I'm telling you that I went to the -- where the
25 patient was -- where the victim was. And that's where I

1 got my information -- that's where the assault -- that's
2 who the assault had occurred on.

3 Q But you didn't go to the place the assault allegedly
4 occurred?

5 A Correct.

6 Q Where evidence would have been there to either
7 establish what the child was saying was true, or if it was
8 a false report?

9 A Because the evidence was with the child.

10 Q You just testified to this jury there would have been
11 DNA on the couch and on the bed if --

12 A No, ma'am, I did not.

13 Q What did you testify to?

14 A You're telling -- you're making those statements that
15 that's where it would be. But that's not the information
16 that I had.

17 Q You said --

18 A Sure. There could be evidence anywhere. There's
19 evidence -- there's -- there's DNA everywhere in this
20 courtroom. So what I told you is that the victim is where
21 my evidence was. And she was at the hospital. And that's
22 where I went, to the hospital. That's where I was called
23 to.

24 Q I think we're playing word games here. If [REDACTED]
25 told you it happened in her bed when [REDACTED] was sleeping

1 and the allegation is he peed on her in her bed, his DNA
2 would have been in her bed; correct?

3 A Correct.

4 Q And if you watched the video, you would have, also,
5 learned the child made the allegation that it happened on
6 the couch and not the bed?

7 A Correct.

8 Q So --

9 A And that's what my -- my report says upstairs in the
10 bedroom --

11 Q Okay --

12 A -- it began there and then went downstairs.

13 Q It doesn't -- it doesn't say that they went
14 downstairs. It says he asked --

15 A Asked her to go downstairs.

16 Q -- asked her to go downstairs and she said no --

17 A She --

18 THE COURT: Wait a minute. I can't have both of you
19 talking at the same time, even though we've got a very
20 experienced court reporter. It would make it easier to
21 wait before the other finishes before the other jumps in.

22 THE WITNESS: Yes, sir.

23 BY MS. BARWICK:

24 Q [REDACTED] told you he asked her to go downstairs and
25 she said, no?

1 A Yes, ma'am.

2 Q Okay. So in the interview where she tells the
3 interviewer she went downstairs and that it happened on
4 the couch, if it happened on couch, the DNA would have
5 been on the couch?

6 A Correct.

7 Q But you didn't go to gather any DNA?

8 A Correct.

9 Q You didn't even go to the place where the child
10 alleges the assault occurred?

11 A Correct.

12 Q And you charged my guy?

13 A Correct.

14 Q So you charged my guy without watching the forensic
15 interview; correct?

16 A Correct. I --

17 Q Without --

18 A Through -- I went through my e-mail.

19 Q I -- without looking at the medical report; correct?

20 A Correct.

21 Q And without going to the place the child alleges the
22 assault occurred?

23 A Correct.

24 Q Now, as a certified law enforcement officer, you
25 would know that any charge of this nature, upon my

1 client's arrest, a DNA sample would have been taken from
2 him automatically because of this charge; correct?

3 A Yes.

4 Q And then it's entered into a system called CODIS;
5 correct?

6 A Yes, ma'am.

7 Q So you had my client's DNA to compare to anything you
8 might have found on scene?

9 MS. MCCALL: Objection, Your Honor. I believe that's
10 outside the scope --

11 THE WITNESS: Yes.

12 MS. MCCALL: -- well, obviously, Sergeant Elrod can
13 testify to that. But I think that there is going to be an
14 issue with this line of questioning.

15 THE COURT: Right. I sustain the objection.

16 MS. MCCALL: Thank you, Your Honor.

17 MS. BARWICK: Judge, I'd like -- if we can --

18 THE COURT: I sustained the objection.

19 BY MS. BARWICK:

20 Q My client's DNA sample was collected; correct?

21 A I wasn't -- I don't know. I'm sorry. I don't know.

22 Q But there's a -- but it's supposed to be?

23 A Okay.

24 Q Is it? You're a certified officer. You should
25 know --

1 A Correct. I was not there. I would not have -- I did
2 not make the final arrest.

3 Q But under the statute, it was supposed to be
4 collected?

5 A Okay.

6 Q Is it? You're a certified officer, I'm asking you.

7 A Yes.

8 Q Okay. And -- and you know that that's what's done,
9 or supposed to be done?

10 A I know that's supposed to be done.

11 Q Okay. Did you ever check CODIS to see if my client's
12 DNA was in there?

13 MS. MCCALL: Objection, Your Honor. I think we may
14 need to approach to address this line of questioning.

15 THE COURT: Well, I -- I'm going to sustain the
16 objection. I -- I don't think y'all need to approach
17 every time an issue comes up. If you need to place
18 anything on the record, when we take a -- a break, you can
19 do that.

20 MS. MCCALL: Certainly.

21 THE COURT: Proceed.

22 MS. BARWICK: Yes, sir.

23 BY MS. BARWICK:

24 Q So before the child got to the hospital, the child
25 spoke to her dad; right?

1 A Yes, ma'am.

2 Q About the allegations?

3 A Yes, ma'am.

4 Q Spoke to her mom?

5 A Yes -- yes, ma'am, attempted to.

6 Q Spoke with the mom on the way to the hospital; right?

7 A (There was no response.)

8 Q Did she speak with her mom at the hospital regarding
9 the allegations?

10 A Yes, ma'am, at the hospital.

11 Q Okay. Spoke to girlfriend?

12 A Yes, ma'am.

13 Q Spoke to two of the child's aunts; correct?

14 A Uh-huh.

15 Q The child's grandmother?

16 A Yes, ma'am.

17 Q The victim's advocate?

18 A Yes, ma'am.

19 Q The nurse?

20 A Yes, ma'am.

21 Q Spoke to all of these people. Did you interview

22 [REDACTED] aunt?

23 A No, ma'am.

24 Q Did you interview [REDACTED] other aunt?

25 A No, ma'am.

1 Q [REDACTED] grandmother?

2 A No, ma'am.

3 Q The victim's advocate?

4 A No, ma'am.

5 Q What about Elaine McGowans, who testified yesterday?
6 Did you interview her?

7 A No, ma'am.

8 Q You never spoke to [REDACTED], the sister, who was in the
9 bed?

10 A No, ma'am.

11 Q And you said that the child had told her mother about
12 the allegations before?

13 A Yes, ma'am.

14 Q The -- March 20th of 2017?

15 A Correct.

16 Q And you're a law enforcement officer and you charge
17 people if you believe they have violated statutes and
18 committed crimes against children; right?

19 A Yes, ma'am.

20 Q Okay. And if a parent is told about sexual abuse
21 allegations, but takes no steps to protect that child,
22 that's a felony offense. That's a zero to 10-year felony;
23 correct?

24 A Correct.

25 Q And that felony is called child abuse and neglect,

1 unlawful conduct towards a child; correct?

2 A Correct.

3 Q But you never charged mom; correct?

4 A Correct.

5 Q In the interview, she accused the -- [REDACTED] accused
6 her mom of allowing her to watch pornography. That's a
7 crime, isn't it?

8 MS. MCCALL: Objection, Your Honor. This is getting
9 outside the scope of what we're here for today.

10 THE COURT: It seems like we're going a little far
11 afield with --

12 MS. BARWICK: Judge, I'm almost done.

13 THE COURT: Okay. I'm going to sustain the
14 objection.

15 Thank you.

16 MS. MCCALL: Thank you.

17 BY MS. BARWICK:

18 Q So the only evidence you had in this case before
19 making this charge is what the child told you at the
20 hospital?

21 A No. I, also, had information from Julie Valentine.

22 Q The summary that you don't recall what was in it?

23 A Correct.

24 Q So besides this summary from a third party and the
25 child's statements to you at the hospital, you had no

1 other evidence in this case?

2 A Correct.

3 Q And you made the charge?

4 A Yes, ma'am.

5 MS. BARWICK: No further questions.

6 THE COURT: Redirect, Solicitor.

7 MS. MCCALL: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. MCCALL:

10 Q Sergeant Elrod, at the hospital, did you obtain
11 written statements from witnesses there?

12 A Yes, ma'am.

13 Q And those were made a part of your report?

14 A Yes, ma'am.

15 Q Ms. Barwick questioned you regarding possible DNA
16 evidence that could have been found in this case?

17 A Correct.

18 Q Is it possible that DNA evidence could be found in a
19 case -- in any case?

20 MS. BARWICK: Judge, I'm going to ask that she
21 doesn't lead her own witness here.

22 THE COURT: Well, I think the question was, is it
23 possible for DNA, whatever. I don't -- I don't think that
24 would necessarily suggest an answer.

25 But be careful about leading.

1 MS. MCCALL: Certainly, Your Honor.

2 BY MS. MCCALL:

3 Q Is it possible that DNA evidence could be found in
4 any case?

5 A Correct.

6 Q And does that mean that DNA evidence will always be
7 found in a case?

8 A No, ma'am.

9 Q Would it have been the best practice to go to the
10 scene where this assault occurred?

11 A Yes, ma'am.

12 Q I would like you to briefly explain how your body
13 camera works.

14 A Okay. So we have a top button. We push it until we
15 see the orange, like, it's just a small little piece of
16 orange.

17 Can I take it off?

18 Q Certainly.

19 A Okay. So these are called -- these are called axon
20 cameras. So as soon as this goes on, you can see it from
21 the front. And it's turned on. It red. And it'll start
22 that beep that -- now, it's green. And it's buffering at
23 this time, which means it's recording. But it won't pick
24 up -- it will record so many seconds prior to and until
25 I -- and that's recording now. And it'll be flashing red.

1 So if I hit it down -- hit it quick, hit it -- it --
2 if I think I've hit it and tapped it, it won't
3 necessarily -- until it's hit in the middle and two beeps
4 like that. Hold it down. I'm back to buffering.

5 Q Is there any kind of delay that's caused with body
6 worn cameras?

7 A Do what now?

8 Q Is there any type of delay that is caused when they
9 turn on? Do they immediately start recording?

10 A No, ma'am. No, ma'am. This -- this one, in
11 particular, the one I carry does have a delay. I don't
12 know how many seconds. But I know there is a delay.

13 Q And would that have been the same camera that you
14 would have worn in March of 2017?

15 A Identical. It is the same one.

16 Q The same type.

17 Okay. And you said you don't know what type of
18 delay -- or how long the delay is.

19 A No, ma'am.

20 Q But what would the delay be? Would it be a sound --
21 an audio delay, a total recording delay so it doesn't
22 begin recording at all?

23 A When I turn it on, there will be an -- an actual
24 delay until it comes up. So there's a -- a red solid
25 light. As soon as it starts recording and it's going to

1 be visual only, it's going to be green. And it's going to
2 be buffering.

3 I have to hit it in the center and tap it twice. And
4 then that will give me another beep -- or a beep, beep.
5 And then I'll have a red flashing light. And that means
6 it's, actually, video and audio recording.

7 Q So there -- would there be a delay of the audio
8 recording?

9 A Yes, ma'am.

10 Q And I just want you to briefly talk about the rape
11 exam that was offered, and Ms. Barwick questioned you
12 about. You stated that the family did not consent to have
13 that rape examination done; is that correct?

14 A Yes, ma'am.

15 Q And you, also, said that you explained to them their
16 options. Will you, please, explain to the Court what --
17 what you meant by that?

18 A I wanted them to be able to -- yes, ma'am. I wanted
19 them to be able to know that we could get a -- a SANE
20 nurse -- I believe that's what they're called -- into the
21 hospital to perform this evaluation so that we could
22 properly have the child examined by not just physicians or
23 nurses that were not -- did not have a specialty in taking
24 care of juveniles that have gone through sexual assault.

25 Q Are there certain considerations for having that

1 done -- that examination done or not having the
2 examination done as far as -- as far as you know?

3 A To my knowledge, being a minor, I had to request the
4 parents permission, to begin with the parents permission.
5 And it was discussed that they did not want to traumatize
6 her any further.

7 MS. MCCALL: All right. Those are all the questions
8 I have.

9 Thank you.

10 THE COURT: Any recross?

11 RECROSS-EXAMINATION

12 BY MS. BARWICK:

13 Q I believe your testimony just now was that that delay
14 is just a few seconds; is that correct?

15 A Yes, ma'am. I believe -- I've never timed it.

16 Q Right.

17 But -- but it's important to get everything on the
18 camera so -- police cameras are equipped where there's
19 only about, at the most, 30 seconds; right?

20 A I -- I can't attest to that. I -- I'm not sure. Not
21 long. It's not long.

22 Q Less than a minute?

23 A Yes, ma'am.

24 Q That family history conference where you got -- spent
25 several minutes talking to them about family history, that

1 wasn't recorded either, was it?

2 A Not that I'm aware of.

3 MS. BARWICK: No further questions.

4 THE COURT: Okay. You can step down, subject to
5 being recalled, Sergeant.

6 THE WITNESS: Yes, sir.

7 THE COURT: Ladies and gentlemen, I understand that
8 the State has one more witness. I need to talk with the
9 lawyers for purposes of scheduling. And so if you'd just
10 go back to the jury room and -- for a few minutes and let
11 me talk to them and see if we're going to proceed forward
12 with that witness before the lunch break.

13 If we do call that witness before -- or if the State
14 calls that witness before lunch, there's some legal issues
15 that I'm going to need to deal with with the lawyers. And
16 you'll be back in the jury room a little bit longer than
17 just a few minutes.

18 But we'll -- we'll see how we're going to proceed.
19 And if you'll go back to the jury room, please.

20 Thank you.

21 (WHEREUPON, the jury was excused from open court at
22 approximately 12:14 p.m.)

23 THE COURT: Okay. Solicitor, you had indicated that
24 you've got Shauna Galloway-Williams with the Julie
25 Valentine Center here to -- to testify.

1 MS. MCCALL: Yes, Your Honor.

2 THE COURT: Okay. And is she being called to testify
3 concerning certain behaviors that have been exhibited by
4 the parents?

5 MS. MCCALL: Yes, Your Honor. She'll be called as a
6 blind expert that --

7 THE COURT: Right, right.

8 MS. MCCALL: -- for behaviors -- just general child
9 abuse. She will be qualified as -- as an expert in child
10 abuse dynamics.

11 THE COURT: Right, right.

12 Okay. Ms. Barwick, are you going to have any issue
13 with her -- with her testifying? And the reason why I ask
14 that is I -- I need to determine whether or not there's
15 going to need to be some in-camera testimony from -- from
16 Ms. Galloway-Williams.

17 MS. BARWICK: Judge, I understand the case law that
18 is out there. And it is pretty prevalent that -- that the
19 State can call an expert to testify as to -- as to --

20 What are you qualifying her as an expert --

21 MS. MCCALL: Child abuse dynamics.

22 MS. BARWICK: Child abuse dynamics. I know there's
23 plenty of case law, especially if it's not, specifically,
24 referring to the child in this case and just speaking in
25 terms of generalities. I understand that. I'm still

1 going to place my objection on the record that I think
2 it's improper bolstering. Because it can be linked to
3 saying, yes, this is what's normal with child abuse
4 victims and this is what she's doing. And the questions
5 are going to be geared, specifically, to the issues in
6 this case, even though the answers are general in terms.

7 I do object to it. I've put it on the record. But
8 I, also, understand the case law that's out there, Your
9 Honor.

10 THE COURT: Okay. Well, we'll need to have an
11 in-camera examination. Because I have go to -- unless
12 there's a stipulation, which, certainly, you don't have to
13 stipulate --

14 MS. BARWICK: I do stipulate that she is an expert in
15 child abuse dynamics.

16 THE COURT: Okay. Well, but what I've got to make a
17 finding is, one, whether or not this information that's
18 going to be elicited from her will assist the trier of
19 fact.

20 Two, that she is an expert. You've stipulated to
21 that. That's fine. That's she's an expert in this
22 particular field of sexual abuse dynamics.

23 And, three, that her methodology is reliable.

24 I have to make those findings. And unless there's a
25 stipulation as to all three, then I've got to have an

1 in-camera --

2 MS. BARWICK: Yes, sir.

3 THE COURT: -- examination of her. It doesn't have
4 to be lengthy.

5 But how long do you anticipate, Solicitor, her direct
6 examination will take? Do you have a -- kind of an idea?

7 MS. MCCALL: I would imagine 15 to 20 minutes.

8 THE COURT: Okay. Well, let's go ahead since she's
9 already here. Let's go ahead and get her and let's have
10 the in camera and just -- just focus in on -- since
11 Ms. Barwick is stipulating that she is an expert in the
12 area of child sexual abuse dynamics.

13 MS. BARWICK: Yes, sir.

14 THE COURT: Okay. So even though I know before the
15 jury that you will want to get out her -- her education
16 and experience, certainly. So in the in-camera hearing,
17 just hone in on what she has to say that will assist the
18 trier of fact and, two, her reliability for her process
19 and methodology.

20 MS. MCCALL: Certainly. I will be questioning her
21 on -- which is sort of outside the expertise area, but
22 questioning her about how she's paid and where her funding
23 comes from.

24 Do you want me to, also, get into that now?

25 THE COURT: Not -- not in camera.

1 MS. MCCALL: Okay.

2 THE COURT: You can just deal with that in -- on
3 direct.

4 MS. MCCALL: Certainly, Judge.

5 WHEREUPON,

6 SHAUNA GALLOWAY-WILLIAMS,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you, ma'am.

9 If you would, have a seat.

10 And say your name for the record, please.

11 THE WITNESS: Shauna Galloway-Williams.

12 DIRECT EXAMINATION

13 BY MS. MCCALL:

14 Q Ms. Galloway-Williams, will you explain the
15 difference between an accidental and purposeful
16 disclosure, and what that mean?

17 A Yes. An accidental disclosure would be one that is
18 discovered by accident without the purposeful intent of a
19 child making a disclosure.

20 So a purposeful disclosure would be one in which the
21 child intentionally and purposefully comes forward and
22 makes a statement.

23 Examples of an accidental disclosure might be
24 observing a behavior or hearing a child make a statement
25 that then leads someone to question their behavior or what

1 they said. Sometimes, that may be the discovery of a
2 note, or a diary, or something to that effect.

3 A purposeful disclosure would be when a child,
4 actually, comes forward and tells someone what's happened.

5 Q In terms of disclosures, what is the difference
6 between a delayed disclosure and an immediate disclosure?

7 A So an immediate disclosure would be one in which the
8 child makes an effort to tell someone as soon as the
9 incident has occurred.

10 A delayed disclosure would be one in which a child
11 doesn't tell right away. That delay can be days, months,
12 years, and for some children, they go into adulthood not
13 ever having told anyone.

14 Q Along the lines of disclosures, is a disclosure an
15 event or is it -- can -- or is it a process, or can it be
16 a mixture of both?

17 A Right. So we tend to think of disclosure as a
18 process, meaning that we don't expect that when a child
19 does make a disclosure, whether that's accidental or
20 purposeful, that they're going to tell every single detail
21 about an event just on their own. We know that there are
22 factors that may influence that child's disclosure and
23 their ability to share additional information, or things
24 that may influence or change their ability to share
25 different types of information over time.

1 Q Do you expect that all children will disclose
2 everything the first time they're interviewed, or not, or
3 is there always -- well, let me -- let me back up and
4 rephrase that.

5 Do children sometimes disclose more after time and
6 after they've become more comfortable with what has
7 happened to them?

8 A Yes. Again, that's part of the process with the
9 expectation that we don't expect that a child is going to
10 share every single detail of an event during one interview
11 or one interaction. It may change with -- based on who's
12 doing the interview, who they're talking to, what
13 questions are asked, developmental level, and, also,
14 environmental factors may play into that as well.

15 Q And talking along the lines of the developmental
16 level, are there a particular type of terms that children
17 always use in these types of disclosures, or can that
18 vary?

19 A That's going to vary with the age, and developmental
20 level, and really the culture of the child. You know, not
21 every child knows the anatomically correct names for their
22 body parts. So they may have different names for those.

23 Depending on the age and developmental level of the
24 child, they may not have a context for describing sexual
25 events. They may not have sexual knowledge. So they

1 would use the words that they have in their vocabulary to
2 explain what's happened to them.

3 Q Turning to the topic of memory. What types of things
4 may impact the memory of a victim?

5 A The age of a child at the time of an event, the age
6 at the time that they're making the report of an event,
7 the type of incident that they're reporting, whether or
8 not they encoded that memory as something memorable and
9 remarkable, whether it was a traumatic event or not.

10 Trauma can have both positive and negative effects on
11 memory, meaning that trauma may make some particular
12 pieces of memory more -- more prominent in -- in one's
13 memory. And then some of the peripheral details or
14 details that we may think are important may not be as
15 important to the person who's experienced that event.

16 Trauma may, also, impact memory in the sense that you
17 may not remember things in sequential order, whether that
18 is a child sexual abuse trauma, a car accident, a natural
19 disaster. That traumatic event can impact the sequence in
20 which you remember pieces of information.

21 Q What makes something a traumatic event?

22 A You know, traumatic events are those events where one
23 feels as if their -- their life or their safety is
24 threatened. Again, those -- those types of events can be
25 car accidents, natural disasters. Certainly, child sexual

1 abuse, physical abuse, sexual assault are considered
2 traumatic events as well.

3 Q What is the difference between script memory and
4 episodic memory?

5 A So script memory would be those memories of events
6 that happened sort of over and over like, for example, you
7 know, I go to the grocery store every Sunday, I park my
8 car in about the same place, I go down, you know, pretty
9 much the same aisles. That's my script.

10 An episodic memory would be recalling a specific time
11 that I went to the grocery store. So maybe the one time
12 that I went when someone backed into my car and it delayed
13 my entry into the grocery. So that would be one
14 particular episode.

15 And when we are talking with children, we are --
16 during interviews or assessments, we're trying to tap into
17 those episodic memories, more specific memories.

18 Q Do they sometimes forget details over time?

19 A Yes. They might forget details. As I said, you
20 know, memory can be impacted by age, time, development, as
21 well as external factors or traumatic incidents.

22 And so certain details may be more important and more
23 memorable than others. Just as we forget certain details
24 about memories that we have over time. With traumatic
25 events, that's -- that's no different.

1 Q Can time be a difficult concept for children to
2 understand?

3 A Time is an absolutely abstract concept. It's a very
4 difficult concept for children up until about the age of
5 12 or 14. It's really difficult for children to
6 understand time. So for us to expect that a child would
7 be able to identify a specific day, month, year that
8 something occurred would be very challenging for them.

9 Instead, we -- we try to have them see if they can
10 ground those events in other periods of time, maybe
11 holidays, who they were living with, certain other
12 experiences they may have had in their lifetime.

13 Q Do children tell lies?

14 A I'm sorry.

15 Q Do children tell lies?

16 A Yes.

17 Q Are they always sophisticated lies or what can those
18 lies --

19 A So children can tell lies. Adults can tell lies.
20 Children are not sophisticated liars, meaning that they,
21 generally, are not able to anticipate the next answer to a
22 question that someone may be asking them.

23 They, also, have a difficult time maintaining a lie
24 over a period of time. You know, children -- particularly
25 when it comes to abuse incidents, children have a

1 difficult time maintaining or being sophisticated liars in
2 that sense. Because these are experiences that are not
3 typical experiences that a child would have.

4 Q What can you tell me is the difference between a core
5 or a contextual detail when it comes to this topic of
6 children possibly lying?

7 A So a core detail would be the -- you know, the who,
8 what, when. Again, understanding that time is an abstract
9 concept, the where that something happened, those -- those
10 core details.

11 The contextual details are those details that are
12 more sensory, those memories of sensory experiences,
13 things that one saw, heard, felt, smelled, things that
14 would indicate that someone has experienced an event,
15 rather than just having been told about it.

16 Q Just because a child makes up one detail or a part of
17 a story, does that mean that the rest of the details are
18 not true?

19 A No.

20 Q In your experience and research, have you found that
21 all victims behave the same after a traumatic event?

22 A No. In fact, that's going to vary based on numerous
23 factors. Again, each individual who's experienced an
24 abuse event is very likely to act different.

25 But there are some concepts -- or some core concepts

1 related to the dynamics of child sexual abuse that we do
2 see happen quite often in terms of disclosures and the
3 process of disclosure. But in terms of reaction that the
4 individual has, that's going to vary from person to
5 person.

6 Q What is meant by the term "grooming" in this -- this
7 area of child sexual abuse?

8 A Grooming refers to the process and the act of
9 developing a trusting relationship with the child with the
10 intent of one seeing how the child's going to respond to
11 what's happening, but, also, with the intent of trying to
12 have the child keep the abuse a secret.

13 Grooming can include giving a child special attention
14 or favors. Grooming can include introducing a child to
15 sexual material or behavior in sort of a natural or normal
16 way, and then progressing to different types of sexual
17 acts with the child.

18 THE COURT: Solicitor, since we are in camera, if you
19 would just have her touch briefly on the area of
20 non-offending caregivers and then get into her experience
21 to -- for me to determine reliability. And I think
22 that'll probably be sufficient for this in camera, so
23 we -- we don't need to go into all the details of her
24 testimony.

25 MS. MCCALL: Okay. Certainly.

1 BY MS. MCCALL:

2 Q As it applies to non-offending caregivers, what does
3 that term mean?

4 A A non-offending caregiver would be a caregiver of a
5 child that has not been an alleged offender. You know,
6 they've not committed the alleged abuse act.

7 Q And in your experience, have you seen non-offending
8 caregivers not believe the victim or fail to protect?

9 A Yes.

10 Q And is the opposite true that there are times when
11 non-offending caregivers do believe --

12 A Yes.

13 Q -- the victim?

14 A Yes.

15 Q How does that impact the child and parent
16 relationship?

17 A So we know that the ideal scenario is when we have a
18 caregiver who is protective and supportive of the child,
19 and follows up with the appropriate recommendations and
20 support for their child. But we know that some caregivers
21 are in impossible and challenging situations and may not
22 make those -- the best decisions, initially.

23 We know that how a caregiver responds to their
24 child's disclosure may have an impact on that child's
25 disclosure. It may influence whether or not they maintain

1 the disclosure. In some instances, it may influence a
2 child to change their disclosure. It may cause a
3 significant impact in the child's overall well-being and
4 may even impact their living situation, particularly if
5 the child -- if the parent's viewed as a non-protective
6 caregiver and it changes the household dynamic of the
7 family.

8 Q All right. Ms. Galloway-Williams, I'm just going to
9 briefly, for the Judge's information, go into your
10 background. Can you explain for the Court your
11 educational background and any experience or training that
12 you have?

13 A Right. I have a Bachelor's Degree in Psychology from
14 Winthrop University, a Master's Degree in Counseling from
15 Clemson University. I'm licensed as a professional
16 counselor in the State of South Carolina and have been
17 licensed since 2004. My area of specialization is in the
18 area of child abuse and sexual assault.

19 I've been counseling, assessing, and training in the
20 area of child abuse and sexual assault since 2001. I am,
21 also, an adjunct faculty member at USC Upstate in the
22 child advocacy studies programs. I teach two
23 undergraduate courses there. One is child maltreatment,
24 which is a three-hour undergraduate course, specifically,
25 around the area of child maltreatment. The second is a

1 three-hour undergraduate course entitled gender violence
2 in society.

3 I am, also, a faculty member with South Carolina
4 ChildFirst, which is the South Carolina forensic interview
5 training program. I've been on their faculty now for
6 approximately three years. We train quarterly. We train
7 forensic interviewers.

8 Additionally, I provide statewide, local, and
9 national trainings in the area of child abuse and sexual
10 assault, most recently in the area of chaplain C and
11 children's advocacy centers because that's what's been
12 requested most often for -- from our national trainers.

13 Q And have you ever testified in court previously?

14 A I have.

15 Q How many times have you been qualified as an expert?

16 A I've been qualified as an expert over 40 times.

17 Q And have all of those times been in General Sessions
18 court?

19 A Yes. Most recently, I was qualified in federal court
20 in Spartanburg in a civil case. Otherwise, though,
21 they've all been in General Sessions.

22 MS. MCCALL: Your Honor, that would be the extent of
23 what I would offer.

24 I would, at this point, since we're outside the
25 presence of the jury --

The Judge has instructed us not to use the term "forensic." And I did not -- I apologize. I forgot to tell you before you came in here. So when you do refer to -- to the interviewing process, if you just would not say "forensic," please.

THE WITNESS: Okay.

EXAMINATION

BY THE COURT:

Q And are your opinions that you have given and will give based upon recognized publications and journals?

A Yes.

Q Okay. And I think, also, you were involved in some fashion with peer review processes?

A Yes.

THE COURT: All right. Ms. Barwick, do you want to examine her at this time in this in-camera hearing for me to make the three findings that I must make in order to allow Ms. Galloway-Williams to -- to testify?

MS. BARWICK: I do not.

THE COURT: Once, Solicitor, that Ms. Galloway-Williams is offered as an expert in the dynamics of sexual abuse, I will find her to be an expert. I find that her testimony would assist the trier of fact. That her testimony is not within the common knowledge of this jury or normal lay people.

1 It's been stipulated that she is an expert by
2 Ms. Barwick. And, also, I find that her testimony and her
3 methodology is sufficiently reliable.

4 And so when you offer her after you go through the
5 necessary questions, I will find her to be such an expert.

6 MS. MCCALL: Thank you, Your Honor.

7 THE COURT: Okay. Let's's get the -- let's get the
8 jury out.

9 And you'll need to go back there. Because you'll
10 need to come back and be sworn in before the jury.

11 THE WITNESS: Okay.

12 THE COURT: And -- and I'll just state, for the
13 record, I have qualified her as an expert probably, at
14 least, five, maybe even in six cases over the years.

15 All right. Bring the -- bring the jury out.

16 (WHEREUPON, the jury came into open court at
17 approximately 12:36 a.m.)

