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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to the Court of Appeals
Appeal From Lancaster County
Hon. Roger E. Henderson, Circuit Court Judge
Court of Appeals Appellate Case No. 2017-001796

The State, Petitioner,

v.

Guadalupe Guzman Morales, Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GUADALUPE GUZMAN MORALES,

APPELLANT

APPELLATE CASE NO 2017-001796

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

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STATE,

Plaintiff,

Case No.

-against-

2016-GS-29-00559

00564, 00565

GUADALUPE GUZMAN MORALES,

Defendant.

----------x

May 26, 2017

Lancaster, S.C.

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THE COURT: What is the first matter before the Court this morning.

MS. BURCHSTEAD: Good morning, Your Honor. Magan Burchstead with the Attorney General's Office. Nice to see you.

THE COURT: Good morning.

MS. BURCHSTEAD: We have Guadalupe Morales, indictment 2016-GS-29-559, 64, 65. The defendant has a motion to quash the indictment which is essentially at this point we understand is more of speedy trial type motion and Mr. Gregory represents him.

THE COURT: Okay. Good morning Mr. Gregory.

MR. GREGORY: My client is sitting here. (Indicating) I don't know that he needs to be sitting up here with me.

THE COURT: Okay, that's fine. However you want to do it is fine with me.

All right. Do the lawyers have anything to hand up to the Court for me to follow along as I hear arguments?

MS. BURCHSTEAD: Your Honor, we have not prepared a brief. We are intending to just respond orally and if Your Honor would like additional briefing we are happy to do it.

THE COURT: How about a copy of the indictment.

MS. BURCHSTEAD: Absolutely.

THE COURT: I got it.

MS. BURCHSTEAD: You got it. I got plenty of copies of those.

THE COURT: All right. Let me have the State then before I hear from you, Mr. Gregory, I'm just going to have the State introduce the case to me and give me the alleged facts and then I will hear your argument and we'll kind of go back and forth. Okay.

Yes, ma'am.

MS. BURCHSTEAD: Thank you, Your Honor. So, as I said we have three indictments. These are all criminal sexual conduct with a minor charges. One count is 1st degree, one count is 2nd degree and one count is I believe assault with intent to commit, 2nd degree. These stem from actions really ranging in the nineties, primarily Your Honor. The timeframe for the indictments is indictment number ending in 559 is December '99 through April 2000. That's the CSC with a minor first degree. The CSC with a minor 2nd degree ranges from April 1st to September 1st of 2001. And then our last Indictment has a date range of April 23, 2000 through September 2000, and that's the assault with intent to commit.

Mr. Morales was arrested in 2002 on these

indictments so we are not dealing with a lengthy delay of disclosure type case. The conduct had been ongoing. That's what the statement alleged. We do have the victim present if the courtroom. She was a child at the time.

The State is ready to move forward with a trial Your Honor, however the reason we are here is the delay in getting the case to court now. And I'm happy to elaborate further. We have the solicitor's office here in the courtroom that can also speak to the delay but the short version as I understand it is, Mr. Morales was in indicted in 2002 -- excuse me, he was arrest in 2002. Indicted in 2003. Solicitor Justice would have had that done. Of course we had a change in solicitor. The courthouse burned in 2008. We had another change in solicitor 2014.

The case came to the Attorney's Generals Office as I understand it just seeking some help with the over crowded docket situation and more manpower getting these cases moved. And so it did come to our office and our office indicted not realizing at the time that it had been in indicted previously so we had new indictments obtained in May of 2016. A change of prosecutor in our office where it came to me at the end of last year and we began talking to Mr. Gregory

and Miss Collins in terms of getting it scheduled. We were prepared to go in May and Mr. Gregory filed this motion. We all realized in conjunction with the solicitor's office that it had been indicted previously so while the original motion Mr. Gregory filed was a motion I believe based on a pre-indictment delay it appears it's more of a straight-up speedy trial motion at this point as this case was indicted and we did appear in front of Judge Hayes. In preparation for trial the State did learn new material. We got a stack about 80 pages of material from North Carolina equivalent of DSS which did list additional folks that may have information to the case and so based on that and the motion needed to be heard we ask we go just go ahead and bump it out a little for Your Honor to hear the motion.

Again, we're prepared to schedule a trial date. We had talked about April. We would be happy with July or September that will be fine too. But I'm happy to respond to anything directly Your Honor would like to know. Of course we have our own take on the speedy trial analysis. We don't believe there has been any prejudice ultimately, but I would let Mr. Gregory place his argument and then respond, if that suits Your Honor.

THE COURT: Thank you. Mr. Gregory.

MR. GREGORY: If it the please the Court.

THE COURT: Yes, sir.

MR. GREGORY: Your Honor, before I start as personal -- as a personal note, I would like to say that I have upmost respect for the Sixth Judicial Solicitor. I've known the solicitors. I have been practicing in Lancaster since 1971. I've known a number of solicitors in that period of time and I've always had the most respect for them, including the present solicitor and former solicitor and the solicitor before that who were all solicitors at the time this case was pending.

This case started with the arrest of my client, October the 29th, 2002. John Justice was the solicitor at that time. He passed away and he was succeeded in office by the assistant by the name of Doug Barfield who was the solicitor until the present solicitor, Randy Newman became solicitor. And the reason I mention this is because my wife and I both were victims of a violent crime within the last year -- two years ago. And I appreciate the respect and the diligence that the solicitor's office offered during that period of time. However, I have to say we are all human beings and I think some times things

fall between the cracks.

In regards to the indictment the solicitors -- well, the Attorney General's Office is prosecuting this case. It was brought to my attention I think it was in March -- I'm not sure. We had a conference call with Attorney General's office and Judge Hayes, I believe. Maybe it was just a meeting or conference. And at that time I think it was Miss Collins mentioned that she thought perhaps the case had been -- an indictment had been issued in the case. This was the first time I had heard this.

My client was arrested October the 29th, 2002. He was released on bail, November the 3rd, 2002. The first notice I had of an indictment was when my client was indicted May the 19th, 2016 and he was arraigned on that indictment August the 1st, 2016.

THE COURT: When did you begin representing your client?

MR. GREGORY: I was retained to represent Mr. Gonzales -- I mean Mr. Morales, I sorry, sometime in October or maybe November of 2002.

THE COURT: All right, go ahead.

MR. GREGORY: At the time he was arrested in other words, and I represented him since that time. At that meeting that I referred to was the first I had heard

of the possibility of a previous in indictment. However, I would like to state that even though there is a possibility that he was indicted my case file never showed an indictment number. When I get retained on a criminal case I entitle it 2002-GS-29-blank. And whenever the case is indicted I fix the indictment number. To date that still is not on there. I haven't put the new indictment number on there. He was in fact indicted last year.

If Mr. Morales had been indicted in 2003, I think that's what the Attorney General is saying the solicitor's records reveal. But of course I think they were all burned in the courthouse in 2008. That could be part of the problem. Then there would be no need to have re-indicted him last year which they did. But if he had been in indicted in 2003 my question is why was he not arraigned after the indictment in 2003. We don't know who was on the Grand Jury in 2003. We don't know when the Grand Jury was commenced. We don't know whether it was commenced more than 15 days before the first term of Court in the year 2003. All those records were burned in the courthouse. We haven't been able to find out who was the foreman of the Grand Jury at that time. Who was on the Grand Jury and do they remember hearing this case and voting

12 out of 18.

THE COURT: Well, let me cut to the chase. Don't the re-indictment then cure any procedural defect that the State may have had with the initial Grand Jury action?

MR. GREGORY: Well, in so far as is he indicted or not, yes. That would solve that problem. And he was arraigned after that.

THE COURT: Okay.

MR. GREGORY: So if that's the case then that would establish a lengthy delay and that's the basis of my motion to quash the Indictment and dismiss the case based on a violation of my client's constitution rights as guaranteed by the Fifth Amendment of the United States and the Fourteenth Amendment of the South Carolina Constitution.

THE COURT: Have you ever filed a motion for a speedy trial? You were retained in October of 2002. From October of 2002 to May 19, 2016, did you ever file a motion for a speedy trial or request a disposition of your client's case.

MR. GREGORY: No, sir.

THE COURT: Okay. Go ahead, I'm listening.

MR. GREGORY: And this motion that I filed was based on the my client's violation of constitution and

due process rights. That's the basis of the motion. So the lengthy delay between 2002 and the arraignment in 2016 is almost 15 years.

Now, I would like to hand up to the Court a letter. I will provide the Attorney General with a copy. If it please the Court.

(WHEREUPON, a document was handed to the Court.)

THE COURT: All right.

MR. GREGORY: The pertinent part of this letter of course is dated February 27, 2007 in regards to my client, Guadalupe Morales. It is to the United States Citizenship Immigration Service in regards to his request for a permanent residence card. In paragraph two of that letter I state that the charges against my client have not been presented to the Grand Jury, therefore he's not been indicted. A copy of that letter went to Jeff Hammond, the Clerk of Court and Jeff Hammond was the Clerk the Court in Lancaster County in 2002 and he still is.

THE COURT: 2007. Was he the clerk in 2002?

MR. GREGORY: He was.

THE COURT: Have you been a clerk that long?

MR. HAMMOND: Yes.

THE COURT: Fifteen years?

MR. HAMMOND: Seventeen.

MR. GREGORY: I didn't think he was that old, Your Honor. Mr. Hammond was the Clerk of Court when my client was arrested in 2002. He was the Clerk of Court in 2007 when this letter was written and I directed a copy of that letter to him. I never got a response from that Your Honor. I didn't request a respond but if my client had been indicted I would assume that the Clerk of Court would have let me know if that were not true.

Also I would like to hand up another letter with an attachment basically to the same addressee; immigration services. This is dated March the 10th, 2008. About a year later. Also in this letter I state that the charges against my client have not been presented to the Grand Jury therefore he has not been indicted. I also sent a copy of that letter to Jeff Hammond, Lancaster County Clerk of Court and I got no response from that letter, Your Honor, either. Which brings me to the conclusion that my client had not been in indicted at that time. I would also like to hand up Your Honor orders from the South Carolina Supreme Court in regards to pretrial delay. They were both signed by Chief Justice Woodrow Lewis dated 1983 and 1984 and they are concerning the length of time -- or they're concerning the delay in a trial of criminal

cases.

THE COURT: All right. Hasn't this order been superceded by the Lanford Order.

MR. GREGORY: It may have been. I didn't check. I don't know Your Honor.

THE COURT: Okay.

MR. GREGORY: But the reason I brought these things to the Court's attention is I'm not taking the position that my client was arrested October 29, 2002 and he was not arraigned until August 1, 2016. Almost 15 years. And this is very factually similar to the State versus Lee case which I stated in my motion to quash.

THE COURT: Let me see your motion to quash. I don't have that in front of me.

(WHEREUPON, documents were handed up to the Court.)

THE COURT: All right. Go ahead.

MR. GREGORY: Your Honor, this case is factually similar to the case State versus Lee, 653 S.E.2d 259, a 2007 case. It was tried I think in 2003. It went to Court of Appeals 2004. He was convicted of child molestation; stepchildren -- stepdaughters of his wife. He was convicted. It was a 12-year delay in that case although this was a pre-indictment of 12 years and he was convicted and the Court of Appeals

reversed the trial Court. The trial Court had denied his motion. He had made a motion to quash the indictment for pre-indictment delay. That was denied. He was convicted. He appealed. South Carolina Court of Appeals reversed it and the South Carolina Supreme Court upheld the Court of Appeals on Cert.

The case -- in that case the Court adopted basically a two-prong pre-indictment test delay. When the delay is alleged to have violated the defendant's due process rights, which we believe was done in this case.

The first prong of the -- the first prong is the delay caused substantial actual prejudice to the defendant's right to a fair trial. And we urge the Court that has happened in this case. And the second prong is that the Court has to balance the justification of the delay, if there is any, against the prejudice suffered by the defendant. And I understand we had a change in solicitors and we had a courthouse fire, but the courthouse fire didn't happen until 2008.

THE COURT: That's nine years ago.

MR. GREGORY: That's a six-year delay. There's also a nine-year delay from the fire until now. The delay -- the case says the delay caused the defendant

to be meaningfully impaired in his ability to defend against the charges. And so I would like to identify the evidence, Your Honor, in this particular case where we he have been unable to defend against the charge because of the delay. The witnesses; James Wilson, he's deceased; Ortero Morales, deceased; Chi Lee, deceased, now a resident of Mexico. Isabelle Palacios and Ricardo Guzman also out of the country and unavailable. The case also said -- the Lee case also said that Mr. Lee to be successful would have to reveal the expected content of the evidence with specificity. Well, the evidence that we are trying to get that we can not get is evidence of criminal conspiracy we believe exists, witness tampering, threatening witnesses with retaliation and criminal records, arrest records in state of Texas regarding Lois Campos. Who by the way is the victim's grandmother with whom she lives.

The State versus Lee case also said that it's required that you must show what serious efforts were used to obtain the evidence that are unavailable from other sources. Well, it's kind of hard to un-ring a bell, Your Honor. It's hard to find something when you don't know where it is. So we made numerous phone calls, personnel interviews and the apartments where

Miss Campos resided with the victim, Westgate Apartment's neighbors are no telling where. There has been a number of hours spent on trying to locate these folks to no avail.

Your Honor, in further support of those items required by the State versus Lee to prevail in a successful quash of an indictment motion, there are no results of medical examination available. The examining physician of the victim is unknown. We have HIPPI privacy policies to prevent disclosure of the examination results which have been attempted to be obtained. The DNA results are not available. We have not been able to see the love letters referred to by Detective Parsons. We have not been able to have the missing evidence examined by forensic expert to testify on my client's behalf at trial. The witness -- the victim's boyfriend is unavailable and has moved and left no forwarding address. This would be the boyfriend at the time of the alleged occurrences. There is also the inability to cross examine the victim in regard to the alleged events and other family members regarding the alleged incident.

My client has suffered the inability to refute the delayed disclosure evidence presented by the State's expert witness and the absence of any contemporaneous

evidence prejudices the defendant's ability to defend himself and he has no ability to obtain items of exculpatory evidence that may be in existence. And I will conclude, Your Honor, with the realization that because of the major advancements in developments of social media have allow the alleged victim to become educated in her description in more graphic detail then previously expressed. We feel that my client has been prejudiced by that delay of almost 15 years.

Thank you, Your Honor.

THE COURT: Thank you. Counsel, I know I'm sitting here looking forward and listening to you. There is a case that came out within the last year. Case out of McCormick County. Are you familiar with it?

MS. BURCHSTEAD: McCormick County?

THE COURT: I think it was McCormick County, and it was a delayed prosecution, State versus Witherspoon

MS. BURCHSTEAD: Sounds familiar, judge.

THE COURT: No, that's out of Charleston County.

MS. BURCHSTEAD: It is not ringing any real bells to me off the bat.

THE COURT: All right. Go ahead. I'm looking for it.

What that case basically stood for was the very

similar argument to what Mr. Gregory is making. I don't know if they cited the Lee case that he is relying upon, but I know it was a recent case and it had some Lanford issues, and speedy trial issues, a delay in prosecution. That may have been murder case.

MS. BURCHSTEAD: Hunsberger is the most recent case I am familiar with regarding the prosecution delay issue, Your Honor, and that came out within the last couple of months.

THE COURT: What's the name?

MS. BURCHSTEAD: Hunsberger, H-U-N-S-B-E-R-G-E-R.

THE COURT: Is is that applicable here.

MS. BURCHSTEAD: I'm sorry Your Honor.

THE COURT: Is any language in that case applicable here which supports your contention.

MS. BURCHSTEAD: Yes, sir. Well, it doesn't support us, but we can differentiate from it, Your Honor.

In this particular case there was found to be such delay that it was a problem in that case, however the significance of that case is the Court found that the prosecution was using the delay tactically and we feel that is very different from what is going on here.

THE COURT: What is the name of that case again?

MS. BURCHSTEAD: Hunsberger, H-U-N-S-B-E-R-G-E-R,

Your Honor. It's a 2016 case; 418 S.C. 335. That's the most recent case that talks about delay, Your Honor, that I am aware of.

THE COURT: Edgefield, McCormick, I was close. Go ahead. I'm listening.

MS. BURCHSTEAD: Thank you. Thank you, judge.

First, let me address the angle of Lee and the pre-indictment delay. And before I actually get to the substance of how I would like to respond, if you don't mind, I believe Mr. Gregory has seen this before. Miss Collins has provided to us what is a -- if I just pass it up to you -- the Lancaster General Sessions docket August 2008 which does list Mr. Morales on there with an indictment number of 2003. So we would reiterate to the Court the State's position is that this case was in fact indicted in 2003. Obviously with the Attorney General's office seeking indictments in 2016 we were not aware of that and we did just learn of that a couple of weeks ago. Which would suggest to the Court that does present a little bit of a different angle here, however, I would say regardless of we're looking at pre-indictment delay or just a speedy trial analysis, Your Honor, the analysis is very similar regardless in that under Lee -- especially looking at that second prong, you are

looking at the reason for the delay and whether there's prejudice and you are still looking at a balancing test. Ultimately you're still looking at prejudice and whether that exists. And while we recognize the length of delay of 15 years is pretty significant, the State's position is that in looking at Barker and the speedy trial case law including Hunsberger and the progeny of Barker you are looking at the totality of the circumstances, the balancing test and the length of delay and the fact that there was delay is just a triggering factor in beginning that analysis Your Honor.

What we would say is that -- or what we are saying is that, yes, the delay was significant. However, the reason for the delay is not tactical as it was in Husnberger. There was no malicious or calculating intent on behalf of the State, but merely an over crowded docket and at worse negligence, which is not good but according to Hunsberger which cites Lanford, negligence or overcrowding weighs less heavily on the State. So in your balancing test that's not as significant as in Hunsberger where they found it to be more of tactical situation where they state was causing the delay.

THE COURT: But it's still something for the Court

to consider.

MS. BURCHSTEAD: Absolutely. All of these things are to be considered. The State's overall position here is when considering all of these things, weighing the totality; the delay, how long it was triggers and you have some presumptive prejudice when you are initially doing your review. But ultimately you still have to balance all of the factors and we ultimately say there is not sufficient prejudice that there is such delay that due process has been violated. Again, the reason for the delay was not tactical and of significance is that the defendant never asserted his speedy trial. According to Barker versus Wingo it's difficult to claim you are violated when you have not asserted your speedy trial rights.

THE COURT: But didn't the Hunsberger wasn't that same argument made in that one and didn't the Court --

MS. BURCHSTEAD: I'm sorry, I hope I am not misstating and that Hunsberger did actually file speedy trial.

THE COURT: Late.

MS. BURCHSTEAD: Filed at least two motions for speedy trial and again when you actually look at the prejudice, we got three prongs. You got the length of delay, reason for the delay, whether the assertion for

the speedy trial happened and whether the delay caused prejudice. And you look at Barker versus Wingo and again the progeny of these cases look back at Barker for what those prejudicial factors are. One of which is whether the defendant was incarcerated and Mr. Gregory told you he was not. He got out almost immediately. So during this entire time he has not been incarcerated. He has not had the anxiety of incarceration and that's the second factor in the actual prejudice factors as being weighed, Your Honor, is whether there was anxiety concerning the accused. I would reiterate if there was anxiety file a speedy motion. It just appears to the State when you sent letters, you had discussions with the solicitor's office, but we never said I want my case heard. And now to come and say I am prejudiced flies in the face of that. And lastly under the specific prejudicial factors, and again, that is fourth prong of your speedy trial analysis of whether you have limited the possibility of a defense. And I heard what Mr. Gregory said and obviously Mr. Gregory is not going to tell me the defense to his case and we wouldn't expect that but I was little bit surprised as to some of things he said. I would point the Court's attention to the case of Evans, Your Honor. State v Evans, 386

S.C. 418. We believe we are in a situation more akin to that case where Judge Lockemy, who was the trial judge at the time, found a 12-year delay was not prejudicial to the defendant in any significant degree. To any degree other than in and of itself having been 12 years. The Court of Appeals affirmed that and they did drop a footnote saying the timeline had been troubling but it was of significance that Judge Lockemy noted at the trial level that basically it's been 12 years. So there's nothing that could really be pointed to. I understand Mr. Gregory gave you a list of names. I haven't seen those names in the file. I don't know whether they would be character witnesses. I don't know what his defense would be, but the State's position is this is the case that would have been years ago except our victim is older now and he's free to cross examine her. She's going to say what happened. She's going to testify.

This is not a forensic type case. This is a witness testimony case and the form of the State's case is primary our victim. There maybe some Lyle testimony. There was other girls in the home and we would address that at trial whether they would testify as well. But the core of the State's case is our victim's testimony and I don't see how that changes

even though it's 15 years later. It is not a forensic type case, Your Honor.

So the State's position is that pre-indictment or not, you are essentially looking at a balancing test under Lee or Barker or any of them. You're still looking at that due process balancing test and ultimately you have to look at the prejudice weighing against the delay and the delay here was --

THE COURT: So, according to your argument --

MS. BURCHSTEAD: Yes, sir.

THE COURT: -- when would there ever been an unreasonable delay of prejudice to the defense.

MS. BURCHSTEAD: I would say when you're in a situation where you do have forensic evidence and you actually do need testing of something and that material has disappeared, or you have someone that actually witnessed it; an eye-witness for example that is gone. Something like that where it actually goes to the core of how the State is going to prove its case, Your Honor, and the inability to cross examine. We have the ability to cross examine.

THE COURT: Isn't that what Mr. Gregory is alleging by listing out those particular witnesses? Mr. Gregory, the names you mentioned, these witnesses for your client, are they alibi witnesses or -- I

don't know what your defense is. What are they?

MR. GREGORY: I understand Your Honor. They are not alibi witnesses. They're witnesses that would testify in regards to the conspiracy of the victim with her grandmother to -- against my client.

THE COURT: Okay. Got you. I understand. All right, that's what you are alleging.

All right. I'm coming back to you.

MS. BURCHSTEAD: In response to that the victim and the grandmother are available to testify as are law enforcement folks that worked the case and I would assume other members of the community.

THE COURT: Well, I'm with you. I understand where your argument is.

MS. BURCHSTEAD: Yes, sir.

THE COURT: But if the defense is putting up -- if the defense's defense is that, look, this is just a conspiracy to get this guy out of the house. This is all made up. He said, she said. There is no forensic evidence. She's just saying this. I'm just portraying this.

MS. BURCHSTEAD: I understand.

THE COURT: I'm just thinking out loud.

MS. BURCHSTEAD: Absolutely.

THE COURT: Doesn't that seriously hamper the

defense's right to a fair trial based upon this delay even though it's not your particular fault.

MS. BURCHSTEAD: Right.

THE COURT: It may not be anybody's fault. Okay.

MS. BURCHSTEAD: I understand. I believe we're still looking at a balancing test and while, yes, there's potential impact, I don't believe it's serious impact. And frankly, the case that we're putting up I believe he would still be able to adequately defend the case, Your Honor, in a confrontation type manner with cross examination of the witnesses that we put up and the two individuals he's discussing that would be in a conspiracy are going to be testify. And there are other members of the family that resided in the home.

There's a number of homes involved and the members that reside in the home are available, and of significance the defense's wife, the victim's mother, is still around somebody can put her up and ask her.

THE COURT: Okay. Thank you ma'am.

Anything further Mr. Gregory?

MR. GREGORY: If it please the Court, Your Honor, the State versus Evans' case that the Attorney General cited I think this is what she said it was a 12-year delay and that was found not to be sufficient delay.

But the Court, Judge Lockemy, called it troubling. This case is almost 15 years old, so I would say this case is more than troubling and not only that, Your Honor, there has been no evidence shown that my client had ever been in indicted. Never been arraigned until last year, August the 1st, 2016.

THE COURT: Do you acknowledge that there's a Lancaster County General Sessions docket from August of 2008 with indictment numbers 03-GS-29-78, 79, 80 and 81.

MR. GREGORY: Your Honor, I do acknowledge having received that and it appears to be either somebody's notebook notes or something in a file. Now what that is it's a list of people's name and either case numbers or warrant numbers and/or indictment numbers. That does not -- that does not prove that an actual grand jury convened that was -- well, back in 2003 I'm talking about. It doesn't prove that a grand jury convened and they were impaneled more than 15 days in the year 2003 and they listened to testimony and they returned a true bill. We don't have it. We don't know if it was burned in the courthouse perhaps so. But we don't have that. So what I'm saying is, what that is is circumstantial evidence that yes, there was case number assigned. But does that mean that they

were indicted, no, and does that mean he was arraigned, no.

THE COURT: That's why I asked you if the new indictment from May first of 2016 cured that. I understand that supports your argument.

MR. GREGORY: It does, Your Honor.

THE COURT: It does cure that. But so the timeframe between then 2000 -- okay. Your argument that would not be excusable delay?

MR. GREGORY: Correct.

THE COURT: Okay.

MS. COLLINS: May it please the Court.

THE COURT: Yes.

MS. COLLINS: Your Honor, I recognize I'm not counsel for the State in this proceeding. It has been taken over by the Attorney General.

THE COURT: Introduce yourself for the record.

MS. COLLINS: Lisa G. Collins. I'm Deputy Solicitor for Lancaster County, Sixth Judicial Circuit.

To the extent that there is any question in terms of pre-indictment delay I would like to be heard, if I may.

THE COURT: All right. Sure.

In the interest of justice all around I will be

glad to hear whatever anybody wishes to say. Yes, ma'am.

MS. COLLINS: Your Honor, I prepared a brief and didn't realize that I am no longer counsel for the State. I am going to hand that up to extent it sets forth a chronology. I participated in a conference call as my role of deputy solicitor that took place with Judge Mark Hayes when this case was schedule for trial before him on May 8th, and I sent an e-mail after the conference because it was during the conference call that I first became aware that Mr. Gregory was asserting pre-indictment delay rather than speedy trial issues. And right before the conference call I was really amazed that was the assertion because for all that can be said in terms of the Sixth Judicial Circuit especially with my background in other areas in the state, both statewide, PCR's and also the 16th, the one thing that I can say about the this Judicial Circuit is that they are extremely timely in indicting the defendants. Almost without exception the defendants are indicted within three to four months of the arrest. But I was not here when Mr. Morales was arrested in 2002. But after that I did do some digging. I spoke with Solicitor Randy Newman. I spoke to Julie Small, who is one of our

paralegals in the office, and there is a notebook and I have testimony available from Julie Smalls that Ginger Sowell, a paralegal in the office at that time of the fire in August of 2008 happened to take home one of the notebooks that had that pre-fire indictment and it is the page that's handed up and I would ask that be made for a record an exhibit; either Court's exhibit or State's Exhibit, showing that the indictment numbers as referenced.

THE COURT: That's this. (Indicating)

MS. COLLINS: Yes.

THE COURT: All right. That will be Court's Exhibit Number One. Madame court reporter I'll hand this to you. You can go ahead and mark that.

(Court's Exhibit One, document, received in evidence as of this date.)

THE COURT: Okay.

MS. COLLINS: So Your Honor, we have available Miss Small to testify as well as Solicitor Newman and former Solicitor Barfield regarding that that at that time there had been an indictment number assigned. At that time to my knowledge the public index as we know it today that reflects indictment numbers didn't exist.

THE COURT: All right, call your witness.

MS. COLLINS: But Your Honor, if I may -- if I may just briefly. There is no statutory nor procedural requirement that anybody be arraigned on an indictment other than for a direct indictment.

THE COURT: I understand. I was fixing to get to that.

MS. COLLINS: And also the reason that the State then did prepare an indictment that the Attorney General did, is at that point since the indictments were destroyed by the fire there is nothing to show to the jury. So of course if something is going to trial we would have to have something and that's why the Attorney General Office did a further indictment but there was no requirement that be done.

Your Honor, at this time I would call Solicitor Randy Newman.

THE COURT: Before we do that. Mr. Gregory, after having heard Miss Collin's legal arguments and of course the only evidence in the record -- albeit circumstantial -- is that Lancaster County General docket August 2008 do you stipulate that your client was indicted in 2003?

MR. GREGORY: No, Your Honor I don't stipulate to that.

THE COURT: Okay. I need to make a finding of

fact.

MR. GREGORY: I do acknowledge that there was evidence showing a case number had been affixed at that time.

THE COURT: Okay, I need to make a finding then for the court's record so go ahead and call your witness.

MS. COLLINS: Your Honor, actually I will call Mr. Barfield first.

THE COURT: All right solicitor.

DOUG BARFIELD, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. COLLINS:

Q Please state your name?

A Doug Barfield.

Q What is your occupation?

A I'm an attorney.

Q And where do you currently work?

A I'm I guess a private practitioner and my sole client is the Lancaster County Sheriff's Office.

Q Did you previously represent the State of South Carolina as the Circuit solicitor for the 6th Judicial Circuit?

A I did.

Q Prior to that time you served as an Assistant Solicitor, Deputy Solicitor under Solicitor John Justice is that right?

A I did.

Q When were you elected solicitor?

A I was elected in November of 2006. I took full term in January of 2007. I was appointed in October of 2006 after the death of John Justice in September of 2006.

Q When you were working for Solicitor Justice were you assigned specifically to Lancaster County South Carolina?

A Yes, ma'am.

Q Did you work exclusively on those cases?

A Every now and then I would go to one of the other counties to do something but primary Lancaster County.

Q Did any other solicitors work those cases at that time?

A I started in '84 and I was a part time prosecutor in '84 until not too long before Mr. Morales was arrested. From '84 until that time there was one part time administrative assistant. I think in 2002 we got another. I had become full time by then and I think in 2002 we got another full time lawyer and full time paralegal. Nobody else worked in Lancaster County other than me as part time employee until some time in 2000 or later.

Q Where was your office located at the time of the fire in August of '08?

A 105 West Dunlop directly across the street.

Q Where were the indictments housed at that time?

A In 101 North Main Street, which is the start of the Lancaster County Courthouse.

Q And that is the courthouse that was set fire to on August 4, 2008 resulting in great damage?

A That's correct. Can I expound on that?

Q Yes, please do.

A The clerk will correct me if he needs to later, but the indictments, the arrest warrants, the bond papers, bench warrant information, the bench warrant logs, all of that material was kept in the upstairs courtroom, the old Lancaster county courthouse. Literally the fire was started with those materials piled on the floor in front of the bench and lighter fluid poured on them. They were destroyed. Those original documents were all destroyed.

Q And that included the indictments?

A Yes, ma'am.

Q So it didn't just start in that room. Those materials were used as fuel for the accelerant; is that correct?

A Exactly.

Q Was it the day within 48 hours would you say of the courthouse fire in August 4, 2008 that your office also was it set fir two?

A It was 72 hours. Three days later. Monday morning to

Thursday morning.

Q And as a result therefore did you file on the various cases were they destroyed?

A They were. We had -- at the time of the courthouse fire we had one lawyer, I think, and a paralegal housed in the courthouse. They had materials, papers, files. They were not burned up but damaged by water and smoke from whatever was over here. We salvaged a little bit of stuff on Monday night and actually carried it across the street to my office which was combine with the stuff I had in my office which all was burned up, smoked up, wet down, five o'clock Thursday morning when my office was set on fire.

Q Let me back you October 2002 when the defendant Mr. Morales was arrested. Were you the sole solicitor working in Lancaster County at that time under John Justice?

A In Lancaster.

Q Okay.

A Are you asking in Lancaster?

Q Yes, in Lancaster?

A I think Mr. Holland might have been there then but I am not absolutely certain.

A Okay.

Q He came in 2002?

Q Do you recall Mr. Morales's case from onset after his arrest?

A I don't have a specific recollection of it, other than reading some material that people had provided me pursuant to this motion.

Q In October 2002 then let's talk about the procedure. If a defendant was arrested in October of 2002 as Mr. Morales was, when would normally their indictment be prepared and presented to the Grand Jury?

A Within a month or two. And I can tell -- I don't want to get way off course here, but at the time these events occurred we had no computerized case management system. We had word documents and we prepared a word document docket of indicted cases. The page that has been introduced as a Court's exhibit is a page of that docket of indicted cases. After my fire in my office I actually found my docket in my office and it's somewhere in the solicitor's office now which is the same document that you handed a page up from. Those -- that docket reflects cases that had been presented to the Lancaster county Grand Jury and had been indicted and thereafter had indictment numbers.

The indictment numbers assigned to this case tell me it that was indicted the first term of Court which I would presume would have been January 2003. I can say with all confidence, Mr. Morales got indicted. There's no doubt in mind he got indicted.

Q Had an indictment number been assigned but in fact the Grand Jury had no billed the indictment, would there have been a

mark on the docket sheet marking through those lists or would they never have made it to that list?

A It would have come off the public index. Let me go back and talk about that.

We had records on public index back then. The Clerk of Court did not put the indictment numbers on those records until probably some time after I became solicitor. The indictment numbers use to never go on the public index until a case was disposed of. In 2002 indictment numbers were never put in the public index until the case was disposed. And I forgot your question. Tell me your question again.

Q I was asking if it would even been on the list or would have been on the list and marked through if it had been no billed?

A Miss Small might be able to answer this better. I don't think it would have ever been on the list but it will certainly have come off the public index if it had been no billed because I would have gone to the clerk's office with no bill indictment and it would have come off.

Q Did Miss Small -- was she in charge of preparing the indictments for you at that time?

A She prepared the indictments. I approved them and I think she typed the docket. Some time earlier then that all that was done in the Chester office but I think by 2002 we did it here in Lancaster.

Q Ginger Sowell (sic)was another paralegal in your office at the time of the fire; is that correct?

A Yes.

Q She had actually taken one of the docket lists home in a notebook the night of the fire, is that right, before the fire?

A That's my understanding.

Q Let's talk about procedure back in '02 or '03 when the fire happened. Let's talk about actually in '03 when Mr. Morales is reflected by the indictment was indicted. Would you arraign someone that had been indicted on something that was not a direct indictment at that time?

A Somebody who got arrested on an arrest warrant did not get arraignment. If we changed the charge, added indictments, we would bring somebody in and arraign them. We also did not call lawyers after the grand jury met and say your guy has been indicted. This is his indictment number. That was a matter of public record. The indictments existed in the clerk's office and we didn't call people and say you can put the indictment number on your file now because he has been in indicted.

Q And that's something that you would expect the defense attorney to have done by contacting the clerk's office for the public record?

A I can't recall lawyers calling me saying did my guy get indicted. It just wasn't an issue.

Q Okay. You were elected in '06 -- well, you took office, am I right -- took office in '07 and '11 is that right?

A That's correct.

Q So, you decided not to run for re-election November '14 that's when Solicitor Newman ran for election and got elected, correct?

A Correct.

Q Prior to your leaving the office when Solicitor Newman was sworn in January of 2015, did you have some e-mail correspondence with Mr. Gregory?

A I apparently did. You showed me an e-mail which I recall now and quite literally this e-mail was sent to me by Mr. Gregory the day before my last day in office.

Q And in that e-mail does he -- does Mr. Gregory say, by the way my guy has never been indicted?

A No, ma'am.

Q He's asking you is there some way to dispose of the case prior to the changing of the guard as Solicitor Newman being sworn in, is that right.

A Right. And obviously between that day and the next day when I was going to leave the office there wasn't any way for me to deal with it. And I will say this to, Mr. Gregory apparently sent this letter that he showed the judge dated March 10th of 2008 that he had written to Customs and Citizenship and Immigration Services. That's the first I had seen of this

letter. He didn't copy me on this letter in 2008 or the one that he referred to he sent to the clerk in 2007. And as far as I recall also this is the only communication I remember having with Mr. Gregory about this case at all; this e-mail the day before I left office.

Q Thank you. I would ask this be marked as State's Exhibit One. And I have shown Mr. Gregory. I move that in.

THE COURT: Any objection to that document coming in?

MR. GREGORY: No, Your Honor.

THE COURT: All right.

(State's Exhibit One, e-mail letter received in evidence as of this date.)

THE COURT: Any further questions.

Q Mr. Gregory -- Mr. Barfield, you heard Mr. Gregory talk today in his presentation to the Court about the numerous witnesses that had either died or were no longer available and that they relocated to Mexico or out of the country, is that right?

A I heard him make those arguments, yes, ma'am.

Q Were any of those witnesses familiar to you?

A No, ma'am.

Q At any time had Mr. Gregory contacted you and say I had a witness that died, I'm very concern about the effect of that on the case?

A I have no recollection of that. Again, I have no recollection of any discussions with Mr. Gregory about this case until the day before I left office.

Q So to the best of your knowledge as reflected by the indictments in Court's Exhibit One, indictment numbers 0378, 79, 80 and 81, Mr. Morales's case was in indicted and that would have been certainly in the year 2003 and by the low number of the indictment number should have been in the January month you believe?

A I believe, and I have no doubt he was indicted.

MS. COLLINS: Your Honor, that would be my only questions for Mr. Barfield in terms of the pre-indictment delay. To the extent Your Honor is going to consider Hunsberger I might have some further for him, but I think this is the critical issue at this point in terms of establishing about the charges being in indicted.

THE COURT: Any questions for this witness.

MR. GREGORY: Yes, Your Honor.

THE COURT: Before we do that for purposes of the record, Mr. Gregory, the letters you handed up during your presentation to the Court, I have stapled them together and I have them marked as Courts Exhibit Number Two. Okay. All right, so we'll have a clean record.

(Court's Exhibit Two, letter, received in evidence as of this date.)

THE COURT: The former Chief Justice orders be placed and filed. These are orders of the Court. They don't need to be formerly introduced. Thank you.

All right. Go ahead.

CROSS EXAMINATION

BY MR. GREGORY:

Q Mr. Barfield, John Reid Justice would appreciate this. I've been waiting 33 years to get you on the stand under oath so I can cross examine.

A It's not the first time I have been on the witness stand under oath. I've done it in a murder case before.

Q All kidding aside. You recall -- okay, the exhibit went in. It was an e-mail communication between you and me.

A Yes.

Q I recall specifically personally, face to face asking you right before you left office would you dismiss the case. And you may or may not remember that, and I may have followed up with e-mail.

A And I have no doubt. I certainly can not dispute that you might have seen me somewhere and asked me that.

Q All right. And obviously you didn't dismiss the case. Do you recall from your own personnel knowledge -- of course you would not be in the grand jury room in 2003 if this case had

been submitted?

A No, sir.

Q So do you recall from your recollection specifically from your memory the case actually being sent to the Grand Jury? Your testimony was, yeah, I probably do this. This is our procedure. Yeah, I think I did this. But can you recall the case actually going to the Grand Jury?

A No, sir.

Q All right.

A And I can explain it this way. Miss Small prepared the indictments. I literally myself proofread them. I handled them through the Grand Jury. I have done it for thousands and thousands and thousands of indictments. I can not recall Mr. Morales's indictment being in my hands at any point, no, sir.

Q All right. That's all the questions.

MR. GREGORY: Thank you, Your Honor.

MS. COLLINS: No further questions for this witness.

THE COURT: All right, thank you sir. You may step down.

MS. COLLINS: I would like to call Jeff Hammond, the Clerk of Court please.

JEFF HAMMOND, called as a witness, having been duly sworn by the Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. COLLINS:

Q Good morning.

A Good morning.

Q Please state your name and occupation?

A Jeff Hammond, clerk of Court, Lancaster County.

Q You served at Clerk of Court in Lancaster since the year engineer 2000?

A 2001.

Q 2001? You were elected in 2000?

A Yes.

Q When you took office in 2001 at that time the courthouse was in the historic courthouse because that was prior to the fire in '08; is that correct?

A That's correct.

Q In 2002 when Mr. Morales was arrested and in 2003 when we believe he was in indicted where were the indictments housed?

A They were in the courthouse upstairs.

Q When the Grand Jury would meet in the year 2003, would you be present?

A Yes.

Q And do you recall the actual date in January of 2003 that the Grand Jury met?

A I do not.

Q If a case had been assigned an indictment number in

January of 2003 and the Grand Jury return a a no bill, what would your office do?

A That case would be disposed of.

Q All right, and would that somehow be reflected in your system?

A Yes.

Q Did you have a computerized system of management at that time?

A Yes, but as far as the actual record entries I didn't perform those. I had staff that did that. The actual case management system that we're presently on I think we started that in -- this is rough guess -- '05, '06. Somewhere in that range.

Q You heard Mr. Barfield testify that he believed it wasn't approximately until '06 that indictment numbers started being entered on the public index, is that right?

A Yes.

Q Did you all at that point go back and enter the older ones or you all just started at that point in '06 and started entering indictment numbers?

A I don't recall. I don't recall.

Q Okay. You heard Mr. Gregory make presentation to the court regarding the chronology of events from his perceptive and he stated that he contacted the clerk's office from time to time to see if a case was still pending. Do you recall him saying

that?

A Yes.

Q Had the case been no billed by the Grand Jury after being assigned a 2003 indictment number, had the case been no billed and a defense attorney contacted you and said is the the case still pending what would your response have been?

A It's pending.

Q If it had been no billed what would your response have been?

A The case doesn't exist.

Q It was closed as you say?

A Yes, closed.

Q Do you recall Mr. Gregory ever contacting you or -- of course I can't speak in terms of members of your office, but ever contacting you about whether or not this case was pending?

A I can not recall.

Q You saw -- did you see the letter attached that was presented by Mr. Gregory in terms of his letter to the immigration management or custom services about his client wanting a permanent residency card?

A I did not see that.

Q Okay, let's show you that. I believe it's attached to State's Exhibit One. If I can have that. (Handed.)

I show you was has been marked as State's Exhibit One that is in evidence without objection. Attached to it is the letter

dated March 10, '08 from Mr. Gregory. Do you recall -- it shows that you were personally copied that at the bottom; cc. Do you recall having received that courtesy copy?

A No.

Q Okay.

A Any correspondence through that comes through our office would have been put in a file.

Q Okay. And if the letter, as this letter does not request action on your part it simply would have been filed?

A Yes.

Q When the courthouse fire happened on August 4, 2008 it happened during the evening hours, is that correct?

A Actually early morning.

Q Early morning. You weren't here in the building, correct?

A I was not. I was actually at the beach at the time of the fire. I was headed back.

Q And you heard Mr. Barfield testify today that actually the records used as part to fuel the accelerant were in part the indictments; is that correct?

A That is correct. I visually got to see that after the the remnants of what was left. The fireman walked me up there and showed me.

Q And the indictments were housed there in the Clerk of Court's Office or in the courthouse?

A In the courthouse upstairs in the courtroom.

Q And indictments were destroyed from the fire, is that correct?

A That's correct.

Q Did your office keep any other log of indictment numbers as you see here in Courts Exhibit's One from the solicitor's office? Did your office keep a log of indictment numbers?

A I would have to probably refer to the deputy clerk.

Q Miss Carol Williams?

A She's not here.

MS. COLLINS: No further questions.

THE COURT: All right. Yes, sir.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Mr. Hammond, you have been a Clerk of Court since 2001?

A Yes.

Q John Justice would probably appreciate it, I have been waiting to get you on stand under oath for 16 years?

THE COURT: I think everybody in this courtroom has.

Q But I won't ask you any questions about anything but this.

You testified about not having recalled seeing a letter. I

think it's called Exhibit Number Two that I had written? You say you don't recall seeing. You say you thought it would have been perhaps put in the file?

A Yes.

Q And those letters were both dated before the date of the fire, correct? So if there were in the file -- fire -- they would have been burned in the fire as well as everything else?

A That's correct.

Q Now you don't recall this particular case having been submitted to the Grand Jury in 2003?

A Just like Mr. Barfield for 17 years there's thousands of cases that have come through. I do not recall.

Q Exactly. Just like probably the people who were on the Grand Jury at that time, whoever they were, probably could not remember the cases that were submitted to them?

A Right.

Q Do you have a record of who were the members of the Grand Jury in 2003?

A If we did, they are probably ashes.

Q Ashes.

MR. GREGORY: All right. That's all the questions. Thank you.

THE COURT: Thank you.

REDIRECT EXAMINATION

BY MS. COLLINS:

Q You stated that you had thousands of cases that came before you in your tenure as clerk of court, correct?
A Yes.
Q You said you took office in 2001, correct?
A Correct.
Q And Mr. Morales per the number was indicted sometime early in 2003, correct?
A Yes.
Q So this was pretty new to you back then, right?
A Yes.
Q Pretty exciting back then I imagine?
A Yes, head spinning.
Q Do you recall any no bill coming out of the Grand Jury during those early years?
A No.
Q That's a rare thing isn't it?
A Yes.
Q So you don't recall any case being no billed by the Grand Jury during those early years?
A If there were one or two maybe, but rare. Very rare.
Q Would you recall, do you think a no bill in your early tenure involving sexual allegations with a child victim?
A No.
Q No, you would not recall that?
A What are you talking about?

Q I'm just saying due to the nature of the allegations, sexual allegations with a child victim, early in your career, do you think you would recall a no bill?

A That would probably stick out, yes.

Q And you don't recall a no bill at that time, correct?

A No.

MS. COLLINGS: Thank you.

THE COURT: All right, thank you sir. You may step down.

MS. COLLINS: Your Honor, the State calls Julie Smalls.

JULIE SMALLS, called as a witness, having been duly sworn by the judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. COLLINS:

Q State your name?

A Julie Smalls.

Q What's your occupation?

A I work with the solicitor's office.

Q What is your responsibility?

A I'm over the diversion programs, I do expungements, I do indictments. Anything else that needs to be done.

Q When you say you do indictments, do you prepare them for review by an attorney in the office?

A I do.
Q Do you number them? Assign numbers to them?
A Yes, I do.
Q And you give them to the solicitor for the clerk of Court and then they'll be presented to the Grand Jury, is that right?
A Yes, ma'am.
Q How long have you worked for solicitor office?
A Thirty-one years.
Q So you were employed then in 2002, 2003, correct?
A Yes, ma'am.
Q Worked under Solicitor Barfield?
A Yes, ma'am.
Q Solicitor Justice before that?
A Yes, ma'am.
Q Now Solicitor Newman, correct?
A Yes, ma'am.
Q In 2003 were you responsible for preparing indictments and numbering the indictments to the best of your memory?
A Yes.
Q Here in Lancaster County?
A Yes, ma'am.
Q Do you recall the courthouse fire in August of 2008?
A I do.
Q Do you recall the fire of the solicitor's office within

72 hours of that fire?

A I do.

Q Was there another paralegal in the office at that time for the solicitor's office Ginger Sowell?

A She was. Her office was in the old historic courthouse.

Q After the fire in the solicitor's office did Ginger Sowell give you a notebook that she had taken home with you?

A She did.

Q And what did that notebook contain?

A It contained the current docket of pending cases that had been indicted.

Q That had been indicted as of August of 2008?

A Yes, ma'am.

Q I will show you Court's Exhibit One and ask you do you recognize that document?

A Yes, that's from my docket.

Q So is that a xerox copy of one of the pages from the August '08 docket that were contained in the notebook that Ginger Sowell took home prior to the fire in the solicitor's office?

A Yes, ma'am.

Q And looking -- and you actually have the notebook here with you, correct?

A Yes.

Q Can you turn to that page and just confirm that Court's Exhibit One is an accurate and true copy of that same page showing that Mr. Morales was indicted in 2003 on his four warrants at the time?

A Yes, it is. It's the same.

Q Okay. Now, in your notebook there are some lines that are marked through like with a black sharpie or magic marker, correct?

A Correct.

Q If a case was disposed of was it your practice at the time to mark through those cases by hand showing that they were no longer pending?

A It was and that was because my computer -- how would I do it before it was destroyed in the fire. So that's is the only way I had to keep up with what was being disposed of.

Q Okay. When would an indictment number be assigned to indictment by you?

A Once it's been prepared. Before the Grand Jury.

Q Within a week of the Grand Jury or within a few days before the the Grand Jury met?

A Yes. Usually.

Q If a number is assigned to an indictment and it's presented to the Grand Jury and the Grand Jury no bills it would you have marked through that on the page?

A I would have taken it off, yes. Somebody would have

notified me that that charge was no billed and that would tell me to take it off the docket.

Q But you have the original notebook there and it was not taken off the docket, correct?

A It has not been taken off the docket.

Q And Court's Exhibit One you've already said is a true and accurate complete copy of what you have there in the original notebook, correct?

A Yes, ma'am.

Q So, would that reflect to you that since it wasn't marked through that it was true billed?

A That would reflect that to me.

Q All right.

MS. COLLINS: No further questions.

THE COURT: Mr. Gregory.

CROSS EXAMINATION

BY MR. GREGORY:

Q Is it your procedure would have been that cases were assigned indictment numbers only after they had been submitted to the Grand Jury and a true bill returned then the only cases that have indictment numbers would have been ones that were returned by the Grand Jury as true billed?

A No, they were assigned indictment numbers before the Grand Jury.

Q That's right. That's what you said. But my question

is, if they weren't assigned numbers until after they were indicted then you wouldn't have any cases that weren't indicted. I mean, if they had numbers on them they wouldn't have been indicted. Would you agree with that?

A I'm not sure what you are asking me.

Q You're saying that you put the numbers on them before they were submitted to the Grand Jury?

A Right.

Q The indictment numbers?

A Right.

Q The case numbers. 2000 -- whatever the year it is, dash GS, dash 29, dash whatever.

A Right.

Q And you only you assign those before they are submit to the Grand Jury?

A Right.

Q So therefore, let's just say in the situation where there is no bill, well, then that case number has to come off, right?

A Right.

Q Right. Now, this is my hypothetical question. Suppose you don't put any numbers on it at all until after it had been submitted to the Grand Jury and only would you put a number on it if it were a true billed indictment --

A Yes.

Q -- then in that case all the cases that have numbers would have been indicted?

A Yes.

Q Okay. But that didn't happen in this case? The numbers were assigned ahead of time?

A Right.

MR. GREGORY: Okay. Thank you.

MS. COLLINS: No further questions.

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

All right, I will go ahead and rule on the issue of the factual finding as to whether or not Mr. Morales was indicted. Based upon the testimony and evidence submitted into the record I find clear and convincing evidence has been presented by the State that Mr. Morales was in fact indicted by the Lancaster County Grand Jury back in 2003.

Now that I made that specific finding, the issue becomes the reason for the delay. I will tell you the Court is extremely concerned with this 15-year delay. Just as Judge Lockemy struggled with a 12-year delay, I'm really struggling with a 15-year delay.

Now, having said that let's move to the next phrase of the argument. What's the reason for -- I understand the reason for the Attorney General's

delay. I'm not worried about you all.

MS. BURCHSTEAD: Thank you.

THE COURT: Let's talk about Mr. Barfield's delay. I'm not worried about John Justice's delay because John Justice died in 2006 and he was in indicted in 2003. As a practicing lawyer back then I knew as a criminal defense lawyer I knew how, you know, how crowded the docket was. Obviously as a Chief Administrator Judge since I've become -- for every year since I've become the resident circuit judge here I'm aware of the issue. I'm aware of the problems. I've communicated with the Supreme Court numerous times about our backlog here. Tried to fashion administrative orders to resolve things. So I don't need to go into all that. I need to know why the case hasn't been called or done something with in the 15 years primarily from Barfield solicitor to the Newman Solicitor.

You all want to address that by way of argument. I don't think I need facts so to speak. I just need to know why it hasn't been pursued. Go ahead.

MS. BURCHSTEAD: Judge, I would say having conversations with Miss Collins and our general understanding is the same as Your Honor said is just general docket crowded issues and we had talked with

Miss Collins --

THE COURT: Is that enough.

