Exhibit A

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Apr 27 2022
S.C. SUPREME COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF Spartanburg)
)
Daniel W. Spade, SCDC # 358974)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s))
)
vs.)
)
State of South Carolina)
Defendant(s))

2017-**CP** - 42- 02372

Submitted By: Charles Grose
Address: 404 Main Street, Greenwood, SC 29646

SC Bar #: 66063
Telephone #: 864-538-4466
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Other:
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NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

If Action is Judgment/Settlement do not complete

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☒ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** May 14, 2019

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

THE STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	Case No. 2017-CP-42-02372
Daniel W. Spade,	)	
Applicant,	)	
	)	**Third Amended Application for Post-Conviction Relief**
vs.	)	
	)	
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

Pursuant to the Uniform Post-Conviction Relief Act, S.C. Code Ann. § 17-27-10 *et. seq.*, the applicant, Daniel W. Spade, amends his application for post-conviction relief.[1]

1) Mr. Spade is confined at the Lee Correctional Institution.

2) The Honorable R. Keith Kelly, Presiding Judge, Court of Generals Sessions, Spartanburg County, imposed sentence.

3) There were not any co-defendants.

4) The sentence was imposed on indictment number 2011-GS-42-04171 for first-degree criminal sexual conduct with a minor.

5) On February 26, 2014, Judge Kelly sentenced Mr. Spade to thirty-five years imprisonment.

6) The sentence was imposed following a trial by jury.

7) Mr. Spade appealed to the South Carolina Court of Appeals. On July 6, 2016, the Court of Appeals affirmed Mr. Spade's conviction and sentence. *State v. Spade*, Unpublished Op. No. 2016-UP- 352 (Appellate Case No. 2014-000448), 2016 WL 3670561 (S.C. Ct. App.

[1] This pleading is based on Form 5, Revised 3/2003, which can be found on the South Carolina Judicial Department website. Mr. Spade reserves the right to further amend his application for post-conviction relief. *See* S.C. Code Ann. § 17-27-90 (expressly contemplating supplemental or amended PCR application).

July 6, 2016). On June 16, 2017, the South Carolina Supreme Court denied Mr. Spade's petition for writ of *certiorari*, Appellate Case No. 2016-001965.

8) Please see number 7 above for courts, opinion, order citations, and dates of decisions.

9) Not applicable because Mr. Spade appealed.

10) Statement of grounds for relief:

a) Mr. Spade was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution during the guilt/innocence phase of his jury trial.

b) Mr. Spade was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution during his sentencing hearing.

c) Mr. Spade was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution during his direct appeal.

d) Mr. Spade was denied due process of law during his jury trial because of prosecutorial misconduct. U.S Const. Am. V and XIV; S.C. Const. Art. I, § 3; *Roviaro v. U.S.*, 353 U.S. 53 (1957); *Brady v. Maryland*, 373 U.S. 83, (1963); *Kyles v. Whitley*, 514 U.S. 419, (1995); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006); and Rule 5, SCRCrimP.

11) Statement of facts supporting grounds for relief:

a) Trial counsel's performance was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

1) Failing to request a continuance in order to have time to review and evaluate the child's mental health records that were disclosed for the first time four days prior to trial, when those records contained exculpatory information.

2) Not only failing to object to the trail judge instructing the jurors that their role is to "search for the truth" and make sure "justice is done" and the prosecutor embracing this language in the its opening statement, which impermissibly diminishes and shifts the burden of proof, but also adopting that language in Mr. Spade's opening statement and closing argument, thereby diminishing and shifting the burden of proof.

3) Failing to call available lay, character, and expert witnesses that would have established the unreliability of the child's allegations.

4) Failing to investigate, develop and present evidence that the Special Prosecutor, N. Douglas Brannon, had a conflict of interest and, therefore, was disqualified from prosecuting this case.

5) Failing to request a ruling on Mr. Spade's contention that the Private Prosecutor, N. Douglas Brannon, was unqualified to serve as a special prosecutor because the Solicitor failed to produce a governor's commission pursuant to S.C. Code Ann. § 1-7-470.

6) Failing to move for disclosure of exculpatory information in the possession of the Mr. Spade's Private Prosecutor, N. Douglas Brannon.

7) Failing to investigate, develop, and present evidence that would have established that testimony about the child's panic attacks were not related to Mr. Spade, which would have led to the trial court excluding that testimony or, if the trial court did not exclude that testimony, would have allowed Mr. Spade to confront that testimony.

8) Failing to object to and move for a mistrial because of inadmissible testimony that vouched for the child's credibility.

9) Failing to object to Meredith Thompson-Loftis as a witness, including but not limited to her qualifications as an expert witness, her techniques, and the reliability of her testimony. In the alternative, failing to impeach Meredith Thompson-Loftis as a witness, including but not limited to her qualifications as an expert witness, her techniques, and the reliability of her testimony. *See, e.g., S.C. Dep't of Soc. Servs. v. Mary C.*, 396 S.C. 15, 720 S.E.2d 503 (Ct. App. 2011).

10) Failing to admit the videotaped interview from the Children's Advocacy Center that contained exculpatory information.

11) Failing to investigate, develop, and present evidence that venue was not in Spartanburg County.

12) Failing to support the directed verdict motion with evidence that venue was not in Spartanburg County.

13) Failing to request a jury instruction on venue.

14) Failing to object to the Special Prosecutor's improper closing argument that appealed the jurors' emotions and improperly vouched for the complaining witness when he recounted a conversation with his daughter discussing how the police arrest "bad people," he (as Special Prosecutor) tells the complaining witness' story, and "the jury takes care of the good people." Tr. 305-07.

15) Failing to object to evidence that the Family Court action involving the same allegations resulted in termination of Mr. Spade's parental rights.

16) Advising Mr. Spade not to present any evidence, including but not limited to his own testimony.

17) Excluding evidence from the forensic computer examination that was exculpatory.

18) The cumulative effect of trial counsel's errors denied Mr. Spade his right to a fair trial.

19) Failing to obtain through discovery, by subpoena, or court order relevant Department of Social Services records.

20) Failing to move to exclude the testimony of the child complaining witnesses because her testimony was tainted, unreliable, and inadmissible because of the improper techniques used to obtain the testimony.

21) Failing to cross-examine witnesses presented by the State to demonstrate to the jurors that the testimony of the child complaining witnesses was tainted and unreliable because of the improper techniques used to obtain the testimony.

22) Failing to present expert testimony to confront the State's witnesses and demonstrate to the jurors that the testimony of the child complaining witnesses was tainted and unreliable because of the improper techniques used to obtain the testimony.

23) Failing to investigate, develop, and present evidence that law enforcement in South Carolina and Virginia investigation allegations that Cara Lintner witnessed and/or participated in child sexual abuse perpetrated by Danny Spade with his daughter P.J. Law enforcement determined these allegations by P.J. to be unfounded. This ground is based on the deposition testimony of Cara Lintner. Exonerating Ms. Lintner on these allegations also exonerated Mr. Spade.

b) Trial counsel's performance was both unreasonable and prejudicial during sentencing. *See Strickland v. Washington*, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

1) Failing to object to the trial judge denying Mr. Spade an opportunity to address the Court during his sentencing hearing.

2) Failing to present any information or evidence to the trial judge in order to mitigate the sentence imposed.

c) Appellate counsel's performance was both unreasonable and prejudicial. *See Strickland v. Washington*, 466 U.S. 668 (1984); *see also Smith v. Robbins*, 528 U.S. 259 (2000); *Evitts v. Lucey*, 469 U.S. 387, 396 (1985); *Patrick v. State*, 349 S.C. 203, 562 S.E.2d 609 (2002); and *Southerland v. State*, 337 S.C. 610, 524 S.E.2d 833 (1999). Counsel's acts or omissions included, but are not limited to, the following: Failing to brief on appeal the trial court judge denying the motion for directed verdict when the State failed to present evidence establishing venue in Spartanburg County.

d) The prosecutors' misconduct was prejudicial and denied Mr. Spade his right to a fair trial. The misconduct included, but is not necessarily limited to, the following:

1) Failing to disclose *Brady* information including, but not necessarily limited to, statements by the child demonstrating that venue was not in Spartanburg County.

2) Failing to disclose *Brady* information in a timely manner including, but not necessarily limited to, statements by the child demonstrating that venue was not in Spartanburg County.

3) Eliciting false testimony regarding venue.

4) Failing to correct false testimony regarding venue.

5) Filing to disclose relevant Department of Social Services records obtained by Spartanburg County Sheriff Officer Investigator Nikki Cantrell.

6) Failing disclosed evidence that law enforcement in South Carolina and Virginia investigation allegations that Cara Lintner witnessed and/or participated in child sexual abuse perpetrated by Danny Spade with his daughter P.J. Law enforcement determined these allegations by P.J. to be unfounded. This ground is based on the deposition testimony of Cara Lintner. Exonerating Ms. Lintner on these allegations also exonerated Mr. Spade.

12) Prior to filing this application, Mr. Spade has not filed any petition in state court under South Carolina law, and petition in state or federal court for habeas corpus or post-conviction relief, any petition in the United States Supreme Court for certiorari, or any other petitions, motions, or applications in this or any other court, except for the direct appeal identified in number 7 above.

13) Not applicable because Mr. Spade his not filed any petitions for relief with the exception of his direct appeal and the original petition in this post-conviction relief case.

14) No ground set forth in paragraph 10 has been presented to this or any other court.

15) Not applicable because no prior petitions have been filed in any other court.

16) The grounds set forth in paragraph 10 have not been presented to any other court because this is the first opportunity to raise ineffective assistance of counsel.

17) Mr. Spade was represented at his jury trial, sentencing, and on appeal by the attorneys identified in paragraph 18. The undersigned counsel assisted Mr. Spade in preparing this amended application.

18) Prior Representation.

a) Trial Counsel:

1) Kenneth P. Shabel, Esquire
Kennedy & Brannon, P.A.
PO Box 3254
Spartanburg, SC 29304

2) Shawn M. Campbell, Esquire
Campbell Law Offices
1451 E Main St, Ste. 1A
Spartanburg, SC 29307

b) Appellate Counsel:

1) C. Rauch Wise, Esquire
305 Main St.
Greenwood, SC 29646

2) Kenneth P. Shabel, Esquire[2]
Kennedy & Brannon, P.A.
PO Box 3254
Spartanburg, SC 29304

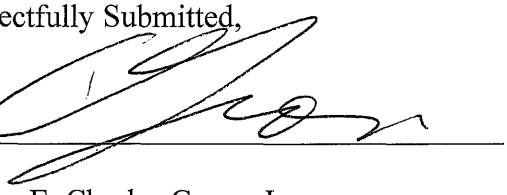
19) Mr. Spade respectfully requests this Court to order a new trial.

20) Mr. Spade is not under the sentence of any other court that she has not challenged.

(signature on next page)

[2] Mr. Shabel withdrew from representing Mr. Spade on appeal when he joined the same law firm as Mr. Brannon, who had been Mr. Spade's special prosecutor.

Respectfully Submitted,

By 

E. Charles Grose, Jr.
S.C. Bar Number 66063
The Grose Law Firm, LLC
404 Main Street
Greenwood, SC 29646
(864) 538-4466
(864) 538-4405 (fax)
Email: charles@groselawfirm.com

Attorney for the Applicant

May 14, 2019
Greenwood, South Carolina

Exhibit B

bad guy did, so she's made yet another disclosure to you.

Now, you are going to hear a couple of things from the defense attorney. One, you are going to hear that there was a meeting, and you have already heard it. You heard it from Kim Rosborough. There was a meeting. I believe it was on March 28th, 2011, I think. And in that meeting that Kim believed that it was time to bring Daniel Spade into this counseling stuff, and that only three, or four, or some days later [redacted] tells Mimi. Well, here is the deal. Mimi wasn't in that meeting. [redacted] wasn't in that meeting. But what we know is before that meeting [redacted] was curled up under a table. [redacted] was fearful. [redacted] was having nightmares. [redacted] was clinging. [redacted], potty trained, stands behind a door in the bathroom in her mommy's house and pees herself.

They want you to think that this is Heather Jolly trying to get Danny Spade, the bad guy, out of her daughter's life. That's not it at all. That's not it at all. He's a bad guy who put his penis in her mouth in a motel in Duncan, South Carolina, and she just, in a delayed disclosure, developed the ability to tell her Mimi, and then developed the ability to tell Tab Webber, and then developed the ability to tell Meredith Thompson-Loftis, and then yesterday developed the ability to tell you.

You know, several years ago -- my daughter is now

twenty years old. Several years ago she came home from school and she said "daddy, I know what you do." She said "I know you're a lawyer, daddy, and you tell people stories. That's what you do." And she said "daddy, I know what the police do. They arrest the bad people." She said "but daddy, I'm really scared and I'm concerned." And I said "well, baby, what is it?" She said "daddy, who takes care of the good people?" And, you know, I'm a pretty well educated person. I have been a dad for a long time, but there are certain things that you cannot prepare for. That question was one of those things that I wasn't prepared for, because at that point my daughter was maybe five or six years old. And that question was so deep and so out of my perception of her ability to think. And so me, this well educated lawyer, kind of took a step back and I said "baby, that's a really great question, but you are going to have to give daddy a minute or two to think about that, because I want to give you the right answer." And I did, I thought for a few minutes. Then we sat down at the dinner table and it just came on me. And I said "baby, do you remember the question you asked me?" She said "yeah, daddy." I said "I think I have an answer." I said "you are right, baby. My job is to tell somebody a story," and I'm telling [redacted] story today. And I said "you are right, the police, they arrest the bad people." And I said "but, baby, there is a

group of people that take care of the good people." Ladies and gentlemen, that group of good people is you. You take care of the good people. I told her "baby, the jury takes care of the good people."

You know, in Mr. Shabel's opening statement he said Danny Spade became a father. He was then on a journey to become a dad. And he told you that his journey ended unfortunately not in a way where he could walk her down the aisle, or take pictures at the prom. It ended in a courtroom with this horrible allegation.

Ladies and gentlemen, I submit to you that it didn't end in this courtroom. It didn't end with this horrible allegation. His journey to become a dad ended in this motel. It ended in a bathroom next to this swimming pool. It ended when that bad guy said "put this in your mouth," when he stuck his penis in her mouth, and said "if you don't, I won't take you home." His journey ended in that motel. It didn't end here today.

Ladies and gentlemen, we have to prove that [redacted] was under eleven years of age. We have to prove that there was a sexual battery; that Danny Spade committed that sexual battery; that there was an intrusion, ever so slight; that fellatio was involved. She told you "he put his private part in my mouth." She told you about fellatio and intrusion, ever so slight. It happened in Spartanburg

County, South Carolina.

Ladies and gentlemen, I submit to you that we have proved each and every element of this crime beyond a reasonable doubt. [redacted]ut it best when she was asked "who is Danny D?" She said "he's a bad guy."

Ladies and gentlemen, you are the good people. You take care of the good people. [redacted] is in your hands. He's guilty. Thank you.

THE COURT: Mr. Shabel?

MR. SHABEL: May it please the court?

THE COURT: Yes, sir.

MR. SHABEL: Good morning.

On behalf of Mr. Campbell, on behalf of Mr. Spade, I want to thank you for your attentiveness, for your focus, for your sacrifice in being here committing to the process of this wonderful government system that we have, and your patience with us. And let's be real, this was not just an education in government, in the judicial process, but it was a little bit of an aerobics workout. You come in, you sat down, you hear some stuff, you stand up, you go out, you come in, you sit down, you get up and you go out. Thank you for all of that.

Ms. Leskanic, Ms. Jordan, Mr. Brannon, Mr. Campbell, and I, we're all very passionate people. We love what we do, and our passion is the same. We want justice

Exhibit C

ALAN WILSON
ATTORNEY GENERAL

November 29, 2021

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, SC 29304-3483

Re: **Daniel Spade, #358974 v. State of South Carolina**
2017-CP-42-2372

Dear Ms. Cox:

Enclosed please find Respondent's Motion to Reconsider, Alter, or Amend the Court's Amended Order and Grant of Post-Conviction Relief and a New Trial Pursuant to Rule 59(e), SCRCP. in the above-captioned post-conviction relief case, for filing in your office. Please let me know if anything additional is needed for assist in this filing.

Sincerely,

Megan Harrigan Jameson
Senior Assistant Deputy Attorney General

MHJ/jj

cc: The Honorable J. Mark Hayes, II, Circuit Court Judge (by email and U.S. Mail)
E. Charles Grose, Jr., Esquire (by email and U.S. Mail)

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Daniel W. Spade, SCDC # 358974	)	Case No.: 2017-CP-42-02372
Applicant,	)	**RESPONDENT'S MOTION TO RECONSIDER, ALTER, OR AMEND THE COURT'S AMENDED ORDER AND GRANT OF POST-CONVICTION RELIEF AND A NEW TRIAL PURSUANT TO RULE 59(e), SCRCP**
v.	)	
State of South Carolina,	)	
Respondent.	)	

This matter comes before this Court by way of Applicant Daniel W. Spade's application for post-conviction relief following his conviction by a jury of his peers for first-degree criminal sexual conduct with a minor for the sexual assault of his four-year-old daughter. Following his unsuccessful attempt to obtain a reversal of his conviction on direct appeal, Applicant sought post-conviction relief by filing a *pro se* application. He then retained the services of E. Charles Grose, Jr., who filed several amended applications on Applicant's behalf. Respondent, the State of South Carolina, made its return to the application and requested an evidentiary hearing to resolve the claims as set forth in his *pro se* and three subsequent amended applications.

Following a lengthy evidentiary hearing spanning the course of five days[1], this Court denied relief, finding Applicant had failed to carry his heavy burden of establishing any constitutional deprivations or other violations necessary for a grant of post-conviction relief as to any of his numerous allegations. This Court issued a written order of dismissal memorializing these findings in compliance with S. C. Code Ann. § 17-27-80 that was filed on October 8, 2020.