18 THE COURT: Let the record reflect the jury is back
19 in.

20 Ladies and gentlemen, you know, I mentioned on Monday
21 that most juries sit in the same seat. And I think you
22 have followed that same -- same pattern. Nothing wrong
23 with it.

24 Solicitor, you have one more witness for the State?

25 MS. MCCALL: Yes, Your Honor.

1 THE COURT: Okay. You may proceed.

2 MS. MCCALL: The State calls our final witness to the
3 stand, Shauna Galloway-Williams.

4 THE COURT: Come around, please, ma'am.
5 WHEREUPON,

6 SHAUNA GALLOWAY-WILLIAMS,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you, ma'am.

9 If you would, have a seat.

10 And state your name for the record, please.

11 THE WITNESS: Shauna Galloway-Williams.

12 DIRECT EXAMINATION

13 BY MS. MCCALL:

14 Q Ms. Galloway-Williams, where do you currently work?

15 A I'm the executive director of the Julie Valentine
16 Center.

17 Q And what is your educational background?

18 A I have a Bachelor's Degree in Psychology from
19 Winthrop University, a Master's Degree in Counseling from
20 Clemson University. I'm, also, licensed as a professional
21 counselor in the State of South Carolina and have been
22 licensed since 2004.

23 Q Do you have any specialized training?

24 A Yes. My area of specialization is the area of child
25 abuse and sexual assault. I've been working in that area,

1 specifically, since 2001 as a counselor, as an
2 interviewer, as a trainer. And I currently still provide
3 some of those services as well.

4 Q Do you provide any professional training?

5 A I do. I am on -- I'm an adjunct faculty member at
6 USC Upstate in their child advocacy studies program. So I
7 teach two undergraduate course. One is a three-hour
8 course called child maltreatment, which is a three-hour
9 undergraduate course, specifically, in the area of child
10 maltreatment. I, also, teach a three-hour undergraduate
11 course on gender violence in society.

12 In addition to that, I am a faculty member at South
13 Carolina ChildFirst, which is another training program for
14 those who are working with children where there is
15 suspicion of child maltreatment.

16 I, also, provide local, statewide, and national
17 training, and have presented at national conferences,
18 including the National Children's Alliance, the Gunderson
19 National Child Protection training violence and
20 intervention conferences as well as numerous statewide and
21 local conferences.

22 Q Do you have to receive any continuing education?

23 A I do. As part of my licensure, I have to participate
24 in continuing education, at least, 50 hours every two years.

25 Q Do you use peer-reviewed articles and journals in the

1 course of your career and profession?

2 A Yes.

3 Q And the opinions that you have, are they supported by
4 these articles and journals?

5 A Yes.

6 Q Have you ever testified in court before?

7 A I have.

8 Q And how many times?

9 A I've been qualified as an expert over 40 times.

10 Q Have those all been in General Sessions court?

11 A Most of them have been in General Sessions. Most
12 recently, I was qualified as an expert in federal court.

13 MS. MCCALL: Your Honor, at this time, the State
14 offers Ms. Galloway-Williams as an expert in child abuse
15 dynamics.

16 THE COURT: Okay. Any examination concerning
17 qualifications, Ms. Barwick?

18 MS. BARWICK: No, Your Honor.

19 THE COURT: Okay. I find that Ms. Galloway-Williams
20 is an expert in the area of child abuse dynamics.

21 You may proceed.

22 MS. MCCALL: Thank you, Your Honor.

23 BY MS. MCCALL:

24 Q Ms. Galloway-Williams, were you subpoenaed to be here
25 today?

1 A Yes.

2 Q And are you being paid by the State?

3 A I'm not being paid by the State.

4 Q Okay. And how are you paid?

5 A I'm paid by the Julie Valentine Center. That's --
6 I'm a salaried employee there. And my salary does not
7 depend on my testimony here or in any other trial.

8 Q And are you involved or have you had any involvement
9 with this particular case, the victim in this case being

10 [REDACTED]

11 A I have not.

12 Q So you have not seen -- have you seen any evidence or
13 read any statements in this case?

14 A I haven't.

15 Q I'd like to get into the area of disclosures when it
16 comes to child abuse dynamics. Can you explain for the
17 jury what the difference is between an accidental
18 disclosure and a purposeful disclosure?

19 A Sure. An accidental disclosure would be one in which
20 a child does not make the purposeful intent of telling
21 someone what happened. Accidental disclosures are those
22 that may be discovered by a concerning behavior, or a
23 statement that a child's made, or, perhaps, a diary or a
24 note, a parent may notice a concerning behavior that the
25 child has exhibited. And they begin to ask questions and

1 the child may then tell. That was an accident. The child
2 didn't set out to tell what had happened to them.

3 A purposeful disclosure is one in which the child
4 makes a purposeful and intentional effort to tell someone
5 what happened. There may be some type of triggering event
6 before that that leads the child to -- to tell. They may
7 have, you know, been in a presentation at school, or they
8 may have a better understanding of development and
9 puberty, and that may lead them to -- to tell what's
10 happened. But still, they're purposefully making the
11 effort to tell someone.

12 Q What is the difference between a delayed disclosure
13 and an immediate disclosure?

14 A So an immediate disclosure would be one in which a
15 child tells right after it's happened. They tell someone
16 as soon as there's someone available for them to tell.

17 A delayed disclosure is one in which a child does not
18 tell right away. And that's much more common in these
19 types of cases. That delay can be days, weeks, months,
20 years. And many adult survivors report that they've never
21 told anyone, even into their adulthood.

22 Q Is the disclosure process an event, or is it an
23 ongoing process, or can it be a little bit of -- of both?

24 A We consider it a process. Because we don't expect
25 that a child is going to share every single detail of an

1 event, an abuse incident or multiple incidents in just one
2 sitting, in just one interview or one conversation with
3 someone.

4 We, also, consider it a process because we -- as
5 we've already talked about, there are different types of
6 disclosures. There are accidental disclosures and there
7 are purposeful disclosures.

8 And at different times, a child may be in a different
9 state of that disclosure as well. They may be in a
10 tentative state of disclosure where they are telling
11 certain pieces of information, but still holding back
12 others. They may be in an active phase of disclosure
13 where they are telling even more details than they've told
14 previously.

15 There are lots of factors that can influence the
16 disclosure process as well. Those can be development, you
17 know, a child's language skills improve and change. They
18 begin to learn and understand more about their bodies and
19 what may have happened to them. Outside factors,
20 environmental factors, their family, their community,
21 their school, their peers, those types of things may
22 influence a child's disclosure.

23 And whether a child has been exposed to the person
24 that may have done this to them. That may have different
25 effects on the child, whether they are supported by the

1 individuals and their family that -- that are around them.
2 That may impact their disclosure process as well.

3 Q During this disclosure process, do you expect the
4 terminology used by victims to always be the same?

5 A No. We would expect that that would match the
6 child's development and their -- their language skills
7 when they're sharing information. You know, some children
8 don't know the correct -- anatomically correct names for
9 their body parts. So they may be calling their body parts
10 one thing versus another. So it's important for us to
11 understand their own language and their own development.

12 At the end of the day, we're talking to children and
13 talking about children. So the expectation would be that
14 they would be sharing information in a childlike way.
15 They may not know the same terms that I know or that you
16 guys would know as adults to describe the events that have
17 happened to them. And, in fact, that's one reason why
18 children delay disclosing is because they don't have the
19 words or the frame of reference to -- to talk about what's
20 happened to them.

21 Q What would impact a child's memory?

22 A There are lots of things that impact memory, the age
23 at which an event has occurred. Memory can be impacted by
24 trauma. Traumatic events can impact memory in both
25 positive and negative ways, whether that trauma is a car

1 accident, or a natural disaster, or a sexual abuse
2 incident. Our memories of those events can be impacted by
3 the traumatic experience itself.

4 So, for instance, there may be certain pieces of that
5 event that are stronger, that we remember more than
6 others. And there may be certain pieces of that event
7 that we just don't remember at all.

8 For example -- just using an example of a car
9 accident. I was in a car accident. It's a traumatic
10 event. Someone ran a red light and hit my car. I can
11 tell you exactly what intersection it happened in. I can
12 tell you exactly the color of the sweater that I had on
13 that day and where the burn was on my arm. But I have no
14 recollection of what the guy who was driving the car that
15 hit me was. That's how trauma can impact our memory.
16 Something that you would think would be a very important
17 detail, but is not -- I'm not able to recall that.

18 Q Do you expect a victim to report every single detail
19 every time they talk about the trauma?

20 A No. And that's going to be impacted by who is -- who
21 the child is talking to, who's asking the questions.
22 Children are very egocentric. They -- they think that we
23 know what they know. And so, sometimes, they think that
24 we already know the answers.

25 So depending on who's asking the questions, the type

1 of questions that are being asked of them, and the type of
2 information that someone is seeking, that may impact what
3 type of information the child shares. They may not find
4 it important to tell us the color of the walls in the room
5 or the positioning of their body. Those are the kind of
6 things that we might have to ask more specific questions
7 about to -- to get that information.

8 Q What's the difference between script memory and
9 episodic memory?

10 A So script memory are those memories of things that we
11 sort of do over and over again. So if you think of a
12 script in terms of maybe a television show where you have
13 the beginning, middle, and end, and it's pretty much the
14 same every time. But if you're speaking about a specific
15 episode where a specific event happened, that's the
16 difference.

17 So a script memory may be that you go to the grocery
18 store on Sunday, every Sunday you park in the same spot,
19 you buy the same groceries pretty much, you go down the
20 same aisles. But if I ask you to tell me about the one
21 time that someone backed into your car in the parking lot,
22 that's an episodic memory, the episode that happened
23 there.

24 And so you remember different details about that --
25 or the expectation would be that you might remember more

1 specific details about that day because of that event
2 happening.

3 Q Is it possible for children to forget details over
4 time?

5 A Yes. It's possible for children and adults to forget
6 details over time.

7 Q Is time a difficult concept for some children?

8 A Time is a difficult concept for all children because
9 time is an abstract concept. So up until about the age of
10 12 or 14, children have a really difficult time
11 understanding time. They may use the terms yesterday,
12 today, tomorrow. But they may have no idea what that
13 means, because these are abstract terms in their mind.

14 So for us to expect that a child would be able to
15 tell us the exact time, date, and day that something
16 happened to them, especially if it was an event that
17 happened days, weeks, years ago is really an unrealistic
18 expectation. Instead, we attempt to see if we can
19 identify a particular holiday, or maybe a grade in school,
20 or maybe where a child was living, who they were living
21 with to really help them put the event in the time that it
22 may have happened.

23 Q Do children or adults, for that matter, lie?

24 A Yes. Children and adults both lie.

25 Q And what is -- well, can children tell sophisticated

1 lies?

2 A Yeah. So we tend to say that children are not
3 sophisticated liars, meaning that, you know, they tell
4 lies to keep themselves out of trouble. You know, they
5 tell us that they didn't eat the cookie when the crumbs
6 are on their mouth. You know, we can see that that
7 happened.

8 They're not good at maintaining a lie. And at
9 maintaining all the details that -- particularly in a sex
10 abuse scenario, they're not good at maintaining those
11 details over time and over different scenarios and
12 settings.

13 They're, also, unable to anticipate what it is the
14 individuals are going to be asking them or what the
15 information is that they need to know. So they're not
16 sophisticated in the types of lies they tell.

17 Q What's the difference between a core and contextual
18 detail?

19 A So a core detail would be the who, the what, the
20 when, not exact time, but when approximately something
21 happened.

22 Contextual details are more sensory details, so what
23 someone saw, what someone felt, what someone heard. Those
24 details that really provide more context or let us know
25 that the experience that's being described is something

1 that the individual has experienced themselves through
2 their senses, rather than just something that they've been
3 told or that they've read about.

4 Q Do you expect all victims, specifically, child
5 victims to react the same?

6 A No. In fact, we expect that each individual is going
7 to have a different response. However, we do know that
8 there are some core concepts that -- that victims share in
9 common.

10 So for example, the idea of delayed disclosure is
11 something that's been well researched over 30 years to
12 show that the vast majority of victims don't tell right
13 away. And we have research to show the reasons why that
14 is. But each individual victim is going to respond
15 differently.

16 Q What is meant by the term "grooming" in child abuse
17 dynamics?

18 A Grooming is what we refer to as establishing a
19 trusting relationship with a child with the intent of
20 having the child, basically, keep the secret. Grooming
21 can involve giving a child extra attention. It can
22 involve giving them gifts, giving them money, giving them
23 treats.

24 Grooming can, also, involve introducing a child to
25 sexual behavior and materials in sort of a normalized way.

1 So maybe starting off introducing them to jokes or
2 touching them on parts of their body that may not
3 necessarily be sexual, initially. So introducing them to
4 these concepts with the idea of developing a trust with
5 the child, but, also, sort of testing the waters to see
6 how this child is going to react and whether this child
7 would tell or not.

8 Q Could that affect a child's disclosure?

9 A Yes. Because it is part of developing a relationship
10 with the child. You know, one of the reasons that
11 children delay disclosure is because most of the time
12 they're abused by someone that they know, they love, and
13 they trust. And that relationship is very powerful and
14 important to them, in spite of the fact that what's
15 happening to them is something that they don't want to
16 happen.

17 So if someone's working even harder through grooming
18 them and giving them special attention and affection, and
19 really cultivating that relationship, you can see that
20 that may have a strong and lasting effect on whether that
21 child feels comfortable to tell.

22 Q Is it common or uncommon for children to be abused by
23 family members or someone in a position of authority or
24 trust in their lives?

25 A As I said, most times, children are abused by someone

1 that they know, they love, and they trust, whether that is
2 a family member, a family friend, someone in the
3 community. Often, children are abused by someone that's
4 not only loved, known, and trusted by the child, but,
5 also, known, loved, and trusted by the family, and many
6 times known, loved, and trusted by the community. There
7 have been numerous recent cases in national news where
8 that's been evident.

9 Q What does the term "non-offending caregiver" mean?

10 A A non-offending caregiver is a caregiver who is not
11 an offending caregiver. That's obvious. But what I mean
12 by that is they're not the caregiver that has committed an
13 abuse act or a neglectful act on the child. So they're
14 not the -- the person that is the alleged offender in a
15 particular abuse scenario.

16 MS. MCCALL: All right. Ms. Galloway-Williams, those
17 are all the questions I have for you.

18 Thank you.

19 THE COURT: Any cross-examination?

20 MS. BARWICK: Yes, Your Honor.

21 Thank you.

22 CROSS-EXAMINATION

23 BY MS. BARWICK:

24 Q Ms. Galloway-Williams, you said there's some -- you
25 know, all -- all children are different. But there are

1 some normal core concepts in these types of cases that
2 seem to be the same. And one of them is delayed
3 disclosure; right?

4 A So by saying -- I -- I don't mean that they're all
5 the same. But it is a -- we see far more often children
6 are delaying disclosure than not. So there are cases
7 where children tell right away.

8 Q And you said that's kind of a core concept in these
9 kind of cases. Wasn't that your testimony?

10 A Delayed disclosure, yes. It is a well established
11 concept in the field of child sexual abuse.

12 Q And another well known concept is that disclosure is
13 a process; right?

14 A Yes.

15 Q And with disclosure being a process, what do you mean
16 by that?

17 A Meaning that we don't -- as I said before, we don't
18 expect that -- one, we don't expect that every child's
19 disclosure is going to be the same. It's a process. It
20 may be different. And we don't expect that it's going to
21 be a one-time event, meaning that a child may tell
22 information, initially, in a tentative state.

23 So they may have purposefully decided that they were
24 going to tell someone what happened. And then someone may
25 question them. And they may tell a little bit more and a

1 little bit more over time. They, also, may vacillate
2 between those stages. So they may go from being very open
3 and active in disclosure to recanting or taking their
4 statement back and then later reaffirming it.

5 So when we're talking about it being a process, we
6 mean that it's not a one-time event. We don't -- when
7 we're talking about a child's disclosure, we're not just
8 talking about a one-time assessment with one person or a
9 one-time interview with an investigator. It's the
10 totality of all of -- all of those things.

11 Q So with disclosure being a process -- and I think
12 you've already testified to this, that you would expect
13 more to come out over time?

14 A Not -- not necessarily, but it could. You know, the
15 child could share more. The child, also, may take some of
16 that information back. As I said, part of the disclosure
17 process may involve recantation.

18 So in terms of, you know, the environmental effects
19 after the child tells, if the child's not well supported,
20 if the child's environment changes, maybe they have to
21 move out of their home or someone else has to move out of
22 the home, that could impact the child's disclosure
23 process. And so they may, in fact, take some information
24 back or change information.

25 Q But I believe prior during your in-camera testimony,

1 you had said that you would expect more to come out
2 over time. Is that not what you said?

3 MS. MCCALL: Objection, Your Honor. I don't think
4 that it's proper to reference --

5 MS. BARWICK: I can impeach her with her prior
6 testimony, Judge.

7 THE COURT: Not -- not under these circumstances you
8 can't.

9 MS. BARWICK: Okay.

10 THE COURT: I sustain the objection.

11 BY MS. BARWICK:

12 Q So it's not your testimony that you -- that it's most
13 common for more to come out over time?

14 A You might expect that more might come out over time,
15 but it -- it's not always that more comes out over time.

16 Q And a lot of it depends on -- and you brought up, you
17 know, you train individuals in interviewing these
18 children. And a lot of it depends on how that interview
19 is conducted?

20 A Yes. Certainly, there are interviewer influences
21 that impact a child's disclosure, as well as the
22 environmental influences and other influences that I've
23 already spoken to.

24 Q And -- and to take out or minimize those
25 influences, the best practice is to ask open-ended and

1 non-leading questions; isn't that right?

2 MS. MCCALL: Objection, Your Honor. I believe this
3 is going outside the scope of her testimony here as a
4 child abuse dynamics expert.

5 THE COURT: Well, I think -- I think she can answer
6 the question if she knows the -- if she knows, sure.

7 MS. MCCALL: Certainly.

8 THE COURT: Overruled.

9 BY MS. BARWICK:

10 Q So when you're training these individuals to conduct
11 an interview, you teach them that the best practice is to
12 ask non-leading and open-ended questions; isn't that
13 right?

14 A We teach them to use a full range of questions
15 beginning with the most open-ended questions that you can
16 use. But we, also, teach interviewers that they may not
17 be -- one, there's no interview where every single
18 question is an open-ended question.

19 Q Right.

20 A There's a full range and really sort of a spectrum of
21 questions that you might use. Some are more focus
22 narrative where the child's giving you a piece of
23 information, and so you ask a more specific question about
24 it.

25 Sometimes, you do have to ask a yes or no question

1 for clarification. You might, also, need to use a
2 multiple choice question for clarification. All of those
3 question types are appropriate within the protocols that
4 interviewers -- that we teach in our interview training.

5 And so the other piece to that is when we are
6 interviewing children, we have to meet children where they
7 are developmentally, and so based on the age of the child
8 and the development of the child. The younger the child,
9 the more difficult it's going to be to answer those
10 open-ended questions.

11 And so there, also, are some techniques or skills
12 that we practice at the beginning of interviews that
13 include tapping into that episodic and script memory,
14 having them practice narrative. And we -- we see how well
15 they can do with that in the beginning of the interview.
16 And then balance the remainder of the interview with the
17 remaining question types.

18 Q And because the power of suggestion is a very strong
19 power, you train your interviewers to make sure that they
20 ask their questions in the least suggestive possible way;
21 correct?

22 A Yes. We -- we know that children and adults can be
23 suggestible. And so we do train that we as much as
24 possible use non-suggestive techniques in our interviews.

25 Q And -- and children are more susceptible to it than

1 adults; right?

2 A Children are more suggestible. The younger the
3 child, the more suggestible they are.

4 Q And the more untrained people who ask the child
5 questions, the more the possibility -- the increase of the
6 possibility that the power of suggestion is going to run
7 off on that child; correct?

8 A Not necessarily.

9 Q But it could happen. Not necessarily means it could
10 happen?

11 A So give me -- be more specific about what you're
12 asking. Maybe give me a hypothetical.

13 Q I'm going to give you a hypothetical. Let's say 10
14 different adults, who are not trained in the appropriate
15 way to ask a child a question, talk to this child before
16 the first trained professional, who knows to avoid
17 suggestible questions, talks to the child. That could
18 alter the child's memory, could it not?

19 A Well, I'd want to know who the individuals were that
20 talked to the child. I'd want to know whether they ask
21 questions and what those questions were. I'd want to
22 know their relationship --

23 Q Ms. Galloway-Williams --

24 THE COURT: Wait a minute. Let -- let her finish the
25 answer.

1 MS. BARWICK: But -- but --

2 THE COURT: No. Let her finish her answer.

3 MS. BARWICK: It's a "yes" or "no."

4 THE COURT: Ma'am?

5 MS. BARWICK: Nothing, Your Honor.

6 THE COURT: Okay. Finish your answer, please, ma'am.

7 THE WITNESS: I'd want to know the relationship to
8 those individuals to the child and to the alleged
9 offender. So I'd want to know a lot more information
10 about that before I could answer that. So it's -- it's
11 not a "yes" or "no" answer for me.

12 BY MS. BARWICK:

13 Q But the question I'm asking is, could that possibly
14 impact the child's memory?

15 A I don't know what type of influence that could have,
16 specifically. Again, in order for me to answer that with
17 an informed answer, I would need additional information.

18 Q Because -- and you'd need that additional information
19 because there's a possibility it could influence this
20 child?

21 A So if -- if the individual that had questioned this
22 child said to the child straight out that this happened to
23 you, didn't it, this happened to you, didn't it repeatedly
24 and repeatedly and repeatedly, maybe.

25 Q Okay. Thank you.

1 And you said that you -- because kids have a very
2 difficult time with timing; correct?

3 A They have a very difficult time understanding time.

4 Q And -- and it could be -- if they say it happened
5 yesterday, there's a possibility it could have been last
6 year?

7 A Correct.

8 Q Or the year before, or even the year before; correct?

9 A Yes. So, you know, children have a very difficult
10 time understanding what those words really mean.

11 Q And you said you try to tap into holidays like
12 birthdays; is that correct?

13 A Yeah. You might try to ground that into a special
14 event, a holiday. You may try to ground that into a grade
15 in school, a particular home the child was living in, who
16 they were living with at the time, those types of things.

17 Q And you said that the State doesn't pay you, but the
18 Julie Valentine Center pays you; correct?

19 A That's correct.

20 Q And -- and how does the child advocacy center get
21 funding?

22 A So the Julie Valentine Center -- our budget's a
23 little over 2 million. We receive about 75 percent of
24 that money from federal grants. Those come from the
25 Victims of Crime Act and Violence Against Women Act funds.

1 Those are federal funds that pass through the state of
2 South Carolina. We, also, are a Greenville County United
3 Way partner. We, also, have to do some fund raising and
4 rely on individual giving.

5 So the remainder of our budget outside of those
6 federal funds is made up of foundation grants, individual
7 grants, fund raising, and other supports.

8 Q And you probably -- and you're the director of the
9 child advocacy center; correct?

10 A Of the Julie Valentine Center, which is a child
11 advocacy center, as well as sexual assault and recovery
12 center.

13 Q Okay. And those funds that employ you would probably
14 go down if you ended up testifying for those who've been
15 falsely accused; correct?

16 A I'm -- can you repeat your question?

17 Q Would all those people continue to fund your center
18 if you were testifying on behalf of somebody who'd been
19 falsely accused?

20 A I'm not sure what you're -- so you're asking me --
21 let me make sure I understand your question. Are you
22 asking me if the Julie Valentine Center would lose
23 support --

24 Q Yes.

25 A -- if I were testifying on behalf of someone who was

1 falsely --

2 Q Accused.

3 A -- accused?

4 Q That's what I'm asking you.

5 A So I don't know.

6 Q Okay.

7 A I -- I don't -- I really -- I don't know.

8 Q That's fine.

9 A Because I don't know -- I don't know that I would
10 ever take the stand knowing that someone was being falsely
11 accused.

12 Q I was saying testifying on behalf of someone who's
13 been falsely accused, not against them, on behalf of them?

14 A Testify -- so if I had been --

15 Q In support of somebody who'd been falsely accused.

16 A Oh, I -- you know, it would depend on the scenario.
17 I testify when I'm subpoenaed. We recently -- in the case
18 I most recently testified in federal court, I was
19 subpoenaed by the Defense -- or I was retained by Defense
20 Counsel in that particular case.

21 We evaluate -- on those types of cases, we evaluate
22 the cost versus the benefits of -- of our testimony.
23 Because we can make a decision about those. In other
24 cases where we're just straight out subpoenaed, we respond
25 to those subpoenas.

1 Q And when you say you testified for the Defense, that
2 was in a civil case; correct?

3 A It was.

4 Q Okay. So you -- you've never testified on behalf of
5 the Defense in a criminal case, have you?

6 A I have not.

7 Q You said children are not sophisticated liars;
8 correct?

9 A That's correct.

10 Q And -- and tell me about that again.

11 A Well, it just means that children have a hard time
12 anticipating what they need to say next and to really keep
13 a lie up. You know, they have a hard time across
14 scenarios saying the same thing over and over again to
15 different people who are asking them different questions.

16 They have a hard time anticipating what those details
17 are that -- those contextual details that we're talking
18 about when children disclose. They have a hard time
19 with -- with those. You know, they might be able to
20 say -- you know, again children, generally, lie about
21 things to keep themselves out of trouble, you know. It's
22 simple lies, not sophisticated lies about sexual abuse.

23 Q So they lie to keep themselves out of trouble;
24 correct?

25 A Uh-huh.

1 Q And they can't keep up that lie over time because
2 they're not sophisticated; right?

3 A Yes.

4 Q And delayed disclosure and non-disclosures, those
5 kind of things really affect the ability to conduct
6 studies on these sexual abuse allegations; correct?

7 A Sexual abuse and the dynamics around it in and of
8 itself make it difficult to conduct studies. Because you
9 have to actually -- you know, you can't do the same
10 scientific research where you expose one person to a
11 condition and one person not. Because you're not going to
12 ethically submit that someone be abused and someone not.

13 So the way that we research sexual abuse is based on
14 the experiences that we have from survivors. So it's a
15 challenging field of research, for sure.

16 Q So the research you have available to you are of the
17 people who report allegations of abuse; right?

18 A So some of the research is based on cases --
19 individuals who've reported. Some of it is, you know,
20 data that's obtained from other sources. You might have
21 anonymous individuals, people who haven't, actually, made
22 a formal report, but they are part of a research study.

23 So it may not be a formal investigation is what I'm
24 saying for the cases -- the individuals who are part of
25 the research studies.

1 Q But some people don't disclose at all?

2 A Yes. Some people don't ever disclose. And some
3 people, you know, would only disclose -- many of the
4 adults that we see at the Julie Valentine Center are
5 disclosing for the first time to their adult therapist
6 there, and maybe no one else.

7 Q And you would agree that the studies and empirical
8 data on disclosure rates are -- for kids are all over the
9 place. Some at 24 percent, some all the way up to 96
10 percent; right?

11 A No. I would disagree with that.

12 Q You would disagree with that. Okay.

13 A Are you referring to delayed disclosure rates or
14 what, specifically, are you referring to? If you're --

15 Q Children --

16 A -- referring to a specific study, I'll be glad to
17 take a look at it, if you want.

18 Q That -- that's okay.

19 How does one go about conducting a study to figure
20 out what percentages of allegations are false allegations?

21 A So in those studies, they're usually taking
22 information from founded Department of Social Services
23 cases. They may be taking information from criminal
24 cases, the outcomes of trials. And they are using that
25 type of information to -- to study that.

1 Q And you've -- you've conducted interviews of
2 children, lots of them; right?

3 A I have.

4 Q Okay. And have you ever on any single occasion ever
5 had the child come back into your facility and say,
6 Ms. Galloway-Williams, I lied about what I told you and that
7 person never did that to me?

8 A I've never had a kid come back and tell me that they
9 lied and that person didn't do that. But I have had kids
10 come back and tell me that they lied and that the person
11 did do it.

12 So I've had kids that have come and talked to me and
13 told me -- kids that have sat an hour, hour and a half
14 long interviews with me and told me that this person did
15 not abuse me, they did not do this, and then they came
16 back and said they did.

17 Q But you've never had one say this happened to me, and
18 then come back later and say, Ms. Galloway-Williams, I --
19 I lied about what they did to me?

20 A I've never had anybody come back and -- and tell me
21 that. But there, certainly, have been cases where --
22 where children haven't disclosed, or where maybe the
23 disclosure is problematic so we don't necessarily know
24 what happened, or we didn't know with assurance that what
25 they said was -- was really what happened.

1 But at the end of the day, my role is not to
2 determine whether a child's telling the truth or a lie.

3 Q Right.

4 A My role in the interview role is to provide an
5 opportunity for that child to share the information that
6 they need to share or want to share.

7 Q And -- and the reason why you don't have children
8 come in and tell you, I'm sorry I lied about that is
9 because they're locked into that statement once they've
10 made it?

11 A Not necessarily. Again, I think we're talking about
12 individual -- you're talking about an individual case by
13 case.

14 Q And you said that children like attention. They
15 thrive on attention; correct?

16 A Children do like attention, yes.

17 Q And some of the reasons a child might make a false
18 allegation is because once they said a little bit, it got
19 them a lot of attention; isn't that correct?

20 A I disagree that children enjoy the negative attention
21 that they might get from a disclosure process. I don't --
22 I don't -- in my experience, children don't enjoy the
23 process of going from one interview to another, to talking
24 to law enforcement, to seeing their families struggle with
25 the challenges and changes that happen with a disclosure,

1 the numerous times they have to get out of school for
2 appointments, the type of attention that they receive, and
3 particularly, when they reach this level of attention and
4 sitting in a courtroom in front of a jury is not,
5 typically, what children want or desire.

