VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Pickens County

Edward W. Miller, Circuit Court Judge

JONATHAN MATTHEW HOLDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000057

APPENDIX

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)	IN THE COURT OF
COUNTY OF PICKENS)	GENERAL SESSIONS
_____)	2013-GS-39-0957-0958
THE STATE,)	
PLAINTIFF)	
vs.)	TRANSCRIPT OF RECORD
)	
JONATHAN M. HOLDER,)	
DEFENDANT)	
_____)	

MAY 20-21, 2015
PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

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CIRCUIT COURT REPORTER

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*** * * P R O C E E D I N G S * * ***

THE COURT: The first case up today is the case of State v. Holder. We've had a conference -- in chambers conference and an informal motion from Mr. Cantrell to continue. We discussed it a little bit, but I think it's a matter that needs to be on the record.

So at this point, first I'll ask the State if -- do you have anything that you want to state before I hear what Mr. Cantrell's position is?

MR. TOOKER: With regards to Mr. Cantrell's continuance motion, sir?

THE COURT: Yes, sir.

MR. TOOKER: Yes, sir. So it's my understanding -- and I want to address each of these --

THE COURT: Well, I'm going to let him tell me first.

MR. TOOKER: Okay.

THE COURT: I just want to know if there's anything -- I'm going to let him put on the record first his grounds, and then you address them.

MR. TOOKER: Then that's what I'll do, sir.

THE COURT: Okay. But I didn't know if you had any preliminary. Okay. Yes, sir, Mr. Cantrell.

MR. CANTRELL: Your Honor, if it please the court,

this matter before the court -- there's two charges, I believe, as we stand right now -- criminal sexual conduct with a minor. The allegations took place in 2012. This case is now on the trial docket for the first time. And the allegations -- or the incident that is alleged in the indictments took place as -- at a residential psychiatric treatment facility for adolescents here in the City of Pickens -- actually less than three or four blocks from the courthouse.

In an effort to prepare for this, once it was on the trial docket, I made contact with the facility's director at the Hampton, and had an appointment set up with him to meet with him last Monday, which would be the 11th, in order to prepare.

The resident -- the facility's director was unable to meet with me at that time that had been set aside, so that was postponed. Then in the meantime, I was notified the next day -- I believe it was -- Tuesday or Wednesday of last week -- I believe Tuesday, that their legal counsel had told them there was specific steps that we would have to go through in order for them to be allowed to speak to us, both myself and the Solicitor.

I talked with Mr. Tooker, and we got information from that legal counsel, and prepared an order that we

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felt addressed their concerns. It was signed on Thursday -- sometime last Thursday -- and presented to the people at the Hampton on Thursday; that got both Mr. Tooker and myself in to talk to -- we were able to talk to the facility's director and the assistant facility's director. We were able to interview them, and at that time were able to determine from them who worked at the facility and who did not work at the facility among those that were possible witnesses to this incident. It was determined that there were several that still worked there, but a good number that did not still work there.

Also, it was determined that the two DSS caseworkers that had been involved in this case, really from before the time that the people at Hampton or law enforcement were aware of it, that those two case workers were no longer coming to that facility; and, in fact, were no longer working with DSS.

I believe that the Solicitor attempted to locate them. I have made some efforts to locate them since last Friday, and have had no luck. I'm satisfied they could be located, but not prior to today.

So we have, by our account, I'm going to say either six or eight -- but approximately that number of witnesses that we believe are very important witnesses,

that will testify to certain specific issues that are a part of our defense.

THE COURT: I'm not going to -- I'm not going to ask you to tell me all your trial strategy, but since it's in my lap at this point, I need to know a little more with specificity as to what -- what, of relevance, do you expect from these witnesses?

MR. CANTRELL: I think it can be paired down to three or four categories of testimony. One will be testimony as to the victim's reputation for truthfulness and veracity, for honesty.

And one step removed from that, the State intends to call another resident to seek to submit his testimony as to incidents that occurred with him. We would need not the same staff, but other staff that worked with him, because these two young men were in separate sections of the Hampton.

So there would be some individuals that would be able to testify as to his truthfulness and veracity; there would be some other individuals that would testify to this potential witness' reputation for truthfulness and veracity.

We do know that two of Mr. Tooker's witnesses will most likely testify to that --

THE COURT: And -- as to both?

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MR. CANTRELL: As to I know at least one. I -- I think they could do the other, and that would be the facility's director and the assistant director, but we have others that would be testifying as to that. And I believe they would be able to supplement or maybe go a step further in how and when they -- they became aware of this. Some of these will be staff members that dealt with these young men, and particularly the alleged victim, on a day-to-day basis more so than the facility's director.

Now, this is a hands-on facility, so that I think the facility's director certainly is familiar, and his testimony will be competent. I'm not arguing that. But I'm arguing that these other staff members -- or former staff members, would have more specific and possibly more detailed information. I, in all candor, haven't been able to talk to them.

Another area of testimony would be statements by this alleged victim, one -- and these fall into two distinct categories or two different sets of witnesses. And that is that he said words to the effect -- we don't know the exact words -- again, because we haven't talked to the witnesses, but they have -- these witnesses reported that he said I know how to get out of this facility. I know what I've got to do to get

out of here, because the evidence will show that he was frustrated and upset and/or angry that he was not getting out when he thought he was. He was on track to get out at one point, and then he regressed, I believe the testimony will show and he became angry. And he was looking for ways out is what I believe his testimony will show.

The second set of statements by this young man would be where he indicated that the defendant did not do these things, was not guilty of these allegations. And, again, all of this needs to come from the actual witness or witnesses that heard these statements and can testify as to the circumstances, how they were said; what they were said. That sort of thing. All of those are very instrumental to the defense. Obviously we're here trying it because Mr. Holder has pled not guilty. He denies all of these allegations. He stood by his innocence for the entire time since he was charged, and all of these are going to be instrumental in presenting a proper defense.

And, again, due to no fault of anybody -- and certainly in this room -- and I don't think due to any of our fault, we've only been able to know who we needed to track down since last Friday, and it's just not been possible to do that.

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On a smaller side issue, there has been some evidence that was presented to both the Solicitor and myself just last Friday, a great deal of documentary evidence, records from the Hampton, that was a lot of -- a lot of paperwork, very significant. And in an effort to locate witnesses and to review that, the continuance would provide us adequate time to more -- more properly go through all of that.

One was a DVD video, which is fairly short and may not even be submitted, so I'm not terribly concerned about that at this stage, I don't believe. But all of this other documentary evidence is very significant, it's handwritten. It's front and back, single spaced a lot of it, and that would be an additional reason that the continuance would be -- I certainly think in the defendant's best interest but I think would serve justice because, again, this is the first time it's been on the trial docket.

We have attempted -- made every effort to secure evidence, to meet with the facility's directors and other individuals there, and simply could not until last Thursday, which would be less than a week before this trial started. And that's when we got some of the information. The rest of it we got in the Fall.

And to be adequately prepared to defend very,

very serious charges where -- where the testimony, the evidence, the allegations and the truthfulness and honesty of the witnesses is of paramount importance, we need to be able to do this with the witnesses -- even though there's been an offer of some stipulations from the State, Your Honor, that just doesn't protect my client's interest, and I believe that's what we need. That's what I need to properly give him his fair trial. I would ask the court to continue it.

And I would submit to the court if it has to be the first trial up the next term of court, which is four weeks away, we're good with that. I think if I have that much time, I've got all I could ask for. But we need that time to really get this done. We could be here at 9:00 Monday morning ready to go to trial.

THE COURT: Mr. Tooker.

MR. TOOKER: Thank you, sir. If it please the court. So, in my mind, his motion for continuance boils down to whether or not there are specific facts that he cannot get out on to the record without the witnesses he says he needs.

I'll say, without actually knowing the name of witness and the content that he anticipates eliciting from that witness, it's hard to say, you know, from the State's position, yeah, it seems like, you know, we can

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stipulate to that or we can't -- my understanding is he has really articulated two things -- two things that he needs, that he thinks these witnesses, that he does not have, can give him. The first is --

THE COURT: I -- I can break it down to three.

MR. TOOKER: Three? I was going to say --

THE COURT: Reputation, denials and way out. "I know a way out" --

MR. TOOKER: I put "way out" and denial under two as subheadings, but reputation. So with regard to reputation, there are still currently employed four of the original witnesses, but the employees of the facility who dealt with this case on the front end, who were part of the facility's in-house investigation. The State intends to call two. The State has under subpoena a third. Mr. Cantrell -- I have her contact information -- is free to call her to court.

It's the State's understanding that all three witnesses would testify that the victim has a reputation for untruthfulness. That being the case, I'm not sure any prejudice the defense suffers, by virtue of the -- of the appearance of other witnesses to testify to the reputation for untruthfulness of the witness, it's so significant as to warrant a continuance. I think if it's three or 300, I -- the --

the information that's elicited and the effect on the jury is the same. If anything, they just keep parading witnesses in to say the guy has a reputation for untruthfulness, all that is -- is piling on with a bunch of cumulative evidence of -- of something that two or three witnesses could easily convince. So I don't think that the reputation for truthfulness or the lack of witnesses that he wants to testify to the reputation for truthfulness, is enough to warrant a continuance.

Second, the statements by the victim, "I know how to get out"; that statement was relayed by an employee to Kevin Sowell, the facility's director. And Kevin Sowell, the facility's director, relayed it to me and I relayed it to Mr. Cantrell. That statement was purportedly made several weeks before --

THE COURT: You said "that statement", which statement?

MR. TOOKER: I apologize, sir. "I know how to get out", that statement -- or "I know what I need to say to get out". So that statement was relayed to Mr. Sowell. The State, to avoid the continuance, is willing to let Mr. Sowell testify to that statement, even though he would not be the proper party for us to ask. But despite that fact, to keep things moving, the

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state would absolutely -- you know, I would ask the question of him myself. That is not -- well, I certainly wouldn't sacrifice the ability to try this case if it hinged on one witness saying something that the kid said who didn't actually overhear it -- I mean, we could write it down on a piece of paper, do it as a stipulation if the defense would prefer. But whatever it takes to get that information to the jury, I'm willing to do to ensure that we can try this case.

The third statement about the victim allegedly having made it up, that's more of a wrinkle inasmuch as I have no information to that effect. That -- that information is contained nowhere in the case file provided by law enforcement; nowhere in the case file provided by the facility with regards to their internal investigation, or the records they made on the victim that Mr. Cantrell and I both have in our possession. So if there are other witnesses to that effect, that information must be coming from the defendant.

To facilitate this trial, to ensure that we go ahead, I'd let the defendant testify that so and so told him -- and I wouldn't object to hearsay -- so and so told him that the victim told him he made it up. Now, I would cross examine him on that point, but I would not -- I would not object to the admission of

that hearsay testimony.

I -- may I ask, Your Honor, are those the three evidentiary issues that --

THE COURT: That's the three -- that's how I'm breaking it down. The defendant doesn't have to testify.

MR. TOOKER: Of course he doesn't, but I understand --

THE COURT: I mean, I'm following up on you saying you'd let him testify to something.

MR. TOOKER: Yes, sir. It would be if he elected to take the stand. If they wanted that information out, then the State is okay with him functioning as a conduit for him to introduce evidence that he wouldn't otherwise be able to introduce. So -- and I think that's the only proper way to do it because I -- I do need to cross examine someone about where those statements came from. And as that information is contained nowhere in the reports, I can only imagine that information is coming from the defendant to his attorney. So -- so I think that's the only fair way to go about it.

I understand that it is difficult to communicate with the people at this facility. I've had the same difficulties. But nevertheless, I am prepared to go to

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trial here today. Now, I think it's worth noting, and I would to put a couple of cases on the record for Your Honor.

The first is State v. Colden, C-o-l-d-e-n, 372 SC 428, 641 SE 2nd 912. In that case, the ruling was that a party asking for a continuance on account of the absence of a witness must show due diligence in trying to procure the testimony of the witness, as well as what the party believes the absent witness will testify to and the basis for that belief. And I don't believe we've actually heard the basis for why it is Mr. Cantrell believes there are witnesses that say the child made it up.

And I might be speaking out of turn, but in my mind, this whole argument boils down to whether or not he can introduce statements that the kid made it up. That's -- that's the biggest issue in my mind. I think the other two are easily solved with the reputation and the statement that we could channel through the facility's director, Mr. Sowell. But the statements that he made it up, I can appreciate that that is certainly something that would be necessary for his defense. But we haven't heard tell where those statements came from.

So absent that, it's difficult to say -- I mean,

it's my supposition that it's coming from the defendant, we would permit the defendant to testify to those things. But it's difficult to say how it is that information came about, and how it is that it would be properly admitted. So -- so then to say we can't find these witnesses, I think, is a little bit premature.

You know, the rule is -- and Your Honor alluded to this in chambers, but the rule is -- Rule 7 (b) of the rules of criminal procedure, and that's a continuance because of the absence of witnesses. And that rule, really, just reiterates what I said in that last case.

I -- I want to make plain that I have significant concerns about my ability to ensure the appearance of the victim for another trial. That is my paramount concern in this case, as he is turning 18, and potentially leaving DSS custody, I -- I do not have any way of guaranteeing his appearance -- I can serve him certainly, and I will, but I'm not confident that that's enough. I'm not confident that I can make sure that he's here just by having him served.

That being the case, I'm opposed -- vehemently opposed to the defense's motion and would very much like to work with the defense and the court to ensure that whatever information he thinks he could get out

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through these witnesses, that aren't available, that that information maybe we figure out a way to get in otherwise.

THE COURT: All right. Mr. Cantrell, any brief response?

MR. CANTRELL: Your Honor, just as to reputation, again, I don't know. I realize that we do have two witnesses that will testify as to his reputation. The other witnesses that can be available that -- when we locate them, may have more specific information or different circumstances, we don't know. So I don't know that it would necessarily be cumulative. We do not know.

As to him saying there was a "way out", Your Honor, in your charge to the jury, you're going to tell the jury that they judge or make their determination a lot about truthfulness, veracity of witnesses, based on their demeanor on the witness stand.

In this situation, were we to only allow the director to say, well, someone said he said this, totally takes away that jury perspective, and that is significant enough that's it charged to every jury in every criminal trial in this state. They need to see the witnesses, but more importantly, they need to hear the specifics of where this witness heard, what they

heard, and what it was that was said. So him knowing a "way out", the live witness sitting there, is of paramount importance.

The same thing as to the denial. Certainly the only way he knows of anything that's not in this police report is what staff members would have told Mr. Holder, staff members that are no longer there, staff members that may have been there for some time after this incident, but are no longer there. And we cannot tell you specifically where they heard it or how they would say what they say without them being here.

And, again, very simply, I -- the fact that this young man turns 18 today is -- I have to -- it just -- I don't believe that it's relevant, the availability of witnesses later on. I'm having to contend with that myself and I'm trying to make them available -- availability of the alleged victim, who turns 18 today.

But quite frankly this case -- this charge came about May -- or the allegations are May 22, 2012. I don't believe his age or his availability -- potential availability is sufficient to override Mr. Holder's need to have witnesses here in order to present his full defense in a proper way, so I would ask the court to grant this continuance. Again, if it's for four weeks, until Monday of the next term, that's all we

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would ask.

THE COURT: The court always hates to find itself in these dilemmas, and they are somewhat of a dilemma, but I'm going to deny the motion to continue.

I -- as to the reputation, I don't think -- I think one's reputation is how one is perceived in the community. And if two people say that his reputation for truth and veracity is bad, then that's what his reputation is in the community, and that's enough to convey that to the jury.

As to any specific denials, regrettably that's hypothetical. We don't have anything to really bottom -- the court does to provide -- a decision on the fact that there are denials somewhere out there because we don't know. That's -- I'm not going to say wishful thinking -- but at least hypothetical.

As to ways out, there -- there appears to be -- and if this doesn't transpire then, of course, you would be looking at perhaps a mistrial -- there appears to be testimony that is going to be elicited that the victim did make statements that he needed a "way out", how to get out of the home; and that the witness to whom he made that is not, my understanding, going to be testifying. And I do understand the concern about the demeanor of the witness. But in this particular

instance, it's sort of a flip of the usual because regardless of the demeanor of the witness that's testifying to this, the -- the -- it would not appear to be any reason for the defense to be attacking the credibility of the witness who testifies that this statement was related to them, so -- so I have to admit with some reluctance because I -- this is a very important case. But I believe on the rule and where we are now, this case being -- I think someone told me two and a half years old, and we -- we will go forward today.

MR. CANTRELL: Thank you, Your Honor.

MR. TOOKER: Thank you, sir.

MR. CANTRELL: My objection is noted --

THE COURT: Oh, certainly, you're on record as -- to use Mr. Tooker's word -- vehemently objected.

All right, let’s get the jury in. Is there any -- any voir dire from The State?

MR. TOOKER: I believe it is on your desk, sir.

THE COURT: All right; any voir dire from---

MR. CANTRELL: I do, Your Honor. I believe some are probably similar, if not the same.

THE COURT: All right. Any witness list for the Defense?

MR. CANTRELL: Your Honor, at this point no.

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THE COURT: Okay; that's fine.

MR. CANTRELL: There -- there may still be some though.

THE COURT: All right, if---

MR. CANTRELL: And I will advise Your Honor.

THE COURT: Okay.

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: I tell you, while the jury's coming in we'll take a five -- five-minute, uh, break.

(WHEREUPON, HEARING RECESSED.)

BAILIFF: All rise; Court is in session.

THE COURT: Thank you, you may take your seats. Good morning.

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: Members of the jury panel, we're gonna start our second trial for the week here, uh, now. And this is the case of The State versus Jonathan Matthew Holder.

Mr. Holder, would you stand so the jury can see who you are?

(WHEREUPON, DEFENDANT STOOD AND FACED THE JURY

PANEL.)

THE COURT: He is represented by Mr. David Cantrell.

(WHEREUPON, MR. CANTRELL STOOD AND FACED THE JURY PANEL.)

THE COURT: The State is represented by Mr. Sam Tooker.

(WHEREUPON, MR. TOOKER STOOD AND FACED THE JURY PANEL.)

THE COURT: And -- you may be seated. The charge against Mr. Holder is Criminal Sexual Conduct with a Minor in the Second Degree; and the second charge is Criminal Sexual Conduct with a Minor in the Third Degree. These alleged that here in Pickens County, between April of 2012 and June of 2012, that Mr. Holder engaged in a -- engaged in a sexual battery with someone who was between fourteen and sixteen years of age; and that at the time Mr. Holder was in a position of familial custeer (phonetic/sic) -- custodial or official authority which gave him the ability to coerce the victim to submit to this event. The second charge is that he did commit a lewd and lascivious act upon the body of Minor 1, a child under the age of sixteen. It's alleged that that was done with the intent of arousing or appealing to Mr. Holder -- this is an

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allegation, of course -- or the child's, uh, lust, passion, or sexual desires. To these two charges, Mr. Holder's entered pleas of not guilty. That places on The State the burden of proving his guilt beyond a reasonable doubt.

Now, first I ask, do any -- are any of you related by blood or marriage, or are any of you a close personal friend or acquaintance of any of the individuals to whom you have just been introduced -- Mr. Holder, Mr. Cantrell, or Mr. Tooker? (After pause) no one stands.

Have any of you been represented by either of these attorneys, or have you worked with or -- or been a witness on behalf of, uh, the Solicitor's Office with the Thirteenth Circuit? If so, please stand. (After pause) No one stands.

Are any of you members of the Grand Jury which passed on these two indictments at an earlier time? If so, please stand. (After pause) No one stands.

Have any of you heard about this case from any source whatsoever? Do any of you have any knowledge, uh, about it, heard about it, read about it, had friends talk about it, have any knowledge whatsoever, please stand.

Yes, ma'am, your name and number?

MS. MARTIN: Um, I'm number eighty-four; um, my name is Sheila Martin, and a student---

THE COURT: All right, don't -- don't go into the -- all you're telling me is you've heard about it?

MS. MARTIN: I've heard about it.

THE COURT: All right, would that affect your ability to be fair and impartial during the trial of this case?

MS. MARTIN: Yes, sir.

THE COURT: It would? All right, you can be excused; just have a seat. Thank you.

She'll be removed from the panel.

Uh, the next -- and this is -- some of these questions, when we, uh -- well, let me ask this first. Have any of you, uh -- and I know we went over this Monday in the other trial -- preparation for the other trial, but these lawyers were not involved.

Have any of you or a member of your immediate family involved in criminal -- prosecution of criminal cases or involved in law enforcement at any level whatsoever, please stand.

All right; you know how we did -- just like we did the other day, tell me your name and number and, again, Uncle Joe's a Sheriff or whatever. All right, starting with this lady who half -- half her family's involved

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in law enforcement.

MS. LEWIS: Yes; uh---

THE COURT: If not all her family.

MS. LEWIS: ---Olivia Lewis, seventy-seven. I have retired Highway Patrolmen---

COURT REPORTER: I'm sorry, her number, Your Honor?

THE COURT: Your number again?

MS. LEWIS: Seventy-seven. Um, retired Highway Patrols in my family. I have a narcotic agent. I do have one still undercover half the time. And then I have some -- my fiancé's family. He is a correction officer at the county prison, and then I have one that's retired Highway Patrol that lives here.

THE COURT: All right, next? If you'd remain standing, please, ma'am? Yes, sir?

MR. VINSON: Jerry Vinson, one-forty-five. My mother works at Clemson University Police Department.

MR. WHISLER: Bruce Whisler; one-fifty-three. My father was a policeman for about twenty years; he's now retired.

THE COURT: All right; yes, ma'am?

MS. CHAPMAN: Leah Chapman, juror twenty-five. My brother is a Pickens County Sheriff.

THE COURT: All right. Is this a city case or a

county case?

MR. TOOKER: It's a city case, sir.

THE COURT: All right. Yes, ma'am, your name and number?

MS. KATHRYN A. SMITH: Kathryn Smith, one-thirty. My son is a -- an officer in Easley.

THE COURT: Yes, sir?

MR. WAGGONER: Joshua Waggoner, one-forty-eight. My step-father was a -- a correctional officer in Pendleton.

THE COURT: Yes, ma'am?

MS. HENDRIX: Amber Hendrix, sixty-two; a have a father used to be a police officer but I have a cousin who is a police officer now and lives in Pickens.

THE COURT: All right; yes, sir?

MR. BRYANT K. SMITH: Bryant Smith, one-twenty-eight; my son is a University Police Officer at Clemson University Police Department.

THE COURT: Would, uh, the fact, uh, that you have, uh -- seven of you -- eight of you, I'm sorry -- if, uh -- the fact that you have a relative involved, as you have told me -- if that would prevent you from being fair and impartial at Mr. Holder's trial, please raise your right hand.

All right, your name and number again?

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MR. VINSON: Jerry Vinson, one-forty-five.

THE COURT: Okay, one-forty-five will -- will not be in the trial; uh, but the rest of you, uh, indicates that you could be fair and impartial so you may all have a seat. Thank you.

Are any of you members of or contributed to Mothers Against Drunk Drivers, Students Against Drunk Drivers, Students Against Violence, Troopers' Association, Sheriff's Association, Fraternal Order of Police, or any entity like those? If so, please stand. (After pause) No one stands.

Now, the next question -- uh, questions would be somewhat sensitive, so I'm not going to ask you to get up and tell me the particulars of why you're standing. But, have any of you or a member of your family been either charged with a sexual offense or been the victim of any sexual offense? If so, please stand.

All right. Now, again, I don't want you to tell me any particulars because it's a very sensitive area. So, I'm just going to ask you, starting over here on the far right, if you'll go kind-a down the aisle then back, work our way across. If each of you would just tell me your name and number and that's -- that's -- that's all I need to know because you told me enough by standing other than your name and number. Yes, ma'am?

MS. BUSHNELL: Cameron Bushnell, number twenty.
MR. BARRETT: Jeff Barrett, number eight.
MS. BUTLER: Jalen Butler, number twenty-one.
MS. PEARSON: Conchita Pearson, one-ten.
MS. KATHRYN A. SMITH: Kathryn Smith, one-thirty.
MS. TURNER: Jennifer Turner, one-forty-two.
MR. PHILLIPS: Robin Phillips, one-eleven.
MR. DANIEL P. SMITH: Daniel Smith, one-twenty-nine.
MR. STEWART: Casey Stewart, one-thirty-five.
MS. HENDRIX: Amber Hendrix, sixty-two.
MS. HALL: Aris---
THE COURT: On that last one, you -- you're kind of overshadowed by the young man in front of you, so your name and number again?
MS. HENDRIX: Amber Hendrix, sixty-two.
THE COURT: Okay; yes, ma'am?
MS. HALL: Aris Hall, fifty-seven.
THE COURT: All right. Any of you that are standing, if you would be, because of this experience in your life, if you would be unable to do that -- to be fair and impartial in Mr. Holden's trial, please raise your right hand.
THE COURT: All right, uh -- uh, let's do it this way. Every -- everyone except for these two ladies

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that raised their hand -- we'll start over here. Give me your name and number again and you will not be in the trial.

MS. BUSHNELL: Cameron Bushnell, twenty.

THE COURT: All right, be seated.

MR. BARRETT: Jeff Barrett, number eight.

THE COURT: Be seated.

MS. BUTLER: Jalen Butler, number twenty-one.

THE COURT: Be seated.

MS. PEARSON: Conchita Pearson, one-ten.

THE COURT: You can be seated. And the two of you that did not raise your hand, you-all can go ahead and sit down. Yes, sir?

MR. PHILLIPS: Robin Phillips, one-eleven.

THE COURT: All right, you can sit down.

MR. DANIEL P. SMITH: Daniel Smith, one-twenty-nine.

THE COURT: You can be seated.

MR. STEWART: Casey Stewart, one-thirty-five.

THE COURT: You can be seated.

MS. HENDRIX: Amber Hendrix, sixty-two.

THE COURT: You may be seated.

MS. HALL: Aris Hall, fifty-seven.

THE COURT: You may be seated. Thank -- thank you so much for -- for helping us on this.

Do any of you, uh -- again, this is a -- we're getting into sensitive areas, but we -- we have to ask these. I'm not going to ask you to tell me any particulars.

But, have any of you as an adolescent, or do any of you now have an adolescent -- a teen -- in a behavioral, uh, inst- -- I call them institutions. In a -- a home or a setting for troubled youth? Again, I'm not going to ask you go into detail on it, but any of you experience that as a teen or if any of you have a teen, uh, household member, uh, who, uh -- for lack of a better way to say it -- is ex- -- experiencing a troubled teenage period and is institutionalized because of that, please stand. (After pause) No one stands.

Now, I'll expand that a little bit. And again, it's very sensitive; I'm not going to ask you to go into particulars. Do any of you have a teen who is receiving any sort of counseling or therapy from any, uh, agency or a psychiatrist or psychi- -- psychologist for any emotional, uh, issues during their teenage years? If so, please stand.

You -- you've already been excused, so you can sit back down.

UNIDENTIFIED PANELIST: Okay.

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THE COURT: Yes, ma'am, your name and number?

MS. BRYAN: Uh, Linda Faye Bryan, seventeen.

THE COURT: Okay; can -- can you be fair and impartial in this trial?

MS. BRYAN: Yes.

THE COURT: Okay, thank you. All right, the following are possible witnesses in this trial. Just like I read the list yesterday, uh -- uh, Monday -- the fact that they're on this list does not mean that they absolutely will testify, but even if they don't testify, their names may surface during this trial. So, if you are related by blood or marriage, or if you, uh, know any of these individuals, please -- please stand.

Uh, Minor 1 [redacted]; Johnice Wofford, who is connected with Department of Social Service; uh, Meg-- Meghann Harvey, Facilities Director at Hampton P-R-T-F; Kevin Sowell, Facilities Director at Hampton P-R-T-F; Detective Samuel Byers from the Police Department, Pickens; uh, Shauna Galloway-Williams, Director of the Julie Valentine Center; and Minor 2 [redacted], former patient at the Hampton P-R-T-F Facility.

If any of you are related by blood or marriage or a close personal friend or acquaintance of any of those

individuals, please stand.

All right; yes, ma'am, your name and number again?

MS. LEWIS: Olivia Lewis, seventy-seven.

THE COURT: All right; and how -- which -- which witness do you---

MS. LEWIS: Johniece Wofford.

THE COURT: All right; would the fact that you know her, would that affect your ability to be fair and impartial in this trial?

MS. LEWIS: (Nod.)

THE COURT: It would? Okay, you can be seated and not -- not attend.

All right, anything further from The State?

MR. TOOKER: No, sir.

THE COURT: Defense?

MR. CANTRELL: None, Your Honor.

THE COURT: Finally, do you know of any reason whatsoever why you could not or should not serve as a fair and impartial juror in the trial of this particular case? If so, please stand. (After pause) No one stands.

Now, you remember we'll do this just like we did on Monday. If you hear your name called, please stand where you are. If you hear, excuse the juror, have your seat. If you hear, present the juror, turn to the

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table where, uh, Mr. Holder is seated and his attorney will say, uh, either swear the juror or excuse the juror. Should you hear the words, swear the juror, take a seat in the jury box.

The strikes are five and ten. Uh, we'll draw two alternates like we did for the case on Monday; those strikes will be one and two.

COURT REPORTER: Your Honor, I don't have a list.

THE COURT: Okay, we -- we'll get it in just a second. It takes a moment for us to get the list together after we find out who is a- -- available for the draw and who is not.

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR PREPARATION OF JURY SELECTION LIST, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: You may proceed.

CLERK OF COURT: Yes, sir. Juror number one-twenty-three, Nathan R. Shelter.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Mr. Shelter.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Mr. Shelter.

CLERK OF COURT: If you would come forward, please, sir, and have a seat in the jury box.

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number two, Victoria M. Alexander.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Alexander.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Ms. Alexander.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number twenty-six, Ashley R. Clark.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Clark.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Ms. Clark.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number ninety, Robert G. McDaniel.

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(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please excuse Mr. McDaniel from the trial of this case.

CLERK OF COURT: If you would have a seat, please, sir.

(WHEREUPON, JUROR RETURNED TO HIS SEAT.)

CLERK OF COURT: Juror number seventeen, Linda Faye Bryan.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please excuse Ms. Bryan from the trial of this case.

CLERK OF COURT: If you would return to your seat, please, ma'am.

(WHEREUPON, JUROR RETURNED TO HER SEAT.)

CLERK OF COURT: Juror number seventy-three, Jeffrey G. Kelley.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Mr. Kelley.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Mr. Kelley.

CLERK OF COURT: If you would come forward please, sir, and have a seat in the jury box.

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number one-forty-eight, Joshua N. Waggoner.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Mr. Waggoner.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please excuse Mr. Waggoner for this trial.

CLERK OF COURT: If you would return to your seat, please, sir.

(WHEREUPON, JUROR RETURNED TO HIS SEAT.)

CLERK OF COURT: Juror number fifty-eight, Frances M. Hart.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Hart.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Ms. Hart.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number eighteen, Tucker S. Burgess.

(JUROR STANDS.)

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CLERK OF COURT: What says The State?
MR. TOOKER: Please present Mr. Burgess.
CLERK OF COURT: And the Defense?
MR. CANTRELL: Please swear Mr. Burgess.
CLERK OF COURT: If you would come forward please, sir, and have a seat in the jury box.
(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)
CLERK OF COURT: Juror number twenty-five, Leah P. Chapman.
(JUROR STANDS.)
CLERK OF COURT: What says The State?
MR. TOOKER: Please present Ms. Chapman.
CLERK OF COURT: And the Defense?
MR. CANTRELL: Please excuse Ms. Chapman from this trial.
CLERK OF COURT: If you would return to your seat, please, ma'am.
(WHEREUPON, JUROR RETURNED TO HER SEAT.)
CLERK OF COURT: Juror number one-o-six, Ethan T. Orr.
(JUROR STANDS.)
CLERK OF COURT: What says The State?
MR. TOOKER: Please excuse Mr. Orr from the trial of this case.
CLERK OF COURT: If you would return to your seat,

please, sir.

(WHEREUPON, JUROR RETURNED TO HIS SEAT.)

CLERK OF COURT: Juror number forty-two, Diane L. Fowler.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Fowler.

CLERK OF COURT: And the Defense?

MR. CANTRELL: (After pause) Please swear Ms. Fowler.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number one-twenty-eight, Bryant K. Smith.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please excuse Mr. Smith from the trial of this case.

CLERK OF COURT: If you would return to your seat, please, sir.

(WHEREUPON, JUROR RETURNED TO HIS SEAT.)

CLERK OF COURT: Juror number thirty-nine, Blake A. Ellenburg.

(JUROR STANDS.)

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CLERK OF COURT: What says The State?
MR. TOOKER: Please present Mr. Ellenburg.
CLERK OF COURT: And the Defense?
MR. CANTRELL: Please swear Mr. Ellenburg.
CLERK OF COURT: If you would come forward, please, sir, and have a seat in the jury box.
(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)
CLERK OF COURT: Juror number fifty-nine, Carl T. Haubold.
(JUROR STANDS.)
CLERK OF COURT: What says The State?
MR. TOOKER: Please excuse Mr. Haubold from the trial of this case.
CLERK OF COURT: If you would return to your seat, please, sir.
(WHEREUPON, JUROR RETURNED TO HIS SEAT.)
CLERK OF COURT: Juror number one-thirty-nine, Jarod L. Todd.
(JUROR STANDS.)
CLERK OF COURT: What says The State?
MR. TOOKER: Please present Mr. Todd.
CLERK OF COURT: And the Defense?
MR. CANTRELL: I'm sorry, what was the number?
CLERK OF COURT: One-thirty-nine.
MR. CANTRELL: (After pause) Please swear Mr.

Todd.

CLERK OF COURT: If you would come forward, please, sir, and have a seat in the jury box.

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number one-o-seven, Rebecca C. Pargas.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Pargas.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please excuse Ms. Pargas from this trial.

CLERK OF COURT: If you would return to your seat, please, ma'am.

(WHEREUPON, JUROR RETURNED TO HER SEAT.)

CLERK OF COURT: Juror number six, Dorothy R. Atkins.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Atkins.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Ms. Atkins.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

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CLERK OF COURT: Juror number one-o-nine, Hanna E. Peace.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Peace.

CLERK OF COURT: And the Defense?

MR. CANTRELL: Please swear Ms. Peace.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: Juror number forty-nine, Ryan K. Gibson.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Mr. Gibson.

CLERK OF COURT: And the Defense?

MR. CANTRELL: (After pause) Please swear Mr. Gibson.

CLERK OF COURT: If you would come forward please, sir, and have a seat in the jury box.

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

THE COURT: There are two alternates; strikes will be one for The State and two for the Defense as to each.

CLERK OF COURT: This will be for the first

alternate. Juror number one-o-three, Barbara L. Murray.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Murray.

CLERK OF COURT: And the Defense?

MR. CANTRELL: (After pause) Please swear Ms. Murray.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

CLERK OF COURT: This will be for the second alternate. Juror number eighty, John L. Lynch, Junior.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please excuse Mr. Lynch.

CLERK OF COURT: If you would return to your seat, please, sir.

(WHEREUPON, JUROR RETURNED TO HIS SEAT.)

CLERK OF COURT: Juror number thirty-four, Cassandra L. Devol.

(JUROR STANDS.)

CLERK OF COURT: What says The State?

MR. TOOKER: Please present Ms. Devol.

CLERK OF COURT: And the Defense?

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MR. CANTRELL: I'm sorry, what is her name -- number again?

CLERK OF COURT: Thirty-four.

MR. CANTRELL: (After pause) Please swear Ms. Devol.

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

(WHEREUPON, JUROR WAS SEATED IN THE JURY BOX.)

THE COURT: Anything from The State involving the striking of the panel?

MR. TOOKER: No, sir.

THE COURT: Anything from Defense involving the striking of the panel?

MR. CANTRELL: Nothing, Your Honor.

THE COURT: All right, those of you who are not chosen, I'm gonna ask you to leave and -- I'm not going to ask you to leave, I'm going to invite you to leave. And I'm going to ask you leave quietly and call back tonight, uh, to the number that you've been calling back to and you'll receive whatever instructions are appropriate at that time. Thank you.

THE COURT: Those of you who are chosen, if you'll please stand and the Clerk will administer the oath.

And, Mr. Kelley, I'm going to ask you to swap with this lady and you will then be in the foreperson's

seat. And so, that will make you the foreman.

CLERK OF COURT: Again, after the oath is administered, answer by saying I will. Raise your right hand.

(WHEREUPON, THE JURY PANEL WAS SWORN.)

CLERK OF COURT: Thank you; you may be seated.

THE COURT: Thank you. Members of the jury panel, I'm going to chat with you for just a minute, and then I'll -- I'll allow the attorneys to make opening statements. They are not required to, but they have a right to come before you and make what are called opening statements; that is, outlines or blue prints of the trial.

They are not arguing any position at this point, and they're not testifying because they're not witnesses. They're just giving you a preview of the case.

I -- as to these two charges against -- lodged by the State against Mr. Holder, is criminal sexual conduct with a minor in the second degree; criminal sexual conduct with a minor in the third degree.

To each of these, Mr. Holder has entered pleas of not guilty. His pleas of not guilty place on the State the burden of proving his guilt beyond a reasonable doubt.

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Mr. Holder, like anyone charged with any of offense in our system, is presumed innocent. He need not prove his innocence. The State, however, must prove his guilt beyond a reasonable doubt before a jury, you, could convict him.

I have three primary jobs in a trial. I am the trial judge. And as the trial judge, I am the logistics person. I make sure we take breaks; that you can see when you need to see, and hear what you need to hear.

I have second job as to ruling on evidentiary matters. If one side believes certain evidence should be allowed or presented during the trial, and the other side, for some reason, based on the rule or precedential case, believes that evidence is not admissible, will result in the need to make a ruling on that, the question of evidence.

My third job is that I am the sole judge of the law in this case. You, as the jury in this case, under your oath must take, accept and apply the law as I charge it, even if you think I charged the law in error, or even if you think the law should be different. Your oath requires you to take, accept, and apply the law as I charge it.

Do not infer from anything I say or do here at

any time during this trial, as indicating an opinion of mine on the facts. Our law does not allow a trial judge to formulate or to express to a jury any opinion on the facts. It is solely your job to examine the evidence and give to the evidence the effect, the value, the weight, and the truth you believe it should have.

During this, you may believe one witness as opposed to several; several witnesses as opposed to one. You may believe all, part, or none of a witness' testimony.

In analyzing the evidence, use your common sense, your sense of logic, your sense of reasoning, and use your experiences in life as you analyze the evidence.

As judges of the facts, you necessarily must judge the credibility; that is, the believability of the witnesses who testify. Assessing the believability, use the things I just talked about. Use the things that you find in your day-to-day life as indicating truthfulness in an individual. And you can use certain evaluators; the witness's demeanor, how they act on the stand. Are they hesitant or straight forward in responding to questions; is their testimony consistent or inconsistent.

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Consider the opportunity the witness had to know those things about which the witness testifies. And you can look at any bias or prejudice a witness may have. That is, whether or not a witness would wish to help or hurt one side or the other.

All of these things you consider in determining the true facts, apply the law, and you're in a position to return a verdict that speaks the truth.

Do not try to make up your own mind or discuss the case among yourselves until I instruct you to jointly deliberate and return your unanimous verdict. Prior to that time, you don't have all the tools you need to make a fair and reasonable decision.

Do not let anyone discuss this case with you outside the courtroom. If anyone tries to discuss this case with you, tell them you cannot, as you are a juror, and report back to me if anyone tries to discuss this case with you -- hopefully being able to give me the identity of that person because they would be in contempt of court for trying to talk to a seated juror.

Do not use any electronic means to access any information about anything that deals with this case; anything about the facts of this case, about the lawyers involved, about Mr. Holder, about any of the witnesses, about court procedure, about me. Don't look

up anything that could remotely deal with this trial.

Don't even utilize such things as Facebook regarding your service as a juror. That is, it may seem to be very innocent, but don't put on Facebook or something like that, that you are serving on a jury because someone may respond by some quote, or note, or information that wouldn't be helpful for you in your position as a juror in this case.

I don't know that there will be any news coverage of this case, but do not let yourself be exposed to it if there is any. Don't watch anything, listen to anything, or read anything that could remotely deal with this trial.

If you hear or see anything that could remotely deal with this trial, don't hesitate -- don't let yourself be exposed to it.

Mr. Foreman, you will be the liaison between the jury and myself. And you will preside over the jury deliberation at the appropriate time, and ultimately sign the unanimous verdict. If you can't see or you can't hear, let me know, cup your ear, give me a voice raising gesture, or nudging gesture, I'll try to correct whatever is interfering with your ability to see or hear.

You do not need to take notes. We take breaks

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about every hour and a half. But if any of you need a break at any time, simply raise your right hand and we'll take a break.

Now, I'm going to turn the case over to the attorneys for their opening statements.

MR. TOOKER: Thank you, Your Honor. May it please the court?

THE COURT: Mr. Tooker.

MR. TOOKER: Mr. Cantrell. Mr. Foreman, ladies and gentlemen of the jury, I sort of briefly introduced myself when I stood up, my name is Sam Tooker, and I'm an Assistant Solicitor here in Pickens County.

What that means is I try cases on behalf of the State of South Carolina. I am -- I am the State in this case. And so, ultimately, as the judge instructed you, it's my burden to prove this case today. So the case that is before you today falls on my shoulders, and I accept that burden.

I want to go ahead and thank you very much for your service. I think that I can speak both for Mr. Cantrell, his client, and the court when I say we very much appreciate your presence. Without you, we cannot solve our disagreement, and that's what this is. There is a dispute with regards to the facts in this case. And you are here to be impartial fact finders, to be

the people that sit and determine the truth in this case.

The case before you, and as the judge read the indictments -- his honor read the indictments, they are indictments of a sexual nature. They are indictments of criminal sexual conduct with a minor in the second degree and the third degree.

And I told you that as the State, I bear the burden in this case. And what that means specifically, is I have to show you that each one of the elements for each charge has been met. So two charges, it's two sets of elements.

Now, they sound similar, the charges do, but they are different. The first, criminal sexual conduct with a minor in the second degree, means that we've got a kid -- a kid less than 16 -- and that kid is sexually abused by someone who is in a position of authority over them. It could be a parent. It could be a teacher. It could be someone who, by virtue of their title or authority, has some -- some degree of control over the child.

The allegations in this case that the victim -- the victim, I believe, his honor has per policy, read Minor 1 -- those are his initials -- Minor 1 His name is Minor 1 . He turns 18 today as a matter of fact.

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But several years ago, he was a patient at a facility here in Pickens County. That facility is called Hampton PRTF. It is an in-patient home. It's a place for kids who have problems. And it's a place for them to go to be taken care of. And the victim was a resident of this facility.

The defendant, in this case, worked there. He was an employee. The allegations are that the defendant had the victim perform sex acts on him, specifically oral sex; that these events occurred in 2012, and they occurred at this facility.

The second indictment is for criminal sexual conduct with a minor in the third degree. And what that means is the Defendant touched the victim or he got the victim to touch him in a way that was lewd and lascivious, that was somehow designed to bring about the sexual passions of either the defendant's person, or the victim's person.

They are very serious allegations. And it is very important that for the duration of this trial, that you keep an open mind. More than anything else, that's what is important.

You don't need to come in and say, I think I know what happened here. Or immediately after one witness takes the stand, decide this is what happened

in this case.

What you're called to do, and what you're sworn to do by your oath, is to listen to all the facts and evidence. Listen to all of it. And then after you have listened to it all, and you have been instructed by his honor on the law in this case, and then deliberate. Deliberate fairly and deliberate with each other in a way that gives everyone an opportunity to explain what they think and why.

At the end of this case, when you do that, when you have your deliberation, you'll be called to render a verdict.

Now, verdict comes a Latin phrase veritas dicere. And if any of y'all are Latin experts, I may have mispronounced that, I'm sorry. But my understanding is veritas means the truth, and dicere means to speak. So what you are called to do at the end of the case, is render a verdict that speaks the truth.

And that's important inasmuch as that root -- that root veritas means truth; right? That comes up again, because in this case -- and I'll say, too, cases like this, criminal sexual conduct, cases of sex -- sex acts against minors, are cases that -- that happen behind closed doors. They are not happening in -- in

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the open. Nobody takes somebody into County Square and abuses them before a load of witnesses.

They are cases that are shameful. They are cases that are secretive. They are acts that are shameful and that are secretive.

But we have an interesting situation here because it occurred at this facility. And this facility has tape recording equipment. It's got a closed circuit TV. And that closed circuit TV will be provided to you, that information will be provided to you and entered into evidence.

Now, it does not show any sex acts. Nothing is depicted on there, that -- that is an eye witness to the child actually being abused. But what it does show is the defendant and the victim together, together at different places and different points. And that information will be important to you at the end of this trial.

Now, I say -- the truth is important, credibility is important. Credibility is the most important thing in this case because, ultimately, despite the fact that we've got this video, and despite the fact that this -- this happened in this home, these cases are cases of word versus word. It's a case where one person said something happened.

And you have to determine whether or not you believe that person. So you are called to -- called to determine his credibility. You're called to say, yes, that is something I believe; or, no, that's not something I believe.

And you do that the same way you do in any instance, when you're interacting with somebody on a day-to-day basis, when you meet somebody on the street, talk to somebody at school, talk to somebody at work. You talk to folks, and you determine whether or not what they're telling you seems to be true. And that's what we are asking you to do in this case.

Again, I think more than anything else, what you should do is try to keep an open mind, play attention to everything. At the end of this case, I'll stand up again and I'll talk to you about what I think the facts and evidence mean. But until then, please keep an open mind.

Again, I -- I thank you. And I know I speak for Mr. Cantrell when I say, I thank you for your service. It is extremely important. And I look forward to talking to you again at the close of this case. Thank you.

MR. CANTRELL: May it please the court?

THE COURT: Yes.

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MR. CANTRELL: Ladies and gentlemen, I'll take up where Mr. Tooker left off. Thank you for your service as obviously none of this takes place and nobody has their day in court without jurors doing their service, even though it may well be inconvenient.

I'm David Cantrell. I represent Matt Holder, who, first and foremost -- and I think you know at this point -- is he sits there innocent of this charge. And that innocence stays with him throughout this unless at the end of this trial, you're convinced beyond a reasonable doubt that he is guilty. Other than that, he remains innocent, as innocent as he is now.

And his innocence shields him throughout the trial. So it is important that you, again, listen to everything the judge has told you. You are the triers of the fact. You decide what, in fact, happened. It's an awesome responsibility. It's a tough responsibility.

But the second part is, you use, as you've been told earlier, your common sense, your day-to-day sensibilities; the way you deal when you deal with any human being. The simple fact is, we're dealing with human beings here throughout this and they're all entitled to their day in court.

You've heard the nature of the allegations, the

charge. You've heard the age of the person who made these allegations. So I will tell you, you're going to be lead -- to a certain degree -- as you would in any day-to-day activity that you begin by -- by various thoughts and emotions, one will be -- will be sympathy. There will be sympathy in the minds and hearts of all of you when you listen to this. Sympathy for Mr. Holder; he's been accused of something that he certainly did not do. You will hear testimony, I believe, of this young man and you will want to sympathize with him -- maybe a lot -- and that is understandable I think. All of us would.

But the fact of the matter is, in your day-to-day activities, your day-to-day relationships, you sympathize with people, but you still have to decide what is the truth. What happened, what are these people -- what is this person telling me and did it happen or if it could. The way you do that is by listening to the testimony, hearing everything, and seeing everything that is presented to you.

I agree with Mr. Tooker, credibility is everything in this case -- absolutely everything. And hearing what somebody says, and determining if you believe it is everything in this case. And only by -- by doing that, do you reach a verdict that speaks the

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truth.

You're going to hear about cameras and potential camera views. You're going to hear testimony from a lot of different people about a lot of different things, and they all must point to guilt beyond any reasonable doubt or Matt Holder remains innocent. It is of paramount importance to all of us. All we ask you to do, and all that you were sworn to do, is to listen, pay attention, and again, use your -- what you use every day, and determine what people are saying, whether it's truth or credible. Based on that, you decide what happened.

You're the finders of the fact. The Judge will tell you all about the law. The two attorneys get to tell you maybe our opinion of the law -- or our opinion of what the law says. The Judge is gonna tell you that -- that's not evidence. We can't tell you what to think. We can't tell you what the law is. He tells you what the law is. We can comment on the facts. But you go back in this room and you take everything you have heard and everything that you have taken in, and then you reach a verdict.

And, ladies and gentlemen, I would ask you to do that, all of you to determine what is credible, and what is believable, and determine what is truthful and

-- and return a verdict that speaks for the jurors. I ask you to return a verdict of not guilty; that Matt Holder will continue to be innocent of this charge.

Again, thank you for all of your attention and all of your efforts, and thank you for listening to all of this evidence.

THE COURT: Call your first witness.

MR. TOOKER: Thank you, Your Honor. The State would first call Detective Sam Byers to the stand.

SAMUEL BYERS, having been first duly sworn, testified as follows:

THE CLERK: Thank you, sir. If you would have a seat and state your name for the record.

THE WITNESS: Samuel Byers.

DIRECT EXAMINATION BY MR. TOOKER:

Q. Detective Byers, where do you work, sir?

A. I work for the Pickens City Police department.

Q. How long have you worked there?

A. I started in February of 2003.

Q. Okay. And what is your role or what are your duties with the Pickens Police Department?

A. I am currently a Detective with the Pickens Police Department, and I investigate criminal activity among other tasks; a training officer, instructor in certain fields; property and evidence supervisor; a

forensic supervisor.

Q. Okay. And how is it that you came to be involved in this case?

A. I received a fax from a DSS worker from Columbia regarding alleged abuse.

Q. Okay. So where did you go?

A. The first time -- the first thing I did is upon receiving that, I made arrangements to speak with the victim.

Q. Who is the victim in this case, who did you speak to?

A. I spoke to Minor 1.

Q. Minor 1. And how old was he at the time?

A. Fifteen years of age.

Q. Okay. And where did you speak to him?

A. I spoke to him at the Hampton PRTF.

Q. Okay. And how many times during the course of this investigation did you speak to Minor 1?

A. I spoke to him on -- actually I got to interview him on three different occasions, but there was a fourth time also.

Q. Okay. Did he want to talk to you at the time?

A. Not in the beginning.

Q. Okay. Were you able to develop a rapport?

A. Yes, I was.
Q. Okay. After you developed that rapport, did you have a conversation with regards to the allegations in this case?
A. Yes, I did.
Q. Without saying any more, did he say when the allegations took place?
A. Yes. He gave me an indication as to what times these took place.
Q. Okay. And what was that?
A. Around the end of May.
Q. Okay. Did he tell you where these events took place?
A. The alleged events took place at the Hampton PRTF.
Q. And specifically where at Hampton PRTF?
A. The specific rooms, one instance was in a laundry room; one incident was in a nurse's office restroom; and a third incident was in a library closet.
Q. Okay. After you communicated with with him, were you able to gather any kind of physical information?
THE COURT: Excuse me for interrupting -- do you want to establish a year?
MR. TOOKER: Yes, sir. Thank you, sir.

BY MR. TOOKER:

Q. Well, with regards to when you said the end of May, the end of May of what year?

A. 2012.

Q. Okay. Let's go back to Hampton PRTF, where is that exactly?

A. It's located at [redacted] Hampton Avenue, Pickens, South Carolina, within the city limits of Pickens, Pickens County.

Q. Okay. And what kind of facility is it?

A. It is a rehabilitation home for troubled youth, troubled boys.

Q. Okay. How many residents does it have?

A. I honestly don't know.

Q. Okay. And who was the person in charge of the facility when you went there to talk to Minor 1 [redacted]?

A. Kevin Sowell.

Q. All right. Were you able to -- to gather any physical evidence in this case?

A. The only physical evidence I was able to get was recorded statements.

Q. Okay. Did you put together any -- were you able to gather any video evidence in this case?

A. Yes. I was able to get that.

Q. Okay. That video evidence, you provided to

who?
A. Mr. Sowell provided that to me.
Q. Did you watch the videos in this case?
A. Yes, I did watch the videos.
Q. Okay. And in the videos in this case, did you observe anything that was inconsistent with what the victim reported?
MR. CANTRELL: Your Honor, I would object. The video is the best evidence of that. Otherwise, it requires --
THE COURT: I sustain the objection.
MR. TOOKER: Okay.
BY MR. TOOKER:
Q. After you gathered the video evidence, what was your next step in the course of your investigation?
A. After I did that, I reviewed the fact -- the statement given to me by Minor 1 and the video.
Q. Okay. Did you get warrants in this case?
A. Yes, I did.
Q. And did you get indictments in this case?
A. Yes, I did.
Q. Okay. Other than -- than talking with folks and gathering evidence, did you do anything else in this case that you haven't testified to for the jury?
A. I --

Q. Anything else that you're allowed to testify to?

A. No.

Q. Okay.

MR. TOOKER: No further questions.