MS. BURCHSTEAD: Yes, is the State's position because when you look at cases like Hunsberger and Lanford says negligence or overcrowding weighs less heavily then another reason for delay such as in Hunsberger where you had a tactical situation.

THE COURT: Less heavily against the State.

MS. BURCHSTEAD: Correct. And all of it is a balancing test to include whether the defendant asserted speedy trial which he did not ever. And that is all to be weighed together along with the prejudice.

THE COURT: Is there any other issue other than crowded docket? Because I know we only have 14 weeks a year of Court, Jeff, is that right?

THE CLERK: Something like that; 14, 16.

THE COURT: Madame solicitor, what's the -- solicitor how many weeks of Court have we had in the past couple of years, just for Lancaster.

SOLICITOR NEWMAN: We are up to 18 or 19 now.

THE COURT: Up to 18, but we were about around --

SOLICITOR NEWMAN: When I started here in 2011 we were at 12.

THE COURT: Around 12.

SOLICITOR: My understanding we had been at 12 for quite some time.

THE COURT: So about one week a month.

SOLICITOR NEWMAN: Other than the horrendous volume on the docket was also what Doug dealt with as solicitor was having two attorneys in Lancaster. We now have nine and a half attorneys, not including myself. So ten and a half including myself, and we are barely treading water now. So you can imagine what solicitor Barfield was doing with two attorneys and the case load that he had and the amount of court time.

THE COURT: Yes, sir.

MS. BURCHSTEAD: And Your Honor, I was just going to add I would defer the solicitor's office to address that in more detail because obviously I do not have all the details of what happened in that timeframe, judge.

THE COURT: Okay.

MS. BURCHSTEAD: But I would just reiterate the Attorney General's position and the State's position now is that is a factor and and we have not heard any other reason that would not be an overcrowded, just struggling with the docket --

THE COURT: Not a tactical reason.

MS. BURCHSTEAD: That's it. You got it. You understand my position.

THE COURT: I got ya. Mr. Gregory, anything else before I rule?

MR. GREGORY: Your Honor, if I understand the math. I went to Carolina so give me a moment hear.

THE COURT: I will give you two moments.

MR. GREGORY: Fourteen terms of court a year, is that the number that was given.

SOLICITOR NEWMAN: No, sir.

THE COURT: Twelve. It averaged about --

SOLICITOR NEWMAN: About one a month.

THE COURT: Yes, sir, about one week a month back when I was practicing which would have been the from 1992 to 2005.

MR. GREGORY: You are talking 12 terms a year?

THE COURT: Yes.

MR. GREGORY: In Lancaster, general sessions.

THE COURT: Just Lancaster. That's not counting the Chester ten and the Fairfield eight.

MR. GREGORY: Well, that would be --

THE COURT: That would have been 144 weeks. I know where you are going with that. They had 144 terms of court they would have the possibility to do something, prior to them increasing there cases from 14 to 18

now.

MR. GREGORY: Yeah, I understand you got to add more attorneys. You got more terms. You got to balance that between 2002 and 2010. But roughly on average you are probably talking about whatever you said -- 144 terms.

The Attorney General made the comment that I had never filed a motion for a speedy trial and that's true. Like Judge Hayes said when we had our conference, be careful what you ask for, you might get it. I don't think there is any doubt I didn't want a speedy trial. I don't think there's any doubt I don't want a trial at all. My client is innocent. He is presumed to be innocent. He doesn't want to be in this courtroom right now, but that's that is not reality. Reality is what it is.

I did ask John Justice if he would dismiss the case before, while he was still solicitor. He didn't do it and he you probably know John Justice as well as I did, he had a habit of putting things off to the side. I asked Mr. Barfield the same question and obviously it was not dismissed and I believe if I'm not mistaken I asked Mr. Newman the same question and the response I got, he didn't dismiss it but he got rid of it from his office and he sent it to the Attorney General

Office. So there you go. We call that passing the buck, Your Honor.

Well, my client even though he is presumed to be innocent he's suffered over the years. He has been ridiculed. He has been accused of being a child molester without being convicted. He has problems at work. They tried to get him fired because he had a criminal case pending. You saw the letters from the immigration. He has not been able to become a United States citizen because of the fact this case is pending. I don't know what other justification the State has for not trying the case at this time but other than asking for a speedy trial I did endeavor to get the case dismissed and not being -- as a defense attorney not in control of the docket, I really can't do anything else except make a motion for a speedy trial or make a motion to quash the indictment when it does eventually come to trial.

Thank you, Your Honor.

SOLICITOR NEWMAN: If it please the Court, I would like to speak on "The passing the buck" comment.

THE COURT: Yes, sir.

SOLICITOR NEWMAN: Your Honor, currently three elected solicitors have looked at this case. Three elected solicitors have denied his request to dismiss

the case. So obviously there's something to this case if three folks did not want to just dismiss it.

Now, I'm not aware of -- we don't have any notes from Solicitor Justice as to when he contacted Solicitor Justice, but we know he didn't contact Solicitor Barfield until the day he left the office asking him to dismiss the case. He didn't contact me by e-mail. We saw each other at a bar function where he jokingly said, "I'm only in this position because you wouldn't dismiss the case". And I didn't say I got rid of it. We took -- when I took over his office we had as you know a terrible backlog. I was approached by the Attorney General's Office who offered to take some of our older cases and help with with our docket management. They did that. We assigned not only this case but I believe 20 total defendants in the initial meeting and we have done several since then. That meeting was in June of 2015, which was about six months after I took office.

THE COURT: Thank you.

MS. BURCHSTEAD: And Your Honor, if I may just say a couple things in summation.

THE COURT: Okay.

MS. BURCHSTEAD: I would reiterate that speedy trial was not filed and quoting the Barker case, the

Court states, both sides failure to assert that right will make it difficult for a defendant to prove he was denied a speedy trial. And I would just note as an aside, the Evan's case which we've referenced, several witnesses that were unavailable or deceased, gone. That nobody could find. I can't remember which exactly, I think deceased -- which Mr. Gregory is alleging here. However, with all due respect to opposing counsel it's pretty easy to come in and give me a list of people that you can't get to court now and I would suggest respectfully again, if there were a defense that was riding on that, or there was some concern about that, a speedy trial motion would have been filed and just to sum up the State's position again, we have a balancing test not just the reason for the delay but prejudice and we have this prejudicial factor where he was not in jail. He could have had a trial if he had asserted that right and made known that it needed to be a priority it could have been prioritized. And in terms of the presentation of case we believe there is no actual prejudice. We're saying there's minimum prejudice given the type of case that it is and we would just in summation say in totality of the balancing test while there maybe some prejudice the State should be able to

call the case at this point Your Honor.

THE COURT: All right. Just give me a moment.

All right. First of all I want to thank you all the lawyers for making an excellent record for whatever appellant review is going to come as a result of this decision. And I don't know if there will be or not, but better safe then sorry. I think you made a really good record with this unique situation. I think everybody in this courtroom agrees that 15 years is way too long. I mean, you know, it hurts the State quite frankly to try a case that's old. Because you know the jury is sitting there saying, wow, what kind of case is this if it takes the State 15 years to bring it in front of a jury and of course that hurts the victim as well. I understand that. And certainly, you know, there could be some prejudice to the defendant which I will get to. But, you know, the wheels of justice do move slow, but as often been stated, justice delayed can be justice denied. And I make these remarks prior to my ruling on this in hopes and I feel extremely confident with the current staff; the solicitor's office and the Sixth Circuit staff has now, this will never happen again. Okay. And I don't anticipate it will. Under my watch as long as I'm the Chief Administrative Judge at least for the next month

and a half. I'll probably be there after that -- after the next six-month break -- it won't happen again.

All right. Let me -- first of all, I have made a finding that Mr. Morales was indicted. So, although this was filed as a motion to quash the indictment, it really is in effect a motion to dismiss. So I agree with the the State's presentation that it really is a motion to dismiss for lack of a timely prosecution. So that I reviewed the case law asserted by both the defense and the State and I find that this case -- this situation is very akin to both the Evans's case, as well as Hunsberger case, and so in ruling on this issue I have to address the four factors laid out by the Supreme Court in the Hunsberger case which are setforth by the U.S. Supreme Court's decision of Barker versus Wingo.

The first factor being the length of the delay. Well, I mean, you can't get much longer then 15 years. I guess you could, but this is longest I've ever seen. The Hunsberger delay -- the Evans' delay was 12 years. The Hunsberger delay was -- I forget how much it was. I think it was nine years. So that's longer then that. This factor certainly ways in favor of the defense. So, there you go. Of course you have to

consider the totality of the circumstances and, you know, our circuit is unique in that at was pointed out we are the smallest circuit in the State in term of population and because of that we're are hampered with staff's ability to, you know, have all the bells and whistles that other prosecuting agencies have. Our neighbors to the west and north you know they have everything they need and of course that's why they're number one in the State in moving cases. But I like it the way we do things here. And I will continue to do the way we do things here. So I don't think it's fair to compare ourselves, our unique situation; the Sixth Circuit with everybody else. Plus we have the unique situation of our courthouse being burned down following and then a couple of days later the solicitor's office being burned down, and indictments lost, papers lost and having to reconstruct that. Having to practice law and administer justice out of temporary courthouse for three or four years before this new courthouse was built. So all that kind of weighs in favor of the state on that issue.

The second analysis is the reason. You know, the reason for the delay. I find that there was no tactical reason for the delay. It appears the defense wasn't pushing it and the State really wasn't pushing

it. So, that's kind of balanced on either side.

The third fact, the defendant never raised assertion of his right to a speedy trial. Hunsberger, that defendant filed two motions for a speedy trial. You know, yes, 15 years is a long time but there is no motion for a speedy trial. And of course there's a difference between talking to the solicitor about working something out versus actually filing a motion where you go in front of a judge, your Chief Administrative Judge and get something scheduled. And I'm going to take care of that here shortly.

Lastly, prejudice to the defendant. There maybe some prejudice to the defendant in this case based upon the defendant's theory or his defense. But the the main portion of his defense which is I guess I didn't do it is still preserved because he can certainly testify to if he wishes to. He has absolutely right not to. He doesn't have to. And the fact this this is a 15-year old prosecution already, you know, kind of weighs in favor of him as well in the Court's view and the strategy of trying cases that the Court has tried before. So, having said that and considering all the factors I respectfully deny the defendant's motion to dismiss or the style of the motion to quash the indictments, that's denied. The

defendant's motion to dismiss for lack of a speedy trial or for unreasonable delay is also denied as well. I believe my reasons are set forth in particular detail in the record.

Having said that, we do have a current motion for a speedy trial. I will treat this motion and the reason we are here by Mr. Gregory as a speedy trial motion. So here's what we are going to do. I am the Chief Administrative Judge. I know you all got stuff scheduled but you know what, we will change -- this will change this morning. Okay. It's still morning. I'm the Chief Administrative Judge for another five weeks. Okay. So my job right now is to get this case resolved for his benefit. And of course let me go back and say, all the stuff Mr. Gregory talked about with him not being able to become a resident and getting ridiculed at work that's all the more reason you should have filed a motion for speedy trial. Not just sit back and not doing anything. So I made that finding as well.

I am looking through the summer. Okay. Here's what we got. We got the week of July 17th. We got week of August 21st and we have the week of September the 11th.

MS. BURCHSTEAD: Your Honor, we are happy with

July 17th or any of those.

THE COURT: Any of those. Okay. So Mr. Gregory, I am going to let you pick the week. Okay. You get to choose which week you want to try this case. I will go ahead and tell you who the judges are. The week of September the 11th is Judge Cooper from Kershaw. The week of August 21st is Judge Henderson from Chesterfield, or Judge Hall from York because there are two judges here that term. And lastly, in July I believe is Judge Hall. Judge Dan Hall is the the administrative judge for the six months from July one to December 31st for general sessions as well here.

Mr. Gregory you don't have to choose right now unless you are ready to. I was going to let you talk to your client and his family first and then let the the solicitor know and that will take priority over anything you got.

MR. GREGORY: Your Honor, I had for some reason I guess it was before Judge Hayes preliminary that's scheduled for the 21st of August, but I think July the 17th may be --

THE COURT: Pushing it. Which month and week do you want.

MR. GREGORY: I would say the 17th is a little bit

early. The 21st -- and I hate to say this, might be an omen, but there is going to be solar eclipse --

THE COURT: Yes, there is.

MR. GREGORY: And it's important on that day and I don't really want to be trying a case when that happens.

THE COURT: Well, schools are closed. I think the government offices probably.

MR. GREGORY: That leaves September 11th.

THE COURT: How long is it going to take to try?

MS. BURCHSTEAD: For the State probably two days judge.

THE COURT: And how much do you think about a day for you.

MR. GREGORY: I would imagine probably take a couple of days.

THE COURT: Okay. So it's a full week trial. Well you got two different courtrooms going. We will go ahead and schedule it August 21st.

MR. GREGORY: The 21st first will be fine. The other thing that bothers me, September 11 is 911.

THE COURT: Right.

MR. GREGORY: Between a rock and hard place.

I think I will stick with the 21st, with the solar eclipse.

THE COURT: All right, August 21st is the trial date. You all got that. That will take priority over anything you all have right now. Okay.

MR. GREGORY: Thank you, Your Honor.

THE COURT: That's the ruling of the Court. You all have a good rest of the day.

MS. BURCHSTEAD: Thank you, Your Honor.

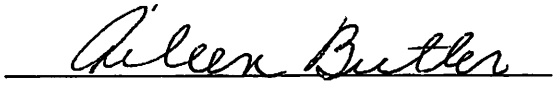
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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 26th day of May, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 5, 2017



State of South Carolina) In the Court of General Sessions
) Sixth Judicial Circuit
County of Lancaster) 2016-GS-29-00559; 00564; 00565

STATE OF SOUTH CAROLINA,
Plaintiff,
vs.
GUADALUPE GUZMAN MORALES,
Defendant.

Transcript of Record

Chesterfield, South Carolina
July 26, 2017

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Megan B. Burchstead, Esquire
Attorney for Plaintiff

Mr. Ned Gregory, Esquire
Attorney for Defendant

LISA S. CARTER
CIRCUIT COURT REPORTER

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NO.	DESCRIPTION	EV.

THE COURT: All right. Ms. Burchstead, if you would identify this matter please?

MS. BURCHSTEAD: Yes, Your Honor. Thank you. We are before you today on the State versus Guadalupe Morales. Indictment numbers 2016-GS-29-559, 564, and 565. Mr. Morales is represented by Ned Gregory of the private bar. This case is actually venue in Lancaster as we all know but for purpose of pretrial today, we've agreed to be here and we appreciate that. The case is scheduled for trial August 21st. The defendant is charged with criminal sexual conduct with the minor first-degree, second-degree, and assault with intent to commit criminal sexual conduct with a minor.

Today, we're specifically hoping to address whether Your Honor is inclined to allow the State to introduce testimonial bad act evidence in the form of the testimony of the victim sister and the victim in this case is present at the time and her sister, Witness B is also present and prepared to testify today. This case is fifteen years old. That has previously been addressed by Judge Gibbons and, of course, we were scheduled after that for August 21st.

To that end, what we would like to do today and what we're asking of the court is a conditional ruling as to whether Your Honor is inclined to allow the bad act evidence in. That way we can plan accordingly, all parties for trial purposes and what I would like to do is just explained to the

court the State's legal argument, of course, and call Witness B to the stand and what I was suggesting to the court is that I explained what we believe our victim will testify to. We're asking for bad act evidence to be admitted preliminarily under the common scheme or plan exception. And I will allow or I will offer to the court our explanation of why we believe it fits that, obviously, after Witness B testifies and, of course, ask of the court pending how the victim testifies at trial if she testifies as we believe and we see at court at trial time that there is that similarily that we're suggesting today that it be allowed at trial.

In addition to that, after or in whichever order Your Honor wants to address it, we also want to bring to the court's attention and have explained to Mr. Gregory the State does intend to use a blind expert at trial concerning disclosure and trauma of criminal sexual conduct cases. This is not an expert that has anything to do with this case factually, Your Honor and I'm going to have Mr. Kozak address that at the appropriate time as Your Honor deems appropriate. So that's what we're asking of the court today.

THE COURT: Okay. Anything from you Mr. Gregory before ---

MR. GREGORY: No, sir, Your Honor.

THE COURT: Okay. Let's deal with the bad act first and ---

MS. BURCHSTEAD: Yes, sir.

THE COURT: --- then we'll deal with Mr. Kozak's explanation of the blind witness secondly, okay?

MS. BURCHSTEAD: Yes, sir. So in chambers I handed to Your Honor a copy of the State's motion, the clocked copy ---

THE COURT: I've got it.

MS. BURCHSTEAD: --- as well as the legal memorandum. That's just there if it helps the court. I believe today my arguments will put forth the State's position and the testimony will, obviously, be what Your Honor's needing to consider. The short version as we understand generally bad act evidence is not admissible, however, it's commonly admitted under common scheme or plan. The exception under Lyle 404 (b) and we do believe in this particular case we're going to have Witness B testify we believe we have spot on common scheme or plan evidence and I would at this time would ask that Witness B take the stand if that suits, Your Honor.

THE COURT: All right.

MS. BURCHSTEAD: The State calls Witness B to the stand.

THE COURT: If you back up and place your left had on the Bible and raise your right.

THE CLERK: Do you solemnly swear to tell the truth,

the whole truth, and nothing but the truth so help you God?

Witness B : Yes.

THE COURT: All right. I'm going to ask you speak loudly and clearly.

Witness B , first being duly sworn, testified as follows:

Direct Examination by Ms. Burchstead:

Q. Good morning.

A. Good morning.

Q. Thank you for being here. If you will just state your name for us?

A. Witness B .

Q. And can you spell that for us?

A. Witness B .

Q. Okay. Just make sure you speak up loud enough so, the court reporter is right front of you so she should be able to hear but just so the folks in the courtroom can hear and Mr. Gregory, at the defense counsel table, should be able to hear you as well.

THE COURT: That's fine.

Q. Witness B , when is your birthday?

A. [redacted] 1992.

Q. So how old does that make you?

A. Twenty-five.

Q. And where do you live?

A. Lancaster, South Carolina.
Q. Do you work?
A. Yes, ma'am
Q. Where do you work?
A. Los Mariachis Mexican Restaurant.
Q. How long have you been there?
A. About four years.
Q. Do you have children?
A. Yes, ma'am.
Q. How many children?
A. Three.
Q. And how old are they?
A. Four, one, and five months.
Q. All right. And have far did you go in school?
A. I graduated high school.
Q. What high school did you go to?
A. Buford High School.
Q. What year did you graduate?
A. 2011.
Q. And you live in Lancaster, who lives with you?
A. My fiancé, Cody Dease and my three children.
Q. So when you were growing up, were you always in Lancaster?
A. Yes, ma'am
Q. And who lived with you when you were growing up?

A. My mom, my dad, and my two sisters.
Q. Okay. Was your mom's name?
A. L.M. .
Q. L.M. . Was your dad's name?
A. Guadalupe Morales.
COURT REPORTER: I'm sorry?
A. Guadalupe Morales.
Q. And what your sisters names?
A. Witness A and Christina Morales.
Q. Christina Morales, okay. And are they older or younger?
A. Witness A is older and Christina is younger.
Q. Okay. How much older is Witness A ?
A. Two years -- three years.
Q. All right. So y'all grew up together?
A. Somewhat. She moved out of the house about I think eleven years old.
Q. Who is she, who is that?
A. Witness A .
Q. You think she was eleven?
A. Yes, ma'am
Q. So you would have been about how old at that time?
A. Nine.
Q. Nine. Do you remember much about that?
A. About her moving out?
Q. Yeah.

A. I just remember being at my grandmother's house one night and my mom came to speak to her and they were outside and she came back in and the next morning she just stated that Witness A would be moving in with her.

Q. Okay. And what's your grandmother's name?

A. Lois Comos.

Q. Lois?

A. Yes, ma'am

Q. All right. So you said you live with your mom, L.M. and your dad, Guadalupe, is he your biological dad?

A. I've been told that he's not. As far as I know, I mean, I grew up with him, he raised me.

Q. So growing up you called him dad?

A. Yes, ma'am

Q. And are you aware if whether he is Witness A 's biological dad ---

A. He's not.

Q. --- do you have any knowledge of that -- what makes you say that, did someone tell you?

A. Yes, ma'am

Q. Do you know what she called him growing up?

A. She -- I don't remember before she moved out but after that she never called him dad.

Q. So after that didn't call him dad?

A. No, ma'am

Q. All right. So do you see Guadalupe in the courtroom today?

A. Yes, ma'am

Q. Okay. Can you just point him out and tell us what he's wearing?

A. He's wearing a blue striped shirt.

Q. So was there ever a time that Guadalupe touched you in what you believed to be in a sexual way?

A. Yes, ma'am

Q. Can you tell us about that?

A. I was in the third grade and one night I couldn't sleep, me and my sisters had a bed time, and it was about 8 o'clock and we had to go to bed and they were asleep, I just couldn't sleep. And he, I guess, when he was going to sleep he walked by our room and I told him I couldn't sleep. So then he told me to come in the room with him. And we laid down to watch TV and after that I felt him pulling my pants and underwear down.

Q. Was that the first time?

A. I remember him doing -- just touching me a few times before but it wasn't nothing, like, he never inserted anything.

Q. So this time when you were in third grade what exactly did you feel?

A. It just felt like his penis was touching my, my but ---

Q. Okay.
A. --- like he was trying to have intercourse but I told him I was ready to go to sleep.
Q. So you told him you ready to go to sleep?
A. Yes, ma'am
Q. When you say he was trying to have intercourse, is that something that you know now as an adult ---
A. Yes, ma'am
Q. --- or did you know at the time as a child?
A. Now as an adult.
Q. Do you feel like it was an erect penis?
A. Yes, ma'am.
Q. And you felt that touch your bottom?
A. Yes, ma'am
Q. And you said there were times before where he would touch you, can you explain that to us?
A. Yes, it was just like times I would sit on his lap he would just put his hands down my pants.
Q. When you say, hands down your pants, was it ever panties are under panties?
A. Under panties.
Q. Under panties, okay. Was he touching your vaginal parts?
A. Yes, ma'am
Q. So under panties, vaginal area, no digital penetration?

A. No, ma'am
Q. Do you remember when that started?
A. From the time I can remember it was around maybe three years old.
Q. So at three years old he started touching under panties and third grade you felt an erect penis on your ---
A. Yes, ma'am
Q. So in between when it started and the third grade since, about how many times did he touch you in a sexual way?
A. I'm going to say about maybe three times.
Q. And when he was doing the touching, where were y'all physically located?
A. We were located in Lancaster in the trailer park is [redacted].
Q. So was it always at home?
A. Yes, ma'am
Q. And were you laying down or sitting up, how did he actually do the touching?
A. Mostly like I said I was on his lap but the night that I was in third grade we were in the bed laying down.
Q. Were your sister's home at the time?
A. Yes, ma'am. They were asleep.
Q. This was the incident in third grade, they were asleep?
A. Mmm, hmm.
Q. Okay. How about the other times he would touch you,

would they be home?
A. They would but they wouldn't be in the room.
Q. Where was your mom in the third grade?
A. At work. She worked night shift.
Q. Where did she work?
A. A plant called Springs.
Q. Springs?
A. Yes, ma'am
Q. So that night you couldn't sleep and mom was working?
A. Yes, ma'am
Q. What about the other times where he was touch you through your panties?
A. I can't really remember it.
Q. Was she home, do you know?
A. No, ma'am
Q. So is it fair to say that the touching would occur when mom was not at home?
A. Yes, ma'am
Q. So when did the touching stop?
A. The last time was that incident when I was in third grade.
Q. Third grade is when it stopped?
A. Yes, ma'am
Q. Did you tell anybody about what was happening?
A. No, ma'am.

Q. Why not?
A. I was -- I was scared. Didn't know exactly what to say or how to say it.
Q. Did he make a difference to you that he was your dad?
A. Yes, ma'am
Q. How so?
A. Because I'd look at it like a father shouldn't do that to their child.
Q. Did there come a time when you did say what happened?
A. Yes, ma'am. When I was in the fifth grade is when I told my grandmother.
MS. BURCHSTEAD: I beg the Court's indulgence.
THE COURT: Yes, ma'am.
Q. Let me ask you just one other brief thing, I had a note here and Mr. Kozak was reminding me. Was there every a time that your dad accused you of being with boys when you weren't?
A. Yes, ma'am.
Q. Tell us about it?
A. I believe it was in the ninth or tenth grade. I was just outside playing basketball and he called my mom and told her that I was outside with two guys at the top of the road and I was just outside playing.
Q. So let's just back track for a second, when you told what had happened to you in fifth grade, you said you told

your grandmother?

A. Yes, ma'am

Q. Do you remember if anything prompted that?

A. I believe Witness A had spoken to her or Michelle or someone in the family and told them and that's what made my grandmother come up there to the school and ask me and my younger sister if anything was going on with us.

Q. So you're grandmother came to the school?

A. Yes, ma'am

Q. Do you know what school?

A. North Elementary.

Q. Do you know if the school notify anybody?

A. Yes, ma'am, the principal, Linda Blackwell.

Q. Is that when DSS got involved?

A. Yes, ma'am

MS. BURCHSTEAD: Your Honor, that's all the State's questions at this time.

THE COURT: Anything, Mr. Gregory?

Cross Examination by Mr. Gregory:

Q. You speak so softly it's hard for me to hear exactly what you were saying that's why -- I'm not sure if I got everything so I may have to repeat a couple of things. It's my understanding that your testimony is that Mr. Morales, who you believe is your father at the time, molested you on three different occasions?

A. Yes, sir

Q. Once when you were three years old and the last time was when you were in the ---

A. Third grade.

Q. Third grade. Which would put you at what age?

A. I believe about seven or eight.

Q. Seven or eight. All right. And what was the other time? There was one time when you were three and one time when you were in the third grade, when you were seven or eight, what was the other time?

A. I don't really remember. It was just like spurs of the moment, I guess, whenever he had a chance.

Q. But all of these alleged occurrence take place in the same place?

A. Yes, sir, at home.

Q. And where was that?

A. At [redacted].

Q. Where?

A. [redacted].

Q. Oh that's the address?

A. Yes, sir

Q. That was the trailer park?

A. Yes, sir

Q. Off West Meeting Street in Lancaster?

A. Mmm, hmm.

Q. And where inside the trailer did it happen, in the bedroom?
A. I remember a couple of times -- the few times it was in the living room and the last time was in the bedroom, in his bedroom.
Q. All right. Now, the first that you mention this outside of the family was when you told your grandmother?
A. Yes, sir.
Q. Her name is Lois ---
A. Yes, sir.
Q. --- Comos? That's your mother's mother?
A. Yes, sir.
Q. So that would be your maternal grandmother?
A. Yes, sir.
Q. And was she living -- was she living in the house with y'all at that time?
A. No, sir.
Q. Did she ever live in the house with y'all?
A. That I remember, no.
Q. Never lived in there?
A. Not that I remember.
Q. Did she ever stay there on occasion?
A. I remember her coming over a lot but I don't think she ever lived there with us.
Q. All right. Was she -- was she working at, do you know

whether or not she was working?
A. I believe she was working at Tyson.
Q. Where?
A. Tyson.
Q. I'm sorry I still didn't hear you?
THE COURT: Tyson.
A. Tyson.
Q. Spell it?
A. T-y-s-o-n.
Q. Oh, Tyson.
A. Yeah.
Q. Did she ever work at the Chinese restaurant as far as you know?
A. I don't remember.
Q. How did she get along with your father?
A. They didn't have a relationship. They didn't get along.
Q. They didn't get along?
A. No.
Q. So when she -- when you left the house you left and moved in with her?
A. No, sir. I never lived with her.
Q. You never lived with your grandmother?
A. No, sir.
Q. Your sister left the house ---
A. Yes, sir.

Q. --- and moved in with her?
A. Yes, sir.
Q. When did you -- when did you leave there, the house, residence?
A. I was sixteen years old. I moved in with my uncle Jimmy.
Q. You were sixteen?
A. Yes, sir.
Q. So you stayed at that house after all this occurred you said, until you were sixteen?
A. Yes, sir.
Q. And where did you move when you moved out?
A. I went to live with my uncle Jimmy.
Q. Where?
A. With my uncle Jimmy in Monroe, North Carolina.
Q. Okay. Who was living -- where do you live now?
A. I live with my fiancé in Lancaster.
Q. Right. Is he in the courtroom with you today?
A. He is.
Q. Okay. So the man in the blue shirt?
A. Yes, sir.
Q. What's his name?
A. Cody Dease.
Q. Cody?
A. Cody. Cody Dease.

Q. Cody, C-o-d-y?
A. Yes, sir.
Q. Last name, Lee?
A. Middle name is, Lee Dease.
Q. Okay. Cody Lee Dease. Is he working?
A. He does.
Q. Where does he work?
A. Davis Neon in Heath Springs.
Q. Where do you work now?
A. La Mariachis Mexican restaurant in Lancaster.
Q. You've been there for four years?
A. Yes, sir.
Q. How far, from where you live now, is it from the time -- from the place you live now to where you were living with your, with the family, how far in distance of those two locations?
A. Mile wise, I'm not sure, but it takes about maybe fifteen minutes.
Q. Okay. So it's not like next door, it's the other side of town?
A. Yeah.
Q. Did you ever have an occasion to speak with Ray Rainey?
A. No.
Q. Do you know who Ray Rainey is?
A. I don't know.

Q. You don't recall?
A. I don't recall.
Q. He's with the Department of Social Services, Lancaster County, the Department of Social Services, you don't remember talking to somebody in the DSS?
A. I don't remember.
Q. You did talk to some people in the DSS, didn't you?
A. Maybe when I was younger but, like I said, I don't remember.
Q. I'm talking about, yes, you would have been younger but I'm talking about roughly around 2002, 2003 -- 2002?
A. I don't remember.
Q. How old would you have been in about October of 2002?
A. Maybe, what, ten, eleven.
Q. What's your date of birth?
A. [redacted]/92.
Q. [redacted] what?
A. [redacted]/92.
Q. [redacted]/92. You did talk to, I guess, when you were about four years old you, did talk to some people in the DSS, do you remember that?
A. I don't remember.
Q. You don't?
A. No, sir.
Q. You don't remember telling them what you just told the

court today?
A. Like I said I remember talking to the principal and they made me go to a place in Lancaster where I had to show them what happened with dolls and that's pretty much really all I remember.
Q. Okay.
A. I remember going to Columbia to get testing done to see if I was touched. I remember talking to a cop but other than that I don't remember really speaking to nobody.
Q. Did you -- did you speak with a -- were you examined by a doctor?
A. Yes, sir.
Q. Where?
A. In, I want to say, it was Columbia.
Q. All right. What were the results of that?
A. They didn't find anything.
Q. Didn't find anything?
A. No, sir.
Q. So you don't recall speaking to a Ray Rainey with Lancaster County DSS in about October of 2002. Do you recall going to the police department and telling them that none of this happened, it's not true?
A. I remember telling my mom that because I seen how hurt she was and I just was trying to protect her.
Q. And did she take you somewhere and tell them that's what

you had just said?

A. Like I said I remember -- like, I remember talking to a cop. I forgot his name, but I remember talking to him. We went to the police department.

Q. To the Lancaster Police Department?

A. Yes, sir.

Q. Detective Parson? (sic)

A. I'm not sure his name.

Q. Detective Parson? (sic)

A. I just remember the cop and my mom was kinda of getting, arguing and we were sitting outside and I just seen them arguing and I remember telling him. But at the time I was just trying to protect her.

Q. And what she was telling them either policeman or whoever she was speaking with, was that you were saying this didn't happen, this wasn't true? Is that what she was saying?

A. Yes, sir.

Q. And the reason she said that is because your grandmother, she said your grandmother told you to say it, is what you just testified to?

A. She didn't. She didn't have ---

Q. And if you didn't do that then she would take, she feared you would be taken away from her, isn't that true?

A. No, sir.

MR. GREGORY: That's all the questions I have.

MS. BURCHSTEAD: Brief redirect?

THE COURT: Yes, ma'am

Redirect Examination by Ms. Burchstead:

Q. So I think I remember your testimony correctly a moment ago you said they told her grandmother and she came down to the school, right?

A. Yes, ma'am.

Q. So what happened right after that?

A. Well, the school contacted my mom and my mom came to the school and picked us up and we went home and she made us say everything that was said or what happened to us in front of him. We had to sit at the kitchen table and state to him and her what was going on.

Q. So she had you to confront him at the dinner table?

A. Yes, ma'am.

Q. What happened after that?

A. I remember him and my grandmother and my mom they all kind of got into a big altercation and she, my grandmother left and it was kind of bad after that.

Q. Did you lie about anything during that confrontation?

A. No, ma'am.

Q. You told them what happened?

A. Yes, ma'am.

Q. So a few minutes ago Mr. Gregory was asking questions he

asked about three times, did this exactly three times?
A. I don't remember exactly how many times, I just remember a few times it happened.
Q. And when you say a few times, can you explain what that means to you?
A. I remember like I said maybe three times.
Q. Always in the home?
A. Yes, ma'am.
MS. BURCHSTEAD: Nothing further, judge.
THE COURT: Anything else, Mr. Gregory.
MR. GREGORY: No. That's all, Your Honor.
THE COURT: You can step down, ma'am.
MS. BURCHSTEAD: Thank you, Your Honor. May it please, the Court?
So you heard the testimony of Witness B. What we would state to the court, now, is we expect Witness A is going to testify to similar acts at trial. That the defendant came at the time she believed to be her father would begin touching her around the age of three or four and that the touching began in a similar manner and that it was over the pennies, then under the panties and then escalated and Witness A 's did increase to intercourse and the conduct was occurred more often. She'll tell you and the jury that it occurred in the home when the mother was not present. Siblings may or may not have been there but would not be aware. There may be

some situations where they were in the room but the mother was not home at the time consistent with the fact that she would be working. And, again, it happened beginning at a young age through the time Witness A moved out at eleven and again it started at the beginning with the touching. So that's what we expect Witness A to testify to on the stand.

Obviously, during her testimony at trial which we will get into more detail but based on that we believe this is appropriate for a pretrial ruling that we would be allowed to have Witness B testify at trial under the common scheme or plan exception under 404 (b). Your Honor, knows the test, of course, we need to find relevance first and that it meets that exception and shown by clear and convincing evidence and then do that balancing test of whether it's unduly prejudiced or not. And when determining common scheme or plan I did pass up to Your Honor a stack of cases and I'm sure you're familiar with many of these.

Just direct the court's attention to State v Atieh, I'm not sure from pronouncing it correctly but A-t-i-e-h which cites, we term, the Wallace factors. In determining common scheme or plan, we should consider five primary factors. Age of the victim when the abuse occurred, the relationship between the victim and the defendant, the location where the abuse occurred, the use of coercion or threats, and the manner of the occurrence and, you know, the type of battery.

So we're looking at common scheme or plan and part you say, you look at one because it necessarily approves the other, assist in approving other. Of course, we're arguing that it's relevant and meets that exception and we believe it meets that common scheme exception because here it started when they were three or four for age among the relationship with the defendant is it the same, it actually happened during the same time frame as well. Both believe to be a biological father at the time, they're sisters. He's the father. It's consistent relationship and I would argue coercive, inherit coercive because of the relationship and that he is taking advantage of his relationship with them for sexual gratification. He has that relationship of being the father figure whether biological or not, they believed him to be their father. The location of the abuse was always in the home when the mother was not present be at living room, bedroom, or what have you, it was always in the family residence and again during the same time. And the touching was similar in itself and that I would suggest it started as grooming with your typical touching, testing the waters, teaching them to get used to the type of touching when touching over the panties. The main difference is, is that it happened more often with Witness A and, Your Honor, will see too much greater level.

Point two of the Atieh case in the coercion aspect of

it, that case we had a, someone entered, who is as I recall basically groping an employees it was deemed in that case it was coercive because you had a subordinate type of relationship. So I believe that is what we have here and, in fact, our similarities are certainly outweighing any dissimilarities. The dissimilarity being, again, with Witness A the conduct increased and right now I'm thinking of the State v. Hallman, where I believe that case is similar to the case here and that you had a defendant molesting a foster child aged seven to nine and there were similarities two other foster children and the difference in that case was the trial on that appeal, the victim had been molested to a more egregious nature but the court deem it appropriate to admit the bad act evidence of the other two even though it did not reach that same level because you have that similarities of using that relationship. And that reminds me which I point, Your Honor, to a number of cases that I believe that are spot on to this in using that relationship for sexual gratification. You also, in addition, State v. Hallman, we have State v. McClellan, 283 S.C. 389 (1984) case. You have two older daughters -- there was three daughters molested, total, two of them testifying. Just similar to here we have a daughter/sister type situation that was a Supreme Court case. Another we have is State v. Blanton. The granddaughter eight years old at the time and two others were

testifying. State v. Henry, you had a sister testifying. And State v. Wallace, 384 S.C. 428 which again we're talking about those factors the Atieh cites that come out of Wallace and the testimony of a older sister was allowed and there were similarities. The stepfather had began touching her under her shirt and then escalated to private area at the home when the mother was not there which is exactly what we have in this case, Your Honor. And I did pass that to the court, a memo and supplemented by some case laws. Those are just a few come into my mind right here. I would also point to the court's attention to Adams which cites McClellan, Hallman, Blanton and again use of the relationship as a stepfather to control the girls and the girls were at the same age.

Again, assuming our victim testifies as we expect we believe there is strong similarity, so similar that it is necessary to assist the trier of fact and that we have this common scheme or plan and while we recognize bad act evidence as inherently prejudicial it is way more probative than prejudicial and we would say that it substantially outweighs rather it's so highly probative that impressions can not substantially outweigh the probativeness. It's such a close similarity to the offense charge that it clearly outweighs the prejudicial effect as the court stated in State v. Hallman and some of those other cases I have pointed to the

court. And I'm happy to answer any questions of Your Honor.

THE COURT: Thank you.

MS. BURCHSTEAD: Thank you.

THE COURT: Mr. Gregory?

MR. GREGORY: May it please, the Court, Your Honor? Your Honor, basically, the Attorney General stated the Rule correctly it's, it's prohibition the rule itself is prohibition against allowing such evidence. This is sought under an exception and there been a number of opportunities where the State is trying to chip away at the rule and get cases, get evidence heard that would fall in the exception category. A lot of them have been unsuccessful. Some of them have. But the Rule itself points to the Lyle's case which is an older case and I thought was in this stack but I don't see it, it's a 1923 case.

MS. BURCHSTEAD: I don't believe I actually printed Lyle. We've all heard Lyle so much and to be candid I haven't read it in awhile.

MR. GREGORY: It's a long case and I'm sure everybody is familiar with Lyle ---

MS. BURCHSTEAD: Yes.

MR. GREGORY: --- and that involved a fraudulent check. And then you can distinguish that case with this case because this case has nothing to do with fraudulent checks. But the point is in that particular case which is a access

test for determining whether or not it would be admissible under the Lyle case there were three points to be considered. One, was identity and I don't think we really need to get into that because there's no doubt that she knew who her father is or who she thought who was her father. The second one, is the intent or guilt or knowledge. And the third one, and the third one is, the plan is consist with common scheme. And I think the State is reliant on the common scheme part from with that particular case. I guess you observe the testimony when the witness was pretty specific about certain things but when I ask her about recanting the statement which we intend to prove at trial, she doesn't remember that. She doesn't remember a lot of other things exactly but she just happens to remember those three points that she testified to. As it to say that someone had given her that information and said this is what happened. How can you remember details from when you were three years old and then believe or to remain in the household until you were sixteen it's sort of inconceivable that, that would take place. It's almost like well that didn't happened. And, of course, it's up to the jury to determine the truthfulness of the witness but it would be up to the court to determine whether or not that evidence would be admissible.

We take the position that it should not be admissible because it would be, it doesn't meet the test of Lyle's

number one. And, number two, it is highly prejudicial. If my client were to -- if my client had been convicted in this particular case and the State decided to try, charge him and try him with what evidence we just heard in regards to the daughter, Witness B then you would have a conviction. And how would the State be able to present to the jury the conviction of a sister. I think the only way you could do that would be at the sentencing or if my client had taken the stand and says, I'm a good person, put his character on the issue and then the State cross-examining. Well, that's not the case here. These are not convictions. These are only statements made by alleged incidents made by witnesses. I don't think it meets the rule and then addition to that I take the opposite position from the State, I say that it's highly prejudicial. That if you had a witness, one witness against the other it's going to be he said, she said and who knows what the jury may decide. But when you got more than one witness that's saying the same thing it intends to give the State's witness more credibility and I think that's what the State is trying to do here. I would say that it would be an improper bolstering of the victim's testimony and I think it would be highly prejudicial and I think the court should find its admissible, inadmissible.

Thank you, Your Honor.

THE COURT: Yes, ma'am.

MS. BURCHSTEAD: Brief response, Your Honor. Just to follow up on what Mr. Gregory is saying if, for instance, the State had gotten a conviction with the acts on Witness B we wouldn't be able to get that in, I just adamantly disagree with that, in fact, I think it would be easier. The current standard that we suggest to the court is that we prove by clear and convincing evidence that this happened when we don't actually have a crime. We suggest to the court that Witness B's testimony does that. She knows that it's her father or father at the time. And she was clear in her testimony, of course, she's not going to remember some details. The case is fifteen years old, unfortunately. It's nobody's fault in this courtroom.

To that end, we have a blind expert coming to testify. We can put the blind expert before she testifies as well if we need to do that but they are explanations for staying in the home and that sort of thing. But I was suggest she says to the court today this is what happened. She did not lie about it. Of course, the family situation it can get tricky but this is the whole point of this common scheme evidence. You have two girls who are going to say this happened to me and it's for the jury to determine what was really going on and that goes to Mr. Gregory's ability to cross-examine her but not the admissibility. We believe it falls in line with all of these cases submitted to the court where it was deem

appropriate in a common scheme or plan with the type of testimony that Your Honor has heard today. And again we do not believe it's unduly prejudicial.

Thank you, judge.

THE COURT: Anything else, Mr. Gregory?

MR. GREGORY: No, Your Honor, that's it.

THE COURT: Okay. Mr. Kozak, do you want to address the blind witness issue?

MR. KOZAK: Yes, Your Honor. I don't want to do an actual formal motion argument, I just want to put on notice to the court as well as opposing counsel that we will intend to call a blind expert in this case. In these cases it's very common nowadays to call a blind expert and we'd probably be calling, barring a scheduling conflict, David Kellan. He'd probably be called, child while treatment and child abuse dynamics. I'm going to hand up the case law on this.

(Whereupon, the lawyer handed up the case law)

MR. KOZAK: The newest case is State v. Roy Lee Jones which said there is no reversible error in using it. Using an expert in child -- child abuse dynamics. They're very common. Brown and Anderson are the seminal cases in this. Roy Lee Jones just builds off of it and confirms. The higher courts upheld the use of these experts in these situations numerous times. They have found that the unique and alter perplex behavior exhibited by child sex of these victims does

not fall within the ordinary knowledge of a juror with no prior experience even directly or indirectly with sexual abuse. And the general behavioral characteristics of a child sex abuse victims are, therefore, more appropriate for an expert qualified under the appeals to explain to the jury so long the expert does not improperly bolster the victim's testimony.

Nowadays it is common to call a blind expert who has no connection to the case. Never did a forensic interview and has never had contact with anyone involved in the case. The only problem that Anderson which is one of the cases that I handed up had, is when the person the forensic interview on the victim also was used as a blind expert. That's the only time the higher courts had a problem. In this situation our expert that we intend to call have never met anyone involved in this case, has never read a case file on it. So, therefore, we think he would be fine as a blind expert to come into this case. Just wanted you to have the case law to read up on what we're arguing. Thank you.

THE COURT: Okay. Thank you, Mr. Kozak. And you provided Mr. Gregory ---

MR. KOZAK: Yes, sir.

MR. GREGORY: Yes, Your Honor.

THE COURT: Any comments from you?

MR. GREGORY: Your Honor, I have been advised

previously that the State intend to call Dr. Kellan as a witness and my position generally speaking in regards to these types of witnesses in these type of cases that they're all attempts to improper bolster the victim, the victim's alleged testimony. The witness, the proposed witness, is never seen the victim. So, therefore, he's only testimony would be the time and place. He could not testify as to what the victim told him because she's never been examined. He has no opinion as to regards to the victims veracity. So, therefore, in a general, generally speaking we think that this type of testimony would be inappropriate and it should not be admitted.

Thank you, Your Honor.

THE COURT: All right. Anything else from the State?

MS. BURCHSTEAD: Not on this issue, Your Honor, however, at the appropriate time I would just like to put on the record status of offers just for the court and I can do it now if you want?

THE COURT: Go ahead. That would be fine.

MS. BURCHSTEAD: Okay. I actually inherited -- our office inherited this case from the solicitor's office trying to assist in the backlog, as you understand, and then Marie Sazah (sic) in our office had the case prior to me. She had previously descended an offer by letter to Mr. Gregory and as I recall the offer was fifteen (15) years, CSC second degree,

fifteen(15) years. My understanding is that offer has been rejected. I never gave another offer and don't intend to.

THE COURT: But that offer is still on the table now?

MS. BURCHSTEAD: My understanding is yeah, the deadline to accept it from Ms. Sazah (sic), he did not accept it. I checked in with Mr. Gregory when I got the case and my understanding is that offer was rejected. So it is not on the table.

THE COURT: Okay.

MS. BURCHSTEAD: Thank you.

THE COURT: Do you agree with that Mr. Gregory? Mr. Gregory, do you agree with that?

MR. GREGORY: Yes, sir. That's correct, Your Honor, a correct statement.

THE COURT: All right. Counsel, I'm prepared to issue a conditional ruling on the admissibility of the sister, Witness B's, testimony. Again it is a conditional ruling but at this point in time I find that it would follow the guidelines set forth in Lyle's and the other cases that have come since then. So, therefore, at least at this point, I would find it to could be admissible as common scheme or plan ---

MS. BURCHSTEAD: Thank you, judge.

THE COURT: --- and it fits that exception. With regards to the blind expert witness I guess, technically,

we'll wait until the trial when you've actually tried to introduce the witness. But I'm inclined, basically, without knowing anything exactly, not seeing how the trial proceeds that, that would be admissible testimony as well based on the recent case law. So that seems to be the trend right now, anyway. So -- that's not a ruling that's just, you know, and inclination ---

MS. BURCHSTEAD: I understand, judge.

THE COURT: --- an inclination on my part at this point in time so -- but I am conditionally ruling with regards to the testimony of Witness B, though.

MS. BURCHSTEAD: Thank you, Your Honor. We understand again that this is conditional that give everyone some guidance....

THE COURT: You know, if I look at it and get heartburn between now and the trial or something I can change my mind ---

MS. BURCHSTEAD: I understand, Your Honor.

THE COURT: --- but right now I don't think so but anyway ....

MS. BURCHSTEAD: We'll proceed accordingly. Thank you, judge.

THE COURT: Okay. So the 21st, August 21st, right?

MS. BURCHSTEAD: Yes, sir, the 21st. We need to coordinate with the solicitor and maybe Mr. Gregory knows

more about how they select juries there. I don't know their exact schedule.

THE COURT: I don't know -- I think I am the only one that's doing trials that week, right? This will be the only trial, I think.

MS. BURCHSTEAD: I think Judge Hall has a murder trial.

MR. GREGORY: Yes.

THE COURT: Well, I thought he told me he had guilty pleas that week because he was saying something to me about he thought I would rather do a trial than the guilty pleas because of my eyes.

MS. BURCHSTEAD: Maybe it's pleading out.

MR. GREGORY: I think Judge Hall is expecting to be presiding over a murder case but I don't know.

THE COURT: It's a murder trial

MS. BURCHSTEAD: We will look into it.

THE COURT: I guess he will qualify the whole panel.

MS. BURCHSTEAD: That's what I'm understand. I guess they come in, in the morning.

MR. GREGORY: Yes.

MS. BURCHSTEAD: I'm going to suggest we get rolling as quick as we can.

THE COURT: Oh, yeah.

MR. GREGORY: They would be coming in that morning.

THE COURT: Mr. Gregory, what time do they usually have the jury report, do you know?

MR. GREGORY: Usually about 9:00.

THE COURT: Nine o'clock, that's good.

MS. BURCHSTEAD: Very good.

MR. GREGORY: Our new thirty million courthouse is able to accommodate two trials at one time so that should not ---

THE COURT: Yeah, that shouldn't ---

MR. GREGORY: --- be a problem.

MS. BURCHSTEAD: We don't expect any crazy voir dire or anything like that. It should be an easy jury selection.

THE COURT: But if there is going to be two going, we've got to make sure they draw plenty of jurors.

MS. BURCHSTEAD: Right.

THE COURT: And I'll talk to Judge Hall.

MS. BURCHSTEAD: Okay.

THE COURT: I was going to talk to him after today anyway so....

MS. BURCHSTEAD: Okay.

THE COURT: We'll make sure things, you know, are lined up, coordinate it.

MS. BURCHSTEAD: Okay.

THE COURT: Okay.

MR. GREGORY: Thank you, Your Honor.

MS. BURCHSTEAD: Thank you.

THE COURT: Thank y'all. Good to see, y'all.

(CONCLUSION OF THE HEARING ON JULY 26, 2017)

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Chesterfield County, South Carolina, on the 26th day of July, 2017.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

Lisa S. Carter

Lisa Carter

Circuit Court Reporter

August 13, 2018

STATE OF SOUTH CAROLINA

----------x

STATE,

Plaintiff,

Case No.

-against-

2016-GS-29-00559,

GUADALUPE GUZMAN MORALES,

00564, 00565

Defendant.

----------x

August 21-23, 2017

York, S.C.

B E F O R E:

HONORABLE ROGER E. HENDERSON

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

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Official Court Reporter

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Witness A				
Ms. Burchstead	42		77	
Mr. Gregory		64		
Kristen Grant				
Mr. Kozak	80		90	
Mr. Gregory		84		91
Lois Campos				
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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Guadalupe Morales				
Mr. Gregory	197		220	
Ms. Burchstead		212		
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room. Juror 43, Jonathan Fowler. What say the State?

MS. BURCHSTEAD: Please present the juror.

THE CLERK: Defendant?

MR. GREGORY: Swear the juror.

THE CLERK: Please follow the bailiff to the jury room.

THE COURT: All right. Ladies and gentlemen, the clerk has advised me that you need to call in after six o'clock tonight to find out whether or not you need to be back here tomorrow or some time later in the week. So any time after six o'clock tonight. I'm sure you've already been given the number.

Any remaining jurors have any questions? Okay. You may be excused for the day.

(WHEREUPON, the jurors exit the courtroom)

THE COURT: All right counsel, you want to renew any motions at this time? Get those matters out of the way.

MR. GREGORY: If it please the Court.

THE COURT: Yes, sir.

MR. GREGORY: Your Honor, prior to the commencement of this case the jury has been selected but not sworn and not in the courtroom. I would like to renew the motions that we made previously before Your Honor.

In Chesterfield at a hearing to determine whether

or not the witness proposed by the State to be called, Witness B , would be improper. And I think the Court has ruled that she would be a proper witness to bolster the testimony of the plaintiff as to prior bad acts witness. And that being the case, I would like to renew that motion but I don't want to reargue it. I would like to use what was on the record at that time. For the record to reveal -- to reflect the fact that the Court ruled in favor of the State.