6 Q And children lie about people because they don't like
7 them; isn't that right?

8 A I suppose a child could tell a lie about someone
9 because they don't like them.

10 Q And children sometimes tell a lie because they don't
11 like that they have to go to time out, or go in a corner,
12 or go to bed; isn't that right?

13 A I think a child could say something negative about a
14 person for that. But the chances of a child making a
15 sexual abuse disclosure in that instance is rare.

16 Q And children might lie because they want their family
17 unit back together and they want somebody out of the
18 picture; isn't that right?

19 A They -- they might, also, not disclose for -- for
20 those reasons as well. So, you know, what we see more
21 often is that children are falsely denying incidents of
22 abuse to -- to make those types of situations occur.

23 Q Or lie to put that family back together?

24 A Again, I mean, I think that if what you're asking me
25 is is that a possibility in the realm of all

1 possibilities, I think so. Is it something that I've
2 experienced in my training and experience regularly, no.

3 Q So as a child advocacy center and -- as being the
4 director of a child advocacy center, your job is to
5 advocate for children; correct?

6 A Yes.

7 Q Okay. Not for those who've been falsely accused?

8 A I don't see that my role at the Julie Valentine
9 Center is to advocate for those who've been falsely
10 accused, no. My role at the Julie Valentine Center is to
11 advocate for child abuse and sexual assault victims. And
12 part of that includes educating the community and others
13 about those dynamics.

14 And my role has nothing to do with the falsely
15 accused in terms of either advocating for them or trying
16 to falsely accuse them. I mean, it's just not part of my
17 job.

18 Q And you're an expert in how other children might
19 react after having been sexually abused; correct?

20 A Clarify, please.

21 Q You're an expert in child abuse dynamics. So your
22 expert testimony is based on other children, not the child
23 involved in this case?

24 A That's correct. I -- I am not here to testify,
25 specifically, about this child. I've not reviewed any

1 records for this child. I don't have any information
2 about this specific case. I'm here to educate the jury on
3 the general dynamics of child sexual abuse.

4 Q So you don't know what any of the 15 adults spoke to
5 her about?

6 A I do not.

7 Q Okay. And you didn't watch the forensic interview?

8 A I did not.

9 Q And you don't know anything about this child?

10 A I do not.

11 Q You don't know her history?

12 A I do not.

13 Q You don't know her motivations?

14 A I do not.

15 Q You don't know her parents?

16 A I don't.

17 Q You don't know any of her family members?

18 A I don't.

19 Q You don't know their motivations?

20 A I don't.

21 Q You don't know their history?

22 A No.

23 Q Or any of the family, friends involved in this case,
24 or extended family members, you don't know anything about
25 them?

1 A I don't.

2 Q And your testimony today is just based on
3 generalizations?

4 A My testimony today is based on my experience, my more
5 than 20-plus years of experience in the field. It's based
6 on my education, my training, and the more than 30 years
7 of research that supports the field of child maltreatment
8 and, specifically, child sexual abuse.

9 Q But all children are different; correct?

10 A Yes. All individuals are different.

11 Q And your testimony today is that the inconsistencies
12 because of the dynamics of disclosures -- that the
13 inconsistencies that might exist in a child's story are
14 consistent with sexual abuse?

15 A I don't remember speaking, specifically, about
16 inconsistencies or consistencies. So if you want to --

17 Q Well, you said more might come out over time, and
18 then it's retracted, and then they remember things
19 differently, and then their memory affects things. So
20 inconsistencies -- you're saying because of disclosure
21 that inconsistencies that are caused by disclosure are
22 consistent with child sexual abuse?

23 A No. That's not what I'm saying. I didn't use those
24 words, consistency or inconsistency.

25 Q And the sole reason the State has called you to

1 testify in their case today is to correct all the
2 weaknesses; correct?

3 A The reason the State has called me as a witness today
4 is to provide information and education for the jury on
5 child sexual abuse dynamics, which is something that's
6 outside the normal range of knowledge and information that
7 the average individual might have.

8 MS. BARWICK: No further questions.

9 THE COURT: Any redirect?

10 MS. MCCALL: Just briefly, Your Honor.

11 THE COURT: Okay.

12 REDIRECT EXAMINATION

13 BY MS. MCCALL:

14 Q Ms. Galloway-Williams, this area of child sexual
15 abuse and disclosure, it's not commonly known among most
16 people; correct?

17 A Right. It's not common knowledge. And even if you
18 have heard of it, the -- the unusual circumstances around
19 it often need more explanation, like the idea of delayed
20 disclosure, why a child would be sexually abused by
21 someone and not immediately tell. That's something that
22 still needs explanation.

23 Q Ms. Barwick questioned you about testifying on behalf
24 of the State most of the time. If you were subpoenaed by
25 a defense party or a defendant, would you answer that

1 subpoena and testify in court?

2 A We would respond to that subpoena, yes.

3 Q And regarding time, specifically, which we touched on
4 earlier. If an immediate disclosure was made in a case,
5 in that instance, would you expect children to more
6 accurately be able to determine when abuse happened?

7 A They might be able to. If it happened right then,
8 they might say this happened today, or this happened this
9 morning, or, you know. The sooner that they report, the
10 more likely they would be able to identify when this
11 happened, particularly if it was in the same day or
12 previous day.

13 MS. MCCALL: Thank you, Ms. Galloway-Williams.

14 I have no further questions.

15 THE COURT: Any recross?

16 RE CROSS-EXAMINATION

17 BY MS. BARWICK:

18 Q You would respond to that subpoena because you're
19 required by law to respond to a Defense subpoena; correct?

20 A That's correct. And -- and Defense Counsel has never
21 subpoenaed me or asked me to testify.

22 Q That's because you wouldn't give them favorable
23 testimony, would you?

24 A I would respond to the subpoena.

25 Q But you wouldn't give favorable testimony, would you?

1 A I'd give the same testimony that I've given today.
2 And so if the Defense wanted me to provide this testimony
3 on behalf of their client, I would provide this same
4 testimony. Because my testimony is not dependent on
5 who I -- I -- I have -- you know, I don't know the
6 plaintiff or Defendant in this case. So my testimony is
7 the same, regardless. It's based on my experience,
8 training, education, and the research in the field.

9 Q And except for the one civil case, how many times did
10 you say you've been qualified as an expert?

11 A Over 40 times.

12 Q All 40 of those times were to testify on behalf of
13 the State; correct?

14 A Yes.

15 MS. BARWICK: Okay. No further questions.

16 THE COURT: You can step down, ma'am.

17 Thank you.

18 You're free to leave the courthouse or more than
19 welcome to remain with us, if you'd like.

20 THE WITNESS: Thank you.

21 THE COURT: Okay. Madam Forelady, and, ladies and
22 gentlemen of the jury, it's already about 1:20. So this
23 would be a good time to break. I'd like you back at 2:30.
24 So that gives you maybe not quite as long a lunch break as
25 I've given previously. So if you can be back at 2:30.

1 And it looks like we will not go all afternoon and,
2 of course, start back in the morning. I think we just
3 have a little bit left to do. And so maybe you'll have
4 part of your afternoon available.

5 So we'll see you at 2:30. Remember all my previous
6 instructions.

7 Thank you.

8 Have a good lunch.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 1:21 p.m.)

11 THE COURT: So the plan is Sergeant Elrod will -- if
12 she has not already, will view the body cam video. And
13 then she'll be brought back for some additional
14 examination; is that correct?

15 MS. BARWICK: That's correct, Your Honor.

16 And -- and those notes are a serious concern of mine
17 because I -- I believe it's Brady material.

18 THE COURT: Well, we can deal with that when we start
19 back. Maybe -- I mean, I don't know the situation with
20 the notes. But, you know, maybe ask Sergeant Elrod to
21 look in her office and see if she can -- she can locate
22 them. And then we can deal with it when we start back.
23 Okay.

24 MS. MCCALL: Thank you, Your Honor.

25 THE COURT: All right. Have a good lunch.

1 MS. BARWICK: Thank you.

2 THE COURT: And I think whatever witnesses that you
3 plan to call -- I know you've got some -- an expert coming
4 in in the morning. But any other witnesses, let's just
5 wait until tomorrow to do that.

6 MS. BARWICK: Yes, sir.

7 THE COURT: Okay. Thank you.

8 (WHEREUPON, a lunch break was taken.)

9 THE COURT: Okay. We are back on the record.
10 And I assume that Sergeant Elrod has viewed the body
11 cam video.

12 MS. MCCALL: I believe so, Your Honor --

13 THE COURT: Oh, there she is.

14 I didn't know you were in the courtroom.

15 All right. So she's going to go back on the stand.

16 And any remaining cross-examination, anything that
17 you want to examine her on, you will be permitted to do
18 that.

19 And then that will be the balance of the State's
20 case. And we still have to deal with -- but I'm going to
21 do it after we finish with Sergeant Elrod -- the issue
22 related to the transcript.

23 And then you want to deal with the issue of the -- of
24 Sergeant Elrod's notes?

25 MS. BARWICK: Yes, sir. And Judge --

1 THE COURT: Sure.

2 MS. BARWICK: Just for some clarification purposes.
3 When I -- instead of playing the video, am I asking her
4 about the transcript of the -- of the videos of the mom
5 and the dad? Because I know --

6 THE COURT: When you say "transcript," what -- what
7 do you mean?

8 MS. BARWICK: I thought you said -- and maybe you
9 were referring to the transcript of the forensic
10 interview.

11 THE COURT: Right.

12 MS. BARWICK: Okay. There is a transcript of the mom
13 and dad. So we don't, actually, have to play the video.

14 THE COURT: Okay.

15 MS. BARWICK: If I need to impeach her based --

16 THE COURT: Well, you know, I suggested that she look
17 at the body cam video. I just wanted her to be
18 familiar --

19 MS. BARWICK: Okay.

20 THE COURT: -- in order to intelligently respond to
21 the questions that you wanted to ask her about the body
22 cam video.

23 So whether she watched the video or looked at a
24 transcript, I guess that really doesn't matter, even
25 though I had suggested her to look at the video.

1 MS. BARWICK: Okay. I -- I was confused. Because we
2 were talking about the wrong transcript.

3 THE COURT: Right. The transcript about whether or
4 not it's going to be in evidence or not.

5 MS. BARWICK: Yes, sir.

6 THE COURT: All right. We will -- we'll bring the
7 jury out.

8 And then, Solicitor, you can recall Sergeant Elrod.
9 And then if you want to reserve any questioning after
10 Ms. Barwick concludes her cross-examination, then that
11 will be fine. Okay.

12 MS. MCCALL: Thank you.

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

15 (WHEREUPON, the jury came into open court at
16 approximately 2:46 p.m.)

17 THE COURT: Let the record reflect the jury is back
18 in.

19 Solicitor.

20 MS. MCCALL: Your Honor, at this time, the --
21 Sergeant Elrod would return to the stand, please.

22 THE COURT: All right. Come around, Sergeant Elrod.
23 I just remind you that you're still under oath from this
24 morning.

25 THE WITNESS: Yes, sir.

1 THE COURT: Ms. Barwick, you can conclude your
2 cross-examination with this witness.

3 MS. BARWICK: Yes, sir.

4 CONTINUED CROSS-EXAMINATION

5 BY MS. BARWICK:

6 Q Ms. Elrod, were you able to go back to your office
7 and look for your notes in this case?

8 A Yes, ma'am, I was.

9 Q And did you find them?

10 A No, ma'am, I did not.

11 Q Okay. And during the father's interview -- and
12 you've had a chance to watch the body cam interview
13 footage?

14 A Yes, ma'am.

15 Q Did you record any portion of the father's interview
16 dealing with -- describing the actual disclosure?

17 A Yes, ma'am. In sound beginning at 30 seconds.

18 Q Okay. And -- and it didn't talk about the
19 circumstances of the disclosure on the recording. It was
20 just information regarding dates of birth, telephone
21 numbers, the next steps. But it didn't describe the
22 disclosure; isn't that correct?

23 A It talked about -- it did talk about how she was --

24 Q Okay.

25 A -- how the parents --

1 Q I'm just asking a "yes" or "no." You're saying it
2 described the disclosure?

3 A Of what had happened to her and that the mom would
4 have -- would not have let that happen to her had she
5 known.

6 Q All right. And then with the father's interview,
7 you'd asked him did [REDACTED] tell him when this happened;
8 is that correct?

9 A Yes, ma'am. I believe so.

10 Q And he said that she couldn't really -- she couldn't
11 really say. And that, sometimes, when she says something
12 happened yesterday, it could have been three weeks ago; is
13 that correct?

14 A I recall the mom saying that.

15 Q You don't recall the father saying that?

16 A It could have happened on the video.

17 Q Okay. And do you recall the father telling you that
18 the last time that mom and my client broke up that mom
19 came running to his house before they got back together
20 again?

21 A Yes.

22 Q Did you ever ask dad about a woman named Ashley?

23 A I can't be for certain. Because I was printing off
24 some stuff while I was listening to the video.

25 Q What were you printing off?

1 A You had asked about an e-mail about me requesting the
2 video from Julie Valentine. And I did request it.

3 Q Okay. You requested the video, but you never watched
4 it?

5 A I never got it.

6 Q Okay. Did you do any follow-ups to get it?

7 A No, ma'am.

8 Q Okay. And then you asked mom if [REDACTED] told you --
9 or you asked mom if [REDACTED] told her when it happened; is
10 that right?

11 A Yes, ma'am.

12 Q And mom said, But she's got that thing where
13 yesterday -- it could have been last year; correct.

14 A And she said a couple of other things. I can't
15 remember the exact words. But one of those was it could
16 have been last year.

17 Q Okay. But she's got that thing where she said -- mom
18 said [REDACTED] -- mom said regarding [REDACTED], But she's
19 got that thing where yesterday could be last year?

20 A That's what the mom said.

21 Q And the mom said, We don't know?

22 A That's what the mom said.

23 Q And you asked mom about a woman named Ashley; is that
24 correct?

25 A I did.

1 Q And then mom didn't -- she said she didn't know who
2 you were talking about; is that right?

3 A Right. I asked about another sibling, an older
4 sibling, maybe a cousin.

5 Q And you said, Is Ashley someone that lives in your
6 home or used to live in your home; right?

7 A Correct.

8 Q And mom said she didn't know; is that correct?

9 A Correct.

10 Q And then mom said maybe you should ask the father of
11 the child who Ashley was?

12 A Correct.

13 Q And you said you would; is that correct?

14 A Correct.

15 Q And then mom said -- about Ashley, What did Ashley
16 say; is that correct?

17 A I believe so.

18 Q And you responded, I was just wondering -- I was just
19 going to my notes; is that correct?

20 A Yes, ma'am.

21 Q And Ashley isn't documented at all in your incident
22 report?

23 A No, ma'am.

24 MS. BARWICK: Okay. No further questions.

25 THE COURT: All right. Solicitor.

1 MS. MCCALL: No further questions from the State,
2 Your Honor.

3 THE COURT: All right. Sergeant Elrod, you can step
4 down.

5 Thank you, ma'am.

6 Solicitor.

7 MS. MCCALL: Your Honor, at this time, the State
8 rests.

9 THE COURT: All right. Very good.

10 Madam Forelady, and, ladies and gentlemen of the
11 jury, I had mentioned, I think, before we broke for lunch
12 that I anticipated this being a short afternoon.

13 The Defense has informed me that they do intend to
14 put up a case. They, certainly, don't have to, as I
15 explained to you at -- at the beginning. The State -- I
16 mean, the Defendant has no burden of proof. And,
17 consequently, they don't have to put up a -- a case or put
18 up any witnesses. But they, certainly, have the right to.
19 And Ms. Barwick tells me that they plan to put up some
20 witnesses. We're not going to do that until in the
21 morning.

22 So that's why we're going to go ahead and break for
23 the remainder of the day. And I'd like to start back
24 around 9:45 in the morning.

25 So I know parking has been somewhat of a challenge

1 for some folks. Just allow yourself enough time to --
2 where you can get here, and get parked, and then be -- be
3 up in the -- the jury room.

4 Okay. I remind you, once again, about my
5 instructions concerning discussing this case among
6 yourselves, anybody that you come into contact with, and
7 the prohibition against any -- any research into this case
8 or any aspect of this case.

9 And we'll see you in the morning. And have a good --
10 good night. Get some good rest. And we'll see you in the
11 morning.

12 (WHEREUPON, the jury was excused from open court at
13 approximately 2:53 p.m.)

14 THE COURT: Okay. Ms. Barwick, do you have any
15 motions you want to put on the record at this time?

16 MOTIONS

17 MS. BARWICK: I do, Your Honor. I'd like to renew
18 all my prior objections and all my prior motions.

19 THE COURT: Okay.

20 MS. BARWICK: And then we, also, need the
21 determination on the transcript.

22 THE COURT: Right. And I'm going to let you know my
23 decision. Do we need to -- you mentioned before the break
24 to deal in some fashion with the notes from Sergeant
25 Elrod.

1 Is that still an issue?

2 MS. BARWICK: It is, Your Honor.

3 I have documentation when I first began representing
4 my client about a year ago where I asked the Solicitor,
5 one, for notes of the officer; and, two, for the pictures
6 that the child drew at the Julie Valentine Center. I -- I
7 was -- and I need to pull these out so I can make sure I'm
8 telling Your Honor correctly.

9 On August 20th of 2018, Your Honor, via letter U.S.
10 mail, I sent the Solicitor a letter asking for the
11 drawings made by the minor during the forensic interview,
12 and any and all of Officer Elrod's investigative notes,
13 and any e-mails between Officer Elrod and the witnesses in
14 this case.

15 THE COURT: Okay. So we've got, I guess, three
16 groups of -- of the requests, drawings made at the
17 interview, Sergeant Elrod's notes, and any e-mails from --

18 MS. BARWICK: With Ms. Elrod and any of the witnesses
19 in the case.

20 THE COURT: Okay. Any e-mails concerning any
21 witnesses. Okay.

22 MS. BARWICK: And then in response, Your Honor -- and
23 there was a certificate of service with that letter that
24 my paralegal signed.

25 On September 5th of 2018, Ms. McCall responded in an

1 e-mail as to the diagrams the child drew. She responded,
2 As you know, the correspondence -- the drawings created
3 during the forensic interview were provided to you through
4 supplemental discovery. Those are the only drawings we
5 are in receipt of or aware of their existence.

6 The ones that I received were the anatomical
7 drawings, Your Honor.

8 THE COURT: Right.

9 MS. BARWICK: Then any and all notes written by
10 Officer Elrod during her investigation. This case was
11 transferred to her written report and that has been
12 provided to you.

13 I was not provided documentation of the officer's
14 notes.

15 THE COURT: Okay.

16 MS. BARWICK: And then I was told by the Solicitor in
17 that same e-mail that there were no e-mail communications
18 between Officer Elrod and any of the witnesses or the
19 victim in this case. Officer Elrod has now testified that
20 she, actually, did receive an e-mail from the Julie
21 Valentine Center -- or that -- I can't remember if she
22 said she sent an e-mail or received an e-mail.

23 THE COURT: All right.

24 MS. BARWICK: And then I believe in our pre-trial
25 e-mails with Your Honor, I brought up again about the

1 notes and the -- I believe I brought up the e-mails as
2 well. And I definitely brought up the Julie Valentine
3 Center victim drawings.

4 And Ms. McCall responded on August 16th of 2019 that
5 the investigating officer has informed me that she
6 transferred all of her written notes to the report and
7 those handwritten notes no longer exist.

8 THE COURT: Okay.

9 MS. BARWICK: And then she responded to the drawings,
10 When I received the Julie Valentine Center forensic
11 interview body parts visuals in this case, we,
12 specifically, requested the drawings that were made on the
13 flip chart. The center confirmed to me that they no
14 longer have them. I have no explanation as to why they
15 are not in the victim's file.

16 So, Your Honor, we still don't have those notes. I
17 believe that there's a strong possibility that it was
18 Brady material. And, in fact, there is a spoliation
19 instruction to the jury that -- that covers that we can
20 assume that there was something good in them for our case
21 because they were destroyed.

22 I -- I think that's a huge issue that we're
23 destroying evidence in a case. And I wasn't provided
24 those drawings, despite being told that they no longer
25 exist until I believe -- what's today? Wednesday --

1 Tuesday morning after Your Honor told the solicitor's
2 office to get the -- the drawings. I think me having to
3 fight for this stuff and being told it doesn't exist when
4 it does or has been destroyed -- I don't know when it was
5 destroyed.

6 THE COURT: Well, I don't think any of us would know.
7 After -- after Ms. Cheney testified, is that when I
8 instructed the Solicitor to check where those -- the
9 drawings on the flip board --

10 MS. MCCALL: Yes, Your Honor.

11 THE COURT: Okay. And they informed you at that time
12 that they no longer exist?

13 MS. MCCALL: No.

14 We requested -- as Ms. Barwick stated, she did in a
15 letter from August 20th request those. I then followed up
16 after that time with -- I say "I," someone in my office.
17 I went back and looked. I don't have documentation as to
18 who called or an e-mail being sent. But -- but we did
19 request the additional drawings, anything else that was
20 existing in the file at that time from the Julie Valentine
21 Center. And they told us that there was nothing else.

22 Again, that was the last time we requested it from
23 the Julie Valentine Center. And then after Ms. Cheney
24 testified -- actually, a representative that was here on
25 behalf of the Julie Valentine Center -- she is, actually,

1 a therapist associated with them -- she made the request.
2 And -- and they did, in fact, have them.

3 So I did make an attempt to have them. I was under
4 the impression that they did not exist. I, certainly, was
5 not attempting to hide anything, Your Honor.

6 THE COURT: Right, right.

7 MS. MCCALL: It's my position there's nothing
8 exculpatory. And then we do have them now. But -- but
9 that is the information that I was provided.

10 THE COURT: Wait a minute. I'm confused. You've got
11 the drawings now?

12 MS. MCCALL: Yes, sir, yeah. They brought them
13 yesterday. And that's when Ms. Barwick said I showed -- I
14 provided those to her yesterday.

15 THE COURT: So the -- the drawings were not
16 destroyed. They're in existence --

17 MS. MCCALL: Correct.

18 THE COURT: -- and even though you didn't get them
19 until yesterday, we do have them?

20 MS. MCCALL: That is correct.

21 MS. BARWICK: That's right, Your Honor.

22 I got them after the forensic interviewer's testimony
23 in which she said she was unbiased and neutral. And one
24 of the things the interviewer did was write my client's
25 full name on that paper that was, one, in front of the

1 victim, who, obviously, can spell.

2 THE COURT: Right.

3 MS. BARWICK: And, two, the child never said my
4 client's full name. She said "B." So the premise and the
5 importance of this --

6 MS. MCCALL: Your Honor, I believe that they only
7 say, Mom -- "mom's boyfriend, B." His name --

8 MS. BARWICK: Then I misremembered. And -- and I
9 apologize to the Court.

10 THE COURT: That's fine.

11 MS. BARWICK: I thought it said mom's -- I thought it
12 spelled out --

13 THE COURT: Said Brandon Clark?

14 MS. BARWICK: Yes. Yes, Your Honor. So I apologize
15 about that.

16 THE COURT: That's fine.

17 MS. BARWICK: And thank you for that correction.

18 So, at this point in time, one, this was kept from me
19 despite repeated requests and being told that it was
20 destroyed. And, now, we're dealing with these officer
21 notes that I requested and first was told I don't really
22 need them because all the information's in the report.
23 And then being told that they're later destroyed a year
24 later when we're on the eve of court.

25 THE COURT: Right.

1 MS. BARWICK: And the -- and it not -- I don't know
2 if it's been destroyed or not. She just can't find them.
3 It's -- it's an issue.

4 THE COURT: Right. Well, I mean, I -- I don't know
5 what sort of relief -- I mean, I would be frustrated, as
6 you are. And I can appreciate that and understand that.
7 I don't know exactly what relief you're requesting.

8 I don't -- I don't see a Brady violation insofar as I
9 don't have anything to tell me that it is exculpatory or
10 impeachment value to these documents. I mean, I can't say
11 that. So I can't definitively say, hey, there's a Brady
12 violation. So -- and it's not something that you got at
13 the eleventh hour that I could say, hey, the State can't
14 get it into evidence because they didn't get it to you in
15 time.

16 So that's not -- so I don't know what relief that you
17 would be seeking by virtue of the fact of getting the
18 drawings late, not being able to get the notes because
19 they were -- at least, cannot be found.

20 So what do you want me to do?

21 MS. BARWICK: Yes, Your Honor.

22 Back in July of 2000 and -- or August 20th of 2018,
23 when I wrote that letter, the response was not about the
24 notes. It was not we can't find them. It's, well, all
25 that information's included in the incident report.

1 THE COURT: Right.

2 MS. BARWICK: Judge, you're right, we don't know
3 what's in that note -- in those notes. And there is an
4 inference that it's favorable. Otherwise, it would have
5 been produced. It -- it's a major issue.

6 So, one, I would say this is a Brady violation and
7 it's -- it seems to be a repeated thing in this kind of
8 case. I would ask, first, for a dismissal because I have
9 not been provided things I repeatedly requested.

10 And, two, if Your Honor is not inclined to do that, I
11 would absolutely ask for a spoliation charge saying that
12 the inference should be given that the evidence that was
13 destroyed, actually, helps my client.

14 Further, I would like a stipulation. Because
15 Ms. McCall -- the last thing I want is to have Ms. McCall
16 testify. So I would ask that the State stipulates that
17 the officer said that those notes were destroyed.

18 THE COURT: Okay. Solicitor, do you want to respond?

19 MS. MCCALL: Certainly, Your Honor.

20 In response, I do understand Ms. Barwick's concern.
21 However, I did everything that -- that I knew to do at the
22 time in order to obtain these. When I requested from the
23 Julie Valentine Center about the drawings, I had no
24 reasonable belief that they would not give them to me if
25 they had them.

1 I, certainly, don't think there was any bad faith on
2 their part. There, certainly, was not on mine. I don't
3 know if there was a confusion, if they were placed
4 somewhere else. I don't have an explanation. But we do
5 have those now.

6 As to the -- the notes from Sergeant Elrod. After
7 that e-mail on August 20th, I know that I followed up.
8 That's why it took me some time to respond to her,
9 September 5th. And I went through each of the things that
10 she had requested and explained -- why she is accurate in
11 saying that as to the notes, I did just say any and all
12 notes written by Officer Elrod during her investigation
13 were transferred to her written report that has been
14 provided to you.

15 I, specifically, followed up with Ms. Elrod. I can't
16 remember if it was -- Sergeant Elrod. I don't know if it
17 was e-mail or phone.

18 I don't know if you recall.

19 But I do, specifically, remember us, also, addressing
20 the body camera of the victim, [REDACTED] and the
21 fact that it was no longer available and --

22 MS. BARWICK: I'm sorry. Is there -- is there a
23 video of the victim?

24 MS. MCCALL: I'm sorry. It was not available. No.
25 That it was not available. That it had not been recorded.

1 MS. BARWICK: Okay.

2 MS. MCCALL: Because that was something that you
3 requested. I followed up on that.

4 And then, also, the e-mail communication between --
5 Ms. Barwick's letter, specifically, said with any
6 witnesses in the case and the body cam footage. Officer
7 Elrod instructed the minor's parents and father's
8 girlfriend to e-mail her if they think of anything else.

9 And I, specifically, asked Sergeant Elrod, Did you
10 e-mail at all with these witnesses? And I didn't,
11 specifically, ask her about any e-mails with the Julie
12 Valentine Center. Because at that point, all I -- I knew
13 of or knew that Ms. Barwick thought may be out there was
14 these e-mails with the victim's family. And she confirmed
15 that there -- there were not any e-mails.

16 THE COURT: All right. Have you ever said to
17 Ms. Barwick that Sergeant Elrod's notes were destroyed by
18 her, or did you say that they can't be found, or what --
19 what did you tell her, ultimately, about Sergeant Elrod's
20 notes?

21 MS. MCCALL: I believe Ms. Barwick has a copy of an
22 e-mail that I sent that does say that they were destroyed.
23 I went back and looked in my notes as far as my
24 conversation with Sergeant Elrod at the time. And I -- I
25 don't have anything that indicated that they were

1 destroyed.

2 But I -- to the best of my knowledge, I can say that
3 when I spoke with Officer Elrod and we -- and I questioned
4 her about where these notes were, she told me that she put
5 everything into her report and that she no longer had
6 these -- the handwritten notes.

7 THE COURT: Okay.

8 MS. MCCALL: I -- I'm not sure. I can't definitively
9 say that she told me they were destroyed. But I know that
10 she said she no longer had them.

11 THE COURT: Okay. Well, we've got Sergeant Elrod
12 right here and still under oath.

13 Sergeant, did -- did you destroy your notes, or you
14 just can't find them?

15 SERGEANT RENEE ELROD: I cannot find them, sir.

16 THE COURT: Okay.

17 MS. BARWICK: Judge --

18 SERGEANT RENEE ELROD: It was -- it would have been
19 in a notebook, a flip steno pad. And I cannot find them.

20 THE COURT: Okay.

21 MS. BARWICK: Judge, on August 16th of 2019,
22 Ms. McCall wrote in a response e-mail when I listed out
23 all of my pre-trial matters. And number five of that
24 e-mail said, The investigating officer has informed me
25 that she transferred all of her written notes to the

1 report. And that these handwritten notes no longer exist.

2 THE COURT: Right, right. I -- I guess it's a matter
3 of semantics. I don't know if no longer exists means that
4 they were, actually, destroyed. I -- I know that -- you
5 know, you're -- I can't force Solicitor McCall to
6 stipulate to anything. And if she's not willing to
7 stipulate that, in fact, Sergeant Elrod destroyed the
8 notes, I can't force her to stipulate.