CROSS EXAMINATION BY MR. CANTRELL:

Q. Mr. Byers, can you tell us the dates that you talked to Minor 1?

A. I spoke to him on one instance at -- June 21st 2012. I think I spoke to him again on June 29th. And if I recall correctly, there was -- January -- I want to say January 10, 2013.

Q. And where did you talk to him?

A. The June 21st was at Hampton PRTF. The second time -- like I said I think was June 29th -- was at the Pickens City Police Department. And the third occasion was at a children's home in Duncan, South Carolina.

Q. Did -- Minor 1 said you had to build a rapport with him, did he initially refuse to talk to you?

A. Yes, sir.

Q. Did he initially refuse to talk to other individuals through other individuals looking into this case?

A. I -- I'm not -- I don't know if he did or not initially. I know that he did speak to some persons

so.

Q. How about a Ms. Few (ph)?

A. Yes. He did refuse to speak to her.

Q. And that was in your presence?

A. It was -- I was at the police department at the time.

Q. And that was the interview on the 29th?

A. It may have been the one on the 29th. There was a second occasion, it was right around there, that I did speak to Minor 1 though.

Q. And after the hesitancy on his part, and you're -- you're working on building a rapport with him, did you explain to him that we -- meaning you and, I guess, Minor 1 -- had to show consistency in his story?

A. Yes, I did.

Q. You did tell him that?

A. Yes, sir.

Q. Have you, in your possession, any evidence of any physical injuries?

A. No, I do not.

Q. And when you went to the Hampton, this -- this was after -- if I understood -- after you received a fax from another agency; is that correct?

A. Yes, sir.

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Q. You went to the Hampton, did you view the areas where Minor 1 was making these allegations?

A. No. I did not go view the other areas at that time.

Q. Have you seen them since?

A. No. I have not been to those areas since.

Q. So, you have never been to the Hampton and eyeball view these areas where these allegations took place?

A. No, I did not.

Q. And all of your investigation took place and was concluded by January of '13?

A. I submitted for the warrants in February, 2013.

MR. CANTRELL: Your Honor, I have no further questions at this time. I may need to recall him.

THE COURT: Mr. Tooker, any redirect?

MR. TOOKER: No, sir, Your Honor.

THE COURT: You can step down. I appreciate your time. Thank you. Call your next witness.

MR. TOOKER: Yes, sir, Your Honor. Our next witness will be Minor 1. But before we call him, we do have a motion we need to take up outside the jury's presence.

THE COURT: All right. We'll take a break then.

We have a matter to take up outside of your presence anyway, and so this will be our morning break. And I don't know how long this will take, but we'll send for you as promptly as we can.

The bailiff will show you the jury room.

(Whereupon, the jury left the courtroom at 10:58 a.m.)

THE COURT: All right.

MR. TOOKER: Before you, Your Honor, I had a filed -- with the court -- a motion in compliance with the Rape Shield laws.

THE COURT: Yeah, I had it. I'm looking for it in my wrath of papers up here. I know I saw it earlier. And I can't put my hands on it now. Do you have an extra copy?

MR. TOOKER: I do, sir.

THE COURT: Okay.

MR. TOOKER: And I just wanted to go on record, that the State is filing the motion. And if Mr. Cantrell has any information on cross examination for the witness, if it does go into any kind of prior sexual history, the State would just request that -- that cross examination be proffered in camera for Your Honor to view before it goes in front of the jury.

THE COURT: Anything, Mr. Cantrell?

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MR. CANTRELL: Your Honor, nothing at this time. I have my doubts if that is going to rise. But if it does, obviously, we will not -- request the opportunity to speak outside the presence of the jury.

THE COURT: Okay.

MR. CANTRELL: But I can say from what I have seen, that we would need to address that issue.

THE COURT: Okay. All right. Well, let's take a short break since the jury is taking one, and then we'll get back started.

MR. TOOKER: Yes, sir. Thank you, sir.

THE COURT: So let's try to be back in about 10 minutes. Ten after 11:00.

MR. CANTRELL: Thank you, Your Honor.

(After a break, Court reconvened.)

THE COURT: During the break, it was called to my attention that juror, Mr. Todd, thinks he may have, through his mother's involvement with DSS, met Mr. Minor 1 before. So I'm going to ask if Minor 1 is present?

MR. TOOKER: He is, Your Honor.

THE COURT: All right. Minor 1 would you please stand just a minute? And I'm going to ask Mr. Todd to come in and see if he -- you are, in fact, the individual he -- he recognizes. So if you would

bring -- bring in Mr. Todd.

THE BAILIFF: Yes, sir.

(Pause.)

THE COURT: Mr. Todd, this is Minor 1. And you indicated you may have met him on some other occasion through your mother?

JUROR: I think I have met him before. I'm not -- I'm not completely sure. I believe we was -- like a festival (ph) up here at Pickens.

THE COURT: Uh-huh.

JUROR: I believe I had an extended conversation with him. I'm not completely sure. And then the other is -- I just -- I'm trying not to get myself in trouble or get anybody else in trouble from where my mom works. And I'm just trying to be safe.

THE COURT: Well, based on that, I'll excuse you from serving. I -- you have done exactly what you were supposed to, so I'm going -- I'm going to excuse you from serving further and let you go. And just call back tonight after whatever time that they told you.

THE CLERK: 6:00.

THE COURT: After 6:00 and follow those instructions. And thank you for letting us know this.

JUROR: Yes, sir.

THE COURT: Thank you. Now, we will draw -- I

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don't need to say we draw --

THE CLERK: Oh, I'm sorry.

THE COURT: All right. The way -- the way we draw for the alternate in criminal court is that the names are drawn at lot. So what I've done is I have put two alternates' names on slips of paper. And without his ability to see it, I'm going to ask the clerk to just draw one. (Pause.) Who did you get?

THE CLERK: Ms. Murray. Ms. Murray.

THE COURT: Ms. Murray, Barbara Murray. All right. She'll be seated as the -- on the panel. Ms. Murray is now a member. She will be seated as a juror instead of an alternate. And just one second -- is the State ready to proceed?

MR. TOOKER: The State is ready, sir.

THE COURT: The defense?

MR. CANTRELL: Yes, Your Honor.

THE COURT: All right. And before -- any comments on the way we handled Mr. Todd?

MR. TOOKER: No objection from the State, sir.

MR. CANTRELL: None. None from the defense.

THE COURT: All right. Tell Ms. Murray that she's now on the jury and bring -- bring them on in.

(Whereupon, the jury entered the courtroom at 11:18.)

THE COURT: Ms. Murray, you're now on the jury. Mr. Todd did not do anything wrong. In fact, he did right. And based on -- I'm not going to go into detail, but I have excused him and we have seated you. Call your next witness.

MR. TOOKER: Thank you, Your Honor. The State would next call Minor 1 to the stand.

Minor 1, having been first duly sworn, testified as follows.

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

DIRECT EXAMINATION BY MR. TOOKER:

Q. State your name for the record, please.

Minor 1.

Q. All right. And, Minor 1, we've got to make sure that you talk real loud -- so this is super awkward, but it's going to be right by your face. Now only say your name again.

Minor 1.

Q. Say it one more time, Minor 1.

Minor 1.

Q. All right. So, Minor 1, what kind of name do you like to go by or be called? Minor 1 or Minor 1

A. Minor 1.

Q. Minor 1 And where do you live?

A. Anderson.
Q. Anderson. Who do you live with?
A. I'm in a group home.
Q. A group home. How long have you been there?
A. A year.
Q. Okay. Do you like the home that you're at?
A. It's okay.
Q. Okay. How old are you?
A. Eighteen.
Q. When is your birthday?
A. Today.
Q. What year were you born?
A. [redacted].
Q. [redacted]. Are you familiar with Hampton PRTF?
A. Yes, sir.
Q. Okay. Did you ever live there?
A. Yes.
Q. How long did you live there?
A. About 10 months.
Q. Okay. Do you know the difference between the truth and a lie?
A. Yes.
Q. What is something that's true?
A. Something that actually happened.
Q. And what is something that is a lie?

A. Something that's false, made up.
Q. Okay. If I were to say this carpet is red, is that true or is that a lie?
A. It's a lie.
Q. Okay. You lived at Hampton PRTF you said for 10 months. Would you describe Hampton PRTF; what it is like living there?
A. It's high management for individuals who have issues with certain things, they try to help you with it. It's like lockdown.
Q. Okay. And are there staff members there that see to your needs?
A. Yes.
Q. Okay. How is it that they have you living -- do you live in your own room or do you share bedrooms?
A. You share a room.
Q. Okay. How is it that you interact with other children?
A. Gym.
Q. Okay. What are the units?
A. They have Paladin (ph). That's the one I was at. It's for younger kids.
Q. Okay. So the units have different names?
A. Yes.
Q. And on the units, do you stay with each other

or do you intermingle with other kids?

A. Everybody is talking to everybody.

Q. Okay. So do you get to talk to kids from other units?

A. Not really.

Q. Okay. And when you were there, how is it that -- how is it they evaluated how well you were doing?

A. They score you on certain things that you do, following the rules, and things like that.

Q. Okay. And how it is that you're able to reward yourself or make money?

A. You go up the level system by following the program rules.

Q. Okay. So if you follow the rules, you progress up the system?

A. And you get special privileges.

Q. Okay. What's an example of a special privilege?

A. You can go out into the Commons and play video games, or you can make extra money.

Q. Okay. When you say "money", what do you mean?

A. Avalons.

Q. Is that what they call money at the facility?

A. Yes.

Q. And how is it that you make Avalons?
A. Doing extra chores and things that they ask you to do.
Q. Okay. And if you got Avalons, what would you spend them on? How would you use them?
A. You get your clothing check, you take that money with you and spend it on what you want.
Q. Okay. And what kind of chores? What kind of tasks did you do to earn avalons?
A. Sweeping, mopping, folding clothes/towels.
Q. Okay. You said you spent about 10 months at Hampton PRTF?
A. (Nodded.)
Q. Is that a yes?
A. Yes.
Q. Okay. You've just got to make sure that you say yes or no, so the court reporter can hear you. Okay. Were you always happy to be there?
A. No.
Q. Okay. Were you sometimes dissatisfied?
A. Yes.
Q. Okay. Because you were dissatisfied, did you do anything or say anything to try to get removed?
A. I made comments because I was angry, but I didn't really try to leave. I waited my time out.

Q. Okay. Do you know the defendant in this case, Mr. Holder?

A. Yes.

Q. How is it that you know him?

A. He worked on the pod that I was at part-time.

Q. Okay. You say "part-time", day time or night time?

A. Both.

Q. Okay. And you say "part-time", was he -- what -- how is it that you have staff members assigned to each unit?

A. I'm not sure.

Q. Okay. Do they -- do they rotate or is it usually the same people?

A. It's usually the same people.

Q. Okay. Are there occasions where other people come and interact with you, other staff members?

A. Yes.

Q. Okay. So you got to know Mr. Holder?

A. Yes.

Q. Did anything ever happen between yourself and Mr. Holder?

A. Yes.

Q. What happened between you and Mr. Holder?

A. He asked -- well, he made statements about his

privates to me, the first time when we were alone.
Q. Okay. Where were you when that happened?
A. In the laundry room.
Q. In the laundry room. The laundry room, is it a big room or is it a small room?
A. It's small.
Q. Does it have any windows?
A. No.
Q. How is it that you get into it?
A. A key.
Q. Okay. Is there one door or two doors?
A. One.
Q. Okay. And once you're in the laundry room, is it a big room or is it a small room?
A. A small room.
Q. You went into the laundry room together?
A. Yes.
Q. Why did you go into the laundry room together?
A. He had to make sure I was doing my job right, not trying to get contraband or anything.
Q. And what job were you doing at that point?
A. I was folding clothes.
Q. In the laundry room?
A. Yes.
Q. So when is it that he started to make sexual

comments to you?

A. We were in there for a few minutes. And he looked at a box or whatever. And he said -- he looked at different measurements on the box, and asked me which one I thought was related to his privates on there.

Q. Okay. Did he make any other sexual references?

A. He didn't say anything else.

Q. Okay. Did anything else happen in that room?

A. Yes.

Q. What else happened in that room?

A. He showed me his privates in there.

Q. He showed you his privates?

A. Yes.

Q. Did he ask you to do anything to him or for him, or to show him anything?

A. Yes.

Q. Okay. What did he ask you to do?

A. He asked me to show him.

Q. Show him what?

A. My privates.

Q. Did you do that?

A. Yes.

Q. Okay. Was there any touching going on at this

point?
A. Yes.
Q. Okay. Did he touch you or did you touch him?
A. Both.
Q. Okay. How long did this take place?
A. A few minutes.
Q. Okay. Total?
A. In the laundry room.
Q. Okay. So in the laundry room, are you talking about both the statements he made and touching, and the showing, all put together was a few minutes worth of time?
A. No.
Q. Okay. Well, how much time are we talking about?
A. Probably 30 minutes I was in there.
Q. Okay. For all 30 minutes, was sexual stuff happening, or were you still working --
A. Talking and touching.
Q. Okay. Did you still work when you were in there?
A. Yes.
Q. Okay. So you were still folding the clothes?
A. Yes.
Q. Did you ask to do anything else in there,

clean anything?

A. No.

Q. Okay. After you're in the laundry room, when was the next time -- or was there a next time there was any kind of inappropriate behavior from the defendant to you?

A. There -- there was another time.

Q. What was the next time?

A. In the library.

Q. Okay. And before we go to the library, do you recall whether or not you said anything ever happened at the nurse's station?

A. Yes.

Q. Okay. What happened there?

MR. CANTRELL: Your Honor, I would object to leading the witness.

THE COURT: I sustain the objection.

BY MR. TOOKER:

Q. Okay. Did anything happen any places other than the library?

A. Yes.

Q. What other places?

A. The nurse's station.

Q. Okay. In there, what happened?

A. He -- he touched me, and asked me to put my

mouth on him, and I moved away.

Q. Okay. How long, total, in the nurse's station did the actual sexual acts take?

A. About eight to ten minutes.

Q. Is that the whole time you were in the nurse's station, about eight to ten minutes?

A. Yes.

Q. Any you mentioned the library, was the library on the same day or a different day?

A. Different day.

Q. Okay. Were the nurse's station and laundry room on the same day or a different day?

A. The same day.

Q. Okay. So on the -- as far as the library, what happened?

A. I was on my pod, and I asked for a staff to come escort me to get a book. Matt showed up and took me, looking for my book. And he asked me to play with myself so that he could watch.

Q. Okay. The library, is it a small room or a big room?

A. Small.

Q. Are there many ways into it or is there just one way into it?

A. One door.

Q. Are there any windows?
A. No.
Q. What is it adjacent to? What room is it next to?
A. It's right in -- you go in the Commons, it's in the Commons.
Q. Okay. And he asked you to play with yourself, so what does that mean?
A. Just touch myself.
Q. Okay. Do you mean masturbate, is that what you're --
A. Yes.
Q. Okay. Was he in the room with you or out of the room with you?
A. In the doorway.
Q. In the doorway. Was the door shut or was the door open?
A. It was open until the end.
Q. Okay. When you say "open", do you mean wide open or cracked?
A. Cracked.
Q. And he's standing in the doorway, was he doing anything while you were masturbating?
A. Looking out the door.
Q. Okay. Would he look at you?

A. Yes.
Q. Okay. What happened -- did the door ever shut?
A. Yes.
Q. What happened when the door shut?
A. He put his mouth on me.
Q. And then what happened?
A. Then that was the end.
Q. And I hate to be vulgar, but did you ejaculate?
A. Yes.
Q. Okay. After that happened, what did you do next?
A. I grabbed a book and went back to my pod.
Q. Okay. Did you tell anybody right then what happened?
A. No.
Q. Okay. Did you ever tell anybody what happened?
A. Yes.
Q. Okay. Who did you tell first what happened?
A. Mr. Sowell.
Q. And do you recall if after you said what happened, you had any kind of behavioral incidents?
A. Yes.

Q. What happened?
A. I ripped up the floors and the sink.
Q. Okay. Why did you do that?
A. I was angry. No one believed me.
Q. Okay. And you did that how many days after that, a day or two?
A. More than a day or two.
Q. All right. And when you did it, where there any consequences?
A. Yes.
Q. What were the consequences?
A. My privileges.
Q. After you did that, did you get back on track?
A. Yes.
Q. Okay. How much longer were you at Hampton PRTF after you made that allegation?
A. About a month or two.
Q. Okay. So you were not released immediately?
A. No.
Q. Okay. On the -- on the day that y'all went to library, do you recall whether or not you had eaten any food?
A. Yes.
Q. Okay. What food had you eaten?
A. Pizza.

Q. Okay. Where did you get -- where had you gotten the pizza?
A. From him.
Q. From the defendant?
A. Yes.
Q. And why is it that he gave you the pizza?
A. For me to let him see me play with myself.
Q. Okay. All right. Did he ever do anything else to you?
A. No.
Q. Did any other staff members do anything to you?
A. No.
Q. Okay.
MR. TOOKER: One moment, Your Honor.
(Pause.)
BY MR. TOOKER:
Q. You said you waited to come forward, why is it that you waited to come forward?
A. I guess I was scared in a way.
Q. Okay. When you came forward, did anything bad happen to you?
A. No. I just was really scared to say anything.
Q. Okay. All right. No further questions at this time, sir.

THE COURT: Please answer any questions of -- Mr. Cantrell may ask you.

CROSS EXAMINATION BY MR. CANTRELL:

Q. Minor 1, on the day at the library, where were you when you asked to go get a book?

A. My pod.

Q. How far is that from the library?

A. Like a three minute walk.

Q. Okay. Where was the pizza?

A. On his -- where he was at, the office.

Q. Okay. Where was that?

A. On his pod.

Q. And how far was that from you?

A. Across the hall.

Q. And were you given pizza while you were walking?

A. Yes.

Q. Did you eat all the pizza?

A. Yes.

Q. Okay. And then you went into the library?

A. Yes.

Q. And you say the door to the library stayed open until the very end?

A. Yes.

Q. Now, tell us, the library door opens on to

what area?

A. The Commons.

Q. And the Commons is bigger than this room, isn't it?

A. Yes.

Q. It's got a lot of seats and people are in there all the time?

A. No.

Q. Pardon me?

A. People aren't always in there. There's no one in there.

Q. You're saying there was nobody in the Commons area at this time?

A. No.

Q. How many people did you pass going there?

A. One.

Q. Who was that?

A. A nurse.

Q. What's her name?

A. I'm not sure.

Q. And you went into the library with -- to look for a book; is that correct?

A. Yes.

Q. Now, who was it you first asked if you could go get a book?

A. I asked my staff member.

Q. And was he going to take you to the library?

A. There was not enough time.

Q. So he asked Mr. Holder to take you to the library; correct?

A. Yes.

Q. So Mr. Holder didn't come to you, Mr. Holder didn't come to your staff member, he went to -- this staff member went to Mr. Holder, to ask him to do him a favor, and take you to the library; is that right?

A. Yes.

Q. Let me ask you, Minor 1, is this a picture of the Commons area?

A. Yes.

Q. And is this, in fact, a picture of the door to the library?

A. Yes.

Q. That would be the door on the right hand side?

A. I --

MR. TOOKER: Your Honor, I would object briefly, just for the purposes of the record, that if Mr. Cantrell refers to any exhibits, he mention the number.

THE COURT: Well, are these in evidence?

MR. TOOKER: No, sir. They are not in evidence. I don't know if that's his intent --

THE COURT: Well, just -- if it's not in evidence, but it does have a number on it -- so refer to it by the number.

MR. CANTRELL: Okay.

BY MR. CANTRELL:

Q. And this is -- it shows number 18 on it; is that correct?

A. Yes.

Q. Is this also the Commons area?

A. Yes.

Q. And this is number 21?

A. Yes.

Q. And, in fact, is this a picture taken from the door just inside the library?

A. I'm not sure.

Q. Okay. Is this the door to the library?

A. Yes.

Q. And this is number 20?

A. Yes.

Q. And do these two pictures, 22 and 23, show the library?

A. Yes.

Q. It is basically a closet that has been converted to a room with book shelves; is that right?

A. Yes.

Q. And that door was open almost all the time that you were in there, Minor 1 is that correct?
A. It was cracked.
Q. And Mr. Holder was standing at the door, just outside the door?
A. In the doorway.
Q. In the doorway. So it was open enough for him to stand in the doorway?
A. Yes.
Q. Okay. And when you were in the nurse's station, which -- there's several rooms in the nurse's area; is that right?
A. Yes.
Q. And which room are you in?
A. The back room.
Q. Which room?
A. The back, back here.
Q. And were there other people in the area?
A. No.
Q. None whatsoever?
A. No.
Q. Were there people that were outside the nurse's area nearby?
A. The nurse was in there, but she had left.
Q. Did she come back?

A. No.
Q. So you're saying there was one person there, the nurse, and she left and never came back?
A. She left while I was cleaning. When I was done, I saw her return.
Q. Now, it was -- you were doing jobs that you wanted to do to earn money for Avalons; correct?
A. Yes.
Q. And it was not unusual for you to do jobs?
A. No.
Q. It was not unusual for Matt or someone else on staff, to be there while you were doing them?
A. No.
Q. Because, in fact, it was required to make sure that stuff didn't get gone, or contraband wasn't taken, or you didn't get hurt?
A. Yes.
Q. All right. Let's talk about Hampton. You've already said that you weren't always happy to be there; is that correct?
A. Yes.
Q. And you wanted to find ways to get out of there?
A. No.
Q. You did not?

A. No.
Q. But you did not want to stay there?
A. I did not want to stay either.
Q. Okay. Did you ever get angry when you didn't progress well enough to leave?
A. Yes.
Q. And what did you do then?
A. I would act up.
Q. Like tearing up floors, that sort of thing?
A. Like arguing with staff and being noncompliant.
Q. And that was because you were angry that you were not on track to leave the Hamptons?
A. Yes.
Q. Now, you said after this incident, you acted out and tore things up; is that right?
A. Yes.
Q. That's not the only time you tore things up; is it?
A. That was the first time I tore stuff up.
Q. But you had acted out before?
A. Being noncompliant, not following the rules.
Q. And, in fact, you did leave the Hampton one to two months after this alleged incident; right?
A. Yes.

Q. Let me ask you, do you remember telling any individuals at the Hampton, or any individuals involved in this case, that you knew how to get out of there?
A. No, I do not.
Q. You don't remember saying that?
A. No.
Q. Do you deny saying that?
A. Yes.
Q. Do you remember saying on several occasions after these allegations, that Matt Holder did not do this?
A. No.
Q. Do you deny saying that?
A. Yes.
Q. Was it your belief that if you made allegations against an individual or a staff there, that you would get transferred out?
A. No.
Q. Did you think you would not get transferred out?
A. Yes.
Q. So you think you would have to stay no matter what you said?
A. Yes.
Q. But, in fact, you did get out a month or two

later; correct?

A. I completed it.

Q. You had come close to completing prior to this, but there were some issues that kept you there longer; is that right?

A. Yes.

Q. Some of that happened right at the time of these alleged incidents; right?

A. No.

Q. Not at all? Are you sure about that?

A. No.

Q. You're not sure?

A. No.

Q. Now, have you testified today to everything that you alleged that Matt Holder did on these instances?

A. Yes.

Q. Have you added anything that you never said before?

A. No.

Q. Have you taken away anything that you did say before?

A. No.

Q. And let's just back up. Everything you've alleged took place at a location in the Hampton that

was at or near one of the bigger areas, bigger rooms, whether it was the Commons or the pod, all of these things took place in rooms where there were doorways leading to these large areas; right?

A. Yes.

Q. All of the things you are doing at the time were things that you and other kids had done before, cleaning up, trying to earn Avalons --

A. Yes.

Q. -- is that correct -- and a couple of days later, you said that Matt did this, and then shortly after that, you started tearing up things and being noncompliant; is that correct?

A. Yes.

MR. CANTRELL: If I could just have one second?

(Pause.)

MR. CANTRELL: Your Honor, no further questions at this time. We may -- we reserve the right to recall.

THE COURT: Redirect?

MR. TOOKER: Briefly, sir.

REDIRECT EXAMINATION BY MR. TOOKER:

Q. Mr. Cantrell mentioned the layout of the nurse's station, where is it that the Defendant touched you in the nurse's station?

A. The bathroom.

Q. The bathroom?
A. Yes.
Q. Did the bathroom have a door?
A. Yes.
Q. Okay. What is the -- if you can describe for the jury, just sort of the physical layout of the nurse's station?
A. You would walk in the door, you go to the left of the doorway, turn right, turn right again in that corner.
Q. So it's kind of a horseshoe?
A. Yes.
Q. Now, you said the nurse was in there initially?
A. Yes.
Q. Okay. But you said at some point she left?
A. Yes.
Q. Okay. When is it that he touched you? Is it when the nurse was there or when she wasn't there?
A. When she wasn't there.
Q. Okay. You said that was brief, or it took a long time?
A. It was brief.
MR. TOOKER: No further questions, sir.
THE COURT: Re -- recross?

RECROSS EXAMINATION BY MR. CANTRELL:

Q. Just to clarify, you said no one was there but the nurse, only for a short period of time?

A. In the nurse's station, yes.

Q. You never saw or heard anybody else come in or out?

A. No.

Q. And that's your full and complete testimony about that?

A. Yes.

MR. CANTRELL: No further questions.

THE COURT: You can step down. Thank you. Call your next witness.

MR. TOOKER: Yes, sir. The State next calls Johniece Wofford.

JOHNIECE WOFFORD, having been first duly sworn, testified as follows:

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

THE WITNESS: Johniece Wofford.

DIRECT EXAMINATION BY MR. TOOKER:

Q. All right. Ms. Wofford, where do you work now?

A. The Department of Social Services Intensive Foster Care.

Q. Okay. And how do you know the victim in this case, Minor 1 ?

A. He's on my case load.

Q. Okay. How long have you been assigned this case?

A. A little over three months.

Q. Okay. So you just got it?

A. Yes.

Q. All right. What is his current situation?

A. He currently lives at a group home in Anderson, South Carolina called Pathways.

Q. Okay. How long has he been in DSS custody?

A. Since the age of 12. So it will be seven years.

Q. Okay. Do the parents have any rights to him?

A. No. Their rights were terminated.

Q. Okay. And his birthday is today?

A. Yes.

Q. Okay. What does that mean if you're 18 years old and you're in DSS custody?

A. Basically what it means is that you have the ability to sign yourself out of care. And at that point, DSS would still be there for you if you needed them. Minor 1 has decided to remain in care throughout the rest of this school year. And following that, he's

going to try to get into the Marine Corps.

Q. Okay. If he up and decided tomorrow that he didn't want to do that, he just wanted to leave?

A. Yes, he could.

Q. Legally, could you stop him?

A. No, we could not.

Q. Okay. All right. Thank you. No further questions.

THE COURT: Cross?

MR. CANTRELL: I have no questions.

THE COURT: You can step down and be excused. We appreciate your time.

THE WITNESS: Thank you.

THE COURT: Call your next witness.

MR. TOOKER: Thank you, Your Honor. The State would next call Meghann Harvey to the stand.

MEGHANN HARVEY, having been first duly sworn, testified as follows:

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

THE WITNESS: Meghann Harvey.

DIRECT EXAMINATION BY MR. TOOKER:

Q. All right. Ms. Harvey, how do you spell your first name?

A. M-e-g-h-a-n-n.

Q. Okay. And where are you from originally?
A. Hampton PRTF.
Q. No. No. I mean --
A. Oh.
Q. Where -- where do you hail from?
A. Hail -- New York.
Q. New York. Okay. And you said you work at Hampton PRTF?
A. I do.
Q. What do you do there?
A. I'm the Assistant Facility Director.
Q. What does that mean exactly?
A. I manage the daily operations of the facility, and the 80 plus direct care staff that we have there.
Q. Okay. All right. The facility itself is PRTF, what does that mean?
A. Psychiatric Residential Treatment Facility.
Q. Okay. And how many kids do you have there?
A. Up to 52.
Q. Where do they come from?
A. North Carolina and South Carolina.
Q. And how are they placed in there?
A. DSS, DJJ, their parents. It depends.
Q. And -- and where does funding usually come from?

A. The State.
Q. The State, medicaid or Medicare?
A. Yes.
Q. And are you familiar with this case, why you have been called to testify today?
A. I am.
Q. Okay. Who is the defendant, Matt Holder?
A. Matt Holder used to be a direct care staff at our facility.
Q. Okay. And how long did he work for y'all?
A. A little over a year, like a year and two months.
Q. Okay. Was he over the age of 14 when he started?
A. Yes.
Q. Okay. Was he over the age of 18 when he started?
A. Yes.
Q. Okay. He -- he worked for y'all for a little over a year in what capacity?
A. He worked on the unit as a direct care staff.
Q. What does that mean?
A. I mean, basically, they watch over the kids, make sure that they're being taken care of. They don't run out the doors, things like that.

Q. Okay.

A. They are responsible for a small amount of paperwork throughout the day.

Q. Do they have the capacity to reward the kids for good behavior?

A. They do.

Q. Do they have the capacity to punish the kids for bad behavior?

A. They do.

Q. Okay. In this case, our victim is Minor 1 [redacted]; are you familiar with him?

A. I am.

Q. Okay. How long did Minor 1 [redacted] stay at Hampton PRTF?

A. He was there 10 months.

Q. When he did come in; do you recall?

A. 2011 I think.

Q. Okay. And when did he finish?

A. 2012. I think it was like April he came in. I don't remember when he finished, but it was 2012.

Q. Okay. And in this case, what was it that you were called to do with regards to the preparation of anything for court today? Did you look at any videos?

A. I did.

Q. Okay. And I'm going to show you a couple of

videos briefly.

MR. CANTRELL: No objection, Your Honor.

BY MR. TOOKER:

Q. I'm going to first show you what's been marked as State's 1; are you familiar with this item?

A. Yes.

Q. What is that?

A. That is a copy of the footage that was taken outside of the library.

Q. Okay. And why was this footage preserved?

A. Because it shows Matt and Minor 1 going into the library together.

Q. Okay. And have you reviewed this footage?

A. I have.

Q. Is it a fair and accurate copy of what was preserved in your system?

A. Absolutely.

MR. TOOKER: At this point, Your Honor, the State would like to enter State's 1 into evidence.

THE COURT: I believe that's without objection.

MR. CANTRELL: That's without objection, Your Honor.

THE COURT: Okay. It's in.

(State's Exhibit No. 1 received into evidence.)

BY MR. TOOKER:

Q. And I'm also going to show you State's 2, 3, 4 and 5; do you recognize these items?

A. I do.

Q. And these items are what exactly? What is State's 2?

A. They are of Matt and Minor 1 in the gym, cleaning the gym one; and then cleaning the gym two. And then of Matt and Minor 1 in the laundry room on the unit.

Q. Okay. Did you preserve these because of this investigation?

A. Yes.

Q. Okay. With regards to the gym and laundry room, are those items fair and accurate copy of what was in your video system?

A. Uh-huh. They are.

MR. TOOKER: The State would now like to introduce 2 through 5 into evidence.

MR. CANTRELL: Without objection.

THE COURT: In without objection.

(State's Exhibit No. 2, 3, 4 and 5 received into evidence.)

BY MR. TOOKER:

Q. Okay. In a place like Hampton PRTF, I imagine

there are rules for both staff and for patients; is that true?

A. There are.

Q. What kind of rules could a staff member expect to follow if he or she were to work for Hampton PRTF?

A. Confidentiality, dress code, conduct with patients.

Q. Okay. Do y'all have a camera system?

A. We do.

Q. At PRTF?

A. We do.

Q. That camera system, is it pretty extensive or is it limited?

A. It's very extensive.

Q. Okay. Does it cover most of the areas of the facility?

A. It does now.

Q. It does now. When Mr. Holder worked there, did it cover all the areas of the facility?

A. No.

MR. CANTRELL: Your Honor, I would -- objection at this time. I would ask that we be heard outside the presence of the jury.

THE COURT: All right. Let the jury go to the jury room just for a minute.

(Whereupon, the jury left the courtroom at 11:55.)

THE COURT: Yes, sir.

MR. CANTRELL: Your Honor, I anticipate that -- if there hasn't been a bit of it already -- testimony that after this incident, more cameras were added to these areas. I believe that's irrelevant to this trial. And, in fact, it is inherently prejudicial because it would view to the jury that these were added because of something this man did. That may be why they did it, but that's not, I believe, appropriate --

THE COURT: What's -- what's the relevancy of the cameras?

MR. TOOKER: Yes, sir. So it's the State's intent to elicit from this witness that there were no cameras in the rooms where the alleged abuse occurred.

THE COURT: That's fine. She can testify to that, if that's a fact.

MR. TOOKER: Yes, sir. And then after that, we would ask what the policy was with her employees, and what they are instructed to do, remaining on-camera in essence.

THE COURT: Well, no, the question was, were cameras added. And that's what he's objecting to.

MR. TOOKER: Well --

THE COURT: I don't know if that was your question, but that was her answer.

MR. TOOKER: Yes, sir.

THE COURT: And -- and whether cameras were added after the incident is not relevant.

MR. TOOKER: Yeah. And I'm not concerned with that fact, sir. So I'll gladly --

THE COURT: Okay.

MR. TOOKER: But I would like to elicit that -- that there were not cameras in those rooms at that time.

THE COURT: I think she has already testified to that. But I'll -- you can certainly testify to what existed at --

MR. TOOKER: At the time.

THE COURT: -- as far as surveillance at the time, yes.

MR. TOOKER: Okay.

THE COURT: I thought she testified to that.

MR. CANTRELL: Your Honor, the possibility of overkill -- I would ask that it not be were there cameras in those rooms at that time. Just ask, were there cameras in those rooms. Because, again, why at that time, they brought at least an indication so --

THE COURT: No, I don't think -- I follow your

concern. But I don't -- I don't -- my logic is a little different. And that is, I don't think it would lead to them -- to conclude that they were added just -- it is just a question as to the issue of whether or not there were cameras present during that time, and I'll allow that question.

Bring in the jury. Bring them in.

(Whereupon, the jury entered the courtroom at 11:59.)

THE COURT: You may proceed.

BY MR. TOOKER:

Q. Were there cameras present in the library in 2012?

A. No, there wasn't.

Q. Okay. Were there cameras present in the rear of the nurse's station in 2012?

A. I don't recall in the nurse's station.

Q. Were there cameras present in the laundry room in 2012?

A. No.

Q. Okay. And what was the policy or what was the staff members instructed to -- to do with regards to the location of those cameras?

A. They are told to stay on-camera at all times.

Q. Okay. And why is that?

A. To protect themselves and the patients.
Q. Okay. Had you ever had to address that with the defendant?
A. I did.
Q. Okay. What did you have to address specifically with him?
A. Making sure that he stayed on-camera when he was with patients.
Q. Okay. So that had been an issue in the past?
A. Yes.
Q. Now, in this case, you said you viewed these tapes, and I would like to play them.
(Whereupon, a video was played in open court.)
Q. Okay. This tape, this footage -- what is our date?
A. 5/31/12.
Q. Okay. And you said this is the footage of the defendant and the victim?
A. It is.
Q. What is this room that we're looking at?
A. We call that the game room.
Q. The game room?
A. I notice the play stations on the right side. And they can watch movies on the -- on the far wall.
Q. And for the record, this is State's 1.

Between that Pepsi machine and that table over there, what is that door we are seeing?

A. The door that is open is the library.

Q. Okay. The library itself, is it a big room or a small room?

A. It's a small room.

Q. Okay. And what kind of stuff do you have in there, just books, or books and games?

A. Books. And we have a TV on a cart and -- you know, with a play station on it.

Q. Okay. Now, who is it that's depicted in that door frame, you said that you reviewed this tape?

A. Uh-huh. That's -- that's Matt Holder.

Q. That's Matt Holder. And as we watch this video, is it fair to say that he's cracking the door?

A. Yes.

MR. CANTRELL: Your Honor, I would object.

THE COURT: I sustain the objection. That speaks to the jury, that's not -- it's up to the jury to determine what it shows.

MR. TOOKER: Okay.

THE COURT: Please disregard that testimony, members of the jury.

BY MR. TOOKER:

Q. As the manager of Hampton PRTF, what was it --

or what would it be as an employer that you would want to see your employee doing in the circumstance of a child in the library?

A. The door should be completely open with Matt standing on-camera so you can see him on-camera.

Q. Okay. Are doors closed ever?

A. No, they're not.

(Whereupon, the video continued playing in open court.)

Q. Your -- your video recording system turns the operation -- how it is that you play files?

A. I'm sorry, how does it what?

Q. How do you play files in a recorder like this? A video file, like we're looking at right now?

A. Just like you're doing.

Q. Yeah. But I just want you to explain what I'm doing; does that make sense?

A. Okay. It's the -- the actual footage is recorded on to a disc, and then you have to have the file payer to open it up.

Q. Okay. So y'all have a specific file player that plays these files?

A. Yes.

Q. Okay. Now, at the very end of this file, who is the young person we see walking with the defendant

away from the library?

A. That's Minor 1 .

Q. Okay. The victim, Minor 1 ?

A. Yes.

Q. Okay. I'm going to show you State's 7 through 23.

MR. TOOKER: At this time, Your Honor, because I believe there is no objection, the State would seek to admit these into evidence, subject to any objection.

MR. CANTRELL: That's correct, Your Honor.

THE COURT: In without objection.

(State's Exhibits Nos. 7 through 23 received into evidence.)

BY MR. TOOKER:

Q. Okay. The first thing I'm going to put on the screen is State's 19. I would like you to tell me, ma'am, what this item is? What is that door right there?

A. The door leading out to the unit, I believe, yeah.

Q. Well, how about one for context, State's 18; what we are looking at there?

A. That's the -- the game room.

Q. Okay. And is one of those doors the door to the library?

A. The first door on the right.
Q. Okay. So looking at that, could that be the door to the library?
A. No. That's not the door to the library.
Q. That's not the door to the library. Then I'm mistaken, I apologize.
A. That's okay.
Q. I'm going to show you State's 20 then. Is that the door to the library?
A. Yeah. That's the door to the library.
Q. Okay. And that library door right there, it -- not the library door -- the room itself, how deep is it?
A. As deep as those shelves right there. That's it. It doesn't go back any deeper.
Q. Okay. If I'm standing in the door frame, how much distance between myself and the shelves in the library room?
A. Myself to here (indicating) probably, a little bit deeper, not much.
Q. Three feet, four feet?
A. Yeah.
Q. Okay. State's 22, what is that?
A. That's how long the library is. That's the right side when you first walk in.

Q. Okay. So, that's the interior of the library when you enter?

A. Yes.

Q. All right. State's 23, what is that?

A. That's the left side of the library when you walk in.

Q. Okay. How many books do you think y'all have in there?

A. Maybe 50.

Q. Maybe 50. Okay. Not the most extensive library in the world?

A. No.

Q. Okay. I'm going to show you what's been marked as State's 6; do you recognize these documents?

A. I do.

Q. What are those?

A. They are behavioral check lists that we do, we score the patients twice a day on different things, like their social skills, their sharing, their language, participation, things like that.

Q. And those are the records for which person?

A. For [redacted].

[redacted]?

A. Yes.

Q. Okay. Now, is that a copy or are those the

originals?

A. They're a copy.

Q. Okay. Is it a fair and accurate copy of his records, his daily log record?

A. Yes.

MR. TOOKER: At this point, Your Honor, the State would seek to move State's 6 into evidence.

THE COURT: Any objection?

MR. CANTRELL: Your Honor, I think I would need to be heard.

THE COURT: Let's -- we -- it's 12:30. We've got a matter of law to take up, so why don't we go ahead and break for lunch until 2:00. I know we're in the middle of a witness, but we're going to be a while. So we've got a matter to take up, and let's come back at 2:00. So have a pleasant lunch and we'll see you back at 2:00 and be ready to crank back up.

(Whereupon, the jury left the courtroom at 12:35.)

THE COURT: Yes, sir.

MR. CANTRELL: Your Honor, I contend that these may be admissible, but I don't think we have on the record the purpose for which they are being admitted. It is pretty substantial also, it is not all of what we received, it's a portion of what we received. I guess,

I just basically don't know what the purpose for their admission is.

MR. TOOKER: I didn't know that was a -- the -- the reason I'm seeking to admit these records, Your Honor, is there's been some -- some notion that Minor 1 was so desperate to get out, that he was doing -- willing to do or say anything to escape the facility.

Now, what I think the record will show is that initially he got into the facility, and did not do very well for several months. I say several months -- I believe that's November of 2011.

He has a period where there are instances of bad conduct, and then he gets on board with the program. And he starts doing better. And as he proceeds through the program, his scores improve and his behavior improves. And that's indicative of, in my estimation, somebody who is doing the right things, the things they need to do to get out of Hampton PRTF.

Now, I understand the allegations regarding his motive for falsification was that he was in desperate need to get out as soon as possible. And his testimony was he didn't want to leave.

But like his testimony, I think the records show that he was doing what he was supposed to do so that he could matriculate out of the program the way it was

designed, and that he had a slip. And that slip was immediately after he levied the allegations against the defendant, the allegations June 5th and June 6th and June 7th as noted in those records, he performed very poorly. He destroyed some stuff and acted very out badly. And I think that's relevant both to his mental state at the time he had made these allegations. But then also, again, to rebut the notion that he was not doing what he was supposed to do.

Because after that slip again, he got back on track and started making full progress. So that's why, in -- in my estimation these documents are important for our case today. They rebut both the defense's allegation and then also our sort of key into a mind of a kid that admittedly has a troubled past.

MR. CANTRELL: Your Honor, I'll start with the end, I think it would be troublesome to put the jury in a position of using these voluminous records to get a key into the mind of this child, if that's what their area of expertise is. I don't think that these records will -- are the proper way to do that, to show anything about this young man's progress --

THE COURT: Can I see -- can I see the records while he's talking about them?

MR. TOOKER: And for Your Honor's benefit, the

scores are based on a total score of 50. So 50 is the maximum amount of points. The records are double-sided. The first set is just --

THE COURT: Well, before -- before you get into all that, is she the custodian of records?

MR. TOOKER: Yeah.

THE COURT: You haven't asked her that.

MR. TOOKER: I didn't, Your Honor. I need to lay a foundation.

THE COURT: All right. The second thing is in addition to the scores -- the scores are obviously based on hearsay, even if they are matters kept within the records in the regular course of business. But they also contain a lot of -- a ton of hearsay about opinions. "Minor 1 was observed every 15 minutes." "Minor 1 scored a 40". He completed so and so in a timely manner. "The flex time was spent off campus with a social worker." "100 percent of meals ate" -- I guess that means eaten. "No medical issues." I -- I don't think the -- under the business documents rule and business records rule, that this actually complies with the rules. Is your -- is that your objection?

MR. CANTRELL: Yes, Your Honor.

THE COURT: All right. Well, I'm not going to allow them in based on -- I don't believe they comply,

number one. You can still ask her if she is the custodian. You can lay the course of business -- but business records have to do with matters that are not subjective. And these are definitely subjective. The whole -- I mean that's the whole purpose of them. So, I'm going to sustain the objection.

MR. TOOKER: Okay. And if I may briefly, Your Honor, and I'm certainly not arguing with your ruling. May I approach?

THE COURT: Yes, sir.

MR. TOOKER: I'm am curious if Your Honor's ruling would be the same if we limited the records to merely the score denotation for each day. I understand that is still a subjective impression by an employee of his performance.

THE COURT: My ruling will be the same.

MR. TOOKER: Okay.

THE COURT: We can get into medical records a lot about a temperature, vital signs and things. The fine line, in my opinion, as to what really falls within the business records act and what is not, and I find even -- even if you try to limit it -- or you limit it to the scores themselves, that's still very subjective. That's some third party -- I don't even -- well, kind of aback -- but I don't know that we know the name of

that third party as to who even entered those. So I sustain the objection.

MR. TOOKER: Yes, sir.

THE COURT: All right. Let's take a lunch break until 2:00. I hate to kind of break up, but we are at a point where we need to. We'll see you back at 2:00.

MR. TOOKER: Thank you, Your Honor.

(After a recess, Court reconvened.)

THE COURT: Is the State ready to proceed?

MR. TOOKER: Yes, sir, Your Honor. Would you like us to --

THE COURT: I would like the witness to be on the stand.

MR. TOOKER: Yes, sir.

THE COURT: Of course, he's still under oath. Is the Defense ready? Mr. Cantrell, are you ready?

MR. CANTRELL: Yes, sir.

THE COURT: Bring in the jury.

(Whereupon, the jury entered the courtroom at 2:00.)

MR. TOOKER: Thank you, Your Honor.

BY MR. TOOKER:

Q. Ms. Harvey, I'm going to show you the video that has been admitted as State's 5. And we're not going to watch the whole thing. I just want you to

identify some parties for me.

(Whereupon, a video was played in open court.)

BY MR. TOOKER:

Q. First off, this image we're looking at, what is this room -- or what is this room?

A. That's a unit -- it was called, at the time, the Paladin unit. It's where the boys live at.

Q. Okay. And the laundry is adjacent to that area?

A. It's the corner door on the -- do you see the mop bucket?

Q. Is it in this area right here?

A. No, that's the staff office. If you keep going, right -- right -- uh-huh, that door by the mop bucket.

Q. Okay. Who is that individual in the gray shirt?

A. That's Matt Holder.

Q. Okay. And who is that individual in the blue shirt?

A. Minor 1.

Q. Okay. And you said you reviewed all these discs?

A. I did.

Q. Do all these discs contain depictions of both

Matt Holder and Minor 1 ?

A. Yes.

Q. Okay. The laundry room itself, State's 8, what are we looking at?

A. The door that's open is the laundry room.

Q. So that door that is being held open by the gentleman in the blue shirt is the laundry room?

A. Yes.

Q. Okay. State's 9, is that a different view, same image?

A. Yes.

Q. State's 7, the same thing?

A. Yes.

Q. State's 10, is that the laundry room?

A. That is the laundry room.

Q. Okay. About how big across is it, in terms of width?

A. It's very narrow.

Q. Okay. You say five feet?

A. (Nodded.)

Q. How far from the left wall to the dryer and washer on the right hand side?

A. Maybe three -- two feet.

Q. Okay. And how long would you estimate the length of the entire room is?

A. Seven feet.
Q. Okay. Okay.
A. Seven feet.
Q. Okay. So it's not a particularly big room?
A. No.
Q. How is it that you were made aware of the allegations in this case?
MR. CANTRELL: Objection, Your Honor.
THE COURT: I sustain the objection.
MR. TOOKER: Okay.
BY MR. TOOKER:
Q. Did you have occasion to talk to Minor 1 about what happened?
A. I did.
Q. When you talked to him, what was his emotional state on June 5th, 2012?
A. He was upset.
Q. Okay. Was he crying?
A. Yes.
Q. Okay. In that state, did he tell you what had happened?
A. He did.
Q. Did he talk about where things happened?
A. He did.
Q. Where did he say things happened?

A. In the laundry room and in the library.

Q. Okay. Did he say when these things happened?

A. He did.

Q. When did he say they happened?

A. June -- the exact -- June 5th -- I'm sorry. I don't even know the actual date.

Q. So -- so the date he told you about this, did he say it happened a short of period of time --

A. It was a very short period, yeah.

Q. Okay. All right. And were you the one who was called to -- to pull up these videos initially, or who pulled them up?

A. I did.

Q. You did?

A. Uh-huh.

Q. Okay. And after you pulled them up, did you supply them to law enforcement?

A. I did.

MR. TOOKER: Okay.

THE COURT: No further questions, sir.

CROSS EXAMINATION BY MR. CANTRELL:

Q. You said Minor 1 told you where it happened, when it happened, and he was emotional; is that correct?

A. That's correct.

Q. He also said he didn't feel safe in this facility anymore, didn't he?
A. He did.
Q. Which would imply he wanted to get out of that facility; correct?
A. Yes.
Q. Let's back up, you showed -- we saw some video of Mr. Holder and Minor 1 there at the laundry room. It showed them walking there, and that was it. That was about 15 seconds worth of video, is that all, that we just saw?
A. What we saw, yes.
Q. Let me back up and ask you -- is it the protocol at Hampton to keep different groups segregated from one another?
A. It is.
Q. If Minor 1 was out doing chores, and members of another group came around, would it be the proper protocol to make sure that they stayed separate from one another?
A. It depends on who the groups are.
Q. You saw some other individuals come into the Commons area when Minor 1 was in the library, did you recognize them or could you tell --
A. I -- I couldn't tell who they were.

Q. So it would be entirely possible that that could be a group that Minor 1 was not to associate with; correct?

MR. TOOKER: Judge, I'm going to object. That calls for speculation.

THE COURT: I overrule the objection.

BY MR. CANTRELL:

Q. Is that correct?

A. It was -- it was one child, I believe, that I saw on the tape. But, yeah, that is correct.

Q. Where there was a child and a staff member probably?

A. Uh-huh.

Q. So that would mean the child was coming by the staff member?

A. Yes.

Q. Just like Mr. Holder may have come with Minor 1?

A. Right.

Q. So, it was not unusual for staff members to accompany children from one section to the other?

A. Right.

Q. Now, were you aware that Matt had bought pizza that night?

A. I had been made aware of that after the fact.

Q. And other people had people as well as Minor 1; were you made aware of that?

A. I don't recollect that -- who had the pizza. I just remember that he brought pizza.

Q. And, in fact, Minor 1 said he got pizza?

A. Yes.

Q. Let me ask you, you talked to Minor 1 about this incident?

A. I did.

Q. Had you ever heard it stated before today that the pizza was traded for some sort of sexual favor?

MR. TOOKER: Judge, I'm going to object. That calls for hearsay.

THE COURT: I sustain the objection.

BY MR. CANTRELL:

Q. Judging by the video, there was pizza -- and Minor 1 had pizza prior going to clean the laundry room -- I'm sorry -- prior to going to the library; correct?

A. I don't remember.

Q. I mean, you saw the video. Do you remember seeing him carry the pizza with him?

A. No, I don't.

Q. The door we saw, is it a pretty heavy door that goes into library?

A. Pretty heavy.
Q. Would it be something -- maybe not as wide, but something similar to this door?
A. I would say heavier than that.
Q. It would be heavier than this one?
A. Uh-huh.
Q. And it had nothing to keep it from closing. In fact, it automatically closed if you let go of it; is that correct?
A. Correct.
Q. So, if an individual was to be following the proper protocol, they would stand at the door, as we saw, and hold it open, push it open, whatever, for the almost 20 minutes that we saw on that video; correct?
A. Are you asking me --
Q. You have to stand there at the door?
A. As far as what we consider -- is that -- as far as our policy is?
Q. It is your policy?
A. No, that's what I'm saying, is that what you're asking me -- what our policy is about the door?
Q. Right.
A. It's to not ever let it shut. It's to keep it open.
Q. So if it was necessary for the staff member to

step in, to get a book, pick up something that fell, anything, the door would automatically close though?

A. If you let go of it, yes.

Q. Right.

A. Yes.

Q. Otherwise, you've got your hand on there the entire time, and trying to make sure it doesn't close?

A. Yes.

Q. Okay. Now, are there not times at the Hampton when staff members are in areas where they're not seen on-camera, but just may be around?

A. Sure.

Q. So the effort, or the rule to never be seen off -- or never be off camera with one of the kids, cannot be totally enforced, ever; can it?

A. No.

Q. And there is no rule, there is nothing in place, as you stated earlier, for the protection of the kid or the protection of the staff in those areas? It's just possible for staff and kids to be off camera?

