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S.C. SUPREME COURT

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable J. Derham Cole, Circuit Court Judge

JOHN BARNES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001696

APPENDIX

JOANNA K. DELANY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General
Rembert Dennis Bldg., Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

JOHN PETER BARNES,

DEFENDANT.

2010-GS-40-7545

SEPTEMBER 12, 2011

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE DEANDREA BANJAMIN, JUDGE

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

MARGARET FEND, ESQUIRE
DEBRA BARRY, ESQUIRE
ATTORNEYS FOR THE STATE

GREG COLLINS, ESQUIRE
RHODES BAILEY, ESQUIRE
ATTORNEYS FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

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September 12, 2011

(WHEREUPON, court convened with all parties present and the following proceedings were had.)

THE COURT: Let's see. All right. I have the State's list of potential witnesses. Do you all have a list?

MR. BAILEY: Yes, Your Honor. We gave one to your clerk, yes.

THE COURT: And you all should have the strike sheet. Y'all have it? All right. Let me go over some of these names because I will definitely mess them up. Amy Gieselman, is that correct?

MR. BAILEY: Correct.

THE COURT: And Victim .

MS. FEND: Which one?

THE COURT: All right. That one I won't mess up. Ray ...

MS. FEND: Olszewski.

THE COURT: Olszewski. Christine Pope, Travis Holdorf, Jamie Murray, Scarlett Murray, Alicia Benedetto?

MS. FEND: Benedetto, yeah.

THE COURT: Benedetto. And then Victim . And then over here we -- the first two, we'll decide on that later. John Peter Barnes, Jeffrey Murray, Amy Royster Gieselman.

MS. FEND: It's the same one on our list.

THE COURT: Okay. But I'll say the full name. Victim , Scarlett Murray. Is Junior the same as II -- as the II?

MS. FEND: Yes.

THE COURT: And any voir dire from the State that you passed me?

MS. FEND: Your Honor, I'm sorry. I did not write anything down on this. But thinking at it, I would want to know if any jurors have children at E.L. Wright Middle School.

THE COURT: Okay.

MS. FEND: Additionally, if they have male children ages between around nine to thirteen.

THE COURT: All right. And then anything else?

MS. FEND: No, ma'am.

THE COURT: Anything from the Defense?

MR. BAILEY: Judge, just what we mentioned earlier. If any members of the panel had themselves been victims of any type of sexual abuse or if they had family members or close friends that were victims of similar abuse. And I assume that you've probably already have the standard, you know, do you know anybody or do you work for law enforcement or someone at the Solicitor's Office.

THE COURT: Yeah. I have the, I have the

standard, so I have it.

MS. FEND: Your Honor, we would just request if you are going to inquire as to anyone have -- if anyone has had any victims in their family, if you also would ask if anybody in their family had ever been accused of a sexual offense.

THE COURT: I'm going to do both, yeah. And you all want me to ask the question, and normally I'll say, can you be fair and impartial, just let them answer yes or no. Do you want me to go into more detail as to what family member?

MR. BAILEY: You know, it's up to your discretion, Judge.

THE COURT: All right.

MS. FEND: How I've usually seen it happen is they're kind of uncomfortable talking about that. And so we just ask them if they do fall under one of these categories then we would have them approach and ask them with Your Honor, you know, can they tell us about it and can they be fair and impartial.

THE COURT: Okay.

MS. FEND: Because normally, I've seen it where they are uncomfortable asking or saying -- talking about it in front of everyone.

THE COURT: Well, I was just -- because I could

just have them stand up and say, yes or no, and -- but I guess if I ask the next question, it's usually is it you or a family member, and some people may not want to answer.

MR. COLLINS: And we would definitely prefer to approach, Your Honor.

THE COURT: Okay.

MR. COLLINS: I mean, we are the only one of two states in the country that are ?? from the attorneys, so we're very appreciative when we have a chance to have a juror number come up and explain exactly what it was. My experience, I think, with Ms. Fend, they're definitely more willing to be honest about whether or not they can be fair and impartial as a juror.

THE COURT: So if they stand up, I'll just bring them up.

MR. COLLINS: Yeah.

THE COURT: Okay. So the question is family member or close personal friend? Family member or close personal friend?

MR. BAILEY: That would be fine with us, Your Honor, yes.

THE COURT: I'll do the same thing with the accused question, have them come up. All right. And the strikes are five and five. One alternate?

MR. BAILEY: One alternate. Was that the

question, Judge?

THE COURT: Yeah. Is that good, one alternate?

MS. FEND: I think so.

THE COURT: Anything else before we bring them in?

MS. FEND: Nothing from the State.

MR. BAILEY: Nothing from us, Judge.

THE COURT: All right. And for the witnesses, if there is a witness that is in the courtroom when your name is called, I'll just ask that you stand up so the jurors will have an opportunity to look at you. All right. You can bring them on in.

(WHEREUPON, the jury panel entered the open courtroom at approximately 12:42 p.m.)

THE BAILIFF: The jury panel is all present, Your Honor.

THE COURT: All right. Thank you and good afternoon. As I told you earlier, I was sure that I would see some of you again. At this time we are selecting a jury in the case of the State of South Carolina versus John Peter Barnes. I have an indictment here before me, Mr. Barnes is charged with lewd act on a minor child. The indictment that I have in my hand reads that John Peter Barnes, being over fourteen years of age, did in Richland County on or between January 1st, 2009 and March 31st of

2010 willfully and lewdly committed a lewd and lascivious act upon or with the body of a child less than sixteen years of age, to wit, Victim , with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of said defendant or of the victim, in violation of Section 16-15-140 of the South Carolina Code of Laws. This is what he is charged with in the indictment.

Ladies and gentlemen, at this time I am going to ask the Defendant to stand and face the audience.

(WHEREUPON, the defendant stands and faces the audience.)

THE COURT: All right. Thank you.

Is there any member of the jury panel that is related by blood or marriage to the Defendant? If so, please stand?

(No response.)

THE COURT: Is any member of the jury panel have a close personal or social relationship with the Defendant? If so, please stand?

(No response.)

THE COURT: All right. And next there is a list of witnesses. I have a list of witnesses. I'm going to ask them to stand. And I'm sorry, I'll introduce -- after I do this, I will introduce the attorneys or allow them to

introduce themselves, also. On this list we have Amy Royster Gieselman, Victim Ray Ol??, Christine Pope, Travis Holdorf, with the Richland County Sheriff's Department, Jamie Murray, Scarlett Murray, Alicia Benedetto, William Dean Murray, II, and Mr. Barnes has already stood, and Jeffrey Murray. Is any member of the jury panel related by blood or marriage to any of the people I have just listed or are here and stood up, or does anyone have a close personal or social relationship with any of these people? If so, please stand.

(No response.)

THE COURT: All right. And the attorneys in this case, Mr. Barnes is represented by Mr. Greg Collins and Mr. Rhodes Bailey. I'll have them stand up and introduce themselves again.

MR. BAILEY: I'm Rhodes Bailey. I'm a lawyer for Mr. Barnes.

MR. COLLINS: And I'm Greg Collins.

THE COURT: And they are with the Richland County Public Defender's Offices. Is anyone related by blood or marriage to either one of the attorneys or anyone in that office? If so, please stand.

(No response.)

THE COURT: Does anyone have a close personal relationship with either Mr. Bailey or Mr. Collins or

anyone in the Richland County Public Defender's Office? If so, please stand.

(No response.)

THE COURT: All right. And the State today is represented by Ms. Margaret Fend and Debra, Ms. Debra Barry. I'll let them introduce themselves to you.

MS. FEND: I'm Margaret Fend with the Fifth Circuit Judicial Solicitor's Office.

MS. BARRY: I'm Debra Barry and I work at the Fifth Circuit Solicitor's Office.

THE COURT: Is any member of the jury panel related by blood or marriage to, or have a close personal social relationship with any -- with the attorneys, Ms. Fend?? and Ms. Barry or anyone in their office, in the Solicitor's Office. If so, please stand?

(No response.)

THE COURT: Has any member of the jury panel formed or expressed an opinion about any issue or matter involved in this case?

(No response.)

THE COURT: Is any member of the jury panel familiar with any of the allegations in this case? If so, please stand.

(No response.)

THE COURT: Does any member of the -- is any

member of the jury panel aware of any bias or prejudice towards either the State or the Defendant in this case? Please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is a member of, contributor to any group which has its primary concern with the promotion of law enforcement or victim's rights? An example of these would be MADD, SADD, CAVE, which is Citizens Against Violent Crime. If so, please stand? Give money to any or if you're a member of any of these groups or any other similar group.

(No response.)

THE COURT: Does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case, particular emphasis being placed on your ability to be fair and impartial to both the State and the Defendant?

(No response.)

THE COURT: Is any member of the jury panel a member of law enforcement or you or anyone in your family a member of law enforcement. If so, please stand. All right. Yes, sir. Your juror number?

THE JUROR: 28.

THE COURT: All right. Yes, sir.

THE JUROR: My son-in-law is a canine officer in

Lexington County.

THE COURT: All right. And so would that affect your ability to be fair and impartial in this trial?

THE JUROR: No, it would not.

THE COURT: All right. Thank you. Yes, ma'am.

THE JUROR: My fiancé is a correctional officer for the State of South Carolina and his father is an officer for the City of Columbia.

THE COURT: All right. And, ma'am, would that affect -- could you repeat that again, your juror number and repeat that for me.

THE JUROR: I'm 207.

THE COURT: All right. You're juror number 207 and it's your ...

THE JUROR: Fiancé, he's a corrections officer for SCDC.

THE COURT: Okay. And your father-in-law is a ...

THE JUROR: He's an officer for the City.

THE COURT: All right. And, ma'am, would that affect your ability to be fair and impartial in this trial?

THE JUROR: I'm very biased.

THE COURT: Okay. I need you to answer yes or no.

THE JUROR: Yes, ma'am.

THE COURT: You said yes.

THE JUROR: Yes.

THE COURT: All right. Thank you, ma'am. You can have a seat. Yes, ma'am.

THE JUROR: My husband is a detention officer ??? and I was also a correctional officer at SCDC.

THE COURT: You are?

THE JUROR: I was.

THE COURT: And, ma'am, would that affect your ability to be fair and impartial in this trial?

THE JUROR: No, ma'am.

THE COURT: All right. Thank you. What's your juror number?

THE JUROR: 270.

THE COURT: Yes, ma'am.

THE JUROR: I am a -- I'm 298. My sister is Sheriff Lott's assistant. I don't know if that has anything to do with it.

THE COURT: Your sister is Sheriff Lott's assistant. Would that affect your ability to be fair and impartial in this trial?

THE JUROR: I'm not sure. But I'm a housemother to fourteen teenage girls.

THE COURT: What's your juror number?

THE JUROR: 298.

THE COURT: 298. All right. On this question as to your sister being a -- being Sheriff Lott's assistant does that affect your ability to be fair and impartial in this trial?

THE JUROR: I don't think so.

THE COURT: Okay. So I've got to get a yes or a no.

THE JUROR: No.

THE COURT: All right. Thank you.

Is there any member of the jury panel who has a child or children or grandchildren that are students at E.L. Wright Middle School? If so, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has male children between the ages of nine and thirteen? If so, please stand. If you have a son between the age of nine and thirteen.

Yes, sir. Your juror number?

THE JUROR: 68.

THE COURT: And, sir, would that affect your ability to be fair and impartial in this trial?

THE JUROR: I don't think so.

THE COURT: Okay. And I need to get a yes or a no.

THE JUROR: No, ma'am.

THE COURT: All right. Thank you. Yes, sir.
THE JUROR: Juror number 16.
THE COURT: What now?
THE JUROR: 16.
THE COURT: 16. Sir, you have a son?
THE JUROR: He's ten.
THE COURT: All right. And would that affect your ability to be fair and impartial in this trial?
THE JUROR: No, ma'am.
THE COURT: All right. Thank you. Yes, sir, your juror number?
THE JUROR: 127.
THE COURT: All right. And you have a son between the age of 9 and 13?
THE JUROR: Yes, ma'am.
THE COURT: All right. And would that affect your ability to be fair and impartial in this trial?
THE JUROR: No, ma'am.
THE COURT: All right. Thank you. Yes, ma'am.
THE JUROR: 267.
THE COURT: And you have a son between the age of 9 and 13, you said?
THE JUROR: He's nine.
THE COURT: He's nine? And, ma'am, would that affect your ability to be fair and impartial in this trial?

THE JUROR: No, ma'am.

THE COURT: All right. Thank you. And, ma'am, your juror number?

THE JUROR: 303.

THE COURT: And your son is ...

THE JUROR: Ten.

THE COURT: All right. And would that affect your ability to be fair and impartial in this trial?

THE JUROR: No.

THE COURT: Thank you.

All right. Ladies and gentlemen of the jury, the next two questions are -- I talked earlier about questions being personal and you all speaking with me in private, privately or semi-privately. If you answer yes to this question, I'm going to ask you to stand. After that, you don't have to say anything else. I'll ask you to come down and we'll have a side-bar conversation over here.

But the question is, members of the jury panel, have you or a family member or close personal friend been the victim of a sexual assault? Is so, please stand? All right. I'm going to ask that you all make a line over here by my bailiff. Yes, ma'am.

THE JUROR: Juror 140.

THE COURT: 140.

THE JUROR: My cousin was molested by her step-

father at the age of seven.

THE COURT: How old is she?

THE JUROR: She's thirty-nine now. So two years apart. The horror story ??? she started talking about it. I can't lie, it would.

THE COURT: I want him to say whether or not he can be fair. Can you be fair in this trial?

THE JUROR: I can't say, to be honest.

THE COURT: All right. Thank you.

MADAM COURT REPORTER: ???

THE JUROR: 104. My daughter ??? are a victim of sexual molestation. I was twelve. I'm now fifty-one. My daughter is twenty-three and she was seventeen.

THE COURT: Would that affect your ability to be fair and impartial in the trial?

THE JUROR: No, ma'am, it would not.

THE COURT: Thank you. You can have a seat back in the audience here, number 104.

THE JUROR: 181.

THE COURT: Yes, ma'am.

THE JUROR: As a child me and my sisters were all abused by our father. And then I was abused.

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

THE JUROR: I don't think so.

THE COURT: You've got to tell me yes or no. Can you be fair and impartial?

THE JUROR: Yes.

THE COURT: You can be?

THE JUROR: Yes. Fair and impartial, yes.

THE COURT: Okay. Thank you.

THE JUROR: 270. My son was molested at the age of nine.

THE COURT: Your son?

THE JUROR: Yes, ma'am.

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

THE JUROR: I think it will because I think I would be a little bit harsh because I know what I went through as a mother.

THE COURT: All right. Thank you. You may sit down.

THE JUROR: 276.

THE COURT: Yes, sir.

THE JUROR: My ex-wife put up with sexual abuse for about fourteen years.

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

THE JUROR: No.

THE COURT: All right. Thank you.

THE JUROR: 298. My son was molested. And did you also say fourteen?

THE COURT: Okay. What is that about?

THE JUROR: I'm a housemother in a boarding school.

THE COURT: Is either one of those things going to affect your ability to be fair and impartial in this trial?

THE JUROR: I don't think so.

THE COURT: You've got to say yes or no.

THE JUROR: No.

THE COURT: I don't want anything to affect your ability to be fair and impartial in this trial.

THE JUROR: With my nephew, yes.

THE COURT: All right. All right. Thank you.

All right. Ladies and gentlemen of the jury, the next question is, have you, a family member, close personal friend been accused of any type of sexual assault? If so, I'm going to ask that you stand and once again, we'll come back down to the microphone and speak privately about this. If you or a family member or a close personal friend, if you've been accused of a sexual assault.

All right. Ma'am, I'm going to ask you to come down and speak to me.

THE JUROR: Juror number 214.

THE COURT: Yes, ma'am. Who was it?

THE JUROR: My friend's brother just recently was accused of sexual assault of a minor.

THE COURT: Could you be fair to the State and the Defendant, or would that affect your ability to be fair and impartial in this trial?

THE JUROR: Yes, it would.

THE COURT: Have a seat.

THE JUROR: 55. I had a nephew one time that was accused of -- and he did not, though. He didn't do it.

THE COURT: And would that affect your ability -- the fact that your nephew was accused in a sexual assault in the past, would that affect your ability to be fair and impartial for the State?

THE JUROR: No, it would not.

THE COURT: Let me ask it again. Could you be fair and impartial to the State and the Defendant in this trial?

THE JUROR: Yes.

THE COURT: You can have a seat. That's juror number 55.

THE JUROR: 239.

THE COURT: Yes, ma'am.

THE JUROR: My ex-husband is in prison for sexual assault.

THE COURT: Would that affect your ability ---

THE JUROR: No.

THE COURT: --- to be fair and impartial in this trial?

THE JUROR: No, sir.

THE COURT: So you can be fair?

THE JUROR: Yes, I can.

THE JUROR: 298. My same nephew that was molested turned around and molested and served time.

THE COURT: And would that affect your ability to be fair and impartial in this trial?

THE JUROR: I think so.

THE COURT: I think she's already -- she's already excused. Thank you.

All right. And is there any member of the jury panel who knows of any reason why they cannot be fair and impartial in this trial to the State and the Defendant? If so, please stand. All right. Your number is ...

THE JUROR: 214.

THE COURT: All right. Thank you, ma'am. You may be seated.

All right. At this time, we're going to take about a five minute break and I'm going to ask that you all come back in -- the bailiff will let you know when you can come back, but if you all can come back to the courtroom in

about five minutes. All right? Thank you.

(WHEREUPON, the jury panel exited the open courtroom at approximately 1:04 p.m.)

THE COURT: All right. Let's go through the list. There were quite a few of them that said they couldn't be fair and impartial and I just want to put it on the record. I'll give you the ones and if I've missed anyone ...

Juror number 214, she said that her friend's brother was accused of CSC with a minor and she couldn't be fair and impartial. And then when I asked the question again, she stood up again. So we're going to take her out. And she didn't want to serve. She didn't want to serve this morning so she's -- she'll probably say it again on the next one.

Juror number 104, who's number 32 on our list, said that her child was a victim of sexual assault. But I think she said she could be fair and impartial.

MR. BAILEY: Your Honor, she also said that she was a victim of an assault when she was twelve years old.

THE COURT: But that she could be fair and impartial. I asked again.

MR. BAILEY: She did say that. We would ask that she be struck for cause considering that it's very close to the age and that she herself was assaulted.

THE COURT: Okay. Yes, ma'am.

MS. FEND: I think that's grounds for them to be able to use a strike on her, but she has the right to serve as a juror in this county as long as she can be fair.

THE COURT: All right. I'm not going to -- I'm going to leave her in and y'all can strike her.

Judy Sanders, juror number 239. On this list it's 33. She said her ex-husband was in prison for a sexual assault. She said that she could be fair and impartial. Same with her. I'm sure you all have an objection to her.

Brenda Maddox was -- says she was -- which is juror number 181 -- abused several times. But she said she could be fair and impartial.

MR. COLLINS: Just anybody that came up and said that they were abused as a child themselves, we would argue should be stricken for cause, considering those are the exact allegations in this case.

THE COURT: All right. And I'll -- she said she could be fair and impartial, so I'll leave her in.

Now, juror number 270 said her son was abused and that it affected her and that she could not be fair and impartial, so we'll take her out.

And juror number 140 also said that he could not -- he's number 45 -- said that he could not be completely fair.

Number 298, she -- I'm going to take her out. She stated that she -- she's number 3 on this list -- that her sister is Sheriff Lott's assistant, that was fine. But she was molested and -- well, she had a relative that was -- her nephew was molested and then he was accused, so we'll take her out. She couldn't be fair and impartial.

Then number 11 on this sheet, and juror number 207, says that her fiancé is a correctional officer. Is she the one that said she couldn't be fair?

MR. COLLINS: Correct. She used the word biased herself.

THE COURT: Yeah. She said that she -- so we'll -- she specifically said she would be biased. So we'll take her off.

Juror number 207, number 11 on here, and juror number 276, said his ex-wife was abused and that he couldn't be fair and impartial, so we'll take him off. That's number 18 on our list, 276.

MS. FEND: I thought he said he could be fair.

THE COURT: Oh, he said he could be?

MS. FEND: Yes.

THE COURT: Well, let me look at my notes. I'm sorry. Yes, he did. I'm sorry. So we'll leave him on.

All right. So the jurors that should be taken off on this list, Madam Clerk, are number 3, 11, 27, 44, -- I'm

reading from the left -- and 45.

MS. FEND: Okay. Thank you. Can I ask about juror number 55?

THE COURT: Juror number 55? Juror number 55.

MS. FEND: Which is number 9 on the strike list.

THE COURT: I believe she said she could be fair and impartial. She said her nephew was accused, but I'm showing that on my notes that she could be fair and impartial. Do y'all have anything, anything different?

MR. COLLINS: She said ---

THE COURT: She stays on.

MS. FEND: Okay. Thank you.

THE COURT: All right. You want to read those back to me?

THE CLERK: You want me to read the numbers to the left or ---

THE COURT: Yes. We'll read the numbers to the left so we'll make sure.

THE CLERK: Okay. Number 3, 11, 27, 44 and 45.

THE COURT: Yes, that's what I have. Is that what you all have?

MR. COLLINS: Yes, Your Honor.

THE COURT: All right. All right. And then the strikes would be five and five. Anything additional that you all want me to ask of them?

MS. BARRY: No, Your Honor, nothing from the State.

MR. COLLINS: No, Judge.

THE COURT: All right. If y'all want to take a minute or two, I want to take a break and run to the restroom and then they should be back in here. You can let them back in.

(WHEREUPON, the court stood at recess for a short break.)

(WHEREUPON, the jury panel entered the open court at approximately 1:11 p.m.)

THE COURT: All right. You may be seated.

All right, ladies and gentlemen of the jury, when your name is called, I'm going to ask you to grab your belongings, you're going to come up to this microphone, turn around, and you're going to state your name, your juror number, your name, where you work, if you're married and where your spouse works. All right. Yes, ma'am.

THE CLERK: Juror 98, Patricia Fogle.

THE JUROR: Patricia Fogle, Richland School District One.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Fogle.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat this juror.

THE COURT: All right, ma'am. You can have a seat in the jury box.

THE CLERK: 300, Judy Younts.

THE JUROR: I'm Judy Younts. I'm an in-home childcare provider for one little girl all day and pick up a few after school. My husband is retired. He was a Baptist minister and also was a chaplain with the Department of Disabilities and Special Needs.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Younts.

THE CLERK: What says the Defense?

MR. BAILEY: Please excuse this juror.

THE COURT: All right. Ma'am, you can have a seat back in the audience. Thank you.

THE CLERK: Number 60, Susan Coaxum.

THE JUROR: My name is Susan Coaxum, juror number 60. I'm an instructional assistant.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Coaxum.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat this juror.

THE COURT: Ma'am, you can have a seat in the jury box. Thank you.

THE CLERK: 16, Timothy Barber.

THE JUROR: My name is Timothy Barber. I'm

employed as a lead operator. My wife works for Blue Cross and Blue Shield.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Barber.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Mr. Barber.

THE COURT: All right, sir. You can have a seat in the jury box.

THE CLERK: 267, Loufiette Sumter.

THE JUROR: 267, Loufiette Sumter. I work at Bosch out of Columbia.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Sumter.

THE CLERK: What says the Defense?

MR. BAILEY: Please excuse Ms. Sumter.

THE COURT: All right, ma'am. You can have a seat back in the audience.

THE CLERK: 127, Harold Hardwick.

THE JUROR: 127, Harold Hardwick. I work at the VA Medical Center. My wife is a stay-at-home mom.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Hardwick.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Mr. Hardwick.

THE COURT: Please have a seat in the jury box.

THE CLERK: 83, John Dozier.

THE JUROR: 83, John Dozier. I work at the South Carolina Department of Education, Office of Transportation. My wife is retired from USC. She was the box office manager.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Dozier.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Mr. Dozier.

THE COURT: All right. Mr. Dozier, have a seat in the jury box.

THE CLERK: 55, Linda Cash.

THE JUROR: I'm 55. My name is Linda Cash. I'm a widow and I'm on disability.

THE CLERK: What says the State?

MS. BARRY: Please excuse Ms. Cash from the trial of this -- from this trial.

THE COURT: You can have a seat back in the courtroom.

THE CLERK: 155, Sherri Jones.

THE JUROR: I'm Sherri Jones, 155. I work at Fort Jackson and my husband is a sub-contractor, heating and air conditioning, retired Navy.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Jones.

THE CLERK: What says the Defense?

MR. BAILEY: Please excuse Ms. Jones.

THE COURT: Okay. Thank you, ma'am. If you'd have a seat.

THE CLERK: 303, Jennifer Shiver.

THE JUROR: I'm Jennifer Shiver, juror number 303. I am employed with the University of South Carolina as a Director of Undergraduate Student Affairs in the College of Arts and Sciences. My husband is employed at Coca-Cola Bottling Company as a local account manager.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Shiver.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Ms. Shiver.

THE CLERK: 33, Cedricse Brown.

THE JUROR: My name is Cedricse Brown. I'm juror number 33, and I work at the University of South Carolina.

THE CLERK: What says the State?

MS. BARRY: Please excuse Mr. Brown from the trial of this case.

THE COURT: All right, sir. You may have a seat.

THE CLERK: 148, Rachel Jerry.

THE JUROR: My name is Rachel Jerry. I'm juror number 148. I work for DHEC.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Jerry.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Ms. Jerry.

THE CLERK: Have a seat in the jury box, please. 168, Phyllis Larson.

THE JUROR: I'm juror 168, Phyllis Larson. I'm a project manager at Blue Cross.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Larson.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Ms. Larson.

THE CLERK: 228, Vernon Richardson.

THE JUROR: 228, Vernon Richardson, Graphic Artist at the State News.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Richardson.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Mr. Richardson.

THE CLERK: 146, Faye Jacobs.

THE JUROR: Faye Jacobs, 146. I work at the Meekness?? Center and my husband work at Quality Foods.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Jacobs.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Ms. Jacobs.

THE CLERK: Have a seat in the jury box.

276, Eddie Thompkins.

THE JUROR: 276, Eddie Thompkins. I'm a business owner. My wife is an attorney.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Thompkins.

THE CLERK: What says the Defense?

MR. BAILEY: Please excuse Mr. Thompkins.

THE CLERK: Have a seat. Thank you.

68, Michael Cox.

THE JUROR: Number 68, Michael Cox. I am over operations for a small chemical company out of North Carolina. My wife does not work.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Cox.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Mr. Cox.

THE CLERK: 69, Pamela Cox.

THE JUROR: I'm Pamela Cox. I'm juror number 69. I work at First Baptist Church in the child care.

THE CLERK: What says the State?

MS. BARRY: Please present Ms. Cox.

THE CLERK: What says the Defense?

MR. BAILEY: Please excuse Ms. Cox.

THE COURT: Ma'am, you can have a seat back in

the audience.

THE CLERK: 108, Marcal Gibbs. Sorry.

THE JUROR: I'm 108, Marcal Gibbs. I work at Computer Science Corporation. I'm a mainframe programmer. And my spouse is in customer service.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Gibbs.

THE CLERK: Does the defense challenge for cause?

MR. BAILEY: No.

THE CLERK: You can have a seat?

57, Darrell Chisolm.

THE JUROR: Darrell Chisolm, supervisor, Time Warner Cable. My wife is a stay-at-home mom.

THE CLERK: What says the State?

MS. BARRY: Please present Mr. Chisolm.

THE CLERK: What says the Defense?

MR. BAILEY: Please seat Mr. Chisolm.

THE COURT: All right. Anything from the State or the Defense before I send -- am I sending them downstairs?

THE CLERK: Yes, ma'am.

THE COURT: --- before I send the remaining members of the panel back downstairs?

MS. BARRY: Nothing from the State, Your Honor.

THE COURT: Anything from the Defense?

MR. BAILEY: Nothing from us either, Your Honor.

THE COURT: All right. Thank you.

For those of you who were not selected I am going to send you back downstairs to the jury room. I believe that Judge Newman will be picking a jury sometime this afternoon, I'm not sure what time. So there's a possibility you may end up going through this process again or they may release you for lunch or for the afternoon. All right. Thank you. Have a good evening.

(WHEREUPON, the jury panel exited the open court at approximately 1:29 p.m.)

THE COURT: May I see the attorneys?

(WHEREUPON, Ms. Fend, Ms. Barry, Mr. Bailey and Mr. Collins approach the bar.)

THE COURT: All right. Ladies and gentlemen of the jury, you have been selected to serve as the jury on this case. I will at this time -- I know y'all are probably wondering, when are we going to take a break for lunch. So we're going to take a lunch break, but I will tell you, give you a few instructions now, some more instructions later.

During lunch you are not to discuss this case with anyone, not even fellow jurors. You are not to -- if anyone is talking about this case in your presence, you're to notify them that you are on the jury and that you cannot

speak regarding this case. If they continue and insist on speaking to you regarding the case, let the bailiff know when you return and they will give the message to me and I'll handle it from there. You are not to do any social networking, meaning you can't tweet or get on facebook or anything regarding this trial. I would suggest to you that you not do any social networking until after completion of this trial, just to make sure that there is -- that that is not an issue. Your cell phones, the bailiff will take that from you when you go -- when you come back from lunch in the jury room.

We're going to break. There's some matters of law that I need to take up outside of your presence and instead of you sitting back there in the jury room, I'm going to let you take a long lunch and if there's some errands or something that you need to take care of, you'll be able to do it. We're going to start back around three-thirty. And at that time, we'll probably get through my opening statement to you and also the opening statements from the attorneys, and we may get to a witness today. If not, we'll start back in the morning. I'm going to ask Mr. Dozier to serve as the foreman, so the bailiff will show you where you are to sit when you return. And Mr. -- is it Gibbs?

MR. GIBBS: Uh-huh (affirmative).

THE COURT: Is it Gibbs?

MR. GIBBS: Yes.

THE COURT: Not Gibbs, okay. Chisolm, you're our alternate. The bailiff will show you where you will sit. Those are the only two people who will have a designated seat. Everyone else can sit wherever you like other than the foreman and the alternate, those are the only two.

All right. You all have an enjoyable lunch. We'll start back around three-thirty. All right. And the bailiff will give you some instructions back in the jury room. Make sure you wear that tag at all times.

(WHEREUPON, the jury exited the open court at approximately 1:40 p.m.)

THE COURT: All right. So we'll take a break until about two-thirty. We'll grab something to eat and then we'll -- I'll let you all make your motions from about two-thirty to three-thirty when they get back.

MR. BAILEY: The only other issue, is he still going to be able to remain free on bond?

THE COURT: Any objection?

MS. BARRY: We do object, Your Honor, since the case has been called the bond is no longer in place. Therefore, there would be no way if he chose to flee, there is no enforcement on the bond issue.

THE COURT: Is he out on bond?

MR. BAILEY: He's been out on bond for a long time. It's imperative that we keep him out on bond during this trial so that we can prepare for the next day at trial. He's going to be testifying most likely. We're going to be prepping him for that. He'll be helping in the case.

THE COURT: How much is the bond?

MR. BAILEY: It was forty-five thousand surety that he posted. He's been out on bond, never missed a Court appearance.

THE COURT: How long?

MR. COLLINS: I've been in frequent contact with him since he bonded out, Judge. I guess it was since September when he was arrested. Yeah. He got out shortly after that.

MR. BAILEY: And I've been in frequent communication with him. I have several numbers to reach him at, and as Mr. Collins said, we do intend on speaking with him extensively about when he takes the stand, which is what we expect.

MS. BARRY: Your Honor, the bonding company would have to be in agreement to stay on his bond, otherwise there is no -- if they're in agreement, that's fine, but they have not made arrangements to have the bonding company agree in front of Your Honor to stay on the bond.

THE COURT: All right. Well, we'll give them a call over lunch. He can stay out until we come back.

Sir, you understand if you are to leave that I'll issue a bench warrant for your immediate arrest. Do you understand that, sir?

MR. BARNES: Yes.

THE COURT: So you're to be back here at two-thirty with us. I'm assuming he's going to probably be with you all? He'll probably be with you all?

(WHEREUPON, the court stood at recess for a lunch break.) ??backup??

THE COURT: The motion to suppress the witnesses is granted.

MR. COLLINS: Your Honor, on the motion to sequester, I think we might ought to get a little bit more specific because of the victim's rights statute allows for immediate family of the victim to stay in the courtroom. This case is a little different because the immediate family is quite larger than a normal family. That's almost every witness besides the officer, so we might want to go one by one on the ones that can stay in the courtroom.

THE COURT: Who do you all want to stay in the courtroom?

MS. FEND: Our case officer, Investigator Holdorf, the victim, of course, and his mother, Amy

Gieselman.

THE COURT: I think that's reasonable.

MS. FEND: His legal father also has a right. That's true. Both parents. The parents of the minor child have the right.

THE COURT: And if he's the legal father, then I think he has a right to stay. Everybody else will be sequestered. If he's the legal father -- has the court determined -- has a family court determined he's not?

MR. COLLINS: I was under the impression at one time he was -- there was some question of him not being the legal father. But I don't know enough about the situation. That's one reason I hesitated.

MS. BARRY: He is the victim's father. He is his legal father.

THE COURT: All right. The mom and father will be able to stay, mother and father will be able to stay. All right. And the discovery motion has been renewed, your *Riddle* motion?

MR. BAILEY: Yes, Your Honor. I guess I just want to say on the record we just want to renew, renew our Rule 5 and then the same thing with the *Riddle* motion we turned in earlier and I guess we made it part of the court record or I guess we could, you know, give another copy to the court reporter, if necessary, just that *Riddle v. State*

says that, you know, that just because it's not on paper, you don't have to disclose it. We think that the State's been pretty thorough in compliance thus far. We just want to renew it for the record and we also submitted a full copy of our *Riddle* motion.

THE COURT: Okay. There's nothing to compel you, but you all have turned over everything that you have?

MS. BARRY: I'm sorry?

THE COURT: He's filed a motion, a Rule 5 and then also a *Riddle* motion to compel disclosure.

MS. BARRY: Yeah. We had turned over all information that we had and the information that we got at subsequent interviews of the victim. I believe that we've disclosed everything that needs to be turned over and disclosed.

THE COURT: Okay.

MR. BAILEY: Right, Judge. And, you know, in that same vein if there is more information that arises in conversations with other witnesses, the victim, et cetera, we just ask that it continue to be done. I'm sure Ms. Fend will be happy to agree with that.

THE COURT: All right. I'm sure she'd agree. All right. So that's taken care of. Anything else from you all, other than the -- you have the motion and then we'll do the *Denno* hearing.

Your motion regarding violation of Rule 3.7, and I've read *Sanders* and -- what's the other case? *Sanders* and *Sierra*. I'll be glad to hear from you. I'll let you place it on the record.

MR. COLLINS: Thank you, Your Honor. As was stated in chambers, we were informed last week that both attorneys, the Prosecutors on this case were -- had an interview with the child victim of this case without anybody else present in the room. Any kind of case where a child is involved it's different. They're a different type of witness. There are special statutes that allow videotapes to be admissible that wouldn't be admissible in any other situations. And the reason for that is that any time a child witness is interviewed, it takes a trained professional to interview those children. And that all started back in the eighties when a lot of false allegations came forth because officers were using the same techniques on children as they use on adults. As a society we figured out that you need to be a trained professional to interview a witness.

Now, I'm not saying Ms. Fend or Ms. Barry don't know a lot about this as well, but our position is that each time the child was interviewed, and each time he's been interviewed in this case, we know who interviewed him and we know where and they're non-lawyers. We have videos of

some of them, or most of them actually. And we look at those videos, we evaluate those videos. We can employ experts to look at the techniques used by the interviewers. It's a very important part of our defense as to how this child is handled from the time that he initially did not disclose and now he's at the point where he is disclosing these allegations.

The main part of our defense is to look at how many times he was interviewed, how he was interviewed, and who interviewed him and what type of situation. The reason this is important is a week before trial he's meeting with two prosecutors in the courthouse, a week before trial and he comes up with new, very detailed pieces of information, which we know they use, and we know they have experts who testify that they look for small details like that to determine whether or not the allegation is compelling. That's a very important part of their case which is why they disclosed it to us because they know it's big. All we're asking for is a hearing that *State v. Sanders* allegation or any allegation of a Rule 3.7 violation -- and it's very clear that we at least get a hearing so that you can hear the whole situation and make a ruling on it. We're just asking for a hearing that we can put both Prosecutors on the stand and ask them exactly what manner and how they interviewed this child. We also intend on

calling the child to ask him a few questions as well, but we feel like we're entitled to that because it was not recorded and the reason it's a violation of Rule 3.7 is that there was no other witness in the room. The only two witnesses are the two attorneys. And every other person that interviewed this child is on the witness list. They're the only two that aren't. That's why they're on our witness list, they were the last ones to interview with him and they got new information from him. We think we're entitled to it and then we think at the very least we're entitled to a hearing.

The only thing that can solve all of this is if one of them's taken off the case. As in Rule 3.7 you can be in the same firm and be a witness in the case. If one is taken off the case, there's no need for this hearing. We can go forward without it. However, since they both intend to stay on the case, we think we're entitled to a hear because when they put up their case and we put our defense, we're going to put them on the stand.

THE COURT: All right. Yes, ma'am.

MS. FEND: Your Honor, a few things. Number one is the videotape requirement or the videotaping of children at the Assessment and Resource Center, it's not a requirement for us to prosecute. The videotape requirement is if we wanted to get that interview in evidence. If the

child is under a certain age and certain criteria are met under the statute, the prosecution can admit the videotape of the interview. If that's not videotaped, we're not going to get that piece of evidence in in those cases. But any investigator could decide, you know what, I'm not going to send this child to the ARC, I'm going to do an interview on my own. So first of all, there's no requirement that anybody videotape.

Secondly, is there are -- there is another witness that can testify to all of these things. Victim, the victim himself, can testify about his meeting with us. In any given case, even with adults as witness, they can be cross-examined about, you know, you met with the Solicitor, you met with them so many times. Did they tell you this information or that information? Is that why you're changing -- is that why you now have more information and are testifying to things that weren't in your original interview. This child can explain, you know, our interview, that we, you know, met and discussed what happened to him and how these other things that were not on that interview, weren't on that videotape that he's now testifying to, how that came to his memory and how that came about.

If he was to testify differently than what he told us, we'd have an obligation as Court Officers to then tell him

while he's on the stand to say, you know, now you need to know now he's completely changed his story or he's denying "X" or admitting to "Y". This is case preparation and sitting down and talking to a witness like any other -- 3.7 doesn't distinguish between if you have a child or if you have an adult witness.

And I think the cases that they provide to you really talk about in cases where they wanted to then impeach a witness about something that was said. If we don't have another witness to that incident, we are now unable to do that. We're not going to be able to impeach those witnesses. So this is -- there is someone that can testify to these things. The victim himself can testify why there are additional memories and things that he remembers about the sexual abuse that happened to him, that he originally didn't talk about in those first two interviews.

MR. COLLINS: Your Honor, if I may respond just briefly. Looking directly at the Rule, it's very clear when an advocate can become a necessary witness. They cannot stay the advocate on the case unless those three exceptions. This case doesn't fall anywhere in those three exceptions. I believe we stated on the record that it has nothing to do about what the child said in the interview about the reason they're a necessary witness. They're a necessary witness because they have knowledge about

interviewing techniques. They deal with these cases on a regular basis and we have a right to cross-examine them on the techniques and methods they used to interview this child. It has nothing to do with whether or not his testimony changed and whether or not they're going to be an impeachment witness. They're a defense witness because we want to put them on the stand and cross-examine them on how they interviewed this child, what questions and where and what type of influences that could have happened. So having him to cross-examine does not cure our problem whatsoever.

MS. FEND: I guess that word is what I'm kind of focusing in on is where it says necessary witness. And we're not necessary. We may have the witness themselves, the child victim, that can come in and testify as to those things, as well as Ray Olszewski, who is a forensic trained interviewer that will be here to testify. They can also pose those questions to that expert as well, is, you know, why, after all of this time, would a child come up with additional details of what happened to them? We're not the necessary witnesses. All the witnesses that are already here on the witness list can provide all of that information

THE COURT: All right. I'm going to -- in the Rule it also says, is acting as an advocate at trial and it

talks about being a necessary witness. I do -- the victim's here. He's testifying. You're able to cross-examine him about what they asked him or what they said to him. I'm not going to disqualify either one of the attorneys. I don't think, you know, based on my reading of the cases, I don't think a hearing is necessary.

The case that you're referring to, *Sanders*, actually that's a case where the State is trying to call the Defense attorney as a witness. In reading both cases, the Court strongly, strongly, strongly discourages attorneys being called as witnesses in a case. I think this is trial preparation and the witness is available. You can ask him any question that you all want to ask him about his preparation with the State's attorneys, if they coached him into saying anything, what they asked, and that kind of stuff.

MR. COLLINS: Your Honor, we would ask a proffer based on the language in *State v. Sanders* that says, we take this opportunity to set forth the proper procedure when counsels removal is sought -- which is being sought right now -- is to have an evidentiary hearing. As a procedural safeguard, an evidentiary hearing is appropriate to determine whether there's evidence to support or not evidence to support.

Again, Your Honor, we would ask that they just proffer

their testimony and have some sort of hearing so that we can establish this for the record. Otherwise, we have no way to establish a record on this issue.

MS. FEND: Your Honor, I actually would be happy to provide a proffer of how the disclosure came about.

THE COURT: That's fine. Do you want to hear from both of them?

MS. FEND: Well, the proffer does require either of us as court officers -- as sworn officers of the court, so I don't need to testify. I mean, I would proffer what happened.

MR. COLLINS: If she's a witness, she's going to have to testify.

MR. BAILEY: She's still a witness, Judge.

THE COURT: I'll let her proffer, but I'm not going -- I'll let her proffer her testimony. She's an officer of the court. She can tell you all how the conversation went. But, I mean, I don't think I need to put her under oath and put her on the stand.

MR. BAILEY: All right, Judge. We would still like to preserve, you know, for the record our objection that she be allowed to wear two hats in this way.

THE COURT: That's fine.

All right. Yes, ma'am. I'll let you proffer any testimony.

MS. FEND: I mean, essentially, the methods is he came in for ---

MR. COLLINS: Before we continue, can we ask that the victim in this case be removed from the courtroom? I don't want to do any more harm that's already been done, repeated questions, information given, age of the child. I would ask that it be done in-camera or with the victim out of the courtroom.

MS. FEND: He has a right to be here under the Victim's Rights Act.

THE COURT: I don't think I can put him out of the courtroom.

MR. COLLINS: Your Honor, I'm just asking the Court for safety purposes, we're objecting to the proffer because we don't get to ask any questions and we don't get to know the true nature. And as an advocate she can't proffer testimony. Under *State versus Hill* what an attorney says is not testimony. So this proffer isn't technically testimony unless she's sworn in and allow us to ask her questions. So it still doesn't establish a record for appeal or a record for any review.

And, Your Honor, the *State v. Hill* case had to do with the question -- where the jury selection process was being challenged, and as an attorney, the attorney stated to the Court on the record certain things that were learned during

jury qualification. And the Court of Appeals of South Carolina ruled that that is not evidence and cannot be reviewed under appeal. I would say that this proffering process that we're involved in right now is that exact same thing where she is talking as an officer of the court and it's not evidentiary. In fact, in value it wouldn't be able to be reviewed.

MS. FEND: What this victim actually said to us in this meeting is hearsay, so I wouldn't be able to testify to it anyway. It's hearsay what the victim said, unless, as we have disclosed, the additional things that he told us, unless he denied making those statements to us, then we could testify to impeaching him and we would be called because they would say, did you tell the Solicitor this? And if he said, no, ---

THE COURT: Well, at that point, you become a witness.

MS. FEND: Right, at that point. But that's not happened. He's not been on the stand. He's not denied making these statements, so that impeachment is not there. So anything that he told us in our meeting is hearsay and is not admissible. What I'm doing is they challenged basically that something improper was done in the method of getting this out, and I am here to -- I was offering under 3.7 as they were asking or you actually read the word

proffer, I was offering to proffer the method. But, you know, if they're objecting to that, then I won't offer the proffer. And, I mean ...

MR. COLLINS: Well, we'll take ---

MS. FEND: We'll stand with the Court's holding that I would not testify as a witness.

MR. COLLINS: Your Honor, I mean, we'll take what we can get, whatever proffer you order, we just want it on the record we object to this being the method used because our position is that this is not going to keep this on the record for appeal or for review.

THE COURT: All right. Hold on one second.

All right. What I'm going to do is I will let her proffer testimony about what happened and after that if we need to -- based on what I hear, if we need to have a hearing at that point, we will.

MS. FEND: Essentially, Your Honor, he came in for -- to meet with us regarding the details of the abuse. He met with myself and Debra Moore, and we didn't use any leading questions, basically just said what can you remember that happened to you, tell us about what happened. He gave us the details, which were consistent with that which is disclosed or has been provided to Defense counsel in the ARC records and the videotape. Talked to him about basically his age and kind of assessed that we thought he

was old enough to go watch these interviews on his own to refresh his memory back to when he met with Ray Olszewski the two times, made copies of those DVDs and had them sent to his home so he could watch them in privacy at his own home by himself. He represented to us that he reviewed those two DVDs. He came back to our office. We sat down with him and said, you know, did you have a chance to watch them? Did they refresh your memory about what happened? And he said, yes, but there are some things that I didn't tell Ray in the interview, and those three things were disclosed to Defense in the email.

It was that he would use the excuse that he had to pee in order to get the masturbation to stop. It was that he remembered that the Defendant would play music and he could remember two distinct songs that the Defendant would play. And then the third thing in one of the -- I guess in the second ARC tape, he referred to that when it happened was somewhere around November of '09 for multiple times. And he said basically he didn't know when exactly it started, the dates, but that he knew it was after he found out that the Defendant was his biological dad. And so because that was different from this interview, we disclosed that third thing to them as well.

MR. COLLINS: Your Honor, this is the first time we've ever heard they had two meetings. This is the first

time we've ever heard the child was allowed to review his own video, which I have never seen done before in a case. We need, we need time to hire an expert and review this information and how it can affect the child's testimony. So we'd either ask that the case be continued so we can hire an expert and let's explore this issue a little bit further. This is new information that we did not have until right now.

MS. FEND: First of all, I don't have to tell him how many times I meet with the witness. How many times I meet with the witness has zero bearing and I have no obligation to turn over to them how many times I meet with a witness. The second thing is, having the child watch the interview happens all the time. It's a regular occurrence, regular. It's like giving a statement, a written statement. If he had given a written statement, we would get that written statement to a witness. It happens in every singe case and every single witness. You say, did you give a written statement? You hand it to them and you say, read this and refresh your memory about the events. Every singe case. It would be irresponsible of us not to provide a witness their prior written statement or in this case, it was videotaped, to that witness to review.

THE COURT: All right. I find that this is trial preparation, that there is no -- based upon what I've

heard, there is no violation of Rule 3.7 and that neither of the attorneys need to step down from the trial of this case.

MS. FEND: Just to clear up the record, too, so they don't think I was misrepresenting anything, I actually met with this victim more times. It was only those two times that I discussed the actual facts of what happened to him. The other time, just getting to know him so that he would be comfortable with me coming back and discussing the case, so there were ---

THE COURT: The victim will testify and they'll have an opportunity to cross-examine the victim. They can ask him how many times they met, what they ask you about, did you look at the videos? That's nothing that is uncommon in any case.

MR. COLLINS: Your Honor, it's our position that it's uncommon in cases with children. That's the difference. There's different statutes and different rules of evidence with children and their testimony.

But for the record, we would like to say we object to the nature of the proffer. We object to the failure to sequester the victim in this. We object to the lack of hearing, denial of a hearing, and also would ask for a ruling on our motion for a continuance so that we may retain an expert to deal with this new information that

we've received.

THE COURT: All right. Your motion is denied. Your motion to continue is denied.

MR. COLLINS: Thank you, Your Honor.

THE COURT: All right. Anything else? Let's see.

MR. BAILEY: I guess we'll move on to the *Denno* hearing now.

THE COURT: Yes.

MS. BARRY: Your Honor, the State calls investigator Travis Holdorf.

THE CLERK: Do you swear or affirm the testimony you're about to give in this case to be the truth, the whole truth and nothing but the truth, so help you God?

WITNESS: I do.

THE CLERK: Have a seat in the witness box. State your name for the record, please.

WITNESS: Travis Holdorf.

TRAVIS HOLDORF,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARRY:

Q. Investigator Holdorf, where are you employed?

A. I'm employed at the Richland County Sheriff's Department.

Q. And how long have you worked at the Richland County Sheriff's Department?
A. Since 1994.
Q. What are your present duties today?
A. I'm a sex crimes and child abuse investigator. Also, every seven weeks when our shift goes on call, I'm a primary homicide investigator.
Q. All right. Did you have an occasion to become involved in the investigation of John Barnes?
A. Yes, ma'am, I did.
Q. And what day did you become involved in that investigation?
A. It would have been April 12th, 2010, is when I was assigned this report.
Q. Did you make contact with the Defendant?
A. I did.
Q. And what, if anything, did you tell him?
A. I explained to him that I wanted to get his side of the events, standard on just about any case.
Q. Were you aware of the allegations made in this case?
A. Yes, ma'am.
Q. And did you, in fact, later meet the Defendant in person?
A. Yes, ma'am. I actually met with him twice.
Q. The first time, where did you meet him?

A. Both times the meeting took place at my office, which is 1931 Pine View Road. It's at the corner of Pine View and Garner's?? Ferry. It's the victim's assistance building.

Q. And how did Mr. Barnes get to Pine View Road?

A. Both times he drove himself and then -- to and from.

Q. Was he in custody at the time?

A. No, ma'am.

Q. Did he come in freely and voluntarily?

A. Yes, ma'am.

Q. And did he, in fact, speak with you?

A. Yes, ma'am, both times.

Q. Did you read him his *Miranda* Rights when he came into your office?

A. No, ma'am. He was not in custody. I did not believe that he would even think that he was in custody. I explained to him he could come in, we would talk, get his side of things, and then he would go.

Q. Did he appear to understand the questions that you asked him?

A. Yes, ma'am.

Q. Was he able to read and write?

A. Yes, ma'am. On one of the statements he actually corrected -- I had was and it was supposed to be wash. But, yes, ma'am.