9 I will be glad to entertain argument -- not
10 necessarily right now -- but entertain argument on a
11 potential spoliation charge. I'm not suggesting I would
12 charge that. But I'll give y'all an opportunity to make
13 some argument and provide me with whatever you want to
14 provide me concerning a spoliation charge. But I'm not
15 going to dismiss the case.

16 I would consider possibly a spoliation charge. And
17 I'm not going to force the State to stipulate to something
18 that they're not willing to stipulate to. And without
19 having something to tell me that these -- the notes or the
20 drawings are exculpatory in value or have some impeachment
21 value, I can't find a Brady violation to -- you know, to
22 grant -- you know, to grant you any relief. I just -- I
23 can't do it.

24 So I think we're going to leave it where -- get me
25 some -- some information, e-mail it to me or Madison on

1 the spoliation. And I can make a decision on that
2 probably when we start talking about charge. Okay.

3 MS. BARWICK: Judge, if something existed and then it
4 no longer exists, it means that it was destroyed.

5 THE COURT: Well, here's how I view it. And I'm --
6 I'm not taking sides here. But I view destroying
7 something is intentionally taking something and doing
8 this, not being able to find it to where you can say it
9 exists in my office, or it exists in my car, or it exists
10 in my home. That -- that's different than intentionally
11 tearing something up. And I can't find that Sergeant
12 Elrod intentionally destroyed her -- her notes.

13 Now, as just a -- an aside, I think maybe she maybe
14 should have done a better job of -- of retaining notes,
15 and whatever other information. Notes come up all the
16 time. I don't know if in your practice or in your
17 position in the solicitor's office -- but I have found
18 that it is coming up more and more, officer's notes. And
19 where are they?

20 And I have even found that some officers now are just
21 saying, well, I'm just not going to take any notes because
22 it's creating issues. So y'all are not by yourself. And
23 I say that not to -- anything related to this case. I'm
24 just making an observation that I'm dealing with notes and
25 where are the police officer's notes a lot more. And

1 maybe -- maybe police officers need to do a better job in
2 retaining these notes. Okay.

3 So -- all right. Then the -- the other issue is the
4 transcript of the -- the interview. And I'm not going to
5 put it into evidence. I will have it marked as a Court's
6 Exhibit.

7 Now, with that said, I think, Ms. Barwick, you had
8 briefly alluded to the fact that your -- your expert
9 coming in tomorrow may want to reference the -- the
10 transcript as far as being reviewed. I don't have a
11 problem if you can establish with your expert that the
12 transcript of things that are reviewed by her as a normal
13 course of documents that experts rely on, or that she
14 relies on.

15 If she's -- I don't even know what kind of expert you
16 have. But if she's an expert that deals with reviewing
17 forensic interviews and that sort of thing, if -- if
18 transcripts of interviews are, typically, used and relied
19 upon, you can ask her that. It doesn't -- you know, most
20 of the time, documents -- and I'm going to say things for
21 lack of a better word that experts rely on when they
22 review cases, typically, are not in evidence. But they --
23 it's something that they're relying on. So I don't have a
24 problem with -- with your expert saying, yeah, I reviewed
25 the transcript of the interview.

1 The only -- the only drawback to that is, is that
2 going to create an issue for us when the jury says, hey,
3 you mentioned about a transcript of the interview. We
4 want to see it. Well, I'll just have to deal with that at
5 that time.

6 So it will be a Court's Exhibit. So it will be a
7 part of the record. Your expert can, certainly, allude to
8 the fact that in -- in her workup of this case for you
9 that she reviewed the transcript. I don't have a problem
10 with that. But it's just not going to be in the
11 evidentiary record in this case.

12 MS. BARWICK: And, Judge, my expert is going -- the
13 purpose of her testimony is to attack the methodology of
14 that interview and -- and to testify as to the matter of
15 suggestion that was made to this child by the interviewer.
16 Your Honor has told me that you are unwilling to allow
17 that to happen.

18 Is that still the case?

19 THE COURT: Well, I did not -- I did not allow the
20 State to get into -- into methodology. So if I allow you
21 and your expert to get into it, then would that be fair to
22 the State, number one?

23 Or, two, if I allow you to get into it, then would
24 that open up the door for the State to come back in
25 rebuttal and put up their witness to support the

1 methodology?

2 MS. BARWICK: Judge, the State didn't try to get into
3 methodology. So I --

4 MS. MCCALL: Your -- Your Honor, if I may. There is
5 clear case law on point that technique of forensic
6 interviewing, as we discussed, is not appropriate in these
7 types of cases, or any case for that matter. So that's
8 why we didn't go into that.

9 Obviously, I would argue that if she is allowed to
10 bring this expert that I would then, also, want to recall
11 an expert or bring even my forensic interviewer to
12 testify. But I'm under the impression that that's not
13 allowed in this State. And then that would just be an
14 appellate issue that would cause problems later.

15 THE COURT: Right.

16 If I remember correctly, that is one reason -- and
17 correct me if I'm wrong. That is one reason why we had --
18 we've had a lot of in-camera testimony in this case. But
19 we had some in-camera testimony from Ms. Cheney. And we
20 dealt with that issue and wherein I ruled that you could
21 not get into methodology and -- and the particular
22 process, the RATAC method, and all that.

23 So if I didn't allow the State, then would it be fair
24 to allow you to do it?

25 MS. BARWICK: The State wasn't trying to do it. I

1 was the one who was trying to do it. And you didn't allow
2 me to, Judge.

3 I don't think they should be allowed to open their
4 case after they've rested. They had the opportunity to do
5 it and they chose not to. I tried to do it and it was
6 objected to. And Your Honor sustained the objection.

7 MS. MCCALL: As -- I'm sorry.

8 THE COURT: Well, but I think they would have every
9 right if I -- if I allowed your -- your expert to come in
10 and attack the methodology, then I -- I think the State
11 would have every right to rebut. I mean, the purpose for
12 rebuttal is to respond to any new stuff that the Defense
13 brings up, regardless of whether it was something that the
14 State could have brought up and elected not to.

15 I think they'd have every right to rebut. I -- I
16 don't know if I want to -- if I want to go there or not.

17 Is that, basically, the purpose for your expert, to
18 attack the -- the methodology?

19 MS. BARWICK: Yes, Your Honor.

20 THE COURT: Okay. Does your expert, is she -- I
21 assume it's a she. I think you said "she."

22 MS. BARWICK: It is a she. She's a psychiatrist,
23 Your Honor.

24 THE COURT: Okay.

25 MS. BARWICK: And she's been qualified as an expert

1 in reviewing other forensic interviews.

2 MS. MCCALL: Your Honor, if I may. I haven't had --
3 I haven't seen her CV. But this would, certainly, go into
4 my argument.

5 Is she qualified as a forensic interviewer? Has she
6 been trained as a forensic interviewer?

7 MS. BARWICK: She is a psychiatrist with an expertise
8 in interviewing children who are the victims of trauma.
9 She is, also, an expert in child memory, and how
10 questioning and suggestion can affect the child's way of
11 disclosure.

12 And -- and, Judge, I think it's pretty clear that if
13 the forensic interviewer that interviewed the child
14 testifies as to methodologies and rules, which she has
15 already testified as to rules, the -- that would be
16 improper bolstering. Now, if she -- they had an outside
17 expert come in and review it, it would not be. I'm having
18 an outside expert come in and review it.

19 As I said in my reasoning why I should be allowed to
20 attack methodology, those statute -- or those cases that
21 say the forensic interviewer can't go into methodology are
22 about the State's expert -- or the State's interviewer
23 who, actually, interviewed the child going into that.
24 Again, I'm not attacking the credibility of the victim by
25 questioning the methodology.

1 The State would be attempting to bolster the
2 credibility of the victim by talking about how the
3 methodology was credible. All I'm trying to do is tell
4 the jury that the words they heard coming out of the child
5 were not the words of the child, but the words of the
6 interviewer.

7 THE COURT: Would not that be attacking the
8 credibility of the child? Because she, for whatever
9 reason, was not being -- either because she was being led,
10 coerced, whatever, she was not being truthful with -- with
11 her answers. So wouldn't you be attacking the credibility
12 of her?

13 MS. BARWICK: No, sir. Because I'm saying her
14 answers are not her own.

15 THE COURT: Well, then she's not -- she -- if -- if
16 her answers are not her own, she's not credible. She's
17 not believable if -- if she's -- if she's giving someone
18 else's answers.

19 MS. BARWICK: Attacking the method the interview was
20 done is not attacking the credibility of the victim. It's
21 attacking the way in which the interview was conducted.

22 THE COURT: All right. Here's what -- here's what I
23 want you to do is -- and I know we've already dealt with a
24 case or so concerning methodology not coming in. Get
25 those cases to me again.

1 Solicitor, if you've got any cases that would support
2 your right to get into methodology wherein the State does
3 not have the right, get me -- get me those cases. And
4 then we can -- we can flesh this out a little bit more and
5 make a decision.

6 MS. BARWICK: And -- Judge, and I did do the research
7 when I made my arguments that I put at length on the
8 record. The cases I'm referring to are Anderson and
9 Kromah.

10 THE COURT: Okay.

11 MS. MCCALL: Your Honor, those are, actually, the
12 same ones that the State refers to wherein the -- the --

13 THE COURT: Okay. Well, I've got -- and, of course,
14 I'm, certainly, familiar with -- with Kromah, because I
15 know very well the -- the trial judge in that case.

16 And then Anderson, I already have because that was
17 handed up to me sometime. So I've already got that.
18 We'll print off -- unless y'all have Kromah handy.

19 Have you got a copy of Kromah?

20 MS. MCCALL: I do, Your Honor. I have a copy.

21 MS. BARWICK: And -- and, Judge, both of those cases
22 say that the State can't go into --

23 THE COURT: Right.

24 MS. BARWICK: -- the methodology. It does not say
25 the Defense cannot.

1 THE COURT: Okay. I will look at those two cases.
2 And then we'll -- we'll get back together tomorrow.

3 How many -- including your proposed expert, how many
4 witnesses do you think you're going to have tomorrow?

5 MS. BARWICK: One.

6 THE COURT: Okay. Just the expert, or one in
7 addition to the expert?

8 MS. BARWICK: One in addition to the expert.

9 THE COURT: Okay. Let me -- while we've just got
10 just a few minutes, let me go ahead and advise Mr. Clark
11 of his right to testify or not testify.

12 And if you haven't explained that to him, do so while
13 I pull the script up.

14 MS. BARWICK: I have, Your Honor.

15 (Pause.)

16 THE COURT: Okay. Mr. Clerk, if you would swear
17 Mr. Clark in, please.

18 THE CLERK: Mr. Clark, if you would stand up and
19 raise your right hand.

20 WHEREUPON,

21 BRANDON JEROME CLARK,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 THE COURT: All right. Mr. Clark, at this time, I'm
25 going to explain to you certain of your rights. If you do

1 not understand anything that I say, please, let me know
2 that. If you want me to explain anything in more detail,
3 please, let me know that as well.

4 Do you understand, sir?

5 DEFENDANT CLARK: I do.

6 THE COURT: Now, we've reached the stage of the trial
7 where you may present your defense. You have the right to
8 claim the protections given to you by the Fifth Amendment
9 of the Constitution of the United States.

10 And this Amendment states in part, No person shall be
11 compelled in any criminal case to be a witness against
12 himself. This means that you cannot be required to
13 testify in this case. You have the right to testify on
14 your own behalf. However, no one can make you testify.
15 This is a personal right. And no one can waive this right
16 except you.

17 If you decide to testify, you'll be subject to the
18 same rules that govern other witnesses. And you may be
19 examined and cross-examined on any relevant issue in this
20 case.

21 In addition, if you have any convictions involving
22 dishonesty, or false statement, or for crimes punishable
23 by imprisonment for more than one year and this Court
24 determines that the probative value of admitting this
25 evidence outweighs its prejudicial effect to you, the

1 Solicitor would be able to introduce your record to attack
2 your credibility.

3 If you decide to testify, this decision on your part
4 must be freely, voluntarily, and intelligently made with
5 knowledge of the protections given to you by the Fifth
6 Amendment and the consequences of your decision to
7 testify.

8 If you decide not to testify, this decision, also,
9 must be made by you freely, voluntarily, and
10 intelligently. And I will instruct the jurors that they
11 cannot give the fact that you did not testify any
12 consideration whatsoever. And that there's to be
13 absolutely no prejudice to you because you did not
14 testify.

15 This is left entirely up to you, whether or not you
16 testify. I'm sure you've already talked with your
17 attorney and maybe some family members, friends. But the
18 final decision will be left entirely up to you.

19 Do you understand what I've explained to you, sir?

20 DEFENDANT CLARK: I do.

21 THE COURT: And do you have any questions about what
22 I've explained to you?

23 DEFENDANT CLARK: No, sir.

24 THE COURT: Okay. Are you at -- are you at a point
25 to where you can tell me whether or not you'll testify?

1 DEFENDANT CLARK: Yes, sir.

2 THE COURT: Okay. And what is that response?

3 DEFENDANT CLARK: I will not testify.

4 THE COURT: You will not testify.

5 Has that decision been made by you freely,
6 voluntarily, and intelligently?

7 DEFENDANT CLARK: Yes, sir.

8 THE COURT: And have you had ample opportunity to
9 discuss this with your attorney and others?

10 DEFENDANT CLARK: Yes, sir.

11 THE COURT: Okay. Thank you, sir.

12 You can sit down.

13 MS. BARWICK: Judge.

14 THE COURT: Yes.

15 MS. BARWICK: I would like -- that's his decision
16 now. But if for some reason between now and tomorrow,
17 I -- he -- he has the option of being able to testify --

18 THE COURT: He has every right up until we close the
19 evidentiary record in this case to change his mind.

20 Do you understand that, Mr. Clark?

21 DEFENDANT CLARK: Yes, sir.

22 THE COURT: If overnight you think about this more,
23 and you talk with your attorney, and you decide you want
24 to testify, then I'll give you every right to testify.
25 Okay.

1 DEFENDANT CLARK: Okay.

2 THE COURT: All right. We'll -- I'll take a look at
3 this -- this issue. And we can talk about it in the
4 morning. Okay.

5 MS. BARWICK: Thank you, Your Honor.

6 THE COURT: And I'm going to try to get to y'all in
7 the morning a -- a draft of the proposed charge, too.

8 MS. BARWICK: Yes, sir.

9 MS. MCCALL: Thank you, Judge.

10 THE COURT: Thank you.

11 (WHEREUPON, the proceedings were concluded at
12 approximately 3:26 p.m., to be reconvened on
13 Thursday, August 22, 2019.)

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1 THURSDAY, AUGUST 22, 2019

2 (WHEREUPON, Court's Exhibit Nos. 4, 5, 6, and 7 were
3 marked for identification and admitted into evidence.)

4 THE COURT: Okay. We are back on the record.

5 I know we've got several matters that we need to
6 address and get on the -- on the record. The transcript
7 of the forensic interview will not be put into evidence,
8 but will be marked as a Court's Exhibit. So I'm just
9 going to lay it right here for when we take a break, then
10 the court reporter can mark that.

11 Okay. I'm just going to --

12 Ms. Barwick, you have the bulk of the matters that
13 you need on the record. So I'm just going to turn it over
14 to you.

15 MOTIONS

16 MS. BARWICK: Thank you, Your Honor.

17 The main one that I have is my directed verdict
18 motion.

19 THE COURT: Okay.

20 MS. BARWICK: As far as directed verdict goes, the
21 testimony that the child said on the stand is that she
22 doesn't remember when it happened. I even tried to say,
23 was it when you were five, when you were four, when you
24 were three? She could not say whatsoever.

25 In the forensic interview, she couldn't say when it

1 happened either, Judge. Were you four? Were you five?
2 Was it before or after your birthday? She could not
3 remember whatsoever.

4 The testimony from the officer is that both parents
5 said -- yesterday could be three weeks from now is what
6 dad said. Mom said yesterday could be a year ago.

7 Mom testified constantly -- or not constantly. Mom
8 testified that -- consistently that her and my client had
9 dated for a two-year period off and on. Your Honor, this
10 child is saying it happened when my client was living
11 there. I understand that timing is not an element of an
12 offense. However, an indictment is a notice document that
13 you're supposed to give to the Defense so that we
14 understand what we're defending against.

15 I would have been able to put up alibi witnesses,
16 perhaps. I might have been able to put up evidence that
17 my client wasn't living there during that time, that he
18 was living somewhere else.

19 But because we weren't given a time, we can't prove
20 this case -- we can't prove his defense that he wasn't
21 there and he wasn't living there at the time the child's
22 alleging that this happened because we don't know the time
23 the child's alleging this happened.

24 The officer put in her indictment February 20th of
25 2017 through March 20th of 2017. The State turned around

1 and indicted based on those dates.

2 And the only evidence we have of that is the improper
3 testimony that should not have been admitted into evidence
4 of the nurse, who's not even a SANE nurse, saying the
5 48 hours. And in her in-camera testimony, that same nurse
6 admitted that that 48 hours could have been less than
7 48 hours because the child said it happened two days ago.
8 But it, also, apparently happened at night when everybody
9 was sleeping. So it could have been less than 48 hours.

10 That SANE nurse -- or non-SANE nurse's testimony
11 shouldn't get to come into evidence to say that it
12 happened two days ago when the child consistently said in
13 the recorded interview and on the stand that she has no
14 idea when it happened. And the parents say this child has
15 no way to understand when it happened. It has not been
16 proven.

17 Even if we gave deference to the State's case at all
18 whatsoever when this thing happened and that it happened
19 between the dates that are alleged in the indictment.
20 That's the reason why we put dates in the indictment is
21 because it allows the Defense to be able to prepare a
22 defense effectively. They have not proven the dates of
23 their indictment, not even on or about.

24 THE COURT: All right. Isn't the -- the proper
25 remedy there when -- when the Defense feels like the

1 indictment is lacking as to adequate information to
2 provide proper notice would be at the front end of the
3 case by way of either a motion to quash the indictment, or
4 possibly the State making a motion to amend the
5 indictment, or the Defense making a motion to dismiss
6 the -- the indictment for lack of proper information
7 vis-à-vis in this case the -- the time?

8 MS. BARWICK: I -- Judge, I'm making it now at the
9 directed verdict stage. And I believe it's the
10 appropriate time to make it.

11 THE COURT: Okay. I --

12 MS. BARWICK: Further --

13 THE COURT: Oh, I'm sorry. Go ahead.

14 MS. BARWICK: Further, Your Honor, the elements of
15 CSC are penetration of the vaginal or anal openings by a
16 part of the Defendant's body or by an object. This child
17 got up and -- and the testimony has to prove -- the
18 testimony that's presented has to prove those elements
19 beyond a reasonable doubt.

20 What the child testified to did not prove any of
21 those things.

22 THE COURT: But her -- the interview did. She
23 testified -- well, she didn't testify --

24 MS. BARWICK: That's right, Your Honor.

25 THE COURT: She stated -- she stated in the interview

1 that -- that he put his finger in both butts.

2 MS. BARWICK: And that's correct, Your Honor. But
3 that's not testimony. And that wasn't subject to
4 cross-examination.

5 THE COURT: Right. But it's evidence, though. I
6 mean, we -- we agree that it's evidence. And it's -- it's
7 offered under, you know, somewhat limited circumstances.
8 But it is evidence. And it comes in if the statute's met
9 so as long as the child is cross-examined.

10 MS. BARWICK: And -- and if I could finish, Your
11 Honor.

12 South Carolina Code Section 17-23-175(3) requires
13 that the child testify at the proceeding, and that the
14 child is subject to cross-examination on the elements of
15 the offense, and on the making of the out-of-court
16 statement.

17 I couldn't cross-examine her on the statement because
18 she didn't remember any of it. She was not subject to
19 cross-examination of this -- on the statement because she
20 said all that stuff -- the only thing that happened to
21 her was -- her testimony was the urination.

22 So she -- I -- it's the Defense's belief that that
23 forensic interview, one, should not come into evidence
24 because I can't attack the methodology of it. And, two,
25 it was not reliable. It -- there's no internal

1 consistency, all the other things I've already previously
2 told the Court about the problems with the forensic
3 interview.

4 So, one, it shouldn't come in. And the fact that it
5 is coming in makes this a -- a material problem for --
6 because, one, it shouldn't come in. And if it doesn't
7 come in, that means the elements haven't been met by her
8 testimony.

9 THE COURT: Well, it's already in. Now, whether or
10 not it should not have come in, that's -- that's for
11 another day. But it is -- it's already --

12 MS. BARWICK: That's right, Your Honor.

13 THE COURT: -- into evidence.

14 I'm not cutting you off, let me just hear what --
15 what the Solicitor has to say.

16 MR. TODD: Yes, sir, Your Honor.

17 With the motion for directed verdict, the evidence
18 must be viewed for its existence, not its weight. Here,
19 we have a forensic interview, which is in evidence before
20 the jury. They can make the determination if they believe
21 that or not. They can compare that, certainly, to her
22 testimony on the stand. But it is in evidence. The
23 existence of evidence is there. We have several witnesses
24 who said that she disclosed sexual assault to them.

25 As to the timing issue, the nurse testified -- I

1 believe her testimony in front of the jury was, was a rape
2 kit discussed with the family? Yes. Is time a factor
3 that goes into that? Yes. When did she disclose? Two
4 days ago, which does place it between the February 20th
5 and March 20th dates on this indictment.

6 The evidence is, certainly, there. It's concerned
7 with the existence or non-existence, not its weight.
8 We've, certainly, put this before the jury for them to
9 decide whether this did, in fact, occur.

10 THE COURT: Okay. Well, you know, again, I have to
11 view it in the light most favorable to the State, even
12 though I recognize that -- that the Defense may very well
13 have some pretty compelling arguments in -- in closing
14 argument. I think the evidence does exist to justify
15 giving this case to the -- to the jury.

16 All right. Next is -- I think -- and we're going to
17 talk about -- more about the charge. Because you haven't
18 seen -- seen the draft yet.

19 But I think let's go ahead and address the spoliation
20 request by the Defense. I have looked at that. And I am
21 going to charge spoliation. And you can see the exact
22 language that I'm going to -- to use. And the charge that
23 I have -- and I have to assume it complies with case law,
24 it's either lost or destroyed.

25 So even an inadvertent losing of the notes, even

1 though it may very well have not been intentional, under
2 the charge I have -- and, certainly, you can look and
3 we'll make sure that it complies with case law. But even
4 losing can -- can come under spoliation.

5 So my plan is right now, unless I am convinced
6 otherwise, that I'm going to charge -- charge that.

7 All right. Ms. Barwick, there were a couple other
8 matters, I think, you needed to put on the record.

9 MS. BARWICK: Yes, sir, Your Honor.

10 I would just renew my motion to enter the transcript
11 of the child's interview into evidence.

12 And then I've already given the court reporter my
13 Court's Exhibits regarding the communication regarding
14 the -- the missing evidence, it being requested, it not
15 being provided, and then it saying -- and then the State
16 saying it went missing or doesn't exist.

17 So I -- I have all those communications marked as
18 exhibits.

19 THE COURT: Okay.

20 MS. BARWICK: If we could figure out what exhibit
21 numbers they are, for the record.

22 THE COURT REPORTER: Court's Exhibit Nos. 5, 6, and
23 7.

24 MS. BARWICK: Those are exhibits -- Court's Exhibit
25 Nos. 5, 6, and 7, Your Honor.

1 THE COURT: Okay.

2 MS. BARWICK: And then as far as Ms. Shauna
3 Galloway-Williams' testimony, I -- I was not able --
4 during her cross-examination, Your Honor ordered I could
5 not bring up what was said in camera. The -- and I was
6 not able to state my objection for the record -- or to
7 state my purpose of going into that for the record and why
8 it was necessary.

9 It was a prior inconsistent statement of Shauna
10 Galloway-Williams. In her in-camera testimony, she was
11 asked, Would you expect disclosure -- more of it to come
12 out over time?

13 And she said, Yes.

14 In front of the jury, she said, Well, it depends.
15 They could retract their statements. They could give more
16 statements. And she kind of went all over the place when
17 it was clear in her in camera, yes, you would expect more
18 to come out over time.

19 THE COURT: Solicitor, do you want to address that?

20 MS. MCCALL: Certainly, Your Honor.

21 I have reviewed, as we all have, her testimony both
22 in camera and in front of the jury. It's the State's
23 position that it is not inconsistent. She does go into
24 more detail in certain instances. But it, certainly,
25 doesn't contradict anything that she said in the -- in the

1 in-camera hearing.

2 Expect more to come out over time?

3 Yes.

4 Then she goes on to explain and then -- in front of
5 the jury she, also, explained that it's a process. And it
6 can change. And it can go either way.

7 THE COURT: Okay. Well, just for the purposes of the
8 record, we are referring to her in-camera testimony Page
9 79 [sic], Line 21 [sic] versus her testimony on cross,
10 Page 104 [sic], Line 9 [sic].

11 And before we went on the record, I did have my court
12 reporter read both. And, quite honestly, I -- I can't
13 find any inconsistency. Because her testimony on cross
14 was -- I, quite honestly, couldn't understand it. That
15 may be my fault, my ignorance. And I'll accept that.

16 But I really can't find any inconsistency. Because
17 her testimony on cross really didn't make a -- a whole lot
18 of sense to me, at least, for me to be able to compare it
19 with her in-camera testimony. So I'm going to deny any
20 further development or -- or issue with that.

21 Okay. Anything else on the record, Ms. Barwick, or,
22 Solicitor?

23 MS. BARWICK: Judge, that -- just that if we could
24 put on the record that you denied my motion to allow my
25 expert witness to testify as to the proper methodology for

1 forensic interviews.

2 THE COURT: Right.

3 And -- and the reason why, again, is because of case
4 law preventing the State from -- from getting into
5 methodology. And I think the reason for that is that if
6 you -- you know, if you try to elevate the -- the
7 methodology and the sufficiency of the methodology, the --
8 the end result is to bolster the child's testimony and --
9 which, of course, we don't want to do.

10 So if -- if the State is prevented from doing that,
11 it would seem like the Defense would, also, be prevented
12 from creating some issue with the methodology. Therefore,
13 the inference being don't believe the child. And so I
14 think we just need to stay away from that.

15 Certainly, giving you the right, Ms. Barwick, to have
16 your witness testify in camera so there's a good -- good
17 record on -- on that. And I indicated in camera -- not in
18 camera, in chambers that you will be permitted to ask that
19 witness -- is it the police officer that you have?

20 MS. BARWICK: Yes, Your Honor. It's Deputy Kristy
21 Leopard with the Pickens County Sheriff's Office.

22 THE COURT: All right. Concerning DNA. And then, of
23 course, the State can cross-examine her on that as well.

24 MS. BARWICK: And, Judge -- and I want to make sure
25 we understand what she's going to testify to. She's

1 simply going to testify that my client's DNA was taken
2 from him at the detention center upon his arrest on May
3 1st of 2017. That his DNA was entered into the CODIS
4 system, what CODIS is, and how it's used. And that's it.

5 THE COURT: Okay. And then the State intends to
6 cross-examine her concerning --

7 MS. MCCALL: Yes, Your Honor.

8 Just to clarify that, one, that DNA was taken based
9 on -- as a standard of practice, based on the charge that
10 he was charged with.

11 THE COURT: Right.

12 MS. MCCALL: And the purpose of CODIS, and what that
13 DNA evidence can be used for and not used for.

14 THE COURT: Okay.

15 MS. BARWICK: Judge, she's, also, the records
16 custodian. And she's going to testify that the records
17 she's given us that I'm going to introduce into evidence
18 is, actually, indicating that the sample was taken from
19 him.

20 THE COURT: Okay. I don't think that's --

21 MS. MCCALL: Your Honor, I don't have a copy of that.
22 I wasn't provided --

23 THE COURT: Okay. Can you show that to her?

24 MS. BARWICK: And this is a state agency, which the
25 Solicitor has access to. And she should have known about

1 this and provided it to me.

2 MS. MCCALL: Your Honor, this -- obviously, it may
3 have been in our report. But -- but it's just not
4 something standard. It's -- okay. So here's the --

5 MS. BARWICK: It was --

6 THE COURT: Don't -- don't both of you talk at the
7 same time.

8 MS. BARWICK: Yes, Your Honor.

9 MS. MCCALL: It just appears to be separate likely
10 because it's not related to the charge -- this particular
11 charge. This is because CODIS is a separate -- there's a
12 separate reason for taking this DNA sample for CODIS. And
13 it doesn't have anything to do with this particular
14 evidence in --

15 THE COURT: And that's why you didn't have it?

16 MS. MCCALL: That's why I didn't have it.

17 THE COURT: Okay. The Defense has it, so -- so we're
18 good.

19 MS. BARWICK: And, Judge, I do need to be heard on
20 that. All the Brady case law makes it perfectly clear --
21 it doesn't matter whether or not the Solicitor was aware
22 of it or not. The Solicitor is responsible for what's in
23 the state agencies care, specifically, law enforcement's
24 care. It's in their care. She should have provided it to
25 me.

1 This is just another example -- this is now the
2 fourth thing I haven't been provided.

3 THE COURT: Well, the State does have an obligation
4 to obtain necessary and relevant information that either
5 would have impeachment value or exculpatory value under --
6 under Brady.

7 In this particular situation, no harm was done
8 because you have it. And -- but I -- I understand your
9 point. I understand your point.

10 MS. BARWICK: And how far do -- how far do we let
11 this go, Judge?

12 And one of the things I was thinking about last
13 night, it's bad policy to let the State destroy, misplace,
14 lose, and not turn over things with the Defense not having
15 a single remedy. Because this encourages this exact kind
16 of behavior of misplacing and not turning over evidence.
17 This -- this is the fourth thing. This is egregious at
18 this point.