A. It's possible. Staff is made aware when they -- when they start at the facility of where the blind spots are in the entire facility. They are shown on the cameras, and shown where those spots are, and told "do not be in those spots with patients".

Q. But if you're traveling from one section to another --

A. Sure, there are a few, yes.

Q. Now, the picture is not up there now, but you saw the laundry room -- and the jurors, or any of us in here, can look at that picture and see a washer and dryer and see there is a little bit of space left. So if we -- if we are familiar with the washer and dryer, we know about how big the room is. And if we are familiar with the shoes, we can figure out -- like you said -- maybe two feet, or a little bit more, of space in there?

A. Right.

Q. So that would more or less speak for itself. But you believe that to be an accurate depiction of the laundry room?

A. Yes.

Q. And the pictures of the -- the laundry, these are both accurate depictions, State's 22 and State's 23, accurate depictions of the size of the library?

A. The library, yes.

Q. All right. Now, you dealt with Minor 1, I assume, the whole time he was there?

A. I did.

Q. And part of your job or responsibilities there

would be to -- be aware of his progress, be aware of his behavior -- basically be aware of everything that goes on with him, as well as all the other kids there; is that a fair statement?

A. Yeah, yes.

Q. Based on that, you're in -- you will be in sessions where progress or lack of progress of each individual child would be discussed?

A. Yes.

Q. And staff, therapist, nurses, administrators, would all, at some point or another, discuss or exchange information about kids in the facility?

A. We do that weekly, yes.

Q. So, based on that, can you say you have an opinion -- or you know Minor 1 's reputation for being honest and trustworthy?

A. Back in the day, a couple of years ago, I'd probably be able to tell you yes or no, either way. But it's been a while since I've heard the name, read the chart, or anything like that. So, I mean, I don't really remember what his reputation was at the facility, besides the interaction I had after this incident.

Q. So you're telling me, you do not know anything about his reputation for truthfulness, honesty, or

veracity?

A. In the interactions that I had with him, after this incident, absolutely. But prior to that, I don't remember.

Q. What do you remember about his reputation or people's opinions of his honesty and truthfulness?

A. I remember that he was a handful, I mean, when he first got there. I know he progressed pretty well in the program, but I don't remember him specifically lying about anything of that nature, like I said, until this incident and I had to deal with him a little bit closer than I deal with the boys.

Q. Let me ask you very specifically and very directly: Do you remember making any statement contrary to that last Thursday while at the Hampton?

A. I don't --

Q. To me?

A. About?

Q. His reputation for honesty, truthfulness, and veracity.

A. Once you showed me my statement about what happened at the hospital --

Q. What did you say?

A. I said, yes, that that was -- that I wrote that statement.

Q. No.
A. And that the dealings I had with him at the hospital were not -- he was not truthful with me at the hospital.
MR. TOOKER: Judge, may we approach for a --
THE COURT: No. No. I'll let you go ahead.
BY MR. CANTRELL:
Q. Okay. Do you remember making any statements about -- in response to a question about his reputation among the community known as Hampton Facility, his reputation for being truthful, honest, and trustworthy?
A. I believe you asked me about all of the boys, and them being there, and if they have a reputation for lying. And a lot of them do, yes.
THE COURT: Well, he's asking you now about Minor 1 --
A. I don't remember specifically telling you that I knew Minor 1 was a liar or a manipulator or anything like that.
Q. So you're telling me, we had a conversation about this case and I did not ask you about him specifically; is that your testimony?
A. No. You did ask me about him specifically. But I didn't ever remember him ever lying to me until you showed me the statement I had written about him

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going to the hospital.

MR. CANTRELL: I think we have covered that all that we can do. Your Honor, I have no further questions.

THE COURT: Redirect?

REDIRECT EXAMINATION BY MR. TOOKER:

Q. There was mention of pizza, is it allowed for staff to bring food from outside of the facility into the facility?

A. No, it is not.

MR. TOOKER: Okay. No further questions.

MR. CANTRELL: One more quick question.

RECROSS EXAMINATION BY MR. CANTRELL:

Q. What was brought in was a huge pizza; is that correct?

A. I believe so. It was a large pizza.

Q. You're saying nobody else ever brings in food or pizza?

A. It's not allowed. I didn't say it didn't happen, I said it is not allowed.

MR. CANTRELL: Thank you.

THE COURT: You can step down and be excused. We appreciate your time. Thank you. Call your next witness.

MR. TOOKER: Thank you, Your Honor. The State

would call Kevin Sowell. May Ms. Harvey be excused?

THE COURT: Yes.

MR. TOOKER: Thank you, sir.

KEVIN SOWELL, having been first duly sworn, testified as follows:

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

THE WITNESS: Kevin Jermain Sowell.

DIRECT EXAMINATION BY MR. TOOKER:

Q. All right. Mr. Sowell, where do you work, sir?

A. Hampton PRTF.

Q. And this has been covered, but what does PRTF stand for?

A. Psychiatric Residential Treatment Facility.

Q. Okay. And what kind of folks do you take there?

A. We take adolescents from the age of five to 21.

Q. Okay. And are you familiar with the defendant in this case, Matt Holder?

A. I am.

Q. What is your familiarity with him?

A. He was one of my direct care staffs.

(Court reporter interruption.)

A. He was one of my direct care staffs.
Q. So he worked for you at Hampton?
A. That's right.
Q. When you hired him, was he over the age of 14?
A. Yes.
Q. Was he over the age of 18?
A. Yes.
Q. What were his duties? What was he supposed to do there?
A. Monitor and interact with the patients.
Q. Okay. Was he responsible for punishing them if they're bad?
A. Yes, sir.
Q. Okay. Was he responsible for doing good stuff for them if they were good?
A. Yes.
Q. Minor 1, are you familiar with that name?
A. Yes.
Q. How are you familiar with that name?
A. He was one of my patients.
Q. How long was he in your facility?
A. Ten months.
Q. Do you remember the date these allegations came up?

A. June 5th and June 6th of 2012.

Q. After that, how much longer did Minor 1 stay at your facility before he was released?

A. He was discharged on 8/8/2012, so two months.

Q. Okay. How long total did he spend in your facility?

A. Like I say, 10 months. He was admitted, I believe, on 10/13 of '11, and discharged on 8/8/12.

Q. Okay. And Minor 1, what unit was he on; do you recall?

A. He was on Paladin Unit at the time.

Q. And he was allowed to use special chores to earn Avalons?

A. Yes.

Q. What are Avalons again?

A. It is part of our token economy that we had back then, where they didn't gain or receive actual physical money. It was based on a reward system that was like money, but not actual money, that they could spend it on things.

Q. Okay. And Minor 1 was -- was permitted to do things in the facility to earn money?

A. Yes.

Q. What kind of things could you do to earn money?

A. You could do chores. You could do extra chores, chores cleaning bathrooms, mopping the floors in the day area, folding clothes in the laundry room. Things like that.

Q. Okay.

A. You basically earn back -- back then, you basically earn Avalons just waking up in a good -- good mood.

Q. And -- and Minor 1, was he interested in earning Avalons?

A. Yes.

Q. Now, this case, do you remember when it came to your attention as the facility's director?

A. I can't remember the exact timeframe, but it happened somewhere around June 5th.

Q. Okay. And after it came to your attention, what was your response? What were you called to do?

A. We immediately started looking at the tape, doing our internal investigation. And then it was on me to contact Pickens City to -- to inform them of these allegations.

Q. Okay. And let's go back -- had Minor 1 ever said anything to the effect of, I know what I need to do to get out of here?

A. Yes.

Q. Something like that?
A. Yes.
Q. What were the circumstances of that?
A. Well, what we have with case workers at the time, they'll come up monthly to assess clients. And during those times, we'll -- you know, they discuss discharge. They discuss behavior for the week or the month. And at that time, Minor 1 was with me and he was wanting to be discharged. And he wasn't hearing what he wanted to hear from his case worker at the time. And he had made a statement to her, that, well, I know what I've got to do to get out of here.
Q. Okay. How long before these allegations came forward, did he make that statement?
A. I want it say it was probably -- it was some time. It was not two weeks prior to his -- probably a month, a couple of months before.
Q. Okay. All right. And you launched your internal investigation, did you talk to Minor 1 about what happened pursuant to that investigation?
A. Yes.
Q. Okay. And you said you reviewed the tapes. The library, did it have video recording equipment in it?
A. The library?

Q. Yeah. The library.
A. No, not at the time.
Q. Okay. What about the back of the nurse's station?
A. No.
Q. No video --
A. In the back of the nurse's office, no.
Q. Okay. And what about in the laundry room, any video --
A. Not at the time.
Q. Okay. You said you did an internal investigation, did you talk to Minor 1 about these allegations?
A. Yes.
Q. Did he say where they happened?
A. The library, the laundry room, and the back of the nurse's office.
Q. Okay. Did he say when they happened?
A. Initially, he told me a couple of weeks prior. Then it switched to a couple of days prior of June 5, 2012.
Q. And with that information, were you able to -- to find the video that we have in court today?
A. Yes.
Q. Okay.

MR. TOOKER: No further questions at this time.

CROSS EXAMINATION BY MR. CANTRELL:

Q. Let's back up -- excuse me -- Mr. Sowell, you did say that Hampton is a Residential Psychiatric Treatment Facility?

A. Psychiatric Treatment Facility, yeah -- the same thing, yeah.

Q. I got you. Okay. And what type of -- what's the criteria for the individuals that are admitted?

A. Most of our kids are diagnosed with ODD, bipolar, you name it. You have to be diagnosed with some sort of mental diagnosis.

Q. And it's sad to say, the simple fact is, they have to be diagnosed and that is -- you're there for that sort of treatment program; is that correct?

A. That's correct.

Q. Very structured?

A. Yes, sir.

Q. Very limited from the standpoint of freedoms or that sort of thing?

A. To a certain extent, yeah.

Q. And they need or have to earn pretty much everything -- not the basic essentials, but they need to earn extra --

A. Yes. Yes.

Q. And I've been there. I've seen it. I know y'all -- what y'all do. That being said, most of the kids if they are there, they want to get it done and get out?

A. That's right. That's correct.

Q. Okay. Which is -- includes Minor 1, and why he said he knew what he knew -- he needed to do to get discharged; he wanted to get out?

A. That was his statement, that he knew what to do to get out.

Q. And I think you also said that the process had not been running as fast as he -- or as quickly as he wanted it to?

A. That's true.

Q. And even after he said that, whether it was a couple of weeks or a month or so before these alleged instances, it was still several more months before he was able to -- to leave?

A. That's correct.

Q. And when he first reported it to you, he reported some different times or different lengths of time, that sort of thing? There was some -- some discrepancies in what and how he reported it --

A. That's correct.

Q. -- is that a fair statement. But you did say

it was not unusual for them to work in the library -- or I'm sorry -- to work in the laundry to earn these Avalons at that time?

A. That's correct.

Q. And that would be something they would want to do, to earn extra credit so-to-speak?

A. Yes.

Q. So any time he talked to you about something that he was wanting to allege that Matt Holder had done, it was at times where he had already been on certain locations with Matt Holder, and it could be verified by the camera?

A. That is correct.

Q. But it wasn't the day of or the day after, it was later on? So anywhere from a day -- two days to a week later that he reported it?

A. Yeah. Yeah.

Q. You reported this to all appropriate agencies, law enforcement, to your superiors, social services, everyone?

A. That's right.

Q. And let me get specific with you on this: Having worked in the facility, worked with the staff, worked with the therapist and dealt with -- I'm assuming every -- every kid there, and doing that at

the time back in 2012, you dealt with Minor 1 ?

A. Yes.

Q. On a regular basis?

A. Yes.

Q. Can you tell us his reputation for truthfulness, honesty, and veracity within your community there within -- in-house with everyone there?

A. It's like I explained to you last week, with me, he didn't lie to me, and I would say that would be for the majority of our patients. But specifically, Minor 1 , he didn't -- he wouldn't lie to me. He would maybe not tell me the whole truth, like I explained, he omitted some things, but he would -- he would have a hard time lying to me.

Q. How about to others there, other staff?

A. The other staff, yeah, he would -- he would lie and manipulate at times.

Q. In fact, did he not lie or manipulate in making statements about staff on occasion?

A. Yes.

Q. Then you're the one that obviously he confided in, related to, however you want to say it, he would acknowledge to you that he had lied about staff?

A. Yes.

MR. CANTRELL: I don't think I have anything

further at this time. Thank you.

MR. TOOKER: Redirect, sir?

THE COURT: Yes.

REDIRECT EXAMINATION BY MR. TOOKER:

Q. So, he did have a reputation for being untruthful at Hampton?

A. Some -- it -- you know, on occasion, yes, he would be untruthful.

Q. Okay. Were there specific instances where he didn't tell the truth?

A. You know, I could remember a couple of times where he would make up a lie on a peer. He may have started a fight. He would say the peer started it. You can clearly see on-camera that he was the one that initiated the fight; things like that, which most of our boys do.

Q. Okay. But you mentioned that he was honest with you?

A. That's right.

Q. So, specifically, were there occasions where you talked to him about things, and he would tell you something; and that thing he told you was something you could prove?

A. Yes, for the most part, yes.

Q. Okay. For instance, in this case, when he

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said he was at the library, is that on the video?
A. That's right.
Q. When he said he was in gymnasium, was that on the video?
A. That's right.
Q. When he said he was in laundry with Matt Holder, was that on the video?
A. That's right.
MR. TOOKER: Okay. No further questions.
MR. CANTRELL: Just one quick.

RECROSS EXAMINATION BY MR. CANTRELL:

Q. Mr. Sowell, I think the -- the short version of this is, sometimes he told the truth, and sometimes he didn't; is that pretty fair?
A. Pretty fair, yeah.
MR. CANTRELL: No further questions.
THE COURT: You may step down and be excused. We appreciate your time.
THE WITNESS: Yes, sir.
THE COURT: Thank you. Call your next witness.
MR. TOOKER: Yes, sir. The State would next call Ms. Shauna Galloway-Williams to the stand.

SHAUNA GALLOWAY-WILLIAMS, having been first duly sworn, testified as follows:

MR. CANTRELL: Your Honor, can we approach one

second before we proceed?

THE COURT: Yeah. Come around.

(Whereupon, a bench conference was held.)

THE COURT: Members of the jury panel, before we do the next witness, we have a legal matter to discuss. So I'm going to let you go to the jury room while we discuss it.

(Whereupon, the jury left the courtroom at 2:33.)

THE COURT: Before we do this in camera hearing, I'm going to exercise my prerogative to step out a minute. If anybody else wants to exercise that same prerogative, they may. Just a couple of minutes.

MR. TOOKER: Yes, sir. Thank you, sir.

(After a recess, Court reconvened.)

THE COURT: Okay. We have Ms. Galloway-Williams, if she'll come forward and take the stand, and be sworn in on the way up.

SHAUNA GALLOWAY-WILLIAMS, having been first duly sworn, testified as follows:

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

THE WITNESS: Shauna Galloway-Williams.

DIRECT EXAMINATION BY MR. TOOKER:

Q. All right. Ms. Galloway-Williams, where do

you work?

A. I am the Executive Director of the Julie Valentine Center.

Q. And how long have you been employed as the Executive Director of the Julie Valentine Center?

A. I have been Executive Director for six years. I have worked with the Center -- well, I was hired by the Center in 2007, but began serving as director in 2009.

Q. What do your duties consist of on a daily basis?

A. As Executive Director, I'm responsible for oversight of the entire agency, physical management, administrative responsibilities. I also still maintain some clinical service provisions, so I conduct assessments with children when there have been allegations of abuse or neglect. I work with -- I'm sorry -- I work with the non-offending caregivers and care facilitating of the non-offender caregiver group, and also do a lot of training in the community.

Q. And what is the Julie Valentine Center?

A. We are the child abuse and sexual assault recovery center. So that means that we provide prevention and education work for the community. We also provide assessments, exams, counselling,

individual, and group therapy.

Q. Okay. Before you were the executive director, what was your role with the Julie Valentine Center?

A. I was the clinical director.

Q. Okay. What did you do as a clinical director?

A. I provided clinical oversight for all of the counselors, forensic interviewers, and provided clinical services, direct services with clients.

Q. Okay. What is your educational background?

A. I have a Masters degree in counselling and a Bachelors in Psychology.

Q. Okay. What is your -- are you licensed?

A. I am. I am a licensed professional counsellor in South Carolina.

Q. Okay. At the Julie Valentine Center, as the clinical director, did you have occasion to interview and/or counsel victims of sexual abuse?

A. Yes.

Q. How many -- well, did you ever do in forensic interviews?

A. Yes.

Q. How many of those did you do?

A. I have done over 850 interviews.

Q. And approximately how many children were victims of sexual abuse that you counseled during the

course of your career?

A. I don't have an exact number, well over 1,000.

Q. Okay. Do you have any kind of specialized training?

A. Most of my training has been specifically in the area of child abuse dynamics, and forensic interviewing, assessing, and responding to children and families who have been impacted by child abuse and neglect.

Q. Okay. We talked a little bit about this, but do you -- do you counsel any other people, other than victims of sexual assault?

A. I work with caregivers and we -- I also interview and provide services for siblings or indirect victims of abuse.

Q. Okay. And do you provide any professional training or teach others in your field?

A. I do. I'm an adjunct faculty member at USC Upstate in their Child Advocacy Studies Program, specifically teaching a course on child maltreatment. I also do a lot of training in the community. Most recently I have been responsible for training over 900 of the administrators in the Greenville County School District, specifically on recognizing and responding to sexual abuse in the educational setting.

Q. Okay. Do you know the victim in this case, Minor 1?

A. I do not.

Q. Did you ever meet him?

A. I haven't.

Q. Have you given him any counselling services or anything like that?

A. No.

Q. Okay. Are you familiar with the defendant in this case?

A. No.

Q. Okay. Have you ever testified as an expert before in either Family Court or General Sessions?

A. Yes.

Q. Which one?

A. I testified in Pickens and Greenville County in the 13th circuit, and General Sessions. I've also testified in Family Court, again, in the 13th circuit.

Q. Okay. And how many times have you been qualified as an expert?

A. Twenty-seven times.

Q. Okay. When you have been qualified as an expert in the past, in what field was it that you were qualified as an expert?

A. Child abuse dynamics --

Q. Okay.

A. Or something related to that. It may have been something -- not specifically that term, but in general, that's what it was related to.

Q. When you are qualified as an expert in that field, by and large, what are you called to talk about?

A. The dynamics of child abuse, how children disclose or don't disclose; what types of behaviors that may lead up to that, so delayed disclosure. Relationships among family members or those who may abuse a child. I'm really just hoping to educate jurors about child abuse dynamics, which is something that not everyone has a clear understanding of.

MR. TOOKER: Your Honor, that -- that would be the extent of the State's voir dire of this witness at this point. We would like to -- to offer her as an expert in the field of child abuse --

THE COURT: Let's, I mean, it's voir dire at this point. I -- we've got another step to go before we -- right now, we are just deciding whether or not she is qualified.

MR. CANTRELL: And if I can beg the court's indulgence?

THE COURT: Yes.

MR. CANTRELL: Your Honor, something just came up

as we speak, or as she was testifying -- is that Mr. Holder advises me that probably seven or eight years ago, that Ms. Williams interviewed his daughter, so there has been some prior connection. We are satisfied seven or eight years ago, she doesn't remember anybody she talked to, and all -- but she did interview his daughter at that point.

I told him -- and I think he agrees -- that that, by itself, doesn't inter -- interfere with this. Now, I might have some other objections, but we are not objecting on that basis. But I felt like I had to let the court know that.

THE COURT: I understand. And he nodded in the affirmative when you were saying that. So -- all right. Do you want to voir dire Ms. Williams?

MR. CANTRELL: Not at this time as to her qualifications at all.

THE COURT: Okay. All right. I find that she is qualified in the areas that she has testified about, disclosure, behavior, delayed disclosure.

MR. TOOKER: Thank you, sir. And just for the record, when we do do this in front of the jury, my -- the language I'm going to use to describe her, would be as an expert in the field of child abuse disclosure dynamics. Because that's what I've seen in the record.

THE COURT: Okay. That would be -- I find that to be appropriate.

MR. TOOKER: Thank you, sir.

BY MR. TOOKER:

Q. Do you know why you have been called here to testify today?

A. To provide educational information on child abuse dynamics.

Q. And who subpoenaed you?

A. The State.

Q. Okay. And are you being paid by our office to be here today?

A. No, I'm not.

Q. Did you ever have any contact with the victim at all?

A. No.

Q. Where does your funding come from?

A. At the Julie Valentine Center?

Q. Yes, ma'am.

A. We are funded by the Greenville County United Way. That's about a third of our funding. Another third of our funding comes from federal grants, Violence Against Women Act, Victims of Crime Act, National Children Alliance, DHEC, grants like those. And the other third of our funding comes from

foundations and fundraising.

Q. Okay. And is that funding in any way contingent upon what you do or do not do, or say or do not say here today?

A. No, it's not.

Q. Okay. Have you spoken to the victim or seen any kind of information or seen any case files in this case?

A. No, I haven't.

Q. What does the term delayed disclosure or delayed reporting mean?

A. It's a term that we used to refer to the timing of a child disclosing abuse, not disclosing right away, which is the case with most children. Most children do not tell right after an abuse incident occurs. And we refer to that as delayed disclosure, whether that be days, weeks, years; and sometimes never telling about an abuse incident.

Q. Okay. In your experience, as an expert in the field of sexual -- or excuse me -- child abuse disclosure dynamics, how common is delayed reporting among victims of childhood sexual abuse?

A. It's more common, the delayed disclosure, rather than a child telling right away. Most children, again, don't tell right away for numerous reasons.

Q. And you said "numerous reasons", what kind of factors play into a child's either disclosing immediately or not disclosing?

A. One of the main reasons that children don't tell right away is because of fear; fear of consequences that they may experience; fear that they won't be believed; fear of what may happen to the alleged offender.

One of the other reasons that children don't disclose right away is that most times the person that has abused them, is someone they know, they love, and they trust. And that dynamic, in and of itself, makes it very difficult for children to disclose. Many times that person may be someone that they are really bonded to, have a very close relationship with, and that sometimes makes it challenging for them to decide, you know, what exactly they need to do as far as disclosing.

Q. Okay. What role does guilt or shame play in disclosure?

A. Well, you know, children often, when they are abused, feel guilty. They feel a lot of shame about what's happened, particularly with sexual abuse. It's something that's still a very taboo subject. It's not something that most adults want to talk about or

disclose. And it's even more uncomfortable often for children.

Children also sometimes feel responsible for what's happened. They may feel responsible for it because they feel, in some way, they didn't stop it from happening. They may have been told by the person that's committing the act that they are responsible for it. Sometimes children's bodies respond in a biological way to the sexual act, and they may feel responsible for that as well.

Q. Okay. What role would the abuser having been in a role of authority over an abused person play?

A. Well, generally, what we say is that the more dependent a child is on the offender, or the more power that that person has over them, the more difficult it is them for them to disclose. Because they are, in many ways, that child is dependent on them for, you know, caregiving; meeting some type of need for them. And if they are an authority figure, then they do have a sense of power and control over them.

Q. Okay. Is disclosure a process sometimes?

A. Disclosure is almost always a process. Meaning that when a child does tell about what's happened, we don't generally expect that they're going to tell every single detail about what's happened at

one time. What we can expect is that they may tell bits and pieces of it over time. They may tell different parts of it to different people, depending on the type of questions that have been asked, who's asking the questions. And it could be very dependent on what type of, you know, how safe they feel in their environment and what type of counselling or other services they may have had.

Q. Okay. How would the passing of time effect a disclosure?

A. Meaning?

Q. Well, two and a half years after an initial disclosure, what would you expect to see in terms of progress or regression in the person who made the initial disclosure?

A. Well, with time, someone may be able to share more information. You know, initially they may not have shared everything. And they need more time to retest the waters and see how people are going to respond, or whoever they disclose to responds to what they say.

You know, sometimes there may be pieces of information that are lost or that they may not remember, so there may be less detail over time. But what we would expect is that they would remember the

core details, the who; the what; the what happened; and, in general, when it happened.

Q. Okay. And grooming, what is grooming?

A. Grooming is the term that we use to describe the developing trusting relationship with a potential victim, maybe testing the waters with them to see if this child may be a victim, or may be someone who an offender could commit an act with. Sometimes this involves -- or most times -- this involves gaining the child's trust by establishing a relationship with them.

It may involve providing special attention, special favors, treats, gifts. Oftentimes, not just grooming the child, but many times grooming the caregivers, and other important people in the child's life.

Q. Okay. And what do we mean when we talk about risk factors in a case of juvenile sexual abuse?

A. We're talking about things that may make a child more vulnerable to abuse. And there are certain risks factors that are -- that are present. Some of those could be children who have disabilities, developmental, or intellectual disabilities. They are at higher risk of abuse.

Younger -- the younger the child is, the higher risk they are for abuse for many reasons. They may not

be able to tell after it's happened. They may be more dependent on a caregiver.

Previous abuse is a risk factor for abuse later on; substance abuse; single parent households; children with behavior problems. Those are risk factors. And often those types of things, the offender may use them to convince the child that they played a role in what's happened. And they may appear to others that -- that this child has played a role in what's happened as well, going back to the whole idea of responsibility and guilt.

Q. And then finally, what is a compliant victim?

A. We use the term compliant victim to refer to a victim who does feel as if they were engaging in the abuse, or they maybe -- they may appear to have consented to the abuse rather than say no, or trying to stop it; when, in actuality, the victim is a child and the child is unable to consent, particularly in a case of where the person that's committing the abuse is someone who's in authority over the child.

Q. Okay. And how do compliant victims differ from victims of say forcible encounter?

A. Well, compliant victims tend to see themselves more responsible and more -- not partners, but more engaged in the abuse itself. They tend to see

themselves as someone who played a role in it. Maybe they even initiated the abuse or may have done absolutely nothing to stop it, and would in some way say that they were responsible for it.

MR. TOOKER: No further questions.

MR. CANTRELL: If it please the court?

CROSS EXAMINATION BY MR. CANTRELL:

Q. When you talk about relationship or position of authority, would that be impacted by a -- a child who has dozens of authoritative figures around them all the time, such as in this case?

A. I'm not sure if I understand what you're asking me.

Q. Okay. You talk about the relationship of the alleged perpetrator and the child?

A. Yes.

Q. In that being one of authority or fear based on authority or relationship, how is that impacted by the -- the young person who is in a facility where there are dozens of people with authority over them?

A. Well, I mean, each of those workers or employees are figures of authority. And it's ultimately their responsibility to maintain, you know, appropriate roles and boundaries with the children.

A child in that type of environment, I imagine,

would see all of those figures as authority figures, you know, because there's a hierarchy there, and they're not at the top of that.

Q. That is not the norm -- most children do not have dozens of the authority figures close at hand, do they?

A. Well, I would disagree. You know, children see all adults as authority figures in one way or another; or, you know, we teach our children that they are to respect adults and do what adults tell them. So a lot of times, children view all adults, no matter what role they're in, as an authority figure.

Children have, if they are in school, they have teachers, principals, guidance counselors, anyone that works in the school. Those are really authority figures. If they play athletics, sports, then they have coaches. And so whether a child is in -- certainly the type of authority and the hierarchies and structure of a residential treatment facility is different from that of living at home with mom and dad. But I would say that there are authority figures all over in a child's world.

Q. But in the world of these children, the authority figures do not come into their homes? Coaches, police officers, teachers, that sort of thing,

do not come into their residence as do the residential care staff; is that a fair statement?

A. Meaning they don't share residency with the -- the family?

Q. Not even live together, but these people that we're talking about, come into the residence of these young people. They can come into their bedrooms. They can come into their bathrooms. They can come into their play areas, lunch room, all of that on a regular basis. And, in fact, do. That would be somewhat different from the coach, the teacher, the police officers, that all children are taught to respect as authority figures, so there would be a difference in that relationship, or that sense of authority as opposed to -- for lack of a better word, I'll call it a normal sense of authority. So there is a difference there; is there not?

A. Again, I really see that as the same in the sense that, you know, children can develop those same type of relationships and authority, and controlled relationships with a coach or a teacher or someone else, in the same way that they would someone who is their caregiver in a residential treatment facility or hospital, or something like that.

Q. You see no difference at all in those?

A. Unless I'm misunderstanding your question, I mean, just in general of what you're asking about is if -- if children perceive someone's level of authority and power over them in a residential treatment facility as different than how a child would perceive a coach or a teacher or parent, or other adult's authority over them, I really don't think that there's a difference there.

Q. All right. What about the age of the child? The younger as opposed to 14 years old, what the difference is there?

A. Differences in...?

Q. In how they they would be perceived, how they would perceive and/or react to perceived threats of abuse?

A. Okay. So resay that one more time, just so I make sure I understand. I'm sorry.

Q. I guess if we're -- maybe I'll make more sense to all of us -- what are the differences -- how -- how does age effect an alleged sexual abuse victim?

A. So as I stated previously, the younger the child, the more vulnerable they are to abuse. You know, very young children are much higher risk of abuse because they're much less likely to tell. And they're much more dependent on others for caregiving.

However that's not to say that older children are not also victims of abuse. You know, really age is not necessarily a determining factor as to whether there is, you know, higher or lower risk, other than the fact that we know that much younger children are at very high risk because they, you know -- we have caregivers who are changing their diapers and going to the bathroom with them. And the more primary care or direct care that a child needs, the higher risk that they are going to be for abuse, or for abuse to occur, and the child not disclose.

Q. And by direct care, do you mean those with physical --

A. I mean any sort of direct care meaning, you know, if a child needs assistance with bathing, toileting, you know, even -- you know, those are high risks situations -- well, yes, that's what I mean. Personal care.

Q. And grooming is by nature -- sorry, strike that. Grooming, would it not have a different effect at a residential treatment facility where everybody is in charge of certain things for these young people?

A. Well, I would see that it would be very similar because if someone is in charge and could offer more favors, or more free time, or something that they

might not be able to offer to another, or if they were to be able to allow a child to get away with a particular behavior, that they may not normally allow them to get away with. I'm just using, you know, examples of how I think that grooming could be different.

The other thing that's really important about grooming is sometimes the grooming is directly related to that relationship, which is something that's not really tangible, just really developing that trusting relationship between the child and the alleged offender.

Q. But is it your opinion that there will be no difference in the impact or -- the impact to that, whether it's grooming, authority, all of those, there's no difference in a residential care facility as opposed to a child that's in the home and going to school? You're saying there's no real difference?

A. I think the dynamics are the same. When we're talking about grooming behavior, and when we're talking about relationship dynamics between children and alleged offenders, or children and adults.

So I think, to answer your question, yes, I don't see that it's any -- I don't see that there would be a difference between the dynamics, whether they are

at play in a residential treatment facility, or in a school, or in a community, or in the home.

MR. CANTRELL: I don't think I have anything further. Thank you.

MR. TOOKER: No redirect, sir.

THE COURT: All right. What -- since you're the expert, and I'm not, how do you define delayed disclosure?

THE WITNESS: A disclosure that is not made directly -- directly after an abuse incident.

THE COURT: When you say "directly after", no -- when you say "directly after", what do you mean?

THE WITNESS: Well --

THE COURT: Is there a time period? What amount of time?

THE WITNESS: There is not a specific timeframe. We are just saying that it's not, you know, at -- not disclosing the soonest possible time that a child could.

So, you know, if -- if the child could -- you know, if -- if the abusive event happens and they have an opportunity to tell someone two hours after, and they don't tell, and then there's another four hours that go by, or another six hours, that's a delay in disclosure. So not telling right after an incident has

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occurred.

And that can be hours. It can be -- I mean, generally, you think of it as being, you know, over a day, two days, weeks, months, years. But in general, I guess you could say not telling right after the first opportunity the child might have to tell someone. Does that make more sense?

THE COURT: It does. All right.

MR. CANTRELL: I have two very quick questions in follow-up to that.

THE COURT: All right.

MR. TOOKER: No objection to that, sir.

MR. CANTRELL: Two very quick.

BY MR. CANTRELL:

Q. Would delay in disclosure, whether it is by two hours, two days, or two weeks, be impacted by the alleged victim being in a residential care facility, where there are all these authority figures around them -- or do you have any opinion on that?

A. I mean, I certainly think that it could have an impact, you know, for the same reasons that children delay disclosure in other settings, for fear of disbelief. This child is already in a residential treatment facility. Do they already have a reputation as being someone who is a troublemaker, is a liar, and

who's going to believe them if they tell. I think that might impact delayed disclosure.

The fact that there are so many other authority figures around might impact a child's ability to tell for fear that there may be consequences; or, again, that no one would believe them. So I think it's similar dynamics that we're talking about.

And, again, you know, if this child has developed a trusting and close relationship with the alleged offender, they may feel that it is risky to tell. They may actually, you know -- a lot of times children are willing, or really appreciate the relationship that they have with the offender so much that they, you know, they just want the abuse to stop, but don't want to give up the relationship with that person.

And one of the ways I describe that is, you know, you have a really close friend, or your spouse, and you love this person. And you love almost everything about them except this one thing that drives you nuts, and yet you continue to maintain that relationship with them. You don't end that relationship because of that one thing. And not to minimize sexual abuse to that, but that's really what it's like.

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Q. The other very quick question, would the desire by the alleged victim to -- if the alleged victim has an ulterior motive for reporting or stating whatever they are saying, does that impact your opinion of their statement or how they would react? If they are attempting to gain something by making a statement, whether true or untrue?

A. So, is your question, are there -- children sometimes make disclosures for some type of gain?

Q. False disclosures for some type of gain?

A. So if -- is the question do children sometimes make false disclosures?

Q. Yes.

A. Yes. It's a very small percentage, but statistically a very low number of children do make false disclosures. The risk that a child faces when making a disclosure far outweighs any benefits that they may gain.

MR. CANTRELL: That's all I have. Thank you.

THE COURT: You can remain there. So you proffer her as an expert, to testify as she has?

MR. TOOKER: Yes, sir. That would be the State's position.

THE COURT: What is the defense's position?

MR. CANTRELL: Your Honor, I just don't think in

this case the testimony that we have heard, the allegations that have been made, rise to the standard of need for expert testimony. Expert testimony should take the jury to a place, essentially, beyond their normal knowledge. Also, that it would be within a place to analyze the evidence that is not readily apparent, according to the case law, to the average lay person.

This is all evidentiary or factual. There has been very little discussion of delay in disclosure. We don't know if it was a -- more than a couple of days, certainly no more than I believe --

THE COURT: Well, I thought June 5th was the first day, if I remember the date. The 4th, the 1st, and the video showed the last incident on the 31st of May, so five days.

MR. CANTRELL: We -- we believe the first disclosure now, I'm not sure if that is totally accurate based on all the witnesses -- or quite candidly, some of the witnesses who aren't here, as to when the first disclosure was made, but very little possible delay in disclosure.

We have got, again, just factual direct evidence that does not rise to the level of the jury needing an expert to tell them how to interpret what they have

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seen up here or heard from the witness stand.

THE COURT: Mr. Tooker.

MR. TOOKER: Yes, sir. And I think there's a case directly on point. And unfortunately I did not print it off of West Law. I printed it off of the judicial department's website. So I don't have a South Carolina or Southeastern cite. I do have the South Carolina Court's opinion number. But it is the State vs. Damon T. Brown. Opinion number 5288, filed January 7th of 2015. If I may approach, and tender it to Your Honor.

THE COURT: Have you given a copy of that to Mr. Cantrell.

MR. TOOKER: I neglected to bring two, Your Honor. I do apologize. I think I can summarize it for the record. And it's particularly telling in as much as it was a case tried here in Pickens.

THE COURT: Okay.

MR. TOOKER: Ms. Shauna Galloway-Williams was the expert proffered. And she was proffered as an expert in the field of child abuse disclosure dynamics. Took the stand, and talked about delayed disclosure and grooming, if memory me serves correctly.

That issue went before the South Carolina Court of Appeals. And on appeal, the primary issue was whether or not that was something an expert was

necessary for, or was something within sort of the scope of your average lay person -- your average lay person could understand what it's like, indicated as abuse.

So in that case, our Court of Appeals concluded that an expert can be necessary to help the jury understand why it is that a child would behave the way a child behaves after having been sexually abused.

THE COURT: I'll allow the testimony over objection. Looking at the opinion just handed up, I do find that the subject matter is beyond the ordinary knowledge of the jury. It's certainly beyond the ordinary knowledge of me, because of the questions I asked. I think an expert is required to explain this particular matter, that is delayed disclosure.

I find, and already found, that she is -- the witness is an expert in the field involving delayed disclosure and sex -- sexual abuse, or sexual related incidents.

And I'm not sure I completely understand this last prong that they have here, which the court must evaluate the substantive testimony in terms of whether it's viable. I'm not sure what that means, but to the extent I do understand, I certainly evaluate the substantive testimony and find it to be -- convince me

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of the soundness, if that's what they're really talking about. And it appears to me to be reliable. A lot of that has to do -- and this is why -- why that language it kind of confusing to me. It seems to me that once you have found somebody to be an expert, that prong is -- is covered.

So based on my finding that Ms. Galloway-Williams is an expert in the area of delayed disclosure and child abuse dynamics, I have evaluated the substantive of -- of her testimony, and determined that it is reliable and so affirmatively find.

I do find that the testimony that she has presented at this time will assist the jury in evaluating the behavior patterns of adolescent victims of sexual assault, and provide understanding of some of the aspects of behavior of victims, and provide insight into an abused child -- well, they use the word here "strange demeanor" -- and I don't think that applies here, but the abuse's child behavior.

MR. TOOKER: Thank you, sir. Before the jury comes back, Your Honor, just a scheduling matter. Our last witness that we propose to call, as I mentioned this to Your Honor and Mr. Cantrell in chambers, he is coming from North Carolina. He's to be here tomorrow morning at 9:00.

THE COURT: Okay.

MR. TOOKER: I don't imagine I will spend more than about 30 minutes with Ms. Galloway-Williams. I know that puts us -- with Mr. Cantrell cross examining -- maybe 4:15. But I wanted to request of Your Honor leave at the -- the termination of this witness until tomorrow morning.

THE COURT: You want me to leave the termination --

MR. TOOKER: Well, no. I would request of Your Honor that we could then break at the close of the witness.

THE COURT: I think what you've told me, we've got to.

MR. TOOKER: Well, it is always up to Your Honor.

THE COURT: I understand that. But we've already discussed, and I thought I had at least given leeway to allow your witness to be here at 9:00, coming all the way from North Carolina -- the State line is 20 miles away I think.

MR. TOOKER: He's in Asheville, so.

THE COURT: Okay. In any event, we will start back at 9:00 in the morning. So if you're ready for the jury?

MR. TOOKER: Yes, sir.

THE COURT: Anything about timing other than we brought up?

MR. CANTRELL: No, sir. I had my shot at changing times yesterday, and that's gone.

THE COURT: It does mean we will leave -- start a little early today -- if we will get cranked up at 9:00, we should be okay. Bring in the jury.

(Whereupon, the jury entered the courtroom at 3:18.)

THE COURT: We already have a witness on the stand. She will now be sworn.

SHAUNA GALLOWAY-WILLIAMS, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. TOOKER:

Q. What is your name, ma'am?

A. Shauna Galloway-Williams.

Q. And where do you work?

A. I'm the Executive Director of the Julie Valentine Center.

Q. What does that mean exactly?

A. The Julie Valentine Center is the child abuse and sexual assault recovery center that serves Greenville and Pickens County. We provide prevention, education, investigative and treatment services to children, families and adults who have been impacted by

child abuse and sexual assault.

Q. Okay. And what do you do as the Executive Director? What are your responsibilities?

A. Well as the Director, I'm responsible for the oversight of the entire agency, all of its programs; the fiscal responsibilities associated with that. I also continue to provide clinical services, so that means that I provide direct services to children as well as their caregivers.

Q. Okay. And have you had any other roles at the Julie Valentine Center?

A. Prior to serving as Executive Director, I was Clinical Director. Prior to that, I was a forensic interviewer that was employed by the Department of Mental Health.

Q. Okay. How many -- well, what's a forensic interviewer?

A. Interviews assessments with children where there are allegations of abuse or neglect.

Q. How many forensic interviews have you conducted in your career?

A. Over 850.

Q. Okay. And do you do any counselling?

A. I don't currently do counselling, but I have previously. The only counselling I do will be grief

counselling with caregivers of children who have been abused. But previously, I provided counselling services to children who had been impacted by abuse and neglect.

Q. And are you licensed?

A. I am.

Q. Okay. What is your licensure?

A. I am a licensed professional counsellor in the State of South Carolina, and have been licensed since 2004.

Q. Okay. You said you counseled victims of abuse?

A. Yes.

Q. How many victims of abuse do you think you have counseled during the course of your career?

A. I don't have an exact number, but it is well over 1,000.

Q. Okay. Do you counsel anybody else other than victims?

A. Well, I work with the caregivers, siblings, what we call indirect victims of abuse.

Q. Okay. And in total, you've been at it since when?

A. I have been providing clinical services since 2001, so over 14 years.

Q. Okay. What is your educational background?
A. I have a Bachelors Degree in Psychology and a Masters in Counselling.
Q. Okay. And like you said, you are licensed as an L.P.C.?
A. I am.
Q. Okay. Do you have any kind of specialized training?
A. Most of my training has specifically been in the area of child maltreatment or child abuse. I have over 150 skills based hours in assessing and interviewing children who have been -- where there are allegations of abuse and neglect. As a part of my licensure, we are required to continue with continuing education credits each year. And most of my training has focused in the area of sexual abuse, recognizing and responding to child maltreatment in those areas.
Q. Okay. You answered a lot of my questions just then. Have you -- have you ever provided any kind of specialized training for other people, or any training at all for other people in your field?
A. I do. I provide training to both professionals and to students. I'm an adjunct facility member at the University of South Carolina Upstate in their Child Advocacy Studies program. I teach a course

on child maltreatment there.

I also provide training, as part of my work, with the Julie Valentine Center. I do a lot of training on mandated reporting, recognizing and responding to child abuse. And most recently, I have been part of the training team that trained over 900 administrators with the Greenville County School District, specifically on recognizing and responding to child sexual abuse in the educational setting.

Q. Okay. Have you ever been qualified before in court as an expert witness?

A. I have.

Q. And in what field were you qualified as an expert witness?

A. In the area of child maltreatment.

Q. Okay. Child abuse disclosure dynamics?

A. Yes.

Q. Okay. How many times before have you been qualified as an expert witness?

A. Twenty-seven times.

Q. Okay. Is that both in General Sessions and in Family Court?

A. Twenty-seven times in General Sessions. I have also been qualified as an expert in Family Court. And I really don't know how many times over -- over 27

times in Family Court.

Q. Okay.

MR. TOOKER: At this point, Your Honor, the State would request that Ms. Galloway-Williams be qualified as an expert in the field of child abuse disclosure dynamics.

THE COURT: Any voir dire?

MR. CANTRELL: No, Your Honor. I would stipulate.

THE COURT: I find she is qualified.

BY MR. TOOKER:

Q. Okay. Do you know why you have been called here today to testify?

A. Yes. To provide information, education on the dynamics of child abuse.

Q. Okay. Who were you subpoenaed by?

A. The State, the Solicitor's Office.

Q. Okay. And have you received any kind of money to be here today; have you been paid?

A. No.

Q. Okay. Your facility, the Julie Valentine Center, how -- how do they get their funding?

A. About a third of our funding comes through the United Way, the Greenville County United Way. Another third comes from Federal funds that includes the Victims of Crime Act, Violence Against Women Act, DHEC;

National Children Alliance. And another third of our funding comes from fundraising and foundational grants.

Q. Okay. So based on your testimony today, are you going to be paid or not be paid, or will your facility get funding or not get funding?

A. Based on my testimony today?

Q. Yes.

A. No.

Q. How do --

A. It's of no relevance.

Q. Is your testimony somehow contingent upon the funding you receive?

A. No, not in any way.

Q. Okay. Are you familiar with the victim in this case, Minor 1?

A. No.

Q. Okay. You have never met him before?

A. I have not.

Q. Have you reviewed his case file or looked at any materials in this case?

A. I have not.

Q. Okay. Have you spoken to anybody other than myself about this case?

A. No.

Q. Okay. What does the term "delayed disclosure"

or the term "delayed reporting", what do those terms mean?

A. In general, delayed disclosure means not reporting an act of abuse right away. And that could mean not reporting within hours, within days. Really it means not reporting within the first opportunity that a child might have to report. And we use that term often, when we're talking about child maltreatment because most children do not tell right away after an abuse incident occurs.

Q. And you cut me off -- I was going to say -- in your experience, how common is it for a child to delay their disclosure?

A. It's more common for children not to disclose right away.

Q. Okay. What are -- well, what kind of factors commonly play a role in a child's delay or failure to disclose?

A. Well, one of the main reasons that children don't tell is because of fear. They fear what will happen to them if they tell. They fear what will happen to the offender if they tell. Many children fear they're not going to be believed.

Children also fear telling because they're often abused by someone they know, they love, and they trust,

whether that is a family member, a family friend, someone that they have developed a relationship with. And often that relationship has many positive aspects to it, too, in addition to the abuse itself.

And many times, children have a difficult time with how to tell, and how to get help because of those reasons.

Q. Okay. What role would guilt or shame play in the child's delay or failure to disclose?

A. Well, guilt and shame is something that is directly associated with child sexual abuse. You know, sex is something that is still a very taboo subject, sexual abuse even more so. You know, it's not something that adults go around talking about, even if they're talking about positive experiences.

So children often feel a significant amount of shame and guilt and responsibility for the abuse that they may have endured. That shame and guilt and responsibility may make it even harder for them to tell about what's happened. It's a subject that's really hard for them to talk about.

Q. What kind of role with the abuser having been in a role of authority over the victim in a case, play on any kind of delay in disclosure?

A. Well, we generally say that the more power and

authority that an individual has over a child, the more difficult it is for them to be able to tell. You know, we'll see that it will make it even harder for them to tell.

And we do -- you know, we teach children that, you know, they are supposed to respect adults and do what adults tell them. And children do that a lot more than -- than we even think they do, which is why we see so many delayed disclosures with children.

Q. Okay. What kind of role would the victim's fear of punishment or retribution play with their disclosure -- delayed disclosure?

A. Along with the fears that we've already -- or that I've already talked about, the fear of what would happen to them or someone else is one of those fears that may keep them from telling. And those may be fears of things that they have sort of made up in their mind, or there may be fears of things that they've been told will happen to them.

Sometimes children fear what will happen based on things that they have seen the offender do with others. For example, if a child is living in a home where there is a violent offender, who has also been abusive to them, maybe sexually abused them, the child may fear that they may be physically abused if they

tell just by virtue of seeing that. So it's sort of an indirect threat, rather than a direct threat and fear.

Q. Okay. What would the role -- or what role would the normalization of sexual activity play in failure to disclose?

A. Well, that kind of goes right in line with grooming, which is the idea of developing a trusting relationship with a child or sort of testing the waters with a child. And oftentimes offenders will introduce children to sexual behavior in a very nonchalant or very casual way.

They may begin with touching. It may be in a caregiving role, in a way that they're introducing children to sex and getting them more comfortable with it.

They may show them movies, pictures, things like that, so that the child is more engaged or begins to be more of a part of what is actually happening.

Q. Okay. And back to sort of the different factors that would play a role in delayed disclosure, what kind of role would a victim's fear that he would not be believed play in delayed disclosure?

A. Well, children often fear that they're not going to be believed. We really train our children that way, whether we mean to or not. You know, often

children will say something. And the first thing that comes out of our mouth is "really", indicating that we don't necessarily believe them.

And particularly when children may have already lied in the past about other things, and children have behavior problems, and they're sort of known for those kind of things, then even more so they fear that if they do tell, that they won't be believed.

Q. Okay. Is disclosure sometimes a process? And if so, why?

A. Disclosure is almost always a process. And what we mean by that is, is that we don't expect that a child is going to tell us every single detail about everything that's happened to them the very first time that they tell. We can expect that over time they may tell us more details, they may tell about more incidents. They may tell different pieces of information to different individuals depending on who's asking the questions, and the type of questions that are asked about them, or asked of them.

Q. Okay. And how would the passing of time, specifically a long period of time, between the initial disclosure and a subsequent disclosure, how would that affect the disclosure, if at all?

A. It could -- a couple of different things. It

could allow the individual more time to be able to process, to get help, to be able to tell more clearly what's happened. With the passage of time, they may lose some of the details about what's happened. But we would expect that they would still remember the core details, the who; the what; the when; the how of what -- what they've described.

Q. Okay. And what are risk factors in your field? What are we talking about when we talk about risk factors?

A. When we talk about child maltreatment, we've identified that there are certain risk factors that make a child at higher risk of being abused or re-victimized. Children who are very young are the most vulnerable victims. They are the ones who are the most vulnerable. They require the most care from adults, and often are the ones who don't have the words to describe what's happened.

Children who have previously been abused or have been in abusive situations are at high risk for being re-victimized. Children who have behavior problems, who are known behavior problems, who have a history of those type of behaviors, are at high risk. Because oftentimes they will be told that if they tell, no one is going to believe them because they're already

troublemakers. And kids internalize that, and adults often do behave that way as well.

Q. Okay. And you mentioned grooming before, but would you -- if you would, what exactly is grooming? What does that term mean specifically?

A. It really means developing a trusting relationship with the potential victim and even the victim's family in the community. So, really, establishing a relationship with a victim prior to or during and after the abuse incident. And that can involve providing special attention, special favors, doing things that make the child feel really special. Anything that really cultivates that trusting relationship with the child and -- and oftentimes with their family.

Q. Okay. And you said that the normalization of sexual activity would be considered grooming?

A. Yes.

Q. Okay. What does the term "compliant victim" mean?

A. Well, that really refers to a victim appearing as if they are engaging in or an active and willing participant in an abuse act. So, a child who -- it may appear that they initiated this sexual abuse in some way -- maybe they went to the offender's room and

initiated this, or maybe they said something or did something that led this to happen. So it's the appearance of being a compliant victim or that they willingly participated in the event.

Q. Okay. Let's reiterate, a juvenile -- is a juvenile capable of consent?

A. No.

Q. I do want to go back real quick, when we talked initially about delayed disclosure, you said it is not disclosing immediately. Is there some period of time that has to be met for disclosure to be a delayed disclosure? Or specifically -- I mean, when is it -- at what point after a child does not say what happened to him, does the disclosure become a delayed one?

A. Well, it would be delayed if the child doesn't tell at the first opportunity they had to tell someone. So if there's another adult around or someone else after the incident has occurred, that's the first opportunity that a child would have to tell someone. Not telling then would be a delay in their disclosure.

Q. So would waiting a day be a delay?

A. Yes.

Q. Waiting two days be a delay?

A. Yes.

Q. Waiting a week be a delay?

A. Yes.
Q. And anything more than that is, of course, a delay?
A. Yes.
MR. TOOKER: Okay. No further questions.

CROSS EXAMINATION BY MR. CANTRELL:

Q. Very quickly. You said delayed disclosure requires they don't disclose at their first opportunity; is that correct?
A. Yes.
Q. What if the first opportunity is seven days later, that would not be a delayed disclosure; would it?
A. So assuming that the child wouldn't have had an opportunity to interact with anyone in a seven day period of time?
Q. I didn't say interact with anyone, I'm saying their first opportunity to disclose under your definition, what if it didn't occur for seven days?
A. What I mean by opportunity is, you know, if the incident occurs, and then the child interacts with another person, or is somewhere else at school, or somewhere else in the home, and has an opportunity to disclose and doesn't, that's a delay in disclosure. They are not telling right after it happened.

So, if the incident happens, the child is not leaving the room or the incident location, and going directly a parent, a caregiver, a family member, or law enforcement or someone else to tell -- or even a friend.

Q. So if they're not leaving their location, that can be part of it?

A. Not necessarily, no. Because the abuse could be happening in the child's home, and often is happening in a setting where the child lives and engages in social behavior.

Q. Everything that you have discussed or presented in response to Mr. Tooker's questions, has to do with your -- your area of expertise and your knowledge of this subject matter; is that right?