Q. And he corrected that?
A. Yes, ma'am. Well, he pointed it out that it was a mistake.
Q. So his first statement he gave you, he came involuntarily. And what day was that?
A. It was June 18th, 2010 at one twenty-six in the afternoon.
Q. What, if anything, did you ---
THE COURT: Hold on one second. Yes, sir.
MR. BAILEY: I'm sorry, Judge, we would like to go ahead and have the witnesses sequestered.
THE COURT: Oh, I'm sorry.
MR. BAILEY: I should have said something earlier.
THE COURT: All right. The victim can stay, his mother and father can stay. Everyone else who is testifying will leave the room.
MR. BAILEY: We would ask that those that are in the courtroom and those out of the courtroom, when they come out, that they just be instructed by the Court not to discuss what's said while they're not in here.
THE COURT: All right. I'll explain that further.
MR. BAILEY: All right. Thanks, Judge.
THE COURT: Once he finishes. I'm sorry. You

may continue.

MS. BARRY: Thank you, Your Honor.

Q. What date was the first statement?

A. It was June 18th, 2010.

Q. And so after he's finished with this statement, what, if anything, do you do with him?

A. If I don't feel I've gotten all the information or I'm getting the whole truth, I kind of throw that out there that if there is something else, that it looks better if it comes from him and that, you know, eventually the truth will come out. The lines of communication are open if he has something further he wants to tell me or just talk about, that he can call me.

Q. But he was not in custody at this time?

A. No, ma'am.

Q. And he actually left the Sheriff's Office?

A. Yes, ma'am.

Q. Did you have an occasion to meet with Mr. Barnes again?

A. Yes, ma'am. I met with him again on July 1st, 2010.

Q. And how did that come about?

A. Mr. Barnes had contacted me and said that there was more things he wanted to talk about. At the time, I remember I was tied up on a case. I don't remember exactly which one it was, but explained to him that, you know, I

did want to meet with him and as soon as I had an available moment, we would sit down and meet when our schedules could agree.

Q. And so he contacted you?

A. Yes, ma'am.

Q. And how did he get to the Sheriff's Office?

A. He drove to the Sheriff's Department.

Q. Was he in custody once he got there?

A. No, ma'am.

Q. Did you read him his *Miranda* Rights?

A. I did not.

Q. In fact, after he gave his statement to you, did you take him into custody?

A. I did not.

Q. Did he leave on his own?

A. He left on his own.

Q. When did you arrest Mr. Barnes?

A. Mr. Barnes turned himself in on September 10th, 2010.

Q. So both of these statements were taken when the Defendant was not in custody. Is that correct?

A. That is correct.

MS. BARRY: I beg the Court's indulgence. That's all I have.

THE COURT: Please answer any questions that Mr. Rhodes ---

MR. BAILEY: Bailey. I know -- it's a double last name ---

THE COURT: I'm sorry. I'm sorry. It's Mr. Bailey.

MR. BAILEY: That's fine, Judge.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. Investigator, you say that you spoke with Mr. Barnes at your office?

A. Yes, sir.

Q. This was in your office or in your office building?

A. I'm not sure I understand the difference in your question.

Q. Well, I mean, I mean, you know, I don't know. I have an office at the courthouse. The Public Defender's Office is on the first floor. And then within that office is my office, which is a really tiny little cubbyhole. But I mean, was it in your own office or was it in a separate room at the building?

A. It was in my small cubbyhole at the Sheriff's Department Victim's Assistance.

Q. Okay. So it was at your desk?

A. Yes, sir.

Q. And both times you invited him into your office and spoke with him at your desk?

A. Yes, sir.
Q. Okay. Are there any windows in your office?
A. I'm in a cube basically. Catty-corner would be a window. I mean, it's not in view from my standpoint. My back's kind of towards the opening. It would be facing the person I'm talking to. The person who I'm talking to might be able to see part of the window.
Q. So you're in a cubicle, not an actual separate office? Is there not a door you can close?
A. No, sir.
Q. I'm just trying to get a picture of it. When you first made contact with Mr. Barnes, how did you make contact?
A. On the phone.
Q. Okay. And you called him and you scheduled a time for him to come in?
A. Yes, sir.
Q. When you spoke with him, what did you tell Mr. Barnes about the accusations?
A. On the phone I try to discuss as little as possible and that's done for several reasons. One is I want to see their reaction as we're talking about it. That's very important to me. I don't want to give them too much time to think of a story. You know, oftentimes when I call someone to come in and talk to me, it'll be several days

before I do get that opportunity to talk to them. So I told him as little as possible, that there had been an allegation made against him, a criminal allegation, that we needed to talk.

Q. Okay. But did you tell him who made the allegation or anything like that?

A. I do not recall that.

Q. Okay. When he did come in, did you tell him who made the allegation?

A. Yes, sir.

Q. Okay. And who did you tell him made the allegation?

A. That Victim had made the allegation, his son.

Q. Okay. That his son or -- or Victim ?

A. It would have been the III.

Q. Okay. So you told him that Victim made the accusation?

A. Yes, sir.

Q. Okay. Before you got a statement from him?

A. In order to get a statement, he needs to know what we're talking about. Typically, the way this happens is you'll come in and we'll sit down and we'll start talking. I don't just start writing right away. It's kind of like a question and answer, getting to know them, making sure that I understand fully what they're saying. And, you know, and

also making sure they understand that, you know, what we're looking at.

Q. Okay. But you told him during one of these interviews, at least, or both, you told him that Victim had said that he had committed a lewd act against him. Is that right? You told my client that?

A. Yes, sir.

Q. Okay. All right. Did you tell him -- okay. This was during both meetings?

A. Yes, sir.

MR. BAILEY: The Court's indulgence.

Q. Well, what did you tell him when you told him that that allegation had been made?

A. I'd have asked why he would have said this, that that's the purpose of this, that Victim would have gone to the ARC to have an interview, try to go over the family dynamics and what's going on, which on this case there are quite a few.

Q. But at this point Victim hadn't said that, had he?

A. Yes, sir, he had.

Q. He had?

A. That's why we have the incident report, yes, sir.

Q. Okay. When did -- can you tell me when before, when before June 18th Victim made the statement that Mr. Barnes had committed this?

A. He admitted to his sister and then again to his dad and step-mother while they were out-of-state.
Q. Okay.
A. And then when they come back to Richland County where this incident happened, they made a police report.
Q. What all did you tell Mr. Barnes about the alleged allegation?
A. I asked him about the bathing. I asked him -- as far as me telling him stuff, I'm not telling him a whole lot. I mean, he'll understand what the conversation's about or what I'm looking at to try to get answered in the investigation, but it's to obtain information from him. I mean, if I'm telling him everything that the other side's saying, it's not his point of view.
Q. Okay. So you didn't tell him very much, is what you're saying?
A. I would have asked him questions and I believe it's in writing where I asked him, why would Victim say that you masturbated him? I asked him if he talked about masturbation, asked him about the bathing techniques and all of that would have been covered in the statement itself.
Q. Okay. How long did you speak with him the first time in June?
A. An hour, maybe two.

Q. Okay. How long did you speak with him the second time in July?

A. An hour and a half, maybe two.

Q. Okay.

MR. BAILEY: Just a moment, Your Honor. No further questions, Your Honor.

THE COURT: Anything else from the State?

MS. BARRY: No, ma'am.

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

WITNESS: Thank you, Judge. All right. Yes, ma'am.

MS. FEND: Thank you, Your Honor. May it please the Court. The two statements from the Defendant were both non-custodial statements; therefore, it's the State's position that *Miranda* does not apply in these situations when the Defendant freely and voluntarily comes in, drives himself to the Sheriff's Department, and actually, in fact, leaves the Sheriff's Department, so *Miranda* would not apply in this case.

THE COURT: Okay. Yes, sir.

MR. BAILEY: Thank you, Judge. We feel that Mr. Barnes, you know, was mislead here. Obviously, he wasn't in custody at the time, but, you know, we think it's -- it certainly sounds like that law enfosrcement had every intention to *Mirandized* him -- had every intention --

excuse me -- to arrest him if they wanted to just hold off on that to avoid giving someone their rights. We still don't think it's appropriate. We would just ask that the Statement be suppressed, Your Honor.

THE COURT: I am going to deny the motion to suppress the statements. I do find that they were voluntary and that based on the officer's testimony, the statements were given as non-custodial. He was allowed to leave. He actually called back himself, drove himself back and was allowed to leave again and was not arrested until September, and that second statement was in July. So I'm not sure if there was any intent to arrest at that point, but he was not arrested, again, until September, September the 10th. The statements were non-custodial based on the officer's testimony.

MR. BAILEY: All right. Thank you, Your Honor.

THE COURT: All right. Anything else before -- well, we've got to see if they're here -- before we bring the jurors in. And then I know there were some other cases that were on the trial docket. Anything else before we bring the jurors. If they have those other cases that are pleas, we'll have to get those in the morning or sometime later in the week. I don't see Mr. Eagle. All right. Are you going to check for me to see if they are here? It's not quite ---

THE BAILIFF: They're all here, Your Honor.

THE COURT: They are all here?

THE BAILIFF: They are.

THE COURT: Okay. Well, we can go ahead and get started. I'll give an introduction. I'm not sure how -- who is your first witness?

MS. FEND: Scarlett Murray.

THE COURT: All right. We'll go ahead. I'll give the preliminary charge, swear the jurors, do opening statements and we'll see how far we get. And call a few witnesses. Are you opening on the law?

MS. FEND: I am, yes.

THE COURT: Oh, you're going to do that, okay. All right. Anything else?

MR. BAILEY: Not from us, Judge.

THE COURT: All right. Let me, for those of you who are in the courtroom who may possibly be testifying, you cannot -- the purpose of sequestering the witnesses is that they are not to know what is said inside of here, inside the courtroom. So you can't go back and tell them what was said once you testify or even by virtue of you all being in the courtroom. You cannot go back and tell them what anyone testified to or anything that happened in the courtroom.

All right. Do y'all need a break before y'all do

opening statements?

MS. FEND: If we can just have five minutes.

THE COURT: All right.

MS. FEND: The other thing is I just -- Our first two witnesses are here. Our third witness is a Richland County Sheriff's Deputy who got off duty at two-thirty and basically she was just going to stay kind of in text contact or cell phone contact. Can we just start with her in the morning?

THE COURT: I don't know if we're going to get past -- well, I don't know how long y'all are going to open. But by the time y'all probably finish opening statements, it'll be at least four o'clock or so. And you said you had two other witnesses. So we'll stop ...

MR. BAILEY: Yes, I'm sorry. We're starting where, Judge?

THE COURT: I'm guessing by the time we finish opening statements it'll be at least four o'clock. My introduction, opening statements, she has two witnesses and she said that she has a Sheriff's Deputy she doesn't know whether or not to call over here or not. I'm thinking we probably won't get to her today.

MR. BAILEY: Okay.

THE COURT: We'll probably stop around five o'clock.

MR. BAILEY: All right. Thank you, Judge.

THE COURT: Let's take a five-minute break.

(WHEREUPON, the court stood at recess for a short break.)

THE COURT: You can bring the jurors in.

THE BAILIFF: All right.

(WHEREUPON, the jury entered the open court at approximately 3:42 p.m.)

THE BAILIFF: The jurors all are present, Your Honor.

THE COURT: All right. Madam Clerk, I'm going to ask that you swear the jurors.

THE CLERK: Please stand and raise your right hand to be sworn. Upon completion, if you accept this oath, respond with I do.

Do you swear or affirm that you shall well and truth try, and a true deliverance make between the State of South Carolina and the Defendant at bar, then you shall have in charge and a true verdict give according to the law and the evidence, so help you God?

JURORS: I do.

(WHEREUPON, the jury was duly sworn.)

THE COURT: All right. Ladies and gentlemen of the jury, I hope you enjoyed your lunch. What I will say now is intended to serve as an introduction to the trial of

this case. These remarks are not a charge on the law in this case. I will charge you -- instruct you on the law of this case at the end of trial, before you retire to consider your verdict. This is merely an explanation of the procedure that we will follow in the trial of this case so that you may better understand what may be happening.

The Defendant, Mr. John Peter Barnes, is charged with lewd act on a minor child, the elements of which will be explained to you later. The indictment is simply the charge by which the case is brought into court and it is not in any sense evidence of any of the allegations it contains. The Defendant has pled not guilty to this indictment. The State, therefore, has the burden of proving each of the elements of the indictment beyond a reasonable doubt. And it will be your duty, ladies and gentlemen of the jury, to decide whether the State has met that burden.

Your purpose as jurors is to find and determine the facts. You are the sole judges of the facts. If at any time I make any comment regarding the facts, you must disregard it. You are to determine the facts from the testimony you hear and the other evidence introduced in Court. It is up to you to determine the inferences which you feel may properly be drawn from the evidence. It is especially important that you perform your duty determining

the facts diligently and conscientiously, because ordinarily there is no way of correcting an erroneous determination of the facts by a jury.

On the other hand, and with equal emphasis, the same law that makes you the judges of the facts makes me the Judge of the law. The law as given by the Court is the only law you may consider. You must accept and follow it even though you may disagree with it. I cannot tell you what the facts are and you cannot disagree with me about what the law is or should be. Your job is to take the law as I give it to you and apply it to the facts as you find them from the testimony of the witnesses and other evidence that is introduced. After doing that, you will render your verdict a true and just verdict under the solemn oath that you just took as jurors.

Until I advise you to begin your deliberations, you must not discuss this case with anyone, including your fellow jurors, friends, family members, and anyone involved in the case. This includes discussions face-to-face and those by telephone, email, text, blogs or any other method of communication or social networking. After the case is submitted to you, you must discuss it only in the jury room with your fellow jurors.

The attorneys and parties in this case have been advised that they are not to talk to you at all. So if you

see anyone involved in the case and they do not even say hello, they are not being unfriendly or rude. They are just following my instructions.

During the trial, do not read, listen to or watch any news reports about this case. This includes anything that may be in the newspaper or on the internet, radio or television. You must not consider anything you may have read or heard about this case outside the courtroom, whether before or during the trial. It is important that you keep an open mind and not decide any issue in the case until all of the evidence has been presented, the parties have made their closing arguments and I have instructed you on the law in this case. It is your solemn responsibility to determine the guilt or innocence of the Defendant and your verdict must be based solely on the evidence as it is presented to you in this trial and on the law as I instruct you during and at the close of the trial.

In just a moment the Solicitor will make what is called an opening statement in which the Solicitor will explain to you the issues in this case or at least what the Solicitor thinks the issues are in this case.

The attorney for the Defendant may also make an opening statement, and although he is not required to do so, he may do so. What the attorneys tell you during their opening statements is not evidence in this case. It is

only their contention as to what the issues are. The evidence in this case will be presented to you by the testimony of sworn witnesses from the witness stand and/or by exhibits that may be introduced into evidence.

From time to time during the trial, you may hear one of the lawyers say something like, Your Honor, I believe we have a question of law or a matter of law to discuss with you, or Your Honor, may we approach the bench? Or sometimes I myself might find it necessary to excuse you from the courtroom for a short while so the attorneys and I can discuss a matter of law. The reason for this is because you are the judges of the facts in this case and sometimes when I am discussing matters of law with the attorneys, it may be necessary for me to make some comment as to the facts in connection with ruling whether or not a particular law applies. I'm not supposed to tell you what I think the facts are, so I will excuse you from the courtroom while these discussions take place so that in no way will you be influenced by anything that I may say or do in connection with the facts.

In determining what the true facts are in this case, you must decide whether or not the testimony of the witness is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all or not, but once the testimony is admitted, whether

or not you believe it is solely for you to determine.

In deciding whether to believe a witness, you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify, and the way the witness acts on the witness stand. You have a right to consider anything that is in the record that will help you evaluate the testimony of the witnesses. That means that it is your duty to pay close attention to these witnesses, to observe these witnesses, to listen to the witnesses and to pay close attention to the attorneys and the Court. Do not let your thoughts wander but give strict attention to the testimony in this case so that at the end of all the testimony, after the arguments of counsel and the charge on the law by the Court, you will then be in a position to determine what the true facts are and to apply the law to those facts and thus render a true and just verdict.

It is your added duty, Mr. Foreman, to preside in the jury room and be the jurors' spokesperson here in Court. It will also be your duty to write the verdict that I will give you -- but I will give you further instructions about that at the conclusion of the case.

In order to preserve everyone's right, I will give the parties an opportunity to object to anything that I've

said. Any exceptions by either side?

MS. FEND: Nothing from the State?

MR. BAILEY: No, Judge.

THE COURT: All right. And I'll go ahead and tell you before we start opening statements, I normally will -- we will normally hold court from about nine-thirty until five-thirty, maybe six o'clock at the latest. If you have childcare issues, let the bailiff know and they'll get the message to me. We will take a break about every hour and a half. But if you need one before then, I'll glance over at you all or grab the bailiff and one of them will get my attention so you can take a break if you need to take a break prior to that hour and a half break.

At this time, we will have opening statements. We will hear from Ms. Fent and then from Mr. Collins.

OPENING STATEMENT

BY MS. FEND:

Eleven-year-old Victim suffered one of the worst kinds of violations any young boy can suffer at the hands of the very person that you hope will protect you above all others, his own biological father. The Defendant was masturbating young Victim in the bathtub at the Defendant's home, giving him bubble baths and lighting scented candles as he masturbated his son.

As a thirteen-year-old young man he will come up here

on this witness stand, and with strength, will tell you the details of how that happened and exactly what happened to him. Not an easy thing for a young thirteen-year-old little boy to come in and talk about.

And I ask that as you listen to the testimony in this case, that you take that into consideration and think about anyone having to come into a courtroom and talk about their most recent sexual experience with strength. And so as you listen to him and you watch him on this witness stand, I just ask that you take that into consideration.

You will hear that the Defendant admitted to the bubble baths, to the scented candles, and he admitted to one act of masturbation. That is the essence of our case. It really is that simple.

However, I will let you know, I would like to tell you a little bit of some of the evidence that you will hear. Victim s mother, many, many years ago prior to Victim being born, was married to William Dean Murray, II, and she had an affair. She had an affair with the Defendant, with John Barnes, and she had two children as a result of that. She had the victim in this case and his brother Jeffrey. It was not until 2008 when, after moving to a couple of other states that they moved back here to South Carolina, and Victim recalls first having contact with the Defendant, that they were moving back here, moving into a house or

wherever they were living and that the Defendant came over to help the family move back in. And it was subsequent to that that he recalls then going over to the Defendant's house on weekends, a couple of times during the week to visit. He was called John or Uncle John.

At some point during that time period, there was a family court action between Victi's mother and his legal father, William Murray. During that time there was some DNA tests done and it was determined then that Victim was, in fact, the product of this relationship that his mother Amy Gieselman had with John Barnes. John Barnes, the Defendant, told the victim himself, pulled him into his room and said, I'm not supposed to tell you this yet, but I am your biological father. Victim recalls that it was after he found out that John Barnes was his biological father that these incidents began taking place in his home, in the Defendant's bathroom, with the bubble baths and the candles.

I am not going to stand up here and we are not going to stand up here and argue that this is a perfect family. This is truly an unconventional family by many definitions of the word. But what I ask you to do is to focus in on what happened in that bathroom with the Defendant and his biological son, what Victim comes up here and tells you about that, and the Defendant's own admission. You are going to

hear that initially Victim tells his sister Scarlett about these inappropriate things happening. He feels comfortable and he discloses to her. She turns around and discloses to her step-mother, Jamie Murray, and her dad, Mr. Murray. They then turn around and call law enforcement and notify law enforcement about this happening.

Investigator Travis Holdorf is the investigator assigned to this case and he schedules an interview for Victim at what's called the Assessment Resource Center. It is a place where they do interviews of children, they are trained to do interviews, conduct interviews of children. And Victim was brought in and he admits basically to the baths. He's an eleven-year-old and he admits that his dad, John Barnes, is giving him bubble baths, but denies any type of sexual inappropriateness at that time. It's an eleven-year-old who's embarrassed to talk about it. The Defendant comes in and gives his statement to Investigator Travis Holdorf and he initially denies anything sexually inappropriate happened, but admits also to giving him, the eleven-year-old son, bubble baths with scented candles.

Investigator Holdorf does a great job in talking with the Defendant and saying, hey, if there's anything else you want me to know, you want to tell me your side of the story, anything else you want me to know, you just pick up the phone, give me a call and let me know. And sure

enough, within a short period of time, the Defendant picks up that phone and calls Investigator Holdorf and says, I have more information to give you. And he comes in and he sits down with Investigator Holdorf and that's when he admits to the one act of masturbation in that bathroom.

Then Victim is contacted again, another interview is set up at the Assessment Resource Center to bring him in and talk to him about it, and that's when he gives all the details and that it happened many times and that he was very embarrassed and scared to tell about it the first time.

You'll hear from Investigator Holdorf. You'll hear from the trained interviewer, Ray Olszewski. You'll hear from his sister, Scarlett, his step-mother, and how all that disclosure and how it's reported to law enforcement that brings us here this week. And it is the close of our case when all the witnesses have testified and you have all the evidence that we'll come back before you and we're going to ask you that justice be served and that you find him guilty beyond a reasonable doubt of the act. Thank you.

THE COURT: Thank you. Yes, sir.

MR. COLLINS: May it please the Court.

THE COURT: We'll hear from Mr. Collins.

OPENING STATEMENT

BY MR. COLLINS:

How did we all get here? How did we get in a room where an innocent man is on trial for something that he didn't do? She made it sound real simple, open and shut. But we're going to hear from a lot of different witnesses, hear a lot of different things over the next couple of days. It's not that simple. As we hear from the different witnesses, hear the different things that happened, there's going to be a couple of different questions that are going to stick out to you. We're not going to run from them. We're not hiding from them.

Number one, why would a child make something like this up? Number two, how could a father sign a statement admitting to doing it?

Now, let's talk about the first question. Why would a child make this up? You're going to hear about a family situation that isn't exactly stable. Custody fights, child support fights, step-mothers fighting with mothers, mothers fighting with step-fathers, sisters fighting with step-fathers, new fathers coming into the equation when he was eight, nine years old. How does that affect a child? Are they caught in the cross-fire? Are different people influencing him in different things? You're going to hear about repeated interviews of this child, asking him time and time again about this situation, about his father, John

Barnes, by trained professionals. You're going to hear about how he was interviewed by untrained professionals, even as lately as last week. How does that affect a child? Because he is a child.

Second question, how can a father sign a statement that he did this? You're going to hear from John. He's going to get on this stand and he's going to tell you some things. He's going to tell you about how he was confronted with these allegations, these horrific allegations, how it affected him because he knows right then and there, these new sons in his life, they're gone. It doesn't matter how this thing shakes out, they're out of his life. We all know how these allegations affect everyone involved. He's lost all hope immediately of having any kind of life with his two sons, his two boys. That's over. That puts a man in a little bit of despair. He tells Investigator Holdorf some things that day and then he goes home and it starts really setting in. He's lost his boys. And that father is -- he starts thinking about the legal justice system, the jaws of this court system. It's not nice in here. It's cut-throat in here. And he doesn't want his child to have to go through that. Nobody wants their child to have to get up here on the stand and talk about what we're going to talk about this week. And he's lost hope for his own sake. John's not even thinking about himself. He's thinking

about his sons. He's going to protect his boy.

So he calls Holdorf up and he goes in there. He says, I'm going to take this on the chin. I'm not going to make my boy go through this. Unfortunately, John's not a lawyer. He didn't have one there with him. He wasn't told he could have one there with him. He didn't understand what he was taking on the chin. And now he's depending on himself, he's depending on Mr. Bailey to stand up and protect and fight for him. He's also depending on each and every single one of you to have an open mind, to think about this case objectively as your oath instructs you to do. An open mind, think sometimes, sometimes kids do make things up. Sometimes people sign statements that aren't true. There's such a thing as a false confession. We've all heard of it. And sometimes innocent men are put on trial for things they didn't do.

THE COURT: Thank you. Yes, ma'am. Please call your first witness.

MS. FEND: The State calls Scarlett Murray.

THE BAILIFF: Place your left hand on the bible and raise your right hand, please.

THE CLERK: Do you swear or affirm the testimony you're about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

WITNESS: I do.

THE CLERK: Have a seat in the witness box and state your name for the record, please.

WITNESS: Scarlett Murray.

SCARLETT MURRAY,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. FEND:

Q. Scarlett, how old are you?

A. I'm eighteen years old.

Q. And what are you doing with yourself right now, working, going to school?

A. Getting ready to go off to Job Corp and get my culinary license.

Q. And get your what?

A. Culinary arts license.

Q. Okay. Tell us your relationship with Victim ?

A. He is my little brother.

Q. Okay. And your relationship with, I guess, Dean Murray, William Dean Murray, II?

A. Junior? That's my father.

Q. And are your mom and your dad married right now?

A. Not any more.

Q. Okay. Do you remember when they got divorced?

A. 2004, I believe.

Q. And between that time and now, who have you lived

with?

A. I've lived with my mother and my step-father.

Q. And is that here in Columbia, South Carolina?

A. Yes, it is.

Q. Okay. Tell us about the visitation that you have with your dad, Dean?

A. I go visit my dad every Thanksgiving, every spring break and one week out of Christmas Break and all summer.

Q. And all summer?

A. (Affirmative nod).

Q. I want to take you back to spring break of 2010, so around April of 2010.

A. Uh-huh (affirmative).

Q. Did you go visit your dad at that time?

A. I did.

Q. And who else was with you when you went to go visit your dad?

A. My little brother Victim and my little brother Jeffrey.

Q. Any other siblings that you have?

A. I have no other siblings.

Q. Okay. And how old is Jeffrey?

A. Jeffrey is eleven.

Q. Okay. Tell us what you remember basically about that spring break?

A. Basically, we went -- we spent time with my dad. We did a lot of walking around D.C., but then when we came home my brother Victim and I decided we wanted to go to the park one day. And he confided in me and told me about his time spent at John Barnes' house.

Q. At that point, what was your relationship with John Barnes?

A. He was a family friend. I had currently found out that he was my brothers' father, both my brothers' father.

Q. Okay. So would you go over to John Barnes' house?

A. Yes.

Q. How often would y'all go over to John Barnes' house?

A. They went more often that I did. I had other plans. But everyone ---

Q. And try to speak up a little bit so we make sure everybody can hear you, okay?

A. I would go over every once in a while. I'd spend a night every now and then. Nothing more than that, really?

Q. John Barnes, do you see him in the courtroom today?

A. Yes, I do.

Q. And can you point to him and describe, I guess, where he's sitting and what he's wearing so that we know who you're talking about?

A. He's right there at the Defendant's table. He's wearing a nice suit.

Q. He's wearing what?
A. A suit.
Q. Okay. There's three people sitting at that table. Which one is he?
A. With grey hair and glasses and a beard.
Q. Okay. And do you remember around what time period it was that you started going over to his house?
A. Approximately the beginning of 2010 -- or at the end of 2009, beginning of 2010.
Q. Okay. And I don't know if I asked you this, but how frequently would y'all go over there?
A. The boys would go spend a lot of time, really. They actually liked going over there sometimes. Usually, he would take them to school so they would be there during the school weeks. And I would go over every once in a while on the weekends, sometime during the weeks.
Q. And what was the sleeping arrangements? How many bedrooms were there?
A. There were two bedrooms. Me and both of my brothers had a room to ourselves and John had a separate room. And later, a few months later, I realized that Victim started sleeping with John Barnes in his room.
Q. Okay. So in April of 2010, you're at your dad's house -- and what state does he live in?
A. Virginia.

Q. Virginia. For spring break and you said that you and Victim went to the park together?
A. Uh-huh (affirmative).
Q. Was there anybody else at the park with you?
A. Nobody was there at the moment.
Q. Okay. And you said he told you about some inappropriate things?
A. Yes, ma'am.
Q. That were happening between he and who?
A. He and John Barnes.

MR. BAILEY: Objection, Your Honor.

THE COURT: Yes, sir, if you'll state your objection.

MR. BAILEY: This is outside the time and place rule for this case, Your Honor.

THE COURT: All right. Let me ---

MR. BAILEY: Under hearsay, the time and place, exception on the hearsay, Judge.

MS. FEND: At this point what he told her, I'm not getting out the details, but it sets up why she didn't go -- it's not for the truth of the matter asserted.

THE COURT: Let me see you all up here.

(WHEREUPON, Ms. Fend, Ms. Barry, Mr. Bailey and Mr. Collins approached the bar.)

THE COURT: All right. Ladies and gentlemen of

the jury, at this time I am going to send you all out. There is a matter of law that I must take up outside your presence. Remember, you cannot talk about the case once you go into the jury room. Thank you.

(WHEREUPON, the jury exited the open court at approximately 4:39 p.m.)

THE COURT: Yes, sir. Please state your objection.

MR. BAILEY: Judge, we're objecting to the testimony as being outside the hearsay exceptions for time and place in these types of cases. That's what -- the witness is only allowed to testify as to the time and the place that any alleged incident should occur. She cannot identify who allegedly committed the incident, otherwise it would be hearsay and she also can't talk about what happened. But there are plenty of cases on point here. If we had five minutes, we can probably pull about five of them. I didn't think this would be an issue, Judge.

THE COURT: Can you rephrase the question?

MS. FEND: Well, two things is, actually that was the second time I asked her. The first time that she answered it there was no objection from the Defense counsel. So then I went back. I backed up and said, okay, who is John Barnes? How do you know this person? Is he in the courtroom? And then I was actually going back around.

So the first time she actually said that John Barnes did things to him, there was no objection.

MR. BAILEY: I'd have to read the record. I didn't know she was trying to sneak that one past me first, but apparently I only caught the most recent one, Judge.

MS. FEND: Secondly is, it's not offered for the truth of the matter asserted. The information is then given to another person and an incident report is made against John Barnes. It goes to explain how that report was made. That's not for the truth of the matter asserted. It explains why this report's made against him.

MR. BAILEY: And that very type testimony can come through the officer's testimony, but not through this young lady here, Judge. There's no reason for her to try and elicit this testimony, except to try and, you know, try and get something in that's outside the time and place.

THE COURT: All right. Let me -- go ahead and ask the question again and proffer the testimony.

MS. FEND: Well, there's nothing else I would proffer. I mean ---

THE COURT: Just ask the question. I want to see what her answer is.

MS. FEND: Could I have the Court reporter just read back my last ...

(??Backup)

THE COURT: ?? truth of the matter asserted, she's just saying that -- I guess to lay the foundation as to how it gets to the police.

MR. BAILEY: Well, again, Judge, there are plenty of cases on point here. She can get that information from the police's testimony, the police investigation. The idea of Mr. Barnes comes from the child himself. This is just -- I mean, I think this is just, you know, throw in an extra chance to identify him. I mean, this is clearly what the time and place rule restriction is for under the hearsay rule.

MS. FEND: It's actually not a restriction. It's an expansion. Without that rule, witnesses would not be able to testify to time and place. If you can fit their testimony in under other exceptions or definitions that are not hearsay, but that is actually an expansion and allows hearsay to time and place, specifically in sexual assault cases, so it's not a restriction, it's an expansion.

MR. BAILEY: Actually, Judge, even expansions have boundaries. So I would -- excuse me. There are boundaries to the rules that Ms. Fend, Ms. Fend-Bodman has cited. And she needs to follow them, Judge.

I think two cases that would be on point, Your Honor, *Jolly versus State* and *Sanchez versus State*.

THE COURT: All right. In *Jolly* it says that

it's three exceptions, first in a criminal sexual conduct case when a victim testifies, evidence from other witnesses that she complained of the sexual assault is admissible, corroboration limited to the time and place of assault, excluding details or particulars.

MS. FEND: That rule still doesn't keep us from being able to use other exceptions. For instance, if a victim ran out of the house screaming and crying, going oh, my God, Joe Smith just raped me, just raped me, and they're crying, then we can get it under, you know, excited utterance, presence of impression. So it doesn't exclude other exceptions or other, you know, definitions of being able to get testimony in.

THE COURT: And what exception are you attempt to ---

MR. BAILEY: That's what we're curious about.

MS. FEND: I just said -- it is the very definition of hearsay, has to be offered for the truth of the matter asserted. I'm not offering it for the truth of the matter asserted with this witness. It's how in the world a report ends up being made about John Barnes, the very definition says you have to be offering it for the truth of the matter asserted. I'm not.

MR. BAILEY: Just because she's saying it's not offered for the truth of the matter asserted doesn't mean

it's not being presented in that way.

MS. FEND: I'm not lying.

THE COURT: All right. I am going to overrule the objection. But she doesn't need to get into any extensive conversation between her brother and she. I think she can say what she did and as a result of him -- and I think she's already answered the question. Did she answer the question?

MR. COLLINS: Your Honor, if I could have two minutes, I can have the exact case that deals with this ID issue directly saying it's not admissible for another witness to talk about the name of the perpetrator or the alleged defendant in the case. For a lay witness to talk to a child and they try to testify ---

THE COURT: What's the name of the case?

MR. COLLINS: I'm not sure. It's somewhere in the litany of the *Sanchez* and *Jolly*, something off of that. There's not that many cases dealing with this issue. But I know there's a case directly on point, talking about ID of the defendant through other lay witnesses and how it's not admissible.

Of course, we're talking about how it was a harmless error because the defense wasn't fighting that it was the issue -- or they weren't fighting that it was this person alleged to have done it, but they still said it was an

error and should not be admissible at trial.

MS. FEND: That is if I was offering it for the truth of the matter asserted. It's the same thing. I just tried a case that, I think, got affirmed and published, *Willie Gilmore??*, where the victim runs into a neighbor's house and is crying and it is admitted under excited utterance the perpetrator, who the perpetrator is. So the identity of the perpetrator is not just absolutely no way, no how, you can never get it in. You can either get it in under one of the other exceptions or the very definition in and of itself. So I'm not offering it for the truth of the matter asserted. There is no case that says absolutely, positively, under no uncertain terms is the identity of the perpetrator admissible.

THE COURT: Okay. All right. I'm going to stick with the original ruling. However, I think beyond her saying that he told her her answer, I don't think you can get into any further detail about the conversation. She can say what she did after the conversation. And I know you -- yes, sir?

MR. BAILEY: Well, I just need to add to the record. We also believe that it's bolstering the victim's testimony, so we still object on both of those and we would like the record to reflect that, that we think the answer to who should be stricken under the law, time and place,

Judge.

THE COURT: All right. Thank you. Your objections are overruled. All right.

MS. FEND: And, Your Honor, on a side note, we both have some child care issues. I think this might be our last witness if that's okay, since it's going a little bit longer than expected.

THE COURT: That's fine.

MR. BAILEY: One other thing, Judge, I just would like to put a standing objection right now to all time and place issues, since this has been the ruling of the Court we expect this to probably come up again with other witnesses. And I'd like to make the record clear, very intent about where we stand on time and place so that we don't have to interrupt every single time.

THE COURT: Well, this one she's saying she's offering it for -- she's not offering it for the truth of the matter asserted. I can't say -- I'll let you make the objection and I'll rule on it.

MR. BAILEY: Okay. Well, we'll be making them.

THE COURT: And I'll rule on it at that time and -- because that may not be the case with other -- she's saying that she's laying the foundation as to I guess how it got reported to them. All right.

MR. BAILEY: Thank you, Judge.

THE COURT: You can bring them back in.

(WHEREUPON, the jury entered the open court at approximately 4:29 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: Yes, ma'am. You may proceed.

DIRECT EXAMINATION

CONTINUED BY MS. FEND:

Q. After your discussion with your brother, what if anything, did you do with that information that you now had, that Victim told you about?

A. I immediately took that information and gave it to my step-mother who was also at the park with my father. And she therefore gave the information to my father who called the Richland County Sheriff's Department down here.

Q. Okay. Your step-mother, what's her name?

A. Jamie Murray.

Q. No further questions at this time. If you'll just answer any questions from Defense counsel.

THE COURT: Yes, sir.

MR. BAILEY: Thank you, Judge.

CROSS-EXAMINATION

BY MR. BAILEY:

Q. Good evening, Scarlet, hi.

A. Hi.

Q. Scarlet, you have kind of a unique family situation, right?
A. Very much.
Q. It's kind of complicated?
A. Yes.
Q. A lot of different -- like several, I guess, fathers, step-fathers ---
A. I wouldn't really say that. I wouldn't say several fathers. Just family friends and my dad and my step-father.
Q. Okay. I understand. But you would say that your family relationship is complicated?
A. Very complicated.
Q. Your dad, William Murray, Jr., and your mom, Amy, they haven't always gotten along very well?
A. No, they haven't.
Q. Okay. In fact, one time your step-mom called the police on your mom. Do you know about that?
A. I do know about that, yes.
Q. You know, I think most people know how hard it is living in a house as a teenager. Have you had problems -- you've had problems living in the same house with your mom, Amy?
A. At times, yes.
Q. Okay. And you had some problems with your step-

father, Mike?
A. Yes.
Q. Her husband?
A. Uh-huh (affirmative).
Q. And it's -- there's been a lot of screaming in the house?
A. Yes.
Q. And yelling?
A. Yes.
Q. And you'd say maybe some amount of violence in that house?
A. I wouldn't say violence. We've had struggles, but no violence.
Q. Okay. Did your step-dad ever grab you by your hair and drag you?
A. No.
Q. Okay. Did you know that Victim said that your step-dad grabbed you by the hair and dragged you?
A. He's grabbed me by my neck but not my hair.
Q. Okay. So did you know that your brother said -- that Victim said that your step-dad had hit you at some time?
A. Yes.
Q. So was Victim correct in saying that your step-dad had hit you before?
A. Yes.

Q. Okay. And the day of the allegation, the reason why we're here today, were you ever at Mr. Barnes house when Victim said something happened?

A. No.

Q. Okay. So you never saw anything that we're here for today, you never saw anything?

A. No.

Q. You never saw John Barnes hurt your brother?

A. No, I have not.

Q. Okay. And you never saw John Barnes do anything inappropriate?

A. No, I have not.

Q. Thank you.

MR. BAILEY: No further questions.

THE COURT: Anything else from the State?

MS. FEND: No, Your Honor.

THE COURT: All right. Ma'am, you may step down.

WITNESS: Thank you.

THE COURT: Any objection to this witness being excused?

MR. BAILEY: No, objection to her being excused, Your Honor. I'm sorry.

THE COURT: All right. Let me see you all.

(WHEREUPON, Ms. Fend, Ms. Barry, Mr. Bailey and Mr. Collins approached the bar.)

THE COURT: We're just trying to figure out the schedule. We're going to hear from -- the State's going to call their next witness.

MS. BARRY: The State calls Jamie Murray.

THE BAILIFF: Place your left hand on the bible and raise your right hand, please.

THE CLERK: Do you swear or affirm the testimony you're about to give in this case will be the truth, the whole truth and nothing but the truth, so help you God?

WITNESS: I do.

THE CLERK: Thank yoy. Have a seat in the witness box. State your name for the record, please.

WITNESS: Jamie Parker Murray.

JAMIE PARKER MURRAY,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. BARRY:

Q. Ms. Murray, where do you live?

A. Woodbridge, Virginia.

Q. Are you currently married?

A. I am.

Q. Who are you married to?

A. William D. Murray, Jr.

Q. Are you employed?

A. I am.

Q. What do you do for a living?
A. I own my own slide-show business and I work part-time for McDonald's as a training manager.
Q. How long have you been married to William Murray?
A. Almost three years.
Q. And do you know the victim in this case?
A. I do.
Q. Victim ?
A. I do.
Q. What is your relationship with him?
A. He's my step-son.
Q. And do you have kids of your own?
A. I do, two.
Q. How old are they?
A. Twenty-four and twenty-three.
Q. The three years that you have been married to Mr. Murray, have you had occasion to spend time with Victim ?
A. I have.
Q. How often do you see Victim ?
A. We see Victim -- he's with us over the summer, spring break, any long weekend out of school, Christmas or alternating Christmases, and that's pretty much it.
Q. Who else would come to your home in Virginia?
A. His brother, Jeffrey, and until -- and his sister, Scarlett.

Q. Turning specifically to spring break of 2010, did the children come and visit you at your home in Virginia?
A. They did. They were with us for the week that they were out for spring break.
Q. So during the week of spring break, what, if anything out of the ordinary, do you recall coming to your attention?
A. That we had an incident, one of the last evenings that the children were there. Scarlett came to me and spoke with me.

MR. COLLINS: Objection. This calls for hearsay.

THE COURT: Sustained.

Q. Without saying what Scarlett told you, based on the information that she gave you, what, if anything, did you do?
A. I waited until the next morning and then I went and spoke with Victim .
Q. After you spoke with Victim , without telling us what he told you, what did you do?
A. I contacted Prince William County Police.
Q. And where is Prince William County?
A. That's the county I live in Woodbridge, Virginia. That would be my local law enforcement.
Q. Was that the only law enforcement agency that you contacted?

A. No.

Q. What other law enforcement agency did you contact?

A. I contacted Richland County on the advice of Prince William County.

MS. BARRY: Your Honor, that's all I have of this witness.

THE COURT: Please answer any questions that Mr. Collins has.

MR. COLLINS: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. COLLINS:

Q. Did Prince William County make a report?

A. No. They suggested to me that I call, that I call Richland County.

Q. Okay. And the mother of the boys, can you pronounce the last name for me?

A. Gieselman.

Q. Gieselman. You two haven't always gotten along have you, have you?

A. No.

Q. The police have been called at least one time as alluded to, correct?

A. That's correct.

Q. And you've called the police other times about stuff going on here in Richland County, too, haven't you?

A. That's correct.

Q. And some of the times nothing happens when you call the police, right?

A. That is correct.

MR. COLLINS: No further questions.

THE COURT: Anything else from the State?

MS. BARRY: No, ma'am.

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

MS. FEND: Our next witness is a Richland County Sheriff's Department Deputy that's off-duty right now.

THE COURT: All right. Ladies and gentlemen of the jury, at this time I am going to excuse you all for the evening. We will begin at nine-thirty in the morning. I remind you that during this break, this evening break, that you are not to discuss this case in any manner with anyone. This includes your fellow jurors, your family, your friends, people involved in the trial or anyone else. If anyone tries to talk to you about this case, please let me know immediately.

Do not read, watch or listen to any news reports or discussions about this trial. Remember to keep an open mind about the case until I instruct you to begin your deliberations. Once again, no social networking, no linked-in, facebooking, my space, tweeting -- there's so many of them I can't -- I don't keep up with them. But no

social networking over the evening regarding this case.

And I'll tell you that when you get home today your family members are going to probably want to know what you've been doing all day, were you picked on a case, and what kind of case and what's -- and just tell them that you'll talk about it at the end of the week because you cannot discuss the case with your family members. You can tell them you were picked on a jury but you don't need to discuss with them what kind of case or who the lawyers are or anything else regarding the case. We'll start at nine-thirty in the morning. I hope you have an enjoyable evening. Thank you.

(WHEREUPON, the jury exited the open court at approximately 4:41 p.m.)

THE COURT: All right. And if we -- so tomorrow is your officer. We'll start back at nine-thirty.

Back to the last issue just to make a record on it. I'm not -- I think Mr. Bailey wanted to have a continuing objection to any -- I'm not sure after -- I mean, she's the person that he's -- you're saying that he reported it to. You said you're not offering it for the truth of the matter asserted, but I think anything beyond that through any of the other witnesses probably -- is probably bolstering, trying to bolster the witnesses credibility. So you all be mindful of that when you call your witnesses on tomorrow.

All right. Thank you.

MS. FEND: Thank you.

MR. BAILEY: Thank you, Judge.

(END OF REQUESTED TESTIMONY OF RECORD ON 9/12/11.)

CERTIFICATE OF REPORTER

I, the undersigned Danette P. Hanks, Official Court Reporter for the Thirteenth 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 had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of General Sessions, Richland County, South Carolina, on the 12th day of September, 2011.

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

November 30, 2011

Susan Danette Hanks

Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2010-GS-40-7545

STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
)
vs.) TRANSCRIPT OF RECORD
)
JOHN PETER BARNES,)
)
Defendant .)

September 13-15, 2011
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE; and a jury.

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

MARGARET FENT BODMAN, ASSISTANT SOLICITOR
DEBRA BARRY, ASSISTANT SOLICITOR
Attorneys for the Plaintiff

J. RHODES BAILEY, ASSISTANT PUBLIC DEFENDER
GREGORY B. COLLINS, ASSISTANT PUBLIC DEFENDER
Attorneys for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

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MR. BAILEY: Yes, Your Honor, just one matter. We would ask that the witnesses or the victims -- obviously they have every right to be here -- we would just ask that they be -- need to sit in the gallery where they are supposed to be rather than right behind the prosecutor's table. I don't really think there is any use, need or purpose for it. I think it is kind of a distraction. I mean, I can elaborate if they want to argue against that.

THE COURT: You don't want them sitting there?

MR. BAILEY: Judge, when you've got the alleged victim and his mom there hugging him, and his stepmom a little while ago, we -- you know, right behind the prosecution table, we think that it really serves nothing other than the purpose of kind of arousing the emotions of the jurors.

And we would just ask that, you know, if they are going to be here, we would just ask that they be set up professionally and separate from the proceedings while it is going on. Plus, everybody involved is a witness too, you know, so.

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

MS. BODMAN: It is a common practice, Your Honor, for the victim to sit right behind the

table.

THE COURT: I am going to let them stay there. I don't think they -- I mean, they have been in my eyesight, her hugging her son, and I mean I --

MR. BAILEY: Judge, I --

THE COURT: I don't understand -- he's what, 12 or 13 years old, so --

MR. BAILEY: Well, Judge, I have been here four years. I have never seen anything like that. But I don't have -- again, I'm not trying to be -- we don't have anything, you know -- I just think that, you know, having them right up behind the prosecution's table, several witnesses, you know, I guess off and on embracing, we feel like that is -- I don't really understand why Ms. Fent has an objection to it except that she objects to everything we ask to give my client a fair trial.

I would definitely like to make the record clear. I need to describe it for the record what is going on. They are within a few inches -- and I'm told -- my wife used to work for the Court of Appeals -- and I want to make it really clear for the record that they are just a few feet behind the prosecutors, you know, and that we feel that it would be really simple and it wouldn't hurt anybody

if they moved them into the gallery where witnesses usually sit, at least in my limited experience as a 30-year-old bar member, I've been a member of the bar four years.

So we would just like to add this to the list of objections that we were going to preserve for the record. And we'd like a standing objection on this, Judge.

THE COURT: That's fine. And I will make the note for the record that they were sitting yesterday on the front row, I believe.

MR. BAILEY: Yes. Right. This is a change from yesterday, Judge.

THE COURT: So yesterday they weren't -- they were sitting on the front row, the mother had her arm around the son. There was no over-showing of emotion during the process. So you -- I mean, I don't even understand, where is it that you want them to sit?

MR. BAILEY: Judge, just back where they sat yesterday. They have been moved up right behind the table.

THE COURT: They can sit back where they -- they can sit where they sat yesterday, back in the gallery. I don't know if she wants -- I'm thinking

you want them up top? The jurors are going to see them regardless.

MR. BAILEY: Judge, we understand that. I think just -- we appreciate it. Thank you, Judge. We don't have any more objection on where they are sitting now.

THE COURT: All right, anything else before I bring the jury?

MS. BODMAN: Yes. Ray Olszewski, the forensic interviewer, is here. We talked yesterday about the sequestration. And we would just ask, experts are also -- can be excluded from the sequestration. We actually just have the sheriff deputy that is going to testify, and then Ray is up. But after he testifies, we would want him present during the victim's testimony in case we need to recall him as an expert he can, you know, watch the victim, see how he discloses, see what he discloses, and that he would be available then to comment as an expert on anything we needed him to testify and clarify to -- clarify with. But as an expert he would be excluded also from sequestration.

MR. COLLINS: At this point he is not an expert. He hasn't been qualified as an expert.

THE COURT: He is not an expert until he is

qualified as an expert.

MS. BODMAN: Well, then we are happy to put him on the stand in a hearing to establish that he is an expert so that he would be able to sit here.

I mean, I have seen defense counsel have, you know, nurses or whatever in cases and they come in and have them sit in the audience to be able to watch an entire trial to then be able to testify. We don't force them to pretrial put on an expert just sitting in the gallery.

MR. COLLINS: I think I can make this easier, Your Honor. We have no objection of him watching Officer Pope's testimony, there is not going to be much to that, he can sit in here for that. And then if they are calling him next, that will be the time where I will be asking for a hearing outside the presence of the jury based on 17-23-175, which is concerning videotape admissions of one of the interviews that he conducted. So we'll be asking for a hearing outside the presence of the jury before he even testifies in front of the jury. So we can just get through this officer, and then we'll deal with all of it.

THE COURT: Is he the second witness?

MS. BODMAN: Yes.

THE COURT: All right. Let's go ahead and bring the jurors in. And if there is an issue about him staying, we'll discuss -- any further issue about him staying, we'll discuss it once we have the other hearing outside the presence of the jury.

(WHEREUPON, the jury came into open court at approximately 9:55 a.m.)

THE COURT: Good morning, ladies and gentlemen. I hope you had an enjoyable evening.

At this time we will continue with testimony. I'm going to ask the State to call their next witness.

Yes, ma'am?

MS. BODMAN: The State calls Deputy Christina Pope.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, raise your right hand, and face the clerk for me, please.

(Witness complies.)

THE CLERK: Do you swear or affirm that the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

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

THE WITNESS: Christina Pope.

CHRISTINA POPE,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BODMAN:

Q And with whom are you employed?

A Richland County Sheriff's Department.

Q How long have you been with the Sheriff's Department?

A For about seven years.

Q And what are your current duties with the Sheriff's Department?

A I work in the civil process division currently.

Q Back in April of 2010, what were your duties at the Sheriff's Department?

A I was a line officer, part of that team, the community action team.

THE COURT REPORTER: I'm sorry, you need to speak up.

A Part of the community action team.

Q And what does the community action team do?

A Assist communities and assigned to areas with any

problems they had.

Q And on April 10th of 2010, did you take a report from a VICTIM

A Yes, I did.

Q Okay. What time was it that you took that report?

A Approximately 5:00 p.m.

Q What was your -- on the dispatch time, not the date --

A I'm sorry.