19 THE COURT: Well, as I stated yesterday, that -- for
20 me to find a Brady violation, I have to find that the --
21 the information not disclosed has exculpatory value or
22 impeachment value. And -- and there was no way for me to
23 do that, for example, with the police officer's notes.
24 You know, I can't say for certain that -- that they had
25 that value.

1 Now, is that suggesting that the Court is condoning a
2 police officer -- and we've kind of batted this around a
3 little bit off the record. Is that in any way condoning a
4 police officer not maintaining all records, whether it's
5 notes or otherwise? No, absolutely not. And I even -- I
6 think I mentioned that Officer Elrod probably needs to do
7 a better job in -- in retaining her notes and other
8 documents.

9 So I don't want anybody to think that -- that I'm
10 condoning not turning over evidence, not complying with
11 Brady, not complying with Rule 5, because I'm not. But
12 for me to grant any sort of extraordinary relief that you
13 wanted such as a dismissal of the case or something short
14 of that, you know, my hands are kind of tied.

15 So I don't -- I don't know what else I can do at
16 this -- at this stage. Because what was not turned
17 over -- if I remember correctly, the notes, the --

18 MS. BARWICK: E-mails --

19 THE COURT: -- drawing in the interview, which were,
20 ultimately, turned over, however late. But I don't think
21 really it has a whole lot of value there --

22 MS. BARWICK: After the State said it didn't exist
23 any more.

24 THE COURT: Right, right.

25 MS. BARWICK: And -- and Judge -- and I know your

1 hands are tied. But this is for the record to say, well,
2 we can't prove it's Brady because we can't prove it's
3 material to the Defense because they got rid of it.

4 THE COURT: Right. I understand.

5 MS. BARWICK: That is a terrible policy decision.
6 And it encourages this kind of behavior to keep repeating
7 itself.

8 THE COURT: Right.

9 MS. BARWICK: And -- and there needs to be
10 repercussions for this.

11 THE COURT: Well, I think possibly -- you know, if
12 this -- if this is a pattern -- and I can't say it's a
13 pattern. I have never held General Sessions court in --
14 in Pickens County, I have in Greenville multiple times,
15 but not in Pickens. But if this -- if this is an ongoing
16 problem -- and I'm not saying that it is. All right. And
17 I'm not pointing any fingers because I don't know.

18 But if -- if -- Ms. Barwick, if you believe that this
19 is an ongoing problem, then my suggestion to you would be
20 to talk with -- in the presence of the solicitor's office
21 talk with the chief admin judge for the Thirteenth
22 Circuit. And -- and see if it can be addressed that way.

23 I don't think -- certainly, it is my place to deal
24 with it appropriately in this case. I don't necessarily
25 think it would be appropriate for me to -- to deal with it

1 in a blanket form.

2 But, again, if you believe this is an ongoing
3 problem, then just deal with it with the chief admin
4 judge.

5 MS. MCCALL: Your Honor, I would just like to place
6 on the record, this is the first time I've ever had this
7 happen before. This is not an ongoing problem, certainly,
8 not for me. And I just want to -- to confirm that there
9 was no bad faith whatsoever on my part. I -- I did do
10 what I thought was reasonably necessary --

11 THE COURT: Sure.

12 MS. MCCALL: -- and within my power to get this
13 evidence.

14 THE COURT: All right. I understand. And I -- I
15 appreciate that. I appreciate y'all's hard work. I've
16 already told you that multiple times.

17 All right. So, basically, the game plan is you want
18 to go ahead and put up your witness first who's going to
19 testify before the jury, and then do the in camera after
20 that.

21 Is that kind of how you want to go?

22 MS. BARWICK: Sure.

23 THE COURT: Okay. And so I can just explain to the
24 jury -- you -- you estimated about 20 minutes roughly for
25 your in camera?

1 MS. BARWICK: 20 to 30.

2 THE COURT: 20 to 30?

3 MS. BARWICK: I'm not sure how extensive Ms. McCall's
4 going to --

5 THE COURT: All right.

6 MS. MCCALL: I'm not, Your Honor. I just plan on
7 questioning her on her qualifications.

8 THE COURT: Yeah. Okay. So, at least, I can explain
9 to the jury, hey, we're going to have to send you back
10 out. You're going to be back there for a while because
11 we've got some issues that we have got to deal with and --

12 Okay. Let's bring the -- the jury out.

13 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
14 identification only.)

15 (WHEREUPON, the jury came into open court at
16 approximately 10:22 a.m.)

17 THE COURT: Let the record reflect the jury is back
18 in.

19 Good morning, ladies and gentlemen.

20 The -- what we're going to do -- the Defense is going
21 to call a witness. And after that, then I'm going to have
22 to send you back to the jury room because we've got some
23 issues that we need to deal with. And then -- and then
24 we'll bring you out.

25 And after the Defense rests, then the State, if it

1 chooses to -- and I don't know if they're going to or
2 not -- they can put up any reply or a rebuttal case. And
3 then once that is done, then the lawyers will make their
4 closing arguments to you. Then I will charge you on the
5 law.

6 In addition, we are going to order lunch for you. So
7 you're just going to -- you're going to be with us over
8 lunch. And it's my understanding that here in Pickens,
9 they order Pizza Inn pizza.

10 Is everybody good with that?

11 (WHEREUPON, the jurors indicated in the affirmative.)

12 THE COURT: Okay. Everybody is good with Pizza Inn
13 pizza. Okay. So that's -- that's what we'll do.

14 So we'll probably try to get all of our work in and
15 then give you the case to begin your deliberations, do all
16 that and then eat lunch. And, certainly, you can eat
17 lunch and be deliberating, or eat lunch and then
18 deliberate afterwards. That's -- that's y'all's call.

19 So that's the plan is try to get all our work done
20 and then have y'all eat -- eat your lunch.

21 Okay. Ms. Barwick.

22 MS. BARWICK: Thank you, Your Honor.

23 I'd call Deputy Kristy Leopard to the stand.

24 THE CLERK: If you would place your left hand on the
25 Bible and raise your right.

1 WHEREUPON,

2 KRISTY LEOPARD,
3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you, ma'am.

5 If you would, have a seat.

6 And state your name for the record.

7 THE WITNESS: Kristy Leopard.

8 DIRECT EXAMINATION

9 BY MS. BARWICK:

10 Q Detective Leopard, where do you work?

11 A Pickens County Sheriff's Office.

12 Q And how long have you worked there?

13 A 17 years.

14 Q And what's your position there currently?

15 A I'm the administrative lieutenant for judicial services.

16 Q And what does that entail?

17 A I handle all of the pending lawsuits for the jail. I
18 do purchasing, ordering. I'm one of the supervisors for
19 the jail. So if the operations lieutenant's not there,
20 then I fill in in his spot. I'm, also, one of the records
21 keepers for the jail.

22 Q So you're a records custodian?

23 A Yes.

24 Q Okay. And my client was arrested on these charges on
25 May 1st, 2017; is that correct?

1 A Yes.

2 Q Okay. And I'm going to show you what's been marked
3 as Defendant's Exhibit No. 1. Is there a statute out
4 there that requires anybody facing a charge carrying more
5 than five years and is a felony offense for their DNA
6 sample to automatically be taken?

7 A Yes.

8 Q Okay. And do y'all do that down at the jail?

9 A Yes.

10 Q And was his DNA sample taken?

11 A Yes.

12 Q And I've shown you Defendant's Exhibit No. 1. Does
13 that -- is that the record showing that his DNA sample was
14 taken and then sent down to SLED to be entered into CODIS?

15 A Yes.

16 Q So SLED has a copy -- or has a sample of my client's
17 DNA?

18 A Yes.

19 Q Okay. And -- and tell the jury what CODIS is.

20 A So that's the combined DNA index system. That is
21 where we take a defendant's DNA if they come to jail and
22 are charged with a crime that's a felony and carries more
23 than five years. We take the sample. We put it in a
24 package that is provided to us by SLED. And it's
25 delivered to SLED about once every two weeks because we

1 have multiple ones that we have to deliver to them.

2 They process the DNA. And they enter it into a
3 system. So it can potentially link an alleged offender to
4 a crime. However, a second DNA sample would have to be
5 taken by someone in a forensic division to link that --
6 send it to SLED and link those two together.

7 So ours is just to be entered into the system by SLED
8 for the FBI.

9 Q So just for clarification purposes, you're saying
10 that in order to compare DNA samples, you need, one, the
11 alleged suspect, and, two, the DNA from the scene or the
12 alleged victim?

13 A Yes. I would assume that's where they would get that
14 DNA from.

15 Q Okay. And his DNA -- and tell the jury what SLED is,
16 because we use acronyms.

17 A That's the South Carolina State Law Enforcement
18 Division.

19 Q Okay. So my client's DNA was sent down to SLED and
20 it was entered into CODIS?

21 A Yes.

22 MS. BARWICK: And Defendant's Exhibit No. 1, I'd like
23 to introduce that into evidence.

24 THE COURT: Okay. What says the State?

25 MS. MCCALL: No objection, Your Honor.

1 THE COURT: All right. Without objection,
2 Defendant's Exhibit No. 1 into evidence.

3 (WHEREUPON, Defendant's Exhibit No. 1 was admitted into
4 evidence.)

5 BY MS. BARWICK:

6 Q And that's the record indicating what you just
7 testified to; is that correct?

8 A Yes.

9 Q Okay. Say it loud for the jury, please.

10 A Yes.

11 MS. BARWICK: Okay. I'm going to get that exhibit
12 back from you.

13 Thank you.

14 I have no further questions.

15 THE COURT: Solicitor, do you want to cross-examine?

16 MS. MCCALL: Yeah, just briefly, Judge.

17 Thank you.

18 CROSS-EXAMINATION

19 BY MS. MCCALL:

20 Q Lieutenant Leopard, you stated that this sample is
21 sent to SLED after it's taken from a defendant; correct?

22 A Correct.

23 Q And if DNA were obtained in a case and there's an
24 alleged suspect in the case, would the law enforcement
25 agency that you work for or any other law enforcement

1 agency be able to send that DNA that was taken from the
2 scene to SLED and compare it to the Defendant's DNA there
3 at SLED?

4 A It's my understanding that if they took DNA evidence
5 from the alleged crime scene, they could send it to SLED
6 and SLED would be able to compare it. I would have no
7 access to that DNA that was taken from him at the jail.
8 So it would have to be sent to them and they would have to
9 compare it and determine whether or not it was a match.

10 Q Okay. So if the law enforcement agency wanted to
11 compare it to the Defendant's DNA, they would have to get
12 a court order or some type of subpoena to get an
13 additional sample of DNA of the Defendant?

14 A Yes. That's correct.

15 MS. MCCALL: Okay. Thank you.

16 I have no further questions.

17 THE COURT: Redirect?

18 MS. BARWICK: Yes.

19 REDIRECT EXAMINATION

20 BY MS. BARWICK:

21 Q I'm a -- I was a little confused by that. People can
22 consent to giving DNA, too, can't they?

23 A Correct.

24 Q So -- and you can get a search warrant for DNA?

25 A Correct.

1 Q So if the alleged victim doesn't consent to DNA or
2 the alleged victim doesn't consent to a search of the home
3 to find DNA, you can get a court order for that; right?

4 A Right.

5 Q You can get a search warrant for it?

6 A Correct.

7 MS. BARWICK: It's pretty easy to do.

8 No further questions.

9 THE COURT: Do you want to respond to that last
10 question, Officer? She said, Pretty easy to do.

11 THE WITNESS: I have not obtained a search -- a
12 search warrant for that. That's out of the scope of my
13 job. So I'm not sure how easy it is to do. But it is
14 available for officers to do.

15 BY MS. BARWICK:

16 Q And it's frequently done?

17 A It is frequently done.

18 MS. BARWICK: No further questions.

19 THE COURT: Thank you, ma'am.

20 You can step down. You're free to leave the
21 courthouse. You're more than welcome to remain with us,
22 if you like.

23 Okay. Ladies and gentlemen, I told you a moment ago
24 that we've got some -- some matters I need to deal with
25 outside of your presence. And it's a little bit too early

1 to order lunch.

2 So if you'll just go back. And we'll get you back
3 out just as soon as we possibly can.

4 Thank you.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 10:29 a.m.)

7 (WHEREUPON, Court's Exhibit No. 8 was marked for
8 identification and admitted into evidence.)

9 THE COURT: Okay. Ms. Barwick, you have a -- a
10 witness that we were going to take her -- her testimony in
11 camera. So you may proceed on that.

12 MS. BARWICK: The Defense would call Dr. Amanda Salas
13 to the stand.

14 THE COURT: Okay. Come around, please, ma'am.

15 THE CLERK: If you would place your left hand on the
16 Bible and raise your right.

17 WHEREUPON,

18 AMANDA SALAS, M.D.,
19 after first having been duly affirmed, testified as follows:

20 THE CLERK: Thank you, ma'am.

21 If you'll state your name for the record, please.

22 THE WITNESS: Dr. Amanda Salas, S-A-L-A-S.

23 DIRECT EXAMINATION

24 BY MS. BARWICK:

25 Q Dr. Salas, please tell the Court about your education

1 and training.

2 A I finished medical school at USC in Columbia, South
3 Carolina, in 2003. I went to a psychiatry fellowship and
4 residency at the Medical College of Georgia, which is now
5 called Augusta University.

6 Q Do you have a copy of your CV up there?

7 A I do.

8 Q Okay. You -- you can refer to it, if it's helpful
9 for you.

10 A Sure. But a lot of it I remember. I went to the
11 Medical College of Georgia for training in psychiatry. I
12 did adult training for three years from 2003 to 2006. I
13 spent two years specializing in child and adolescent
14 psychiatry from 2006 to 2008.

15 Then I went and did a forensic psychiatry fellowship
16 back in Columbia from 2009 to 2010. And I'm triple board
17 certified in adult psychiatry, child and adolescent
18 psychiatry, and forensic psychiatry.

19 Q And you might have already went through this. What
20 kind of licenses do you have?

21 A I'm licensed to practice medicine in the State of
22 South Carolina, as well as in the State of Georgia.

23 Q What kind of leadership experience do you have in the
24 area of child psychiatry?

25 A I -- well, as a physician, a lot of times, we're

1 stigmatized, so we don't get to be leaders because of
2 being a child psychiatrist. But as a physician, I've held
3 leadership roles in our hospital. I'm the director of the
4 behavioral health department at World Health Services
5 where I work. I have been the immediate past director
6 after serving six years for the director of behavioral
7 health in psychiatry at Self Regional Hospital.

8 I've had awards and been recognized for being the
9 outstanding intern when I was in my first year of
10 residency. I was, also, the chief resident when I was an
11 adolescent resident, as well as an adult resident.

12 By that, I might to need to refer to my CV for
13 because I can't remember all of them.

14 Q Yeah.

15 A They're outlined on my CV.

16 Q Yeah. Go ahead and look at your CV. That's fine.

17 A I'm, also, the current director of Aiken Treatment
18 Specialists, which is a substance abuse program in Aiken.
19 I mentioned the medical directorship for Self Regional
20 Hospital. While there, I have served on the medical
21 executive committee, which reviews physicians, develops
22 policies, addresses concerns amongst the medical staff.

23 I've been on the board of directors for the Low
24 Country Autism Foundation. I've been a representative to
25 the American Academy of Child and Adolescent Psychiatry

1 Residence Committee. I've been on the ethics committee
2 while I was at the Medical College of Georgia. I, also,
3 ended up writing questions at one point for
4 Pright [phonetic], which is the inservice training exam
5 for child and adolescent psychiatry residents and fellows
6 that is offered to all fellows across -- the training
7 programs all across America. And I was one of the fellows
8 who, actually, wrote the questions for the exam.

9 I did, apparently, a psychiatry interest group,
10 resident leader at one point in time, and was on the
11 education committee when I was in fellowship and residency
12 as well.

13 Q What kind of professional societies and memberships
14 do you belong to?

15 A I'm a member of the American Medical Association, the
16 American Academy of Psychiatry and the Law, American
17 Psychiatric Association, child and adolescent -- what do
18 they call that one? AAPL. The American Academy of Child
19 and Adolescent Psychiatry is the other one. So
20 representing each of my four fields of expertise, as well
21 as globally as a physician in the American Medical
22 Association.

23 Q And -- and those four areas of expertise --

24 A The three areas, adult psychiatry, child and
25 adolescent psychiatry, and forensic psychiatry.

1 Q Okay. And you've been a practicing psychiatrist
2 since 2004?

3 A Since 2003.

4 Q 2003.

5 And what portion of your practice centers around
6 child psychiatry?

7 A At present, it's around 25 percent. And that's a
8 rough estimate.

9 Q And how many children do you think you have treated
10 since 2004?

11 A I have no idea. But, I mean, if you gave a
12 conservative estimate --

13 Q Why don't we do this. Why don't we do this. How
14 many per year would you estimate?

15 A It -- well, the years would vary. But if you gave a
16 conservative low estimate, anywhere from 50 to a hundred
17 children per year, over the course from 2003 to 2018 is
18 what? 16 years. Well, over a thousand children. That
19 would be a low estimate.

20 Q And when you treat a child -- well, yeah. When you
21 treat a child for child abuse, whether it be sexual or
22 other abuse, do you interview that child?

23 A Yes.

24 Q And does your interview of the child affect the
25 treatment you provide that child?

1 A Yes.

2 Q And does it have an impact of your -- on your
3 diagnosis?

4 A Yes.

5 Q Have you been educated and trained in the best
6 practices to interview children who have allegedly been
7 abused?

8 A Yes.

9 Q And why is it important to follow the best practices?

10 A You want to make certain that you're following the
11 appropriate methodology and the best practices because it
12 allows you to get information from the child that is the
13 child's information and not something that I've implanted
14 in the child or skewed the child to report that's not the
15 child's words of experience.

16 Q Have you testified as an expert in trials before?

17 A Yes.

18 Q And have you given your opinion as to the proper
19 methodology to interview children who have allegedly been
20 abused?

21 A Yes.

22 Q And approximately how many times?

23 A I don't know. Again, a rough estimate would be if I
24 do a forensic case that involves that type of material,
25 maybe six a year, since 2009 when I entered that

1 fellowship, just in the forensic avenue over 50, over 50
2 times mathematically speaking, based on those
3 calculations.

4 Q And some of those times have been for the State?

5 A Yes.

6 Q And some of those times have been for the criminal
7 defense side?

8 A Yes.

9 That I've been retained to do work for? Is that what
10 you're asking?

11 Q Yes.

12 A Yes. I've been retained by the state, as well as by
13 defense attorneys.

14 Q To review interviews?

15 A Yes.

16 Q To ensure that they were following the proper
17 methodology?

18 A Yes.

19 Q And you've testified in civil court as well?

20 A Yes.

21 Q And in Family Court?

22 A Yes.

23 Q And you've, also, testified in depositions as to this
24 material as to the methodology of forensic interviews; is
25 that correct?

1 A That's correct.

2 Q And how many times do you think you've done
3 depositions?

4 A I don't know. I have a copy of how many times I've
5 done different things from, I think, 2014. But I don't
6 have a copy from before 2014.

7 Q Well, on an estimate without -- I mean, on an
8 estimate, how many times a year since 2014 do you think
9 you've testified in depositions as to this material?

10 A I don't know. I mean, if I did one deposition or two
11 depositions a year since 2014 -- and I know I've testified
12 more than that. But I -- I don't know. I mean, was
13 that -- 19 -- five years, so maybe 10 times.

14 Q Okay. And how many times have attorneys retained you
15 to consult as to whether or not the proper methodology was
16 used in these forensic interviews?

17 A Again, I -- I don't know how many times it's been for
18 that specific purpose. But if I went with anywhere from
19 two to six times per year since 2009, 20 to 50, 60 times.

20 Q Okay. Are your opinions supported by peer-reviewed
21 professional journals?

22 A Yes.

23 Q And trade publically -- I'm getting tongue tied over
24 here. Trade publications?

25 A What kind of publications?

1 Q Are your opinions supported by peer-reviewed trade
2 publications?

3 A Yes.

4 Q And -- and these publications and journals are
5 uniformly accepted within your profession as a child
6 psychiatrist, are they not?

7 A Yes.

8 MS. BARWICK: Your Honor, at this point in time, I'd
9 like to qualify her as an expert in child psychiatry and
10 in the area of child -- proper child interview
11 methodology.

12 THE COURT: And do you have any examination of this
13 Doctor concerning qualifications?

14 MS. MCCALL: I do, Your Honor. Just briefly.

15 VOIR DIRE EXAMINATION

16 BY MS. MCCALL:

17 Q Dr. Salas, you testified that you had been trained in
18 the best practices for interviewing children. What are
19 those trainings that you have trained with?

20 A We do it as part of our fellowship program in child
21 and adolescent psychiatry. There are certain components
22 that are related to how you interview children. And they
23 do it over the course of the two years.

24 So you continuously follow a training program while
25 you're in fellowship related to how you interview

1 children. Some of that is lecture. Some of that is
2 direct feedback. You do video recordings. You review
3 them with your attendings. It -- it's rather intense.

4 Q Are you familiar with ChildFirst training?

5 A I have heard of it. I am familiar with the processes
6 that are collateral to what we do in our training for
7 interviewing child and adolescents, in general.

8 Q Okay. So are you aware that in 2017, that was the
9 standard per se for forensic interviewing in the State of
10 South Carolina?

11 A I'm aware that South Carolina has used the RATAC and
12 moved to ChildFirst. I don't know exactly which year that
13 they moved to it.

14 Q But just to confirm, you've never trained under the
15 ChildFirst training protocol; correct?

16 A No. I did not complete a training for ChildFirst
17 protocol.

18 Q Okay. And Ms. Barwick asked you -- and I just wasn't
19 clear. I was hoping that you could clarify. You said
20 that you had testified as an expert regarding these types
21 of interviews; is that correct?

22 A I've testified as an expert in cases where I have had
23 to review the materials. I can't remember and I don't
24 have documentation from before 2014 what I was doing in
25 2011, '12, and '13 when I had more people that'd

1 approached me about doing reviews of those materials. So
2 I can't remember at what point I, actually, provided
3 testimony and in what regards that testimony encompassed
4 in those cases that I reviewed.

5 Q Okay. So since -- even since 2014, you're not sure
6 what type of cases that you've testified in?

7 A I've testified in cases that have related to
8 allegations of child sexual abuse and there has been a
9 recorded interview that has been done. And the task is
10 related to -- part of my work, at least, is related to
11 looking at and reviewing those interviews to find out
12 exactly what opinions I have in terms of the reliability
13 of an interview, the conduct of an interview, whether it
14 was following the best practices or not.

15 But sometimes -- and, oftentimes, you find that those
16 are followed. And so you're not testifying, specifically,
17 about what wasn't done because my opinion is that it was
18 done appropriately and to the best practice standard.

19 Q Okay. But --

20 A Do you follow me?

21 Q I do, yes.

22 A Okay.

23 Q But I'm just trying to confirm whether or not you've
24 testified in a criminal matter addressing the techniques
25 and best practices with a forensic interview that followed

1 either the ChildFirst or RATAC method.

2 A I did.

3 Q Okay.

4 A I remember it was in Charleston. And there was one
5 in Orangeburg. But I know it was before 2014. And I
6 can't tell you any more about what those cases are at this
7 point in time today.

8 Q Okay. So you're not sure if that was prior to the --
9 the new set of case law regarding forensic interviewers
10 and what -- the extent of testimony that can be given.
11 Are you aware of that?

12 A I don't know --

13 MS. BARWICK: Judge, I don't know why we're asking my
14 witness about the law.

15 THE COURT: Well, since we're in camera --

16 MS. BARWICK: Yes, sir.

17 THE COURT: -- then -- I don't think I would allow it
18 if we were before the jury.

19 MS. BARWICK: Yes, sir.

20 MS. MCCALL: Certainly.

21 THE COURT: But since we're in camera, we're relaxing
22 the rules just a little bit.

23 MS. BARWICK: Yes, sir.

24 MS. MCCALL: Your Honor, I'm just trying --

25 THE COURT: Sure.

1 MS. MCCALL: I'll be very brief. I'm almost finished
2 up.

3 THE COURT: No. You're fine. Keep going.

4 MS. MCCALL: Thank you, Your Honor.

5 THE WITNESS: Can I get some water? I'm sorry.
6 Thank you.

7 BY MS. MCCALL:

8 Q Ms. Barwick asked you whether or not you reviewed
9 those interviews regarding the methodology that was used.
10 I just want to confirm that you have never reviewed them
11 to, specifically, address the ChildFirst method or RATAC;
12 is that correct?

13 A I haven't done it in terms of looking, specifically,
14 at the criteria for training that I haven't received in
15 ChildFirst. But the standard of practice that you would
16 review those materials -- so here's -- I look at them from
17 the best practice of how you conduct interviews. And the
18 literature, actually, supports -- and anybody can access
19 and read the literature on ChildFirst, RATAC, and other
20 national recognized protocol that we don't use in South
21 Carolina. And you're able to go back and review based on
22 elements of suggestibility, factors that can influence
23 what information you're getting out of a child.

24 So whether somebody conducts the interview or not,
25 anybody who's trained to understand how children's memory

1 develops, how suggestible they are, and what are the best
2 practices, and why we do interviews the way that we do for
3 the training of a child as a psychiatrist allows you in
4 hindsight and retrospect to go back and identify where
5 there were vulnerabilities in the conduct of an interview.

6 MS. MCCALL: Your Honor, those are all the questions
7 that I have for her.

8 THE COURT: All right. Thank you.

9 While Dr. Salas --

10 Is it Salas? Is that how you pronounce it?

11 THE WITNESS: Salas.

12 THE COURT: While she has a lot of credentials and
13 I'm sure she is an excellent psychiatrist, I'm not going
14 to find her to be an expert. Because I'm not allowing
15 her -- per case law that we have in this state, I'm not
16 allowing her to testify before the jury.

17 So I'm not going to find her as an expert, as
18 requested by the Defense.

19 MS. BARWICK: And --

20 THE COURT: But, again, I'm not --

21 You have tremendous credentials. And I don't want
22 you to think that I don't think that you do. But because
23 I am confined to what the case law allows people to
24 testify to concerning these forensic interview, then
25 that's why I'm not allowing you to testify before the

1 jury. But, again, I don't want you to think that I'm
2 being in any way critical of your credentials, because
3 they are very impressive.

4 MS. BARWICK: And -- and, for the record, Your Honor,
5 I -- I'd like to place why I do think she's an expert.
6 She is a child psychiatrist. She understands how memory
7 works, how it's relayed. She has interviewed thousands of
8 children to be able to treat them and to diagnose them.
9 And she has to get accurate information from them in order
10 to do that. That was all within her testimony, Your
11 Honor.

12 You can be qualified as an expert based on your
13 training, your expertise, and your experience. It
14 doesn't -- you don't have to necessarily follow RATAC or
15 ChildFirst.

16 THE COURT: Well, and, again, I'm not -- I'm not
17 necessarily saying she's not qualified. I'm just not
18 going to qualify her as an expert in this case simply
19 because she is testifying in camera only. Okay.

20 MS. BARWICK: I understand, Your Honor.

21 THE COURT: Thank you.

22 MS. BARWICK: I didn't understand what you were
23 saying before, but now you have made it clear to me.

24 So thank you for that.

25 THE COURT: Good.

1 CONTINUED DIRECT EXAMINATION

2 BY MS. BARWICK:

3 Q All right. What are the best practices for
4 interviewing a child who alleges child abuse?

5 A They're extensive and broad. And there's a lot of
6 things that you need to do. But you need to make the
7 child feel comfortable. You need to make certain that
8 you're asking questions that are developmentally
9 appropriate. You have to focus on open-ended questions,
10 use fewer close-ended questions.

11 Q Use that?

12 A Fewer close-ended questions.

13 Q Okay.

14 A You want to make certain that you have established
15 rapport, that there's not a perceived power differential
16 between you and the child, and do things that allow them
17 to feel comfortable and willing to open up about very
18 sensitive issues that allows them to use their words
19 without you influencing them consciously or unconsciously
20 to give words that are not part of what they're
21 experiences have been.

22 Q What are some ways that a child might be improperly
23 influenced by the form of the question?

24 A You want to use more open-ended questions, things
25 that are like, tell me about that, tell me more about

1 that. You do not want to come in and use a leading
2 question, use a misleading question. You would not want
3 to reflect inaccurately on what a child says back to you.

4 You need to make certain that they're engaged with
5 you, not trying to please you, make certain that the child
6 is not in a situation where they feel like they have to
7 give an answer in order to get something that they want.
8 You don't want to bribe, punish, reward a child for trying
9 to give an answer.

10 The younger a child is, the harder it becomes.
11 Because younger children are a lot more suggestible. And
12 so you have to be a lot more mindful of what's going on
13 with a younger child when you're conducting an interview
14 with them.

15 Q And Ms. McCall asked you about ChildFirst and RATAC.
16 And you mentioned another nationally recognized method of
17 conducting forensic interviews. What is that method?

18 A Let me see if I wrote it down because it goes by an
19 acronym.

20 Q We like acronyms.

21 A The National Institute of Child Health and Human
22 Development, which was a very structured interview for
23 listing narratives. And it emphasizes the verbal
24 narratives. And it's --

25 Q Dr. Salas, I --

1 A -- perceived as more open --

2 Q Okay. And this is the one -- and I'm sorry to
3 interrupt you. I'm talking about one that talks about
4 just very open ended. Is that the one you're talking
5 about?