The other motion that was made in this case, Your Honor, I would like to renew was made before Judge Gibbons. At that time we thought Judge Gibbons was going to be the trial judge. I think the case was going to come up for trial earlier in the year. I don't recall. But the defense made a motion to quash the indictment. Quash the indictments in this case based on the violation, constitution violation, due process.

Judge Gibbons after a lengthy hearing heard testimony, denied the motion and decided that he would schedule the case for trial this week and that's why we are here today this week to try the case. We would like to renew that motion and have that put on the record as well without having to go through and reargue the motion.

There's a motion, I believe, pretrial motion made today by the State. I don't know if we want to put that on the record at this time but we can and I think the State has some proposed photographs of the alleged victim. They wanted to know if we consent to have those placed into evidence and premarked. I think we may have an objection about that so I would allow the State to present that.

THE COURT: Okay. Miss Burchstead.

MS. BURCHSTEAD: Thank you, Your Honor. As for the pictures I just wanted Mr. Gregory to see them before we got rolling. My intention is to have them pre-marked as an exhibit and have Witness A identify and authenticate them prior to actually seeking their admission into evidence but I didn't want anybody to be surprised. I believe that's the only exhibit or potential evidence other than testimony that we are going to present in this trial pending if we need to pull out some statements for rehabilitative purposes. So we covered that.

In terms of motions, of course the Lyle hearing we had concerning testimony of Witness B we understood that to be a conditional ruling by Your Honor that the evidence by testimony would be admissible under the the common scheme or plan exception, 404 (B). We'll

ask to address that further once we hear from our victim which we do intend to call as our first witness, Your Honor. So at the appropriate time following Witness A 's testimony we would ask for a final ruling as to the common scheme or plan exception and the admission of Miss Morale's testimony.

Concerning the motion before Judge Gibbons on the scheduling of this case as Mr. Gregory pointed out we had already argued and litigated that. I understand the purpose to properly form a record and preserve any objections made. Of course the State believes the proper ruling was made and we're ready to proceed forward here today.

Additionally, I did ask in chambers that we consider -- that Your Honor consider charging the jury before the trial begins as to not considering the length of delay in this case while they listen to evidence. My understanding is Your Honor may be more inclined to do that at the close of the case. I understand Your Honor's thought process on that and the State's request is just at some point before the jury begins deliberations and if we need to discuss it further closer to the time during the jury charge conference that seems appropriate that we want to just flag that to the court and address on some level.

Check check.

The other motion we had made was just an in limine motion to make sure we abide by the rape shield law and not get afield of what is appropriate in terms of -- and I don't think their would be anything but just want to go ahead put that out there that we do understand the rape shield law and respectfully we will remain within those parameters.

That's all the pretrial, judge. I guess as matters come up we will address them and again we do intend to to put an expert witness. That's tomorrow. And will proffer that testimony before we do so. We are prepared to do that. Oh, and I do have the indictments. At the appropriate time we can present those to Your Honor and call the case.

THE COURT: Okay. Anything else from you Mr. Gregory?

MR. GREGORY: No, Your Honor.

THE COURT: All right. As you mentioned, Miss Burchstead, we can address the concern of Witness B at the time that you call her. As I have already indicated it's my inclination to allow that under the the common scheme or plan not to bolster anybody's testimony but under the common scheme or plan.

The motion that was before Judge Gibbons, I'm not

going to go behind him. He has already ruled on that. So his ruling will stand with regards to the quashing of the indictment.

Have you had the photographs marked already?

MS. BURCHSTEAD: I have provided a list of them to the court reporter but I've not actually marked the exhibits yet. There is three of them.

THE COURT: We can certainly go ahead and mark them. They're obviously not admitted into evidence until we address them one at a time, but go ahead and mark them.

MS. BURCHSTEAD: Yes, sir.

THE COURT: And with regards to the rape shield obviously I expect everybody to actually stay or remain within the parameters of rape shield law.

(State's Exhibit 1-3, Photographs, marked for identification as of this date.)

THE COURT: We will take up anything in regards to the expert at the proper time tomorrow before that witness is called.

MR. KOZAK: Yes, Your Honor.

MS. BURCHSTEAD: Your Honor, would you like me to provide you with the indictments now?

THE COURT: Yes, please.

MS. BURCHSTEAD: As Your Honor is reviewing those

indictments one other matter that just occurred to me so we are all on the same page. My understanding this is under the old law as he was arrested in 2002. He was indicted under the old law. I found a 2006 bench book to assist in jury instructions. So I do have those ready at the appropriate time. One of the charges is assault with intent to commit which is not the current law and so we are all on the same page as that.

THE COURT: If you have something that you want to share with my clerk you can do that during the course of the trial.

MS. BURCHSTEAD: Absolutely. Yes, sir. Just trying to assist in that regards since it's old.

THE COURT: Okay. Counsel, are you ready for the jury to be brought in.

MS. BURCHSTEAD: The state is ready, Your Honor.

MR. GREGORY: Defendant is ready, Your Honor.

(WHEREUPON, the jury enters the courtroom.).

THE COURT: All right. Would you swear the jury please.

THE CLERK: Please rise and give the appropriate response when I'm through. Do each of you promise to swear that you should well and truly try in true deliverance make according the issues now joined

MS. BURCHSTEAD: No, Your Honor.

THE COURT: Okay. Thank you, very much. All right, and while we are here let me go ahead before we start with the opening statements I realize that the eclipse that I mentioned earlier is a big deal for a lot of people and it takes place I understand the tee time is 2:41, I think. What we plan to do is provide lunch for you, so you don't have to worry about going out and getting lunch. My plan is to break about two o'clock for an hour. That will give you a chance to eat the food that will be brought in. Once you have eaten you can go outside and I hope you got your glasses if you are going to look at it. You can stay inside. You can do anything else you want to do. It is your hour to do what you want to. But then my plan is to reconvene back here at three o'clock and start back at the trial. I wanted to give everybody an opportunity to see the eclipse if they so desire. Sometimes people wonder who this person is that is sitting beside me. That is my law clerk, Paul Burch. I know sometimes people are curious so you can quit thinking about that. He helps me with my legal research and things of that nature. And you met the various players I think already this morning. If you need anything these gentlemen -- does everyone have on

a gray jacket?

THE BAILIFF: Yes.

THE COURT: You stop one of these gentleman, tell them what your situation is, if you got a question or something you need to present to the Court you have them let me know what your problem is or situation is. Once you get a foreperson that person can communicate with the bailiff as well.

All right, all that being said, counsel are you ready to make your opening statement?

MR. KOZAK: Yes, Your Honor.

Good afternoon. My name is Joel Kozak and I along with Megan Burchstead represent South Carolina in this trial against Guadalupe Morales. Now Guadalupe Morales as you've heard from the judge is on trial for CSC, 1st with a minor, which is the common name for it. It is also known as criminal sexual conduct in the 1st degree with a minor. He is also on trial for criminal sexual conduct with a minor in the 2nd degree, as well as the assault with intent to committed criminal sexual conduct in the 2nd degree with a minor.

Now at the end of the trial the judge is going to instruct you on the law. But right now I would like to touch on it a little so you know what to look for

during the trial. There are two main things to look for in a criminal sexual conduct in the 1st degree. The first thing is that the sexual battery takes place when the victim is under the age of 11. Now sexual battery mainly means penetration however slight. Now criminal sexual conduct in the 2nd degree with a minor what you are looking for is the same thing as criminal sexual conduct in the 1st degree but the victim is now 11 to 14 years old.

Now basically assault with intent to commit CSC 2nd with a minor is going to be the same elements as CSC 2nd but it's just an attempt. So the battery didn't actually take place.

Now, today you are going to hear from quite a few -- or throughout this trial you will hear from quite a few witnesses. But the main person you are going to hear from and meet is Witness A. Witness A is now 28 years old. She has a daughter who is eight years old and she's a nursing assistant. Witness A is going to get on the stand and tell you her story. She is going to tell you in her words how the defendant battered her when she was a little girl. She is going to get up there in her own words and she is going to explain to you what happened. Now, at this time she thought the defendant was her father. Now Witness A's testimony

isn't going to stand on its own. Other witnesses will be called. You are going to from members of her family. You will hear from law enforcement. Now the State bears the burden in this case and that burden is beyond a reasonable doubt. Now this is a highest burden in South Carolina and we take it very seriously. But reasonable doubt does not mean it's a perfect case. It doesn't mean beyond all certainty. It doesn't mean an absolute certainty. It means exactly what it sounds like beyond a reasonable doubt. Now after you have heard all the evidence we trust that you will retire to the deliberation room and you will you find the defendant guilty of all three offenses.

Thank you.

MR. GREGORY: If please the Court.

THE COURT: Yes, sir.

MR. GREGORY: Ladies and gentlemen of the jury, I want to thank you for your participation here today. I realize it may be somewhat of an inconvenience to be called to jury duty. I don't know if you ever served on a jury in the past or not. But I think it's probably the height of civic responsibility to have served on a jury and I want to thank you for that and ask you to do a good job and keep your mind open. To

listen to all the facts both from the State and from the defense.

At this time I would like to introduce my client. Mr. Morales will you step up here please. Ladies and gentleman, this is Guadalupe Morales. He is 46 years old. He works for Lance -- Snyder Lance in Charlotte. Been working there for eight years. His wife is with him today, L.M. . They have been married together for 25 years. They have five children. Two of the children are still at home right now, their ages are 10 and 11. All right. You can go back and have a seat. Thank you.

Ladies and gentlemen, this case is 15 years old. Why did it take so long? Fifteen years is a long time ladies and gentlemen. A lot can happen in 15 years. People can die. People can move. Family dynamics can change. Couples divorce and life goes on. But some things don't change. Mr. Morales has been living with this cloud over his head for 15 years. His wife has stayed with him. She believes in him. She has been at his side. His father died in Mexico and Mr. Morales was prohibited to leave?

MS. BURCHSTEAD: Your Honor, I object. This is inappropriate for opening statement.

THE COURT: I agree. I will sustain the objection

with regard to that, with regards to the opening statement.

MR. GREGORY: Could Mr. Morales have left the country and fled to Mexico. Sure he could have. But he didn't do it. You know why he didn't do it because he wanted adamantly to clear his name. He's been waiting 15 years to do this and this is his opportunity. He is not about to leave. He is not that kind of man. He's an honest man. Now the testimony in this case, the allegations, the statements that will be made probably be somewhat difficult to hear. But you have to understand and please realize that in a dysfunctional families sometimes witnesses will lie for vindictive reasons. I just ask you to keep an open mind.

When you hear the State's testimony don't close your mind. Leave it open until you hear all of the evidence in the case. When you leave to go to the jury room to reach your verdict, the verdict is a Latin term. It comes from two words; veritas dictim, that means to speak the true. So let your verdict speak the truth based on what you have observed as jurors. Thank you very much.

MS. BURCHSTEAD: The State calls Witness A .

Witness A . Called as a witness, having

been duly sworn by The Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BURCHSTEAD:

Q Good morning Witness A. I guess actually afternoon now. Witness A could you just tell the jury your full name please?

A Witness A .

Q And was it formerly Witness A ?

A Yes. Before that it was Witness A .

Q How old are you Witness A.?

A I am 28 years old.

Q Okay. What is your birth date? When were you born?

A [redacted] -- 1989, sorry.

Q Are you working anywhere?

A Yes. I work for -- I'm a C and A for Hospice and Palmetto Charlotte region.

Q How long have you been doing that?

A Been C and A for about five or six years and I worked for Hospice of Charlotte region for a little over three years.

Q So where are you currently living?

A I live Monroe North Carolina.

Q Who do you live with in Monroe?

A My husband and I rent a home and my daughter lives with us and my grandmother lives with us.

Q What is your daughter name?

A Juliana G. .
Q How old is she?
A She is eight.
Q And what is your grandmother's name?
A Lois Campos.
Q Did you grow up in Monroe?
A I lived there since 2002.
Q Where did you live before that?
A My mom kicked me out so before that I was living with my uncle and his girlfriend and his two daughters in a house that my grandmother rented in Lancaster, South Carolina.
Q All right. What is your mom's name?
A L.M. .
Q What is your uncle's name?
A Jimmy. Jimmy Joe Perez.
Q Did you say you were living at some point with Jimmy Joe and his girlfriend?
A Yes.
Q What is his girlfriend's name?
A I think her whole name is April Michele Rollins but we always call her Michele.
Q So you know her as Michele?
A Uh-huh.
Q So, you said your mom kicked you out. Before your mom kicked you out where were you living?

A I was living with her and her husband and my two little sisters.

Q What are your sister's names?

A I'm the oldest. Witness B is next and then Kristina Morales is the youngest.

Q How far apart are you guys in ages? Close?

A Witness B is three years younger. About two years younger. Kristina is about five years younger.

Q Now you say you lived with your mother's husband. Who is that?

A Guadalupe Morales.

Q Do you see him in the courtroom right now?

A I don't see him. Oh, yes.

Q Do you need to stand up.

A He is right there behind Mr. ---

Q Can you tell us what he is wearing?

A The navy blue shirt with lighter blue strips.

Q Okay. So you lived with him along with your mom and two sister's?

A Yes.

Q Was that in Lancaster?

A Yes.

Q Where in Lancaster did you live with him?

A We lived in a trailer park at the address is [redacted].

Q When did you -- how old were you when you were living at [redacted]?

A I don't really remember how old I was when we moved there, but it was a few years. She kicked me out from that place and I was 13 when he she kicked me out.

Q We'll get to that in just a minute. So when you were living there what did you call Guadalupe Morales -- and for the record Witness A has identified the defendant.

What did you call him when you were a little girl.

A I called him daddy.

Q You thought he was your biological dad?

A Yes.

Q Is he your biological dad?

A No.

Q What makes you say he is not your biological dad?

A A while after I told my grandmother, came out and told me what all, told me everything about my mom and she -- I guess she thought it would make me feel better knowing that he wasn't and she told me.

Q Okay. So, your mom kicked you out. We will get to that in a minute. But where did you go live after that?

A I was just going to live on the streets. I didn't want to go back. I didn't want to be part of that family any more. But I somehow ended up with my uncle.

Q Okay. Uncle Jimmy?

A Yes.

Q And his girlfriend Michele?

A Yes.

Q How long did you live with Uncle Jimmy and Michele?

A I want to say a couple of months maybe. I'm not sure.

Q Then where did you go live?

A My grandmother took me -- took me to Monroe.

Q So were Jimmy and Michele in Lancaster?

A Yes.

Q And then you went to live with your grandmother Lois in Monroe?

A Yes.

Q Do you have any idea why your mom kicked you out?

A I don't know. I didn't care. I was just -- you know, she always kicked us out, me and my sister's. Always kicked us out.

Q Witness A can you tell the jury about your 11th birthday? Were you living at [redacted] on your 11th birthday?

A Yes.

Q You were living with your mom and your sisters and the defendant, is that right?

A Yes.

Q What did you want to do on your 11th birthday?

A I wanted --

Q If you need a minute? We can take a minute. Beg the

Court's indulgence?

A I wanted to go to Carowinds. I wanted to go to Carowinds.

Q Just take a minute.

Q Was your whole family going to go to Carowinds?

A My sisters.

THE COURT: You need to speak up. You got to speak loud enough for everybody in the jury box to be able to hear you.

THE WITNESS: I'm trying.

THE COURT: You need to compose yourself. Go ahead and do that before you start back.

THE WITNESS: Yes.

A My sisters, my mom her husband and myself.

Q So what happened when were you getting ready to go to Carowinds?

A My sisters and I shared a room so we were getting ready in our room. My mom was in the shower and her husband was in their bedroom laying in the bed.

Q At this time did you think he was your dad?

A Yes.

Q And he is laying in the bed?

A And he called me and he asked me to get in the bed and I said no and he said, well then, if you don't get in the bed we're not going to Carowinds. I said well, that's fine. I

don't want to go any more. And then he just said get in the bed now and so I had to get in the bed and ---

Q What happened in the bed?

A He put his penis inside of me.

Q So is this like in the morning or the afternoon? Do you remember what time?

A It's in the in the morning.

Q So as you get in bed and puts your penis inside you did you still have your clothes on?

A He had taken my bottoms off.

Q Where were your sister's when this happened?

A In the room getting ready. In our room getting ready.

Q And your mom was in the shower?

A Uh-huh.

Q So, was this -- this was your eleventh birthday, right?

A Yes, ma'am.

Q Did he continue to have intercourse with you after your 11th birthday?

A Yes, ma'am.

Q Do you recall having your first period?

A Yes, ma'am.

Q Was that significant to you?

A I thought I was dying.

Q Why?

A Because you know how they say three times is the charm.

It already happened three times.

Q So you were 11 when you got your first period and he had intercourse with you three times?

A My birthday is [redacted] and I got my first period in May after I turned 11.

Q So do you recall the first time was your birthday or was it before?

A It was before.

Q And you know that because the third time is the charm?

A (Nod).

(Reporter asks for a verbal response.)

A Yes.

Q And I know it's hard. She is going to need to take down verbal responses.

A Okay.

THE COURT: Please answer questions with a yes or no response. If you need to explain it you can do so but don't say uh-huh or nod your head. You got to answer verbally.

THE WITNESS: Okay.

THE COURT: Thank you.

Q All right. So, sexual intercourse started around your birthday. Had there been sexual touching before that?

A Yes, that started when I was about four.

Q What do you remember about that?

A When I was about four we lived in the same trailer park but a different trailer.

Q Is that still in Lancaster County?

A Yes, ma'am. And my sister Witness B and I we were jumping on my mom's bed and her husband went in the bedroom and grabbed me by my ankles and kind of flipped me to where I was laying on my back and at first I thought he was playing, but then he pulled me to the edge of the bed and he had my legs opened when he pulled me and he got between my legs and started rubbing his groin area against my groin area.

Q This is when you were about four?

A I was about four.

Q So that was outside your clothing?

A Yes, ma'am.

Q Was there a time he touched inside your clothing in a sexual way?

A Yes, ma'am, there were several times.

Q Before the intercourse?

A Yes, ma'am.

Q Can you tell us when that started and what type of touching it was?

A I'm not sure how old I was when it started but I know it was when I moved back in with my mom. I was about seven. I was in first grade and he started putting his hands -- he would go up under our shorts or our skirts or whatever we had.

Q I need you to limit what happened to you. Let me just back up.

Did you have to do the first grade more than once?

A Yes, I did.

Q Tell me about your grades in first grade?

A I was doing good when I was living with my uncle and my grandmother, but then I moved in with them and what he was doing to me and and my mom she would get really mad because my grades weren't good. And she was yelling and telling me that I'm making D's and F's weren't acceptable in her house. So I just started doing better in school. So that she would be happy.

Q Okay. So is that the time that he started digital penetration?

A Yes.

Q So is it actual penetration?

A Yes ma'am.

Q How often was that happening? Before the intercourse how often was he sticking his hands in your vaginal area?

A It would happen almost daily.

Q Where would you be when this would happen? Was it always at home?

A It would be in the car or at the river. But most of the time it happened at home.

Q So most of the time it was at home on a weekly basis, more than once a week?

A Yes, ma'am.

Q Where were your sisters or your mom when this behavior was going on?

A My mom was usually not home but if she was home she was in the shower or she just wasn't home.

Q Okay. How about your sisters?

A He would make them go in the living room and watch TV or he would do it under the covers discretely. He would -- some times my sisters weren't home.

Q Okay. So this digital penetration continued until intercourse started; is that correct?

A Yes, ma'am.

Q So, at the river how would that happen?

A He would pull me like he was going to hold me and he would put his fingers down there in my vaginal area.

Q Now you're an adult now. We are using adult terms, right?

A Yes.

Q As a child did you necessarily know --

A No.

Q Proper terms?

A No, I didn't.

Q But did you understand what was happening at the time?

A Understand that it was wrong. And I felt just disgusting.

Q So when we was having intercourse -- well, let me back up. Did you say he also touched you sexually in the car?

A Yes.

Q How did that happen?

A My mom use to work at cocoa -- cocoa factory in Indian Land and one night he said I am going to go pick your mom up. My two sister's were like I want to go, I want to go. And it was about 10:30, 11 at night and he said, okay, come on and then he changed his mind and said no, only Witness A can go. And I didn't want to go because my sister's weren't going because I knew what would happen, but he made my go and on the way there he started going up my shorts and putting his fingers -- playing with me. And he asked me if I I wanted him to pull over and I said no because we got to pick my mom up. I don't want my mom to be mad.

Q Okay. So, did most of the touching happen at home?

A Most of the time it did.

Q When he was having intercourse with you was that always at home?

A Yes.

Q And this is at [redacted]?

A Yes.

Q So the time on your birthday was in that your parents' bed?

A Yes.

Q Again at the time you thought he was your dad, right?

A Yes.

Q Was it in the bed every time, that same bed every time?

A No.

Q Okay. How many times did this happen? Do you remember?

A I don't remember but it was a few times.

Q Was it the same every time? Did he do it the same way every time?

A Yes.

Q So was your mom taking a shower or where was your mom the other times other than your birthday?

A Usually she wouldn't be home.

Q Usually not home.

A There was one time she went to Walmart and she took my sisters. It was summer and our room was off the hallway and across from our room there's a window and that window was open, because it was summertime, so she left the windows open. And I was confined to my room. I don't remember what I was in trouble for, but usually if she takes my sisters somewhere she would take me, but that day she didn't take me. And he went in there and he raped me and I saw the window open so I tied to scream but he put his hand over my mouth.

Q So that was summer. Was that the summer when you were 11?

A I was -- that was probably after I turned 11. And when my mom got home I told her why didn't you take me and you took my sisters. She's like I don't know.

Q Was there a time when you were home sick and he tried to touch you?

A Yes. I was home sick one winter and we had gone to Rock Hill.

Q Who is "we" the family?

A My sister's were in school. I stayed home from school because I was so sick. I think I had strep or pneumonia. I don't remember what I had, but my mom kept me home and my mom and me and her husband we all went to Rock Hill and I remember we stopped to eat. She asked me what I wanted and I told her I didn't want anything because I felt like I was going to vomit. I was going to throw up. And when we got home she left to go somewhere and he was lying on the couch watching TV and told me to lay down with him and I told him please not today. I really don't feel good.

Q So he asked you to lie down on on the couch with him?

A Yes.

Q And then what happened?

A He made me lie down with him and he started putting his hands down my pants.

Q Did anything else happened? What happened after that?

A I don't remember.

Q Did you have intercourse?

A No.

Q Did he leave you alone?

A Eventually he did.

Q Okay. So this time when you were home sick do you remember kind of a timeframe of when that was?

A I think I was about ten, ten years old.

Q So, when he was touching you putting his fingers inside you did you ever tell anybody?

A No, I didn't.

Q And after it escalated to intercourse did you tell anybody then when it was going on?

A No, I remember a time my mom sat down beside me and told me that if I needed to tell her anything that I could tell her but she was so mean all the time that I didn't feel like I could trust her and he always told me that if I told her that he was going to -- that my mom was going to kill me, and I didn't care about that, but I didn't want it -- I didn't want it to be by my mom's hands.

Q So were you afraid?

A Yes, I was.

Q Did you think people were going to believe you?

A No. I don't want to be called a lair and I didn't want to be judged.

Q How did you feel about the fact that it was your dad

touching you or who you thought was your dad?

A I didn't know if it was the same everywhere. It was just normal. It felt disgusting.

Q Did there come a time that you -- let me ask you this. When you you moved out to live with Uncle Jimmy and Michelle, did you tell anybody then what had been going on?

A I told Michelle.

Q Where were you when you told Michelle?

A She took me to the bus stop because it was a bad neighborhood. So they would walk me to the bus stop her or my uncle, and Michelle took me one morning and she just looked at me. I was just quiet and just thinking in my head, you know. I was wonder how my sisters are doing.

Q So your sisters were still in the house at that time?

A Yeah.

Q With your mom and the defendant?

A Yes, ma'am. And Michelle asked me she is like I just -- -I just was wondering something and it's okay if you get mad at me, but has he ever touched you all? And at first I didn't say anything. I just stayed quiet and it was like but if -- in my head I am a thinking if I don't say anything I've seen seen him touch Witness B.

Q So you told Michelle that he had been touching you?

A Yes.

Q How long had you been living with Jimmy and Michelle

when you told her?

A Probably a month or two. I can't remember.

Q Right after you told her what happened?

A She took me to this abandoned trailer in the neighborhood and talked to me and she told me that she knew when she had lost my virginity because she could see the changes in me and that she was also raped when she was a little girl and she just knew what was going on.

Q Okay.

A And she just kind of just calmed me down.

Q Okay. So did you continue living with Jimmy and Michelle for a while?

A For a couple weeks I think and then my grandma took me with her in Monroe.

Q Tell us about your relationship with your grandmother, Lois, right?

A Yes.

Q What did you call her grandma?

A Well, when I was younger I called -- when I was way younger maybe like four and under I called her mom.

Q Why is that?

A Because she raised me. My mom was never around.

Q Okay. You say your mom was never around. What do you mean?

A My grandmother said she didn't want me. She said she

took me to a shed when I was a baby and left me in there and that she would -- my grandma paid somebody to baby sit me when I was baby, and she told my mom when she gets off of school go pick me up. She never picked me up. My grandma always had to pick me up when he she got out of work.

Q Okay. So were you and your grandmother close then?

A We were.

Q Okay.

A We were.

Q Are you not now?

A Not so much.

Q Did your grandmother take you to therapy after this all came out?

A She did, but she was dealing with her own problems and she would drink a lot and she just got tired of taking me and stopped taking me.

Q And that was when you lived with her in Monroe after Jimmy and Michelle?

A Yes.

Q Do you remember after all this came out if you ever talked to law enforcement or anybody kind of with the government?

A I did.

Q So when you were living with your grandma going to the therapist were you -- or just after this happened, how did you

feel?

A I felt like -- you know, when you have something like this built up in you and you go talk to a therapist you would think that it would help you but it didn't help me. I think it made my more suicidal then I already was.

Q You felt suicidal this is when were you 13?

A Thirteen, 14.

Q Did it affect the way you dressed?

A I think it did when I was younger.

Q Okay. Do you remember any other ways it may have changed you?

A I became more rebellious and more just confined to myself. I didn't want anyone knowing my personal business. I didn't want anyone knowing anything about me. I didn't want people to be close to me and I didn't want -- I just wanted to stay to myself. Be left alone.

Q Does all this effect your family now?

A Yes. My family is attorney apart.

Q Is that part of why you're not as close to your grandmother?

A They don't think I'm lying is what they tell me but they don't want to be part of this thing.

Q Okay. Does it affect how you raise your little girl?

A Yes, it does. I'm extremely protective of her.

Q Can you describe that for us?

A Like for example my daughter -- I have full custody of my daughter, but her dad has joint visitation -- joint custody I guess,, or visitation rights for every weekend but he only wants to get her every other weekend and I'm fine with that because I can have her more to make sure she's safe. And he's not steady or mature yet.

Q Okay.

A And he kept bringing these girls, different girlfriends to my house and cussed him out one day and told him not to be bringing these girls to my house because one day he's going to make them mad and they will come looking for my daughter.

Q So going back to the way the defendant was touching you, when did the sexual touching stop?

A When my mom kicked me out. Like sometimes he would stop because he would think that I had a boyfriend or people would say that I had a boyfriend and he would get mad and he would stop for a while.

Q Did he ever accuse you of being with a boy when you weren't?

A Yes, he did.

Q Tell us about that?

A The first time he raped me he said it went in too easy and who was I having sex with.

Q And prior to that he had been sticking his fingers inside you?

A Yes.

MS. BURCHSTEAD: I beg the Court's indulgence. If I just may approach Your Honor?

THE COURT: Yes, ma'am.

Q Witness A I am showing you what has been marked as States One for identification. Do you recognize that?

A Yes, that's me in fourth this grade.

Q So, it's a picture of you in the fourth grade. How old were you in that picture?

A I was 11.

Q Okay.

A Ten or 11.

Q Okay. Let me now show you State's Exhibit Number Two. Do you recognize what that is?

A It's another year book picture.

Q Okay. And how long are you in that picture?

A About nine.

Q Okay. And let me show you State's Number Three. Do you recognize this?

A Yes, I do.

Q What is it?

A It's a little card that they give you in school. Like if you get lost your parents will have them to find you.

Q Does it have a picture of you?

A Yes.

Q So that's your picture?

A Yes.

Q And how old are you in that picture?

A I was five.

Q So these are all pictures of you? State's Exhibit One you are eleven, State's Two you are nine and State's Three you are five; is that right?

A Yes, ma'am.

MS. BURCHSTEAD: Your Honor, at this time the State would move Exhibits One, Two and Three into evidence.

MR. GREGORY: Your Honor, I don't think there has been a proper foundation laid for this. We don't know who took the pictures and if it's a collage who prepare the collage. We object on that grounds Your Honor.

THE COURT: When you say a collage I haven't seen them. May I see them.

MS. BURCHSTEAD: To that extent I believe she's described that they are her. I don't think we need to have the photographer.

THE COURT: If that's the only basis of you're objection I am going to overrule the objection. She's testified that it came from yearbooks or school.

MS. BURCHSTEAD: Yes, sir.

THE COURT: All right.

MR. GREGORY: Thank you, Your Honor.

THE COURT: I will allow those and admit them into evidence as Plaintiff's One, Two and Three.

(State's Exhibit One, Two and Three, photographs, were received in evidence as of this date.)

MS. BURCHSTEAD: Thank you, Your Honor, and permission to publish. If I may just pass them to the jury.

THE COURT: Yes.

Q So Witness A those are pictures of you at five, nine and 11. At five he is been touching you outside your clothes, is that right?

A Yes.

Q And at nine he had been sticking his fingers inside you?

A Yes.

Q And at 11 intercourse?

A Yes.

MS. BURCHSTEAD: Beg the Court's indulgence. Your Honor, that all the State's questions at this time.

THE COURT: All right, Mr. Gregory.

CROSS EXAMINATION

BY MR. GREGORY:

Q Witness A, how old are you?

A I am a 28 years old.
Q How old?
A Twenty-eight.
Q How long have you been living with your grandmother?
A For about -- we all lived together when I was four. We all lived together; my uncle, my grandma, my mom, her husband, me my sister's lived together at four on [redacted].
Q All right.
A But I lived with her a few months after I told since 2002 until now.
Q So you lived with your grandma when you were age four for a period?
A We all lived together.
Q You said you lived with Jimmy Joe Perez?
A Yes.
Q And his wife?
A His ex.
Q When was that?
A After my mom kicked me out when I was 13.
Q When you were 13. So, that would have been about 2002?
A Yes.
Q How long did you live with Jimmy Joe?
A May be a month or two.
Q A couple of months. Then you went back home to live with your mother?

A No.
Q And father?
A No.
Q Who is your father?
A I don't know. I've asked my mom but she doesn't know.
Q Have you seen your birth certificate?
A Yes, I have.
Q What does it say on that about who your father is?
A Her husband adopted me.
Q Guadalope Morales adopted you?
A Yes.
Q Okay. Was that done in Court?
A I'm not sure. I wasn't there.
Q All right. Why did you -- you say your mother kicked you out. Why did she kick you out?
A I don't know why she kicked me out.
Q Did she kick you out because you were saying things about your dad that weren't true?
A No.
Q Did she kick you out because you were running around with boys in the neighborhood that she didn't approve of?
A No, I never ran around with any boys in the neighborhood.
Q How did she kick you out?
A She just told me she regretted having me and she wanted

me to leave and get my things and leave.

Q And how old were you then?

A I was 13 the last time it happened.

Q And is that when you went to live with Jimmy Joe and Michelle?

A Yes.

Q And you stayed with them a couple months and then you came back home?

A No, I went to live with my grandmother.

Q Okay. So when you left -- after living with Jimmy Joe and Michelle for a while you went to live with your grandmother?

A Yes.

Q And that is Lois Campos?

A Yes.

Q Whenever your mother would leave the house she took you and your two sisters with you didn't she every time she left the the house?

A No, she wouldn't, no. She would not take all three of us every time.

Q When you said your mother was never around. I think you said a while ago your mother was never around. Was she working?

A Some times she would be working or some times she would go to the grocery store.

Q Where was she working?

A She worked at a few places; Springs, a cocoa plant in Indian Land and another plant out in Edgemore.

Q What was -- what were the hours when she worked?

A Mostly third shift, second shift.

Q Third shift what would that be? Would that be like night shift?

A Night shift, evening shift, depending on the job she got. She would work all shifts.

Q So she would be gone from the house from when, midnight until eight in the morning or something like that?

A It depends on what job. Which job are you referring to.

Q I think I heard you say earlier that your mother was always kicking you and your sister's out?

A Yes.

Q So you weren't the only one that got kicked out of the house?

A No, I wasn't.

Q All right, what were the other sisters, what were they kicked out of the house for?

A I have no idea. I remember when she kicked my sister Witness B out. Told her to put her things in the trash bag and my sister Witness B I saw her walking down the road with her things in the trash bag and she was going to go to a friend's house that lived down the road in the same trailer park but down the road

and my mom went and got her before she could reach the door and she was laughing about it. Like it was funny.

Q Would you consider your mother a strict disciplinarian?

A I would consider her strict in a way that is not sane.

Q She didn't let you do everything you wanted to do did she?

A There wasn't much I wanted to do except play outside and ride my bike.

Q I mean, she didn't let you get away with everything you wanted to do, did she?

A Like what?

Q Did she rule with an iron hand when you did something wrong you got punished for it?

A She grounded me. Made me stay in my room.

Q All right. Now after you lived with Jimmy and Michelle, Jimmy Joe Perez and Michelle, now Jimmy Joe Perez is your mother's brother?

A Yes.

Q So that's your uncle?

A Yes.

Q You moved in with your grandmother Lois?

A After I moved in with my uncle after I told Michelle my grandmother took me to Monroe to live with her.

Q All right. And when did your grandmother Lois tell you to report what you are saying to the Department of Social

Services?

A My grandmother wasn't even around. She was in Monroe so she couldn't have told me to report anything.

Q I thought you lived with her? Was that in Monroe when you lived with her?

A I lived in Monroe with her after I told Michelle.

Q After you told Michelle. How long was it between the time you told Michelle and the time you told Lois?

A I didn't tell her, Michelle and my uncle told her, after Michelle talked to me she took me to an abandoned trailer in the neighborhood and we sat on the porch and we talked until I calmed down and she took me back to the house where we were living and she took my uncle into the next room and my uncle -- because my uncle was like, why isn't she going to school? Why did you bring her back?

So she took my uncle into the next room and I guess she told him and he got really upset and he went to a pantry that was in the house and got a grilling fork and said he was going to kill him. And I don't know when my grandmother arrived but it was pretty quick. And they all sat in the living room and they asked me if it was true and I told them yes, it was true. And my uncle asked me was it rape and at the time I didn't know -- I didn't know what that word met. And he said did he put his penis inside of you and I just shook my head yes because its uncomfortable. I felt uncomfortable. And I guess that's how

the authorities got involved and that's how my grandmother found out. My grandmother didn't know prior.

Q What did your grandmother say?

A She was in shock. She was crying.

Q Did she tell you not to tell anybody?

A She didn't really talk to me. She -- her and my uncle took me to my mom's job to tell my mom and when I did we kind of lashed out at each other.

Q You kind of what?

A Lashed out at each other.

Q Did your grandmother encourage you to say that Guadeloupe did what you said he did?

A No. No, she didn't.

Q Did someone take you to the doctor to be examined?

A Yes, someone did.

Q Who took you to the doctor?

A It was I think she was a police officer at the time.

Q A police officer?

A Well, she didn't dress like a police officer. She dressed very casual but she was driving a government car.

Q Did your mother go with you?

A My grandmother went with me.

Q Your grandmother went with you. And where did you go see the doctor?

A When?

Q Where?

A In Columbia, South Carolina.

Q You went to see the doctor in Columbia. Was it a medical doctor?

A I believe so.

Q Did he examine you?

A Yes.

Q When did you tell your mother about it for the first time?

A My grandmother took me to her job to tell her.

Q That's when you went to the doctor in Columbia?

A No, that's prior.

Q When?

A That was prior.

Q Okay. So you had already gone to the doctor in Columbia?

A No, I told my mother prior.

Q Before you went to doctor in Columbia. Okay. Did she take you to the doctor?

A No, my grandmother and another lady took me.

Q Was it Michelle?

A No, it was the government lady.

Q Okay. All right. So you're saying your mother never took you to the doctor?

A No.

Q That's not what you are saying?

A No, she never took me to see the doctor.

Q Your mother never took you to the doctor to be examined is that what you are saying?

A That's what I am saying.

Q Okay. How close are you and your sister Witness B ?

A We're not -- I'm not too close to anyone, either one of my sisters.

Q Are you closer to Witness B than you are your other sister, Christina?

A I am because I love my nieces, my nephew.

Q You all talk to each other?

A We talk but not -- not like I guess a normal sister would talk.

Q She is about three years younger than you are?

A Yes.

MR. GREGORY: Beg the Court's indulgence please.

THE COURT: Yes, sir.

Q When you were living which Jimmy Joe Perez and Michelle where was that? What was the address?

A On [redacted].

Q On [redacted]. Isn't that where your grandmother lived?

A She rented that house but my uncle, Michelle and her two daughters lived there. The house was under my grandmother's

name. She lived there at one time but she moved to Monroe and kept renting it under her name.

Q So when you moved in with Jimmy Joe and Michelle that's when Lois moved out is that what you are saying?

A I don't know when she moved out.

Q Was she in the house when you were living with Jimmy Joe and Michelle or not?

A She wasn't.

Q She was not?

A I never said she was.

Q Did you ever go to Texas with her?

A Yes, she took me to Texas.

Q With Lois, your grandmother?

A I don't remember because I was a baby but I know she took me to Texas.

Q You know you went to Texas with her but you don't remember --

A Because I was a baby.

Q -- because you were a baby?

A Uh-huh.

Q Well then, how could you know something that you don't remember? Did somebody obviously told you?

A My mom told me, my grandmother told me, my uncle told me.

Q Okay. Are there other things that you testified to

that people have told you to say today?

A No.

Q About Witness B? Did she tell you to say something today like you said?

A No.

Q How about Lois, your grandmother Lois?

A No.

Q Did Lois and Guadeloupe get along?

A I don't know if they get along. Right now?

Q I am talking about -- well, did they ever get along?

A I think they got along from time to time, but there were times where they didn't get along.

Q There were times when they didn't get along, weren't there? Do you recall the time when Guadalupe called her and asked her to help out with the bills when she was living with your mother and Guadalupe and she refused to help pay for the bills and he came to the house and they got into an argument?

A I don't know anything about. I know when I was about almost five we got kicked out; my grandmother, my uncle and myself. We got kicked out. And I just remember him throwing one of my grandmother's plates out the door and breaking a pot and destroying it and I remember thinking I am going to be homeless but at least I don't have to worry about him touching me anymore.

Q You remember your grandmother being at the house, this

is when at the trailer park in Lancaster? Do you remember living there?

A Yes.

Q What was the name of the trailer park?

A I don't remember the name of the trailer park but the name of the road was [redacted].

Q [redacted]. Isn't that Restgate Trailer Park or [redacted], something like that? Isn't that the name of it?

A I'm not sure.

Q All right, do you recall Lois living there with you and your mother and Guadalupe?

A And my uncle.

Q And your Uncle Joe, Jimmy Joe?

A Yes.

Q Do you remember the fight that Guadalupe had with Lois about bringing men to the house and drinking?

A I don't know what the fight was for, but I know he got pretty violent and my grandmother just grabbed me and said, come on Witness A, let's go. Tell my uncle let's go.

Q And that was before you moved in with Jimmy Joe and Michelle wasn't it?

A Yes, that was when I was about four, under five.

Q Did you -- have you ever had a paternity test conducted with Guadalupe?

A No, but I don't need one.

Q Have you ever asked him to do that?

A No, but I believe my sister Witness B did.

MR. GREGORY: That's all the questions I have.

THE COURT: Miss Burchstead.

MS. BURCHSTEAD: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. BURCHSTEAD:

Q Witness A, are you making this up?

A No, I am a not making this up.

Q Did your grandmother tell you to make this story up?

A No, my grandmother wasn't nowhere around when I told Michelle.

Q Michelle tell you what to say?

A No.

Q Are you making it up because you are mad at your mom?

A I wasn't mad at my mom. I was happy. I didn't want to go back to that house, trailer, whatever you want to call it.

Q So, your grandmother hadn't told you what to say?

A No.

Q Do you want a relationship with your family?

A I don't care about my mom anymore. She's -- she's ruined that chance but I want the rest of my family to come together. I can see how it has affected some.

Q Back in 2002 you told Michelle what happened. That is the first person you told, is that right?

A Yes.

Q Did you have to tell other people after that your story?

A Yes, I had to.

Q It is a little bit -- that was back in 2002, right?

A Yes.

Q It's a little bit harder to remember all the details of what happened after you told Michelle?

A It was. Some things I didn't really say because they were just -- it was too much. But some things that were hard because I really wasn't thinking about it and I didn't want -- I just didn't want to be judged.

Q Okay. Do you remember everybody you had to talk to involved with the investigation of the case after it came out?

A I don't remember everyone. I don't remember their names but I remember what they looked like at the time.

Q And you remember what the defendant did to you when you were a little girl?

A I do. I remember.

Q Okay.

MS. BURCHSTEAD: Nothing further Your Honor.

THE COURT: Mr. Gregory.

MR. GREGORY: No further questions.

THE COURT: All right. You may step down.

THE WITNESS: Thank you.

(WHEREUPON, the witness was excused.)

MS. BURCHSTEAD: Beg the Court's indulgence one moment. I just want to make sure our next witness is still out there.

THE COURT: Ladies and gentlemen, while she does that anyone need a comfort break at this point.

JUROR: Yes.

THE COURT: You do, okay. Why don't we take a quick just a five, ten minute break. Go to the restroom and come back in. Keep in mind we are going to break at two o'clock. So again, as I told you I would I caution you don't talk about the case yet. You you only heard from one witness. A lot more witnesses to be heard from so please don't discuss the case at all while you are in the break. Everyone remain seated while the jury goes out.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Are you ready to proceed.

MS. BURCHSTEAD: Yes, Your Honor.

THE COURT: Bring the jury in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: We took a little longer break than I intended but we had to locate a witness and we have the witness located now so we are ready to resume.

MR. KOZAK: The State calls Kristen Grant.

KRISTEN GRANT, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOZAK:

Q Please state your name for the record.

A Kristen Grant.

Q Ms. Grant, what is your current position?

A I am a special agent with the South Carolina Law Enforcement Division commonly referred to as SLED.

Q And how long have you been with SLED?

A I have been at SLED for five years.

Q And what are some of your duties and responsibilities at SLED?

A I'm a regional investigator. We investigate anything from officer involved shootings to other agencies dealing with a conflict within a case. We may assist with murders. Anything -- corruption cases, misconduct cases. Anything like that.

Q And where did you work prior to SLED?

A Lancaster Police Department.

Q And were you working with Lancaster Police Department at the time of this incident?

A I was.

Q All right. And when did you begin working for Lancaster PD?

A I started working or Lancaster PD in '96.
Q And how long were you employed with Lancaster PD?
A Sixteen years.
Q So you went straight to Lancaster PD to SLED?
A Correct.
Q Okay. What were some of your duties and responsibilities when you were serving with Lancaster PD?
A I started out as patrol officer on the road and I later went to be an investigator.
Q How did you become involved in this case?
A Oh, at the time I was a corporal on patrol.
Q Okay, and so how did you become involved?
A We got a call from DSS. They were at the hospital with an individual that had been sexually assaulted.
Q Okay. And what county was this?
A Lancaster County.
Q And once your agency began its investigation what was its first step?
A The first step was we went to the emergency room and spoke with DSS, the hospital staff and the victim and took an incident report?
Q Did you speak with Witness A?
A I know we spoke with Witness B that night but I don't think we spoke to Witness A that night?
Q Did you eventually speak with Witness A?

A We did.

Q Did she disclose to you that she had been sexually assaulted?

A She did.

Q Did she tell you where those assaults took place?

A She did.

Q Where?

A [redacted].

Q Okay. So what is that location?

A It's a mobile home park in the City of Lancaster.

Q But according to her what was --

A That was her home. That was her residence.

Q Did she tell you when the assaults would took place?

A She did.

Q When did the assaults take place?

A She stated they started from the time she was three years old until current. At that time she was 13 and she stated they would take place when her mother was out of the residence.

Q Okay. Did you happen to notice her demeanor when she disclosed this to you?

A I don't recall that at this time.

Q About how long ago was it?

A Its been almost 15 years.

Q Throughout your agency's investigation who else did you speak with concerning these allegations?

A Sergeant Pat Parsons.

Q Who else did you speak concerning these allegations not in your office?

A Within the family?

Q What other individuals just did you speak with concerning these allegations?

A We talked to the other -- all the other children in the home and then we talked to PCASA, which is our Palmetto Citizens Against Sexual Assault as well as investigators in the department.

Q After the agency spoke with the those individuals what did you then do?

A We did some more interviews. We did forensic interviews and then we followed up with an interview of the subject in this case.

Q You said you involved DSS and PCASA. So, what is PCASA?

A Well, DSS contacted us initially. That's how we got contacted to the ER. Then we contact PCASA which is Palmetto Citizens Against Sexual Assault. Any time we have a sexual assault victim we contact them and they do our forensic interview so it is a child friendly interview.

Q Okay, and is that common procedure in these cases?

A It is.

Q Do you know who at DSS or PCASA Witness A spoke with?

A I know initially it was Harry Broadwell and I believe Ray Raney from DSS and then once PCASA got involved it was Margo Dixon.

Q After all the investigation was done did you guys arrest the defendant?

A We did.

Q What was the date of his arrest?

A I believe it was October the 29th, 2002.

Q So overall how long did the investigation take place?

A The initial -- when we responded -- we got the initial call to go ER on October the 10th, 2002 at 12:50 p.m. and the arrest was on 10-29-2002 at 5:17 p.m.

Q And once the defendant is arrested how is your agency involved from that point on?

A Unless the solicitor's office requested anything further our case is closed.

Q Once he is arrested you were done?

A Correct.

MR. KOZAK: No further questions, Your Honor.

THE COURT: Mr. Gregory.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Officer Grant, is that how how you're addressed now?

A Agent Grant.

Q Agent. All right. And you are with SLED.

A I am.

Q I understand your testimony was that you were on patrol. You were a corporal on patrol at the time the call came in?

A That's correct.

Q And that would have been October the 10th, 2002?

A Correct.

Q And 12:50 would have been, what, shortly after noon?

A Yes, sir.

Q And you received a call from DSS. I guess you got dispatched?

A We were, yes.

Q The call came to Lancaster Police Department dispatcher and they notified you and you went to ER?

A Correct.

Q That's the way it went. And you spoke with Witness B Witness B?

A Yes, sir.

Q And you say you did not speak with Witness A ?

A Excuse my one moment please. According to my report we did not that day.

Q All right. And so you only spoke with Witness A -- I mean, I'm sorry. You only spoke with Witness B on the 10th of October 2002?

A Yes, sir. According go to this report, yes, sir.

Q Did you talk to Witness B again after that?

A I did not.

Q Did anyone with the Lancaster Police Department talk to Witness B after that?

A I believe Sergeant Parsons did.

Q All right. Do you recall Witness B coming to the police department within three weeks of that date, October the 10th, 2002? It would have been probably the end of October stating that what she had told you on October 10th was not true and it didn't happen and that her grandmother told her to say that?

A She did not provide that information to me, no, sir.

Q She didn't provide that information to you?

A No, sir.

Q Was it provided to Sergeant Pat Parsons?

A I do not see that in this file book.

Q You don't know?

A I don't see it in this file book.

Q So that may have occurred. You just don't have a record of it, would that be a fair statement?

A Not in the case file I have, no, sir.

Q But in any case you are not aware of her recanting her testimony?

A No, sir, I am not.

Q So based on what Witness B said that she had been -- let's

see, what did you say abused, between the age three to the age 13?

A Witness A. Yes, sir.

Q Witness B ?

A Witness A.

Q That's what Witness B said?

A The information I have from the interview I did was Witness A. Is the one that gave me that statement stating from the time she was three.

Q All right. Was that on October the 10th, 2002?

A October 15th.

Q Okay. All right. I'm sorry. Let's back up to October the 10th at the ER?

A Okay.

Q You talked to Witness B I think we established but you did not talk too Witness A that day?

A Correct.

Q All right. On that day October the 10th, 2002 at the ER, Witness B was the one that said that she had been assaulted from age three to age 13, correct?

A I'm a not sure on the age of her.

Q I would think not because she wasn't but ten years old at the time.

A Correct.

A Witness A was 13. Witness A is who I'm making the

statement about.

Q Is it possible you are confusing Witness A and Witness B?

A No, sir. I am reading based off of the three to 13 year old -- three to 13 years old is Witness A.

Q All right. But you didn't speak to Witness A on October the 10th. It was five days later when you spoke to Witness A?

A Correct. She was interviewed October 15th.

Q All right. Now, in the house that this occurred it was on [redacted] in Lancaster?

A Correct.

Q Are you familiar with that location?

A I am.

Q It's a trailer park in Lancaster?

A That's correct.

Q Off of West Meeting Street?

A That's correct.

Q Did it have a name? Did that trailer park have a name?

A We just always refer to it as [redacted]. It runs off of Plantation to Meeting Street.

Q For some reason I thought it was Westgate?

A That's another one across the road.

Q Oh, there is one called Westgate but it's not that one?

A Correct.

Q Is there a [redacted], or was there a [redacted]?

A I think at one point in time some people may have referred to [redacted] as [redacted]. But at the police department we was always just referred to it as [redacted].

Q All right, we will call it [redacted] then. That was the residence where these two girls were living?

A That's correct.

Q With their mother?

A Correct.

Q L.M. and their father, Guadeloupe Morales?

A Yes, sir.

Q As far as you understand?

A Yes, sir.

Q And you said you did some interviews after October the 10.th, who did you interview other than Witness A.?

A On October -- that's it. October 15th I interviewed Witness A.

Q All right. Did you interview anybody else?

A No, sir.

Q So you basically just interviewed two people?

A Yes.

Q Witness B and Witness A. What about the forensic witnesses? Who were they?

A According to Sergeant Parsons' report it was Margo Dixon the report and DSS Agent Ray Raney and at the time Solicitor Doug Barfield was there for the interview as well as

Sergeant Parsons.

Q All right. Now, was there an exam? Did an examination of Witness B and/or Witness A take place at the emergency room?

A No, sir, they did not.

Q Why not?

A According to what the medical staff told Sergeant Parsons was that to much time had passed.

Q All right. To much time had passed. So there evidently was no need to do an examination to see whether or not any abuse had taken place at all?

A Based on what they told us that a year had passed since the last incident. So they stated that they wouldn't do a physical exam.

Q All right.

MR. GREGORY: That's all the questions.

THE COURT: Mr. Kozak.

MR. KOZAK: Thank you, Your Honor. Just briefly.

REDIRECT EXAMINATION

BY MR. KOZAK:

Q When you responded to the hospital what family members were at the hospital?

A Witness B was there with the mother, L.M. and the grandmother, Lois Campos.

Q So, was Witness A at the hospital when you responded to the hospital?

A No, sir.

Q And what was the residence you said you responded to on the call?

A [redacted].

Q And was Witness A living at that residence at the time?

A She was.

MR. KOZAK: Beg the Court's indulgence.

Q As far as you are aware is that the family home you responded to?

A Yes.

MR. KOZAK: No further questions. Thank you.

THE COURT: Mr. Gregory, anything else?