A. Yes, that's correct.

Q. You have no knowledge of the specifics of this case?

A. No.

Q. You have no knowledge of the circumstances, the people involved, what happened when? You simply have no knowledge of the circumstances in this case?

A. No, no specific knowledge, no.

Q. And, quite candidly, not to sound like I'm trying to overly compliment you, but you are the -- the

expert in this area on this subject matter. Hopefully, you can agree to that -- or you are certainly one of the foremost authorities in this -- in this area; is that correct?

A. Yes.

Q. Okay. You have not been asked to give any information or asked to be involved in the specifics of this case, to investigate, to review, to recommend treatment, to provide specific testimony -- you have not been asked to do anything specific to this case other than present this expert opinion testimony here today; is that right?

A. Right. What I have been asked to do is to provide general information about the dynamics of child sexual abuse and child maltreatment.

MR. CANTRELL: That's all I have. Thank you.

THE COURT: Redirect?

MR. TOOKER: Just one question.

REDIRECT EXAMINATION BY MR. TOOKER:

Q. It was mentioned opportunities to disclose, what is an opportunity to disclose?

A. A -- a chance to tell someone what's happened. So being outside of the presence of the offender that just committed the act, interacting with another person outside of that, any opportunity to show or tell

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someone what's happened.

Q. Okay. So any time the person, the victim were around someone other than the defendant -- or the offender?

A. Yes.

Q. That would be an opportunity?

A. That would be an opportunity. You know, if they're around their parent, or their friends, or some other caregiver, that would be an opportunity. That could be someone they could tell.

MR. TOOKER: Okay. No further questions.

THE COURT: Mr. Cantrell?

RECROSS EXAMINATION BY MR. CANTRELL:

Q. So, now, you're saying it would be as soon as they're outside of the presence of the alleged offender, they have an opportunity to disclose?

A. They don't have to be outside of the presence of the offender. The offender could be there with other people around, the child could potentially have an opportunity to show or tell what's happened to them.

MR. CANTRELL: Thank you.

THE COURT: All right. You may step down and be excused. We appreciate your time.

THE WITNESS: Thank you.

THE COURT: Thank you. I understand that's the

last witness for the day?

MR. TOOKER: Yes, sir. The last witness for the day.

THE COURT: Members of the jury panel, we have another witness that's unavailable until the morning, so we're going to break for the evening. We are going to start back at 9:00 in the morning. Keep in mind my admonitions about not discussing the case, or trying to make up your own mind, or being exposed to news coverage, or using any electronic means or use media to obtain any information about this case or anything related to it.

So have a pleasant evening, and we'll see you back at 9:00 in the morning.

(Whereupon, the jury left the courtroom at 3:39.)

THE COURT: Has Mr. Holder been out on bond?

MR. CANTRELL: Yes, he is. And I apologize to address --

THE COURT: I'll allow him to remain on bond -- out on bond. Mr. Holder, I'm not going to have you -- generally, once a trial starts, a defendant may be required to remain incarcerated until the jury deliberates and returns a verdict.

I'm not -- not going to require that of you.

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I'm going to let you go home, but you need to return by 9:00 in the morning, or earlier if your lawyer wants you here.

I want you to understand that if you were to some reason not appear, this case would not stop. It would go forward. The case would be tried. The case would be submitted to a jury. The jury would deliberate. The jury would return a verdict.

Of course, if the verdict is not guilty, that would end the matter. If the verdict were guilty, I would impose a sentence, seal it up, file it with the clerk, issue a bench warrant, and your arrest will be sought on that bench warrant.

And if you -- not if, but when you were arrested on that bench warrant, you would be brought back before the court, and a judge -- not necessarily me -- but a judge would impose -- read that sentence and impose it on you at that time; do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Thank you.

MR. CANTRELL: Thank you, Your Honor.

THE COURT: Counsel, if we can kind of have a charge conference, and chat a little bit, maybe we'll be ready to move in the morning.

(Whereupon, a jury charge conference was held.)

(Whereupon, the hearing adjourned until May 21. 2015.)

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*** * * P R O C E E D I N G S * * ***

MAY 21, 2015

THE COURT: Good morning.

MR. TOOKER: Good morning, sir.

THE COURT: Is the State ready?

MR. TOOKER: Yes, sir, Your Honor. I didn't know if you would prefer to proffer this witness' testimony before we had the jury come in.

THE COURT: I think that's -- makes sense, yes.

MR. TOOKER: Okay.

THE COURT: And this is the common scheme of plan issue?

MR. TOOKER: Yes, sir.

THE COURT: So call -- call your witness.

MR. TOOKER: The State would call Minor 2 to the stand.

Minor 2, having been first duly sworn, testified as follows:

THE CLERK: If you would, have a seat. State your name for the record. You'll have to speak up where everybody can hear you.

DIRECT EXAMINATION BY MR. TOOKER:

Q. What's your name?

A. Minor 2

Q. I'm going to put this right in front of your face, so we can hear you nice and clear. I know that's kind of awkward, but -- all right. So say that again, what's your name?

A. Minor 2.

Q. And how old are you, Minor 2?

A. I'm 16, sir.

Q. What is your date of birth?

A. [redacted].

Q. Are you familiar with Hampton PRTF?

A. Yes, sir.

Q. Did you ever live there?

A. Yes, sir.

Q. How long did you live there?

A. About 30 days, sir.

Q. Okay. And I might be getting ahead of myself a little bit. Do you know the difference between a truth and a lie?

A. Yes, sir.

Q. What's the difference between the truth and a lie?

A. A lie is something that did not happen or something that is false.

Q. Okay. What's something that is true?

A. Something that actually did happen.

Q. Okay. So if I were to point to the wall, and say the walls are green, would that be true or would that be a lie?

A. False.

Q. Okay. Now, you said you lived at Hampton PRTF for how long?

A. About 30 days, sir.

Q. All right. Do you remember what unit you were on?

A. Phoenix, sir.

Q. Okay. On the Phoenix unit, did you have your own room or did you sleep in a room with other people?

A. I had my own room, sir.

Q. Where would you eat your meals?

A. Separate from the other kids.

Q. Okay. You ate by yourself?

A. Yes, sir.

Q. Did you have a lot one-on-one time with staff or were you often with a group?

A. It was a mix of both.

Q. Okay. And at Hampton PRTF, did you get any kind of counselling or treatment?

A. Yes, sir.

Q. What kind of counselling did you get?

A. I had therapy sessions once a week.

Q. Okay. Were those individual sessions or group sessions?
A. They were individual.
Q. Okay. Do you remember your therapist's name?
A. Kayla.
Q. Okay. Do you know the defendant in this case, Matt Holder?
A. Yes, sir.
Q. How do you know the defendant, Matt Holder?
A. He was a staff on the unit that I was on at the time.
Q. Did anything inappropriate ever happen between you and the defendant?
A. Yes, sir.
Q. What inappropriate thing happened?
A. It was inappropriate touching, sir.
Q. Okay. You say "inappropriate touching", what does that mean?
A. Being brought into a blind spot on the unit and coerced into touching his private parts.
Q. You said "blind spot on the unit", what does that mean?
A. There were certain spots on the unit where the cameras couldn't see everything.
Q. Okay. And you said he brought you there, how

did he bring you?

A. I was going out of the bathroom to get towels.

Q. Okay. And when you left the bathroom to get towels, what happened?

A. I was going back into my room, to go back and get in the shower, and that's where it happened at.

Q. Okay. Did he approach you or did you approach him?

A. We just happened to be in the same spot.

Q. Okay. Was it a large area or a small area?

A. Fairly small.

Q. Okay. And when you happened to be in the same spot together, who initiated contact?

A. He did.

Q. How did he initiate contact?

A. Using my hands to touch his private parts.

Q. Okay. And how is it that he used your hand to touch his private parts?

A. More so grabbing my wrists and putting it there.

Q. You say "more so grabbing your wrists", did he actually grab your wrists?

A. Yes, sir.

Q. And you said "putting it there", what did he put and where did he put it?

A. He put my hand on his groin area.
Q. Okay. Was that on top of the clothes or underneath?
A. On top, sir.
Q. Okay. When he did that, could you tell whether or not he had an erection?
A. Yes, sir.
Q. He did have an erection?
A. Yes, sir.
Q. Okay. About how long did he hold your hand there?
A. About five seconds, sir.
Q. Okay. And what did you do in response to that?
A. I threw my hands up and said that wasn't cool.
Q. Okay. And what did he say to you?
A. I don't know if I should quote that.
THE COURT: Please, you can do it. We are all adults.
THE WITNESS: Quote, unquote "I'll kick your..." -- you know.
BY MR. TOOKER:
Q. Kick your what? You can say it. Nobody is going to get mad.
A. Quote, unquote, "I'll kick your ass".

Q. If what?
A. If I tell anybody.
Q. Okay. So he threatened you if you told anybody, he would beat you up?
A. Yes.
Q. Did you tell anybody?
A. No.
Q. Okay. When did you encounter law enforcement in this case?
A. When I was in Grandfather.
Q. What is Grandfather?
A. It's the placement that I was at after I left Hampton.
Q. Where is that located?
A. Banner Elk, North Carolina.
Q. Who came to talk to you?
A. Detective Byers, sir.
Q. Okay. When he came and talked to you, had you reached out to him?
A. No.
Q. Okay. Did you know he was coming?
A. No.
Q. When he came and talked to you, did you know what he was coming to talk to you about?
A. No, sir.

Q. Okay. Were you surprised at all by his questions?
A. Yes, sir.
Q. When he asked you about what happened, did you tell him what you told the court here today?
A. Yes, sir.
Q. Okay. No further questions.
THE COURT: Please answer questions that the other gentleman has.

CROSS EXAMINATION BY MR. CANTRELL:

Q. Minor 2, you were in the shower at your unit?
A. Yes, sir.
Q. And you just happen to run into Matt when you were going out to get a towel?
A. Yes, sir.
Q. So you didn't plan to meet him; he did not plan to meet you?
A. No, sir.
Q. And if you're in the shower area, I assume almost all of the shower area has no cameras; is that correct?
A. No, sir.
Q. That is not correct or that --
A. No. They didn't have a camera.
Q. So the place where you were, was a blind spot

all together, because nobody was going to be -- no cameras were going to be focused in that area; is that right?

A. No, sir.

Q. And this entire matter took about five seconds?

A. The whole incident lasted 45 seconds to a minute.

Q. From the time you saw him to the time --

A. That I left.

Q. Y'all went separate ways?

A. Yes.

Q. Now, did you say that Matt worked in your area, your unit there?

A. He was in my shift.

Q. So he was supposed to be there?

A. Yeah.

Q. In the area. And you were supposed to be there in that area?

A. Yes, sir.

Q. Were there other -- other kids in that area at the time?

A. Not in the area we were in.

Q. Other kids in the shower area?

A. Each room had its own shower area. And I was

in a room by myself, so I had my own.

Q. So you were not surprised that Matt was there, because that was -- he was supposed to be in that unit?

A. Yeah -- or yes, sir.

MR. CANTRELL: I beg the court's indulgence?

THE COURT: Certainly.

BY MR. CANTRELL:

Q. Now, when you talked to Mr. Byers, did you -- how long had you been there when this happened at -- at Hampton?

A. I don't remember, sir.

Q. Did you tell the officer, when talking to him, that people at the Hampton would turn off cameras at certain times?

A. Yes, sir, I did.

Q. Was that a true statement?

A. Not at the time, sir, no.

Q. So you told him something that was not true when you talked to the officer about this incident?

A. Detective Byers?

Q. Yes.

A. Yes, sir.

Q. You told him that you knew more about technology than people at the Hampton knew; didn't you?

A. I don't remember.

Q. Did you tell him that they would turn off the cameras and do whatever to you?

A. I remember them saying turning off the cameras.

Q. I'm asking, did you say that they, at the Hampton, would turn off the cameras and do whatever to you?

A. Yes, I said that at the time.

Q. Okay. Was that true?

A. No, sir.

Q. You say you did not tell anybody about this?

A. No, sir.

Q. Did you tell Detective Byers that you told Kayla about it?

A. I told Kayla about it. She did not believe me.

Q. Okay. So previously when you said you didn't tell anybody, that was not true, was it? You did tell someone -- or is it your testimony that you told someone?

A. I said let law enforcement -- there was no law enforcement or anybody brought in. From what I heard, the investigation was done by the facility itself.

MR. CANTRELL: I'm sorry, Your Honor. Just a little bit longer.

THE COURT: Okay. Take your time.

(Pause.)

BY MR. CANTRELL:

Q. Did you report to Detective Byers that you had been assaulted on other occasions at the Hampton?

A. I don't remember.

Q. You don't remember. Did you tell Mr. Byers that a Mr. Darius had assaulted you?

A. I don't remember.

Q. If you did tell Detective Byers that, was it true?

A. I don't remember saying that.

Q. If you said it, was it true?

A. No.

Q. Were you assaulted by Mr. Darius?

A. No.

Q. Were there times when you would pass out and then find yourself in your bedroom with nothing but your underwear on; did that happen?

A. No, sir.

Q. Did you tell Detective Byers that that sort of thing happened?

A. I don't remember.

Q. If you told Detective Byers that, that was not true, was it?

A. No, sir.

Q. Did you ever make a statement or tell Detective Byers anything about being assaulted and being pile driven into the floor or thrown up against the wall?

A. I don't remember, sir.

Q. Do you remember telling Detective Byers about another young man there being restrained or assaulted, and that Mr. Darius said that he would kicked them in crotch, put them in a choke hold, and put them to sleep; do you remember telling Detective Byers all of that?

A. Yes, sir.

Q. Was that true?

A. Yes, sir.

Q. That happened?

A. Yes, sir.

Q. And you reported it?

A. I can't remember.

Q. Okay. Now, a while ago I asked if you -- Darius had assaulted you. You're saying that he never assaulted you, but you reported him assaulting other people?

A. The restraints were done in an unorderly fashion.

Q. What about kicking him in the crotch or throwing him up against the wall; did any of that happen?
A. That usually happened to the other kids. That wasn't me. I wasn't violent enough.
Q. Did you report kids being drug across the asphalt?
A. I don't remember, sir.
Q. If you did -- if you said that, was it true or untrue?
A. Yes, sir.
Q. Yes, sir? It wasn't true?
A. True.
Q. So you did see that; that's your testimony?
A. Yes, sir.
Q. Are you having trouble remembering a lot of what you told Detective Byers; is that true?
A. Yes, sir.
Q. And you did tell him some things that were not true?
A. At the time, sir, yes.
Q. In fact, when you talked to Detective Byers, you reported all sorts of things about staff members at the Hampton?
A. Yes, sir.

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Q. And you reported some things that were not true by your own admission?

A. Yes, sir.

MR. CANTRELL: I don't have any further questions.

THE COURT: Redirect?

MR. TOOKER: Nothing on redirect, sir.

THE COURT: You can step down. Anything from the State? I've read and looked over your memo and the Curtin (ph) case, very well drawn by Judge Anderson. Mr. Cantrell, do you have any comments?

MR. CANTRELL: Your Honor, only that I don't believe the State has met the burden as to whether the -- the incident alleged actually happened by clear and convincing evidence. I don't believe the connection would be sufficient.

And going beyond that, if you get beyond that -- the connection, the circumstances under the case law to warrant the admission of this evidence, let alone the prejudicial value. I don't believe it, in any way, outweighs the prejudicial value -- the prejudicial effect, I should say, as to the defendant. So I do believe -- we would ask this court to deny the -- deny this evidence, suppress it.

THE COURT: Mr. Tooker.

MR. TOOKER: Thank you, sir. With regards to the

initial standard, of course, which is clear and convincing evidence, part of that -- the Curtin case talks about how it is that the State met that burden in that case, and that case was merely testimony of the victims.

I understand in this case, our victim -- or our common scheme or plan witness, admitted to saying things to the officer that weren't true. In my estimation, that makes what he did say more credible. And as much as he clearly knows the difference between the truth and a lie, he admits to things that are lies, and then acknowledges the things that he said are true.

THE COURT: Well, I disagree with you on that. I I think that stands truth on its head, credibility. But go ahead.

MR. TOOKER: Yes, sir. That being said, I -- you know, the standard is not beyond a reasonable doubt, which is clear and convincing. I think he articulated things in a way that indicates the realities, as opposed to being sort of a blind allegation of touching. He describes it. And then it very much does seem real.

Assuming Your Honor were to find that standard met, the bigger issue in this case, in my estimation, is whether -- whether the acts were sufficiently

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similar to warrant admissibility under a common scheme or plan.

Like I said in that memo, this is pursuant to State vs. Wallace -- excuse me -- State v. Hallman 298 SC 172. We're looking for age of the victims when the abuse occurred; relationship between the parties; location where the abuse occurred; use of force or threats, and the manner of the occurrence. For instance, the type of sexual battery.

Now, I don't think we check off every box. But we do have a similar relationship between the parties. We have similar ages of the victims. We have a circumstance where, based on the alleged perpetrator's role, he's in a position over them at this facility.

And the acts themselves, I think, this is why I put in that Curtin case, indicate to me at least, there is a progression. The initial act rebuffed by this witness, while not rebuffed by our victim, led to ultimately sexual abuse. So that is why I think that, in this case, it's indicative of that common scheme or plan, to isolate kids in an area where they are not on the camera. And in that environment, then making advances, sexual advances.

And having made a sexual advance, to see whether or not the kid is interested. One kid participates,

the other kid rebuffs. So that's why I do think that it is relevant, and I think that it meets the definition of common scheme.

THE COURT: Well, I'm -- I'm not going to allow it. The memorandum is very well done, but for one important key, I agree with everything the State has to say. But based on my determination that the credibility of this witness is shaky at best, I cannot go so far as to find by clear and convincing evidence that the incident occurred, so I'm not going to allow it.

MR. TOOKER: Thank you, sir.

THE COURT: Is the State ready?

MR. TOOKER: Yes, sir, one moment. Yes, sir, at this point, Your Honor, the State would rest its case.

THE COURT: All right. Well, I'll let you rest formally in front of the jury. But in order to keep them from coming in and out, we will treat this at the point where the State has rested. Any motions?

MR. CANTRELL: Yes, Your Honor. At this time, I would move for directed verdict, in that the testimony taken in the light most favorable to the State, the State has not sufficiently met its burden.

I do realize that, quite candidly, I am arguing a great deal on credibility. And that generally

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speaking, that's not an argument for a directed verdict. But, Your Honor, I believe in this case, with all of the issues as to credibility, or lack of credibility, without asking you to evaluate the evidence of the videos and that sort of thing, but the credibility itself.

We have heard several statements by the State's witnesses themselves as to the alleged victim's -- for truthfulness and veracity. Statements that he knew how to get out if there was -- for lack of a better way, a common scheme or plan on his part as to how to get out of the facility. And by his own testimony, he said that.

I believe that to that point, the lack of credibility rises to the point that the State has not sufficiently met its burden. Then add to that, the fact that the evidence is insuf -- insufficient -- excuse me. I would ask the court to direct a verdict.

THE COURT: I deny the motion. Credibility is, as you observed, for the jury. While it was on me regarding the rule 404 issue, it's on the jury regarding the guilt or not -- or not guilty determination. I find that there is direct evidence. And I'm not going to comment a lot on it, but there is at least corroboration of -- to give some credibility,

the video of the 31st certainly showed the door being manipulated by someone.

The testimony was that it was the defendant and the same sort of manner as the victim testified the event occurred. So I'm not saying that's the only evidence, obviously, because I can't. But there is at least enough evidence for this to go to the -- to the jury.

MR. CANTRELL: Thank you, Your Honor. Note my objection for record.

THE COURT: Okay. Yes, sir. All right, Mr. Holder, can you hear me?

THE DEFENDANT: Yes, sir.

THE COURT: We have reached a point of the trial where you have a right to present a defense if you wish, but you do not have to present any defense. You don't have to call any witnesses and you don't have to testify.

You may call witnesses, if you have any witnesses or -- you certainly have a -- have a right to present a defense. However, you are presumed innocent of this charge as you might have heard me say already, and the State must prove your guilt beyond a reasonable doubt before the jury could convict you of this offense.

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You have a right to testify -- does he have any impeachable record?

MR. TOOKER: He has a prior conviction for 2004 that is outside the 10 year limit, that would be impeachable otherwise. Because it's outside the 10 year, the State doesn't intend to use it.

THE COURT: Okay. If you -- if you testify, you will be under oath, and have to answer questions of course, which you have a right to testify if you wish.

If you exercise your constitutional right to remain silent, I will tell the jury that that is what you have done. That you have exercised your constitutional right to remain silent. I will tell them that they cannot use that against you in any way whatsoever. I will remind them that you are presumed innocent and need not prove your innocence.

I will tell them they cannot discuss among themselves your exercise of your right to remain silent. And I will tell them they cannot even factor it into their independent, own evaluation of the evidence to make a determination. That is, they cannot in any way use your -- exercise your right to remain silent against you.

Do you do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about it?
THE DEFENDANT: (Nodded negatively.)
THE COURT: You have to answer yes or no.
THE DEFENDANT: No. No, sir.
THE COURT: All right. Mr. Cantrell, you have explained that to him?
MR. CANTRELL: Yes, sir. We've had some detailed discussions about that. I do believe he understands it fully.
THE COURT: Okay. Mr. Holder, this is your right. It's not your attorney's. It's certainly not mine or the State's. You -- we're at the point where hopefully you have discussed whether or not that is what you wish to do.
And at this point, do you plan to testify or exercise your right to remain to remain silent?
THE DEFENDANT: Yes, sir. I plan to testify.
THE COURT: Okay. All right. Then -- yes, sir.
MR. CANTRELL: And, Your Honor, with that in mind, I know that we've had the jury here for a little while, but I would ask for as much as 10 minutes to review or to talk to him, but also I have a couple of witnesses that were going to be here that I haven't spoken to yet.
THE COURT: All right. Now, I didn't have a

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witness list.

MR. CANTRELL: I -- I talked to Mr. Tooker about that. Some of them, I did not have names or weren't sure who would be here. But I can get names and bring that in.

THE COURT: Okay. All right. Well, yeah, I -- it would be nice to have, but Mr. Tooker you --

MR. TOOKER: Yes, sir. The State's requests would be just to ensure that we don't have any jurors that are familiar with these folks. Maybe, even to send a note back --

THE COURT: No. I would rather do it on the record. So if you'll hand me up their names and some sort of other -- if there is identifying information.

MR. CANTRELL: I will get those names and bring that in. And then if I can have, just like I said, a few minutes to communicate with these people.

THE COURT: Okay. We will take about a 10 minute break.

MR. TOOKER: The State would requests also, dates of birth, if you can get them, so that I can run a NCIS --

THE COURT: Right. Okay.

MR. CANTRELL: Sure. I don't think that will be a problem. I -- nobody is too concern about it.

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

MR. CANTRELL: All right. Thank you, Your Honor.

(After a recess, Court reconvened.)

THE COURT: All right. Is the State ready?

MR. TOOKER: I do have one request, Your Honor.

THE COURT: Okay. Well, let's see, we've got a bailiff talking.

(Pause.)

MR. TOOKER: The investigator is going to run a NCIC on each of them. So my request would just be that -- for their case, that they call the Defendant, so we can get the NCIC -- I know we can't force them. It's just my request.

THE COURT: I'm not going to make them do that. Your staff is, I'm sure, is nimble I believe. All right. Let's bring in the jury.

(Whereupon, the jury entered the courtroom at 10:00.)

THE COURT: Good morning. And I know now that you are convinced that I missed that class in kindergarten, when they taught you how to tell time. But we had some matters to take up again, outside your presence, so we have been working since shortly after nine, and we're just now ready to move forward.

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We -- the defendant -- the posture -- the posture of the case now is that the State has presented all of its witnesses, and I'm going to let them formally rest on the record in just a moment. Then the defense has the right to present witnesses if it wishes. There is no requirement.

Along those lines, it's anticipated that the following three individuals may testify. I did not have these names when I went over that list the other day, so if any of you are related by blood or marriage, or are close personal friends of one -- any -- one or more of these individuals, please stand. Mareen Thorny Rickerd or Rickard; Katrina Jones; and Josh Huckabee. No one stands. Thank you.

All right. And we are now -- it's Thursday, I realize that. So we are going to order lunch today, so instead of having a long lunch hour, we can move along a little quicker.

MR. CANTRELL: Thank you, Your Honor. If it please the court, I would call Jonathan Matthew Holder to the stand.

THE COURT: Please come up and be sworn.

(Pause.)

THE COURT: And the Clerk is reminding me that I said I was going to let the State rest on the record,

and then I didn't let them.

MR. TOOKER: Yes, sir. At this point, the State rests.

THE COURT: Okay. Thank you. All right, if you'd put your left hand on the Bible and raise your right.

JONATHAN MATTHEW HOLDER, having been first duly sworn, testified as follows:

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

THE WITNESS: Jonathan Matthew Holder.

DIRECT EXAMINATION BY MR. CANTRELL:

Q. You go by Matt; is that correct?

A. Yes, sir.

Q. All right. I'm going to hand you your water without objection. I think you said some allergy issues?

A. Yes, sir. Thank you.

Q. Let's keep that nearby. If I ask you questions, and you don't understand them, or don't hear them tell me before --

A. Okay.

Q. -- you even try to answer. And, Matt, where do you live?

A. I live in -- currently live in West Minister, South Carolina.

Q. And are you originally from this area?
A. Yes, sir, I am. From Pickens.
Q. Born and raised in the Pickens County area?
A. Yes, sir.
Q. How old are you? How old are you?
A. I'm 33.
Q. And are you married?
A. Yes, sir.
Q. What your wife's name?
A. My wife's name is Misty.
Q. Is Misty right here in the courtroom?
A. Yes, sir. She's in the courtroom.
Q. And do you have any children?
A. Yes, sir, I have five. Three girls -- excuse me -- two girls and three boys, and possibly one on the way.
Q. All right. Well, I was going to say, this is a test, but you've already failed the first step with the numbers of girls. But tell me -- tell me their names and ages?
A. My oldest is Madison. She is 11. And then my next, Maggie [redacted]. She turned seven in November. And then my oldest son, Jonathan -- Jonathan, Jr. is named after me. He'll -- he'll be six next month on the 10th of June. And this past week, we had two birthdays. My

middle son, Anniston, he turned three on the 19th. And my youngest, Zion, he just turned one on the 15th so that is --

Q. Well, you past that test.

A. Thank you.

Q. Okay. Matt, let me ask you, have you ever been employed at the Hampton Residential Treatment Facility here in Pickens?

A. Yes, sir.

Q. And when were you employed there?

A. I was employed there from March of 2011 through June of -- I was actually still working there through June. I'm not sure the date I was actually terminated, but the last day I was working was June 5th.

Q. And what was your job description?

A. I was a Direct Care Staff was my title. But my description, I did like daily operation for taking care of the kids, making sure they took their bathes, making sure they ate right. Took their medicine. We had to take them to the doctor. We have to take them on, you know, different outings if they had to leave the facility. Their daily -- their gym time. You know, they had some time they had to get in -- you know, they had daily -- as you heard some of the

facility directors say, there was a daily check list we had to go by and that we had to do. And then we had to do a moderate amount of paperwork, you know, just a daily journal on each one, and their progress and their score.

Q. Now, would you be assigned to a particular group on -- on your shift?

A. Yes, sir.

Q. How many kids are usually in the Hampton?

A. In -- on a group or in the whole?

Q. In the whole facility.

A. Anywhere -- around 50, I think, 52 one -- 51 is the max possibly.

Q. And how many individual groups did they have?

A. I think there's five, currently five units.

Q. And we've heard different names, one of them is Paladin?

A. Yes, sir.

Q. And that sort of thing?

A. Yes, sir.

Q. They would name the groups?

A. Yes, sir.

Q. When you would come on shift, would you be assigned to one particular group?

A. Yes, sir, unless they needed, you know,

some -- somewhere else, but primarily yes.

Q. Was it always the same group or would you be assigned possibly to different groups, some different groups?

A. It was always the same.

Q. What was the name of the group was were you assigned to?

A. The Paladin unit.

Q. Is that the group that Minor 1 was assigned to?

A. Yes. He was actually on two different units, but that was -- that was -- at the time --

Q. They move from group to group --

A. -- as they progressed.

Q. -- as needed there?

A. Yes.

Q. Now, did they train you? Did you have to have specialized training before you came there? Tell us about that.

A. Yes. Our training consisted of a week to two weeks. We had to learn the basics like CPR, first aid, you know, how to take care of them in the event they were choking, or their hearts stops, you know, or -- you know, that they need to CPR, things like that. And we also -- part of the job was -- was called TCI. It's

a tactical crisis intervention. When we were working with kids with psychiatric problems, a lot of times, as you heard there, when they would act out, they would have to be restrained. And there was a certain way -- for their safety and ours, we had to do that. That took close to a week just for that.

And then a lot of privacy laws, you know, different things like that. We have, you know, working with children in state custody and all, it was a whole lot of things of that nature.

Q. Now, you were Direct Care Staff. There were a fair number of people that would be considered Direct Care Staff; is that correct?

A. Yes, sir. Approximately 80.

Q. Eighty on staff?

A. Yes, sir.

Q. How many would be assigned on a -- on a shift to an unit?

A. To each unit would have roughly four, four staff.

Q. And how many kids would be in the unit?

A. Depending on radio of, you know, just anywhere around dozen or so, you know, 10 -- 10 to 12.

Q. So we are talking --

A. Certain units were bigger than other ones.

Q. So we are talking two or three kids per staff member?
A. Yes.
Q. Generally?
A. Yes, sir.
Q. Now, this is -- as the name would imply, a psychiatric facility; is that correct?
A. Yes, sir, it is.
Q. And you've already heard that there are certain requirements or diagnosis or indications for each kid that comes into that facility; is that your understanding?
A. Yes, sir.
Q. And just -- did these kids require fairly significant monitoring or attention or care?
A. Yes, sir. They -- they were under 24 hour watch. We had to do 15 minute checks of them. You know, they were on -- under doctor's and nurse's care.
Q. Now, we're not talking about physical limitations or anything, are we; or was it all --
A. It was all mental.
Q. Psychiatric?
A. Yes, sir, psychiatric.
Q. And what shift did you normally work?
A. I worked night shift.

Q. What time would you go in?

A. At -- from 6:00 at night to 6:00 in the morning.

Q. And while there, would you on occasions have opportunity to be at -- at any place in the facility?

A. Yes, sir. As ratio -- like I said, it depended a lot of times on ratio, or the staff had called out, you know. We had to -- someone always had to be there, you know.

Q. Now, once there and on shift, would your duties require you to go to various --

A. Yes, sir.

Q. -- areas in the facility?

A. Yes, sir, a lot of times.

Q. If a kid were to be going from one place to other in a facility, was it required that he have staff with him?

A. Yes, sir. They have to be accompanied at all times.

Q. And also certain units could not intermingle with each other?

A. Yes, sir. No units are allow to mingle together.

MR. TOOKER: Judge just briefly, as this is his witness, I would object to these leading questions.

MR. CANTRELL: Okay.

BY MR. CANTRELL:

Q. So, you're in a normal shift. How many parts of the facility might you go to?

A. Anywhere from three to four in a shift at least.

Q. Was there ever any time on your shift when you would not be with other staff, or with some of the kids? Would there be times when you would have to do work alone or by yourself, whether it's paperwork or whatever?

A. Yes, sir.

Q. The majority of the time would be with kids or not with kids?

A. With kids.

Q. Okay. And you -- you already heard, but there were cameras in this facility, surveillance type cameras; is that correct?

A. Yes, sir.

Q. And were you given instructions on whether to make efforts to always stay on-camera?

A. Yes, sir. It's our -- we're supposed to try to stay, but it's really impossible to know because we don't have access to what cameras see what, you know. You're surrounded by things on the ceiling, the little

globes, so.

Q. Do you operate while on shift as though all cameras are functional and all cameras are on?

A. Yes, sir.

Q. Observing. For lack of a better way of putting it, would each child there be considered, in your opinion, high maintenance or require a lot of attention?

A. Yes.

Q. If you were with a -- a child, in any location in the facility and his needs or his actions required you to be right there, if it took you off camera, were you allowed to go off camera?

A. Yes.

Q. And where there areas where there were no cameras? By definition, I would have to say the shower area would not have cameras. Were there other areas that would not have cameras?

A. Yes, sir.

Q. Let's talk about Minor 1. You -- you know Minor 1?

A. Yes, sir.

Q. Do you remember him being at the Hampton?

A. Yes, sir.

Q. Do you remember when he came there?

A. He -- he came roughly in the Fall, October, November, 2011.

Q. And you had already began employment there?

A. Yes, sir. I had been there for close to a year, eight months or so.

Q. Was he immediately assigned to your unit or do you remember?

A. I'm not 100 percent -- I believe so. When he first came, I believe he was on my unit.

Q. Was there a time when he was moved to another unit?

A. Yes, yes, sir. I think towards the end. And I also was different -- different units as well, so.

Q. In -- during the time that Minor 1 was there, was it necessary for you to occasionally accompany him places inside the facility?

A. Yes, sir.

Q. Would the same be true with every other young man on the unit that you were assigned to?

A. Yes, sir.

Q. No individual was assigned to any particular child, it was assigned to the whole unit; is that correct?

A. Yes, sir. That's correct.

Q. Now, let's jump ahead, Matt, to an occasion

where you would have been involved with Minor 1 cleaning in the laundry room. Why would Minor 1 want to clean the laundry room?

A. It was part of his daily chores. He had to -- he had to do the laundry as part of his chores. But in addition, with his level that he was on, he -- in order to earn extra money, that was a thing for him to do.

Q. So, he could earn money not to go out to -- to a convenience store, but to use there in the facility?

A. Somewhat. We -- they have like clothing allowances. And if they had field trips, you know, we would take them shopping, things like that.

Q. Now, whose idea was it for him to earn money by working in the laundry?

A. It's one of the options for -- for them to do.

Q. Did he choose that option?

A. Yes, sir, he did.

Q. So, it was -- was it his decision, I want to earn these extra points or this money, so can I do laundry?

A. Yes.

Q. Had he ever done it before to your knowledge?

A. He had -- he had did laundry, as far as I know. He had, you know, folded clothes and all.

Q. But as far as doing laundry, like you were

doing this day, has he ever done that before?
A. No. He had no knowledge of how to operate the washers or dryers or anything.
Q. So this was something new or something different?
A. Yes, sir.
Q. But he asked for the opportunity to do this?
A. Yes, sir.
Q. If a young man was going to be doing a job like that, was it required that you stay with him?
A. Yes, sir.
Q. Could -- were you allowed at any point to leave him alone?
A. No, sir.
Q. Now, in the laundry area, were there any particular reasons that you could not leave him alone?
A. Due to chemicals, you know, electrical things, you know, with suicide risk, stuff like that, you know. And self harm, you know, especially with the detergent -- you know, any cords, wires.
Q. All of those are considerations that you on staff had to make with all of the kids there?
A. Yes, sir.
Q. So on the day that we're talking about, did you, in fact, take him to the laundry room?

A. Yes, sir.

Q. And while there, what sort of jobs did he do?

A. While he was in there, he did -- you know, he learned how to work the washer and did loads of clothes or towels in -- in the washer. And then also dried those. I'm not sure if he was able to finish the loads drying, you know. It's a time process. But I believe so, at least one. But we did -- the laundry room was also in a mess, too. You know, shoes and stuff kind of scattered around. Housekeeping is kind of a hard thing for us having to watch them, so that was why we gave them the chores, you know.

So cleaning up in there, wiping down the walls. Wiping down the washers, dryers. Cleaning up lint, any papers, things like that.

Q. Was he, in fact, relatively busy or active or doing something the entire time he was there?

A. Yes, sir, he was.

Q. Not just throwing clothes in the washer and starting it up?

A. No.

Q. Okay. I hand you State's Exhibit No. 7; is that the doorway into the laundry room?

A. Yes, sir.

Q. Now, we can't tell by this, but to the sides

and behind the washer and dryer, was there any room or space, or did they pretty well fill up that space of the laundry room?

A. May be a tiny -- tiny --

MR. TOOKER: Again, I'm going to object real quick. I know a little leading is okay, but when he --

THE COURT: Just rephrase your question.

BY MR. CANTRELL:

Q. How much space would be left around the washer and dryer in that room?

A. Virtually no space.

Q. And what are these items along the floor?

A. Those are shoes of the clients.

Q. Is that a fairly common practice for the shoes to be in there?

A. Yes. They -- due to suicide reasons, they can't have their shoes or shoe strings.

Q. Is there any space in that room, other than what is shown on that picture?

A. No, sir.

Q. And is this the doorway to the laundry room also?

A. Yes, sir.

Q. The same one. What is this area in front of the doorway?

A. In front of the doorway is what we call the dining area, with the picnic tables, or the Common area for the pod.

Q. And what pod was that?

A. That is the Paladin Unit.

Q. Okay. Is this another closer picture of the laundry room?

A. Yes, sir.

Q. All right.

THE COURT: I've been remiss in not requiring you to tell us what numbers.

MR. CANTRELL: I apologize.

BY MR. CANTRELL:

Q. The picture showing the picnic area is State's Exhibit No. 8; is that correct?

A. Yes, sir.

Q. And the larger picture of the laundry room is State's Exhibit No. 10; is that correct?

A. Yes, sir.

Q. So that would be the area where Minor 1 would be doing laundry and working in the laundry room?

A. Yes, sir.

Q. And approximately how long did y'all stay there?

A. It -- you know, we were in and out of there,

having to get cleaning supplies, bringing clothes out to fold. I'm not sure the whole time just spent on laundry. But we were never in there long at all, you know, other than the time to start the washers and things like that.

Q. So when the washer was going, what -- the washer and dryer were both going, what else would Minor 1 be doing?

A. He was cleaning. Like -- like I said, we were spraying down the washer and the dryer, cleaning all the dust, sweeping out. He also mopped, I think, in there.

Q. Would he have mopped the other area or just that one -- just the small floor in the laundry room?

A. What do you mean by the other area, the unit?

Q. Outside the unit itself?

A. Yes, sir.

Q. So would you and Minor 1 have been outside in that picnic or Commons area also?

A. Yes, sir.

Q. And if you can remember, about how long would you have stayed -- and you can relate it to a cycle on the washer and dryer for that matter. That would be fine. About how long did you and Minor 1 stay in this whole area working for him to earn money?

A. The whole process was at least probably an hour or so maybe. It's roughly, what, 30 or 45 minutes for a load, so maybe an hour or an hour and a half total cleaning, laundry, mopping, you know, the whole area.

Q. Now, did you say to your knowledge Minor 1 had not done those specific jobs before?

A. Yes, sir. Not to my knowledge.

Q. Had other kids in the units done those jobs before to your knowledge?

A. Yes, sir.

Q. And would that be a common procedure and a common amount of time for them to work doing laundry?

A. Yes, sir.

Q. During that time, was there anything inappropriate done between you and Minor 1 ?

A. No, sir.

Q. During that time, were you touched or was Minor 1 touched in any inappropriate -- in any inappropriate way?

A. No, sir.

Q. Now, that pod area, is that an area where kids presumably with staff could or would walk through at any given time?

A. Yes, sir. They were there the whole time.

Q. Is that close to the actual residential area where they sleep, where they have their bedrooms?
A. Yes, sir.
Q. Now, do they all have individual bedrooms?
A. No, sir.
Q. Okay, so they -- how many beds are in the unit?
A. In the unit total, a bed for each -- you know, each child. So, I think Paladin maybe had 10 to 12 beds in it.
Q. Were they all in one room?
A. No, sir.
Q. How many --
A. I think four rooms of three, if I remember right.
Q. Do you remember what -- what time of day this was?
A. Well, I go to work at 6:00. And we do the dinner and showers and gym time. It would have been at least roughly eight something, 9:00, around in there, maybe a little later.
Q. Would it be uncommon for a young man to go do laundry or do chores at 8:00 at night?
A. No, sir.
Q. And after his chores were done, did he earn

his points?

A. Yes, sir.

Q. And after his chores were done, did he go back to the residential portion of the pod?

A. Yes, sir.

Q. Did you have any more interaction with him before you left shift the next morning?

A. At some point, he went to bed, you know. So then I was there doing checks all night. So -- but eventually, him and the rest of the kids went to bed.

Q. Do you remember anything out of the ordinary, unusual from that night after the chores were done?

A. No, sir, not at all.

Q. And did Minor 1 finish his tasks, did he finish the laundry or do you know?

A. Maybe all but the last load in the dryer. Because I think I did -- me and the other staff members, and myself, we ended up folding the last load of towels probably. They took the longest, so we usually did those last.

Q. So that was going to be my next question. Sometimes staff has to finish attending to some of these tasks?

A. Yes, sir.

Q. And to the best of your knowledge, how many

staff would have been in that pod that night?
A. There was at least two other staff that night.
Q. Do you remember approximately what month that was? When that was?
A. It was in May of 2012.
Q. In fact, you've heard the dates discussed. You don't disagree with those dates?
A. No. I had actually just came back to work from my son being born.
Q. Had you been out -- how long had you been out with your son being born?
A. I was out total like two weeks when he was born. And then just before that, I was out on a leave -- we lost our house in a fire, and my mom four days later. So I was out for an extended period. My wife had went into early labor, and so I was trying to do too much.
Q. So a lot of things going on?
A. Yes, sir.
Q. How many days had you been back on duty?
A. Maybe two or three days.
Q. So you had been absent for several weeks prior to this?
A. At least, like I say, a week or two weeks just from the birth.

Q. Had you had any contact with Minor 1 in the couple of days or so before this incident? Had you been on that pod or had any contact with Minor 1 before this day?

A. I'm not 100 percent. I believe I had been on that -- on that pod, whether it be for kitchen duty, you know, or just having to go over there.

Q. Okay. Now, let's talk about -- at some time, as best you remember, when in relation to the laundry room would you have taken Minor 1 to the laundry?

A. Will you ask that one more time?

Q. When did you take Minor 1 to the library?

A. I took Minor 1 to the library on a -- I was actually on another unit that night. And I took him to the library. I was asked by my supervisor to take him because he needed -- he wanted to pick up some books. But it was on a night shift as well.

Q. So it would have been at night after 6:00?

A. Yes, sir.

Q. But you were not working the Paladin Unit that night?

A. No, sir.

Q. And do you remember who his staff -- the staff member was that asked you to take him to get a book?

A. It was our supervisor, Tony Duncan.

Q. And do you remember why they needed your assistance?

A. I think maybe with the ratio. We were having problems on our unit. So the supervisor had to be over there anyway, so he wasn't able to go and take him. So he asked me to take him.

Q. Was that uncommon?

A. No, sir.

Q. Now when you went in that night, did you have any idea you would be asked to take -- get from one -- from another unit to do anything?

A. No, sir.

Q. So it -- how far was it from the first time you and Minor 1 started going to the library, how far was it to the library from there?

A. From his unit?

Q. Yes. Uh-huh.

A. Maybe 30 or 40 yards, maybe, a minute walk.

Q. Did you have to walk from your unit to his unit to get him?

A. Yes, sir.

Q. Okay. And this was something that was done at his request?

A. Yes, sir.

Q. Just like the laundry room was at his request?

A. Yes, sir.

Q. And tell us about the pizza, is that the night there was some pizza?

A. Yes, sir. I had -- it was like I had been given a gift card. And I went to Miables Pizza (ph) in Easley -- actually my wife did, and brought the pizza up there, and so we can have it that night. And I had brought -- it's a pizza the size of this desk here. To call it a large would be an understatement. It is a table size.

Q. Had you ever done that sort of thing before?

A. Yes, sir, many times.

Q. And had other staff done it before?

A. Yes, sir.

Q. Even if there might have been some protocol that said don't bring food, do people bring food anyway?

A. Yes, sir.

Q. Do they share it with staff and kids in their pod --

A. Yes, sir.

MR. TOOKER: Again, Judge. It's leading.

THE COURT: Yeah. Try not to lead.

MR. CANTRELL: All right, sir.

BY MR. CANTRELL:

Q. Had you ever brought pizza before?

A. Yes, sir.

Q. Had other people brought pizza?

A. Yes, sir.

Q. Who -- who was this shared with?

A. It was shared with the Phoenix Unit and other employees. And, you know, I gave him -- Minor 1 some pizza that night as well.

Q. So you said Phoenix Unit, that night you were working with the Phoenix Unit; is that correct?

A. Yes, sir.

Q. And Minor 1 was not with the Phoenix Unit?

A. No, sir.

Q. But you did -- did you bring it to him or did y'all go get it after you got with him to go to the laundry room?

A. We had went and got the pizza.

Q. Okay. Why did you go get pizza?

A. He had asked for it. It was kind of -- everybody in there knew. He said he knew I brought a big pizza in, and was complaining about food. And --

Q. Did anybody else in the Paladin Unit get any of that pizza?

A. No, sir.

Q. Just Minor 1?

A. Yes, sir. He was the only one I interacted with.

Q. And was that the reason -- he's the one that got the pizza?

A. Yes, sir.

Q. Because he was -- because you were taking him to the library?

A. Yes, sir.

Q. Are you sure about it?

A. Yes, sir.

Q. And you walked this distance to the library. I'm showing you State's Exhibit No. 19; is that the door to the library?

A. Yes, sir.

Q. And it is in -- we've seen a picture, but is that the doorway that's in this larger Commons area?

A. Yes, sir.

Q. That is not a pod Commons area, that's the Commons area for the entire facility; is that right?

A. Yes, sir.

Q. And is that where people congregate or walk through?

A. Yes, sir.

Q. Routinely. And is this a picture of the door

that -- once it's open?
A. Yes, sir.
THE COURT: What's the number?
MR. CANTRELL: I'm sorry.
BY MR. CANTRELL:
Q. Number 20?
A. Yes, sir.
Q. Okay. And here on State's Exhibit 22, is this a picture of one side of the library?
A. Yes, sir. The right side, I believe.
Q. And on State's 23, is this the left side of the library?
A. Yes, sir.
Q. Do those two pictures depict the entire area of the library?
A. Yes, sir.
Q. And does this picture depict the door -- the door, this being State's 20; this picture depicts the door open?
A. Yes, sir.
Q. And does this automatically stay open or automatically close?
A. It automatically closes.
Q. You heard it described as heavy, maybe heavier than this door; would you agree with that?

A. Yes, sir. It's way heavier. It's a big metal door.

Q. And is that the area that Minor 1 went to, to look for a book?

A. Yes, sir.

Q. Now, we've seen video of that. And you saw the video. Does that pretty well accurately depict what happened that night?

A. Yes, sir.

Q. We see a little bitty room, and shelves with some number of books. Did it take Minor 1 a while to decide what he wanted to do or what he wanted to get?

A. Yes, sir.

MR. TOOKER: Judge, again, he's leading.

THE COURT: Yes. Rephrase the question.

BY MR. CANTRELL:

Q. Did it take Minor 1 a while in the library?

A. Yes, sir. It took him a good while.

Q. What was he doing while he was in there?

A. He was sorting through books and magazines.

Q. And again, Matt, let me just ask you, was Minor 1, when you consider him -- when you were with him, relatively high maintenance? Were you required to stay close by and be attentive to him?

A. Yes, sir.

MR. TOOKER: Again, he's leading, Judge.
THE COURT: Wait.
MR. TOOKER: It's leading. If he wants to ask how the child behaved, he can ask how the child behaved, but not was he like this.
THE COURT: All right. Rephrase the question.
BY MR. CANTRELL:
Q. Were you required to focus on or keep attention focused --
A. Yes. Constantly.
Q. And why was that?
A. Due to his safety, there is a -- as it was stated by our facility director, there was a TV cart there with a long extension cord, you know. There's -- there's a lot of safety issues. So he has to be -- we constantly have to have eyes on them.
Q. And what was he doing this 18 minutes or so that he was in there?
A. He was -- like I say, he was sorting through different books. He ended up getting a few books, magazines.
Q. Was it unusual for a kid to take that long in the library?
A. They didn't get to go there a lot. So usually when they did, they tried to get as much as they could,

you know.

Q. And let's back up, is he -- who requested that he go to the library?

A. He requested to go.

Q. What time of day or night was this?

A. Roughly maybe eight something, 9:00 at night.

Q. What else would be going on back in the pod at that point in time?

A. At that point, showers, and, you know, they had already finished their meals. Maybe a little TV time, just depending on what level they're on.

Q. So whether --

A. Group time.

Q. So whether they got to watch TV or how much, depended on their level, and I guess their conduct; is that true?

A. Yes, sir.

Q. But he has to go to the library; is that correct?

A. Yes, sir.

Q. When did he get this pizza?

A. When did he eat it or when --

Q. When did he get it?

A. He got the pizza on the way to the library.

Q. And then when did he eat it?

A. He ate maybe a couple of bites on the way there. And then ate the remainder of the pizza in the library.

Q. Was he eating while he was looking for books and magazines?

A. The first part, he was just eating pizza.

Q. Was he in the library by himself with no other kids in there?

A. Yes, sir. There was no other kids.

Q. And we saw for the full 18 minutes to 20 minutes of this video, we saw you standing at the door -- well, you saw it. But, I mean, the door going back and forth, opening and close. There were times when it would be closed for a short period of time. Who was the person standing at that door, holding it open, moving it?

A. I was holding the door.

Q. And was that you the entire time of the video?

A. Yes, sir.

Q. And it's opening and closing, or it's moving further and sometimes it's -- just barely open, sometimes it's wide open. Even a couple of times when it appeared to close, you were the one in control of the door; is that right?

A. Yes, sir.

Q. Was there any way to make it stay open other than you holding it open?

A. No, sir.

Q. And, you know, and do you know what the protocol is for keeping it up with kids in there?

A. The door has to remain open.

Q. And we see it moving and all that, what were you attempting to do?

A. Whenever the door was open?

Q. Yes.

A. Basically holding -- the door was really heavy for the most part. But a couple of times, I had to help him look through books, you know, or he would ask me questions about books. You know, if I read this, what I thought, things like that.

Q. If he is in the library at the far end, and he's asking you about a book, is there any way for you to hold the door?

A. No, sir.

Q. Like you do that -- did he bring the books to you at times, or what was he doing that you had to walk over to where he was?

A. He asked me a question about the book. And I went in there and looked at the book.

Q. I believe if you walked away from the door,

what would happen?

A. The door would close.

Q. Were you cognizant of the fact that the door would be closing?

A. Yes, sir.

Q. What did you do?

A. I -- I would immediately -- that's why I would try to go back. I never wanted to be off camera long, you know. But if he was too far away, you know, I obviously had to. And whenever I -- the door was completely closed is when another client was there.

Q. Okay. Tell us about that one time we saw some individuals come in, what -- what was happening here, there?

A. It was from the Pinnacle Unit, I believe. It was a staff, Josh Carrington, had brought a client, Minor 1 -- I won't use his last name. But he brought him -- he brought him out, it looked like, to get a video. I think it was a video game. And that's why I looked at them, you know, I had -- Minor 1 had to be separated from him. We couldn't let them interact.

Q. They were -- because of the units they were on?

A. Yes, sir.

Q. And are the videos not in the library, they're

in another area? Or are the videos --

A. No, it was actually left in a DVD or a Play Station, the video that they got off the -- that Common area is a big game room with TVs and things like that.

Q. And when they walked in, that's -- what did you do? When they walked in the Common areas?

A. I took Minor 1 into the library and waited for them to leave.

Q. Was there ever any time when anybody else walked in?

A. There was. You can -- you couldn't see it. It was on the video from that angle y'all had -- I'm not sure what other -- the whole place is under surveillance. But I'm not sure who it was. You can see their shadows. But anytime people came by -- because we were right adjacent to the nurse's station as well, so that was really a busy area.

Q. And -- well, this night, when you were at the library with Minor 1, if other people walked in, what did you do?

A. I would have to close the door.

Q. Also, how long did it take to finish his pizza?

A. A few minutes. I mean, I'm not 100 percent of the time -- a couple of big, you know, large pieces of

pizza. I don't think he had a drink, so it was kind of hard.