Thereafter, Applicant, through counsel, filed a motion to reconsider, alter, or amend

[1] This Court heard motions pertaining to this matter on May 14, 2019, with the evidentiary hearing beginning on May 15, 2019, and concluding on May 20, 2019, following a break for the intervening weekend.

pursuant to Rule 59(e), SCRCP. Respondent made its return to this motion. On March 29, 2021, this Court convened a hearing on this motion and took the motion under advisement at the conclusion of the hearing

On November 12, 2021, this Court issued a new order, captioned "SCRCP Rule 59(e) Order Modifying in Part the Order of Dismissal Dated October 8, 2020 And Granting a New Trial," wherein this Court reversed its denial of relief and granted Applicant a new trial in the court of general sessions based on a determination that trial counsel was constitutionally ineffective for failing to object to a portion of the State's closing argument. Respondent received written notice of the order granting relief on November 15, 2021, when the order was sent to Respondent by the Spartanburg County Clerk of Court.

Respondent now makes the following motion pursuant to Rule 59(e), SCRCP, asking this Court to reconsider its amended order granting Applicant post-conviction relief and grant of a new trial in the court of general sessions.

I. PROCEDURAL HISTORY

During its February 2014 term, the Spartanburg County Grand Jury indicted Applicant for first-degree criminal sexual conduct with a minor following an investigation into allegations he sexually assaulted his four-year-old biological daughter during an overnight visit at a hotel in Spartanburg County (2011-GS-42-4171). Applicant retained the services of Kenneth Shabel, Esquire, who had been representing him in an on-going custody dispute involving the same minor child, and Shabel's law partner Shawn Campbell, Esquire, to represent him in this criminal matter. Seventh Circuit Solicitor Barry J. Barnette, Assistant Solicitors Jennifer Jordan and Kimberly Leskanic, and Special Prosecutor N. Douglas Brannon prosecuted the case. On February 24, 2014, Applicant proceeded to a jury trial before the Honorable R. Keith Kelly, circuit court judge. The

jury convicted Applicant as indicted. Judge Kelly sentenced Applicant to imprisonment for thirty-five years.

Applicant filed a timely notice of appeal and was represented by C. Rauch Wise, Esquire.[2] who raised five grounds. The South Carolina Court of Appeals affirmed Applicant's conviction by unpublished opinion on July 6, 2016. State v. Spade, Op. No. 2016-UP-352 (S.C. Ct. App. filed July 6, 2016). Applicant subsequently filed a petition for rehearing, and, following the denial of rehearing, filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. On June 16, 2017, the Supreme Court denied the petition for certiorari. The Remittitur was returned to the circuit court on June 22, 2017.

II. CURRENT PROCEEDINGS

On July 13, 2017, Applicant filed a *pro se* application for post-conviction relief, initiating this current action. Applicant then retained E. Charles Grose, Jr., to represent him in this action, and, through counsel, filed three subsequent amendments to his application on October 2, 2017, December 24, 2018, and May 14, 2019. Respondent filed a return to the application and requested an evidentiary hearing.

An evidentiary hearing on this action was convened May 15, 2019[3], before the Honorable J. Mark Hayes, II, circuit court judge. Applicant was present and was represented by counsel Grose. Respondent was represented by Senior Assistant Deputy Attorney General Megan Harrigan Jameson and Assistant Attorney General Johnny Ellis James, Jr. At the start of the hearing,

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[2] Trial counsel Kenneth Shabel originally assisted in the appeal but withdrew as counsel for Applicant when he changed law firms and began practicing law with Special Prosecutor Brannon. Counsel Shabel filed a motion to be relieved as counsel with the Court of Appeals on March 21, 2016, and his motion was granted on May 6, 2016.

[3] The Court convened for a motion hearing related to this matter on May 14, 2019.

Applicant also filed and submitted a "Memorandum in Support of Application for Post-Conviction Relief," which had not previously been provided to Respondent or the Court. At the hearing, Applicant proceeded forward on the following claims from his third amended application, absent allegation number 15, which Applicant expressly withdrew.

A. Ineffective assistance of counsel during the guilt phase for:

1. "Failing to request a continuance in order to have time to review and evaluate the child's mental health records that were disclosed for the first time four days prior to trial, when those records contained exculpatory information."

2. Not only failing to object to the trial judge instructing the jurors that their role is to "search for the truth" and make sure "justice is done," which impermissibly diminishes and shifts the burden of proof, but also adopting that language in closing argument, thereby diminishing and shifting the burden of proof."

3. "Failing to call available lay, character, and expert witnesses that would have established the unreliability of the child's allegations."

4. "Failing to investigate, develop, and present evidence that the Special Prosecutor, N. Douglas Brannon, had a conflict of interest and, therefore, was disqualified from prosecuting the case."

5. Failing to request a ruling on Mr. Spade's contention that the Private Prosecutor, N. Douglas Brannon, was unqualified to serve as a special prosecutor because the Solicitor failed to produce a governor's commission pursuant to S.C. Code Ann. § 1-7-470.

6. "Failing to move for disclosure of exculpatory information in the possession of the [Special] Prosecutor, N. Douglas Brannon.

7. "Failing to investigate, develop, and present evidence that would have established that testimony about the child's panic attacks were not related to Mr. Spade, which would have led to the trial court excluding that testimony or if the trial court did not exclude that testimony, would have allowed Mr. Spade to confront that testimony."

8. "Failing to object to and move for a mistrial because of inadmissible testimony that vouched for the child's credibility."

9. "Failing to object to Meredith Thompson-Loftis as a witness, including but not limited to her qualification as an expert witness, her techniques, and the reliability of her testimony. In the alternative, failing to impeach Meredith Thompson-Loftis

as a witness, including but not limited to her qualifications as an expert witness, her techniques, and the reliability of her testimony. *See, e.g., S.C. Dep't of Soc. Servs. v. Mary C.*, 396 S.C. 15, 720 S.E.2d 503 (Ct. App. 2011)."

10. "Failing to admit the videotaped interview from the Children's Advocacy Center that contained exculpatory information."

11. "Failing to investigate, develop, and present evidence that venue was not in Spartanburg County."

12. "Failing to support the directed verdict motion with evidence that venue was not in Spartanburg County."

13. "Failing to request a jury instruction on venue."

14. "Failing to object to the Special Prosecutor's improper closing argument that appealed to the jurors' emotions and improperly vouched for the complaining witness when he recounted a conversation with his daughter discussing how the police arrest 'bad people,' he (as Special Prosecutor) tells the complaining witness' story, and 'the jury takes care of good people.' Tr. 305-07."

15. "Advising Mr. Spade not to present any evidence, including but not limited to his own testimony."

16. "Excluding evidence from the forensic computer examination that was exculpatory."

17. "The cumulative effect of trial counsel's errors denied Mr. Spade his right to a fair trial."

18. "Failing to obtain through discovery, by subpoena, or court order relevant Department of Social Services records."

19. "Failing to move to exclude the testimony of the child complaining witnesses because her testimony was tainted, unreliable, and inadmissible because of the improper techniques used to obtain the testimony."

20. "Failing to cross-examine witnesses presented by the State to demonstrate to the jurors that the testimony of the child complaining witnesses was tainted and unreliable because of the improper techniques used to obtain the testimony."

21. "Failing to present expert testimony to confront the State's witnesses and demonstrate to the jurors that the testimony of the child complaining witnesses was tainted and unreliable because of the improper techniques used to obtain the testimony."

22. "Failing to investigate, develop, and present evidence that law enforcement in South Carolina and Virginia investigation allegations that Cara Lintner witnessed and/or participated in child sexual abuse perpetrated by Danny Spade with his daughter P.J. Law enforcement determined these allegations by P.J. to be unfounded. This ground is based on the deposition testimony of Cara Lintner."[4]

B. Ineffective assistance of counsel during the sentencing phase for:

23. "Failing to object to the trial judge denying Mr. Spade an opportunity to address the Court during his sentencing hearing."

24. "Failing to present any information or evidence to the trial judge in order to mitigate the sentence imposed."

C. Ineffective assistance of appellate counsel, in that

25. "Failing to brief on appeal the trial court judge denying the motion for directed verdict when the State failed to present evidence establishing venue in Spartanburg County."

D. Denial of due process because of prosecutorial misconduct, in that:

26. "Failing to disclose *Brady* information including, but not necessarily limited to, statements by the child demonstrating that venue was not in Spartanburg County."

27. "Failing to disclose *Brady* information in a timely manner including, but not necessarily limited to, statements by the child demonstrating that venue was not in Spartanburg County."

28. "Eliciting false testimony regarding venue."

29. "Failing to correct false testimony regarding venue."

30. Failing to disclose relevant Department of Social Services records obtained by Spartanburg count Sherriff Investigator Nicki Cantrell

31. Failing to disclose that law enforcement in South Carolina and Virginia investigated allegations that Cara Lintner witnessed and/or participated in the abuse and LE found them to be unfounded.

At the evidentiary hearing, Applicant presented the following witnesses:

[4] Applicant did not introduce transcripts of the depositions of Cara Lintner and John Hall during this proceeding. Neither deposition is part of this record.

-Dr. Maggie Bruck, Ph.D, who was admitted as an expert in child abuse disclosure, forensic interview techniques, treatment of child sexual abuse victims, and suggestibility;

-Meredith Thompson-Loftis, who was the victim's counselor;

-Appellate counsel C. Rauch Wise;

-Seventh Circuit Solicitor Barry Barnette;

-Dr. Michael Lamb, Ph.D., who was admitted as an expert in psychology with a specialty in child interviews;

-Trial counsel Kenneth Shabel;

-Applicant's brother-in-law Josh Trumpower;

-Applicant's close friend Michael Mizak;

-Alexandria Wolf, the victim's former guardian ad litem in the family court proceedings, and

-Special Prosecutor Douglas N. Brannon.

Respondent presented the following witnesses:

-Investigator Nicki Cantrell, formerly with the Spartanburg County Sherriff's Department;

-Trial counsel Shawn Campbell

-Tabitha Weber, MSW, LISW-CP, the Clinical Director and Forensic Supervisor of the Children's Advocacy Center of Spartanburg, Cherokee, and Union Counties who was admitted as an expert in the field of child abuse assessment and treatment.

Numerous exhibits were also introduced during the hearing, including the videotaped forensic interviews of the victim conducted by Weber.

Following the hearing and on Applicant's motion, the Court issued an order requiring the South Carolina Department of Social Services (DSS) to provide the court with a complete copy of any file or records regarding the underlying custody action involving Applicant, the minor victim, and her parents (mother and adoptive father) within ten days of receipt of the order. On June 11,

2019, the DSS file was hand-delivered to the Court by a DSS attorney.

Upon receipt the file from DSS, this Court instructed both parties to conduct an in-camera review of the DSS file, which occurred in chambers at the Spartanburg County Courthouse on July 3, 2019, with counsel Grose and Senior Assistant Deputy Attorney General Jameson. Thereafter, both parties requested the Court release the records, subject to a protective order. On July 30, 2019, the Court conducted a telephone status conference on this request, with counsel Grose and Senior Assistant Deputy Attorney General Jameson appearing on behalf of the parties and DSS represented by Robert Rhoden, Esquire and. By order signed and filed August 16, 2019, this Court issued an order releasing the DSS fie to the parties, with special instructions that DSS was to redact any personal identifying information before providing a copy to the parties, that counsel for the parties shall maintain the file subject to the strictest confidence and not make any copies other than as needed for litigation, and that the parties shall not give copies of the file to anyone absence approval of the Court.

On October 31, 2019, following the issuance of this order and the delivery of the DSS file to the parties, the Court requested the parties submit any additional memorandums on the DSS file and the issues raised at the PCR hearing on or before December 17, 2019. On that date, the State submitted its "Post-Hearing Memorandum in Support of the Denial of Post-Conviction Relief" and Applicant submitted a "Supplemental Memorandum of Law regarding the DSS Records."

On May 7, 2020, this Court issued a ten-page Form 4 denying post-conviction relief on all grounds and instructing the State to prepare a proposed order in accordance with the Form 4 within thirty days. On June 8, 2020, Respondent submitted a proposed order pursuant to the Court's instructions. On the same date, Applicant's counsel requested time to review the proposed order with Applicant and submit written objections to the proposed order and the Court granted this

request. On July 7, 2020, Applicant submitted "Objections to Attorney General's Proposed Order and Proffer of Attorney General's Proposed Order."

On October 8, 2020, the Court issued an order of dismissal, denying and dismissing the post-conviction relief action in full.

On October 19, 2020, Applicant served a timely Rule 59(e), SCRCP motion. Respondent made its return to the motion on January 13, 2021. On March 29, 2021, this Court convened a hearing on Applicant's motion. Applicant was present and represented by counsel Grose. Respondent was represented by Senior Assistant Deputy Attorney General Jameson. Following the hearing, this Court took this motion under advisement.

On November 12, 2021, this Court issued an amended order, reversing its previous denial of post-conviction relief and granting Applicant a new trial in the court of general sessions. This order makes new substantive findings of fact and conclusions of law pursuant to Section 17-27-80 and now determines Applicant received constitutionally deficient representation during trial based on trial counsel's failure to object to a portion of the State's closing argument and that this failure to object likely changed the outcome of the trial, i.e., that Applicant would have been acquitted of the sexual assault of his four-year-old daughter but for trial counsel's decision not to object to a story told by the prosecutor in his closing argument.

Because this is an amended order with new substantive findings and ultimately changing the ultimate outcome of this case, Respondent now makes the following motion to reconsider, alter, or amend this new order pursuant to Rule 59(e), SCRCP.

III. ARGUMENT IN SUPPORT OF RECONSIDERATION

In its amended order, this Court grants Applicant post-conviction relief as to a sole[5] issue—that trial counsel was constitutionally ineffective for failing to object to what this Court's concludes was an improper closing argument by Special Prosecutor Brannon that "unconstitutionally negates the presumption of innocence." (Amended Order p. 20). This Court finds that this argument regarding the role of the jury in protecting good people from bad people somehow unconstitutionally shifted the burden of proof away from the State and told the jury not to view the evidence objectively and fairly, but, rather, "beseeches the jury to become an advocate for the victim, thus asking them to depart from their constitutional duty to consider the facts of the case impartially." (Amended Order p. 2 FN 22).

This Court further finds that because this argument was impermissible, trial counsel should have objected. This Court then concludes Applicant was prejudiced by trial counsel's failure to object for several reasons. First, this Court finds that because trial counsel did not object, the trial court did not give an instruction to the jury that the verdict must not be based on passions or emotions. Second, this Court finds that there is a reasonable probability that Applicant would have been acquitted but for counsel's failure to object to this portion of the State's closing argument because the primary evidence introduced against Applicant was the minor victim's testimony. This Court elaborates that "[t]here were not multi-witnesses as to the events"[6] nor was there DNA or

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[5] To the extent that this Court finds Applicant established prejudice, but not deficiency, as to Applicant's allegation that trial counsel was ineffective for failing to object to bolstering from State's witnesses, Respondent respectfully requests this Court either remove entirely or clarify its position in FN 18 of the amended order, as the footnote in question finding prejudice does not comport with the body of the amended order unequivocally finding Applicant failed to find trial counsel deficient as to this allegation.

[6] Respondent notes in the overwhelming majority of child sex abuse cases, the abuser performs his or her heinous acts not in front of an audience, but, rather, in secrecy while the child is isolated from those who can protect him or her, and, therefore, there generally are not "multi-witnesses" to

other physical evidence, thereby making the credibility of the minor victim crucial and "[c]ompounding and intensifying the prejudicial harm caused by trial counsel's failure to object to the Special [P]rosecutors argument[.]" (Amended Order p. 27).

Respondent respectfully notes this Court's findings and conclusions are not supported by the record or case law and urges this Court to reconsider its grant of post-conviction relief and a new trial to Applicant.

Standard of Review for Assessing Claims of Ineffective Assistance of Counsel

Initially, Respondent notes this Court's determination that Applicant met his burden of establishing trial counsel was constitutionally ineffective does not comport with the recognized standard of review for granting relief in post-conviction relief matters, which requires an applicant to meet a heavy burden of establishing both that his or her counsel performed in a manner that no competent attorney would have performed and that there is a reasonable probability that the applicant would not have been convicted but for counsel's error or omission. Respondent respectfully urges this Court to reconsider its ruling in light of the established standard for granting post-conviction relief.

Applicant, like all those seeking post-conviction relief, bears the burden of proving his allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. This Court, like any post-conviction relief court, must then

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the atrocious sex acts committed on children. The lack of additional eyewitnesses to the abuse does not make this case unique, but, rather, commonplace. See State v. Smith, 406 S.C. 215, 220, n. 7, 750 S.E.2d 612, 614 (2013) ("Child abuse differs from other types of crimes in several respects. Specifically, the crime of child abuse often occurs in secret, typically in the privacy of one's home. The abusive conduct is not usually confined to a single instance, but rather is a systematic pattern of violence progressively escalating and worsening over time. Child victims are often completely dependent upon the abuser, unable to defend themselves, and often too young to alert anyone to their horrendous plight or ask for help." (quoting State v. Fletcher, 379 S.C. 17, 27, 664 S.E.2d 480, 484-485 (2008) (Toal, C.J. dissenting))).

apply the two-part test outlined in Strickland v. Washington, 466 U.S. 668 (1984), to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a post-conviction relief applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats am ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690. The reviewing post-conviction relief court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Because of the difficulties inherent in making such an evaluation, this Court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [i]t.' " Dunn v. Reeves, 594 U.S. ___, 141 S. Ct. 2405, 2410 (2021)

(alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that ***no competent lawyer would have chosen***." Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). This Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as he or she did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a post-conviction relief court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688–89; see id. at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn, 594 U.S. ___, 141

S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt"). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112 (emphasis added); see Strickland, 466 U.S. at 694 ("A reasonable probability is a probability sufficient to undermine confidence in the outcome.").