MR. GREGORY: Yes, I do have one other question.

RECROSS EXAMINATION

BY MR. GREGORY:

Q You mentioned Sergeant Parsons?

A Yes, sir.

Q He assisted in the investigation along with you?

A He initially took the investigation, yes, sir.

Q All right. Is he here? Is he available? Does he still work for Lancaster?

A No, sir, he is retired.

Q Okay. Would there be anyway to find out whether or not he recalls --

MS. BURCHSTEAD: Objection. Calls for

speculation.

THE COURT: I agree. I will sustain the objection. She couldn't know what -- well, you didn't finish the question. Speculation.

Q Would there be any records that Officer Parsons would have left to indicate a conversation with Witness B about some time October -- toward the end of October 2002?

A I can't really answer that because I don't work at the police department any more.

Q Okay.

MR. GREGORY: That's all the questions I have.

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

MR. KOZAK: Your Honor, is it all right if we have her excused?

THE COURT: Any objection to her being excused?

MR. GREGORY: No, sir, Your Honor.

THE COURT: Okay. You may be excused.

THE WITNESS: Thank you judge.

MS. BURCHSTEAD: Your Honor, may we approach for one minute?

THE COURT: Yes.

(WHEREUPON, there was an off the record discussion.)

THE COURT: All right, ladies and gentlemen, I

told you that we would break at two, but we just concluded a witness so rather than start the testimony of another witness and break that testimony up we will go ahead and break for lunch. As I told you earlier there will be food for you in the jury room. Once you've eaten you are free to take the remainder of your lunch break like you want to. Just be back ready to start back at three o'clock. If you don't want to eat I don't have a problem with you leaving and going out now. But anyway there will be food provided for you.

Mr. Sims.

JUROR: Yes.

THE COURT: I am going to appoint you as the foreman of the jury. So from hereafter when you come back out if you will take the first seat where the lady in blue is. Always sit on that seat. As I explained earlier you will be the spokesperson for the jury. You will interact with the bailiff if necessary and you will submit any questions to the Court in writing. But I will explain that to you later as well.

Everybody remain seated while the jury goes out for lunch break.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Anything, counsel, before we break for lunch?

MR. GREGORY: No, Your Honor?

MS. BURCHSTEAD: Not from the State?

THE COURT: Be back at three o'clock.

(WHEREUPON, court was in recess.)

THE COURT: Counsel, are you ready for the jury?

MR. GREGORY: Yes, Your Honor.

THE COURT: Bring them in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Who went outside to see the eclipse?

(Jurors raise their hands.)

THE COURT: Good. Okay. All right. Everybody got lunch then so we are ready to proceed.

Miss Burchstead.

MS. BURCHSTEAD: Thank you, Your Honor. The State calls Lois Campos

LOIS CAMPOS, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY BURCHSTEAD:

Q Good afternoon Miss Campos. Could you just tell the jury your full name please.

A Lois Campos.

Q Where do you live Miss Campos? Where do you live?

A Monroe, North Carolina.

Q And how long have you lived in Monroe?

A About ten years. Ten. Maybe a little bit more. I'm not sure.

Q I would ask if you could move the microphone down. Make sure you project enough.

So, who do you currently live with?

A Excuse me.

Q Who are you living with right now?

A My granddaughter and her husband.

Q Okay. Who is your granddaughter?

A Witness A .

Q How do you feel about testifying today?

A I don't know.

Q Has it created a challenge for you with your family?

A Yes, ma'am.

Q Okay. Who's your daughter? Is L.M. your daughter?

A Yes.

Q And she is married to Guadalupe Morales?

A Yes.

Q And they have children together?

A Yes.

Q Do you know whether Guadalupe is Witness A's dad?

A No, he is not.
Q And did you tell Witness A that?
A Yes, she knows.
Q Tell us about your relationship with Witness A?
A Her dad?
Q Your relationship with Witness A. Are you close to her?
A Just Witness A.
Q Did you -- did she ever come live with you? When she was a little girl did Witness A come to live with you?
A Yes. Yes.
Q When did she come live with you?
A When she was born I had her up until she was I think may be about four, four or three, and then she went back and lived with with her momma.
Q Her mom L.M.?
A Uh-huh.
Q You have to answer yes or no.
A Sorry.
Q That's okay. You're not use to it. We understand.
Q So when Witness A went back to live with her mom L.M. who else lived in the house when she moved back? Do you know?
A Her other two daughters.
Q Is that Witness B and Kristina?
A Witness B and Kristina, yes.
Q And what about the defendant, was he living there too,

with L.M. and the girls and Witness A moved back in?

A Yes.

Q Was there another time when Witness A came to live with you when she was older?

A Yes, when she about 13.

Q Okay. And how did that come to be?

A That's when they were having problems and that's when I was called and told that she had been messed with by her step dad.

Q Who called you?

A My son, Jimmy.

Q Who is your son?

A Jimmy Perez.

Q So after Jimmy called you did you come get Witness A.?

A Yes.

Q So was she living with Jimmy at the time? Was Witness A living with Jimmy when he called you?

A Yeah, she was staying at the house where I would stay here in Lancaster with my son.

Q Okay.

A And then after this happened I came down to talk to her to see what was going on and she didn't want to stay down here no more so I moved her with me to Monroe.

Q Okay. So were you coming to Lancaster like on a weekends, is that right?

A Yes, on weekend.

Q Where were you working at the time? Were you working somewhere.

A Yeah, I was working at Tyson in Monroe.

Q All right, so you were living in Monroe working at Tyson when Witness A came to live with you?

A Yes.

Q And she had been at Jimmy's house when Jimmy called you?

A Yes.

Q Did Witness A ever disclose that she was the victim of a sexual assault to you?

A Yes, she told me.

Q Did she tell you where it was happening to her?

A Yes, she told me he had been touching her.

Q Was it when she was living at [redacted]?

A Excuse me.

Q Was it when she was living in the trailer at [redacted]?

A Yes.

Q Do you recall taking Witness A -- did you ever take Witness A to talk to law enforcement or DSS?

A Yes, after talked to DSS.

Q Was that after Jimmy called you?

A Yes.

Q Did you ever take Witness A to see a therapist in Monroe?
A Yes, she went to therapist in Monroe.
Q Can you describe Witness A's behavior when she was living with you, anything that you would consider outside the norm?
A She just act like she had this anger in her.
Q How is this affecting your family now?
A I don't know.
Q Is it hard for you?
A Yes.
Q Thank you.

MS. BURCHSTEAD: Your Honor, that is all the State's questions right now.

THE COURT: Mr. Gregory.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Miss Campos, have you ever gone by any other name besides Campos?
A Yes, when I was married a long time ago.
Q Was it Martinez?
A Martinez, yes.
Q Did you ever go Lois Vasquez?
A No.
Q Did you ever go by Lois Perez?
A No.

Q You use to live in Texas?
A Yes.
Q Use to live on [redacted] in Lancaster?
A No, I live in Monroe.
Q Did you ever live on [redacted] in Lancaster?
A Oh, yes. Yes.
Q When?
A I can't remember how long it's been.
Q Did you ever live on [redacted]?
A Yes, that's where I stayed with my daughter back then.
Q Where did you live before you lived with your daughter on [redacted]?
A I was in Texas at that time.
Q Would that have been in the 1990's?
A It might have been. I don't remember.
Q Do you recall being arrested in Lancaster -- -

MS. BURCHSTEAD: Objection.

Q -- in the 1990's?

THE COURT: Okay, and your basis?

MS. BURCHSTEAD: I will need to look back at my impeachment rules, judge, but unless it's for -- I need to know what it is.

THE COURT: All right. Let's send the jury out for a moment. I'm sorry ladies and gentleman, send you back to the jury room.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: All right. Mr. Gregory, what are you pursuing.

MR. GREGORY: Your Honor, I was asking the witness about being arrested in Lancaster in the mid 1990's after she had moved back to Lancaster from Texas or moved to Lancaster from Texas.

THE COURT: How long has that been?

MR. GREGORY: And the State objected. I'm not sure exactly what the date was. It would be from '94 to '97. Somewhere in that range.

THE COURT: You are talking well over ten years ago then.

MR. GREGORY: It would have been.

MS. BURCHSTEAD: Your Honor, I would say I don't know even know what it is, first of all. Right, it is over ten years. So unless it was a crime of dishonesty it's only an arrest not a conviction. It's improper and it's prejudicial.

THE COURT: Is this the first you heard of this Miss Burchstead.

MS. BURCHSTEAD: Yes, Your Honor.

THE COURT: So you were given no prior notice?

MS. BURCHSTEAD: Correct.

THE COURT: Okay. What about that Mr. Gregory?

MR. GREGORY: I am sorry.

THE COURT: What about the fact that you didn't put her on notice that you were going to raise this issue? This is something that is more than ten years old.

MR. GREGORY: Yes, I did not do that. I did not become aware of this incident until just recently so I didn't put her on notice.

THE COURT: How recently though, before today.

MR. GREGORY: Yes, sir. It was last Friday, this passed week.

THE COURT: Okay. I don't even know what your asking she is arrested about.

MR. GREGORY: I don't either. That's why I asked the question. I guess I can cross examine her out of the presence of the jury to see if I can find out more information, but I don't know anything more than what I just provided the Court.

THE COURT: If it's something that is more than ten years ago, unless you can show some way that, you know, its not so prejudicial might could consider it. But being over ten years ago I think it would be more prejudice.

MR. GREGORY: I agree. It would have had to been over ten years ago.

THE COURT: I am not going to let you proceed.

MR. GREGORY: All right. I will move on to something else Your Honor.

THE COURT: Okay. All right, let's bring them back in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: All right. Ladies and gentlemen, that was one of those instances where we had to discuss a matter of law that I explained to you earlier where you might be asked to go back to the jury room. I hate to have to do that but it was necessary. We are ready to proceed at this point in time.

Mr. Gregory.

MR. GREGORY: Thank you, Your Honor.

RECROSS CONT'D:

Q Miss Campos, have you ever been involved in any civil litigation?

A Have I ever what?

Q Have you ever brought a lawsuit against someone?

MS. BURCHSTEAD: Objection. Relevance?

A No. No.

THE COURT: What would be the relevance of that question?

MR. GREGORY: Well --

MS. BURCHSTEAD: May we approach Your Honor?

THE COURT: Yes, ma'am. I will not send you out at this time.

(WHEREUPON, there was an off the record discussion.)

THE COURT: All right. With regards to your objection Miss Burchstead, I'm sustaining your objection. That's not a relevant question.

MS. BURCHSTEAD: Thank you, Your Honor.

MR. GREGORY: Thank you.

Q All right. Miss Campos, you lived in Texas and then you moved to Lancaster. Where did you live when you moved from Texas to Lancaster?

A I lived in Corsicana County Texas.

Q In Texas. After you left Texas did you move to Lancaster?

A Yes.

Q All right. Where did you live when you moved to Lancaster?

A When I came back from Texas I lived on [redacted] with my daughter when I came back.

Q [redacted]?

A On [redacted], yes.

Q [redacted]?

A In a trailer park, yes.

Q When did you live on [redacted]?

A That was after I moved out from the house.
Q That was a house.
A After I moved that's where I moved to.
Q So you moved in with your daughter and her husband on [redacted] when you came from Texas. Then after a period of time you moved into a house on [redacted]?
A Yes.
Q Was was the number of that house?
A I don't remember.
Q All right. When was that? How long did you live on [redacted] before you moved to the house on [redacted]?
A I don't remember.
Q All right. How long did you stay at the house on [redacted]?
A About about a year maybe.
Q About a year maybe. All right. And then after that you moved to Monroe?
A Yes.
Q All right. So you didn't live anywhere in Lancaster between the time you lived in the house on [redacted] until you moved to Monroe?
A No.
Q Is that right?
A I didn't live no where else just there in Monroe.
Q All right. When did Witness A move in with you?

A I don't remember the year exactly.

Q All right. Do you remember taking Witness A to Texas with you?

A Yes.

Q Was that after you had moved from Texas to Lancaster?

A Yes.

Q All right. When you went to Texas what part of Texas did you go to? What town did you go to?

A That was in Corsicana Texas.

Q Cristiana?

A Corsicana. I don't know how to spell it.

Q All right.

A Sorry.

Q Is that the same place that you were living before you moved to Lancaster, the same town?

A Let's see -- no.

Q All right. All right, where did you live in Texas before you moved to Lancaster for the first time?

A I lived Ennis Texas.

Q Where?

A Ennis Texas.

Q All right. Why did you take Witness A to Texas with you?

A Because at the time that's when she was staying with me.

Q The time she was what?

A She was staying with me. At the time she was living with me.

Q Now, how long did you live on [redacted] -- at [redacted] with with your daughter and her husband?

A I can't remember how long it was.

Q Would it be a year or more?

A It couldn't be more than a year.

Q It was less than a year. All right. During that period of time did Guadalupe -- how do you call him? Do you call him Guadalupe?

A I call Melqueades. I mean that's his middle name or something.

Q All right. Did he ever ask you to help pay for the household expenses?

A I can't remember.

Q Did you ever work at the China Inn?

A China Inn. Yeah, I worked at the China Inn.

Q Do you remember getting a call from Guadalupe while you were at the China Inn and ask you if you would help him pay for the household expenses?

A No. I mean why would he call me if I lived there. He should have told me when I got home. I don't remember him calling me.

Q Do you ever remember him asking you to pay for the expenses?

A No. No, I don't remember.

Q Did you ever assist financially? Did you ever help pay for the expenses?

A No, but I did by groceries.

Q You bought groceries?

A I bought groceries, yes.

Q Did you and Guadeloupe get into an argument about paying for the expenses?

A I remember we got into an argument but I don't remember if that was the case though. I don't remember if that was the the case.

Q Do you remember calling 911?

A Yes.

Q All right. Did the police come?

A Yes, they did.

Q At [redacted]? This was on a Friday, right?

A Excuse me.

Q This was on a Friday, the day of the week?

A I don't remember what day it was.

Q All right. If it was on a Friday then you move out of the house on Monday?

A Yes.

Q Does all that sound right?

A I don't remember. I don't think -- I don't remember.

Q Why don't you tell me what happened then?

A All I know we got into an argument. So the police was called because he was throwing my stuff out.

Q He was throwing what?

A Throwing my things out from the trailer.

Q He was throwing your things out of the house?

A Yes.

Q And that's why I call the police so he stop would throwing my stuff out. So then they told him that he couldn't do that because since I was staying there he couldn't just throw me out like that.

Q So --

A Then I did eventually move out as soon as possible.

Q So you moved out on your own then?

A Yes.

Q And you weren't thrown out?

A No, I moved out on my own.

Q Did you and Guadeloupe ever get into a discussion about you bringing men to the house, boyfriends?

A Yes.

Q All right. Did he -- did you all disagree on that?

A Yes, we did.

Q All right. He didn't like it? He didn't -- Guadalupe did not like you bringing men friends to the house?

A No.

Q Did he ask you to stop doing that?

A He might have. I don't remember.

Q Did you stop doing it when he may have asked you to stop?

A Yes, I did.

Q But not immediately. You continued to do it after he asked you to quick didn't you?

A No.

Q Were you drinking at the house with these guys?

A Yes, I drink. He drink too.

Q Did he ask you not to bring guys over the house and be drinking in the house?

A Excuse me.

Q Did Guadalupe ask you not to bring guys into the house and be drinking with the the guys in the house?

A Yes, I was.

Q Did he ask you to quick doing that?

A He asked me not -- I think he asked me not to bring the guys back. He didn't say anything about the drinking.

Q All right. What did your daughter have to say about this? Was she on your side or was on Guadalupe's side?

A She stayed mostly out of it.

Q She what?

A She stayed mostly out of it.

Q She stayed out of it. All right, well, when you moved out of the house did she try to get you to come back?

A No.

Q And Witness A went with you when you left the house, right?

A Yes.

Q And that's when you moved to [redacted]?

A No, I didn't move to [redacted] at that time.

Q Where did you go between [redacted] and [redacted]?

A I can't remember the name of the street but it was apartments where I moved to. I can't remember the name of the apartments.

Q You went to an apartment. You don't remember the name of it?

A I don't remember the name of it.

Q Do you remember where the apartment was located?

A I remember where the apartments are located.

Q All right, where was it located?

A It was -- it was -- I can't -- I can't remember.

Q Was it in Lancaster?

A It's in Lancaster, yes.

Q All right. Did you tell Witness A to say that Guadalupe had done things to her that he hadn't done?

A No. I will not tell none of my kids to say anything like that.

Q You didn't tell her to say that?

A No.

Q Did you tell Witness B to say that?

A No.

Q Did you know that Witness B has said that Guadalupe did things to her that he hadn't done?

A Excuse me.

Q Did you know that Witness B has said the same thing Witness A is saying?

A Yes.

Q You do? Did you tell her to say those things?

A No.

Q Do you know who Witness A's father is?

A No.

Q Do you know who is Witness B's father is?

A Yes.

Q Who?

A That's -- I just know his first name. I don't know his last name. His name is Billy.

Q What's his first name?

A Billy.

Q Willy?

A Billy.

Q Billy, B-i-l-l-y?

A Yes.

Q When is the last time you've seen Billy?

A Its been a long time. We moved.

Q When you moved where to Monroe?
A That's at the time when we lived in Edgemore.
Q When you lived in Edgemore?
A Yes.
A That's where she met that boy and that's how she --
Q Okay, so, you must have moved somewhere between the time you left Texas and the time you moved to Lancaster?
A Yes, because when we came -- when we came from Texas -- when I came from Texas down here I moved. I was staying -- I worked in Richburg.
Q You worked in Richburg?
A In Richburg, yes. So I was staying in Fort Lawn and then from Fort Lawn we moved to Edgemore and then from Edgemore that's when we came to Lancaster.
Q All right. Okay. Did you discuss the situation involving Witness A and Witness B with your daughter?
A No, we never talked about it.
Q You don't get along with your daughter?
A I mean we talk, but we don't discuss -- talk about the situation. We never did. We just ---
Q How do you get along with with Guadaloup?
A Well I mean, some times we speak but we don't have like ---
Q You don't talk on a regular basis?
A No.

Q When is the last time you spoke with Guadaloup?

A The last time I spoke to him. Let me see. It was one day when I went to go see my daughter. Probably about two months ago. Probably about two months ago.

Q Was that on the phone or you saw personally?

A In person.

Q What did you talk about?

A We didn't talk. Just said like hello.

MR. GREGORY: That's all the questions I have. Thank you, Your Honor.

THE COURT: Miss Burchstead.

MS. BURCHSTEAD: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. BURCHSTEAD:

Q Miss Campos, your daughter is L.M. , right?

A Excuse me.

Q Your daughter is L.M. , Witness A's mom?

A Yes.

Q Do you want to have have a relationship with her?

A Yes, I want to have a relationship with all my kids.

Q But you all don't talk about this situation?

A No.

Q Has that been hard on the family?

A Excuse me.

Q Has this situation been hard on the family?

A Yes.

Q Did you tell Witness A or anybody to make up sexual assault?

A About what?

Q Did you tell Witness A to make up that she had had been sexually assaulted? Did you tell her to lie about Guadalupe?

A No. No.

MS. BURCHSTEAD: Nothing further Your Honor.

THE COURT: Mr. Gregory.

MR. GREGORY: No further questions.

THE COURT: You may step down Miss Campos.

MS. BURCHSTEAD: May she be excused Your Honor?

MR. GREGORY: We have no objection.

THE COURT: Okay. You may be excused Miss Campos. You can leave.

MS. BURCHSTEAD: May we approach Your Honor.

THE COURT: Yes.

(WHEREUPON, there was an off the record discussion.)

THE COURT: All right, ladies and gentlemen, the the attornies have discussed with me the scheduling of the rest of the witnesses that need to testify. The case has moved a little bit faster then they had anticipated. The remaining witnesses for the State were put on notice to be here tomorrow so we will take

a break for the afternoon until tomorrow with regards to this case. Come back tomorrow morning and conclude the testimony tomorrow. We will see how far we can get. The case may very well go into Wednesday depending on how long the witnesses take to testify tomorrow just for your scheduling purposes.

As I cautioned you earlier please do not discuss the case with anybody when you get home tonight or on your way in and out. Please don't discuss the case. As I said the State is still putting up there evidence at this point in time. We have yet to hear from the defendant at all in this matter so I don't need anybody to start forming any opinions or make any decisions at this juncture.

We have some legal matters that we need to take up after you leave so we are going to be here for a little while getting those out of the way so it won't delay things tomorrow morning. Why don't you be here ready to start at 9:30 tomorrow morning. Everybody remain seated while the jury is excused.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: All right, counsel.

MR. GREGORY: Your Honor, we haven't discussed this until now but my client has been on recognizance bond, surety bond for 15 years and he hasn't gone

anywhere so I would appreciate if the Court would consider letting him stay at home so we will prepare for our defense tomorrow and Tuesday night if it goes on to Wednesday.

THE COURT: I don't know. Does the State take any position. I normally detain them.

MS. BURCHSTEAD: We object, Your Honor. Based on the seriousness of the charges and the amount of time; CSC, first degree he faces 25 to life. Given that I just can't consent and in fact I oppose.

THE COURT: Yes, and then obviously if we do that, I know he has been here 15 years, but I mean he obviously has ties to Mexico and he could, you know, very well get cold feet over night and hopefully you prepared before now anyway for his defense. You are not going to prepare it tonight. I am inclined to require him to be detained at this point in time. We are in the mist of the trial. So conditions of his bond have been met.

MR. GREGORY: I understand.

MS. BURCHSTEAD: That's the State's position. And just before we get rolling tomorrow I wanted to get a final ruling from the Court on the bad act testimony we intend to elicit from Witness B . You heard from the victim today and of course we argued the matter

before Your Honor a few weeks back in Chesterfield and did pass up a memo on that primarily on the case law but just to remind Your Honor the similarities of what we heard from Witness B pretrial and what we now heard from Witness A . The defendant's conduct started around three or four for each of the girls. Each of them believed them to be their father. That's the main consistency here where we believe it is a common scheme or plan where he was taking advantage of his familial relationship with these girls to -- in furtherance of his sexual gratification. The location he used was primarily the home when the mother was away most of the time. And it occurred in a similar manner in the sense that it began with grooming, touching outside the clothes and then under the clothes and went father with Witness A but of a similar nature. And we do believe the similarities outweigh the dissimilarities again focusing on the familial relationship and remind the Court of all the case law that supports allowing it in in those circumstances with that familial relationship in particular.

I will be happy to articulate further if you like but we have heard from Witness A now and she has stated that it began when she was four, touching outside then inside, then intercourse, and of course

the familial relationship and you heard her testimony, judge, and I will elaborate further if you like.

THE COURT: Okay, Mr. Gregory.

MR. GREGORY: Your Honor, since the ruling that you made in Chesterfield on a temporary basis. We heard some testimony. We haven't heard Witness B's testimony but we did hear it there that day. It appears to me that it is becoming a little bit more clear as to where the conspiracy is, if that's what you want to call it; the pattern. And I think that now I'm seeing a pattern of -- I'm seeing a pattern of conspiracy. And I don't really want to call it that because it's not really legal criminal conspiracy. But the consortium of witnesses that are saying the same thing for the same reason. We believe it's vindication. We believe it came from -- it's stemming from the grandmother. But now after hearing Witness A's testimony it appears to be clear that's what it is. So we think that the testimony of Witness B is -- will be improper bolstering of Witness A's testimony. We think it is improper and should not be allowed.

THE COURT: Okay. Well, I heard the testimony. I heard the testimony from Witness B at the hearing in Chesterfield and now that I've heard Witness A's testimony it's clear that their testimony, everything

else aside their testimony does have a number of similarities and I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales.

The fact that the grandmother and you contend that the grandmother may have something to do this. That is something you can certainly argue to the jury if you want to when the time comes. But with regards to the actual offering of Witness B as a witness, I'm going to find her testimony will be admissible and I will allow her to testify tomorrow.

MR. GREGORY: All right. Thank you, Your Honor. And there's one other thing that we covered at the bench and the jury was in the room, now that the jury is out of the courtroom I would like to get a ruling on the issue that came up in with regards to my questions of Lois Campos has she ever been involved in a civil litigation. Has she ever brought suit against anyone. She said no. And it's public record of an I suit in 2004, where she brought and action against Shannon Rivers, [redacted] Flintridge Road, Heath Springs. She denied that and I realize that it may not have been pertinent at that time. May not have been relevant. But since she denied it and it's a matter

of public record that raises an issue of her credibility. And the Court ruled that I could not pursue that. I just wanted to get that ruling on the record.

THE COURT: When the question was asked counsel immediately objected to the question. The fact that she responded before counsel could argue her objection doesn't make it an irrelevant question relevant all of sudden and I understand your position that well, maybe she is -- we can can impeach her, but the fact that it was irrelevant can't make it relevant at some point in time. So I find the question itself was irrelevant and therefore is not admissible, and I am not going to allow to you pursue that.

MR. GREGORY: I understand.

THE COURT: The record will be clear for you in regards to appeal.

MR. GREGORY: Thank you Your Honor.

THE COURT: Anything else?

MS. BURCHSTEAD: That's all we have, Your Honor. We will be ready to go to proffer that testimony.

THE COURT: Is he going to be first?

MS. BURCHSTEAD: I think he will be first. If you like us to try and get here earlier that way the jury is not waiting too long.

THE COURT: If that is going to be the situation..

MS. BURCHSTEAD: We can arrange it however you want, but he does need to testify in the morning.

THE COURT: I scheduled a conference call at 9:15 thinking I would get that out of the way so that we can start at 9:30.

MS. BURCHSTEAD: We could put up some other witnesses and may be on a break proffer his testimony. But we would like to get him done in the morning. We do have a couple other witnesses. We don't think his testimony is going to be that long.

MR. KOZAK: If he bring him in and immediately proffer him 9:30 and make sure there is no hi-cups in the testimony we are fine doing that. I don't think it will take long to proffer him.

THE COURT: I wouldn't think so.

MR. KOZAK: Right.

THE COURT: But we -- if we get the jury here at 9:30 we can let them know that we are taking up some legal matters. If you have no objection I will have the bailiff let them know we are taking up some legal matters and we will get started with the trial after and hopefully it wouldn't take thirty minutes anyway.

MS. BURCHSTEAD: Right. We'll be ready to roll and as we discussed at the bench we don't think we

will go pass early afternoon with the State's case.

THE COURT: Okay. That way I could get my conference call out of the way and be ready to start 9:30. So we will do that.

MS. BURCHSTEAD: Thank you judge.

MR. GREGORY: Thank you.

THE COURT: Have a good evening.

(WHEREUPON, court was in recess.)

(WHEREUPON, the trial continued on August 22, 2017)

(WHEREUPON, the jury was not present for the following examination.)

MR. KOZAK: The State calls David Kellin.

DAVID KELLIN, called as a witness, having been duly sworn by The Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOZAK:

Q Please state your name for the record.

A Mahlon David Kellin.

Q And Mr. Kellin where are you employed?

A I work as a counselor at the Palmetto Citizens Against Sexual Assault and I also have a private practice.

Q And what are your duties there?

A I counsel children who have been sexually or physically abused and trauma services.

Q And what is your title?

A Basically a counselor.

Q Okay. What is your educational background?

A I have masters degree in social work, I have an undergraduate BS degree in psychology.

Q And where did you go to school?

A I went to for my BS in psychiatry I want to Lander University and I finished my master in social work at UNC.

Q And what did you get your undergraduate -- I probably covered this, but where did you get your undergraduate and graduate degrees in?

A Undergraduate degree is in psychology and then masters degree was in social work.

Q All right. Do you have any specialized training?

A I do. I have been trained in finding words as well as extended forensic interviewing through the NCAC in Huntsville Alabama. I've taken advanced forensic interviewing as well as I have been trained in trauma-focused cognitive behavior therapist and a number of other trainings I have attended over time.

Q And what training do you have in counseling sexually abused individuals?

A That the trauma-focused cognitive behavioral therapy.

Q Would you explain what that is a little bit?

A Basically when there's a trauma we look at trying to help the child cope with the thoughts that come from what

happened. It's not necessarily what happened that's the problem it's their reaction to them. And so in my work with kids it's to get the children to be able to come to terms with what happened and also what do they want to go forward with that. So a lot of its questions. A lot of it's why did it happen to me. Why did they choose me.

Q Okay. Do you hold any professional licenses?

A I'm a licensed professional social worker, licensed social work for the State of South Carolina.

Q All right. How many years have you counseled children and adults involved in sexual abuse?

A From a formal focus on them about nine years, eight to nine years. I have been counseling children for going on 26.

Q And do you counsel anything other than children? What types of people do you counsel?

A I have a general practice with my private practice where I will counsel anybody, but at PCASA I focus on children or adults who have been sexually or physically abused.

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

A Yes, I have taught several classes. There are many of them.

Q Right. Okay. Have you testified in court before?

A I have.

Q About how many times have you been qualified as expert?

A It has been over ten. I don't keep a count of the individual appearances.

Q How many times in General Sessions?

A Probably about ten. For Family Court probably closer to fifty.

MR. COSSAK: At this time I would like to enter David Kellin as an expert in child maltreatment and child abuse dynamics.

THE COURT: What is the first one?

MR. KOZAK: Child maltreatment and child abuse dynamics.

THE COURT: Okay.

Q Mr. Kellin, have you had any contact with the victim in this case?

A No.

Q Have you ever spoken with the victim in this case?

A No.

Q Have you viewed any of her statements?

A No.

Q Have you seen any evidence in this case?

A No.

Q Other than the conversations you had with me have you done any investigatory work or interviewed anyone involved in this case?

A No.

Q Okay. Will you just describe for the Court what a purposeful disclosure is?

A A purposeful disclosure is when someone makes a chose to disclose something. So in the case of child abuse it's the child that comes in and purposely chooses to tell mother or father or somebody they trust that somebody is hurting them. Some times that may be verbally, some times that's with a letter left for a parent or given to a parent for the parent to read. It can also be to law enforcement officer, teacher, anybody the child trusts.

Q What is accidental disclosure?

A Is when the child does not intend to release information but releases information that causes a disclosure to continue. So typically in fifth grade in South Carolina there is education about anatomy and so we have a lot of children around that time who make disclosures. Not because they intend to make disclosures but it's something along the lines that's happening to me. With the new laws in South Carolina about education, about sexual abuse, they are educating in schools now about sexual abuse and we're getting more of those accidental disclosures when the discussions come up at school and then the child says well, that's happening to me. I didn't know what that was. Or they are out on playground and a fellow child says something and they say oh, me too and then it starts that ball of disclosure rolling.

Q What is a reason why a child may not purposely disclose?

A Fear. Fear of upsetting the family. Fear of shame. Fear of basically getting in trouble. Depending on the age of the child. The younger the child it also can be confusion about what's happening or not understanding the significance of what's happening. Also if the child has been groomed or been told not to tell their loyalty to the person may prevent them from saying anything.

Q All right. Will you explain the difference between a propertied and unprompted disclosure?

A Okay. Unprompted would be either the accidental or the purposeful. That's when somebody comes and makes the disclosure. A prompted disclosure is when somebody makes a request of the child to ask them that question; has anybody hurt you, or has anything happened to you. This might come with a parent who notices a bruise or notice something wrong with the child may say did something happen to you. That would be a prompted disclosure if the child said something along those lines.

Q What do the terms delayed disclosure or delayed reporting mean?

A Okay, delayed disclosure is when a child withholds any disclosure at all for a period of time. And that typically is the norm for disclosures related to sexual abuse. So it may be

six months, it may decades before that disclosure comes out. Delayed reporting might be where somebody knows that something has happened but delays reporting to law enforcement, delays reporting to DSS, would be my guess. We don't have a term specifically for delayed reporting. In our field delayed disclosure where I deal with most. In my practice almost nobody comes in the day after something happens and says this happened to me.

Q Okay.

A It's almost all delayed.

Q And in that same vein, in your experience as an expert in the field of child maltreatment how common is delayed among victims of child and sexual abuse?

A Both the research and my experience is that less than 25 percent of children will report an abuse. About 75 percent according to the adverse childhood advanced study say that 75 percent will never report. In that study they found about 75 percent had not reported until the study came and asked them directly. And they said they would not have reported at any point in their life. So we have seen that statistic throughout our field consistently about 25 percent of reporting over a lifetime time.

Now my experience is that really -- and I have no numbers to say that this percentage -- it's just a percentage for me. It's about ten percent of children would ever report because most of

our delayed disclosures come two or three or four years after something happened and usually for my age group I work with typically from about five through about 14. The 14 years old the abuse happened earlier in their life and they delayed that disclosure until something came out later. So I don't get a lot of immediate disclosure cases within my services.

Q What kind of factors commonly play a role in a child's delayed disclosure?

A In terms of what keeps from coming?

Q Yes.

A Typically I guess the foremost thing is fear. Fear that they would loose their family; fear that they would get their family in trouble; fear that they would be blamed for whatever happened. Fears in general.

The second layer of that would be if the person hurt the child, threaten the child, or asked the child not to say. Or in some cases if they've given the child money. Said don't say anything I will give you this money. Just don't say anything about it. And the then the last one is really confusion of what is happening. Very young children don't understand the significance of what has happened to them. And so for them it's just somebody hurt me or somebody is being mean to me. And most parents and educators we don't recognize somebody being mean to me as maybe one of trigger words that somebody might be hurting this child.

Q What would minimization in this context mean?

A Minimization is when a child minimizes the contact. So if we have a situation where there has been penetration of the child, digitally or otherwise, the child may only say somebody touched me, or they touched me on top of the clothes. But as we go further we learn that there was penetration. Because disclosure is a process. It's not an event. So when that first disclosure comes out over time that disclosure is going to probably deepen. And so what they might initially say is just somebody touched me on top of my clothes may end up being something more as that goes along because they become to understand they're not going to get in trouble and they can trust to speak more clearly. And so that minimization is a common factor when we get kids in. Almost rarely -- we rarely get any full one hundred percent disclosure on the the initial disclosure.

Q Is it common for a victim to minimize when disclosing?

A I would say yes. I think that first disclosure is always less than what probably is fully going on. I don't have any hard evidence to say how many children minimize, but from my experience in counseling what I find is that what I start with with a child and from that initial report, then as they start talking and sharing new information comes in and new pieces come in the process of counseling. And so I see that from my practice we always start with a smaller amount then fuller.

Q What does recanting mean?

A Okay. Recanting is when a child makes a statement that says what I said before was not true. So if a child makes a disclosure somewhere down the road they may say that's not true. I did not do that or that didn't happen or he didn't do this. They take back their statement.

Q Is that common in sexual abuse cases?

A It happens. It's not -- I wouldn't say common, but it does happen within cases. More often or not there is pressure for the child to recant. If the child is feeling like they are going to get in trouble again or if that fear kicks up sometimes they will recant.

Q Okay. In your opinion what would a change in a child's behavior indicate to you?

A Any number of things. One specific change in behavior does not indicate really anything. One of the things I've often talked with parents about I can't look out and see based on behavior or based on a child's look whether or not they've been abused or not. All I know is that there's a change in behavior. It would then be incumbent to determine why that behavior is occurring. So in a case where I have somebody referred in because they're masturbating at home that doesn't automatically mean there's sexual abuse. That just may be normal sexual development. If that's in connotation of other things and combination with other elements then we might could look and say

there's a possibility a cause. But just one specific behavior I can't say or even a series of specific behaviors, I can't say that's causal. That sexual abuse is causal to that behavior.

Q So, in light of that is there any difference between a positive or negative change?

A Here again it depends on the child. Okay. There are some children when abuse starts they get to be very good kids because they're afraid of getting in trouble so they change their behavior to be really, really good kids and don't step out of line on a lot of things. There are other kids that become very angry and they become rebellious. So it really depends on the child you have to look at the child in context of what their life is and what those changes mean. So it isn't something that can be applied globally.

Q What is grooming?

A Grooming is when the person who is intent on hurting a child starts by making small adjustments in the life of the child so the child adapts to the idea of sexual behavior. And the way I explain this is like if your outside in South Carolina in the summertime it's very hot. When you walk in to your house and the air conditioner is on it's very cool when you first walk in. A few minutes later you have adapted to that process inside the house and it normalizes. When in problem behaviors what happens is the person starts a very small come sit over here and play games with me. And it's innocent. It seems perfectly

normal and then those games start to take on new connotations. Sit on my lap. All right. Sit on my lap this way. Let's play horse. Whatever. They start to move closer and closer to the process of abusing. By doing that they're slowly adapting the child to normalized sexual behavior. They may lie to the child. They may offer gifts to slowly get that child closer and closer. One of aspects of grooming that's really we look for is the grooming of the parent. They have to get the trust of the parent to be able to get access to the child. So in most cases there's he's been some adjustment or adaption to get close to that child. Most children if you walk up on the playground and without trying to groom and just touched them, they would probably would scream. But in this case they don't because it has been normalized.

Q How does that effect a child's disclosure?

A They may not disclose because they consider it normalized behavior. So there isn't anything to report. You know if the person has groomed them to believe that touching is part of what you do when you grow up or what the adult does to a child when they grow up the child may not disclose because they feel that is normalized behavior.

Q What effect could a perpetrator telling a child to keep abuse a secret have on the child?

A For children loyalty is very important and promises. Especially younger children like a pinky promise is a very

powerful thing for a child and when somebody says keep this quiet, keep this a secret, they tend to keep that secret either because of the loyal issue or because of the fear. Especially if they say keep this secret or else. Then that fear can impact the child.

Q What do we mean when we talk about risk factors in sexual abuse cases?

A Risk factors in sexual abuse come from where we have normalized activities that are not okay. Okay. So, most abuse is is known -- most abusers are known to their victims. About 75 percent,80 percent are known and trusted to the person. That's not considered a risk factor for overall but within sexual abuse that can become a problem. If the child is unaware of normal anatomy and normal processes of anatomy that can be a problem for sexual abuse because they don't know when something is wrong or how something is wrong. Somebody who has had a prior history of abuse doesn't necessarily mean that they would be an abuser. Only about one percent of people who have been abused before end up abusing. But there are some situations where if we had a sexual abuser before certainly that would be a risk factor for them to be around children. I guess the biggest one is lack of communication or lack of the ability to communicate between parents in an honest and open way. That puts most of the kids at risk.

Q What's the different between a false denial and false

disclosure?

A Okay. False denial is when the child makes a statement or when they've been asked about sexual abuse and they say no, it didn't happen when it did. False disclosure is when something has been reported or when they are asked about it and they say, yes, it did but it didn't happen. So if somebody came and said, you know, have you been sexually abused and the person says no, but they have been. That's a false denial.

If somebody comes in and says you have been sexually abused can you tell us -- or you say you have been sexually abused, but there is no evidence to support that. There is no abuse. The person was in Hawaii at the time. That may be a false reporter or false disclosure.

Q What's more common?

A Typically false denial. Somebody saying that nothing happened though something did. In my practice I don't get a whole lot of false reporting or false disclosures. Usually what we get is more false denials where somebody comes in and says no, it didn't happen but all of everybody else is aware and seen it and you can't refute that it happened but the child says no, it didn't.

Q Is it common to see affection for the perpetrator?

A Yes. What happens in cases with children is that they develop a strong bond with the people in their lives. And they may have a strong bond with the person who hurt them. They may

like the trips to Carowinds. They may like the candy. They may like the sitting and having some attention by this person. They may not like the sexual abuse. And so it gets them conflicted. I have had a number of them say they would rather this go away so they could have this person back again. This person who was nice to them and treated them wonderfully. And so they tend to care about particularly if it's a parent, care about that person even if behaviors are wrong. And kids are able to separate I don't like the behavior but I love the person.

Q Is it common for the perpetrator to blame the victim?

A A lot. Yeah. I heard endless numbers of times where somebody said, oh, this person came in was acting very inappropriately sexually and I didn't have a choice. You know, five year old comes in swaying the hips and I didn't have a choice. That blaming the victim is a common process.

Q Is it common for a person who suffered from sexual abuse as a child to be hyper-protective of their child when they get older?

A I think once abuse has happened the defenses close in and they may be overly protective. I seen a number of parents that become overly protective.

MR. KOZAK: No further questions.

THE COURT: Mr. Gregory.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Doctor Kellin, in your practice you dealt with a number of children, have you not?

A Right.

Q Have you found that in your practice that some times children will lie?

A I have had occasion where kids lie. I think all kids lie at some point.

Q Have you had occasion to see where a child would say something that is not true because they were manipulated by someone else?

A I have had one occasion in my practice where I ran in to a knowingly false situation and what ended up happening was that the person had been abused but the time and place where they described it was not where it was. As far as in counseling and in talking with people in the forensic interviews I have done -- denials -- I don't get a whole lot of denials. It's about fifty percent of people will disclose in a forensic interview. I have not run into a lot of those that I would classify as lies. I have had more where they minimize and they don't report all of it. Now, does that classify as a lie, I don't think so. In my practice very few have come out and out-and-out lied to me about sexual abuse or about what happened. From my personnel experience I have not run in to that.

Q Well, if someone, if some child would come in and tell you something that wasn't true you may not be able to -- you may not be able to determine whether it's true or not, isn't that correct?

A Yes, it's possible I might not know if they are lying to me.

Q You have occasion to have children say bad things about other family members for vindictive reasons?

A I had a few occasions where children have said stuff negative about other family members. I have not had over the course of my time, I have not had anybody come in and specifically make a false statement against a family member related toe sexual abuse. Now, you know they might tell me that so and so did something, you know, it's more family oriented normal stuff, like he didn't give me pizza when he did give me pizza. They are looking for that sympathy I guess is a way of putting it. But not where I have had children come in and say you know so and so touched me and then we find out later the child was lying about that. I have not had that a lot.

Q All right. Do you find that these things occur more in families that are dysfunctional as opposed to families that are quote more normal?

A Sexual abuse cuts across all families. It is not specific just to one economic status or group.

Q All right, now, when something happens to a child

abuse or whatever, something traumatic, don't the school records or grades reflect that?

A It can. It depends on the child. You know, here again it's in context. If that child losses focus and not able to do their homework, sure, there grades can drop. There are some other kids who throw themselves in to school as a safe haven and they do everything they can to get good grades so they can eventually get out or also to find ways to find ways to find other people to be pleased with them for that.

So it just depends on the child. You can't look at a drop in grades and say that is sexual abuse.

Q All right. And abuser, someone who has been accused of abuse, don't they normally continue that abuse?

A I'm not expert in abusers, per se. What we know is that -- what I know from my own research. Okay. Just from reading. Is that abuse continued until it is disclosed. So it guess progressively worse. That's what I've seen in my practice is it get progressively worse. For somebody who has been accused or found to be oriented towards girls in their offense, about 21 victims is what we've typically seen overall. That's an average. For boys about 240 victims. And so, it does continue and it may be with multiple people. It may be with multiple situations. Here again that is individual to that person. I don't work directly with abusers so I don't have that research base to show what their prevalences are.

Q All right. Now what field do you deal with more if you don't deal with abusers? Like molestation or what's your --

A I deal with children who have reported physical or sexual abuse who showed traumatic reactions. So like avoidance, fear, intrusive memories. Basically what we would think of as like similar to PTSD.

Q Not just related to sexual?

A No. For me any trauma would be applicable.

Q All right. Would that also include a fear caused or confusion caused by the fact that you have made -- had told a lie and your conscious is eating on you?

A If a child came in and was talking about that they had told a lie and they needed to process, yeah, we would work with them on that.

MR. GREGORY: That's all the questions we have Your Honor. Thank you.

THE COURT: Okay. Anything else?

MR. KOZAK: Nothing further from the State.

THE COURT: Okay. Mr. Gregory your motion?

MR. GREGORY: Your Honor, our position is as stated previously, the testimony of this witness although he appears to be an expert and knows what he is doing and has great credentials, has nothing to do with this case. It's irrelevant. He has never spoken with the victims. He has never read the records. He

has never seen any of the facts of the case. I think, like I said, I think it would be -- the testimony would be irrelevant.

Thank you, Your Honor.

MR. KOZAK: Your Honor, actually that's the point of this expert is that he has never seen this case. It is an educational expert for the jury.

The Supreme Court has ruled many a times that these are valid experts to take place in these type cases as long as they are not bolstering the witness because they have had contact with the victim. The only time the Supreme Court had a problem with using blind experts is when they've also perform the forensic interview on the victim themselves. Otherwise they say it is necessary in these type cases.

THE COURT: Okay. All right. I am certainly going to allow the testimony of this witness and I will instruct the jury before he begins to actually testify that he's giving an opinion about child abuse cases, their assessments and their dynamics in general. Nothing specific about this case. And what I would plan -- and I assume you're going to question him Mr. Kozak?

MR. KOZAK: Yes, sir.

THE COURT: When we get him qualified as an expert then I am going to instruct the jury about expert testimony and then I'll go into the instruction I have on child abuse dynamics' expert as well and then I will let you proceed with your examination.

MR. KOZAK: Sounds great.

THE COURT: Everyone know we're on the same page. But this testimony will be admissible.

MR. GREGORY: Thank you, Your Honor.

THE COURT: All right, let's bring in the jury.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: Good morning ladies and gentlemen. I realize it's 10;15. We said we would start at 9:30 but after you left yesterday we had an issue that arose and we had to deal with it this morning. It took a little bit longer then the 30 minutes that I thought it might take but we are now ready to proceed with the trial. I hope you had had a good evening last night. All right, counsel.

MR. KOZAK: We call David Killian.

DAVID KILLIAN, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOZAK:

Q Please state your name for the record?

A Mahlon David Kellin.

Q Mr. Kellin where are you employed?

A David Killian. I work for Palmetto Citizens Against Sexual Assault and I also have private practice.

Q And what are some of your duties there?

A At Palmetto Citizens Against Sexual Assault I'm a counselor and also back up forensic interviewer.

Q What kind of services do you provide?

A I primarily provide trauma counseling services to children who disclose physical or sexual abuse.

Q And what is your title?

A Counselor.

Q Okay. What is your educational background?

A I masters degree in social work from the University of South Carolina. I have an a bachelors in science degree in psychology from Lander University.

Q And do you have in specialized training?

A I do. I have been trained in forensic interviewing through Finding Words from the State of South Carolina. I have been trained as extended forensic interviewer through the National Child Advocacy center in Huntsville Alabama. I've also been trained as a trauma focus cognitive behavioral therapist and also cognitive processing therapy I have been trained in that as well.

Q Will you explain what that is a little bit?

A Both trauma focus cognitive behavioral therapy and cognitive processing theory are ways to help overcome PTSD-type symptoms or acute reaction symptoms. So, with cognitive processing theory it's just what happened from the event. How your reactions from the event. With trauma focus cognitive behavioral therapy we actually walk through what happened and then help address any problems that have come up or any adverse reactions to what has happened. Both have been evidence based strongly now in the field.

Q What training have you had in counseling sexually abused individuals?

A That's is trauma focus cognitive behavioral therapy and cognizance processing theory.

Q All right. Do you hold any professional licenses?

A I am licensed through the State of South Carolina as a licensed independent social worker.

Q How many years have you counseled children and adults in sexual abuse?

A Specifically solely in sexual abuse about nine years now. I've been counseling children now for going on twenty six.

Q Do you also provide any professional training to others in your field?

A I do. Numerous trainings in numerous places.

Q Have you testified in court before?

A I have.

Q How many times have you been qualified as an expert?

A In family court about 50 times. In criminal court or in this kind of court about ten times.

MR. KOZAK: At this time I would like to enter Mr. Kellian as expert in child maltreatment and child abuse dynamics.

THE COURT: Does the child abuse dynamics also include disclosure as well.

MR. KOZAK: Yes, Your Honor.

THE COURT: Okay. Any objection to this person being qualified as an expert Mr. Gregory.

MR. GREGORY: No, Your Honor.

THE COURT: All right. I do find that Mr. Kellin is qualified as an expert in the area of child maltreatment and child abuse dynamics and disclosure. All right, that being said, ladies and gentlemen of the jury I want to instruct you that our rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to that rule is with regards to expert witnesses which this gentleman has been qualified as expert. A witness who by education and experience has become expert in some art, science, profession or calling may state an opinion as to relevant and material matters in there

in which he claims to be an expert, and may also state the reasons for the opinion.

You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight that you think it deserves. If you decide the opinion of an expert witness is not based on sufficient education or experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence you may disregard the opinion entirely.

An expert witness's testimony should be given no greater weight then that of any other witness simply because he's an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

Now, having instructed you about an expert's testimony and the basis upon which you decide how much weight to give that testimony I want to go further with regard to this witness who has been qualified in the area of child maltreatment and child abuse dynamics and disclosure.

There's one thing I want to caution you about this expert's testimony. As I told you most experts are entitled to give you an opinion about the facts and

their observations. This expert is not going to give you an opinion about anything that you have heard in particular in this case. He is going to give his opinion about child abuse cases, there assessment and there dynamics in general. It's important that you understand that he is not giving you his opinion as to whether or not the victim in this case is telling the truth or not telling the truth. That's not his role. He is not to lie detector or truth detector. He is not giving his opinion on that. He's giving his opinion about general things that are said that may or may not apply in these kinds of cases.

You may proceed.

MR. KOZAK: Thank you, Your Honor.

Q Have you ever had any contact with the victim in this case?

A No.

Q Have you spoken to the victim in this case?

A No.

Q Have you viewed any of her statements?

A No.

Q Have you seen any evidence involved in this case?

A No.

Q Other than the conversations you had with me have you done any investigatory work or interviewed anyone involved in

this case?

A No.

Q Okay. Could you please tell the jury what a purposeful disclosure is?

A Okay. Purposeful disclosure is when somebody chooses to disclose something. So in my field with children who have been abused they would go to a trusted adult or somebody a police officer, or teacher and make a disclosure specific by choice. So and so is hurting me. It is their choice to make that disclosure.

Q Okay. What is an accidental disclosure?

A Accident disclosure is when a child discloses something but they are not intending for that disclosure to come out. This is more typical in my field for disclosures. They go to school and they either view the fifth grade process of anatomy or they are talking with their friends or new programs about sexual abuse and then they say oh, me too. And somebody catches it and starts to ask more questions or they're at home and they they make a disclosure so and so is mean to me and they touched me in the wrong way. They may have had a discussion going on before that the child did not intend to disclosure it as a sexual abuse disclosure. That's what we classify as accidental.

Q What is a reason why a child may not purposefully disclose?

A The largest one is fear. Fear that they will get in

trouble. Fear that they will get blamed. Fear that they would cause problems for the person that is abusing them. They may feel they may loss their parent or loose their caregiver or somebody they love. Fear tends to be the main reason why disclosures don't come out.

Q What does the term delayed disclosure mean?

A Delayed disclosure is when an event happens and then the point at which disclosure either accidental or purposeful comes out may be months, years later. It is not right when something happens. In fact, for the majority of our cases that I work with in the field, that disclosure doesn't come out until much later. National studies look at about 75 percent of people who have been abused never disclose it. That 25 percent that is across the life time. Within my own practice my estimate would be about ten percent of kids disclose. About 90 percent don't ever disclose or delay their disclosure. But it's usually for a period of time afterwards and it's usually an accidental disclosure that allows that disclosure to come up.

Q What kind of factors commonly play a role in a child's delayed disclosure.

A Here again, fear. Not being afraid of a number of things about their safety or health. If there was a threat or promise made by the person who is involved with us. So if they said don't tell or, you know, I'll have to go to jail or don't tell. You know, you'll will breakup the family, or here's $50.

Don't say anything.