Q -- of the incident.

A I'm sorry. It was about 7:48.

Q A.m. or p.m.?

A A.m.

Q And your responsibility, I guess -- and talk to us about taking an incident report. What is the purpose of this initial report and where does it go?

A The purpose of the report is to establish that an incident occurred, where it occurred, just to get the foundation to start the initial process of the case for the investigation.

Q I guess any information that you are able to get from the person reporting?

A Correct.

Q When it happened?

A Who, what, when, where, how.
Q Okay. And you got that information from, to put in your report, VICT [redacted] [redacted] --I?
A Correct.
Q Okay. Do you have a specific memory of taking this report?
A Some.
Q Okay. Do you recall or are you able to tell in reviewing it, did you actually physically meet with this person or was it taken over the phone?
A I believe it was taken over the phone.
Q And then what do you do after basically taking this report? What do you do with it?
A After I take the report?
Q Uh-huh.
A After I take the report, the report is forwarded to an investigator to further investigate the incident.
Q And in terms of the time that the crime allegedly occurred and the place that the crime allegedly occurred, did you get that information?
A I believe so.
Q What was the time frame of when this crime or these acts took place?
A Approximately two weeks prior to them reporting it.

Q Okay. And was it just on one single day that it happened, or was it over a period of time?
A Over a period of time.
Q Okay. And what was the place that these crimes took place at?
A At the Defendant's residence, [redacted] in Richland County.
MR. COLLINS: Objection, Your Honor. Move to strike reference to the Defendant.
THE COURT: Excuse me?
Q Did you get the actual name of the --
THE COURT: Hold on one second. What is your objection?
MR. COLLINS: Judge, I would move to strike the last answer regarding the Defendant.
THE COURT: All right, let me see you all a second.
MS. BODMAN: I can clear it up.
THE COURT: All right. Rephrase.
Q Did you ever meet the actual suspect, person that was named as --
A No, ma'am.
Q Okay. Do you know what this person looked like?
A No, ma'am.
Q Okay. So when you said the word Defendant,

actually in your report do you have a place for it where it says Defendant, or does it say subject?

A On my report, subject listed, that is who they allege.

Q Okay. It doesn't say the person's name, it just says subject. So at whose residence or at what place did this occur?

A At the subject's residence.

Q Okay.

MS. BODMAN: I have no further questions.

THE COURT: Please answer any questions by Mr. Collins.

CROSS-EXAMINATION

BY MR. COLLINS:

Q So you never met anybody face-to-face at this house?

A No, sir.

Q This all came from one phone call?

A Yes, sir.

Q And then you wrote your report?

A Yes, sir.

Q And your report, you like to keep it detailed?

A I like to keep it accurate.

Q Accurate?

A As to what information I'm given.

Q As thorough as possible, right?
A Only as thorough as whatever information they give me.
Q Because you want to help out the investigators when they start investigating whether or not this happened?
A I just want to make sure it is recorded accurately as to what people give to me.
Q And with your phone call, some of the information that you got was that they were under court order to return the children to South Carolina, right?
A I believe so, yes, sir.
Q Because at this time they were in Virginia?
A I believe so, yes.
Q And they didn't want to bring the kids back to South Carolina?
A Yes, sir.
Q Did they? And you were also notified that there was a previous report?
A Yes.
Q That it was unfounded?
A I don't know about the status.

MS. BODMAN: Objection, Your Honor. Improper characterization of what is in the report.

THE COURT: Sustained.

MR. COLLINS: No further questions.

THE COURT: Ma'am, you can step down.

MS. BODMAN: If I can actually clarify?

THE COURT: Oh, I'm sorry. All right.

REDIRECT EXAMINATION

BY MS. BODMAN:

Q He asked you about how the complainant did not want to return to South Carolina -- return the children to South Carolina?

A (Nods affirmatively.)

Q Did they indicate to you that they were in fact bringing the children back to South Carolina?

And I refer to your report starting with this word, requested. And just read it to yourself.

A And your question?

Q Did they indicate to you that they were in fact going to be coming back to South Carolina?

A Yes.

MS. BODMAN: No further questions.

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

(Witness steps down.)

THE COURT: Any objection to this witness being excused?

MR. COLLINS: Not from the Defense.

THE COURT: Ma'am, you are free to leave.

(Witness excused.)

THE COURT: Please call your next witness.

MS. BARRY: The State calls Ray Olszewski.

MR. COLLINS: Your Honor, we have a matter of law.

THE COURT: All right, ladies and gentlemen of the jury, at this time I am going to send you out for a short break. There are some matters of law that I need to take up outside of your presence. So we'll send you out for a short break.

All right, thank you.

(WHEREUPON, the jury retires to the jury room at 10:04 a.m.)

THE COURT: Y'all do me a favor. When you make an objection, state what the objection is and then elaborate as to if it is hearsay -- or state the objection and then I am going to give you an opportunity to elaborate after that.

He is the ARC -- he is with ARC; is that correct?

MS. BARRY: Yes, ma'am.

THE COURT: Yes, sir, I'll be glad to hear from you.

MR. COLLINS: What we have here is kind of a

unique situation. I don't believe it has ever come up, at least here in Richland County.

With Statute 17-23-175, the admission of a prior statement that has been audio or video recorded, specifically in child abuse cases, there is a certain procedure that needs to be taken in order to introduce the video.

Normally the prosecution is seeking to enter the video. In this case we have two separate videos. One was taken when the alleged victim was under 12 years old, which falls into this statute. The second interview that was video recorded, he was 12 years old or over, which does not fall under the jurisdiction of the statute. So that video, our position is not admissible and not eligible to be admissible even after a hearing.

So I don't think they are planning on introducing either one of the videos. From the Defense, we may want to introduce the video from when he was under 12 years old.

In order to do that, we have to have a hearing outside the presence of the jury as dictated by the statute about the guarantees of trustworthiness of that interview and the methods that were used and whether or not it was proper. And that is what the

interviewer from ARC is here to testify about.

I think that the Defense -- and I understand this is a unique situation because they are not planning on introducing the video, but I think we should be afforded the hearing outside the presence of the jury to ask Mr. Olszewski about guarantees of trustworthiness of his first interview.

The first interview he did put on his report it is a compelling disclosure. He didn't put it was a non-disclosure. He checked compelling disclosure, which means there were allegations set forth.

They may be a little different than what is going to be testified to in court, but that is something we have to find out. The video is not admissible until after the child testifies. So this would just be the first part of whether or not the video is admissible. But I think we should be allowed an opportunity to cross-examine Mr. Olszewski or ask him some questions outside the presence of the jury in regard to this hearing, because some of the things we have to address I may not want to bring up in front of the jury.

THE COURT: Yes, ma'am?

MS. BARRY: Thank you, Your Honor. In

determining whether an out-of-court statement comes in under 17-23-125, there is a 5-prong -- under Subsection (d) -- five prongs that need to be met to determine whether the statement has particularized guarantee of trustworthiness. And Number 3, whether the statement represents a detailed account of the alleged offense.

He did not disclose anything other than just unusual things happening at his dad's house. He disclosed very -- he minimized, but it was enough that Mr. Olszewski had concerns about that interview, but he did not -- and he found it compelling, but there was no disclosure. It was a tentative disclosure. And that is common in child abuse cases, child sexual abuse cases, where a victim -- the process of disclosure.

It is just like the victim giving Margaret and myself more details as they -- as time goes on, that they didn't think about at the time. You can't expect an 11-year-old child to come in and give details of sexual abuse in one hour in one -- at one opportunity.

This was the first person that he had spoken with. He didn't even talk with Detective Holdorf.

So that would be something I would establish

through Mr. Olszewski is that there are -- that this -- that that video should not come in because there is no -- there was no detailed account. It did not have the internal intent.

And to allow the jury to only believe that there is only one video is misleading to them. There is a second video, but by law we are not allowed, unfortunately, allowed to introduce that. And that guts our case as far as the video is concerned. He turned 12 in June before he can give his video.

But at -- all right. The Defendant confesses to masturbating his son, but he is -- the victim, as you heard, spent the summer with his biological -- the real dad and stepmom in Virginia so wasn't able to come in for the interview until August.

We would ask if the first one comes in, the second one comes in.

MR. COLLINS: Your Honor, everything she is discussing is what is to be considered after the hearing is held. We are entitled to a hearing outside the presence of the jury. If you decide it is not coming in, that is going to be your decision. But I don't think we can just take

another proffer from the prosecution about what is in the video and what somebody is going to testify to.

THE COURT: We are not going to take a proffer.

MR. COLLINS: Thank you, Your Honor. And I would also ask as we get into it that Your Honor takes the time to watch the video because I don't believe the -- I believe you will see that there is more -- there are many details involved that are not good for our client. Just because it is not a perfect video doesn't mean it doesn't come in.

And I guess I can save my argument for -- I don't know whether to argue the rule of completeness or whether to argue to get the second video in.

THE COURT: In proximity of time as far as his age, when did --

MR. COLLINS: His interviews were four months apart.

THE COURT: When did he turn 12?

MS. BARRY: [redacted].

THE COURT: And the second interview was in?

MS. BARRY: August the 12th. The first interview was April 19th.

THE COURT: And he turned 12 on June?

MS. BARRY: .

MR. COLLINS: Your Honor, there is a section within the section that talks about if one side wants to challenge whether or not he is mentally above -- over 12 years old or under 12 years old.

And, again, this is weird because the roles are reversed than they normally are. I would think they have to establish some type of testimony that his mental and cognitive abilities are below 12. And judging from watching those videos, I think they will have a very hard time establishing that.

MS. BODMAN: We in no way will say that he is mentally below 12. He is way above.

THE COURT: All right. All right, you can go ahead and call your witness. We'll have the in-camera testimony from Mr. Olszewski.

MS. BARRY: The State calls Ray Olszewski.

THE BAILIFF: Place your left hand on the Bible, raise your right hand, and face the clerk, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the

truth, so help you God?

THE WITNESS: Yes, I do.

THE CLERK: Have a seat in the witness box, state your name, and spell your last name, please.

THE WITNESS: First name, Raymond. Last name, O-L-S-Z-E-W-S-K-I.

RAYMOND OLSZEWSKI,

after being duly sworn, testified as follows:

DIRECT EXAMINATION(IN CAMERA)

BY MS. BARRY:

Q Mr. Olszewski, where are you employed?

A I am employed at the Assessment and Resource Center here in Columbia.

Q And what is the Assessment and Resource Center?

A The Assessment and Resource Center is a child advocacy center, nationally accredited child advocacy center. More descriptively, we're a child abuse evaluation and treatment center. We conduct forensic interviews and medical exams on children that are suspected to have been sexually or physically abused and other types of abuse.

Q And how long have you been employed there?

A Employed there since December of 1999, so over 11 years.

Q Can you give the Court your educational background,

beginning with your undergraduate degree.
A I have a bachelor's degree in psychology from the State University of New York in Oneonta. I have a master's degree in social work from the University of South Carolina here in Columbia. I am a licensed master social worker here in Columbia. I received my license in November of 1997.

I also have a diplomate in forensic social work through the academy of forensic social work. It is just a post-graduate certification in a specialty area.

Q Have you attended seminars and training regarding the forensic interviewing of children?
A Yes, numerous trainings and seminars over the years. In addition, I teach. I'm on the faculty for a forensic intern course that we teach three to four times a year. We teach front line professionals in South Carolina on how to conduct forensic interviews. It is called Child First South Carolina, previously called Finding Words South Carolina. I teach a good portion of that course, as I said, three to four times a year. I have been doing that since 2001.
Q But you have also attended other trainings and seminars regarding --

A Attend frequent workshops, yes. I have attended 40-hour courses on forensic interviewing, a basic interviewing course when I started working back in 2000. I have been to advanced interviewing courses, continuing education workshops on all topics dealing with child sexual abuse, forensic interviewing with children.

Q And so at the ARC, what do you do?

A My primary job responsibilities is to conduct forensic interviews of suspected child abuse victims.

A forensic interview is a fact-finding or investigative interview trying to determine, first of all, whether or not something happened. And if it did, get as many facts as we can about what took place: Who, what, when, where, how.

Q And approximately how many forensic interviews have you performed?

A It would be over a thousand. I don't have an exact number.

Q Have you testified in court in this state?

A Yes, I have.

Q Can you estimate approximately how many times?

A Well, I have testified as both a fact and expert witness. A fact witness far too many times to

count. As an expert witness it would be over 20 times, at least.

Q And each time you testified were you qualified as an expert?

A The time that I was testifying as an expert, yes.

MS. BARRY: Your Honor, at this time we would move to qualify Mr. Olszewski as an expert in child sexual abuse and child forensic interviewing.

MR. COLLINS: Your Honor, I believe we are afforded an opportunity to voir dire the witness. As far as them trying to qualify the witness as an expert, I don't believe this hearing is an appropriate time to qualify the witness as an expert, because I would definitely want to do this in front of the jury because I have some -- we would object to him being qualified as an expert. I have a whole long line of questions to go into about that.

MS. BARRY: Your Honor, that --

MS. BODMAN: At that point then that stops --

THE COURT: Hold on, only one person. But you are also asking me to determine if the video is trustworthy, and I'm assuming that is what we are getting to, and he is going to have to testify as to that.

MR. COLLINS: Your Honor, if you read the most recent case of State v. Douglas regarding forensic interview expert testimony, the Supreme Court has said that they don't have to be qualified as an expert, but yet they can still testify to aid the jury, or in this case to aid the Court, to determine the method used in the interview.

And I think the problem with the expert testimony is that there is no way to gauge the science, there is no way to test the reliability, the repeatability of the methods. That is the only thing. But they can still aid the jury and aid the Court as far as their experience and how they interviewed the child and the reason they use different questioning techniques.

And the Supreme Court in State v. Douglas has said they don't have to be an expert to be able to testify about that. So I'm going to be asking him about those issues, I'm just -- I don't want him to be qualified as an expert now and not in front of the jury where I can go up and address those situations about the science of forensic interviewing.

THE COURT: All right. But you can still cross-examine him now. I mean, I can determine if

he will be qualified as an expert. And then we can go through this whole exercise again in front of the jury.

MR. COLLINS: My position is that would be a violation of due process to my client to reveal what we are going to do before we actually do it with her part of the case. It would be sitting there waiting for my questions the second time around and could possibly be ready for it.

THE COURT: Well, he can't -- I'm assuming he can't answer them any different.

MR. COLLINS: Hum?

THE COURT: If he answered them any different you would impeach him, I would guess.

MR. COLLINS: That is true, but there is -- I just don't think I should be forced to reveal what we are going to be doing in front of the jury in a hearing where it is not necessary for him to be qualified as an expert. We are only addressing the video itself as to guarantees of trustworthiness, whether or not improper things were used, any improper techniques while interviewing the child. That can be testified to without qualifying him as an expert.

THE COURT: Yes, ma'am?

MS. BARRY: Your Honor, it has been my practice that before going through the Terry -- and I have done many of these hearings -- that the witness is qualified as an expert based on his training, experience and education.

And, as Your Honor pointed out, any -- I don't know what they are planning on springing in front of the jury, but, I mean, this is a court of law, it is not a game. And we are all officers of the court.

We would just ask that he be qualified as an expert now and then again in front of the jury. I think that is proper. And that has been the procedure that has been followed.

I'm not familiar with State v. Douglas. And I think -- I don't believe all lay witnesses can testify, give opinion testimony. They must have some level of knowledge that exceeds that of the typical juror.

MR. COLLINS: Your Honor, the issue with qualifying as an expert has nothing to do with his background, his education and his experience. The issue is the Daubert test and whether or not the field of expertise is actually that, a field of expertise. You can't be qualified as an expert in

any scientific field unless it is qualified as a scientific field that can be tested. That can be the repeatability of results, reliability of the opinions. And in this field of science there is no way to test that because it is all opinion. Every single issue that comes up, there is competing research studies on these issues. And that is what I'm going to get into with the witness in front of the jury as far as different things and different methods.

As far as this hearing, he has testified about his experience and his education which Your Honor can take into consideration in determining whether or not he improperly elicited any improper information from this interview of this one video that we're seeking to introduce as long as nothing improper was done. And he can testify about what he has learned and what is proper and what is improper. And I can ask him about different studies that show this trend and that trend. But to qualify him as an expert now without enforcing me to challenge the level of expertise before the jury is in here I believe is improper.

THE COURT: All right. Well, I'm going to -- I'll give you an opportunity to cross-examine the

witness, and we'll make the determination as to whether or not he is qualified as an expert at this time. I do not find that it violates your client's due process rights. He will have an opportunity to ask the same questions. If the witness changes his testimony, you will have the opportunity to impeach him. I'll give you an opportunity to cross-examine him regarding his expertise as a child -- you said child sexual abuse and forensic interviewing?

MS. BARRY: Yes, ma'am. Child abuse, yes, ma'am.

THE COURT: All right.

MR. COLLINS: Your Honor, if I am given an opportunity to do this in front of the jury, I have no objection for this hearing of him being qualified for this hearing only.

MS. BARRY: Your Honor, if he has no objection to him being an expert now, I don't --

THE COURT: I don't think you can bifurcate it.

MR. COLLINS: Well, then I have no questions, and I object to him being qualified as an expert. I have no questions.

THE COURT: All right. He will be -- you object to him being qualified as an expert. There

is no --

MR. COLLINS: Because based on Daubert, the field of expertise cannot be defined in such a way to test the reliability and repeatability.

THE COURT: All right. The objection will be overruled. He will be qualified as an expert in child sexual abuse and forensic interviewing.

MS. BARRY: Thank you, Your Honor.

BY MS. BARRY:

Q Mr. Olszewski, what is a forensic interview?

A Again, it is a fact-finding or investigative type interview. We are trying to determine whether or not something has happened, and if it has, get all the facts that we can about what took place: Who, what, when, where, how.

Q And where is it conducted?

A We conduct our forensic interviews at the ARC, or the Assessment Resource Center. It is on the campus of the Department of Mental Health, State Hospital campus on Bull Street. We call it a child friendly facility. We have forensic interview rooms. They are furnished in a particular way. We have video recording equipment that we use so every interview that is done is recorded onto a hard drive and then transferred to a DVD.

Q And what information do you give the child when the child comes in for the forensic interview?

A Well -- what information we give the child?

Q Do you give them any information?

A Typically we're not giving the child any information, we're looking to get information from the child.

The process typically is somebody will bring the child to the ARC. It is usually -- we don't allow alleged perpetrators to come to the ARC, so it is typically going to be another individual, some non-offending caregiver or other support person. The caregiver will bring the child to the ARC. They have some paperwork to fill out. There is a waiting area.

Once the paperwork is completed, the child -- I'll go and get the child from the waiting area, bring the child to one of our three forensic interview rooms, introduce myself at that time, explain that we have a camera and microphone, recording equipment that the interview is being recorded.

And then, again, depending on the age of the child, I will begin -- the interview process begins differently depending on the age of the child. We

have a protocol that we follow, and it is a nationally recognized forensic interview protocol. It is known by its acronym, RATAC, R-A-T-A-C. And each letter stands for a different stage of the interview.

But there is flexibility that goes into the protocol allowing for developmental considerations, the age of the child, other issues like spontaneous disclosures. So probably no two interviews look exactly alike. Like I say, it varies depending on the age of the child. But we have some kind of reportability phase with any child that we see.

Q Are you familiar with the victim in this case?

A Yes.

Q VICTIM ? Are you aware -- were you made aware of the allegations that he made in this case?

A Prior to him coming in to see me?

Q Yes.

A Yes. We have an intake process so we can have intake information available to us before we do the interview. That information often comes from a law enforcement investigator or a child protective services case worker. So we have some basic information going into the interview process. We may also have a copy of the incident report,

something like that.

Q And in this particular case, what date did you first come in contact with VICTIM ?

A I interviewed him initially on April the 19th of 2010.

Q And can you describe the way that you -- after you do this rapport building with the child, how do you gather details about the offense?

A Well, when questioning the child about the offense, we try to use very broad, open-ended questions or prompts to elicit information. Those are the best kinds of questions to ask because they are non-leading, non-suggestive. They require the child to do a lot of the work and provide details and information.

But we also have -- you know, sometimes we have to use more specific, more direct focused questions, like multiple choice type questions, maybe some yes or no or first choice questions, which are not leading, they are just more direct and more focused.

So we try to use -- it often turns out to be, you know, sometimes a variety of those different types of questions during the course of an interview. Of course we try to avoid leading,

suggestive, suppositional type questions when interviewing the child.

Q And why is that important?

A Well, we don't want to put any ideas into the child's head or put words into the child's mouth or lead them in a certain direction or another. I mean, you know, we're just trying to determine whether or not something happened, and if it did, get those facts from the child. We're not going in to in a sense prove what information we have ahead of time. That is not -- that is not the goal.

Q And did you follow that procedure on April the 19th 2010 with the victim?

A Yes, I believe I did.

Q When you interviewed VICTIM , was he able to give you a detailed account of the alleged offense?

A When I interviewed him the first time?

Q Yes. April 19th.

A He gave me some details about things that took place. I interviewed him subsequently, so I know that it was not a complete account of what took place, what he is saying took place.

Q But physically on the 19th, he was not alone, he did not give you --

A I would call that at this point a tenta -- I would

call what he gave me at that point a tentative disclosure or a minimized disclosure.

Q Was he able to give you details of the crime that he is on trial for here today on April the 19th, the lewd act on a minor, on the first interview?

A Well, he did tell me that the alleged suspect -- that is a different question to answer. He didn't explicitly say in that initial interview that the alleged suspect had masturbated him. But he did say things to indicate that the suspect had touched him or had contact with him in that type of fashion.

But, again, because of -- and this is what I mean by tentative -- it was not made clear or explicit. It was very concerning and inappropriate, in my opinion, what he was telling me, but it wasn't made explicit or clear until that second interview.

I hope that answers your question.

Q Thank you. But it was very concerning to you?

A Yes.

Q But he did not give details of masturbation?

MR. COLLINS: Objection. Leading.

THE COURT: Sustained. Rephrase the question.

Q Was he able to give you details of any sexual

abuse?

A He gave me details that I felt were inappropriate in a sexual manner.

Q What were those details?

A He indicated that the suspect or subject had washed him in the bathtub, including the washing of his private parts. That he would use a rag. This happened maybe 7 or 18 times.

At the same time indicating as an 11-year-old that he at his own house takes showers and knows how to clean himself. That there were even a couple of times he indicated he would rather clean himself and the suspect said that was okay.

So considering his age and his abilities as an 11-year-old to clean himself, I in my opinion again found inappropriate that he was being bathed and his private area was being washed in a bathtub setting with -- give me a second to review my notes here.

(Pause.)

A Yes. I mean, in my mind the setup as explained to me by VICTIM for these baths and this touching and washing of his body, including his private parts, you know at 11 years old with these bubble baths, and he talks about candles being lit in the

bathroom, it just -- it feels -- it felt inappropriate to me in a sexual manner what he was describing.

Again, being extremely explicit about what happened in the second interview, I feel this initial interview was a tentative type of disclosure or a minimized disclose, which is not uncommon. Kids frequently do that.

Q Can you explain that for the Court?

A Yes. What we know about the way children tell about abuse is that it is more of a process. It is not an event. So what I mean by that is when a child is abused, first of all they frequently don't run and make an immediate outcry to somebody, hey, this happened to me, and tell everything that happened to them right away. That is just not the way children respond when they are sexually abused. The vast majority of them delay in reporting. And that delay can be weeks, months, years. Some don't tell until they are adults. Some probably never tell.

But what we also know is that when they do tell or when they are first questioned even, sometimes they'll deny initially when first approached by someone about it, especially if they

haven't worked up the nerve to tell or they are not in a position where they are ready to talk about it. If they do tell, we know that these disclosures initially are often tentative, they are not complete. And then the majority of those kids, with the proper support and some time will often make a full disclosure at some point. That could be later on in a therapeutic setting. It could be in a second or third forensic interview. It could be years down the road, but...

Does that answer your question?

Q Yes.

A Okay.

Q So in your expert opinion, this disclosure wasn't logical; is that fair to say?

A I'll say this. It had the feel at the time of a tentative disclosure, but we never know for sure. I mean, I don't have a crystal ball. A child could tell me something and that could be all there is to it. But, again, what we know is the majority of times it is not.

You know, Victim told me I believe in this interview -- well, he seemed uncomfortable in talking about this stuff. I will say that right off the bat. That is also not uncommon, especially

when we are talking with boys and boys who have been molested by other boys or by men or by a male caregiver. There is often a serious embarrassment factor, a shame factor that goes along with this. It is very uncomfortable to talk about this for young boys, sexual activity with a grown male.

So, you know, this had the feeling of a tentative or minimized disclosure. And I still get that feeling in reading through my notes and when I watched it. I watched it in preparation for testifying. It still has that feel. So...

Q You testified earlier that you were very concerned about his disclosure?

A Yes.

Q But your -- but then four months later you interviewed him again?

A I interviewed him in August, on August the 12th, 2010.

Q And on that day, what if any disclosures does he make?

A On that day he made a very clear disclosure that his biological father had masturbated him pretty much every time he took a bath at his house. And he said it had taken place from November of the previous year through about April of that current

year, which is 2010.

Q In your experience and in your expert opinion, is that uncommon for that to happen in the second interview?

A No, it is not uncommon for it to happen at some point later on. And like I said, it could be in a follow-up forensic interview, it could be in a therapeutic setting. So, no.

We see frequently children who have had a forensic interview, and we call it at the time a forensic interview, and then later in therapy -- again, any -- it could be a couple of months down the road, it could be a year down the road, it could be at the time of trial a child will disclose more information and more details.

You know, that may seem strange or inconsistent to grownups who are just, you know, looking at it, but we just know from our experience that is the way this happens. That is the way it works. And maybe the kids become more comfortable as times goes by. Maybe in therapeutic intervention they are given permission and freedom to talk about it. They feel safer. It could be any number of reasons.

Q Are you aware, based on your interview in August,

where he was and who he was with when he made his disclosure?

A I don't -- I'm not sure I understand your question. Who brought him in to see me? Is that what you are asking? Or...

Q Where had he been?

A Uh...

Q Are you aware of who he disclosed to?

A I'm not sure I'm aware of that now. It may be in my notes, but if it is I haven't reviewed that particular section of the case.

Q Okay.

MS. BARRY: Beg the Court's indulgence.

(Pause.)

MS. BARRY: Your Honor, that is all we have for this witness at this time.

THE COURT: Please answer any questions, sir, Mr. Collins may have.

CROSS-EXAMINATION(IN CAMERA)

BY MR. COLLINS:

Q Good morning.

A Morning.

Q So you wrote a report about the first interview. Was it April 19th, I believe?

A Yes.

Q In the report on the interview outcome page you have a summary of what the interview was about, right?
A Yes.
Q You also have some boxes up at the top. One box says disclosure of maltreatment. And you have that checked, right?
A Yes.
Q You also have underneath that disclosure of maltreatment, you have a box checked sexual, right?
A I checked what, sir?
Q Checked next to the sexual, as in type of maltreatment?
A Sexual, yes.
Q Sexual and witness?
A Yes.
Q Because he said something about a sister being punched or drug down the hall, or something like that, right?
A Yes, that's correct.
Q And you put a little comment to notate what that witness box was checked for, right?
A Yes, I did.
Q All right. And then under opinion you have two boxes that say compelling or problematic, right?

A Yes.
Q And you checked compelling?
A Yes.
Q Not problematic?
A Right.
Q All right. And you testified you didn't use leading questions or suggestive questions to get him to say anything, did you?
A Correct. I tried not to.
Q He was actually a little bit talkative, was he not?
A Yes. A very talkative individual.
Q Very open with you?
A He's a very talkative child.
Q I believe sometimes you actually had to corral him back to the subject because he was talking about a lot of different things with you, right?
A Yes. He has a got a lot of interests and he talks a lot. A very interesting child, yes.
Q And you have already established you've been significantly trained in interviewing children, right?
A Correct.
Q You are probably one of the most -- you are the most experienced interviewer at the Assessment Resource Center?

A No. Dr. Allison Foster, who I work with and who is my immediate supervisor, Mental Health Director, I would say she is probably more experienced than I am.

Q That is always good to give credit to the boss. But you have done some training sessions on a lot of these subjects, haven't you?

A Yes.

Q Isn't one called Child First?

A Child First is a week-long, 40-hour forensic interviewing course that we teach.

Q Now, the Solicitor asked you some things or told you some things about the details that were disclosed in this first interview on April 19th. VICTIM tells you that he went over to John Barnes' house with his brother Jeffrey, right?

A Yes.

Q He says that John Barnes would give him bubble baths, right?

A Yes.

Q And he would wash him all over his body?

A Yes.

Q With a rag?

A Yes.

Q With scented candles?

A Yes.
Q He said that John Barnes would lean over and tell him to relax?
A Yes.
Q And, in fact, when you first started interviewing VICTIM, you asked him why he thinks it is that he is here to talk today.

And VICTIM's response was, to say in a non-embarrassing way he's been touching me for cleaning reasons?
A Yes.
Q That is probably the first thing that shot the flags up for you, right?
A Yes.
Q He said that he took 17 to 18 bubble baths with John Barnes, right?
A Yes.
Q He described the house that John Barnes lives in?
A He described the bathroom area and it is connected to John's bedroom.
Q He said John knelt beside him in the tub when he washed him?
A That's correct.
Q He offered to give you John Barnes' work schedule at the end of the interview? He offered more -- as

much information as you wanted on John Barnes, didn't he?

A I don't recall about the work schedule. He may have.

Q Okay. And the reason you try to get details if you are open to details like that is the next thing that you refer is you want to try to corroborate some of those details, right?

A Well, my job is limited to the forensic interview. I'm trying to get information that can be used by law enforcement, for example, to corroborate in this case.

Q I apologize, I probably asked that wrong, but it is all right.

And why do you video these interviews?

A To preserve the interview. Normally at the time, you know, we feel it is the most accurate way to record that process.

Q And that way somebody can't come in here and say you used improper questioning techniques for the child, right?

A Exactly.

Q Do you routinely give copies of videos to your child witnesses after you interview them?

A No, I would not do that.

Q Okay. Have you ever done that?
A No.
Q All right. Have you spoken with the Solicitors about what they have done in this case since you interviewed this child?
A Yes.
Q And was there anybody else present during this interview in the room?
A No, we don't -- those interviews are conducted with just the interviewer and the child.
Q And was there anything that seemed like fantasy in this -- in what he told you that day?
A Not that I recall.
Q If there would have been a problem, you would have probably checked problematic disclosure, right?
A Well, depending on the nature of the fantastical element, whether they are essential to the issue.
Q Okay.

MR. COLLINS: I have no further questions, Your Honor.

THE COURT: Anything else from the State?

MS. BARRY: No, ma'am.

THE COURT: You may step down.

(Witness steps down.)

MS. BODMAN: It is our understanding in order

to make a finding that you do have to watch the tapes yourself to be able to make the findings, which I guess is what they are asking you to do.

MR. COLLINS: We are asking you to watch the one video that we had the hearing about. That falls underneath the statute. The other video we would ask to not watch. It is not admissible.

THE COURT: And y'all are asking me to watch the second one?

MS. BODMAN: Well, I think the second one is important in order for you to say whether or not -- because you have to determine whether the statement represents a detailed account of the alleged offense and that puts it in perspective of his full disclosure of what ultimately he does fully disclose.

And he can say, you know, was this a detailed account of the alleged offense, the crime, not, you know, inappropriate things that Ray Olszewski was -- alarms were going off and, oh, my gosh, this man is bathing an 11-year-old in a bubble bath, it is weird. But the crime that we are here for today, the act, I mean, I think it is important to watch the entirety of the child's disclosure.

MR. COLLINS: He testified on direct that what

was additional in the second interview was he said that while he was bathing him the 17 or 18 times in the bubble bath with the candles, the only additional element is that he came in and said, yes, he masturbated me those times. That is the only additional element.

Under the statute, it was a very detailed version of events. The only thing left out was the *final damage,* which they will be able to explain with the victim witness, they will be able to explain with Mr. Olszewski, they will be able to explain with whatever other witnesses they can try to explain it with, but reference to just this video, which is the only thing in issue in this hearing, we have to decide whether or not it was a detailed account of the alleged offense.

And I don't see how it could be any more detail than it was. It was an extremely detailed account. It didn't have any fantasy elements involved with it. It was ruled as a compelling disclosure by the interviewer.

I don't see that -- if this doesn't reach the level of a detailed account, I think we would be far-fetched to ever be.

MS. BODMAN: I am just asking in order for you

to make a full determination that you watch the second one, because actually he does say other things in the second video. He talks about an incident in the bedroom, the bed, where the Defendant took his hand and went to put it under his pants to touch under his pants. And then the victim talked about how once his fingernails hit the top of his pants he pulled it out and said, no way, Jose.

So there are other things that the child comes forward and talks about on that video.

THE COURT: I am going to watch both videos. Then also Ms. Barry also stated that -- I believe this is what she stated earlier -- that if one video is admitted that the other one should be able to be admitted in response to the other one. In response. So I have got to make a determination regarding that also. I will be more than happy to. How long are the videos?

MR. COLLINS: Fairly long. But just in response to the other video coming in, out of fairness, just so I can do some research during the break, what legal grounds is that on? What rule are you talking about that that video comes in, a prior consistent statement that does not fall under

the statute? I just want to have a little direction as to how to argue against it, other than it is not fair. I didn't hear another legal argument.

THE COURT: Well, I guess the -- well, yes, ma'am?

MS. BARRY: Well, we'll just take the time during the break and do our research as well.

THE COURT: All right. So it is almost 11:00 o'clock. I'm trying to think what I need to do with the jurors. Y'all want me to watch the video. It is going to take --

MR. BAILEY: Well, the first video is about an hour.

THE COURT: I wish y'all would have told me this last evening and we would have started this morning a little bit later and do all these motions and I could have watched the video then instead of having the jurors come in and sit in the jury room for an extensive amount of time.

MS. BODMAN: And we are offering it now when we typically do it at pretrial, so we apologize.

MR. COLLINS: We weren't aware they weren't offering it.

MS. BODMAN: He asked me yesterday and I told

him I was -- that I would not, yes.

THE COURT: All right. You said the first videotape is an hour?

MR. BAILEY: Yes, ma'am, I think the second videotape is closer to half an hour, if I remember the time correct.

THE COURT: All right, well, I will just let them go ahead and break until 1:00 o'clock.

What I am going to do is let them go ahead and take an early lunch break and break until about 1:00 o'clock and we'll start back at 1:00. Those videos, can they be played on a computer? Will they work on a computer?

THE WITNESS: On a computer that plays DVDs.

MR. COLLINS: We'll have this one, the second video, marked as a State's Exhibit and the first video marked as a Defense Exhibit.

THE COURT: All right.

MR. COLLINS: And the first video would be the April 19th and the second video would be the one on August 12th.

MS. BARRY: Your Honor, he needs the original back for his file, so maybe we should have copies.

THE COURT: I'm going to watch them over lunch. I mean, if y'all can change them out,

that's fine. She'll give you an opportunity to change them out.

And I will look at both videos, but be prepared to make an argument. I understand that it was close in proximity of time, but I guess my concern is if you open the door as far as the first one, that the second one comes in.

And also the expert testified that the interview is a follow-up forensic interview to the first, so we'll -- and I will do some research on it also during the break.

All right, so let's bring the jurors back in. I will send them out until 1:00 o'clock. They will probably say, why did you bring me down here, you could have let me sleep.

(WHEREUPON, the jury came into open court at approximately 10:56 a.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, thank you for your time. I am going -- there are some matters of law that I must take up. It is going to take some time. And instead of making you all sit back there in that jury room, I am going to go ahead and let you take an early

lunch. And we'll break until about 1:00 o'clock. It is 11:00 o'clock now. We'll start back at 1:00 o'clock.

All right, thank you. Just remember that you are not to discuss this case with each other or with anyone else. No Tweeting, Facebooking, no social networking regarding your jury service.

All right, thank you. Enjoy your lunch.

(WHEREUPON, the jury is excused for lunch at 10:57 a.m.)

THE COURT: All right. I will take a look. I guess I didn't take into consideration -- I said 1:00 o'clock -- I will take a look at the video and we'll start back at 12:30.

Are there any other matters that are going to take an extensive amount of time before we bring the jurors back? I'd like to do it --

MS. BARRY: Nothing from the State.

THE COURT: I'd like to do that in the morning or late in the afternoon. We left here yesterday at 20 till 5:00. We could have dealt with some of this stuff at that time.

All right, we'll break until 12:30. And I will come back. You are saying the videos are about an hour, hour and a half?

MS. BODMAN: I know the second one is about 30 minutes, and I just didn't note the time on the first one, so --

MR. BAILEY: I watched the first one. It is a little under an hour.

(WHEREUPON, court recessed for lunch.)

(WHEREUPON, court resumed at 1:11 p.m.)

THE COURT: I had an opportunity to review the videos. It took a little bit longer, that is why we are just getting back in here now.

But as to -- again, I will -- my ruling as to -- well, I will be glad to hear from you all if y'all have anything additional regarding, I guess the two issues are:

Number One, is the first video admissible under the statute.

And Number Two is, if it is admissible, is the second video admissible.

And I will be glad to hear from the Defense since it is their motion regarding the first video.

MR. COLLINS: In regards to the admissibility of the first video, I think based on the Statute 17-23-175 and the five factors to look at, I think we more than presented enough evidence that the interviewer was very well qualified, that the

statement represented an extremely detailed account of the allegations in this case. There were many details he testified to that remained the same in all further interviews. I mean, as detailed as what scent the candles were in the bathroom.

Whether the statement has an internal coherence, I believe when watching the videos, and Mr. Olszewski testified to it, there wasn't anything that was completely outrageous about it.

And then the sworn testimony of the participants. The interviewer, we have Ray Olszewski here to testify, we have the victim who I assume they will be putting on the stand because the video won't be admissible until he does testify.

I move on to regards if the first video comes in, does the second one come in.

THE COURT: Well, let me ask you a question. Number -- I think I agree with you as to 1, 2, 4 and 5, but as to Number 3, whether the statement represents a detailed account of the alleged offense.

He is charged with lewd act on a minor child. The elements of lewd act on a minor child are that he willfully and lewdly committed a lewd or

lascivious act upon or with the body of a child less than 16 years of age; (2) with the intent of arousing, appealing to, or gratifying the lust or passions or the sexual desires of said Defendant or of the victim.

Now, in watching the video, I took the statute, watched the video. I understand what you are saying, but the alleged offense is lewd act on a minor child. In watching the video -- and I'm sure that you'll make this argument at some point today or tomorrow at best. The video, the elements are not met in the video.

Is that your -- in the first video there is nothing in there. He is talking about bathing him, scented candles, but there is nothing in the video where he talks about willfully and lewdly committing a lewd or lascivious act upon or with the body of a child less than 16 years of age with the intent of arousing, appealing to or gratifying the lust or passions or sexual desires of said Defendant or of the victim.

MR. COLLINS: Your Honor, I would point to one statement that is contained in Mr. Olszewski's report that I asked him about.

When I asked what he was there to be

interviewed about, VICTIM I said, say in a non-embarrassing way that he's been touching me for cleaning reasons.

I agree this is all circumstantial in this video, but if we reverse the roles here, and this is the only video they have, I guarantee you it comes in every single time. Because this was ruled by the interviewer as a compelling disclosure of sexual contact.

Not every interview comes real clean accusations that he put his penis in my vagina. That doesn't happen in these type cases. And the witness who is qualified as an expert by Your Honor testified to that, that in fact it is against the norm for a child to come forward and have very clear accusations early on.

This is one of the clearest things we have come across in a long time as far as the details contained and where it happened and what happened, what could be corroborated.

Now, granted he didn't come forward with the complete disclosure, but he came forward with enough that the expert that they put up and presented as an expert said it was compelling for sexual abuse.

And I believe under his testimony that this more than suffices what the statute intends. The statute intended to introduce this video, which is completely inadmissible in any other shape or form in any other case as a prior consistent statement that bolsters the witness, but in these cases with children, our legislature saw that sometimes they are not very clear, they may not be very clear on the stand, and that we need to make sure the jury sees the whole picture and the whole process of the interview.

And this interview is much more fact-specific and much more clear than any of the ones that I have come in contact with in the past dealing with these cases for the last five years.

So our argument would be that it definitely satisfies Prong 3. And if the roles were reversed, that they would be arguing probably a lot more forcefully than I'm arguing right now.

THE COURT: Now as to whether or not both videos come in.

MR. COLLINS: The only argument I heard was fairness. And I racked the rules to find the word fairness, and I found it. It is Rule 106, the rule of completeness. The standard is, is it fair to

bring in the rest.

However, State versus Cheeseboro, 346 S.C. 526, citing State versus Gay, 343 S.C. 543, states that evidence otherwise inadmissible is not admissible under Rule 106, the rule of completeness.

The second video does not come in and does not fall within Section 17-23-175. It is therefore an inadmissible hearsay prior consistent statement from a witness that bolsters his testimony. Because it is otherwise inadmissible it doesn't fall under the rule of completeness, Rule 106.

So I would argue that there is no legal argument as to why it shouldn't be admissible.

THE COURT: All right, thank you. Yes, ma'am?

MS. BODMAN: Well, I guess I'll start with his two cases, State v. Cheeseboro and State versus Gay.

Cheeseboro specifically was talking about an exculpatory letter written by the Defendant to explain other evidence. So it wasn't portions of the same statement. It was a letter written by the Defendant to explain other evidence. So that is completely not applicable to our case.

And State v. Gay was that only the portion of

a statement which explains or clarifies the previously admitted portion should be introduced, so not necessarily -- a Court has the option of not necessarily just letting the entire statement in, but can say under the rule of optional completeness, under 106 I will let you introduce Paragraphs 5 and 6 because it more clarifies Paragraph 3. So that also is not applicable.

But if we want to use that same, you know, type of argument, is your finding under 17-23-175. It says that: Totality of the circumstances surrounding the making of the statement. And then I totally agree with the Court, you know, clearly 1, 2, 4 and 5 are met, those prongs. But does it contain a detailed account of the offense. An offense meaning crime.

Ray Olszewski at the ARC has a broader role than 17-23-175. His job doesn't always result in a crime being charged, law enforcement being involved. He also is looking to see -- really it is just, you know, an allegation to come to court. And he is going to be listening to anything that the child says.

If the child is in the course of being sexually abused and was exposed to marijuana,

elicit drugs, watching pornography, violence in the home, he is going to be making recommendations as part of his job, and together with DSS, or whoever is going to be making recommendations.

So his finding about, quote, you know, compelling for sexual abuse on his statement is that he is concerned as a social worker that this man is bathing an 11-year-old, bathing his genitals in a bubble bath with scented candles.

So his term of sexual abuse is not a criminal term or a crime, it is a broader, you know -- that there are clearly concerning things going on in this home.

But he also says that it was problematic and a tentative or a minimized disclosure, that he can clearly tell the child was embarrassed and, you know, was not fully -- probably not fully disclosing something that has happened to him.

Lewd act, really it comes down to that part of the lewd act statute, with the intent of arousing, appealing to or gratifying the lust or passion or sexual desires of the said Defendant or the victim. That element right there.

Cleaning reasons. He said he was bathing me for cleaning reasons. That is not a lewd act.

Mr. Collins says that, you know, you just have this one videotape. This tape is going to come in in every single case.

It is not coming in in every single case because these facts on that first videotape, without the Defendant's confession, I'm going to be saying no probable cause. No warrant is going to be gotten on this. This case is never coming to a criminal court. There is no PC when this child is saying, he is touching me for bathing reasons.

Seriously, somebody needs to be, you know, decide whether this child still needs to be going over to the Defendant's house. Somebody needs to be looking into that. But it is not going to come into this courtroom.

So that is just completely not an accurate statement. There is no criminal act disclosed in that first videotape. Alarm bells, very concerning, but not a criminal act.

I mean, really that -- in saying the totality of the circumstances, it does not give that single videotape, that first interview does not give a detailed account of the offense of the masturbation, the lewd act, which is the crime that we're here for today.

I mean, so far I think the Court is saying that you don't find that that statute is met on the first videotape. If after listening to Defense counsel you are inclined to say that it meets the element or the criteria of the statute, then we would definitely say that that totality of the circumstances prong then now definitely includes the second, that it is a continuous interview. He calls it a follow-up interview. He is coming back.

And under Rule 106 it would then be, you know, the totality of the circumstances for this jury to make a fair determination of all the interview techniques that were used, how this disclosure was made, what details surrounding it, how the second details of masturbation fit into the initial details that he does give in the first interview. It is all one continuous really statement of this victim.

And so under Rule 106, we would say that that second tape makes the totality of the circumstances, makes it then a detailed account of the offense, both interviews coming in.

THE COURT: Thank you.

MR. COLLINS: Your Honor, I forgot to put a couple of things, if I may?

THE COURT: Yes, sir.

MR. COLLINS: South Carolina Rules of Evidence 101 also states that when there is a contradiction between the rules of evidence and a statute, the statute always overrides.

So even if you believe the State's argument that inadmissible evidence is admissible through Rule 106, it is not admissible through the statute, which would override Rule 106.

I only make that argument because I still believe the language in State versus Cheeseboro is perfectly clear in that inadmissible evidence does not come in through Rule 106.

We are talking about two different interviews four months apart. He came to completely different people.

And then if you look at Number 3 in 17-23-175, it says: A statement that represents a detailed account of the offense. It doesn't say it has to give the exact details of events, it says what it represents.

The only difference in these two statements is the masturbation part. Everything else was dead on. Even the number of bubble baths was exactly the same. The same scented candles, the same

number of bubble baths, the same house, the same perpetrator, the same time period. Everything was exactly the same except for, yes, remember when I told you about those baths, yes, he masturbated me during those baths. That is the only additional element in the new one.

So I would say if you call the second one a detailed account, then the first one definitely represents that detailed account.

THE COURT: All right. In reviewing the totality of the circumstances surrounding the statement, I do find that the video should be admitted into evidence if the Defendant intends to bring it -- I am assuming you are going to try to bring it in through the expert or -- well, it has got to come in after the child testifies, so --

MR. COLLINS: It is our position, once the prongs are met, that we can just admit it at the start of the Defense case. Once the prongs are met, the statute says that it is admissible.

THE COURT: All right. I make a finding that the totality of the circumstances -- the circumstances surrounding the making of the statement provided particularized guarantee of trustworthiness.

And I'm looking at the statute. The statute says that the Court may consider, but it is not limited to the following factors, and it goes out into 1 through 5, and says that we must -- we may consider, not must, but may consider all of these factors in determining the trustworthiness of the video.

Now, as to the second video I do find that in State v. Cabrera-Pena, State of South Carolina, 350 S.C. 517 or 567 S.E.2d 432, it talks about the rule of completeness and that placing part of the video would be misleading to the jury, that it would confuse the jurors by admitting one and not admitting the other. And I refer to that case.

Also I would like to refer back to the expert's testimony. I believe he testified that it was a follow-up forensic interview. He also testified that it was -- he testified it was a follow-up forensic interview.

In the video when he is talking to the child he says -- he refers to the first interview and says, you have more you want to talk to me about from the first time -- last time we were together.

I find that it is a continuation of the first interview, in close proximity of when the child

was -- when the interviewing process began, that the child was under 12.

So if the Defense decides to present or introduce the first video, then I will allow the State to introduce the second video on redirect.

Thank you.

And we'll go ahead and bring -- anything else before we bring the jurors in?

(WHEREUPON, there was no response.)

THE COURT: You can bring them in.

(The Clerk approaches the bench.)

THE COURT: All right, one of our jurors has not showed back up. Do you know which one it is?

THE CLERK: Juror Number 60.

THE COURT: Juror Number 60. I told them 1:00 o'clock. It is 1:30. We can wait a little bit longer and see if she shows up, or we can use the alternate.

My only concern about using the alternate is that we probably have another day or two in this trial, and I'm concerned if we use the alternate and somebody else drops out then we'll have a problem.

Any thoughts?

MR. COLLINS: I don't have a problem going

with the alternate, Judge.

MS. BODMAN: I guess I just want -- do we have a cell phone number or anything for --

THE COURT: I'm sorry, she said that the only number they have for her is her home number. We can give her about 15 more minutes and see if she shows up. Because they have been pretty prompt thus far, I believe. Maybe about 15 minutes and see if she shows up. And then if she doesn't then we'll seat the alternate.

We'll take about a 15 minute break, or until she comes, or about 10 or 15 minutes.

(WHEREUPON, a break was taken.)

THE COURT: That juror is still not here. I'm not sure. We don't have a cell phone for her, so we will --

THE BAILIFF: Y'all may be seated.

THE COURT: I'm sorry, you may be seated. We don't have a cell phone number for her, but back on the -- during the time that we were waiting on her, Mr. Collins, something you said has intrigued me. You said you want to enter the video after the victim testifies at the beginning -- or sometime after the victim testifies at the beginning of the Defense case.

MR. COLLINS: Well, two problems here. The first problem right now, we're still deciding what we want to do after your ruling that we objected to. But our position is that the statute, once the prongs are met, the admissibility of the video, that it is completely at the discretion of the moving party as to when they want to introduce that evidence.

So our position would be that if we decide to introduce that video, we could do it at the start of the Defense case without a witness.

THE COURT: Well, let me ask you this. Isn't the video normally introduced when the victim does not testify?

MR. COLLINS: In every other state other than South Carolina; however, South Carolina copied the other state statutes and put a requirement that the video is not admissible unless the child does testify, which is why we are usually the ones arguing that it is constitutionally defective for it to be entered. That is why this is a unique case.

THE COURT: All right. And I guess my next question is, isn't it -- the video, if the child testifies, isn't it the age of the child at the

time of -- which y'all probably would be arguing -- but at the time of the trial, at the time of the testimony? Or is it the age of the child at the time of the video?

MR. COLLINS: Well, the statute, the plain language is admissibility of an out-of-court statement of a child under 12. They are statements made out of court. It is at the time when the statement was made. And I think in the plain language it definitely applies from the time the statement was made.

MS. BODMAN: The paragraph actually goes on and says: In the present case the victim was under the age of 12 at the time of the making of the statement.

So they can be 21 when the case goes to trial as long as when they made it to the forensic interviewer they were under the age of 12 at the time it was made.