6 A Correct. The acronym is NICHD.

7 Q Okay. And -- and tell us about how that one is
8 different from RATAAC and ChildFirst.

9 A So I'll reference some notes about it, but it --
10 the -- it's much more structured. There are some subtle
11 differences about whether you promise to tell the truth.

12 The RATAAC does not necessarily illicit a promise,
13 but, instead, goes into, do you know the difference
14 between a truth and a lie? Whereas the one from Child
15 Health and Human Development is, actually, looking for a
16 promise that the child is going to provide the truth. But
17 it's a lot more open ended and less close ended in what it
18 tolerates for illiciting information from children. And
19 that's the gist of it.

20 Q And there's a lot of argument nationally that that
21 other method used outside of South Carolina gets more
22 reliable disclosures than the ones we use in South
23 Carolina; isn't that correct?

24 A The data in the literature review that I've conducted
25 over the last month reveals that there's a lot of people

1 who are more supportive in the -- in the national database
2 for that particular process, as opposed to the RATAC.

3 Q Did you carefully review and watch the forensic
4 interview recording in this case?

5 A Yes.

6 Q Did you, also, read the transcript of what was sent
7 to you, which was -- I'm sorry. Did you carefully review
8 the transcript of the forensic interview video?

9 A Yes.

10 Q And did that transcript accurately, and completely,
11 and fully reflect what was said in that interview?

12 A Yes. In my opinion, it did.

13 Q I'm sorry.

14 A In my opinion, it did.

15 Q Okay. And after watching the interview and reading
16 the transcript, in your professional opinion and in your
17 expertise, is there any evidence that the interviewer
18 suggested to [REDACTED] what her answers should be?

19 A Yes.

20 Q And was that -- what level -- how much evidence was
21 there of that?

22 A I found that there was a substantial amount of use of
23 suggestible techniques that were influencing the child in
24 the interview.

25 Q So is -- is what you're saying that -- is that there

1 is substantial evidence that the interviewer suggested to
2 [REDACTED] what her answers should be?

3 A Yes.

4 Q And after watching the interview and reading the
5 transcript, in your professional opinion and in your
6 expertise, is there any evidence that -- that [REDACTED]'s
7 answers were not her own answers, but that of the
8 interviewer through the use of improper methodology?

9 A Yes.

10 Q And is there substantial evidence of that?

11 A I found it to be substantial, yes.

12 Q And you said children are susceptible to the power of
13 suggestion and more so for younger children; is that
14 correct?

15 A That's correct. The literature shows that
16 preschoolers, which is defined as under the age -- six and
17 under, are far more suggestible than when they age and
18 they're older and, certainly, are more suggestible than if
19 you were interviewing a teenager or an adult.

20 Q And why is that?

21 A Children like to please. They are looking for
22 positive feedback. If they feel like they're getting
23 positive feedback, they're going to move forward with
24 whatever it is that they're trying to get more of that
25 positive feedback.

1 If there's negative reenforcement or negative
2 consequences, then they will conform. They're less
3 likely -- especially in controlled interviews, they're
4 less likely to test or challenge a situation if they
5 perceive someone to have a power differential over them.

6 But their -- by their own development and the lack of
7 development that hasn't happened for them yet, they're far
8 more suggestible. And that's consistently what the
9 literature shows and supports.

10 Q And you said the power differential. Tell -- tell us
11 about that.

12 A So power differential would be -- it could be
13 something as simple as what goes on in the courtroom
14 today. The Judge has greater power and autonomy over
15 court hearings and proceedings that go on in this room
16 than anybody else. And so they sit up higher and taller.

17 If I go in to interview a child and I physically make
18 myself appear bigger and taller based on where I'm
19 interviewing them from where their positioned and
20 postured, there's a risk that they're going to see that as
21 something that I am bigger and more powerful than them and
22 they're less likely to give information.

23 So with a child, what you would try to do is set
24 things up to be at eye level, be on their playing field
25 with them. If there's -- like, in my office, the -- a

1 door to my office, I try to make certain that they know
2 that the door is accessible to them and that I don't have
3 myself in between the child and the door. So that they
4 think that they can't get out because I'm the one who's
5 telling them you can't leave until you do X, Y, and Z.

6 Q What -- what impact does having authority over a
7 child have on their ability to disclose? Like, I -- for
8 example, I wouldn't want to correct the Judge. Do
9 children feel comfortable correcting the adults?

10 A No. And the younger they are, the less likely they
11 are to feel comfortable correcting adults.

12 And I saw evidence in the interview that this child,
13 in particular, did not have the comfort level of
14 correcting the adult. And that the interviewer was,
15 actually, misinterpreting a correction that -- the
16 interviewer identified as a correction that the child made
17 and it wasn't a correction that the child made.

18 Q And -- and do -- what is the best practice for
19 conducting an interview of a child who alleges child
20 abuse?

21 A You want to make certain that the child is giving a
22 report using their words or an experience that that child
23 has had. You want to ask open-ended questions. You want
24 to make certain that you're not encouraging them to make a
25 disclosure that is not accurate or based on their

1 experiences.

2 So you don't want to bribe them. You don't want to
3 give them a feeling of punishment if they don't answer
4 your questions. You want to meet a child where they are
5 developmentally and be able to in real time when you're
6 interviewing them make certain that you're mindful about
7 the nature of the questions that you're asking, the words
8 that are coming out of your mouth, how that child is
9 perceiving them, and what information they're giving you
10 so that they're giving you information that's their
11 information, and not information that they think you want
12 to hear.

13 Q Were those best practices followed in this interview?

14 A No.

15 Q And what problems did you see in this interview? And
16 let's just start with the whole leading and
17 suggestibility. Did you see any problems with that in
18 this interview?

19 A I don't know where you want me to start with what
20 your question was. But --

21 Q Because it was a poorly phrased question.

22 So what problems did you see in this interview?

23 A I saw that this interview opened up a -- a wide door
24 for increasing this child's suggestibility and relying on
25 the power of suggestion to get information and words to

1 come out of the child's mouth.

2 Q What examples do you have from the interview?

3 A There were a lot of close-ended questions, which can
4 be something as simple as a person asking the question
5 back to the kid and then using inflection on the end of
6 their voice to reflect that the statement that the child
7 said was correct. Right? And in doing that, it's -- it's
8 illiciting a child to -- to want to agree. Because kids
9 like to be right.

10 So you don't want to go in and interview a kid and
11 say, is this exactly what happened, blah, blah, blah;
12 right? Because a child is going to hear "right." And
13 they're taught you want to behavior [sic] right. And so
14 you have to be very careful about when you're reflecting
15 something back to a kid that you're not misleading them
16 into right and wrong.

17 There are experiences in right or wrong for what they
18 experienced. You just want them to be able to report what
19 it is. And when you start introducing close-ended
20 questions where there are other issues related to
21 suggestibility, you're increasing the risk that you're
22 going to get an unreliable report from a child.

23 Q And what about incorrect feedback. Did you see any
24 evidence of that in this interview?

25 A Yes.

1 Q And tell us about that.

2 A So one of the things is that at the beginning of the
3 interview when the examiner was going over ground rules,
4 the examiner misunderstood a correction that they thought
5 was a correction that the child really was not correcting.

6 So, for example, it had something to do with a
7 picture that was shown to the kid. And the child looks at
8 it. And the examiner asks, I think, Is this -- is this
9 pizza?

10 And the kid says, No.

11 And then they say, Well, what is this?

12 And the child says, It's ice cream.

13 And the examiner, basically, says, I want you to be
14 able to correct me like you just did. The child did not
15 make a correction. The child answered the examiner's
16 question. And so a review of those ground rules was not
17 an accurate reflection of what was going on because there
18 was no correction made.

19 Where the child did make a correction was in two
20 cases. The only two that I found in the interview
21 happened when the child was going to get relief from
22 having to answer more questions and it was something as
23 basic as the child's name.

24 So right before the break in the interview after the
25 child had been called [REDACTED] the examiner gets

1 ready to leave and that's a perception of relief from the
2 stress of doing an interview. The child, finally, says to
3 the examiner, My name is [REDACTED]. And that was a
4 correction.

5 And the only other time that that type of correction
6 happened in the same context related to the child
7 expressing her preferred name as [REDACTED], which was,
8 again, at the end of the interview upon the conclusion
9 when they were getting ready to leave the interview room
10 and the child corrected the examiner again and said, My
11 name is [REDACTED].

12 Because even after correcting the examiner [sic], the
13 examiner went back and continued to use the abbreviated
14 name that the child had clearly corrected her on. And she
15 went back to it any way.

16 Q So going to Page 7 of the transcript. I just want to
17 make sure I understand which pizza and ice cream example
18 you were talking about. Page 7, Line 2. Do you have that
19 transcript with you?

20 A I do.

21 Q And if you'll -- you'll read -- well, if you'll tell
22 us if that's what you're referring to. And if it is what
23 you're referring to, please, read it to the Court.

24 A So I have that at approximately minute five, the
25 interviewer asked the kid, Is this a pizza?

1 The minor says, No.

2 Q Do you have the transcript in front of you?

3 A I do.

4 Q All right. Page 7, Line 2.

5 A I'm sorry.

6 Q That's okay.

7 A At the top of Page 7, Line 2, it states, It's, also,
8 important that I get things right. And let me just be
9 sure this is the interviewer talking. Yes, the
10 interviewer is talking.

11 And the interviewer says, It's, also, important that
12 I get things right. So if I say something wrong or mixed
13 up, you can correct me. So let's practice that. If I
14 told you that this little girl is feeding this pizza --
15 this puppy a pizza, what would you say?

16 The minor, I don't know.

17 The interviewer, Is that a pizza?

18 The minor, No.

19 The interviewer, What is that?

20 The minor, Ice cream.

21 The interviewer, Ice cream. So thank you for
22 correcting me.

23 Q Did the child ever correct the interviewer in that
24 exchange?

25 A No.

1 Q Do you think this child understood the directions
2 about the ability to correct any misinformation the
3 interviewer was importing to the child?

4 A That's not what the example shows. It shows that the
5 child was not able to make a correction.

6 Q And let's talk about -- did you see any incorrect
7 paraphrasing by the interviewer of the child?

8 A Yes.

9 Q And -- and how would that impact the ability of the
10 child to give their own answer versus the interviewer's
11 answer?

12 A It increases the risk of the child adopting words
13 that have been introduced in the interview by the
14 interviewer, as opposed to the child using words that the
15 child has generated from herself.

16 Q And -- and how often was this parroting done by the
17 interviewer?

18 A I didn't count, specifically. But I remember the
19 most remarkable one that stands out was the child had said
20 that something happened with the finger. And the
21 immediate response from the interviewer was that finger
22 translated into a new noun, which was hand.

23 Q Okay. And -- and were there examples of that
24 throughout the interview?

25 A There were times where the interviewer did not

1 accurately reflect -- or when the interviewer tried to
2 reflect what the child's words were, instead of doing it
3 under best practices. The interviewer was relying more on
4 suggestive techniques.

5 Q And -- and was the paraphrasing correct or was it
6 something different than what the child had already said?

7 A Different.

8 Q And, oftentimes, throughout the interview, did she
9 say, "Isn't that right" after she parroted that?

10 A Yes.

11 Q Let's talk about positive reenforcement and negative
12 reenforcement. Did you see any of that going on in this
13 interview?

14 A Yes.

15 Q Tell us about it.

16 A Positive reenforcement is trying to get information
17 with the idea that a -- from the kid's perspective that
18 they're going to get praised for giving something, or
19 they're going to get more attention. They're going to get
20 something positive is what they're looking for that makes
21 them feel good and it increases the likelihood of getting
22 a response. Because they are getting something that they
23 desire.

24 So, for example, in this particular interview, the
25 kid is definitely looking for an opportunity for positive

1 reenforcement. Because the child from the beginning of
2 the interview starts off with being proud about how she
3 can make -- she can draw -- I think it was a five, a
4 seven, write her name, spell a friend's name. There was a
5 lot of interest that this child had in looking for an
6 opportunity to get that positive response.

7 And as the interview proceeds, it was very apparent
8 that the kid continued to seek positive reenforcement
9 through the interview questions themselves, as well as she
10 didn't want negative reenforcement, which is -- negative
11 reenforcement is when you get a consequence for not doing
12 what you're supposed to be doing or what a child perceives
13 that they're supposed to be doing in this case.

14 So, for example, when the examiner asks questions in
15 this interview, the examiner may ask a question whether
16 it's open ended or closed end. The child's response
17 doesn't always reflect the question that is posed.
18 Instead, the child deviates and says, Hey, I know how to
19 do my ABC's, and let me do those.

20 And so by answering a question, the child gets a
21 chance to have more attention from the examiner and do
22 things that she's proud of to get more positive feedback.
23 And the longer the interview goes on, you could see that
24 the more this child was doing to try to get more positive
25 feedback over time.

1 Q When did the interviewer give her positive feedback?

2 A Throughout the interview.

3 Q In -- in response to what kind of questions?

4 A It happens a lot more in response to the close-ended
5 questions, which are where you have a one word answer or
6 yes or no would be an answer to a close-ended question.

7 And when the examiner would ask a series of
8 close-ended questions, the child will just get into an
9 agreement pattern and continue. Because a lot of times,
10 the examiner was using the word "right." And the child
11 would say, Yes.

12 Q Okay. Was she getting any positive reinforcement
13 from being able to do the things that children normally do
14 to seek positive reinforcement, like the numbers and the
15 letters?

16 A Can you ask that one more time?

17 Q Yeah. Was -- the child writing the numbers and
18 letters, was that getting her positive reinforcement from
19 the interviewer?

20 A Yes. The -- the child writing numbers and letters
21 was getting her the positive response of being able to do
22 it in some cases, and getting the examiner's attention and
23 seeing that she could do it, and sometimes acknowledging
24 that she was, actually, doing it.

25 Q When did the examiner appear to be most interested in

1 this child throughout the interview?

2 A When -- I don't -- I don't know exactly how to answer
3 that particular question. Because I don't know, one, what
4 you're asking. But, two, I think what you're asking has
5 to do with was there a likelihood that the examiner was --
6 let me -- let me clarify if I'm understanding what you're
7 asking. You're asking was this examiner giving more
8 positive feedback at different times in the interview?

9 Q Yes.

10 A Because I thought that positive feedback -- when I
11 review this, I find the positive feedback for this child
12 was happening throughout the interview. The child came in
13 looking for positive attention. And that's why from the
14 get-go you can find at the beginning of the interview
15 within the first few minutes, this child is wanting to be
16 able to spell her name, report her birthday. I can write
17 a number five. I can write a number seven. I know my
18 friend s names. I know how to spell these key things.

19 And what's happening is that the interviewer is
20 giving the child positive feedback of letting her do that
21 and acknowledging it from a positive technique that, yes,
22 you can do that. And that's why throughout the interview
23 you begin to see that this particular child is -- if you
24 meet that child where she is for what that child is
25 looking for, she's looking for the opportunity to have

1 more attention and focus on what she's capable of doing,
2 not necessarily giving a disclosure.

3 But when the child deviates from giving a disclosure,
4 the interviewer begins to withdraw. And when the
5 interviewer starts asking more close-ended questions,
6 which increases the risk of suggestibility, the child
7 starts getting more positive feedback. And so it starts
8 this cycle of if I answer the question that's a
9 close-ended question, I get more attention from the
10 examiner. And then the kid starts giving more responses
11 to close-ended questions that are congruent with what
12 appears to be interviewer bias.

13 Q Okay. And let's talk about the -- the drawings of
14 the child. What -- what did you know -- notice about the
15 child drawing?

16 A So I can't see those drawings because they were --

17 Q Right.

18 A -- they -- they had been drawn so lightly I can't see
19 what is -- in the tape what is, actually, on the -- the
20 board that the child is writing on. So what I can -- what
21 I can tell you that I see is profound evidence of
22 suggestibility contained within the interview is that this
23 child in the confines of just this one interview was so
24 suggestible that the interviewer at one point goes through
25 a process of identifying anatomy. And that's typical of

1 the type of interview to identify different types of
2 anatomy.

3 But later on within that process, the interviewer is
4 circling different body parts and writing down the child's
5 word for whatever that body part is. Later on in the
6 interview, the interviewer asks the kid something about
7 the butt. And the kid ends up saying that -- I think the
8 interviewer asks, What did he do with his butt?

9 And she says, He circled it, which is what they were
10 doing in the interview itself.

11 The process of circling body parts was something that
12 was introduced and contained in that interview process.
13 It wasn't something that anybody has reason to think that
14 outside of that interview people were circling butts.

15 Q Did the interviewer use the drawings as a means for
16 positive reenforcement or negative reenforcement?

17 A It appeared to me that the child really got into the
18 use of the drawings for positive reenforcement. Because
19 they start off asking questions about body parts on a
20 girl. And by the time they get to body parts on a guy,
21 the kid is now wanting to spontaneously be able to say,
22 And you missed this one, and let's do that one.

23 And so she's getting attention from the examiner.
24 And the examiner starts following along with that as well.

25 Q You mentioned you saw bribing in this video. Tell us

1 about that.

2 A The bribery component -- let me see if I can find it.

3 Q In -- in particular, when the -- when the interviewer
4 comes back into the room, what did she say to the child?

5 A (There was no response.)

6 Q It's on Page 30.

7 A Thank you.

8 I'm getting to the end of the first component.

9 So the kid has utilized time to -- the interviewer
10 exits the room. And the child makes the first correction
11 in the interview, which is at the conclusion of the
12 initial 25 minutes, which is about the amount of time you
13 expect a five-year-old to be able to attend and pay
14 attention.

15 So the interviewer steps out and the kid starts
16 coloring. And then the interviewer comes back and says,
17 Thanks for waiting while I'm gone. And then the kid is
18 still engaged in what she's doing, which is making a
19 drawing. And the interviewer says, Well, you can keep
20 drawing as long as you keep answering my questions. Okay.
21 Do you want to do that?

22 And the kid says, Yes.

23 That is very concerning because it's telling the kid
24 you can do what you want to do if you give me what I want
25 from you, which is you've got to answer my questions.

1 Q Okay. And -- and this drawing kind of comes up where
2 this child wants to take this drawing home in the
3 interview. Tell us about that.

4 A Yeah. So the -- the kid is really into drawing.
5 The -- the child is really enjoying writing, drawing,
6 whatever is going on on that piece of paper. And towards
7 the end and the conclusion of the interview, she wants to
8 take this home. Well, it's standard that you don't take
9 that home with you. It becomes part of their medical
10 record for the interview.

11 And the kid towards the end, basically, has tried
12 several different approaches to let the examiner know she
13 likes [inaudible]. She would like to take it home with
14 her. She really wants this. And, eventually, the child
15 has learned to appoint that -- she begins to twist back
16 towards the interviewer that -- it's on the transcript on
17 Page 43. Let me see if I can find it.

18 So, actually, at the bottom Page 42, the interviewer
19 says, Okay, okay, so I have asked you a lot of questions
20 today, [REDACTED]. Is there anything you want to ask me?

21 And the child says, Yeah. Do you like this picture?

22 The interviewer says, I do.

23 The child says, I was going to take it home because I
24 wanted to.

25 And so it's -- it's another effort that this child

1 has to now utilize techniques that she's learned in this
2 interview of you can keep doing this if you give me what I
3 want. And she's now, basically, saying, well, I've done
4 what you wanted, now give me what I want. And she's
5 twisting it around to show that she's keenly aware, even
6 as a five-year-old child, that you like this picture and I
7 still want to take it home with me.

8 And the interviewer starts saying again, No, you
9 can't. And the child wants to write her name. She wants
10 to do more, wants to write her last name. And then it
11 concludes with the interviewer saying, We're going to go
12 back out to the waiting room. Okay.

13 And this is the other time in the interview where the
14 child corrects the examiner, which is when she's getting
15 relieved by knowing she's going to go back into the
16 interview -- or leave the interview room and go back into
17 the waiting room. And the child says, Everybody calls me
18 [REDACTED].

19 Q Okay. And what does tainting mean?

20 A Tainting is, basically, a result of interviewer
21 biases increasing suggestibility in children, deviation
22 from best practices where a child's report is not their
23 own words from their experience, but an assembly of the
24 information that has been a result of either interviewer
25 bias, suggestibility, the deviation from best practices

1 where their report is not their own words. It's something
2 that has been implanted in them for -- and it ends up not
3 being reliable. But it's a -- it's what we call that
4 process that deviates from this best practices that
5 results in a non-reliable -- or an unreliable report.

6 Q And -- and in your opinion, was the methodology used
7 by the interviewer -- did that taint the child in this
8 case?

9 A Yes, it did.

10 Q And once a child is tainted, is there any going back
11 from that?

12 A You can't recover. Once a child is -- is tainted,
13 you can't untaint a child.

14 Q And why not?

15 A It's impossible. Once you have influenced a child
16 and you have, whether consciously or unconsciously, put
17 words in their processor that come back out that were not
18 their words to begin with, you can't undo that effect.

19 It's kind of like if -- if I'm going to paint my
20 bedroom and I'm painting on the walls and somebody spills
21 a different color or something into my paint bucket, I
22 can't use that paint bucket again. I've got to go back to
23 the drawing board. I can't take it out. In similar, you
24 can't take out of a child who's been tainted, you can't
25 take out that tainting.

1 MS. BARWICK: Okay. No further questions.

2 THE COURT: Solicitor, any cross?

3 MS. MCCALL: No, Your Honor.

4 THE COURT: Okay. Thank you very much, Doctor.

5 You are free to leave, but, certainly, welcome to
6 remain with us.

7 THE WITNESS: Thank you.

8 THE COURT: Okay. Let's take a short break. And
9 I've got a draft of the charge if y'all will take a look
10 at it during the break.

11 Okay. Let's take a little short break and then
12 figure out where to go from there.

13 (WHEREUPON, a break was taken.)

14 THE COURT: All right. We're back on the record.

15 Have you had an opportunity to look at the charge?

16 MS. BARWICK: I have not, Your Honor.

17 THE COURT: Okay. Solicitor, have you looked at it?

18 MS. MCCALL: We have, Your Honor, yes.

19 THE COURT: Okay. Do you have any requests for
20 changes?

21 MS. MCCALL: We just have one request that concerns
22 us within the testimony of children, just that one
23 statement that says, In addition, young children may be
24 influenced by the way that questions are asked. I believe
25 that just goes directly to her argument. And -- and it

1 seems like the rest of the charge is comprehensive in
2 explaining to them that it's up to them to --

3 THE COURT: I'll tell you what. Let's do this since
4 Ms. Barwick is -- looks like she's in the middle of
5 reading it. Let's go ahead and do our closing
6 arguments --

7 MS. MCCALL: Sure.

8 THE COURT: -- if you're ready for those. And then
9 we'll take a sufficient break to deal with whatever we
10 need to deal with concerning charge.

11 And that will give you an opportunity to finish
12 reviewing that.

13 MS. BARWICK: Yes, sir.

14 THE COURT: So let's -- let's do that. I'd like to
15 get the jury out since they've been -- been back there for
16 quite some time.

17 MS. MCCALL: I do have just one thing to address
18 prior to starting closing because I would address it in my
19 closing argument. Ms. Barwick stated in her opening that
20 the child's statement has to be proven. And I know we
21 can't charge corroboration in -- in jury charges.

22 THE COURT: Right.

23 MS. MCCALL: But I just wanted to be -- I just wanted
24 to make the Court aware that I am going to address that in
25 closing. Ms. Barwick stated this, in fact, the child's

1 statement is all that you need.

2 THE COURT: Right. Yeah. The -- the statute that
3 says that the child's testimony does not need to be
4 corroborated is -- I think it's just in place to -- to --
5 on a directed verdict-type thing. Just -- the only
6 prohibition is that the Court cannot charge that to the --
7 to the jury under -- the name of the case escapes me, but
8 anyways.

9 MS. MCCALL: Yes. I just wanted to bring that to
10 your attention, Your Honor.

11 THE COURT: That's fine.

12 All right. Are you ready to bring the jury out?

13 MS. MCCALL: The State is ready, Your Honor.

14 THE COURT: Defense?

15 MS. BARWICK: Yes, sir.

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

17 And, Ms. Barwick, you'll need to rest on the record
18 after the jury comes out.

19 MS. BARWICK: Yes, sir.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:37 a.m.)

22 THE COURT: Let the record reflect the jury is back
23 in.

24 Ladies and gentlemen, thank you for your patience and
25 understanding.

1 Ms. Barwick.

2 MS. BARWICK: Judge, can we approach?

3 (WHEREUPON, a bench conference was held.)

4 MS. BARWICK: Judge, the Defense rests.

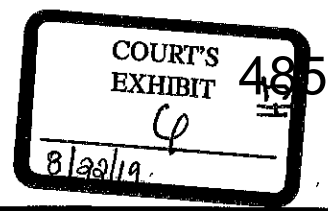
5 THE COURT: Okay. Very good.

6 Ladies and gentlemen, now, what will take place is
7 that the lawyers will give their closing arguments to you
8 since the evidentiary record in this case is now closed.
9 The State will go first. And then the Defense will follow
10 the State. And then the State has the right, if it so
11 chooses, to put up any reply closing argument in response
12 to anything new that the Defense brings up.

13 It's extremely important that you continue to be
14 alert and attentive. This is the last opportunity that
15 these lawyers have to advocate for their respective sides.
16 So, please, give your undivided attention.

17 What we will do after closing arguments is,
18 hopefully, lunch will be here. And then what I want you
19 to do is go ahead and eat lunch. Don't begin your
20 deliberations because I still need to charge you the law.
21 But, at least, we'll take that time for you to -- to eat
22 lunch. And then when you finish lunch, I'll bring you
23 back out. And I will charge you the law that applies to
24 this case.

25 Solicitor, are you ready?



Jenny Barwick

From: McCall, Britni <BrMcCall@greenvillecounty.org>
Sent: Wednesday, September 5, 2018 1:41 PM
To: Jenny Barwick
Subject: Defendant - Brandon Clark; re: correspondence

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mrs. Barwick,

This email is in response to your letter dated August 20, 2018. In that letter, you requested to be provided with "written documentation of any and all statements Ms. Johnson made" to my office. No written statements have been made to me or anyone in my office by Rhonda Johnson, and no oral statements made by this individual were exculpatory to the guilt of your client.

Only *written, exculpatory* statements are required to be disclosed to an opposing party. See *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963) (A *Brady* claim is based upon the requirement of due process and requires that the accused demonstrate that the evidence withheld was favorable to the accused, it was in the possession of or known to the prosecution, it was suppressed by the prosecution, and it was material to guilt or punishment of the accused). Furthermore, Rule 5 of the South Carolina Rules of Criminal Procedure only requires disclosure of statements made by a State's witness *after* the witness has testified on direct examination.

The statement you reference in your letter does not in any way speak to the guilt or innocence of your client as it pertains to his criminal charge, Criminal Solicitation of a Minor in the First Degree. As far as it appears, the statements you seek to obtain speak only to the question of whether or not the victim's Forensic Interview was copied and whether that copy was provided in some way to the defendant.

At this time, you have been provided all discoverable materials my office is in receipt of. I will address specifically each item you requested below, as it relates to the numbered items in your correspondence:

1. Multiple requests have been made to the medical facility that conducted the physical examination of the victim. As soon as those records are provided, supplemental discovery will be provided for you. I expect to receive those records in the next week or two.
2. As you noted in your correspondence, the drawings created during the forensic interview at the Julie Valentine Center were provided to you through supplemental discovery dated July 30, 2018. Those are the only drawings we are in receipt of or aware of their existence.
3. There is no recording of the interview conducted between Officer Elrod and the victim.
4. The complete recording of the interview between Officer Elrod, Brandon Gantt, and Sarah Harris has been provided to you. As a standard in the industry, the audio of body cam footage is delayed approximately 30 seconds.
5. Any and all notes written by Officer Elrod during her investigation of this case were transferred to her written report that has been provided to you.
6. There has been no email communication between Officer Elrod and any of the witnesses or the victim in this case.

Should you have any questions about the information provided in this email or your client's case, please feel free to email me or call me in the office at (864) 898-5570.

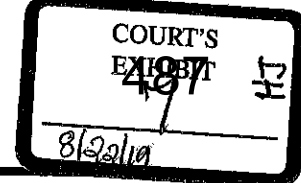
Kindly,

Britni M. McCall

Assistant Solicitor
13th Circuit Solicitor's Office
214 E Main Street, B120
Pickens, SC 29671
Phone: (864) 898-5570
Fax: (864) 898-5586
brmccall@greenvillecounty.org

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Kristen Smith-Blackham



From: McCall, Britni <BrMcCall@greenvillecounty.org>
Sent: August 16, 2019 10:46 AM
To: Hocker, Donald B.
Cc: Hocker, Donald B. Secretary (Regan A. Snow); Hocker, Donald B. Law Clerk (Madison Hoffman); Todd, Scott; Jenny Barwick
Subject: RE: State vs. Brandon Jerome Clark

Judge Hocker,

I will address the issues that may be resolved at this time in order to expedite the pretrial matters on Monday.

3. I will not be calling Ms. Rhonda Kitchens as a witness.
4. I will not mention the issue of flight in the opening statement.
5. The investigating officer has informed me that she transferred all of her written notes to the report and these handwritten notes no longer exist.
6. When I received the Julie Valentine Center Forensic Interview body part visuals in this case, we specifically requested the drawings that were made on the flip chart. The Center confirmed to me that they no longer had them. I have no explanation as to why they were not in the victim's file.
7. We have provided the entirety of the DSS file that was provided to our office in response to our subpoena. The copy that we have also has the redactions on them, so it appears that DSS made those redactions. Ms. Barwick is welcome to review the actual copy we have in our file, but I believe it will match exactly the copy that she has.

Thank you for your time in this matter.