The third and way is for younger children they may not understand the significance of what happened to them. So for a very young child having somebody touch their private part for them doesn't make the same leap that we would as adults to relate it to sexual abuse. They may just feel it's mean or somebody is being -- hurting them. They may not disclose it in a way that is recognized or they may not disclose it at all because they do not know what to disclose.

Q What's the difference between a prompt and unprompted disclosure?

A Okay. Prompted is when somebody asks a child specifically. So if a child comes in and the parents see a bruise the parents might sit down with the child and say, okay, what happened. Tell me what happened here. The child may not be interested immediately in saying but as the parents works with them they may learn of abuse or they might learn it was on on the playground, that is prompted. Somebody is asking a question of the person to elicit a disclosure.

Unprompted is when the person makes a disclosure without anybody asking specific questions.

Q When it comes to disclosures what does minimization mean?

A Minimization is when the initial disclosure is made. Let's say I will use an example if a child has been sexually

assaulted with penetration and that's the action that happened. The child may say somebody touched me in a private area. They may not tell you the whole story. And more often then not won't tell you the whole story until it goes over time. But they minimize the contact at first in hopes that this may be could be go away or not a whole lot is going to be said about this. It might start with somebody touched me on top of my clothes or it might be somebody touch me on private part but then as the time goes on the disclosure really starts to show what happened. But they minimize it in an effort to keep it from blowing up.

Q It is common to minimize in disclosing?

A Yes.

Q In your opinion what would a change in a child's behavior indicate to you?

A It could be any number of things. Change in behavior doesn't specifically speak to sexual abuse versus not sexual abuse. Let's say a child suddenly became very good at home and started cleaning the house and started cleaning their room. We would notice that as a change in behavior. That might be because they don't want to get it trouble or don't want to get hurt or don't want to upset somebody at home. On the other hand they might get really angry and they might start punching holes in the wall or might start pitching a fit and not going to sleep. It really has to be accessed on an individual basis. Because any one particular behavior punching holes in the wall

does not necessarily indicate sexual abuse. It just indicates a change in behavior that needs to be accessed further.

Q Would there be difference between a positive and a negative change?

A Not necessarily. A change is change. Increase in positive behavior can be just as problematic as changes to negative behavior. So if a child suddenly changes how they do school and their suddenly all involved in school and doing their homework doesn't necessarily mean that things are absolutely wonderful. They may have just thrown themselves into school to avoid being at home.

Q Will you describe to the jury what grooming is?

A Okay. Grooming is a process of adaption, and I use the thermometer as a way to say this. You know South Carolina heat here when you are outside it's really hot, when you step into your house that is 10 or 20 degrees cooler then outside it feels very cool. Ten minutes, 20 minutes into the house you are feeling kind of normal in the house. That's a process of adaption. Okay. What happens with grooming is when a person wants to sexually abuse a child they start with small behaviors that allow the child to adapt to inappropriate behaviors. So, it might be sit on on the couch next to me while we watch TV. Then sit on my lap. Then why don't you wear that short dress while you sit on my lap and why don't you wear your swimsuit, sit on my lap and we will play tickle game. It's that process

of slowly moving that child. The individual behaviors may not be overtly what we classify as sexual abuse, but they're slowly moving the child to an acceptable place where they could act sexually and the child feels like that's normalized behavior.

Q How does that effect a child's disclosure?

A It would slow down disclosures. In my practice what I've noticed is that when grooming has happened it takes longer for them to disclose because they don't typically see that as a problem behavior. So when the education goes on in the schools about sexual abuse we have had some kids that have gone, oh, that's what going on. That's what's happening to me. Because they did not see it as abnormal. They saw that this is the way it is in our house. This is the way it is with this person. And that normalized behavior for them that is stuff that we have to back up in counseling, that it's not okay to sit on somebody's lap in your swimsuit or your panties or whatever. You have to -- we have to back that up and get that back to normal appropriate behavior because grooming moves them so far this other way that they don't see that as abnormal.

Q What effect could a perpetrator telling a child to keep abuse a secret have on that child?

A Children tend to be very loyal and for younger children they see any adult statement that not to say something as an instruction. They will keep that secret or they will if they're loyal to the person they will keep that secret so that they can

either get a favor or continue if it's a positive grooming thing like going to Carowinds or, you know, having treats or time out with that person they may -- that loyalty may keep them from saying anything because they don't want to lose that other process. So for a perpetrator or somebody who abused -- abuser to make a statement please don't say anything. I might go to jail if mom finds out. Or don't say anything because we'll never be able to go to Carowinds again.

Children are going to keep those secrets in favor of the positives or the lack of negatives. They tend to be good secret keepers.

Q What do we mean when we talk about risk factors in sexual abuse cases?

A Risk factors are complex things when we are talking about sexual abuse because a number of positive behaviors can be a risk factor for children. So a closeness with an adult or a closeness with somebody within the family we know about 75 to 80 percent of abuse is by somebody known and trusted to the child. So while that's a positive thing to have good close family bonds it also can increase the risk of sexual abuse if somebody's intent on doing something wrong.

I guess the primary risk factor, if you want to look at the a primary risk factor, it's the lack of communication between the child and parent in a way that allows the child to speak clearly about whatever is going on in their life. What I use as

an example when I'm teaching parents if your child spills orange juice in the middle of the kitchen can they walk in to you and say I spilled orange juice all over the kitchen and you would accept that. Not chew them out. Not yell at them, but help them to clean it up an fix it.

The ability to come and tell you about negative events and your ability to hear it is important protective factor. The lack of that tends to be a risk factor for children. They feel isolated and can't tell their parent everything that is going on in their life.

Q What is about the difference between a false denial and false disclosure?

A False denial is when a child is confronted with evidence or confronted with a disclosure that they have been abused and they say it didn't happen to me. A false disclosure, a false report, is when a child goes to somebody and says this happened to me but it actually didn't happen. So a child says something happened to me by, you know, by so and so, but so and so was in Hawaii at the time. That's a false report because there is no way or there is no evidence to indicate that that happened. That would tend to be considered false reporting. Denial is much more common in that when confronted children typically deny first, and then when presented with other information then disclose. But first typical response is to deny.

Q What is more common?

A Denial, false denial.

Q What is recanting?

A Recanting is when a disclosure has been made and then at some point later the child says no, that wasn't true. I take it back. I lied. That didn't -- that really didn't happen. I just made that up.

That recanting happens in some cases. It's not in every case but it does happen in some cases. Typically more for fear, fear that they are going to lose the person that they care about, or fear of getting in trouble; fear of the family losing the house. Any number of things that can happen. But that -- or somebody coming in and saying, you know, that can't be true. You need to tell me you weren't be truthful. So recanting happens for a number of reasons. It is part of what we -- we don't necessarily look for it but it's part of what we know that is in the process of working with sexual abuse.

Q Is it common to see affection for the perpetrator?

A Yes. Particularly with younger children, because that 75 to 80 percent of people are known and trusted to the person who is the victim they may have lots of positive memories, lots of positive relationship with this person but then have problem behaviors that have come up. And their desire -- I see this a lot in counseling -- the desire is to get back to the good relationship with the person who hurt them and get all the rest

of this taken care of so they can have this person back. And so there is a lot of conflict that happens between the person I care about versus the person who hurt me. Kids have a real tough time with that.

Q Is it common for the perpetrator to blame the victim?

A Absolutely. Yeah. Almost universally there is blaming of somebody else and victims tend to be the person who is blamed.

I've seen a number of times in my work with kids where the perpetrator would say oh, she was acting sexy or she was showing her stuff or whatever and I just couldn't resist because she was acting too much. And he did not, or they did not, exercise the controls of adult to stop but instead blamed it on the behavior of a child.

Q Is it common for a child who -- is it common for a person who suffered from sexual abuse as a child to be more protective of a child when they grow up?

A Absolutely. Most of the times when sexual abuse happens there's a desire for that cycle to stop and not have that happen again. And so there's a -- anything that was related to that abuse tends to be avoided or blocked or kept from happening again. So like, I guess an example like sitting on a lap. If a person was sexually abused when there was sitting on a lap as a child they may not not as a parents allow anybody to sit on anybody's lap. They might crimped that down

and not allow those pieces of interaction.

MR. KOZAK: No further questions.

THE COURT: Mr. Gregory.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Doctor Kellin, now your testimony today is general?

A Yes.

Q It has nothing to do with this case?

A That's true.

Q Because you have not had any contact with the victim? Don't know anything about the facts of case? You haven't read any of the statements or anything?

A That's correct.

Q Now understanding that, in your practice have you ever had a child to lie about something?

A I've had kids to lie a lot in practice. Not necessarily about sexual abuse, but whether or not they had pizza for lunch. They typically are smaller things that get lied about. But all kids lie.

Q Now you earlier said that your -- in your field you've helped children deal with thoughts or events that happened, is that a fair statement

A Yes.

Q Would that include helping a child who has lied about

something in the past and is now being bothered about what they said or that their conscious is bothering them?

A If they came to me and they presented me with that as their issue that they had made a false disclosure, sure, I would work with them to try and help them figure out what was going on.

Q Doctor Kellin, would fluctuation in school grades be a red flag in a child's behavior that would indicate abuse had occurred?

A It really depends on the child. You know, if the fluctuation in grades either way; positive or negative is something that has not been seen with that child before that would be something that would be of interest to look at and access. Does that mean any particular thing in terms of my field in terms of counseling, I can't say, okay, drop in grades or sudden improvement in the grades is indicative of any one particular problem or concern. But it raises a flag to ask more questions. So if the child suddenly had dived into home work and became very good and started doing straight A when they were a C student before then I want to know what is going on that led to that change. It opens the door for concern in assessment but not necessarily indicative of any one particular thing.

Q All right. And you mentioned recanting. Is that the same thing as admitting that something that was said previously is now untrue?

A It is when something been said at later point they say that whatever they said before was not true.

Q All right.

MR. GREGORY: That's all the questions I have. Thank you.

THE COURT: Mr. Kozak.

MR. KOZAK: Just briefly.

REDIRECT EXAMINATION

BY MR. KOZAK:

Q Mr. Kellin, you are trained in forensic interviewing, right?

A I am.

Q What is forensic interviewing designed to do?

A Forensic interviewing is designed to create a safe environment to a child to give a statement or disclosure in a forensically sound way. That is done with a very simple structure but basically try as much as possible to ask open ended questions and to allow the child to make whatever statement they need to make without a lot of prompting or without a lot of direction from the forensic interviewer. The interviewer really is just there to create the environment for the child to make a statement if they do.

MR. KOZAK: No further questions Your Honor.

THE COURT: Anything else Mr. Gregory.

MR. GREGORY: Nothing further.

THE COURT: You may step down.

MR. KOZAK: Your Honor, may he be excused.

MR. GREGORY: No objection.

THE COURT: You may be excused.

THE WITNESS: Thank you.

MR. KOZAK: The State calls Margo Dixon.

MARGO DIXON, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOZAK:

Q Please state your name for the record

A Margo Bernadette Dixon.

Q Miss Dixon, what is your current position?

A I'm a children's advocacy director and lead forensic interviewer at Palmetto Citizens Against Sexual. I serve the Assault sixth Sixth Judicial Circuit.

Q How long have you been with with PCASA?

A I have been with PCASA including my internship 22 years.

Q What are some of your duties and responsibilities as PCASA?

A As CAC director my job is to facilitate forensic interviews for children of allegations of abuse. Also facilitate the MBT meeting. Meaning I'm the mediator for the

MBT meetings. I testify in Family Court as well as General Sessions Court.

Q How many times have you testified in General Sessions Court do you think?

A Well over 80 times.

Q All right.

Q Where did you work prior to PCASA?

A I was a students prior to PCASA. I was going to school majoring in journalism and I changed over to criminal justice with a concentration of forensic psychology.

Q Were you working for PCASA at the time of this incident?

A I was..

Q How did you become involved with this case?

A We received a referral from DSS and law enforcement.

Q All right. Once you became involved in this investigation what did you do?

A An appointment was set up through our followup service coordinator and the children were brought in and conducted forensic interviews on behalf of DSS and law enforcement.

Q Did you speak with Witness A.?

A I did.

Q Did she disclose to you that she had been sexual assaulted?

A She did.

Q Did she tell you where the sexual assault took place?

A She did.

Q Where did she say?

A She spoke of incidents that took place in her home; in her bedroom, in the living room, as well as their bedroom; her parents bedroom.

Q Did you tell her when these assaults took place?

A She did give me a timeframe.

Q When did she say you they occurred?

A The initial contact was made when she was three years old when they first moved to [redacted]. Actual intercourse took place when she was 11 years old around the time of her birthday, and continued up until our forensic interview when she was 13.

Q Do you remember what her demeanor was like when she disclosed to you?

A She was calm. It wasn't -- you know, demeanor varies. So it wasn't one of where she was just emotionally crying. She's 13. So 13 year olds can go from one extreme to the other. She was calm in giving her interview.

MR. KOZAK: I beg the Court's indulgence.

Q You may have already covered this. How old was Witness A when she spoke with you?

A Thirteen.

MR. KOZAK: All right. No further questions Your

Honor.

THE COURT: Okay. Mr. Gregory.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Miss Dixon, were talking about interview with Witness A, ?

A Yes.

Q And you said that she said this occurred at home. Did she indicate where, what the address of the home was?

A [redacted].

Q [redacted]?

A Yes.

MR. GREFORY: That's all the questions I have of of this witness. Thank you.

MR. KOZAK: No further questions from the State Your Honor.

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

MR. KOZAK: May she be excused as well?

MR. GREGORY: No objection.

THE COURT: You may be excused ma'am. Thank you.

MR. KOZAK: The State the calls April Michelle Rollins.

APRIL MICHELLE ROLLINS, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KOZAK:

Q Please state your name for the record?

A It's April Michelle Rollins.

Q Miss Rollins, where do you currently live?

A I live at North Myrtle Beach, South Carolina.

Q All right. And how do you know Witness A?

A I was with her uncle for over 20 years.

Q And what timeframe was that?

A We have been separated for four years, so the 1990's, early 2000's.

Q About how old was Witness A when you first met her?

A She was five.

Q How do you know the defendant?

A The defendant, I know him as her father.

Q All right. Did you approach Witness A and ask her if she was sexually assaulted?

A Not like that, no, not sexually assaulted. I asked her was anything going on with her. She just seemed distant.

Q Why did you feel the need to ask her that?

A Because she had got put out at her house and I was walking her to school. She didn't have her mother around or anyone, no clothing, no nothing. So I was walking her to school so she wouldn't be alone there early in the morning in a bad neighborhood. So on the way to school she was just upset about

something and I was trying to find out what was going on. So I asked her what was going on? Was anything going on at home and she had replied yes.

Q Was she living with you at this time?

A She was living with me, her uncle and her grandmother, yes.

Q All right. And about how long had she been living with you?

A A week or so.

Q Would you say you were close with Witness A at this time, relationship wise?

A Yes, sort of. As close as could be.

Q Do you know why she was living with you at this time?

A At the time no, I didn't. I just know what I was told after I asked her what was going on.

Q And when you asked her if something was going on with her did she disclose to you she had been sexually assaulted?

A Yes.

Q Where did she say these assaults took place?

A At [redacted] park is what she replied, at her home with her mother and father.

Q Okay. Did she say when they would take place?

A She said it happened numerous times over and over for the past many, many years.

Q Did she tell you how old she was when they started?

A About four years old.

Q What was her demeanor when she told you that?

A In tears. Couldn't really speak. She was very sad. Very upset.

Q And after she disclosed what did you do?

A I advised her that she needed to contact someone with authority and I took her to a pay phone. We didn't have cell phones back then like today. So I walked her to a pay phone and gave her the money and she called her grandmother and she told her grandmother and we proceeded to walk back home. I didn't even send her to school that day.

Q Did you tell anyone after she disclosed to you?

A After the walk home I walked in the house and I woke up her uncle and I told her uncle and then I let her speak to him in private,and she disclosed to him what happened to her after that. But we had a long conversation on the way home.

Q After all this happened did she continue to live with you?

A For temporary, yes.

Q Do you know where she went?

A She went to Monroe, North Carolina to live with her grandmother.

Q Okay.

MR. KOZAK: I beg the Court's indulgence.

Q After the disclosure do you know if an investigation

took place?

A Yes, there was.

Q What house was she living in address wise before she came to live with you guys?

A It was on [redacted], [redacted] and then she come to [redacted] and then she went to Monroe from there.

Q All right.

MR. KOZAK: No further questions Your Honor.

THE COURT: Okay, Mr. Gregory?

MR. GREGORY: If the please the Court?

CROSS EXAMINATION

BY MR. GREGORY:

Q You go by April or Michelle?

A Michelle.

Q All right. And you are Jimmy Joe Perez's girlfriend?

A Ex-girlfriend.

Q Ex-girlfriend?

A Yes.

Q Okay. So you and Jimmy Joe are not living together any longer?

A No, we've been separated for over four years.

Q All right. And what you just testified to occurred at the address [redacted]?

A Yes.

Q That's where you and Jimmy Joe--

A And Lois.

Q -- and his mother were living?

A Yes.

Q And Lois Campos is Jimmy Joe's mother?

A Yes.

Q She's also L.M. 's mother?

A Yes.

Q When Witness A came to live on [redacted] how long had she been living there before you had this conversation where you describe you were on the way to school?

A Approximately a week or two.

Q And Jimmy Joe's mother, Lois Campos, was living in the house all that time?

A She was living in the house, but she worked out of town so she stayed out of town a lot of times. She had two houses.

Q Is this the bad neighborhood you were talking about?

A Yes.

Q All right. Did Witness A tell you that -- anything about her grandmother telling her to say certain things about her father?

A Her grandmother was never around at this time. She did not have the opportunity to tell her that. She was alone with with me and her uncle prior to this at least a week before. Her grandmother was not even around.

Q Well, you're not saying that her grandmother was never there?

A I can't testify to what her and her grandmother had a private conversation about. I can't say that she did or did not but there was no opportunity for that.

Q All right. So you can't say whether or not Mrs. Lois Campos told her that?

A I can't no. Who can say a private conversation.

Q And when you took Witness A to a pay phone or you took her to a phone to call, it was a pay phone?

A Yes, it was.

Q Was it near where you were living on [redacted]?

A Yes, it was at school bus stop.

Q And who was the the first person she called?

A Her grandmother.

Q All right.

MR. GREGORY: That's all the questions.

THE COURT: Redirect?

MR. KOZAK: Just a few.

REDIRECT EXAMINATION

BY MR. KOZAK:

Q When Witness A moved out of [redacted] who was still living in that residence?

A Miguel, Lilly, Witness B and Christina.

Q Okay. So you said what was order of events for the

disclosure again, you said you were walking to the store with her?

A I walked to the store was the school bus stop. It was about 6:15 in the morning and it was still dark and I didn't see a child of her age walking to the school bus stop alone at that age by herself. So I walked her to the school bus stop and we were waiting on the bus and she just had a sad demeanor about her so we just started talking and I asked her what was going on and eventually she told told me. And I asked her if there was any touching going on she said yes. So I told her to call her grandmother and get her grandmother to come take her to the police and on the way home we sat and talked at an abandoned trailer. It was the only place between there and the house that we can stopped and we talked and I reassured her that everything that was going on was not her fault. We went from there to the house to speak to her uncle and then her grandmother picked her up and took her to the police department.

MR. KOZAK: No further questions.

THE COURT: Mr. Gregory.

RECROSS EXAMINATION

BY MR. GREGORY:

Q Where are you living now Miss Rollins?

A I live in North Myrtle Beach, South Carolina.

Q All right.

MR. GREGORY: That's all the questions I have.

Thank you Your Honor.

THE COURT: You may step down now.

MS. BURCHSTEAD: The State calls Witness B

Witness B , called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. BURCHSTEAD:

Q Good morning Witness B. I'm just going to ask you to speak up as loud as you can so everybody can hear you and so the court reporter can take down what you're say. If you need to adjust the microphone do that.

Tell the jury your full name okay.

A Witness B .

Q And how old are you?

A Twenty-five.

Q Where do you live?

A [redacted], Lancaster, South Carolina.

Q Are you working anywhere?

A Mariachis Restaurant.

Q And who do you live with with?

A My finance, Cody Deese (phonetics)and my three children.

A And have you three children?

A Yes, ma'am.

Q How old are they?
A Three, one and six months.
Q And you said you are living in Lancaster?
A Yes.
Q Did you grow up in Lancaster?
A Yes, ma'am.
Q And where did you grow up in Lancaster? Where did you live as kid?
A In the [redacted] [redacted] is what the only actual address that I remember.
Q Okay. But you always grew up in Lancaster?
A Yes, ma'am.
Q And who did you grow up? With who did you live?
A My dad, my mom and my two sister's.
Q What are your sister's name?
A Witness A and Kristina Morales.
Q Are you obviously DER?
A Witness A is older and Kristina is younger than me.
Q And you say you lived with who else?
A My mom and my dad.
Q What's your mom's name?
A L.M. .
Q And what's your dad's name?
A Guadalupe Morales.
Q Do you know if he's your biological dad?

A As far as I know I grew up knowing he was my dad. Everyone else is telling me he's not.
Q So, what did you call him when you were growing up?
A Dad.
Q Do you see Guadalupe Morales in the courtroom today?
A Yes, ma'am.
Q And can you point him out for us?
(WHEREUPON, the witness points him out.)
Q Can you describe what he is wearing?
A He is wearing a red shirt.
MS. BURCHSTEAD: And just for the record purposes she's identified the defendant Your Honor.
THE COURT: All right.
Q How do you feel about testifying today?
A I'm nervous.
Q Has it been hard on your family?
A It has.
Q Did the defendant ever touch you in a sexual way when were you a child?
A He has.
Q Do you remember when it first happened?
A I can remember being about three years old.
Q Can you describe to the jury what you remember?
A I remember a few times he would have me sitting on his lap and he would just touched me under my panties.

Q And was that when you were in the home?
A Yes, ma'am.
Q Where would you be in the home like the living room?
A The living room. There was one time we was in his bedroom. I was in the third grade. I was eight years old and I couldn't sleep. So we had a bedtime. It was about eight o'clock we had to go to bed. He walked by later on that night and I was the the only one awake. I couldn't sleep. He walked by and I told him I couldn't sleep and we didn't have a door on our room. So he told me to come in the room with him and I laid on the bed with him.
Q Okay. So you were talking about your room didn't have a door. Did you share a room with your sisters?
A Yes, ma'am.
Q So when he started touching you did he start over the clothes or under the clothes?
A Under.
Q And so this time where you couldn't sleep was that the first time or the just the time that you remember?
A That's one of the times that I remember.
Q And about how old were you then?
A Eight.
Q So after this time when you were about eight did that type of conduct continue?
A No, ma'am.

Q Okay. So where was your mom when this happened?
A She worked nightshift.
Q And what were your sister's doing?
A Sleeping.
Q Okay. So that particular time your sisters were sleeping?
A Yes.
Q When you couldn't sleep. Okay. And you said it did happen other times?
A Yes, ma'am.
Q Where would your mom be the other times?
A I don't remember, I just remember no one was in the living room at the time we were sitting in the living room on the couch and I was on his lap.
Q So do you have any idea how many times he touched you?
A I would say around four times; three to four times.
Q Okay. And was it the same way every time?
A Except for that last time.
Q What was different the last time?
A Like I said, we were laying in the bed facing the TV and he just pulled my underwear and my pants down and I felt his penis touch my butt.
Q Okay. So was that the last time that he touched you?
A Yes, ma'am.
Q What grade were you in?

A Third.
Q So, after the third grade incident it didn't happen any more?
A No, ma'am.
Q Did you tell anybody while it was happening?
A No, ma'am.
Q Why not?
A I was afraid. I didn't know who to tell or what to say.
Q Did you ever tell anybody?
A I told my grandmother whenever I was in the 5th grade.
Q Who is your grandmother?
A Lois Campos.
Q Where were you when you told your grandmother?
A I was at school. She came to the school and noticed that Witness A had stated to her and Michelle that this was going on with her and she wanted to know if it was happening to me so I told her what happened.
Q Okay. So, when you had the conversation at school where were you at the school?
A We was in the conference room in the office.
Q With the principal?
A At the time it was just me and her but the principal was notified.
Q Okay. So, this happened after Witness A had the

conversation with Michelle?

A Yes, ma'am.

Q Was Witness A living with you all at the time?

A She wasn't.

Q How long has she been out of the house?

A Maybe a week or two. Not long after.

Q What happened after you had the conversation at school?

A She -- my mom came and picked us up from school, me and Kristina my younger sister, and took us home and she made us sit at the kitchen table and tell him exactly what he did to us and -- that's it.

Q So your mom took you home and had you talk to the defendant about --

A Yes, ma'am.

Q -- the allegations of sexual assault?

A Yes, ma'am.

Q Did you ever lied about being sexually assaulted?

A I said -- I told it wasn't -- after he went to jail I said it wasn't true, but I was trying to protect my mom.

Q Okay. Did he touch you as a child?

A He did.

MS. BURCHSTEAD: Beg the Court's indulgence.

Q Did the defendant ever say you were with boys when you weren't?

A He did.

Q Tell us about that?

A I was in the ninth grade and he just called my mom. I was outside playing. He called my mom and said that I was outside with two guys at the top of the road and I was just out there playing basketball by myself.

Q Okay. And did you ever -- were you ever kicked out or did you ever leave the family home when you were child?

A Yes, ma'am. I ran away a few times and they kicked me out when I was 16 years old.

Q Did you know why?

A At the time I didn't but I feel like it was -- like a whole bunch of family issues and I felt like he didn't like me so he was trying to get me to, you know, leave. So my mom eventually kicked me out.

Ms. Burchstead: Nothing further at this time Your Honor.

THE COURT: Mr. Gregory.

MR. GREGORY: If it please the Court.

CROSS EXAMINATION

BY MR. GREGORY:

Q Witness B, who is your father?

A Guadalupe Morales.

Q Did you ask him to take a paternity test?

A I did.

Q And what was his response?

A He said he would and then when I went to buy the test he didn't want to take it any more.

Q And what else did he tell you?

A We had a conversation about the way I was treated when I was younger and basically to him they didn't do anything wrong. I was kicked out of the house. I ran away several times. They would put their hands on me so ---

Q Now, about the paternity test. Did Mr. Morales tell you he would take a paternity test but he did not want to a do-it-yourself test, he wanted to do it at physician's office?

A He didn't tell me. He told my younger sister, Kristina. I had called and said that I bought the test does he want to take it and he said yes. Do you want to met me somewhere, you can come to my house. I didn't know my mom was going to be there that day and he changed his mind.

Q So he never agreed to take one of these do-it-yourself tests?

A No, sir.

Q But he did say he would do it before professionally?

A Yes, sir.

Q You're still interested in having that done?

A Yes, sir.

Q All right. So you're -- you're curious as to whether or not he's your father, right?

A Yes, sir.

Q That's why you want to have this done?
A Yes, sir.
Q Are you married?
A I'm engaged.
Q And your finance is he here today?
A He is here.
Q His name is Cody?
A Yes, sir.
Q What's his last name?
A Deese.
Q Is he in the courtroom?
A He is.
Q He is sitting over there in the far right hand corner?
A Yes,sir.
Q And his last name is Deese, D-e-e-s-e?
A Yes, sir.
Q And do you have any children of your own?
A I do.
Q You have four children -- three children don't you?
A Three children.
Q One is age four, one is age one and one is about six months?
A Yes, sir.
Q And do you live in Lancaster?
A Yes, sir.

Q Who else lives -- where do you live?
A I will in Buford in Lancaster.
Q Who else lives this is house with you?
A It is just me and my finance and my three children.
Q All right. You have two other sisters?
A Yes, sir.
Q Older sister is Witness A.?
A Yes, sir.
Q Younger sister is Kristina?
A Yes, sir.
Q And you have two brothers?
A I do.
Q Antonio.
A Antonio and Omar.
Q Omar. Antonio is 11?
A Yes, sir.
Q Omar is ten?
A Ten.
Q Do you get along with them?
A I do.
Q Do you get along with Kristina?
A I do.
Q And what about Witness A, are you all close?
A Yes, sir.
Q When is the last time you talked to Witness A.?

A It was maybe last week. I was telling her about my daughter going to school, starting school.

Q All right. Did you go to school in Lancaster?

A Yes, sir.

Q At elementary school where were you?

A North Elementary.

Q All right. You with went there the whole time? The whole time were you living in Lancaster.

A I went to North Elementary, then I want to A.R. Rucker. Seventh grade I went to Buford and I finished at Buford.

Q All right. I think you said that your mom worked nightshift?

A At the time, yes, sir.

Q Where was she working?

A Springs, the cotton plant.

Q Do you know how long she worked that nightshift job?

A I don't remember.

Q All right. Do you recall going to Columbia to be examined?

A Yes, sir.

Q Who examined you, was it a physician?

A Yes, sir.

Q And did anyone go with you?

A My mom.

Q All right. What were the results of that examination?

MS. BURCHSTEAD: Objection. Outside the scope of what the witness can testified to.

THE COURT: I don't know if she's in a position to be able to testify as to what the results were without the the physician being here to verify that.

MR. GREGORY: Well, I'm not asking what the physician's opinion was. I'm just asking what results of the examination.

THE COURT: Well, I wouldn't call that an opinion from her though. Let's see what her response is.

A They didn't tell me anything.

THE COURT: Okay.

Q You were examined by a physician but you weren't told anything?

A They might have spoke to my mom but as far as me, no.

Q All right. Was anyone else there with you, your mother and was your grandmother there?

A No, sir.

Q Just you and your mother?

A And I believe my younger sister, Kristina, was examined at the same time.

Q Okay. So Kristina was examined too?

A Yes.

Q But Witness A was not there?

A She was not there.

Q How close are you with Lois Campos?

A When I was younger I didn't have a relationship with her and now I am trying to build that relationship with her.

Q You lived with her for how long a period of time?

A I never lived with my grandmother.

Q Well now, didn't your grandmother and her son Jimmy Joe Perez and you and your sister Witness A and your sister Kristina all live in [redacted] with your parents?

A I don't remember them living with us.

Q All right. You're not saying they didn't live there you are saying you don't remember them living there?

A I don't remember.

Q Do you remember having a conversation with your grandmother about telling some bad things about your father?

A I remember she come in to the school and she asked me what happened, if anything was going on with me and I stated what was going on.

Q Do you recall your grandmother telling you to say that things were done to you by your father?

A She never told me to say any of this.

Q And do you recall telling your mother that what you said about your father, things that he had done to you, were not true?

A I do, because I remember her face and I remember her crying so I was trying to protect her.

Q Were you in the courtroom earlier when Doctor Kellin testified?

A Yes, sir.

Q Do you recall what he said about recanting?

A Yes, sir.

Q He said that recanting is the same thing as --

MS. BURCHSTEAD: Objection, pitting.

THE COURT: We 're not going to have any pitting of witnesses against each other. I am not going to permit that.

MR. GREGORY: Well, I'm not really doing that. I am just laying a foundation for the the question I am getting ready to ask her. I will restraint that question.

THE COURT; we will not pit witnesses against one another.

Q Do you recall about what Dr. Kellin said about recanting?

A Yes, sir.

Q Isn't that what you did when you told your mother that your grandmother told you to say things about your father that weren't true? Wasn't that a recanting statement?

A Well, my grandmother never told me to say anything of this. I said it because this is what was happening to me. The only reason that I told her it wasn't happening is because I

seen her hurt she was.

Q All right. Now, let me see if I got this straight. What you are telling me now is that you told your mother that your grandmother told you to say these things that weren't true?

A No. I told my mom that I said it wasn't true because I felt her pain. I never said anything about my grandmother telling me to say this. Me and my grandmother -- the only time we had a conversation about this is when she came to the school and told us that Witness A was saying this was happening to her. So then she proceeded to ask if anything was going on with me. This was the only conversation me and my grandmother ever had about this.

Q Your grandmother didn't tell you if you didn't continue saying what you were talking about Guadalupe doing that she would take you away from her mother?

A No, sir.

Q You deny making that statement to your mother?

A She never -- she never told me any of this.

Q So when you told your mother that your prior statements about Guadalupe were not true, didn't she take you to the Department of Social Services?

A I remember her going to pick my Uncle Jimmy me up because she wanted somebody else to hear it. As far as talking to DSS and letting them know that I was taking it back I don't remember that. I remember speaking to DSS when it first

happened.

Q You don't remember going to DSS and telling them that you were taking the statement back?

A No, sir.

Q . Do you remember going to the the police department, Lancaster Police Department and telling them that the statement was not true, you're taking it back?

A No, sir. I remember going to the police department with my mom and her and the police was arguing. They made us stand outside and I seen them through the glass door and they were standing there arguing and then we left from there.

Q So you remember being there with your mother but you don't know what they were saying to each other?

A That's correct.

Q Now, you said you were kicked out of the house. This would have been the house on [redacted]?

A No, this was the house on [redacted].

Q That's the last time you lived there?

A No, sir.

Q And you were 16?

A Yes, sir.

Q Do you know why you were kicked out?

A I don't know why.

Q You think it had something to do with playing outside with three boys?

A No, that happened when I was nine years old. A lot of stuff was going on. Every time I tried to do something he would just make it look like I was the one doing bad. I started dating this guy and somebody shot our door and they blamed it on him. And it just -- the problem escalated and I guess my mom got tired of picking and choosing sides so she choose his side and kicked me out.

Q Somebody shot the door?

A With a BB gun.

Q What what were your grades like in school?

A My grades wasn't too good but I wasn't failing. I didn't have any A or B's.

Q And you graduated from --

A Buford High School..

Q -- Buford High School. All right.

MR. GREGORY: Beg the Court's indulgence?

THE COURT: Certainly.

Q Witness B, when you left the house did you have a boyfriend then?

A I did.

Q Was his name John Taylor?

A Yes, sir.

MR. BURCHSTEAD: Objection. Matter of law.

THE COURT: Approach the bench.

(WHEREUPON, there was an off the record

discussion.)

Q Witness B, when you left the house was it because you wanted to be with John Taylor and you were not kicked out of the house you left voluntarily?

A No, sir. My mom went to the uncle and told him to come and pick me up or I was going to be outside walking with my stuff in the rain.

MR. GREGORY: That's all the questions I have. Thank you.

THE COURT: Anything on redirect?

MS. BURCHSTEAD: Just briefly on redirect.

REDIRECT EXAMINATION

BY MS. BURCHSTEAD:

Q So, we talked about your sister Kristina. Do you know if she is the defendant's biological daughter?

A She is.

Q And at the time that the disclosures were coming out with Witness A telling Michelle and your conversation at school you were still living at the [redacted] Home, is that right?

A Yes, ma'am.

Q And then this conversation where your mom had you confront the defendant when did that happen again?

A That was the same day I spoke with my grandmother about what happened. She -- the school contacted my mom. She came to the school, picked us up and took us home and made us tell

everything that was going on in front of him.

Q Okay. And what was her reaction when -- what was your mom's reaction during this time you are are confronting him?

A I don't remember her face. I just remember her standing beside us at the table. We were sitting at the the table and she was standing up. He was sitting across the table from us.

Q And so it was after that that you changed your story you recanted?

A Yes, ma'am. It was when he was in jail.

Q And you say you ran away several times?

A Yes, ma'am.

Q And that they had put hands on you?

A Yes, ma'am.

Q What do you mean by that?

A Just when we would argue they would start hitting me. They never hit my on face but it was always in my head so I would fight back.

Q So you recanted but today your testimony is that the defendant sexually touched you as a child?

A Yes, ma'am.

MS. BURCHSTEAD: Nothing further Your Honor.

MR. GREFORY: No further questions.

THE COURT: You may step down.

MS. BURCHSTEAD: May she be excused, Your Honor?

THE COURT: Any objections Mr. Gregory to her being excused?

MR. GREGORY: No objection Your Honor.

THE COURT: You may be excused ma'am.

MR. KOZAK: Your Honor, I don't believe I asked if Michelle can be excused as well. She is the last person to testify.

THE COURT: Any objection to Miss Rollins being excused?

MR. GREGORY: No objection Your Honor.

THE COURT: She may be excused as well. Thank you.

MS. BURCHSTEAD: And may we approach for just a minute?

THE COURT: Sure.

(WHEREUPON, there was an off the record discussion.)

THE COURT: All right ladies and gentlemen. We are going to take about a ten-minute break at this point in time. The State needs to determine whether or not they are ready to conclude their case or if they need to call another witness. We need a few minutes to determine that so if you would retire to your jury room we will call you back in a few minutes. Again, I caution you about discussing this case at

this point in time.

Everyone remain seated.

(WHEREUPON, the jury enters the courtroom.).

THE COURT: You may call your next witness.

MS. BURCHSTEAD: Your Honor, the State rests its case.

THE COURT: Okay. All right. Mr. Gregory are you going to have some motions at this point.

MR. GREGORY: Yes, Your Honor, I do.

THE COURT: We will take those up outside the presence of the jury. I know we just brought you in but I will let you go for a walk. What we will do, we got to argue some motions at this point in time. I will go ahead and let you break for lunch. It's 12 o'clock. We got arguments and motions. All right why don't we plan to be back in here by 1:30. Just be ready to start at 1:30. Everything out of the way so we can hit the ground running. Start at 1:30 and see how far we get this afternoon. So I will ask you to leave now and break for lunch.

Again, I caution you not to discuss the case with anybody at lunch or with each other in the jury room.

(WHEREUPON, the jury exits the courtroom.)/HREURT.

THE COURT: All right, Mr. Gregory.

MR. GREGORY: At this stage at the conclusion of

the State's case the defense moves for a directed verdict of not guilty. Looking at the evidence presented by the State, there is insufficient evidence for the case to go forward at this time.

THE COURT: Okay, any response?

MS. BURCHSTEAD: Thank you, Your Honor. And I know you're well aware of the standard at the directed verdict motion at that time during the case and we are concerned at this point with the existence of evidence and not the weight of the evidence and it's to be viewed in a light most favorable to the State.

To that end the defendant is charged with three counts; CSC with a minor, first, second -- and second degree as well as assault with intent to commit and on each of these we do believe the State has presented sufficient evidence that the jury can -- that it could be submitted to the jury specifically with CSC first degree. This would be under the age of 11. You heard Witness A testify to digital penetration numerous times over the years under the age of 11 and potentially the jury could also find sexual intercourse that occurred prior to the age of 11. You recall as to second degree, her 11th birthday. Specifically on her birthday we had incident that happened prior to going to Carowinds. She also

testified to intercourse that day as well as potentially before that and the timeframe within a few months surrounding her 11th birthday.

Lastly, assault with intent to commit CSC with a minor, second. She talked about the time she stayed home sick, as well as some other times where he had attempted to commit acts as he had done previously, CSC with a minor she said something along the lines not today, but essentially fought him off and that would have occurred closer to maybe her 12th birthday but some time after the age of 11 to fit that 11 to 14, timeframe. Of course we do believe the defendant has been more than sufficient identified. We have established jurisdiction as Lancaster County. And in addition to Witness A z's testimony we had a disclosure witness.

THE COURT: All right. All right, Mr. Gregory I am going to respectfully deny your motion for a directed verdict of not guilty. I find that there is sufficient evidence that has been introduced that is this a matter that should be submitted to the jury.

MS. BURCHSTEAD: Thank you, Your Honor.

THE COURT: Okay. Counsel let's plan to be here at 1:30.

MS. BURCHSTEAD: Yes, sir.

(WHEREUPON, court was in recess for lunch.)

THE COURT: Ready for the jury.

MS. BURCHSTEAD: We are ready, yes.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: All right. Mr. Gregory, proceed.

MR. GREGORY: Thank you, Your Honor. Please the Court, I would like to call Guadalupe Morales to the stand please.

GUADALUPE MORALES, called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q Mr. Morales, can you hear me?

A Yes, sir.

Q I want you on speak up loud enough so I can hear you and that means all the jury panel can hear you as well. All right. And what is your name?

A Guadalupe Morales.

Q And what's your date of birth?

A [redacted], 1970.

Q So you are what, 46 years old now?

A Yes, sir.

Q All right. And where do you live?

A [redacted] Blackmon Pond Road.

Q And that's in Lancaster?
A Lancaster, South Carolina.
Q Who lives their with you?
A My wife, L.M. .
Q And that is her sitting over there?
A Over there.
Q Do you have any children?
A Yes, sir.
Q How many?
A I got four and my wife has one with somebody else.
Q All right. Witness A is your wife's child?
A Yes.
Q Before you and Witness A -- L.M. got married?
A Yes, sir.
Q When did you and L.M. get married?
A Back in 1992 I think it was. I really don't remember.
Q All right. You lived for a while on [redacted]?
A Yes, sir.
Q All right. Who was -- was that a trailer?
A Yeah, a trailer.
Q Who was the landlord of that property?
A Mac Edmonds and Pie -- I can't remember whole name.
Q All right. Pie Edmonds?
A Yeah.
Q All right. Where are you employed?

A When, right now?
Q Yes, right now?
A Right now I am working with Snyder's Lance.
Q Snyder's Lance, is that like Lance the cracker?
A Yeah, that company.
Q And that's locate where in Charlotte?
A Charlotte, North Carolina.
Q You drive back and forth every day?
A Yes, sir.
Q What shift do you work?
A I work first shift.
Q First?
A First.
Q All right. Now Mr. Morales, did you do any of the things that being said about you?
A No, sir. No.
Q Have you ever molested anyone?
A No, no, sir.
Q Have you ever touched anyone inappropriately?
A No.
Q Are any of these accusations that have been made against you true?
A No, sir, not true.
Q Do you have any reason, any idea as to why these girls would say the things about you if they are not true?

A I have no idea where. You know, I've always been strict with them to make their homework and do chores in the house. That's the only reason I think why they are saying all these things.

Q All right.

A And maybe mother-in-law put them to say these things. I don't know.

Q All right. Now your mother-in-law that is Lois Campos?

A Yeah.

Q That's your wife's mother?

A Yeah.

Q How do you all get along?

A Not very well.

Q All right. Now did you ever have an occasion to ask her about her bringing men to the home?

A Yes. I told her to stop drinking and stop bringing men into the house.

Q Was she living with you?

A Yeah.

Q And who else was living there with you?

A My wife and Witness A and Witness B.

Q And Lois was there?

A Yeah, and Jimmy Joe Perez.

Q She had a son, named Billy (sic) Joe Perez and he was living there as well?

A Yes.

Q This is house that you and Witness B had were renting from the Edmonds there on [redacted]?

A It wasn't a lease. It was my wife's L.M. . You're saying Witness B. It's L.M. .

Q Okay. L.M. . You and your wife, L.M. . So you and L.M. , that's your wife?

A Yes.

Q And Witness A?

A Yes.

Q And Witness B?

A Witness B.

Q And Lois.

A Yeah and Lois.

Q And Jimmy Joe were all living there in the same house?

A Yes.

Q Okay. Now, did you ask Lois to help pay for the expenses?

A Yes, sir. Yes, sir.

Q What was her response?

A She didn't like that very much.

Q Was she working somewhere at the time?

A Yes, she was working at China Inn. I had called her over there to the job to ask her if she was going to help me pay the bills and she got -- hang up the phone and she right away

she came to the house.

Q The China Inn in --

A It was its not far.

THE COURT: Sir, wait a minute. Let him finish asking the question before you answer.

THE WITNESS: All right. Sorry.

Q The China Inn in that you refer to where Lois was was working was on Meeting Street?

A Yes.

Q And [redacted] was right off of Meeting Street?

A Yeah.

Q So how far far was it from where she worked until where the house was?

A Not far. Not far at at all. You can walk.

Q A couple of miles?

A Not even. May be not even half a mile. Maybe half a mile. I don't know.

Q So she came over to the house right after the telephone conversation?

A Yeah.

Q She hung up on you?

A Yes.

Q And what happened when she got to the house?

A She start telling me not to be calling her to the job and start pushing me around and then of course Jimmy Joe Perez

he starting taking off his shirt like he wanted to fight me but I tell him I was not going to touch them and then she called 911.

Q And did the police come?

A Yeah, the police arrived.

Q All right. And did she move out right after that?

A Yeah, the police make her move out.

Q When, like within two or three days?

A No. Well, the police told me just give them a chance to stay here for the weekend. Because it is the weekend they can go no where right now. But she move. The next day she move out, she went to Westgate Apartments.

Q So when she left did she take Witness A with her?

A Yes, sir.

Q What did your wife, L.M. , think about her mother, Lois, having men coming to the house?

MS. BURCHSTEAD: Objection. Calls for speculation.

THE COURT: I'll sustain the objection. She wouldn't know what somebody thought.

Q Did your wife express any -- express anything about her mother's --

A Well, she was the one telling me about all these men because I use to work third shift and when I came home she told me all these things about her that she take a different man

every -- almost every day and she told me that put a stop to thing or me or her were not going to be together anymore.

Q So you did what your wife asked you to do?

A Yeah, yeah. Cause -- sorry. Can I say something?

Q No. Whenever you were first accused of this what if anything did you do I?

A Say what?

Q When you were first accused when the allegations were first made against you what if anything did you do? Did you go talk to anybody.

A Oh, yeah. Yeah.

Q Who did you go see?

A That Parson detective or whatever he is.

Q You went to the city police department?

A Yeah.

Q And you went to see the detective?

A Yes.

Q Did you talk to him?

A Yeah.

Q What did you tell him?

A It was a long time ago. I couldn't speak very good. I still can speak but right now I am more clearer.

Q Did you deny --

A Yeah.

Q -- these allegations?

A Yeah.

Q So you told him that they weren't true?

A Yeah.

Q All right. And that name of that officer was Officer Parsons?

A I remember the last name Parson. Something like that.

Q Did you go anywhere else and did you talk with anyone else?

A No, not that I remember.

Q Did you go to Department of Social Services?

A No. No. They didn't -- they didn't talk to me.

Q They didn't ask you to come by and talk to them?

A No. No.

Q All right. Now when you talked to Officer Parson that was about let's say when, within two or three weeks of when you were arrested?

A I talked to him before I got arrested.

Q When was it, the first of November?

A I can't remember the date.

Q From the time that you were arrested about how long a time -- about how much time elapsed from that time until the time you went to the police department and talked to Officer Parsons?

A I can't understand.

Q How much time was it from the time you were arrested

until the time you went to see Officer Parson and told him this wasn't true?

A I wasn't arrest. I went to talk to him before I got arrested. When I got arrested it was probably about a week.

Q Oh, I see. So you went to see the officer before you was arrested?

A Yeah.

Q I see. I understand. Now, were there any witnesses that you have -- that you had that you intended to bring to Court that have moved away?

A Oh yeah, my dad. My dad.

Q And who else?

MS. BURCHSTEAD: Your Honor, objection.

A Some other friend.

THE COURT: Hang on second. Yes, ma'am.

MS. BURCHSTEAD: I think we have a matter of law. Can we just approach for a minute?

THE COURT: Okay. All right.

(WHEREUPON, there was an off the record discussion.)

Q Now Mr. Morales, what is your father's name?

A Arturo Morales.

Q And what was your relationship with him, was it good?

A Yeah, very good.

Q Were you all close?

A Yeah.
Q Did you talk about this case with him?
A Yeah, he helped me with this case.
Q Did you expect him to come to court and testify?
A Yeah.
Q Did he pass away?
A Yeah, he passed away.
Q Were you able to attend the funeral?
A No. No.
Q Was it in Mexico?
A Yeah, Mexico.
Q Now, are you a citizen of the United States?
A I'm a resident.
Q Do you have temporary residence card?
A Yeah.
Q Have you attempted to apply for citizenship?
A Yes, sir.
Q Have you been able to accomplish that?
A I can't do it right now.
Q Why not?
A Because of this problem.
Q Because this is pending?
A Uh-huh. Yeah.
Q Did you have any problems traveling out of the state of South Carolina?

A Yes. Yes, sir.

Q And your job is in North Carolina?

A Yeah.

Q Did you have to get the Court to give you permission to leave the state in order to get that job?

A Yes.

MS. BURCHSTEAD: Your Honor, I object. It's related to that previous matter of law we discussed. I don't believe this is relevant to the facts of this case or any defenses to this case.

THE COURT: Where are you headed with this?

MR. GREGORY: I think that's about as far as I was going to go.

THE COURT: All right. That is not really relevant to the issues before the court.

MR. GREGORY: All right.

Q Tell me about your family. What do you do for your family?

A My family. My kids?

Q Yes.

A Yeah, I work for them. Work all the time so I can put food on the table for them. That's all I do.

Q Who all has lived in your house?

A Say what?

Q Who all has lived in your house? Now you have two

children?

A Yes.

Q Lives in the house now?

A Yeah.

Q What are there names?

A Antonio M. and Omar M. .

Q And they are 11 and 10 years old?

A Yes, sir.

Q The two boys?

A Yes, two boys.

Q And all the other children that were in the house, the other three girls have all moved out?

A Yeah, move out.

Q All right. Did you ever have an occasion to have any of your children's children or your grandchildren living in your house?

A Oh, yeah. Yeah.

Q How many were they?

A Two. Well, yeah two. Three right now because sometimes I babysit my grand kid.

Q All right. And whose children were those? Were those Kristina's?

A Yeah, Kristina Morales.

Q About how long did those grandchildren live in your house?

A The two oldest ones they live -- the oldest one probably two years and the youngest one -- not the youngest one, the middle one about a year.

Q All right. Now tell me about your wife. How do you all get along?

A My wife and me get along very good.

Q She's supportive of you?

A Yeah.

Q You have all been married for what 25 years?

A Twenty-five years.

Q Does she work?

A Yeah she work right now at Walmart.

Q How long has she been working at Walmart?

A Probably about -- well, she started in Indian Land and then then she quit and she went right here in Lancaster. All together maybe three years.

Q All right. She is working in the Walmart in Lancaster now?

A Yes, sir.

Q All right. Now do you have any offenses against you? Do you have any record?

A No. No, sir, only traffic tickets.

Q Did Witness B ask you if you wanted to take a paternity test?

A Yes, sir.

Q And what was your response?

A I ask her first one time and she didn't want to do it. Now she come back and tell me that she want to do it but she wants to do it with a little thing from Walmart. I do it if we go to the doctor. I mean I don't want to just to do with a little thing from Walmart.

Q All right. You think a test as doctor's office would be more reliable?

A Yeah.

Q Why do you think Witness B would want to have you take a paternity test?

A What?

Q Why do you think Witness B would ask you to take a paternity test?

A She's tired of hearing that she's not my daughter which I'm the the same way. I'm tired of this thing. I mean I really want to find out the truth if she is mine or not.

Q Did your ever work third shirt or what they call graveyard shift over night?

A I don't remember. She don't hardly work. In the past there we don't have no babysitter. It costs more to pay a babysitter than what she would be making so I told her to stay home and babysit the kids.

Q Whenever L.M. left the house did she take anybody with her?

A She usually take all of them.
Q Did she take all the children with her?
A Yeah.
Q Did she ever leave some of the children at home?
A No. No.

MR. GREGORY: Beg the Court's indulgence please.

THE COURT: Yes, sir.

MR. GREGORY: That's all the questions we have of this witness Your Honor.

MS. BURCHSTEAD: Beg the Court's indulgence just one minute Your Honor.

THE COURT: All right.

MS. BURCHSTEAD: If it please the Court.

CROSS EXAMINATION

BY MS. BURCHSTEAD:

Q So Mr. Morales is it your testimony that all this is being made up by Witness B and Witness A because you were strict?
A I didn't say it was made up I said it could be. I don't know. I was strict. I would make them do their home work, make chores in the house.
Q So you were strict 15 years ago?
A Not 15 years ago because I told you I worked -- I told you I worked third shift and my wife was in the house.
Q Were you strict or not strict?
A I was strict.