THE COURT: And I guess what I was thinking is, I wasn't sure how you were going to try to introduce it, if you were going to -- if you were trying to use it to impeach the victim --

MR. COLLINS: At this point, Your Honor --

THE COURT: You're not sure.

MR. COLLINS: It is still our position that it can be introduced in whatever shape, form or fashion as it usually is by the prosecution at whatever point during the case.

However, after speaking with co-counsel, based on your ruling, it significantly hamstrings what we were going to do with that first video. We object to the ruling and we feel that we cannot present the video because if we did based on your ruling the second one would come in.

So just so the record is clear, we were intending on putting that video in a hundred percent, but we will not be introducing it based on your ruling that we have objected to for the reasons that were put on the record.

THE COURT: Under the doctrine of completeness. Yes, ma'am? And the case that I cited.

Is she here? Did she give us an explanation of what happened?

THE CLERK: She apologizes, Your Honor. She thought you said 2:45 instead of 12:45.

THE COURT: I didn't even say 12:45, I said 1:00 o'clock.

THE CLERK: She got -- she understood 2:45. I

don't know where that came from.

MS. BODMAN: She thinks she is early.

THE COURT: Okay. All right. Well, we'll be ready for her in a minute. Hopefully it won't be 2:45.

Yes, ma'am?

MS. BODMAN: I guess then we need to make sure that we can get a clarification of your ruling, because based upon your ruling that the Videotape Number One met the statute and thus then for a couple of reasons it was kind of an ongoing interview, so since he was under the age of 12 when he made the first one and the second one then comes in as a continuing, we were just planning on putting both of them in evidence with our interviewer.

If your ruling is that the second videotape is only admissible if they offer Videotape Number One --

THE COURT: That's fine.

MS. BODMAN: Okay.

THE COURT: They have -- it would be -- because if not you would not be able to get it -- if they offer it. If not, you would not be able to get it in.

MS. BODMAN: Well, under -- actually, your finding under the statute is that it meets the -- it meets the standards of the statute, so it is admissible regardless of who admits Videotape Number One. I just want to be -- I just want to make sure I understand your ruling because I don't want to be in a situation where we admit Videotape Number One based on your ruling and then you say, wait, wait, wait, wait, I was saying that you could only get Tape Number Two in if they offer it.

THE COURT: And that is what I was saying.

MS. BODMAN: Okay.

THE COURT: They have to -- if they offer one --

MS. BODMAN: Then we can get two in.

THE COURT: Under the doctrine of completeness. And also I have taken into consideration the continuation of the interview. So if they enter it you can enter the other one on redirect, or whenever they enter it, but that is the ruling. So you can't introduce them.

MS. BODMAN: Okay.

THE COURT: All right.

MS. BODMAN: I can't introduce Two. I am free to introduce One if I want to, I guess, but Two --

THE COURT: Yes, you can introduce -- well --

MS. BODMAN: Two can only be admitted if they admit One. I can't set myself up to admit Number Two.

MR. COLLINS: I would just argue laches. They have argued against Video One coming in. They can't then turn around and argue for it to come in.

THE COURT: If they introduce Video One, you can introduce Video Two.

MS. BODMAN: All right.

THE COURT: You can bring them in.

MR. BAILEY: Oh, I'm sorry, Judge, I just have one thing before the jury.

THE COURT: Yes, sir.

MR. BAILEY: I'm sorry. I apologize for that. We would just ask respectfully that Mr. Olszewski, he has been talked about being an expert in the hearing but not before the jury yet. We would just ask that this witness be sequestered while they call the victim to the stand first.

THE COURT: Yes, ma'am?

MS. BODMAN: And under the rules, experts are allowed, and he would be allowed then to watch his testimony and potentially be able to comment as an expert on any details or disclosures that he makes

in his testimony.

THE COURT: And I think he has been admitted as an expert. You all are going to object again for the record in front of the jury, but he can stay in the courtroom.

MR. BAILEY: And just for the record, we object to him being in the courtroom at this time.

Thank you, Judge.

THE COURT: All right. I think your objection is stated for the record.

All right.

(WHEREUPON, the jury came into open court at approximately 2:24 p.m.)

THE BAILIFF: The jury is all present, Your Honor.

THE COURT: All right. Ladies and gentlemen of the jury, I -- we of course were not starting back. I think y'all -- Ms. Copeland?

THE JUROR: Yes, ma'am.

THE COURT: -- got confused about the time to come back. But I will try to make it a little clearer the next time so y'all can be back on time so you won't have your fellow jurors waiting on you. That would be greatly appreciated. But I will make sure I say it two or three times so it

won't be an issue next time.

But at this time we are going -- the State is going to call their next witness.

MS. BODMAN: The State calls [redacted]

THE BAILIFF: Place your left hand on the Bible, raise your right hand, and face the clerk, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

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

THE WITNESS: [redacted]

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BODMAN:

Q How old are you?

A Thirteen.

Q And what do you go by?

A I just go by anything with [redacted] or [redacted] in it.

Q [redacted] or [redacted] Where do you go to school?
A E.L. Wright Middle School.
Q And how long have you been going to E.L. Wright?
A About a year and three quarters.
Q And what grade are you in?
A I'm in eighth.
Q And what school did you go to before E.L. Wright?
A Kelly Mill Middle.
Q How do you like E.L. Wright?
A The teachers are nice. Just the attitude of the students gets on my nerves.
Q And why does that get on your nerves?
A I don't suffer incompetence well.
Q You don't suffer incompetence well?
A Not really.
Q I take it that you like to learn?
A Yes.
Q You like -- you love school?
A Yes.
Q What are your favorite subjects at school?
A Math, science, language arts, mainly.
Q Tell us a little bit about what you did this summer.
A I went to college for three weeks and I went to Kansas and did random stuff in D.C.

Q Tell us about what you mean by you went to college for three weeks.

A I went to Kansas University because of the Duke TIP Program. I passed so I was able to take aerospace engineering. Let's see, I did that for three weeks. And according to the record I got back, I seemed to do pretty well.

Q And so these were other students from I guess different states all around the United States?

A Mainly the southeast. The most north we got was Virginia, the most west we got was Texas.

Q And you stayed in a dorm room?

A Yes, with three other students.

Q And you took classes you said in aerospace engineering?

A Yes.

Q What kind of things did you do?

A We built a model airplane out of styrofoam. We learned mainly about lift and drag, which in my opinion, learning it the way our instructor taught it to us was a little bit confusing and boring.

Q You think lift and drag should be an exciting topic?

A I mean, lift, the plane goes up. Drag, a plane is pulled back. What else is there to learn?

Q Tell us about your family. Do you have brothers and sisters?
A Yes, I do.
Q Okay.
A My brother Jeffrey and my sister Scarlett.
Q And how old is Jeffrey and how old is Scarlett?
A Jeffrey is 11, but he'll be 12 later this month, and Scarlett is 18.
Q What are your relationships with Jeffrey and Scarlett?
A Jeffrey and I don't fare well. What I mean by that is we tend to argue over some things, which the subject I believe is stupid. My sister, on the other hand, we get along quite well. We can talk to each other without me constantly thinking she's a dork and we can get along without some sort of argument.
Q And has that been the case for a while, you have gotten along with Scarlett I guess a little bit better than Jeffrey?
A Yes.
Q Your mom and your dad, do you remember when they separated?
A I never was too sure about that.
Q Okay. Do you remember I guess living in South

Carolina and then moving to other places with one of your parents?

A The earliest -- the first time I remember moving out of South Carolina was when I moved to Georgia.

Q Okay. And who did you move to Georgia with, your mom or your dad?

A My mom.

Q And your dad is who? What is his name?

A William T. Murray, Jr.

Q And what state do you remember living in before you moved back to South Carolina?

A Which time do you mean?

Q I guess from the first time you lived in South Carolina you said you remember moving to Georgia, and then what do remember after that?

A I went to Georgia, then Ohio, then back down here to South Carolina.

Q Do you remember what grade you were when you moved back down here to South Carolina?

A I was coming up to the end of fourth.

Q End of fourth grade?

A (Nods affirmatively.)

Q And you're in eighth grade now?

A Uh-huh.

Q And you said it was at the end of that school year

that you moved back?
A Uh-huh.
Q So I guess the spring or the beginning of summer, something like that?
A Yes.
Q Do you know who John Barnes is?
A Yes, I do.
Q And do you see him in the courtroom today?
A Yes, I do.
Q Can you point to him and describe I guess where he is sitting and what he is wearing so we know who you are talking about.
A Yes, ma'am. He is right over there at the Defense table in the middle with the graying hair and the, what I think is navy blue suit.
Q Okay. When do you first remember meeting John Barnes?
A When I moved back to South Carolina from Ohio.
Q And what do you remember about meeting him? Where was it? When was it? What was happening?
A We were at the house that I currently live in, -- and he was helping us move back in. And it just -- he was helping us move back in and like --
Q And who were you moving into that home with? You

said helping us. Who all was that?

A Me, my sister, my brother, my mom and my stepdad.

Q So in the meantime from I guess -- or you tell me, when did your mom get together with your stepdad?

A It would have to be around when I was in third grade, so -- because it was in third grade that I moved to Georgia.

Q So that is the first memory that you have of meeting John Barnes is when you moved back to South Carolina the last time, you were finishing up --

MR. BAILEY: Leading, Your Honor.

MS. BODMAN: He has already testified to it. I was just kind of laying a foundation.

THE COURT: Overruled.

Q When you moved back and you said you were finishing up the fourth grade.

A Uh-huh.

Q After that first meeting when you remember meeting John Barnes, tell us about what contact, if any, you had with him after that.

A Well, we knew to him -- well, my brother and I and Scarlett over there knew to him as our uncle, so we would just call him Uncle John and sometimes we would visit him, like in his house or at the laundromat where he owned. And so we would just

sometimes visit him. And my brother and I more constantly than our sister.

Q And you said would visit him. What do you mean by visit him? Just for a couple of hours, for a day, for a few days? What was that?

A Sometimes for a couple of hours, sometimes for a day.

Q And what do you remember about why it was that you were going over to his house?

A At first just to visit him. Like, you know, he was in town, we could go visit him.

Q Okay. You said at first. And then were there different reasons later?

A Well, I later knew him to be my dad.

Q Okay.

A So. Because --

Q I'm sorry. Go ahead.

A So around then we were, my brother and I were already coming a little bit more frequently. Also because there would be a few fights in our house from time to time. So we would go over there to get away from that drama. So...

Q And you said you would go over there to get away from the drama. Was that -- you would ask, can we go over to John's house, or your mom would say, you

are going over to John's house? How would that happen?

A It would either be that mom would sense a fight coming on and she would ask John to pick us up or she would drive us over there ourselves. That, or he would just come over and pick us up.

Q Would you actually witness some of these fights?

A I have actually witnessed a few beforehand, so -- before I started going over there frequently. So I seen them. I witnessed a few of them, but most of them I haven't seen.

Q And when you say you would go over there more frequently, describe, you know, was it during the week, the weekend, both, for what period of time?

A It was a mixture of both and sometimes it was just for a few hours. Sometimes we would stay overnight. Sometimes it would be just till our mom picked us up at who knows when.

Q When you stayed there overnight, what do you remember about the sleeping arrangements?

A Sometimes it would be that I would sleep on the recliner in the living room and John would sleep on his waterbed.

Well, at first it was that and our brother slept on the couch in the living room. Sometimes I

slept in the waterbed with him.
Q And him meaning?
A John.
Q Okay.
A And sometimes John would sleep in the living room, I would sleep on the waterbed and Jeffrey would sleep on the couch.
Q How many bedrooms were in this house?
A Until John fixed up a second one, one.
Q Okay. But there -- you said until John fixed up the second one. Describe that for us.
A Well, he used to have two other people living in the household with him, Jamie and Vicky, and they had a bedroom to themselves. I want to say left that whole bedroom became a dump, like unliveable practically. So John had to fix it up. He even put cable in there. It was poor cable, but cable. So he fixed up the room a little bit, you know, made it like a home bedroom, you know. That is where my brother and I and sometimes Scarlett slept the night.
Q Okay. And I guess what were the -- what was the bed situation in that room for you and your brother and Scarlett to sleep in that room?
A Like, my brother and I would sleep on the very back

wall, and Scarlett would sleep on the wall with the door.

Q But you each had your own bed? There were three beds?

A Yes.

Q Okay. I'm going to show you what is marked as State's Exhibit Number 2. And I'm going to ask you just, yes or no, do you recognize this?

A Yes.

Q Okay. And basically what is it?

A It is a floor plan of John's house.

Q Okay. And did you sketch out the floor plan before coming to court today?

A Yes.

Q Okay. And then I guess I typed this up, but did you take a look at it?

A Yes.

Q And is this -- we didn't measure it out, it is not to scale.

A Yes.

Q But is it a fair and accurate depiction of John's house?

A Yes.

Q Okay. And would it help you to be able to refer and describe to the jurors the rooms and where

everything happened if you were able to look at this diagram and point to it for them?

A Yes, it would help to describe.

MS. BODMAN: I offer into evidence Exhibit Number 2.

MR. BAILEY: No objection, Your Honor.

(WHEREUPON, State's Exhibit No. 2 was marked for identification and received into evidence.)

Q This isn't any fancy CSI diagram, but if I ask you to come down here to the diagram, can you keep your voice up so the court reporter and all the jurors can hear you?

A I'll do my best.

Q Okay.

(Witness steps down.)

Q I will let you stand on this side so that your voice can go kind of to the court reporter, okay?

Describe what we're looking at here.

A Let's see. Right over here is the front yard. There was a porch right here. And -- the front porch right here. And then here was the living room, although we barely came in this way. The only people that used this were the cops that showed up at the front doorstep or the pizza guy.

Q And then we have a living room, we have a kitchen. You said there were two bedrooms, right?
A Right. One over here and one over here. So...
Q And then which room was it that you and your brother and Scarlett stayed in and which bedroom was it that John stayed in?
A This was the one where my brother, sister and I usually slept in, and that is the one where John usually slept in.
Q Okay. And how many doors were on this bathroom that was in John's bedroom?
A There were two. One that led to the kitchen and one that led to his bedroom.
Q Okay. That's it for now. You can go back and sit down.

(Witness returns to the witness stand.)

Q While you were I guess -- let me go back to this. In April of 2010, did you spend the spring break at your dad's house?
A Yes, I did.
Q Okay. And did you have occasion to tell your sister Scarlett about some things that were happening at the house at John Barnes' house?
A Yes, I did.
Q Tell us basically how that came about, like where

were you, how do you remember it kind of happening that you told Scarlett this stuff?

A Well, Scarlett needed to do -- well, she wanted to do her college prep homework, and she asked me to come with her in case she needed -- well, I think she might have wanted to -- have wanted help with her homework, so we went to the park just up the road that we sometimes called haunted because Scarlett got constantly hurt there. It was a little -- evening. And what happened was she took her homework. I went with her. We walked up a hill and we went to the park.

We sat down on a park bench and we started talking. I mean, it was just like -- nobody else was around. It was about that time that everybody was either rushing home or getting to night school or getting to the graveyard shift or something. So it was around that time.

But we haven't like noticed anybody in the place that our dad and stepmom lived in. Well, what happened was Scarlett and I were just talking. And then I told her about some events that were happening in John's household.

And then she got a little, how should I say it, not like excited, not like -- like she got a

jolt of shock. That is how I will put it.

So she must have told my stepmom that night because the next morning our stepmom took us to walk the dog. And our sister has a reputation of lying, so our stepmom took me for a walk with our dog Lucy. And she asked me to clarify -- so she asked me for clarification if what Scarlett said was true.

I confirmed all -- that what Scarlett said was true. So she must have told our dad and called the cops.

And then after we got back down to South Carolina Scarlett must have told my mom because we went on a walk, and I once again confirmed what Scarlett said.

Q Why -- is Scarlett the first person that you told about what was happening at John Barnes' house?

A Yes.

Q Why is it that you told Scarlett? What was it about Scarlett?

A Well, for a few reasons. I would want to tell my mom, but since we were constantly going over to John's house I could never really find the time to tell her, first.

Also, I have such a good relationship with

Scarlett. I mean, we can tell each other anything. And we know we'll be honest to each other.

Also, because if I told anybody at school I would be treated differently than I was already being treated, and I didn't wanted to start anything up at school.

Q You were talking about how you didn't particularly like E.L. Wright?

A Yeah. I'm already treated as the odd one out anyway, so I'd rather not start anything up.

Q When you got back here then to South Carolina, do you remember going to talk to Ray Olszewski, Mr. Ray, at the ARC?

A Not -- not too long after we got back.

Q Okay. Did you tell Ray -- that first time you met with him, did you tell him everything that was happening at John Barnes' house?

A Not everything, at first.

Q And why didn't you tell Ray about everything that was happening?

A Because I was embarrassed, nervous, you know. We kind of -- at that time it would have been a one, two -- at that time it would have been a fourth time, and I'm still not too comfortable with telling every single detail. So I told him

everything I felt comfortable to tell him.

Q Okay. Do you remember then going a second time to talk to Ray at the ARC?

A Yes, after the summer.

Q Okay. And did you then tell him more about what was happening at --

A Yes.

Q -- at John Barnes' house. And why was it that you felt comfortable or that you decided to tell that second time that you were interviewed?

A Because -- because I felt a little bit more comfortable. I mean, I had already recounted the same story four times already, but with more and more detail.

Q So the details that you gave Ray in that second interview, did you give all those same details to your -- to Scarlett, your stepmom and your mom?

A Not like all the details. Maybe a few, but not all of them.

Q Okay. Tell the jury basically what was happening to you at John Barnes' house?

A Well, what happened was, whenever we needed to like get bathed somehow, Jeffrey, my dorky little brother, he would take a shower. And that is all he would ever take. But because I was somebody who

went through a school switch in the middle of the year, really, not literally, what happened -- well, since I was actually needing to carry more books than I was used to, I was dealing with a lot more incompetence than I was used to or that I could tolerate, so I suddenly felt stressed, so John came up with the idea of taking bubble baths.

Q So you confided in him that you were feeling stressed out?

A Yes.

Q Okay. And he suggested -- or who suggested the bubble baths?

A John. He thought that it would like help me from being stressed because, you know, bubble baths are relaxing.

And so also while we were getting the elements for the bath, I came across some scented candles in the Dollar Store and I said, hey, these might be good. And so he got a few of them.

And not too long after we got everything, we started taking the bubble baths.

Q So describe what would happen during these bubble baths.

A Well, the lights would be off, the candles would be lit, the bath would already be drawn. And he would

have -- and soon after he got an MP3, he would place that on the side of the tub and play music during it.

Q Do you remember what music he would play?

A Sometimes Elton John. He would play whatever he had on it, like Elton John, Dr. Hook and the Medicine Show. I don't remember -- I don't think he -- I don't exactly remember if he did, but I think he played Meatloaf too.

Q So the bath would be drawn, the candles would be lit, and music would be playing. Then what would happen next?

A So then he would wash me down with a washcloth, had some hand soap and a washcloth so he would wash me down from head to toe. And then after that he would tell me to relax. And then he would masturbate me for about ten seconds until it actually felt like I needed to use the restroom. So I would tell him, I need to pee. And then he would grab a red plastic cup from the side of the sink, hand it to me, I would turn my back to him so my butt was in his face, and I would attempt to use the restroom.

When it -- after a few seconds and confusion, I hand him back the cup and he would put it back on

the side of sink, and then we just talked for the rest of the time I was in the tub.

Q While he was washing you and doing this, would he be saying anything to you during that time?

A The only time -- other than our talks after the masturbation -- during the masturbation he would constantly whisper, relax, to me.

Q And you said that you would -- or let me get this. Did you say that you would just tell him that you had to pee or did you actually feel like it was, it was a sensation to you that -- like you had to pee?

A Right. It felt like I actually had to pee.

Q And then he would -- you said he would give you a cup?

A (Nods affirmatively.)

Q And describe that again, because you said something about, in confusion I would hand him back the cup.

A Well, it felt like I had to pee, and when I tried to pee I didn't pee. So...

Q You would just hand him back the cup?

A Yes. And usually when I feel like I have to pee, I pee.

MR. BAILEY: Your Honor, we have a matter of law we would like to discuss.

THE COURT: Ladies and gentlemen of the jury,

at this time I am going to send you out for a break and take up a matter of law.

(WHEREUPON, the jury retires to the jury room at 2:52 p.m.)

MR. COLLINS: If I may address the Court? This goes back to the Rule 3.7 issue, that part of pretrial.

THE COURT: Yes.

MR. COLLINS: From the testimony we just heard, I have an e-mail that I can make a part of the Court's record, that when we were first made aware that the prosecutors in this case had interviewed this child once, and the new information they gave us, in this e-mail it states:

In order to get the D, representing the Defendant, to stop it, he would use the excuse that he needed to pee. The D would then give him a cup to pee in.

That is all that she disclosed to us. This is in much more detail. This is material to guilt because one of the elements is lewd and lascivious to the victim or the Defendant.

This is obviously getting into some kind of description about ejaculate, or something of that nature, which is obviously one of the elements of

the crime that they are alleging.

If they knew about this when they interviewed the child last week, it is something that they should have disclosed to us and we would say would be a violation of Rule 5.

MS. BODMAN: Can I see that, the e-mail? I didn't bring a copy with me.

MR. COLLINS: I have a copy. I'll mark it as a Court's Exhibit.

MS. BODMAN: I actually put in that Number 3, in order to get the D to stop it he would use the, quote, excuse, that he needed to pee.

That was because he said he actually felt a sensation. It wasn't really truly a lie. I put it in quotes, the excuse.

THE COURT: Can I see it?

MR. COLLINS: I was waiting on her to mark it.

THE COURT: Oh.

MR. COLLINS: That in and of itself is extremely misleading, Your Honor.

(WHEREUPON, Court's Exhibit No. 1 was marked for identification only.)

(Hands exhibit to Court.)

(Pause.)

MR. COLLINS: This all goes back to the

problem we have with advocates and witnesses. This would be impeachment based on what they were giving us, which is an additional problem, which would be the method of interview that we initially had.

THE COURT: Well, he just testified to what the e-mail said.

MR. COLLINS: He testified in much more detail, a lot more details as far as -- that e-mail has nothing sexual in nature involved in it. What they are just getting into is describing a young child ejaculating for his first time, which is one of the elements of the crime. It is definitely material to our client's guilt. And they did not disclose that to us.

THE COURT: What do you say?

MS. BODMAN: First of all, lewd act doesn't require that they successfully get somebody aroused, just that that was their intent.

So just the act of him masturbating his son, even if he wasn't actually aroused, is completely relevant. This is -- I told them what he said. I put it in quotation marks, excuse.

Because he did -- I mean, our conversation was much longer. We had very detailed conversations in terms of, you know, what happened to him and

everything. This is very consistent with what he said. And it is not material. He can cross-examine him right here. That is the whole purpose of it. And we disclosed it. So they have this to cross-examine him.

THE COURT: All right. And the statute says that, with the intent of arousing, appeal to, or gratifying the lust or passion or sexual desires of said Defendant or of the victim in violation of Section 16-15-140.

I guess I'm not clear on what the objection is.

MR. COLLINS: The e-mail doesn't state that he felt any kind of sensation. He said that he used it as an excuse to get him to stop. That is completely different than what we just heard.

MS. BODMAN: Even if he felt the sensation, even if he didn't tell me this when he testifies today, they can impeach him on it. They can ask him about it. Any additional detail. He also doesn't say he played Meatloaf. It says Elton John and Dr. Hook and the Medicine Show. I didn't disclose the Meatloaf. I mean, it is just not material.

THE COURT: All right. The objection is

overruled. And you will have an opportunity to cross-examine. He is on the stand. You'll have an opportunity to cross-examine him.

MR. COLLINS: And we have a chance to visit the Rule 3.7 at the close of the case. We think again this makes an additional reason why they are a necessary witness for our defense, and we would ask again for a proffer at that time.

THE COURT: All right. You can bring them back in.

(WHEREUPON, the jury came into open court at approximately 2:57 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right, Ms. Bodman, you may continue.

DIRECT EXAMINATION CONTINUES

BY MS. BODMAN:

Q Which bathroom was it that this was happening in?

A The bigger one next -- between the two bedrooms, because the smaller one didn't have a bath in it.

Q Okay. So this one right here?

A Yes.

Q Now, I notice that there are two doors. Talk to us about, you know, were the doors open, were they

closed? What was happening with the doors?

A This one over here actually swung into the bathroom just like -- well, this was a double door, so this one swung in like this. This one swung in like this.

So what he would do was, he would just close that door, because barely anybody came in this way anyway, so he would just close this door.

And then on this door, the more frequent used door, he would put that heater in front of it so that my brother, who was usually out here playing on Facebook or something, he would put the heater right here so that our brother wouldn't get up and barge in.

Q I guess -- what was the heater like?

A It was like a small little white strip with braiding on the front of it, and it had something heating it from the inside.

Q Like a little space heater type thing, that is moveable that you can plug in anywhere around the house?

A Yes, like one of those.

Q Okay. From the time that you told Scarlett about this in the park -- how long before you told Scarlett -- how much time had passed since the last

time it happened?

A Well, let's see. Let's see. We went to Mt. Vernon on Wednesday of that week. So I think I told around Thursday. We had gone up there around Saturday. So approximately the Friday before that Thursday.

Q Just like a week or so?

A Around.

Q And when this started happening, if we can put that kind of in perspective, is -- was it before or after you found out that he was your biological father?

A After.

Q Do you remember how you found out that he was your biological father?

A Well, he had gotten paperwork from the courthouse that showed the statistics of the DNA match -- of the DNA testing. And, well, he took me into his bedroom, had the shutters closed, had the lights off, and he told me that -- that he -- he was telling me that he has given me information before I should have it. And then he told me, I'm your dad. I'm your father. Then he showed me the papers, which to tell the truth I couldn't make heads or tails of them at all. So I just went with

what he said.
Q So it was after he told you that he was your biological dad up until about a week before you told Scarlett?
A Uh-huh.
Q And did this just happen one time or did it happen more than once?
A More than once.
Q Do you know approximately how many times?
A Let's see. Seventeen, 18, maybe.
Q Other than what John Barnes was doing to you in this bathroom, other than that, did you like going over to the Defendant's house, to John Barnes' house?
A I mean, well, yes. I mean, like there were -- we were well entertained. We had enough physical labor, especially at the laundromat. I mean, over there we had to like clean everything. So, yes.
Q You would help him out? He had a laundromat and you would help him out?
A Yes. We would mop the floor, clean the washers, clean the dryers, clean the chairs, clean the table, clean the front windows. What else would need to be cleaned and/or restocked.
Q What about the house? You said that you were well

entertained at the house?
A TV, Facebook. We would sometimes bring over our Gameboys. We would play a board game, like he had -- well, he had Quelf and Spider-Man Monopoly.
Q He had lots of games for you to play?
A Actually, very little.
Q You had computer access?
A Yes.
Q Over there?
A And we had TV access.
Q Why was it that you said you liked to go over there? What was it about your home and going to John's house that you liked going over there?
A Well, in John's house there was less drama. And frankly more possible entertainment. Like we were somewhat -- like we didn't have much computer access. With TV we would just get really bored after a few shows, because we don't have -- because in our house --
Q This is where, at your mom's house?
A Yes.
Q Okay.
A At our mom's house we didn't have like very many channels to search through. And the only TV was in my brother's room, so I didn't have anything to

watch in my own room. The only thing I had in my room was a computer that didn't even have internet. So the most fun I could have on that was either play Mindsweeper or mess around on Microsoft Excel.

Q So you could have -- you are saying you could have more computer access and internet access over at John Barnes' house?

A Yes. I mean, that was just one thing.

Q TV?

A Yes. With the TV, over at John's house we had more availability to -- like more channels, like DSN, one Nick Toon channel.

Q [redacted], I don't have any further questions for you at this time. Just answer any questions from the Defense counsel, okay?

A Got it.

THE COURT: All right, Mr. Bailey.

MR. BAILEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BAILEY:

Q Hey VICTIM . How are you doing?

A Good. You?

Q Doing great, thanks.

A You're welcome.

Q So you were involved with the Duke TIP Program; is

that right?
A Why, yes, I was.
Q And they had you take the S.A.T. already for that?
A Yes.
Q You must have done pretty well?
A Yes. I don't exactly know what I got, but my mom does know, right? She does.
Q Well, you must have done pretty well if you got into the program?
A Yes.
Q They had it back when I was a kid, and I didn't get it, so.
A I feel sorry for you.
Q VICTIM , you've been here, you've been here today and yesterday. Would you say that you have got kind of a complicated family situation?
A Uh, let's see. Stepfather, stepmother, divorced mother and father, long confusing family that I still can't keep track of. Yes.
Q Okay. Well, your mom and dad, they have been apart for a little while? A few years?
A Yes. I don't know exactly how long, but my sister probably knows.
Q Okay. And your mom -- and I'm talking about legal dad, Mr. William T. Murray, Jr. -- is it junior or

is it the II? I heard both.
A It is really just -- we just use Jr.
Q Okay. Okay. Well, I'll tell you what I will do, I will refer to him as, you know, your legal dad. I think he is your legal dad. And then we'll just -- and I'll just refer to Mr. Barnes as Mr. Barnes; is that right?
A Got it.
Q So your mom and Mr. -- I'm sorry your legal dad, they haven't always gotten along; have they?
A Not too much.
Q And your stepmom, she also has had problems getting along with your mom; is that right?
A A little.
Q Okay. And, VICTIM , do you remember earlier, I think it was yesterday, when your sister said that there was a lot of violence in your mom's house years ago?
A Yes, I do remember her telling me about that. From yesterday I do remember her talking about that.
Q Okay, I'm sorry. I don't -- I'm not sure if you were in here or not.
A I was. I was right on the front row.
Q Okay. So you saw when I was talking to her, when I was speaking to her yesterday?

A Yes.
Q And you remember her saying that there was screaming in the house?
A Yes. Yes, I almost remember exactly what she said. She said that she wasn't pulled by her hair and she said that there wasn't violence in the house, there might have been tension, but no violence.
Q Okay. So you're saying that -- okay, well, you're saying that yesterday she didn't say that she was -- that there was hitting involved? Do you remember me asking her if there was hitting yesterday?
A Yes. It is just that that is the part where I sort of went blank.
Q Okay. All right. Victim, do you remember -- do you remember how you spoke with Mr. Ray Olszewski a while ago about April of last year, of 2010? I know it was a while ago.
A Yes.
Q Do you remember the first time you spoke with him?
A Not too well, but, yes.
Q Okay. Well, do you remember telling him that your stepfather had dragged Scarlett by her hair and hit her? Do you remember saying that at the time?
A Yes, I do remember saying that.

Q Okay. And you remember telling him that there was a lot of fighting in the house, right?
A Yes.
Q Okay. And I think you said also that you and your little brother Jeffrey, that y'all would hide in the closet when there was violence?
A Well, that is what we did at first. Then Jeffrey stopped coming with me. And then we just got to the point where we just turned up the volume of whatever we were using.
Q Okay. But it was -- would you say it was scary at times?
A At first. Then it just got to the point of, well, this is happening so often that we just need to turn up the volume to hear whatever we are listening to.
Q Sure. But when you were a little bit younger, would you say you were scared enough that you went and hid in the closet?
A Yes.
Q Do you remember saying to Mr. Olszewski -- do you remember saying that, when he asked you -- do you remember him asking you why you were hiding in the closet?
A Yes.

Q Okay. Do you remember saying, we were hiding from possibly getting hurt?

A Yes, because -- well, we didn't actually like witness any of these fights, so we didn't know what was exactly going on. And luckily we were either both in his room or both in my room. Our rooms are side-by-side, so we could just either -- if we were both in his room we could just swing over; if we were in my room, we would just swing in.

Q Okay. But you did say that he -- that your stepdad drug Scarlett by her hair, right?

A Which Scarlett proved wrong yesterday.

Q I want to talk about your mom for a second. You said earlier that your mom would drop you off to Mr. Barnes' house sometimes, right?

A Yes.

Q Okay. And you said that she did that because sometimes there was fighting at the house, there was a lot of drama at the house?

A Yes.

Q Okay. Do you remember saying to Mr. Olszewski that she also dropped you off because she was broke at the time? Do you remember saying that?

A You just recalled that memory.

Q Okay. But as you said earlier, I mean, you laid it

out for me, you said that it is a complicated family life. Do you remember saying that you -- do you remember telling Mr. Olszewski -- do you remember telling him that you consider yourself kind of like the family psychologist? Do you remember saying that?

A Yes, but it is mainly to my sisters. How do I -- I won't go into too much detail because, you know, with the --

Q I want to talk just a little bit, Jeffrey -- I mean, not Jeffrey, I'm sorry -- I want to talk, VICTIM about the first statement you gave to Mr. Olszewski at the ARC, the Assessment and Resource Center?

A That would be --

Q That was April 19th.

A No, I meant, the statement.

Q Right. Well, I would like to talk about that for a second and ask you some questions that you gave to him, okay?

A (Nods affirmatively.)

Q I am probably -- I'm going to ask if you remember saying these things or not, okay?

A Okay.

Q I know it was a while ago. Do you remember telling

Mr. Olszewski that it was your idea to take baths at Mr. Barnes' house?

A No.

Q Okay. So if I showed you the video of you saying this to Mr. Olszewski, you would say that you didn't say it?

A I mean, if you showed proof, then, yes, it would probably be recalled, but --

Q Okay. Do you remember telling -- do you remember telling Mr. Olszewski that it was your idea that you wanted to have candles while you were taking baths?

A That I do remember, and it actually was.

Q Okay.

MR. BAILEY: All right, just a moment, Judge. Court's indulgence.

(Pause.)

Q But you don't remember when you told Mr. Olszewski that you wanted -- that it was your idea to take baths at Mr. Barnes' house?

A No.

Q Okay. Do you remember telling Mr. Olszewski at that interview that nothing inappropriate went on? Do you remember telling him that?

A Not too well.

Q Okay. So are you saying under -- I mean, you are saying right now in the court you are saying that you definitely didn't say that to Mr. Olszewski?

A I'm not saying that. It is just that that might be a statement that I said, but I'm not recalling it.

Q Okay. Okay, I understand. Do you remember -- do you remember him asking you if anything sexual happened, and you said, no, nothing sexual ever happened?

A I don't recall.

Q Do you remember Ray asking you about your conversation with Scarlett?

A Yes, I do.

Q Okay. Do you remember Ray asking -- these are in quotes -- could she have gotten confused about whether actual masturbation happened?

And then you said, she might have gotten confused.

Do you remember that?

MS. BODMAN: Your Honor, I apologize. I just object to the form of these questions. Do you remember, and then inserting hearsay. They are just improper questions. If he wants to introduce the videotape, I have got no problem with that, but do you remember saying something, it is hearsay.

THE COURT: Please approach.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right. The objection is sustained. However, ladies and gentlemen of the jury, I am going to ask you all to disregard the last comment regarding the admissibility of any -- regarding any video or playing of any video.

All right, you may continue.

MR. COLLINS: Your Honor, also --

THE COURT: Sir?

MR. COLLINS: May we approach one more time?

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Hold on one second. Ladies and gentlemen, I will send you out for a moment. All right.

(WHEREUPON, the jury retires to the jury room at 3:19 p.m.)

THE COURT: I'll let you place your objection on the record, Ms. Bodman, and then I will let you all place your objection on the record.

I think the objection was hearsay. The

objection was sustained. I think I instructed Mr. Bailey to rephrase the question, lay the foundation for the question if he is going to try to impeach him on it, and then I instructed the jurors to disregard any comment regarding whether or not the video could be played.

MR. BAILEY: All right. Thanks, Judge. We would move for a mistrial at this time. We don't think any curative instruction about the video would solve it after we have spent all day fighting over this video.

Now, you know, Ms. Bodman has represented this as something that they want in. We think it is -- you know, I think it was the strangest and the most telling speaking objection. I mean, whether it was intentional or not, I think it has definitely screwed things up. We ask for a mistrial at this time, Judge.

THE COURT: Yes, ma'am?

MS. BODMAN: And this tape was ruled admissible by Your Honor. Those questions -- and I didn't object for a very long time -- all of them are completely improper objections, which was the very basis when I stood up, I said, objection to the form of the question. It is calling for

hearsay. What it said on that tape, what it said by this witness on that tape is hearsay.

If they want to ask the proper question, which is: For example, did -- was it your idea for the candles.

And then he says yes or no.

If his answer is different from that tape, then they can offer the tape in.

Well, didn't you say in the tape to Ray Olszewski -- didn't you say that it was your idea. Or the opposite of what you are saying today.

But to ask all of these, do you remember saying this, do you remember saying that, do you remember saying that, that is all hearsay. He can't just stand up there and recount what is said on the tape itself.

If it is offered it is no longer hearsay. As it stands right now, what is on that tape is hearsay, and I object to the form of the question. He needs to ask proper questions.

THE COURT: That has been sustained.

MR. BAILEY: That is not hearsay, first of all. Ms. Bodman has opinions about what she thinks or what she believes hearsay is.

THE COURT: All right, well, I sustain the

objection and ask you to lay the foundation or rephrase the question.

Now, the next issue. They have asked for a mistrial based on the speaking objection as to if they want to impeach the witness. I am not sure exactly what she said, but they can show the video. And I did rule that it is admissible. I'm not sure if they are going to -- we're not -- I'm not sure if they are going to show it or not. But I am -- I have given a curative instruction and they have asked for a mistrial based on that, that comment. Any response on that?

MS. BODMAN: Well, first of all, I don't believe it is any kind of improper statement for me to make. It is an admissible piece of evidence. They sat up here arguing, we want Tape Number One in. Please rule that it meets the criteria. We want Tape Number One in.

Well, then they are saying, wait, gosh, don't tell this jury that we want the tape in.

It was a completely appropriate comment, but even if Your Honor believes that it wasn't, a curative instruction certainly cures what is in fact admissible evidence. It is not inadmissible improper evidence that I was trying to, you know,

make this jury believe something that would never come before them and it is inadmissible. It is an admissible piece of evidence.

THE COURT: I am going to deny the motion for a mistrial. I believe I have given the instruction. I ruled earlier that it is admissible.

From now on -- and some judges say they don't allow speaking objections, and I'm leaning towards that just so that certain things aren't said in front of the jurors, but if it is something that you are not sure about, ask to approach and I'll be glad to -- we can talk about going forward.

All right. You can -- anything else?

MR. BAILEY: Thank you, Judge. I just want to preserve -- renew -- preserve my objection for the record.

We are for no more speaking objections, Judge.

THE COURT: Yes, sir, bring them in.

(WHEREUPON, the jury came into open court at approximately 3:26 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: Yes, sir, you may continue.

MR. BAILEY: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUES

BY MR. BAILEY:

Q VICTIM , do you remember telling Mr. Olszewski that nothing inappropriate happened with Mr. Barnes in the bath?

MS. BODMAN: Object to the form of the question.

THE COURT: Sustained. Rephrase.

MR. BAILEY: Judge, we'd like to know on what basis at this point?

THE COURT: Let me see you all.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right. The objection is overruled. You may continue.

MR. BAILEY: Thank you very much, Judge.

BY MR. BAILEY:

Q I'm sorry, VICTIM , I don't remember if you got to answer my question or not.

A I didn't.

Q Okay. Do you remember telling Mr. Olszewski that nothing inappropriate happened with Mr. Barnes in the bathroom back in April of 2010?

A Okay, the first time?

Q Yes, that's right, the first interview with the Assessment Resource Center?
A Although may I ask you something real quick? When you are asking me these questions, could you say the first time or the second time, please?
Q Absolutely. I can -- I'm sure -- yes. The first time when you met -- and all I want an answer to is --
A Okay.
Q -- for the first time.
A For the first time?
Q Yes, that's right.
A You just recalled that memory.
Q Okay. Okay. So you do remember saying to Mr. Olszewski that nothing inappropriate happened with Mr. Barnes in the bathroom; is that right?
A The first time.
Q Okay. All right. VICTIM do you remember telling Mr. Olszewski that you knew what to do if somebody ever touched you inappropriately?
A Uh --
Q I'm sorry, that is confusing.
A Yes, I was about to say.
Q Do you remember Mr. Olszewski saying to you in that interview, do you know what to do if somebody does

something or somebody ever touches you inappropriately? Do you know how to respond? Do you remember him asking you something like that?

A At the moment I don't recall.

Q Okay. All right. VICTIM I just -- I want to talk real quick -- you were talking about Facebook earlier and being on Facebook. Do you remember a Facebook message you shared with your mom in which you said that you didn't want to go back to your legal father or dad because he would lie to you? Do you remember a Facebook message to your mom saying something like that?

A No.

Q Okay. If I showed -- if I showed you a copy of it, do you think that might help you remember?

A Possibly.

Q Okay.

MR. BAILEY: Judge, I'd like to --

MS. BODMAN: If we could have a copy of that so we can follow along.

MR. BAILEY: I'd like to hand this to the Court and mark this as Defense Exhibit 2 for Identification Purposes Only. I'm sorry, Defense Exhibit 2.

(WHEREUPON, Defendant's Exhibit No. 2 was marked for identification only.)

Q Do you remember down about Line 3?

MS. BODMAN: Your Honor, I object. If we can approach.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen, I will let you all take a bathroom break and we'll be in here working.

(WHEREUPON, the jury retires to the jury room at 3:33 p.m.)

THE COURT: All right, I have an e-mail here, but it looks like a Facebook conversation between VICTIM [redacted], and his mother. And the objection is relevance. How is this relevant?

MR. BAILEY: I think, Judge, without getting into our whole case here, I think the fact that -- I think the fact that there is communication and fighting involving three different members or parental figures in this family is highly relevant, and I think we have already shown there is trouble in the family.

THE COURT: All right. How is it relevant to

the charges that I have before me? And I ask, which if it was him saying, I don't want to go to the Defendant's house, then I think that there may be -- it would probably be relevant, but him not wanting to go to his legal father's house, is that what this is about?

MR. BAILEY: Well, Judge, this conversation was at Mr. Barnes' house on Mr. Barnes' computer.

THE COURT: Okay. So this is a conversation on Facebook. And he is -- I guess to make a proper record -- he is at Mr. Barnes' house. This is a Facebooking between he and his mom about going to the father's house in Virginia; am I correct?

MR. BAILEY: Yes, ma'am. William Murray, Jr.

THE COURT: Okay. And Mr. -- little VICTIM, is going back and forth with his mom about not wanting to go to Virginia; is that correct?

MR. BAILEY: That's true.

THE COURT: Now, how is that relevant?

MR. BAILEY: Well, I mean, I feel like I'm kind of being asked to give up my entire line of cross-examination here, but I think it is -- I think it is -- I think on its face it is pretty relevant.

I mean, we cited this at the very beginning, that part of our whole, you know, defense is that, well, it is important that there is significant turmoil in this family between three of the parental figures. All three of them are involved to right here.

You know, Judge, I'd like to ask that I not be, you know, expected to give up my entire defense here. I have asked him if he remembers a conversation. He said no.

I handed him the document to refresh his memory. I should have phrased it better because I -- refreshing memory, whatever. Ms. Bodman said she didn't want any part -- anything to do with it. But, Judge, I think it is necessary for a complete and fair defense for my client of the Sixth Amendment. I mean, we're going to be here till next week if they try to stop every time, you know, every little thing we need to do to give my client a fair defense.

We are allowed to pursue our own theory of the case, our own approach and our own defense. I mean, there hasn't been one thing that they haven't objected to at this point, Judge.

THE COURT: All right. Yes, ma'am?

MS. BODMAN: I just want everyone to follow the rules. This is -- there is no doubt if their defense is there is turmoil in the family, that that is fine. I'm objecting to the specifics of what are in there.

If they want to say to refresh your memory that there is turmoil, or whatever, but just dragging 404(b) information in here to -- you know, just bad acts and throwing -- slinging mud around, it needs to be a relevant and properly admissible incident.

Also, properly setting up, you know, the foundation of when exactly this was, where exactly it was, the time frame that it was.

I'm not sure what the stuff that is written, that is typed in on the bottom of the Facebook page is clearly not part of the Facebook, it is somebody else has written in what they believe or their interpretation of whatever this is. So that is clearly not a part of the Facebook page. But the message is.

MR. BAILEY: I'm sorry, Judge, I can explain how this goes. I ask VICTIM , do you remember posting things, you know, on the Facebook page. If he said no, I hand it to him to refresh his memory.

He doesn't have to read from it or whatever else. And then if he answers my questions after that, then that is fine, but I am allowed to impeach him on it if there is something different. We are not putting this in as evidence, we are putting this in for purposes of impeachment, which we are completely allowed to do.

There is nothing wrong with us using this for impeachment, Judge. And I know you know that.

THE COURT: Impeaching him on what?

MR. BAILEY: If he doesn't -- if he said something inconsistent on what this sheet is, we're allowed to, you know, ask him to refer to it. It might not even get to that. He probably -- you know, for all I know, he is just going to take it, have a chance to look at it and say, yes, I remember this. This is what happened.

THE COURT: So are you going to move to introduce this one?

MR. BAILEY: No, ma'am. This is just for -- this is -- I'm sorry. I got ahead of myself at the moment. All this talk about impeachment. But I present it to VICTIM I say, this is to refresh your memory. And then, you know, we take it back from him. And we ask him, you know, I ask him

about it. And, you know, if he says something that is impeachable we can use it to impeach him, but this is for identification purposes only, to start with, to refresh memory. And then potentially for impeachment, but we might not even get to that, Judge.

THE COURT: Why don't -- let's do it in-camera and I can see exactly what it is -- where you are going, because I'm not following you. And know that she has no objection to -- she has no objection to you asking him does he remember it and asking him about him and his mom -- I guess him and his mom having a dispute about him going to his dad's house.

Is that correct, Ms. Bodman?

MS. BODMAN: I just -- you know, just saying, I have a right to impeach a witness, doesn't give you the right to impeach them on any little fact. What I was concerned about, is it a relevant fact that he is about to admit into evidence and --

THE COURT: Well, he is saying he is not going to admit this into evidence.

MS. BODMAN: Potentially impeachable. But by asking questions about it, that is offering the facts into evidence. He might not offer the piece

of evidence. He could say --

THE COURT: Let's see what he says. What is it that you are agreeing to him asking him about the e-mail, about the Facebook page?

MS. BODMAN: Well, he was saying that the relevance that he was trying to offer was for the purpose of showing there was turmoil in the family, so I don't have a problem if he just wants to show to him and, you know, do you remember having that conversation. And there was definitely some turmoil in the family. Yes. No. If he says no, everything was great, the family was peachy keen, then, you know, wait a minute, read that, you were fighting with your mom.

THE COURT: I think he has already testified that there was -- I don't know if he used the word turmoil, but he said they were a not traditional family and that there was problems and that he left his mom's house and the reason he liked going over was because, he said, no trauma.

MR. BAILEY: Yes, Your Honor, but we are -- I mean, we are not just trying to establish that, we are allowed to get into that. I mean, we think these facts are highly relevant. They might not be facts that the State wants in, but I think it is

relevant that we be able to discuss it. This is our one chance for, you know, us to --

THE COURT: And you can ask him questions about the drama and what kind of things if he says -- but then -- but I don't think this comes into play as impeachment until he says something contrary.

MR. BAILEY: Yes, ma'am. I don't disagree with that.

THE COURT: But I think you can ask him about the problems, if there is drama. I mean, I think you can ask if he didn't want to stay with -- and he has already said, I didn't want to stay with my mom because there is always drama there. He has already said that. So I think you can ask him to elaborate on what kind of drama, why didn't you want to stay there. He has already testified to that.

MR. BAILEY: Okay. All right, Judge. Should we go ahead and -- I mean, do you want to do this out of the presence of the jury first? Is that what you want to do?

THE COURT: I guess I'm trying to figure out, are you trying to impeach -- what are you trying to impeach him on, because he hasn't said that they --

he said they are I guess a non-traditional family and --

MR. BAILEY: Well, Judge, I think that -- I mean, I want to ask him about some things that he wrote on this. I'd say, do you remember writing this. I mean, I want to ask him, you know, why he says his dad is a liar and he doesn't want to go back to his house. I mean, I don't -- I don't -- those are basically the things I want to ask him. I mean, I would be happy to continue with that line of questioning now or --

THE COURT: And when say his dad, you are referring to his legal father?

MR. BAILEY: Yes, ma'am.

THE COURT: I think we need to just make it clear.

MR. BAILEY: I will say legal dad as much as I can.

THE COURT: Okay, VICTIM . All right. Well, I am going to sustain the objection. I don't think it is relevant unless you are going to use it for impeachment purposes if he says something contrary to that.

MR. BAILEY: Well, I'm not really understanding -- I mean, I get to ask him, though,

if he said it first; am I correct? I don't really understand what objection -- why I'm not allowed to bring --

THE COURT: She's objecting to the relevance of you asking him anything about this other than anything to do with him having -- there being turmoil. Because you are saying you are admitting -- you are trying to get the witness to say that they had turmoil.

MR. BAILEY: No, Judge, that is the greater picture. We are trying to get into this because there are essential relevant facts, and just because they are not facts to put my client in jail doesn't mean we don't have a chance to use them. These aren't facts that Ms. Fent might -- maybe she meant she does not want me to get into it. I don't understand why. But, I mean, this is pretty simple. I mean, you know, I wanted to ask him about things he said on this that involved his legal father, it involved his mother, it involved my client, Mr. John Barnes, because that is at the heart of this conflict, you know, and a lot of other things that would influence, you know, influence things that he would say or influence this whole family dynamic, which is at the very

heart of this case, Judge.

THE COURT: What does it say about your client?

MR. BAILEY: Well, I mean, he is at my client's house here.

MR. COLLINS: Your Honor, this document is being used to refresh his memory. If it doesn't refresh his memory, it doesn't refresh his memory. He is not offering it into evidence. He is not going to put it into evidence to impeach him. He is simply giving it to the witness, does this refresh your memory about the situation between you and dad? Do you remember saying that your dad was lying, yes or no. Does this document help refresh your memory as to why you might have said your dad was lying in Virginia. That's all the document --

THE COURT: We can do it in-camera. Lay the proper foundation. He has not done that. You haven't done that thus far.

MR. BAILEY: Well, I didn't really get a chance, Judge.