In determining prejudice, this Court must consider the totality of the evidence before the jury. Id. at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to deprive the defendant of a fair trial." Id. at 687. "An error by counsel, even if professionally unreasonable, does not warrant

setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 691.

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90; see also Weaver v. Massachusetts, __ U.S. __, 137 S.Ct. 1899, 1912 (2017) (quoting Premo v. Moore, 562 U.S. 115, 112 (2011) ("For this reason, the rules governing ineffective-assistance claims "must be applied with scrupulous care.")). Post-conviction relief courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so manifestly ineffective that defeat was snatched from the hands of probable victory.").

With this standard in mind, Respondent will address below why Applicant was unable to meet this high burden placed upon him and why this Court should reconsider its grant of relief.

Trial Counsel was Not Deficient for Failing to Object to this Portion of the Closing Argument

Respondent respectfully notes that this Court's finding that trial counsel was constitutionally deficient for failing to object to the portion of the State's closing argument is not supported by prevailing professional standards required of competent attorneys.

Special Prosecutor Brannon gave the State's closing argument in this case. He began by discussing the elements of first-degree criminal sexual conduct, the State's burden of proof, and reviewing the evidence presented to meet the State's burden of proof as to the elements of the crime. (Tr. 298-301). Special Prosecutor Brannon then discussed the defense theory of the case—that Applicant was merely a man trying to be a dad despite enormous opposition from the victim's mother—and tied it to his own experiences as a father while making comparisons to properly admitted evidence presented to the jury. (Tr. 301-305). Then, more than two-thirds into his closing argument, Special Prosecutor Brannon tells a story of when his daughter came to him and asked him, "daddy, who takes care of the good people?", to which Special Prosecutor Brannon ultimately responds that the jury takes care of the good people. (Tr. 305-307). Special Prosecutor Brannon then summarizes the evidence presented one more time before concluding his argument:

> Ladies and gentlemen, I submit to you that we have proved each and every element of this crime beyond a reasonable doubt. [Victim] put it best when she was asked "who is Danny D?" She said "he's a bad guy."
>
> Ladies and gentleman, you are good people. You take care of the good people. [Victim] is in your hands. He's guilty. Thank you.

(Tr. 308).

Initially, Respondent notes the portion of the closing argument that Applicant takes issue with was confined to evidence in the record and argument based on that evidence, and, accordingly, is not inherently improper or unconstitutional as a matter of law.

Closing arguments are a basic and important element of the adversarial fact-finding process in a criminal trial, and such arguments serve "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case" while also providing both the solicitor and defense counsel with an opportunity to advocate for their respective positions, argue for certain inferences to be drawn from the evidence presented, and identify the weaknesses in the other side's positions. Herring v. New York, 422 U.S. 853, 862 (1975). When presenting a closing argument, a solicitor generally possesses "wide latitude" as to the substance of his remarks to the jury and is fully permitted to prosecute with earnestness and vigor. Bates v. Lee, 308 F.3d 411, 422 (4th Cir. 2002); Berger v. United States, 295 U.S. 78, 88 (1935) ("[A prosecutor] may prosecute with earnestness and vigor—indeed, he should do so."); see also United States v. Isaacs, 493 F.2d 1124, 1164 (7th Cir. 1974) ("The closing argument of a prosecutor need not be confined to such detached exposition as would be appropriate in a lecture . . . because to shear him of all oratorical emphasis, while leaving wide latitude to the defense, is to load the scales of justice." (citations and internal quotations omitted)).

Pursuant to the wide latitude afforded in regard to the substance of a closing argument, the solicitor—amongst other things—is allowed to state and discuss the State's version of the testimony, to comment on the weight to be given to such testimony, and to point out the matters the jury should and should not consider in arriving at a verdict. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); see State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) ("[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider." (citation and internal quotations omitted)).

However, prosecutors must confine their arguments to the record and the reasonable inferences that may be drawn therefrom. Tappeiner v. State, 416 S.C. 239, 250, 785 S.E.2d 471, 477 (2016) (quoting Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). When a court is reviewing a post-conviction relief claim that a prosecutor's argument violated an applicant's due process rights, the court "must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial." Id. (quoting Darden v. Wainwright, 477 U.S. 168, 181, (1986) (internal quotations and citations omitted).

Our Supreme Court has stated:

> Improper comments do not automatically require reversal if they are not prejudicial to the defendant. On appeal, the appellate court will view the alleged impropriety of the solicitor's argument in the context of the entire record . . . The appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument. ***The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.***

Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166-67 (1998) (emphasis added) (citations omitted); see also Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) ("The relevant question is whether the solicitor's comments [in closing argument] so infected the trial with unfairness as to make the resulting conviction a denial of due process.").

While "[a] solicitor has a right to state his version of the testimony and to comment on the weight to be given such testimony[,]" prosecutors are "bound to rules of fairness in their closing arguments[.]" Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010) (quoting Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (quoting Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d

738, 744 (2004)). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Von Dohlen, 360 at 609–10, 602 S.E.2d at 744

Here, the argument made by Special Prosecutor Brannon does not rely on inadmissible evidence, but, rather, is based on properly admitted evidence and reasonable inferences to this evidence. He is merely commenting on the properly admitted evidence, which including the minor victim calling Applicant a "bad guy" when she was asked who Applicant was on the witness stand. (Tr. 137). Special Prosecutor Brannon's tale of a conversation with his daughter and tying it to the evidence presented and the proper role of the jury—to evaluate the evidence properly admitted and determine whether that the State met its burden of establishing Applicant's guilt beyond a reasonable doubt—is not *per se* impermissible and counsel is not *per se* deficient for failing to object to this portion of the State's argument.

In reaching its determination that this argument was impermissible, this Court places significant emphasis on the testimony of Special Prosecutor Brannon during the evidentiary hearing, which this Court characterizes as an acknowledgement that this portion of the argument was knowingly improper and specifically intended to arouse the passions of the jury. Respectfully, this is a mischaracterization of the testimony provided at the evidentiary hearing.

During his testimony, Special Prosecutor Brannon was asked by the State about his closing argument, which he stated he "plagiarized" from former Seventh Circuit Solicitor Harold W. "Trey" Gowdy, III. (PCR Tr. May 20, 2019 p. 101). On re-direct examination, Applicant's counsel and Special Prosecutor Brannon had the following exchange:

Q. And she asked you about the closing argument.

A. Yes, sir.

Q And, and I understand you would testify that you got that story from former Solicitor Gowdy?

A. That's correct.

Q. Okay. Are you familiar with case law about closing arguments that prohibit making an emotional appeal to jurors to decide the case on fact or on something other than the elements of the crime?

A. I'm -- I -- yes, sir, I, I –I'm aware of that. But I also know that I tried cases for years, and saw Mr. Gowdy stand in front of the 12 people in the box with tears running down their face and telling that story. So, yes, I'm aware of that, that case law. But I'm always aware of what happens in the courtroom on a daily basis.

Q. And, and did you ever object when or did you have a trial with Solicitor Gowdy when he made that argument?

A. Dozens of them, yes.

Q Did you ever object---

A. I did not.

Q ---to it?

Do you think it's an objectionable argument?

A. Well, it might of been. But that's not for me to – it might of been. But I knew that either I had just gone and had been just as passionate as him or I was about to go and was gonna try to be more passionate than him. So, I mean those are, those are calls for trial strategy, and Tr[e]y's a passionate lawyer, and I try to be one myself.

Q. All right. And, and I believe you started to say it's not for you to decide whether that's a proper argument or not?

A. I believe that would be correct.

(PCR Tr. May 20, 2019 p. 119-120).

From the record, it is clear Special Prosecutor Brannon intended to give a ***passionate*** closing argument. However, there are no prohibitions against a prosecutor arguing with vigor, and no case law requiring the State's closing argument to sterile, antiseptic, and free from emotion.[7]

[7] In State v. Durden, 264 S.C. 86, 212 S.E.2d 587, 590 (1975), the South Carolina Supreme Court set forth examples of permissible closing arguments by prosecutors:

Special Prosecutor Brannon's commentary that he intended to be just as passionate, if not more, passionate, than trial counsel during his closing argument is not impermissible—in contrast, it is being an effective advocate.

Importantly, Special Prosecutor Brannon did not testify that he made a knowingly improper argument. In contrast, he testified that as a defense attorney, he has prosecutors make this argument in cases where he is on the opposing side representing a defendant and he unequivocally stated he has ***not*** objected to this argument.

While Applicant would have this Court view the Special Prosecutor's remarks in the most damaging manner possible, the United States Supreme Court gave the admonition in Donnelly v. DeChristoforo that "a court should not lightly infer that a prosecutor intends an ambiguous remark to have its most damaging meaning or that a jury, sitting through lengthy exhortation, will draw that meaning from the plethora of less damaging interpretations." Donnelly v. DeChristoforo, 416 U.S. 637, 647(1974). Respectfully, this Court's findings that Special Prosecutor Brannon

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> 'So long as he stays within the record and its reasonable inferences, ***the prosecuting attorney may legitimately appeal to the jury to do their full duty in enforcing the law, or to return the verdict which he conceives it to be their duty to return under the evidence, and it may employ any legitimate means for impressing on them their true responsibility in this respect***, as by stating that a failure to enforce the law begets lawlessness. Thus, he may in effect tell them that the people look to them for protection against crime, and may illustrate the effect of their verdict on the community or society generally with respect to obedience to, and for enforcement of, the law; he has the right to dwell on the evil results of crime and to urge a fearless administration of the criminal law; ***and he may ask for a conviction, or assert the jury's duty to convict. He may argue with reference to any matter which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.***'

(citation omitted) (emphasis added).

knowingly made an argument intending to impermissibly arise the passions of the jury is not supported by the record.

Next, Respondent urges this Court to reconsider its finding that trial counsel was constitutionally deficient for failing to object to this portion of the closing argument. As described above, Applicant carries the burden of overcoming the rebuttable presumption that counsel's performance was reasonable and to do so, he must establish that trial counsel's performance, whether it be through an act or omission, is so inherently unreasonable that "no competent attorney would have chosen." Dunn v. Reeves, 594 U.S. at ___, 141 S. Ct. at 2410 (quoting Burt v. Titlow, 571 U.S. at 22–23). As this portion of the closing argument was not *per se* impermissible, Applicant cannot meet his high burden of establishing trial counsel was constitutionally ineffective for failing to object.

Applicant Cannot Meet His High Burden of Establishing Prejudice for Failing to Object

Finally, Respondent respectfully urges this Court to reconsider its finding that Applicant established there is a reasonable probability that he would not have been convicted but for trial counsel's failure to object to the questioned portion of the State's closing argument. Notwithstanding Respondent's prior arguments that Applicant cannot establish that the closing argument in question was impermissible or that counsel was deficient for failing to object to this argument, Respondent also respectfully asserts this Court erred in determining Applicant established the requisite prejudice for a grant of post-conviction relief.

A criminal defendant or convicted person seeking collateral review is not entitled to relief based upon the closing argument of a prosecutor unless that argument so infected the trial with unfairness as to make the resulting conviction a denial of due process. Donnelly, 416 U.S. at 643. See also Humphries, 351 S.C. at 373, 570 S.E.2d at 166 ("Improper comments do not automatically

require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument"). "'[I]t is not enough that the remarks were undesirable or even universally condemned.'" Darden, 477 U.S. at 181.

The United States Supreme Court has consistently held this is a very high standard for a petitioner seeking collateral review to meet. In Darden, the United States Supreme Court held that a closing argument considerably more inflammatory than the one at issue here did not warrant habeas relief, despite the prosecutor referring to the defendant as an "animal" and expressing a desire to see the defendant "with no face, blown away by a shotgun," amongst other comments to which Darden argued were objectionable. Darden, 477 U.S. 168.

Applying this high standard to the present case, Respondent submits Applicant cannot show prejudice under Strickland resulting from trial counsel's failure to object to the Special Prosecutor's closing argument, as the innocuous comments that Applicant was a "bad guy" did not so infect the trial with unfairness to warrant relief.

Moreover, Respondent respectfully notes the record is replete with admonitions to the jury from the trial court that the jury's verdict must be fair and impartial and the State firmly held the burden of proof, thereby eliminating any possible prejudice from the portion of the closing argument which this Court found impermissibly shifted the burden of proof away from the State. (Tr. 115, 316, 317, 319, 328). Specifically, the trial court explicitly instructed the jury at the outset of trial that arguments from counsels were not evidence. (Tr. 115). The jury was repeatedly told its verdict must be based solely on the evidence presented from the witness stand and exhibits and was properly instructed on how to evaluate the credibility of witnesses. (Tr. 115, 316, 317, 319, 323, 328). The jury was instructed by the trial court that Applicant was presumed innocent, which

was then described to the jury as akin to Applicant being cloaked in a "robe of innocence place about his shoulders . . . which remains with him from the moment of his arrest and continues until it has been stripped from him, from his shoulders, by evidence satisfying you of his guilty beyond a reasonable doubt." (Tr. 318-319). The jury was repeatedly instructed as to the State's burden of proof. (Tr. 316-330). Respectfully, this Court's finding that Applicant established prejudice from trial counsel's failure to object because the jury did not receive a special instruction that its verdict must be free from passion is not supported by the record in light of the repeated instructions the jury received explaining the verdict must be based solely on the evidence presented from the witness stand and the other proper jury instructions given by the trial court.

Moreover, there is no conceivable way the result of Applicant's trial would have been different but for counsel's failure to object to this closing argument. As discussed above, the Special Prosecutor's argument was not *per se* impermissible, was not calculated to arouse the passions of the jury, and did not rise to the level of denying Applicant a fair trial.

Respondent moves this Court to reverse its amended decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984), and its progeny.

IV. CONCLUSION

Based on all the foregoing, as well as the arguments set forth at the evidentiary hearing and in Respondent's post-hearing memorandum, proposed order of dismissal, return to Applicant's motion to reconsider, and other previous arguments, Respondent respectfully requests this Court affirm its original denial and dismissal of post-conviction relief, as Applicant failed to meet his heavy burden of establishing counsel performed in a way no competent attorney would and that

there is a reasonable probability the outcome of the trial would have been different but for counsel's failure to object to a portion of the State's closing argument.

Respectfully submitted,

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By: _____

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November 29,2021

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT
Daniel Spade, #358974 Applicant,	)	Case No. 2017-CP-42-2372
vs	)	CERTIFICATE OF SERVICE BY MAIL
State of South Carolina, Respondent,	)	

1. I am counsel of record for Respondent in the above-captioned post-conviction relief action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Respondent's Motion to Reconsider, Alter, or Amend the Court's Amended Order and Grant of Post-Conviction Relief and a New Trial Pursuant to Rule 59(e), SCRCP in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

The Honorable J. Mark Hayes, II
Presiding Judge
180 Magnolia Street
Spartanburg, SC 29306

E. Charles Grose, Jr., Esquire
Grose Law Firm
404 Main Street
Greenwood, SC 29646

DATED this the 29th day of November, 2021.

Megan Harrigan Jameson
Counsel for Respondent

Exhibit D

bad guy did, so she's made yet another disclosure to you.

Now, you are going to hear a couple of things from the defense attorney. One, you are going to hear that there was a meeting, and you have already heard it. You heard it from Kim Rosborough. There was a meeting. I believe it was on March 28th, 2011, I think. And in that meeting that Kim believed that it was time to bring Daniel Spade into this counseling stuff, and that only three, or four, or some days later [redacted] tells Mimi. Well, here is the deal. Mimi wasn't in that meeting. [redacted] wasn't in that meeting. But what we know is before that meeting [redacted] was curled up under a table. [redacted] was fearful. [redacted] was having nightmares. [redacted] was clinging. [redacted], potty trained, stands behind a door in the bathroom in her mommy's house and pees herself.

They want you to think that this is Heather Jolly trying to get Danny Spade, the bad guy, out of her daughter's life. That's not it at all. That's not it at all. He's a bad guy who put his penis in her mouth in a motel in Duncan, South Carolina, and she just, in a delayed disclosure, developed the ability to tell her Mimi, and then developed the ability to tell Tab Webber, and then developed the ability to tell Meredith Thompson-Loftis, and then yesterday developed the ability to tell you.

You know, several years ago -- my daughter is now

twenty years old. Several years ago she came home from school and she said "daddy, I know what you do." She said "I know you're a lawyer, daddy, and you tell people stories. That's what you do." And she said "daddy, I know what the police do. They arrest the bad people." She said "but daddy, I'm really scared and I'm concerned." And I said "well, baby, what is it?" She said "daddy, who takes care of the good people?" And, you know, I'm a pretty well educated person. I have been a dad for a long time, but there are certain things that you cannot prepare for. That question was one of those things that I wasn't prepared for, because at that point my daughter was maybe five or six years old. And that question was so deep and so out of my perception of her ability to think. And so me, this well educated lawyer, kind of took a step back and I said "baby, that's a really great question, but you are going to have to give daddy a minute or two to think about that, because I want to give you the right answer." And I did, I thought for a few minutes. Then we sat down at the dinner table and it just came on me. And I said "baby, do you remember the question you asked me?" She said "yeah, daddy." I said "I think I have an answer." I said "you are right, baby. My job is to tell somebody a story," and I'm telling [redacted] story today. And I said "you are right, the police, they arrest the bad people." And I said "but, baby, there is a

group of people that take care of the good people." Ladies and gentlemen, that group of good people is you. You take care of the good people. I told her "baby, the jury takes care of the good people."