Q Fifteen years ago?

A Not 15 years ago.

Q Twenty years ago?

A Not 20 years ago.

Q When were you strict?

A When they start getting older like eight years old.

Q Okay, so not three or four?

A No. How can I be strict with a kid like that. Too small.

Q Okay. And they don't live with you now, is that right?

A They're not living with me.

Q So you are not strict with with them now?

A No, how can I? They have their own life.

Q So the grandmother Lois is telling them to make this up, is that right?

A I have no idea what she did or not. It's my suggestion. I don't know.

Q Because she got mad at you? You kicked her out?

A I didn't kick her out.

Q So she told them to make this up?

A I didn't kick her out.

Q And that was what 15, 20 years ago?

A Say what?

Q Fifteen, 20 years ago you all had some sort of disagreement?

A Yeah, 15, 20 years ago, yeah.

Q But Lois testified in here?

A Yeah.

Q Okay. Now, your father, you mentioned you would have called your father to testify; is that right?

A Yes.

Q Did he live with you at [redacted]?

A No, he was living with my brother.

Q So anything he would know about this case would be what you told him?

A Well, I didn't tell him nothing about anything. I just -- he know what happened to me. I got locked up because of this thing.

Q Okay. You talked about watching Kristina your daughter's children, is that right?

A No. He never watched them.

Q You never watched Kristina's children?

A Who me?

Q Yeah, you.

A I thought were you talking about my dad watching them.

Q So you have a daughter Kristina, right?

A Right.

Q You're her biological father?

A Yeah, as far as I know.

Q And you watch her children?

A Yeah, I watch my grandchildren.

A And she did not testify in this case did she.

A No, but Witness B asked me to watch her kid one time.

Q Okay. So, when the girls were young L.M. worked at a cocoa factory, is that right?

A Cocoa factory?

Q Yeah.

A In Indian Land.

Q I think that's where it is.

A Yeah.

Q She was working night shift, is that right?

A No.

Q She never worked night shift?

A No, she worked there for maybe a week or two.

Q And your testimony is that every time she left the house she took all the kids with her?

A Yeah, I was working third shift. I could not babysit my kids.

Q So when Witness A was three and L.M. left the house she always took the kids?

A She always take the kids.

Q And when Witness A was four and L.M. left the house she always took all the kids?

A Yes.

Q And five and six and seven --

A Five and since because I was working third shift.
Q And eight and nine and ten and eleven?
A I was working third shift.
Q And 12. You were never alone with the kids?
A No.
Q Never?
A My mother-in-law was there too. She was watching the kids. When they leave somewhere they take the kids.
Q So you were arrested October 29th of 2002, is that right?
A It was October. I don't remember exactly the date.
Q But you do recall talking to Investigator Parson?
A Parsons, yes.
Q Before were you arrested?
A Yeah, before.
Q Would it be accurate to say the day before?
A What did you say?
Q Would you dispute that it was the day before?
A Before what?
Q You got arrested. Let me he ask you this. Did you talk to Investigator Parsons on October 28th of 2002?
A I say I remember it was October. I can't remember the date.
Q Okay. But you do recall talking to --
A Yeah.

Q To Investigator Parsons one time?

A One time only.

Q Okay. Do you recall telling Officer Parsons or Investigator Parson that he could write a statement for you?

A No.

Q You deny that he wrote a statement that you signed?

A Yeah. I don't know how he got that thing but he didn't ask me none of those questions.

Q So did you make a statement "that you told Witness A you were going to tell her mother --

A No.

Q That she started acting strange"?

A No.

Q "That Witness A started trying to let me to touch her and sleep with her"?

A No.

Q "After that she was okay for a while"?

A No.

Q "Then the summer she started again"?

A No.

Q You didn't say this. "One morning we were home alone and she came in to my bedroom where I was asleep. I felt someone get into bed and it was Witness A wearing just a nightgown"?

A I didn't tell him that. I told my wife what she did

because she use to wake me up cause I tell you I worked third shift and then she start pulling my legs and my hair for me to wake up.

One time my wife tell Jimmy Joe Perez to cut the grass for somebody and --

Q That's not the question sir. The question is did you make that statement to the officer, "that Witness A got in bed with you wearing a nightgown"?

A I don't remember.

Q "And that after that I told my wife and mother-in-law the last time and they talked to Witness A." Do you remember that?

A I never talked to my mother-in-law.

Q Okay. "When I told my wife about the last time she kicked her out of the house"?

A My wife took her to her mom but she never kick her out.

Q So your statement to Officers Parsons, Investigator Parson was that Witness A got in the bed with you wearing a nightgown and then L.M. talked to with her and then kicked her out after the last time?

A I never told him that.

Q Okay.

MS. BURCHSTEAD: If I may have this marked.

(State's Exhibit Four, Statement marked for identification as of this date.)

MS. BURCHSTEAD: Permission to approach Your Honor.

THE COURT: Yes, ma'am.

Q I am showing you State's Exhibit Four. Does this look familiar to you?

A He never asked me those kinds of questions.

Q Is that your signature?

A Yeah. He didn't ask me no kind of questions like that.

MS. BURCHSTEAD: Beg the Court's indulgence.

Q So you have two boys in the house?

A Yes, sir. Yes, ma'am.

Q And they are your boy?

A Yeah.

Q So every time L.M. left the house she took all the girls and the boys?

A The boys were not born at that time. How could she take them.

Q How old are the boys now?

A Eleven and ten.

Q All right. So at the time you were living with just the three girls; is that right at the time of these allegations?

A Yes, ma'am.

Q So every time L.M. left she took all the girls?

A Yes, ma'am.

Q So there was never a time that you were home alone with

these girls?

A No.

Q Ever?

A I don't remember being alone with them because my mother-in-law was there too. Sometimes she keep them.

Q So, Witness A is lying and Witness B is lying?

A I don't know what they are doing.

MS. BURCHSTEAD: Nothing further Your Honor.

THE COURT: Mr. Gregory, any redirect.

REDIRECT EXAMINATION

BY MR. GREGORY:

Q Guadalupe, you went to the police department before you were arrested?

A Yeah, before.

Q You talked to Officer Parsons?

A Yeah.

Q Did you ever write down anything?

A No, I didn't write nothing down. Not even him write anything down.

Q Did he give you anything to sign --

A No.

Q -- that was written out?

A No.

Q How long were you there?

A Maybe about -- maybe 15 minutes.

Q Did he write out anything?
A No, he didn't write anything down.
Q And ask you to sign it?
A No, he didn't ask my to sign anything.
Q How much English were you able to speak at that time?
A Very little.
Q Did they ask you if you wanted a interpreter?
A No. No.
Q Did you need a interpreter at that time?
A I did but I didn't ask for one.

THE COURT: I am sorry I didn't hear your answer.

THE WITNESS: I said I did. I didn't ask for one.

MR. GREGORY: All right. That's all the questions. Thank you.

MS. BURCHSTEAD: Nothing further from the State.

THE COURT: Okay, you may step down Mr. Morales.

MR. GREGORY: I call L.M. .

L.M. , called as a witness, having been duly sworn by the clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREGORY:

Q All right. State your full name please?
A L.M. .
Q Now speak up so I can hear you.

A L.M. .

Q That is good. How old are you?

A Forty-two.

Q All right. And how long have you been married to Guadalupe?

A Twenty-five years.

Q All right. Where are you employed?

A Walmart supercenter.

Q Is that in Lancaster?

A Yes, sir.

Q How long have you been employed there?

A I am going to say going on three years.

Q All right. How many children do you have?

A I have five.

Q Witness A?

A Witness A.

Q Witness B?

A Witness B.

Q Kristina?

A Yes, sir, Kristina.

Q Antonio and --

A And Omar.

Q And were any of the boys -- when were the boys -- what are there birthdays?

A Antonio [redacted] of '06 and Omar is [redacted] of '07.

Q All right. Were any of the boys living in the home at the time your girls were living there?

A Kristina. I think Kristina had a chance to live with them for about I think she lived with us maybe -- let's see -- a couple of years before she moved out. She was -- I think they were like maybe five or six months when she moved out.

Q All right. If you left the house did you take all the children with you?

A Yes, sir.

Q Would there be a problem in taking all the children?

A No. Because every time I left I would tell them to get there things together and lets go. I do that the now with my boys I tell them to get there things and lets go.

Q Did you ever leave any of the children alone by themselves?

A No, sir.

Q When you left the house?

A No, sir.

Q Did you ever work the graveyard shift or the third shift?

A No, sir.

Q Never have?

A No, I worked for Walmart third shift and that was the first time I worked for Walmart in Indian Land. That was like four years ago. But other than that I never worked not third

shift.

Q And what shift was that?

A Third.

Q What were the hours on that job?

A When I worked for Walmart third shift was ten at night to seven in the morning.

Q Okay. How long did you work that job?

A A year.

Q One year?

A One year.

Q All right. Now do you believe your husband did the things that they accused him of doing?

A No, sir.

Q Have you seen any evidence -- have you seen anything to make you believe he did any of these things?

A No, sir.

Q What did Witness B -- did you take Witness B to be examined?

A Yes, sir. They had scheduled -- social services had scheduled them an appointment up in Columbia for Witness B and Kristina and I took both of them.

Q All right. Were they both examined?

A Yes, sir.

Q And what were the under all the results of those examinations?

A They told me --

MS. BURCHSTEAD: Objection. Calls for speculation.

A -- it was negative.

THE COURT: Don't say anything ma'am.

MS. BURCHSTEAD: Objection. I don't believe she has first hand knowledge of that. It calls for speculation. Can't authenticate it.

THE COURT: You have to lay a better foundation before I let her respond to that Mr. Gregory.

Q Were you provided the results?

A Yes, sir.

Q All right. Were the results both the same for both girls?

A Yes, sir. All three of them actually.

Q Who was the other one, Witness A?

A Uu-huh. Yes, sir.

THE COURT: Say yes or no to answer the question.

Q Did Witness B ever tell you that what she had said about Guadalupe was not true?

A Yes, sir. I remember when the case had first come about I was getting visitation with Witness A and we was going to see her and I remember we were in the truck that we had at the time and we were sitting in the truck going to McDonalds and she was like, momma, she was like, how come if this is not true how come they don't just drop the charges against my daddy. And I

was like because you all have to tell the truth. I can't make you all say stuff. I can't put stuff in your head. And then I turn around and I looked and I said, what are you trying to say that it's not true. And I was like, if it's not true you need to talk to somebody. You can't just leave it like that and she was like -- and I said why would you want to lie anyway.

MS. BURCHSTEAD: I object. I believe this whole line of questioning is hearsay.

THE COURT: I'll let her go into this. I'll overrule the objection. Go ahead.

A I asked her why she wanted to lie and who would put her up to it and she just said that she didn't know but she said that her grandma had -- had did this to her. And I was like when did she have the opportunity to talk to you and she just said when she came up to the school. That's what she told me.

Q All right.

A So I left it at that because I didn't want nobody thinking that I was putting stuff in their head because I never have.

Q Okay. And when you you were talking about at the school, who was in the conference room?

A I asked her --

MS. BURCHSTEAD: Objection. Calls to speculation. She wasn't present.

THE COURT: If she wasn't there she certainly

can't testify as to who was in the room, Mr. Gregory. If you can establish she was present. But if she wasn't there she can't say.

Q You weren't in the conference room?

A No, sir, I was not.

Q Do you know who was?

A No, sir, I do not. Just what Witness B told me.

Q All right. Well, what did Witness B -- who did Witness B say was there?

MS. BURCHSTEAD: Objection. Hearsay.

MR. GREGORY: Your Honor, Witness B has already testified. It's not hearsay unless the witness is unavailable.

MS. BURCHSTEAD: I wholeheartedly disagree and he could have asked Witness B when she testified.

THE COURT: It's a hearsay statement. I will sustain the objection.

MR. GREGORY: All right.

Q Now, after Witness B told you that did you take her anywhere?

A No, not that day because like I said we was going to do my visitation with Witness A. But then that next day because it was the weekend that following Monday I had called and they told me I had to bring her up there and I did but they wouldn't talk to her because they were saying that I was probably putting this

stuff in her head.

Q Who was this?

A The case worker.

MS. BURCHSTEAD: Objection. Hearsay.

THE COURT: Sustained. You can't tell us what some case worker told you ma'am. That would be hearsay.

Q So this was at DSS?

A Yes, sir.

Q Did you go anywhere else?

A Yes, sir. I also went to the sheriff's department, but I was informed the same thing I was at DSS.

Q But you told them what you had been told?

A Yes, sir.

Q Who did you tell at the DSS?

A I actually talked to the case worker.

Q Do you remember his name?

A Her name. No, sir, I don't remember her name.

Q Was it male or female?

A It was a woman.

Q Okay. Did you know somebody named Ray Rainey?

A The name sounds familiar.

Q All right. Do you know who you spoke with when you went to the city police department?

A Yes, the detective that was on the case.

Q Detective Parsons?

A Yes, sir.

Q And you told him what Witness B had just told you about this being untrue?

A Yes, sir.

Q Miss L.M. were you abused as a child?

A Yes, sir.

MS. BURCHSTEAD: Objection, relevance.

THE COURT: What's the relevance of that?

MR. GREGORY: Your Honor, the expert testified about how child abuse -- how abuse victims handle the raising of their children.

MS BURCHSTEAD: Your Honor, may we take this up outside the presence of the jury.

THE COURT: All right ladies and gentlemen, I will ask you to retire to the jury room for a few moments as I go over this point of law.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: Yes, sir.

MR. GREGORY: Your Honor, I asked L.M. whether she had been abused as a child and I think she said yes. Doctor Kellin had given extensive testimony to the jury about what happens when someone has been abused and he went into detail about how they raise their children; they're strict on their children. I

think that's what he said. Because they don't want the same thing to happen to their children. And I think this falls directly in line with his testimony.

THE COURT: I recall he testified they can be protective, more protective. But what's the point Miss Burchstead?

MS. BURCHSTEAD: Your Honor, the State's concern is that we are essentially going to open a trial about whether or not L.M. was abuse or not and she can say she was we and we've got nothing to say that she wasn't. This is going to turn into another trial about whether or not L.M. was abused or not to see whether she actually was strict or over protective of her children or not. It goes far afield from the evidence and presentation of this case.

THE COURT: What about Mr. Killen, he did testify concerning people who have been abused, the parents have been abused. How they can be protective of their children.

I think it's admissible. I will let you go into it Mr. Gregory.

MR. GREGORY: Thank you.

THE COURT: It has been raised by the State in there case.

MS. BURCHSTEAD: Very well, Your Honor. Thank

you.

THE COURT: I mean, we don't want it to become a trial concerning her. We are just going to let her testify. You ask what you want to. We will address it question by question. If there is anything objectionable I'm sure Ms. Burchstead or Mr. Kozak will object.

MS. BURCHSTEAD: Thank you, Your Honor.

MR. GREGORY: Thank you, Your Honor.

THE COURT: I will let you go into it. While the jury is out do you need to take a restroom break?

RM. GREGORY: That will be fine.

THE COURT: We will take a restroom break L.M. . I must caution you, you cannot talk to your attorney or the defendant at any point in time during this break. You can go to bathroom and come straight back. Don't communicated with anybody. Do you understand?

THE WITNESS: Yes, sir.

(WHEREUPON, there was a brief recess.)

THE COURT: Ready for the jury?

MR. GREGORY: Yes, sir.

THE COURT: Bring them in

(WHEREUPON, the jury enters the courtroom.)

THE COURT: All right Mr. Gregory.

MR. GREGORY: If it please the Court.

CONT'D DIRECT:

Q L.M. , I believe I had asked you question earlier as to whether or or not you have been abused as a child?

A Yes.

Q You said yes. Did that make you more protective of your own children?

A Of course.

Q Who abused you? Was the a family member?

A It wasn't one person. It was multiple.

Q Was it relatives?

A Yes, close relatives and guys that would come over to the house.

Q Where did this take place?

A Different places.

Q In Texas?

A Yes, sir in Texas.

Q None of that happened in South Carolina?

A No, sir.

Q About how old were you?

A I was around between the age of seven, up to probably about ten.

Q Do your children -- did tell your children about this?

A No, not at first but when I started having issues with Witness A, I did mention that to her. I think that's how about

this case came about. I didn't want to put stuff in her head, but I just thought she would know what had happened to me. I didn't tell her who or nothing like that but I just tried to tell her I was abused as a kid so I didn't want them to go through nothing like that. That's why I was so protective of them.

Q Were -- did you have occasion to have a boyfriend named Billy or William?

A Excuse me.

Q Did you have a boyfriend named Billy or William?

A Yes, sir.

Q Is that the one that Lois referred to as Billy?

A Yes, sir.

Q What happened to him in regards to you?

A Well, we lived in Edgemoore.

MS. BURCHSTEAD: Objection, relevance. Why would we care about the mother's boyfriend.

THE COURT: There was testimony. I will overrule the objection.

MS. BURCHSTEAD: Thank you.

THE COURT: Go ahead Mr. Gregory.

A We lived in Edgemoore and I was about 15 at the time and I think he was like twenty something years old and my mom didn't like him. She had him charged with statutory rape because I was underage but then we moved to Lancaster so I don't

know what happened with that case.

Q And you don't have any relationship with Billy any longer?

A That was the last time I saw him when we moved from Edgemoore.

Q Do you agree with your husband's decision to have a paternity test conducted as to whether or not he is the father of Witness B ?

A I mean if she has doubts and he has doubts if that's what they want to do they can.

Q Do you have any doubts as to who the father is?

A No, sir. The reason I said that was because when I got pregnant with Witness A she moved from Texas over here because she didn't want me to live with her father and I didn't want the same thing to happen with him so I lied and said that he was the father so she wouldn't take me away from here and take me away from him. I was underage. She had control of what -- of my life. I was underage. And I didn't want to be having kids with different guys. I wanted to be settled down. I wanted to have my family settled down. Even though I was young I was pretty mature to my age. I took care of my kids.

Q All right.

MS. GREGORY: That's all the questions I have of this witness.

CROSS EXAMINATION

BY MS. BURCHSTEAD:

Q So who is Witness A's dad?

A Richard Canales. And I always told her that.

Q So when Witness B recanted she was living at the home with you, right?

A Ma'am?

Q Witness B, she recanted. She changed her statement?

A Yes, ma'am.

Q When he she was living in the home with you?

A Yes, ma'am..

Q After you made her confront the defendant?

A I didn't make her confront. I just wanted her to express what she was saying in front of him.

Q Why?

A What do you mean why.

Q Answer the question, why?

A I don't know, I just did it.

Q What were trying to accomplish?

A I wasn't trying to accomplish anything.

Q Okay. So did you ever work at night? You never worked at night?

A No, ma'am, not third shift. Never.

Q Never worked third shift?

A Just worked that one time Walmart for third shift and the girls weren't living with us at the time.

Q Okay. And you never left them home alone with your husband?

A No, ma'am.

Q Never? That was there dad, right?

A Yes, ma'am.

A So you never left them a home alone with their dad is that right.

A Like I said I was very protective of my girls. If you would be in my shoes you probably would have too.

Q Okay. Your super protective because you were abused?

A Yes.

Q Okay and you have sitting --

A I mean I wouldn't even leave them with a baby sitter that long.

Q So you have been sitting in this court listening to all the testimony, right?

A Yes, ma'am.

Q And suddenly you are coming in saying you are abused?

A No. I have been telling my family that for years now.

Q So you have been kind of messed up for years, is that right?

A I guess, if that's how you want to put it.

Q Okay. So you're super protective and that's why you kicked your girls out?

A I'm not only like that with them even with my boys.

Q So you kick your boys out too?

A I mean protective over them.

Q How do you explain being protective and kicking your girls out?

A I didn't kick them out.

Q You didn't?

A If I kicked them out I would have got their stuff and threw it out, but I did not. I would call my brother or my mother to come and pick them up. There's a difference between them two.

Q So you are protective but you got them out of the house?

A Yes, because --

Q How is that protective?

A -- they are at the age where they want to do what they want to do. Look, this is my house. This is my husband's house. We are not perfect. We do have rules. If they cannot abide by them -- I mean, there's either you have to go by our rules or you are going have to go live with your grandmother or your uncle and do what you want to do.

Q So abide by the rules or get out?

A I didn't kick them out. Like I said if I would have kicked them out their stuff would have been on the porch or out in the yard..

Q You would you have packed their stuff up?

A I called somebody to come and get them. There's a difference if you think about it.

Q Sure. There's a difference. You would have packed up for them. That's nice.

Q So, you're so protective that you don't leave them home alone with their dad. Do you trust him?

A Yes, I trust him.

Q Then why didn't you leave them home alone with him? Which is it?

A When you get abused you have issues and those issues are hard to explain to somebody that doesn't understand.

Q So you trust him but you don't leave them home alone ever?

A Like I say I could say the same thing with you. I wouldn't trust them with you either.

Q But you kicked them out?

A I didn't kick them out.

Q That's right, you didn't pack their stuff. They just needed to get out. Okay.

So the story about being abused and overly protective it is awfully convenient today isn't it?

A (No response.)

Q Okay. So your supporting the defendant. That's why you have been sitting there helping him with the trial, right?

A (No answer.)

THE COURT: Answer the question.

Q That's all. Nothing further.

THE COURT: Mr. Gregory.

REDIRECT EXAMINATION

BY MR. GREGORY:

Q L.M. , you believe your husband?

A Yes, sir.

Q And you believe him when he says he had nothing to do with this?

A Yes, sir.

Q It's not true.

A There's no evidence.

Q All right.

MR. GREGORY: That's all the the questions I have. Thank you Your Honor.

MS. BURCHSTEAD: Just one final question if I may judge.

THE COURT: Yes, ma'am.

RECROSS EXAMINATION

BY MS. BURCHSTEAD:

Q Just so the jury is clear. You're protective and you are going to leave the girls or send them or let them go be with lois and Uncle Jimmy and Michelle but not the dad; is that right?

A (No response.)

Q Is that right?
A Excuse me. What was the question? I'm not understanding.
Q Okay. You let the girls go with Uncle Jimmy, right?
A Yes.
Q You let them go with Lois, right?
A Yes.
Q But not be alone with the defendant?
A He worked third.
Q That's not the question.
A My husband worked a lot.
THE COURT: Answer the question directly.
A Okay. No.
Q Thank you.
A It wasn't like that.
MS. BURCHSTEAD: No further questions Your Honor.
THE COURT: You may step down.
MR. GREGORY: Your Honor, the defendant rests its case.
THE COURT: Any rebuttal witnesses?
MS. BURCHSTEAD: If we could have just a few minutes to confer, judge.
THE COURT: All right.
MS. BURCHSTEAD: Nothing further Your Honor.
THE COURT: All right. Let me confer with

counsel.

(WHEREUPON, there was an off the record discussion.)

THE COURT: All right. Mr. Foreman, ladies and gentlemen, I realize that it is early, but at this point in time with regard to the trial there is some motions that have to be made. Then we have got to allow time for the argument by the attorneys. I have to charge you on the law. So we are looking at probably, say if the lawyer argue for an hour which I don't doubt they will argue that long. My charge will probably take 20, 30 minutes. We will be looking at well after four o'clock, maybe 4:30 before we could even get started with your deliberations and that's your purview with regards to how long that takes. But that being said, that that's a little bit late to submit a matter to the jury in the afternoon. I know you probably like to go ahead and finish today and I would too if at all possible, but it doesn't look like it is going to be able to done. I have to go over with the lawyers my charge. I don't want you just sitting back in the jury. You have been doing that enough today already.

I am going to let you leave for the day. Ask that you be back at 9:30 tomorrow morning. We will get

started promptly and we be able to get through with the charge and the arguments to the jury surely by 11 o'clock or so tomorrow morning to submit the matter to you and you will have as long as you need to deliberate tomorrow.

I hope you have a good evening. But again, I caution you again, please don't talk about the matter at home with your spouse, girlfriend or boyfriend. Don't talk about it coming and going with regard to the jury room and the courthouse and we be back at 9:30 in the morning. Thank you. And I appreciate --let me say this, I appreciate your patience. I told you when I first gave you the general charge at the beginning of the trial there would be times I have have to send you in and out and I know it's enough inconvenience for you to be here when you have to keep going back and forth. I know that's somewhat disconcerting. It's just the way the process works and as I told you I can't let you hear arguments about the law because you are the judges of the facts and I got to keep it that way.

Thank you though for your patience.

(WHEREUPON, the jurors leave the courtroom.)

THE COURT: All right, Mr. Gregory.

MR. GREGORY: If it please the Court. Your Honor,

at this time now that all of the testimony has been received, both the state and the defense have rested their cases I would like to renew my motion for a directed verdict of not guilty, but I have addition national ground other than what was stated earlier, and that is in regards to statute 16-3-356 -- I'm sorry, 16-3-657. That's statute Your Honor is a statute that says that criminal sexual conduct has to have testimony -- the testimony of the victim need not be corroborate. However, you know that statute was found unconstitutional in the case of State versus Witherspoon, opinion 27675. South Carolina Supreme Court found that statute was unconstitutional. It said the victims -- it said a victim -- a victim's testimony in a criminal sexual conduct case need not be corroborated. So, now that statute has been found unconstitutional you look at the evidence that was presented today. The only witness -- the only testimony that came in about abuse of Witness A came from Witness A. The other witness that testified about the alleged abuse was from Witness B. But if you go back and look at the testimony I don't recall hearing Witness B say anything about observing Mr. Morales abusing Witness A. So therefore based on that we feel that the victim's testimony is not corroborated. Therefore

it's not admissible and therefore the Court should direct a verdict of not guilty.

Thank you Your Honor.

THE COURT: Miss Burchstead.

MS. BURCHSTEAD: In addition to what we stated during the directed verdict motion portion of it I would add and respond directly to what Mr. Gregory has raised. I don't have the case in front of me, but my understanding of that case is we are talking about how the judge should charge the jury, not the way a case is presented and what is required to move to a jury for deliberation. So we would suggest to the Court we recognize there is a new way of charging the jury such that -- I can't recall exactly but there's some way the judge may need to fashion a charge to the jury concerning corroboration of a victim but that has nothing to do with whether the jury gets the case or not. We submit, as we stated at the direct verdict motion, more than sufficient evidence has been presented to the jury to get the case and anything that Mr. Gregory is touching on goes to the weight of the evidence. Part of why we have the bad act evidence of the sister is because of the common scheme or plan exception because we don't have witnesses to children being sexual abused but we do have a common

scheme or plan which would assist the jury in making that determination. And again, specific to this new case that has come out, State's position is that relates to how a judge instructs the jury not whether the jury gets to deliberate on the case Your Honor.

THE COURT: Anything else Mr. Gregory? Anything else, sir?

MR. GREGORY: I think the State made a good point, Your Honor, but I think the State is incorrect. The - it does not go to the weight of evidence. It goes to the admissibility. If the evidence is not admissible it doesn't matter how much it weighs or not. There's no case. And we feel that the State's case is against my client in regard to Witness A , not Witness B. And there is absolutely no corroborating testimony of Witness A's alleged being abused by my client.

Now the complaining witness testified as to what she told him but if you go back down, and boil it down, it all comes from one person; one person only. She told the detective. She told the doctor. She told DSS. She told anybody that would listen to her. But nobody came in here to court to testified that they saw Mr. Morales abuse Witness A except Witness A. And therefore we feel it has uncorroborated and therefore cannot be admitted.

Thank you Your Honor.

MS. BURCHSTEAD: Your Honor, briefly in response to that. If that logic were followed we'd never have a case going to the jury. That's -- I hate to say it -- I wouldn't call it offensive, but I just can't follow that logic, respectfully. Plenty of cases have victims where people didn't see them get touched. I do think it's the weight of the evidence and that is again why we're allowed to have bad act evidence and I'm going to leave it at that judge.

THE COURT: Okay. All right. I agree with you, Miss Burchstead. I don't know that we would have any -- well, there would be very few sex abuse cases prosecuted particularly children if we didn't allow bad act; prior bad act, whatever, and the common scheme of plan testimony to come in and assist in the corroboration.

I take your point Mr. Gregory and you can certainly look at the charge as a way of correcting what you think needs to be corrected if there is anything that needs to be corrected. But I am going to respectfully deny your motion with regards to the directed verdict at this point in time. I need to -- let's see. Are you in position now to tell me anything you want to request for the charge if we do this afternoon rather

than wait for the morning.

MS. BURCHSTEAD: Sure Your Honor.

THE COURT: I can give you time to work on it and look at it. We can stick around.

MS. BURCHSTEAD: Absolutely.

THE COURT: I just hate to come in tomorrow morning and you hand me a bunch of requests to charge.

MS. BURCHSTEAD: I agree. I don't intend to pass up anything supper specific other than what I already shared with your law clerk which I found from the 2006 bench book and I believe we can make copies for Mr. Gregory if he wants to look. But I am assuming you are taking that under consideration for your charge. My main concern was just making sure we were looking at that old law for the assault with intent to commit since that law has been changed.

In addition to I believe I passed up something related to when you have multiple charges that are being faced related to CSC with a minor. Of course we would ask for some sort of charge to the jury on determining credibility of the witnesses, per usual. I think most of the charges that we would ask are what Your Honor would normally charge in any sort of any criminal case and as for the corroboration defer to Your Honor in terms of newest case law but we do

understand that we may need to address that.

The last issue I would have -- and I don't know how to address this the best way, but I have concern about this 15-year delay. We recognize the defense needs to put up a defense, however, as it relates to anything being said in closing and potentially how we would charge the jury would not want us to get into finger pointing and making some sort of allegation that if the State thought it was important they would have brought it sooner or something where it puts the State in a defensive position.

Your Honor, I would ask that we stick to the facts of the case and if we want to talk about witnesses that aren't available and that kind of thing I believe that's appropriate. But just strictly the length of time being considered against the State I would like to fashion something to protect against that prejudice to the state.

THE COURT: Well, obviously there was no testimony concerning any delays and why it was 15 years old. So it wouldn't be appropriate to address that in any type of closing argument. It's not before the jury.

MS. BURCHSTEAD: I would agree Your Honor. I have not had the privilege of trying a case with Mr. Gregory but I have certainly seen defense counsel on

other cases argue things that weren't presented to the jury.

THE COURT: I understand that. You had earlier -- I think it's on my desk -- had left me a request prior to trial which I denied --

MS. BURCHSTEAD: Yes, sir.

THE COURT: -- your motion to do that, but do you want me to considering using that. I don't see any point in addressing it at all. I mean, it's not relevant to the case the fact that it took 15 years. I don't know why it took 15 years. Don't care why it took 15 years. It's before me.

MS. BURCHSTEAD: I know. That's my position as well, judge. I'm just concerned the jury is going to get back there and start deliberating about the fact it has been 15 years and somehow --

THE COURT: If they want to talk about it from what they heard that's fine.

MS. BURCHSTEAD: Right.

THE COURT: But I don't want to draw any real attention to it from the State or the defendant. It's not important why it took 15 years.

MS. BURCHSTEAD: Right. If that's the Court approach I understand and appreciate that.

THE COURT: I mean, it's not your fault.

MS. BURCHSTEAD: Right.

THE COURT: I don't know whether it's the solicitor's fault or whose fault. Somebody dropped the ball.

MS. BURCHSTEAD: Correct.

THE COURT: But that's not for the jury to be worried about.

MS. BURCHSTEAD: Agreed.

THE COURT: They have to be worried about whether there was criminal sexual conduct committed as to Witness A.

MS: BURCHSTEAD: Agreed, Your Honor, yes.

THE COURT: And if not find him not guilty.

MS. BURCHSTEAD: That's right. We agree.

THE COURT: We are clear on that everybody.

MR. GREGORY: Your Honor, our position on that is still Judge Gibbon's ruling that we raised is due process violation. We still renew that position.

THE COURT: I understand that. I understand that and it's noted for the record so ---

MS. BURCHSTEAD: I am just conferring with co-counsel to make sure I haven't missed anything.

THE COURT: I'm here.

MS. BURCHSTEAD: I don't think there is anything specific we want to ask, or ask Your Honor to charge.

Just the usual charges you would give.

THE COURT: I'm going to look at this case that has been raised by Mr. Gregory closely.

MS. BURCHSTEAD: Yes, sir.

THE COURT: I'm going to be around. I will stick around and go over everything and get my charge ready. I don't know if you all getting ready to leave or will be around.

MS. BURCHSEAD: We can stay and take a look at it if that will help things move faster tomorrow.

THE COURT: I got a lot of it already if you want to look at what I already have.

MS. BURCHSTEAD: Sure.

(WHEREUPON, court was in recess for the day.)

(WHEREUPON, the trial continued on August 23, 2017).

THE COURT: Good morning.

MS. BURCHSTEAD: Good morning.

THE COURT: All right. Counsel, are you all ready to make your closing arguments and charge the jury.

MR. GREGORY: Yes, Your Honor.

THE COURT: Any requests concerning the argument.

MR. GREGORY: Yes. The defense would request that the State open.

THE COURT: Okay. All right. They will open in

full on the facts and the law and be allowed to reply or refute anything that is argued by defense counsel.

MS. BURCHSTEAD: We're ready Your Honor.

THE COURT: Okay. Bring the jury in.

(WHEREUPON, the jury enters the courtroom.)

THE COURT: All right. Good morning ladies and gentlemen. Hope you had a pleasant evening last night.

We have reached the the point in the trial where the attorneys will now make their closing arguments or closing summations to you. I want to remind you that what the the attorneys say to you during these closing arguments or summations is not evidence. You to consider the facts that were presented from the witness stand as I told you at the beginning of the trial. That's where the evidence comes this and through any documents. I believe there was one set of photographs that was introduced as an exhibit which is the only documents that we have. But what they say to you is their position concerning the facts as were brought out throughout the testimony and what they consider the law should be applied -- or as to how the law should be applied to those facts.

So I ask you to give them close attention, pay close attention to what they have to say. When both

of the attorneys have finished there closing arguments I would then charge you on the law and then send you back to your jury room. Thank you.

Miss Burchstead.

MS. BURCHSTEAD: Thank you, Your Honor. May it please the Court.

Good morning. The defendant, Guadalupe Morales, was suppose to protect a little girl who called him daddy. Instead from the time she can remember he sexually abused her. He used his position as her father, who she believed to be her father; the father figure, for his own sexual gratification. It's time to hold him accountable.

She testified on the stand as an adult but the actions were as a child and because of that he is charged with criminal sexual conduct with a minor first disagree, criminal sexual conduct, second degree and assault with intent to commit criminal sexual conduct with a minor, second degree.

Mr. Kozak talked to you at the beginning of the case. Gave you a little bit of the parameters of what those laws are. The judge is going to instruct you after closing arguments are concluded.

For now, in the context of my closing arguments, I want to refresh you very briefly on what those charges

are. Criminal sexual conduct with a minor first degree requires -- and second degree -- requires a sexual battery. The main difference you are looking at the age of the victim at the time of the sexual battery occurs. And the assault with intent to commit is an assault with the intent but you don't actually have that sexual battery that occurs. The sexual battery includes sexual intercourse, an intrusion however slight into the genital or anal opening of the body. It could include other things like cunnilingus, fellatio, things of that nature. For purposes of this case evidence that we presented to you we are primarily focused on vaginal intercourse and digital penetration in the sense that we are looking at intrusions, however slight, into the body. And I would like to talk now and just refresh you on Witness A's testimony. Remember we started our case with Witness A sitting right there. She is an adult now. Using adult terms. But told you what happened to her as a child. Remember she told you that she was living in [redacted] with her mother and her two sisters and from the time she was about three or four the defendant started touching her in an inappropriate way. He touched outside of her clothing. She told you about that first time that she can really remember

him doing that and they are on the bed. And he pulled her close and she can feel him rubbing on her. And then that behavior continues to increase, to escalate. To normalize her. Groom her. And he then starts putting his hand under her panties and inserting his fingers inside of her from the age of six. He continues to do that over and over again. She told you it happened on a weekly basis. It would happen in the home. Primarily in the home, her home where she should feel safe. It would happen in the bedroom, the living room. Mom is in the shower. Mom is not home. The other girls are younger. Don't know what is going on and remember you heard from Witness B. Some of this happened to her too. And we'll talk about that in a minute. But it happened over and over again. At the river. He will pull her close in the river where you can't see. You're under the water. In the car. Remember she talked to her about the time she went to pick up her mother and he touched her in the seat of the car and asks if she wants to pull over. This is before she is 11 yes, sir old.

He has inserted fingers into her. That is CSC with a minor in the first degree. I submit intercourse also happened. She told you about her 11th birthday. She said he had to have sex before she go to

Carowinds. She just wanted to go to Carowinds for her birthday. But no, we have to sexually abuse her first. Remember the details she told you that was daytime in the parents' bed. Her mom is in the somehow. The other girls are are getting ready to go. She didn't want to do it. Takes her bottoms off. Makes her do it. She said, never mind I don't want to go to Carowinds, but he makes her do it. Her 11th birthday. She tells you about third time is a charm, right. Kids think funny things. Third time is a charm. She gets her period the May after her 11th birthday. Her birthday is in [redacted]. She gets her period in May. She thinks she's dying because she is bleeding because he's been sexually abusing her to the point of having intercourse now. And the 11th birthday is not the first time. So CSC with a minor, first degree, he all these times digital penetration that alone is enough to convict on that. But I submit intercourse actually began before the 11th birthday as well. The intercourse on the eleventh birthday, and anything after that in terms of intercourse and intrusion, however slight; which again we are talking digital penetration. That is CSC with minor, second degree. Her 11th birthday, CSC with minor, 2nd degree.

She told you about some other times that this happened. Some where he was successful. Some where he was not. Remember the time in her room. She is confined to her room. She's got the window open. She remembers these details because it was so heinous. Her whole life she has had to think about this and now she's finally getting to tell you.

Mom goes to Walmart, leaves her home alone. He ties to touch her. Remember the time she was sick. She told you she stayed home from school. She's sick. She so sick she doesn't want to eat. She thinks she's going to throw up. He's on the couch. Not working. He's on the couch and asked her to come to the couch and starts touching her. And as I recall I believe he puts his hands in her pants something of that nature and she says not today. She can't even be sick without this man touching on her.

Now, she didn't tell, right. She didn't tell until she was 13. She gets kicked out of the house. Leaves the house. Mom packs the bag. Whatever. Somehow she's out of the house. She's living with Uncle Jimmy and Aunt Michelle. Michelle -- remember Michelle testified, Michelle told you something wasn't right with Witness A. Her demeanor is not right. She asked Witness A one morning going to the bus stop. What is

happening to you? What happened? Her exact words, she asked her, what's going on? Is anything going on? And she does disclose daddy has been touching her. Remember at this point she still thinks it's daddy. Daddy has been touching her. Now why would she not tell. All right. So Witness A told you why she didn't tell. She said she felt threatened and afraid. She was afraid of her mother. He told her her mother would kill her. She told you she didn't feel like she could tell help mom. She didn't want to get it trouble. It was help dad. Because it's dad she didn't know if it was formal. She didn't know. She knew how it made her feel. But she didn't know she needed to tell. When she was asked she told. She told. And after she told what happened? All right, so she is living with Jimmy and Michelle and Michelle tells her we need to tell. We need to tell some other people, right. So grandma gets notified. Lois. Remember Lois had taken care of her when she was a young child. Lois told you that and then Lois gets her again when she's 13 after this all comes out. She's been with Michelle and Jimmy maybe a couple of weeks. Disclosure comes out. Now Lois is going to take care of her and the school is notified. Witness B told you. We now have DSS, law enforcement involved.

Michelle told you the same thing as far as DSS and law enforce. Remember Witness B told you their that's conversation in the principal's office at the school. So now we got -- we're looking into Witness B and what els is going on.

In terms of the disclosure we just don't have Witness A telling you today what happened but we do have these other witnesses that say yes, she told back then. She told us that he was touching her. After Michelle asked we had Michelle telling you what she told Michelle that was happening over and over and over again. And remember Michelle told you about how Witness A demeanor was when she disclosed this to her. You have Lois saying, yeah, she told me that too. Lois didn't tell her to say it. Lois told you she didn't tell her to say it. Witness A told you she didn't her to say it. We also have Kristen, Sled agent, who was with Lancaster Police Department at the time. Kristen told you the same thing. Yes, she disclosed. This had been going on including intercourse. Margo Dixon, the forensic interviewer. Forensic interviews are designed to be conducted in a controlled environment. What did she state, to tell the truth. What did she say; at home, in the bedroom, living room, children's room beginning at the age of

three, intercourse on 11th birthday until 13. It went on until she got out of the home at 13.

Let's talk a little more about the disclose. You heard from the expert, David Kellin. An expert in child maltreatment, child abuse dynamics and child disclosure. And he talked with you about reasons a child may not disclose and other aspects of child maltreatment and the dynamics of abuse. He didn't know anything about this case. He told you he had not talked about anybody involved in this case. It was just to help you understand and put some things in perceptive. You all have to decide the facts. Don't forget David's testimony when you're looking at what happened here. Reasons not to disclose; fear, blame, love for the abuser, loyalty to the abuser. Witness A told you those things. She told you that. He never talked to her.

Grooming; the process of adaption to increase the behavior to where it feels normal. She told you she didn't know if it was normal. Delayed disclosure; minimization, prompted disclosure. He talked about the ways it comes out. That's what we have here, we have a delay in disclosure in a sense that it was going on for years, over and over again. But when she was asked, when someone who cared enough to ask who

saw the signs and asked, she told. She told. And she was consistent after she told. Remember false denials and false disclosures. Not a lot of times we get false disclosures. More common to get false denial. Recantation. Witness A never recanted. Never. Never, ever. Witness B -- you heard from Witness B. And we are going to talk about her specific testimony in just a minute. But Witness B did. Think about that. She still in the home. L.M. makes her sit down and confront her abuser. Mom is upset. The world is upside down. Of course she recanted. What did David tell about recanting, when you're feeling pressure. Yeah, she couldn't stick with the truth. She had to recant. She told you today why she recanted. And she told you -- she told you yesterday why she recanted and what really happened. Risk factors; can't talk to the parent, right. How about L.M.? Witness A couldn't talk to L.M. . You're not going to hear anyone tell you -- the judge is not going to instruct you that the victim has to be corroborated. You are not going to hear that there has to be any sort of physical evidence shown to you. There doesn't have to be corroboration, but I submit there is corroboration in the sense that we had the disclosure witnesses come and tell you that Witness A was consistent. Also

remember how she says it effected her family. Her little girl. She's a nursing assistant now. Palliative care. She has her own little girl and husband. She's very protective of her little girl now. Remember what she said about when she was a little girl and all this came out and she was suicidal, rebellious, angry. Lois told you when she lived with her she was angry. She went to treatment.

For 15 years her story stayed the same. Through nobody's fault in this courtroom this case got old. She didn't wait until 2017 to tell. She told in 2002. Nobody's fault in this courtroom it took 15 years to get here. But we are here and she's got no reason not to tell the truth now. If grandma made her do it way back when or made Witness B do it way back then why are they going to stick with that now. That doesn't make any sense. They've got their own families. In fact they told you this is hard on the family to keep going with this. It would be a whole lot easier to say, yeah man, we were scared. Our parents were strict. Grandma put us up to it. Whatever. Put your family back together now. But instead they are telling you what really happened. Because it happened. Lois testified she told you that Witness A did disclose sexual assault. She told you she didn't put her up to

that. She wouldn't put anybody up to that. The defense would have you believe with Lois moving to Texas and all these dynamics about where Lois was living and Lois getting into fights with the defendant and whether she called 911. No, she didn't put Witness A up to it. We're talking about sexual assault and not where Lois lived and whether she paid rent. And even if that were true 15 years ago why are they going to come in here now and continue to say they were sexually abused.

So let's talk about Witness B's testimony. Witness B also said she was sexually assaulted. She didn't testify that it went as far as it went with Witness A. The last incident with her was third grade. Remember that she is a little bit younger than Witness A. Some time after that DSS is getting involved. But what she said to you is it started the same way. It's common scheme by the defendant. He takes his position as the father, daddy -- they call him daddy -- to groom these girls and normalize it and meet his own sexual desires. He started with her the same way; three or four, touching in her panties, on his lap, in the house, in the home. She told you mom's not there. In the home where they are suppose to feel safe. This is what he is doing.

Let's talk about the mom whether she's home or not. Okay. So L.M. testified. She acknowledges that she kicked the girls out over and over again but she tells me she didn't kick them out. She helped them pack. Follow the rules or get out I think is what she acknowledged. She says she's been abused so she was over protective. She been in here to hear David Kellin's testimony. I think it's awfully convenient that suddenly she abused and over protective. She's really over protective she is kicking the girls out. Remember she says to you, yeah, they can go with Michelle, then can go with Jimmy, then go with Lois, but no, no, no, they can't be alone with her daddy. I'm so protective. That makes no sense. Makes no sense at all. She's protective that when the disclosures comes out she makes Witness B confront the abuser. And she lashes out at Witness A. Remember Witness A told you she talked to her after the conversation with Michelle. She lashed out at her. Supper protective mom. Yeah, she's real protective. Real, real protective. I submit to you her testimony does not come from a place of over protection or love of these girls. It comes from a place of protecting herself or the defendant. Because let's think about this. If this was happening in the home, while she is

the momma in the home maybe she needs to be thinking about her role in all this. She can't admit it happened right. So the defendant testifies and of course he denies everything. But let's think about that. Not only does he deny touching these girls he denies ever being alone with them. Are you kidding. You're the daddy and you are never alone with these girls. That's crazy. His testimony is not believable because of that. Just look at it. No. He denies so much it just doesn't make any sense. What we are looking at here is the defense of liar, liar. Witness A is lying. Witness B is lying. Everybody is lying. And when you are thinking about that you judge the credibility of the witnesses.

The judge is going to instruct on that. You decide what the truth is. You decide what the facts are and when you are looking at that you look at the credibility of the witnesses. Look at their demeanor on the witness stand. Look at what you think the truth is. Remember Witness A sobbing. Having to tell you this. Remember Witness B crying. Remember all that when you are deliberating.

Now, the State has the burden of proof. That is our job. We welcome that. The judge will instruct you on the full law of what that means, but it is

proof beyond a reasonable doubt. That doesn't mean beyond any doubt. You don't check your common sense at the door. It's proof that leaves you firmly convinced. You think he did it. Firmly convinced he did it, he did it.

I just want to show you these pictures one more time because I know with this delay we got an adult on the stand. We got to remember what happened to a little girl. State's two, she is nine. All right. He has penetrating her for years. State's one, five, about when it started. State's three -- actually that's state's one; 11 years. Carowinds. Can't go to Carowinds. Got to have sex. Witness A did not get to have a childhood like a normal little girl. He took her innocence. He used his position as daddy to abuse her. She didn't get to be a little girl.

The time for justice is here. Let's do justice today. Convict Guadalupe Morales because he sexually abused Witness A as a little girl.

Thank you for your attention and time.

THE COURT: Mr. Gregory.

MR. GREGORY: If it please the Court.

THE COURT: Sir.

MR. GREGORY: Mr. Foreman, ladies and gentlemen of the jury, I want to thank you again for your service

in this case for the the last two days and today.

As a father and grandfather much of the testimony in this case has been difficult for me to hear and I am sure it's probably been difficult for you to hear.

MS. BURCHSTEAD: Your Honor, objection. He's personalizing.

THE COURT: I will him go forward just a little bit. Just don't dwelling on that Mr. Gregory.

MR. GREGORY: As an attorney in practice for over 45 years I have seen and heard children used as pawns, for vindictive purposes against their parents. I have seen children coerced by others to tell untruths.

MS. BURCHSTEAD: Your Honor, objection. He is testifying, facts not in evidence, personalizing.

THE COURT: Stick with the facts that have been introduced during the course of the trial Mr. Gregory. You are getting a little bit far afield from that.

There was no testimony with regard to that.

MR. GREGORY: Well, I believe these are the facts of the case. I am referring to coercion by others to tell untruths.

THE COURT: Stick with the facts of this case I don't have a problem and the testimony.

MR. GREGORY: It is not uncommon for that to happen. Mr. Morales has been supported -- he has

supported his family. He has helped feed and cloth his children, his grandchildren and he is been a loving partner to his wife and he has been law abiding person with no criminal charges for over 25 years while here in Lancaster. He has remained not only in the United States but in Lancaster while it would have been very easy for him to have fled. He's ready to put this behind him. Free himself of these unjust charges and declare his name.

During the last two days of testimony there have been some things that have come to the forefront that I feel that show reasonable doubt as to Mr. Morales' guilt. L.M. stated in her testimony that all three girls were examined by a physician and that results were provided to her. As a victim of child abuse herself had the results of the exam revealed abuse would she have stayed with Mr. Morales.

MS. BURCHSTEAD: Objection. Facts not in evidence.

THE COURT: She had no idea what the results were. She didn't testify about any results. We don't know what the results were.

MR. GREGORY: I am not testifying about the results. I am testifying about what happened. What she testified to.

She testified that they were examined and she received the results.

THE COURT: That's all.

MR. GREGORY: I'm not saying what the results are. I don't know what the results are.

Suppose the results of the examination had shown abuse would Mrs. Morales have stayed with Mr. Morales and allowed the children to stay with him in the home. Absolutely not. Since she was abused as a child herself the State's expert testified that she would be more protective, and also not nothing what the results of the physical examination were. If suppose they had been positive and shown abuse the State would have had the doctor come and testify and disclose the results to you. That did not happen.

Ladies and gentlemen of the jury and gentleman there is no physical evidence of abuse even though the three girls were examined by a physician.

Now Witness B, recanted her statement to her mother and said that the grandmother had told her to say that her father had abused her. And the police report was made of this recanting of Witness B. Although Witness B said that the molestation happened while her mother worked at night Mrs. Morales testified that she never worked at night except for one time three or four years ago

after the girls had left the home. Witness A said in her testimony that the mother was never around. However L.M. stated that she was always around the home and she would of course notice anything out of the or ordinary concerning the girls's welfare and safety. The opportunity for Witness A was not there.

Mr. Morales had never had a criminal record before these accusations, during these accusations, nor since these accusations were made. There has been no one else to accuse Mr. Morales --

MS. BURCHSTEAD: Objection.

MR. MORALES: -- of these offenses.

Witness B noticed -- noted that she was molested I believe three or four times if I'm not mistaken. You heard the testimony. The judge tells you to believe what you heard not what I say she said, but I believe she said she was molested three or four times.

The State's expert witness stated that once a molester begins their abuse it becomes more frequent. So three or four times during a 16-year period just does not make sense. And the fact that she continued to live in the home does not make sense. She stayed in the home until she was 16. I think she testified the last time she was abused was when she was age ten. And then the request that Witness B made of her father for

a paternity test means that she apparently doubts that he is her dad. And that's why she's decided to side with Witness A because he's not Witness A dad.

The only witness to Witness A abuse is Witness A herself. Even though she and her sister Witness B shared a bedroom that had no door. Witness B never corroborated her sister's story. She never said anything about seeing her father or Mr. Morales abuse Witness A. All of these things in my mind show reasonable doubt as to Mr. Morales's guilt.