THE COURT: All right. Lay a proper -- well, you showed it to him. You have got to lay the proper foundation and then show him the document.

IN-CAMERA TESTIMONY

BY MR. BAILEY:

Q VICTIM , do you remember just a few minutes ago I asked you, do you remember saying that you didn't want to go see your father. Do you remember -- okay, I'm sorry -- do you remember me asking you a few minutes ago, do you remember telling your mother on Facebook some things about your stepfather -- I mean, I'm sorry, your legal father?

A Well, right here I -- it does refresh my memory about it, and I do remember typing these exact letters.

Q Okay, great. So you remember this conversation?

A Yes.

MR. BAILEY: Is that the foundation, Judge? Would you like more? From the State?

MS. BODMAN: What is here is hearsay. And this goes to my -- the very thing I was objecting to before. If he says that -- he was asking this witness like, do you remember saying "x" on the video, do you remember saying "x" on the video. That calls for hearsay. Him standing up and saying, do you remember saying "x" on this Facebook page, that calls for hearsay. On that Facebook page is hearsay.

Now, if he wants to stand up here and say,

were there times that you did not want to go to your dad's house, and if he says, no, I loved my dad's house, I always wanted to go to my dad's house, then you can say, I'd like to show you this. Does this refresh your recollection?

And then he says, oops. And then he goes, you actually had said you never wanted to go to your dad's house. Today you testified you always wanted to go to your dad's house. Now you're saying -- now right here you actually said you didn't want to go to your dad's house. That is how it is set up.

The other thing is, I think it is very telling that Mr. Bailey stood over here and said, you know, Your Honor, this may not be evidence that will put my client in jail or not, but we can ask whatever we want to.

Relevancy. Evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable.

He can't just ask any facts that he wants to, it has to be relevant.

MR. BAILEY: Judge, if I may speak. I kind of lost track of what we were talking about there for a second.

BY MR. BAILEY:

Q VICTIM why would you say that your legal father, William Murray, Jr., would lie to your face again?

A Well, to tell the truth, I was lying on this when I said that no one was influencing my decision. I got influenced by all three: By my dad and stepmom, my mom and stepdad, by John himself. I've been thrown different facts and opinions about each and every single person in my family. I've been thrown facts about one side, I have been thrown facts about another, I have been thrown about him, her, them. So I just didn't know what to think or not.

THE COURT: Okay. I think the proper way to ask it is, VICTIM --

MR. BAILEY: That's it. That's what we need. That's it. That was perfect. That's all we need to ask.

THE COURT: I think the proper -- the question is: VICTIM -- and I'm talking to him, VICTIM , not you -- is to ask him, did you like going to your father's house in Virginia. He says yes or no.

If he says no -- or he says no, then that answers. You can ask him why not.

Then if he says yes, you say, do you remember this Facebook page and remember telling your mom you don't want to go to his house.

Other than that, I don't think it is relevant what is on -- the details of what is on his Facebook page.

So I think that is how the question has to be: Were you influenced, VICTIM -- I mean, you can ask him about the drama in the family, the dynamics in the family.

MR. BAILEY: Well, I want to ask him why did you say that your father would lie to your face again. That is what I just asked on the record here.

THE COURT: But how are you going to get to that without getting to the Facebook page?

MR. BAILEY: I mean, I --

THE COURT: You have got to be able to get into that.

MR. BAILEY: I asked that before I handed it to him to refresh his memory.

MS. BODMAN: Because the other thing is he didn't actually even answer the question. We're in a hearing outside the presence of the jury, so I didn't object, but he actually didn't answer the

question. He went on about something else about saying that no one was influencing his decision.

The question is why would you say your dad was lying. And he actually talked about another response. He never really answered the question.

THE COURT: This is cross-examination. He can ask him -- he talked about the drama in the family. He can ask about the drama in the family, that he didn't want to go to dad's house, he didn't want to stay at mom's house. He can ask about all that.

If you -- if he says something contrary to this, then you can bring this up to impeach him. But other than that, I don't think anything in here is relevant to this case, and I am going to sustain the objection to the details of --

MR. BAILEY: Okay, I would like to put this into the record. We would -- okay. Well, I would like to object to my not being able to reference this, whether it be to refresh his memory or -- So we're not allowed to refresh his memory?

THE COURT: No, sir.

MR. BAILEY: Okay. All right. So I just want to make sure on the record that this Facebook document, I'm not being allowed -- it is not being admitted or it is not being allowed used either to

refresh Mr. Murray's memory and it is not being admitted for purposes of impeachment, even though we haven't gotten there, so.

THE COURT: Well, I'm not saying it can't be if he says something contrary to what it says on here, but we have got to get there first.

MR. BAILEY: Well, I don't think we are ever going to get there, but I will certainly try.

THE COURT: All right. And if you want to mark it as a, I guess a Court Exhibit, you can.

MR. BAILEY: And if we can ask Ms. Fent to please not say disparaging things about the South Carolina legal system within earshot of the courtroom anymore.

THE COURT: Excuse me?

MR. BAILEY: I'm sorry, I --

THE COURT: Hold on a second.

MR. BAILEY: I heard her say South Carolina. I would just ask her not to --

THE COURT: I didn't hear it. I'm not sure what y'all are talking about.

MR. BAILEY: Well, maybe my hearing is uber teen, which I doubt, but I would like her to, you know, to try and just not say things within earshot of the people in court after we have, you know, a

disagreement at the bench.

THE COURT: All right, well, Mr. Bailey and Ms. Fent-Bodman, y'all try to keep the comments to yourselves. I didn't hear any comment. I don't know what comment he is referring to. But let's try to move this case along.

MR. BAILEY: Fine, Judge.

THE COURT: If not, we are going to be here until Saturday.

MR. BAILEY: I have a feeling we are going to be here longer than anybody expected, Judge.

THE COURT: All right, can I bring the jurors back in? Is everybody ready to go forward?

All right, bring them in.

THE BAILIFF: I would be glad to, Your Honor.

(WHEREUPON, the jury came into open court at approximately 3:53 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right, yes, sir, you may continue.

MR. BAILEY: Thank you, Your Honor.

CROSS-EXAMINATION CONTINUES

BY MR. BAILEY:

Q VICTIM we talked about, you know, that you had

your legal dad, your stepmom, we talked about your family situation.

A Yes.

Q How did you feel about having all these people influence you in your life?

A Well, since -- well, since they are all influences to me -- I mean, they are all supposed to be like my main influence, like I'm supposed to be a part of how I'm supposed to grow up from them, so if I have one person saying one thing to me, another person saying another thing to me, and a third person saying, hey, do this, I mean, how would you feel if somebody said one thing and another person said another? I mean, wouldn't you get confused too?

Q Absolutely. I would definitely get confused.

A So --

Q Did you ever feel like your legal father, William Murray, Jr., lied to you?

A Well, since I have been told -- well, since I have been told that William Murray, Jr. was a liar, then I guess -- well, since I was told that by at least one person, then what am I supposed to think? Like nobody else has contradicted that except for him himself, and his wife. Well, what else am I

supposed to think?
Q Was there ever a time when you didn't want to go back to Virginia to stay with your legal dad?
A Once.
Q Okay. Well, VICTIM , I want to talk a little bit about interviews. I know we talked a little bit about interviews. We talked about your going to the Assessment Resource Center, right?
A Uh-huh.
Q Okay. You went there a couple of times?
A Uh-huh.
Q Okay. But before that, do you remember being interviewed way back in January of 2009 at your school?
A 2009, January. I don't remember anything from -- about me being interviewed in E.L. Wright.
Q Okay. You don't remember -- so you would have been at E.L. Wright in January of '09?
A Yes, because that is the second semester, right?
Q I trust your math better than mine.
A Yes, that would have been around the second semester, so -- and it was during the semester that I switched schools, so, yes, I would have been in E.L. Wright by then.
Q Okay. So you don't remember being interviewed by

principals or any teachers being there or anything like that?

A No.

Q Okay. And since last Spring, before you ever went to the Assessment Resource Center, Scarlett talked to you, right?

A Yes. I mean, she was the first one I confided in, so, yes.

Q Okay. So Scarlett spoke -- you spoke to Scarlett?

A Yes.

Q And then you also spoke with your stepmother too?

A Yes.

Q Okay.

A Mama Lucy.

Q Okay. And you talked to your mom?

A Yes.

Q Okay. And, I mean, who did you talk to next after that?

A After that it was Ray twice. And then after a series of events, especially with Ms. Margaret and Ms. Debra down there, it is now up to this interview up here.

Q Okay. All right, well, I want to back up just a little bit. So you spoke with Ray the first time in April of 2010; is that right?

A Yes.
Q Okay. And then did you speak with anybody -- and you spoke with him again in August?
A Right.
Q Of 2010. Did you speak with anybody in between that about this?
A No.
Q Okay. But you spoke again with Ray?
A Uh-huh.
Q In August, right?
A Right.
Q And then you say -- you just said now that you spoke with the two lawyers over here?
A Yes.
Q Is that correct? Debra and Margaret, I don't know what you called them, Ms. Bodman and Ms. Barry, you spoke with them?
A Yes.
Q Okay. And you spoke with them a few times, or how many times would you say?
A Three times. But I guess -- well, about this case I guess that would technically be two times, but the first time it was just a get-to-know.
Q Okay. Did the prosecutors give you videos of your interviews with Ray?

A Yes.
Q Okay. Did they mail them to you? Did they hand them to you?
A They had -- who did you call him, Ace? They had Ace drive them to our house and deliver them.
Q Okay. And did you watch the videos?
A Yes.
Q Did you watch them a few times?
A Only once each.
Q Okay. But then you spoke -- but then you spoke with the Solicitors again before the trial, right?
A Right.
Q You spoke with them -- even just this past week you spoke with them, right?
A Yes, we spoke on Tuesday.
Q Okay. What did y'all talk about?
A Well, it was prior to that that I watched the videos at all. And after watching the videos -- and I didn't do a very thorough job, to tell the truth -- but after watching them, I had instant memories of stuff that I forgot to tell Ray or stuff that I remembered by watching me tell stuff to Ray, and other stuff like that.
Q What did the Solicitor -- what did the Solicitors -- is what we call Prosecutors -- what

did these two lawyers ask you?

A They asked me like very open-ended questions about stuff about the case, like, for example: Is there anything else you remember? And then I would go on and answer.

And then if they thought I was being too vague, then I would give them -- then they would ask a little bit more specific question, and I would answer it and I would try to be less vague.

Q Okay. So y'all talked about what you were going to say in court today; is that right?

A A little. I mean, we talked about the case, yes.

Q Okay. All right, great.

VICTIM , just a couple more questions. When you spoke with these lawyers, was there anybody else in the room with you when you spoke?

A No, everybody else was sent out.

Q Okay. And today since we have been here at this trial, you have been in the courtroom with us the whole time, right?

A Other than the breaks, yes.

Q Okay, great. Thank you, VICTIM Thank you very much.

THE COURT: Yes, ma'am. Anything?

REDIRECT EXAMINATION

BY MS. BODMAN:

Q What is your birthdate?

A [redacted]

Q Of what year?

A [redacted]

Q Between the first interview that you had with Ray and the second interview you had with Ray, the first one in April, you said, and the second one was in August?

A Uh-huh.

Q You had a birthday in between?

A Yes.

Q Those two interviews?

A Yes.

Q When we talked, what was the one thing that I asked you to say?

MR. BAILEY: Objection, Your Honor.

MR. COLLINS: May we approach?

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Sustained.

MS. BODMAN: No further questions. May this witness be excused?

THE COURT: He can step down and he may.

(Witness steps down and is excused.)

THE COURT: All right, call your next witness.

MS. BARRY: The State calls Ray Olszewski.

THE BAILIFF: Place your left hand on the Bible, raise your right hand, and face the clerk, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: Yes, I do.

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

THE WITNESS: My first name is Ray, last name is Olszewski. That is O-L-S-Z-E-W-S-K-I.

RAY OLSZEWSKI,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BARRY:

Q Mr. Olszewski, where do you work?

A I work at the Assessment and Resource Center, or the ARC, here in Columbia.

Q And can you tell the jury what the Assessment Resource Center is?

A Sure. The ARC, the Assessment Resource Center, is a nationally accredited child advocacy center, or child abuse evaluation and treatment center. We are an outpatient clinic. Children are referred to us by, usually by law enforcement investigators or detectives or by DSS by child protective service workers. And we conduct forensic or investigative interviews of suspected child abuse victims. We also have a medical component where we have a pediatrician who does exams on many of those victims as well, and up until recently provided ongoing treatment for identified victims of child abuse.

Q And at the ARC, what are your duties and responsibilities?

A My primary duty and responsibility is as a forensic interviewer. And a forensic interview is simply an investigative or a fact-finding type interview where we are trying to determine whether or not something has happened. And if it has, we get as many facts as we can about whatever it is from the child.

Q And how many years have you been employed there in that capacity?

A A little over 11 years at this point.

Q Can you tell the jury what your educational background is beginning with your undergraduate degrees?

A Sure. I have a bachelor's degree in psychology and I have a master's degree in social work from the University of South Carolina here in Columbia. And I'm a licensed master social worker here in the State of South Carolina. And I also have a diplomate in forensic social work, which is just a post-graduate certification in a specialty area.

Q Have you attended any trainings and seminars?

A Yes. I have attended many trainings, workshops, seminars.

In 2000 I attended a basic forensic interviewing course. It is called Finding Words. It was a week-long course in Boise, Idaho.

I have also attended advanced interviewing training in Minneapolis, Minnesota, at a child advocacy center there called Corner House.

And over the years, just numerous other workshops and trainings. There is a national conference, it is held every year. I have gone to that several times for people like myself that do forensic interviewing with children.

I also teach forensic interviewing of children

as well.

Q And tell us about that.

A The course I attended in 2000 was called Finding Words. Again, it is a week-long interviewing course. It teaches us specific protocols, protocols we use at the ARC. It is a nationally recognized forensic interview protocol.

In 2001 we began teaching that protocol here in South Carolina. We teach it to front line child abuse professionals, so law enforcement officers, child protective service workers, Solicitors, Prosecutors, other forensic interviewers. So we have been teaching that course three or four times a year, every year since 2001. And I'm one of the lead faculty for that course.

Q And approximately over your 11 years, how many forensic interviews have you conducted?

A I don't have an exact number. It would probably be over a thousand interviews.

Q And have you testified in courts of record in this state?

A Yes, I have.

Q Do you know how many times?

A It would be over 20 times as an expert witness and more including fact witness testimony as well.

Q And each time were you qualified as an expert?
A Each time I was offered as an expert, yes, I was qualified.

MS. BARRY: Your Honor, at this time we would qualify -- move to qualify Ray Olszewski as an expert in the field of child sexual abuse and child forensic interviewing.

THE COURT: Any voir dire?

MR. COLLINS: Your Honor, just off the bat, I don't think we have the proper foundation for the field that she is proposing him to be qualified in. We have heard nothing about -- what was the first thing, child?

THE CLERK: Child sexual abuse.

MR. COLLINS: Child sexual abuse is way too broad or vague of a category to be declared as an expert.

THE COURT: I'll let you ask questions.

VOIR DIRE EXAMINATION

BY MR. COLLINS:
Q Can you describe the science behind child sexual abuse? Is there a science called child sexual abuse?
A No.
Q No. Is there an empirical way to get actual

numbers for the successful rate of a forensic interview?

A How would you define -- I mean, you have to define success. I mean, if we --

Q Is there a way to know if you are a hundred percent accurate in your opinions about these interviews?

A A hundred percent accurate to my opinions? Not for every case. I mean, if you look at particular cases that have maybe gone to trial that I have done, gone to trial where there has been a compelling interview combined with a conviction.

Q Okay. There are -- you know what an empirical study is?

A Yes.

Q Okay. They are -- can you name the empirical studies that prove the reliability of the methods that you use at ARC?

A Like I said, it is a nationally recognized protocol. It is based on research.

Q Sir, can you name one empirical study that gives the reliability of the methods that you use at Assessment Resource Center? Just one?

A For the protocol we use?

Q Can you name one empirical study that shows the success rate of the methods used at the place where

you work?
A Okay. Well, these are facts. It is an investigative type interview.
Q It is a yes or no question. Can you --
A Well --
THE COURT: Let him answer the question.
A Yes, I'm not sure on -- I mean, I'm not sure I understand the question exactly. I mean, it is a fact-finding type interview. We are asked to do basically a witness interview of a child that is suspected of having been harmed. And so we're gathering facts from that child, asking questions in a developmentally appropriate manner, using open-ended questions to try to elicit information from the child. Am I a human lie detector test? No. I mean, I don't know --
Q And then you pass on the information you guys get, you pass it on to law enforcement or to medical, right?
A Correct. We pass it on to the investigating agencies that have referred the child.
Q And now you guys are doing counseling on children?
A It depends. We refer some children to counseling. Some -- they used to be referred in-house, sometimes to our own center. We no longer offer

counseling, so we refer them out to another facility now.

Q And have you ever been qualified as an expert in --

MR. COLLINS: I'm sorry, I keep forgetting, what was the first?

MS. BARRY: Child sexual abuse.

Q Have you ever been qualified as an expert in the field of child sexual abuse?

A Yes. Many times when I'm in court it is worded in different ways. Sometimes it is child forensic interviewing, child sexual abuse, forensic interviewing of children. The exact wording is sometimes different.

Q Let's focus specifically on the child forensic interviewing. That entails the types of questions you ask children, right?

A Well, it entails the protocol we use, the types of questions that are asked, yes.

Q The environment in which you conduct the interview?

A The environment the interview takes place.

Q The number of times, you want to do the interviews in a short amount of time?

A Yes. It all plays a part in it.

Q The amount of training the interviewer has?

A Correct.

Q Child sexual abuse, you would admit, involves anything happening to the child sexual abuse? It is a pretty open-ended term, isn't it?
A It is a much broader area, yes.
Q And, again, there is -- you can't name a single study that can test the reliability of the methods that you guys use at the Assessment Resource Center?
A I don't have any in front of me, but I can go back -- there is a whole body of research that supports different aspects of what we do that I can -- you know, if I'm here tomorrow I can bring those to you. I mean, I can bring you a list of articles.
Q At this point in time you don't have any?
A Well, there is the Child Sexual Abuse Combination Syndrome by Ronald Summit. There is the Process of Disclosure by Sorenson and Snow. Those are two articles that describe what we do.
Q There is articles. There are empirical studies that have actual numbers?
A Well, the Sorenson and Snow article had numbers, yes. That was an -- it was an article as well as a study.
Q And it hasn't been done in the Assessment Resource

Center?

A I'm sorry?

Q No empirical study, no statistical number from the Assessment Resource Center, there is no study that you can testify about?

A We are not really a research agency, we are more of a functioning facility. We do have some ongoing research, but it is minimal.

Q Okay.

MR. COLLINS: I have no further questions at this time.

I would object to him being qualified as an expert in child sexual abuse as being too broad a subject to be deemed an expert in.

I believe -- I object to him being an expert in the field of child forensic interviewing because there is no way to test if it is actually a science.

THE COURT: All right. Thank you.

Yes, ma'am, any questions, follow-up questions?

MS. BARRY: No, ma'am.

THE COURT: All right. He will be admitted as an expert in child -- as an expert in child forensic interviewing.

Ladies and gentlemen of the jury, normally a person cannot 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 an exception if someone is qualified because of education, experience, they are permitted to give their opinion in certain areas if the Court qualifies them that way.

This witness will be qualified in the area of child forensic interviewing to give opinion testimony in that area. That does not mean that you must accept the opinion, but it is evidence for you to use in any way you see fit and give it the weight and credibility you believe is appropriate.

Yes, ma'am, you may continue.

MS. BARRY: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUES

BY MS. BARRY:

Q Can you please tell us what a forensic interview is?

A A forensic interview, again, is a fact-finding or investigative type interview trying to determine whether or not something has happened. We often have some basic information, what we call intake

information, ahead of time.

We go in, you know, objective, open-minded, trying to determine whether or not something happened. And if it has, we try to get as many facts as we can about what took place and who, what, when, where, how.

And that is going to be affected sometimes by the age of the child. So we would expect less detail and perhaps less information from a very young child, like a preschool age child, where we would expect a teenager to be able to provide more details and more information.

Q Is there a certain protocol that you follow?

A At the ARC we use a nationally recognized protocol. It is known as RATAC, R-A-T-A-C. It is an acronym. Each letter stands for a different stage of the forensic interview protocol. So the R, for example, stands for report, there is a report on the case. The first A stands for anatomy identification. The T stands for touch inquiry. The second A is abuse scenario, if there is one. And C is closure. That is RATAC.

Q Can you give the jury an idea how these interviews are conducted within your office?

A Sure. Again, we like to think we have a

child-friendly facility, so we have a waiting area so when a child comes in they are often brought by a family member, and we don't allow alleged perpetrators to come to the ARC, so they are brought by some other caregiver of some sort. They are in the waiting area. The caregiver has some paperwork to fill out.

Once that is done, I will come and get the child from the waiting area and bring them to one of our three forensic interview rooms.

Each room is very sparsely furnished. We just have like some comfortable furniture in there, a flip chart to do some drawing on. We have a chest with some anatomically correct diagrams that we sometimes use. And we also have some anatomically correct dolls that we sometimes use as tools. Each room is equipped with a camera and microphone for videotaping purposes. Every interview is recorded.

Once we bring a child in the room, I'll introduce myself. I will tell them about the recording equipment. And then begin the interview process.

And, again, how the interview unfolds will often depend on the age of the child. So RATAC may look different depending on how old the child is.

So an interview with a 5-year-old, for example, is going to look very different than an interview with a 15-year-old.

Q And what, if any, guidelines are established for the interview with the child?

A And by guidelines?

Q What do you tell the child as far as the rules of the interview?

A We really don't have a lot of rules. Sometimes we will explain to children that this is a place where we only talk about things that are real and true. It really just depends on the circumstances. Certain things might come up that we try to reinforce.

If I make an error, for example, and the child corrects me, I explain to them how important that is that sometimes I might make a mistake and it is important that they feel comfortable enough to assert themselves and let me know about that.

Sometimes we -- I accidentally repeat myself or ask the same question more than once. I may tell a child that, no, that doesn't mean you gave me the wrong answer, it just means I forgot or I'm looking for a little bit different information than what I asked the first time.

So there are some rules. But those often get used -- it is not like you sit down and, well, this is a list of rules. They often are just -- if they happen -- if they occur in the interview then we reinforce and then we explain them at that point.

Q And what type of questions do you ask the child? What is the format of your question when you are talking with the child?

A Well, we feel it is particularly -- it is important particularly in an abuse scenario, if there is one, unfortunately, where the child is going to be explaining what has happened to them, that we use as many open-ended questions or prompts as we can.

So these would be broad questions like, tell me about that, and then what happened, or what happened next, or even more focused recall questions, but they are still kind of broad. Well, what happened at your mom's house, or what happened at your dad's house.

So those are the best kinds of questions to ask. They are more effective with older children. The younger children have a harder time with a big broad question.

If you have asked your 4-year-old, what did you do at preschool today, they might just say

nothing or stare at you, because that is a big tough question for them to handle.

But sometimes even with older kids we need to get more specific or focused, so it is okay to use -- for us to use maybe multiple choice questions if the situation arises. So, did it happen in your room or the bedroom or someplace else. Or even yes or no questions, either/or type questions.

So a yes/no question may be okay. If the answer is yes, we may follow it up with an open-ended question like, well, then tell me about that.

The questions we try to avoid using are leading questions or suggestive questions like, you were in your room when that happened, weren't you. That would be a sort of suggestive or leading question and we would try to avoid something like that.

Q And why does your facility use those safeguards? Why are they in place?

A Well, you know, we want to get as much information as we can from the child as a usual fact-finder or objective interviewer. I'm not trying to -- I'm not trying to just confirm something I have heard

in an intake, I'm trying to figure out whether or not this happened. So I don't want to lead a child down a certain path or down a certain road or, you know, put words in their mouth or try to get them to say something that I think they should say or to try to confirm some hypothesis I have. I want to hear from them what they have to say.

Q And typically what, if any, information are you provided with prior to your interview with a child?

A Well, you know, we have some intake information. Again, this information often comes from a law enforcement investigator or a DSS representative. It is all just some basic information of what the nature of the allegation was, how it came to that agency's attention. We may often get a copy of an incident report along with the intake information so I have that to review.

And then when they first come to the ARC, the caregiver sometimes fills out a caregiver questionnaire, which is some basic information from the person bringing the child in about the family makeup and some other information on that form that is sometimes reviewed prior to the interview. Sometimes it is helpful.

Q Specifically in this case, did you have on occasion

to interview the victim, VICTIM [redacted] I?

A Yes, I did, on two separate occasions.

Q The first occasion, what date was that?

A April 19th, 2010.

Q And were you provided any information regarding the allegations made in this case?

MR. COLLINS: Your Honor, I see the witness is reading from something. I would like to have a copy of whatever he is reading.

THE COURT: Let me have you approach.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

Q Mr. Olszewski, I ask that -- you were looking at some documents. What are those documents that you are looking at?

A I haven't looked at anything yet. I was -- when I heard your question I was going to search for the intake information, which is what I thought you were asking about. I hadn't actually located it yet. These are from the chart.

Q When you met with VICTIM [redacted], do you recall if you had the information regarding the allegations in this case?

A Yes, we always have an intake. We don't do blind

interviews. By blind interviews, I mean an interview where we don't know anything at all going in.

Q And on April the 19th, 2010, did you interview VICTIM ?

A Yes, I did.

Q And did you follow a protocol that you just described to the jury, the RATAC?

A Yes.

Q And how old was he at that time?

A He was 11 the first time I saw him.

Q Was he able to give you any details?

A Yes.

Q And what, if anything, did you do at the conclusion of your interview with him?

A At the conclusion of my interview? Well, often we meet with a caregiver or family who has brought the child to the interview, what we call post-conferencing. If we have any recommendations at that time, we will give them to the family.

At this interview also Investigator Holdorf had observed the interview at the time it took place, so he was provided the interview as well.

Q Was the victim able to tell you where the allegations, the alleged allegations happened?

A He was able to tell me where certain events took place, yes.
Q And was he able to give you a time the alleged incident took place?
A During the first interview?
Q Yes.
A Let me refer to my report here if you don't mind.
(Pause.)
A Yes. Well, excuse me one second. Pardon me.
(Pause.)
A Yes, he did.
Q Where did he say that it took place?
A He said it took place at John's house in the bathroom that was next to -- connected to John's bedroom.
Q And what was the date? Was the time frame?
A He said, a few weeks ago.
Q In your expert opinion, based on your training and experience, the interview that you conducted on April 19th, 2010, what type of disclosure did VICTIM give you?
MR. COLLINS: We would object to this, Your Honor, based on the previously stated objection.
THE COURT: All right. Overruled.
MR. COLLINS: Thank you.

A Typically when we do an interview we have an interview out from the session where we give an opinion on how we feel the interview -- based on our opinion of how the child performed in the interview, whether or not it was compelling, for example, or problematic.

It is not whether or not we think the child was truthful or not, it is whether or not we think the interview was compelling or whether there were some problems.

And we have different psychologies that we look at, like whether the child was talking about sexual abuse, physical abuse, psychological abuse, neglect, or some other situation, because we also interview children who witness violent crimes or other types of incidents. So we will, for example, we will maybe check the box for sexual abuse. And then maybe the interview was compelling, so I would say that is a compelling interview for sexual abuse. So that is an example of how we look at an interview.

Then there is a separate section that would say, no disclosure at all. So if a child didn't say anything about anything happening or gave denials about something happening, we would say

there was no disclosure. And then also was that compelling or problematic. So that is how we look at it.

Now, were you asking me in this case what I concluded?

Q Well, you talk about disclosures. Can you explain to the jury what type of disclosures there are?

A Like from the broad sense or just in general how they are disclosed?

Q General. Right.

A Well, there are really two different types: Accidental disclosures or purposeful disclosures. When I'm speaking here, I'm talking about how does the allegation initially come to somebody's attention. Now, by purposeful disclosure, we mean just that, the child's purpose --

MR. COLLINS: Objection, Your Honor. This is not his field of expertise. He is talking about an initial disclosure. It has nothing to do with the interview.

THE COURT: Overruled.

A A purposeful disclosure would be one where a child intentionally comes forward, purposefully comes forward and tells somebody that they have been being abused. So they go to a guidance counselor,

they go to their parents, they go to somebody they trust, they go to a school resource officer. So they make it intentionally.

An accidental disclosure would be one where the abuse or some concern about abuse is discovered by accident, so a parent discovers a videotape that is concerning or discovers an e-mail that was sent by the child perhaps to a friend, or a parent walks in on a couple of young children engaging in some kind of exploratory sex play that goes beyond the norm and then questions one of the children. And that -- we call that an accidental discovery or an accidental disclosure. Where a child has a physical complaint and goes to the hospital and is positive for gonorrhea that has never said anything. So these are accidental discoveries.

Does that answer your question?

Q Are you familiar with the term, process of disclosure?

A Yes.

Q Can you describe that for the jury?

A Yes. Children who have been abused --

MR. COLLINS: Objection, Your Honor. Again, this is outside his field of expertise.

THE COURT: Overruled.

A In our field we think of disclosure as more of a process than an event. So in my experience and what I have seen, children very rarely are abused and then make an immediate outcry, that they are abused and they immediately pick up the phone and call 9-1-1 or run and tell somebody. That is unusual. For most children it is a process. So most children don't tell right away. There is some delay in reporting. It could be weeks, months, years. Oftentimes they may have been asked along the way and they may have denied that anything had taken place.

And then when they finally do tell, initially it is often a tentative type of disclosure or maybe they are testing the waters, they are telling a little bit of it to see what the reaction might be because they are worried about what the reaction is going to be or because they heard what the reaction might be if they tell.

So there is this tentative stage that many children go through where the disclosure is incomplete.

Then for the majority of those kids, especially the ones who have good support systems in place, they --

MR. COLLINS: Objection, Your Honor. Again, this is pure speculation.

THE COURT: Sustained.

Yes, ma'am, you can continue.

BY MS. BARRY:

Q What, if any, effect does a familial -- does the familial dynamics have on a disclosure with a family member?

MR. COLLINS: Objection, Your Honor. This calls for a psychiatrist. He is a forensic interviewer.

THE COURT: Hold on one second. Let me see you all.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen of the jury, at this time we're going to take a bathroom break. We'll take a break for about ten minutes.

All right, thank you.

(WHEREUPON, the jury retires to the jury room at 4:35 p.m.)

THE COURT: All right, yes, I'll let you put your objection on the record.

MR. COLLINS: The reason for the objection, I believe the question was, how can turmoil in the family affect the child, or something along those lines. And that would be a correct question for somebody who has been certified as an expert in child psychiatry. Our witness has been certified in child forensic interviewing, and only that. He can testify about methods used in forensic interviews, why they use those methods. But as far as certain victims come forward at this time because they are scared to tell this person or that person, that is getting into the psychology of the child, which he is not qualified for, has not been qualified by the Court for.

THE COURT: Let me make -- I guess I need to rule on it. When he was questioned about his expertise, he said -- and I wrote down what he said -- that he was -- it is often -- he is qualified, has previously been qualified, it has been different ways, but he said child forensic interviewer or forensic interviewer with children. And that is where he -- and that is how I determined that he would be qualified as a child forensic interviewer.

Now, I understand your objection, but I think

they can ask him about things that he knows based on being a forensic interviewer and interviewing children. And he can testify as to the interview or interviewing process means that he has been taught to consider in interviewing. If a family member is at issue, then he can -- but it needs to be -- the question needs to be raised and qualified as to him as a forensic interviewer.

MR. COLLINS: I think the problem is the wording the witness has been using is, when somebody is sexually abused they do this and they do that.

I'm fine with him testifying he's been taught, if you see this sign, you treat it this way, or we are taught to treat it that way. But to say sex abuse victims show these types of symptoms, that is not a fair statement and he is not qualified to make that statement. And he has made it a couple of times. It slipped by me already. But that is what is causing me concern is he is saying, this is what sex abuse victims represent and this is what sex abuse victims do. And he is not qualified to make that. That is in the psyche of the child. He is about the interviewing tactics and how an interview can affect the child, not how a child

initially discloses, not how a child is influenced by family members.

THE COURT: All right, well, I -- yes, ma'am?

MS. BARRY: I was just -- he said that I asked a question about turmoil and family. And that was not my question. My question was the familial dynamics of a family, how would that impact or influence a child's disclosure. That was my question, that he -- I never used the word turmoil.

THE COURT: All right. And --

MS. BARRY: But, like I stated at the bench, Your Honor, he has testified and been qualified as an expert in all these different areas, but part of his training that he talked about, he is an instructor and trained law enforcement, Prosecutors, DSS case workers on how to do his job.

THE COURT: And he can testify regarding that, but I think you need to rephrase the question. He can testify to what he is supposed to look at in determining -- when he is interviewing a young child or a child. He can testify to that. I'm not saying he can't. If that -- if the makeup of the family is something that he testifies that he has to consider or he has been trained to do in interviewing children, he can testify to that. I

just think you need to qualify it as to the forensic interviewing of children.

MS. BARRY: Okay. All right. Thank you.

THE COURT: Thank you.

MR. COLLINS: Your Honor, may we really have a bathroom break?

THE COURT: Yes.

(WHEREUPON, a break was taken.)

THE COURT: As a scheduling matter, how much longer do you think you have with this witness? I'm just trying to figure out scheduling.

MS. BARRY: I think no more than 20 minutes, but I don't know.

THE COURT: Direct?

MS. BARRY: Yes.

MR. COLLINS: I'm fine with doing my cross tomorrow. I may not be that long, but it could go long.

THE COURT: All right, we'll finish with direct and we'll probably stop around 5:30 or as soon as you -- and then we will go into cross-examination tomorrow.

Just for scheduling purposes, Judge Newman is in a trial also. I'm trying to figure out -- and apparently they have people down -- y'all had

people down in the holding, I guess, for pleas or something, and y'all had people signed up. For whatever reason, there is 12, 13 people down there. So I'm just trying to figure out how many more witnesses you all may have. One more? And I'm not trying to narrow y'all down on anything. But do you have any idea as to how long you think your case may be presented? And we have got probation violations on Friday and somebody has to do them, and I think they are going to be over there for a while.

MR. BAILEY: Judge, I mean, I think very -- I am guessing we are going to put up -- I don't know how much they have got left. I would think at the very latest on Thursday for us. I don't expect it -- certainly wouldn't expect it to run into Friday.

THE COURT: Okay. I'm sorry.

We'll put the witness back on the stand, and you can bring the jurors in.

(Witness returns to witness stand.)

(WHEREUPON, the jury came into open court at approximately 4:57 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

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

DIRECT EXAMINATION CONTINUES

BY MS. BARRY:

Q Mr. Olszewski, based on your training and experience with the Finding Words and your experience as a forensic child forensic interviewer, are you taught the dynamics of delayed disclosure?

A Yes.

Q And are you aware of how that would impact your testimony as an expert?

A I'm not sure I understand the question.

Q You testified that you have been previously qualified as an expert?

A Right.

Q And you previously testified as an expert in this area?

A Yes.

Q And as an expert in these areas, is it based on your training and experience?

A Yes.

Q And your training, does it include or did it include learning about the process of disclosure?

A Yes.

Q Does that assist you in telling the jury and trying

to inform them and instruct them about the dynamics of the process of disclosure?

A Yes.

Q And based on your experience and training and classes that you have attended, are you familiar with a term like minimization?

A Yes.

Q Does your experience and training and education assist -- does that assist you in informing the jury what that means?

A Yes.

Q What is minimization?

A When a child minimizes, it means they don't -- again, it is almost -- it is not quite a disclosure, but they don't tell everything. They may make it sound less severe than it actually was.

So we have sometimes kids who initially will say that they were fondled and then later they will say maybe that they were penetrated, so we know those initial statements were minimized.

Q Is that type of training, learning about minimization, delayed disclosure or the process of disclosure, does that training assist you as a child forensic interviewer?

A Yes.

Q In what way?
A Well, we need to pay attention, we need to be aware of things like that so that when we're doing an interview -- you know, we're looking to see if we feel as though the child is maybe in a full complete phase of disclosure or if they are perhaps minimizing or in a tentative stage, you know, why, what does that mean, what if anything will we recommend based on that. We will recommend therapy if the child was in a minimized disclosure. We would recommend further forensic interviewing. Some of this is interviewer-based, based on my opinion as an interviewer, some of it is based on consultation with our multi-disciplinary team.

So, you know, I may talk with an investigator and say, well, the child is saying this, but it seems to me like it is a minimized or tentative disclosure. And then, you know, I may leave it up to the investigator to do more investigation or suggest another interview. So --

Q And as an expert in child forensic interviewing, what types of things are you looking for when you call something a tentative disclosure or minimization?
A And that is a good question. Kids will sometimes

use phrases like, well, he touched me there, but it was an accident.

To me that is a red flag. You know, the child is trying maybe to say that something happening, but they are not yet ready to put the blame on somebody maybe or, you know, they are not quite sure so they will say it was an accident.

You know, the funny thing about kids is they often, especially if the abuse is perpetrated by a family member, they don't necessarily want to see that person get in trouble. It is not really about justice or revenge, maybe like it is for an adult victim. I don't know, I don't work with adult victims much. But for kids, they often still love this person that may be harming them, so they are conflicted about what to do.

MR. COLLINS: Objection, Your Honor. Now we are getting into speculation again about what a child is thinking at different times.

THE COURT: Overruled.

MS. BARRY: Thank you, Your Honor.

A So out of this conflict may be borne some tentative or minimized statements, he touched me there, but it was an accident. Maybe even the child on some level wants to believe it was an accident because

they don't want to believe somebody would do this, somebody they love would do this to them intentionally, so.

Q And as an expert in the field of child forensic interviewing, having done over a thousand interviews with children in the 11 years that you have worked at the ARC, is it common for children to give all details in one interview?

A No. I mean, no, it is not. In my experience, you know, that is not the case. And that could be for a variety of reasons. I don't think that I have probably ever asked all the questions I could possibly ask, you know, to get every possible detail. You know, there are more possible details there can be. And I, you know, know from my experience in kids that have gone on to therapy that I interviewed sometimes they disclose additional details or elements later on in therapy that weren't disclosed, you know, during the forensic interview, so.

Q And you said you met with the victim in this case, VICTIM ?

A Yes.

Q The first time in April of 2010?

A Correct.

Q Did you have an occasion to subsequently meet with him again?
A Yes, on August 12th, 2010.
Q And where did you meet him at?
A Also at the ARC, Assessment and Resource Center.
Q Did you perform the same type of interview with him?
A Yes, similar type of interview. It was kind of a follow-up interview, having just seen him four months prior. It was a little bit different. The reportability might be just, you know, do you remember being here before and what he has been doing, and then going from there.
Q Are you aware of his age at that time?
A He had turned 12 in June, so he was 12 when I saw him in August.
Q Was he able to give you more details on that --
MR. COLLINS: Objection, Your Honor. Calls for hearsay.
MS. BARRY: I'm not asking for the details, Your Honor, just yes or no.
MR. COLLINS: The fact that there were more details is information. That is hearsay.
THE COURT: Overruled.
A He gave additional information in that interview,

yes.

Q You testified a few minutes ago that that is not uncommon, correct?

A That's correct.

Q Was he able to tell you where -- this additional information that he alleged to you, where did that occur?

A Yes.

Q Where did it occur?

A At John's house.

Q And did he give you a time frame?

A Yes. From around November of last year until about April of that current year.

MS. BARRY: Beg the Court's indulgence.

(Pause.)

MS. BARRY: That's all I have.

THE COURT: All right, ladies and gentlemen of the jury -- I'm sorry, you can step down.

(Witness steps down.)

MR. COLLINS: Your Honor -- I'll bring it up when we're through. I'm sorry, I apologize.

THE COURT: And this is probably a good time to break for the evening. It is about 5:07. And you will hear the cross-examination of the witness in the morning. We will start at 9:30.

If you all could give the -- if you have a cell phone number, give that to the bailiff so they will write it down so if someone is not around we can call you on your cell phone, because the clerk only has home numbers for some of you all, so if you have a cell phone number, just in case something comes up tomorrow morning, it will be nice to have those cell phone numbers.

You all have a good evening. Remember that you are not to discuss this matter with anyone, no family members, no fellow jurors, people involved in the trial. You are not to do any social networking regarding this case and regarding your service on this jury. Keep an open mind about this case until I instruct you to begin your deliberations.

Have a wonderful evening. Thank you.

(WHEREUPON, the jury is excused at 5:08 p.m.)

THE COURT: All right, we'll start at 9:30.

Mr. Olszewski, I would advise you that you are still under your oath. You cannot talk to the State regarding your testimony or anyone regarding your testimony over the evening.

And we'll start back at 9:30 in the morning.

Thank you.

Is that what you were going to ask?

MR. COLLINS: No, Your Honor.

THE COURT: Oh.

MR. COLLINS: The witness appeared to have a binder that obviously he prepared for testimony and during testimony. I was wondering now that they are done with direct, I think I have a right to look and see what he was using to prepare for his expertise testimony. This is all that I have from this case. I would at least like an opportunity to look through that notebook before my cross-examination.

THE COURT: Any objection?

MS. BODMAN: I would just say that whatever it was that he referred to. If there was a document that he didn't refer to or look at, but if there was anything that he used while he was on the stand, then absolutely, but if there is --

MR. COLLINS: As an expert witness I am entitled to whatever he prepared to testify.

MS. BODMAN: That is a different request than what he just said. So, yes, whatever is used to prepare -- to testify. I think he should have -- they should already have copies of everything, but,

yes, anything that he used to prepare for his testimony, absolutely.

THE WITNESS: All I referred to was the ARC reports.

MS. BODMAN: In preparing for your testimony, did you, other than the viewing the --

MR. COLLINS: Put him on the stand and ask him.

MS. BODMAN: We'll make copies of whatever it was that you used to refer to and prepare for your testimony we'll make copies of and give to Defense.

THE COURT: All right. And you can take a look at it and if it is an issue we'll deal with it.

MR. COLLINS: The problem I'm having is there is a large notebook over there.

THE WITNESS: Case file.

MR. COLLINS: That he had with him on the stand. Obviously, I mean, he may not have looked at every single page, but if he is allowed to go on and pick and choose what he looked at to answer the questions, that doesn't really satisfy what we're asking for.

THE COURT: All right, let me have him -- place him back on the stand. I'm sorry, sir.

(Mr. Olszewski returns to the witness stand.)

THE COURT: All right, can you describe what you have testified to today out of your folder and what you have relied on in preparation for your testimony today?

THE WITNESS: Okay. The only thing I have testified to are the two written reports I did following each of the forensic interviews. These are just copies I ran off my computer. They are not even signed. I never did refer to anything -- this is the case file on VICTIM It includes not just my forensic interviews, but it includes therapy information, protected health information from his therapy sessions at the ARC.

I started to try to find the intake information when I was asked that question, but I never did even find it. I didn't refer to anything in here in my testimony.

I have copies of my CV, Curriculum Vitae, in this folder, which I did refer to when I was being asked about my education and experience. And I have two copies of the DVD interviews here.

In preparation for testifying I reviewed the videos, the written reports that I did after the interviews, the two ARC intakes -- well, the one

ARC intake because there was only one -- and then the incident report from the initial incident, the police incident report that was written.

THE COURT: Okay.

MR. COLLINS: And, Your Honor, we were provided with some of the counseling records prior to trial. So the only thing that I heard him testify to I think I'll need for tomorrow is just a copy of the CV. I don't have one handy. I'm sure I can find one if I looked in my computer, but I'm not sure if it would be complete.

THE WITNESS: I have an extra copy.

MR. COLLINS: Okay, that will be fine.

THE COURT: He will be glad -- he has no problem giving you a copy of that.

MR. COLLINS: Okay.

THE COURT: All right. May this witness be excused for the evening?

MS. BARRY: Yes, ma'am.

THE COURT: You may step down.

(Witness steps down.)

THE COURT: All right, we will start at 9:30 in the morning unless -- is there anything that we need to take up today that may cause some delay in the morning?

MR. COLLINS: At the close of the State's case when we start the Defense case, we will be wanting to revisit the --

THE COURT: Motions at the end of their --

MR. COLLINS: Unless we dream up anything else tonight, I think we'll be fine.

THE COURT: All right. I will see y'all at 9:30 in the morning.

(WHEREUPON, court adjourned for the evening.)

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THE COURT: Juror 127 needs to leave at 4:30, if possible, to pick up a child. I'll let her know that we'll do -- I don't think it will be 4:30, but it will probably -- this is a note from one of the jurors. I don't think it will be 4:30 because -- unless we're at a breaking point, but we'll -- I will make a mental note of it, but I don't think we will be able to stop at 4:30. She'll have to make other arrangements, the juror.

THE BAILIFF: Are you ready for them, Your Honor?

THE COURT: No, one second. We had a note from the juror.

Anything before I bring them in?

MR. COLLINS: Yes, Your Honor. Last night after we left, there is something that has just kind of stuck in my head as far as the case file that Mr. Olszewski had with him.

We were provided I'm sure all of the counseling records that the Solicitor has got; however, when I see the thickness of the file he had with him, obviously there is more in there than what we have. And I'm not asking that it be turned over to us right now or anything like that, but I think out of an abundance of caution the Court should review that file in camera to see if there is any kind of impeachment material in there.

And the type of impeachment material I'm talking about is we've gotten brand new specific details in this case from interviews made by the Solicitor last week. I want to see if any of these details came up earlier in the counseling with his therapist or if they came up from the interviews that the Solicitors conducted.

I think that will be a big part of our case if none of these details were talked about until an interview with the Solicitors last week. And that is the type of impeachment material I am looking for. It may be in there, it may not.

THE COURT: Well, you can ask him that. The Defendant -- I mean, the victim already testified as to what they talked about. You can ask him that on cross-examination, can't you?

MR. COLLINS: Your Honor, the witness is not his therapist. He just has -- he has the files from the Assessment Resource. That is not his therapist. Anything -- if I'm fishing, it is protected by HIPAA. It has to be deemed material for impeachment or for other reasons before it can be disclosed to me. And that can be done by the Court. That is the reason I'm asking for an in camera review of the record.

THE COURT: And you are asking me to do that now?

MR. COLLINS: Your Honor --

THE COURT: And I told y'all yesterday, I wanted -- this case should have been over by now. If there is something that I need to review, I could have reviewed it last night instead of reviewing it the morning of at ten til 10:00. And we had the same issue yesterday. And now I've got the jurors sitting back in the jury room. It is not fair to them to have them sit back there while I sit in here and review notes.

What is your position on it?

MS. BODMAN: I mean, I don't have custody of the file. I did subpoena all those therapy and counseling notes, everything that was turned over to me by the ARC I turned over to them in terms of counseling and therapy notes.

I would also say that the therapist is Elizabeth Dukes, who no longer works at the ARC, but he would better be able to answer the question, but my understanding is all of her notes are kept in that case file, so I would assume that they turned everything over.

THE COURT: So she is saying that they turned everything over in this case file to you all.

MS. BODMAN: That they turned over to me.

THE COURT: That they turned over to you.

MS. BODMAN: Right. I subpoenaed everything.

MR. COLLINS: And that kind of explains why this is a last minute deal, because we thought we had everything. When I saw that case file, we had 53 pages of counseling. That case file is about an inch and a half thick, which is much thicker than what we have. And that is -- it became aware to me about 4:45 yesterday. Originally I wanted to review his whole case file, and that was denied.

So as I go home last night and I am thinking of different options so we don't miss anything out of an abundance of caution, and the only remedy I can think of coming in this morning, and I approached the Solicitors as soon as they got here and told them about it, was an in-camera review of these records.

THE COURT: All right. So you -- I don't even know -- and I'm looking for what?

MR. COLLINS: Anything that may be material to impeachment. Different versions of what happened from the victim. Whether or not details that he has testified to have ever been spoken about before. If they have never been spoken about before, they have arisen out of the interview with the Solicitors of this case, which is material.

THE COURT: Well, you can ask -- I'm not understanding why you can't ask him if he is aware of any of the -- if he had heard some of the allegations that the victim -- he's been in here. He heard the victim testify. You can ask him. He said he reviewed the file in preparation for court.

MR. COLLINS: He said he reviewed the reports, that he was not a part of the counseling session.

THE COURT: I can't remember if he -- he said

he reviewed the file, I think.

Did you review the file or the counseling notes or --

THE WITNESS: I only reviewed my work product. I was not involved in his counseling history.

THE COURT: All right. I will be glad to take a look at it. I don't know by my looking at it if that is going to -- if -- I'll be glad to look at it and see what all is in there, and we can go from there. You can pass it up.

MR. COLLINS: Thank you, Your Honor.

(Mr. Collins complies.)

MS. BODMAN: I will say this for clarification. In the notes that I have read and in talking with Elizabeth Dukes, the counselor, she said she never got to what is called basically a trauma narrative with the child, which is going through the details of the assault, but basically the counseling terminated before they started talking about actually what happened to him. But I think the notes reflect that.

THE COURT: All right. So what does he have that I --

MS. BODMAN: He can probably direct you to where the counseling notes are.

MR. COLLINS: The counseling notes we got were 53 pages of different dates of therapy. We got them, they were out of order, but essentially it is about six to seven meetings with the counselor. And we have the counselor's notes. Some of them are handwritten and some of them are typed.

THE COURT: There is health insurance papers in here.

MS. BODMAN: Just so you can --

THE COURT: I mean, health bills. I mean, that is why probably yours is thicker -- theirs is thicker than yours.

MS. BODMAN: This is basically what the counseling notes look like to kind of direct --

THE COURT: This is everything y'all turned over?

MS. BODMAN: Of the therapy and counseling notes. We also had subpoenaed initially the forensic interview and those reports, which is what he said, those are his reports, Ray's reports, as well as copies of the DVDs of the forensic interview.

THE COURT: I guess I'm trying to figure out what -- there is a PSCP booklet. Was that turned over? Do you know if it was turned over?

MS. BODMAN: The stack I handed you is exactly what I handed over to them. It is the counseling notes and therapy notes that I received.

THE COURT: So this is all they have gotten out of this file is what you are saying?