Q. And the other people that walked in, had they had pizza that night to your knowledge?

A. Not that I know of, no. Because they were from Pinnacle.

Q. So you had one young man that had pizza, and these were people walking in that didn't?

A. Yes.

Q. While you were in, at, or around this library area shown in the pictures, did anything inappropriate happen?

A. No, sir.

Q. Was there any -- any inappropriate language?

A. No, sir.

Q. Was there any suggestive behavior or language?

A. No, sir.

Q. Was there any inappropriate touching of any sort?

A. No, sir.

Q. Once Minor 1 had gotten the materials that he wanted from the library, what did you do?

A. I took him back to his unit, and then I returned to my unit following that.

Q. Did Minor 1 say anything to you going back to

his unit about being in the library?

A. No, sir.

Q. Did you end up back on his unit after that, a few days after that, or did you stay in your unit?

A. If I was on overtime or if I -- like I say, with kitchen duty, I was -- you know, I have would been there.

Q. Okay.

MR. CANTRELL: Just one minute, Your Honor.

(Pause.)

BY MR. CANTRELL:

Q. One other thing. Would you -- were you required to accompany Matthew -- I'm sorry -- accompany Minor 1 to the nurse's area?

A. Yes, sir.

Q. Was he cleaning up in there?

A. Yes, sir.

Q. During that period of time, were there other people present?

A. Yes, sir, there were.

Q. And was this one individual or more than one?

A. More than one.

Q. And were these people in and out or was there anyone there the whole time?

A. I think the nurse was gone for like a minute

at one point. And the other guy, he was in and out, another staff member.

Q. Other than those two, do you remember other people being in and out?

A. Not to my knowledge.

Q. But they -- the nurse was there how long?

A. She was there --

Q. Can you tell me the time?

A. She was there 99 percent of the time. Like I say, she was gone maybe a minute or so.

Q. And the other individual?

A. He was just there briefly. He had came to get an ice pack for another staff member.

Q. At any point in time, did you say or do anything inappropriate with him, Minor 1 ?

A. No, sir.

Q. Once you found out that something had been alleged, did you talk to Detective Byers?

A. Yes, sir, I did.

Q. What was your statement to him about whether anything happened?

MR. TOOKER: Objection, as to the out of court statement, Judge. It's hearsay.

THE COURT: I sustain the objection.

MR. CANTRELL: I don't have anything further.

Answer any questions Mr. Tooker has.

A. Okay. Thank you.

MR. TOOKER: May it please the court?

THE COURT: Yes.

CROSS EXAMINATION BY MR. TOOKER:

Q. So let's start with the library. The door shut several times as we saw on the tape; correct?

A. I think completely once for a period. I'm not -- but it did shut, yes, sir.

Q. Mr. Cantrell asked you about two separate times that the door shut on the video; do you recall just now testifying to that?

A. Yes, sir. He said several.

Q. Okay. So two?

A. Yes, sir.

Q. Two times. So on those two occasions, you said the door shut because you didn't want other staff members -- or excuse me -- other residents to see Minor 1?

A. Yes. It's not so much to see Minor 1, but they can't interact.

Q. Okay. So you're saying it's policy then to shove a child in a room with yourself when another child comes around?

A. Well, his unit was all the way to the other

side. It was -- it's policy just to get him away from the other child.

Q. He is away from the other child; right? On that video, what we saw was him in the library; correct?

A. Yes, sir.

Q. The other kid, on the other side of the room; correct?

A. Yes, sir.

Q. You standing in the door frame; correct?

A. Yes, sir.

Q. With the door cracked; correct?

A. Yes, sir.

Q. And you found it necessary at that point, upon seeing those people, to shut the door completely; is that correct?

A. Yes, sir, until they left.

Q. And you're saying that's policy?

A. Yes, sir.

Q. You're saying that Meghann Harvey and Kevin Sowell will come in here and say, yes, that's what we want them to do?

MR. CANTRELL: Your Honor, I would object. He can't testify to what anyone would say once they get in here.

MR. TOOKER: I'm asking if that's what his understanding of the instruction was; how about that? I'll rephrase, sir.

THE COURT: Rephrase.

BY MR. TOOKER:

Q. Is that your understanding of what you were instructed to do?

A. My understanding is to just keep him away from the other client.

Q. And despite your standing instruction not to close a door and go off camera with a child, you thought the best way to keep him away from another kid, all the way across the room with another staff member, was to close the door to a small room with yourself and your ward inside; is that correct?

A. I mean, it's not a standing instruction to do that. You know, we don't have to just immediately run -- you know, we have to get them away from them. It's not a rule that we can't be off camera. There's many times that we are.

Q. And -- and two times it happened; right? Two times that door shut; correct?

A. Yes, sir.

Q. And each of those times, you said you did it, so as to keep him away from someone else; is that

correct?

A. Well, one time I went for the book. Like I said, I went to --

Q. Okay. So one time the door shut because you went to look at a book that he had -- he had to show you; is that correct?

A. Yes, sir. And he was on the end.

Q. Okay. Do you recall reviewing the tape with Kevin Sowell, the facility director?

A. Yes, sir.

Q. Okay. And do you recall telling him why it is --

MR. CANTRELL: Your Honor, I would object. We don't have the individual that was involved in the entire conversation with -- with Mr. Holder here.

MR. TOOKER: This is impeachment, sir.

THE COURT: What's the question again?

MR. TOOKER: The question is going to be: Did he not tell that person the door shut for another reason. So he said that the door shut for a particular reason. I'm saying, was his story not different two years before.

MR. CANTRELL: Your Honor, I think he's entitled to question the statements, but not with -- with a second or third --

THE COURT: Let me let the jury go to the jury room just a minute.

(Whereupon, the jury left the courtroom at 10:44.)

THE COURT: If I'm following what's going on, you're trying to impeach him with a prior inconsistent statement?

MR. TOOKER: Yes, sir. So I'm going to ask him about the statement, where it was made, when it was made. Give him the opportunity to affirm or deny making the statement. If he denies making the statement, then I'll impeach him. That's my intent.

THE COURT: Okay. How do you intend to impeach him?

MR. TOOKER: On rebuttal.

THE COURT: All right. If the State can lay the proper foundation, which he just indicated he was, I'll allow it.

MR. TOOKER: Thank you, sir.

MR. CANTRELL: And I'll just note the objection for the record.

THE COURT: And while the jury is out, I believe I was wrong in sustaining the State's objection as to what Mr. Holder said to Mr. Byers. And I don't believe that constitutes hearsay, because this is the witness

who made the statement. So I -- I was wrong. And, therefore, I'll allow -- do you want to say something, Mr. Tooker?

MR. TOOKER: Yes, sir. And this is an issue that comes up frequently. And I -- I do find my interpretation of the hearsay rule oftentimes differs from members of the judiciary. But my understanding of the rule is hearsay is a statement made by the declarant on the stand -- the person on the stand outside of court, being offered for the truth of the matter asserted.

THE COURT: By a third party?

MR. TOOKER: Let me pull it --

THE COURT: Well, we don't have time to argue about that. I -- I have visited this before, and that's why I -- after further reflection, I don't believe what he said -- he is subject to cross examination on it. He's sitting here on the stand, so you can certainly cross examine him on it.

MR. TOOKER: Yes, sir.

THE COURT: And that's the main purpose -- the main protection of hearsay is, so that -- because you're talking about somebody who is not subject to cross examination. So I'm finding that I was wrong.

MR. TOOKER: Okay.

THE COURT: And I invite counsel, if he wants to, even though that technically would not fall under redirect -- I'm going to allow him to explore that if he desires.

MR. TOOKER: Yes, sir.

THE COURT: Okay.

MR. TOOKER: And one more thing while the jury is out, and I hate to delay it any further, I've consumed a lot of water this morning already, could I run out real quick?

THE COURT: Well, let's -- while the jury is out, I bet they're taking care of that same event. So let's take about a five minute running out. And the witness, if he needs to use the restroom, he can certainly take care of that.

But if you do, don't talk to anyone about your testimony. Your wife, who is present; your attorney; anybody. Just -- you're on the stand, so you can't -- you're subject to cross examination, so you can't be having a dialogue with anybody about -- about anything at this point.

But you can certainly use the restroom if you need to. Let's take five minutes.

(After a recess, Court reconvened.)

THE COURT: I have a note that juror number 58 --

and I don't have my list right at hand -- is ill, and does not feel like she can continue. We do still have one alternate. Let me find my list. Ms. Hart, juror number 34. So any comment on that from the State?

MR. TOOKER: Is she the juror that served on the first jury?

THE COURT: I -- I don't know.

MR. TOOKER: I'll defer to Mr. Cantrell. I'm a little concerned that we're down to zero, and we're still not done.

THE COURT: Well -- would you bring her in first. Let's do that and see.

(Whereupon, the juror entered the courtroom.)

THE COURT: You are not feeling well?

JUROR: No, sir.

THE COURT: Do you think can you make it?

JUROR: No.

THE COURT: Okay. I'll excuse you.

(Whereupon, juror number 58 was excused.)

THE COURT: She -- she did not appear to be feeling very well, and I -- she sat through and I don't think she's trying to avoid her duty. I know this puts us out of alternates, but that's just where we find ourselves in the scheme of things.

So if you'll tell number 34, the last juror, Ms.

Devol, she is now on the panel.

All right. Is the State ready?

MR. TOOKER: Yes, sir.

THE COURT: Is the defense ready?

MR. CANTRELL: Yes, sir.

THE COURT: Bring in the jury.

(Whereupon, the jury entered the courtroom at 11:01.)

THE COURT: Mr. Clerk, would you hand that to Vivian. That needs to be a part of the record.

(Whereupon, Court's Exhibit 1 one was marked.)

THE COURT: I excused Ms. Hart. She was not -- she said she didn't feel well. And I hate to talk about how people look, but she didn't look liked she felt well. So, Ms. Devol, you're now on the jury, full panel.

MR. TOOKER: May it please the court?

THE COURT: Yes, sir.

MR. TOOKER: All right.

BY MR. TOOKER:

Q. So, where we left off was, you said that the door closed for two specific reasons; correct?

A. Yes.

Q. Closed for one reason, so you could look at a book; right?

A. Yes, sir, I believe so.

Q. Okay. And the other reason it closed is because you didn't want Minor 1 to be near some other kid who walked in?

A. Yes, sir.

Q. Okay. Did you talk to Kevin Sowell, facility's director, on 6/5 of 2012 about what's in that video?

A. I'm not sure of the date, but I did see the video with Kevin.

Q. And you did that at Hampton?

A. Yes, sir.

Q. Okay. And when you talked to him about that, he asked you about why the door shut; isn't that right?

A. I believe so. I'm not 100 percent. It's been so long ago.

Q. And your response to him was you didn't want anybody else to know that Minor 1 got pizza; isn't that right?

A. Yes, sir. Another client, yes, sir.

Q. So your response to him as to why the door closed was different than what your response on the stand today is; isn't that corrects?

A. No, sir. It's virtually the same. It's going to start a fight with the two clients in there. They

can't -- especially if they saw the pizza.

Q. It was going to start a fight. What we saw on that video, you're saying, was the beginning of a fight?

A. No, but it could lead to that.

Q. Uh-huh.

A. It is a psychiatric facility.

Q. Sure thing. So there was images captured or there was video captured from the 27th as well, in addition to the 31st. That's a question.

A. The whole place is under surveillance. I'm not sure what --

Q. Have you had occasion to watch those videos?

A. I saw some videos, yes. I'm not sure which videos.

Q. Okay. So --

MR. CANTRELL: Your Honor --

MR. TOOKER: And, Your Honor, this is --

MR. CANTRELL: Your Honor, I'm going to have to object until I know what video and what circumstance --

THE COURT: What number?

MR. TOOKER: One second, Your Honor. This is State's 4.

MR. CANTRELL: If I could have just one second?

MR. TOOKER: It's in evidence.

MR. CANTRELL: Your Honor, I'm going to have to object. I don't think it's irrelevant.

THE COURT: Well, I hadn't -- we'll have to see where we go. At this point, it's in evidence. He's got the right to show it, and we'll see where we go.

BY MR. TOOKER:

(Whereupon, a video is played in open court.)

Q. All right. Up there in that right hand corner, you and Minor 1 are entering the laundry room; isn't that correct?

A. I'm sorry.

Q. Right above "S", that's the laundry room door; right?

A. Yes, sir. That's the laundry room.

Q. And when we started that video, you and Minor 1 entered the --

A. I didn't see the first part.

Q. Well, let's rewind it. Let's try this again. In the top left corner -- or excuse me -- above the "S", that's you and Minor 1; is that correct?

A. I can't see his head. I'm not 100 percent.

Q. Okay. Is that your shirt? That gray shirt?

A. Yes, sir.

Q. So is that you?

A. Yes, sir.

Q. Okay. And you're saying you don't know that that's Minor 1 in that room with you?

A. No. I'm not saying 100 percent. I don't -- I can't see the person's face.

Q. Again, do you recall talking to Kevin Sowell in this case?

A. In this whole case in general?

Q. On 6/5/2012, do you recall talking to Kevin Sowell and reviewing video footage?

A. Okay.

Q. When you talked to Kevin Sowell on 6/5 of 2012, and reviewed this video footage, do you recall telling him that you went into that room with Minor 1 to show him what to clean, and how to clean, and how to wash clothes?

A. Yes, sir.

Q. So then that is Minor 1 that you went into the laundry room with?

A. Yes, sir. I'm not denying that it's not him, I just didn't see -- from that film, you can't see the top.

Q. Okay. And so you're sitting in there in that laundry room for the duration of this tape; isn't that right?

A. I'm not sure.

Q. And at some point, he washes clothes; right?
A. Yes, sir.
Q. So you had to show him how to wash the clothes; is that why you shut the door at that point?
A. The door is still open.
Q. Okay. Do you shut the door at some occasion?
A. Yes, sir. I mean, you have seen on the pictures how far the washer is from the --
Q. What I'm asking you, is when the door shut, was that so that you could show him how to use the washer and dryer?
A. Yes, sir. That's part of the reason why.
Q. Well, tell us the whole reason. What's the reason?
A. I told you earlier, there's -- we had to clean the -- we had to fold stuff. We had -- I had to go in there and clean stuff, various things.
Q. And I suppose maybe --
A. Or I had to get client's clothes.
Q. -- I'm not artfully asking this question -- is the reason that the door shut the first time, so that you could show him how to wash the clothes; would that happen first?
A. Possibly or to sort them. I'm not -- I'm not 100 percent. It's been so long.

Q. My question to you -- well, you had a lot of specific remembrances during direct examination; didn't you?

A. I mean, I remember what we did, but I don't remember --

Q. So I'm asking you --

A. At that second, I didn't, you know -- I can't say.

Q. What I'm asking you, is would you have shown him how to use the washer --

A. Yes.

Q. -- and dryer first -- that's the question.

A. Possibly, yes.

Q. Possibly yes. And that's why the door would shut. Does the door shut in this video; that's what I'm asking you?

A. Yes, the door closes.

Q. Does it shut one time?

A. It probably closes a second time.

Q. Two times, several times?

A. I don't know.

Q. Okay. And would you have used the first time to show him how to do the washer and dryer; that's what I'm asking --

MR. CANTRELL: Your Honor, that's been asked and

answered three times now.
MR. TOOKER: I feel like he's evading the question, sir.
MR. CANTRELL: He's answered possibly.
THE COURT: I -- I -- I think he has answered the question. Move on.
MR. TOOKER: Okay. I'll move on.
BY MR. TOOKER:
Q. All right. And so if we watch the rest of this video, what we see is you in that door frame, and kids coming to and from, oftentimes coming up to that door; is that right?
A. Right.
Q. Okay.
A. And the staff was Remona Foster.
Q. Okay. Now, just try to answer the questions I ask you.
A. Okay.
Q. And toward the end of this tape, you were in -- well, excuse me -- I want to stop there. Minor 1 is in the room the whole time; is that right?
A. Yes, sir.
Q. Okay. Cleaning, doing whatever he's doing?
A. Yes, sir.
Q. So this tape starts at 20:50, and I'm not

super great on military time, but is that about 8:50? Is that 8:50?

A. I'm not sure.

Q. You're not sure?

A. I don't know military --

Q. It's 20 minus 12.

A. I don't know military time.

Q. Okay. So -- so about 8:50, they go in there -- or he goes in there, and he stays in there?

A. He's out of there now, at eight --

Q. No, that's this thing not working. Yeah, at 8:50, that's when y'all are standing right there. And then he entered shortly thereafter; right? That's a question.

A. Is that the beginning of the tape? I'm not sure. Did you just rewind it?

Q. Okay. Let's -- let's start from the beginning. Is 8:50 when the tape starts, and you guys are standing right there?

A. Okay.

Q. Is that right?

A. Yes, sir.

Q. Okay. And then y'all go in -- does he stay in that room for the remainder of this tape?

A. No. He comes out of this room, I'm sure.

Q. You're sure -- no, I'm asking -- do you know?
A. I'm not 100 percent. It's been three years.
Q. Okay. At 21:19, would he still be in that -- in that room?
A. Yes.
Q. Okay. And that 21:19, you're standing in the door frame, it cracks, and it shuts; is that correct?
A. Yes, sir.
Q. Someone comes up to the door. What do you do? Stand in the door frame?
A. Yes, sir.
Q. Do you let that kid go into the room?
A. I don't know. I have not seen the video.
Q. You have not seen this? Is that your testimony?
A. No, that's not -- I'm not -- I'm watching it as you're watching it.
Q. Who's that fellow in the green shirt; do you remember? It looks like a tall African American kid?
A. I think it is Devonne T. [redacted], if I remember right.
Q. Okay.
A. I'm not 100 percent.
Q. And you sent him away. And then that door shuts. And we're sitting here at 21:21. And then when

the tape picks back up, we're at 21:21 till 21:22 -- you just opened the door again; right?

A. Yes, sir.

Q. And then it shuts again. And how long do you think it stays shut?

A. I have no idea.

Q. You don't remember? You come out at 21:24, you crack the door; is that right?

A. Yes, sir.

Q. How many kids are in that room, that main room right there? That's a question.

A. Six or seven possibly.

Q. Seven kid. One kid in the laundry room. And you've got one and sometimes two staff members in the little control room right there; does that sound right?

A. There is one -- this is during bath time. So the other staff is in the door of the shower. You're not seeing the angle. That's the towels, where they come in the door to get their clothes.

Q. Okay. So all of those kids are running around that big floor there, and it looked like someone was chasing each other, rough housing, stuff like that. And it was -- it was your decision that your time would be better spent with the door spent to a small laundry room with one boy; is that right?

A. He had to do his chores. That was part of my job.

Q. And the other part of your job is watching these other kids; right?

A. We have two other staff to seven kids.

Q. Uh-huh.

A. And I'm technically still there though.

Q. Sure. And then you come out again at 21:26.38; is that right?

A. Yes, sir.

Q. Minor 1 is in there all the while?

A. Yes, sir.

Q. And that door is shut again; is that right?

A. Yes, sir.

Q. And you and Minor 1 then come back out at 21:27.43?

A. Yes, sir.

Q. And from there, y'all leave to go do more chores together; right?

A. Yes, sir. That the janitor's closet.

Q. Yeah. Y'all are going to get a broom to go sweep the gym; is that correct?

A. I'm not sure.

Q. Well, maybe I can refresh your recollection. I'm going to show you what's been marked State's 2. So

you're saying you don't have an independent recollection of going to the gym with Minor 1 ?

A. No. I didn't say that. I said I don't know if we got a broom right then to go.

Q. Okay. Then I'll ask a question. Maybe it's a little clearer. Did you go to the gym with Minor 1 to sweep after you left the laundry room?

A. I know we went to the gym that night and other cleaning. I'm not 100 percent if that's where we went straight to.

Q. Okay. So you just don't know if it was immediately there or somewhere else?

A. Yeah. I'm not sure of that.

Q. Okay. So we're at 21:54. And y'all sweep the gym together; right?

A. Right.

Q. And that's all that would be depicted in this video; right?

A. I have no idea.

Q. Y'all cleaning. And it actually took a while to clean the gym; right?

A. It's a pretty big gym.

Q. Yeah. So y'all actually were in there until well into 22:00 hours; is that right?

A. I'm not 100 percent, the time we left.

Q. Well --
A. If it's on there, it will show you.
Q. I'm going to show you State's 3, and see if you can't refresh your recollection.
A. Okay.
(Whereupon, a video was played in open court.)
Q. So y'all are there until about -- I think my time was wrong, but 22:12; does that sound right, 8:22.13. From there, you went to the laundry room -- or excuse me -- the nurse's station; right?
A. I believe so.
Q. Okay.
A. I don't know if we went back to the unit first, I think.
Q. And after you went to the nurse's station, you went back to the unit and back to the laundry room; is that right?
A. I believe so to finish the laundry.
Q. Okay. So when you went to the nurse's station, you talked to -- excuse me -- on 6/5, you talked to Kevin Sowell about going to the nurse's station; right?
A. Yes, sir.
Q. Okay. And when you talked to him, you talked to him at Hampton?

A. Yes, sir.

Q. Okay. And when you talked about it, you acknowledge that the nurse left for a period of time; right?

A. Yes, sir.

Q. Okay. And you acknowledge that -- that you went into an area of the nurse's station that was not on-camera; is that correct?

A. Yes, sir, I believe. I'm not sure where cameras are in there and where they're not.

Q. Okay. So you're saying that you didn't recognize to Mr. Sowell that you went to an area --

A. No. I know like the bathroom or something like that, obviously, yes.

Q. And that's where Minor 1 was; right?

A. Yes, sir.

Q. Okay. So Minor 1 was in the back cleaning where there was no camera; right?

A. Yes, sir. When he cleaned the bathroom, but.

Q. And that's away from where the nurse is; right?

A. Yes -- I mean, it's from me to you.

Q. Yeah. But the layout is one where if I'm in the back, where the bathroom is, and the nurse is in the front, where the nurse is, it's not like a direct

line of sight; isn't that correct?
A. Yes, sir. Correct.
Q. So if he's back in the back corner, and you go back in that back corner, even if somebody is there, they can't see you; that's correct?
A. Yes, sir.
Q. Okay. And you acknowledged to Mr. Sowell that you did go off camera with Minor 1 in the nurse's station; is that correct?
A. Yes, sir.
Q. Okay. And you were in the nurse's station until -- until about 23:20; is that right?
A. Do you have the video -- I don't -- I'm not 100 percent.
Q. About 11:00?
A. Maybe -- yeah.
Q. Okay. So you stayed in the nurse's station until about 11:00 with Minor 1. You acknowledge that the nurse left and came back; is that right?
A. Yes, sir.
Q. So she was gone for a period of time?
A. Yes, sir, maybe a minute.
Q. And it was just he and -- he and you who were in there; is that right?
A. While she was gone, another staff came in.

I'm not sure of the time -- the timeline or whatever it may have been.

Q. Well, again, you talked to Mr. Sowell; right? You told Mr. Sowell about when the nurse left?

A. Yes, sir.

Q. Okay. And you talked to him about going to the back with Minor 1; right?

A. Yes, sir.

Q. And about how y'all were away from the video for a -- a not insubstantial period of time; is that right?

A. Yes, sir. I'm not sure how long exactly.

Q. Okay. And then after you left there, you went back to the pod; is that right?

A. I believe so, yes, sir.

Q. And when you got back to the pod, you went back to the laundry room; is that right?

A. I think so.

Q. Okay. And I'm going to show you what's been marked as State's 5. So, you left the nurse's station around 11:20, and you came back to the pod. And on that video, is that Minor 1 who just walked through the screen?

A. I think so.

Q. Okay. And which door -- when we're looking

back here at the rear wall, is that the door to the laundry room?

A. The one to the left, like the half door you can see.

Q. Uh-huh. Is that you right there with the gray shirt?

A. Yes, sir.

Q. Again, with the stripe across the front?

A. Yes, sir.

Q. And y'all go back in the laundry room; right?

A. I believe so.

Q. And again the door shuts?

A. I think so.

Q. Do you remember for how long?

A. I'm not 100 percent.

Q. So that's Minor 1, and that's you, and that's a third staff member; right?

THE COURT: Did you answer that?

THE WITNESS: I can't see -- it's real...

BY MR. TOOKER:

Q. Minor 1 is going down the hall, maybe doing a little mopping?

A. He's in the janitor's closet.

Q. Janitor's closet. Putting up -- putting up the stuff that y'all took to the gym with you?

A. Yes, sir.

Q. And it's -- it's 11:23 on a Sunday night. Does Minor 1 often do chores until 11:23 on a Sunday night?

A. This here was Memorial Day the next day, so there was no school.

Q. Okay. So it was good to keep them up late?

A. Well --

MR. CANTRELL: Objection, Your Honor, that's --

THE COURT: Yeah. Let's don't have any editorial comments.

MR. TOOKER: I withdraw.

(Whereupon, a video was played in open court.)

BY MR. TOOKER:

Q. Y'all just talking?

A. Yes, sir.

Q. Was Minor 1 a real chatty kid?

A. Somewhat.

Q. And who's that fellow with the beard?

A. His name is Josh. He's another staff member.

Q. Is he Rosinberger (ph) or somebody else?

A. I'm not for sure of his last name.

Q. Okay. So then y'all are in the janitor's closet together; is that right?

A. Yes, sir.

Q. You guys are standing pretty close together; aren't you?

MR. CANTRELL: Objection, Your Honor.

THE COURT: I sustain the objection.

BY MR. TOOKER:

Q. Now, is that Minor 1 going into the laundry room?

A. I don't think so. He's standing in front of the office.

Q. And he's taller now, but about how tall was he back in 2012?

A. I have no idea.

Q. Is he shorter than you?

A. Probably so.

Q. How tall are you?

A. Six foot.

Q. And that door you're standing next to, is that the laundry room?

A. Yes, sir.

Q. And Minor 1 just entered that laundry room?

A. Yes, sir.

Q. And you're standing there in the door frame apparently?

A. Yes, sir. I believe so.

Q. And that door shuts; is that right?

A. Yes, sir.

Q. Do you recall Minor 1 's demeanor that night?

A. He was -- he was really upset supposedly because he was supposed to be going home. I know that much. That's what we were -- a lot of our conversation was about.

Q. So -- so you say looking at him right now, is the demeanor of a kid that's upset?

A. More, you know, anxious.

Q. And, so, he wanted to stay up all night with you doing chores because he was mad about not going home?

A. No. The supervisor is who gave him permission to do chores and who asked me to let him do them.

Q. What I'm asking is, he did, what, three and a half hours or four hours worth of chores with you?

A. Yeah. He hadn't made a lot of money lately. That was one of his complaints. He wanted to make money.

Q. So --

A. Avalons.

Q. So for three and a half, four hours, y'all did chores on this night that he said he was anxious, because he wanted to go home?

A. Yes, sir.

Q. Where are all the other kids at this point?
A. I'm pretty sure they're in bed. He was the highest level.
Q. Because he has done really well; right?
A. Yes, sir, at that point.
Q. He had done very well in the program.
THE COURT: You can ask questions.
BY MR. TOOKER:
Q. Is that true, he had done very well in the program?
A. At times, yes.
Q. Would you say it was most of the time or a small point in time?
A. Towards the end, you know, it was up and down. So maybe not the whole time -- I'm not for sure the percentage of it.
Q. How is it that you would know how well he was doing if you weren't always with him?
A. Say that one more time.
Q. Well, my question to you is, you seem to have some knowledge of how well he was progressing. So my question to you is, how would you know that unless you were with him all the time -- and weren't, of course, right?
A. I'm sorry?

Q. You were not with him all the time?

A. No, not at this point. He started out on my unit. And then we're all -- like I say, we're always intermingling with other units, you know, the staff are. And I was working overtime on this particular time. The fact that he's on the level he's on and the supervisor is giving him the privileges speaks for itself, that he's doing better at that point.

Q. Okay. So what I'm asking you is, you said that he was having up and downs. And what I'm asking you is, isn't it true that he was doing exceptionally well up until the point he made the allegation?

A. I'm not -- I'm not for sure if he was doing exceptionally well or not. He was doing better than he was at certain times.

Q. I'm sorry. I'm talking scoring 40s and 50s on his daily reports.

A. I'm not sure. I would have to -- I wasn't on that unit.

Q. You weren't on that unit. So how is it that you would have independent knowledge of him having up and downs?

A. It's common knowledge. It's not that big of a place. The supervisor just told us that.

Q. So what I'm asking is, you say it's common

knowledge that he has up and downs, but it's not common knowledge that he's doing really well. This is what I'm asking you -- do you understand? Maybe I'm not asking it well. You're saying that you have independent knowledge, based on what y'all talk about at your facility, that he's up and down in terms of his behavior?

A. Right.

Q. You're saying that you do not have any kind of common knowledge -- or it's not common knowledge at the facility that he was doing really well up until the point that he made the allegation?

A. I'm -- I'm not 100 percent of his daily, you know, like I say -- if I wrote in his book or something like that, I would have saw the scores for that week. But I don't know what -- based on the fact that he's getting privileges, I'd say that he's doing --

Q. He's doing really well?

A. Somewhat better, yeah.

Q. Okay. And just for the sake of brevity, we'll hit fast forward. Minor 1 comes back, doesn't he? And that lady that just left is that Romona?

A. I believe so.

Q. Y'all are again off camera for a period of time; is that right?

A. I'm not sure where we are. But there's other cameras. The angle you have -- every room has -- bedrooms and everything have cameras.

Q. And, again, you two go into bathroom -- excuse me -- the laundry room at 23:35.58; does that sound right?

A. I think so.

Q. The door shuts, and you peak out about 50 seconds later; is that right?

A. I'm not sure how many seconds it was.

Q. Okay. Then y'all both go back in there at 23:38; is that right?

A. Yes, sir.

Q. And then you peak out again at maybe 23:39.30?

A. I don't know if you call it -- where I'm standing at, the dryer is right there, so there's not a lot of room -- that's why the couple of times -- he's doing the dryer, you'll kind of see him in the door because I can't really -- I'd have to go all the way to the back side.

Q. Try to answer my questions. And we'll talk about the room in a moment; okay?

MR. CANTRELL: Your Honor, I would object. He's responding the best he can.

MR. TOOKER: I don't believe I asked anything

about the lay out of the room.

THE COURT: Well, just -- just go ahead.

BY MR. TOOKER:

Q. Okay. So, on that tape, we see you in that room with him with the door closed for like three occasions for -- for extensive -- more than a minute; does that sound?

A. I believe so, yes.

Q. Okay. And that room itself, as I believe you articulated during direct, is a small room; is that correct?

A. Yes, sir. It's a narrow room.

MR. TOOKER: Do you know where they went?

THE COURT: There is some on there.

MR. TOOKER: Oh, Thank you.

BY MR. TOOKER:

Q. So, into State's 9, you went with Minor 1 [redacted]; is that right?

A. Yes, sir.

Q. And then you spent several minutes behind a closed door with Minor 1 [redacted] in a room this size in State's 10; is that right?

A. Yes, sir.

Q. Okay. And Minor 1 [redacted] said that he spent that same time with you; is that correct?

A. Yes, sir.

Q. So, he said, I was with Matt Holder on these occasions. And we pulled up the video, and sure enough that's true; is that correct?

A. Yes, sir.

Q. Okay. That -- you mentioned restraints; what are restraints?

A. There's different forms of restraints. You have a physical restraint which involves the -- a hold of sorts where you -- you know, you physically put someone in a hold. We have chemical restraints which is medicine. We also have a straight jacket.

Q. Okay. How is it that you get them subdued enough to put a hold on them?

A. Say that again.

Q. How is it that you subdue them enough or get them into a position whereby you can put a hold on them?

A. Well, you don't just put it on them for no reason. It's usually in the middle of a fight or in the middle of a self harm. You have to take them down in a safe way.

Q. Okay. "Take them down in a safe way", what does that mean?

A. What does it mean?

Q. Yeah, what does it mean?

MR. CANTRELL: Your Honor, I object --

THE COURT: I sustain the objection.

MR. CANTRELL: I object to this line of question. I don't --

THE WITNESS: As safe as it can be.

THE COURT: I sustain the --

MR. CANTRELL: How it would be relevant?

THE COURT: I sustain the objection.

MR. TOOKER: Okay. Thank you, sir.

BY MR. TOOKER:

Q. And you were with Minor 1, like we said, for maybe about four hours that night, had you asked about him to anybody before that?

A. To who?

Q. Specifically, do you recall talking to Ms. Shelly Byers?

A. About Minor 1?

Q. About Minor 1.

A. I'm not for sure because she doesn't work on his -- you know, on his unit. She was on the Preserve Unit.

Q. Preserve Unit?

A. I talked to Shelly that night. She was one of the staff when we were cleaning. You have videos of

that, so.

Q. So my question to you is, do you recall talking to her, asking her about Minor 1's whereabouts that night when you weren't around him? Do you have independent recollection of that?

A. That night, I was around him the whole time. I was there.

Q. The entire night you were there --

A. That was the unit I was assigned to.

Q. Okay. So you're saying that you never talked to Shelly before you were around Minor 1, about, hey, where is Minor 1 at or something to that effect?

A. I was put on his unit that night.

Q. So is that a no? That's what I'm asking.

A. I don't see why I would have asked her that. I would not have been around her.

Q. So it's a no? That's a yes or no. That's all I need.

A. To my knowledge, it's a no.

Q. Okay.

MR. TOOKER: And -- one moment, Your Honor.

BY MR. TOOKER:

Q. So are you gay?

A. No.

Q. Are you interested in young boys?

A. No.
MR. CANTRELL: Your Honor, again, I object.
THE COURT: I sustain the objection.
MR. CANTRELL: There's no foundation.
THE COURT: I sustain the objection.
MR. TOOKER: Okay. All right.
MR. CANTRELL: Your Honor, could I be heard outside the presence --
THE COURT: Yeah. Let the jury go to the jury room just for a minute.
(Whereupon, the jury left the courtroom at 11:41.)
THE COURT: All right. Before I hear from Mr. Cantrell, Mr. Tooker, I'm sure it's just a habit, but you don't have to comment after I rule. Once I've ruled, that's it.
MR. TOOKER: Yes, sir.
THE COURT: So you can't say, okay, or make -- anyway, that's enough said. All right. Yes, sir.
MR. CANTRELL: Your Honor, I'm going to move for a mistrial. Regardless of opinions about gay, not gay, that sort of thing, that's irrelevant. But to ask a question, with no basis, no foundation whatsoever, if there is some -- there are allegations obviously in this case. This incident occurred between two males,

but that still does not lay a foundation for just asking the witness if he is gay.

The same could have been done with the alleged victim, but it wasn't. And it would be -- again, it would be inappropriate and irrelevant.

And, I guess, to be perfectly candid with Your Honor, we don't know the predisposition of members of the jury. If there is no foundation for such a statement or allegation, we don't know the effect it could have. It was unnecessary. I believe it's grounds for a mistrial.

I'm not satisfied that Mr. Holder can get a fair trial when we don't have any idea of a foundation. We don't know why it was asked. We don't know how it could affect any member of the jury, anymore than if hypothetically if the alleged victim in this case had been a minority, you couldn't ask him of his opinion of the minority. And, again, it would be prejudicial. It's just --

THE COURT: He didn't ask about his opinion about people who are gay. He didn't ask his opinion about it. Go ahead.

MR. CANTRELL: Just basically to ask that question with no foundation or no basis. And, quite candidly, to take a step further, so what. I mean, why ask that.

It just serves to bring up issues that should not be brought up.

There is no foundation for it. I think it can be prejudicial, and I don't think it can be undone at this stage.

THE COURT: Mr. Tooker?

MR. TOOKER: On direct, Mr. Cantrell elicited from the defendant that he's married, that he does have several children. He's expecting another child. Candidly, and this is just my personal theory in the case, but it seems to me like these things happen by virtue of some sort of repression.

THE COURT: Some sort of what?

MR. TOOKER: Repression. Repressed -- if these things are true -- and I'm not --

THE COURT: Well, you're not a psychiatrist or a psychologist.

MR. TOOKER: No, I'm not.

THE COURT: And have you had your theory bedded by someone who has expertise to tell you whether you are going down the right rabbit trail or not?

MR. TOOKER: Absolutely not, sir. But I -- again, ultimately, what we have got to do is make our case in close --

THE COURT: Well, but your case -- kind of a case

that is based on fact.

MR. TOOKER: Yes, sir. Yes, sir.

THE COURT: Did you have any basis to ask that question, other than your theory of some kind of repression?

MR. TOOKER: It's in response to his questions on direct.

THE COURT: Which questions?

MR. TOOKER: He --

THE COURT: He was never asked --

MR. TOOKER: His questions initially -- or not initially -- his questions, in essence, revealed or developed that he is a heterosexual. That he is married, that he's got kids. And so I want to know if the opposite is not true.

Because I -- I'll tell you my theory personally. The jury goes back there. There's this married guy with several kids. He couldn't do this. He's married. He's got kids. Clearly, this isn't something that's an issue. He's attracted to women. So that's the reason for the question.

THE COURT: Well, I think -- I think it was an inappropriate question, quite candidly, because there is nothing without foundation to throw that in. It is -- it is just inappropriate. I'm not going to go

any further than that.

However, I do not feel that it manifests a necessity to grant a mistrial. I'm going to ask the jury to disregard that. If we -- if we have another episode like that, then we will bring this two and a half day -- or two day trial to a screeching halt. And I think I have said enough on that, too. I tend to ramble. I think have rambled enough. So I'm not going to grant it. I don't think it manifests the necessity to grant a mistrial.

I will give, even though the defense has not requested it, I want the record to be clear that I'm doing this sua sponte, to give the correct -- curative instructions and we'll proceed.

MR. CANTRELL: Thank you, Your Honor.

MR. TOOKER: Thank you, sir.

THE COURT: Bring in the jury.

(Whereupon, the jury entered the courtroom at 11:47.)

THE COURT: Members of the jury panel, shortly before you went out, the -- Mr. Tooker asked the witness whether or not he was gay. That was not an appropriate question. There is no evidence in this record to support that question. The question is not relevant -- the question nor the answer.

So please disregard the fact that the question was asked. Mr. Holder answered it no, so you can disregard that, too. But just disregard -- that's not an issue in this case to any degree whatsoever. So disregard the fact that that question was asked. You may proceed.

MR. TOOKER: Thank you, Your Honor. May it please the court.

BY MR. TOOKER:

Q. I'm going to finish up real quick. So ultimately in this case, it boils down to his word vs. your word; is that right?

A. That and the facts.

Q. Okay. And the facts in this case are that he made these allegations that you guys did this stuff together when you were alone; is that right?

A. That's what he alleged, yes.

Q. Okay. And on that video that we watched, there are instances where you guys are alone; is that right?

A. Yes, sir.

Q. So ultimately, what things boil down to, is does what he says make sense or does what you say make sense; is that right?

MR. CANTRELL: Your Honor, I'm going to --

THE COURT: I sustain the objection. That's for the jury.

MR. TOOKER: Okay.

THE COURT: That's why we've got these 12 people over there.

MR. TOOKER: Excuse me, sir.

THE COURT: I said that's why we have these 12 individuals sitting here.

MR. TOOKER: Absolutely. And no further questions.

THE COURT: All right. Redirect?

REDIRECT EXAMINATION BY MR. CANTRELL:

Q. Matt, let me start maybe at the end. We've watched -- and I lost track of trying to do the totals -- but we watched I don't know how many minutes of video from the -- the laundry room to the gym, and then I think back to that area; do you remember seeing those videos here?

A. Yes, sir.

Q. And would it be accurate to say they were somewhere between 21:20 --

MR. TOOKER: Objection, leading.

THE COURT: Yeah. He is your witness.

BY MR. CANTRELL:

Q. Do you have any estimate as to how much time

we saw on the videos after you left the -- the laundry area the first time?

A. A couple of hours.

Q. And this reflected you being in the gym; is that correct?

A. Yes, sir.

Q. And were there areas of the gym where people in the gym may not be on-camera?

A. Yes, sir.

Q. Then you're back in the pod area; is that correct?

A. Yes, sir.

Q. And that was -- was that centered around the laundry room and working in there?

A. Yes, sir.

Q. First of all, did Minor 1 get credit for all of this time he was working?

A. Yes, sir.

Q. Did that accumulate points or money for him?

A. Yes, sir, it did.

Q. What had he asked for earlier in the day? Had he asked to be able to do that?

A. Yes, sir. He asked the supervisor if he could earn Avalons.

Q. Do -- have other clients worked for several

hours at a time to earn Avalons?

A. Yes, sir. As I stated, we saw several other clients also.

Q. During the time in the gym, during the time in the pod, the laundry room, the janitor's closet, all of those sort of things, there would be times when you may not be on-camera; correct?

A. Yes, sir.

Q. Throughout that time, was Minor 1 working?

A. Yes, sir.

Q. If the door was closed, was Minor 1 working in the laundry room or wherever he may be?

A. Yes, sir.

Q. Have you ever been made aware of any allegations about those times of inappropriate behavior?

A. No, sir.

Q. So from the time you left the laundry room, you've stated two or three hours; correct?

A. Yes, sir.

Q. Mr. Tooker has pointed out that there were times when you were off camera; correct?

A. Yes, sir.

Q. During that two to three hours, was there ever any -- have you ever been made aware of any

allegations of any inappropriate conduct by you, by Minor 1, either one after leaving the laundry room the first time and going to the gym, and coming back to the pod?

A. No, sir.

Q. Was Minor 1 working during that time?

A. Yes, sir.

Q. Were you doing your job in allowing him to work?

A. Yes, sir.

Q. Did your job require you to stay right with him?

A. Yes, sir, it did.

Q. Were you required to make sure he was protected or did not harm himself?

A. Yes, sir.

Q. You were asked about a statement you may have made to Ken Sowell. Let's go back. Who is Ken Sowell?

A. Kevin Sowell is --

Q. Kevin Sowell. I'm sorry.

A. He's the facility director of Hampton Psychiatric Residential Treatment Facility.

Q. And you were asked if you told him the reason the door closed was because there was someone else in the pod area, and asked you -- I'm sorry -- Minor 1 did

not want them to see him eating pizza?

A. Yes, sir.

Q. Is that -- that was what you told Kevin?

A. Yes, sir.

Q. The video shows someone else in the pod area at the time; right?

A. Yes, sir, it did.

Q. Was, in fact, Minor 1 still eating pizza at that time?

A. Yes, sir.

Q. You were also asked to confirm that you told Kevin three years ago that the other time was when you had to go look at a book that Minor 1 had picked up?

A. Yes, sir.

Q. Is that what you told this jury a while ago?

A. Yes, sir.

Q. The first time I asked you?

A. Yes, sir, it is -- or was.

Q. You were also asked about the nurse's area and the timeline there; is that correct?

A. Yes, sir.

Q. When you talked to Kevin, did you review the timeline and see that Maureen, the nurse, was there when you and Minor 1 walked in?

A. Yes, sir.

MR. TOOKER: Judge, I've let a lot go, again, he's leading.

THE COURT: All right.

MR. TOOKER: Every single one of these questions has been leading.

THE COURT: Just rephrase your question.

BY MR. CANTRELL:

Q. All right. Who was in the nurse's area when you and Minor 1 walked in?

A. The nurse, Maureen Rickerd.

Q. Did she stay there?

A. She stayed 99 percent of the time.

Q. When you talked to Kevin and reviewed the minutes, did you see that she walked out?

A. Yes, sir. I saw on the video, the same video you guys have, that she was gone for like a minute.

Q. While she was out, was anyone else around?

A. Yes, sir, another staff, James Hayes, came in.

Q. Was there any time that you and Minor 1 were in the nurse's area, when there was not Maureen or James Hayes there, but for a few seconds?

A. No, sir.

Q. And you reviewed all of that with Kevin Sowell?

A. Yes, sir.

MR. CANTRELL: I don't think I have anything further.

THE COURT: Recross?

MR. TOOKER: No recross, sir.

THE COURT: All right. You can step down and have a seat with your counsel. Call your next witness.

MR. CANTRELL: Can I have about two minutes with just -- not with the jury.

THE COURT: All right. Yes, sir.

MR. CANTRELL: Your Honor, I'm sorry. Can I ask for about a five minute break --

THE COURT: All right. I'll let the jury go to the jury room for a couple of minutes -- well, five minutes is what he's asking.

(Whereupon, the jury left the courtroom at 11:58.)

THE COURT: Me too. We'll take about a five minute break.

MR. CANTRELL: Thank you, Your Honor.

THE COURT: Okay. Now, we -- I was told by off -- off the record, that there's no more, that the defense is resting; is that correct?

MR. CANTRELL: That is correct, Your Honor.

THE COURT: All right. Mr. Tooker, you indicated you may have some reply or rebuttal?

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MR. TOOKER: I thought so, Your Honor. The one that we were really waiting on, she won't be here for another hour at least. So I'm prepared to just argue the charge.

THE COURT: Because I think we've reached the point where it is time to go forward with arguments and charges.

Any motions on be behalf of the defense?

MR. CANTRELL: Your Honor, I would renew all previous motions, including a motion for a directed verdict at this time.

THE COURT: The motions are denied. I believe there is enough evidence for the case to be submitted. So about how long, Mr. Tooker -- how long do you usually take to wrap up?

MR. TOOKER: And close?

THE COURT: Yeah, I mean, I don't usually set time limits.

MR. TOOKER: The longest I've ever gone is 45 or 50 minutes.

THE COURT: Don't try to set any records today.

MR. TOOKER: Okay.

THE COURT: The same -- about the same?

MR. CANTRELL: Your Honor, my first answer to that question would be probably too long. But I can't

imagine that I'm going to talk more than 10 or 15 -- if I --

THE COURT: Well, I don't -- I don't structure any time. It just helps me kind of to see where we go from here. All right. And we might not get the charge until after lunch, but we might get through arguments before lunch, and then the charge after.

MR. TOOKER: And, Your Honor, my only request would just be that if Mr. Cantrell, you know, starts his argument, that I'm able to argue my case too before we break for lunch.

THE COURT: Okay. All right. Well, we'll finish -- we'll do that. Bring in the jury.

(Whereupon, the jury entered the courtroom at 12:08.)

THE COURT: All right. Members of the jury, while you were out, the defense tells me they are resting, so I am going to let them do that on the record now.

Mr. Cantrell, the defense rests?

MR. CANTRELL: Yes, Your Honor. The defense does rest its case.

THE COURT: All right. So we have reached the point where all the evidence is in the record, all the exhibits and all the testimony. So at this time, the attorneys have the opportunity to make their closing

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arguments -- their closing statements.

Unlike the ones they made yesterday, where they were simply outlining the trial and not trying to convince you of anything, at this time, they will be presenting their arguments along the lines of what the evidence -- tieing the evidence to the law, and telling you why you should, based on those arguments, based on the facts in the record and the law, your verdict should be a certain verdict.

The defense will go first and then the State will follow.

MR. CANTRELL: Thank you, Your Honor, may it please the court?

THE COURT: Yes, sir.

MR. CANTRELL: Ladies and gentlemen, just briefly, thank you. Again, it's not an easy task. You're here serving as jurors and we do appreciate that, and thank you. And it may sound a little hollow right now simply because you've got to be here and you've got to listen to me for a few minutes. But -- but please understand that that is a sincere thank you from myself, from Mr. Holder, and I think everyone in here.

A couple of things that first come to my mind when I try to stand back and think about this case. I don't know what to put first. Very simply, it's not

easy -- this is not easy for participants. It's not easy for you as jurors, because we do have issues of credibility. And part of that is based on circumstances, those of Minor 1 that otherwise -- and but for being here in this trial, and but for there being allegations made, it wouldn't be appropriate, I think, for me to comment on. It wouldn't be appropriate for us to discuss. They are his issues. And that makes this uncomfortable -- at least for me -- and I have to think it is for you.

But the fact of the matter is, that having been said, it is totally and completely relevant and I'm required to present to you things and the issues that I believe affect the credibility of the testimony you have heard. So please understand, there's no great pleasure in doing that in a case like this, but there is a real desire to do the right thing.

Secondly, another thing to put out before you is in our day and age, TV, social media -- you name it -- it can almost get to the point that presumed innocent and must be proven beyond a reasonable doubt, that those words just get washed away.

You hear them all the time, if you watch anything. I don't care what network -- even the news, you are going to hear the words "presumption of

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innocence" and "reasonable doubt" thrown around. But what is so extremely important is right here, right now, in this place, those are real, real issues. Those are real, real rights that our constitution gives everybody in this case, especially to Matt Holder.

So you're going to hear those things, but try the best you can to put out of your mind what you hear on TV or any place else.

And what you will do is this Judge will tell you what those terms mean. And please take them and appreciate them as real, real rights that were handed down hundreds of years ago to each and every one of us. And they're real -- and they're important. Because Matt Holder sits there innocent. He is presumed innocent. He's innocent now. He's innocent when you walked into the courtroom. And unless there has been proof by competent and believable evidence to you, beyond a reasonable doubt, he is innocent when you walk out of that courtroom.

That's where your job really gets cranked up. You've heard testimony. We both told you, you're going to hear testimony. You use your common sense. You use your every day sensibilities and render a decision which speaks the truth, render a verdict. That's where this -- we're at that point, as soon as you listen to

Mr. Tooker and myself, and you take the law from the judge, you go back and you've been told, you will determine what the true facts are. And that's what you will do back there in your room.

You've heard how this thing all got started, right at almost exactly three years ago now. And you heard the law enforcement officer receive information and investigated a case. So Detective Byers goes out and investigates. Based on his investigation, he goes and has Matt Holder arrested for these charges.

But you go back and look at the statements he received from Minor 1, and they are inconsistent. That may not be uncommon, but it is a fact in this case that they are inconsistent, and you have to take that into account. Why they are and where these inconsistencies are.

But he took Minor 1's statements and he looked at some video -- and you've seen those. We'll talk about that in just a second. But I won't beat you over the head with it, because you've seen them also. And he secured a warrant. He didn't go to the facility itself, but secured a warrant.

Then what you heard also was testimony from Minor 1 himself. And some of the things he did say in his testimony was, yeah, he was dissatisfied with being

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at the Hampton. Well, you might say that nobody would want to be there. But I think we heard that it was more than that. We heard from him and other witnesses, not defense witnesses, but State witnesses that he was dissatisfied. He was not happy with his progress, so that he could get out of there. And he told you he would act out.

He had different terminology, clinical terminology for it, but the fact of the matter is, it was acting out, up to and including tearing up and destroying property. Not just once -- and his acting out was not just once, he would -- could make progress and do well, and then he would regress, and not do quite as well.

Then there are other inconsistencies in what he told you on the witness stand. For the first time, based on everybody else you heard from here in the courtroom, he says, well, I got the pizza for sexual favors. Well, that had never been said based on what Detective Byers or Kevin Sowell told you, but it was said in here. Another inconsistency in a story that I'm afraid he's kind of stuck with now, that they -- he made allegations, so he's stuck with that, even now three years later.

He would testify about the lack of presence or

presence -- or lack of presence of other individuals. You saw that there were people all over the place when he worked in the laundry room. You have heard that there was a nurse in the nurse's area virtually the entire time that Minor 1 and Matt were there. And that, in fact, someone else came there.

And that's the other thing about all these locations. All of these locations are in a facility where anybody can come up at any time. All of that should be weighed in determining the believability of these statements and these allegations.

I would submit to you that there is nothing valuable in the video -- to the State in the video of the nurse's station, because you haven't seen it. There's nothing there.

I would submit there at the end, you saw a lot of video, two to three hours of stuff going on, trying to show doors closed, doors opened. When, in fact, it's admitted, acknowledged, that there are no allegations whatsoever. That, in fact, occurs after the point in time when some other allegations were made. But then you watch video for three hours and you see nothing that leads to any allegations of any inappropriate conduct that's inconsistent that's -- that leads to believability of what the allegations

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are, I believe, and I would ask you to consider that.

And then, again, very simply, you heard testimony from two of the State's witnesses that -- and these were denied by Minor 1, but you heard two State's witnesses testify; one, that he said, yeah, I know how to get out of here. I know what I need to do to get out of this place. He was already agitated about not getting out. And he said he knew what he needed to do to get out. That shows his agitation. And that was not when he was apparently doing well, but it was prior to these allegations. So it shows his state of mind, which is terribly important.

And also you heard that he had a reputation for not telling the truth. Again, there's nothing comfortable about coming in and telling you this young person doesn't tell the truth. But it is something that you heard from the State's witnesses, that it is terribly relevant to the allegations in this case. And I would ask that you do place significant weight on that. He had ulterior motives for making the allegations. He wanted to get out of this place. He also didn't always tell the truth. And, in fact, was known to not tell the truth.