You know, in Mr. Shabel's opening statement he said Danny Spade became a father. He was then on a journey to become a dad. And he told you that his journey ended unfortunately not in a way where he could walk her down the aisle, or take pictures at the prom. It ended in a courtroom with this horrible allegation.

Ladies and gentlemen, I submit to you that it didn't end in this courtroom. It didn't end with this horrible allegation. His journey to become a dad ended in this motel. It ended in a bathroom next to this swimming pool. It ended when that bad guy said "put this in your mouth," when he stuck his penis in her mouth, and said "if you don't, I won't take you home." His journey ended in that motel. It didn't end here today.

Ladies and gentlemen, we have to prove that [redacted] was under eleven years of age. We have to prove that there was a sexual battery; that Danny Spade committed that sexual battery; that there was an intrusion, ever so slight; that fellatio was involved. She told you "he put his private part in my mouth." She told you about fellatio and intrusion, ever so slight. It happened in Spartanburg

County, South Carolina.

Ladies and gentlemen, I submit to you that we have proved each and every element of this crime beyond a reasonable doubt. [redacted]ut it best when she was asked "who is Danny D?" She said "he's a bad guy."

Ladies and gentlemen, you are the good people. You take care of the good people. [redacted] is in your hands. He's guilty. Thank you.

THE COURT: Mr. Shabel?

MR. SHABEL: May it please the court?

THE COURT: Yes, sir.

MR. SHABEL: Good morning.

On behalf of Mr. Campbell, on behalf of Mr. Spade, I want to thank you for your attentiveness, for your focus, for your sacrifice in being here committing to the process of this wonderful government system that we have, and your patience with us. And let's be real, this was not just an education in government, in the judicial process, but it was a little bit of an aerobics workout. You come in, you sat down, you hear some stuff, you stand up, you go out, you come in, you sit down, you get up and you go out. Thank you for all of that.

Ms. Leskanic, Ms. Jordan, Mr. Brannon, Mr. Campbell, and I, we're all very passionate people. We love what we do, and our passion is the same. We want justice

(Witness comes forward.)

THE COURT: Ma'am, just come right up here and place your left hand on the Bible and raise your right hand. (Complies.)

Do you solemnly swear that the testimony you're about to give the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: Thank you, ma'am. And just watch your step as you're stepping up.

THE WITNESS: Okay.

THE COURT: But just step up and have a seat in the red chair and pull the red chair up to the microphone.

THE WITNESS: Thank you.

THE COURT: Ma'am, if you will give us your name for us, please.

THE WITNESS: My name is Maggie Bruck, B-r-u-c-k.

THE COURT: Thank you.

DR. MAGGIE BRUCK,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GROSE:

Q. And, Dr. Bruck, what is your occupation?

A. I'm presently semi-retired, but I have the title

of full professor of child psychiatry at Johns Hopkins University and professor of psychology at McGill University in Montreal, Quebec.

Q. And can you review for Judge Hayes your educational background, I guess, beginning with your college degree?

A. Yes, it's very short. I got a Batchelor's in 1967 at Wheaton College in Norton, Massachusetts. And then I went to McGill University where I got a Master's, and then a Ph.D. in psychology, in general psychology.

Q. Okay. And what year did you get the Ph.D.?

A. 1972.

Q. Okay. And since then have you been employed within your profession?

A. I have.

Q. Okay. And what are some of the academic and professional positions that you've held?

A. Well, when I graduated I, I held -- I was still in the psychology department at McGill University, but I specialized in children with learning disabilities and cognitive and emotional problems. And then I do a lot of work on dyslexia and bilingualism. And then at the end of the '80's I began focussing on issues that we call forensic developmental psychology about issues that arise when children are witnesses in the courtroom.

Q. Okay.

A. And I have stayed on that track for a long time.

Q. All right. Can you explain, I believe you used the term forensic developmental psychology?

A. Right.

Q. Can you explain what that means?

A. You know, it's a term that we made up, actually, to encompass many issues that many researchers in the field deal with that involve child witnesses, such as their comprehension of the legal setting; their memory of events; their generally, what we call, memory distortion.

A lot of these things are not specific to the courtroom, but they're issues that arise. So how well do children remember events? How quickly do they forget events? What are the techniques that help children to accurately remember events? What are the techniques that actually impair children's memory and that may result in false statements?

They also involve issues of child abuse in general, such as the issues of disclosure, the issues of recantation. The issues of what sexually abused children or victims, what their statements look like, how they come about. All of those are issues that we have put under scientific scrutiny and examine the

scientific literature. Done our own experiments to answer these issues and to write about them and talk about them.

Q. And when you say "put under scientific scrutiny" is that applying some sort of scientific method?

A. Yes.

Q. And can you give an example of how that's done?

A. Okay. So let me just say about the importance. I mean, really up until we began this work in the late 1980's, very little was known about children's capabilities and their weaknesses and strengths, so all we had were witnesses or clinicians who came and said, you know, based on my experience, you know, I think children will make up a story out of nowhere, or I think children are always truthful and they never lie about sexual abuse. Or, you know, when children are sexually abused these are the symptoms that they always show. But there was no scientific evidence to back that up.

In other words, they were based on these people who were professionals and experts in their fields and treating children on their own intuitions. And there are problems with dealing with one's own intuitions because they're not systematically recorded. They're sort of like their general feelings but their not necessarily right. They describe negative evidence.

And we need something stronger to deal with.

And what science, you know, part of the scientific method is a systematic examination of an issue, such as, let's say, children's -- let's say sexually abused children's behavioral problems. This is one of the first ones that came up.

And, you know, what we were faced with and what these clinicians were telling us that one of the scientific strategies to deal with this was to, in fact, take children with no histories of sexual abuse to measure in some standardized way, such as checklists or whatever, what their symptoms are and then to compare those to the symptoms of children who have no histories of victimization or whatever with the same instruments or to compare them to children who had other kinds of behavioral problems who were just in general in psychiatric clinics.

And what's been found over the years is that there are no specific set of symptoms that are unique to sexually abused children; that a lot of these, depending on the age, are common among normal developing children. That these are common among children who have other kinds of psychiatric disorders. And so that's one form of the scientific method.

Q. All right. I want to go through some of the

areas that you may have some, I don't know, expertise or some participation in. Have you been involved or conducted research on children's memory?

A. I have.

Q. And can you tell the Court a little bit about that?

A. Yes. So, the research on children's memory had to do with how well can children remember events. Some of them pretty mundane. Some of them stressful, such as visits to the pediatrician or to a doctor and having genital examinations. Some of -- and what all -- not all, but parts of them were was really how much could they accurately remember by being asked, you know, did you go to the doctor recently, can you tell me what happened?

The other part of most of our studies have been to see what happens if we use certain kinds of procedures to interview or ask these children? And these are procedures that I am gonna call suggestive interviewing techniques, such as prompting children with information that might skew their memories.

So like you remember when you went to the doctor and there was a nurse who had a bow on her head and then later we'd come back and say, you know, tell me about the doctor's visit. Can you tell me what the nurse was

wearing? And we were interested in how many would report she was wearing a bow on her head. Now, that's a really simplistic thing, but just to give you a kind of idea. And so, that's been the majority of the research in children's memory.

But we've also done research on adult's memory that has importance to the forensic arena, and that concerns adult's memory of their conversations with children. How well do they remember these conversations and what kinds of errors do they tend to make?

Q. Okay.

A. Anyway, that's just a quick overview.

Q. Right. And this is research that you personally have actually been involved in?

A. Yes.

Q. Okay. And we know now that there's recommendations of recording interviews with children?

A. That's correct.

Q. And did that come out of some of the research that you participated in?

A. Well, I'd love to say yes.

Q. Okay.

A. Partially so. I think, you know, more and more jurisdictions are now requiring recordings. We, you know, suggested to judges that this be a requirement,

but it's very half hazard. But I think now more and more jurisdictions it's, it's the rule that they do recordings.

Q. Earlier you mentioned the term "memory distortion." Has any of your research involved that either with children or adults?

A. Yes. I mean, the, the research that I talked about in terms of suggestion is memory distortion. We have some research, I mean, and other people have about how beliefs result in memory distortion. So if you really believe something happened, how accurately are you going to remember the exact facts of what happened? So there are lots of different kinds of memory distortion.

Another kind of memory distortion that everyone studies is just forgetting. Is that over time you don't remember every single fact. You kind of, things fall away. Different events get congealed in memory. They get combined. They change over time. They get combined with newer memories.

And that's really the common view of memory now is that it's not like a tape recorder. It's not like a file box where you can pull it out. It's really an ongoing symphony where things get dropped off, things get put in.

And there are different reasons for this. Sometimes, you know, like studying, for example. The more you study, the more you're gonna know.

Q. Right.

A. And so there are lots of strategies we know that help enhance memory but we know there are other things that degrade memory.

Q. Okay. We mentioned that you, or I talked about you have conducted research. Have you published any books or chapters to books?

A. We did publish a book called Jeopardy in the Courtroom. That's our major. When I say "our", I have to say that a lot of my research has been done with Dr. Stephen Ceci, who's at Cornell University.

COURT REPORTER: I'm sorry, can you say the name again?

THE WITNESS: I'm sorry, Dr. Stephen Ceci, C-e-c-i, Cornell University. Ithaca, New York.

Okay, now I've -- Okay. So Steve and I, we wrote this book called Jeopardy in the Courtroom, which was really the initial attempt to try to put -- make a -- set a scientific foundation for understanding the trials up until the 19 -- to the mid-century and up until 1995, which involved children as witnesses, where there was very little known about interviewing children. There

wasn't a lot of science.

And we put together what was known. And this field was starting to expand. And how to, in fact, raise issues or hypotheses about why children might have come to make the allegations they did. So that was the book. We've written many chapters, but we've also have written many, many peer review articles, which are the most widely read.

Q. Okay. And I was gonna ask you about that. You said many. How many peer review articles have you authored or been a co-author on?

A. Well, over my career over a 100. But in terms of the issue of child witnesses, 30, 35.

Q. Okay.

A. Growing.

Q. And have any of your works that you've published received any recognition?

A. Yes. Our first paper, which was the prelude to the book, which was published in a peer review journal, won the best articles on sexual abuse for the year.

Q. Was that 1993?

A. Yes.

Q. Okay. And what about the book?

A. Jeopardy in the Courtroom won an award by the American Psychological Association as the best book on

public policy, I forget what, but it was a book award.

Q. All right. Now, you mentioned the term "peer review". What does that mean?

A. Okay. So in the scientific world there are different standards for evaluating science. And I think that Nobel Prize is probably number one. But I think one of the most common standards is how many journals have published your articles and how many of these journals are peer reviewed?

Now, what peer review means is that experts -- I do a lot of peer review. People who write articles, things we're gonna talk about today, that I get sent to by these journals. And they ask me to carefully go through the article and comment on the scientific integrity, whether they followed the rules of science, whether this information is new, exciting, unimportant, so inconsistent with everything else, not replicating, whatever. And do I think that this is worthy of publication.

And so, and there's also a ranking of journals in terms of how scientifically meritorious there are -- they are. So when you look at when someone says, yeah, I've published, you know, 40 articles and journals, well, the first thing you want to do is you want to look at the journals and see are these just, you know, notes

or whatever or do you see that these are, in fact, well known scientifically acceptable journals.

And so it's a rigorous standard whereby, you know, you -- that a lot of the stuff kind of gets pushed to the side that doesn't have any scientific merit to it. So we rely a lot when we look at people's records on the publication records.

Q. So obviously your work has been subject to being reviewed by peers. And are you also saying that you conduct peer review of other people?

A. All the time.

Q. Okay.

A. And the other thing I wanted to say is to be granted the rank of full professor, that probably is the primary standard of how many peer reviewed articles you have and how many times they've been cited by other experts in the field.

Q. Have you presented at seminars, either nationally or internationally on child sexual abuse disclosures?

A. I have.

Q. And can you give us some examples?

A. No.

Q. Okay.

A. I mean usually these are seminars that deal specifically with issues regarding child witnesses or a

child sexual abuse. These are usually seminars that involve practitioners or attorneys or judges. And sometimes they're national. Sometimes they're done internationally.

Q. There's one a lot of years in Las Vegas. Have you presented at that one?

A. Yes, I have.

Q. Okay. And have you ever been asked to consult as an expert witness on a case involving child abuse or sexual abuse allegations?

A. Yes, I have.

Q. Okay. And how many times do you estimate that you've done that?

A. How many times have I been asked?

Q. Well, how many times have you actually --

A. Have I done it? Gone through the process?

Q. Right.

A. Maybe a hundred.

Q. All right. Do you do it every time you're asked?

A. Never.

Q. All right.

A. I mean, I take a small percentage.

Q. Okay.

A. And I think I've only gone to court about 20 times, 25 times.

Q. And that was going to be my next question.
A. I'm sorry.
Q. Have you -- so you've testified in court before?
A. I have.
Q. All right. And how many states have you testified in before?
A. I think about 15.
Q. This is your first time in South Carolina?
A. It is.
Q. Okay. And have you ever testified in any other country?
A. Yes.
Q. And can you tell us an example of that?
A. Ireland, England, Canada. There's more, but I can't -- I mean, I've worked on cases in Australia and most recently in India, so...
MR. GROSE: Can you mark this as the next exhibit, please.
(Petitioner's Exhibit Number 15, Dr. Bruck's Curriculum Vitae, was marked for identification.)
MR. JAMES: Your Honor, the State has no objection to Dr. Bruck's curriculum vitae coming in as an exhibit.
THE COURT: Is that what that is?
BY MR. GROSE:

Q. Well, I was just -- that is your CV?
A. It is.
Q. Okay.
THE COURT: All right, without objection.
MR. GROSE: Thank you.
(Petitioner's Exhibit Number 15 was entered into the record.)
BY MR. GROSE:
Q. Now, in the -- well, let me ask you this, what is the difference between being a researcher and being a clinician?
A. Well, you could be a researcher clinician also. The difference is that researchers, the enterprises is quite different. The researcher asks questions and investigates them in a scientific method. Now, they, they ask, depending on their field, they can ask questions of clinical importance and they can use clinical populations, but they don't treat their subjects. Often they're not trained to treat their subjects.
However, many of us, in fact, do research on the effects of different kinds of treatment on children using scientific methods. When I was at Hopkins, I was involved as a consultant in many studies that treated children who had anxiety disorders or depressive --

depression and so on, but I wasn't trained as a clinician in that I wouldn't be a -- I didn't have a specialty in terms of curing children or how to do the day-to-day treatments that require. Although, I know about those and I know about their scientific integrity.

Q. Okay.

A. And I also know about the major issues that arise.

Q. Okay. And ---

A. The clinician, on the other hand, most clinicians are not researchers.

Q. Okay. So in your experience as researcher, have you done research with regards to area -- of the area of child sexual abuse disclosures?

A. I have.

Q. And have you done research involving forensic interview techniques?

A. I have.

Q. And have you done research regarding treatment of children alleged to have been sexually abused?

A. Treatment? No, but I've reviewed the literature.

Q. Okay. So you're familiar. And that's peer reviewed literature?

A. Yeah. When available, yes.

Q. Okay.

A. Yeah.

Q. And the term suggestibility, do you have experience involving that?

A. Yes.

Q. And can you explain what that is?

A. What suggestibility is?

Q. Yes.

A. Okay. Suggestibility is you have a person who -- involves usually two people but more -- where the person who is, let's say, an adult and a child. It makes it easier -- where the adult is trying to get information from a child. We call these interviews. Interviews are anything that involve attempts to garner information.

And where the adult uses certain strategies that provide the child with information about what the adult is thinking, believes to be true, wants the child to say. And there are many, many ways of doing this that most people are not aware of. And so when those conditions arise, we call these suggestive interviews, suggestive techniques, whereby an adult is trying to get information from a child and uses a variety of techniques to extract that information.

Q. All right. And have your research and studies focused on that area?

A. Mainly, yes.

MR. GROSE: Okay. At this time, Your Honor, I'd offer Dr. Bruck as an expert in the area of child sexual abuse disclosures, forensic interview techniques, treatment of children alleged to have been sexually abused, and suggestibility.

MR. JAMES: Your Honor, I may have to walk back one of my early remarks. She explicitly testified that she had not personally researched the issue of treatment of child sexual abuse, but simply that she had reviewed the literature. So I'm not sure she's qualified for that. As to all of the others I have no objection.

THE COURT: Do you want to ask her questions on that?

MR. JAMES: Yes. I'll followup with a little bit of voir dire, if I may, Your Honor.

THE COURT: Uh-huh.

VOIR DIRE TESTIMONY

BY MR. JAMES:

Q. Dr. Bruck, good morning.

A. Good morning.

Q. You indicated earlier that you had looked at the literature regarding the treatment of child sexual abuse. In what context have you looked at that literature?

A. I've reviewed the literature on different modes

of treating children with behavioral problems and specifically for two reasons. One is, when I was helping people put articles together on or grant proposals together or whatever. It was part of my job at Hopkins. But of specific importance was we have carefully looked at the techniques that therapists use when treating sexually abused children, who they think they're sexually abused, and try and have identified a number of elements of that treatment that are consistent with a good practice or a bad practice.

But when I mean -- I mean for me good practices that they're non-suggestive. And there are a number of techniques that in therapy that are highly suggestive. And this has been an issue in the memory community for a long time about extracting reports from clients, adults and children.

Q. So your research into the treatment of child abuse has not been with a mind to --

A. So treatment is good or bad?

Q. -- the treatment itself, but it has been the mind to the suggestibility that may result from that treatment?

A. Exactly.

Q. Okay.

A. Okay.

Q. Have you engaged in the treatment of child abuse victims?

A. No, I have not.

Q. Okay. Have you supervised anybody who has treated victims of child abuse?

A. No. But I've done some consulting.

Q. All right.

A. I'm not a clinician.

Q. Okay.

A. Okay. So we can put that aside.

Q. Going back to that researcher/clinician distinction, you're on the research side?

A. Right.

MR. JAMES: Okay. If I may beg a moment of the Court's indulgence.