MS. BODMAN: In addition to the forensic interview report. The forensic interview report of VICTIM [redacted], which is one, two, three pages. A caregiver questionnaire, three pages. A diagram I guess of body parts. A sign-in sheet. Their computer intake printout. And then there is a separate report from 8/12, a three-page report. Caregiver questionnaire, three pages. Sign-in sheet. Same thing, computer printout. And then a therapy intake form it looks like Ray filled out. And then there is a whole other packet for Jeffrey [redacted] regarding his -- same thing for Jeffrey [redacted]. A one-, two-, three-page forensic interview report. There is a questionnaire, a couple of pages. A diagram of the body. Sign-in sheet. And a computer report output.

THE COURT: All right, instead of me having to go through all of this, I'll give it to you all. Y'all can look at it and decide what -- I will let the Solicitor go through it and mark the stuff that

you think that you don't have to turn over and then be prepared to give me an explanation as to why you don't have to turn it over. And we'll go from there. I mean, it is quite a bit of documents in here. And it is not in order.

MS. BODMAN: Well, I guess my stand would be because it is not in the custody of the State, none of it would I have to turn over. I do a subpoena. They send to me the documents in response to my subpoena. If it was a law enforcement or state agency, yes, I would have the obligation, but they have equal access for subpoena. So just in terms of the State doesn't have to turn something over, that wouldn't apply to the ARC. It might apply to investigators in a case jacket or something, but --

THE COURT: Did you subpoena the records from ARC?

MR. COLLINS: Your Honor, he is under subpoena right now. He's in court with the documents that he brought with him to testify. I think the Court --

THE COURT: What does the subpoena say?

MR. COLLINS: Basically he is on their witness list.

THE COURT: Well, if you wanted to subpoena

him and tell him to bring the entire -- you could subpoena him. In the body of the subpoena there is a place that says, bring the entire case file. But he is saying he can't testify to some of it because he doesn't know anything about it.

MR. COLLINS: From our point of view, we were given through discovery a subpoena filed by the Solicitor's Office on the Assessment Resource Center asking for all counseling records.

The only indication we had that this wasn't everything in that file was when he came here with that file. I can go get a subpoena right now and serve it on him, but we weren't aware of the extra material until yesterday afternoon around 4:30. Otherwise, we would have gotten more information. This is the first time I have ever laid eyes on a full case file from the Assessment Resource Center. And it is surprising to see how thick it is.

THE COURT: And these are the notes that you received?

MR. COLLINS: From what I can tell, we have the counseling reports -- they are a little out of order, but I have got the dates. They start August 7, 2010, and roughly it goes weekly until -- the last few notations in January of 2011 were

no-shows, but they are all out of order, but pretty much every week is accounted for from August 2010 until middle of January -- or middle of January 2011.

MS. BODMAN: I don't know if I reshuffled the papers when they were given to me, but my recollection, I think, is that when I got them the top one was like a January 22nd --

THE COURT: February.

MS. BODMAN: Okay, February, but I think indicates she closed out --

THE COURT: Discharge summary.

MS. BODMAN: Yes.

THE COURT: Or transition plan.

MS. BODMAN: So I would assume from that there would be no records after. She didn't have the notes. It appears that is when therapy stopped.

MR. COLLINS: Where is that, February?

THE COURT: Okay, so all of these counseling notes that I see on the left side of this file are the same ones that you have. Then at the back is the last forensic interview report that you had. Then the caregiver questionnaire.

MR. COLLINS: We don't have the February report, Your Honor.

THE COURT: She said this is what she gave you. It is the very top page. I'm just going based on what --

MR. COLLINS: This is the first time we have seen this report.

THE COURT: The February 22nd?

MR. COLLINS: Yes.

MS. BODMAN: Do y'all have the e-mail? I can't get access to the internet right now.

THE COURT: Did you give them the report from -- the evaluation of the psychiatrist or doctors?

MS. BODMAN: Yes, but -- my stack is with you.

THE COURT: Oh, I just gave him the stack.

MS. BODMAN: Okay. I'm trying to find the actual e-mail that has the PDF so I can look at the PDF. If you are referring to --

MR. COLLINS: My concern is the first three or four pages there is a format of a form and we don't have that format anywhere in this stack.

THE COURT: There is what?

MR. COLLINS: The format of this form on the top two or three pages we don't have in our information received from them. And some of this information is about how they wanted him to

continue therapy and they couldn't get him to come back to therapy, which we would have been using on cross-examination of his mother or his family members as to why they took him out of therapy.

THE COURT: His mother hasn't testified.

MR. COLLINS: His stepmother, she has testified. We knew that it was in it, but we didn't know the recommendation was made to the family to continue.

MS. BODMAN: Can I come up and look in my e-mail? I think the access to the public internet -- and I can -- because what I did was I took my stack, I ran it through the scanner, it made a PDF, and then I forwarded that to them. So if I can look at that actual PDF it would show exactly what was e-mailed.

THE COURT: Okay.

MR. BAILEY: I mean, yes, we'll check the e-mail you sent to us too. Our printer was down three, four days of the last week, so we were having to shoot them to different printers in the office. And there is a chance that it didn't get to us. We'll check.

THE COURT: Well, everything that is here under the counseling notes is here.

MR. BAILEY: Yes, ma'am.

THE COURT: Y'all can go take five or ten minutes. If you want the -- I'm not sure if you are entitled to it, but the Medicaid documents saying how we deal -- I don't think that --

MR. COLLINS: I don't think the bills would be necessary, I don't guess.

(Pause.)

THE COURT: Anything else I should be looking for? I mean, some of the stuff she has given you she says that is all she has because some of the stuff she hasn't even reviewed, I'm guessing, and he hasn't reviewed. She is giving you everything in response to what she got in the subpoena. He is not law enforcement. They are not a law enforcement agency. I don't think she has to go look through their file and pull -- I mean, she has given you everything that she got. Y'all had the right to subpoena this just as they had. You got the pictures, the little pictures were in that stack, I think the pictures, the drawing?

MR. COLLINS: Yes, ma'am. I would just ask if you could give us a brief recess to go type up a subpoena to hand to him now. We weren't aware.

THE COURT: I don't know -- he's under

subpoena, but I don't think he can -- he's got to go through and figure out, you know, under HIPAA what he can and cannot.

And then there is another statement, the police statement that the officer gave in here.

We'll take a five or ten minute break.

(WHEREUPON, a break was taken.)

THE COURT: I think you had the same ability to subpoena anything else as the State. And if that was not done then we are proceeding.

Yes, ma'am?

MS. BODMAN: I'm sorry, just on a different matter -- I'm waiting for you.

THE COURT: I believe y'all have the notes. I have a copy of the subpoena she sent also and things that it asked for. I'm not sure if you have a copy, but everything that she asked for in the subpoena, counseling records, June 5.

MR. COLLINS: For the record, it is our position that file was in the Court's possession at the time and, Your Honor, I understand your ruling. I think it is proper for the file to be copied, sealed and make a copy of the record for review. I understand.

THE COURT: I haven't had a chance to review it. We're in the middle of a trial. The subpoena, this is not -- this is not records from the Sheriff's Department or law enforcement agency. That is what she has to turn over. She requested records. You all I'm sure were aware of ARC and she -- and you all had the ability to subpoena, send a subpoena just as she did for the record. Once she got them she turned over what she had and we have gone through that extensively today what she had, what she does not have, and she turned it over. There is other documents I don't have -- we're in the middle of a trial -- that I have not had a chance to go through and review myself. So, you know, y'all had the opportunity to subpoena the record from ARC. If there was anything more specific that you were looking for you could have subpoenaed them, and that wasn't -- but all the medical assessment, everything that he said that he gave to you all is in here, from what I can tell.

I asked about one additional thing, the psychiatrist notes. And my understanding is y'all have that. The other stuff is Medco card, insurance card, schedule of fees. There are

some -- there is another -- some of the notes, the investigative stuff from the Sheriff's Department is in here you should have. And then there is a whole other stack of other stuff that I haven't had a chance to go through, letters that were sent regarding appointments, that kind of stuff. If you have appointments on August 18th, that kind of thing, but that -- I mean, that is all I can -- I'm not going to -- your motion is to seal the file?

MR. COLLINS: Our initial motion was for an in-camera review of the case file that we were not aware of, it had more information than what we were given to by the Prosecutors. We then filed a subpoena because we were not aware of what was entailed in the case file, it had never been turned over in the -- as he had in the past. We were not aware until yesterday. I would just ask for an in-camera review out of an abundance of caution. I don't know what is in there, don't know if there is anything in there that is relevant, but if the ruling is denying an in-camera review, I think to preserve the record that file needs to be kept as a Court Exhibit.

THE COURT: Yes, ma'am? Anything?

MS. BODMAN: Well, the actual file, I guess --

I'm sure that ARC would object to -- if they wanted copies made and then that sealed, that would be more appropriate, not the actual file.

MR. COLLINS: Okay.

THE COURT: Well, I'll think about that. But I'm going to -- other -- I have done an in-camera to make sure what she had she has given to you, and based on what I have gone through, what she has given and what you all have said, she has given you everything that she has. So any further in-camera review of the file will be denied. I will think about whether or not I'm going to seal it and put it in the record. But I can make that determination later.

MR. COLLINS: Thank you, Your Honor.

THE COURT: Yes, ma'am, one other issue?

MS. BODMAN: Yes, Your Honor. Just in terms of the videotape, we would request and just ask the Court if you can give us a ruling not as to the specific instruction of what it would be, but that -- would you -- if the Court's instruction and the charge to the jury included a charge on 17-23-175, which is the admissibility of the tape. Essentially something to the effect that an out-of-court statement of a child is admissible

if -- and including the elements that the child is under the age of 12 at the time of making the statement. And we would just need to know if you were going to give that charge so that we can then make a decision about admitting that first video because the second one, you know, we cannot -- if we're offering the first one we cannot admit the second one, and we don't want the jury to think that anybody is hiding the ball. There is a true statement of the law that would be proper to give to the jury and would give them also a fair and accurate understanding of the law as to why that second videotape is not before them because that is going to be a lingering question and wondering, you know, why; they gave us the first one, why are they not giving us the second one.

THE COURT: Well, throughout my ruling yesterday was that if they entered the first one that they could enter the second one.

MS. BODMAN: Right. But they are not indicating that they are offering the first one, so that is a decision that we are now put with is about you have ruled that it meets the statute, that it is in fact --

THE COURT: The first one?

MS. BODMAN: -- admissible. It is in fact admissible. So should we go ahead and admit it? If we admit it we just need the Court to rule in order to make a decision about whether or not to admit it. We just need the Court's ruling on whether or not you will give the jury this instruction regarding the law on the videotape, that admissibility, so that they understand why the second one is not before them so they are not thinking anybody is hiding any information, hiding the ball, that it is a true and fair -- so they have a full and fair understanding of why that second one is not before them.

MR. COLLINS: I guess in response, first off, under that statute it has never been charged to a jury since enactment in South Carolina.

Secondly, under that line of reasoning we would have to give the jury charge on what hearsay is. We'd have to give a jury charge on what a leading question is and why it is not admissible. The jury is there to determine the facts, not to determine legal principles and what is admissible and what is not admissible.

Thirdly, they spent a majority of the case arguing against the admissibility. I believe they

are barred by laches and estoppel to now come and say the video should be admissible. So I think they are barred from introducing the video based on earlier arguments to the Court.

THE COURT: Anything else?

MS. BODMAN: (Nods negatively.)

THE COURT: My thinking -- I thought we were over the video issue -- is that if it was their motion I believe to use the video, you all objected to it. I granted it saying that if they entered it that you all could present the second one. So if they have not entered it then I'm not sure how you all are going to try to get it in.

MS. BODMAN: There is nothing under 17-23-175 that says the State on one side can offer it. It is that if these requirements are met it is an admissible piece of evidence. Our argument was that it was not admissible, that it didn't meet the statute because it is not a full, you know, disclosure. We did not believe it contained the details of the offense. But if we are not able to get in Number Two, it is misleading to the jury. It doesn't detail a crime happening. But Your Honor ruled that it meets the statute.

THE COURT: The first one.

MS. BODMAN: The first one meets the statute. There is nothing in the statute that says that we are prohibited from putting it in if you ruled that it is admissible.

THE COURT: You want to put it in and then you want me to tell them --

MS. BODMAN: The law of --

THE COURT: Reading the statutes.

MS. BODMAN: The law of its admissibility. It is a correct statement of the law that an out-of-court statement by a child under the age of 12 is admissible in a General Sessions court proceeding if the statement was given in response to questioning conducted during investigative interview of the child and audio visual is preserved and the child testifies during the proceedings and is subject to cross-examination and the child is under age of 12 at the time of the making of the statement.

That would be a full and fair statement of the law to give this jury because they are not thinking that anybody is playing any games or --

THE COURT: You want to put in one. I don't have a problem charging the statute. The jurors are going to ask where is Number Two. And they

are -- I think it is pretty clear that they know he was over 12 at the time. The statute specifically says if she wants to put that one in and not put in the other, I don't have a problem charging the statute saying that that video -- I mean, we could probably tweak it some, but saying that that video was taken out of -- he was 12, so under the law they arn't allowed to see it. That is my way of --

MR. COLLINS: Your Honor, we definitely object to that type of jury charge, but on the first issue of them introducing the first video, not the second video, this is completely the opposite of what they argued throughout the case.

THE COURT: I understand. But I have already ruled that it is admissible based on your -- what you all asked. They weren't going to admit it, then you said, we want to admit it. But then you only want to admit part, don't want to admit the second part of the interview. So, I mean, if y'all want to show both videos, you can show both videos.

MR. COLLINS: Our position is the first one is the only one that fell under the statute.

THE COURT: Well, that is misleading for you all to be able to present that and then not present the second one.

MR. COLLINS: Then I understood your ruling to be that if we put the video in they could introduce the second video.

THE COURT: In response.

MR. COLLINS: Only if we put in the video. Now they are seeking to offer -- I believe the argument was just to offer the first video, give the jury charge as to why the second video shouldn't be seen. So now we are looking to offer just the first video, which is what we wanted to do, but because on your ruling we can't offer the first video without the second video coming in, so see the situation --

THE COURT: I understand. But you are giving them the -- by putting the first video in, I was allowing them to bring the second one up on redirect if you put the first one in. She is not -- she has not entered either one of them in her case in chief, but she would be able to do it on redirect in response to the first if you put the first one in.

MR. COLLINS: Okay.

THE COURT: I understand what you are saying. It confuses everything, but the problem is at this point then she asked me, asked if she could enter

both of them, and I told her no. The problem is we get one because hers -- the only reason I let her get the second one in is in response to putting the first one in. If she puts the first one in, then the jurors -- the second interview, you know, within five minutes we get a question as to why we haven't received the second interview, seeing a copy of the tape with the second interview.

And so what she is saying is offering the statute to just say we couldn't put the second one in, which is in essence what you asked for on yesterday.

MR. COLLINS: Your Honor, I believe that creates a situation of burden shifting.

THE COURT: How does the statute prejudice you? That is what you wanted yesterday. You wanted Video One in. Why are you asking for -- I had no idea -- you wanted Video One in. You didn't want Video Two in.

MR. COLLINS: Your Honor, the reason we don't want the jury charge is that our position is that that is not the role of the jury to look at complex legal admissibility of evidence. This is one of the most complex statutes allowing the admissibility of the prior consistent video

recorded statement. It is not allowed in any other type of case. And there is a lot of things that the jury is not going to hear, a lot of people they are not going to hear from. We can't get a juror to explain why each piece of evidence and each witness is not there. They are to look at the facts of the evidence given to them and then determine the result.

But going back to the video, if she -- the way the rules are and the way I understand it is if they introduce the first video they are going to introduce that to get a jury charge to explain why the second one does not come in. However, your ruling is that the second one comes in if the first video is put into evidence, which shifts the burden to us to put in the video that we stated should be inadmissible to not have an incorrect jury charge as the Court said to not mislead the jury. Our position is that the first video, we would have produced it, but now we are stuck in the position if we do, the second one comes in and the second one is so prejudicial that it outweighs the strategy that we had for the first one.

THE COURT: But she wants to put it in. I'm not saying I'm going to read the statute exactly,

but I think there needs to be some explanation because there has been testimony the entire -- all day yesterday about -- to the second interview. And I think the child testified to it. The counselor or interviewer testified to it. So they know there is a second interview. They know when it happened. They -- I mean, it probably does not take much for them -- I'm talking about simply saying something to the jurors to the effect that he was over 12 years old. That is under the law. That is not admissible. I'm not talking about going into reading every detail of the statute. We can -- the videotape normally would not be admissible, but because he is under 12 at the time of the first one, it is admissible. The second one is -- the second one is not admissible. He was over the age of 12.

MR. COLLINS: I mean, that kind of opens the door to -- I mean, then we're going to ask for a jury charge that prejudice can be implied for each witness not put on the stand that could have been a witness.

THE COURT: I'm not going to charge that. All right. I'll make a decision on that as we go, but, I mean, I'm inclined to do something to let them

know why the second video is not in since we talked about the second video.

MR. COLLINS: Going back to the first video.

THE COURT: I think you are arguing against everything you asked for yesterday.

MR. COLLINS: Well, that gets me back to what I want to make clear for the record. Our position is that for them to introduce this videotape, the first one, knowing it will be the only videotape in evidence, they are forbidden from doing that for laches and estoppel and argue against admitting it. They are now seeking to introduce it. As an attorney you are not allowed to go completely counter opposite to what you argued for earlier in the case.

THE COURT: You want me to let her enter both of them?

MR. COLLINS: That would go against the previous ruling.

THE COURT: That is exactly why I have said she can enter that one, the first one, and we'll craft some type of charge to let the jurors know what happened to the second one. We have been talking about it, y'all have been talking about it, the victim has talked about it, the interviewer

talked about it. The jury is going to ask --

MR. COLLINS: I guess we would have already introduced this video if your ruling would have been we could have introduced it without the second one coming in.

THE COURT: Well, that was --

MR. COLLINS: You are ruling that if we introduce the first one, the second one, they will be able to bring the second one in later in the case.

THE COURT: In response to your -- on redirect. That was my ruling, yes, sir.

MR. COLLINS: Okay.

THE COURT: All right, let's bring the jurors in.

(WHEREUPON, the jury came into open court at approximately 10:49 a.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right. Juror 127, I'm not sure if we are going to be able to stop at 4:30, so if you can make some other arrangements, but it probably won't be, hopefully -- I'm just not sure where we'll be in the testimony, but it should not be too much later than that.

JUROR 127: Okay.

THE COURT: If we can we will, but right now it is probably not going to be. We'll see later today. If you can try to make some other arrangements when we take a break that will be great.

JUROR 127: All right.

THE COURT: All right. Yes, ma'am. We're going to begin -- continue with the cross-examination of Mr. Ray Olszewski.

Yes, sir, come on up.

(Ray Olszewski returns to witness stand.)

THE COURT: All right, sir, you are still under oath. Please answer any questions Mr. Collins may have.

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

CROSS-EXAMINATION

BY MR. COLLINS:

Q Good morning, Mr. Olszewski.

A Good morning.

Q I just want to start out, I just want to apologize for being a little short with you yesterday. It was kind of a long day yesterday.

A Okay.

Q I want to talk to you a little bit about the types of interviews that you do, about the science that backs up the forensic interviewing that you do. It kind of dates back to the 80s, right?

A Forensic interviewing?

Q Yes?

A Yes.

Q Specifically of children?

A Yes, sir.

Q Back in the 80s there was a big spike of people reporting child molestations and different things like that because of a couple of big signal cases, right?

A There were a couple of high profile cases I guess involving allegations, a couple of daycares involving multiple victims.

Q Yes. Are you familiar with one I believe in Virginia -- California, it was something around 80 children reported abuse from a daycare provider?

A I don't know, you would have to tell me specifics of the case.

Q Just in general from those cases, law enforcement learned that certain types of interviewing techniques can get false information from children, right?

A Correct. Possibly.
Q And from that, that is where this science of using the RATAC and other different techniques of interviewing children with open-ended questions and things like that, right?
A Right. And other things. Like if you have multiple victims in a case you try to have more than one interviewer so one is not interviewing maybe six, seven, eight, nine, ten possible victims in the same case so you don't carry bias over from one interview to the next.
Q You want to have the training and the certifications and the education to perform these interviews, right?
A Certainly, training, education all plays a role.
Q The goal is you don't want to elicit information that is false?
A Correct.
Q Whether that be through reading, repetitive questions, right?
A Well, leading questions, yes.
Q Leading questions, asking the same question over and over and over again. You don't want to do that with a child?
A You don't want to, with proper instruction that,

you know -- I mean, you don't want to continually hammer away with the same question. Occasionally repeat. Like I said yesterday, we have a rule that we try to --

Q You don't want to get in situations where you have selective reinforcement to the child?

A Selective reinforcement? What do you mean?

Q Praising them for certain answers and chastise them for other answers?

A Yes, I agree with that.

Q Because a person in a position of authority can influence what a child says?

A Potentially, yes.

Q Potentially. So you guys at Assessment Resource Center, you set up three or four interviewing rooms there?

A Three forensic interview rooms.

Q And you have couches, not like metal chairs or anything like that?

A Correct. Like a love -- like a loveseat and then, you know, it is like furniture you have in a living room.

Q You have been working about 11 years?

A Since December of 1999.

Q The only person with more experience is your boss?

A That is working there with me, yes.
Q You have done thousands of these interviews?
A Over a thousand in my time there.
Q You want to make sure it is a comfortable room for the child to be in?
A Yes, comfort is a part of the process, making sure the child feels comfortable reporting.
Q You would not want to put them in a jail cell and talk to them?
A No, no jail cells, cubicle, no interrogation rooms, nothing like that.
Q You wouldn't want a uniformed officer coming in and interviewing them in a cubical or anything like that?
A Not in a cubicle, no. We advise against formal uniform or even dress that could be intimidating.
Q You wouldn't want to take him down to the principal's office or anything like that at school to interview there, would you?
A Not necessarily, but if someone had to do an interview at school, a private office would be the best way to go about that, whether it be -- a guidance counselor I know sometimes are first responders to do interviews in a location.
Q A counselor is much better than the principal's

office?

A I would think it would be a better option, yes.

Q The principal is the highest authority in that school, you agree?

A Oh, yes. The child might think he is getting in trouble or something.

Q When you conduct initial interviews at ARC, you set up the first interview and try to establish a rapport, right?

A (Nods affirmatively.)

Q When you finish the interview you type up the report, right?

A Right.

Q And at the end you make a recommendation?

A Correct.

Q You are trying to gain information from the child?

A That's right.

Q In a way in which you are being careful not to elicit false information?

A Correct.

Q But you are not a lie detector?

A That's true.

Q You testified to that there is no hundred percent proof or way to know everything the child told you is the truth, right?

A That's true. I mean, unless it is corroborated later through some other evidence.
Q So those are the details you are trying to get from the child so that you can pass that on to say law enforcement?
A Correct.
Q To see if they can corroborate, right?
A Right. It becomes part of their investigation.
Q That is part of your recommendation is maybe further interviews with other people?
A Some -- yes, sometimes. I mean, we're not really advising them how to do their job, but if there is a -- if the child mentions perhaps a person that we think should be interviewed based on something our child says, we might recommend law enforcement interview them, particularly other children.
Q Your job is to collect the information?
A Correct.
Q Their job is to investigate whether or not the crime happened?
A Yes.
Q Now, you don't set up five interviews in one week with the child, do you?
A No. It is -- our protocol is actually typically a one interview model. Most children we interview

them one time. If need be we'll do a follow-up interview, but it will never be five interviews in a week.

Q Because intakes, information you get from the parent, you ask certain questions like, has the child been interviewed before?

A Yes, sir.

Q That is one of the questions you ask, right?

A Yes.

Q You would want to know if a child had been interviewed in a principal's office by a uniformed officer, right?

A Correct. There are different types of questions that may have taken place.

Q And you would want that on the intake sheets because that would affect how you evaluate and interview, right?

A Possibly, yes. It is just information to have, yes.

Q Now, do you have the report in the first interview that you interviewed VICTIM with you?

A Yes, sir, uh-huh.

Q On that intake sheet there is nothing indicating a prior interview with VICTIM is there?

A I don't have the intake sheet. Sorry, it is in the

file.

Q Are you aware of ever being notified of a prior interview of VICTIM before you interviewed him?

A Not -- not that I recall. I wouldn't say exclusively unless I look at the sheet.

Q Now, as part of the ARC process sometimes you do a follow-up interview. After the interview you don't give the child a copy of the DVD that you took of the video, I mean, of the interview, do you?

A No, we don't.

Q It is not your practice at ARC to give videos to children to take home and watch?

A No, it is not.

Q Have you ever given a video to a child of their interview?

A No, I have not.

Q Are you aware that the Solicitor in this case interviewed this child and gave him both DVDs?

A Yes.

Q You have spoken with the Solicitor in preparation for this trial?

A Yes.

Q Now, you interviewed VICTIM , and one of the recommendations before the first interview is his brother Jeffrey should be interviewed?

A Yes.
Q And sister Scarlett should be interviewed?
A Yes.
Q Scarlett was never interviewed, was she? Not at all?
A Not at the ARC, I don't believe.
Q Do you know if she was interviewed anywhere else?
A I'm not aware if she was interviewed by someone else.
Q Jeffrey was interviewed, right?
A Jeffrey was interviewed at the ARC, yes.
Q And have you reviewed those reports?
A I have not.
Q I have not. Are you aware of the results of that interview?
A I might have been at the time. I have not reviewed them. If I did review them, it would have been back when it took place. I have not reviewed them in preparation for this trial.
Q You might have been aware of the results at a certain time, but you are not aware of the results right now, is that your answer?
A I can't recall what the results of his interview were exactly right now.
Q Do you think you might be able to remember it if

you could review his report?
A We -- yes, if you show me the report I will be able to tell you what was in the report. I didn't conduct his interview.
Q But at one time you knew the result of that interview?
A Yes.
Q You think his report would refresh your memory?
A Yes.

MR. COLLINS: Beg the Court's indulgence.

(Pause.)

Q We'll move on. I'm sure somebody else will be aware of those results.

Let's step back to -- you said you spoke with the Solicitor about the interview they did with this child, right?
A They told me they spoke with him. They didn't really go into detail about what they interviewed him about.
Q You guys didn't get in detail about where the interview happened?
A Where they interviewed him?
Q Uh-huh?
A I guess maybe assume here at the Solicitor's Office. I don't know if they told me where the

interview took place.

Q Would you be surprised to learn they gave the DVD to the kid to watch and take home?

A Not necessarily, no.

Q Not necessarily. Okay. I will take you back to the first interview with VICTIM Who came with VICTIM to the interview? Which family members and --

A I believe the first interview -- first interview, April 19. I have the sheet in the file. I can look at it to show exactly who brought him to the interview, or who accompanied him, I should say.

(Pause.)

A He was accompanied by his mother, Amy Geiselman, and Investigator Travis Holdorf, of the Richland County Sheriff's Department.

Q And Holdorf watched the interview take place, didn't he?

A That's true. Yes, we have a close-up TV in there to observe the interview in a separate room on a television screen.

Q And you told VICTIM that Holdorf was watching the interview, didn't you?

A Yes, sir, I believe I did.

Q Let's take you to the next interview with VICTIM ,

the follow-up interview August 12th. Who came with VICTIM that day?

A Give me one second. I have a similar sheet.

(Pause.)

A He was accompanied by his mother, Amy Geiselman; father, William Murray; stepmother, Jamie Murray; Robert Jeffrey Murray, sister Scarlett ; and again Investigator Travis Holdorf, of the Richland County Sheriff's Department.

Q And with that interview there was an intake sheet as well where the question was asked, have there been any previous interviews?

A A caregiver questionnaire form you are referring to?

Q Yes?

A Yes. Let me double check to make sure it is separate -- they filled out the first one -- and it wasn't simply a copy. Sometimes at a follow-up interview a brand new caregiver form is not completed, they just use the one from the previous interview. Have you found it? I did find a caregiver questionnaire you are asking me about?

Q On that it has previous interviews that have been conducted. What is the box that was checked?

A The caregiver filling out the form did check a box

on that. It looks like Page 3 wasn't filled out.
Q If I showed you a filled out Page 3, would that refresh your memory of what was on there?
A Yes, I'd like to see that.
MR. COLLINS: If I can mark this as an exhibit.
(WHEREUPON, Defendant's Exhibit No. 3 was marked for identification only.)
Q Do you recognize this form?
A Yes, it is Page 3 of our caregiver information form. But it looks like Page 3 from the -- according to my chart, it looks like Page 3 from the April 19th, 2010 visit. That form filled out by Amy Geiselman looks to be exactly the same.
Q Is the date on either one of those sheets of paper?
A No, the only date is on Page 1. There is a place to put the date when the form was completed.
Q What is the box on this checked?
A *I don't know* is checked. Either *yes*, *no* or *I don't know*. *I don't know* was checked.
Q Now, you said you weren't necessarily surprised about what happened with the Solicitor and the witness leading up to this case. That was your testimony?
A About them giving him the videotapes to review?

Q Yes?
A No.
Q Now, in all of your training you talked about a week-long course that you have done?
A Right.
Q And then you talked about a week-long course here in Columbia that you actually kind of head and teach?
A Yes.
Q Called Child First?
A Child First, South Carolina.
Q It used to be Open Hand?
A It used to be called Finding Words. It is now called Child First.
Q You are pretty familiar with the material contained in the seminar, right?
A Yes.
Q You've been teaching it for almost ten years now?
A Yes, I teach certain sections of it particularly, so I'm very familiar.
Q You are probably familiar with the portions you don't teach as well?
A I'm familiar with them.
Q And as part of this training one of the things you -- and let me back up. The people that come to

this seminar are forensic interviewers?
A Forensic interviewers.
Q Solicitors?
A Yes. Assistant Solicitors, usually.
Q Police?
A Law enforcement, investigators.
Q No Defense attorneys?
A I'm not sure if I have ever had a Defense attorney come through the course.
Q One of the things that is talked about in this thing is there is a few slide shows that are presented?
A PowerPoint presentations.
Q One of these PowerPoints is reminding everyone to be a part of a team?
A Yes, uh-huh.
Q Make sure law enforcement and Solicitors are not strangers to you?
A Yes, that's true. We stress a multi-disciplinary team approach to child abuse investigations.
Q And if anybody from -- if a Defense lawyer calls, you need to go consult with the Solicitor first?
A I don't -- I don't say that when I'm training.
Q If I showed you Slide 21, do you think it might refresh your memory of what you have been doing for

over ten years?

A I'd like to see the slide.

(WHEREUPON, Defendant's Exhibit No. 4 was marked for identification only.)

Q I show you what is marked as Defendant's Exhibit 4.

A Okay, yes, I'm going to look for exactly which lecture this is. It is a lecture I'm testifying in court.

Q Okay.

A Okay, it does say consult with Solicitor before talking to Defense lawyer -- or Defense lawyers, investigators.

Q Okay.

A Again, our audience is broad. Many different disciplines. It is probably more of a cautionary statement. I know personally I will talk with a lawyer when they call me about cases.

Q Because your role is to be neutral, right?

A Yes, I'm just trying to determine whether or not something happened.

Q If you were biased you wouldn't be a good interviewer, would you?

A I think that is true. I try to avoid bias.

Q But still part of the team, right?

A Multi-disciplinary team approach, and that team

consists of law enforcement, oftentimes DSS, medical personnel are involved in these investigations. These investigations are often complex and they involve oftentimes, you know, forensic interviews and medical exams with evidence that may be hard to interpret, and so a team approach is, you know, sort of considered the best practice when you are investigating these types of allegations.

Q What if two Solicitors gave two videos for the child to watch at home?

A My understanding that was done just to refresh his recollection in preparation for trial.

Q And you wouldn't cover for a teammate, would you?

A I don't understand the question.

Q No further questions.

A I said it is my understanding it was done to refresh their recollection.

MR. COLLINS: No further questions.

THE COURT: Yes, ma'am. Any redirect?

MS. BARRY: Very briefly, Your Honor.

REDIRECT EXAMINATION

BY MS. BARRY:

Q Mr. Olszewski, is it common -- common practice for Prosecutors to talk with a victim in preparing

cases in cases that you have been to trial on?

A From my experience, yes.

Q Anything improper about that in your opinion?

A Improper about talking with a witness prior to trial?

Q Exactly?

A No.

Q Is there anything improper about showing a victim a copy of their -- essentially their statement, their forensic interview that they gave to you to refresh their memory in your expert -- or is there anything improper about that?

MR. COLLINS: Objection, Your Honor. May we approach?

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.).

THE COURT: Objection overruled.

MS. BARRY: Thank you.

BY MS. BARRY:

Q I'll ask it again. Is there anything improper about a Prosecutor asking -- showing a victim a copy of their recorded statement prior to trial?

MR. COLLINS: Objection. Outside the scope of his expertise as well.

THE COURT: Overruled.

A I don't think so. I don't think it is any different than any witness reviewing a statement. I mean, I reviewed my reports and videos prior to testifying in the trial to refresh my recollection.

Q You actually had an opportunity to review State's Exhibit Number 1?

A What is State's Exhibit Number 1, the interview?

Q I show you that and ask you if you recognize that.

A Yes. That is the first interview done. It is in April of 2010.

Q Who conducted this interview?

A I did.

Q On what date?

A April 19th, 2010.

Q Okay. And you have had an opportunity to review it?

A I did.

Q Is that a fair and accurate depiction of -- what is that, the actual interview that you conducted on April 19th, 2010?

A Yes.

Q Do you do therapy at the ARC? Is that one of your roles?

A Do I do therapy?

Q Yes?

MR. COLLINS: Outside the scope of cross-examination.

THE COURT: Overruled.

A No, I don't currently do any therapy at the ARC.

Q Are you aware of the practices of the therapist at the ARC as co-workers?

A Yes. I mean, I have some awareness of therapeutic techniques and what they do, not an in-depth understanding of what they do.

Q Is it common practice for them to review the videotapes of the victims in court preparation?

A In court preparation, yes. I have known of that being done in court preparation, yes.

MS. BARRY: Beg the Court's indulgence.

(Pause.)

MS. BARRY: That's all I have.

THE COURT: Thank you. You may step down. Any objection to this witness being excused?

MR. COLLINS: We'd like to keep him.

THE COURT: You can step down.

(Witness steps down.)

MS. BODMAN: May we approach briefly?

(WHEREUPON, a bench conference was held in the presence of the jury but out of

the hearing of the jury.)

MS. BARRY: The State calls Investigator Travis Holdorf.

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, please.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about to give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Have a seat in the witness box.

(Witness complies.)

THE CLERK: State your name for the record.

THE WITNESS: Travis Holdorf.

TRAVIS HOLDORF,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. BARRY:

Q Investigator Holdorf, where are you employed?

A I'm employed at the Richland County Sheriff's Department.

Q How long have you been employed at the Richland County Sheriff's Department?

A I was hired in 1994.

Q What are your current job duties?
A Currently I'm assigned to the special victims unit. That consists of working rape cases, child abuse cases. Every seventh week our shift goes on-call, then I'm primary for homicide.
Q Back in 2010 was that your duties and responsibilities?
A Yes, ma'am.
Q Did you have an occasion to be involved in an investigation of John Barnes?
A Yes, ma'am.
Q When did you receive a report regarding the investigation?
A April 12th, 2010.
Q When you received this report, what if anything did you do?
A We look at the age of the victim, with the victim being 11. The best course of action is to send that person to the ARC for a forensic interview.
Q Why is that?
A It is a child. We put them in a place with professionals when they are interviewed so you have an interview that is not contaminated and no one is misled. It is done by trained people so we can arrive where we are today.

Q So did you talk with the victim in this case, VICTIM , prior to the ARC interview?

A No, ma'am. I would talk to the parents, explain to them the process: We're going to be sending them to the ARC and that it can take -- sometimes we schedule these appointments, it could take several weeks. You have several agencies who use the Resource Center. I also asked them not to ask any questions about this case with him, not to talk with him about this case. And if they do -- the victim does bring something up, to let them know about it. Try not to have it constantly be brought up all the time in front of the victim just so we can try to get exactly what the victim knows.

Q Did you actually talk with the victim at all in this case?

A No, ma'am.

Q What date -- are you aware of what date he went to the ARC for his forensic interview?

A Yes, ma'am. I received a report from the ARC. The first interview date was April 19th, 2010.

Q Did you accompany the family?

A No, ma'am. I got there at a different time as the family. I did not even see the family that day and went straight to the viewing room, if you will.

There was no contact with the victim or the family.
Q Can you describe that for the jury so that they get a better picture of that?
A There are several doors. And just where I went in I just bypassed the waiting area, went straight into the viewing room and sat. There was not a place for anyone else other than law enforcement or people related to the case would be.
Q Do you actually watch the interview?
A Yes, ma'am.
Q And -- beg the Court's indulgence.
(Pause.)
Q Have you had an opportunity to review the video?
A Yes, ma'am I have.
Q I will show you State's Exhibit Number 1. Do you recognize that?
A Yes, ma'am.
Q Does that fairly and accurately depict the forensic interview that you watched on April 19th, 2010?
A It does, yes, ma'am.
MS. BARRY: Your Honor, at this time we would offer into evidence and permission to publish to the jury.
THE COURT: Yes, sir, any objection?
MR. BAILEY: Your Honor, we'd like to object

based on the grounds previously mentioned. We renew our previous objection.

THE COURT: All right. The objection is overruled.

(WHEREUPON, State's Exhibit No. 1 was marked for identification and received into evidence.)

THE COURT: While you all are setting that up -- that video is about an hour long. Does anyone think they need to use the restroom before we start the video? Now might be a good time to do so. Are y'all okay? Does he need to use the restroom? We'll take a break while they are setting up the video. We'll take about two minutes, two or three minutes.

(WHEREUPON, a break was taken.)

THE COURT: Are you ready?

MS. BARRY: The State is ready.

MR. COLLINS: If I can put on the record what we discussed at the bench for my objection.

THE COURT: Your objection is to the video because y'all are the ones that asked for it to be admitted. I don't know how you can object to something you asked to be admitted and ask me to go through 17-23-145. If it is admissible it is

admissible.

MR. COLLINS: Well, Your Honor, what we're objecting to is the effect of your ruling on the video and your previous rulings that if we entered that video the second video comes in. We only wanted one video, which is getting accomplished through the Solicitors. However, we lose the power of offering it ourselves.

The second part, this is a caveat to them introducing -- you haven't ruled on it yet, but the jury instruction is the reason we're objecting to the admission of the video is because it seemed as if they were going to get their jury instruction, which that is what we object to is the jury instruction. Without the instruction we have no objection to the video itself. But coupled with the instruction of that section, we have major problems with that because that instruction would be commenting on the facts of the case. An instruction on the inadmissibility of something defeats the purpose of it being inadmissible. It is inadmissible so the jury is not to consider it, but instructing them that they can't introduce it, you are telling the jury to consider that video.

THE COURT: I can let them put both of them in

based on -- I mean, based on -- but we're going to have the question from the jurors as to Video Number Two, which has been discussed by -- you asked the witnesses about it. So the instruction -- and I'm not saying that I'm going to read the entire statute, we can craft the charge at the time we charge it to say something as simple as the second video is not admissible because he's 12.

They asked -- you asked, when did you turn 12. I turned 12 before the next interview. I mean, it is straightforward. The victim turned 12. The law does not provide -- does not allow the admissibility of a videotape over the age of 12. Something as simple as that. I'm not saying I'm reading the entire statute to them. But the charge on the law is a charge on the law and this is the law.

Now, I mean, if you want me to put both of them in we can put both of them in. The jurors can see both of the videos, which I'm almost inclined to do at this point, go ahead and just put both of them in, but what happened yesterday is you all came in here and asked me to admit something into evidence. I did. They said, well, Judge, in fairness, what they said is you can't admit one

without the other because it is misleading to the jurors that there is not a second video or there is not a video with him acknowledging what actually happened according to him.

And I said under the doctrine of completeness and in order not to mislead the jury or confuse the jurors that I -- if you all put it in, I would allow them on redirect to put in the second video.

But I think we have to explain to the jurors at some point where is the second -- why didn't we see the second video. I can guess that the question would be out here before 15 minutes of going out to deliberate where we keep referring to the second video, why didn't you do the second video.

And it has been talked about by both sides, the second video.

MR. COLLINS: So both videos are now going to come in? Is that the rule now, that both videos are coming in?

THE COURT: Well, yesterday my ruling was that both videos would come in and that the second one was a continuation of the first one. But, I mean, you are saying you don't want the video -- you don't want the charge. I haven't made my mind up.

MR. COLLINS: For both of them. If you consider it as one continuous interview, during that interview he is over 12 years old, he is 12 or older. Therefore, it does not get within the statute. If you consider it one continuous interview it does not fit within the statute.

THE COURT: The first one he was under 12?

MR. COLLINS: When it finished he was over 12. That would be or error if they both come in. It does not fit the statute.

THE COURT: I guess my problem is I'm not sure if -- yesterday you don't want the video in, today you don't want the one video in. If something is admitted in evidence, it is evidence whether or not you ask for it or she asks for it. You could have asked for it on yesterday and could have presented it and she could have asked to present it in her case in chief. She did not. You did. She wasn't planning on -- you brought up the issue regarding the video.

MR. COLLINS: We never offered the video into evidence, Your Honor.

THE COURT: You asked me to go through Section 17-23-145 to determine if it was admissible.

MR. COLLINS: Yes.

THE COURT: I looked -- you asked me to look at the video. I spent my lunch going over the video for an hour and a half, hour and 45 minutes based on your request.

She is saying no, no, no, no, I don't want the video. I made -- based on what you asked me, we had a long discussion as to whether or not the video under the statute was admissible and I asked you about Number 3. I said I'm not sure if it is admissible based on the fact that is not a detailed account of the alleged defense. And you said oh, yes, it is, it is, it is, it is. And I ruled with you that it was admissible.

Then they said under fairness or whatever doctrine of completeness that both videos should be shown. The case law says you cannot show -- you can't take part of something and admit it and not present the other part if it does not fit. And then I looked at the case law, and that is what it said.

So then you said, well, I don't know if we are going to admit it, but that is fine if you want not to present it, but I already made a determination as to whether or not it is admissible under 17-23-145. So she has a right to enter it into

evidence today, but I'm going to give an instruction as to 17-23-145 as to why that second video didn't come in.

MR. COLLINS: Just so the record is clear.

THE COURT: That's fine.

MR. COLLINS: We don't have objection to that video coming in if it is only that video. The only reason we changed our mind yesterday was based on your ruling on the rule of completeness allowing the -- our position is the separate interview that happened four months later we don't -- our position is these are two separate interviews. One falls within the statute, the other doesn't. Based on your ruling, I understood your ruling to be if we introduce the first video, the second video also comes in, which defeated the purpose of our trial strategy of introducing the first video.

THE COURT: I explained to you that was a risk of you asking for the first one to come in. I told you before we went to lunch, I said y'all understand that I'm going to consider and research as to why it -- if both of them should come in. And I explained that to you that that was a risk of the possibility of both of them coming in if you were going to try to put the first one in, and you

said you understood that. I asked you to get me some case law on it. And the case law -- and I think your argument was just that the rules -- I can't even remember what it was.

MR. COLLINS: Rule 101 stating that when a statute and rule of evidence completes -- supercedes 106, right of completeness does not allow otherwise inadmissible evidence.

THE COURT: All right. And that was your argument and I told you if you brought in one you have to bring in the other. So I am going to -- even though at this point you're objecting, your objection is going to be to the charge, not the video coming in.

MR. COLLINS: Yes, Your Honor.

THE COURT: I guess to make a long story short, your objection is not to the video because you said I object, but your objection is to the charge, and there will be proper time to make that objection.

MR. COLLINS: The only reason we object to the video is if that is coupled with the charge being given.

The real objection I wanted to put on the record originally was when Ms. Barry was

redirecting Mr. Olszewski, and I believe the question she asked was, is it proper for a Prosecutor to show a DVD to a child. It was very clear to the jury that these Prosecutors had shown the DVD of the interview to the child. She used her own expert to give an opinion about things that she did as a Prosecutor in this case.

Our position is that puts her as a witness. It is too late in the case to take her off the case. The only remedy would be a mistrial. I move for a mistrial that she is now an advocate and a witness in the case.

MS. BARRY: Your Honor, I did not specifically say would it be improper for myself or Ms. Bodman to show it, I said in general terms is it improper for a Prosecutor to do that. He opened the door on cross. That's our position.

THE COURT: The motion is denied. The question was you actually asked him about two of them in the questioning or prepping the victim, which is not out of the ordinary or improper according to the witness. And I think my earlier ruling is that it was not a violation. I think he said 4.7 for them to prepare the victim for trial.

So, with that being said, we'll bring the

jurors back in. And your motion for a mistrial is denied. Your objection is noted for the record.

(WHEREUPON, the jury came into open court at approximately 11:45 a.m.)

THE BAILIFF: The jurors are all present, Your Honor.

MS. BARRY: Permission to publish to the jury.

THE COURT: Yes, ma'am.

(WHEREUPON, videotape played in open court.)

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: All right, ladies and gentlemen of the jury, at this time this would be a good opportunity, time for us to take a lunch break.

I am going to allow you to take a lunch break until 2:00 o'clock. If you all could be back in the jury room at 2:00 o'clock we will continue with Officer Holdorf's testimony at that time.

All right, thank you.

(WHEREUPON, the jury retires for lunch at 12:47 p.m.)

THE COURT: All right, sir, you may step down. Just remember that you are still -- that you are under oath and that you cannot discuss your

testimony with the Prosecutors.

THE WITNESS: Yes, ma'am.

THE COURT: Or anyone else.

All right, thank you.

(Witness steps down.)

THE COURT: All right, we will start back at 2:00 o'clock.

(WHEREUPON, court recessed for lunch.)

MS. BARRY: They have an issue.

MR. BAILEY: Oh, no, Judge, we are just talking about the statements. We really don't have any issues.

THE COURT: Okay. Let's bring them in.

MR. BAILEY: Do want him back on the stand?

THE COURT: Yes, you can bring him up. We are waiting on Ms. Bodman.

THE BAILIFF: Are you ready to bring them in, Your Honor?

THE COURT: Yes.

(WHEREUPON, the jury came into open court at approximately 2:33 p.m.)

THE BAILIFF: The jury is all present, Your Honor.

THE COURT: All right. Yes, ma'am, you may continue.

MS. BARRY: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUES

BY MS. BARRY:

Q Investigator Holdorf, you -- we watched the video. You were present the entire time is what you testified to before lunch, correct?

A Yes, ma'am, that's correct.

Q And what, if anything, did you do after the conclusion of that forensic interview?

A We spoke at length about what we felt happened, and then I would have tried to interview Mr. Barnes.

Q And did you in fact interview Mr. Barnes?

A I did.

Q What date did that happen?

A On June 18th, 2010.

Q How did that come about? Did you go to his house or -- tell the jury --

A I had his phone number. Typically when we work cases we are working several cases at one time. I don't have the luxury of just having one case and work it to it's conclusion and then get another case. I'll get two or three cases on a Monday, another case on a Tuesday, and a case or so on Wednesday, Thursday, so on. So I try to handle a lot of appointments on the phone.

And that is what I did on this case. I called Mr. Barnes, explained to him I was an investigator with the Sheriff's Department, I had a criminal case he was named as doing something and I wanted to talk to him about it.

Q And did he agree to speak with you?

A Yes, ma'am. I believe he came in the same day that I called.

Q And that date was June 18th?

A Yes, ma'am.

Q Where did you meet him at?

A I work at the Special Victims Unit. We have an office at the corner of Pineview and Garners Ferry, 1931 Pineview Road. It used to be the old State Farm building. We share the building with the Coroner's Office. And he came into our office and we sat in my cubicle.

Q And when he came into the Sheriff's Department he came voluntarily?

A Yes, ma'am.

Q Did he -- how did he get there? Did he drive or walk or --

A He drove himself. We have a little small waiting area. I'll go meet him, introduce myself, we'll go back to my cubicle and start talking.

Q Was he in custody at that time?
A No, he was not in custody. He was not placed in handcuffs, not told he could not leave.
Q And so he was free to leave?
A Yes, ma'am.
Q Did he voluntarily speak with you about this -- the allegations?
A Yes, ma'am. He gave me a written statement.
Q Prior to that, did he indicate he could read and write?
A Yes, ma'am.
Q Did he appear to be, in your experience as a law enforcement officer since '94, did he appear to be under the influence of drugs or alcohol?
A He did not. His questions made -- or his answers to my questions made sense. His speech was clear. He wasn't incoherent. He seemed very well knowing what he was doing.
Q Did you use threats or coercion or promises of leniency for him to speak with you?
A No, ma'am.
Q Was his statement freely and voluntarily given?
A Yes, ma'am.
Q What if anything did you tell him regarding the allegations in this case?

A That there had been an accusation of him improperly touching.

MR. BAILEY: Objection, Your Honor.

THE COURT: Yes, sir. State your objection.

MR. BAILEY: Judge, hearsay, time and place.

THE COURT: I'll see you all.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: The objection is sustained.

BY MS. BARRY:

Q After you had a conversation with the Defendant regarding the allegations, what if anything did he tell you?

A The first time he denied any type of improper touching. He admitted that they -- he gave baths to --

Q Do you have a copy of --

A I do.

Q -- the statement?

A Yes, ma'am.

Q And when you interview a suspect in a case, can you describe the process that you go through? Do you just go ahead and write a statement or do you talk to them first?

A To make sure that I understand what they are saying, I don't spend a lot of time typing up something that is going to change. What I'll do is I'll talk to them first and make sure that I understand what they are saying, listen to their story, maybe confront them some on the facts.

And then once I feel we're at a point where it is not moving anywhere or he is staying with his story, then we'll put it down on paper.

Q And is that what you did in this case?

A Yes, ma'am.

Q Do you have a copy of that statement from June 18, 2010?

A I have the statement.

Q The statement, the original statement?

A Yes, ma'am.

Q And this is a statement that -- who filled out the typed portion?

A I type it on my computer, and then I'll print it off. I have to go down the hall a little bit to get to the printer. But I type it up, question and answer, after we've been talking and just try to get it to flow almost as if you are reading a story.

I ask them what happened next or what then, so

they are each individual questions unless it is something that just can't be done. On this case it was a lot of individual questions.