And, in fact, one witness said that, yeah, he had made allegations previously against staff and then

come back to say they were not true. When you're deciding proof beyond a reasonable doubt of somebody that is presumed innocent, you have got to take that into account. It's not a nonfactor.

Meghann Harvey talked to you about the cameras and the use of cameras, and that sort of thing. But I would submit to you, the videos you have seen show you what the cameras can show you, and show you -- as you determine it, the weight of the evidence or weight of that testimony.

She, in fact, testified, yes, Minor 1 had a problem with telling the truth. In fact, when he was at the hospital -- or in the examination after this incident, he outright lied to her. She said so. It's relevant. It is relevant that those things happened when you're making allegations against someone.

Kevin Sowell confirmed that it was not uncommon for somebody to earn points like this. They didn't say it was -- had to be for 30 minutes or an hour, but it wasn't uncommon for a kid to earn points, and that they all truly wanted to.

Nobody has denied that on the evening of these allegations of the -- the library allegations, that Matt Holder was not even supposed to be working with Minor 1. But that by a set of circumstances, he did.

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And that happened to be the night that it was pizza -- none of this was planned. All of this spontaneous. And they went to the library.

The doors closed on occasion, but those were explained. And when Mr. Holder was asked about, well, you told Kevin Sowell, this actually turned out to be almost spot on. Well, he didn't want the other kids to see them. I couldn't let them interact, but he had this piece of pizza with him, and that would have made a kid out of a different pod with no pizza angry. So, yes, I closed the door. Either that or run him out into a different area, which would have only made matters worse.

He told Kevin Sowell that. He told the Solicitor that. And then that the door closed another time when he was looking at a book that -- that Minor 1 was asking about. And if you look at the doors, heavier than this, look at the pictures to see what the layout is, all of that is absolutely believable. Not ideal for being off or on-camera. But, again, we've already heard, it is not ideal but there are places that aren't on-camera.

You do the best you can when you're working in an area like this, working with people who need help and have issues. You do the best you can. But if the

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absolute only thing you care about is being on-camera, you're not going to do your job and you're not going to protect people. You do the best you can.

You did hear from an expert, Shauna Galloway-Williams, who is absolutely an expert, a wonderful expert. But what did she tell you. Well, the studies will tell you this. The reports will show you that. She gave you that information, which I certainly am not going to question her on. Because, again, she's an expert in her area. And she told you that.

But I would submit to you that studies and reports, and that sort of thing, have to be taken with a grain of salt, applying your common sense; particularly when you've got a situation like we have, where this alleged incident took place in such a unique facility, a unique community if you will.

But she gave you her professional opinion on her area of expertise. But she did not, could not tell you one single thing about this case. She was not called in to analyze this case, to review this case, to give you an opinion about this case. So she couldn't. She was not asked. So you take information about studies, but you take it whatever emphasis you feel is necessary.

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Matt Holder testified fully, openly put himself out there for you, and certainly put himself out there for Mr. Tooker to cross examine. And he answered all of the questions that were asked of him. He didn't deny doors were closed. He didn't deny that, well, it's usually best not to close the doors.

He did explain how and why the doors could or would have been closed. He did explain, most importantly, that no -- nothing happened. We're in this laundry room. And I -- you saw the video. There were kids out everywhere. I didn't see any kids fighting, getting hurt, getting into trouble, so they didn't need three guys watching them. But there were kids everywhere.

I would submit to you that Minor 1, if he wanted to work and earn his points, did not need that door open for people to come in and out, to make comments, or distract -- in fact, a couple did come up to the door once or twice. But if Minor 1, who -- yes, it may have been a little high maintenance. He wanted to earn his points. He wanted to get back on track, or wanted to continue on track -- depending on how you look at it. He didn't need -- he needed to earn the points in laundry. That's what he had been assigned. I don't know how he could have done it with

that door wide open.

Then, even though that's where the allegations supposedly took place for the next three hours, they are together, doors are closed. And no allegations ever came about. It doesn't make a whole lot of sense. It applies to credibility, believability.

You've got to take everything that you have heard. You've got to decide what is believable, what is credibility. I have told you at the very beginning, there's a lot of room for sympathy in the circumstances presented to you. And I would be shocked if you and maybe everybody in this courtroom didn't have some sympathy for individuals that have a need for special attention, special placement like at the Hampton.

I quite candidly think there should be some sympathy for someone who is doing his job, denies, and has continued to deny forever anything happened. There should be sympathy for someone who is confronted with allegations under these circumstances. But I understand there is room for sympathy for Minor 1. Quite frankly, I feel that, too.

But the simple fact is, that does not equate to anything regarding credibility, believability; did this happen. Are these facts substantiated. That's when you get into your responsibilities as a juror.

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You use -- as a judge years ago used to always tell the jury, use good old common horse sense. You apply what you've heard with good old common horse sense to determine whether the State has proven Matt Holder guilty beyond a reasonable doubt.

In the end, when you sit down, there might be the gut check -- or the gut test. Did I hear enough? Did I see enough to convict Matt Holder of criminal sexual conduct? Am I convinced beyond a reasonable doubt? Do I know this beyond a reasonable doubt? How can I convict him based on these allegations, these circumstances, and the questions that I have?

If you answer all of those, and you decide it's guilty, then that's the verdict you are going to return. But if you cannot say that, look each other in the eye, and look yourself in the eye and say, yeah, I know it, then you don't know it. The reasonable doubt is there.

It can be only one -- one thing can give you reasonable doubt, several things. Witnesses can give you reasonable doubt, several witnesses can. But if you can't say that, then Matthew remains innocent. And you should return a verdict and find him not guilty, which is what we're going to ask you to do. Thank you.

THE COURT: All right.

MR. TOOKER: Thank you, Your Honor. May it please the court?

THE COURT: Yes, sir.

MR. TOOKER: Mr. Cantrell. Mr. Foreman, and ladies and gentlemen of the jury, nobody is asking you for sympathy. Nobody wants sympathy. What we want is your attention and we want justice. This case is not about sympathy. This case is about what you think as reasonable people happened in those rooms when Minor 1 [redacted] says he was molested. That's what this case is about.

I say that, molestation is not a crime. A crime in this case is criminal sexual conduct with a minor in the second degree, and criminal sexual conduct with a minor in a third degree.

Mr. Cantrell is absolutely right, I have the burden of proving these things to you. And like I told you in opening, it means showing you that certain elements have been met.

So what I want to first do -- and let me say this too. His honor will charge you on the law. And if anything I say differs from what his honor says, then you have to -- I mean, you are bound by your duty to go with what his honor says. This is -- this is my best recollection. My best understanding of what the

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law is in this case.

All right. Criminal sexual conduct with a minor in the second degree requires three things in essence. You have got a child between 14 and 16 years of age at the time. The Defendant is in a position of authority or has some capacity to control or limit or do something for or against the kid by virtue of being a parent, a guardian, a custodian, something to that effect; and that a sexual battery occurs.

And a sexual battery has a specific definition. And his honor will charge you about sexual battery, but it's penetration of any kind, oral sex. I believe the term is fellatio and cunnilingus are used. And that just means oral sex on a man or a woman.

So the allegations in this case with regards to criminal sexual conduct with a minor in the second degree, that Minor 1, who was 15 years of age, was abused by the defendant, Matt Holder, who is in a position of authority over him by virtue of his role in Hampton PRTF, and that oral sex occurred. And that oral sex is enough to constitute a sexual battery. So the elements are met if you conclude that the testimony was credible. If you determine ultimately what -- you believe Minor 1; right?

The second charge we have is criminal sexual

conduct with a minor third degree. Again, basic summary, the child has got to be less than 16. He was 15. The defendant has to be over 14. That's not an issue in this case. And the lewd or lascivious act that occurred -- touching, fondling, oral sex, lewd or lascivious act.

So this issue in this case is not whether or not the elements are covered. The issue in this case is whether or not you believe the victim when he says these things happened. That's why, in opening, I told you, credibility is paramount in any case, but particularly in this case. Credibility is paramount because you have to figure out what story is the true story. What story is the real story. And so you do that by applying your common sense.

And Mr. Cantrell mentioned horse sense and common sense are the same thing. You're reasonable people. That's why we use jurors, as a reasonable set of folks. So you have to use what you use on a daily basis to determine what you believe and why.

One thing I like to think about, when I think about credibility, is what -- what benefit is someone going to get from telling a story; or what detriment -- how will they suffer if they say the truth. Right? So it's why do I get something if I lie, or how do I --

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how do I suffer if I tell the truth.

Now, Minor 1 is here currently. He's been here throughout this trial. He testified. He is 18 years old, and a day today. He's been out of Hampton PRTF since he was 15 years of age. He has maintained that this happened since leaving. He came in. Took the stand, and told you, like Mr. Cantrell said, three years after the fact, that this happened.

The defendant had him expose himself to the defendant. That the defendant exposed himself to the victim. That after they did that, there was some touching in the nurse's station. And a day later, there was oral sex. Those are the things that he told you three years after he left the Hampton PRTF.

Now, the defense wants to say, well, he's got a motive. He's got a motive to lie. He wanted to get out of that home. He felt like he had been doing well, making steady progress, and he wants to get out. And that's the best they have in this case.

The best they have is this is why he would say this thing. So, he says on June 5th, five days after the second incident, that I was molested. He tells a staff member. They launch an internal investigation; tells them this stuff. And what happens, does he leave? Is he immediately taken out of the home? What

was the testimony? What does Kevin Sowell say? August 8th is when he finally left -- when he finally matriculated out of the program; right? August 8th -- two months later. Two months later.

So if his whole scheme, his whole aim was to get out of the home by making a false allegation against Mr. Matthew Holder -- well, that failed. That failed. So why not say it against somebody else?

Why not say, well, I was also abused by staff member "x", or staff member "y", or staff member "z", why not throw everybody under the bus that he can so that he can get out, if for no other reason, they're sick of him accusing people of sexual abuse. No. He says these things happened to me. And he stays.

And what did we hear from Meghann Harvey? He told her about what happened on June 5th, and he cried. He cried. We're talking about whether he's lying. That's what this case is about. Did he lie?

People fake words. People -- people are good at faking words. Anybody can tell a story. Faking emotion is something different. Faking emotion is something actors do; right? An actor or actress can make you believe that they believe something by virtue of their performance. So not only are you being asked to believe that he lied, but you're also being asked to

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believe that he's an actor. That he's able to pull tears on command, to cry in front of Meghann Harvey when revealing abuse.

In addition to that, he tells people what happened. He's not believed. And Mr. Cantrell mentioned that he had behavior outbursts, tearing up a floor and a sink. When did that happen? That happened after the -- the allegations. He makes the allegations. And then following that, tears up the floor and tears up the sink. Why? Again, this goes to emotion.

If you're a 15 year old child, particularly a 15 year old child in a facility like Hampton, you say, I have been sexually abused and you feel like nobody believes you. You act out. You behave in a way that is destructive, because that is emotion. That's what's happening to you in your heart.

If you're a liar, you say these things happened. You say, I was abused. You say, I was touched. And you're saying it because you want to escape, and nobody believes you, and you go on your merry way.

You don't maintain it. You don't freak out. You don't cry. You don't have a fit of rage. You're the same. When you lie, you don't change inside when something like this really happens to you.

The -- the video, of course, and I mentioned that in opening, wasn't going to show a sex act occurring. We don't have the sex acts captured on video. So why is it that I wasted all of your time showing you those videos, particularly when some of the videos were just of the defendant and the victim cleaning. Why show y'all that?

Well, what did Shauna Galloway-Williams talk about? Shauna Galloway-Williams talked about grooming. Do you recall that? She said there was something called grooming, whereby a perpetrator cultivates a relationship with a victim. The perpetrator does things to expose the victim to ideas that maybe the victim wouldn't have otherwise.

The perpetrator talks about stuff. The perpetrator ingratiates himself with the victim. The perpetrator makes small moves in one direction to see if the kid will reciprocate.

What are the allegations in this case? Text book grooming. Initially it's not just, wham, we're in the laundry room, and oral sex happens; right?

Initially, the allegation are, well, there was exposure. There's first first joking about penises. And then, hey, let me see yours. How big is yours. Oh, let me see yours. How big is yours. And then

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there is exposure.

So all of a sudden, sexual activities, sexual talk, and the exposure sure of genitalia has been normalized. And it's been normalized by virtue of this process of grooming. Then what happens.

Then they're in the nurse's station. Again, what is requested is exposure. And while the exposure is happening, what did Minor 1 say? The Defendant attempted to put his mouth on Minor 1's genitalia. So it's the next step.

Now, Minor 1 said he -- he wasn't comfortable with that. It wasn't completed. He didn't do it. So -- so we've got exposure; exposure and then an attempt at oral sex. And then two days later when they are -- or three days later when they are again around each other, what happens? At this point, the Defendant requests exposure, requests masturbation. After requesting masturbation, then performs oral sex on the victim.

And what does the victim say -- and this, I think, is particularly telling. He says, he did ejaculate. If you're making this up, and you're a guy, and you're saying to yourself, okay, I want to get out of here. I am going to say these things. And I am going to get out of here. You are not going to be

like, okay -- and, yeah, I did ejaculate. I did have an orgasm. You're going to say, yeah, he tried to do these things to me. I was like, whoa, Bro, I'm not into that. That's not what I'm about. That's not cool; right?

What's reasonable to you as reasonable people. Is it that you say, yes, I participated and ejaculated; or is that you say, oh, no, no, I wasn't into that, so I got him off of me as soon as I could; right?

The videos, too, are important inasmuch as they corroborate what Minor 1 says. Minor 1 goes to the staff members. He goes to Meghann Harvey and says, I was inappropriately touched by the defendant. These things happened to me in these places.

So what does she do? What, they launched their internal investigation. And fortunately, they have these cameras up on the the ceiling, and the cameras can capture the conduct of parties. The cameras capture the defendant on the 27th, was with the victim for four hours.

The victim says these -- these things happened in these places. Sure enough, what do the cameras capture? That the defendant and the victim were in these places together.

What else does the victim say? Well, the door

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shut and these things happened; or the nurse left, and these things happened. And what was the testimony?

Well, first we saw the video where the door is shut, corroborating what he says. He doesn't -- if he's a liar -- and let me say this, too -- y'all have been around kids. Y'all have been around 15 year olds. I mean, y'all have been around 14 year olds. Are they sophisticated liars? When a 14 year old or a 15 year old lies to you, is it a sophisticated lie? Do they tell you something that you say to yourself, oh, man, that -- that really sounds true. And you look into it, and you actually find evidence corroborating it. Does that sound reasonable, or is it more reasonable that kids like that are not sophisticated when they lie.

When they lie, like Kevin -- Kevin Sowell said when he was on the stand, lie about being the one who started a fight. I'm not the one who started the fight. That other kid started the fight. They checked the video and it's rebuffed. It is rebutted, because kids aren't sophisticated. They can't think through those kind of things when they concoct a lie.

Now, Minor 1 says these things happened. And -- and what do we find out when they pull the tape? Sure enough, they are together. They're off camera and the door shuts. Then what do we have? We have an

allegation on the 31st. The same thing, together. Minor 1 says we went, we got pizza. We went to this room. We got in a room. And then once I was in the room, he requested that I start masturbating. And then the door shut toward the end of the time that we're there, he put his mouth on me, and I ejaculated; right?

What do we see in the video? They go to the library together. He has pizza in his hand, if I remember correctly. They get into the library. While they are there together, the defendant -- and this is why I showed you that during Ms. Harvey's testimony, if it's me, it's me -- I'm that staff member. I'm standing in the door, and my instructions are to make sure that I'm on camera at all times, and doors don't shut, and I'm not behind a closed door with a -- a child or a ward. I'm standing there with an open doorframe here, with my back against the door, leaning against it. Checking my watch, saying hurry up, dude. Come on, we need to get back on the ward.

But what do we see in this video? In this video, we see him standing in the doorframe, peeking out, and then it shuts to a sliver. To a crack; right? He peeks out again, and then it shuts to a sliver. To a crack. He peeks out again. And that goes on for some 25 minutes; right?

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And it goes on until the door shuts. And the door shuts twice. The door shuts as people enter the room. There are other people in the room. The defendant says, well, I had to shut the door because it was another child in there and I thought there could have been a fight over pizza. Well, that other child, if you look at the video, is with a staff member. Does that sound reasonable to you?

If you're that staff member, you're employed at this place, and your instructions are don't go off-camera, don't go behind closed doors. Do you say to yourself, when someone enters at the opposite end of the room, what I need to do is shut myself into that tiny little closet of a library with this kid; or do you say to yourself, hey, maybe I'll just stand here. And if I have to take some sort of preventative measures, I'll wait and see what happens. Heavens forbid I put myself in a position where someone can accuse me of doing something I didn't do.

Ms. Shauna Galloway-Williams, she talked about grooming. She talked about that process, but she also talked about other things. She talked about delayed disclosure and how common delayed disclosure is in victims of sexual abuse.

Minor 1 didn't immediately say, after having been

approached or abused, hey, Meghann, hey Kevin, hey some other staff member, guess what happened to me. This terrible thing happened to me. No, he didn't say that. He waited. He kept it inside.

Again, these things happen. He doesn't immediately come forward and say, hey, guess what just happened to me. If his plan is, I'm going to get this guy, I'm going to tell the authorities that he is molesting me, and that's going to get me out of this facility, then would he not been immediately -- after having been around that man -- go to Kevin, or go to Meghann, or go to another staff member and say, hey, listen to what just happened. No, he doesn't. He doesn't come forward until June 5th, six days later; right?

June 5th, he comes forward and says, I was sexually abused. I was sexually abused. I was sexually abused in these locations. And they are able to verify that he was with the defendant at those locations on those dates, at those times; right?

Shauna says delayed disclosure is common. It is more common than someone saying they have been abused immediately. And what we have in this case is delayed disclosure.

Why? Why is it that people delay disclosure?

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What did she say? She said, out of fear. Out of fear that they might get in trouble, out of fear that somebody else might get in trouble, out of concern that they won't be believed. And imagine -- imagine a child, a child in a facility like Hampton, that doesn't have parents. He can't get on the phone and call mom and dad. He's in this facility and something like this happens. Who's going to protect him? Who's going to protect him? His rights? They're voided. There's no one to take care of him. Who will protect him.

There's fear. There's trepidation. There's concern that if I go forward, maybe I won't be believed. And Mr. Cantrell was talking about how these kids have problems, and of course they do. You don't end up in the facility if you don't have problems. But does that mean that any child who makes an allegation from there cannot be believed?

Does that mean any time that someone from that place says they were wronged by a staff member, that you can't believe what they say? Of course not. Again, when we talk about credibility, we talk about whether or not what the person says makes sense, and what makes sense in this case.

Shauna Galloway-Williams, she also talked about risk factors. When kids are more likely to be exposed

to abuse. She said real little kids, because they can't say what happened. But she also said kids with problems. Kids with problems are more likely to be abused.

Why are they more likely to be abused? Because abusers know that no one will believe them when they come forward, and how sad is that? How sad is that? That somebody is targeted because they're already affected, because they've already got problems.

Ultimately, in my mind, this case comes down really to two things -- or to two stories. It's what you have to determine. Right? You have to determine what happened in this case.

We talked about the verdict and the verdict speaking the truth. What is the truth in this case? The defense wants you to believe that the truth in this case is that the defendant is -- is a criminal -- or excuse me, the defendant -- the victim is a criminal mastermind. That he -- that he decided I want to get out of this facility. And what I'm going to do is, I'm going to get around one staff member. I'm going to make sure that that staff member goes off camera with me, preferably behind close doors; right? Not only will I do that on one occasion, I'll do it on multiple occasions.

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And then another day, I'll make sure I'm again around that same staff person and I'm going to make sure again, we are behind closed doors because I know that if I get him off camera, and that door shuts, boom, I got him I got him. Does that make sense? Does that make sense to you based on what you saw of Minor 1 [redacted] on the stand? Does that seem like the kind of person who comes up with that elaborate of a plan?

And what did Mr. Cantrell say, it was spontaneous. That Matt had him on the 31st. The kid wants to go to the library. It's just so happens that Matt comes to pick him up; that Matt takes him to the library.

So if this is an extraordinary and elaborate plan to frame the defendant, well, he's got some sort of clairvoyance. He's figured out how it is, and when it is that this person is going to be around him, and how it is that person is going to act on a camera on a particular day, before he even goes there.

So -- so it's either that -- it's either that or it's true. It's either that he is the most sophisticated liar I've ever heard of, or it's true. And what's reasonable? What's reasonable to you? We ask you for the only reasonable thing; that is a verdict of guilty.

THE COURT: Members of the jury panel, I appreciate the attention that you've given to the attorneys and the witnesses and myself. We do have lunch for you. And what I'm going to do now is charge you the law, then we'll let you go start deliberating. And I'll tell you a little bit more about that in just a moment. But first I'm going to charge you the law that you are to apply to the facts as you determine them to be.

This case has two charges against Mr. Holder. They are criminal sexual conduct with a minor in the second degree; and criminal sexual conduct with a minor in the third degree. The elements of those offenses I'll talk to you about later.

The fact that there are two charges is of no importance; that is, there is no weight to be given since there is more than one charge. That is, the fact that there are two charges, doesn't make any -- any difference. You would have -- you have to analyze the evidence regarding each charge independently and determine whether or not the state has proven beyond a reasonable doubt Mr. Holder's guilt of that particular charge. And what you find on one charge, does not necessarily have to be found on the other. They stand separate and apart.

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Mr. Holder, you heard me say already, is presumed innocent of these two charges. This presumption of innocence that's in his favor, attached to him at the time of his arrest, and remained with him as his case is processed through out court system.

The presumption of innocence in Mr. Holder's favor exists at this moment, and continues to exists as you deliberate. Presumption of innocence is removed if and when, and only if and when you determine that the State has proven his guilt beyond a reasonable doubt. And the State is not required to prove his guilt beyond every doubt, but beyond a reasonable doubt.

Our court has described a reasonable doubt as a kind of doubt that would cause a reasonable person to hesitate to act. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of someone's guilt.

If, based on your consideration of the evidence, you are firmly convinced that Mr. Holder is guilty of one or both of the charges, you would find him guilty. If, on the other hand, you think there is a real possibility that he is not guilty, you would give him the -- give him, Mr. Holder, the benefit of that reasonable doubt, and find him not guilty. He is entitled to any reasonable doubt you have as to any

issue in this case.

I remind you that I am the sole judge of the law in this case, and you must take, accept, and apply the law as I charge it. You're not to infer from anything I have said or done during this trial, or now say and do, that's indicating an opinion of mine on the facts. Our law does not allow a trial judge to formulate or express to you, as the trial jury, any opinions on the fact. That is solely your job.

It is solely your job to examine the evidence, and give to the evidence the effect, the value, the weight and the truth you believe it should have. During this, you may believe one as opposed to several; several witnesses as opposed to one. You may believe all, part, or none of a witness' testimony.

Use your common sense, your sense of logic, your sense of reason. Use your experiences in life as you analyze the evidence. As judges of the facts, you necessarily must judge the credibility, that is the believability of the witnesses who have testified.

Assessing believability, use the things that I've just talked about. Use the things that you, in your day-to-day, life find to be indicators of truthfulness in an individual. And you can use certain evaluators, the witness' demeanor, how they act on the

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stand. Are they hesitant or straight forward? Is there testimony consistent or inconsistent. Do they have any bias or prejudice, that is, any reason to help or hurt one side or the other. Consider the opportunity the witness had to know those things about which the witness testified.

Examine the facts, determine the credibility, determine the true facts and apply the law, and you'll be in a verdict -- be in a position to return a verdict that speaks the truth.

In this case, we had a witness who was qualified as an expert, Ms. Galloway-Williams. Generally individuals can only testify to something that they have seen with -- or observed, something that they experienced with one of their five senses. Usually it's something they've seen or heard, but it could be taste, touch or smell.

However, when someone has certain training, experience and knowledge in a particular area, that person can be qualified by the court to testify as an expert and give expert opinions. That is, take facts from those facts, and reach opinions.

Now, those opinions are allowed into evidence to assist you. They are not binding on you. You look at the testimony of an expert witness like Ms.

Galloway-Williams, just as you look at the testimony of every other witness.

In addition to her, as to an expert witness, you can -- even though I allowed her to testify as an expert, you determine whether you believe she had the qualifications to testify about the things that she testified to.

In addition, you also can analyze and look a the reasons she reached the opinions she reached to determine how to use her testimony, if at all. You can accept or reject in whole or in part the expert's testimony in this case.

Now, in cases such as this, there are generally two types of evidence which are presented, direct and circumstantial evidence. Direct evidence is evidence which directly proves the existence of a fact, and does not require any deduction.

Circumstantial evidence is proof of a chain of facts and circumstances which indicate the existence of a fact. Crimes may be proven by circumstantial evidence. Our law makes no distinction between the weight or value to be given either to direct or circumstantial evidence.

However, to the extent the State relies on circumstantial evidence, all of the circumstances must

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be consistent with each other, and when taken together, point to the guilt of the accused beyond a reasonable doubt.

If these circumstances merely portray one's behavior as suspicious, then the proof has failed. The State has the burden of proving the defendant guilty beyond a reasonable doubt. This is true regardless of whether the State relies on direct evidence, circumstantial evidence, or a combination of the two.

The first charge I'm going to go over is criminal sexual conduct with a minor. Here, Mr. Holder is charged with that offense. Here, the State must prove beyond a reasonable doubt that the defendant, Mr. Holder, engaged in a sexual battery with the victim.

A sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight of any part of the person's body, or any object into the genitalia or anal openings of another person's body, except when that is accomplished for medical recognized purposes.

In addition to proving a -- a sexual battery in order to convict Mr. Holder, the State must also prove beyond a reasonable doubt that the victim was less than 16 years of old at the time, was at least 14 years of age, and that the defendant was either in a position of

familial, custodial, or official authority to coerce the victim to submit, or that the defendant was at the time, older than the victim.

Consent, willingness, indifference or ignorance on the part of the minor, if any, as to what was taking place, does not in any way effect the charge of criminal sexual conduct. As to criminal sexual conduct in the second degree, the State must prove that beyond a reasonable doubt.

As to criminal sexual conduct with a minor in the third degree, the State must first prove beyond a reasonable doubt that the defendant was over the age, at the time of the incident -- alleged incident -- of 14.

Next, the State must prove that the defendant willfully and lewdly committed or attempted a lewd or lascivious act on or with the body, or its parts, of a child under the age of 16 years, with the intent to arouse, appeal, or gratify the lusts, passions of sexual desires of himself, the defendant, or the child. Willfully means voluntarily and intentionally. Something is wilful if it's done with a specific intent to do something the law forbids.

Lewd means obscene, lustful, indecent or lecherous. Lascivious means tending to incite lust,

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lewd, indecent, obscene, or tending to deprave the morales in respect to sexual relations.

As to these two charges, the testimony of the victim need not be corroborated. Now, the State must prove before you can convict Mr. Holder as to either of these -- those charges beyond a reasonable doubt.

When you go in to deliberate in just a moment, when you first go into the jury room, do not start deliberating. I have to go over my charge with the attorneys. If I have made an error, I have to bring you back in and correct it. If that is the case, that will be done fairly promptly, so don't start on your lunch, make yourself available, so if I have to send for you -- it'll be within two or three minutes, if I have to.

If not, I will send in to you the verdict forms that I'm going to go over with you in just a moment, and the exhibits and the bailiff will tell you to start deliberating.

If, while you're deliberating, you have questions, please write them down, Mr. Foreman. Knock on the door; give them to the bailiff. The bailiff will bring them to me. I will consult with the attorneys. I may be able to write an answer to your note on -- on the paper.

If I do return a written note, keep that note and turn it in with the exhibits, because it has to be a part of the record. It may be that I'll have to bring you back in open court to answer your question.

We can have testimony replayed if you wish. I'll have to know from -- this is the first time I've held court in Pickens. I'll have to find out what accommodations the court, the Solicitor and the Defense and the Clerk has for your viewing the videos, but I will make those available.

Do we have a way to send something into the jury? (Pause.) Well, if you want to see any part or all of the video, let us know and we'll bring you back here in open court, play the video, with no comments, just let you watch it.

Now, your verdict must be unanimous. All 12 jurors must agree on a verdict before you authorize your foreperson to write the verdict on your behalf.

Your verdict cannot be based on sympathy, passion, public opinion, or matters outside the record.

When you've reached a verdict, Mr. Foreman, knock on the door and tell the bailiff. I may be doing some other work, but I'll send for you as promptly as I can.

Now, the verdict forms are the same for each

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basically, because they have two lines on there, and the order of the lines, as set forth on the paper, is of no importance. I have -- have to set them out in some fashion. I usually set them out in this fashion, but that has no importance.

If the State has, as to one or both of these charges, found -- or convinced you beyond a reasonable doubt of Mr. Holder's guilt as to either criminal sexual conduct with a minor second degree or third degree; if you would, as to that charge, put an "X" or a check in the line before the sentence that says, "we find the defendant guilty of criminal sexual conduct with a minor, second degree". And then the other indictment says "third degree".

If you find that the State has failed to prove Mr. Holder guilty beyond a reasonable doubt of either of these offenses, you would put a mark on the first line of the verdict line that says "we find the defendant not guilty of criminal sexual conduct with a minor second degree", and on the other, third degree.

So I'm going to allow you to go to your jury room now, but do not start deliberating until -- until you hear back from me. And while you're having your lunch, you can be at ease and just eat; or you can work while you're eating. That's your call.

So, I'll let you go to the jury room, but don't start deliberating quite yet.

(Whereupon, the jury left the courtroom at 1:02 p.m.)

THE COURT: Anything from the State regarding the charge?

MR. TOOKER: Did Your Honor say consent is no defense? I'm trying to remember.

THE COURT: I had it on my -- I had it here. I think I said it. I have got on my notes, "consent, willingness, indifference or ignorance on the part of the minor, if any, as to what was taking place does not, in any way, effect the charge of criminal sexual conduct".

MR. TOOKER: Okay.

THE COURT: I think I said it, but I got it here.

MR. TOOKER: And you very well may have, Your Honor. I'm sorry.

THE COURT: Anything from the defense?

MR. CANTRELL: Not a thing, Your Honor.

THE COURT: Okay. All right. Can you verify real quick that I did, in fact, say that?

(Whereupon, court reporter checked the record.)

(Discussion off--record concerning exhibits.)

(Whereupon, the jury began deliberations at 1:11

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p.m.)

(Whereupon, the court was in recess.)

THE COURT: Counsel is present, and I understand we have a verdict. Bring in the jury.

(Whereupon, the jury entered the courtroom at 2:17 p.m.)

THE COURT: Mr. Foreman, I understand the jury has reached verdicts?

MR. FOREMAN: Yes, sir.

THE COURT: If you would hand it to the clerk.

THE CLERK: This is indictment number 2013-GS-39-957, the State of South Carolina vs. Jonathan Matthew Holder. We find the defendant guilty of criminal sexual conduct with a minor second degree.

THE COURT: Are you sure that's what it says --

THE CLERK: Yes. This is indictment 2013-GS-39-958, the State vs. Jonathan Matthew Holder. We find the defendant guilty of criminal sexual conduct with a minor third degree.

Is this your verdict, and still your verdict, say so y'all by raising your right hands?

(All jurors raised their hand.)

THE CLERK: Thank you very much.

THE COURT: Anything from the State before the jury is dismissed?

MR. TOOKER: No, sir.

THE COURT: Anything from the defense before the jury is dismissed?

MR. CANTRELL: Not before.

THE COURT: All right. Members of the jury panel, we appreciate your help with this, and I'm going to allow you to leave at this time. You are through for the week and you will be mailed a check.

Mr. Foreman, on the way out, if you'll just step over here --

THE CLERK: I'll go back there.

THE COURT: Oh, okay. Actually he's coming back there.

(Whereupon, the jury left the courtroom at 2:19 p.m.)

THE COURT: Mr. Tooker, do you have sentencing sheets?

MR. TOOKER: Yes, sir, Your Honor. I'm just --

THE COURT: Okay. Now, the jury has been dismissed. Anything further from the defense?

MR. CANTRELL: Your Honor, only that I would renew all prior motions. Again, my motion for a directed verdict and -- directed verdict, but renew my motions and a motion for a directed verdict.

THE COURT: All right. The -- those motions are

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denied. As I found at the end of the case, the evidence was sufficient to submit the case to the jury for consideration. So I deny those motions.

Bring Mr. Holder up.

MR. TOOKER: Your Honor, if I can have just one quick -- I'm sorry.

THE COURT: I've got the penalties on this.

MR. TOOKER: I wanted to make sure --

THE COURT: The codes --

MR. TOOKER: No, if it was violent and serious. I have that with regards to CSC minor second degree, which is violent and most serious. I do not have that information for CSC minor third degree.

THE COURT: Does the victim want to say anything?

MR. TOOKER: Your Honor, the victim advocate is Brittney Roper. She would like to address the court. The victim has indicated to her that he would like her to speak on his behalf.

THE COURT: All right.

VICTIM ADVOCATE: Yes, Your Honor. Minor 1 did ask me to address the court on his behalf. Your Honor, he would just like for Your Honor to take into consideration the facts of this case, and respectively ask Your Honor that you do sentence this defendant to some jail time, as he feels like that is appropriate in

this case. Thank you.

THE COURT: Anything else from the State -- you said he had a prior record, you mentioned, but we didn't get into what it was.

MR. TOOKER: I actually -- I went through the NCIC again, and didn't see a conviction. So I don't think there's anything on his record. I saw a charge, but it was an acquittal.

THE COURT: All right.

MR. CANTRELL: Excuse me, Your Honor, and I won't try to revisit the facts or the trial itself, and that sort of thing. You have heard everything that Matt had to say in his testimony, that he -- and he gave that testimony in earnest, so I won't revisit that.

I would tell you that Matt is -- is 33 years of age, I'm sorry. You've already heard about him. He has a wife and five children. He regained employment after -- after this incident, and was employed.

Now, since January of this year, he's been on short term disability from -- from a staffing service through -- at BMW. So he is employed, but he's not working because of disability at this time. He's under doctor's care for some gastrointestinal issues and other matters that he's had some procedures as recently as April regarding that.

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But like I said, he -- he's -- and like he said, he's a resident of Pickens County, lifelong. He's currently living in West Minister. He's employed, has a family, has a wife, has a stable home.

And, Your Honor, just very simply, without minimizing the gravity of the charges at all, but taking into account all circumstances and his circumstances, I would certainly ask the court to be as lenient as possible.

THE COURT: Does anyone else want to speak on his behalf?

MR. CANTRELL: I don't think so, Your Honor.

THE COURT: Mr. Holder, anything you want to say? She can speak if she wishes to.

MRS. HOLDER: Can I say anything that I want to say?

THE COURT: Of course.

MRS. HOLDER: Matt and I have been married for almost ten years. And when we first got together, my daughter -- my oldest daughter was 18 months old, and he took her in as his daughter.

Her dad signed over her rights -- or his rights. And Matt has stepped in and been -- I can't even explain to you the father and the other half of me that he is.

And just like when -- you know, when the allegations came up, I -- you know, even seeing the taped video, I have never once thought any different of Matt because I've known him. We've grown in -- we're starting our ministry together. You know, we have bonded together as, you know, just as a power couple. And God -- I know that God knows that.

And I know beyond a shadow of a doubt, you know, I look at my children. And they love their daddy. He has such a heart for children. He'd come home and, you know, we'd make Easter baskets for these kids in this home. We do, you know, special Christmas things for these kids, write cards.

I've spent many hours, you know, in prayer for these kids. And it just -- I don't know -- I don't understand because I need him -- I need him to help me with the kids, to help me raise our family. I know that God is calling us. I just -- I don't know what else to say. He's just -- he's my best friend. I just -- I don't live my life -- or the majority of my life without him.

THE COURT: I understand that and I appreciate it. Thank you. Mr. Holder, anything you want to say?

MR. HOLDER: Yes, sir. I stand by that I'm innocent. I did my job as I was told. I've never had

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any problems there with anybody this whole -- I've tried to impact any of these kids. I -- I don't know what to say.

I have a family. I have a wife and five kids, and my family needs me more than ever right now. And I -- I've always tried to be the model citizen and do everything that I can to stay out of trouble and work. I've never not worked. Even after these allegations were made against me, I -- how hard it was to get a job. I busted my butt and I've had perfect attendance up until now.

And I've just -- I just feel like I've been wrongfully done. I -- I have no other say -- no other stance than that. I just -- I don't feel like that -- it's just a lot of different circumstances, but I just don't feel like that -- that justice was served here today.

THE COURT: Did Mr. Holder serve any time in jail already on these?

MR. CANTRELL: No, sir.

THE COURT: All right. The sentence on each of these are both the same, they are both to run concurrent. And it requires enrollment on the sex offender registry. The sentences, again, are to run concurrent. They're each for ten years.

359

MR. CANTRELL: Thank you, Your Honor.

(Whereupon, the hearing adjourned.)

360

CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR PICKENS COUNTY, SOUTH CAROLINA, ON THE 20TH AND 21ST OF MAY, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

9.29.15

Sharon D. Jones

_____

SHARON D. JONES,
CERTIFIED COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

John C. Hayes, III, Circuit Court Judge

ORIGINAL

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NOV 03 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JONATHAN M. HOLDER

APPELLANT

APPELLANT CASE NO. 2015-001185

FINAL BRIEF OF APPELLANT

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South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to declare a mistrial after the solicitor asked, as the trial court called it, the "inappropriate question" that was "without foundation" of whether appellant was gay and "interested in young boys" in a sexual abuse case?

STATEMENT OF THE CASE

On May 12, 2015, a Pickens County grand jury indicted appellant for one count of third degree criminal sexual conduct with a minor and another count of second degree criminal sexual conduct with a minor. R. 334-335; 337-338. On May 20, 2015, appellant was tried before the Honorable John C. Hayes, III, and a jury. R. 1. Samuel B. Tooker represented the State. R. 1. David D. Cantrell, Jr. represented appellant. R. 1. The jury convicted appellant. R. 325, ll. 11 – 19. Judge Hayes sentenced appellant to concurrent ten year terms of imprisonment. R. 331, ll. 21 – 25. This appeal follows.

ARGUMENT

The trial court erred in refusing to declare a mistrial after the solicitor asked, as the trial court called it, the "inappropriate question" that was "without foundation" of whether appellant was gay and "interested in young boys" in a sexual abuse case.

Factual Background

The State agreed that this sexual abuse case depended entirely upon credibility. R. 300, ll. 7 – 15. In his closing, the solicitor stated, "The issue in this case is whether or not you believe the victim when he says these things happened. That's why, in opening, I told you, credibility is paramount in any case, but particularly in this case." R. 300, ll. 7 – 15. Appellant Jonathan M. Holder ("Holder") testified in his own defense and denied the complainant's allegations of sexual abuse. R. 213, ll. 15 – 21. R. 230, ll. 10 – 20.

The complainant was a teenage boy who was a resident at an in-patient psychiatric facility in Pickens. R. 108, ll. 13 – 19. R. 109, ll. 17 – 21. The director of the facility stated that the juvenile residents "are diagnosed with ODD, bipolar, you name it. You have to be diagnosed with some sort of mental diagnosis." R. 114, ll. 8 – 12. He agreed that the juvenile residents had limited freedom. R. 114, ll. 19 – 21. Most of the residents wanted out of the facility. R. 115, ll. 1 – 5. Holder worked in the facility as a staff member responsible for watching the residents. R. 74, ll. 19 – 25.

Complainant described living in the facility as "like lockdown." R. 46, ll. 5 – 10. Complainant agreed that staff members were required to supervise the residents at all times for their safety. R. 64, ll. 14 – 17. Residents were accompanied by staff at all times when they moved around the facility. R. 99, ll. 20 – 22. R. 203, ll. 15 – 19. Staff members were

also required to keep different groups of residents separated from each other. R. 98, ll. 13 – 16.

The video surveillance system in the facility was "very extensive," but did not cover all areas. R. 78, ll. 12 – 20. Staff were told to "stay on-camera at all times . . . [t]o protect themselves and the patients." R. 81, l. 21 – 82, l. 1. The videos taken at the time of the alleged incident showed Holder and complainant entering off-camera areas while complainant was doing his chores in the laundry room and getting a book from the library. R. 84, l. 24 – 87, l. 12. R. 94, l. 4 – 96, l. 5. Holder was also off-camera with complainant in the nurse's station. R. 255, l. 6 – 256, l. 20. The nurse was gone from the station for "maybe a minute." R. 256, ll. 21 – 22. Holder agreed that staff members were instructed to stay "on-camera," but explained that if a resident's needs took him off-camera, he was allowed to follow. R. 204, l. 20 – 205, l. 14.

During these three instances, complainant alleged that Holder sexually abused him. Complainant said the first instance happened in the laundry room. R. 49, l. 21 – 50, l. 9. Complainant admitted that Holder had to be in the laundry room with him because Holder "had to make sure I was doing my job right, not trying to get contraband or whatever." R. 50, ll. 18 – 20. R. 64, ll. 11 – 17. Complainant admitted that it was not unusual for a staff member to be with him in the laundry room while he did his chores. R. 64, ll. 11 – 17. Holder testified that he was not allowed to leave complainant alone in the laundry room because of chemicals, electrical cords, and "suicide risk." R. 208, ll. 9 – 20. These rules applied to all of the residents, not just complainant. R. 208, ll. 21 – 23.

Complainant requested to do extra chores in the laundry room to earn "Avalons," the facility's in-house currency. R. 64, ll. 6 – 8. R. 110, l. 12 – 111, l. 11. Complainant stated

that he was in the laundry room with Holder when Holder made a comment about the size of his genitalia related to a box. R. 51, ll. 2 – 9. Holder showed complainant his penis and asked to see complainant's penis. R. 51, ll. 12 – 24. They touched each other for a "few minutes." R. 51, l. 25 – 52, l. 6. The total time in the laundry room was approximately thirty minutes, during which complainant continued folding clothes and working. R. 52, ll. 14 – 24. On the same day, in the nurse's station, complainant said that Holder "touched me, and asked me to put my mouth on him, and I moved away." R. 53, l. 19 – 54, l. 13.

On a different day, complainant "asked for a staff to come escort me to get a book." R. 54, ll. 8 - 19. Holder escorted complainant to the library where complainant said Holder "asked me to play with myself so that he could watch." R. 54, ll. 14 – 19. Holder stayed at the door keeping it cracked. R. 55, ll. 13 – 24. When the door shut, Holder performed oral sex on complainant until he ejaculated. R. 56, ll. 5 – 11. Complainant "grabbed a book and went back to my pod." R. 56, ll. 12 – 14.

The assistant director of the facility stated that the door to the library was "pretty heavy" and would close automatically unless someone held it open. R. 100, l. 24 – 102, l. 16. While policy was to keep the door open at all times and to be on camera at all times, the assistant director admitted that this policy "cannot be totally enforced." R. 101, l. 11 – 102, l. 16.

The first person complainant told about the alleged abuse was the facility's director, Kevin Sowell ("Sowell"). R. 56, ll. 21 – 22. Afterwards, complainant "ripped up the floors and the sink" because "[n]o one believed me." R. 57, ll. 1 – 7. A couple of months before making the allegations against Holder, complainant told his case worker "I know what I've got to do to get out of here." R. 112, l. 22 – 112, l. 17. Sowell testified that when

complainant told him when the abuse occurred, "Initially, he told me a couple of weeks prior. Then it switched to a couple of days prior of June 5, 2012." R. 113, ll. 18 – 21. Sowell said complainant's first report contained discrepancies in the times. R. 115, ll. 20 – 24.

When asked about complainant's reputation for truthfulness, Sowell testified that complainant "would lie and manipulate at times" and admitted he would lie in making statements about staff members. R. 117, ll. 5 – 24. Sowell described complainant as being untruthful. R. 118, ll. 5 – 8. Complainant had made up lies about other residents which had been contradicted by the video surveillance footage. R. 118, ll. 9 – 16. The facility's assistant director, Meghann Harvey ("Harvey"), tried to avoid defense counsel's questions about complainant's reputation for truthfulness, initially answering that complainant was "a handful." R. 105, ll. 5 – 12. On further cross-examination, Harvey admitted giving a statement to police that complainant was not truthful. R. 105, l. 13 – 107, l. 1.

Holder denied abusing complainant. R. 213, ll. 15 – 21. R. 230, ll. 10 – 20. Holder grew up in Pickens County. R. 197, ll. 1 – 4. He was 33 years old at the time of trial. R. 197, ll. 5 – 6. He was married and had five children. R. 197, ll. 7 – 16. He began working at the facility in March 2011. R. 198, ll. 10 – 15. Each unit in the facility had approximately four staff members supervising 10-12 residents. R. 201, ll. 17 – 23. The residents were "under 24 hour watch" and staff members "had to do 15 minute checks of them." R. 202, ll. 14 – 18. The residents had "to be accompanied at all times" and the units were not allowed "to mingle together." R. 203, ll. 15 – 23.

Holder stated that complainant chose to earn extra "Avalons" by working in the laundry room. R. 206, l. 25 – 207, l. 17. Complainant was not allowed to be in the laundry

room by himself. R. 208, ll. 9 – 20. On the day of the alleged abuse, Holder showed complainant how to use the washer and dryer. R. 207, l. 22 – 209, l. 21. The laundry room was in an area where residents or staff could walk through at any given time. R. 213, l. 22 - 214, l. 3. Holder did not remember anything out of the ordinary occurring that night. R. 215, ll. 3 – 13.

Regarding the alleged incident in the library, Holder's supervisor asked him to take complainant to the library to get a book. R. 217, ll. 8 – 25. The door to the library was in the commons area for the entire facility where people congregated and routinely walked. R. 221, ll. 16 – 24. The door to the library was made of metal, heavy, and automatically closed. R. 222, l. 21 – 223, l. 2. Complainant looked through the books and magazines. R. 224, ll. 17 – 21. Holder was required to supervise complainant because of safety issues. R. 223, l. 17 – 224, l. 21. The video showed complainant in the library for approximately 18 minutes and the door opening and closing; Holder testified that he was holding the door during the video. R. 226, ll. 10 – 17. Holder denied abusing complainant in the library and took complainant back to his room after he got his books. R. 230, l. 10 – 232, l. 29.

The Motion for a Mistrial

After the solicitor finished a line of questioning that implied Holder had asked another staff member about complainant's whereabouts, the following occurred:

MR. TOOKER: And – one moment, Your Honor.

BY MR. TOOKER:

Q. So are you gay?

A. No.

Q. Are you interested in young boys?

A. No.

MR. CANTRELL: Your Honor, again, I object.

THE COURT: I sustain the objection.

MR. CANTRELL: There's no foundation.

THE COURT: I sustain the objection.

MR. TOOKER: Okay. All right.

MR. CANTRELL: Your Honor, could I be heard outside the presence—

R. 269, l. 21 – 270, l. 8 (emphasis added). Judge Hayes excused the jury. After the jury left the courtroom, Judge Hayes chastised the solicitor:

> THE COURT: All right. Before I hear from Mr. Cantrell, Mr. Tooker, I'm sure it's just a habit, but you don't have to comment after I ruled. Once I've ruled, that it.
>
> MR. TOOKER: Yes, sir.
>
> THE COURT: So you can't say, okay, or make – anyway, that's enough said. All right.
>
> MR. TOOKER: Yes, sir.

R. 270, ll. 11 – 19.

Defense counsel then moved for a mistrial. R. 270, l. 20 – 272, l. 5. Defense counsel argued the question was irrelevant and was asked "with no basis, no foundation whatsoever." R. 270, ll. 20 – 25. Defense counsel also argued that Holder had been prejudiced by the question:

> And, I guess, to be perfectly candid with Your Honor, we don't know the predisposition of members of the jury. If there is no foundation for such a statement or allegation, we don't know the effect it could have. It was unnecessary. I believe it's grounds for a mistrial.

R. 271, ll. 6 – 11. Defense counsel further argued that Holder could not get a fair trial, that there was no foundation for the question, it was prejudicial, "and I don't think it can be undone at this stage." R. 271, l. 12 – 272, l. 5.

The solicitor tried to explain his basis for asking the question:

> MR. TOOKER: On direct, Mr. Cantrell elicited from the defendant that he's married, that he does have several children. He's expecting another child. **Candidly, and this is just my personal theory in the case, but it seems to me like these things happened by virtue of some sort of repression.**
>
> **THE COURT: Some sort of what?**
>
> **MR. TOOKER: Repression. Repressed—if these things are true—and I'm not—**
>
> THE COURT: Well, you're not a psychiatrist or a psychologist.
>
> MR. TOOKER: No, I'm not.
>
> THE COURT: And have you had your theory [vetted] by someone who has expertise to tell you whether you are going down the right rabbit trail or not?
>
> **MR. TOOKER: Absolutely not, sir.** But I—again, ultimately, what we have got to do is make our case in close—

R. 272, ll. 7 – 24 (emphasis added). When asked by Judge Hayes for his good faith basis to ask the question "other than your theory of some kind of repression," the solicitor stated it was because of Holder's responses to defense counsel's standard background questions about whether he was married and had children. R. 273, ll. 3 – 21.

After this response by the solicitor, the trial judge ruled on the defense's motion for a mistrial:

> THE COURT: Well, I think-- I think it was an inappropriate question, quite candidly, **because there is nothing without foundation to throw that in. It is – it is just inappropriate.** I'm not going to go any further than that.

> However, I do not feel that it manifests a necessity to grant a mistrial. I'm going to ask the jury to disregard that. **If we – if we have another episode like that, then we will bring this 2 ½ day – or 2 day trial to a screeching halt.** And I think I have said enough on that, too. I tend to ramble. I think I have rambled enough. So I'm not going to grant it. I don't think it manifests the necessity to grant a mistrial.

R. 273, l. 22 – 274, l. 10 (emphasis added). Judge Hayes then stated that "even though the defense has not requested it, I want the record be clear that I'm doing this sua sponte, to give the correct – curative instructions and we'll proceed." R. 274, ll. 11 – 14. When the jury returned, Judge Hayes told them to disregard the question and the answer. R. 274, l. 18 – 275, l. 6.

Discussion

The trial court should have granted a mistrial because of the solicitor's irrelevant and inflammatory appeal to stereotypes about homosexuals. Homosexuals have a long history of being discriminated against, both in society and in the law. See Obergefell v. Hodges, 135 S.Ct. 2584, 2596 (2015). In Obergefell, the Court recognized that this prejudice would continue when it stated that "it must be emphasized that religions, and those who adhere to religious doctrines, may continue to advocate with utmost, sincere conviction that, by divine precepts, same-sex marriage should not be condoned." Id. at 2607. Writing with a practical eye after the Obergefell decision, a practitioner in Wyoming advised that, "Discomfort with or prejudice against lesbians and gay men is a fact of life within almost any jury pool." John D. Rawls, Practical Effects of the Gay Marriage Opinion, 38 Wyo. Law. 52 (Oct. 2015).

Juror prejudice is especially present in child sexual assault cases. See Tisha R. A. Wiley, Bette L. Bottoms, Effects of Defendant Sexual Orientation on Jurors' Perceptions of Child Sexual Assault, 33 Law & Hum. Behav. 46 (Feb. 2009). In Professors Wiley and Bottoms' study, "Jurors made more pro-prosecution decisions in cases involving a gay

versus straight defendant, particularly when the victim was a boy." Id. at 46. The professors noted that "One stereotype about gay men generally is that they are oversexed, predatory child molesters who are drawn to boys in particular." Id. "Surveys reveal that people presume a link between homosexuality and pedophilia." Id. at 47. "[I]n one survey, 30% of registered voters endorsed a statement that 'typical' behavior for gay men included trying to 'take advantage sexually of boys and young men." Id. After their study, the professors reported that their "data suggest that compared to straight defendants, defendants perceived to be gay face unfair presumptions of guilt in child sexual abuse cases." Id. at 55.