THE COURT: (Nods head up and down.)

MR. JAMES: I have no further questions for this witness, Your Honor.

THE COURT: All right.

END OF VOIR DIRE EXAMINATION

CONTINUATION OF DIRECT EXAMINATION

BY MR. GROSE:

Q. I'll just followup on questions that he asked. You have done a lot of research on suggestibility, right?

A. Yes.

Q. And so, as part of your research -- well, strike that.

As part of the question that he asked you a minute ago, you talked about suggestibility in the context of treatment of children who have been sexually abused; is that right?

A. Correct.

Q. And is that something that your research or writing has focused on?

A. The writing has, yes.

Q. Okay. And specifically, has that focused on some of the problems that could arise if a treating clinician uses suggestive techniques?

A. That is correct.

MR. GROSE: Your Honor, I would renew my offer of this witness as an expert.

THE COURT: All right. I'll accept her as an expert in all of the areas that are offered and the area that the State raised the objection to, I'll take into account. I don't want to say limited role, but will take into account her specific role as a researcher versus clinician.

MR. JAMES: Thank you, Your Honor.

BY MR. GROSE:

Q. Now, obviously you wouldn't be here today if we didn't ask you to consult in this case; is that correct?

A. Yes.

Q. All right. And why -- you mentioned earlier that you don't accept every case. Why were you willing to accept this case?

A. When I quickly -- when I looked quickly -- when I looked through the record and I knew vaguely the facts of the case and I looked through the trial testimony, I want to say this unemotionally, it was -- the fact of -- the fact that the forensic interviews were never introduced into the trial testimony was something I had rarely, rarely seen. And I saw that the jury was not given any background about the supposed allegations.

And I also felt that the experts who are what I call the clinicians, the two, the forensic interviewer and the therapist, really did not properly inform the jury about the child or the child's history or the child's allegations. And I thought, you know, if I had been called as an expert witness, what would I have done?

But the other thing was I saw that the defense had no expert witness. I mean, this is -- and I felt this is a case that just, you know, screeches expert witness needed. So on that basis, and when I saw the

forensic interviews, I decided that I would work on this case.

Q. And we talked earlier about suggestibility. Does -- and we may be getting a little bit ahead.

A. Okay.

Q. But does suggestibility play a role in what happened in this case?

A. To a large extent.

Q. Let me do this, I want to explore a little bit more about what suggestibility is. And is it fair to say that that's more than just asking misleading questions?

A. Yes. I think most people say, oh, suggestibility, that's like when you say: You saw that red cat, didn't you? One rarely sees that in interviews. I mean, some of them go I don't see any suggestions here.

But suggestibility is, is a concept -- first of all, when people are being suggestive, they don't necessarily -- they're not necessarily aware that they are. I mean, we all are to some degree. But there are a number of strategies or a number of devices that we call suggestion that are known through scientific research to bring children and sometimes adults to make statements that never really happened.

And I'll just start with some of the really simple ones if you want, but there's something that I call -- and as oppose -- and I have to oppose to -- so if you -- when you're interviewing someone, I mean one of the major rules with interviewing children, for example, the good rule is you make them feel comfortable, all that stuff, but you ask them open-ended questions.

You know, you say tell me about the last time you went to school, or tell me what you did with your mom this weekend. Or tell me about things you did with your dad. Tell me about things you like to do with your dad. And the child is then ready or is given the opportunity to express in her own words what happened.

And then you continue on by saying, you know, you just mentioned you just went to the park, can you tell me more about the park? So those are ways, opportunities that the child can say in their own words what happened that's uninfluenced by the person who they're talking to. So suggestive techniques are one where the way the child is asked to tell, helps the child -- directs the child to what to say in various ways.

So, for example -- I mean, these are the ways also that we evaluate forensic interviews or

conversations between clients or whatever, is you look to see, first of all, how often is that technique of open-ending questioning is, because that's good.

The second thing is that then we go to the most obvious ones, which we call specific questions where the person is asked questions like, did it -- did this happen. All they've got to say is yes or no and they're given information about what an event could be. Another example is, did he wear a red hat or a white hat? All the child has to do is pick something.

Another example is -- there's a third one -- what color was his hat? Now, that's a little bit different, but if the child's never mentioned a hat, then that's a very leading question. Okay. So those are kind of the specific kinds of questions where the child doesn't really have to do any work, just sit back and go yes, no, on, on top, whatever you say.

Then there are more implicit devices, which is we see repeated questions. Repeating the same question or repeating a question about the same piece of information. And what we know from these studies is that, first of all -- and we see it more in the -- well, in the forensic arena what we see is when the interviewer doesn't get the answer she wants, what she'll do is she'll repeat the question. It might not

be immediately after, but it might be several lines down. So that question gets repeated. And it might be that, you know, you'll say it's a check.

But what we know is that in the laboratory when we do this and we ask a repeated question or we rephrase it, children change their answers. And sometimes they change it to the right answer and sometimes they change it to the wrong answer, but the point is, is that they change their answers. So repeated questions are a sign of suggestibility.

Q. Okay. So if I could just go back for a second?

A. Uh-huh.

Q. The one-word answers are a problem?

A. One-word answers are a problem because they -- they're not coming -- the child's -- it's in someone else's words.

Q. Okay.

A. Okay?

Q. And providing examples is a problem, from what you said?

A. Providing examples? No.

Q. Well, if the question -- well, not necessarily example, but if the question gives a choice?

A. Yes. We call those choice questions.

Q. Okay.

A. Yeah.
Q. And the repeated questions --
A. Right.
Q. -- you talk about that.
A. Yes.
Q. What about the use of drawings?
A. Drawings? So I've done some of this, some of this research using the kinds of drawings that are generally used in the forensic arena where we involve children in touching. They will play a touching game.

Most recently we had children who actually had anal examinations or genital examinations and we interviewed them. And we interviewed them with the drawings asking them, first of all, did anyone touch you here, and we'd point to the place. Or at the beginning we say, show me all the places the doctor touched you. And then we'd go back, you know, did he touch you here? Show me on the drawing how that happened.

And what we found was that the drawings, especially with the younger children, provided many false statements, specifically about genital touching. And my colleague, Deb Pool, has written about this a lot. And she's found that when children are asked, are just given, you know, are asked to touch, she has bigger samples, that there are some children who will just

touch all over the place. Here, here, here, here, here, here, here. (Indicating.)

And so, drawings have actually been taken, have been excluded from scientific protocols because of this danger. And, and it's a non-verbal technique. And it's used because people feel that kids don't have their words, they don't know how to show them, all that. Maybe, maybe not, but this provides an extra risk.

Q. And when you mean extra risk, extra risk of a suggestibility?

A. Exactly.

Q. Okay. What about the atmospherics?

A. Okay. So, atmospherics is sort of a very vague term that encompasses many suggestive techniques, but essentially it's, it's a way of referring to an event, a person, a situation to the child in a negative way. I mean, sometimes it's a positive way. You know, we're going to a birthday party, it's going to be so much fun, everyone's gonna be there, you know, you'll get presents, whatever. The child has this expectation that they're going to a great place.

On the other hand, you can present these, what I call, also stereotypical -- stereotype inductions or negative cognitions about he's a bad man, you have to be careful around him, he does bad things, you shouldn't

let -- you shouldn't let him call you that. And what we know from those situations is that children then develop a belief or a feeling that this person does bad things.

So, you know, we call it atmospherics, we call it a stereotype induction. It can happen in one conversation. It can happen over years. It's, it's a more intangible situation, but we can, in fact, distill it in a laboratory situation.

Q. Now, earlier you talked about repeated questions.

A. Yeah.

Q. What about repeating --

A. Interviews.

Q. -- interviews?

A. Okay. So, often in forensic situations one has to re-interview a child because you need more information or you felt that the child was getting tired and so on. And what we know from so many of the educational literature and so on is that you will get more information sometimes in a second interview. Some of the things might not get repeated, but new information might be added. And that's okay as long as it's not a suggestive interview.

And, you know, sometimes we have to go back and say I forgot to ask you, can you tell me more about this. But when interviews are suggestive, what we see

is an increase in false statements, in false reports.

I mean, the child is learning that this is a place I go to where I have to tell them things and I don't have to pay attention to whether these things happen or not, they just want me to tell them a lot of things about the bad things that someone did. And what you see are early increase in disclosures but, you know, increase in accusations in the laboratory situation.

And in the forensic field, you know, it's recommended that there be one. But there are lots of us who feel one sometimes is not enough and you might have to do a second and you might have to take a break and go back, which is fine as long as you stick to the rules. But when you have three, four, or five and they're replete with suggestions, there's no way this child -- if the child hasn't made a statement in the first interview or the second, you can't rely on anything that comes out after that just because they've been so inundated with suggestion and information.

Q. I want to pick up on that. When you use the term "rely" or "reliability", what does that mean?

A. Okay. So, and this is generally what I'm regarding to, are the statements -- are the child's statements reliable? It's can they be trusted? Did they come out and was the chain of custody healthy,

germ-free? Did the child's statements get handled in such a manner from the initial disclosure right up to the courtroom where we can trust that there was no interference?

Such as, and I always give the example of fingerprints on a weapon where a weapon is found. And the chain of custody of that weapon until it gets to the courtroom is of the utmost importance. And, you know, someone could say, well, I did, I did pick it up, but I kind of scrubbed it so it's okay now. Well, you know, that's not okay now.

But in terms of suggestibility in children, what we know from the science is that even one interview, a suggestive interview can, in fact, bring a child in a laboratory to make false statements. We don't know that, and what's false in the real world or what we do know in the controlled scientific world is, a, that they can be false statements. Those false statements grow over time. The child is more competent in those statements and someone will talk about that later.

But the point is that if there is evidence of suggestion, then by definition that child's -- those child -- that child's statements or time is tainted. It doesn't mean they're wrong. I mean, it could be right, but there's no way that we know if they're right or

wrong, but we do know that there's something wrong with the way that they came out and, therefore, they're unreliable.

Q. And you use the word "taint".

A. Right.

Q. What do you mean by that?

A. Well, I sometimes use it. I mean tainted statements are unreliable. I mean, they're tainted by the method by which they were extracted.

Q. Okay. How does reliability compare or contrast with the term credibility?

A. So these are orthogonal terms. Credibility is not allowed in the courtroom. But credibility is, you know, how -- does this child sound believable? Is there a ring of truth? And what we, we know about reliability -- I'm sorry, about suggestibility is that children sound highly credible.

You cannot judge whether there's been suggestion or coaching or whatever based on their statements because -- there's been a lot of research on this. That even experts cannot discern whether this child's words have been touched by another person.

So, credible, you can be 100 percent wrong and yet highly credible. And, in fact, you can, in fact, be very, very right and be un-credible. And so that's why

the term "reliability" in the search for the suggestion is above most important because credibility cannot be relied upon.

Q. And so when, when you consult with lawyers on a case, are you offering opinions about credibility?

A. No, I don't.

Q. Okay. But you are able to offer opinions about reliability?

A. I am.

Q. Okay. And we'll come back to that in a little bit. You used the term "coaching" a minute ago.

A. Yes.

Q. When you hear that term in your field, what does that mean?

A. Well, you know, for the uninitiated it might mean suggestion, but I don't think that those people really know what suggestion is. But, you know, I think the textbook or the dictionary term is deliberate, deliberate effort to have, talk in this point, the child make a statement with rehearsal.

Q. And when we're talking about suggestibility, is that the same or different than coaching?

A. It's different.

Q. Okay. Can you explain why?

A. Well, first of all, the techniques are very

different. I mean, it's really rare that you see, and certainly in a forensic interview, now I want you to say. I mean, interviewers know you don't do that. So I rarely see coaching at all.

Second of all, when children are coached often, certainly at the beginning, they know it's not true and they know that they're lying. I mean, the point of coaching -- now, you can coach to have someone tell the truth, right? That's one thing, but coaching is a way -- is deception, is to actively deceive somebody. And that's what a lie is, is that your intention is to deceive someone.

Now, in suggestibility children aren't lying. They -- what they're doing is, they're sometimes just bowing to the pressure that they see and trying to comply with their interviewer who has a position of power in one way or another and to go along with what the interviewer is saying. After all, they have high status, they know what they're talking about. I can't remember the event. I might as well say yes.

And after a while and, you know, for some children it can be minutes, for some children it can be weeks, actually they come to believe these statements. They'll say, no, this really happened. And their narratives look highly, highly truthful. I mean, filled

with details, all the kinds of things we think define a good narrative. So these children are not lying. They're not trying to deceive. They're trying to comply and they're trying to retrieve a memory.

Q. And so suggestibility can result in making false statements?

A. Well, false statements absolutely. I mean, that's what the studies usually are about. And some studies go on to see do these false statements become false memories?

Q. What do you mean by false memories?

A. That you really believe it happened.

Q. Okay. I want to switch gears and ask you about interviewer bias. What does that mean?

A. So, interviewer bias -- so interviews are conversations between two people or more where there's a goal to retrieve information about a certain subject. And interview -- interviewers with a bias -- and let me say interviewers can be trained interviewers, they can be mothers, they can be fathers, they can be teachers, they can be -- it doesn't matter. I mean, it can happen informally and formally.

But an interviewer has -- a bias interviewer has a primary hypothesis of an event where something went wrong. The purpose of that interview is to draw out

statements that are consistent with a primary hypothesis. And in doing so, biased interviewers ignore inconsistent evidence. They don't test other plausible hypotheses. You know, maybe she's really thinking about this. Maybe she doesn't really understand this.

And biased interviewers actually come to misinterpret what's going on in the interview that are consistent with their own biases. And so one of the things that is really hard to teach people is to be as unbiased as possible. We all have biases. And it all, you know, creeps into our conversation. It keeps them going.

But when you seek their -- there are certain kinds of interviews you see or situations where something is always a topic of conversation. And it doesn't matter what happened, it gets reinterpreted as this is symptomatic of or this happened. And that's because the person who's doing the investigation or the police only has one primary hypothesis. And that's an interview, a bias interview.

Now, why does that tie in with suggestion? Because bias interviewers use suggestive techniques to confirm their biases. I mean, that's the way to do it. You just don't sit there and say, you know, tell me what happened. I mean, you -- you see the biased

interviewers use this whole -- not all of them, but a whole array, and that's why they'll kind of re-ask questions, ask questions in a certain way because their belief is, is that this happened and we've got to get this information out.

Q. All right. And you said it was difficult to train interviewers in that.

A. Uh-huh.

Q. I mean, is this something that they can do without even realizing they're doing it?

A. Oh, we all do it.

Q. Um...

A. It's easier to train interviewers to follow protocols that say use this statement, not this statement. You know, here's -- you know, here's a protocol, follow these rules. And these are almost thoughtless in a way, but they certainly do avoid a lot of mistakes.

It's very hard when you're dealing with training people to interview at, you know, sort of the CPS level, for example, where they have a lot -- they don't have a lot of time for it, but how do you test hypotheses and how do you remain unbiased? I mean, it's a lot, a lot, a lot of work. It's easier just to do this protocol this way. If you follow the protocol, chances are you

can have a pretty clean interview.

Q. And what's the, the risk of a biased interviewer using suggestive techniques?

A. Well, the risk is if the child, you know, makes false statements and will come to believe these false statements. And that the interviewer, regardless of what the child says, will come out saying the child made a disclosure.

Q. And that goes to perceptions of the interviewer or can it?

A. Well, you know, we've done some of these studies perceptions, but it's their memory is.

Q. I'm sorry, say that again.

A. That their memory is that the child did this or said this.

Q. Yeah.

A. Yeah.

Q. Okay. And that gets back to the importance of videotaping, I guess.

A. Yes.

Q. Okay. So kind of shifting gears a little bit, I've been trying to talk about terms and concepts, and I think we've gotten a little bit into the science already, but what is the scientific evidence about the use of strategies that we've been talking about with

regards to interviewing children? Before I do that --

A. Uh-huh.

Q. -- earlier you mentioned something about age.

A. Right.

Q. When the things that we're talking about -- and I -- and you said that adults can be suggestive.

A. Uh-huh.

Q. A lot of the concepts we're talking about, are we focusing your testimony or are you focusing it on younger children?

A. Well, a lot of the studies have involved younger children, but there are a lot of studies that involve older children. But it was the younger children who initially instigated this line of research.

Q. And when you say "younger", what age group are we ---

A. Under six, under seven.

Q. Okay. So getting back to the question about scientific evidence about the use of these strategies for children.

A. So what is the evidence?

Q. Yes.

A. Okay. So, I mean, I've mentioned a few. But we know is when they're used, they bring children to make false reports. False reports grow, increase in number

with repeated questions, with repeated interviews.

Q. And can you explain what you mean by "they grow"?

A. They increase.

Q. Okay.

A. They become more detailed. They become more frequent. Okay? They sound very credible. They are indistinguishable from reports that children make about real events. And sometimes, you know, in a way that feel more detailed. They bring in new information. They have more elaborative terms.

These, these initial statements sometimes -- these initial statements might not automatically generate a false memory, but they might if the child has no memory of anything and says, well, you know, I guess that's what's happened and come to believe it. But the more that this goes on in time, the more that it becomes part of their autobiography and they incorporate that memory. And even when a suggestion stops, these memories can last for a really long time.

Q. What do you mean by a "really long time"?

A. Years, months. But usually, yeah, there's a whole story to that, but...

And, as I said, that, you know, the more suggestion there is -- I mean, you know, someone said, the question is, you know, is a four-year-old more

suggestive than an eight-year-old? Well, it depends. It depends on how long it's been since the propose -- the suspected event and the interview and the length of time.