Q And was the Defendant given an opportunity to review the statement?

A He was given the statement to read, make sure he understands it, reads what it says. Also as I'm typing it up where he was sitting he can see my computer very clearly and would see what I'm typing.

Q Did he make any changes to your statement?

A On the first one, on the second page I had was, w-a-s, I left off the "h," it is supposed to be wash. So, yes, ma'am.

Q He made that change?

A Yes, ma'am.

Q And who signed at the bottom?

A I swear him to it. He swears or affirms this is the truth, the whole truth, and nothing but the truth, and that he has made the statement of his own free will and accord without reward or intimidation. Then I have him sign it.

MS. BARRY: Your Honor, at this time we would offer the statement from June 18th, 2010, into evidence.

THE COURT: Any objection?

MR. BAILEY: No objection, Judge. I'm sorry.

(WHEREUPON, State's Exhibit No. 8 was marked for identification and received into evidence.)

MS. BARRY: State's Exhibit Number 8, Your Honor, we have blown up and would ask that Detective Holdorf come down and publish it for the jury.

THE COURT: Any objection?

MR. BAILEY: If we could just look at it first.

(Pause.)

MR. BAILEY: No objection, Judge.

BY MS. BARRY:

Q Investigator Holdorf, if you could come down and --

(Witness steps down.)

THE BAILIFF: Do you need the pointer over there?

THE COURT REPORTER: I am going to need the witness on the other side.

(Witness complies.)

BY MS. BARRY:

Q This is State's Exhibit Number 3 for ID. If you could -- the body of the statement, if you could

read that to the jury.

A All right. This is a template. The part above the pointer is just a fill-in-the-blank. And the part below the pointer general is just fill-in-the-blank. It is going to be on each page. On the bottom part on each page. The top part is just on the front page. And it is just: County of Richland. The person appeared before me this date and time that we appeared, which is June 18th, 2010, 13:26, which is military time for 1:26 in the afternoon. An officer duly and legally authorized to administer oaths in the above named county and state aforesaid, one John Barnes -- I put the date of birth, which is something I like to try to do so we will know who we are talking to -- of [redacted] That is going to be his home address or the address that we were given. A daytime telephone number of 776. Then the nighttime telephone number. And then from there I ask the questions and get a response. "Q" indicates the question and "R" is the response.

I asked questions. And again start with, who makes the following statement under oath, to wit. I asked the question:

What is your relationship with VICTIM [redacted],

VICTIM and Jeffrey ?

He said, I'm their biological father. I got a DNA test two years ago. VICTIM looks just like me. Dean cannot have kids, even though his name is on the birth certificate.

And he said that she wanted to change the custody arrangements and get child support from Dean. Dean and Amy were married when the kids were born.

If I can just kind of interrupt. When I give someone a statement, I explain to them this is their statement. I'm not here to make -- put words in their mouth, I'm not here to confuse them or anything else. If I ask a question more than once, it is not to slip you up, it is just to make sure I understand the question, or that I understand your answer to my question. And I am going to put what the response is, because it is not my statement.

I asked the question, do they call you dad?

And he said, they started to.

I asked the question, when is the last time you had contact with either VICTIM or Jeffrey?

He said, physically it was April 3rd before they went up to see VICTIM VICTIM sent something to me June 2nd and Jeffrey was May 12th.

I asked the question, what is your relationship with Amy Geiselman?

He said, I'm the father of her two sons. We don't talk anymore.

I asked the question, have you given VICTIM VICTIM a bath?

He said, yes, it was a bubble bath. He wanted candlelit baths. I'm afraid of open fires.

I asked, where was this at?

He says, at my house on .

Q Now, where is ?

A It is in the Hopkins area of Richland County. Not far from Garners Ferry Road.

Q Now, Page 2 of the statement.

A It continues with -- this is always going to be on the statement forms, as well as this part down here. It is going to be the same.

And this is where he corrected me. Did you wash VICTIM ?

And he answered, yes, mainly back and occasionally done his legs and arms.

I asked a question, did you wash his genitals?

His response was, if I did, it was not intentional.

I asked a question, how often would you give

VICTIM a bath?

His response was, once or twice a week. It was not every night. They prefer baths over showers.

I asked a question from that response just because he said they. Did you give Jeffrey a bath?

He said, no, he likes -- he did not like candles.

I asked a question, did you show or demonstrate to VICTIM or Jeffrey how to masturbate?

And he said no.

And the reason why I didn't show or demonstrate is just you try not to leave it too open. I'm trying to keep it where it is either yes or no. It is not a word game or anything else like that.

I asked a question based upon that answer, did you talk with him about masturbation?

He said, yes, I told him that it was okay and natural. I told him that was part of growing up.

I asked a question, why would VICTIM say you washed his genital area on more than one occasion?

His response was, I don't know.

I asked a question, is there any reason that

VICTIM would lie about this?

He said, on if like before when William Murray, Jr. took him down to Richland County. He had said that I had sexually abused him. That was -- this was a few years ago.

And then I asked a question, what is your relationship with Scarlett?

Q Then the last page.

A All right. The response was, I met her when she was four years old. I thought of her as a daughter. Scarlett wanted more -- wanted her mother all to herself, did not like me with her. She turned on me. She told the resource officer that I had touched her inappropriately. She accused me of ordering the Playboy channel. I started missing money from my laundromat. Amy was tending the store a couple of evenings a week. She would have Scarlett with her and I would have the boys. Some money came up missing. And I talked to Amy about it. I was not going to do anything because I wanted a strong relationship with Scarlett.

I asked a question, would VICTIM and Jeffrey spend the night at your house?

His response was, yes.

I asked a question, would you sleep in the same bed as them?

His response was, yes.

I asked a question, what would you wear?

His response was, shorts. I was always dressed and they were always dressed.

And then I had the same ending to all my statements, is there anything you'd like to add or change about your statement?

It is where they have a chance to go over it and make sure that this is how it is they want it to sound.

It says, no, nothing that I can think of at this time.

Q And then whose signature is at the bottom?

A This is the part where it says the statement was made in the presence of T. Holdorf, which is myself, of the Richland County Sheriff's Department. And then I sign it here. They sign it. Then I will notarize it.

Q And what is the sentence? Can you read that out?

A I make the statement of my own free will and accord without reward or intimidation. All the above is the truth, the whole truth, and nothing but the truth.

And that is on each page of the statement at the bottom.

Q And whose signature is that?

A That is Mr. John Barnes' signature.

Q And that date is?

A That is going to be the 18th of June, 2010.

(Witness returns to witness stand.)

Q So after he signed the statement, at that point was he arrested?

A He was not arrested, no, ma'am.

Q And did he leave the Sheriff's Department?

A He did. Based on me having two different accounts of what happened -- by two different accounts I mean the one I'm getting from the victim and the one I've gotten from Mr. Barnes. I left an open door. I wanted to make sure that he understood if there is anything else he needed to tell me that it was better if it came from him and made sure that he understood the lines of communication were open and that we felt confident the truth was going to come out.

Q But in your experience, did you feel the statement combined with the interview that you witnessed at the ARC, were they consistent with one another?

MR. BAILEY: Objection.

THE COURT: What is the objection?

MR. BAILEY: It is outside the scope of what he is here to be a witness to, Judge.

THE COURT: Can you rephrase the question, please?

BY MS. BARRY:

Q Did you feel you had enough probable cause to get a warrant?

A No, ma'am.

Q And what if anything did you tell the Defendant at that time?

A That is when I left it with him with -- if there is something more he needed to tell me, if there is something that he had left out to let me know, that the lines of communication were open.

Q So those lines of communication, did you have contact with the Defendant subsequent to this interview?

A Yes, ma'am. Approximately a week or so later he called and said there was more he wanted to tell me.

Q The Defendant called you?

A Yes, ma'am.

Q And what did you do?

A I was tied up on something at the time. I told him

that we would as soon as I could get an appointment to get him to come down and we would sit down and talk. When I'm talking to people I don't really use the word interview or interrogate, I talk to people. And when I talk to them there is not a shining a light down on their head. It is not a metal room or anything else. There is just a little metal table. It is my office cubicle. It is the same place where I talk to victims or anyone else. I don't touch anyone, I just try to get their side of events.

As I said, we make an appointment where you can come down and we can talk. And we made that appointment on July 1st.

Q And did he come in on July 1st?

A Yes, ma'am.

Q Was he in custody at that time?

A No, ma'am. He drove himself to and from this appointment.

Q He drove himself? He was not in custody?

A No, ma'am.

Q And was he free to leave?

A Yes, ma'am.

Q Did he voluntarily speak with you?

A Yes, ma'am.

Q Did you use any threats, coercion or promises of leniency against him to get him to talk to you?
A No, ma'am.
Q Did he general give you a statement freely and voluntarily?
A Yes, he did.
Q And on July 1st, what did the Defendant tell you?
A We started out talking and he said that -- we started out, he might have touched him to where it developed to what he put in the statement, which is where he does admit to touching him and he does admit to masturbating him.
Q Do you have a copy of the original statement?
A Yes, ma'am, I do, signed by both myself and Mr. Barnes.

MS. BARRY: Your Honor, at this time we would offer this into evidence.

THE COURT: Can you show it to Mr. Bailey?

MS. BARRY: Yes, ma'am.

MR. BAILEY: No objection, Judge.

(WHEREUPON, State's Exhibit No. 9 was marked for identification and received into evidence.)

Q State's Exhibit Number 9 is blown up on the board as well. If you would come down and publish that

to the jury as well?

A Yes, ma'am.

THE WITNESS: May I step down?

THE COURT: Yes, sir.

(Witness steps down.)

MS. BARRY: State's Exhibit Number 6 and 7 for ID, Your Honor?

MR. BAILEY: No objection.

(WHEREUPON, State's Exhibit No. 6 was marked for identification only.)

(WHEREUPON, State's Exhibit No. 7 was marked for identification only.)

Q So on July 1st, please tell the jury what Mr. Barnes told you.

A We have the same template as before. You see the date has changed. July 1st, 2010 at 16:55, which is military time for 4:55 p.m. The Defendant's name, address, daytime phone number, and then the nighttime phone number. He makes the following statement, to wit.

Do you want me to read it?

Q (Nods affirmatively.)

A Then general it is after we talked, it is just to open up to get some dialogue.

Is there any additional information you'd like

to add to your previous statement?

His response was, yes, I did explain to VICTIM how to masturbate. We were talking about sexuality and his interest in boys or girls. I told him that it was all right to have feelings about girls and if need be about boys. We were in the bathroom. VICTIM was in the bathtub taking a bath. I was clothed next to the bathtub. I was washing VICTIM. I don't know how one thing led to another. I noticed he had an erection. He was covered in bubble bath. I touched him on his lower leg and moved my hand from his ankle to his lower leg. I asked him if he was chicken. He said no. I went up to his knee. I asked him if he was chicken. And he said no. I moved to his lower thigh. And I asked him general. And he said no. I moved to his hip and asked if he was chicken. And he said no, that he was not chicken. I went to his other hip and brushed against his penis. We started talking about masturbation general. I started demonstrating on VICTIM how to masturbate. He said no, and I stopped.

I asked a question, how many times did this happen?

He said, just once.

I asked, how long did you masturbate VICTIM 1?

He said, just a few seconds.

Q Page 2, read that for the jury.

A It continues on Page 2.

I asked a question, were you aroused?

He stated, no.

I asked, what was the purpose of this?

He said, to teach VICTIM a safe outlet. I was concerned that he would get an erection from it.

I asked a question, how often would you wash VICTIM 1?

He said, about ten times. About five or six where I would wash him. They were mainly bubble baths and mostly on his back. I was in the bathroom with him five or six times. The other times he was by himself.

I asked a question, would you wash his genital area?

He said, not intentionally. I would stick with his feet and his back.

I asked a question, aside from the masturbation incident, how many times did you touch VICTIM 's genital area?

He stated, just that time. That was the on

time he made me aware of it.

I asked if he bathed Jeff.

He said, no.

Did you show Jeff how to masturbate?

He said, no.

And then I asked general, last question, is there anything you'd like to add or change about your statement?

He said, not at this time.

It is signed by Mr. Barnes on both pages and myself.

Q And what date is that?

A This is going to be the 1st of July.

Q So on July 1st, after the Defendant voluntarily gives you that statement, did you arrest him at that time?

A I did not.

Q And what if anything did you do after he left your office?

A I contacted Ray from the ARC. I wanted to have VICTIM re-interviewed since the first time he had said that nothing had happened, and to see if that was something we could do.

He indicated that was something we could do, that all I have to do is just reschedule it, it was

just a formality of signing the paperwork and they would get it in.

Q And did you do that?

A I did.

Q When was he re-interviewed at the ARC?

A VICTIM was -- he was out of town at the time with his father. And we had arrangements for when he came back on the 13th he would be interviewed again at the ARC.

Q And were you present during that interview?

A I was.

Q Did you speak with VICTIM prior to that second interview?

A No.

Q Did you speak with the family members and tell them that Mr. Barnes had given the statement regarding masturbation?

A I told them that Mr. Barnes had come in and given some additional information. What that information was was never told to them. And that was done on purpose so that -- I wanted to keep this as pure as we could. If something has gone on, I don't want to put words in anyone else's mouth. All I'm looking for is the truth. Nothing more, nothing less. And that it would have to -- you know, I

just need Victim to come in here and tell us the truth.

Q And you were present during that interview?

A Yes, ma'am.

Q And you witnessed that interview?

A Yes, ma'am.

Q Where did VICTIM say that, during the second interview, that the alleged event occurred?

A At Mr. Barnes' house on in Richland County.

Q And what time frame?

A He gave a time frame of -- I want to say it was a couple of weeks before the incident was reported to us.

Q A couple of weeks before it was reported?

A Yes, ma'am. It went over a span of several incidences.

Q And you had stated that you put his date of birth on the statement. Are you aware of how old Mr. Barnes is?

A Approximately 46.

Q After you watched the victim's interview at the ARC, coupled with his -- with Mr. Barnes' own statement that was freely and voluntarily given, what if anything did you do at that point?

A I would have met with Ms. Fent -- Ms. Bodman. Gone over the case with her to see if there is anything else that she feels we could have done at the time or anything that she had a problem with. Just basically seeking her approval to get a warrant. I'm not in a hurry to rush to any type of judgment. I just want to make sure we proceed with due caution.

Q And did you get a warrant?

A Yes, ma'am, we did.

Q And what was that warrant?

A It was for --

MR. BAILEY: Objection, Your Honor.

THE COURT: What is the objection?

MR. BAILEY: Relevance, Judge.

Q Did you arrest Mr. Barnes?

A I did, yes, ma'am. I'm sorry.

MS. BARRY: That's all I have, Your Honor.

THE COURT: Do you have any further questions? Any further questions?

MS. BARRY: No.

THE COURT: Okay. Please answer any questions that Mr. Bailey has.

MR. BAILEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BAILEY:

Q Investigator Holdorf?

A Yes.

Q You say you have been working with the Richland County Sheriff's Department since 1994?

A Yes, sir.

Q And you've been an investigator that long or --

A No, sir. I think in investigations from the summer of '97.

Q So about 17 years with the department, and you have 14 years as an investigator?

A Yes, sir.

Q And you investigate a lot of cases, I guess?

A Yes, sir.

Q Done a lot of investigations?

A Yes, sir.

Q I guess you have had to do a lot of paperwork also?

A Yes, sir.

Q Written a lot of investigative reports?

A Yes, sir.

Q And every time, like you said earlier, you are looking for the truth?

A Yes, sir.

Q And so it is important that you are detailed in these investigations, right?

A Yes, sir.
Q And it is important that you are thorough?
A Yes, sir.
Q And obviously it is important that you are accurate, right?
A (Nods affirmatively.)
Q And you first got this case in April of 2010, is that right?
A Yes, sir.
Q Okay. Around the time of VICTIM 's first ARC interview?
A Yes, sir.
Q Okay. And being that you are the lead investigator on this case, you wanted to check background between all the parties in this case, right?
A At least background.
Q Okay.
A Going through the database, yes, sir.
Q Okay. Because of these allegations you checked to see if there were any old allegations?
A Yes, sir.
Q Old allegations against Mr. Barnes?
A Yes, sir.
Q Made by the same people, Mr. Murray, Sr.?
A Yes, sir.

Q Who lived in Virginia?
A Yes, sir.
Q And you found that there had been some allegations, is that right?
A Yes, sir.
Q Okay. Somebody investigated those allegations, correct?
A Investigator Iseman.
Q Okay. So this was before your time, this was Investigator Iseman investigated this?
A Uh-huh.
Q Okay. Did you have a chance to read Investigator Iseman's report?
A I did.
Q And Investigator Iseman was trained I guess the same way you are at Richland County Sheriff's Department?
A I don't know the extent of her training.
Q You know Investigator Iseman I guess?
A She is no longer with the department.
Q Okay. Well, Investigator Iseman did a report, right?
A Yes, sir.
Q I assume she is also trained to be thorough?
A I don't know the extent of her training. We

differed on a couple of things.

Q All right. Well, Investigator Iseman did a report, right?

A Yes, sir.

Q And, in fact, Investigator Iseman interviewed VICTIM , didn't she?

A According to her notes, yes, sir.

Q Okay. And she interviewed him in the principal's office?

A According to her notes, yes, sir.

Q So the principal knew about it?

A According to her notes. That is what I'm getting --

Q Okay. She interviewed VICTIM in the principal's office?

A Yes, sir.

Q She was there, an officer of the law?

A Yes, sir.

Q She interviewed VICTIM , so her report says?

A Yes.

Q And you read this report?

A (No response.)

Q And this was based on allegations from Virginia, right?

A Yes, sir.

Q Okay. And she wrote that there was insufficient probable cause to continue with this case, isn't that correct?
A On her case.
Q Well, exactly. On her report --
A On her case, the whole basis for that investigation was not the same as this.
Q Okay.
A This was more inappropriate play. It was inappropriate -- more questionable behavior. It wasn't something that actually -- even if it were founded --
Q Well, let me -- I'm asking you a simple question.
A Okay.
Q She closed this case, is that right?
A She did.
Q She said there was no probable cause to go forward with this case?
A Something to that effect, yes, sir.
Q Now, you get this case, a brand new case?
A Yes, sir.
Q Allegations against John Barnes?
A Yes, sir.
Q Okay. Made by family in Virginia, Mr. Murray?
A Yes, sir.

Q Okay. And you didn't interview Mr. Barnes right away, right?
A No, sir.
Q Okay. You didn't interview VICTIM , right away?
A I never interviewed VICTIM .
Q Right. Because you know to send him to a trained professional?
A Right.
Q You set it up so that the Assessment Resource Center would interview VICTIM ?
A That is correct.
Q Okay. Did you know that the Solicitors in this case interviewed VICTIM ?
A Prior to going to trial, yes, sir.
Q Okay. Do you know if they videotaped those interviews?
A I do not believe they videotaped those interviews.
Q Okay. But you sent VICTIM to the Assessment Resource Center?
A That is correct.
Q You did see this interview?
A At the Resource Center?
Q Right? I mean, you were there?
A Yes, sir.
Q And VICTIM knew that you were watching the

interview, right?
A Yes, sir.
Q He even saw the video, he waived and said hello to you?
A Yes, sir.
Q So you saw the full interview from beginning to end?
A Yes, sir.
Q And Jeffrey, VICTIM 's little brother, was also interviewed by ARC, is that correct?
A Yes, sir.
Q Okay. Did you read the report on Jeffery's interview?
A I did.
Q Okay. And Jeffrey denied that anything inappropriate happened between Mr. Barnes, right?
A That is correct.
Q Okay. And he denied that he knew of anything inappropriate happening between his brother and Mr. Barnes, is that correct?
A That is correct.
Q And Jeffrey is supposed to be the only other person in the house at this alleged time, is that correct?
A Scarlett was in the house also. There are three kids total in the house.

Q I'm talking of the allegation times. Jeffrey was named -- the only person that was named at the house at the time of the alleged incident, isn't that correct?
A I believe that is correct.
Q So after VICTIM had an interview with ARC, you met with John Barnes, right?
A Yes, sir.
Q You invited him to come and speak?
A Yes, sir.
Q You asked him to meet with you in person?
A Yes, sir.
Q And this was June 18th?
A Yes, sir.
Q Okay. You told him that there were allegations against him, is that right?
A Yes, sir.
Q You told him that there were allegations from Virginia again, similar to the last time, right?
A The allegations weren't from Virginia, the allegations were of what happened here.
Q Okay. Well, the report, the statement you just read, you remember him saying, yes, you know, Mr. Murray had made allegations against me before?
A It is actually VICTIM . Victim makes

the allegation. Because he is a minor he cannot be the Plaintiff.

Q I'm sorry, let me -- give me just a second. You remember this, though, you remember him telling you, when William Murray, Jr. took him down to Richland County, he said I had sexually abused him before. This was a few years ago. You remember him saying that?

A Yes, sir.

Q Okay. And Mr. Barnes denied any wrongdoing in this conversation, is that correct?

A On the first conversation, yes, sir.

Q Okay. Denied any wrongdoing?

A Yes, sir.

Q Okay. Now, you met with him general July 1st?

A Yes, sir.

Q Mr. Barnes came into your office?

A Yes, sir.

Q It was just you and him?

A Yes, sir.

Q Okay. Nobody else in the office?

A I don't recall if there was anyone else.

Q Okay. You didn't videotape the interview, did you?

A The only capability we have to videotape interviews are in the polygraph room. The rest of our offices

are not videotaped.
Q Okay. But you didn't videotape the interview?
A No, we did not videotape interviews except for polygraph.
Q And you didn't do an audio recording of the interview?
A We don't do audio recording except for polygraph.
Q You say that no one ever audio records interviews at your office?
A It is the policy of the Sheriff's Department at this time we do not do that. I'm not saying that people don't, but we're not set up for that type of capability.
Q It seems to me I've seen it recorded before.
A I've been an investigator there for 13 years.
Q All right. So you are saying that nobody ever does any audio recordings of anybody, any interrogations?
A No, that is not correct. You are saying ever.
Q Okay, well, that's fine. That's fine.
A Yes, some people -- you can do some. We're not set up for that. We don't have a procedure in place for everyone to do that.
Q You didn't do it?
A This was not done.

Q You told them again that there were accusations made against him, right?
A Yes, sir.
Q By his son?
A Yes, sir.
Q And you said his son made these allegations?
A Yes, sir.
Q You said VICTIM made these allegations against Mr. Barnes?
A I don't think I came out and said exactly who said it, but there is an allegation that he inappropriately touched his son.
Q Okay.
A One of the questions in his statement was, why would VICTIM say this.
Q Okay. You had gone -- you had requested that VICTIM go to ARC, right?
A Yes, sir.
Q And you watched the ARC interview, like we talked about?
A Yes, sir.
Q And VICTIM and Ray were in the interview?
A Yes, sir.
Q In fact, we just watched that interview that you watched from, you know, outside the room, right?

A Yes.
Q And VICTIM doesn't say that John did anything inappropriate in that interview, did he?
A In that interview he said some things that are very questionable. Whether they rise to the level of probable cause for arrest is open to judgment, but he raised some things that I had questions and concerns about.
Q Okay. But you told -- you told John Barnes that VICTIM had said things that you hadn't seen VICTIM say, correct?
A I heard from other officers that this is what was being told, based upon what was in the incident report, then after talking to the family.
Q Okay. But you saw him. You got to see somebody ask VICTIM questions first-hand. And you didn't see VICTIM say the things that you told John Barnes he said, right?
A I didn't first-hand see it, no, but I had it from other family members who heard him say it and corroborated one another.
Q But, like you said earlier, you told him that those were VICTIM allegations, right?
A Uh-huh.
Q Okay. The justice system is hard. These kinds of

cases are hard, right?
A They are.
Q They are hard on children?
A (Nods affirmatively.)
Q They are hard on families?
A They are.
Q The whole process the system is hard on, right?
A I agree.
Q You told Mr. Barnes this would be hard on VICTIM ?
A I would have told him that this is -- on any type of case this is hard on everybody. I can't undo something once it is done.
Q Okay. But you talked to Mr. Barnes. You told him that this would -- that this whole process would be hard on VICTIM ?
A I'm not sure. I don't recall exactly saying those words.
Q You told Mr. Barnes it would be easier if he cooperated? You told Mr. Barnes it would be easier if he just said what was alleged, that VICTIM wouldn't have to go through anything else?
A I never told anyone just to say what is alleged. I tell them and keep repeating just to tell the truth and the whole truth. Never say what is alleged. I was not present. I don't know what exactly

happened, which is why I conduct an investigator and ask for their side of it.

Q Well, you typed up the statement, right?

A I typed up Mr. Barnes' statement.

Q You typed up a statement?

A Yes, sir.

Q He didn't write it out, you typed it up?

A I type up what he said, or his response to my questions.

Q You gave it to Mr. Barnes?

A Yes, sir.

Q You gave him a statement? You got Mr. Barnes to sign this typed up statement?

A He did so of his own free will, yes, sir.

Q Okay. And you notarized it?

A Yes, sir.

Q Because you were the only person there, on other witness?

A Yes, sir.

Q Okay. VICTIM mentions Facebook at Mr. Barnes house, right?

A (Nods affirmatively.)

Q And you know that the computer in the house is right beside the bathroom, right?

A I do not know that.

Q Okay. So you are the lead investigator in this case, correct?
A Yes, sir.
Q Okay. You didn't go to the house?
A When VICTIM recanted, which is what we say when someone first comes forward with an allegation and then when they go to the ARC, the Assessment Center where they are interviewed and they deny making that allegation, we call that a recant. Once that happens, that puts a case in a different status.
Q That's not what I'm asking. You didn't go to the house?
A I did not go to the house, no, sir.
Q You didn't send anybody to the house?
A No, sir.
Q You didn't check for candles?
A No, sir.
Q You didn't check for bubble baths?
A No, sir.
Q Okay. This investigation, I guess from when you first got it, to when Mr. Barnes was arrested in September is about five months long, would you say about five months almost?
A Approximately, yes, sir.
Q Okay. And your report, your report is less than

two pages, is that right?

A Yes, sir.

Q Okay. Less than two pages for a five-month investigation, is that correct?

A Yes, sir.

Q You thought this was enough?

A Yes, sir.

Q Okay. You thought Mr. Barnes was guilty of this, am I right?

A I feel that Mr. Barnes is guilty of this, that's correct.

Q You were building a case, weren't you?

A I'm looking for the truth.

Q You were building a case?

A You can say that, yes, sir.

Q All right, thank you.

MR. BAILEY: No further questions, Judge.

THE COURT: Please answer any questions the State may have.

MS. BARRY: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MS. BARRY:

Q Mr. Bailey asked you on cross about the old allegations.

A Yes, ma'am.

Q From Investigator Iseman. What were the allegations?

A It was inappropriate play, inappropriate games. It was basically something that even if it were founded would come across as --

THE COURT REPORTER: I'm sorry, come across as what?

A As non-criminal. Wouldn't meet the criminal element.

Q So nothing illegal was going on?

A From what I recall reading, and I really haven't gone over her case too much since then, no, ma'am. It was -- if you want I can read what the complaint was, and what I have is the complaint.

Q Yes.

A Okay. The complainant, Mr. Murray, states that his minor sons had been staying with the above subject, Mr. Barnes, overnight. The subject let's Victim One, VICTIM , sleep in his water bed with him and the other child sleep on the couch. The mother has denied that she has let the children stay at the residence with Mr. Barnes. The complainant stated that his children -- stated that they play inappropriate games at his house. The children were told not to say anything about this incident.

The complainant is not sure if sexual contact has occurred but wishes for the incident to be investigated.

It has CVR, which is short for Crime Victims' Rights form, was issued to the complainant.

Q But no charges arose out of that?

A No charges arose.

MS. BARRY: Beg the Court's indulgence.

(Pause.)

MS. BARRY: That's all I have.

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

MR. BAILEY: I'm sorry, Judge. I'd like to re-cross real quick.

THE COURT: Based on her redirect?

MR. BAILEY: Yes, ma'am. Yes, ma'am.

RECROSS-EXAMINATION

BY MR. BAILEY:

Q All right. Investigator, in reference to that same investigation, there was also a report made by Iseman, there was also an investigation by Investigator Martin, isn't that correct?

A He didn't do an investigation. He did like a paragraph basically saying this was going to be looked at, that type of thing.

Q And he said, the complainant and the victim's mother have a history with problems over custody and other child issues, am I right?

A Yes, sir.

Q Okay. And, I'm sorry, one more thing. The date of that Iseman interview -- I'm sorry, what was the date of the Iseman report?

A It looks like she started her investigation on 1/20/09.

Q All right, thank you.

MR. BAILEY: No further questions.

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

THE WITNESS: Thank you, Judge.

(Witness steps down.)

THE COURT: Please call your next witness.

MS. BARRY: Beg the Court's indulgence.

(Pause.)

MS. BARRY: Your Honor, at this time the State rests.

THE COURT: All right, ladies and gentlemen of the jury, at this time there are matters of law that I need to take up outside the presence of the jury. I am going to send you back in the jury room for a break, and we will bring you back shortly.

Thank you.

(WHEREUPON, the jury retires to the jury room at 3:24 p.m.)

THE COURT: All right, the State has rested. Anything from the Defendant?

MR. COLLINS: Yes, Your Honor. For the record, we would like to renew all of our previous objections and all of our previous mistrial motions. In particular, going back to the ruling on our request for an evidentiary hearing when we were moving to remove at least one of the attorneys from the case according to a violation of Rule 3.7 of the Rules of Professional Conduct.

At this point in time we would still like an evidentiary hearing. I don't believe it is too late. Well, we would like an evidentiary hearing at this time to determine that there are necessary witnesses. We have seen it come up time and time general where they reference to what they have done with the child.

They even asked the question of their own expert if what they did was proper. We believe it is a necessary part of our defense to cross-examine the last two people that interviewed the child the last three times before he testified in Court. Some of the procedures that they used we feel are

improper with the interview of the children. So we would ask for an evidentiary hearing on that. If they are found to be a necessary witness, that the on remedy would be a mistrial at this point in time because they have shown an authority as an advocate in this case. And according to the State versus Sierra they wouldn't be able to proceed on this case.

And also -- would you like for me to go one at a time or just put it all on the record?

THE COURT: Go ahead. And then I will give them an opportunity to respond.

MR. COLLINS: So all of them at once or one at a time?

THE COURT: You can go ahead.

MR. COLLINS: Okay. The second motion, like I said, I specifically mentioned in my motion for continuance when we got the new information we did not have about the victim, alleged victim in this case when he testified he went into much more detail as far as using a cup and saying that he had some type of sensation from peeing but yet couldn't pee.

The on information that we were provided is that he would use an excuse to pee to get

Mr. Barnes to stop.

We would move for a continuance so that we could -- I'm sorry, I misstated that -- renew our motion for mistrial based on that violation of Rule 5 and Brady and Riddle.

The motion for continuance, I would like to renew that for an expert to determine how showing a child two videos of previous interviews can affect his memory, his recall of events, and how he came up with more details about the crime.

Beg the Court's indulgence.

(Pause.)

MR. COLLINS: I renew our objection to the witness Ray Olszewski being allowed to stay in the courtroom before being qualified as an expert outside of the original hearing that we had.

The other issue would be to address the preservation of the case file from ARC, what we are going to do with that.

And then lastly we are moving for a directed verdict based on the fact that in the light most favorable to the prosecution, they haven't presented their case to the point where a jury can find a guilty verdict.

And, general, going back to the ruling on the

video that you made yesterday, the ruling that if we introduced the first video from the time the child was 11 years old when the statement was taken, that the second video would be allowed to come in through rebuttal through the State. That hamstrung our strategy of defense given the fact that the second video coming in with the first, the prejudicial value of the second video outweighed the probative value that -- and the strategy that we wanted to employ by using the first video.

And I guess we'll address the jury charge when we get to that point, Your Honor.

THE COURT: I haven't ruled on that.

Yes, ma'am?

MS. BARRY: Thank you, Your Honor. As far as his first motion, the Rule 3.7, the new -- he said that we mentioned it numerous times, that the State mentioned numerous times. I believe it was the Defense that mentioned it numerous times that we had interviewed the victim, made a big deal about it with the forensic interviewer.

The on time I think I responded in redirect based on his question whether or not it was proper for a Prosecutor to allow a victim to review their DVD prior to testimony, and Ray Olszewski said that

was proper. I did not put myself as a witness nor Ms. Bodman as a witness. I used general terms.

So the -- him categorizing it as us talking about it numerous times, we did not, they did.

As far as the motion for a continuance based on the victim giving much more detail, we did provide the Defense with the Brady letter. They had an opportunity to cross the victim on it. And I'm not sure they even asked him about much more detail or what detail he gave us.

They did talk about him meeting with us, and I think the victim said he met three times. One time was just a meet and greet, and then two other times.

Number Three, Ray Olszewski being allowed to stay in the courtroom, he was qualified as an expert; therefore, he would be allowed under the rules to stay in the courtroom.

The motion for a directed verdict, I think there is ample evidence on the record supporting this charge -- this indictment going to the jury on lewd act on a minor.

We established through not on the victim himself who testified, the Defendant's own statement, he admits to committing a lewd act on

his son.

The child is -- was 11 years old at the time, and the Defendant was in his mid-40s. Clearly that is a lewd act and should go to the jury at this time.

And the admission of the videotape under 17-23-175, Your Honor has reviewed both videotapes and found them to meet the criteria under the law, that the statement was elicited -- was not elicited by leading questions, conducted by a trained forensic interviewer containing detailed accounts of the crime, that the victim was under the age of 11 at the time. And Your Honor ruled appropriately that the State's position -- that the video was properly admitted.

THE COURT: All right. As to your motion, I'm going to Rule 3.7, the testimony thus far, all questions regarding any conversations with them during their trial preparation have been presented by the Defense. Any comments regarding what was said, I believe there was an objection and I sustained the objection when you -- about that Ms. Bodman asked a question I believe of the child regarding any conversation between them, all questions have been presented by the Defense. Any

questions that arose on by the Prosecution have been in response to those questions.

Once again, you all phrased it as an interview where it appears to be trial preparation according to the testimony of the victim and also properly given by Ms. Bodman at the beginning of the case.

As to the continuance, motion for continuance, I will deny it.

The violation of Rule 5 is denied.

As to -- I don't know how to pronounce his name -- Mr. Olszewski staying in the courtroom, he was qualified as an expert. He was qualified before I made the decision. Furthermore, you all questioned him about testimony that came from the stand in his expert capacity. So that is denied.

Preservation of the case file is -- the problem we have here is that this is not a file -- the State has turned over everything that they received pursuant to their subpoena. You all did not subpoena anything regarding the case. I will make it a -- if he can copy it and make it a Court Exhibit for -- it will be sealed. It will be a Court Exhibit, but the State has not violated any rule. Under Rule 5 there is no obligation for them to turn over anything that they don't have. This

is not an investigative file with the police. This is a file with ARC that either side had ample opportunity to subpoena.

As to ruling on the video and the second video, I believe my ruling on the video was based on your request that it -- regarding the admissibility of the video. The second video was to be admitted for rebuttal purposes and rebuttal purposes on. And that if they entered the video that is what would have happened. The Defendant was not prejudiced by it in any way because I believe that what the Defense has asked for is in fact what has happened, even though it did not happen the way that you all wanted it to happen, but there is no prejudicial effect on -- the Defendant is not prejudiced by the airing of the video something that his counsel has asked for.

And finally there is -- I find that there is sufficient issues, genuine issues of fact to submit to the jury. And therefore your motion for directed verdict is denied.

The issue regarding the jury charge will be decided when we have our charge conference.

If you all have something to submit for me to look at, I'll be glad to look at it at the time we

discuss the jury charges.

MR. COLLINS: And just one last thing, I want to make sure that we preserve the record.

Our intention is to call both of these Prosecutors as witnesses in the trial. If your ruling is that we're not allowed to do it, that is fine, but I just want to make sure it is preserved for the record that our intention still is to call them as witnesses for the Defense.

THE COURT: All right. Well, you can't call them at this point. We have made that ruling. I made that ruling. I think you have made your record at least two times or more as to calling them as witnesses.

So you may call your first witness, but it won't be Ms. Bodman or Ms. Barry.

MR. COLLINS: Thank you, Your Honor.

THE COURT: All right. And I need to speak with the Defendant regarding his rights.

Let me have you stand up, sir.

(WHEREUPON, the Defendant stands.)

THE CLERK: Raise your right hand.

(WHEREUPON, the Defendant complies.)

THE CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth,

so help you God?

THE DEFENDANT: I do.

THE COURT: Mr. -- and you are John Peter Barnes?

THE DEFENDANT: That is correct.

THE COURT: And, sir, there is -- I have an indictment here for lewd act on a minor child. And it is my understanding that you have pled not guilty to this charge. And it is my responsibility at this time to inform you of your constitutional rights.

Sir, you have a right to remain silent. You do not have to testify. The burden would be solely upon the State to prove your guilt beyond a reasonable doubt. Sir, you do not have to present any evidence. The burden is totally upon the State to prove your guilt beyond a reasonable doubt.

However, sir, if you wish to testify, you can testify, but that is a decision that you and your attorneys must make. I cannot tell you to testify, I cannot ask you to testify, because the burden is on the State. You do not have to prove anything.

However, sir, if you wish to testify, now would be the time to do it in your case, in your defense in putting up any testimony.

I will give you an opportunity to speak with your lawyers and make a decision as to whether or not you wish to testify, but, once again, sir, you do not have to unless you choose to. The burden is on the State to prove you guilty beyond a reasonable doubt. And you do have the right to remain silent.

All right. Thank you.

All right, it is 3:39. We'll take -- I'll let you all talk to him and then you can let me know during the course of your case if he is going to testify.

But just for scheduling purposes, do you all think we are going to get through testimony? You don't have to tell me if he is going to testify or not.

MR. BAILEY: I mean, he is going to testify, Judge. And I think -- I mean, I don't know where they want to go with cross, but he is the on witness, other than the intended witnesses we will not be allowed to call, he is the on witness we intend to call at this point. And I don't believe it is going to be -- I think that will probably be -- that will be the extent of our case. I don't know how long they are going to cross-examine, and

I'm sure they don't know how long they are going to cross-examine.

THE COURT: So we may, there is a possibility we may finish with testimony, unless y'all have something on redirect, we may finish today and be able to do a charge conference and all.

Okay. Well, we'll continue. We will take about a five minute break.

Did you have something, Ms. Bodman?

MS. BODMAN: I do. Just one thing for the Court's consideration and what we think needs to be on the record, and we may need to -- you may have done this and I just need to go back and look, because when you initially made the findings, we watched the two videos and you made the findings, I don't recall if you actually made the finding regarding the statute just as to Video One or if you also made those specific findings as to Video Two, because in that we have requested this charge, I would ask the Court if it is your opinion, if the conclusion is that you made this, that basically all the criteria were met except for that -- the age, that you did find under the totality of the circumstances, you know, there were no leading questions, that all but that one prong was made,

and since that one prong was not made of him being under the age of 12, that is truly the reason for its not being admitted, because I wouldn't want -- I would just want the record to reflect that other than that age the videotape would have been admissible so that any instruction that is crafted to the jury doesn't misrepresent what Your Honor's opinion is about that video, if that makes -- I don't know if I have made myself clear.

THE COURT: I'm not sure if I -- the request was Video One and it wasn't Video Two.

MS. BODMAN: But I think even under probably the rule of optional completeness, you probably would need to still say that it wasn't elicited by leading questions, that the interviewer was -- it is the same interviewer, so some of the findings naturally flow over to the second interview because if he was qualified to do the first one he would have been a trained interviewer for the second one.

But since there are multiple prongs in order for a videotape to be admissible, and if the Court is going to craft one that is basically telling the jury that the child has to be under the age of 12, I would just want to make sure that Your Honor's opinion was that absent that age everything else,

all the other elements were in fact met.

THE COURT: And see I'm not sure if that was my ruling. My ruling was based on it being -- the first one being presented and that the second one would come in under the doctrine of completeness, not under -- the second one was -- cannot -- does not come in under the statute by itself.

MS. BODMAN: Right, it doesn't come into the statute, but what I'm asking for the Court to make a ruling on is why that second one doesn't. What of that statute is violated that makes it not admissible. Is it because it elicited -- because leading questions were elicited? Just so that the record is clear. You know what I mean?

THE COURT: I understand what you are saying, but I don't think we went through each of the -- like I went through each element with Mr. Collins on the first one, and I asked him to explain to me as to Number Three was the one that there was an issue regarding a detailed account of the alleged offense. And we didn't -- I did not do that with the second one. The second one was for rebuttal purposes and rebuttal purposes on.

MS. BODMAN: So that is what I'm asking the Court. If we're going to give this instruction to

the jury about the law, I want to make sure that it is a true statement of the law.

MR. COLLINS: Our position is you are commenting on contents of a video that is not in evidence. That is commenting on the facts. That is outside --

THE COURT: And I can't comment on the facts.

MS. BODMAN: Right. Right. I'm not asking you to do it in the charge, I'm saying for the appellate record, that outside the presence of the jury, just like you did Video Number One, you are not going to tell the jury, ladies and gentlemen, on Video Number One I found that this statement has internal -- that -- none of your findings, those findings were on the record regarding Video Number One. You walked through them on the record for the appellate record that you made the appropriate findings, just like we did for the Defendant's statement, his confession. You made the appropriate findings it was freely, voluntarily -- none of that goes to the jury that you made those findings.

What I'm saying, for the appellate record, to make sure that this instruction that we give to the jury is a true statement of the video and why it is

not coming in. I'm asking the Court -- I wasn't sure if you did it as to Video Number Two, so if you haven't done it as to Video Number Two, if we are going to give this instruction to the jury, I'm asking you to make those findings that, I watched Video Number Two and it is, you know, the statement was not elicited by leading questions, the interviewer had been trained, it did contain a detail account of the offense, there was internal coherence. However, I find that this child was not over the age -- or under the age of -- excuse me -- I find the child was over the age of 12; therefore, that is the basis for its inadmissibility.

If you didn't find -- if you don't believe that the video contains one of these other factors or contains the appropriate factors regarding the totality of the circumstances, then, you know, then that is Your Honor's finding, but I'm just asking you to -- so that we know when that instruction goes to the jury about the law and how the child has to be over this age.

THE COURT: And I haven't ruled that that is going to go -- I said we would -- I will entertain proposed charges from you all, because he tried to object to it earlier, and I told him that I haven't

ruled on it yet.

So I need to see the charges, because we need to be really careful. I can't comment on the law -- I mean, on the facts. Which, getting into the age, it could be perceived as a comment on the facts. I can't comment on the facts. I can't -- the on thing the jurors need to be concerned with is whether or not it is -- whether -- whatever they have in front of them, if I determine that it is admissible, it is admissible if I determine it. If it is not admissible, it is not admissible.

But that is why I asked you all to draft some type of charge regarding it and I will consider it at that time, but I have not made a ruling. I think that is what I have said the whole time is that I have not made a ruling, I will think about it. I said earlier that I think the jurors would probably be confused if there is no clarification, but I have not made a ruling on it.

Now, what I -- I understand what you are saying as to the ruling as to the admissibility of Video Two. The problem is I don't even get into considering those factors because the first part of it says that the child has to be 12. So I can't make a finding -- I'm not making a finding that I

considered those because the first part of the statute does not apply to this video.

MS. BODMAN: Okay. So you never even got to -- okay. I guess -- I am --

THE COURT: I guess that is my ruling. I didn't evaluate it.

MS. BODMAN: And I guess with all due respect to the Court, we specifically heard you say that you were in fact going to give an instruction, the exact words of the instruction was yet to be determined, but that you were going to be telling this jury that in order for the statement to be admissible the child had to be under the age of 12.

And that was in reliance of that ruling, although we didn't know the specific words of the instruction, but that in fact you were giving this instruction to the jury is why we admitted that tape.

THE COURT: I think I did -- well, now, I'll have Debbie go back and look at it, but I think my words were that I will make a decision on that at the time of the charge. We -- when we do charges we will make a decision. I said I would like -- I said I was leaning towards doing something along the lines, and I just said not saying that it would

be something -- and I think I used the word simple as saying that the child of 12, dada-dada-dada-da, but then that does get into commenting on the facts.

I will consider a charge -- I will try to draft something, but I didn't say exactly what it would say in that charge.

MS. BODMAN: Right. But that you did in fact say -- our understanding and what we heard you say is that you were in fact giving the charge, we just hadn't decided on the language of the charge.

THE COURT: But taking into consideration I can't comment on the facts. All right.

MS. BODMAN: Right.

THE COURT: All right. Anything else?

MR. COLLINS: We'd like a -- I'm kind of -- a proposed charge on the statute.

THE COURT: If you'd like to.

MR. COLLINS: We could propose a charge on the basic instruction of the jury to consider evidence that has been presented -- from testimony and evidence that has been admissible in court, you are not to consider something that is not in evidence.

Because that is our concern. If you instruct them on something that is not in evidence, it is

inadmissible for a reason, and by instructing them on something that is not in evidence, you are drawing attention and having them consider something that is not in evidence. And that is our concern.

THE COURT: All right. We'll take five minutes.

(WHEREUPON, a break was taken.)

THE COURT: All right, I went back and looked at the conversation. I don't remember if it was earlier today or yesterday, it must have been earlier today. And what I said was that I was not making a decision at this time. I am inclined to -- I am inclined to charge something. And then I went on with Mr. Collins as to why. And I talked about the jury being confused about the second video, but I'm inclined to charge something regarding the absence of the second video. I did not get into any details. And I did not make a decision. I said I was inclined to. And I still haven't made a decision, even though y'all are trying to make me make a decision right now.

So if you all have anything that you want me to consider, I will consider that in your proposed jury charges, but I have not made a decision as to

what we are going to charge. Aaron is going to try to draft something also.

All right. Are you all ready?

MR. BAILEY: Yes, Your Honor.

THE COURT: You can bring them in.

(WHEREUPON, the jury came into open court at approximately 4:12 p.m.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, the State has rested. At this time the Defense will present its case.

Yes, sir, please call your first witness.

MR. BAILEY: Thank you, Your Honor. The Defense calls John Barnes to the stand.

(Witness approaches.)

THE BAILIFF: Place your left hand on the Bible, and raise your right hand, and face the clerk.

(Witness complies.)

THE CLERK: Do you swear or affirm the testimony you are about give in this case will be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I swear.

THE CLERK: Have a seat in the witness box.

(Witness seated.)

THE CLERK: State your full name for the record, please.

THE WITNESS: My name is John Peter Barnes.

JOHN PETER BARNES,

after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BAILEY:

Q Good afternoon, Mr. Barnes. Can you tell us a little bit about yourself to the jury? Tell us your age, where you are from, where did you grow up.

A I'm 47. I grew up an army brat, so the first ten years of my life I traveled over the southeast and to Germany.

THE COURT REPORTER: Can you speak in the microphone, please?

A Oh, I'm sorry. I lived briefly on my grandparent's farm in Germany. And since my father retired when I was 11 years old, I spent almost my entire life here in Columbia.

Q So how long have you been in -- when did you move to Richland County?

A 1975.

Q And where did you graduate from high school?
A Lower Richland.
Q What did you do after high school?
A Went straight to the navy. I spent a few years in the navy and then a few years in construction after that, made some concrete pipe and went to -- ended up in retail after that.
Q And would you say you have done a lot of physical labor?
A Yes, I did.
Q I think everybody notices you have crutches with you today. Could you explain why?
A The work that I was doing, it caused damage to my back and I ended up being a technician for office equipment and driving around a lot, driving thousands of miles every month, and it just caused a steady deterioration of my back.
Q Okay. What kind of work are you doing right now?
A I work at a computer doing primarily accounts receivables, processing invoice checks, checks that people pay us.
Q Did you have any additional jobs on top of that before you were arrested on this charge -- on this?
A I used to own a laundromat.
Q And how long did you own a laundromat?

A Approximately six years.
Q Mr. Barnes, I'd like to talk about Amy Geiselman. How did you meet Ms. Geiselman, the mother of VICTIM and Jeffrey?
A I met her through the laundromat. She was a --
THE COURT REPORTER: You are going to have to speak up, I'm sorry.
A Oh, I'm sorry. I'm kind of a soft-spoken guy. I met her through the laundromat. She started being a regular customer on my nights to work. I had worked with the laundromat for ten years before my brother -- before I bought it. And she started coming in on nights that I was working. And after a while we started talking and then we started dating and we got engaged to be married.
Q Okay. Did she tell you if she was married at the time?
A No. She said she was divorced.
Q Okay. Was she divorced?
A No, she was not.
Q Okay. What happened when you found this out?
A I broke it off.
Q But did you see her general?
A Yes. She made contact with me later and she said she still wanted to get divorced and marry me. And

this went on and off for five years.

Q When did you find out that VICTIM and Jeffrey were -- that you were the father of her sons, VICTIM and Jeffrey?

A For Jeffrey I did not find out until the DNA tests. For VICTIM she first told me when she was pregnant that she was pregnant by me. Then she said she was not pregnant by me. Then when the child was born she said it was mine. And then she turned around and said it was not mine.

And after I found out that she had left her husband, I dropped it. I gave up on it.

Q Did you ever get confirmation that he was yours?

A Yes. We had a DNA test.

Q Whose idea was it to have a DNA test?

A Amy wanted the DNA test on VICTIM .

Q And why did she want the DNA test?

A To try to -- she told me it was to try to readjust her custody and child support that she had with William Jr.

Q To your knowledge, was she getting along with William Jr.?

A They had never gotten along.

Q Did Amy -- did you start spending time with VICTIM after you found out, after you got confirmation

that they were your sons?

I'm sorry, when did you start spending time with VICTIM and Jeffrey?

A When the guys wanted to move back from Ohio I started spending time with the boys. And then when it came time for the DNA tests, we told VICTIM and Jeffrey what the tests were for, to determine whether or not the boys were my sons.

Q How often when they moved back did you spend time with VICTIM and Jeffrey?

A Initially it was just a little bit of time here and there, maybe, you know, a couple of hours here and there a day, here and there. Maybe on occasion spend a weekend.

As VICTIM noted, when they first started spending time with me at my house, Vicky and J.D. were living with me. So I had set up a tent in the back yard for us to sleep in initially, but that didn't last very long.