As the trial judge recognized, the solicitor's question was irrelevant and "without foundation." R. 273, l. 22 – 274, l. 14. In a Missouri sexual assault case, the state introduced evidence the defendant was a homosexual. State v. Ellis, 820 S.W.2d 699, 701-02 (Mo. Ct. App. 1991). The court held, "The state attempts to justify the testimony regarding homosexuality and the earlier incident with Burks on the basis that it establishes a common plan and a general proclivity to commit the offense." Id. at 702. "To the extent this contention is based upon the proposition that homosexuality *per se* establishes a propensity to engage in sexual activities with children under the age of consent, we reject it out of hand." Id. "To allow its injection into the trial here was an attack on the character and reputation of the defendant which character and reputation he had not put into issue." Id.

In State v. Blomquist, 178 P.3d 42, 50 (Kan. Ct. App. 2008), the Kansas Court of Appeals reversed because of the prosecutor's "appeals to passion, prejudice, and fear." The court criticized the State's argument because it assumed "that a sexual desire for children is among those desires which define a homosexual orientation." Id. at 49. The court quoted

extensively from a video recording of the police's interrogation of the defendant during which the officer repeatedly asked the defendant if he was gay. Id. at 47. Just as the prosecutor's strategy of exploiting bias against gay people was rejected in Kansas, it should be rejected here.

Here, the solicitor intentionally tried to link homosexuality with pedophilia with the timing of his questions. R. 269, l. 21 – 270, l. 1. Immediately after asking Holder if he was gay he asked him if he was "interested in young boys." R. 269, l. 21 – 270, l. 1. The transcript indicates that the solicitor paused before asking his questions, demonstrating a deliberate strategy. R. 269, l. 21 – 270, l. 1. Furthermore, the solicitor's explanation for asking the question—his theory of "repression"—confirms that his strategy was to show that because Holder must be a "repressed" homosexual, it followed that he was more likely to molest children. R. 272, l. 7 – 273, l. 21. The solicitor's appeal to prejudice was also evident when he explained that he needed to rebut the notion that Holder was heterosexual and therefore could not have abused complainant. R. 273, ll. 11 – 21.

The trial judge correctly realized the irrelevance and highly prejudicial nature of the solicitor's questions, but erred in not granting a mistrial. See Rules 401, 403, SCRE. Whether the prosecution intentionally elicits inadmissible evidence is a factor the Court considers in determining whether to grant a mistrial. State v. Ferguson, 376 S.C. 615, 619, 658 S.E.2d 101, 103 (2008). In State v. Parker, 391 S.C. 606, 609, 707 S.E.2d 799, 800 (2011), the trial court granted a mistrial in part based on the solicitor's playing of an unredacted videotape containing graphic evidence. Id. The parties previously agreed to redact the videotape, but claiming "inadvertence," the solicitor played the unredacted

version for the jury. Id. In this case, the solicitor asked the inflammatory questions after a deliberate pause.

In State v. Ross, 272 S.C. 56, 249 S.E.2d 159 (1978), the defendant asked for a mistrial after the prosecutor elicited character evidence. The Court reversed and granted the defendant a new trial, stating that "the testimony elicited had the effect of placing the bad character of the defendant in issue when she herself had not placed her good character in issue." Id. at 60, 249 S.E.2d at 161.

As argued by defense counsel that the prejudicial effect could not be "undone," the trial judge's decision to give a "sua sponte" curative instruction was insufficient to cure the prejudice caused by the solicitor's deliberate insertion of the spectre that Holder might be a homosexual and therefore must be a child molester. An analogous case demonstrating that the prejudice could not be cured is State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998). In Nelson, evidence such as the defendant's membership in the "Punky Brewster" fan club was admitted by the State to show that he was a pedophile. Nelson at 4-5, 501 S.E.2d at 717-18. The Court held the evidence was "clearly inadmissible" as propensity evidence and reversed. Id. at 6-7, 501 S.E.2d at 718-19.

The rule against inadmissible propensity evidence about the defendant's character from Nelson applies to this case. The solicitor implanted in the jury's minds that Holder might be gay and therefore must also be attracted to young boys. Solicitors are bound by rules of fairness and they cannot ask questions or make arguments calculated to arouse a juror's passions or prejudice. Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010); Donnelly v. DeChristoforo, 416 U.S. 637, 643 (1974).

The solicitor again alluded to the theme of homosexuality in his closing argument when he claimed that complainant's version was believable because he admitted he ejaculated. R. 305, l. 11 – 306, l. 9. The solicitor argued that complainant was credible because if he had been making up the story, he would have spun the story to show he was not gay. R. 305, l. 11 – 306, l. 9. Speculating on what complainant might have said, he told the jury, "You're going to say, yeah, he tried to do these things to me. **I was like, whoa, Bro, I'm not into that.** That's not what I'm about. **That's not cool, right?**" R. 305, l. 11 – 306, l. 9 (emphasis added).

The State rushed this case to trial over appellant's request for a continuance because the solicitor had "significant concerns about my ability to ensure the appearance of the victim for another trial." R. 17, ll. 13 – 21. The solicitor did not believe complainant would appear even if served with a subpoena. R. 17, ll. 20 – 21. Both the director and the assistant director of the facility admitted that complainant had a reputation for being untruthful. R. 118, ll. 5 – 8. R. 105, l. 13 – 107, l. 1. The State also tried to call as a witness another resident from the facility who would claim that Holder abused him, but Judge Hayes found the boy's credibility lacking and would not allow him to testify. R. 171, l. 7 – 188, l. 11.

The State's injection of the notion that Holder might be gay and therefore was sexually attracted to young boys was irrelevant and highly prejudicial. The trial judge erred in not granting a mistrial. Holder could not receive a fair trial after the solicitor forced him

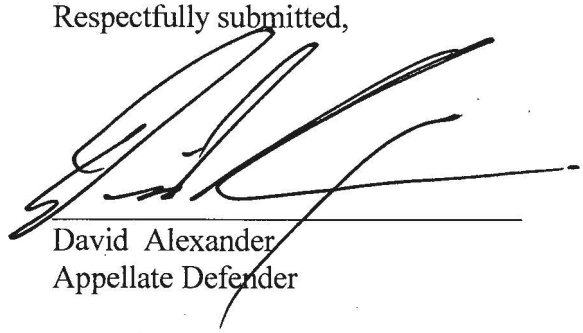
to deny he was gay and to deny he was sexually attracted to children.[1] This Court should reverse and remand Holder's case for a new trial.

[1] In assessing whether Holder's trial was fair, this Court can also note that he received the erroneous jury charge that "the testimony of the victim need not be corroborated." R. 321, ll. 3 – 6. The Supreme Court recently confirmed that giving this charge is an unconstitutional comment on the facts. State v. Stukes, 416 S.C. 493, 787 S.E. 2d 480 (2016). As in Stukes, this charge was highly prejudicial in this case because both parties repeatedly emphasized that the entire case revolved around complainant's credibility.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 3rd day of November, 2016.

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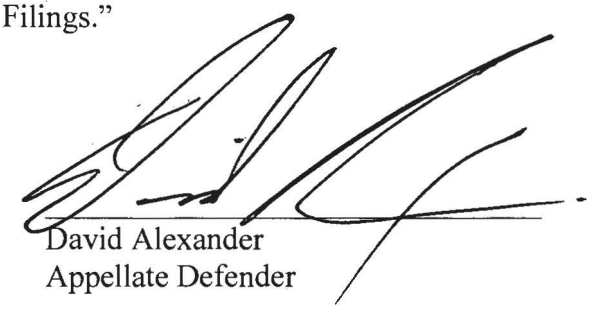
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SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 20014, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 3, 2016



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ORIGINAL

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
John C. Hayes, III, Circuit Court Judge

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THE STATE,

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John C. Hayes, III, Circuit Court Judge

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The trial court did not abuse its discretion by declining to grant a mistrial under the circumstances of Appellant's case because the challenged portion of the assistant solicitor's cross-examination of Appellant did not render Appellant's trial fundamentally unfair when considered in the context of the record as a whole, and any prejudice that could have resulted from those remarks was eliminated through the issuance of a curative instruction to the jury. 9

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State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) 10

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State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008) 10

State v. Powers, 331 S.C. 37, 501 S.E.2d 116 (1998) 10

State v. Walker, 366 S.C. 643, 623 S.E.2d 122 (Ct.App.2005) 11

State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) 9

State v. Woods, 345 S.C. 583, 550 S.E.2d 282 (2001) 10

STATEMENT OF ISSUE ON APPEAL

The trial court did not abuse its discretion by declining to grant a mistrial under the circumstances of Appellant's case because the challenged portion of the assistant solicitor's cross-examination of Appellant did not render Appellant's trial fundamentally unfair when considered in the context of the record as a whole, and any prejudice that could have resulted from those remarks was eliminated through the issuance of a curative instruction to the jury.

STATEMENT OF THE CASE

During its June 2013 term, the Pickens County Grand Jury indicted Appellant Jonathan Matthew Holder for second-degree criminal sexual conduct with a minor and third-degree criminal sexual conduct with a minor following an investigation into allegations Appellant sexually assaulted a minor resident at an inpatient treatment center where he worked. On May 20, 2015, Appellant proceeded to a jury trial before the Honorable John C. Hayes, III. On May 21, 2015, the jury convicted Appellant of second-degree criminal sexual conduct with a minor and third-degree criminal sexual conduct with a minor. The trial court sentenced Appellant to concurrent sentences of ten years' imprisonment for each conviction. Appellant then filed a timely notice of appeal.

STATEMENT OF FACTS

On October 13, 2011, Victim, a fifteen-year-old ward of the State,[1] was admitted to Hampton Psychiatric Residential Facility (hereinafter "Hampton"), an inpatient treatment center for minors with psychological, behavioral, and other mental health concerns, to address his on-going behavioral problems. (R. 33-35, 46, 71, 73, 105, 108, 110, 114-15). Hampton was designed to care for up to fifty-two boys at a time; the facility was operated by more than eighty employees called direct care staff. (R. 46-47, 73, 114). Direct care staff was responsible for resident care, including preventing the residents from harming themselves or others, assisting with their basic needs, and rewarding or punishing the residents. (R. 74-75, 109). Appellant was a direct care staff employee at Hampton while Victim resided there. (R. 49, 108-10, 198-200). Hampton provided the residents with bare essentials, but well-performing residents were able to do chores and other tasks to earn Avalons, an in-house currency residents could use to purchase special items. (R. 47-48, 110-11, 114).

Hampton was equipped with an extensive camera system throughout the facility, but there were several locations without cameras, including the library, the laundry room, and portions of the nurse's station. (R. 77-78, 81, 113). Direct care staff was advised to remain on-camera at all times and to avoid being off-camera with residents. (R. 81, 102, 204). Additionally, Hampton protocol required all doors to remain open. (R. 101). This policy was for the protection of both residents and direct care staff. (R. 81-82)

In late spring of 2012, Victim was progressing well in the Hampton's program and was able to do extra chores to earn Avalons. (R. 47, 105, 110, 263). One particular evening, Victim asked to do laundry to earn Avalons. (R. 207-08). Pursuant to Hampton's policy, a direct care

[1] Victim had been in the custody of the Department of Social Services since his parents' rights were terminated when he was twelve years old. (R. 71).

staff member was required to accompany him while he completed his chores and Appellant was tasked with assisting Victim in the laundry room, a small area not equipped with cameras. (R. 50, 81, 95, 113, 208-10). While in the laundry room with the door shut, Appellant made comments comparing the size of his genitalia to a box of laundry detergent. (R. 50-51). Appellant then showed Victim his penis and asked Victim to show him his penis. (R. 51). Appellant and Victim touched each other's genitals for a few minutes. (R. 51-52). The entire encounter lasted approximately thirty minutes. (R. 52).

Later that same evening, Appellant was monitoring Victim as he cleaned the nurse's station. (R. 53-54). While Victim was cleaning a back room out of camera view, Appellant touched Victim's genitals and asked Victim to put his mouth on Appellant's penis. (R. 53-54, 63-64). Victim declined and moved away from Appellant. (R.53-54). The encounter lasted approximately ten minutes and occurred when the on-duty nurse left the station. (R. 54, 64).

Another evening shortly thereafter, Victim requested to retrieve a book from the library and Appellant was asked to accompany Victim to the library. (R. 54, 217-18). Appellant, who had brought a large pizza into work that evening against Hampton policy, gave Victim a few slices of pizza to eat while on the way to the library. (R. 57-58, 219-20). It took Appellant and Victim a few minutes to walk to the library, a small room without any windows and one door that opened to a common area. (R. 54-55, 59-62, 218, 222-23). Once inside the library, Appellant left the door cracked and stood inside the library with Victim. (R. 54-55). Appellant instructed Victim to masturbate and Victim complied while Appellant watched. (R. 55-56). Appellant then shut the door completely and performed fellatio on Victim until he ejaculated. (R. 56). Following the assault, Victim grabbed a book and went back to his room. (R. 56).

After the abuse, Victim began acting out aggressively, including destroying property around the facility. (R. 56-57). A few days later, Victim disclosed the abuse to Kevin Sowell, the director of Hampton. (R. 56, 108, 111). Victim attributed the decline in his behavior to anger over the abuse and frustration over his perception that no one believed he was abused. (R. 56-57). Victim remained at Hampton for a few months following the abuse. (R. 57, 110).

Following Victim's disclosure, Sowell began an internal investigation into Victim's abuse allegations, which included looking at camera footage from the locations where Victim alleged Appellant had sexually abused him. (R. 111-13). The various cameras through Hampton showed Appellant and Victim alone and off-camera during the periods Victim alleged he was sexually abused by Appellant. (R. 36, 75-77, 81-85, 94-97, 111-13). The allegations were eventually reported to DSS, who informed the Pickens City Police Department. (R. 32-33). The case was assigned to Detective Samuel Byers, who interviewed Victim three times. (R. 32-34). Detective Byers also watched video footage from Hampton and reviewed a statement made by Appellant. (R. 34-36). Following his investigation, Detective Byers sought and obtained warrants for Appellant's arrest. (R. 36). Appellant was arrested and indicted for second-degree criminal sexual conduct with a minor and third-degree criminal sexual conduct with a minor.

Appellant proceeded to a jury trial on May 20, 2015. During its case-in-chief, the State presented testimony from Detective Byers, Victim, Sowell, Victim's DSS caseworker Johniece Wofford, and Hampton's Assistant Facility Director Meghann Harvey. The State also presented Shauna Galloway-Williams, who was admitted as an expert in the field of child abuse disclosure dynamics and who testified about delayed disclosure, risk factors for sexual abuse, and grooming of victims. (R. 120-167). Additionally, the State presented and published to the jury the video

footage from Hampton showing Appellant and Victim alone, often with the door shut, in the laundry room, nurse's station, and library. (R. 75-77, 81-85, 94-97, 111-13).

Appellant testified in his defense and denied abusing Victim. (R. 196-237, 241-69, 274-81). Appellant, who was thirty-three years old at the time of trial, testified he began working at Hampton as direct care staff in March of 2011. (R. 197-98). He testified he had worked in Victim's unit previously and was familiar with Victim. (R. 200, 205-06). He testified he would occasionally accompany Victim while he did chores to earn Avalons, something he also did with other residents. (R. 206-07). Appellant testified that although Hampton policy was to remain on-camera at all times with residents, it was impossible to stay within the view of a camera at all times and staff was allowed to go off-camera if necessary to care for or supervise a resident. (R. 204-05). Appellant testified he accompanied Victim one evening when Victim was doing laundry and he was unable to leave Victim alone at any point due to risks associated with the chore, including electrical and chemical risks. (R. 207-08). He testified nothing inappropriate occurred while he assisted Victim with the laundry. (R. 213).

Appellant testified he also took Victim to the library one evening to retrieve a book at the request of his supervisor. (R. 217-18). He testified he brought a pizza in to share with residents and fellow staff that evening, which he testified was a common practice despite formally being against Hampton policy, and he gave Victim pizza because Victim asked for some. (R. 219-21). He testified the library door was heavy and automatically shut if he did not hold it open. (R. 222-23). He testified he tried to hold the door open the entire time, but allowed it to shut briefly when he was helping Victim select a book or keeping him separated from other residents. (R. 227-29). Appellant insisted nothing inappropriate happened between himself and Victim in the library. (R.

230). He similarly testified nothing inappropriate happened when he assisted Victim in cleaning the nurse's station. (R. 231-32).

During the cross-examination of Appellant, the following exchange occurred between the assistant solicitor and Appellant:

> Q. So are you gay?
>
> A. No.
>
> Q. Are you interested in young boys?
>
> A. No.

(R. 269-70). Defense counsel objected and the trial court sustained his objection. (R. 270). Defense counsel then asked to be heard outside the presence of the jury. (R. 270). Once the jury cleared the courtroom, defense counsel moved for a mistrial, arguing the line of questioning was irrelevant, without foundation, and prejudicial. (R. 270-71). The assistant solicitor responded the line of questioning was in reply to defense counsel's questioning about Appellant's marital status and number of children, which he theorized "revealed or developed that he is a heterosexual." (R. 272-73). He elaborated his theory of the case was that Appellant was a repressed homosexual. (R. 272-73).

After hearing from both parties, the trial court denied Appellant's motion for a mistrial. (R. 273-74). The trial court stated:

> Well, I think—I think it was an inappropriate question, quite candidly, because there is nothing without foundation to throw that in. It is—it is just inappropriate. I'm not going to go any further than that.
>
> However, I do not feel that it manifests a necessity to grant a mistrial. I'm going to ask the jury to disregard that. If we—if we have another episode like that, then we will bring this two and a half day—or two day trial to a screeching halt. And I think I have said enough on that, too. I tend to ramble. I think I have rambled

> enough. So I'm not going to grant it. I don't think it manifests the necessity to grant a mistrial.
>
> I will give, even though the defense has not requested it, I want the record to be clear that I'm doing this *sua sponte*, to give the correct—curative instructions and we'll proceed.

(R. 273-74).

When the jury returned to the courtroom, the trial court issued the following instruction:

> Members of the jury panel, shortly before you went out, the—Mr. Tooker asked the witness whether or not he was gay. That was not an appropriate question. There is no evidence in this record to support that question. The question is not relevant—the question nor the answer.
>
> So please disregard the fact that the question was asked. Mr. Holder answered it no, so you can disregard that, too. But just disregard—that's not an issue in this case to any degree whatsoever. So disregard the fact that that question was asked. You may proceed.

(R. 274-75). The assistant solicitor finished his cross-examination without incident and defense counsel re-examined Appellant before resting his case.

ARGUMENT

The trial court did not abuse its discretion by declining to grant a mistrial under the circumstances of Appellant's case because the challenged portion of the assistant solicitor's cross-examination of Appellant did not render Appellant's trial fundamentally unfair when considered in the context of the record as a whole, and any prejudice that could have resulted from those remarks was eliminated through the issuance of a curative instruction to the jury.

Appellant contends the trial court erred by denying his motion for a mistrial following the assistant solicitor's line of questioning about his sexuality and interest in young boys. Specifically, Appellant complains the questions were irrelevant and highly prejudicial and avers the assistant solicitor deliberately intended to appeal to the stereotypical fallacy that homosexual males prey upon young boys, thereby irreparably tainting the jury. As a result, Appellant asserts the trial court's failure to grant defense counsel's mistrial motion and immediately abort the trial abridged his constitutional right to have his case decided by a fair and impartial jury.

Contrary to Appellant's contentions, Appellant's right to a trial by a fair and impartial jury was not adversely impacted by the assistant solicitor's line of questioning because the trial court promptly cured any possible prejudice to ensure the assistant solicitor's line of questioning did not impact the impartiality of the jury. Furthermore, the trial court determined the impartiality of the jury was not adversely impacted by the challenged line of questioning, and the court's determination in that regard was supported by the evidence presented during trial. Under those circumstances, the trial court did not abuse its broad discretion in refusing to grant the extreme measure of a mistrial in Appellant's case. Appellant's convictions should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Significantly, a decision as to whether to grant or deny a motion for mistrial rests within the sound discretion of the trial court, and a trial court's ruling in regard to a mistrial motion will **not** be disturbed on appeal absent a prejudicial abuse of

discretion. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 627-28 (2000); see State v. Coaxum, 410 S.C. 320, 331, 764 S.E.2d 242, 247 (2014) ("[T]o receive a new trial, the defendant must show a prejudicial abuse of discretion."); State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) ("A mistrial should not be granted unless absolutely necessary. Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial. In order to receive a mistrial, the defendant must show error and resulting prejudice." (citations omitted)). Abuses of discretion occur where the trial court's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010).

In every criminal case tried in South Carolina, a defendant has a constitutional right to a fair trial. State v. Woods, 345 S.C. 583, 587, 550 S.E.2d 282, 284 (2001); see Harris, 340 S.C. at 63, 530 S.E.2d at 627 ("The Sixth and Fourteenth Amendments of the United States Constitution guarantee a defendant a fair trial by a panel of impartial and indifferent jurors."). That right guarantees to a defendant a trial by a panel of impartial, indifferent jurors. State v. Parker, 381 S.C. 68, 96, 671 S.E.2d 619, 633 (Ct. App. 2008). Importantly, it is the duty of the trial court to ensure a jury comprised solely of fair, impartial, and unbiased jurors ultimately decides a defendant's case. State v. Powers, 331 S.C. 37, 43, 501 S.E.2d 116, 119 (1998). However, the "[g]ranting of a mistrial is a serious and extreme measure which should only be taken when the prejudice can be removed no other way. Generally, a curative instruction to disregard the testimony is deemed to have cured any alleged error." State v. Ferguson, 376 S.C. 615, 618–19, 658 S.E.2d 101, 103 (Ct. App. 2008) (citing State v. Edwards, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct.App.2007)); see also State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009) ("The granting of a motion for a mistrial is an extreme measure that should only be taken

if an incident is so grievous that the prejudicial effect can be removed in no other way." (citations omitted)).

In the case at bar, Appellant was not entitled to a mistrial because the trial court's curative instruction sufficiently cured any error or potential prejudice. Immediately following the assistant solicitor's questions about Appellant's sexuality and interest in young boys, defense counsel objected, the trial court sustained the objection, and the jury was quickly removed from the courtroom. (R. 269-70). After the jury was removed, defense counsel moved for a mistrial, citing a lack of foundation and relevancy. (R. 270-73). Defense counsel also noted the "predisposition of the members of the jury" and the possible "effect" of the questioning was unknown and could potentially be prejudicial. (R. 271-72). After listening to the assistant solicitor's response,[2] the trial court admonished the assistant solicitor and cautioned him against asking any more questions without proper foundation. (R. 272-74). The trial court then denied defense counsel's motion for a mistrial based on a lack of manifest necessity. (R. 274). The trial court elected to *sua sponte* give a curative instruction. (R. 274). As soon as the jury returned to the courtroom, the trial court instructed the jury that the questions were irrelevant, inappropriate, and must be disregarded entirely. (R. 274-75).

"It is well known '[a] curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.'" Harris, 382 S.C. at 119, 674 S.E.2d at 538 (quoting State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct. App. 2005)). In Harris, the assistant solicitor improperly asked a witness whether the defendant had ever hit her. Harris, 382 S.C. at 119, 674 S.E.2d at 538. Defense

[2] Appellant cites to the assistant solicitor's comments regarding his theory of the case—that Appellant was a repressed homosexual male—in support of his argument that he was irreparably prejudiced. However, these comments were made **outside** the jury's presence and this "theory" was never presented to the jury or mentioned in the State's closing argument.

counsel immediately objected and moved for a mistrial. Id. The trial court denied the mistrial motion but gave the jury the following curative instruction, "An objection was raised as to any hitting or spanking of the young man that was on the witness stand or the other children. I sustained the objection and I ask that you disregard the question that was raised by [the State]." Id. On appellate review, this Court determined "any alleged error was cured" by the trial court's curative instruction, noting the instruction "explained to the jury they were not allowed to consider the question in their deliberations" and specifically instructed the jury to disregard the question. Id.

The present case is analogous to Harris. In both cases, the trial court swiftly issued a curative instruction to the jury explicitly stating the line of questioning was improper and the jury must disregard it entirely. Therefore, any error in the present case was cured by the trial court's curative instruction. Appellant was not entitled to a mistrial and the trial court did not abuse its discretion in denying Appellant's mistrial motion.

Despite the trial court's curative instruction, Appellant maintains he was nonetheless entitled to a mistrial because the prejudicial effect could not be cured. In support of this argument, Appellant cites to State v. Nelson, 331 S.C. 1, 501 S.E.2d 716 (1998), a case where the South Carolina Supreme Court reversed and remanded Nelson's convictions for four counts of first-degree criminal sexual conduct with a minor and four counts of lewd act with a minor, finding that numerous children's toys, photographs, videos, and other evidence tending to depict Nelson as a pedophile were improperly admitted as character evidence. Id. at 6, 501 S.E.2d at 719.

Despite Appellant's attempts to draw parallels between the two cases, Appellant's case is readily distinguishable from Nelson. In Nelson, the trial was rife with evidence of Nelson's

infatuation with young brunette girls of similar appearance to the victim, including his membership in a "Punky Brewster" fan club. Id. at 4-5, 501 S.E.2d at 717-18. In the present case, the assistant solicitor asked two brief questions in succession, amounting to less than a minute of the two-day trial. Furthermore, there was no further mention of Appellant's sexuality during the rest of the trial including in the State's closing argument. Therefore, any potential prejudice was minimal and was cured by the trial court's curative instruction. Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, this Court should affirm the judgment and conviction of the lower court.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 27, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
OCT 27 2016
SC Court of Appeals

APPEAL FROM PICKENS COUNTY
John C. Hayes, III, Circuit Court Judge

Appellate Case No. 2015-001185

THE STATE,

Respondent,

v.

JONATHAN MATTHEW HOLDER,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCAR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Findings."

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Attorney General

MEGAN HARRIGAN JAMESON
Assistant Attorney General

WILLIAM W. WILKINS, III
Solicitor, Thirteenth Judicial Circuit

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ATTORNEYS FOR RESPONDENT

October 27, 2016

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Jonathan M. Holder, Appellant.

Appellate Case No. 2015-001185

Appeal From Pickens County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2017-UP-239
Submitted May 1, 2017 – Filed June 7, 2017

AFFIRMED

Appellate Defender David Alexander, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Megan Harrigan Jameson, both of Columbia; and Solicitor William Walter Wilkins, III, of Greenville, all for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Rogers*, 361 S.C. 178, 183, 603 S.E.2d 910, 912-13 (Ct. App. 2004) (holding for an issue to be preserved for appellate review, it must be "(1)

raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity" (quoting Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002))); *State v. George*, 323 S.C. 496, 510, 476 S.E.2d 903, 911-12 (1996) ("If the trial [court] sustains a timely objection to testimony and gives the jury a curative instruction to disregard the testimony, the error is deemed to be cured."); *id.* ("No issue is preserved for appellate review if the objecting party accepts the [trial court's] ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial."); *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 130 (Ct. App. 2005) ("A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission.").

AFFIRMED.[1]

WILLIAMS and KONDUROS, JJ., and LEE, A.J., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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June 27, 2017

The Honorable Harold P. Welborn, Jr.
PO Box 215
Pickens SC 29671-0215

REMITTITUR

Re: The State v. Jonathan M. Holder
Lower Court Case No. 2013GS3900957, 2013GS3900958
Appellate Case No. 2015-001185

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
David Alexander, Esquire
Megan Harrigan Jameson, Esquire
William Walter Wilkins, III, Esquire

FORM 5

STATE OF SOUTH CAROLINA)
)
County of PICKENS)
)
Jonathan M. Holder #364105)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2018-CP-39- 576

2018 MAY 15 A 9:3

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Tyger River Corr. Inst. 200 Prison Rd. Enoree, SC 29335

2. Name and location of Court which imposed sentence Gen. Sessions / Pickens Co.

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2013-GS-39-957 / Criminal sexual cond. w/minor 2nd degree

   (b) 2013-GS-39-958 " " " " " 3rd "

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) May 21, 2015 10 yrs

(b) May 21, 2015 10 yrs CONCURRENT

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. SC. Ct. of Appeals

ii. N | A

iii.

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. N | A

iii.

(c) the date of each such result:

i. June 7, 2017

ii. N | A

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. U.P. # 2017-UP-239

ii. N | A

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N | A

(b)

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of trial counsel

(b) Ineffective assistance of Appellate counsel

(c) N/A

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a)

(b) SEE ATTACHED SHEETS

(c) 1 – 6

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? YES

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Appeal

ii. N

iii.

iv. A

(b) the name and location of the Court in which each was filed:

i. S.C. Ct. of Appeals

ii. N

iii.

iv. A

(c) the disposition thereof:

i. Affirmed

ii. N/A

iii.

iv.

(d) the date of each such disposition:

i. June 7, 2017

ii. N/A

iii.

iv.

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. U.P.# 2017-CIP-234

ii. N/A

iii.

iv.

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii.

iii.

(b) the proceedings in which each ground was raised:

i. N/A

ii.

iii.

19. State clearly the relief you seek in filing this application:

New trial, New appeal and any other relief that I am entitled to and this Ct. deems just and fair.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
County of Spartanburg)

VERIFICATION

2018 MAY 15 A 8:30
CLERK OF COURT
SPARTANBURG COUNTY, SOUTH CAROLINA

I, Jonathan Matthew Holder, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

J. Matthew Holder

SWORN to and subscribed before me this 8th day of May, 2018.

(L.S.)
Notary Public

My Commission Expires: March 24 2027

Revised 3/2003

410

2018 MAY 15 A 9:39

CLERK OF COURT

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

Matthew Holder, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this 8th day of May, 2018.

Notary Public

My Commission Expires: March 24, 2027

Revised 3/2003

II (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Here, counsel, David D. Cantrell, Sr. acts and or omission, (including but not limited to), PREJUDICED me, when he failed to use due diligence in trying to properly find and procure my witnesses that I needed to testify, "that they had heard the victim state, that I did not do this crime "sexual misconduct..."

2018 MAY 15 A 8:09
CLERK OF COURT

Counsel, Cantrell had a DUTY to conduct a reasonable investigation of my witnesses long before my day

In court SEE: State v Williams 485 SE2d 99; Faretta v California 422 U.S. 806; Pauling v State 503 SE2d 468; Thomas v State 417 SE2d 531; Ingle v State 560 SE2d 401; Martinez v State 403 SE2d 113 and Brier v State 384 SE2d 772

But I was denied the ~~RIGHT~~ to

effective assistance of counsel, as guaranted by the 6th and 14th Amendments of the U.S. and South Carolina Const.(s). Also see Strickland v Washington 104 S. Ct. 2052 Thereby my Conviction and Sentence Violates the Constitutions and laws of the U.S. and S.C. Const.(s) as well.

II(b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Here, Appellate counsel David Alexander denied me my RIGHT to effective

assistance of appellate counsel.
When he failed to raise the
MERITORIOUS continuance issue
on appeal.
But by raising the unpreserved
"mistrial" issue.
I understand that an Appellate
counsel does not have a const.
duty to raise every-non frivolous
issue. But here Appellate counsel
raised an unpreserved issue.
which PREJUDICED my appeal
and violated the Constitutions and
laws of the United States, as guaranted

by the 6th and 14th Amendments and S.C. Const. Art. I Sec 3 and Sec 14 Also see Evitts v Lucey 105 S. Ct. 830; Smith v Robbins 120 S Ct. 746; Gray v Greer 800 F2d 644; Bell v Jarvis 236 F3d 149; Frasier v State 570 SE2d at 174

Which I will be able to prove the above matters etc. by the preponderance of the evidence, with the aid of an effective P.C.R. counsel SEE: Martinez v Ryan 132 S. Ct. 1309; S.C.R. Civil P. Rule 71.1 (d); Rule 407 of the rules of Professional

Conduct Also see: Frasier v State 570 SE2d 172.

I further argue that any grounds set out in this original application for P.C.R. expressly argued or not, is subject to AMENDEMENTS per. S.C. Code Ann § 17-27-90 Also see S.C.R. Civil P. Rule 71.1 (d), thereby, I am entitled to a FULL and FAIR P.C.R hearing SEE: Sharper v State 305 SE2d 247; Odom v State 523 SE2d 753 Plus a ruling on "all" issues I bring up before this court SEE: S.C. Code Ann § 17-27-80; Marlar v State 653 SE2d 266 and Bostick v Stevenson 589 F3d 164

Respectfully submitted

s/J Mark H

Date 5-8-18

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	IN THE COURT OF COMMON PLEAS
Jonathan M. Holder # 364105 Applicant vs the State	2018-CP-39-~~AND~~ 516 NOTICE ~~AND~~ MOTION FOR COSTS / FEES

CLERK OF COURT
2018 MAY 15 A 8:10

NOW COMES the above named indigent Applicant who moves this Hon. Court in the above entitled matter per. S.C. Code Ann § 17-3-50; 17-27-60 and any other applicable law(s); rule(s) and Const.

This motion will be based upon the following:

(1) Applicant is in need of an expert in the field, involving delayed disclosure, sexual abuse and sexual related incidents.
Which this expert service is needed to

show, that Applicants trial counsel was not properly prepared to cross the State's expert in the field of child abuse disclosure dynamics.

INVESTIGATOR SERVICES REQUESTED

(2) Further, the state's case was based entirely upon the credibility of the alleged victim. And, although trial counsel made a motion for a continuance. Counsel failed to use due diligence in trying to properly find and procure my witnesses, that I needed to testify, that they had heard the victim say that I did not do this crime.

I also understand, that without said costs/ fees for the above requested services. I will be perjudiced upon my P.C.R. SEE: Easter v Estelle 609 F2d 756; Bassette v Thompson 915 F2d 932; Underwood v State

425 SE2d 20; Glover v State 458 SE2d 538;
Bannister v State 509 SE2d 807.

CONCLUSION

WHEREFORE: based on the foregoing I am entitled to a full and fair hearing on this matter as well as the costs/fees for the above requested services.

Respectfully submitted

Date 5-8-18

2018-CP-39-576

PROOF OF SERVICE

2018 MAY 15 A 9:40

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

I ~~Jonathan~~ M. Holder hereby certify that I have served the below Hon. Clerk of Ct. my form 5/PCR App. and motion for costs/fees By placing the above said into the Tyger River Corr. Inst. mail room on this 8th day of May 2018 to be placed in the U.S. mail w/ postage prepaid.

The ~~Hon.~~ Clerk of Ct.
214 E. Main St.
Pickens, SC 29671

SWORN to before me s/ J. M. H.
this ~~8 day of May,~~ 2018
Notary Public
My Commission Expires March 24, 2027

cc: Personal File

The Hon. Pickens Clerk of Ct.
214 E. Main St.
Pickens, SC 29671

Date: 5-8-18

2018 MAY 15 A 9:39
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Dear Hon. Clerk of Ct.

Please find enclosed for filing the matters mention in my proof of service.

I would you be so kind as to send the Atty Gen' office a filed copy and me one back, please.

Thanking you in advance, I remain

Sincerely

J. Matt Hole

cc: Personal file

STATE OF SOUTH CAROLINA COUNTY OF PICKENS	)	IN THE COURT OF COMMON PLEA FOR THE THIRTEENTH JUDICIAL CIRCUIT
Jonathan Matthew Holder, #364105 Applicant, v. State of South Carolina, Respondent.	)	Case No.: 2018-CP-39-9576 **RETURN**

The State (Respondent), making its return to the application for Post-Conviction Relief (PCR) filed on May 15, 2018, would respectfully show this Court:

I.

Jonathan Matthew Holder (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to the orders of commitment from the Pickens County Clerk of Court. In June of 2013, the Pickens County Grand Jury indicted Applicant for second degree criminal sexual conduct with a minor (2013-GS-39-0957) and third degree criminal sexual conduct with a minor (2013-GS-39-00958). In May 2015, both indictments were amended to include different time frames.

These charges arose from incidents occurring between April 2011 and June 2012. The first incident that was reported involved a minor of at least fourteen (14) years old, but younger than sixteen (16), wherein which Applicant, using his authority as a staff member of a residential treatment facility, told the juvenile to perform oral sex on him while in the nurse's station restroom. Then Applicant proceeded to perform oral sex on the victim. The second reported incident occurred in the laundry room of the residential treatment facility whereby Applicant told

the juvenile to expose his genitals and then touched the genitals of the victim. Applicant also exposed his genitals and had the juvenile touch Applicant's genitals.

Applicant was represented by David D. Cantrell, Esquire. This case was prosecuted by Assistant Solicitor Samuel B. Tooker, Esquire of the Thirteenth Circuit Solicitor's office. On May 20, 2015, Applicant proceeded to trial before the Honorable John C. Hayes, III and a jury. On May 21, 2015, the jury found Applicant guilty as indicted. Judge Hayes sentenced Applicant to ten years for each of these offenses, set to run concurrently.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's convictions in an unpublished opinion. State v. Holder, Up. No. 2017-UP-239 (S.C. Ct. App. filed June 7, 2017). The remittitur was returned to the circuit court on June 27, 2017.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

    a. "Here, counsel, David D. Cantrell, Jr. [by] acts and or omission (including but not limited to) prejudiced me, when he failed to use due diligence in trying to properly find and procure my witnesses that I needed to testify that they had heard the victim state that I did not do this crime, sexual misconduct".
    b. "Counsel Cantrell had a duty to conduct reasonable investigation of my witnesses long before my day in court (see State v. Williams 485 S.E.2d 99; Faretta v. California 422 U.S. 806; Pauling v. State 503 S.E.2d 468; Thomas v. State, 417 S.E.2d 531; Ingle v. State, 560 S.E.2d 401; Martinez v. State, 403 S.E.2d 113; Grier v. State, 384 S.E.2d 772)
    c. "[He] was denied the right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments of the U.S. and SC Constitutions. Thereby my conviction and sentence violates the Constitutions and laws of the U.S. and SC." (Attached Pg. 7-9)

2. Ineffective Assistance of Appellate Counsel

a. "Here, appellate counsel, David Alexander, denied me my right to effective assistance of appellate counsel when he failed to raise the meritorious continuance issue on appeal. But, by raising the unpreserved "mistrial" issue". (Attached Pg. 9-11)
b. "I understand that an appellate counsel does not have a constitutional duty to raise every non-frivolous issue. But here appellate counsel raised an unpreserved issue which prejudiced my appeal and violated the Constitution and laws of the United States, as guaranteed by the sixth and fourteenth amendments, and the SC Constitution Article I section three and section fourteen. (also see *Evitts v. Lucey*, 105 S.Ct 830; *Smith v. Robbins*, 120 S.Ct. 746; *Gray v. Greer*, 800 F.2d 644; *Bell v. Jarvis*, 236 F.3d 149; *Frasier v. State*, 570 S.E.2d at 174)". (Attached Pg. 9-11)

Applicant is seeking a "new trial, new appeal and any other relief that [he] is entitled to and this court deems just and fair".

Attached to this Return and incorporated by reference are the records from the Pickens County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, trial transcripts, appellate materials, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the proceeding "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S.at 687;

Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

pplicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to

exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends that Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this allegation.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments

withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes, to issue subpoenas, or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial counsel and ineffective assistance of appellate counsel.

(*signature page to follow*)

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

DESHAWN H. MITCHELL
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 7, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2018-CP-39-9575
	)	
JONATHAN M. HOLDER, #364105	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

R. Mills Ariail, Jr., Esquire
11 North Irvine Street, Suite 11
Greenville, SC 29601

DATED this 7th day of September, 2018.

Mallory Morris, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

JONATHAN M. HOLDER,	)	
	)	
APPLICANT,	)	2018-CP-39-00576
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	
	)	

OCTOBER 25, 2019
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE EDWARD W. MILLER

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

ATTORNEY FOR APPLICANT:

R. MILLS ARIAIL, JR., ESQ.

ATTORNEY FOR RESPONDENT:

TAYLOR Z. SMITH
ASSISTANT ATTORNEY GENERAL

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

NO	DESCRIPTION	ID	EVIDENCE

(No Exhibits Were Presented During This Hearing)

MR. SMITH: Your Honor, this is the case of Jonathan Holder v. State, 2018-CP-39-9576 [sic]. The Pickens County Grand Jury indicted Mr. Holder for CSC with a minor, second, in June of 2013 and CSC with a minor in the third degree. In May of 2015 Mr. Holder proceeded to trial before Judge Hayes and a jury where he was found guilty as indicted and sentenced to ten years for each offense.

Mr. David Alexander filed an appeal on Mr. Holder's behalf raising the issue that Judge Hayes erred in denying the defense's motion for directed verdict on the basis -- on the grounds that the solicitor made some improper comments during the trial. The Court of Appeals affirmed in an unpublished opinion. And, thereafter, Mr. Holder filed this application for a post conviction relief.

He raised a few issues in his pleading, Your Honor. One, that Mr. Cantrell failed to use due diligence in finding some witnesses that would have been helpful at trial. Another issue, that Mr. Cantrell did not conduct a reasonable investigation. And that was the only issue pled, Your Honor, as far as trial counsel.

THE COURT: Okay.

MR. SMITH: With respect to appellate counsel the pled issues was that Mr. Alexander was ineffective for not raising another issue in his brief. Mr. Ariail has also told me that they will proceed on another allegation this morning. And I

will let him specify to the Court what that is, but we'd just ask that he put on the record what the issues are before we begin.

THE COURT: Okay.

MR. ARIAIL: I think those state the issues, Your Honor. And let me go back over some of them. The other issue was a State v. Stukes issue in regards to whether the sexual assault victim does not have to be corroborated. There's a charge on that on page 348. There was no objection made to it as a result. We would just add that as a ground.

And I can provide -- we can provide testimony. And David Alexander's here, the appellate counsel, in regard to that. So ---

THE COURT: What page are you talking about?

MR. ARIAIL: 348, Your Honor, of his charge. I think it was line -- bear with me -- 348, lines 3 and 4. And there was no objection made to it on page 351 at 19 and 20.

THE COURT: All right.

MR. ARIAIL: And those are -- and I think ---

THE COURT: What's the date -- on the dates of the -- what's the date of the decision?

MR. ARIAIL: The date of the decision was 2016.

THE COURT: Okay. Subsequent to the trial.

MR. ARIAIL: Subsequent. And there were some things that Mr. Alexander can testify to as to whether it was ---

THE COURT: Okay.

MR. ARIAIL: --- ongoing at the time and all that.

THE COURT: All right.

MR. ARIAIL: We can get into that. I think the -- and I'll just reiterate, there was an issue in regards to the witnesses being called. There's, I think, three appellate issues we wanted to go to, the continuance issue, the State v. Stukes issue, and then an unpreserved or the mistrial issue that we -- that's been briefed, but there's some questions in regard to that.

There were also some questions about -- and this could go to the ineffective assistance of counsel in regards to medical records not being used for impeachment and other impeachable items that were not brought up during cross-examination, which I can get into through Mr. Holder's testimony. But I think those are the main issues there, Your Honor, for this hearing.

And I would call my client to the stand ---

THE COURT: All right.

MR. ARIAIL: And I think he goes by Matt Holder. Is that correct?

MR. HOLDER: Yes, sir.

MR. ARIAIL: Your Honor, if I could call Matt Holder to the stand.

THE COURT: All right.

MADAM CLERK: Mr. Holder, if you could place your things

down. Put your left hand on the Bible and raise your right hand.

Jonathan Holder, being duly sworn testified as follows;

MADAM CLERK: Thank you. You may be seated. Please state your full name for the record.

MR. HOLDER: My name is Jonathan Matthew Holder.

MADAM CLERK: Thank you.

Direct Examination by Mr. Ariail:

Q. You good? You've been coughing a little bit. Do you need any ---

A. Yeah, it's my allergies and ---

Q. Okay. Mr. Holder, you were represented by Mr. Cantrell in regards to these charges, is that correct?

A. Yes, sir.

Q. Okay. Let's go back a little bit and start off so we can kind of understand what's going on. There were two CSC charges that you were facing, is that correct?

A. Yes, sir.

Q. Okay. And this began back sometime -- I think you were indicted in June of 2013, is that correct?

A. I believe that's correct. The accusations were made in 2012. And I was arrested in early '13.

Q. Early '13 and then indicted at some point in time?

A. Yes, sir.

Q. Okay. Mr. Cantrell represented you on both of these charges. Was he retained or appointed?
A. Appointed.
Q. Okay. And as -- after he was appointed were you incarcerated for, I guess, a period of time?
A. No, sir.
Q. Okay. You got out on bond?
A. I never was -- I never went to jail. I was at work and my attorney that -- he was also our company attorney, Lewis Gossett, he was handling the preliminary stuff, I guess. So he talked -- whoever -- whatever he did, he was dealing with the police department, and with the judge, and all through me or my company that I worked with.

He called me. I was working at BMW on a Wednesday afternoon. And he asked me, he said, I need you to call Detective Byars at the Pickens Police Department, that they're arresting you. And it just threw, you know, I was like for, you know, for what? What's going on? I thought this was being thrown out, you know, they don't have anything, yada, yada, yada.

So we talked. And he goes, just call Detective Byars. So I called detective Byars and he said -- he asked me where I was at. I said I'm at -- I was at work. And he knew where I worked because whenever he had interviewed me and all, you know, I guess they had told him from work, I believe.

Q. Okay.
A. So long ago now. Long story short, he asked me to come up there on Friday afternoon. And my wife and I went to the Pickens Police Department on that Friday afternoon. And I walked in and I spoke with somebody at the desk.

And then they talked to me. And then I went around and the judge said you've got to just sign these papers. We're giving you a PR bond.

Q. Okay.
A. So they gave me a PR bond on the charges, and then I left from there. So I never even was -- had a picture took, fingerprinted.

And I guess like two years later they called me up and like, hey, we forgot to do all the stuff, you know. So I went -- I thought it was some kind of set-up. So I went to -- my wife and kids, we went to the police department. We got there and then their fingerprint thing was messed up.

So then I rode with the officer to -- I think I rode with them or we followed them over to the law enforcement center. And I got fingerprinted and all that. I never went -- the only time being in the jail was to go, I guess, to turn myself in, technically, ---

Q. Right.
A. --- is what I did. So ...
Q. Okay. And then you got appointed counsel, Mr. Cantrell.

A. Yeah.
Q. How long after the initial, I guess, when you went in and signed your PR bond did you get him appointed as your counsel?
A. I signed up for the attorney -- you know, I went to the public defender's office and paid ---
Q. Okay.
A. --- the money. I'd been out of work, so I qualified for the attorney, you know. So then they appointed him. I'm not sure of the exact time-line, ---
Q. Okay.
A. --- when it was. It was ---
Q. And ---
A. --- maybe a couple of months later, maybe. I'm not sure what -- a few months. I mean, it was sometime ---
Q. Okay. All right. So you got him appointed, you met with him and discussed the case, is that correct?
A. Yes, sir.
Q. Okay. Y'all went through -- he got discovery at some point in time, is that right?
A. And he wasn't able to get the discovery for a long time. He had a lot of issues with -- with getting stuff from my work, you know, from my employer and all.

And when he finally got some stuff from the State, we thought -- this went on for like three years. You know, we thought this was basically being thrown out. I didn't see him

-- it was -- we met, you know, at the beginning and then we were just more or less waiting because he knew my stance was that I wasn't taking, you know, the pleas they were offering or whatever. I wasn't taking any pleas. I stand by my innocence. I wanted to fight it.

Q. Okay.

A. And so we -- I saw him in downtown Greenville at Tupelo Honey. My wife was actually -- she was pregnant with our -- our fourth child. So it was right before he was born. It was around Easter ---

Q. Uh-huh (affirmative).

A. --- '14.

I saw Mr. Cantrell -- and him and his wife at Tupelo Honey about a couple of blocks from here. And he was like we'll get together sometime soon, you know, and talk about it, but everything looks good and seems to be, you know, like this is -- more or less I think we both thought it was going to be just going away, you know. That ---

Q. Okay.

A. --- they had no -- nothing, that it was, you know, that everything would be resolved.

Q. Okay.

A. And then all this time goes by and then -- go ahead. I'm sorry.

Q. Yeah, I'm going -- I'm trying to break it down a little

bit because I want to make sure we kind of express what we've got here. Now, in regards to conversation with Mr. Cantrell, y'all went over discovery at some point in time, correct?

A. The only time -- we -- it snowed in early '15. We were supposed to had a meeting. And then I was in the hospital. I had surgery. I had to have cancer removed from my -- it's in my intestines from my -- it's in my transcript, it's in my intestines. I was in and out of the hospital.

And we met like one time, but we never got to really -- we never got to watch videos. We never got to go over ---

Q. Okay.

A. --- testimony. You know, he was having a difficult time to try to get there.

But we never -- I never got to have a real good meeting til like probably a day or two before, I think, we met. And he was like we're going to go to trial. But we -- we thought it was going to be continued. Was being naive to the system, you know, I had no idea.

Q. Right.

A. And I'm not sure how much trial experience he had in that. So we had said it was going to be continued and maybe we'd get the witnesses or whatever. And, obviously, we went to court that day and it didn't get continued.

Q. Okay. And we're bouncing around a lot. I'm trying to narrow you into ---

A. I'm sorry. I was ---
Q. --- certain things right now. The first thing I'm trying ---
A. --- a short story long. I'm sorry.
Q. Well, that's fine. If we just concentrate on just different parts, then we can get it, I mean, I'm going to try to work you through it.
A. Okay.
Q. In regards to your discovery, you got that discovery at some point, correct?
A. Yes.
Q. Okay. Were you able to review it and discuss it with him and understand what your discovery had in it?
A. To be honest with you, no, not really.
Q. Okay. Did y'all have any discussions about what you're charged with, the elements of the offenses, the punishment and things along those lines?
A. No, sir.
Q. Okay. Did y'all go over statements, or testimony, or information about what was going to be presented by witnesses against you at trial?
A. He -- he did have the statements from the police department and all.
Q. Okay.
A. As far as that goes -- as far as my witnesses and the

ones -- I think he -- when he finally was able to get the discovery, that's where all the statements from my co-workers and all.

Q. Okay.

A. But as far as before, we really didn't have a opportunity.

Q. All right. So -- and this is where I'm going. Going into it to the trial, and I know we're coming up to the trial, do you believe that you were adequately informed about the discovery, the elements, the criminal defenses, all the things associated with your case?

A. No, sir.

Q. Okay. Did you explain to him that you were having problems dealing with that or understanding that?

A. Yes, sir.

Q. Okay. What was his response in regards to it?

A. Like I said, I think that he thought it was going to be continued and we would have more time.

Q. Okay.

A. That was ---

Q. So ---

A. --- the gist of what I thought. I think we were both in the blind.

Q. Right. So let's go -- I want to just back up in regards to that time-frame coming to trial. Y'all had been -- how

long was your representation from when he was appointed to the day it was called to trial?

A. Three -- right at three years.

Q. Okay.

A. Two and a half, three -- yeah.

Q. How many meetings do you think you had during that period of time in those three years?

A. Maybe two, two to three.

Q. Okay. And ---

A. The initial meeting, and then like I say, the -- which that wasn't technically a meeting, it was just a chance running into him. And then ---

Q. Right.

A. --- I think I saw him one more time.

Q. It looks like you were indicted sometime in June 2013. You come up to this trial date, which is May 20th and 21st, 2015. So that'd be two years.

A. Right.

Q. So during that time-frame, two, three meetings, you think, is what you're saying?

A. I don't know if I saw him -- from the time I was indicted I never -- I don't think we had any meetings. I may be wrong. I'm not a hundred percent, but I don't think we met til right, you know, like that month or so before we might have met one time.

Q. Okay. And when you meet the month or so before, we're talking April of 2015, correct?
A. Right.
Q. What do y'all discuss?
A. The -- basically the statement, you know, the thing -- discovery. I think he may have had the discovery then, ---
Q. Okay.
A. --- the month before. I think that's when we -- he looked at the statements. And all the statements were backing me up, you know, from my co-workers and everything. And I -- that's pretty much the gist of what -- you know, as far as like you said, the time or consequence, you know, that was ---
Q. Okay. During this meeting -- I know one of your issues is there were witnesses you say right now had statements that were supporting you or were going to testify on your behalf, correct?
A. Yes, sir.
Q. Okay. Who were they?
A. Witnesses that -- direct witnesses that witnessed it and that Minor 1 told that he lied were Katrina Jones, Edward Simpson, Jamal Latimore. And there was a couple of patients that were -- I'm not sure what. But there was J.T. Scott -- I think his name is James Tyler Scott.
Q. Okay.
A. Jansen Aiken. And we had another -- we had -- the issue

with one or two of the staff members, I think they were hesitant. They still worked there. I'm not sure what the thing, you know, but we had at least five people. And we had an additional six or seven witnesses that were there right with me the whole time, you know.