It depends on the number of times -- how suggestive. How many suggestive sessions. How many suggestive techniques are used. You know, one time doesn't necessarily do the trick. But, you know, with an eight-year-old you can, you can do highly suggestive interviews and they can flip over pretty quickly. So, so age is generally, in the studies that we do, the youngest children are most at risk for any of these things.

Q. All right. And how has the science in -- how has the scientific evidence influenced clinical and forensic practice and protocols?

A. Right. I can't remember if I said this, but it has. For -- it has in that what it's shown is these are things you do not want to do. These are bad things. And here -- and so find ways to question the child that don't involve any of these bad things and ask open-ended questions. Give the child time to, to use their own words. Don't, don't hurry up and interview.

I mean, we -- so a lot of the protocols have a lot of the don'ts in them, right? But what they've also

replaced them with are other techniques that may enhance the opportunity and the experience for the child that yields more reliable evidence. A lot of protocols now don't use drawings. Protocols that we did a lot of research on dolls that are no longer in these protocols. So it's kind of like it's had a profound experience.

MR. GROSE: Your Honor, we've been at it for about an hour-and-a-half. I could use a restroom break, and I think this is probably a good place to interrupt my examination.

THE COURT: All right. Ma'am, I will let you step down, but just remind you that you're in the process of giving your testimony, so do not have any discussion with anyone about the substance of your testimony, but you may step down.

THE WITNESS: Thank you.

THE COURT: We will take a short recess.

MR. GROSE: Thank you, Your Honor.

THE WITNESS: Thank you so much.

(Witness leaves witness stand.)

(Whereupon, a recess was had from 10:54 a.m. - 11:06 a.m.)

(Witness resumes witness stand.)

THE COURT: Ma'am, I just need to remind you that you remain under oath.

MR. GROSE: May it please the Court?

THE COURT: (Nods head up and down.)

BY MR. GROSE:

Q. Now, when you work on cases or consulted by -- well is it usually attorneys that consult you?

A. Always.

Q. Okay. And so when you consult with a lawyer, is it important for you to review the evidence in the case?

A. Absolutely.

Q. Okay. And by reviewing the evidence in the case, are you then able to offer opinions and advice to the lawyers?

A. I can offer an opinion, yes.

Q. Okay. All right.

A. And I can offer advice. It may not be what they want to hear, but...

Q. All right. And so in Mr. Spade's case, let me ask you this. You did a written report, didn't you?

A. I did.

MR. GROSE: Let's mark this as an exhibit, please.

(Petitioner's Exhibit Number 16, Dr. Report, was marked for identification.)

BY MR. GROSE:

Q. And I'm gonna hand you what's been marked as

Petitioner's Exhibit Number 16.

A. Yes. Okay.

Q. Is that a copy of your report?

A. Yes, it is.

Q. And did it summarize some of your findings in this case?

A. It does.

Q. All right. And did it summarize some of the information that you've reviewed in this case?

A. Yes.

MR. GROSE: Okay. Your Honor, I would offer, I believe it was, Petitioner's Number 16 into evidence.

MR. JAMES: I take issue with one small portion of Dr. Bruck's report. I would direct everybody's attention to section E5. It is the last point on the last page of the report towards the end of that section she indicates: "It is my expert opinion that the child's courtroom statements are not reliable." I believe that's objectionable as an explicit comment on the credibility of the victim, which would not be admissible in the state of South Carolina. It's anti-false, if you will, Your Honor.

MR. GROSE: And I would offer two responses to that, Your Honor. First, she's already talked about the difference between reliability and credibility. And

second, this is not the General Sessions trial. And it's my position that the scope of the evidence that's admissible in this hearing is broader than what might be admissible in a General Sessions trial because we're looking at the reasonableness of the attorney's decisions and what information that she could have communicated to the attorneys that could have affected their decisions to call an expert or and how to present the case to the jury.

MR. JAMES: Given that that opinion I do not believe would have been admissible in the General Sessions trial, I don't think it's relevant ultimately to the allegations that we have here, Your Honor. Now, certainly one way or another, because I understand Mr. Grose does have to present his PCR case, it will be ultimately proffered to the Court, so it will be part of the record, but the State's position is that it would not be admissible.

THE COURT: All right. I will allow it to be part of this record. I'll give it -- I'll take the State's position. I would have to expect that this witness to actually pass that opinion anyway based on the fact that she's called by the applicant. Understanding what the issues are before her, so I'm gonna allow it.

MR. GROSE: Thank you, Your Honor.

MR. JAMES: Thank you, Your Honor.

(Petitioner's Exhibit Number 16 was entered into the record.)

BY MR. GROSE:

Q. And so, did you review the interviews in this case?

A. I did.

Q. Okay. All right. When you reviewed those interviews, did you find any evidence of suggestion or suggestibility?

A. Yes.

Q. All right. And did you find any examples of interview bias?

A. Yes.

Q. Okay. And do you have an opinion as to whether or not [redacted] was at risk regarding some of the things that you testified to earlier about suggestibility?

A. Yes.

Q. Okay. And can you explain why that is?

A. Why I think she was at risk?

Q. Yes, ma'am.

A. I mean, these were highly, highly suggestive interviews. I mean, they're casebook presentations of, you know, if you want all of the examples squished into

one, you can take any, any page and there's something there. This is a child who was dragged back time and time again. Kept saying she wanted to leave, wasn't allowed to leave. Who was asked question upon question upon question about abuse, who provided exculpatory or no evidence of anything wrong.

Once in a while she would say something, as anybody might because they're tired or they'll say, okay, just I'll say what you want, take me out of here. And then she recants. She recants many times throughout these interviews. It's never paid attention to. The only thing that they look at is I don't know what.

I mean, my opinion is that no one who was in charge here ever looked at the transcripts or the videotapes of these interviews, because based on my previous experience a prosecutor would not want these to be entered as evidence and a defense lawyer would use it as primary evidence.

Q. And, in fact, the prosecutor didn't enter them into evidence in this case, did she?

A. No. But then neither did the defense attorney, so okay fine. I mean...

MR. JAMES: Objection. There's no basis for that opinion.

THE WITNESS: Oh, I read it.

THE COURT: All right.
MR. JAMES: That the defense attorney never looked at it.
THE WITNESS: Oh, I don't know.
MR. GROSE: Well, the question was were they entered.
THE COURT: All right. Yeah, rephrase your question. If you got -- if that is an issue with something that she says, you can go into it through --
THE WITNESS: Cross.
THE COURT: -- cross-examination.
BY MR. GROSE:
Q. And the question was, were they ever introduced by either side?
A. No, they were not.
Q. Okay. And in your opinion should they have been introduced?
A. Oh, absolutely.
Q. All right. On -- in -- when you're reviewing the file, is it important to you to understand what the timeline is?
A. Yes.
Q. And why is that?
A. Oh, boy. Well, it's one of my basic procedures when I do a case is, you know, put everything in

chronological order that I've given. And if I see something missing I'll ask for it. And then to itemize what happened at every month, every year, pre-disclosure, so I can capture maybe are there rumblings of beginnings of unrest or anxiety or whatever to see what was it that preceded the allegation.

And then to understand what that first allegation was and then to see how it was handled until it got to trial and even after trial if necessary. That was, what was the chain of custody? Who -- when did new statements come in? Who did they come in with? How did they come in? So the timeline is really -- also tells me the space in between different kinds of events.

I mean, how much time was the child living maybe in an atmosphere where dad was not liked or whatever. How old was she? I mean, sometimes, you know, the age of the child makes a difference. Sometimes if they're two years old or three years old, their long-term memory isn't really that good.

So there are scientific reasons, just as well as investigative reasons. I mean, I know that I only come here to talk about scientific foundation, but I have to have a firm episodic understanding of the case in order to do this.

I mean, if I see a child makes an allegation

spontaneously and it's all full of stuff and whatever and then later on she's interviewed suggestively, it's not very interesting to me because it's all happened up there and there's nothing -- there's been nothing tainting before there. So it's the sequence of events and the length of time between events that's very important.

Q. Okay. You mentioned something about an atmosphere of ill will or something of that nature.

A. Yeah.

Q. And what do you mean by that?

A. Well, this is another form of atmospherics, of stereotype induction. Do we want to talk about the case or...

Q. Yeah. Well, that was gonna be my next question is --

A. Yeah.

Q. -- did you see evidence of that in this case?

A. Yes. I think that I saw that there was always tension and conflict around visits with the father. In one case there was with the mother present and father's partner present, there was screaming and crying. The child was crying. I see that there was always conflict or tension about phone calls, about what she should call her father.

And I see that the grandmother, I mean maybe for good intentions or what, was always made the middleman in order to keep the father at distance. And so I think that, my opinion is that all this goes to the point, good or bad, that the child has some attitude about her biological father.

Q. Well, and in this case there was a period of time where there was court ordered supervised visitation.

A. Right.

Q. And that supervisor, at least for part of that time, was the grandmother.

A. Right.

Q. Can -- does that factor into it, what you're talking about?

A. Well, yes. I mean, at times I thought, you know, we have the statements of the grandmother, more or less. I mean, at the very beginning, I mean, she was -- this was an infant and I thought she was being a pretty good sport to do this.

Q. Right.

A. And she really has -- it's really her child, having spent a lot of time with her. So I thought she did a lot of driving around and trying to facilitate. But as time went on, I thought that she put up barriers.

Q. And that can convey to a child that in this case

the natural father needs to be somebody you need to be protected from?

A. Right. And, I mean, at one point she did see screaming and yelling and people crying all about this visitation.

Q. Right.

A. I mean, not a good thing.

Q. Well, in fact, the grandmother was the first one that, according to the testimony, that a disclosure was made?

A. Yes.

Q. All right. And what do you understand about that disclosure?

A. Oh, boy. Well, I tried to pin it down exactly, but I think it occurred sometime around March 27th or maybe a week later. And she said to -- all we have -- and we have very, very little information in the record about this. I was able to kind of pull out what -- pull out everything. And according to the grandmother she said -- she asked her: Has Danny ever said anything or done anything that you did not like? Now, I don't know why she asked that question, but it's pretty suggestive, right? It's talking about things she doesn't like. And according to her the child said yes.

Now at this point, and this is from the TPR

hearing, she doesn't say what the disclosure was, but what's interesting to me is that she did not tell her husband for one or two days. She said she was mulling it over.

Q. Okay.

A. Now, that, that's unusual. I mean, it's either -- I mean, it could be beneficial or she could have been protecting. It could have been maybe I didn't hear it right. Maybe it didn't mean anything. Maybe I shouldn't worry anyone, but it's her job to tell Heather and her husband. So we have two days there. And what happens in two days? I don't know. All I'm saying is that this is an opportunity for more questions. And then ---

Q. All right. And when there's more questioning does that relate to suggestibility also?

A. Okay. So now let's go back to how the allegation came out. So what was the allegation? So I found this in the record someplace. According to the grandmother, and I think this was at a TPR hearing, the child said: "He put a wiener in my face. Please don't tell mommy or daddy." And then she took it back, so she recanted.

Q. All right. And you had mentioned recantations once --

A. Right.

Q. -- or twice before.

A. Uh-huh.

Q. In your field, what is the importance of that?

A. Okay. So recantation is what in the field of Child Sexual Abuse? A child makes an accusation or statement and then either immediately or sometimes later says, no, that never happened.

So, the prevailing view was that this was really common among abused children because they didn't want to break up their family -- that's not gonna happen in this case -- because they were worried that the accuser would be really angry with her or hurt her. Not gonna happen in this case. I don't know that she's seen her father for a while. And that, you know, it was they felt guilty or whatever.

Now we, my colleague, Kennedy London, and I, have written a lot about disclosure and we've gone through records, the the published records of recantation in child abuse cases. And we've actually looked at recantation in cases where there, in fact, is evidence of child abuse. And we find the recantation rate really, really low where we find recantation rates are in cases where there have been false reports.

So the problem with recantation is that, you know, clinicians will look at this and say, oh, the

child was scared, we can't -- you can't do anything about this. I mean, the grandmother admitted that she took it back, so I don't know I think that -- and we'll see in the forensic interviews there's a lot of recantation. Saying the child, no, that never happened, nothing happened. It's not paid attention to.

Q. Again, in your field can there be issues with how an adult remembers a child's statement --

A. Right.

Q. -- or a disclosure?

A. Right. So my question here is this, what we know from the scientific literature is that when adults are asked to recall a child's statement and we have -- we'll have transcripts, we've done this, we have transcripts, whatever, that they make a lot of errors in what the child says. Sometimes they're substantive errors as to actual facts, but a lot of the errors come from the form of the child's statement.

So we have things like the grandmother, you know, makes the statement as though it were a spontaneous statement, just came out. What we know is that when adults question children, first of all, they use a lot of leading questions, a lot of yes/no questions. Was it this? Did he do this? And the child's going yes/no, yes/no. And when they're asked to recall what happened,

they put together the child's yes/no answers and say, you know, it just came out spontaneously. So we don't really know what the child actually said here.

And, in fact, when I've looked at the statement and then gone through the records, the forensic interview records, which are the ones that we really have, and even her courtroom record, that statement doesn't appear anywhere. And one of the things I try to do when I do these cases is I try to follow the form or the content of the initial statement and see how it gets repeated across time and into the courtroom. How sometimes you -- I do this because sometimes you see it change over time, which is important.

But sometimes when you see this is initial statement and it's nowhere, it's concerning. You wonder, you know, was the statement ever made? Or what was the form in which the statement was made? Why did she recant it? Why did the grandmother take so long to get to the grandmother -- father? Why did she never tell her mother, her daughter? I mean, there are just too many issues that come up with this, so that's, that's the initial statement of the initial.

Q. And going back to that, the initial statement: "He put a wiener in my face. Please don't tell mommy or daddy." Did you -- you had the videos of the ---

A. Yes.
Q. Okay. Did you also -- I've got exhibits that we've marked, transcripts. Did you have the transcripts --
A. I did.
Q. -- of the, of the interviews?
A. I did.
Q. Okay. Did you -- you said, you talked about timeline and that you wanted to follow sort of a disclosure over time.
A. Yes.
Q. Did you compare this initial report of what the disclosure was with what was in the five --
A. Yes.
Q. -- Child Advocacy Center --
A. Yes.
Q. -- interviews?
A. I said that. I found nothing. I didn't find any of these words --
Q. Okay.
A. -- in those interviews. The word "wiener" is not used and the word "face" is not used.
Q. Okay. Now, I want to talk about those interviews. And they were done by a lady named Tabitha Webber.

A. Right.
Q. If I'm saying her name correctly.
A. Uh-huh.
Q. And in what you've reviewed -- well, what did you -- did you also review the other materials that came with her report and the drawings and that sort of thing?
A. I did.
Q. Okay. And did -- was there any indication of the guidelines that Ms. Webber was supposed to be following?
A. Yes.
Q. And what was that?
A. So she said that she, she used the following guidelines. That the interviewer be non-suggestive. That the interviewer ask no leading questions. That the interviewer go at the child's pace. If the child shuts down or wants to go, finish the interview. I'd have to let them go. I don't know exact words, but that was it.
Q. Okay. And are, are those appropriate guidelines?
A. There are some, yes.
Q. Okay.
A. I mean, they're very basic.
Q. Okay. Well, in your review of the interviews did Ms. Webber follow those guidelines?
A. She broke every single one.
Q. Okay. And can you give some examples of what you

mean by that?

A. Well, she asked many leading, close-ended questions. She repeated questions. She repeated interviews. And that might not have been her choice. She -- the child was never allowed to go at her pace. She was bombarded with questions about Danny.

She kept saying she was through, she wanted to go now. A lot of times. I haven't seen an interview where a child does that a lot, but the interview is continued. I mean, I think at one time the child comes in the interview and says, I'm going soon, right? I mean, that's not a way to start.

Q. In your field, I mean, what is the significance of the child wanting to leave?

A. Well, it has many. I mean, it could be that she just, you know, I mean, here's the significance and you can then put the spin on it the way you want, but she feels uncomfortable and she doesn't want to be there. That's it.

Q. And how, if you're following appropriate procedures, how is that supposed to be handled?

A. You stop the interview. I mean, you might say well, you know, why don't you go -- I mean, it could be well we'll do it another day. Or another could be, you know, why don't you go out with mommy or something,

which is not a great idea in the middle of an interview but, you know, let's do something else for a while. Let me leave, let you color, see how you feel.

And if the child was still noncompliant, I mean, the reason is because when the child says that they become noncompliant and you worry after that about whether the child is thinking I'll say anything, just get me out of here.

Q. And so is it fair to say that you're trying to avoid the risk of there being false statements?

A. Well, you know, on a higher level, yes. But at a basic level you want to be kind to this child. You know, this was like a little kid who's not having a good time here.

Q. What were the most salient characteristics of the child's statements that you observed from the interviews?

A. That -- I didn't count this, but I think that she made more denials than she made disclosures. Her disclosures were generally one-word disclosures. They were inconsistent. They didn't make sense.

The many disclosures that seemed to bear some evidence in the court or these forensic interviews were her scribbling on drawings, which we can look at and make some sense of. But the drawings were kind of not

very graphic and not very detailed. And it looked -- it was hard to see on the video, so I had to look at these drawings. It looked like the child was just randomly pointing, kind of doodling around. At times she's scribbling a lot.

I mean, those are not ways to get disclosures. I mean this is, we know what the dangers of these are. And after a while, you know, she learned where she was supposed to be pointing to. I mean, this was -- this is the other thing about the suggestive techniques, people say, well, how would children even know about this? This is how they know about it, they're shown drawings and they're asked, you know, what are things you can do with the drawings and then they do them. But I just think that the use of the drawings were really unforgiveable in the way that they were used.