I looked over the judge's charges that he is going to present and they are excellent. I don't need to go through and tell you what he is going to tell you about the law about presumption of innocence, about the test of beyond a reasonable doubt. But I would like you to keep those in mind. There's one central figure that keeps appearing in this case and you can probably guest who that is; the grandmother. Who does Witness A run too after she is been asked to leave the house and goes with her, the grandmother. Who takes Witness A to report the molestation to the officials and to the police; the grandmother. Who was with Witness A in the conference room at the school; the grandmother. Who takes Witness A to talk to the therapist about the abuse; the grandmother. Who does Witness B(sic) call

after being asked by Mrs. Rollins what's troubling her they go to a pay phone and who does she call; the grandmother. Why? Because she needed to know what to say. Who was asked to leave the home by Mr. Morales because of unsavory behavior in the home; the grandmother. Coercion, vindictiveness, hatred; the grandmother.

Ladies and gentlemen, this is not a Beaver/Cleaver family. That's for those who are old enough to remember leave it to Beaver. But I remember the judge remembers that show. This is not that type of family. This family is full of anger, hatred, and vindictiveness. The mother-in-law who loathed Mr. Morales for holding her accountable for her actions. The daughters that were ejected from the home and have bonded together with their grandmother because of many like circumstances. Could this happen to anyone? I am afraid it could even with lack of physical evidence.

Grandmother had motive. The grandmother had opportunity. Mr. Morales is not a child abuser. He is a victim of vindictiveness brought on by his mother-in-law. Mr. Morales is victim of untrue accusations and vindictive lies.

I want to thank you again for your attentiveness

and I would like to thank you for being such an intricate part of our system of justice. I ask you to please find in your heart to see through these untruths and give Mr. Morales his life back. A verdict of not guilty in this case would be like the leopard being healed by Jesus. Not only was he healed of his disease but the stigma associated with it as well. It's been a long time to be under this black cloud of suspicion. Please help Mr. Morales see the sunshine again.

Thank you.

THE COURT: Ms. Burchstead.

MS. BURCHSTEAD: Thank you, Your Honor. In reply just a few thoughts as you -- before you begin your deliberations.

The physical exam, again, you're not going to hear the judge instruct you that we need a physical report, or physical trauma shown. And recall Special Agent Grant told you it's law enforcement's understanding from a doctor doing the time/physical thing would be of no value. She testified as to that. This is not a physical case. It is a case about the testimony and what they told you happened. And again, look at the demeanor on the stand for that. And talking about being protective, the mom being protective, she's been

abused. I'm not going to rehash that. You saw her testify. I submit to you it is just wholeheartedly false.

Attacking Witness B for continuing to live in the home, she's still a kid. What she's suppose to do when you are having to confront your abuser. She actually told you she ran away a few times, right. She didn't really want to be there but what do you do.

The only witness is Witness A. Yeah, sex acts are private. You don't typically abuse in front of others. Your not going to have a smoking gun in a sex case. What you have is testimony that you can evaluate. Thank goodness she had Michelle who asked her. That goodness she had the grandmother. This isn't Lois's fault. It's 15 years later and they're still telling you it happened. Whatever beef happened, 15 years later. This isn't Lois's fault. This is the defendant's fault. Hold him accountable.

Thank you.

THE COURT: All right, ladies and gentlemen of the jury, we have reached the point in the trial where I charge you with the law that is to be applied to the facts that you heard from this witness stand this week. I remind you that during this trial you and I have both had certain duties to perform. As the trial

judge it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered here during the trial and you were inconvenienced several times when I had to do that. You were asked to leave the courtroom when the attorneys approach the bench.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have additional duty on to charge you the law applicable to this case. As presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is you must abandon this idea because you are sworn to accept the law and apply a law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the

facts in any case. A trial judge can not intimate, state, common on, or make any statement to a trial jury about the facts in the case. Since you, the jury are the sole judge of the facts of this case, you are not to infer from what I have said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you, that I have any opinion about the facts in this case. Because I do not. The law does not allow me to have have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine. As jurors, it is your duty to determine the effect, value, weight,, and truth of the evidence presented during this trial.

The indictments which we referred to earlier in the trial charge the defendant with criminal sexual conduct with minor, first degree; criminal sexual codnuct with minor, 2nd degree; and assault with intent to commit criminal sexual conduct the with minors, 2nd degree. I remind you that the fact that the defendant was arrested, charged and indicted in this case, is not evidence in this case and can not be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of

guilt. This document is simply are the formal written instrument which contains the charges made against the defendant. It is the formal documents by which this case is brought in to this courtroom.

Each indictment charges -- and again there are three -- charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it un influenced by your decision as to any other indictment. Very simply they are to be considered separate. Each three charges. The defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict of guilty or not guilty for each indictment.

The defendant has pled not guilty to these indictments, and that plea puts the burden on the State to prove the defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is important rule of the law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a

reasonable doubt. This presumption of of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a rob righteousness placed about the shoulders of the defendant which remains with the defendant until it has been stripped from the defendant by evidence satisfying you of the defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitled unless you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

Now, what is reasonable doubt. The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true then not true, such as by the greater weight or preponderance of the evidence. In criminal cases the State's proof must be more powerful then that. It

must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty. If on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

Now there are two types of evidence which are generally presented during a trial; direct evidence and circumstantial evidence.

Direct evidence is the testimony of a person who claims to have actual knowledge of a fact such an eyewitness. It is evidence which immediately establishes the main fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on

inference and not on personal knowledge or observation.

The law makes absolutely no distinction between the weight or value to be begin to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Now, I've always even as an attorney and since I've been a judge have a little bit of a problem with the definition of circumstantial evidence. I don't have a problem with the actual definition but it is hard to follow. I'm looking at it word-for-word and it still troubles me and I realize you may have had some trouble with it to. Let me give you an example that I've come up with that I think is a simple explanation of direct and circumstantial evidence.

If we were to go outside in a few minutes and look up at the sky and we see a jet plane flying across the sky. That's direct evidence. We see sit. We know what we are looking at a jet plane. If we go outside in a few minutes and look up at the sky and we see the

vapor trail that is left by a plane. We don't see the the jet plane. We don't know that the jet plane has been there but we know from the circumstantial evidence of vapor trail which is circumstantial evidence that there has been a plane flying across the sky we ask establish it that way. That's my simple explanation of what a direct and circumstantial shall evidence may be. Sometimes it's a little bit difficult to follow what we are instructed to give you. All right, that being said we need to talk about credibility it of the witnesses.

Necessarily, in any case particularly in this case you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. If becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of the same witness. You may believe the testimony of a witness in its entirety or reject the testimony of an a witness in its entirety. You

may consider whether any witness has exhibited to you any interest, bias, prejudice or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

Normally, a person in a trial can not give opinion testimony. Normally, when a person testifies they must testify as to what they either saw, heard, or sensed by smell or something of that nature. However, there is exception when someone is qualified because of education or experience. They are permitted to give their opinion in certain areas if the Court qualifies them that way. You heard one witness that was qualified in the area of child maltreatment and child abuse dynamics and disclosure and he gave an opinion and he gave opinion testimony in those areas. That does not mean that you must accept the opinions, but it is the evidence for you to use in any way you see fit and give the weight and credibility you believe is appropriate.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by a state for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.

Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There's no way to prove intent to a mathematical certainty. There's no way medical science can dissect a person's brain and determine what the person had in mind. So the law says that criminal intent maybe inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present. It's not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties and all the facts and circumstances of the case.

Criminal intent is a mental state, a conscious wrongdoing. It is up to you to determine what the defendant intended to do based on the circumstances shown to have existed.

Criminal intent can arise from action or a failure to act. It may arise from negligence, recklessness, or an indifference to duty or to consequences that is considered by the law to be equivalent of criminal intent.

Probable cause is a good faith belief that a person

has committed a crime when that belief rests on grounds that would make an ordinary prudent and cautious person, under the circumstances, to have the same belief. Probable cause for arrest in misdemeanor cases without a warrant is something more than a mere suspicion that the person committed a crime. An arrest made on a hunch, a mere belief, or guess unsupported by facts, circumstances or credible information showing that the person has committed a crime, is not made on probable cause. Probable cause is somewhere between suspicion and sufficient evidence to convict. In deciding whether there was probable cause to arrest, the probability cannot be technical, but must be based on factual and practical considerations of everyday life on which reasonable, prudent and cautios people act.

Now there has been evidence presented that witnesses had made prior statements which are not consistent with the witness' present testimony. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony begin at trial.

If a witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust the witness' testimony as on other matters. You may reject all testimony of that witness, or give all or part of the testimony the weight you think it deserves.

Now the defendant is charged with first degree criminal sexual conduct with minors. The State must prove beyond a reasonable doubt that the defendant 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 of a person's body or of any object into the genital and national or anal openings of another person's body except when the intrusion is is accomplished for medically recognized treatment or diagnostic purposes.

The State must then prove beyond a reasonable doubt that the victim was less than eleven years old at the time of the sexual battery.

Consent, willingness, indifference or ignorance on the part of the minor, if any, as to what was taking place does not in any way affect the charge of criminal sexual conduct with a minor because an

unmarried woman under the age of 14 can not legally concept to sexual intercourse.

The defendant is charged with second degree criminal sexual conduct with minors. The State must prove beyond a reasonable doubt that the defendant engaged in sexual battery with the victim.

And again, sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

The State must then prove beyond a reasonable doubt that the victim was at least 11 years old, but not more than 14 years old at the time of the sexual battery. Consent, willingness, indifference or ignorance on the part of the minor, if any, as to what was taking place does, not in any way affect the charge of criminal sexual conduct with a minor because again, an unmarried woman under the age of 14 can not legally consent to sexual intercourse.

In order to prove assault with intent to commit second degree criminal sexual conduct, the State again must prove beyond a reasonable doubt that the

defendant assaulted the victim in a attempt to engage in sexual battery with the victim.

An assault occurs when a person violently or forcefully attempts to hurt or injure another person and has the present ability to complete the attempted injury. An assault is the intentional creation of fear of immediately bodily harm.

A sexual battery again, is sexual intercourse, cunnilingus, fellation, anal intercourse or any intrusion, however slight, of any part of the person's body or of any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

The State must also prove beyond a reasonable doubt that the defendant intended to use aggravated coercion to accomplish the sexual battery.

Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent.

Aggravated coercion means that the defendant threatened to use force or violence of a high and aggravated nature to overcome victim or another person, if the victim reasonably believed the defendant had the present ability to carry out the

threat. Aggravated coercion may also exist if the defendant retaliate in the future by the infliction of physical harm, kidnapping, or extortion, under circumstances of aggravation, against the victim or any other person.

There are six possible verdicts ladies and gentlemen which you may find in this case: Guilty of criminal sexual conduct with minors, first degree; not guilty of criminal sexual conduct with minors, first degree; guilty of criminal sexual conduct with minors, second degree; not guilty of criminal sexual conduct with minors, second degree; guilty of assault with intent to commit criminal sexual conduct with minors, second degree; not guilty of assault with intent to commit criminal sexual conduct with minor, second degree.

There is no significance whatsoever in the order in which I state these possible verdicts. It is just simply one must be stated first.

Ladies and gentleman, your verdict must be a unanimous one. Mr. Foreman, when the jury agrees on the verdict you will write the verdict on the verdict form which I will provide to you to take into the jury room with you and then you will sign your name as foreperson on each one of the jury verdict forms. You

will then knock on the jury room and inform the bailiff that you have reached a verdict and at that time we will receive you back into the courtroom.

Now at this time I am going to ask everyone except the two alternates, Mr. Evans and Mr. Fowler, to retire to the jury room. As I cautioned you before do not begin your deliberations yet. There maybe some matters that we have to discuss with the attorneys, some legal matters or issues. They may have some objections to what I have said whatever. We have to clear up those matters. Once those matters are cleared up we will send word to you to begin your deliberations. We will have the photographs which are the only exhibits that have been introduced brought into the jury room at that point in time. But once the bailiff tells you to begin your deliberations you may commence those deliberations and we will have you back in the jury room at such point in time as you have reached any verdict. If there are any questions that arise during the course of your deliberations, Mr. Foreman those will be written down by you on a piece of paper that will be submitted back to me. At that point in time I will consider them with the attorneys and then we will address that question if you have any.

All right, you may retire to the jury room except the two alternates.

(WHEREUPON, the jury leaves the courtroom.)

THE COURT: All right Mr. Evans and Mr. Fowler, your service in this matter has concluded since everybody is available to go in and deliberate. You gentleman are welcome to stick around if you want to and see what the your fellow jurors decide with regards to the the case or you are free to leave at such time as you so desire. Again, as I said earlier I thank you from the State of South Carolina for your service in this matter. Our law clerk and I were talking on the way up here. What an awesome responsibility it is to serve on a jury, to have the responsibility of making a decision concerning one of your fellow citizens. But that's how our system works in this country and there's no better system that has been devised anywhere in this world even with its flaws which it may have. But again, I thank you for that. I know you didn't volunteer to do this and you were summons to do but you responded to summons and I appreciate that. You will be surprised that the people try to flee jury duty. So I appreciate you being one of them willing to come forward. If you gentleman wish to stay as I said you are welcome to

stick around and see how this thing turns out.

All right, counsel, any objection to my charge.

MR. GREGORY: No, Your Honor. I thought it was an excellent charge.

MS. BURCHSTEAD: No objection, Your Honor.

THE COURT: All right. If we have the exhibits out we'll get those and take them and tell them they may commence their deliberations.

Counsel, you saw the verdict forms did you not yesterday?

MS. BURCHSTEAD: I don't know that I looked at it. If I could take a quick peak.

(WHEREUPON, a document was shown to Ms. Burchstead.)

THE COURT: All right, bring this back to the jurors.)

(WHEREUPON, the jury began deliberating).

THE COURT: Counsel we already have a question from the jury. The jury requested Exhibit Four introduced by the State. I assume what they are referring to is the statement which was not introduced or admitted into evidence. It was just marked for identification purposes only. It's not really an exhibit. So I will send instruction back that it was not admitted into evidence therefore it's not an exhibit.

MS. BURCHSTEAD: Right, I just questioned him about it.

MR. GREGORY: I'm going to be honest though, be advised not to consider what was in essence is not in evidence.

MS. BURCHSTEAD: Well, they don't have the document.

THE COURT: They can consider the testimony just because they don't have the document doesn't matter.

MS. BURCHSTEAD: He denied everything I asked him.

THE COURT: Right. If you tell them it was not admitted into evidence. It was only marked for identification purposes and therefore it's not an exhibit, so it is not something we can submit to them.

(WHEREUPON, the jury continues deliberations.)

THE COURT: All right. I understand we have a verdict.

THE CLERK: Yes, sir.

THE COURT: Counsel are you ready for the jury to come in with a verdict.

MR. GREGORY: Yes, Your Honor.

MR. BURCHSTEAD: Yes, Your Honor.

THE COURT: Okay, bring them in. .

All right, Mr. Foreman have you reached a verdict.

MR. FOREMAN: Yes, Your Honor.

THE COURT: Would you pass it up please to the clerk.

All right, Mr. Hammond will you publish the verdict please.

THE CLERK: Sure will Your Honor. Case now 2016-GS-29-564, the State of South Carolina versus Guadalupe Morales, the defendant, we the jury find the defendant, Guadalupe Morales, guilty of assault with intent to commit criminal sexual conduct with minors, Second degree. Signed W. E. Sims, Foreperson, date August 22, 2017.

Case 2016-GS-29-565, State of South Carolina versus Guadalupe Morales, the defendant, we the jury find the defendant, Guadalupe Morales, guilty of criminal sexual conduct with minors, second degree; W. E. Sims, foreperson, August 22, 2017.

Case number 2016-Gs-29-559, the State of South Carolina versus Guadalupe, Morales, the defendant, we the jury find the defendant, Guadalupe Morales, guilty of criminal sexual conduct with minors, first degree; W.E. Sims, foreperson, August 22, 2017.

Ladies and gentlemen of the jury if this be your verdict say so you all by the raising of your right hands. Let the record reflect all jurors raised their right hands.

THE COURT: Does the defendant wish for the jury to be polled?

MR. GREGORY: I am sorry.

THE COURT: Do you wish for the jury to be polled.

MR. GREFORY: No, Your Honor.

THE COURT: Thank you Mr. Hammond.

All right, Mr. Foreman, ladies and gentlemen of the jury, you have now completed your duties as jurors in the trial of this case. I want to tell you at this point in time you are free to discuss this and your verdict with anybody that you want to at this point in time. However, if you wish not to discuss it with anybody you certainly have that right as well and you don't have to talk to anybody about it you don't want to. Or if you decide to talk to somebody and after you talked to for a little while you decide you don't want to talk to them any more you break it off and tell them you don't want to talk any more. If someone were to try to bother you or harass you with regards to your verdict and want to talk to you about it and you don't want to talk about it you report that to Mr. Hammond, who your Clerk of Court, who in return will get in touch with the Court and we will take care of that situation for you.

Now, as I told you earlier, I, on behalf of the

State of South Carolina, sincerely appreciate the service you have rendered to the State of South Carolina. I was telling the two alternates after you went into the the room for your deliberations that my clerk and I were talking on the way up here today and I have been doing this for forty years, but that never stops making me think about what an awesome responsibility it is for people to serve on a jury. It's something that no one really looks forward in doing. Nobody volunteered for this but you all responded to the summons when you were requested to be here and you are performing your civic duty. Probably the most important civic duty that can be performed by a citizens in this country.

It's always difficult to have to sit in judgement of a fellow citizen but you've taken that responsibility and you have worked diligently. Again, I appreciate it on behalf of the State of South Carolina. I realize that you don't receive much compensation for this but you don't really do it for compensation, you do it for the civic service. That being said you will be excused. Are they excused for the week?

THE CLERK: They are, and if you need a work excuse just go down the bailiffs will take you to the

clerk's office if you need a work excuse and on behalf of Lancaster county thank you for your service.

THE COURT: Any jurors have any questions that you with like to ask the Court.

Okay, again thank you so much for your service and we look forward to seeing you some time again in the future.

If you are interested in seeing the sentencing you are welcome to stick around. When you leave you come back around in to the courtroom. That's entirely up to you. If you wish to do that you may come back around. So, again, totally up to you. I will delay sentencing for a little while in order to give you an opportunity to come back in the courtroom if you so desire.

(WHEREUPON, the jurors leave the courtroom.)

THE COURT: All right, if you'll bring the defendant forward please.

Before I hear from the defendant does the State have anything else they would like to present to the Court concerning sentencing.

MS. BURCHSTEAD: Your Honor, you've heard the facts of the case and we had been discussing the potential penalties. I believe the Court does understand penalty is up to thirty years for CSC

first, up to 20 for CSC with a minor second and up to 20 for the assault with intent to commit. I would just reiterate to the Court the current potential sentence for CSC first is 25 to life. Based on that we believe society views this as a crime where punishment is appropriately at least 25 years. Based on that I would ask for a sentence of at least 25 years. Beyond that I would just ask that we allow Witness A to address the Court. She's the Witness A in this case.

THE COURT: Certainly.

MS. BURCHSTEAD: She's going to sit at the table if that's all right.

THE COURT: Just make sure the microphone is on so we can hear.

MS. BURCHSTEAD: Yes, sir.

THE COURT: Witness A .

MS. BURCHSTEAD: She is going to read to you Your Honor.

Witness A : Good morning Your Honor. First I would like to thank everyone for listening to my case and I know it has been hard and no one wanted to hear the things that they heard, but for a person to do something and ask for forgiveness and it not be wrong any more is something I can live with. I could

forgive. However, this wasn't the case we were dealing with this week. I have given a lot of thought in asking for reasonable judgement for a person who had molested, raped, intimidate and bullied me along with calling me a liar and tearing my family apart. While some people thing molestation and rape is only physical abuse of a person I'm here to tell you, tell all ever you, it's not only physical; its physical, emotional and mental. It's always social abuse in a way that I was confined most of the time to the home. After asking my grandma and my uncle if it was okay for me to spend the night I still wasn't allowed to. I often felt the reason was to have me at his disposal. I could not look at, have or talk to any male friends or I would get yelled at and threatened that he was going to beat my ass. Eventually I didn't even want friends and would push people away from me so I wouldn't get hurt more than I was already being hurt. Also because I had this very bad secret that if I let slip I was often told my mom would kill me. But the truth is finally out.

All this time I have been hearing this case is 15 years old. He has gotten away with it for more than 15 years. I'm currently 28 years old and this started when he was about four. This means he has gotten away

with this for about 24 years. And this 24 years he's also managed to tear my family apart and at times turn them against me. I know that all of this could have been avoided if I had told the truth sooner when I was four, but I was scared. Another way this could have been avoided is by him being honest about it 15 years ago. That the best way for all of this to have been avoided was for him not to commit the wrongdoings in the first place and being a good parent like he was suppose to. Whether he was a biological father or a stepparent I spent about 24 years with the guilt of not confining in someone sooner to tell them what was going on at the time. These past few days I have been relieved of that guilt.

Today I am going to ask you, Your Honor, for the maximum sentence and then for him to face deportation. I hope that some time he will tell the truth and find mercy in God.

I thank everyone here for their time, your compassion in allowing me to finally get the truth out. May God bless you all and be with you always. Thank you.

THE COURT: Anything else from the State.

MS. BURCHSTEAD: No, Your Honor. Thank you.

THE COURT: Mr. Gregory.

MR. GREGORY: Your Honor, if it please the Court. As the presiding judge over this case you probably learned a good bit about Mr. Morales's background; work history, family history. He is now in the country under a temporary residence card which will come up for renewal within a year, I think. And I imagine with the conviction now he will probably be denied and they may institute deportation proceedings. I really don't know. That's my guess.

In regards to the sentence, Marie Saison (phonetics) who was the previously prosecuting this case for the Attorney General's office had offered Mr. Morales an opportunity to plead guilty and receive a sentence of 15 years. You are aware of Mr. Morales's position. He denied that this occurred. He plead not guilty, and he maintained his innocence so he therefore rejected the offer proposed by Marie Saison of 15 years.

Your Honor, he has no record. I've checked his record. He has got some traffic violations. Something like that. Something that everybody has and there is nothing else on his record. The only thing on his record. He's too old for youthful offender but I think if you take that into consideration you may find a sentence a little bit less than what the State

is proposing would be appropriate.

THE COURT: Mr. Morales, do you want to say anything sir?

THE DEFENDANT: I want to say to my wife, take care of my two little kids that I have at home now that I am not going to be around any more. And my girls, I always loved them. I worked hard for them. I never did anything wrong. I worked for them to provide food for the house so they can eat and now that I'm not going to be around I hope they don't have any regrets about what they say. I guess that is all I have to say.

THE COURT: The jury has spoken in this case and they have spoken loudly and clearly and they have found Mr. Morales guilty of all three charges contained in the indictments. All three of these offenses are serious. Some of the most serious crimes that can be committed in the State of South Carolina. These crimes are disgusting and despicable to the Court. Anybody that preys on young children like this and young girls as they grow in my opinion doesn't deserve a whole lot of of mercy.

I heard from the State and from the defendant as to what they think would be appropriate sentences in this matter. The State of South Carolina provides me with

the authority to sentence as I deem appropriate and I will do so.

With regards to these crimes, sentence of the Court with regards to indictment 2016-GS-29-559, criminal sexual conduct with a minor first degree, sentence of the Court is you be committed to the State Department of Corrections for a term of thirty years. As to indictment 2016-GS-29-565, criminal sexual conduct, second degree with a minor, sentence of the Court is you be committed to the State Department of Corrections for a term of ten years. This will run consecutive with the thirty-year sentence. As to indictment 2016-GS-29-564, assault with intent to commit criminal sexual conduct, second degree with a minor, sentence of the Court is you committed to the State Department of Corrections for a term of ten years. That sentence will run consecutive with the first two sentences. Concurrent. I am sorry, concurrent. I meant concurrent. I took my glasses off. That will run concurrent. So it is a total of 40 years.

Good luck to you.

MR. GREGORY: Your Honor, 565 was consecutive to the 30-year sentence?

THE COURT: Five sixty-four is concurrent. Five

sity-five is consecutive.

MR. GREGORY: All right. So you got a sentence and another one consecutive and then the third one was concurrent.

THE COURT: Concurrent.

MR. GREGORY: Thank you, Your Honor.

THE COURT: The assault with intent to commit is concurrent. First two are consecutive. Total of 40 years.

MR. GREGORY: All right. Thank you, Your Honor.

THE COURT: Thank you.

Witness A : Thank you, Your Honor.

THE COURT: Anything else from the State or the defendant?

MS. BURCHSTEAD: No, Your Honor. Thank you.

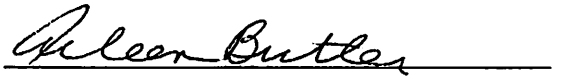
(END OF TRANSCRIPT)

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Lancaster County, South Carolina, on the 21-23rd of August, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 3, 2017



ARREST WARRANT

H-067093

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of Lancaster

THE STATE

against

adalupe Guzman Morales
dress: [redacted] Paladin Road
Lancaster, SC 29720
me: SSN:
: M Race: H Height: Weight:
State: SC DL#:
B: [redacted]/1970 Agency ORI#: SC0290100
secuting Agency: LANCASTER POLICE DEPARTMENT
secuting Officer: Sgt. A.P. Parsons
ense: Criminal Sexual Conduct with a Minor, Second
legree Offense Code:
de/Ordinance Sec. 16-3-655 (2)

403

warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused to be arrested and brought before me to be alt with according to law.

_____ (L.S.)
Signature of Judge

te: _____

RETURN

copy of this arrest warrant was delivered to
lendant C. Morales
10 29 02
Signature of Constable/Law Enforcement Officer

TURN WARRANT TO:
ethryn A. Hayes, Associate Judge
O. BOX 1149
ter, SC 29721
1171

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of Lancaster

AFFIDAVIT

Form Approved by S.C. Attorney General July 28, 1990 SCCA 618

Personally appeared before me the affiant Sgt. A.P. Parsons who being duly sworn deposes and says that defendant Guadalupe Guzman Morales did within this county and state between July 1, 2000 & July 31, 2000 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster) in the following particulars:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct with a Minor, Second Degree

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

One Guadalupe Guzman Morales did commit second degree criminal sexual conduct against his stepdaughter, [redacted] who is now thirteen (13) years old, in her home at [redacted] now lives with her grandmother at [redacted]) During an interview by Margo Dixon at Palmetto Citizens Against Sexual Assault Center, [redacted] stated that Morales has been touching her inappropriately since she was three or four (3 or 4) and has forced sexual intercourse on her six (6) times. She states this happened sometime in July of 2000 when she was 11 after the family had returned from the river. Her mother and sister went to the store and her stepfather Morales came into the living room, removed her pants, and inserted his penis into her vagina. [redacted] did not tell anyone because once Guadalupe told her her mother would kill them both.

Sworn to and subscribed before me on 10/29/2002
Kathryn A. Hayes (L.S.)
Signature of Issuing Judge

Signature of Affiant
Affiant's Address P. O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone (803) 283-1171

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of Lancaster

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on July 1, 2000 & July 31, 2000 defendant Guadalupe Guzman Morales did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Criminal Sexual Conduct with a Minor, Second Degree

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Kathryn A. Hayes (L.S.)
Signature of Issuing Judge
Judge Code: _____

Judge's Address P. O. BOX 1149
Lancaster, SC 29721
Judge's Telephone (803) 283-1171
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

DEFENDANT COPY

H-067093 Xref #: 2002-22417

between

OCT-03-17 10:56 AM Gregory&GregoryAttorneys 8003753839 P.02

399

ARREST WARRANT

H-067094

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of Lancaster

THE STATE

against

uadalupe Guzman Morales
ddress: [redacted] Paladin Road
Lancaster, SC 29720
hone: _____ SSN: _____
ex: M Race: H Height: _____ Weight: _____
State: SC DL#: _____
OB: [redacted]/1970 Agency ORI#: SC0290100
rosecuting Agency: LANCASTER POLICE DEPARTMENT
rosecuting Officer: Sgt. A.P. Parsons
ffense: Attempted Criminal Sexual Conduct with a Min
or, Second Degre Offense Code: _____
ode/Ordinance Sec. 16-3-656[illegible] (K)

his warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of _____. The accused s to be arrested and brought before me to be lealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant [illegible] Saunders on 10/29/02.

[illegible]
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
Kathryn A. Hayes, Associate Judge
P. O. Box 1149
Lancaster, SC 29721
[illegible]171

AFFIDAVIT

Form Approved by: S.C. Attorney General July 26, 1990 SCCA 518

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Lancaster)

Personally appeared before me the affiant Sgt. A.P. Parsons who being duly sworn deposes and says that defendant Guadalupe Guzman Morales did within this county and state on April 23, 2001 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster) in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degre

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

One Guadalupe Guzman Morales did attempt to commit second degree criminal se[illegible]act against his [redacted]ghter, [redacted] who is now thirteen (13) years old, in her home a[redacted] [redacted] now lives with her grandmother at [redacted] On her twelfth (12th) birthday when her mother was in the shower, Morales called [redacted] into his room, pulled her onto his bed, took down his pants, and attempted to force her to have sexual intercourse with him. Jessica states that she was able to fight him off. She did not tell her mother because one time Morales told her that if her mother found out she would kill them both.

Sworn to and subscribed before me on 10/29/2002
Kathryn A. Hayes (L.S.)
Signature of Issuing Judge

Signature of Affiant
Affiant's Address P. O. BOX 1149
Lancaster, SC 29721
Affiant's Telephone (803) 283-1171

ARREST WARRANT

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of Lancaster)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on April 23, 2001 defendant Guadalupe Guzman Morales did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster) as set forth below:

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degre

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Kathryn A. Hayes (L.S.)
Signature of Issuing Judge
Judge Code: _____

Judge's Address P. O. BOX 1149
Lancaster, SC 29721
Judge's Telephone (803) 283-1171

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

DEFENDANT COPY

H-067094 Ref #: 2002-22417

404

400

OCT-03-17 10:57 AM Gregory&GregoryAttorneys 8037538390 P.03

401

ARREST WARRANT

H-067095

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of Lancaster

THE STATE

against

adalupe Guzman Morales
dress: [redacted] Paladin Road
Lancaster, SC 29720
one: _____ SSN: _____
x: M Race: H Height: _____ Weight: _____
State: SC DL#: _____
OB: [redacted]/1970 Agency ORI#: SC0290100
osecuting Agency: LANCASTER POLICE DEPARTMENT
rosecuting Officer: Sgt. A.P. Parsons
ffense: Attempted Criminal Sexual Conduct with a Min
or. Second Degre Offense Code: _____
ode/Ordinance Sec. 16-3-656

This warrant is **CERTIFIED FOR SERVICE** in the ☒ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant G Morales on 10/29/02.

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
. Kathryn A. Hayes, Associate Judge
. O BOX 1149
ster, SC 29721
-1171

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Lancaster)

AFFIDAVIT

Personally appeared before me the affiant Sgt. A.P. Parsons who being duly sworn deposes and says that defendant Guadalupe Guzman Morales did within this county and state Between May 1, 2001 & May 31, 2001 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster) in the following particulars:

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degre

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

One Guadalupe Guzman Morales did attempt to commit second degree criminal sexual conduct against his stepdaughter [redacted], who is now thirteen (13) years old, in her home at [redacted]. [redacted] now lives with her grandmother at [redacted] In May of 2001 when [redacted] was twelve (12) and was home sick from school. Morales took her clothes off while they were in the living room and attempted to penetrate her vagina with his penis. Jessica states that she was able to fight him off. She did not tell her mother because one time Morales told her that if her mother found out she would kill them both.

Sworn to and subscribed before me on 10/29/2002

Kathryn A. Hayes (L.S.)
Signature of Issuing Judge

Signature of Affiant

Affiant's Address: P. O. BOX 1149
Lancaster, SC 29721

Affiant's Telephone: (803) 283-1171

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of)
Lancaster)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that defendant Guadalupe Guzman Morales did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Lancaster) as set forth below:

Between on May 1, 2001 & May 31, 2001

DESCRIPTION OF OFFENSE: Attempted Criminal Sexual Conduct with a Minor, Second Degre

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Kathryn A. Hayes (L.S.)
Signature of Issuing Judge

Judge Code: _____

Judge's Address: P. O. BOX 1149
Lancaster, SC 29721

Judge's Telephone: (803) 283-1171

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

DEFENDANT COPY

H-067095 Ref #: 2002-22417

WITNESSES

Valerie Williams – SC Attorney General's Office

ARREST WARRANT/TICKET NUMBER

Direct Presentment

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 19 2016

VERDICT

Foreperson of Petit Jury

Date:

Docket Number 2016-GS-29-559

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MAY Term 2016

THE STATE

vs.

Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales

DEFENDANT

Indictment for

Criminal Sexual Conduct with Minors First Degree

SC Code: 16-3-655(1)
CDR Code: 159

Felony/A

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
CLERK OF COURT
LANCASTER, SC
2016 MAY 19 AM 12:49

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 19, 2016 the Grand Jurors of Lancaster County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS – FIRST DEGREE

That in Lancaster County, South Carolina, between the dates of December 1, 1999 and April 22, 2000, the Defendant, Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales, did commit a sexual battery upon a minor, Witness A DOB: [redacted]/1989, who was less than eleven years of age. In violation of §16-3-655(1) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ALAN WILSON/SMS
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

Valerie Williams – SC Attorney General's Office

ARREST WARRANT/TICKET NUMBER

H-067094

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 19 2016

VERDICT

Foreperson of Petit Jury

Date:

404

Docket Number 2016-GS-29-564

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

MAY Term 2016

THE STATE

vs.

Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales

DEFENDANT

Indictment for

Assault with Intent to Commit Criminal Sexual Conduct with Minors Second Degree

SC Code: 16-3-655(2), 16-3-656
CDR Code: 159

Felony/C

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
CLERK OF COURT
2016 MAY 19 AM 12:43
CLERK OF COURT
LANCASTER, SC

408

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 19, 2016 the Grand Jurors of Lancaster County present upon their oath:

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT WITH MINORS - SECOND DEGREE

That in Lancaster County, South Carolina, between the dates of April 1, 2001 and September 1, 2001, the Defendant, Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales, did attempt to commit a sexual battery upon a minor, Witness A DOB: [redacted]/1989, who was fourteen years of age or less but at least eleven years of age. In violation of §16-3-655(2) and §16-3-656 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ALAN WILSON/SMS
SOUTH CAROLINA ATTORNEY GENERAL

WITNESSES

Valerie Williams – SC Attorney General's Office

ARREST WARRANT/TICKET NUMBER

H-067093

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 19 2016

VERDICT

Foreperson of Petit Jury

Date:

406

Docket Number 16-GS-29-565

The State of South Carolina

County of Lancaster

COURT OF GENERAL SESSIONS

__MAY __ Term 2016

THE STATE

vs.

Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales

DEFENDANT

Indictment for

Criminal Sexual Conduct with Minors Second Degree

SC Code: 16-3-655(2)
CDR Code: 159

Felony/C

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury

Defendant

I, _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. Pls. And G.S.

FILED
OFFICE OF CLERK
OF COURT
2016 MAY 19 AM 12:43
CLERK OF COURT
LANCASTER, SC

410

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER)

INDICTMENT

At a Court of General Sessions, convened on May 19 ,2016 the Grand Jurors of Lancaster County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH MINORS – SECOND DEGREE

That in Lancaster County, South Carolina, between the dates of April 23, 2000 and September 30, 2000, the Defendant, Guadalupe Morales a/k/a Guadalupe Guzman Morales a/k/a Guadalupe Melqueades Morales, did commit a sexual battery upon a minor, Witness A DOB: [redacted]1989, who was fourteen years of age or less but at least eleven years of age. In violation of §16-3-655(2) of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

ALAN WILSON/SMS
SOUTH CAROLINA ATTORNEY GENERAL

STATE OF SOUTH CAROLINA)
COUNTY OF Lancaster)
STATE VS.)
Guadalupe Guzman Morales)
AKA:)
Race UNKNOWN/O Sex: M Age: 46)
DOB: [redacted]1970 SS#:)
Address: [redacted] Paladin Road)
City,State,Zip: Lancaster, SC 29720)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2016GS2900559
A/W#. ~~H067092~~ Direct Presentment
Date of Offense: 10/29/2002
S.C. Code § : 16-03-0652
CDR Code #: ~~0160~~ 151

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Sex / Criminal sexual conduct - First degree (Not More than 30 years)
in violation of § ~~16-03-0652~~ 16-3-655(1) of the S.C. Code of Laws, bearing CDR Code # 0160
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Maggie B Bouchette 71716 _____ _____ _____
General, Attorney SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on. _____
☐ The Defendant is to be given credit for time served pursuant to S.C Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total. $ _____ plus 20% fee: _____ $ _____
Payment Terms _____
☐ Set by SCDPPPS _____
Recipient: _____

*Fine.		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other. _____

☐ Appointed PD or appointed other counsel, Proviso 61 6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk D. H. Raymond
Court Reporter H. Lastly Stubbs
Presiding Judge
Judge Code: 2754
Sentence Date: 9-23-17

SCCA/217 (07/2016)

409

STATE OF SOUTH CAROLINA)
COUNTY OF Lancaster)
STATE VS.)
Guadalupe Guzman Morales)
AKA:)
Race: UNKNOWN/O Sex: M Age: 46)
DOB: [redacted]-1970 SS#:)
Address: [redacted] Paladin Road)
City,State,Zip: Lancaster, SC 29720)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900564
A/W#: H067094
Date of Offense: 10/29/2002
S.C. Code §: ~~16-03-0653~~ 16-3-655(2), 16-3-654
CDR Code #: ~~0161~~ 0159

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: ~~Sex / Criminal sexual conduct - Second degree~~ (Not More than 20 years) Assault with Intent to Commit CSCSW
in violation of § ~~16-03-0653~~ 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # ~~0161~~ 0159
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____ 71716 _____ _____ _____
General, Attorney SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2016-GS-29-00559
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee. _____ $ _____
Payment Terms _____
☐ Set by SCDPPPS _____
_____
Recipient _____

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv Surcharge)	$100	$
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61 6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(DUI Breath Test Fee)	$50	$
§ 56-5-2940(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$ 128.75

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk _____
Court Reporter _____
Presiding Judge _____
Judge Code: 2754
Sentence Date: 5-25-17

SCCA/217 (07/2016)

410

STATE OF SOUTH CAROLINA)
COUNTY OF Lancaster)
STATE VS)
Guadalupe Guzman Morales)
AKA:)
Race: UNKNOWN/O Sex. M Age: 46)
DOB: [redacted]-1970 SS#:)
Address: [redacted] Paladin Road)
City,State,Zip: Lancaster, SC 29720)
DL#: SID#:)
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS2900565
A/W#: H067093
Date of Offense: 10/29/2002
S.C. Code § : 16-03-0653
CDR Code #: ~~0161~~ 155

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Sex / Criminal sexual conduct - Second degree (Not More than 20 years)
in violation of § ~~16-03-0653~~ 16-3-655(2) of the S.C. Code of Laws, bearing CDR Code # 0161
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is. ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Megan B Burkhalter 71716
General, Attorney SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2016-GS-2900559
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee _____ $ _____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 61.6 (Public Def/Probation)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
3% to County (if paid in installments)		$
TOTAL		$

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires $500 be paid to Clerk during probation and shall be collected before any other fees

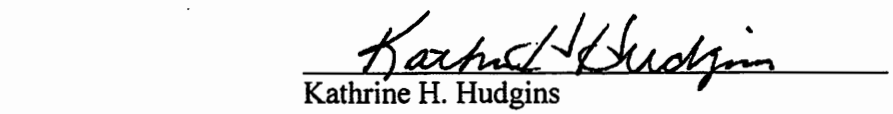
Clerk of Court/ Deputy Clerk Eileen Butler
Court Reporter
Presiding Judge
Judge Code: 2754
Sentence Date 6-23-17

SCCA/217 (07/2016)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 3rd day of January, 2019.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ON REMAND FROM THE SOUTH CAROLINA SUPREME COURT

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GUADALUPE GUZMAN MORALES,

APPELLANT

APPELLATE CASE NO 2017-001796

MEMORANDUM ADDRESSING IMPACT OF
State v. Perry, 430 S.C. 24, 824 S.E.2d 654 (2020)

KATHRINE H. HUDGINS
Appellate Defender

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

ATTORNEY FOR APPELLANT

MEMORANDUM

In State v. Perry, 430 S.C. 24, 44, 842 S.E.2d 654, 665 (2020), decided after this Court affirmed the present case, State v. Morales, Op. No. 2020-UP-01 (S.C. Ct.App. Filed January 8, 2020), but while the petition for writ of certiorari was pending, the South Carolina Supreme Court overruled State v. Wallace, 384 S.C. 428, 434, 683 S.E.2d 275, 278 (2009), where the Court found that "A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility." Instead, in Perry, the Court looked to the traditional Rule 404(b), SCRE, analysis found in State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and other pre-Wallace cases and held that:

> The State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes "reasonably tends to prove a material fact in issue." 125 S.C. at 417, 118 S.E. at 807. The State must also convince the trial court that the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes. Rule 403, SCRE. Whether the State has met its burden "should be subjected by the courts to rigid scrutiny," considering the individual facts of and circumstances of each case. 125 S.C. at 417, 118 S.E. at 807.

Perry, 430 S.C. at 44, 842 S.E.2d at 665.

On September 23, 2020, the South Carolina Supreme Court granted the petition for writ of certiorari in this case, reversed the decision of this Court and remanded the case to this Court for reconsideration of the substantive and procedural issues in light of the decision in Perry. State v. Morales, Op. No. 2020-MO-009 (S.C. Filed September 23, 2020). On October 7, 2020, this Court requested memoranda from both parties addressing the impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020). This memorandum from Appellant Morales follows.

The trial judge abused his discretion in admitting the testimony of Witness B about alleged prior bad acts as evidence of a common scheme or plan pursuant to Rule 404(b), SCRE, when the State failed to meet its burden under rigid scrutiny to show a logical connection between the other alleged prior bad acts and the crime charged.

Under the framework of Perry, Lyle and the traditional interpretation of Rule 404(b), the testimony of Witness B about alleged prior bad acts was not logically connected to the crime charged such that the testimony reasonably proved a material fact in issue. The testimony of witness B does not serve a legitimate purpose. The testimony of Witness B does not meet the common scheme or plan exception of Rule 404(b). The trial judge erred in admitting the testimony of Witness B and the error requires reversal.

Facts.

Between December of 1999 to September of 2001, Witness A, her sister, Witness B, and another younger sister lived with their mother and Petitioner. During this time Witness A believed that Petitioner was her biological father but was later told he was not. (R. p. 139, lines 6-19). Witness B also believed that Petitioner was her father but at the time of trial it was unclear if Petitioner is Witness B's biological father. (R. p. 274, line 21 – p. 275, lines 1-25). At the time of trial in 2017, fifteen years after arrest warrants issued, Witness A was twenty-eight years of age. (R. p. 136, lines 10-11). At the time of trial Witness B was twenty- five years of age. (R. p. 267, lines 15-16).

At trial Witness A testified that in 2002, when she was thirteen years of age, she went to live with her uncle and his girlfriend and his two daughters because her mother "kicked her out of the house." (R. p. 137, lines 7-11; p. 159, lines 14-21). Witness A testified that after living with her uncle for about a month, upon questioning by the uncle's girlfriend Michelle, she told

Michelle that Petitioner had been touching her. (R. p. 151, line 4- p. 152, lines 1-2). As a result of the disclosure by Witness A, the maternal grandmother questioned Witness B and the younger sister. (R. p. 272, lines 15-18). Upon questioning by the maternal grandmother, Witness B told "what happened." (R. p. 272, lines 11-18). At trial Witness B admitted that she later recanted the accusation against Petitioner. (R. p. 273, lines 17-19).

Testimony of Witness A.

At trial Witness A testified that when she was four years old Petitioner rubbed his groin area against her groin area on the outside of her clothing. (R. p. 143, line 23 – p. 144, lines 1-14). Witness A testified that when she was in first grade digital penetration took place on a daily basis. (R. p. 145, lines 12-19). She said the digital penetration took place mainly at home but also in the car and at the river. (R. p. 145, lines 20-23). Witness A testified that her mom was usually not home when the touching took place and if she was home she was in the shower. (R. p. 146, lines 2-5). Sometimes her sisters would be at home and other times they would not be at home. (R. p. 146, lines 6-9).

Witness A testified that Petitioner had intercourse with her on her eleventh birthday in the bedroom Petitioner shared with Witness A's mother. (R. p. 140, line 17 – p. 141, 142, lines 1-18). According to Witness A, the whole family was going to Carowinds for her birthday and Petitioner threatened not to take them to Carowinds unless she got in bed with him. (R. p. 141, line 2 – p. 142, lines 1-2). Witness A testified that at the time her sisters were getting ready in the room they shared and her mother was in the shower. (R. p. 142, lines 11-14). According to Witness A, Petitioner continued to have sex with her after her eleventh birthday. (R. p. 142, lines 17-19).

Witness A testified that Petitioner had sex with her in her room in the summer after she turned eleven years old. (R. p. 148, line 15 – p. 149, lines 1-3). Witness A testified that, at the time, she was in trouble, confined to her room and her mom had taken her sisters to Walmart. (R. p. 148, lines 15-21). Witness A also testified that one time when she was at home from school because she was sick Petitioner asked her to lie on the couch with him and he put his hands down her pants. (R. p. 149, lines 9-25). According to Witness A, Petitioner told her that if she told her mother, her mother would kill her. (R. p. 150, lines 16-19).

Testimony of Witness B.

On July 26, 2017, prior to trial, the State moved before Judge Henderson for a conditional ruling on the admission of testimony from Witness B, during the trial for charges involving Witness A. (R. pp.76-114). The State argued that the testimony from Witness B should be admitted as the common scheme or plan exception contained in Rule 404(b). (R. p. 81, lines 8-19). At the pre-trial hearing Witness B testified that beginning when she was three years old until the third grade Petitioner touched her in a sexual way three times. (R. p. 88, lines 1-10). She testified that the incidents took place inside the home. (R. p. 92, lines 13-25). Witness B testified that the touching stopped when she was in the third grade. (R. p. 89, lines 19-23). According to Witness B, the last time it happened she was unable to sleep and Petitioner told her to come in the room with him and watch television. (R. p. 86, lines 11-18). Witness B testified that while they were laying down on the bed he pulled her pants and underwear down and she felt his penis touch her butt. (R. p. 86, line 23 – p. 87, lines 1-14). Witness B testified that her sisters were asleep in another room. (R. p. 88, lines 21-24). According to Witness B, her mother was working when the incident took place. (R. p. 89, lines 3-10).

Witness B testified that the other two times she was sitting on Petitioner's lap and he would put his hands down her pants but there was no digital penetration. (R. p. 87, lines 15-25). She testified that when these other two incidents occurred her sisters were home but in a different room. She testified that her mother was not home. (R. p. 88, line 25 -p. 89, lines 1-18). Later, when Witness B was in the fifth grade, her grandmother questioned her, after Witness A alleged abuse, and Witness B disclosed the incidents to her grandmother. (R. p. 90, line 24 -p. 91, lines 1-15). Witness A did not testify at the pre-trial hearing.

Arguments at trial.

After Witness B testified at the pre-trial hearing, the State argued that Witness B's testimony was admissible pursuant to State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009); State v. Hallman, 298 S.C. 172, 379 S.E.2d 115 (1989); State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984); State v. Blanton, 316 S.C. 31, 33, 446 S.E.2d 438, 439 (Ct. App. 1994); State v. Adams, 332 S.C. 139, 143, 504 S.E.2d 124, 126 (Ct. App. 1998) and State v. Henry, 313 S.C. 106, 108–09, 432 S.E.2d 489, 491 (Ct. App. 1993). (R. pp. 101 – 105). The State argued that there were strong similarities between Witness B's testimony and the testimony the State expected from Witness A at trial. (R. p. 105, lines 15-25). Counsel for Petitioner argued that Rule 404(b) prohibited admission of the testimony from Witness B and cited State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). (R. p. 106, lines 5-15). The attorney for the State replied, "I don't believe I actually printed Lyle. We've all heard Lyle so much and to be candid I haven't read it in awhile." (R. p. 106, lines 16-18).

After Witness A testified at trial, the State sought a final ruling on the admission of testimony from Witness B. (R. p. 211, line 21 – p. 212, 213, lines 1-2). The State argued that

the similarities outweighed the dissimilarities. (R. p. 212, lines 17-21). Petitioner objected to the testimony from Witness B. (R. p. 213, lines 4-21).

Ruling at trial.

After the pre-trial hearing the judge ruled, "Again it is a conditional ruling but at this point in time I find that it would follow the guidelines set forth in Lyle's [sic] and the other cases that have come since then. So, therefore, at least at this point, I would find it to could be admissible as common scheme or plan." (R. p. 113, lines 15-21). It is unclear how the judge concluded that the testimony from Witness B was admissible as common scheme or plan without hearing the testimony from Witness A.

At trial, after hearing the testimony from Witness A, the judge ruled, "Okay. Well, I heard the testimony. I heard the testimony from Witness B at the hearing in Chesterfield and now that I've heard Witness A's testimony, everything else aside their testimony does have a number of similarities and I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales." (R. p. 213, line 22 – p. 214, lines 1-5). The judge allowed Witness B's testimony. (R. p. 214, lines 9-12). The trial judge erred. The judge failed to make specific findings about how the testimony from Witness B was similar to the testimony from Witness A. The judge failed to conduct a Rule 403, SCRE, analysis.

Argument on appeal.

Appellant relies on and incorporates by reference the brief and record filed with this Court prior to the South Carolina Supreme Court's decision in Perry and subsequent to remand. In issue two of the brief Appellant argued that the trial judge erred in admitting the testimony of Witness B., finding that the similarities to Witness A's testimony outweighed the dissimilarities,

pursuant to State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), when such a finding is contrary to Rule 404(b) and State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923), and the holding in Wallace should be overturned. Appellant argued, "Applying the traditional connection test of Lyle and Rule 404(b) to the testimony of Witness B in the present case, the record fails to establish a logical relevance between the allegations made by Witness B and the crimes for which Appellant stood trial." (Brief of Appellant pp. 17-18). In issue one of the brief Appellant argued that the trial judge erred in admitting the testimony of Witness B as evidence of a common scheme or plan pursuant to Rule 404(b), SCRE, when the dissimilarities between Witness B's testimony and the testimony of Witness A, the prosecuting witness, outweighed the similarities. Although Perry was decided after the trial and after this Court decided the direct appeal in this case, the arguments made were pursuant to Lyle and Rule 404(b), the law in effect at the time of trial. Applying the logical connection test of Lyle and Rule 404(b), as argued in the brief, this Court should reverse the convictions.

Under the framework of Perry, similarities are not enough to meet the common scheme or plan exception to Rule 404(b). "The common scheme or plan exception demands more. There must be something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged." State v. Perry, 430 S.C. 24, 41, 842 S.E.2d 654, 663 (2020). In the present case the State failed to show that the there was something in the criminal process that logically connected the other crimes to the crimes charged.