Q. Okay.

A. Tony Duncan, he's an Anderson County police officer. He was my direct supervisor that was there when this -- there when these allegations were made.

Q. Right.

A. He gave me the exact direct, you know, he wasn't -- we had none of these witnesses there, none of them.

Q. Okay. And so you tell him about these witnesses a month before. Did you relay this to him any time during the two years he represented you?

A. Well, once he got -- yeah, I did tell him there was witnesses. The whole time, you know, we had -- in the beginning, ---

Q. Okay.

A. --- you know, I told him the ones that knew and he had the statements. Because I had to write, you know, my part with Detective Byars. And I guess they went to the facility and took statements.

Q. Right.

A. As far as I -- you know, he had those statements. And

then I informed him about Katrina Jones and a couple of patients. And then the nurse, Maureen Rickard. She went by Reenie. That's the other direct ---

Q. Okay.

A. --- person. She had also wrote a statement, but she wasn't there. So we couldn't use her statement to, you know, you have to be present or whatever.

Q. Well, what I'm -- I guess what I'm trying to get at is did you give him these names along with addresses, contact information, or how to find these people during this period of time?

A. I'm not sure how many addresses and all that I found. See, I wasn't allowed on the premises of my job. So he knew where -- where I worked, where I was employed. And he said that he would be -- make an effort to go there and get the information. Because several of them still worked there, but ---

Q. Okay.

A. --- some -- we had two caseworkers that were DSS agency workers, I can't remember their names. It's in the transcripts. And you guys probably have that information, ---

Q. Right.

A. --- that those two, they were no longer apparently with the agency.

Q. Okay.

A. Since then I've saw one lady on the news like ten times. She works for Spartanburg.
Q. Okay.
A. Which really was, you know, to sit and see -- I know that she couldn't, you know, with social media and they had Google and all that. I wished that -- like I said, I think that it was a situation that we thought the -- we were just going into it blind.
Q. Did he talk to any of these witnesses to your knowledge?
A. I don't think he talked to any of them.
Q. Okay.
A. No, sir.
Q. Did he tell you anything about any conversations or any information he had gathered about these witnesses or issues he saw with them testifying or anything like that?
A. Mr. Cantrell told me that he went to the -- this was on Monday when the trial started ---
Q. Okay.
A. --- that he went on Friday, I think, Thursday or Friday, a couple of days before. I told him, I said, I worked Monday through Thursday on night-shift. I think he went on Friday because he -- he said that they wouldn't let him in. I'm not sure what the -- that's his words, not mine. I'm not sure of the exact, so I don't want to misquote him. But he -- I think it's in the transcripts.

He had went along with the prosecutor, I believe, they tried to get in. Needless to say, he waited two or three days before he went to try to speak with the witnesses and wasn't -- wasn't able to get them.

Q. Okay. So there was nothing, I guess, you didn't get any confirmation that he'd spoken with the witnesses to be able to confirm what you said or to see if they were going to help or hurt you at trial?

A. No, sir.

Q. Okay. And you say that's probably five or six different witnesses?

A. At least ---

Q. Okay.

A. --- that were direct, you know.

Q. Yeah. And I know I've represented you for some time, and we've had this issue in finding these individuals. Have you been able to locate them or find them at any time?

A. My -- my issue is being incarcerated. You know, I don't have access to the internet. I don't have access to the yellow pages, the white pages, to Google or, you know, I have several people that are through Facebook, you know, if I could even go to my old Facebook to try and find them, you know, co-workers.

So -- I've had -- on my end I've had little -- very little luck with that, but my wife -- the issue with this, my

wife's been in and out of the hospital and has been in the hospital this week. She has a kidney disease ---

Q. Um-hum (affirmative).

A. --- and -- she suffers from. And so she's been in and out of the hospital.

She's made contact, I know, with a couple of the witnesses. Some are out of State, some -- one guy is incarcerated. So I -- he was one of the patients. I'm not sure how credible that makes him, but he was a witness, you know.

Q. Right.

A. He probably would be one of the easier ones to find since he's ---

Q. Sure.

A. --- you know, y'all could go get him.

And as far as that goes, you know, it's -- the remainder of them are the ones that are in the discovery. You know, I don't have access to get all that. You know, I don't have all that with me to -- I wouldn't know -- it doesn't have their addresses and phone numbers in it anyway, you know?

Q. Right.

A. So that would all be in his files that I don't have.

Q. One thing you put in your PCR application, what I want to understand is, you say there were some that would state that the victim or that the crime didn't happen.

A. Right.
Q. Which ones specifically are those ---
A. Leigh Ann Wesley, Katrina Jones, Jamal Latimore.
Q. Okay.
A. I -- whenever I found out on a Monday, just to let you know, and Mr. Cantrell can attest to this, I found out on Monday we're going to trial and he couldn't find the witnesses.
Q. Right.
A. He said he would do whatever. I don't think I slept for the whole three or four days of this thing. I went all night trying to find people a couple of nights. I went to where people used to live. I tried to track people down through Facebook, through any means necessary to try and find the couple -- couple of witnesses. The only witness I was able to find was one of the patients, J.T. Scott.
Q. Okay.
A. He worked at the Spinx in Dacusville, and a nurse. I was able to track down the nurse.

The issue with -- and this is a rabbit trail here, the issue with the nurse, the situation was -- and the paperwork that all you guys have keep saying the two things I'm convicted of are -- was allegedly from an incident that -- and this is in the transcript, some librarian from the laundry room.

Q. Um-hum (affirmative).
A. The nurses thing was an accusation that was made. And the nurse backed up that it didn't happen, that she was there. You know, that's where the medical record issue comes in and, you know, it contradicts all that. The nurse was there to testify.

Mr. Cantrell said that the State wasn't pushing that and that he didn't -- he felt that that might prejudice me, you know. I was for trying to get Ms. Rickard to testify because, I mean, this is a direct witness that also then could bring in Joshua Hubbard. This is all coming to me. I'm sorry. This has been seven years. Joshua Hubbard was one of the guys that took him -- him and Megan Harvey took Minor 1 to the hospital.
Q. Okay.
A. Then Dr. Caldwell -- he told Dr. Caldwell -- and this is in the medical records and in their witness statements, which should be in the Rule 5 that he said, you know, he lied. He changed his story five times ---
Q. Okay.
A. --- and told, you know, it was a whole -- all that. And none of that was able -- this one witness that I was able to track down, I couldn't -- couldn't use because ---
Q. Okay.
A. --- of that reason.
Q. And let me go back. I mean, a lot of it dealt with the

truthfulness of the victim in ---

A. Right.

Q. --- regards to his testimony, correct?

A. Yes.

Q. Okay. So you thought the nurse would help you add to it if he had lied about a certain, I guess, another incident, is that correct?

A. Right. Yes, sir.

Q. Okay. So did you discuss that and ask Mr. Cantrell to call her as a witness?

A. Yes, sir.

Q. And what was his response in regards to that?

A. I found her. You know, we went and got her. She came that day, but he told me that he did not -- that he did not want to call her.

Q. So she was there?

A. She came. Maureen Rickard is her name.

Q. Okay.

A. She came on the second day or third ---

Q. Right.

A. I'm not sure which day.

Q. Did y'all discuss that -- I know there was a couple of witnesses that testified about the lack of truthfulness of the victim. Do you remember discussing that?

A. Yes, sir.

Q. I mean, did he say anything about, well, I think we've got sufficient evidence to show that without calling Ms. Rickard or what was the reason, do you remember, about not calling her?

A. To be -- I remember this conversation like it was yesterday. There's -- and it's one of the issues that's brought up, the mistrial issue.

Q. Okay.

A. Mr. Tooker made these ridiculous inflammatory remarks, like we almost had a mistrial. And the court was stopped, the jury was sent out. This was on the last day.

Q. Right.

A. And this was the day that I had the former patient, J.T. Scott and Ms. Rickard. And Mr. Cantrell even was floored, the whole court, people were like, ah, you know, gasping that Mr. Tooker said something this outlandish.

Whenever -- whenever we were in recess or something, Mr. Cantrell talked to me, he said, Matt, and then he goes -- he goes, I don't want to call these other witnesses. He goes, I think -- he goes, I -- he was very confident that Mr. Tooker basically dug his grave with his case that that's what was going to win us the fact ---

Q. Okay.

A. --- that he made basically a -- I'm trying to think of a nice word, out of himself, a fool of himself the way he did

that, that that was our slam dunk and that we didn't need to do anything else.

And I'm -- my wife's freaking out, I'm freaking out. I'm like, you know, I've never faced anything like this. I don't know what to do. My only hope is to try to get these witnesses, you know, because I didn't see how anything else would have hurt it, but Mr. Cantrell was my attorney and that's what he said that, you know, he didn't want to do. So ---

Q. Okay. So let's go back to this mistrial issue. The mistrial issue dealt with your attorney, I believe, objected to two questions. So are you gay? Are you interested in young boys? He objected to that, correct?

A. Yes, sir.

Q. At some point in time there was either a curative instruction or some instruction by the court, but there was a failure to object to that, is that correct?

A. Yes, sir.

Q. Okay. So you're saying that that -- and then I think the Court of Appeals says that was not preserved, is that correct?

A. Now this goes into both -- we're speaking just to Mr. Cantrell now or Mr. Alexander? This is kind of a cross-over ---

Q. Let's start off with Mr. ---

A. Okay. Well, Mr. Cantrell, the issue of it, he objected

-- he says, I -- objection, objection. You know, he's like halt, let's stop this thing, you know.

Q. Right.

A. There needs to be a mistrial. And Judge Hayes goes over -- he basically roasts Mr. Tooker. And it's in -- we can find the pages. It's around ---

Q. 270 ---

A. 290 something.

Q. No. No, this is 270. Oh, excuse me.

A. Yeah, 297.

Q. I'm looking at the record on appeal.

A. Excuse me. He asked me the question on page 296, line 23 is when Mr. Tooker asked the question. I said, no. He asked the second question. And it doesn't show where my -- where Mr. Cantrell objected. I don't know if the stenographer missed that because it says by Mr. Tooker's -- line 23, so are you gay? No -- I answered no. Are you interested in young boys? I answered no.

Mr. Cantrell said, Your Honor, again, I object. I don't know if he said he objected because he objected to a lot of other things or if they missed an objection to the -- I'm telling you, literally, people in the courtroom screamed out, ah, I can't believe he ---

Q. Well, ---

A. --- you know.

Q. --- the judge sustains the objection, correct?
A. Correct.
Q. Then he goes on and Mr. Cantrell asks for a mistrial, correct?
A. Right.
Q. Okay. Then the court -- and they have a discussion in this time-frame. And they come back and Judge Hayes, I think, states that even though the defense has not requested it, I want the record to be clear that I'm doing this *sua sponte* to give the correct curative instructions, then we'll proceed.
A. Right.
Q. So ---
A. Mr. -- the judge said that he was going -- we thought he was because he said do the same thing -- so he weighed it against each other and he said, if you do this, this is a mistrial issue. We thought it was a mistrial. And he said, but I'm going -- if you do it again, I'll bring this three-day-trial to a screeching halt. That's the judge's lines.

So then ---

Q. Yeah, but ---
A. --- he tells him -- he tells -- he said -- Mr. Cantrell said, I'm not satisfied we can get a fair trial. And the -- the judge said -- it goes on. Mr. Tooker talks. Mr. Tooker gives us some crazy theory -- because the judge, like I say, he roasted him. He said, how can you -- how dare you say

that? He said, it's a theory of repression. And then Judge Hayes says, you're not a psychiatrist or a psychologist. And he said, ---

Q. Okay.

A. --- why you going down the rabbit ---

Q. Okay.

A. When he gets through that, he said ---

Q. Hold on. Let me -- let me just ask you a -- the Judge has the transcript. We don't have to re-read ---

A. Oh, I'm sorry.

Q. So what I'm trying to get to is that your issue is in regards to ineffective assistance of counsel in regards to that claim, and we've got it as part of the transcript. You're saying he did not object to the ---

A. Curative instruction.

Q. --- curative instruction that was done by Judge Hayes during this?

A. Right.

Q. And then as a result the Court of Appeals says that issue has not been preserved, is that ---

A. Right.

Q. --- correct?

A. Yes, sir.

Q. Okay. Now, that deals with what Mr. Cantrell didn't do. Is there something in regards to Mr. Alexander in regards to

that that you have discussed with me that you wanted him to do or ...

A. Yes, sir. And it's in my -- when I filed my PCR, I have it in there. The -- I wrote -- whenever I was appointed -- I once again was appointed Mr. Alexander. I never met him. Just spoke with him through correspondence. We never met to my knowledge because I was at Ridgeland, and he never came. This is the first -- that's Mr. -- I've never seen him until now.

Q. Okay.

A. But we -- we talked a lot through letters and all. I sent him cards.

Q. Um-hum (affirmative).

A. I have a stack of letters that he sent me, you know, thanking me for sending him Christmas cards and all.

Q. Right.

A. I tried to maintain -- and I think he'll attest to that. I tried to maintain communication with him to see what's going on and stay on top of it. I told him -- I even said in one of the letters that he had a good reputation in the law library. So this really shocked me just to be honest with you.

So I asked him, I said, will you please -- because whenever I saw the brief -- I had the brief. I said, please amend this brief. I said, we have other issues and this alone isn't enough.

And then I had my roommate, to be totally transparent with you, works in the law library. We looked at all this stuff. He -- the man has several cases -- he has a life sentence and came off death row. He said, Matt, you got to, you know, we're looking at all this stuff. And I'm looking and looking. And this is an ---

MR. SMITH: Objection. Hearsay, Your Honor.

THE COURT: Well, he's just talking about he's looking and looking. Go ahead.

A. I'm looking at my transcripts. And I said, this is an inarguable issue, you know. So I wrote the -- I wrote him two letters.

Q. When you say inarguable issue, you're talking ---

A. It wasn't preserved.

Q. --- in regards to the --- the ---

A. For the ---

Q. --- curative instruction.

A. Curative instruction.

Q. Okay. Go ahead.

A. It wasn't preserved. Well, I write him a -- I wrote him two letters. And I said, look, you know, there's six -- there's six issues -- meritorious issues.

Q. Okay.

A. I understand that you don't have to argue them all because they're not all -- carry the weight. But we have

three that are very strong. And I wrote him two letters. And Mr. Alexander responded to me -- he ---

Q. You're jumping around. Just tell me what ---

A. Two letters that said can you please amend ---

Q. Okay.

A. --- this brief.

Q. Just answer my question.

A. Yes, sir.

Q. What are the three issues you told him? You said there were six, but you narrowed it down to three. What are the three you wanted him to do?

A. The first issue was the denial of defense's counsel's motion for a continuance, to interview exculpatory witnesses, and to testify to my mistrial.

Q. Okay. Let's talk about that one. Did he send you a letter regarding his position in regards to that?

A. He -- in regards to all three, he did.

Q. Okay. Well, just -- I'm trying to break these down so we don't have multiple ones. The continuance issue, what was his basis for saying he did not want to appeal or did not believe it was going to be successful on appeal?

A. He said the trial judge's decisions regarding continuances are sometimes -- or excuse me, almost never reversed on appeal.

Q. Okay. So that was his position in regards to that. The

second one was you wanted a ---
A. I said the second vital issue we can argue is the trial court's denial of defense counsel's motion for a directed verdict.
Q. Okay. And what was his response to that?
A. He said in his opinion he did not think raising it -- he said that raising it will detract from the meritorious issue that I briefed.
Q. Okay.
A. Was his exact words.
Q. Okay. Then the third one you wanted him to raise was?
A. The third issue in the court's denial of defense counsel's motion was the inflammatory and prejudicial remarks before the jury that Mr. Tooker made involving the are you gay and do you ---
Q. That would be with the mistrial issue?
A. Yes, sir.
Q. Okay. But then -- because I'm trying to understand this. Those are the three you wanted him to brief, correct?
A. Yes, sir.
Q. He gave you a response into two of them as to what his view was in regards to why he wasn't going to appeal them, correct?
A. Yes, sir.
Q. Okay.

A. He said that -- what he said was he -- he thought that this was going to detract from the issue, that he had a good issue. He said, I'll have an opportunity to present the other stuff at PCR if ---

Q. Okay.

A. --- we're not successful on appeal.

Q. Okay. Let's take the first two right there. And what I want to understand is how was he ineffective in regards to not raising the continuance issue on appeal or the directed verdict issue?

A. Okay. In ---

Q. How do you think that?

A. For a -- I basically -- I had issues that were preserved, you know. They met all the requirements to being preserved. I had those issues. And they were ruled on, the whole nine yards. They were good issues.

He -- I begged him. I asked him, I said, these are more -- I only have one issue that's going to lead the court to one -- one thing. We have three strong issues. This can really hurt me, you know. And I ---

Q. Okay.

A. --- I quoted case law of all the reasons, ---

Q. Okay.

A. --- you know, extensive case law and all of ---

Q. Yeah, you got that. Okay. So in regards to the

mistrial, you still asked him to appeal that one, correct?
A. Yes, sir.
Q. Okay. And tell me -- he appealed it and he did what he needed to do on that. How is it ineffective as to what he did with that appellate issue?
A. He never -- well, first, he never amended the brief. And what made it ineffective -- issue in the courts -- the decision from the courts -- the courts said that -- the courts said that my attorney did not -- I'm trying to find the exact words. That he didn't -- that he didn't object to the curative instruction, that Mr. Cantrell just agreed to it.
So when I -- I told Mr. Alexander, I said, look, we've got all these issues we can argue. He said, no, this is the slam dunk issue. You know, this is our -- whatever the words he said, the merit ---
Q. Meritorious issue on appeal.
A. --- the great one. The -- you know, this is the one we're going -- I feel strongly about this one issue.
Q. Okay.
A. And it was an inarguable issue. That was the whole issue of it. Now, I, myself being -- I'm not an attorney. In my letter, in my own -- I even said to argue it, you know, amongst the six.
Q. Okay.
A. So I thought it was ---

Q. So you wanted him to argue it?
A. Yeah. I still wanted him to argue it, ---
Q. Okay.
A. --- you know. I didn't know -- I'm not a lawyer. I didn't know that it -- that part of it, you know, that the -- curative instruction, you know. That was -- as you read, the first part was objected -- not the -- there wasn't any objection. When there -- Mr. Cantrell's response was thank you, Your Honor, you know, not I strongly object, ---
Q. Okay.
A. --- you know.
Q. Okay. That -- I think that takes care of the appellate items. I want to go back and kind of relate them back to Mr. Cantrell a little bit ---
A. Okay.
Q. --- and what he did at trial. The continuance issue, you believe that he was ineffective in not preserving -- I know he made a motion for continuance. But you believe he was ineffective in doing that?
A. Yes, sir.
Q. Okay. And how do you believe he was ineffective ---
A. The reason that we wanted the continuance was to secure the witnesses.
Q. Right.
A. And in the transcripts, even on page 16, lines 4 through

13, Mr. Cantrell's talking, he didn't relate the basis for why he believed the witnesses need to be there. Basically the court -- everything that was said was just, well, we want to discuss truthfulness and veracity of the defendant. Those words were said a hundred times.

Q. Okay.

A. And Mr. Tooker basically talked to the judge and talked to the courts and was like we feel we can communicate this and we have witnesses that will. And the only thing that I can say that I -- it scared me. The only witness that we had that was in our favor was Megan Harvey, ---

Q. Right.

A. --- who then flipped on the stand, you know.

Q. Okay.

A. She went against what she said three days before, you know.

Q. Right.

A. So -- but he didn't have any of the witnesses. Then on page 16 it has -- Rule 7(b), refers to continuance because of absence of witness. He never establishes where any of those statements came from that they had. There's several things to deal with the witnesses. He didn't ---

Q. Okay.

A. --- emphasis [sic] the importance of them enough, you know, ---

Q. Okay.

A. --- that we desperately needed them. This was our first time in front of the courts. You know, we never asked for a continuance. We never asked for anything.

And this, you know, according to the Constitution, you know, I was entitled to have my witnesses there to have a fair trial, you know. I -- constitutionally, you know, my Sixth Amendment right, you know. I didn't have -- and the Fourteenth Amendment. I didn't have any way to have a fair trial ---

Q. Okay.

A. --- just because, you know, I couldn't have due process because there was no -- the, you know, there was not an opportunity to present a competent defense ---

Q. Okay.

A. --- with those witnesses.

Q. Let me -- okay. And there were some questions that you raised to me during our conversations there. I guess, things in regards to Megan Harvey, you wanted him to raise or impeach her on as part of the cross-examination that he did. And what items did you think that he should raise?

A. He -- Mr. Cantrell, when he went -- and he can verify it because I don't know if it was on a Thursday or Friday, three days before, roughly. Megan Harvey had wrote a statement whenever she came back from the -- she wrote two statements

actually, one, the initial statement, and then one whenever she came back from the hospital.

She literally used profanity in the statement. She was very, very strong against Minor 1, you know. I don't know if you want me to say what she said, but she literally said that he's full of shit. Her exact words that ---

Q. That he's not truthful.

A. --- he's lying and he's not truthful. And ---

MR. SMITH: Objection.

A. --- y'all have copies ---

THE COURT: Whoa, whoa, whoa.

MR. SMITH: Hearsay, Your Honor.

A. It's not -- y'all have ---

THE COURT: Whoa.

A. Oh, I'm sorry. I'm sorry, Your Honor. I'm sorry.

THE COURT: Sustained.

Q. No testimony of what others -- okay? Let's just -- let's just stick ---

A. I apologize.

Q. And what I'm trying to get is between you and Mr. Cantrell as to what you wanted him to do, okay?

A. She lied on the stand. She totally contradicted what she said. She says, I never said that. First she said she didn't say it. And then Mr. Cantrell said, did you not -- it's in the transcript. Did you not say on ---

Q. So he tried to impeach her on some stuff?
A. He asked her. And then I was like, why are you not going to impeach, you know, then she -- I was like, what are we going to do? And he says, well, the jury sees that she's lying, you know. That was another issue of we thought, you know, that they would see that she's lying.
Q. Okay. You had raised to me that you thought some of the victim's medical records would help during some of these -- the testimony to impeach or to help you show that he was being untruthful?
A. Yes, sir.
Q. How do you think and what discussion did you have with Mr. Cantrell to how those medical records may help you?
A. The -- well, the records, they were never turned over in the Rule 5, certain records, first off, ---
Q. Okay.
A. --- that involved his progress and his -- the daily journals.
Q. Right.
A. Part of our -- the therapeutic process as a counselor there, we had to keep daily records. And we didn't have any access to that. And they came into court firing off stuff from it we never had seen, heard, knew anything about.
Q. Okay.
A. It wasn't in the Rule 5. And then we had several other

pieces of evidence that was withheld from us and the jurors that we needed to bring forth.

MR. SMITH: Objection, Your Honor.

A. Especially the medical records ---

THE COURT: Whoa, whoa, whoa.

MR. SMITH: Relevance. Issues about lack of discovery or Brady violations have not been raised.

THE COURT: Well, I'll, I mean, let him testify. Go ahead.

Q. All right, Mr. Holder.

A. Okay. The main -- the medical records.

Q. Correct.

A. The medical records totally contradicted the testimony of what he said.

Q. Okay.

A. And the doctors' statements totally contradicted it, the nurses' statements. The two staff members, Joshua Hubbard and Megan Harvey, that drove him to the hospital and both wrote statements that are in that that you guys have. That -- none of that was presented.

Q. Okay. And I guess my question is did y'all discuss about calling them and putting them on the stand to say y'all have testified to this or ---

A. Yes.

Q. --- you have said this previously?

A. Yes.
Q. Okay. What were the discussions and why wasn't ---
A. Our -- on the last day I had Joshua -- that was the other guy. I'm -- like I said, this is seven years I'm ---
Q. Right.
A. --- processing. I had the nurse, Reenie Rickard, J.T. Scott, Joshua Hubbard, I think. I can't remember who else. But whenever Mr. Tooker did the -- when we had the mistrial issue, that's when Mr. Cantrell said I'm going -- I'm not going to call anybody else. I feel like we need to -- this is it, you know. He basically just -- it's a done deal. We got it now, you know.
Q. Okay.
A. He sealed the deal for us.
Q. Okay. So that was what ---
A. That killed off the couple -- the two out of ten witnesses that I actually -- or three, you know, that I actually had.
Q. I mean, did you say at that point in time, well, hold on, I don't believe that? I mean, let's move forward and call these witnesses or ---
A. I tried -- to be honest with you, like I said, I was under extreme stress, and duress, and fear and don't know what to do. And I asked him about it. And he, as my attorney, and I -- I hoped that he was effective in his decision, you know.

Now I see and after learning a little bit about -- and obviously ten years' worth of the consequence, I know that it was a very poor move, a very ineffective move to make to not -- we had witnesses there onsite that would testify, you know, otherwise, you know, to contradict him other than ---

Q. Okay. Now, one other issue that -- well, I think it's along the same lines. Those are the issues that we've discussed.

Are there other things -- and I know we've gone back and forth on different items. Are there other things you want to present today to be able to make sure that Judge Miller has that to consider during your PCR?

A. I do. When we talked about the directed verdict, ---

Q. Right.

A. --- and I'm not an attorney, but I want to read this. A defendant is entitled to a directed verdict when the State fails to produce evidence of offense charged. And I -- this is something dealing with both -- both attorneys here. This was such a major issue. The only evidence was their -- his word against mine. I actually had witnesses on my side wherein they had -- he had nothing but himself.

Q. Right.

A. I tried, you know, I needed so much, you know, for this. This was a major error to me that wasn't argued. It wasn't, you know, pushed hard enough to where I would have a fair

trial, you know. There was no ---

Q. Did he discuss -- I didn't mean to cut you off. Did he discuss to you what the standard was for obtaining a directed verdict?

A. No, sir.

Q. Okay. Did he tell you -- did y'all go over, I mean, the witness testimony is going to be enough to be able to survive a motion for directed verdict?

A. No, sir.

Q. Okay. You don't remember having any discussions in regards to that?

A. I'm telling you the discussions we had -- I get there on Monday, we think there's a continuance.

Q. Okay.

A. He says, I'm sorry, but we're going to trial.

Q. Okay.

A. We got to go on what we got. And he went in. I had several issues, one with the expert witness having interviewed my daughter in the past. The attorney, Sam Tooker, I was a witness in my wife's niece case involving sexual assault to where she was being molested. I knew him. There were several ---

MR. SMITH: Objection.

A. --- issues ---

THE COURT: Whoa, whoa, whoa, whoa.

MR. SMITH: Your Honor, this is not relevant. This is an issue that has not been pled. And I also note that they waived this issue at trial.

THE COURT: All right. I'm going to sustain that one.

MR. ARIAIL: Okay.

Q. Those are the issues I have. I know you raised another directed verdict issue and we went to other things.

A. The whole issue of -- and this falls into -- the way that I was even arrested, the very -- is that something ...

Q. I don't know of the issue -- what we're trying now is ---

A. Just ---

Q. --- in regards to the ineffective assistance ---

A. Okay.

Q. --- of counsel of your appellate counsel or trial counsel and before that -- before they were appointed.

A. As far as with my, you know, the main -- the key thing with these -- this evidence was withheld. You know, we had -- no medical records were brought forth. The witnesses that we needed, their testimony to clear my name, to help me, none of that was presented.

Q. Okay.

A. You know, and that was from Mr. Cantrell. As far as Mr. Alexander, like I say, the issue was I needed him to argue these issues ---

Q. Right.

A. --- because in the event that something happens, and it did, the one issue that he thought was this -- the grand issue, wasn't even arguable. So, therefore, we had no leg to stand on with the other two issues.

Q. Okay.

A. I didn't try to push all six. I said, these are three strong issues, ---

Q. Right.

A. --- you know. Had we had the three of them, who knows what would have happened, you know. That's -- I -- that's the biggest thing, you know, that I see, you know, is just the ---

Q. Okay. I think that's all the questions I got for you. I think we've gone through most of the -- all items that we discussed. I'm going to let you ---

A. I do have one thing I wanted to ---

Q. Okay.

A. If I may? This is from -- in the letter from -- after the -- after my appeal was denied, ---

Q. Um-hum (affirmative).

A. --- Mr. Alexander wrote me. He said, the court held a mistrial issue, was not preserved for appeal because your attorney did not object to the sufficiency of the curative instruction. While this is certainly bad news for your direct appeal, this will help you in your PCR.

Q. All right.

A. And he said this constitutes deficient performance, which you can prove at PCR. I wrote Mr. Cantrell a letter, ---

Q. Right.

A. --- and I asked him, it's here in the midst of all this, I asked him just to be -- I just asked him straight. He may have a copy of the letter. I don't have the copy with me.

And I told him -- I said -- I forgive him. I'm not mad at him. I said, this is my life. And my family is suffering. I wrote down some things. I said -- and I asked him point blank, period, why he didn't object to this. Why did he allow this -- you know. His response was ---

MR. SMITH: Objection.

A. He says, I'm unclear ---

THE COURT: Yep.

A. --- to the curative ---

THE COURT: Yep, yep. Sustained.

A. So I can't read what Mr. Cantrell ---

Q. No. What -- we're going to get into it. I'm going to ask because I can -- he can testify to that when he gets up there. What I want to understand -- what I think the court -- what I'm trying to summarize is you believe that failure to object to that curative instruction, which was not preserved for appeal, ---

A. Yes, sir.

Q. --- has prejudiced you and you should have had a mistrial

at that first trial?

A. Yes, sir.

Q. Okay.

MR. ARIAIL: Your Honor, I have no further questions at this time. Answer any questions the attorney general asks you.

THE COURT: All right.

Cross-examination by Mr. Smith:

Q. Thank you, Mr. Holder. I tried to take down all the witness names you said earlier, but I'd like to go through them and make sure I've got them all, okay?

A. Okay.

Q. All right. You named Katrina Jones, Edward Simpson, ---

A. Yes, sir.

Q. Jamal Latimore, ---

A. Yes, sir.

Q. --- J.T. Scott, also James Tyler Scott?

A. Yes, sir. I believe that's his full, you know, his actual name.

Q. It's the same person. Jansen Aiken.

A. Yes, sir.

Q. Tony Duncan.

A. Yes, sir.

Q. Maureen Rickard.

A. Yes, sir.

Q. Leigh Ann Lesley.
A. Yes, sir.
Q. Okay. I think that was all. Did you have any others or did I cover them all?
A. I think that's -- I'm pretty sure that's all. There was -- did you say Joshua Hubbard? Did you have him?
Q. I'm not sure, but I'll add it to the list just to be -- just to be sure. What information did you give to Mr. Cantrell about these witnesses so that he could find them?
A. Basically some of them -- where I worked. I think I had a phone number for one or two of them, maybe. I'm not sure. But, like I say, I had -- from June of 2012 until May, three years later, I wasn't, you know, I wasn't allowed there to contact most of those people.
Q. Okay.
A. So the majority of that I was depending on him and the investigator, however they go about finding them from the statements that he had.
Q. Okay. And you testified earlier about the solicitor asked you were you gay or did you like children? And you said that everyone in the courtroom kind of had that expression. What -- can you tell me more about that, that expression? You said -- you said that everyone kind of said, ah.
A. Yeah. It was just like a huge shock, you know, when it happened. And a couple of people kind of yelled out, my wife

being one of them, you know. Everybody was, you know, the few onlookers that were there, they really couldn't believe it, you know, especially -- it was just really shocking.

Q. And you think the reaction was that they thought the question was inappropriate or ---

A. Extremely inappropriate.

Q. Okay. Thank you. I have no more questions.

THE COURT: Any redirect?

MR. ARIAIL: No, Your Honor. Thank you.

THE COURT: All right. You can step down. Thank you.

MR. ARIAIL: I call David Alexander to the stand, Your Honor.

MADAM CLERK: Mr. Alexander, please place your left hand on the Bible and raise your right hand.

David Alexander, being duly sworn testified as follows;

MADAM CLERK: Thank you. You may be seated. Please state your full name for the record.

MR. ALEXANDER: I'm David Alexander. I'm an attorney at Appellate Defense.

Direct Examination by Mr. Ariail:

Q. Mr. Alexander, how you doing today?

A. Good.

Q. Good. Now you represented Mr. Holder on his appeal, is that correct?

A. That's correct.
Q. Okay. And as part of that process how do y'all -- how do y'all normally handle appeals when they come in to the appellate division down there?
A. Well, the chief appellate defender assigns all the cases to the lawyers in my office. He waits until a transcript comes in. I don't really know how he picks what lawyer for what case.
Q. Yeah.
A. But once it came to me, I sent Mr. Holder a letter telling him who I am. And then he basically had to get in line, wait on me to get to his case because we have so many cases.
Q. Sure. And at that point in time when you -- when you get assigned you read the transcript and, I guess, review it to see if there are any issues that you believe should be appealed, is that correct?
A. Correct.
Q. Okay. And I know in this case it sounds like some potentially were preserved, some were not preserved in regards -- how do you evaluate -- when you do an appeal, how do you kind of look at how I'm going to handle these issues when they come ---
A. Right. Well, there's no one way to do it.
Q. Um-hum (affirmative).

A. Certainly whether an issue has some preservation problems is something you take into account because in almost every case the attorney general is going to say the issue was not preserved.

Q. Right.

A. And the merits of the issue, of course, are the most important because if you get past preservation and you don't have a meritorious issue, you're not going to get anywhere.

Q. Right. Okay. So in this case -- and I know Mr. Holder has testified. It looked like there were about six issues he sent down to you. It was then narrowed down to three. They appear to be a request for a continuance, a motion for directed verdict, and then a mistrial issue.

Let's start off with -- and I think we've heard some, you know, communication between you and him. In regards to the motion for continuance, what was your -- after reviewing it, what was your position in regard to that appellate issue?

A. Exactly what Mr. Holder said. The standard of review, I thought, was going to control that. The standard of review on appeal for continuances, unfortunately, is they're not reversed and the reversals are as rare as hen's teeth is what the courts say.

Q. Okay.

A. They pretty much on appeal leave that to the trial judge's discretion. In addition to that there were some other

problems with this particular continuance motion that I thought did not leave it as a merits issue on appeal. Primarily the solicitor offered to cure some of these problems by not objecting to some hearsay. But the most important issue that I had with it was this case was two years old by the time this continuance motion got made.

Q. Right.

A. And at the beginning of the motion the trial lawyer's telling the judge, well, I tried to locate these witnesses two weeks ago. Well, if I'm bringing that up on appeal, that's going to be the first question they're going to ask me in an oral argument.

Q. Right.

A. He had two years to get this case ready. What are we doing here, Mr. Alexander?

Q. Okay. So based on what you got, you didn't think that was going to be a successful issue on appeal?

A. Not at all.

Q. So that's why you didn't raise it?

A. Correct.

Q. Okay. Directed verdict -- and I know you kind of heard the discussions in regards to -- Mr. Holder didn't understand the burden that is in a directed verdict motion. Did you see anything based upon -- we know the victim had testified, there was some evidence there. Did you see anything that was viable

in regards to a directed verdict ---
A. No. And that's one of the hardest things I have explaining to my client is that the appeal is not a retrial.
Q. Right.
A. It doesn't matter whether someone's telling the truth or not. So long as they say it, that's direct evidence that goes to the jury, the standard review controls ---
Q. Okay. So you didn't see anything in regards to that that warranted an appeal?
A. No.
Q. Okay. The last issue there was in regards to the mistrial issue and the curative instruction issue. It appears that Mr. Holder -- I know some -- he was saying he didn't -- or, I guess, the argument is you're appealing an inarguable issue. Why did you appeal that issue now looking back at it?
A. Certainly. Because I thought the merits of the issue to get past any of the preservation problems were winnable.
Q. Okay.
A. Certainly winnable. I thought what the solicitor did in this case was, to use Judge Hayes' words, extremely inappropriate.
Q. Right.
A. And Judge Hayes did chew the solicitor out about it.
Q. Sure.
A. And said that if something happened like that again there

would be an absolute mistrial in the case. So I thought that the merits of it were strong.

Q. Okay.

A. I never tell anybody slam dunk. I hope I didn't tell Mr. Holder that, but I think it would be very rare for me to use that word.

Q. Right.

A. I've never seen a slam dunk in an appeal. But I did think the merits of that were strong.

When I first reviewed it I noted the problem about the curative. A mistrial is one of the most difficult things to preserve for a trial lawyer. But he had -- he had said that it could not be undone when he made his argument. That's essentially what you'd have to argue when you say the cumulative [sic] won't be sufficient is that the bell can't be unrung.

And I noted also that the judge had said that he gave that *sua sponte* without the request of the defendant. In going back and reviewing this case, it looked like the attorney general did not make an issue preservation argument against it, that it was something that the court just came up with and recognized on its own.

Q. Okay. And there was a -- there was a large discussion between the court, and Mr. Tooker, and Mr. Cantrell in regards to this -- these two questions that were made. And no -- it

didn't appear that there was any, I guess, valid reason for why it was being articulated on any cross-examination.

A. Correct. And one of the things I think I stressed in my brief, from the transcript it looked like there was a deliberate pause before he asked Mr. Holder whether he was gay and liked young boys. So it looked like it was a very deliberate strategy by the solicitor. And ...

Q. Based upon your, I mean, you've handled -- how many appeals have you handled?

A. Hundreds.

Q. Hundreds. Based on your review of this do you believe this was prejudicial to Mr. Holder by the statements that were made in this case?

MR. SMITH: Objection. Your Honor, this is a legal question that's left to the Court in a PCR.

THE COURT: Yeah, you're asking for an expert opinion. He's not -- he's a fact witness here.

Q. Do you believe this would have been -- handling it from your standpoint, do you believe this would be a valid appellate issue you could have argued and won on if it had been preserved?

A. I did argue it. And I thought it had merit.

Q. Okay. And if it had passed that issue in regards to being preserved, do you think it would have been successful in your, I guess, in handling this?

A. It certainly could have.
Q. Okay. Now, as part of your review also in handling this there was a discussion -- and I think it was on -- I don't know if you have a copy of the transcript -- on page 348 about an issue in regards to the corroboration of the sexual assault victim. Do you remember that?
A. If you'll give me one second. I have a transcript.
Q. Okay.
(Pause)
A. Could you give me that page again?
Q. I can. It is page 348. It's lines 3 and 4.
A. Yes.
Q. Okay. And lines 3 and 4 state as part of the transcript, as to these new [sic] charges -- and this is during the judge's charge, as to these two charges the testimony of the victim need not be corroborated. In reviewing that have you dealt with that issue -- I guess it's a State v. Stukes issue. Have you dealt with that issue as an appellate counsel before?
A. Multiple times. In fact, looking at my brief, I have dropped a footnote. It's footnote 1 on page 17 in my brief about this. Because Stukes came out in between the time that Mr. Holder was tried and, obviously, between the time of both the appeal.
I told the court that if it's conducting any kind of harmless error analysis that he needed to consider that he got

this charge. Stukes says that you can't give the charge that the testimony of a victim does not need to be corroborated in a sexual assault case.

Q. Okay.

A. Here there was no objection to that. And it appeared to be the last substantive charge that the judge gave as well: Those issues were in the pipeline at the time.

Q. Right.

A. The case prior to that, it said that it was not reversible error to give that charge. Many lawyers were pushing that issue. Obviously, Mr. Stukes' lawyers did.

Q. Okay.

A. And I think I won several cases right after Stukes came out. They were unpublished based on those Stukes errors.

Q. Okay. And actually Stukes was handled -- and I think the Court of Appeals argued it or issued their decision on January 14th, 2015, correct?

A. I don't have that opinion in front of me.

THE COURT: Not in '15. You said '16.

MR. ARIAIL: The Court of Appeals was an unpublished decision before it went to the Supreme Court.

THE COURT: Okay.

MR. ARIAIL: This Supreme Court decision was 2016.

THE COURT: Okay.

Q. So during that -- when you've handled those cases and

been successful on those issues before, is that correct?

A. Correct.

Q. Okay. In this case there was no objection to that made by ---

THE COURT: Well, let me just interrupt for a second. During that time period?

A. Cases were absolutely being argued during that period ---

THE COURT: Were you successful during that time period with those cases? Isn't that what you're asking?

MR. ARIAIL: Correct.

THE COURT: Didn't you just ask him that?

MR. ARIAIL: I don't know if I asked him. I think you asked him.

A. That was not my testimony, Your Honor. What I meant to say is that those cases were in the pipeline. And then when Stukes came out, some of those cases where that argument had already been made won based on the Stukes ruling at the Court -- Court of Appeals.

THE COURT: Okay.

Q. Okay.

THE COURT: But it was not good law at the time this trial was had?

A. It was still arguable, Your Honor, because I think the prior case law said that it was not reversible error. That particular piece of law is an evidence law. It's not a jury

charge. And that's ultimately what the Supreme Court said.

Q. Okay. And the Court of Appeals had made that decision prior to this, I mean, I can give you the decision on January 14th, 2015. So there was some knowledge that that was an arguable issue at that time, ---

A. Yes.

Q. --- correct? Okay. And there was no objection made to the charge of the -- charge of the judge during this trial, is that correct?

A. That's correct.

Q. And, in fact, on, I think, 351, 19 and 20, Mr. Cantrell said there was nothing from the defense in regard to the charge, any objections. I think that's ---

A. Which page is that?

Q. 351, 19 and 20.

A. That's correct.

Q. Okay. Mr. Alexander, I think those are the only questions I have. Thank you.

MR. SMITH: Your Honor, may I have just a moment to look at this Stukes case?

THE COURT: Yeah. Yeah, go ahead.

(Pause)

THE COURT: While he's thinking, are there other cases that you're aware of that are in the same posture as this case with respect to an unobjected to charge on the corroboration?

A. I can't recall any off the top of my head. Usually what the Supreme Court will say -- I think they just did it in that Burdette case, that was Belcher that just came out recently, is that it's effective for all cases which is preserved on the record of review. But ---

THE COURT: You don't know of any others that are in this posture?

A. I can't think of any off the top of my head, Your Honor.

THE COURT: Okay. All right.

Cross-examination by Mr. Smith:

Q. Mr. Alexander, I think Mr. Ariail covered most of the topics I would ask you about. But just to confirm, was there any issues that could have -- that you saw that could have been raised that you didn't raise that you believe after reviewing it would have had more merits than the ones you did raise?

A. No.

Q. Okay. And in its brief the State did argue the merits of the issues as far as the court's not granting a mistrial, correct?

A. Correct.

Q. Okay. Thank you. I have no more questions.

THE COURT: If this case came up to you now or came up to the courts now and there was an objection made at the time, what would the result be?

A. On Stukes?

THE COURT: Yeah.

A. I think the case would be reversed, Your Honor. What's ---

THE COURT: And go back to the trial level for a complete do-over, right?

A. Yes, Your Honor. What they have done with Stukes errors is they said if there's no physical evidence and it's just the word of the complainant versus the word of the defendant, which is what you had here, it's reversible error.

THE COURT: Okay.

MR. ARIAIL: No further questions, Your Honor.

THE COURT: Okay. Thank you very much.

A. Thank you, Your Honor.

MR. ARIAIL: Can he be -- well, he's not under my subpoena, but I know he wants to get back.

THE COURT: Really? He wants to leave Greenville?

MR. ARIAIL: I mean, hey.

A. Thank you, Judge.

THE COURT: All right. Have a safe trip.

MR. ARIAIL: Your Honor, that's our case.

MR. SMITH: The State would call Mr. David Cantrell.

THE COURT: All right.

MADAM CLERK: Mr. Cantrell, how are you?

MR. CANTRELL: Fine. How are you?

MADAM CLERK: Place your left hand on the Bible and raise your right hand.

David Cantrell, Jr., being duly sworn testified as follows;

MADAM CLERK: Thank you. You may be seated. And please state your full name for the record.

MR. CANTRELL: David D. Cantrell, Jr.

Direct Examination by Mr. Smith:

Q. Mr. Cantrell, can you tell us how long you've been practicing law?

A. Forty-two years.

Q. And how much of that time has been in criminal -- criminal law?

A. Virtually all of it.

Q. Okay. How did you come to be involved in Mr. Holder's case?

A. I have been for a number of years a contract public defender in Pickens County. And it was assigned to me in that fashion.

Q. Okay. Do you know how many times you met with Mr. Holder during his case leading up to trial?

A. I was actually appointed shortly after he was arrested in March of 2013. Met with him some. I do not have the dates. Met with him some during that period of time.

And it being most likely a trial, it continued on through

the system, but was not going to be called -- the standard in Pickens County that's generally a trial is not going to come up for a year or two, usually. We generally knew how to keep in touch with one another. So first met with him in about April or May of 2013.

Q. Do you remember how many times you met with him?

A. I cannot speak to any times, although we did meet. I cannot speak to the number of times prior to -- I believe it would be about February of 2015, the year of the trial. We met, it looks like, February the 4th and February the 10th.

The reason for that was it was placed on the trial docket at that time. And we met to begin preparation for that. And I don't remember the snow, but I do know that the case did not come up at that time.

After that it came up on the trial docket in May. And we met three times, I believe all three at my office, May 7th, May 11th, May 14th. And we left two other messages to set up appointment times when we did not receive an answer on the phone, but did not meet.

Q. Were those messages unanswered?

A. I believe that -- I believe we got a voicemail. So we left a message and set a tentative appointment time. I don't believe those were included among the three that I just mentioned in May.

Q. I understand. Could you tell me about the facts of the

case?

A. Basically that Mr. Holder was an employee of this facility, which was a juvenile psychiatric facility, basically. It is all inpatient, fairly intensive. A number of the kids there generally stay for months at a time. And they are generally kids with general significant issues based on my experience in dealing with that facility.

It was alleged that Mr. Holder on at least two, maybe more occasions that it was alleged that he, with this particular young man, inappropriately touched him in at least two different areas of the facility.

Q. And you said that two -- two young men made accusations?

A. The trial was just on allegations of one young man. It was the same victim on both -- on these charges. There were allegations, alleged allegations by another young man, but -- and the State attempted to use him to present prior bad acts, but based on his, almost total lack of credibility, that was not allowed.

Q. Okay.

A. So there were allegations, but never -- nothing ever materialized.

Q. So Judge Hayes excluded that testimony?

A. Yes, he did.

Q. Okay. What was the evidence that the State had in this case?

A. I think it could generally be narrowed down to the statement of the young man and videos that showed the young man and Mr. Holder alone in certain areas on two separate occasions, two separate areas, being alone in those areas such that nobody could see them.

Q. They were blind spots?

A. Well, one was, in fact, in a -- I believe a -- one was in a library, the library of the facility, which was a fairly small room, but it had -- of course, had a door on it, but the door would close with the two of them in there.

The other, I believe, was a laundry area. And I don't recollect that there was any direct camera access to that area. I don't remember for sure, though.

Q. Okay. How harmful were the video recordings?

A. I believe significant -- significantly harmful. I do remember specifically the one from the laundry. The door would automatically close, but it would close. And the total amount of time they were in there, I don't remember, but several minutes. And there were periodic times when Mr. Holder would open the door and look out in the open area or look up and down the hallway, go back in and the door would close.

Q. What kind of preparation did you do to get ready for trial?

A. We communicated for the two years or more that it was

pending, but we did not start in-depth preparation. I did meet with him, and I'm sorry, I had the date earlier -- within the couple of months. And we talked about the case.

We talked about what he would do in his circumstances at the time when he was working. And he said, I do have witnesses that will help us out. We did not get into -- and I was not given any names at that point, and knowing that the trial was a year or two down the road, that was not pursued specifically at that time, just to know that witnesses were available.

We met in February of 2015 in anticipation of it being on the trial docket and started talking about it, but we pretty quickly discovered it was not going to come up for trial. And we did not talk again -- it came up for the trial -- for trial on May.

Generally the trial docket is published about two weeks before court. But routinely the solicitor's office would give the defense attorney somewhat of a heads-up, a notice that this case is probably going to be called for trial. That is when I started attempting to get in touch with Mr. Holder.

We had just met last in February. And we all knew that it was going to come up at some point within the next few months. I started calling Mr. Holder's phone number. I started writing him at the information I had in February when we talked and met, and I got no answers.

I cannot say for sure. The phone may have been disconnected. But I was getting no response from phone calls. One letter was returned from the address I had as not being deliverable. So I pretty quickly was concerned about reaching him because the trial was coming up. And I had no way at that point to reach him.

I did try one other thing and actually looked on Facebook to see if he had a presence on Facebook and discovered that he did. So I messaged him on Facebook saying I need to hear from you right away.

And within about 30 minutes, I believe it was, I get a phone call. And I was able to tell him about the trial, discovered that he had moved, I think, to somewhere in Oconee County and had a new mailing address and a new phone number, but, unfortunately, I didn't have any of that.

Q. He never gave you that information?

A. Not until I messaged him on Facebook.

Q. Okay. Do you remember the names that Mr. Holder gave you?

A. I believe this is most, if not all of them. And these I have based on the subpoena that was prepared and a cover letter to go with those subpoenas, were Anita Murphy, Ramona Foster, Kayla Shaw, Kaleisha Blassingame, Jamal Latimore -- Latimore, Valerie Clark, Shelly Brooks, Leigh Ann Lesley, Tony Duncan, Katrina Jones, Josh Hubbard, Jamie Wooten. And there

may have been one or two more. I don't see those here.
Q. So that's, what, about ten people?
A. I would say so. I do know that Maureen Rickard was mentioned. Josh Rasberger was mentioned.
Q. And, quite honestly, I'm trying to determine if these were people -- there were a number of people that we had names and I prepared subpoenas for, but we had no locations or ways to serve them.
Q. Okay. Were all of those names given to you by Mr. Holder?
A. Yes.
Q. Okay.
A. I will say that potential witnesses included people that were at the facility that Mr. Holder probably gave me, but they were also already included in the discovery. That would be the director and the assistant director, particularly.
Q. Okay. And they testified at trial, didn't they?
A. They did.
Q. Okay. How did you go about trying to find these witnesses?
A. Generally I had to depend on Mr. Holder to provide information. He knew them. To my knowledge, there were -- none of these people that I had any independent knowledge about. So I had to depend on him.
We would check Facebook for that type of information or

public -- the public index for criminal records to try to locate information. Anyone that was at the facility, we knew how to reach if we could reach them during work hours.

Q. Were you able to establish contact with any of these people?

A. I did with some, particularly the two, Mr. Sowell and the associate or the assistant director. I forget her name at this point. At the facility there were several of them also that either I located or Mr. Holder helped to locate that I was able to communicate with.

Q. Did you tell Mr. Holder that you were having trouble getting in touch with some of these people?

A. Yes. And he -- he also knew that because he also knew he didn't have any contact information for a number of them. But, yes, that was a concern.

Q. Was there any name that he gave you that you did not -- any person he named whom you did not try to contact?

A. I attempted to locate everybody whose name he gave me.

Q. Okay. Of the people with whom you spoke, why did you not call some of them as witnesses at trial?

A. Just very simply, he did tell me at some point all of these people will tell you that I didn't do this. And that was -- that was his belief, but that was not -- that was not accurate.

None of these people were at a vantage point to say

whether that specific occurrence happened in the library, in the laundry room. If anything, they would give an opinion, maybe, about Mr. Holder. And I don't remember any of those being particularly negative. They might give an opinion as to the young man's character or truthfulness, but that was basically it.

Q. Okay. So they essentially would have been character witnesses?

A. Basically for the most part. I don't remember anybody having direct knowledge of the incident or allegations. So, yes.

Q. Okay. And how did you decide that they wouldn't have been helpful at trial?

A. Quite candidly, bringing them in as witnesses of the character -- of Mr. Holder's character, I didn't see a need for unless something came up about his character on direct, which did not.

As to the young man's character, quite frankly, once I talked to the individuals at the facility, I knew and believed that they had the best knowledge and information about his character, his truthfulness, his honesty. And these other witnesses were much less definitive about that. So I believed that having the people that had the most direct knowledge were the strongest witnesses and would make the best impression on the jury.