And then they didn't start spending time with me during the week until they started baseball.

Q Did you take them to the baseball practice?

A Yes, I took them to the baseball practice and helped coach the team during practice.

Q Did you do anything else when they were at your

house or other activities with them?

A Played board games and wrestled around with them as much as I could, watched TV, played games on the computers. I let them play on Facebook, play the games on Facebook.

Q Did they seem to have a good time?

A They seemed to.

Q So you did eventually tell VICTIM he was your son?

A Yes. I told them that I was tired of lying to him, and I told him that I was his biological father.

Q Did this change the relationship with him and Jeffrey in any way?

A Yes. They were more open to me and more -- they seemed to be -- want to spend more time with me after that.

Q Did you say you were closer with them at that point?

A Yes.

Q Do you love your sons?

A They are the world to me. I don't love anything more than my sons.

Q Mr. Barnes, I'd like to talk a little bit about why we're here today.

Can you tell us about when you first learned of the allegation?

A I was going through a very hard time. My mother had been recently diagnosed with Alzheimer's. And I was in the process of losing my store. I was under a lot of stress. And after that last night with the boys at my house, I -- I mean, I knew I wasn't going to hear from them over the spring break, but I just didn't hear from them general except a couple of times on Facebook when they tried to contact me over Facebook. But I didn't know why I couldn't talk to them.

With everything going on, I was devastated by what was happening in my life, and then one day I get a phone call. It is Investigator Holdorf.

He identified himself as who he was and who he worked for. And he asked me if I knew VICTIM --- and Jeffrey .

I told him that I did.

And he told me that they had made allegations against me.

And he asked me if I could come in -- to go see him.

Q And did you hear anything about these kind of allegations before?

A No.

Q So you went in to see Mr. Holdorf?

A Yes, I did.
Q Was that on June 18th of 2010?
A Yes, it was.
Q And this was your first meeting with him?
A Yes, it was.
Q Okay. How did you feel general at this time in your life?
A I was already extremely depressed because of losing my mother, you know, worried about my father, if his cancer was going to come back. I mean, I knew it was just a matter of time before I lost my laundromat unless I could find some way to save it. And now these -- the renewed fight between all the parents. It was just killing me.
Q So would you say that the allegations upset you?
A Very much so.
Q When you first -- when you met with Investigator Holdorf, what did he say to you?
A Well, he started off with pleasantries.

And I explained to him everything about what was going on in my life.

And he told me that VICTIM had made allegations that I was rolling around naked on the bed with him, sleeping naked with him, and masturbating him frequently in the bathtub.

Q So he said a bunch of things to you?
A Yes, he did.
Q Okay. And how did this make you feel?
A Each -- each word was ripping my heart out. I couldn't take it.
Q But on that day, you did give him a statement the first time?
A Yes, I did.
Q Okay. Did you talk to him about baths that VICTIM took at your house?
A Yes. I told him that it was VICTIM 's idea, you know, that VICTIM wanted the -- wanted baths. In hindsight now I think it was a bad idea, but I let VICTIM have the baths.
Q Did you explain -- or did he ask about candles?
A Yes, he did. General, that was VICTIM 's idea. VICTIM wanted the candles.
Q Did you have any attitudes about candles in your house?
A No open flames, at least not around the children. As I told Mr. Holdorf, I'm terrified of open fires just unattended. So when I was living in Cedarwood there was a rash of arsons, a bunch of buildings were being burned down. And based on the pattern of the buildings being burned, mine was very

soon -- mine was possibly next or very soon to be burned down.

Q Okay. I'm sorry, I just want to back up a second. You said when you were at Cedarwood. Was this your last residence?

A No, this was many years ago. This was many years ago. This was right about the time VICTIM I was born.

Q You were concerned about fire?

A Yes.

Q And fire safety?

A Right. And I never let the boys around the open fire by themselves. You know, if they wanted to stoke the fire in the fireplace, which is in my living room, they were not allowed near the fireplace unless I was in the living room with them. You know, if I had to leave the living room for any reason they had to stay away from the fireplace until I got back.

If -- you know, like if one boy was in the bedroom and the other was in the living room, then if I left, then whoever was in the living room left with me.

Q Did you allow VICTIM I to be in the bathroom with flames unsupervised?

A No.
Q Now, is this what you told -- basically what you just told the jury, is this what you told -- these events, is this what you told Investigator Holdorf in June?
A Right.
Q You told this on June 18th, right?
A Correct.
Q Then you left the interview with Investigator Holdorf, is that correct?

I'm sorry, did you meet with him again at a later time?

A Well, I did not leave Investigator Holdorf until -- well, he informed me that VICTIM was continuing with the interviews. He said that another interview was already scheduled for the ARC. And he asked me to take a polygraph. He asked if I would volunteer for a polygraph. And then he released me, let me -- or he allowed me to leave.
Q Okay. Well, when you left -- you eventually spoke with Investigator Holdorf again?
A Yes, I did.
Q Okay. When did you meet with him general? Do you remember the date?
A July. July 1st.

Q Okay. How did you feel at this time?
A I wanted to die. I had lost my sons. I had lost everything in my life that was meaningful. The one person I used to turn to was my mother. She is gone. The on strength that I had left was my sons, and Amy took them from me general. And the thought of VICTIM having to go through all of this was too much for me to bear. I wanted to -- I wanted it to end. I wanted to protect VICTIM . I did not want him to go through any more of those interviews. I did not want him having to testify against all of his parents in any way.
Q Is this why you met with Investigator Holdorf general?
A Yes, it is.
Q Were you clear-headed at the time?
A I don't know if I was clear-headed. I wanted to -- since I could not think of any other way to commit suicide, I was going to try suicide by police.
Q So do you think that sounds like you were clear-headed?
A No.
Q When you spoke to Investigator Holdorf this time, what did he say to you?
A At one point he told me that, you know, the

allegations that VICTIM said first, you know, they were no big deal, you know, there is no handbook for parenting, you know, parents make mistakes. And, you know, and if any of the allegations are true, it was just a mistake.

Q Did he -- did you feel like after speaking to him that it would -- that -- I'm sorry. You say that Investigator Holdorf led you to believe that this was not a big deal?

A Correct.

Q Did Investigator Holdorf's words lead you to believe that it would be easier if you signed the statement?

A I let him know under no certain terms I was there to protect VICTIM to -- so that he would not have to go through any more interviews. I would do whatever it took to protect VICTIM .

Q And what did you think that would take?

A I don't know.

Q At the time were you aware of the trouble that this kind of thing could cause, signing this kind of statement?

A No, I did not.

Q Did you think that signing a statement would make it easier on everybody?

A I -- yes, I did.
Q If you could go back, would you sign the statement again?
A No, I would not.
Q Was anybody with you when you signed the statement?
A Just Mr. Holdorf.
Q Do you know anything about the legal system?
A Very little.
Q Did he type up the statement, Investigator Holdorf?
A Yes, he did.
Q You didn't write that statement?
A No, I did not.
Q At this time did you feel like you had much to live for?
A No, I did not.
Q Did you have any hope of seeing your sons general?
A No. I don't believe I will ever see my sons general.
Q What has changed between then, the time you gave the statement, and now?
A I have advocates now telling me what is right as far as what to do, and I've got people telling me not to commit suicide. I've got people trying to convince me I've got reasons to live, even though I can't see it.

Q Well, do you -- even though you still feel upset, would you say you are thinking more clearly now?
A Yes.
Q Mr. Barnes, I would like to address these allegations directly. Did you ever molest your son?
A No, I did not.
Q Did you ever touch his private parts inappropriately?
A No, I did not.
Q Would you ever do this kind of a thing?
A I would rather die than hurt my children.
Q Thank you.

Mr. Barnes please answer any questions that the Prosecution has.

THE COURT: Yes, ma'am?

MS. BARRY: May it please the Court?

CROSS-EXAMINATION

BY MS. BARRY:

Q You would agree with me that VICTIM is your biological child, correct?
A Yes, he is.
Q And you would agree that he began staying with you when they returned to South Carolina?
A Yes.

Q In fact, they stayed with you at your home on - - - - - , correct?
A That is correct.
Q You testified that you slept in a tent with the kids?
A In the back yard.
Q In the back yard? How long did y'all do that?
A That lasted two weekends. The boys didn't like it.
Q Yet you had a two-bedroom home, correct?
A Yes. One of the bedrooms was rented out at that time.
Q VICTIM would come over?
A I'm sorry?
Q VICTIM came over, right?
A Could you be more specific?
Q VICTIM would stay at your home?
A Not by himself, no.
Q He would with Jeffrey, correct?
A Correct.
Q And sometimes Charlotte -- Scarlett would come?
A I asked that Scarlett come to help introduce me and get the boys adjusted to being around me.
Q And part of your parental duties was to give your children baths, correct?
A No.

Q In fact, Jeffrey didn't get baths, did he?
A No. He didn't want candles.
Q He didn't get baths because he didn't like candles?
A He took a bubble bath, but he didn't want a -- he didn't want a candlelit bath.
Q But you said he didn't get baths because he didn't like candles?
A I did not bathe him because he did not want candles.
Q Did he take baths or did he take showers? Isn't it true he took showers and not baths because he didn't like candles?
A No. The children came to me one day and said they were tired of taking showers, they took showers at home, they took showers at my house. They were arguing constantly about who was supposed to take the showers first.

I had this thing where I would take them to the dollar store and give them a five-dollar bill each, and they saw the bubble bath and asked if they could buy the bubble bath.

Q Sir, you just said Jeffrey didn't take baths because he didn't like candles. Can you elaborate on that?
A I was not in the bath with Jeffrey when he took his

bubble baths.
Q But you gave VICTIM a bath, didn't you?
A Eventually, yes.
Q With candles?
A I let him be in the bathtub with the candles as long as I was there to prevent anything from happening.
Q So you were there in the bathroom, weren't you?
A Yes, I was.
Q Kneeling beside the tub?
A Not at first.
Q Washing your child?
A No, not at first.
Q But when he was 11 years old you washed your son, correct?
A Yes. I knew that Amy was trying to take the children from me general.
Q But when -- the younger -- your younger son, Jeffrey, you didn't bathe him, did you?
A No.
Q You weren't in the bathroom?
A No.
Q Were you?
A No, I was not.
Q But the older son you were in the bathroom, you

were kneeling down, you were washing your older child, correct?

A Yes.

Q With a rag?

A Yes.

Q And candles, scented candles, correct?

A Yes.

Q And that is the on light in the bathroom?

A No. There are two light fixtures in the bathroom. The main light fixture lights up the -- it is very bright in the bathroom. The other light fixture is dimly lit. And that light fixture would remain on.

Q But you spoke to both of the boys about masturbation, correct?

A I spoke to the children about cigarettes, about alcohol, about drugs, and about sex.

Q And you actually explained to VICTIM when he was 11 years old how to masturbate?

A No, I did not.

Q You had this discussion in the bathroom, didn't you?

A No, I did not.

Q You had this discussion while he was taking a bubble bath with candles?

A I did not.

Q In a dimly lit -- you deny that?
A I deny that.
Q Yet you came in and gave a statement to the police that you did that, correct?
A I was led to believe that giving such a statement would be protecting my child.
Q On June 18th Investigator Holdorf on told you that you were being accused of inappropriate touching of your children, correct?
A No. He told me I was accused of wrestling naked with my sons, with sleeping naked with my sons, with masturbating on a pretty regular basis. And none of that was true.
Q When you went and met with Investigator Holdorf, you drove yourself in, correct?
A I went with Investigator Holdorf. I knew he carried his sidearm on his right side.
Q You --
A I knew --
Q -- drove yourself --
A I knew he carried his sidearm on his right side. I waited in the lobby. He came and got me. I looked at him. He sat me down in his cubicle. I looked at his sidearm. I could not find a way for me to get to his sidearm without him preventing me.

There was no way for him -- for me to force anybody else in that building to shoot me.

Q Sir, my question is, how did you get to the Sheriff's Department?

A I could have walked. It is that close. I drove.

Q And how did you leave?

A I drove. I was looking for a way to die and I failed. I couldn't find a way to commit suicide.

Q Isn't it true you have done that before, though?

A Without the influence of adverse medications? No.

Q But on June 18th, you were not arrested for this charge, were you?

A No, I was not.

Q In fact, you went home?

A Yes, I was.

Q And you thought about it, didn't you? You thought about your conversation with Investigator Holdorf, this man right here?

A On June 19th I was devastated. I had confirmation that I had lost the on thing that was left in my life. There was -- I knew Amy wanted to take the children from me again. She had taken them from me before simply because she could. And now I had lost them forever. The on thing I had in my life at that time was my children.

Q But you contacted him about a week later, right?
A To see if there was any way for me to protect VICTIM , to keep him from -- I did not want him to go to any more interviews. I did not want him to go back to the ARC.
Q So by --
A And by the things that Mr. Holdorf was telling me, that it was no big dial, it was just parental mistakes, that we -- I believed if I gave that statement VICTIM wouldn't -- VICTIM would be protected.
Q So you voluntarily called Investigator Holdorf and told him you had more information to give him to protect your child?
A As I told him when I got there, I wanted to do whatever it took. I told him I would do whatever it took to protect my son.
Q You drove yourself back to the Sheriff's Department?
A Yes.
Q On July 1st?
A Yes, I did.
Q And you drove yourself out, correct?
A Yes, I did.
Q And that day you weren't arrested either, were you?

A No, that day I bought a rope.
Q I'm sorry?
A I bought a rope.
Q But on that day you voluntarily told Investigator Holdorf that, yes, I did explain to VICTIM how to masturbate. You signed that?
A Yes, I did sign it. I will not deny signing that statement.
Q And you will not deny that you --
A But I will not -- I will not confirm that any of that statement is true. Yes, I know I swore that that is a sworn statement, but I lied.
Q But you lied? You lied then?
A I lied to protect my son. As I told Mr. Holdorf, I would do anything to protect my son.
Q And you are lying today, aren't you, about teaching your son how to masturbate, isn't that true?
A No.
Q To protect yourself?
A No.
Q You also told him in a signed sworn statement, we were talking about sexuality and his interest in boys and girls, correct?
A I made the conversation up. I don't remember every detail of it.

Q And isn't it true you told him in a signed sworn statement, I told him it was all right to have feelings about girls and if need be about boys, right?

A I don't remember what I said. I made it up as I was going along.

Q The whole truth and nothing but the truth?

A I lied.

Q You lied July 1st and you signed your name?

A Yes. I would lie to protect my son. I would die to protect my son.

Q But you bought a rope?

A I couldn't reach the rafters in my laundromat.

Q We were in the bathroom. VICTIM was in the bathtub taking a bath.

You don't deny that, do you? You have already testified that you gave VICTIM a bath?

A Yes.

Q You won't deny that you said, I was clothed next to the bathtub?

A I'm sorry?

Q You don't deny that you were clothed next -- kneeling next to the bathtub, because you testified to that already?

A Yes.

Q And you won't deny that you were washing VICTIM , right?
A Correct.
Q I don't know how one thing led to another.
That is your statement, correct?
A That is -- that is on the statement.
Q And isn't that true?
A Isn't what true? The fact that I lied when I made that statement?
Q I don't know how one thing led to another.
What did you mean by that?
A I don't know. I made it up as I went along.
Q Isn't it true in a signed sworn statement you said, I noticed he had an erection?
A Is it true I made the statement or is it true that it happened? It is not true that it happened.
Q Sir, you contacted an investigator at the Richland County Sheriff's Department with additional information after you had time to think --
A I wanted to die.
Q -- after you had time --
A My life was over.
Q Can I finish my --
THE COURT: Sir, please let her ask the question.

MS. BARRY: Thank you.

THE COURT: And then you can answer, okay?

Q After you had time to think about your original statement, you contacted them voluntarily and it is your testimony to protect your son? Is that your testimony?

A Yes.

Q Isn't it true this testimony is to protect yourself?

A My life is over. If they come back with a guilty or a not guilty, I'm still without my sons. I am still without a reason to live. If I -- no matter which door I go out of here, it is the same for me, a prison without my sons. I have the physical pain that I endure every day. I watched my mother die slowly every day. What am I protecting myself from?

Q On July 1st, 2010, in a signed sworn statement you wrote down -- you signed your name to paper, he was covered in bubble bath. I touched him on the lower leg and moved my hand from his ankle to his lower leg. I asked him if he was chicken.

Isn't that true?

A That I did it? No, it is not true.

Q Isn't that true that is what you swore to?

A How many times are you going to ask me if that was my sworn statement there? I have already admitted that that is my sworn statement, and I have already admitted that it is a lie.

Q You swore today to tell the truth, the whole truth, and nothing but the truth, so help you God; isn't that true?

A That is true. And because of that statement I am obligated by this court to admit that those allegations that I made against myself in that statement were false. Are you trying to get me to commit perjury now?

Q Sir, you can read, correct? Can you read that last line?

MR. BAILEY: Objection, Your Honor.

THE COURT: What is the objection?

MR. BAILEY: Judge, she can't make him read a statement in the record. She is trying to get him to say these things a hundred times.

THE COURT: What is the objection?

MR. BAILEY: Judge, there is already a statement. She has asked him about the statement.

THE COURT: Let me see you all.

(WHEREUPON, a bench conference was held in the presence of the jury but out of

the hearing of the jury.)

THE COURT: The objection is overruled.

Q Please read that last sentence.

A I must object to that. I must read the entire statement there.

I make this statement of my own free will and accord without reward or intimidation. All of the above is the truth, the whole truth, and nothing but the truth.

There was a reward for me in that VICTIM would be protected. I was led to believe that VICTIM would be protected. There was intimidation on the part of the Geiselmans and Murrays in taking my sons from me.

Q Whose signature is that?

A That is my signature.

Q And you swore over a year ago to tell the truth, the whole truth, and nothing but the truth, just like you did today?

A Yes.

Q Yet a year ago it wasn't the truth because you were protecting your son?

A Yes.

Q From what? From yourself? From you?

A From you.

Q From me?
A From this system. From --
Q You knew --
A From him having to go through another interview. From him having to fight all of his parents. VICTIM was already tired of all the fighting and infighting. VICTIM came over to my house because he wanted to. I never forced VICTIM over to my house.
Q But you knew by telling these details you would never see your son again, correct?
A I knew before those details.
Q But by giving --
A On April the 18th -- I'm sorry, on June the 18th I knew I would never see my sons again. That was it. That was over. I would not see my sons again unless by chance when they turned 18 they wanted to come see me.
Q Yet on July --
A That is a long time to wait. My life was over. I knew no matter what I said that day, and as I told Investigator Holdorf, no matter what I said, no matter what I did, no matter what the outcome of this was, I had lost my sons forever.
Q Sir, but on July 1st you swore to masturbating your

son. And you are -- you are intelligent. You are a navy vet. You are a business owner. You are intelligent. Isn't that true?

A Yes.

Q And you knew by giving these details you would never see your son ever again?

A That is a misleading statement on your part because I knew before I made those statements that I would never see my sons again.

Q And you knew by giving these details that your son would be subjected to the court system, correct?

A No.

Q That your son would be interviewed, put through a trial, have to come in and testify in front of 13 strangers and an audience full of people? You knew that?

A No. I'm not a lawyer. I never went to law school. Mr. Holdorf never explained to me what the full procedures would be. The only thing I knew is that VICTIM was going to be subjected to interviews, additional interviews. They didn't like what he said the first time so they were going to call him back.

Q You knew that?

A Yes, I was informed of that. I didn't want VICTIM

going back.

Q You went back and you told them that to protect him you told them the truth so that he wouldn't have to go to subsequent interviews, correct? You told them in a sworn signed statement --

A Are you wishing me to commit perjury?

MR. BAILEY: Objection, Your Honor. Asked and answered I don't know how many times.

THE COURT: Overruled.

Q You read it and signed it, correct?

A Yes, I signed it.

Q We started talking about masturbation again. I started demonstrating on VICTIM how to masturbate. He said no and I stopped.

Isn't that true?

A Please read the entire thing and quit asking me each and every line. I have already admitted I signed that statement. I will stand up here to the best of my ability and say that that is my signature on the bottom. Going line by line what are you hoping to achieve?

THE COURT: All right, Mr. Barnes, she will ask the questions and you will answer the questions, sir. All right?

Q And then Investigator Holdorf asked you how many

times did this happen. And your answer is just one time.

You just did it once, right?

A No, I didn't do it once.

Q And he asked you how long did you masturbate William.

And you said, just a few seconds.

Isn't that true?

A The truth that I did it or the truth that I said it?

Q The truth that you said it?

A It is true that I said it, but it is not true that I did it.

Q But you want this jury to believe today you took the same oath to tell the truth and you want them to believe you today? Is that your testimony?

A Yes.

Q Investigator Holdorf asked you were you aroused.

And your answer was no, right? Because you weren't?

A That was my answer, yes.

Q His question is, was the -- what was the purpose of this?

And your answer is, to teach VICTIM a safe outlet. I was concerned that he would get an

erection from me.

That is what you put in your signed sworn statement, correct?

A That's what is in the statement. That is what I signed to, yes. But is it true? No.

Q But you want the jury to believe that today, don't you? Don't you?

A My life is over. If they believe me or not, my life is over.

Q We have heard that.

The next question is, how often would you wash VICTIM 1?

The -- your answer -- your answer, about ten times. About five or six when I would wash him. They were mainly bubble baths, mostly on his back. I was in the bathroom with him five or six times. The other times he was with himself.

Your son could bathe -- could wash himself, correct? He was 11, right?

A Yes.

Q He could wash himself?

A Yes, he could.

Q Yet you washed him?

A Yes, I did.

Q In a bubble bath?

A Yes, I did.
Q With candles?
A Yes, I did.
Q The next question is, would you watch his genital area?

And your answer is, not intentionally. I would stick with his feet and his back. That's true, right?

A Yes.
Q Aside from the masturbation incident, how many times did you touch VICTIM s genital area?

And your answer is, just that time. That was the on time he made me aware of it.

The next question is, did you make --

MR. BAILEY: Objection, Your Honor. Now she is just reading from the list. She is not even giving him a chance to answer.

Q I'm sorry. Isn't that true --

THE COURT: Sustained.

Q Isn't that true that is what -- your answer?
A Yes, it is true that is on the statement.
Q The next question is, did you bathe Jeff?

And your answer is no, isn't that correct?

A That is correct. That is on the statement.
Q And then Investigator Holdorf asked you, did you

masturbate Jeff?

And your answer is no, you didn't masturbate Jeff.

A Are you answering for me?

Q I'm asking you, you did not -- isn't it true that you did not masturbate Jeff?

A That is correct.

Q The fine question is, is there anything you would like to add or change about your statement?

And your answer is, not at this time, correct?

A That is correct.

Q So isn't it true that you want us to believe -- you want this jury to believe that some of this is true, but some of it is not true, right?

A If you put it that way, yes.

Q And your last statement, is there anything you would like to add or change about your statement?

Your answer, not at this time.

July 1st, 2010, you said that?

A Yes.

Q But here today, September 14th, 2011, yes, you want to change your statement, correct?

A At the advice of my attorney to tell the truth, yes.

Q On the advice of your attorney?

A I didn't have an attorney when I made that statement. I didn't have any legal counsel. I did not know what was going on legally.
Q And your statement --
A According to Mr. Holdorf this was a parental mistake, no big deal.
Q And you wrote -- you admitted to masturbating your son to protect your son, isn't that correct?
A Yes.
Q That's all I have.

THE COURT: Yes, sir?

MR. BAILEY: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. BAILEY:
Q Mr. Barnes, what is this?
A That is a Holy Bible.
Q Was this here the day you met with Investigator Holdorf?
A No, it was not.
Q Was this jury here that day you met with Investigator Holdorf?
A No, they were not.
Q Would you lie after swearing on this Bible today?
A No, I would not.
Q Would you lie to this jury today?

A No, I would not.

Q Thank you, Mr. Barnes.

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

(Witness steps down.)

THE COURT: Please call your next witness.

MR. BAILEY: The Defense rests, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, the Defense rests. This would be a good time to break for the evening. I am going to -- let me see the attorneys.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, before you leave, we are going to start in the morning at 10:00 o'clock. At that time we should be ready for closing arguments and also my instruction on the law, the Court's instruction on the law.

Instead of starting at 9:30 we'll start at 10:00 o'clock. There are some matters of law that I need to take up with the lawyers this afternoon, this evening and in the morning, and instead of having you wait back there in the jury room, I'm going to have you come in at 10:00 o'clock in the

morning.

And we will more than likely -- well, we will order lunch tomorrow, and you'll be allowed to eat during your deliberation, so just take that -- I guess if you were planning anything or making plans for lunch, we will order lunch and they'll bring it in to us.

All right. Thank you. You all have a good evening. I think we are a couple of minutes behind. Hopefully you can still pick up your child.

And remember what I said about discussing it with anyone.

(WHEREUPON, the jury is excused for the evening at 5:04 p.m.)

THE COURT: All right. We can start in the morning around 9:00. There is one other matter I think the Attorney General's Office has in the morning that I need to meet with them right at 9:00 o'clock, and then we can do I guess the charge conference. If you have any proposed charges, you can e-mail them to Aaron and he will get them to me, and then we'll go over everything.

Anything else before we break for the evening?

MR. BAILEY: Not from us, Judge.

MS. BARRY: No.

THE COURT: All right, thank you.

(WHEREUPON, court adjourned for the evening.)

SEPTEMBER 15, 2011

THE COURT: We have a question before we even charge the jury. And it is not even from the foreman, which is interesting. It is from Juror Number 68, Allen Cox.

He says, I am requesting an easel for oversized paper. I have brought the paper. This will be used for organization of the facts in the case once the case is turned over to us.

Any comments?

MS. BODMAN: I don't have a problem with it.

THE COURT: I guess I need to let him know that he is not the foreman in a nice way. But do you all -- I would like to look at the paper to make sure there is nothing -- information or anything written on it or anything. He said he brought oversized paper himself. And we have an easel in there so he can do whatever it is that he wants to do in organizing the facts.

And have y'all had a chance to look at the charge? Any objections, additions?

MS. BODMAN: Yes, Your Honor. With regard to

the instruction on the statement of the Defendant, the eighth factor, the advice or lack thereof to the Defendant of constitutional rights. Miranda, because he was not in custody, his Miranda was not required, so we would ask that either Number Eight is taken out, because how it is written right now is if they find he wasn't given his constitutional rights they would find that it is not -- they have to find that he was given his constitutional rights and that it would be an involuntary statement and that is not a true statement of the law. So we'd ask that eight be taken out. Or in the alternative, because I guess it still can be something -- they can consider that the word -- after it says, and eight, that you add, in custody. If the Defendant was in custody, the advice or lack thereof to the Defendant. Because he -- I mean, as a matter of law, Miranda is not required to be given and the statement comes in.

THE COURT: Okay. Yes, sir?

MR. COLLINS: We're fine with adding that little phrase, if in custody.

THE COURT: And so you want me to say, Number Seven, the nature of the questioning, and Number Eight, if --

MS. BODMAN: If the Defendant was in custody. Right. If the Defendant was in custody, the advice or lack thereof to the Defendant of his constitutional rights.

THE COURT: Okay. Anything else?

MS. BODMAN: I'll skip to Page 13, the lewd act on a minor.

It says, a minor is a person under the age of 18, but the statute lewd act is under 16. It correctly says it as it goes on to the next page, so it is just that one sentence.

THE COURT: Yes.

MS. BODMAN: Fifteen on to sixteen is the mere presence. I don't think that is really applicable to this case. I mean, it is not --

THE COURT: Aaron put that in there, but I'll be glad to hear from you all. I don't know if it is pertinent to --

MR. COLLINS: It is a correct statement of the law, though, Your Honor.

MS. BODMAN: But it doesn't apply to our case. It is not like a crime was committed and they are just saying he wasn't --

MR. COLLINS: A crime was committed in his house. If he was merely present in his house at

the time it was alleged to have been committed, it doesn't necessarily mean he committed the lewd act.

MS. BODMAN: There wasn't any evidence that some other adult came in and did it to the child. He said he lied about masturbating the son, that a crime didn't happen. There is no evidence that someone else committed the crime in his house, somebody else masturbated the child in his house and he was merely present when it happened.

THE COURT: I think what they are saying, though, is the fact that he was there -- the fact that the child was there and he was there doesn't mean that it necessarily happened. I'll leave it in there.

MS. BODMAN: And then finally the instruction on Page Eight regarding what you crafted regarding the video.

THE COURT: Yes.

MS. BODMAN: We do believe that this paragraph is a comment on the evidence. And the way that it is written, they would listen to that and think that they are not supposed to consider the second interview, the fact that there was a second interview, not just the fact that -- of the tape being admitted, but it says: And you should not

consider it for any purpose during your deliberation. You may not consider facts not admitted into evidence.

THE COURT: Okay. And the one you had is too -- it definitely kind of comments on the facts and the age, and so that is why we -- I didn't put that in. And I don't know if necessarily the jurors need to be concerned about him being under the age of 12. I was trying to put something in there that says that, you are not to consider -- and I understand what you are saying. I thought about the fact that the interview -- that there was the interview and that the witness did testify to that. And that they can consider that. But then how do we craft it to mention that, just because you didn't receive the second video itself. Unless -- I mean, I can say, during this trial you have heard it was mentioned two videos, one of which you have seen and one of which you have not seen, or something like that.

MS. BODMAN: Yes. I'm just asking that the actual words of the statute, the law. What I propose to the Court doesn't comment on any facts, it is the actual words of the statute.

There is another statute, I can't remember

exactly the number, but there is another statute that reads: The victim in a criminal sexual conduct case -- the testimony of the victim in a criminal sexual conduct case need not be corroborated. That statute is oftentimes read as a matter of law, because that is exactly what the statute reads, to the jury in CSC cases.

So that in and of itself does not -- they have ruled. The law says that just by reading that statute that is not a comment on the evidence. So that is why I wanted to specifically craft --

THE COURT: This is a lot different. This talks about admissibility. And I don't think that -- the way the statute is written, it is strictly for the Court to determine admissibility. And it talks -- the way you drafted it, it talks about admissibility, which I think is not an issue for the jurors, it is an issue for the Court.

I mean, I'm willing to take some other suggestions. I'm not necessarily sure if I'm going to get into the part about the age of 12, but I do understand your concern as to any confusion about the jurors not considering the interview.

MS. BODMAN: If you -- if we compare it to the instruction on the statements of the Defendant, how

you have instructed the Court -- instructed the jury: A statement alleged to have been made by the Defendant has been admitted into evidence in this case.

You are talking in that instruction about the admission of evidence. It is okay to talk about the admission of evidence. That is specifically what that statute talks about the, 17-25-123, 175 specifically lays out the law on the admissibility of it. So it is really no different than an instruction like this on, you know, about the statement of the Defendant. You are instructing them about the admissibility of a piece of evidence and the law that governs that piece of evidence.

THE COURT: Yes, sir?

MR. COLLINS: Your Honor, we have no objection to the proposed instruction you proposed. I think you are absolutely right that the proposed instruction from the State, it mentions the age of the boy, which was a material element of this charge. We haven't stipulated to the age of the boy. If you charge them that the video is not admissible under the age of 12, you are telling them that he was under the age of 12 during the first interview, and that is a material element --

that is an issue of fact for the jury to determine. And that is the reason we would oppose any instruction regarding that statute and the age of the boy. That is a problem.

THE COURT: All right. You understand what she is saying, though, about the charge that I have here, because, although the video wasn't admitted, the interviewer did discuss the second interview. I don't want to confuse the jurors into thinking that they are not to consider the second interview. And I can't get into saying, you can't consider the video, but you can consider the video, because that is definitely commenting on the facts of the case. So I'm trying to come up with something that kind of works --

MR. COLLINS: Your Honor, we didn't propose -- we didn't -- our position is that there is no instruction needed on this. They have the evidence presented. That is what they are to consider when evaluating this case. Our position is that there is no instruction needed for a piece of evidence. That is not in the evidence. It is a video that is not in evidence. They don't need to consider it. I don't think there is an instruction necessary for it. In fact, had the video come in, you know,

against the ruling of the Court, you would have to give a curative to try to remove the taint of that inadmissible evidence. By doing this, bringing up the video that is not in evidence, you are injecting the taint into the jury. We're telling them about something that is not in evidence.

It was testified to that the child went to one interview, two interviews. He testified about what he said at both interviews. The fact that there is not a video of it is not for them to consider.

I mean, they brought up the issue of the video, in their witnesses that came up, that is fine that there is a video. It is a prior consistent statement that bolsters the credibility of the witness. The only reason the one video comes in is there is a statute that says it comes in. We don't need to discuss why something else doesn't come in. If we give them that line of thinking, there is a lot of instructions we would have to give in this case.

THE COURT: And her concern is probably that you all are going to get up and argue, where is the second video.

MR. COLLINS: We will stipulate -- we are not going to do that. That is commenting on something

not the evidence.

MS. BODMAN: That is not my concern. My concern is the jury thinks that we're hiding evidence that we for some reason other than the law only introduced --

THE COURT: I understand. But we don't have to get into the details, like the one -- even the law that you quoted earlier, that is not the details. It is not getting into details as to what the law is, because really it doesn't matter what the details of the law is, the only thing that matters is that I determine as a matter of law that it is not admissible. So that is all -- that is all the jurors need to be concerned with. And it is not on you, it is not on the Defense, it is on me that they can't see -- it puts the burden back -- if they want to blame anybody as to why they can't see the video, it is me.

And that is what I was trying to do in saying this, but I do understand your concern that they may not -- they may get confused because of the second one.

Let me read it real quick.

MS. BODMAN: Quickly, two things. It is the request that I submitted, the last sentence: And

the child is under the age of 12 at the time of making the statement. It is not -- we're -- we did not mean to specifically refer to the victim, so we weren't suggesting that you tell the jury that this victim is under the age of 12. It was a generic child. So if you wanted to add, and the child making the statement is under the age of 12. Certainly, I mean, that is the law. And we would argue to the jury, you heard the birthdate, you know, this child, you heard when the interviews happened. So we're not asking that you tell the jury that this child, in fact, this victim was under 12. That is a generic -- speaking of a generic child making the statement.

THE COURT: Just give me a second to read over it and try to figure it out.

(Pause.)

THE COURT: Is there a charge -- I'm thinking instead of saying anything about the second video, maybe just saying that in South Carolina interviews with children under 12 are admissible for you to -- which means I'm not commenting on the one that is not in. We talk about the one that is in. That is what I'm --

MS. BODMAN: I just don't want anything to be

construed as the interview itself. It is just literally the physical videotape. Because they can consider what facts are in front of them about the fact that a second interview was conducted and he made disclosures in a second interview.

If we don't actually just address the physical tape, then it could be construed as disregard the fact that there was a second interview.

MR. COLLINS: Your Honor, your proposed charge refers specifically to the video. But any kind of charge about the age of the child and it is admissible if the child is under the age of 12, you are instructing the jury based upon the admission of first videotape that that child is under the age of 12, which is a material element of fact for the jury to determine in this case.

It may not be a direct statement that the child is under 12, but if you say a video is admissible in South Carolina if the child is under 12 at the time of making the statement, you are saying they have already proved the fact that this kid is under -- you agree with the fact that the child is under the age of 12.

THE COURT: Well, no, it puts the jurors in a position at that point to determine if he was under

12, but if the video is admissible, which the jurors can't do, so that is a problem. I mean, that is the problem I'm having with it. I think I can read this one that I have and just say, this video itself has not been entered into evidence. And that might clear up if there is any confusion regarding the interview, just to say that the video itself.

And then of course you are going to have the opportunity to argue. I mean, y'all do it all the time, say, the judge is going to charge you this, the judge is going to charge you that.

MS. BODMAN: And as we're sitting here, I was looking at the paragraph that you had drafted, and actually that is something that I scratched down is, during this trial you have heard witnesses mention a video that has not been placed into evidence as a matter of law. The fact that the video itself has not been entered into evidence should not be considered for any purpose during your deliberation.

But I would ask that that -- the next sentence, you may not consider facts not admitted into evidence, be taken out because that potentially they could read as, ignore the

interview itself, the substance of the interview and what information they have about the second one.

Because as soon as you say, refer to facts, that is not -- we're just referring to the actual physical tape, not any information that they may have heard of through testimony about the second interview.

So just leave it at the fact that the video itself --

THE COURT: And if it concerns you, there is a portion where I talk about facts not entered into evidence later on.

All right, so, during this trial you have heard witnesses mention a video which has not been placed into evidence as a matter of law. This video itself has not been entered into evidence and you should not consider it for any purposes during your deliberation.

MS. BODMAN: Yes. The fact that the video itself has not been entered into evidence.

THE COURT: The fact?

MS. BODMAN: The fact that it has not been entered into --

THE COURT: Oh, the fact of the video itself.

MR. COLLINS: It is just making more confusion I think.

MS. BODMAN: No, because if you just generally refer to the piece of evidence.

MR. COLLINS: It is the piece of evidence that is inadmissible. That is what is inadmissible is the video, is the prior consistent bolstering statement made out of court.

MS. BODMAN: Otherwise it says, this video should not be considered for any purpose during your deliberations. They can consider the interview and what they know about the interview.

THE COURT: Okay. You are saying the fact that the video itself has not been entered into evidence and you should not consider --

MS. BODMAN: Should not be considered for any purpose.

THE COURT: You should not consider for any purpose during your deliberations the fact that the video itself has not been entered.

MS. BODMAN: The fact that the video itself has not been entered into evidence should not be considered for any purpose during your deliberations.

MR. COLLINS: And I would just add, Your

Honor, during closing, I'm not sure what they are planning on saying in closing, but at any time if they say something like, we would have loved to have shown you the video or --

THE COURT: Oh, they won't. Nobody is going to say it. You have already said you are not going to say it, they are not going to say it.

MS. BODMAN: That is improper. I would not do that.

THE COURT: The video has not been placed into evidence as a matter of law. The fact that the video itself has not been entered into evidence should not be considered for any purpose during your deliberation.

MR. COLLINS: That is commenting on -- that comes across as commenting on the strategy of one counsel or another counsel. The fact that it is not being given to them should be considered. The whole video itself should -- the testimony should be considered. There was testimony about the second interview by two or three different witnesses. The video shouldn't be considered at all.

THE COURT: Tell me what you want me to say, that second sentence. I think we got past the

first sentence. Tell me what you think. And I'm taking suggestions, so tell me what you think.

MR. COLLINS: Okay. I think, this video has not been entered into evidence and it should not be considered. I think the way you wrote it the first time was exactly right.

MS. BODMAN: It is just too generic. They are going to think they can disregard that second interview.

THE COURT: The video itself is what -- I'm going to say the video -- refer to the video itself, not the second interview.

MS. BODMAN: You are saying the word itself, the fact that the video itself.

THE COURT: Well, he doesn't wanted me to say the fact that the video.

MS. BODMAN: No, he doesn't want you to say itself.

MR. COLLINS: No, I'm fine with itself. The fact that the video has not been entered into evidence concerns me because it is commenting on strategy.

THE COURT: He is saying that is a comment on the facts, the fact that I am going to say the facts.

MR. COLLINS: I mean, the video is not in evidence and the video itself should not be considered.

MS. BODMAN: Okay. I thought you were saying you had a problem with the word itself.

THE COURT: No, he has a problem with the word, the facts.

MS. BODMAN: Oh, with the facts. Okay.

THE COURT: So this video itself has not been entered into evidence. This should not be considered for any purposes during your deliberation.

MS. BODMAN: Yes. Okay.

THE COURT: Okay. All right. Are we good? I'll read it.

During this trial you have heard witnesses mention a video which has not been placed into evidence as a matter of law. This video itself has not been entered into evidence. This should not be considered for any purpose during your deliberation.

MR. COLLINS: So changing the second part after, has not -- itself has not been entered into evidence.

THE COURT: And you should not consider -- I

mean, I don't -- I kind of scribbled on here a good bit. And you should not consider for any purpose during your deliberation. It is all the same sentence. You are talking about the same object.

All right. Are y'all ready for them? Do you need to take a break before we start? And depending on how long y'all go, if it is more than an hour on closing, which I think 30 minutes is reasonable, if it is more than an hour then I'll break before I charge them because I want them to listen to me. And after an hour they start -- and the law isn't exactly as exciting as the closing arguments, so they tend to wander off.

All right, are you ready to bring them in? Oh, what do y'all want me to -- y'all are fine with them seeing the note and -- I'm just going to instruct him that he should -- that all notes need to come through the foreman, but, yes, we will give them the easel, we just need to look at the paper before.

THE BAILIFF: It is here.

MR. COLLINS: We have some markers too if they need some.

THE COURT: Do y'all want to look through there and make sure there is nothing written in

there? You probably should.

MR. BAILEY: I don't think this is a John Grisham novel. I'm pretty sure he is not hiding or smuggling stuff.

(Pause.)

THE COURT: All right, we are ready for them. And the verdict form looks okay?

(WHEREUPON, the jury came into open court at approximately 10:39 a.m.)

THE COURT: All right. Good morning, ladies and gentlemen of the jury. At this time we are going to -- well, actually, Mr. Cox -- is it Mr. Cox?

JUROR COX: Yes.

THE COURT: -- sent us a note and requested an easel. We'll send that back with you. And you brought some oversized paper, so you can take that back in. And also there is I believe a chalkboard and some chalk back there. And if you need some markers, we have markers that you can use. I have a bag full up here.

When you all go back, the foreman, make sure you send the notes through the foreman. You can ask him to write a note if you all have a question about something, but he needs to -- the foreman's

name needs to be at the bottom of the note. All right?

At this time we are going to have closing arguments from the parties. You will hear from the State, the Defense, and then you'll hear from the State again.

All right, listen closely. Thank you.

CLOSING STATEMENT

MS. BODMAN: This was for VICTIM the perfect storm. He is in a family with a lot of turmoil, a lot of things going on in that house.

MR. BAILEY: Objection, Your Honor.

THE COURT: Let me see you.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

THE COURT: Ladies and gentlemen, I'm going to send you all out. There is a matter of law that I need to take up outside the presence of the jurors. We will bring you back in shortly.

(WHEREUPON, the jury retires to the jury room.)

THE COURT: All right.

MS. BODMAN: State versus Rodgers, which is 235 S.E.2d 808, a 1977 case. The State is entitled

but not required to open the closing argument to the jury, i.e., make a statement to the jury before the Defense's closing argument then make another statement after the Defense, unless the Defendant has offered no evidence. The right to open and close argument to the jury is a substantial right, the denial of which is reversible error. A judge cannot limit this right by dictating that a Solicitor limit themself to a discussion of the law during his initial closing argument and only discuss the facts during the reply.

THE COURT: All right. Your objection?

MR. COLLINS: Your Honor, if we could be given a few minutes to pull the litany of cases that are post 1977 that contradict that, but I've got somebody running to grab it. This issue has been just actually a case in front of the Court of Appeals, the Supreme Court addressing these issues. It came down, and it is not inapposite to that, but it came -- the argument has always been that if you open closing argument on the law and then you go into the facts, you waive your right to come back up.

THE COURT: Give me some case law, but I will tell y'all the jurors are rolling their eyes. I

don't know who they --

MS. BARRY: We have to preserve the record.

THE COURT: Huh?

MR. COLLINS: We have to preserve the record when issues come up.

THE COURT: I understand. But they are -- when I told them they had to go back, they may have been rolling them at me, but they were rolling their eyes. They want the case to be over.

Are you going to go get -- we'll take a five minute break.

MR. BAILEY: Thanks, Judge.

(WHEREUPON, a break was taken.)

THE COURT: The only thing I could find looks like there are some cases where it was denied, when the Defendant doesn't testify there is a denial.

MR. COLLINS: Our position would be that the case cited was a capital case. This is not a capital case. We feel it is cumulative and unnecessary. We would ask that -- say it is in the judge's discretion to limit it, but if she is going to go into facts if you could just keep in mind on the timeframe.

THE COURT: Yes. Okay. All right. And so the objection will be overruled. We'll wait on Ms.

Bodman to come back. Aaron had already Shepardized it.

MR. COLLINS: One more quick thing that I forgot to say. Number Ten of the jury instructions I forgot to say we still have arson left in there from the last trial. Make sure not to read that.

THE COURT: All right, thank you. I would have stumbled over that.

(Pause.)

THE COURT: All right, thank you. I overruled the objection. And he had already Shepardized the case. So it appears to be still, from what we can establish, the law. But you all -- I can't limit what you can say, but it is, you know, up to the Court's discretion. Y'all are not going to take 30 minutes on both. If you can limit it to around 30 minutes. I'm not putting time limits on anybody, but if you can try to limit it to around 30 minutes.

All right. You can bring them in.

THE BAILIFF: Go glad to, Your Honor.

THE COURT: And you probably want to start from the top.

(WHEREUPON, the jury came into open court.)

THE BAILIFF: The jurors are all present, Your Honor.

THE COURT: All right, ladies and gentlemen of the jury, you'll now hear closing arguments, beginning with Ms. Bodman for the State.

Thank you.

CLOSING STATEMENT

MS. BODMAN: A perfect storm was what [VICTIM] was caught up in of family turmoil, violence in the home, hiding in the closet with his brother. A mom, a dad, a stepmom, a stepdad. Finding out he has a biological father, not his legal dad. Financial problems in the home. He is going over to the Defendant's house. He changed schools. He is stressed out. He is picked on at school.

But he decides -- tells Mr. Barnes, I am stressed out, and they decide maybe some baths would help him out.

Then he gets him into that bathroom, isolates him, starts bathing him, washing him, isolating him there. Then he is then able to sexually abuse him.

A perfect storm. All of these kind of things come together that puts him in that bathroom with the Defendant.

I want to talk to you about some of the law

that applies in this case. First off is what is charged, lewd act. It is unlawful for a person who is over the age of 14 -- we have heard his birthdate, he is in his 40s -- to willfully and lewdly commit or attempt a lewd or lascivious act -- masturbation -- upon or with the body or its parts of a child under the age of 16 -- he is 13 today. He was 11 when this happened -- with the intent of arousing, appealing to, or gratifying the lust or passion or sexual desire of the person or of the child with the intent. It doesn't mean that anybody is successful in getting aroused, but that is the intent of the act, is either to arouse himself or Victim. And that is the purpose and intent of masturbation.

You heard VICTIM talk about how sitting in that bathtub and being masturbated by the Defendant, he would get the sensation or the urge like he had to pee.

And he would tell him, I have to pee, and the Defendant would hand him a cup.

And then he said, in confusion I would hand it back. Because this is an 11-year-old boy who was not sure about the sensations that he is feeling, what this is, that he could liken it to peeing,

needing to pee, but then he was confused why he didn't pee into that cup.

That act in that bathroom is a lewd act.

We have to prove this case to you beyond a reasonable doubt. I will talk to you a little bit about what does that mean. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt.

There are a 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 him guilty.

If, on the other hand, you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty.

There are a few things in this world that we know with absolute certainty. The on way that we would be able to prove to you beyond every possible doubt, 100 percent absolute certainty is if you were in that bathroom and saw it yourself. That is

absolute certainty. Because then you are a witness, you are not a juror. You would be sitting in this chair and not this one.

But that doesn't happen in sexual abuse cases because pedophiles isolate their victim so that there are no witnesses, so that child is alone.

You use your common sense when you go over all of this evidence, all the testimony that you heard. You brought your common sense in that door when you came in here for jury duty and you are not going to leave it in this courtroom. You are going to take it out that door and into the jury deliberation room.

Reasonable doubt. Why would a man lie about masturbating their son? That is ridiculous, ludicrous, absurd. That is completely unreasonable. No man is going to lie that they masturbated their son.

Why would Victim lie about this? This was his refuge from the violence in the home, the screaming, the yelling, the dragging, his mom talking about his dad, William Murray. Liar. The infighting. The fighting with his sister. Not having to hide in that closet. Financial reasons. Being able to get some food over at John Barnes'

house. He said it was entertaining. It was great to go over there. They had more entertainment for themselves than they did at their house. So they were away from all of that drama and able to entertain themselves. Why is he going to cut off the very refuge that he had? It is not going to happen.

This excuse of lying about masturbating his son in order for Victim's protection, I lied that I masturbated him in order to protect him. Protect him from what? Protect him from another interview with ARC? Protect him from having to talk about this again? Protection from people finding out about it because he just did not want anybody at school to know? He is having a hard enough time. He is already, he says, the odd guy out, different than everybody else, picked on. That this is going to get back to school and it is going to even be more turmoil in his life? Protect him from having to talk to us about it? Protect him from having to come into this courtroom and talk to you about it? That is absurd and completely unreasonable. Absurd.

This family is not the family of the year. There is so much going on over there. But I want

you to think about it. They want to bring out all this turmoil and basically just say, these are -- I want you to get a picture of just, this is horrible people, horrible -- you know what? Like it or not -- like it or not, John Barnes is a part of that family. And you know what? There is a pedophile in the family. He is a part of all of that, like it or not.

Credibility of the witnesses. You are the judge of the credibility or the believability of each and every witness that took this stand. Was he or she straightforward or hesitant when answering questions? Was the witness consistent or inconsistent? How does the witness know the facts that he or she is testifying to? Was the witness present during the incident or did he happen on the scene afterwards? Was the testimony of the witness strengthened or weakened by the other testimony or evidence? Is there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words, was the witness biased or prejudiced?

I want you to think about Victim and how he testified on that witness stand and what he said in the forensic interview.

He sat up. Yes, ma'am. No, ma'am. I don't remember that. That might have happened. He is going to be straightforward. In light -- even with his sister sitting here in the courtroom, he says on that witness stand to you, you know, Scarlett is kind of known to be a liar in the family. Victim is nothing but a hundred percent the truth. He can't help but just tell you the truth of what is going on. And do you think that airing the dirty laundry of sitting in that -- hiding in the closet and the violence in the home isn't a difficult thing to talk about? But he did. He is going to tell you all of it, a hundred percent of it.

The consistency or inconsistency. We heard from Ray Olszewski about the process of disclosure and that it explained, you know, how he would initially probably disclose to a trusted person, his sister Scarlett, but then in that first forensic interview he gives kind of a tentative or problematic disclosure. He says, well, to say in a non-embarrassing way, he was washing me for cleaning purposes. But there are -- when you watch that first interview, there are significant telltale signs that he is holding back.

At times he is, well, not really. How at some