Britni M. McCall

Assistant Solicitor
13th Circuit Solicitor's Office
214 E Main Street, B120
Pickens, SC 29671
Phone: (864) 898-5570
Fax: (864) 898-5586
brmccall@greenvillecounty.org

From: Jenny Barwick [mailto:jbarwick@clawsonandstaubes.com]
Sent: Friday, August 16, 2019 10:19 AM
To: Hocker, Donald B.; McCall, Britni
Cc: Hocker, Donald B. Secretary (Regan A. Snow); Hocker, Donald B. Law Clerk (Madison Hoffman); Todd, Scott
Subject: RE: State vs. Brandon Jerome Clark

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Judge Hocker-

Thank you for letting me know about Scott being your former law clerk. I do not believe this is a conflict and I am comfortable moving forward with you presiding as the trial judge.

As to pre-trial matters:

1. I subpoenaed the alleged victim's school records from Pickens County School district on 7/16/19. After being assured that we would receive the records, the District's attorney reached out to me approx. 2 weeks ago and said that they could not give them to me absent court order or the parents' consent. The parents denied the request this week. The school district's attorney will be present on Monday morning with the records to hand over to me upon the Court's ruling. This will not delay the trial.
2. I have no objection to the forensic interview, so long as the certified and sealed transcript is also admitted into evidence. I provided the e-transcript to Ms. McCall yesterday. Per 4/12/19 email, Mrs. McCall confirmed our telephone conversation where she stated that she had no objection to the admissibility of this. She later told me that she objected to the admissibility of the transcript.
3. If Mrs. McCall intends on calling Ms. Rhonda Kitchens a/k/a Rhonda Johnson as a witness, we need to have a pre-trial conference as to the admissibility of her testimony. Per 4/12/19 email, Mrs. McCall confirmed our telephone conversation where she stated that she did not intend to call this witness but would make a final determination in June and that if, in June, she made a determination not to call Ms. Kitchens/Johnson, then she would sign a stipulation accordingly. In June, Mrs. McCall stated that at this time she was intending to call this witness, but that she was no longer willing to stipulate not to call Ms. Kitchens/Johnson as a witness. Mrs. McCall agreed to let me know as soon as possible if she decides to call Ms. Kitchens/Johnson, as I made clear that I would need to make a motion to exclude her testimony and for Mrs. McCall to produce all written and oral statements from this witness (as requested in my 8/20/18 letter to Mrs. McCall). I do not know if Mrs. McCall intends to call her at this point, but if she does, I'll need to be heard on my motions.
4. I believe Mrs. McCall may attempt to argue flight can be considered by the jury as evidence of guilt. I would move that she not make such an argument in her opening, as evidence establishing the inference has not been established at that point.
5. On 6/15/18 via email and again on 8/20/18 via letter, I requested from Mrs. McCall to provide me the investigating officer's investigative notes. In her response email (9/5/18), Mrs. McCall said that all the officer's written notes were transferred to her written report. I would move for her to produce them prior to trial. I do not believe this will delay the trial.
6. On 8/20/18 via letter, I requested Mrs. McCall provide me with the drawings the alleged victim made during the interview. In Mrs. McCall's 9/5/18 response email, she states that the drawings with the body parts are the only drawings she is aware of the existence of and that she is in receipt of. I was provided only with the diagrams the forensic interviewer provided to the child to identify body parts. It is clear in the interview recording the child draws pictures and the interview repeatedly denies the child's request to take them home, with the forensic interviewer stating that she has to keep them. I would like those to be produced prior to the trial. I do not believe this will delay the trial.
7. I would like Mrs. McCall to produce all 54 pages of the DSS dictation. She produced 36 of the 54. She also redacted large portions of the same. Before the start of the trial, I am requesting she produces all 54 unredacted pages. I am fine with DOBs and addresses being redacted. I do not believe this will delay the trial.

As to the remainder of Mrs. McCall's pre-trial matters:

- A. I am not aware as to how the Rape Shield Statute comes into play here.
- B. As to the evidence from the separate (and related) case that Mrs. McCall provided me evidence on— she refused multiple times to provide me the evidence I requested. After being forced to take this to the administrative judge to be heard, Mrs. McCall eventually consented but conditioned my receipt on having this heard pre-trial. I refused to allow my receipt of the same be conditioned on a pretrial motion as the evidence was discoverable under Brady. Depending on the State's witnesses testimony, I may not need to introduce this evidence. The administrative judge specifically stated in her email that it would be up to you when you would hear the motion to exclude the evidence. These communications are documented in emails amongst the State, myself, and the admin judge.

Please let me know if you need anything further from me and have a great weekend.



**CLAWSON
STAUBES**
LLC

Jenny L. Barwick
Licensed in SC

Driving Instructions: [Using GPS](#) | [Print Map](#)

1000 E North St., Suite 200 | Greenville SC | 29601

Phone: 864 331 8940 Ext. 2402 | Fax: 864 232 2921

Website: www.clawsonandstaubes.com | Email: jbarwick@clawsonandstaubes.com |

Location: [Map](#)

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From: Hocker, Donald B. <dhockerj@sccourts.org>

Sent: Friday, August 16, 2019 9:36 AM

To: McCall, Britni <BrMcCall@greenvillecounty.org>

Cc: Jenny Barwick <jbarwick@clawsonandstaubes.com>; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Todd, Scott <ScTodd@greenvillecounty.org>

Subject: RE: State vs. Brandon Jerome Clark

Thank you for this information

From: McCall, Britni <BrMcCall@greenvillecounty.org>

Sent: Friday, August 16, 2019 9:12 AM

To: Hocker, Donald B. <dhockerj@sccourts.org>

Cc: jbarwick@clawsonandstaubes.com; Hocker, Donald B. Secretary (Regan A. Snow) <dhockersc@sccourts.org>; Hocker, Donald B. Law Clerk (Madison Hoffman) <dhockerlc@sccourts.org>; Todd, Scott <ScTodd@greenvillecounty.org>

Subject: RE: State vs. Brandon Jerome Clark

*** **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good Morning Judge Hocker,

The State will have a few pretrial matters to address on Monday, including the following:

- Motion for Admission of Out-of-Court Statement of a Child pursuant to Code Section 17-23-175 (Forensic Interview)
- Motion for Compliance with Rape Shield Laws
- The State provided to the Defense evidence from an unrelated matter that involved two of the State's witnesses. The State maintains that the evidence from that closed case is not discoverable in this case. We provided the evidence as a courtesy, with the understanding that we would address the evidence pretrial for Your Honor to make a determination as to its relevancy and admissibility in this case.

We look forward to working with you in Pickens. Thank you for your time.

Best Regards,

Britni M. McCall

Assistant Solicitor
13th Circuit Solicitor's Office
214 E Main Street, B120
Pickens, SC 29671
Phone: (864) 898-5570
Fax: (864) 898-5586
brmccall@greenvillecounty.org

From: Todd, Scott

Sent: Thursday, August 15, 2019 5:14 PM

To: Hocker, Donald B.

Cc: jbarwick@clawsonandstaubes.com; Hocker, Donald B. Secretary (Regan A. Snow); Hocker, Donald B. Law Clerk (Madison Hoffman); McCall, Britni

Subject: Re: State vs. Brandon Jerome Clark

I am just copying Britni McCall on this email thread. It is her case that I am sitting second chair on.

On Aug 15, 2019, at 4:26 PM, Hocker, Donald B. <dhockerj@sccourts.org> wrote:

CAUTION: This email is from an EXTERNAL source. Ensure you trust this sender before clicking on any links or attachments.

Jenny: I see on the docket that you are the defense lawyer in the above case that I will be presiding over next week. If you do not already know, Scott is a former law clerk of mine (2015-16). I do not have any problem presiding over this case. I routinely have a former law clerk appearing before me here in

Laurens and up until a few years ago, another former law clerk appearing before me. Just wanted to make sure you knew for whatever it is worth. I look forward to being in Pickens next week. Now, if there are any pretrial matters that we need to deal with Monday, a heads-up now would be helpful. Thx. (dbh)
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VIDEOTAPE TRANSCRIBED

INTERVIEWER AND A MINOR

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**COPY**

1 BEGINNING OF VIDEO:

2 THE INTERVIEWER: This room right here. And you  
3 can sit in that chair. Okay.

4 So, like I said, my name is Amber. It's  
5 just my job to talk to kids and make sure that  
6 they're safe. Okay?

7 So how do you spell your name?

8 MINUTE ONE:

9 THE MINOR: [REDACTED]

10 THE INTERVIEWER: [REDACTED]

11 THE MINOR: -- [REDACTED]

12 THE INTERVIEWER: How old are you?

13 THE MINOR: (Indicated)

14 THE INTERVIEWER: How many is that?

15 THE MINOR: One, two, three, four, five.

16 THE INTERVIEWER: Five? Okay.

17 THE MINOR: I know how to make a five.

18 THE INTERVIEWER: Do you?

19 THE MINOR: Uh-huh. Go up, down, and then --

20 THE INTERVIEWER: Oh, okay.

21 So, [REDACTED], before I ask you some  
22 questions, there's some things I want to tell you  
23 about this room. Okay?

24 THE MINOR: Okay.

25

1 THE INTERVIEWER: Do you see that black ball up  
2 there and this little metal plate over here? That's  
3 a video camera and a microphone. So right now I'm  
4 making a video, and that's just so that I remember  
5 everything that we talk about, and anyone whose job  
6 it is to make sure that you're safe can get a copy of  
7 that video.

8 And there is a lady that I work with, and  
9 she's in a room right now so she can hear us and she  
10 can see us, and that's just to make sure that I ask  
11 you all the questions that I need to. Okay?

12 MINUTE TWO:

13 THE MINOR: She's in the next room?

14 THE INTERVIEWER: She's not in the next room  
15 over, she's in a room that's way back there.

16 Okay. So do you have any questions about  
17 that?

18 THE MINOR: I do know my birthday.

19 THE INTERVIEWER: You know your birthday? Tell  
20 me your birthday.

21 THE MINOR: [REDACTED]

22 THE INTERVIEWER: [REDACTED]

23 THE MINOR: Yeah.

24 THE INTERVIEWER: Okay.

25 THE MINOR: And I know how to write a seven.

1 THE INTERVIEWER: Do you know how to write a  
2 seven? Write a seven.

3 THE MINOR: (Indicated)

4 THE INTERVIEWER: Okay. Thank you.

5 So, Abbi, I also have a few other things I  
6 want to tell you about this room. Okay?

7 THE MINOR: And my friends, I got two new  
8 friends, [REDACTED].

9 THE INTERVIEWER: Okay. [REDACTED] and [REDACTED] are  
10 your two new friends?

11 THE MINOR: Uh-huh. I know how to spell [REDACTED]  
12 name.

13 THE INTERVIEWER: Do you? Okay. How do you  
14 spell it?

15 THE MINOR: (Indicated)

16 THE INTERVIEWER: Okay. Well, thanks for writing  
17 that up there.

18 THE MINOR: [REDACTED]

19 MINUTE THREE:

20 THE INTERVIEWER: So, [REDACTED] while we're in this  
21 room today, it's really important that we only talk  
22 about things that really happened. Do you promise  
23 that you will only talk to me about things that  
24 really happened?

25 THE MINOR: (Nodded)

1 THE INTERVIEWER: Okay. And part of that means  
2 that if I ask you a question and you know the answer,  
3 I want you to tell me everything you know about that  
4 question. But I might ask you something that you  
5 don't know the answer to. So if I do that, you can  
6 just say, I don't know. You don't have to guess or  
7 make up anything. Okay?

8 THE MINOR: I know what color my nails are.  
9 They're kind of a -- color of fingers.

10 THE INTERVIEWER: Okay.

11 THE MINOR: Well, they got ripped off, too. This  
12 one is about to come off.

13 THE INTERVIEWER: That one's about to come off?  
14 Okay.

15 THE MINOR: And that one is about to come off.

16 THE INTERVIEWER: Well, let's practice and see  
17 how you would answer this question. Okay?

18 So if I were to ask you what is this puppy's  
19 name, what would you say?

20 THE MINOR: That's -- I don't know.

21 MINUTE FOUR:

22 THE INTERVIEWER: Because you have never met that  
23 puppy, so you don't know his name. So just like  
24 that, just say, I don't know. You don't have to  
25 guess or make up anything if you don't know.

1 THE MINOR: What's the next one?

2 THE INTERVIEWER: It's got another picture.

3 And so it's also important that you  
4 understand my questions. So if I ask you something  
5 and you don't know what I mean, you can say, I don't  
6 understand, and I can ask the question a different  
7 way. Okay?

8 THE MINOR: I know how to write a circle and  
9 shapes.

10 THE INTERVIEWER: Oh, okay. Well, maybe we'll do  
11 that in a little bit. Okay?

12 So let's practice this other thing. Okay?  
13 So if I were to ask you, [REDACTED] is there foliage in  
14 this picture, what would you say?

15 THE MINOR: I don't know.

16 THE INTERVIEWER: Do you know what foliage is?

17 THE MINOR: No.

18 THE INTERVIEWER: Let me ask it a different way.  
19 Are there leaves in this picture?

20 THE MINOR: Yeah.

21 THE INTERVIEWER: Where are the leaves at?

22 THE MINOR: (Indicated)

23 THE INTERVIEWER: Okay. So foliage is just a big  
24 word for leaves. So just like that, I can ask  
25 anything a different way if you don't know what I

1 mean. Okay?

2 It's also important that I get things right.

3 So if I say something wrong or mixed up, you can  
4 correct me. So let's practice that.

5 If I told you that this little girl is  
6 feeding this puppy a pizza, what would you say?

7 MINUTE FIVE:

8 THE MINOR: I don't know.

9 THE INTERVIEWER: Is that a pizza?

10 THE MINOR: No.

11 THE INTERVIEWER: What is that?

12 THE MINOR: Ice cream.

13 THE INTERVIEWER: Ice cream. So thank you for  
14 correcting me.

15 So can you do all of that stuff today?

16 THE MINOR: (Nodded)

17 THE INTERVIEWER: Okay. So first off, I just  
18 want you to tell me everything you did from the time  
19 you woke up until the time you got here.

20 THE MINOR: Well, there was somebody sticking  
21 their finger in my mouth.

22 THE INTERVIEWER: There was someone sticking  
23 their hand in your mouth?

24 THE MINOR: And there, there, and behind me.

25 (Indicated)

1 THE INTERVIEWER: Uh-huh.

2 THE MINOR: But they're never going to come back.  
3 It's my mom's boyfriend, his name is B, and it only  
4 gots one B.

5 THE INTERVIEWER: One B. Okay.

6 So your mom's boyfriend?

7 THE MINOR: His name is B.

8 THE INTERVIEWER: Okay. So tell me what happened  
9 with B.

10 THE MINOR: He stick his finger in my butt, the  
11 front and the back, and he sticks his finger in my  
12 mouth.

13 MINUTE SIX:

14 THE INTERVIEWER: Okay. When did that happen?

15 THE MINOR: When my mom was asleep and Sissy was  
16 asleep, I was screaming.

17 THE INTERVIEWER: Uh-huh.

18 THE MINOR: And there wasn't no -- there wasn't  
19 nobody coming downstairs.

20 THE INTERVIEWER: Okay. So did that happen with  
21 B one time or more than one time or something else?

22 THE MINOR: It was just one time.

23 THE INTERVIEWER: One time.

24 Where were you at when that happened?

25 THE MINOR: He got me out of the bed and took me



1 downstairs.

2 THE INTERVIEWER: Okay. And tell me about where  
3 you were downstairs.

4 THE MINOR: On the couch laying like this.

5 (Indicated)

6 THE INTERVIEWER: Like that?

7 THE MINOR: Yeah.

8 THE INTERVIEWER: Okay. And where was he at?

9 THE MINOR: He laying like this, and he stick his  
10 finger right here and right here. (Indicated)

11 THE INTERVIEWER: Okay. Tell me what your  
12 clothes were like when he did that.

13 THE MINOR: I was wearing this last night.

14 MINUTE SEVEN:

15 THE INTERVIEWER: Last night.

16 So when that happened with B, when he did  
17 that stuff on the couch, what were your clothes like?

18 THE MINOR: (Indicated)

19 THE INTERVIEWER: Like that?

20 THE MINOR: Yeah. And I know how to (Inaudible)  
21 like this.

22 THE INTERVIEWER: Like that? Okay.

23 THE MINOR: And my shirt.

24 THE INTERVIEWER: Okay. So did your clothes stay  
25 on or off or something else when he did that?

1 THE MINOR: They stayed on.

2 THE INTERVIEWER: Stayed on? Okay.

3 And when he did that --

4 THE MINOR: But my -- but he made me took my  
5 shorts off, not my shirt.

6 THE INTERVIEWER: Okay. He made you take your  
7 shorts off?

8 THE MINOR: Uh-huh.

9 THE INTERVIEWER: Did you have on anything  
10 underneath your shorts?

11 THE MINOR: Yeah, but I did have panties.

12 THE INTERVIEWER: You had panties?

13 THE MINOR: Yeah.

14 THE INTERVIEWER: Did you have to take those off  
15 or did they stay on or something else?

16 THE MINOR: I had keep them on but B took them  
17 off.

18 THE INTERVIEWER: B took them off? Okay.

19 And after he took them off, then what  
20 happened?

21 THE MINOR: He went back upstairs, put me back to  
22 bed.

23 THE INTERVIEWER: Put you back to bed? Okay.

24 THE MINOR: And he turned the TV off.

25 THE INTERVIEWER: Turned the TV off?

1 MINUTE EIGHT:

2 THE MINOR: And he told me what to do, but he  
3 don't tell me what to do. He's -- he's -- he's not  
4 my mom or my dad or my nanny.

5 THE INTERVIEWER: Okay. So what did he tell you  
6 to do?

7 THE MINOR: He told me -- he always told me to go  
8 get in a corner, he always told me to stand in  
9 time-out, he always tell me to lay down.

10 THE INTERVIEWER: Uh-huh. Okay.

11 And so when he was doing that stuff on the  
12 couch, what were his clothes like?

13 THE MINOR: Well, I do know one thing.

14 THE INTERVIEWER: Tell me about that.

15 THE MINOR: He was peeing on me.

16 THE INTERVIEWER: Peeing on you?

17 THE MINOR: (Indicated)

18 THE INTERVIEWER: Okay. Tell me about that.

19 THE MINOR: He -- and then he's sticking his  
20 finger in my butt.

21 THE INTERVIEWER: Okay. So he was peeing on you  
22 and then he stuck his finger in your butt?

23 What did he pee on you with?

24 MINUTE NINE:

25 THE MINOR: His big fat butt, big fat butt. And

1 I know how to write a butt, but I just can't right  
2 now.

3 THE INTERVIEWER: Okay.

4 THE MINOR: But I do know how to spell a butt,  
5 it's just got a B in it.

6 THE INTERVIEWER: Okay. What did his big fat  
7 butt look like?

8 THE MINOR: It was wiggling and it looked -- he  
9 was like (Indicated) his butt.

10 THE INTERVIEWER: His butt? Okay.

11 And did his clothes stay on or off or  
12 something else?

13 THE MINOR: Well, his shorts had a -- had a hole  
14 in it and then he peed on me.

15 THE INTERVIEWER: Peed on you. Okay.

16 Tell me what the pee looked like.

17 THE MINOR: It was -- looked like it's stinky  
18 socks.

19 THE INTERVIEWER: Stinky socks?

20 THE MINOR: (Nodded)

21 THE INTERVIEWER: Okay. Was the pee any certain  
22 color?

23 THE MINOR: They was like -- like the kind of  
24 color I'm wearing, I'm wearing blue and white.

25 (Indicated)

1 THE INTERVIEWER: That's okay, you don't have to  
2 show me. That's okay.

3 So he -- so he peed there.

4 MINUTE TEN:

5 THE INTERVIEWER: Where did he pee on you at?

6 THE MINOR: (Indicated)

7 THE INTERVIEWER: Right there and right there?

8 Okay.

9 What did that feel like when he did that?

10 THE MINOR: Feel like -- it felt like ice coming  
11 down my butt.

12 THE INTERVIEWER: Ice coming down your butt?

13 Okay.

14 And when he touched you there with his  
15 fingers, did his fingers do anything?

16 THE MINOR: I was open with my mouth like, and  
17 then he stick in his fingers, and I was like --  
18 (Indicated)

19 THE INTERVIEWER: Like that?

20 THE MINOR: And I bited him and he was like, ow.

21 THE INTERVIEWER: And then what happened?

22 THE MINOR: He hit me and he put me back to bed,  
23 turned the TV off, took my TV away from me.

24 THE INTERVIEWER: Okay. When you say that he hit  
25 you, tell me about that.

1 THE MINOR: He also -- hey, I know my ABC's, too.

2 THE INTERVIEWER: You know your ABC's, too?

3 THE MINOR: Yeah. And I can write them.

4 MINUTE ELEVEN:

5 THE INTERVIEWER: You can write your ABC's?

6 Okay. You can write your ABC's, and then I'll have  
7 some more questions for you. Okay?

8 THE MINOR: (Indicated)

9 THE INTERVIEWER: Where did you learn your ABC's  
10 at?

11 THE MINOR: At school.

12 THE INTERVIEWER: At school? Okay.

13 MINUTE TWELVE:

14 THE MINOR: And then L, and then N, O, P -- you  
15 write a P, and then Q, R --

16 THE INTERVIEWER: Uh-huh.

17 THE MINOR: -- R, and then S and T, U, V and W --  
18 it doesn't look like a W but it's okay.

19 MINUTE THIRTEEN:

20 THE INTERVIEWER: Okay. A W, uh-huh.

21 THE MINOR: W.

22 THE INTERVIEWER: Okay. So you know all your  
23 ABC's. Thank you for writing those.

24 I just --

25 THE MINOR: I also know how to write my name.

1 THE INTERVIEWER: You know how to write your  
2 name, too? Okay. Maybe we can do that in a little  
3 bit. Okay? I just have some more questions for you.

4 So I want to make sure that I understand  
5 what you said so far. Okay? And you can correct me  
6 if I get anything wrong.

7 So you said that B came and got you from  
8 your room and he took you downstairs on the couch.  
9 Did I get that right?

10 THE MINOR: No -- yeah.

11 THE INTERVIEWER: Okay. And then you said that  
12 he did some stuff with his fingers. Where did he do  
13 the stuff with his fingers?

14 THE MINOR: (Indicated)

15 THE INTERVIEWER: There and there.

16 And what did he do with his fingers there  
17 and there?

18 THE MINOR: (Indicated)

19 MINUTE FOURTEEN:

20 THE INTERVIEWER: You don't have to show me.  
21 Tell me what he did. Okay?

22 THE MINOR: Like this. (Indicated)

23 THE INTERVIEWER: Okay. You don't have to show  
24 me.

25 THE MINOR: But like he stucked his fingers and I

1       wasn't -- (inaudible)

2           THE INTERVIEWER: And he stuck his fingers in  
3       there?

4           THE MINOR: And I was scared down there.

5           THE INTERVIEWER: Okay. What did it feel like  
6       when he stuck his fingers there?

7           THE MINOR: It feeled like a rock in my butt.

8           THE INTERVIEWER: A rock in your butt? Okay.

9                 Did he say anything to you when he did that?

10          THE MINOR: (Indicate)

11          THE INTERVIEWER: Tell me what he said.

12          THE MINOR: He said, go back to bed, because he  
13       busted it, he busted my TV and my DVD player, but it  
14       still work.

15          THE INTERVIEWER: Okay.

16          THE MINOR: And busted it again.

17          THE INTERVIEWER: When did he bust it?

18          THE MINOR: A long time ago.

19          THE INTERVIEWER: Uh-huh. Okay.

20          THE MINOR: He was like -- (Indicated). And then  
21       he bam it.

22          THE INTERVIEWER: Okay. So you also said  
23       something about how he hit you. Did I get that  
24       right?

25          THE MINOR: Yeah.



1 THE INTERVIEWER: Tell me what he did when he hit  
2 you.

3 MINUTE FIFTEEN:

4 THE MINOR: He hit my shoes I was wearing at  
5 night, and he (Audible) skirt.

6 THE INTERVIEWER: Uh-huh.

7 THE MINOR: But -- but I was scared.

8 THE INTERVIEWER: Okay. Okay. And did he --

9 THE MINOR: I don't want to talk about anymore of  
10 this because -- because B is already gone at my mom's  
11 house.

12 THE INTERVIEWER: He's already gone? Okay.

13 Did he say that any -- did he say for you  
14 not to talk about it?

15 THE MINOR: Yeah, but I wanted to, and I keep it  
16 a secret.

17 THE INTERVIEWER: You kept it a secret?

18 THE MINOR: Yeah. Then I took it to my mom.

19 THE INTERVIEWER: You talked to your mommy?

20 THE MINOR: But not B, because he was there.

21 THE INTERVIEWER: You didn't talk to B, you told  
22 your mommy?

23 When did you tell your mommy?

24 THE MINOR: A long time ago.^^^

25 THE INTERVIEWER: Uh-huh. Tell me what you told

1 her.

2 THE MINOR: I told her that B -- I was dreaming  
3 about it though.

4 MINUTE SIXTEEN:

5 THE INTERVIEWER: Uh-huh.

6 THE MINOR: He hit me and -- I don't know. So  
7 I -- but I remember about my dad's girlfriend, Sarah,  
8 and my aunt. A long time ago, Sarah was inside my  
9 four -- my school, and when she went in they was  
10 calling for Sarah but they was -- Sarah was not  
11 available, and she was probably in jail, so we went  
12 outside, got in the car and then came out -- Sarah  
13 was out, and then we finally found her.

14 THE INTERVIEWER: Oh, okay.

15 So, [REDACTED] when this stuff happened with B,  
16 how old were you?

17 THE MINOR: I was five.

18 THE INTERVIEWER: You were five?

19 MINUTE SEVENTEEN:

20 THE MINOR: Yeah. But I didn't turn five but --  
21 I was four, but my -- my birthday came up, it was  
22 just in (Audible) and I was -- I was like -- B was  
23 saying happy birthday to me.

24 THE INTERVIEWER: Okay. And did this happen  
25 before your birthday or after your birthday?

1 THE MINOR: It was -- my birthday was in -- in  
2 the fourth day.

3 THE INTERVIEWER: The fourth day?

4 THE MINOR: Uh-huh.

5 THE INTERVIEWER: Okay. Okay. And so --

6 THE MINOR: I know how to write a four.

7 THE INTERVIEWER: Okay. So when you said that  
8 you told your mama about what happened with B, did  
9 you tell her the same thing you told me or something  
10 different or something else?

11 THE MINOR: I told her the same thing I told to  
12 you.

13 MINUTE EIGHTEEN:

14 THE INTERVIEWER: And after you told your mama  
15 that stuff, then what happened?

16 THE MINOR: She got mad at me but she wasn't  
17 hollering at me.

18 THE INTERVIEWER: She got mad at you?

19 THE MINOR: Yeah, but she didn't holler at me.

20 THE INTERVIEWER: How do you know that she was  
21 mad at you?

22 THE MINOR: I don't know, because I was trying to  
23 get the secret, but my mama wouldn't let me.

24 THE INTERVIEWER: Did you tell anybody else about  
25 what happened?

1 THE MINOR: Well, I told my dad.

2 THE INTERVIEWER: You told your dad?

3 THE MINOR: Yeah.

4 THE INTERVIEWER: And what happened after you  
5 told your dad?

6 THE MINOR: She -- he was about -- he -- my mom  
7 was talking to B, and he was like -- and she was  
8 like, B, you -- did you stick your fingers in Abbi's  
9 butt?

10 THE INTERVIEWER: Uh-huh.

11 THE MINOR: And he said -- I don't know what he  
12 said, but my mom sent -- sent a picture of B on my  
13 dad's phone, Facebook.

14 MINUTE NINETEEN:

15 THE INTERVIEWER: Uh-huh.

16 THE MINOR: I was -- she -- he noticed a picture  
17 of B.

18 THE INTERVIEWER: Okay.

19 THE MINOR: And then he was like -- my dad was  
20 like, I will rip up that guy.

21 THE INTERVIEWER: Okay.

22 THE MINOR: (Inaudible) In my house because I  
23 don't want him.

24 THE INTERVIEWER: Okay. Okay. Now, had you seen  
25 B since you told your mom and your dad?

1 THE MINOR: No.

2 THE INTERVIEWER: Okay. Okay. So, [REDACTED] I have  
3 some other questions I want to ask you. Okay? And  
4 I'm going to bring out these few pictures that I have  
5 got, and one is of a boy and one is of a girl.