Q. And then that goes to suggestibility, as I believe the word.

A. I think it was suggestive in the way that it prompted the child to make a response that she would not ordinarily make. I mean, she never -- it was rare for her to make any verbal responses. They were -- and when she did, they were recantations. I mean, go through the interview and see how many times, no, this never happened. No, I like Danny, he was nice to me.

So, again, here through all this you can see interviewer bias. Go through these transcriptions and see how many times the child says something and you should have gone, wow, it never happened. You know, it never happened or no, it was just followed up by more.

Q. Right.

A. And that was never shown to the jury. I mean, had the jury been pointed out the number of times the child had denied and then had been brought back in. I think it was very important to show them that evidence.

Q. And if they had seen the videos, they would have seen that evidence?

A. If they had seen the interviews? Yes. It would have been a long -- it takes a long time, but they could have been given parts of the transcriptions. And then, you know, if someone objected they could have showed more of the interviews.

Q. And because in the testimony did you see -- did the testimony from Ms. Webber include the fact that there had been recantations and denials?

A. No.

Q. Okay. Now, you talked about interviewer bias and I was gonna ask about that.

A. Yeah.

Q. And I think you were beginning to say or already

had given some evidence of that that you saw in this case?

A. Right.

Q. And what specifically did you see in this case?

A. Well, I saw that when the child made confusing statements, for example, she never tried to figure it out, which I give her points for because it was just, it was all so hard to figure out what the child was doing.

Q. Uh-huh.

A. When the child denied consistently or changed her answers, I mean the only thing was if she, you know, we wanted were assents, not denials. So when you got denials you got this. The whole issue about how the interviewer got her to say that the abuse happened in a hotel in North Carolina -- in South Carolina, that whole stream of questioning is -- reflects that that's what the hypothesis was, was that there was a hotel and that's where the abuse took place.

So you see when she starts talking about Virginia or any other things, it's really not taken up. The questions, the people sometimes use this thing of a funnel. When you don't get the answer you want, you keep funneling, funneling, funneling down until you get the answer you want. So, I mean, her whole notion of where it took place is really not clear at all.

Q. And what about testing alternate hypotheses?
A. Well, you know, I want to tell you something. Well, I just want to say something else about interviewer bias. I mean, there are a lot of times throughout this interview that she says Danny did nothing wrong. She's -- and also, there's the whole issue about Nathan.
Q. Okay.
A. Now, the judge might not know who Nathan is. In the first interview she's asked about wrongdoing and she talks about a little -- I mean, we're pulling this together. A little boy called Nathan, who was in her class, and he did bad touching. And that's all that happened. There's no mention of her father.
And I think Nathan came up again in the second interview. And then it gets confused with who was doing the touching, her father or Nathan. But then in a later interview it comes out that it's really Nathan who's doing it. Now ---
Q. And at one point she says that Nathan put his hand inside of her.
A. His foot, his hand, his foot.
Q. Yeah.
A. His foot. Whatever. And, I mean, that should have been such a red flag. I mean, you know, I guess

people can say she's trying to avoid the issue. But at some point I think she says, you know, it wasn't my dad, it was Nathan. So if you look through these interviews, at the end of it I don't think you have to be really that trained.

I mean, I can actually put labels on what's happening and explain what the devices are and how the child talks about it. But you get a very strong feeling that this child is not accusing her father of abuse. And certainly of not putting a wiener in her mouth, her face. And that the accusations are as yes and no answers, inconsistent, changing her mind, scribbling on pieces of paper in nonverbal ways.

Q. Did you prepare a document with some examples of things that you found problematic?

A. I did.

MR. GROSE: Can I mark this, please.

THE WITNESS: Now, I think I should preface this. This is, this is a summary of what I've taken out of maybe 100 pages. And, you know, I put in the good and the bad, I think. I mean, I put in, you know, her statements and how they came about. It's long. I don't know if I'd want to go through it all in this courtroom, but you have it to look at. And I think tomorrow's witness might elaborate more.

THE COURT: Is she referring to Applicant's 16?

MR. GROSE: Well, actually, this is the one I'm getting ready to mark.

THE COURT: The thing she's holding in her hand?

MR. GROSE: Yes. I think that's a copy of what ---

THE WITNESS: Yes. Right.

MR. JAMES: Your Honor, I'm uncertain as to how this particular exhibit is necessary in that it's overwhelmingly excerpts from the transcripts that's already a part of the record before the Court. It's divided portions of the transcript.

THE WITNESS: No, it's not in the transcript.

MR. GROSE: But it's the transcripts of the ---

THE WITNESS: Well, right. Right.

MR. GROSE: It's not the trial transcripts.

MR. JAMES: Of the forensic interviews?

THE WITNESS: Yes.

MR. GROSE: Of the forensic interviews.

MR. JAMES: Okay.

MR. GROSE: Yeah.

THE WITNESS: So maybe I can just go through some of them and then people can look at them and then I think Dr. Lamb would fill it in because really you'll get tired of my talking.

MR. GROSE: Let's go ahead and get this marked. If we can give her just a break to do that.

THE WITNESS: But I can just go through a few to give you ---

THE COURT: You have to stop talking because she's got to write down.

THE WITNESS: I'm sorry.

(Petitioner's Exhibit Number 17, Summary, was marked for identification.)

BY MR. GROSE:

Q. Just so we're clear on the record, what's been marked is Petitioner's Exhibit Number 17 is what we're talking about?

A. Right.

Q. And you have a copy of that?

A. I do.

Q. Okay.

A. So the gray lines are actually my yellow lines.

Q. Okay.

A. And, actually, these were all my yellow lines in my original when I went through the transcripts themselves.

Q. Okay.

A. I mean, could have just entered the whole transcript. So this is the first interview and this is

an example of multiple questions about Danny, about her dad bad touching.

MR. GROSE: Your Honor, I can hand you this, if that would help.

THE WITNESS: Yeah.

MR. GROSE: This is the marked exhibit. I'm sorry.

THE WITNESS: And so: "Any big people do anything with that part right there?"

I think she's talking -- she's pointing to the picture and she says: "No."

And then she says: "I was sitting at the table drawing", which is what she was doing actually. And then she went, "under the table."

"Did he touch you on top of your clothes or under?" Choice question.

"Under."

"Okay. Did your pants stay on or something else?"

"On." And then ---

BY MR. GROSE:

Q. Let me interrupt you there.

A. Uh-huh.

Q. I've seen interviews where a lot of times the interviewer will give a choice was it A or B or was it

something else.

A. Yes. So the scientific evidence shows that the something else doesn't make a difference.

Q. And why?

A. Because they're more likely to take one of the choices.

Q. Okay. All right. And so that, that use of that can be suggestive then?

A. It is. It's giving a -- I mean, what is she doing? She's taking her word under. Now, here actually she says: "When he touched you there, did he touch you on top -- on top of your pants or somewhere else?" So she picks somewhere else. And then, okay, and now it's inside of my pants. Before it was under, now it's outside. And then she says: "He did it on my pants."

And then we can just go through this here, but there are just a lot of these questions.

"Is there somebody you don't want to talk about?"

And she said: "It's about my friend."

"Is there a person you don't want to talk about?"

And she says: "No."

Things that are redacted here are the child's name, so it's not any information.

"There's not?"

And she said: "His name is Danny D and I don't

want to talk about him."

Now, this is really important. She says: "He calls hisself daddy and he is not my father. And I don't like it when he calls me that."

So when there's anger here. I mean, what the child has incorporated is that she doesn't have to call him daddy. It makes her angry when he insists on being called daddy and he's not her father. And you see throughout this interview that that's the bad thing that's involved with it and why she gets upset on the phone calls is because this whole thing with Danny "D".

Q. And that gets back to what you talked about earlier about the stereotyping or the atmospherics --

A. Right.

Q. -- surrounding --

A. Right.

Q. -- you know...

A. And for a lot of reasons she might not but, you know, it's that part. But then: "When we talked here in the picture that you helped me with right here, was that about Danny D?"

And she says: "No."

"Danny D did what?"

"Nothing."

Okay. So this child is being brought in for a

forensic interview and she now says nothing and that's the end. There are a lot of repeated questions about Danny D after that and nothing comes out.

So the next day there's a second interview. And if you look at the pictures, there's an annotation on top of one that says: "Danny "D". touched with his hands." And it says: "She pointed to the private and said inside it hurt." But there's no inside it hurt in this transcript, so I don't know where the interviewer got to put that in.

So here again you see at the beginning just issues about why he's bad.

And she says: "What does he do that you like?"

Now, that's a really good question. And, you know, let -- that's a really good question.

And he (sic) says: "He gets me Easter stuff." And she says: "I don't like it."

Now, I think what she's referring to is the fact that he would send her packages and the mother would return it, and I'm surprised the child knew about it. So I think that's another thing about why he's bad. And then again we have this thing about calling him Daddy Dan. Hanging up on the phone call.

And: "But are there things he did that you don't like?"

And she says: "I don't know."

Then: "Hotel and his house, did he do something bad?"

And what did he do bad? He wrote on her hand.

"And anything else?"

Denial. That's it. I'm gonna go down the end to this page. By the end of this page, this interview should have been stopped. This child is not giving information. But the idea is, you know, if we keep at her long enough she will. But you have to be careful because the more suggestion there is, the more the child is probably gonna say, okay, I'll tell you something and I'll make it worse than it actually is. A lot of details. I mean, we know that from these kinds of interviews.

"Who pushes you?"

"Nathan."

And here she says -- she's drawing and distracted: "I'm ready to go. When am I going to go?"

And what happened? She says: "Does anybody give you teaches -- touches you don't like?"

"Someone gives me hugs."

And who does -- and she doesn't like the hugs that Nathan gives her. And here she is talking about she peed in her pants. And then: "My shoes were wet."

I don't know if that happened.

So now we get to something. Let's wait to see what happened.

She says: "What did Danny do?

"He (sic) said: "He just pulled my panties and pulled them down. It made me sad." And then she says: "When do I get out of here?"

"Did he touch you on the top or under or both?"

She goes "both".

"Did anything go inside of you?" And she nods.

"What went inside of you?"

"Nathan's hand."

Q. So this is a point where it's not really clear who she's really talking about?

A. Well, I don't even know who -- first of all, there are a lot, there are a lot of things here, as we were talking about he. And young children sometimes have problems with pronouns. So a lot of the times is she really talking about Danny or is she talking about Nathan? And a lot of times the interviewer asks about it and who knows what it is? So there's no clear reference.

And then she says -- I want to come back to what's at the top of the page -- "Nathan's hand."

"Now, yesterday we were talking about Nathan. He

touched you on top of your clothes."

"He went outside."

"Well, what about Danny D? What went inside of you?"

"Nothing."

Now, if you look at the previous page where -- well, she just said it hurt inside. I don't know. And so there's a recantation.

Q. Okay. Let me, let me interrupt and ask you a question about Nathan. The fact that we're talking about him, does that necessarily mean that we're accusing him of a crime or anything?

A. Not at all. Not at all.

Q. Okay.

A. Young children, you know, there are always kids in the class that people find annoying, little girls. You know, they're touching them, they're hitting them, they're whatever. Could be a good friend. She could be doing that with him. I mean, who knows?

Q. But from a standpoint of analyzing these interviews it's kind of significant?

A. It's significant that she talks about Nathan, yes.

Q. Okay. All right.

A. And then just at the top here I just put, if you

look at the tape she's, she's drawing vicariously. She's asking: "When am I ready to go?"

And then she said: "He uses his hand."

"That's it?"

And then later on it says that she denies that her pants came off. They didn't come off.

"Did they come down?"

"Yes."

And then she says: "They came down, up and down." So who knows?

Q. All right. Instead of necessarily going through all of these --

A. Right.

Q. -- these were ---

A. I just want to go through the many things here. The next page you (sic) said: "Nathan didn't do anything? What about Danny D?"

"Let me think. No."

So, again, we have another denial. You know, "Danny "D" touched you with his feet?" Further on she says: "What else?"

"I guess I don't know."

"Show me what he put inside you."

She shakes her hand negatively.

And all these things are what Danny "D" put

inside her. And then we get to this whole conversation about Virginia.

And here ---

MR. JAMES: Your Honor, I'm going to respectfully object at this point. This isn't responsive to any particular questions from Mr. Grose. And I believe he indicated a moment ago a desire to followup from it.

THE WITNESS: Okay. Cool.

THE COURT: Go ahead Mr. Grose.

BY MR. GROSE:

Q. Well, instead of basically going through all of these --

A. Uh-huh.

Q. -- and I think this is what you were doing, first of all, this -- the exhibit are things that you found significant that should probably be looked at as far as evaluating this case. Is that --

A. Absolutely.

Q. -- right?

A. But there's one -- can I just move one more thing because it had to do with mouth. Because that was the -- I mean, it wasn't the initial allegation but it was fixed, right?

And so he (sic) asked: "You were telling me about mouth. Did Danny "D" use his mouth for anything?"

She said: "He used his mouth to bother me."

"Where?"

"On my chin."

Q. Okay.

A. So...

Q. You indicated, and I think this document brings it out, that there was a number of recantations.

A. Yes.

Q. And in the -- in your profession, in your field of study, what is the significance about that?

A. Well, I mean, the significance is that the child denies previous disclosures and what does that mean? In this case there are so many denials and so many recantations that it just -- that the child is not willing to make a disclosure. And one has to say why is she not willing? Well, is it because she's embarrassed? I don't think so. Maybe. Is it because she's afraid of Danny? Not really. She says she likes Danny. Is it she's worried that it's gonna break up the family? No, it's not gonna break up the family.

So what I think that this child is highly resistant to suggestion really. I mean, what they're doing is cherry picking because there's more evidence of her resistance later on.

Q. Okay. And what do you mean by that?

A. Not in these interviews.
Q. Okay. And in subsequent counsel?
A. Uh-huh.
Q. All right. Is that a "Yes" for the ---
A. Yes, in subsequent counsel.
Q. Okay. All right. And we'll get to that in a minute. Did you also find evidence of leading in these interviews?
A. Well, everything I talked about is leading. It's leading in that she's asking her yes/no choice questions. Repeating questions, that's all leading.
Q. Uh-huh. And there were also some questions that you found significant that had to do with a hotel and a swimming pool.
A. Right.
Q. What can you tell us about that and what you found significant?
A. Well...
Q. I think I'm looking at the fourth interview.
A. No, I know. I know.
Q. Yeah.
A. Well, what I find significant is that she keeps talking about it happening in Virginia. And at trial she talks about a bathroom and there's no mention of it here in any way.

Q. And then there's also talk of a swimming pool.

A. And she says -- and she said: "No, it was in Virginia. It was at the hotel."

And then she says: "Did it happen the first time you were at the hotel?" So what's "it"? And there were a lot of leading questions here.

Q. And at one point do they ask her about did something happen in a swimming pool?

A. Here? At the beginning? It's in here if I saw it. It was a sun room.

Q. A little bit before that.

A. Before. Did the hotel have a -- skipping a page. Okay. "A Virginia hotel. It was in the swimming pool."

"Did something happen in the swimming pool?"

She goes: "No".

So a swimming pool comes up but she says it was in Virginia.

Q. All right. And then she also recants.

A. And then she recants. She says it was in the sun room.

Q. Okay.

A. But she doesn't really say what it was. And --

Q. And the only ---

A. -- you know, how many times? And then she denies.

"Last time you were telling me you had to use your mouth for something."

I don't know that she actually said that. I mean, someone would have to go back, but I think that's pretty leading.

And she says: "I don't know."

And then she denies that he used his mouth. Second denial about using the mouth. And she still keeps questioning her about a mouth.

Q. And let me, let me ask, you talked about the use of the word "it" --

A. Uh-huh.

Q. -- and not knowing what that means.

A. It is, yes. What is "it"?

Q. Okay. Are there considerations that come into play with regard to a child's developmental stages and the use of words like that?

A. Well, it's an ambiguous program -- pronoun. I mean, I know, you know, sometimes you talk to people and you say well tell me about it and you go what's "it"? You know?

Q. Uh-huh.

A. And so, there's no context here. She hasn't made an allegation. You know, she's never, she's never said anything that could say tell me about, you know, when he

put his mouth on you because she said that never happened. So what -- how, how do you ask the question? Or if she just doesn't -- just use the word it. She's not being careful about how she's questioning this child.

Q. And you also talked about pronouns like he and she can give children problems.

A. Yes. Like he could -- was it Nathan or was it Danny or was it someone else?

MR. GROSE: Right. Yeah. I don't know that I've offered Exhibit 17 and I'd do that at this time, Your Honor.

MR. JAMES: No objection at this time, Your Honor.

THE COURT: All right. It will be admitted as 17.

(Petitioner's Exhibit Number 17 was entered into the record.)

BY MR. GROSE:

Q. And I want to transition a little bit. Did you also look at records of some therapists?

A. I did.

Q. Was one of those Kim Rosborough?

A. Yes.

Q. Or Kimberly Rosborough?

A. Yes.

Q. And what did you find, if anything, significant about those?

A. Well, let me just look at my timeline here. So she went to see -- okay. Well, anyway she went to see Rosborough. You had a timeline. Here we go. She went to see Rosborough in 2011. Oh, she started October 10th. And she went to see her through ---

Q. Was that 2011 or 2010?

A. She started March 28th, October 10th. I think. Oh, no, and she finished. She finished seeing her on March -- in March 2011.

Q. Okay.

A. Is what I know.

Q. So from October ---

A. Ten visits, yeah.

Q. Okay.

A. To March, yes. So she went to her for anxiety or maybe. I think the parents were concerned. She went to her for anxiety.

MR. JAMES: Objection, speculation.

THE COURT: I'll sustain the objection.

THE WITNESS: This was an anxious child. The grandmother talked about anxiety separation when she was very young. And there are examples of her anxiety in

Rosborough's report.

BY MR. GROSE:

Q. Okay.

A. Saw her for ten sessions. And she felt much better. Mother reported that she got much better. She was cheery. The teacher was happy with her. She was socializing in school. She was doing much better, so really a happy child.