First, as noted by the Court in Perry, while similarities between the other acts and the crimes charged may be important for the State to show in order to meet its burden for admission pursuant to Rule 404(b), the State must show more than similarities. In the present case the allegations made by Witness B were substantially different from the allegations made by Witness

A. The three instances of sexual touching between the time she was three years old until the third grade alleged by Witness B never progressed to digital penetration and always took place in the home. Witness A alleged digital penetration, starting when she was in first grade, on an almost daily basis that progressed to instances of sexual intercourse beginning when she was eleven years old. The incidents took place mainly in the home but also in the car and at the river. While both witnesses allege the abuse began when they were young, three or four years old, Witness B testified that the abuse ended when she was in the third grade. Witness testified that she was questioned about abuse when she was in the fifth grade. (R. p. 90, line 24 – p. 91, lines 1-15). Witness A testified that the abuse continued after her eleventh birthday. Appellant was a father figure to both, but the type of alleged abuse was different. The locations were different. While the State argued that Appellant used coercion in the form of his role as a father figure, (July 26, 2017, Tr. p. 28, lines 8-15), only witness A testified about a threat. Witness B testified that her mother was not home during the three alleged instances but Witness A testified that her mother was in the shower during at least one of the alleged incidents.

As noted by the Court in Perry, "Certainly, there are similarities. In addition to the general similarities discussed above, the State emphasized the specific similarity that Perry was the only father figure in the lives of each victim. There is nothing in this record, however, that amounts to "a close degree of similarity," as Wallace purports to permit. Wallace, 384 S.C. at 434, 683 S.E.2d at 278." Perry, 430 S.C. at 39, 842 S.E.2d at 662. As in Perry, there is nothing in the record of this case that amounts to a close degree of similarity allowed under the overruled similarities test of Wallace. A father figure with abuse starting at an early age is not sufficient. As the Court wrote in Perry, "Rather, in our significant collective experience dealing with crimes of this nature, a very high percentage of sexual crimes against children are committed just like

Perry's alleged crimes: by father figures, in the home, in a bedroom, beginning in the pre-pubescent years. The fact Perry's crimes fit this general pattern does not give Perry a 'monopoly' on his criminal method." Perry, 430 S.C. at 40, 842 S.E.2d at 662. As in Perry, in the present case there was nothing unique or even very similar about the acts alleged by witness B and the crimes charged.

Second, the State failed to show a logical connection between the acts alleged by Witness B and the crimes charged involving Witness A, as required by Perry. "The State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes 'reasonably tends to prove a material fact in issue.' 125 S.C. at 417, 118 S.E. at 807." Perry, 430 S.C. at 44, 842 S.E.2d at 665. As the Court clarified in Perry, citing the concurrence in State v. Perez, 423 S.C. 491, 502, 816 S.E.2d 550, 556 (2018):

> It is not enough to meet the "logical connection" standard for admission of other crimes under the common scheme or plan exception to Rule 404(b) that the defendant previously committed the same crime. "Repetition of the same act or same crime does not equal a 'plan.'" Perez, 423 S.C. at 502, 816 S.E.2d at 556 (Hearn, J., concurring) (quoting Daggett v. State, 187 S.W.3d 444, 451 (Tex. Crim. App. 2005)). When evidence of other crimes is admitted based solely on the similarity of a previous crime, the evidence serves only the purpose prohibited by Rule 404(b), and allows the jury to convict the defendant on the improper inference of propensity that because he did it before, he must have done it again. See United States v. Krezdorn, 639 F.2d 1327, 1331 (5th Cir. 1981) (reversing the district court's admission into evidence of similar forgery crimes because they "would, at best, merely demonstrate the repetition of similar criminal acts, thus indicating [the defendant]'s propensity to commit this crime. Evidence of other crimes is not admissible for this purpose"). Quoting Justice Hearn one final time from her concurrence in Perez, "the repeated commission of the same criminal offense [is] offered obliquely to show bad character and conduct in conformity with that bad character." 423 S.C. at 502, 816 S.E.2d at 556 (Hearn, J., concurring) (quoting Daggett, 187 S.W.3d at 452).

Perry, 430 S.C. at 41, 842 S.E.2d at 663.

In the present case, the admission of the testimony of Witness B, based solely on vague and general similarities, allowed the jury to convict based on the improper inference of

propensity. The State failed to show a logical connection between the acts alleged by Witness B and the charged crimes. The State failed to meet its burden to show that the testimony of Witness B met the common scheme or plan exception of Rule 404(b). "The State must demonstrate to the trial court that there is in fact a scheme or plan common to both crimes, and that evidence of the other crime serves some purpose other than using the defendant's character to show his propensity to commit the crime charged." Perry, 430 S.C. at 44, 842 S.E.2d at 665. The State failed to show that the testimony of witness B served a legitimate purpose.

On the same day the Court decided the Perry case the Court also decided State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020), and State v. Cotton, 430 S.C. 112, 844 S.E.2d 56 (2020). In Durant, the Court citing State v. McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984), wrote:

> Because McClellan remains good law, we believe the prior acts here are admissible. Durant had a **particularly unique method** of committing his attacks common to all the girls. While there were differences in their ages and the type of sex act, the method of his attack was more than just similar; instead, evidence of the prior acts "reasonably tend[ed] to prove a material fact in issue." Lyle, 125 S.C. at 417, 118 S.E. at 807. Durant exercised his position of trust, authority, and spiritual leadership to hold private prayer meetings with teen girls who had grown up in his church. He told them he was praying for their health and good fortune, and represented that part of this process was touching them sexually and having intercourse. Durant then warned the girls of misfortune if they refused or told anyone. Moreover, he used scripture as a means of grooming the children into performing sex acts, a striking parallel to the defendant in McClellan. Indeed, the trial court noted it was one of the more compelling cases of common scheme or plan evidence it had ever seen, and we agree. These facts demonstrate the requisite logical connection between the prior acts of sexual abuse and the one forming the basis of the crime charged.

Durant, 430 S.C. at 106–07, 844 S.E.2d at 53 (emphasis added).

The present case is easily distinguished from Durant and McClellan. There was no particularly unique method used in the present case to show a common scheme or plan as used by the defendants in both Durant and McClellan. Again, there was nothing unique or even very

similar about the acts alleged by witness B and the crimes charged. The present case is also easily distinguished from Cotton. The Court in Perry, discussing Cotton wrote:

> We affirmed the admission of the evidence under the common scheme or plan exception. The similarities between the two incidents were extensive. The trial court discussed these similarities at length in its pre-trial ruling. But the "other crimes" evidence in Cotton had more than just similarity. As the State argued in its brief in that case, "Even if the similarities alone are not sufficient for admission of the testimony, the testimony clearly establishes a logical relevance to the underlying crime." Brief for Resp't at 18, State v. Cotton, 430 S.C. 112, 844 S.E.2d 56. The State went on to explain its theory of a logical connection to a specific, disputed fact. In addition, the trial court in Cotton conducted an extensive, on-the-record analysis of the balance between the unfair prejudice that would result from the evidence against the probative value in the logical connection. "Using the new framework set forth in [this case], we [found] the admission of the second victim's testimony satisfied the requirements of Rules 404(b) and 403, SCRE," and we affirmed. Cotton, 430 S.C. at 114, 844 S.E.2d at 57.

Perry, 430 S.C. at 43–44, 842 S.E.2d at 664 (n. #9 omitted).

In contrast in the present case, the similarities were not extensive and not discussed at length during the pre-trial hearing because the judge only heard from Witness B and not Witness A during the pre-trial hearing. At trial the judge generally discussed the similarities stating, "I heard the testimony from Witness B at the hearing in Chesterfield and now that I've heard Witness A's testimony, everything else aside their testimony does have a number of similarities and I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales." (R. p. 213, line 22 – p. 214, lines 1-5). The judge, however, failed to make specific findings about how the testimony from Witness B was similar to the testimony from Witness A. Importantly, in the present case the State failed to establish a logical connection of the alleged other acts to a specific disputed fact, as in Cotton. Finally, the judge in the present case failed to conduct an analysis pursuant to Rule 403, SCRE, as the judge did in Cotton.

Appellant submits that the analysis ends when, as here, the State failed to show that the alleged other act testimony served some legitimate purpose. If, however, the analysis continues, pursuant to Rule 403, SCRE, the probative value of Witness B's testimony is substantially outweighed by the danger of unfair prejudice. "The State must also convince the trial court that the probative force of the evidence when used for this legitimate purpose is not substantially outweighed by the danger of unfair prejudice from the inherent tendency of the evidence to show the defendant's propensity to commit similar crimes. Rule 403, SCRE." Perry, 430 S.C. at 44, 842 S.E.2d at 665. The State again failed to meet its burden.

Counsel for Appellant did not waive the Lyle, Rule 404(b) issue. First, the State moved pre-trial to admit the testimony of Witness B as the common scheme or plan exception to Rule 404(b). (R. pp. 79-114). Again, Witness A did not testify at the pre-trial hearing. Counsel for Appellant argued that Rule 404(b) prohibited admission of the testimony from Witness B and cited State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923). (R. p. 106, lines 5-15). At this point the State failed to meet its high burden to show that the testimony of Witness B met the common scheme or plan exception of Rule 404(b) when the State failed to offer the testimony of Witness A.

After Witness A testified at trial, the State again moved to admit the testimony of Witness B as the common scheme or plan exception to Rule 404(b) arguing that the similarities outweighed the dissimilarities. (R. p. 211, line 21 – p. 212, p. 213, lines 1-2). Counsel for Appellant again objected and stated:

> Your Honor, since the ruling that you made in Chesterfield on a temporary basis. We heard some testimony. We haven't heard Witness B's testimony but we did hear it there that day. It appears to me that it is becoming a little bit more clear as to where the conspiracy is, if that's what you want to call it; the pattern. And I think that now I'm seeing a pattern of – I'm seeing a pattern of conspiracy. And I don't really want to call it that because it's not really legal conspiracy. But the

> consortium of witnesses that are saying the same thing for the same reason. We believe it's vindication. We believe it came from – it's stemming from the grandmother. But now after hearing Witness A's testimony it appears to be clear what it is. So we think that the testimony of Witness B is – will be improper bolstering of Witness A's testimony. We think it is improper and should not be allowed.

(R. p. 213, lines 4-21). Counsel never stated that the testimony of Witness B was sufficiently similar to the testimony of Witness A to establish a common scheme or plan. Instead, counsel's reference to a pattern of saying the same thing was to both girls making general allegations against Appellant as vindication and under the influence of the grandmother. Counsel never stated that there was a logical connection between the testimony of Witness A and the testimony of Witness B. The general allegations are not sufficient to establish a connection. The State again failed to meet its high burden to establish admission pursuant to the common scheme or plan exception to Rule 404(b). While counsel did not restate the objection as specifically based on Lyle, Rule 404(b), the State moved for admission on these grounds, counsel objected on these grounds pre-trial and at trial additionally objected as improper and bolstering. The judge understood the objection as pursuant to Lyle, Rule 404(b), and ruled accordingly. The admission of the testimony of Witness B as the common scheme or plan exception was, however, error. The issue is preserved for appellate review.

In Durant the Court, discussing Perry, wrote:

> The Court emphasized Lyle's "logical connection" test, whereby "[t]he State must show a logical connection between the other crime and the crime charged such that the evidence of other crimes 'reasonably tends to prove a material fact in issue.' " Id. at 30 (quoting Lyle, 125 S.C. at 417, 118 S.E. at 807). To prove a sufficient connection, the State must demonstrate that there is "something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged." Id. at 27. This requirement filters permissible evidence of prior acts against veiled attempts to introduce propensity evidence. When the State seeks to present this evidence, its burden is a high one, as trial courts must employ "rigid scrutiny." Id. at 30.

Durant, 430 at 105, 844 S.E.2d at 52. In the present case the State failed to meet its high burden to show that the testimony of Witness B met the common scheme or plan exception of Rule 404(b). The testimony of Witness B was inadmissible propensity evidence. The State failed to show that there was a logical connection between the acts alleged by Witness B and the crimes charged involving Witness A. The State failed to prove that the testimony of Witness B reasonably proved a material fact in issue. The State failed to show that the testimony of witness B served a legitimate purpose. The trial judge erred in admitting the testimony. The error in admitting the propensity evidence requires reversal.

Based on the above argument above in addition to the arguments made in the brief previously filed, this Court should reverse the convictions and remand for a new trial.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of November, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

Honorable Roger E. Henderson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GUADALUPE GUZMAN MORALES,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Appellant's Memorandum Addressing the Impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) in the above entitled case has been served upon William M. Blitch, Jr. Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and copy of the Appellant's Memorandum Addressing the Impact of State v. Perry, 430 S.C. 24, 842 S.E.2d 654 (2020) has been served on Guadalupe Guzman Morales, #373639, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 6th day of November, 2020.

s/ Kathrine H. Hudgins
Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case Tracking No. 2017-001796

The State, Respondent,

vs.

Guadalupe Guzman Morales, Appellant.

SUPPLEMENTAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

PROCEDURAL STATEMENT

In October 2002, Appellant was arrested for two counts of criminal sexual conduct (CSC) with a minor second degree and one count of attempted CSC with a minor second degree. He was subsequently indicted in 2003 for the charges, but a fire in the Lancaster Courthouse in 2008 destroyed the indictments. (5/26T.6-7; R. 6-7) Appellant was re-indicted in 2016 on charges of CSC with a minor first degree, CSC with a minor second degree, and assault with intent to commit CSC with a minor second degree. (True-billed Indictments; R. 402-407).

After two pretrial hearings, Appellant proceeded to trial before the Honorable Roger E. Henderson and a jury. The jury returned verdicts of guilty on all charges. (8/21T.293; R.387). Judge Henderson sentenced Appellant to thirty years imprisonment for CSC with a minor first degree; ten years imprisonment, to be served consecutively, for CSC with a minor second degree; and ten years imprisonment, to be served concurrently, for assault with intent to commit CSC with a minor second degree—totaling forty years in prison. (Sentencing Sheets; R. 408-410).

This Court, after briefing, affirmed the convictions and sentences. See State v. Morales, Op. No. 2020-UP-001 (S.C. Ct. App. filed Jan. 8, 2020). Appellant petitioned to the South Carolina Supreme Court arguing the trial court erred in its application of State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009). The Supreme Court granted certiorari, dispensed with further briefing, reversed the decision of this Court, and remanded for "reconsideration of the substantive and procedural issues in light of [the Supreme Court's] decision in State v. Perry, 430 S.C. 24, 824 S.E.2d 654 (2020)."

On October 7, 2020, this Court sent a letter in light of the remand requesting the parties provide a memorandum addressing the impact of Perry on this appeal. This supplemental brief follows.

ARGUMENT

I. First, the issue is not properly preserved for review on appeal and pursuant to the Supreme Court's remand this Court should consider the procedural bar. Second, even though not preserved, the Court should affirm the trial court's decision to admit the testimony of the second victim because it meets the requirements of either Wallace or Perry.

While Appellant's trial counsel initially objected to the testimony as not meeting Rule 404(b), SCRE, at a pre-trial hearing, once testimony was presented at trial he waived his objection and admitted the testimony was similar. Instead of continuing to maintain the testimony was inadmissible under Rule 404(b), he argued the testimony constituted impermissible bolstering based on the similarity of the testimony. As a result, any issue regarding application of 404(b) is waived and not preserved for review on appeal. Additionally, he never maintained State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009), should be overruled or was not the applicable case law. Additionally, the testimony properly meets the requirements set forth in State v. Perry, 430 S.C. 24, 824 S.E.2d 654 (2020), especially when considered in light of both Perry and State v. Cotton, 430 S.C. 112, 844 S.E.2d 56 (2020).

WAIVER/PRESERVATION

As the Supreme Court's remand allows for the raising and consideration of procedural bars, the State submits this Court should consider the previously raised procedural bars and find the issue not properly preserved for review on appeal. Appellant's trial counsel waived any issue regarding the admission of the second victim's testimony pursuant to Rule 404(b). While counsel did raise an objection to the second victim testifying at a pre-trial hearing, arguing the testimony was inadmissible under Rule 404(b) and State v. Lyle, 125 S.C. 406, 118 S.E.2d 803 (1923), he waived this ruling at trial.

Initially, the pre-trial hearing regarding the testimony did not result in a final ruling. Specifically, the trial court stated: "I'm prepared to issue a conditional ruling" and later reiterated: "Again it is a conditional ruling . . . .". (7/26T. 38; R. 113). He ended his ruling by stating: "So -- that's not a ruling that's just, you know, and inclination . . . an inclination on my part at this point in time so - - but I am conditionally riling with regards to the testimony of [the second victim], though." (7/26T.38-39; R. 113-114). Because this was an *in limine* ruling, it was not a final ruling by the trial court. See State v. Forrester, 343 S.C. 637, 642, 541 S.E.2d 837, 840 (2001) ("[M]aking a motion *in limine* to exclude evidence at the beginning of trial does not preserve an issue for review because a motion *in limine* is not a final determination. The moving party, therefore, must make a contemporaneous objection when the evidence is introduced."); State v. Wiles, 383 S.C. 151, 156, 679 S.E.2d 172, 175 (2009) ("Generally, a motion *in limine* is not a final determination; a contemporaneous objection must be made when the evidence is introduced."); State v. Atieh, 397 S.C. 641, 646, 725 S.E.2d 730, 733 (Ct. App. 2012) ("A ruling *in limine* is not final; unless an objection is made at the time the evidence is offered and a final ruling procured, the issue is not preserved for review.").

Additionally, once at trial, Appellant's trial counsel acknowledged the similarities of the testimony by agreeing the witnesses are saying the "same thing" and that the testimony established a "conspiracy" or a "pattern." Essentially, he admitted the second victim's testimony was sufficiently similar to the victim's testimony to establish a common scheme or plan.

> Your Honor, since the ruling that you made in Chesterfield on a temporary basis. We heard some testimony. We haven't heard Lisa's testimony but we did hear it there that day. It appears to me that it is becoming a little bit more clear as to where the conspiracy is, if that's what you want to call it; **the pattern. And I think that now I'm seeing a pattern** of – I'm seeing a pattern of conspiracy.
>
> . . . .

> But the consortium of witnesses **that are saying the same thing for the same reason**. . . . But now after hearing Jessica's testimony it appears to be clear that's what it is. So we think that the testimony of Lisa is -- will be improper bolstering of Jessica's testimony.

(8/21T.119; R. 213) (emphasis added). As a result of his acknowledgement regarding the similarities in the testimony, he altered his objection from one based on Lyle and 404(b) to one based on improper bolstering. Accordingly, any issue regarding Lyle and 404(b) was waived and is not preserved for review on appeal. See State v. Mitchell, 330 S.C. 189, 195, 498 S.E.2d 642, 645 (1998) (where counsel acquiesces in the judge's ruling and makes no other objections regarding the issue, the issue is not preserve for appeal); Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (an issue conceded at trial cannot be argued on appeal); Richland Cty. v. Carolina Chloride, Inc., 382 S.C. 634, 656, 677 S.E.2d 892, 903 (Ct. App. 2009) (an issue expressly waived during trial is not preserved for appellate review), *aff'd in part, rev'd in part on other grounds*, 394 S.C. 154, 714 S.E.2d 869 (2011).

Further, as his actual objection to the testimony at trial was based on improper bolstering, Appellant cannot now raise a different issue on appeal. See e.g., State v. Stahlnecker, 386 S.C. 609, 617, 690 S.E.2d 565, 570 (2010) ("For an issue to be properly preserved it has to be raised to and ruled on by the trial court."); State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal).

Finally, Appellant never asked the trial judge to rule Wallace inapplicable, nor did he make any assertion the trial court was applying an incorrect standard when the trial court presented its analysis of the similarities versus the dissimilarities. (8/21T.120; R. 214). As a result, application of Perry to this case is not preserved for review on appeal. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (providing that in order for an issue to be preserved for appellate

review, it must have been raised to and ruled upon by the trial court); see also, S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) ("The issue must have been (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)). As the Supreme Court explained:

> The purpose of an appeal under our procedure is to determine if the lower court did something that it should not have done, or omitted doing something it should have done. A trial judge will not be reversed for failing to grant a motion on a ground that was not submitted to him. For the guidance of the bar we restate the holding made by this court in many cases heretofore: This court will not grant relief on alleged error asserted for the first time on appeal.

Powers v. City of Aiken, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970). This Court should not address an issue never raised to or ruled on by the trial court. See Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (" 'Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review.' " (quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006))); State v. Morgan, 282 S.C. 409, 412, 319 S.E.2d 335, 337 (1984) ("Inasmuch as the trial judge had no opportunity to pass upon the issue, the question will not be considered on appeal.").

This Court should find the issue presented related to Rule 404(b) to be blatantly not preserved and refuse to address the merits of any claim regarding Rule 404(b), Wallace, or Perry.

MERITS

Even if this Court overlooks the fact the issue is not properly preserves and does not consider the procedural bar, the testimony of the second victim was properly admitted by the trial

court under the newly issued Perry standard. In Perry the Supreme Court required more than just similarities. The Court stated: "There must be something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged." State v. Perry, 430 S.C. 24, 41, 842 S.E.2d 654, 663 (2020). In the instant case, there is something more; there is a logical connection that makes the victim in this case and the testimony of victim two unique and more than just propensity evidence.

In Perry, the Supreme Court explained:

> The question for a trial court, and for this Court on appeal from Perry's conviction, is whether the evidence also serves some legitimate purpose that is not prohibited by Rule 404(b). The rule provides examples of legitimate purposes, stating evidence of other crimes "may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent." Rule 404(b), SCRE.

Perry, 430 S.C. at 30–31, 842 S.E.2d at 657. The Court continued:

> Historically, to justify a finding that evidence of other crimes, wrongs, or acts is offered for a legitimate purpose, and thus should not be excluded pursuant to Rule 404(b), South Carolina courts have required a logical relevancy or connection between the other crime and some disputed fact or element of the crime charged.

Id. at 31, 842 S.E.2d at 658.

The primary question to be resolved in this case is whether a logical connection or logical relevancy exists between the testimony of the two victims to establish the common scheme or plan. The Perry Court provided some guidance by indicating: "There must be something in the defendant's criminal process that logically connects the 'other crimes' to the crime charged." Perry, 430 S.C. at 41, 842 S.E.2d at 663. The Court then discussed several cases in which the logical connection was developed including: State v. McClellan, 283 S.C. 389, 392, 323 S.E.2d

772, 774 (1984), State v. Durant, 430 S.C. 98, 844 S.E.2d 49 (2020), and State v. Cotton, 430 S.C. 112, 844 S.E.2d 56 (2020).

In both McClellan and Durant, the logical connection was established through a "particularly unique method of committing his attacks" which involved using the Bible or spiritual healing as a means of being able to abuse the girls. The Court explained: "The fact he carried out his plan in its unique detail when assaulting all three children warranted the admission of the uncharged crimes into evidence. The evidence had a logical connection to whether a crime was committed and to who committed it." Perry, 430 S.C. 24, 42, 842 S.E.2d 654, 663 (2020) (discussing McClellan).

The more apropos comparison in the instant case is with the Supreme Court's holding and analysis in Cotton. In Cotton, the Court explained: "the trial court admitted testimony from a second victim (another young woman) who had suffered an **essentially identical assault** at Petitioner's hands." Cotton, 430 S.C. at 114, 844 S.E.2d at 57 (emphasis added). The Court then explained many of these similarities and noted that in both cases the victim tried to persuade the defendant not to rape her, but he did anyway. In Cotton, it was not the "unique method" like what occurred in both McClellan and Durant, but instead very similar facts and a circumstance that occurred in both which created a stronger indication of who attacked the women.

In the instant case, the testimonies of the two victims were very similar.[1] They both indicated the abuse began when they were very young, three and four years old. They both testified Appellant began by touching them under their clothes. Both victims indicated the abuse generally happened at home when the mom was either not home or occupied and their sisters were not in the same room. The extent of the abuse against the victim—which included intercourse—was worse

[1] The State craves reference to its Final Brief of Respondent for a detailed discussion of the facts and the testimony of the two victims.

than the abuse against the second victim—which only included Appellant placing his penis against her buttocks. However, this is likely only because of the disclosure by the victim which ended the opportunity of Appellant to do more to the second victim. Most significantly, and similar to Cotton's circumstance where it was not a common occurrence, both victims believed Appellant was their dad at the time of the abuse, but later learned he was not their father. Both girls testified that they always believed Appellant to be their dad, but only after the abuse did they learn that he was not actually their biological father. Appellant took advantage of this relationship for his sexual gratification, and this false "relationship" also is a prime factor in the failure to disclose and the failure to resist the abuse that was occurring. The fact he allowed both girls to believe he was their biological father, when he was not, and relied on that "relationship" to be able to abuse the girls is the logical connection required to allow admission of the testimony under Cotton and Perry.

This Court should consider the procedural bars and find the issue not preserved for review on appeal. Even if a challenge to admissibility under Rule 404 was preserved, Appellant never asserted Wallace was the inappropriate standard and so the State and trial court properly analyzed the facts under the standard as articulated by the South Carolina Supreme Court at the time and the trial court was never asked to consider a different standard so there should be no issue on which to reverse the admission of the evidence. Finally, even on the merits the circumstances of this case, much like the circumstances in Cotton, demonstrate the second victim's testimony was properly admitted.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

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ATTORNEYS FOR RESPONDENT

November 6, 2020

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case Tracking No. 2017-001796

The State, Respondent,

vs.

Guadalupe Guzman Morales, Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Supplemental Brief of Respondent on Appellant by emailing a copy to his counsel of record, Kathrine H. Hudgins, at the email address provided for in the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 6th day of November, 2020.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Guadalupe Guzman Morales, Appellant.

Appellate Case No. 2017-001796

Appeal From Lancaster County
Roger E. Henderson, Circuit Court Judge

Opinion No. 5814
Heard February 9, 2021 – Filed April 7, 2021

REVERSED AND REMANDED

Appellate Defender Katherine Haggard Hudgins, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior Assistant Deputy Attorney General William M. Blitch, Jr., both of Columbia, for Respondent.

KONDUROS, J.: Guadalupe Guzman Morales appealed his convictions for assault with intent to commit criminal sexual conduct (CSC) with a minor, second degree; CSC with a minor, second degree; and CSC with a minor, first degree. This court affirmed his convictions. *State v. Morales*, Op. No. 2020-UP-001 (S.C. Ct. App. filed Jan. 8, 2020). The supreme court granted certiorari and reversed and remanded this court's opinion. *State v. Morales*, Op. No. 2020-MO-009 (S.C. Sup. Ct. filed Sept. 23, 2020). This mandate resulted from the supreme court's opinion,

*State v. Perr*y, 430 S.C. 24, 37, 842 S.E.2d 654, 661 (2020), in which it overruled *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009), a case that was an integral part of this court's original analysis. Upon reconsideration on remand from the supreme court, we reverse and remand.

FACTS/PROCEDURAL BACKGROUND

Morales was arrested in 2002 for CSC with a minor based on allegations of abusing the victim (Victim) between 1999 and 2000. In 2016, a Lancaster County grand jury indicted Morales.[1] At a pretrial hearing, the State moved to allow Victim's sister (Sister) to testify about prior bad acts by Morales. According to the State's theory, Sister experienced similar abuse as Victim, and Sister's testimony fit the common scheme or plan exception under Rule 404(b), SCRE. Sister testified Morales attempted to have intercourse with her when she was in the third grade; she explained that one night she had difficulty falling asleep and Morales invited her into bed. She recalled that when she got into bed with Morales, he pulled her underpants down and "his penis was touching [her butt]." She also described a couple of prior occasions when Morales put his hands down her pants. She stated the abuse began when she was three years old and occurred on three occasions; she explained the abuse occurred at home when her mother was not there.

Morales objected after Sister's testimony and argued, "We take the position that [Sister's testimony] should not be admissible because . . . it doesn't meet the test of [*Lyle*[2]] number one. And, number two, it is highly prejudicial." The State argued Sister's testimony would not be prejudicial because Morales had the opportunity to cross-examine her and the jury could determine her credibility at trial. The trial court issued a conditional ruling admitting Sister's testimony over Morales's objection.

At trial, Victim explained Morales was not her biological father but she grew up believing he was. She stated Morales began touching her in a sexual manner when

[1] Morales moved to quash the indictments based on delay. The circuit court treated this as a motion for a speedy trial and found the case should go forward after considering all the evidence presented. This issue is not appealed.
[2] *State v. Lyle*, 125 S.C. 406, 427, 118 S.E. 803, 811 (1923) (explaining the common plan or scheme exception requires "such a visible connection between the extraneous crimes and the crime charged as will make evidence of one logically tend to prove the other").

she was four years old. She further described an escalating period of abuse that began with touching and progressed to digital penetration. According to Victim's account, this period of abuse led to an incident on her eleventh birthday when Morales threatened to withhold her birthday trip to Carowinds if she did not get in bed with him. She recalled Morales engaging in intercourse with her when she got in the bed. She also stated the intercourse continued after her eleventh birthday. She testified Morales abused her at home, in the car, and at the river. She recalled her mother and siblings were ordinarily out of the house when the abuse occurred.

Prior to Sister's testimony at trial, Morales requested a final ruling on the admissibility of Sister's testimony. Morales objected to the admission of her testimony, arguing:

> It appears to me that it is becoming a little bit more clear as to where the conspiracy is, if that's what you want to call it; the pattern. And I think that now I'm seeing a pattern of . . . conspiracy. But the consortium of witnesses that are saying the same thing for the same reason. We believe it's vindication. We believe . . . it's stemming from the grandmother.[3] But now after hearing [Victim's] testimony it appears to be clear that's what it is. So we think that the testimony of [Sister] . . . will be improper bolstering of [Victim's] testimony. We think it is improper and should not be allowed.

The trial court denied the motion without hearing from the State and explained: "I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales." Sister testified last for the State. She testified about the alleged abuse from Morales; her trial testimony was consistent with her pretrial hearing testimony. Sister also confirmed she grew up believing Morales was her biological father; however, she explained she was unsure if Morales actually was her biological father and had asked him to take a paternity test.

[3] At trial, Morales attempted to show Victim's grandmother planted the abuse allegations by pressuring Victim to disclose. During the grandmother's cross-examination, Morales alleged she was "messed up" and made up the abuse allegations due to her own history of abuse. He also questioned Sister about her grandmother's role in disclosing the abuse.

Following Sister's testimony, the State rested, and Morales moved for a directed verdict. The trial court denied the motion, and Morales testified in his defense. At the close of trial, the jury found Morales guilty as indicted. The trial court sentenced him to thirty years' imprisonment for CSC with a minor, first degree; ten years' imprisonment to be served consecutively for CSC with a minor, second degree; and ten years' imprisonment to be served concurrently for assault with intent to commit CSC with a minor, second degree. This appeal followed.

STANDARD OF REVIEW

"A ruling on the admissibility of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law." *State v. Washington*, 379 S.C. 120, 123-24, 665 S.E.2d 602, 604 (2008) (citation omitted).

LAW/ANALYSIS[4]

[4] As an initial matter, the State argues Morales's argument is unpreserved because he conceded similarities between the Victim's and Sister's testimonies when he stated:

> It appears to me that it is becoming a little bit more clear as to where the conspiracy is, if that's what you want to call it; the pattern. And I think that now I'm seeing a pattern of . . . conspiracy . . . . So we think that the testimony of [Sister] . . . will be improper bolstering of [Victim's] testimony. We think it is improper and should not be allowed.

The State contends Morales's improper bolstering language is evidence he changed his objection and waived the Rule 404(b) issue. However, the trial court understood Morales was still arguing against the admission of Sister's testimony as prior bad act evidence and ruled, "I do find that the similarities outweigh the dissimilarities and taking their testimony would tend to show a common scheme or plan by Mr. Morales." Consequently, the issue is preserved. *See State v. Hopkins*, 431 S.C. 560, 569, 848 S.E.2d 368, 372 (Ct. App. 2020) ("The failure to raise specific grounds for an objection will not prevent the appellate court from

Morales contends Sister's testimony does not fall within the common scheme or plan exception for the admission of prior bad act evidence. We agree.

Because this court relied on *Wallace* in originally deciding Morales's appeal, we must now re-examine it under the analytical framework set forth in *Perry*. In *Perry*, the court rejected the test adopted in *Wallace* that determined whether prior bad acts established a common scheme or plan based exclusively on the similarities between the prior acts and the pending charges. 430 S.C. at 35-37, 842 S.E.2d at 660-61. According to *Perry*'s majority opinion, a similarities-only test abandoned the long-standing "logical connection" test established in the seminal prior bad act case, *Lyle*. *Id*.

> For the first time in our jurisprudence, contrary to over eighty years of interpretation of Rule 404(b) and its pre-Rules predecessor *Lyle*, the [c]ourt [in *Wallace*] stated, "A close degree of similarity establishes the required connection between the two acts and no further 'connection' must be shown for admissibility." 384 S.C. at 436, 683 S.E.2d at 279. . . . We find this statement from—and the reasoning and holding in—our opinion in *Wallace* is based on a misunderstanding of Rule 404(b) and our cases interpreting it, particularly the "seminal" case *Lyle*. The decision in *Wallace* effectively created a new rule of evidence, and rendered meaningless the restrictive application of the common scheme or plan exception that is so deeply embedded in our precedent. . . . We now overrule *Wallace*.

Id. (footnotes omitted).

The *Perry* court instructed that the proper question for determining whether prior bad act evidence is admissible to prove common scheme or plan under Rule 404(b) is whether there is a "logical connection." *Id*. at 44, 842 S.E.2d at 664-65. In explaining this connection, the *Perry* court offered the example of *State v.*

addressing an issue when the record indicates that the trial court and the State understood the basis for the objection." (quoting *State v. Bowers*, 428 S.C. 21, 29, 832 S.E.2d 623, 627 (Ct. App. 2019))).

McClellan, 283 S.C. 389, 323 S.E.2d 772 (1984). *Perry*, 430 S.C. at 41, 842 S.E.2d at 663.

> The common scheme or plan exception demands more. There must be something in the defendant's criminal process that logically connects the "other crimes" to the crime charged. For example, in *McClellan*, we upheld the admission into evidence of other crimes under the common scheme or plan exception because the State proved the defendant used the same particularly unique method of committing two uncharged crimes that he used to commit the charged crime. We explained,
>
> > All three daughters testified concerning the pattern of this and prior attacks. According to them, these attacks commenced about their twelfth birthday, at which time Appellant began entering their bedroom late at night, waking them, and taking one of them to his bedroom. There he would explain the Biblical verse that children are to "Honor thy Father," and would also indicate he was teaching them how to be with their husbands. The method of attack was common to all three daughters.
> >
> > [*McClellan*,] 283 S.C. at 391, 323 S.E.2d at 773.
>
> The defendant in *McClellan* developed a particularized plan for sexually assaulting his children through which he invoked the Bible, placed a duty on the children to "honor" him, and placed himself in the role of "teaching" them to submit to sexual violence. The fact he carried out his plan in its unique detail when assaulting all three children warranted the admission of the uncharged crimes into evidence. The evidence had a logical connection to whether a crime was committed and to who committed it. We emphasize today that *McClellan*

> represents the proper application of Rule 404(b) and remains good law.

Id. at 41-42, 842 S.E.2d at 663-64.

The supreme court decided two other cases the same day it issued the *Perry* opinion and employed its clarified analytical framework to affirm in both instances. *Perry* discusses these two cases—*State v. Durant*, 430 S.C. 98, 844 S.E.2d 49 (2020), and *State v. Cotton*, 430 S.C. 112, 844 S.E.2d 56 (2020)—as examples of how courts should apply the "logical connection" analysis.

> In *Durant*, the defendant was charged with CSC in the second degree for sexually assaulting a young girl at the church where the defendant served as pastor. The State offered into evidence the testimony of three other girls the defendant sexually assaulted as evidence of a common scheme or plan. We affirmed the trial court's admission of the "other crimes" because the defendant used a "particularly unique method of committing his attacks" and that method was "common to all the girls." We noted there were differences between the crimes, but relying on our opinion in this case, refused to engage in a "mathematical exercise where the number of similarities and dissimilarities are counted." Rather, we relied on the fact "the method of his attack was more than just similar," it was unique, and because of its uniqueness" 'reasonably tended to prove a material fact in issue.'" *Durant*, 430 S.C. at 105, 844 S.E.2d at 52 (quoting *Lyle*, 125 S.C. at 417, 118 S.E. at 807). As to the particular facts supporting the use of the common scheme or plan exception, we explained,
>
> > Durant exercised his position of trust, authority, and spiritual leadership to hold private prayer meetings with teen girls who had grown up in his church. He told them he was praying for their health and good fortune, and represented that part of this process was touching them sexually and

> having intercourse. Durant then warned the girls of misfortune if they refused or told anyone. Moreover, he used scripture as a means of grooming the children into performing sex acts . . . . Indeed, the trial court noted it was one of the more compelling cases of common scheme or plan evidence it has ever seen.
>
> *Durant*, 430 S.C. at 106, 844 S.E.2d at 53.

Perry, 430 S.C. at 42-43, 842 S.E.2d at 664 (omission by court).

The second case applying the resuscitated "logical connection" test was *Cotton*. In that case, the State offered into evidence the testimony of another victim who had been kidnapped and sexually assaulted by the defendant seven months earlier. *Perry*, at 43, 842 S.E.2d 654, 664. The court found the incidents were "remarkably similar" and had "extensive" similarities.[5] *Id*. Additionally, because Cotton claimed he was not with the victim and that DNA evidence on her jeans belonged to someone else, Cotton's identity was a disputed fact in issue to which the prior victim's testimony was logically relevant. *Id*. at 43 n.9, 842 S.E.2d at 664 n.9.

With all these cases in mind, we now return to Morales's case. The manner in which the abuse began was similar for both girls. Victim and Sister testified the abuse began with sexual touching at around the same age. Morales was a father-figure to both girls. The abusive events as to Sister occurred when her mother was not present in the home. Some of Victim's abuse occurred in the home when mother was absent but other abusive episodes occurred outside the home. It is impossible to predict what would have occurred had Morales's alleged abuse of Sister continued, and we cannot speculate. Overall, in keeping with the analysis employed in *McClellan*, *Durant*, and *Cotton*, we conclude the prior bad act evidence in this case was not sufficiently logically connected to the indicted

[5] In *Cotton*, both victims met the defendant online. *Cotton*, 430 S.C. at 113-14, 844 S.E.2d at 57. He picked them up for a date, forced them both to perform oral sex, drove each to a secluded location, and raped them. *Id*. Additionally, each victim attempted to dissuade Cotton from raping them with a fabricated story and he indicated he would simply "fix" the fictitious problems by putting on a condom. *Id*. at 114, 844 S.E.2d at 57.

conduct such that proof of one tended to prove the other. Rather, the prior bad act evidence veered more into the inadmissible propensity evidence cautioned against by precedent and Rule 404(b). Based on all of the foregoing, Morales's convictions are

REVERSED AND REMANDED.

LOCKEMY, C.J. and HILL, J., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case Tracking No. 2017-001796

The State, Respondent,

vs.

Guadalupe Guzman Morales, Appellant.

PETITION FOR REHEARING

On April 7, 2021, this Court reversed the trial court's decision admitting a second victim's testimony as part of a common scheme or plan and remanded to the circuit court for a new trial. This Court misapprehended or overlooked incredibly relevant facts, including the sequence that ultimately led to the trial court's ruling the testimony was admissible. Additionally, this Court overlooked the relevant law of waiver and acquiescence resulting from Appellant's counsel's clear and unambiguous agreement in the State's argument that a pattern/logical connection existed and the testimony was admissible. Accordingly, pursuant to Rule 221(a), SCACR, the Court should grant the petition for rehearing, find the issue either not properly preserved for review on appeal, waived, or acquiesced in; find the testimony properly admissible especially in light of Appellant's counsel's agreement a pattern/logical connection existed; and affirm Appellant's conviction and sentence.

Preservation/Waiver/Acquiescence

This Court overlooked the sequence of events relevant to the trial court's ruling on the admissibility of the second victim's testimony. A review of the Record demonstrates that Appellant's counsel did not continue his objection related to Rule 404(b), SCRE, but instead altered his objection after hearing the evidence presented to one of bolstering and vouching. The language he used in explaining his decision to the trial court makes it abundantly clear that, not only was he abandoning his Rule 404(b) objection, but he was actually agreeing with the arguments made by the solicitor for admission under Rule 404(b) based on an explicit acknowledgement of the "pattern" or logical connection required.

In order to properly preserve an issue for review on appeal, the process has been succinctly stated with four basic requirements: "The issue must have been (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." Jean Hoefer Toal et al., Appellate Practice in South Carolina 57 (2d ed. 2002). "An appellate court may not, of course, *reverse* for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000) (italics in original). The Supreme Court further announced: "imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments." Id. at 422, 526 S.E.2d at 724. The Court noted the purpose of an appeal is to determine whether the trial judge erroneously acted or failed to act and when appellant's contentions are not presented or passed on by the trial judge, such contentions will not be considered on appeal. Id. Previously, the Supreme Court has explained:

> The purpose of an appeal under our procedure is to determine if the lower court did something that it should not have done, or omitted doing something it should have done. A trial judge will not be reversed for failing to grant a motion on a ground that was not submitted to him.

Powers v. City of Aiken, 255 S.C. 115, 117, 177 S.E.2d 370, 371 (1970).

While the defendant did move pre-trial to exclude the testimony of the second victim based on Rule 404(b), it is important to note that **the State** and **not Appellant** requested the final ruling from the trial court on whether the second victim's testimony would be admissible. Pre-trial, the court made it clear he was not making a final ruling on admissibility repeating multiple times that he was making a "conditional ruling." (R.113-114). At trial, before the second witness testified, **the State** asked the judge: "before we get rolling tomorrow I wanted to get a final ruling from the Court on the bad act testimony we intend to elicit from [the second victim]." (R.211). The State then presented its argument on admissibility including recounting all the similarities involved—especially the "circumstances with that familial relationship." (R.212).

Appellant did not continue to raise an objection pursuant to Rule 404(b). Instead, after hearing the evidence presented by the victim and being able to compare it to the pre-trial testimony by the second victim, he shifted his objection to something he believed may be more advantageous. He abandoned his Rule 404(b) objection and specifically noted: "And I think that now I'm **seeing a pattern** of — I'm seeing a pattern of conspiracy. . . . But the consortium of witnesses that are **saying the same thing** for the same reason." (R.213)(emphasis added). As a result of his agreeing with the State that the testimony established a pattern and that the witnesses were "saying the same thing," Appellant argued only the second victim's testimony would be "improper bolstering" of the victim's testimony. (R.213). Again, the **only** request made to the circuit court to consider its ruling on Rule 404(b) came from the prosecutor and not the

defendant. See Brock v. Bd. of Adjustment & Appeals of City of Rock Hill, 308 S.C. 539, 543, 419 S.E.2d 773, 776 (1992) (finding an issue is not preserved when it is not raised by the appellant and trial); Tupper v. Dorchester Cty., 326 S.C. 318, 324, 487 S.E.2d 187, 190 (1997) (finding appellant "cannot bootstrap an issue for appeal by way of a codefendant's objection"); State v. Carriker, 269 S.C. 553, 238 S.E.2d 678 (1977) (finding issue not preserved because "appellant may not utilize the objection of another defendant to gain review"). Appellant in this case is clearly relying upon the State's request for a final ruling in order to maintain the issue is preserved for review on appeal, and this Court overlooked this aspect in ruling "the trial court understood [Appellant] was still arguing against admission of [the second victim's] testimony as prior bad act evidence" based solely on the fact his ultimate ruling addressed the issue.

Significantly, not only does Appellant attempt to rely on the State's request for a ruling in order to create a preserved issue, he is arguing a completely different issue on appeal from what **he** raised to the trial court. The only way to read Appellant's actual objection made during trial on the admission of the second victim's testimony is to read it as an objection based on improper bolstering—a different objection that what has been raised on appeal. As a result, the issue is not properly preserved for review on appeal. See State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003) (holding a defendant may not argue one ground at trial and another on appeal).

This Court reads the trial court's ruling as preserving the issue because the court addressed Rule 404(b). However, as discussed this was for the benefit of the State and not based on any continuing objection from Appellant.[1] The trial court also directly addressed Appellant's new challenge in which he argued about the grandmother coaching and the testimony being so

[1] Appellant certainly could have continued his Rule 404(b) objection while raising a new objection if he had just let the court know that was his intention. Nowhere in the Record is there any indication given to the trial court that Appellant still believed Rule 404(b) to be an issue. In reality, the exact opposite is the case as Appellant not only declined to continue his objection, he agreed with the State that a common scheme or plan was established.

similar that it constituted impermissible bolstering as a conspiracy. The trial court specifically noted Appellant's new contention: "The fact that the grandmother and you contend that the grandmother may have something to do this. That is something you can certainly argue to the jury if you want to when the time comes." (R.214). It is improper for this Court to utilize the trial court's response to the State's request to find an issue preserved on behalf of Appellant, especially when the trial court specifically addressed Appellant's new argument in the same ruling.

In addition, Appellant never challenged application of State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) to a determination of whether the testimony was inadmissible under Rule 404(b). Unlike the defendant in State v. Perry, 430 S.C. 24, 824 S.E.2d 654 (2020), who directly maintained Wallace was the inappropriate standard, Appellant never raised that as a consideration for the circuit court. See State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003) (providing that in order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial court); see also, S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301–02, 641 S.E.2d 903, 907 (2007) ("The issue must have been (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)). Additionally, the decision in Perry should only apply in those cases in which the defendant specifically asked the circuit court to apply a standard other than that set forth at the time by the South Carolina Supreme Court in Wallace. Otherwise, this Court would be reversing a trial court and a jury's determination when, at the time, no error was committed and no one ever told the trial court that their determination

should be based on a different standard than the one articulated and binding on the court at the time.

Finally, Appellant's acknowledgement of "a pattern" and that the victims were "saying the same thing" was a clear acquiescence and acceptance of the trial court's ruling that the testimony met the requirements under Rule 404(b) for admission. Appellant never challenged the State's argument that admission was proper and his conceding a "pattern" establishes the logical connection as well as the necessary similarities to constitute a common scheme or plan. As a result, he cannot challenge on appeal an issue he explicitly conceded at trial. See State v. Benton, 338 S.C. 151, 156–57, 526 S.E.2d 228, 231 (2000) ("Appellant's present issue is not preserved for appellate consideration as he previously conceded the palm print was direct evidence."); TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998) (an issue conceded in the trial court cannot be argued on appeal); Southern Ry. Co. v. Routh, 161 S.C. 328, 159 S.E. 640 (1930) (issue conceded in trial court cannot be argued on appeal).

This Court overlooked or misapprehended the relevant facts in the Record as well as the proper application of the long-standing preservation requirements to those facts in finding the issue preserved for review on appeal. Appellant never raised Rule 404(b) at trial—the State raised it. Appellant never maintained Wallace was the incorrect standard—all parties proceeded based solely on the Wallace analysis. Appellant explicitly and unequivocally conceded the testimony constituted a common scheme or plan when he acknowledged after hearing the testimony of both victims that he saw the "pattern" and that they were "saying the same thing." As a result, this Court should grant rehearing, determine the issue not properly preserved for review on appeal, and affirm Appellant's convictions and sentences.

Common Scheme or Plan

Additionally, even if the challenge under Rule 404(b) was properly preserved, not waived, and not conceded, this Court erred in its analysis and finding the testimony by the second victim was inadmissible as a common scheme or plan. While this Court correctly noted the standard as being that articulated in Perry, the Court overlooked other relevant case law decided contemporaneously with Perry as well as the facts of the instant case.

In State v. Cotton, 430 S.C. 112, 844 S.E.2d 56 (2020), the Court explained: "the trial court admitted testimony from a second victim (another young woman) who had suffered an **essentially identical assault** at Petitioner's hands." Cotton, 430 S.C. at 114, 844 S.E.2d at 57 (emphasis added). The Court then explained many of these similarities and noted that in both cases the victim tried to persuade the defendant not to rape her, but he did anyway. In Cotton, it was not the "unique method" like what occurred in both McClellan and Durant, but instead very similar facts and a circumstance that occurred in both which created a stronger indication of who attacked the women.

In the instant case, the testimonies of the two victims were very similar. As a matter of fact, Appellant's own counsel conceded: "the . . . witnesses [] are saying the same thing for the same reason." (R.213). If they are saying the same thing for the same reason, it is hard to imagine of many scenarios which do not meet the "essentially identical assault" as discussed in Cotton. They both indicated the abuse began when they were very young, three and four years old. They both testified Appellant began by touching them under their clothes. Both victims indicated the abuse generally happened at home when the mom was either not home or occupied and their sisters were not in the same room. The extent of the abuse against the victim—which included intercourse—was worse than the abuse against the second victim—which only included

Appellant placing his penis against her buttocks. However, this is likely only because of the disclosure by the victim which ended the opportunity of Appellant to do more to the second victim. Most significantly, and similar to Cotton's circumstance where it was not a common occurrence, both victims believed Appellant was their dad at the time of the abuse, but later learned he was not their father. Both girls testified that they always believed Appellant to be their dad, but only after the abuse did they learn that he was not actually their biological father. Appellant took advantage of this false relationship for his sexual gratification, and this false "relationship" also is a prime factor in the failure to disclose and the failure to resist the abuse that was occurring. The fact he allowed both girls to believe he was their biological father, when he was not, and relied on that false "relationship" to be able to abuse the girls is the logical connection required to allow admission of the testimony under Cotton and Perry.

Accordingly, even if this Court improperly overlooks the lack of a preserved issue and addresses the merits, the testimony of the second victim was admissible under the Cotton and Perry standards. As a result, this Court should grant the rehearing, find the trial court properly admitted the testimony, and affirm Appellant's convictions and sentences.

CONCLUSION

For all of the foregoing reasons, the State requests the panel grant the petition for rehearing, find the issue presented on appeal was not properly preserved for review by the Court or in the alternative find the trial court properly admitted the testimony of the second victim as establishing a common scheme or plan. This Court should affirm Appellant's convictions and sentences.

Respectfully submitted,

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Attorney General

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ATTORNEYS FOR RESPONDENT

April 22, 2021

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable Roger E. Henderson, Circuit Court Judge
Appellate Case Tracking No. 2017-001796

The State, Respondent,

vs.

Guadalupe Guzman Morales, Appellant.

PROOF OF SERVICE

I, Caroline Collins, certify that I have served the within Petition for Rehearing by having a copy emailed to his counsel of record, Kathrine H. Hudgins, at her primary email address provided by the Attorney Information System (AIS).

I further certify that all parties required by Rule to be served have been served.
This 22nd day of April, 2021.

CAROLINE COLLINS
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The South Carolina Court of Appeals

The State, Respondent,

v.

Guadalupe Guzman Morales, Appellant.

Appellate Case No. 2017-001796

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

James E. Lockemy C.J.

J.

J.

Columbia, South Carolina

cc:
Alan McCrory Wilson, Esquire
Kathrine Haggard Hudgins, Esquire
William M. Blitch, Jr., Esquire
The Honorable Roger E. Henderson

FILED
May 13 2021

Caroline Collins

From: Caroline Collins
Sent: Monday, June 14, 2021 3:03 PM
To: Hudgins, Kathrine
Cc: Stock, Chris; William Blitch
Subject: The State v. Guadalupe Guzman Morales
Attachments: MORALES Guadalupe - Appendix - COA Appellate No. 2017-001796 (02609292xD2C78).PDF; MORALES Guadalupe - Petition for Writ of Certiorari - COA Appellate No. 2017-001796 (02610747xD2C78).PDF

Good Afternoon Ms. Hudgins,

Attached please find a Petition for Writ of Certiorari to the Court of Appeals and Appendix in The State v. Guadalupe Guzman Morales (Court of Appeals Appellate Case No. 2017-001796). These will be submitted to the South Carolina Supreme Court today via the AIS One Drive System.

If you will, please reply to confirm receipt of this email.

Thank you!

Caroline Collins
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