6 So which one is a girl?

7 THE MINOR: (Indicated)

8 THE INTERVIEWER: And which one is of a boy?

9 THE MINOR: (Indicated)

10 THE INTERVIEWER: And which one is like you?

11 THE MINOR: (Indicated)

12 THE INTERVIEWER: So I'm going to ask you about  
13 different body parts. Okay?

14 So what are those?

15 THE MINOR: Eyes.

16 THE INTERVIEWER: Eyes.

17 And what's that?

18 THE MINOR: Mouth.

19 THE INTERVIEWER: Mouth.

20 What are those?

21 THE MINOR: Boobies.

22 MINUTE TWENTY:

23 THE INTERVIEWER: Boobies. Okay.

24 And what's this?

25 THE MINOR: Arm.

1 THE INTERVIEWER: Arm.

2 And what's this?

3 THE MINOR: Your butt.

4 THE INTERVIEWER: Your butt? Okay.

5 What's this?

6 THE MINOR: Your feet.

7 THE INTERVIEWER: Feet? Okay.

8 And I will flip her over the other way.

9 What's this right here?

10 THE MINOR: Your back.

11 THE INTERVIEWER: Your back.

12 And what's this?

13 THE MINOR: Your butt.

14 THE INTERVIEWER: Your butt? Okay.

15 And then we're going to do the same thing  
16 for this boy. Okay? And what are those?

17 THE MINOR: Eyes.

18 THE INTERVIEWER: Eyes.

19 And what is this?

20 THE MINOR: Mouth.

21 THE INTERVIEWER: Mouth?

22 THE MINOR: You forgot to do that eye.

23 THE INTERVIEWER: Oh, that eye, to.

24 And what is that?

25 THE MINOR: Boobies.

1 THE INTERVIEWER: Boobies.

2 THE MINOR: Why don't you write him a shirt?

3 THE INTERVIEWER: Write him a shirt? Because I  
4 just want to know what you call different body parts.

5 So what is that?

6 THE MINOR: Hand.

7 THE INTERVIEWER: Hand?

8 THE MINOR: Make sure you get that because --

9 THE INTERVIEWER: That one, too. Okay.

10 And what is this?

11 THE MINOR: Your butt.

12 THE INTERVIEWER: Butt? Okay.

13 And what's this?

14 THE MINOR: Your feet, both of the feet.

15 MINUTE TWENTY-ONE:

16 THE INTERVIEWER: Both feet. Okay.

17 And I'm going to flip him over, and what is  
18 this?

19 THE MINOR: Butt, back.

20 THE INTERVIEWER: Back. Okay.

21 And this?

22 THE MINOR: Butt.

23 THE INTERVIEWER: Butt? Okay.

24 THE MINOR: And legs.

25 THE INTERVIEWER: Legs?

1 THE MINOR: Don't forget the legs.

2 THE INTERVIEWER: Thank you for not letting me  
3 forget the legs.

4 Okay. So I want to ask you some other  
5 questions about this. Okay? And I'm going to open  
6 her up so we can see her on the front and we can see  
7 her on the back. Okay?

8 So you were telling me the places that B  
9 touched with his fingers. Are they on here?

10 THE MINOR: (Indicated)

11 THE INTERVIEWER: Where are those at?

12 THE MINOR: (Indicated)

13 THE INTERVIEWER: Right there? Right there?

14 So this butt right here and this butt right  
15 here?

16 THE MINOR: (Indicated)

17 THE INTERVIEWER: You also said that he did  
18 something with your mouth. Did I get that right?

19 THE MINOR: (Indicated)

20 THE INTERVIEWER: Is that on here?

21 THE MINOR: (Indicated)

22 THE INTERVIEWER: Where is that at?

23 THE MINOR: (Indicated)

24 THE INTERVIEWER: Right there? Okay.

25 And you said that --



1 THE MINOR: He touched my hair, too.

2 THE INTERVIEWER: He touched your hair?

3 THE MINOR: Front and the back.

4 THE INTERVIEWER: Okay. What did he do when he  
5 touched your hair?

6 MINUTE TWENTY-TWO:

7 THE MINOR: He made it crazy.

8 THE INTERVIEWER: Made crazy?

9 THE MINOR: And I was like, B, stop.

10 THE INTERVIEWER: Okay. Okay. So when he  
11 touched you in these places with his fingers, did he  
12 do anything else on those places?

13 THE MINOR: Well, he -- well, yeah, he did. Hit  
14 me with his finger. He was like -- he scraped me  
15 with his finger. He was like -- (Indicated)

16 THE INTERVIEWER: Scraped like that?

17 THE MINOR: (Indicated)

18 THE INTERVIEWER: Did he say anything to you when  
19 he did that?

20 THE MINOR: Yeah, but I was covered in blood,  
21 covered all the way here, down to here.

22 THE INTERVIEWER: Down there? Okay.

23 And did he do anything to your boobies?

24 THE MINOR: (Indicated) This.

25 THE INTERVIEWER: Did he do anything to those?

1 THE MINOR: Yeah.

2 THE INTERVIEWER: Tell me about that.

3 THE MINOR: (Indicated) This.

4 THE INTERVIEWER: That? Okay.

5 And --

6 THE MINOR: He poked my eyelashes. He said that  
7 they're ugly.

8 THE INTERVIEWER: They were ugly? Okay.

9 And you also said that he peed somewhere on  
10 you. Did I get that right?

11 MINUTE TWENTY-THREE:

12 THE MINOR: Yeah.

13 THE INTERVIEWER: Where did he pee on you at?

14 THE MINOR: (Indicated)

15 THE INTERVIEWER: Right there?

16 THE MINOR: (Indicated)

17 THE INTERVIEWER: So this butt and this butt,  
18 too? Okay.

19 THE MINOR: I want to hold it.

20 THE INTERVIEWER: You want to hold it? Okay.

21 THE MINOR: I like to hold stuff.

22 THE INTERVIEWER: Okay. And then I also want to  
23 bring out this picture of this boy, and I'm going to  
24 hold it so you can see him on the front and the back.  
25 Okay?

1           And so when you said that he peed on you, is  
2   what he peed on you with on this picture?

3           THE MINOR:   He did, but I'm not a boy.

4           THE INTERVIEWER:   You're not a boy, no.

5           So when he peed on you, is there something  
6   on here that he peed on you with?

7           THE MINOR:   He peed on my -- on my hand and my  
8   butt.

9           THE INTERVIEWER:   On your butt?

10          THE MINOR:   And my feet and my legs and my back.

11          THE INTERVIEWER:   So what did he pee on you with?

12          THE MINOR:   His butt.

13          THE INTERVIEWER:   Is that on here?

14          THE MINOR:   (Indicated)

15          THE INTERVIEWER:   That?   Okay.

16                Okay.   Did he make you do anything to his  
17   butt?

18   MINUTE TWENTY-FOUR:

19           THE MINOR:   Yeah.   He told me to stick his  
20   fingers in my butt -- in his butt.

21           THE INTERVIEWER:   He told you to stick your  
22   fingers in his butt?

23           THE MINOR:   Yeah, but I didn't want to.

24           THE INTERVIEWER:   Did you -- did he make you do  
25   that?

1 THE MINOR: Yeah.

2 THE INTERVIEWER: Tell me about that.

3 THE MINOR: I want to talk to -- about this  
4 tomorrow.

5 THE INTERVIEWER: You want to talk about it  
6 tomorrow?

7 Okay. Well, I just have a couple more  
8 questions for you. Okay?

9 So when he said that he wanted you to stick  
10 his -- your fingers in his butt, is that butt on  
11 here?

12 THE MINOR: I know how to draw a rainbow.

13 THE INTERVIEWER: Okay. You want to draw a  
14 rainbow?

15 THE MINOR: Yeah.

16 THE INTERVIEWER: Okay. You can draw a rainbow,  
17 and then I will have a few more questions for you.  
18 Okay? I will flip this over for you.

19 (Inaudible)

20 THE INTERVIEWER: So there you go.

21 THE MINOR: I need more color.

22 THE INTERVIEWER: You need some more colors?

23 Well, I've got that.

24 THE MINOR: And I need greens.

25 THE INTERVIEWER: Blues and green. Okay.

1 THE MINOR: And red.

2 THE INTERVIEWER: Green.

3 THE MINOR: There is a green and blue down there.

4 THE INTERVIEWER: I have got this. Okay.

5 MINUTE TWENTY-FIVE:

6 So, Abbi, what I'm going to do is I'm going  
7 to step out for one second and you can draw.

8 THE MINOR: And I need orange, too, and pink.

9 THE INTERVIEWER: How about that, they're all  
10 right there. Does that work?

11 Okay. And then when I get back, I'm going  
12 to have a few more questions for you. Okay? You can  
13 draw while I'm gone.

14 THE MINOR: Okay.

15 THE INTERVIEWER: Thanks for talking to me so  
16 far, [REDACTED]

17 THE MINOR: [REDACTED]

18 THE INTERVIEWER: [REDACTED] Thank you for  
19 correcting me.

20 THE MINOR: You're welcome.

21 (Interviewer steps out)

22 THE MINOR: I'm going to use this color to  
23 make --

24 MINUTE TWENTY-NINE:

25 (Interviewer comes back)

1 THE INTERVIEWER: Okay. I'm back. Thanks for  
2 waiting while I was gone.

3 THE MINOR: I'm making a girl with short hair.

4 THE INTERVIEWER: You're drawing a girl?

5 THE MINOR: Yeah, with short hair. And the grass  
6 and the sky.

7 THE INTERVIEWER: Oh, okay.

8 THE MINOR: And the sun.

9 THE INTERVIEWER: Well, you can keep drawing as  
10 long as you keep answering my questions. Okay? Do  
11 you want to do that?

12 THE MINOR: Yeah.

13 THE INTERVIEWER: Okay. So earlier -- so earlier  
14 you were talking to me about some stuff that B wanted  
15 you to do to him. Did I get that right?

16 THE MINOR: Yeah.

17 THE INTERVIEWER: And you were saying that he  
18 wanted you to stick your fingers in his butt?

19 THE MINOR: Uh-huh.

20 THE INTERVIEWER: Did he make you do that?

21 THE MINOR: Yeah.

22 THE INTERVIEWER: Yeah. Do you think so?

23 THE MINOR: Uh-huh.

24 THE INTERVIEWER: Okay. And when he made you do  
25 that, is that on here that he made you do that to

1       you?

2       MINUTE THIRTY:

3           THE MINOR: Well, he is a boy. He got that kind  
4       of butt.

5           THE INTERVIEWER: He's got that kind of butt?  
6       Okay.

7           So what did he want you to do with that  
8       butt?

9           THE MINOR: Circle his butt with a pen.

10          THE INTERVIEWER: Circle it with a pen?

11          THE MINOR: Yeah, he wanted me to write his butt.

12          THE INTERVIEWER: Okay. Okay.

13                Did he want you to do anything else to him  
14       on any other part of you?

15          THE MINOR: Yeah, he wanted me to stick my  
16       fingers in his mouth, but then he said no, and then I  
17       did.

18          THE INTERVIEWER: And you did?

19          THE MINOR: He was mad at me, and he busted my  
20       TV.

21          THE INTERVIEWER: He busted your TV?

22          THE MINOR: Yeah, but it still works.

23          THE INTERVIEWER: Okay. Now, did you ever see B  
24       do that stuff to anybody else?

25          THE MINOR: Yeah.

1 THE INTERVIEWER: Tell me about that.

2 THE MINOR: He did it to my mommy.

3 THE INTERVIEWER: Tell me what he did to your  
4 mommy.

5 THE MINOR: He busted my mom's face wide open,  
6 and I was like, Mommy, are you okay? And she had  
7 blood coming on her eye.

8 MINUTE THIRTY-ONE:

9 THE INTERVIEWER: Uh-huh.

10 THE MINOR: And I was like -- I was calling my  
11 nanny on the phone. I met my friend Lydia on the  
12 phone.

13 THE INTERVIEWER: Uh-huh.

14 THE MINOR: And we -- she say -- and then Lydia  
15 will say -- will say this.

16 THE INTERVIEWER: Okay.

17 THE MINOR: She said this. I was talking with  
18 [REDACTED], and I was like, [REDACTED], will you come and pick  
19 me up and my mommy up, and I said, [REDACTED], because my  
20 mommy's -- my mommy's eye is filled with blood.

21 THE INTERVIEWER: Okay. And how did that happen?

22 THE MINOR: A long time ago.

23 THE INTERVIEWER: It happened a long time ago?

24 Okay.

25 How do you know that that happened?



1 THE MINOR: Because it was in real life.

2 MINUTE THIRTY-TWO:

3 THE INTERVIEWER: Did you see it happen or did  
4 you hear about it or something else?

5 THE MINOR: I heard about it.

6 THE INTERVIEWER: Heard about it?

7 What did you hear?

8 THE MINOR: I hear big giant noise, I turn and --  
9 my mom turned the light on and there was a big scary  
10 guy, he knocked out my mommy.

11 THE INTERVIEWER: Who was the scary guy?

12 THE MINOR: B.

13 THE INTERVIEWER: B?

14 THE MINOR: Yeah. Knocked my mama's head wide  
15 open.

16 THE INTERVIEWER: Okay.

17 THE MINOR: She had blood coming all around right  
18 here. (Indicated)

19 THE INTERVIEWER: Like that?

20 THE MINOR: To right here.

21 THE INTERVIEWER: Okay.

22 THE MINOR: And I had to took her to the  
23 hospital.

24 THE INTERVIEWER: Okay.

25 THE MINOR: I was driving her car.

1 THE INTERVIEWER: Okay. So remember, we can only  
2 talk about things that really happened in here.  
3 Okay?

4 So did you really drive a car?

5 THE MINOR: Yeah.

6 THE INTERVIEWER: Okay. So, [REDACTED], have you ever  
7 seen B touch anybody else on these places?

8 THE MINOR: No.

9 THE INTERVIEWER: Have you ever seen B touch your  
10 sissy on those places?

11 MINUTE THIRTY-THREE:

12 THE MINOR: Yeah.

13 THE INTERVIEWER: Tell me about that.

14 THE MINOR: I'll have to ask Lily (Inaudible).

15 THE INTERVIEWER: Have you ever seen that happen?

16 THE MINOR: No, I have got to ask her.

17 THE INTERVIEWER: You have got to ask her?

18 THE MINOR: Uh-huh.

19 THE INTERVIEWER: Okay.

20 THE MINOR: And see if she says yes, if she says  
21 no, if she says yes.

22 THE INTERVIEWER: Okay. Okay. So --

23 THE MINOR: But she heard it.

24 THE INTERVIEWER: She heard what?

25 THE MINOR: She heard me.

1 THE INTERVIEWER: Tell me about that.

2 THE MINOR: She was upstairs sleeping and I was  
3 screaming. She came downstairs and she was like, B,  
4 will you shut up. And we looked at her and looked at  
5 me, and in the meantime I was like dead, but then I  
6 came back alive, and I took my mom to the hospital  
7 because she was dead, she wasn't asleep.

8 THE INTERVIEWER: Okay. Okay.

9 THE MINOR: And B got out of my house, so --

10 (Inaudible)

11 THE INTERVIEWER: When you said that this stuff  
12 was happening with B on the couch, you said your  
13 sissy and your mommy were asleep. Did I get that  
14 right?

15 MINUTE THIRTY-FOUR:

16 THE MINOR: Uh-huh.

17 THE INTERVIEWER: Was anybody else home when that  
18 happened?

19 THE MINOR: No.

20 THE INTERVIEWER: Okay. Okay. So, Abbigail, has  
21 anyone told you what to say to me today?

22 THE MINOR: Yeah.

23 THE INTERVIEWER: Tell me about that.

24 THE MINOR: My nanny, my daddy and my mommy.

25 THE INTERVIEWER: What have they told you to say?

1 THE MINOR: They told me to say the same thing  
2 that I just told you.

3 THE INTERVIEWER: Okay. And did that stuff  
4 really happen?

5 THE MINOR: Yeah.

6 THE INTERVIEWER: Okay. What did they tell you  
7 about telling me that?

8 THE MINOR: I don't know, but it didn't really  
9 come in life, but I really driving my mom's car.

10 THE INTERVIEWER: Okay. So what did you know  
11 about coming to talk to me today?

12 THE MINOR: All about B because B's mean to me.

13 THE INTERVIEWER: Uh-huh.

14 THE MINOR: I look really pretty. You want me to  
15 make you a dress?

16 THE INTERVIEWER: Okay.

17 THE MINOR: I'm in a skirt.

18 MINUTE THIRTY-FIVE:

19 THE INTERVIEWER: And has anyone told you what  
20 not to say to me today?

21 THE MINOR: Nobody said I should tell nobody  
22 nothing about B, but my mom told me to tell my dad  
23 nothing about B, but I wanted to.

24 THE INTERVIEWER: You wanted to?

25 Your mom told you not to tell about B but

1       you wanted to. Did I get that right?

2           THE MINOR: Yeah.

3           THE INTERVIEWER: Okay. And then you told your  
4       dad about B. Did I get that right?

5           THE MINOR: Yeah.

6           THE INTERVIEWER: What happened after you told  
7       your dad about B?

8           THE MINOR: I don't know what was in there.

9           THE INTERVIEWER: Okay. Now, has anything else  
10       happened with B that you haven't told me about?

11          THE MINOR: He was acting crazy on my shirt. He  
12       was -- he was ripping it.

13          THE INTERVIEWER: Ripping it? When did he rip  
14       it?

15          THE MINOR: He was like (Indicated) and then it  
16       ripped with a hole.

17          THE INTERVIEWER: Ripped with a hole?

18          THE MINOR: Uh-huh.

19          THE INTERVIEWER: And was that the same time that  
20       happened on the couch or a different time?

21       MINUTE THIRTY-SIX:

22          THE MINOR: A different time.

23          THE INTERVIEWER: A different time? Okay.

24               Now, has anything else happened with B that  
25       I haven't told me about?

1 THE MINOR: No.

2 THE INTERVIEWER: Okay. Is there anything that's  
3 happened with anybody else that you haven't told me  
4 about?

5 THE MINOR: No.

6 THE INTERVIEWER: And has anyone else ever  
7 touched you on those places?

8 THE MINOR: No.

9 THE INTERVIEWER: Okay.

10 THE MINOR: Can I take this home with me?

11 THE INTERVIEWER: I have to keep it.

12 THE MINOR: No, not the board, the --

13 THE INTERVIEWER: The picture? I have to keep  
14 anything we draw in here.

15 But, so [REDACTED], has anyone left any, like,  
16 marks or bruises on you?

17 THE MINOR: Uh-huh.

18 THE INTERVIEWER: Tell me about that.

19 THE MINOR: I don't really know, but I do know  
20 one part.

21 THE INTERVIEWER: Tell me about that.

22 THE MINOR: I do know about the hitting me on my  
23 head.

24 THE INTERVIEWER: Hitting you on the head?

25 THE MINOR: Yeah. And he knocking me out wide

1 open.

2 MINUTE THIRTY-SEVEN:

3 THE INTERVIEWER: What did he hit you on the head  
4 with?

5 THE MINOR: A big giant thing. He went --  
6 (Indicated)

7 THE INTERVIEWER: Like that?

8 THE MINOR: Uh-huh.

9 THE INTERVIEWER: What did the giant thing look  
10 like?

11 THE MINOR: It was like a big baseball thingy.

12 THE INTERVIEWER: Uh-huh.

13 THE MINOR: But it was his sport ball.

14 THE INTERVIEWER: His sport ball?

15 THE MINOR: Uh-huh.

16 THE INTERVIEWER: Okay.

17 THE MINOR: And knocked me in the head with it.

18 THE INTERVIEWER: Did that leave any marks or  
19 bruises on your head?

20 THE MINOR: No.

21 THE INTERVIEWER: Okay. And has anyone ever  
22 shown you any, like, movies on a computer or a  
23 television with people with their clothes off?

24 THE MINOR: Yeah.

25 THE INTERVIEWER: Tell me about that.

1 THE MINOR: Well, I watched it when I was a  
2 little girl.

3 THE INTERVIEWER: What did you watch?

4 THE MINOR: A scary movie about a little girl got  
5 dead.

6 THE INTERVIEWER: Uh-huh.

7 THE MINOR: And her mom didn't come back alive  
8 but she did.

9 THE INTERVIEWER: Who did you watch that with?

10 THE MINOR: My mommy when I was little, but I  
11 didn't like it so I wanted to watch Bubble Guppies.

12 THE INTERVIEWER: Okay.

13 MINUTE THIRTY-EIGHT:

14 THE MINOR: Because I really like Bubble Guppies.  
15 I had a Bubble Guppies birthday party.

16 THE INTERVIEWER: Okay.

17 THE MINOR: And I was three.

18 THE INTERVIEWER: Okay.

19 THE MINOR: But now I turn -- I was four, then I  
20 went five and I will be six.

21 THE INTERVIEWER: So, [REDACTED] has anyone ever  
22 taken any pictures or movies of you without your  
23 clothes on?

24 THE MINOR: Yeah.

25 THE INTERVIEWER: Tell me about that.



1 THE MINOR: Well, B was taking pictures of me  
2 with my shorts off.

3 THE INTERVIEWER: When did he take that picture  
4 of you?

5 THE MINOR: A long time ago.

6 THE INTERVIEWER: And was that the same time the  
7 accident happened on the couch or a different time or  
8 something else?

9 THE MINOR: A different time.

10 THE INTERVIEWER: Different time.

11 Did you have on anything underneath your  
12 shorts?

13 THE MINOR: Yeah.

14 THE INTERVIEWER: What did you have on?

15 THE MINOR: I don't know. I'm not going to say.

16 THE INTERVIEWER: What did he take the picture  
17 with?

18 THE MINOR: His own eyes.

19 THE INTERVIEWER: His own eyes?

20 THE MINOR: Yeah, with his eyes, because his eyes  
21 got a camera.

22 THE INTERVIEWER: His eyes got a camera? Okay.

23 And is there anything else that you want me  
24 to know about B or anybody else?

25 MINUTE THIRTY-NINE:

1 THE MINOR: That's all.

2 THE INTERVIEWER: That's all? Okay. So,  
3 [REDACTED], just -- [REDACTED], I've only got two more  
4 questions for you then. Okay?

5 THE MINOR: Okay.

6 THE INTERVIEWER: So if something were to happen  
7 to you that you didn't like or that hurt you --

8 THE MINOR: That hurt me?

9 THE INTERVIEWER: Yeah.

10 -- who could you talk to about that?

11 THE MINOR: My mommy. That was the only person  
12 that wasn't with a B, but now -- (Inaudible).

13 THE INTERVIEWER: You could talk to your mommy,  
14 you could also talk to somebody at school, like a  
15 teacher at --

16 THE MINOR: Well, I couldn't, I couldn't talk  
17 about my butt.

18 THE INTERVIEWER: Why can't you talk about your  
19 butt?

20 THE MINOR: My dad tell me not to but I did it.

21 THE INTERVIEWER: Your dad told you not to what?

22 THE MINOR: Tell my friends at school, but I  
23 wanted to and I told them.

24 THE INTERVIEWER: Okay. Okay. So I have asked  
25 you a lot of questions today, [REDACTED]. Is there

1 anything you want to ask me?

2 THE MINOR: Yeah. Do you like this picture?

3 THE INTERVIEWER: I do.

4 THE MINOR: I was going to take it home because I  
5 wanted to.

6 MINUTE FORTY:

7 THE INTERVIEWER: I know. I have to keep it  
8 though. Okay?

9 Did you have any other questions?

10 THE MINOR: No. I want to write my name on the  
11 back.

12 THE INTERVIEWER: You can write your name right  
13 here.

14 THE MINOR: I didn't even get to use this color.  
15 Well, yeah, because I wanted to do my last name, too.

16 THE INTERVIEWER: Okay.

17 THE MINOR: Because --

18 THE INTERVIEWER: We're going to go back out to  
19 the waiting room. Okay?

20 THE MINOR: Everybody call me [REDACTED]

21 THE INTERVIEWER: [REDACTED]?

22 THE MINOR: Uh-huh. But my name doesn't begin  
23 this letter.

24 THE INTERVIEWER: Okay.

25 THE MINOR: [REDACTED] called me [REDACTED] but I call

1 my name [REDACTED].

2 THE INTERVIEWER: [REDACTED]? Okay.

3 THE MINOR: I don't want to be (Inaudible) and  
4 Jamie. God bless.

5 MINUTE FORTY-ONE:

6 THE INTERVIEWER: Okay. Okay. Well, we can go  
7 back out to the waiting room. Thank you for talking  
8 to me today, [REDACTED].

9 THE MINOR: You're welcome.

10 THE INTERVIEWER: Okay.

11 THE MINOR: I want to take my picture home.

12 THE INTERVIEWER: I have to keep it. Okay? We  
13 can go --

14 THE MINOR: My picture is pretty.

15 THE INTERVIEWER: Yeah, it is pretty, but I've  
16 got to keep it. Okay? We've got some other stuff  
17 that you can draw with out here. Okay?

18 THE MINOR: Okay.

19 THE INTERVIEWER: Thanks for talking to me today.

20 (End of videotape)

21

22

23

24

25

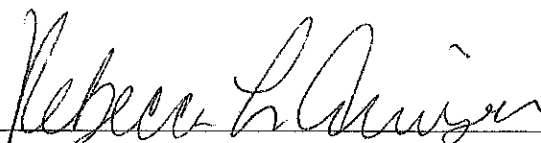
1 STATE OF SOUTH CAROLINA  
2 COUNTY OF GREENVILLE.  
3  
4

5 REPORTER'S CERTIFICATE

6 I, Rebecca L. Arrison, a Notary Public in and for  
7 the State of South Carolina, do hereby certify that  
8 the foregoing is a true and correct transcription of  
9 video, to the best of my ability.  
10

11 I further certify that I am neither attorney or  
12 counsel for, nor related to or employed by, any  
13 attorney or counsel employed by the parties hereto or  
14 financially interested in the action.  
15

16 IN WITNESS WHEREOF, I have hereto set my hand,  
17 this 10th day of July, 2019.  
18

19  
20 

21 Rebecca L. Arrison, Notary Public

22 My Commission Expires: 3/28/2027  
23  
24  
25

STATE OF SOUTH CAROLINA )

INDICTMENT FOR

COUNTY OF PICKENS )

CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on

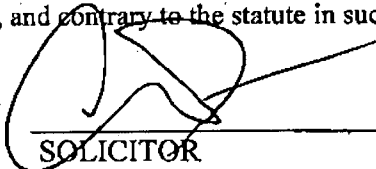
AUG 22 2017

the Grand Jurors of Pickens

County present upon their oath:

That BRANDON JEROME CLARK did in Pickens County, on or about or between the dates of February 20, 2017 and March 20, 2017, commit a sexual battery on A.N.G., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
SOLICITOR

BAR # 78892

## WITNESSES

Renee Elrod

Pickens Police Department

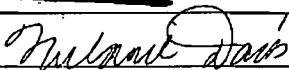
5/1/2017

ARREST WARRANT NUMBER  
2017A3920700075

## ACTION OF GRAND JURY

TRUE FILE

Date: AUG 22 2017

  
Foreperson of Grand Jury

## VERDICT

Guilty

  
Foreperson of Petit Jury  
Date:DOCKET NO. 2017-GS-39-2245  
CLJ

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 22 2017

TERM 2017

THE STATE

vs.

BRANDON JEROME CLARK

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR  
FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

RECEIVED  
SEP 03 2019  
SC Court of Appeals

## STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 539

COUNTY OF Pickens  
STATE VS.  
Brandon Jerome ClarkINDICTMENT/CASE#: 2017GS3902245A/W#: 2017A3920700075Date of Offense: 2/20/2017S.C. Code § 16-03-0655(A)(1)CDR Code #: 0385

AKA:

Race: BLACK Sex: M Age: 28DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Sex / Criminal sexual conduct with minor or Attempt - victim under 11 yrs of age - First degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ \$17-25-45  
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Britni McCall  
McCall, Britni

101300

SC Bar#

Defendant

BARWICK, JENNY  
Attorney for Defendant

76128

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,  
which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: \_\_\_\_\_☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic  
Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

|                                        |         |    |        |
|----------------------------------------|---------|----|--------|
| *Fine:                                 |         | \$ |        |
| §14-1-206 (Assessments 107.5 %)        |         | \$ |        |
| §14-1-211(A)(1) (Conv. Surcharge)      | \$100   | \$ | 100.00 |
| §14-1-211(A)(2) (DUI Surcharge)        | \$100   | \$ |        |
| §56-5-2995 (DUI Assessment)            | \$12    | \$ |        |
| §56-1-286 (DUI Breath Test)            | \$25    | \$ |        |
| Proviso (Public Def/Probation)         | \$500   | \$ |        |
| §14-1-212 (Law Enforce. Funding)       | \$25    | \$ | 25.00  |
| §14-1-213 (Drug Court Surcharge)       | \$150   | \$ |        |
| §50-21-114(BUI Breath Test Fee)        | \$50    | \$ |        |
| §56-5-2942(J) (Vehicle Assessment)     | \$40/ea | \$ |        |
| 3% to County (if paid in installments) |         | \$ | 37.5   |

TOTAL

\$ 128.75Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: \_\_\_\_\_

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SEP 03 2019

SC Court of Appeals

☐ Appointed PD or appointed other counsel,  
Proviso requires \$500 be paid to Clerk  
during probation and shall be collected before  
any other fees.Presiding Judge: [Signature]Judge Code: 2 1 6 7Sentence Date: 8/22/2019Clerk of Court/ Deputy Clerk: [Signature]Court Reporter: Holly Jenkins



STATE OF SOUTH CAROLINA )

COUNTY OF PICKENS )

IN THE COURT OF GENERAL SESSIONS  
THIRTEENTH JUDICIAL CIRCUIT

2017-GS-39-2245

STATE OF SOUTH CAROLINA, )

vs. )

BRANDON JEROME CLARK )

DEFENDANT. )

**VERDICT FORM**

1. As to Indictment 2017-GS-39-2245, the charge of **Criminal Sexual Conduct With a Minor in the First degree**, we the Jury find the Defendant:

\_\_\_\_\_ Not Guilty.

KE Guilty.

I certify this decision was the unanimous decision of the jury.

Karen Edwards  
Foreperson  
August 22, 2019

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SEP 03 2019

SC Court of Appeals

PLEASE NOTIFY THE BAILIFF WHEN YOU HAVE COMPLETED THIS FORM.

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled, “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

**RECEIVED**  
**Jan 27 2021**  
**SC Court of Appeals**

Respectfully submitted,

/s Cameron Jane Blazer  
Cameron Jane Blazer  
BLAZER LAW FIRM  
1037 Chuck Dawley Blvd. D100  
Mount Pleasant, SC 29464

843-732-4441

ATTORNEY FOR APPELLANT

This 25<sup>th</sup> day of January, 2021