Q. And that was happening from October of 2010 through --

A. Right.

Q. -- March of 2011?

A. Ten visits, so probably like less than once a week.

Q. And so Ms. Rosborough is reporting improvement and these visits somewhat coincide with the timeframe of the allegations in the indictment?

A. That's right. And the mother is reporting it. And her mother writes an e-mail to Rosborough saying, you know, how happy she is with her child. This is during a time where stuff was going on.

Q. All right. And did you also review records from a therapist named Meredith Thompson-Loftis?

A. As best I could.

Q. Okay. And why do you say as best you could?

A. Well, it was very hard to read. But I looked at her testimony and I was able to look at the records as best I could up to the time of the trial.

Q. Okay. And did you consider her records to be a good forensic record?

A. No. But to be honest, I don't know if these were forensic. I think that she was there for therapy.

Q. Okay.

A. Okay?

Q. Was there any things -- well, let me withdraw that.

Did you get a sense of the number of times that [redacted] went to sessions with Ms. Thompson-Loftis?

A. Well, I know that by the time she got to trial, so that was between -- so it started after the forensic interviews ended, which was about October. Around May 11th to the trial in 2014. She had seen her 71 times.

Q. Okay. And is there any -- in your field, is there any significance regarding those numbers of sessions?

A. In my field in terms of suggestibility?

Q. Yes.

A. Or just in terms of child development?

Q. Or both.

A. It's a large number of times.

Q. Okay.
A. It's a large number of times.
Q. Well, in particular with regards to suggestibility.
A. Well, the one thing I noted was that it took her months to make any disclosures. I mean, what this woman did was she noticed her high anxiety. I mean, she was an anxious child, but at that point she probably did have a lot to be anxious about. And she attributed ---
MR. JAMES: Objection, speculating.
THE COURT: I'll sustain the objection.
THE WITNESS: Oh, sustained, okay. She had just gone through these CAC interviews that she didn't want to be there for and now she was seeing this other woman. And it took about five months for her to get her to make an allegation.
BY MR. GROSE:
Q. Okay.
A. But her, her diagnosis was that there was sexual abuse. And so her therapy was to get a disclosure of sexual abuse.
Q. All right. And when you say her therapy, did she use a particular type of therapy?
A. She said she used trauma-focused therapy.
Q. All right. And what is trauma-focused therapy

mean?

A. Trauma-focused therapy is used when there was a known trauma and there are real signs of worry, illumination, anxiety, due to things about that. And the idea is to have the child -- well, it's often, it can be used a lot with adults with PTSD, whatever. It really is. To have them recognize or to relive the trauma and to relive it by drawing pictures, by writing a journal. And the idea is that if you rehearse it enough and talk about it enough, it will blunt it and you will learn ways to deal with those feelings.

Q. Okay. And do you have concerns about whether or not there was a known trauma in this case?

A. No. We don't know there was a known trauma.

Q. Okay. And ---

A. But, you know, she decided there was because they found the child guilty. She never read any records before that.

Q. Okay. And is there a risk of suggestibility coming into this type of treatment?

A. Yes. Because you have to, you have to pick a trauma.

Q. And did you -- and I think you've already kind of touched on this, but did you see any evidence of interviewer bias in these records?

A. Well, you know, to be -- the records were just really one, one sentence is about what she was doing, what the child said.

Q. Uh-huh.

A. There's really, I mean, you know, a child -- I mean, at a point she says the child not doing better. I mean, the child is clearly not getting better. But I find that a lot of times here, and I don't know what the rules are, it's really more to refresh the therapist's memory.

Q. Okay.

A. And, you know, what notes don't have is the full -- you know, she doesn't talk about any denials. She only includes evidence that is useful for her. So I don't think that they're much use except for what is abuse is that the child never -- it took a long time. That's why I'm saying that I think this child is highly resistant to suggestion to get her to make allegations.

And once she makes allegations, this is the other thing I noticed, she goes way off board. She starts making allegations about her stepbrothers, about abuse by them or with them or for them. Things that were never mentioned before. And you see this a lot in children who are being forced or confronted to talk about and tell me more and tell me more.

I mean, what they learn is I can say anything I want. There's no, there's no limit. The sky is the limit. And that's why these narratives people say look so credible because they have so much detail on them. I mean, no one's ever gonna call them on it, and so they learn that they can do this and it's very concerning.

Q. All right. And on making allegations about other people, there's also allegations made about Cara.

A. That's right.

Q. And is that consistent with what you're talking about?

A. Yes.

Q. About the allegations expanding --

A. Yeah.

Q. -- through these therapies?

A. Yes.

Q. Okay. I want to transition out of that and talk about anxiety for a minute, because you've mentioned that, that this was an anxious child.

A. Right.

Q. And you saw evidence of that in the records, I guess.

A. Right.

Q. And as well as some of the testimony.

A. Uh-huh.

Q. From a scientific standpoint regarding child sexual abuse, what does the, the evidence show, teach us?

A. Well, I mean, anxiety can be -- is found in children who have been sexually abused, but it's no more common. It's not a distinctive diagnostic feature. There are lots of children who suffer anxiety who have not been abused.

There are a lot of children who are -- there are a lot of children who are anxious who are not abused. This could be part of normal development where, you know, you go through stages you're afraid of clowns, you're clingy, you don't want to leave your mom. Or it can, in fact, be a pure anxiety disorder which is treatable.

Q. Okay. And you said, I think you used the term -- I don't remember the term you used, but anxiety in and of itself be the diagnostic factor.

A. Right.

Q. It's not a diagnostic factor by itself for sexual abuse?

A. No. There is none.

Q. Okay. And ---

A. Well, some people might, might argue that sexualized behavior is one, but there's also some slight

interludes to that. But in terms of, you know, depression, anxiety, aggression, all those things, they're not specific to children who have been abused.

Q. All right. And asking the question another way, can anxiety be -- is it a symptom of other disorders?

A. Yes.

Q. Okay. And can you give us a couple examples?

A. Well, you know, there's a childhood anxiety disorder --

Q. Okay.

A. -- which can be all kinds of things. It's associated with depression, so...

Q. Okay.

A. Associated with a lot of childhood disorders.

Q. Okay.

A. I think, you know, that this child, I mean, Kim, the doctor, Ms. Kim, she, she thought she had primary anxiety disorder.

Q. And you mentioned the interviews. Can, can anxiety come from going through interviews?

A. I guess.

Q. It can come from a lot of things?

A. Right. I mean, I'm anxious now after going through this interview, so...

Q. So to kind of summarize -- well, not necessarily

summarize, but we've already talked about this. Do you think it was important for the jurors in this case to see the -- or at least be exposed to either video or the transcripts of the interviews?

A. I think it was the prime evidence that the defense had.

Q. Okay. And if you were consulted, had been consulted by the defense, would you have advised them that the jurors needed to see that prime evidence?

A. Absolutely.

Q. And if you had been consulted by the defense, would you have advised them that the jurors could benefit from testimony of an expert in your field?

A. Yes. I would do that all the time.

Q. And particularly to convey to the jurors a lot of the information that we went over before we took a break a little while ago?

A. Yes.

MR. GROSE: Okay. Judge, I think I'm wrapping it up. Could I have a couple minutes just to consult and make sure I don't have anything else?

THE COURT: Yes, sir.

MR. GROSE: Okay. Thank you. That's all I have at this time. So, Dr. Bruck, if you can answer any questions that the State might have, please.

THE COURT: Lawyers approach a moment.

(A bench conference was held off the record.)

THE COURT: All right. We're going to take a lunch break, Doctor. Again, you may step down but don't have any discussions about the substance of your testimony. We're going to reconvene at quarter till two. All right.

(Lunch break was had from 12:17 p.m. - 1:50 p.m.)

THE COURT: Is the State ready for their cross-examination?

MR. JAMES: Yes, Your Honor, the State is.

THE COURT: Ma'am, I just need to remind you that you remain under oath.

CROSS-EXAMINATION

BY MR. JAMES:

Q. Good afternoon, Dr. Bruck.

A. Good evening. Good evening, good afternoon.

Q. It feels like evening, doesn't it?

A. Oh, please. Sorry.

Q. My name is Johnny Ellis James, Jr. I am one of the attorneys for the State who is representing our side of this postconviction relief action. For the first start of this cross I want to go over some of the high concept ideas and research around forensic interviewing, explore your knowledge of the research on that subject

before --

A. Okay.

Q. -- we get back to the specific facts of this case. Forensic interviewing is a relatively new process and field of research, is it not?

A. More than 25 years old.

Q. More than 25 years old, but it's comparable to my age, I'm about 30.

A. Okay.

Q. Is there at this time in the United States a standardized universal practice for the conducting of forensic interviews?

A. No.

Q. Okay. In fact, right now there is a wide variety of different protocols that are followed in the different states?

A. Yes.

Q. Okay.

A. They all have common principles.

Q. And what would those common principles be?

A. With children?

Q. Okay, yes.

A. Make the child relaxed. Have the child practice making -- giving narratives on unrelated things that are filled with details and require little prompting.

Asking mainly open-ended questions. Not using leading questions. Not repeating questions. Minimizing the number of interviews. Taking into account the child's developmental level. Okay.

Q. My understanding is that taking into account the child's developmental level is actually arguably the first and most important aspect of conducting a forensic interview. Would you agree with that?

A. No.

Q. No?

A. Well, I mean, I think the most important part is keeping it non-suggestive.

Q. Okay.

A. But, you know, certainly a lot of these interviews begin with trying to assess the child's developmental level but they're not true developmental examinations. Give them an idea.

Q. In what way is a forensic interviewer supposed to engage the child's developmental level?

A. Well, sometimes, you know, they ask them their colors, they ask them to count, they ask them their alphabet. They see -- they're supposed to listen to their language. There, there is no standard way.

Q. In going back to that absence of a standard procedure nationwide, in fact in many circumstances

forensic interviewers will blend a variety of approaches and protocols, correct?

A. It depends on the state.

Q. Okay. And so to a certain extent the approach that's taken in the forensic interview is governed by the law of the state in which the interview is taking place?

A. I don't know if it's the law or just the general agreement among whoever. I really don't know that much about it. Tomorrow's witness will.

Q. Okay. And when you say "it", are you referring to forensic interviewing?

A. Yes.

Q. Okay. Would you agree with me that some of the research into the best practices for forensic interviewing is still in development, it's still in flux?

A. Yes.

Q. Okay. And as a consequence would you agree with me that there are certain issues in the field of forensic interviewing over which there remains some disagreement upon researchers?

A. Among researchers, some, yes.

Q. Okay. Were you aware that there is at least some research that differs as to the appropriateness of the

use of simple media, such as paper and crayons or markers in the course of a forensic interview?

A. Disagreement about like the use of drawings?

Q. Disagreement as to whether the presence of crayons and markers --

A. Right.

Q. -- is appropriate and the best practices in --

A. Right.

Q. -- a forensic interview.

A. Right. So Debra Poole has recently written an article about letting a child draw during an interview does not interfere with the quality of their answers. And I actually did the similar study but didn't publish it because she had done it already.

Q. Some of the travails of academia.

A. Oh, well, you know, anyway, so...

Q. Are you referring to Dr. Poole's 2014 work? If I can find the title of it quickly.

A. Anyway, she -- go on.

Q. My apologies. If I can beg just a moment of indulgence. The publication in child use and neglect. Comfort drawing --

A. Yes.

Q. -- during investigative interviews. Evidence of the safety of a popular practice?

A. That's correct.
Q. Okay. And that was alongside Dr. Dickinson?
A. Yeah. Jason Dickinson, yes.
Q. Okay. And in that publication she actually went so far as to suggest that it may be helpful to the child in the forensic interview?
A. Yes.
Q. Would you agree that every child's development proceeds at a different pace?
A. Yes.
Q. Okay. So some four-year-old might be more capable of verbalizing their thoughts and feelings than other four-year-olds?
A. Absolutely.
Q. Okay. Would you agree that some young children in the course of their development when they are subjected to a forensic interview may not be capable of or comfortable with verbalizing their memories?
A. Verbalizing their memories or answering questions or what?
Q. Well, that perhaps they can answer their questions, but is it possible that a child could go into a forensic interview and can converse but lacks the language necessary to describe what happened in the past?

A. Well, but they might lack the memory.
Q. Okay.
A. So it's hard to tell. If the question is asked in the right way they should be able to. And if they can't, the interviewer usually notices, so they can't do this interview if this child is not at the developmental stage.
Q. Is it possible that a child might not be able to articulate their memory but might be able to communicate that there is a memory there in some other way, either in their body language or by drawing?
A. Not in body -- there's no evidence about a body language.
Q. Okay.
A. And the evidence about drawing, I can't answer that question.
Q. Okay. When should the forensic interviewers do the forensic interview?
A. I didn't -- what's the first part?
Q. My apologies. When should a forensic interviewer endeavor --
A. Yeah.
Q. -- to conduct the first forensic interview?
A. As soon -- as close as possible to the initial allegation.

Q. And why is that?

A. Because there's less time for forgetting and there's less time for interference or rehearsal or suggestion. You want as close, you want it off the burner as close as possible.

Q. So it's in order to reduce the possibility of tainting?

A. Yes.

Q. Okay.

A. And forgetting.

Q. For how long should a forensic interview be conducted?

A. Well, I think Dr. Lamb has more of that information than I do, but for this age child 40 minutes, probably. You know, it depends. If the child is comfortable and there are still things to do, I guess you could push it further, but try to keep it within their attention span.

Q. So you try to be flexible to the child, but also you want to keep it relatively short?

A. Right.

Q. Okay. Well, you don't want to keep it so short that you're not -- I mean, you want to make sure you've got the information you need, right?

A. Okay.

Q. And it's also important to commit time, especially in that initial forensic interview to allow the child to familiarize themselves with the interviewer, correct?

A. Yes. But in normal interviews that's part of -- that's part of the package.

Q. So regardless of the particular protocol, this agency or that agency may follow, generally, universally there's an effort to familiarize at the outset of the first forensic interview, correct?

A. I would hope so.

Q. Okay. Could be a little intense if the child went in there and --

A. Precisely, yeah.

Q. -- started peppering them --

A. Did your father touch you, yeah.

Q. -- with questions. Correct me if I am mischaracterizing your testimony.

A. Okay.

Q. But my understanding from your testimony on direct examination is that you are of the position and opinion and that research bears out that there should be as few forensic interviews as possible?

A. That's correct.

Q. Okay. But you would agree that there is some

research to show that certain severely traumatized children may benefit from multiple non-duplicate interviews?

A. I know some of that research and I think it's not very good at all.

Q. Okay. So you disagree with it?

A. Well, I think two is a start. If you can do it in two, and if you can't then you've got to discuss it further. But the problem -- okay, that's my opinion.

Q. When you say "discuss it further", what do you mean?

A. You discuss with your peers or whatever about, you know, how the child's doing, what do you think you could get out of the third interview? How would the third interview be non-duplicative of how we could rule a suggestion? I mean, it's very difficult. I don't really have an answer to that question, okay? I think it's very difficult.

Q. It's very difficult for prevailing to ---

A. It's a difficult issue. But my opinion is there should not be multiple interviews that are suggestive.

Q. Some children are going to be reluctant to disclose the abuse that they have suffered, correct?

A. Some children are going to be reluctant to disclose?

Q. Their abuse in a forensic interview.
A. Some children are.
Q. Okay. Are there specific factors that would cause a child to be more reluctant to disclose abuse?
A. Well, the ones that have been looked at in relationship to the abuser. There are a number, but that's usually the one that's brought up.
Q. That's the number one that appears?
A. That pops into my mind, yes.
Q. Okay. And what is the nature of that factor? Is it that the closer the relationship of the abuser the less likely they are to disclose?
A. Yes. I mean, usually it's interfamilial that, you know, if they can disclose the mother will be mad, it'll break up the family. There are ties to the abuser, positive ties. That's it. You know, it's usually these emotional familial-able attachments. What it would do to the family.
Q. It's also common for victims of child abuse to delay in disclosing their abuse, correct?
A. Delay? Delay is a very ambiguous term because, you know, it can be days or it could be months or it could be years. And I don't think there's any argument that there is delay in disclosure. It is very rare for a child to come running in and say, hey, this just

happened to me. It happens, but...

Q. I think I've seen instant disclosure once.

A. You've seen it once?

Q. Once.

A. Uh-huh.

MR. JAMES: Beg a moment of the Court's indulgence.

BY MR. JAMES:

Q. Are you aware that there is some research that found and asserted that as many as 60 to 80 percent of children and adolescents who are subject to sexual abuse do not disclose until adulthood?

A. Okay. So, I know that research because we reviewed it.

Q. Okay.

A. But who knows what the number is. There's a lot of data about whether in fact they didn't disclose earlier. Those are based on much earlier studies, but we all know -- I think it is common. It's common, it occurs.

Q. Okay. Given that it is common and that it does occur, is there any particular commonality in what causes victims of sexual abuse to actually come forward and disclose their sexual abuse?

A. You know I don't, I don't really know.

Q. Okay.

A. I really don't know. I mean, I could guess. I think -- I've been asked -- I've asked whether this is true and with time, you know, it's become easier to disclose. What we know is that rapes of sexual abuse have declined over the decades, but I don't -- we don't -- there really are not any good data that we could ever find to answer your question.

I mean, sometimes it's because a lot of times it's adolescents. A lot of times, you know, kids don't really understand what's happening to them. And then you could think of all the usual, no one's ever asked them.

Plus the other thing that we found is that, you know, these rates of nondisclosure, they don't really answer the question of when children are asked how many people denied. I mean, that's the thing. These rates of nondisclosure may involve times when no one ever asked them and so they never told. But I think the relevant question is once the children are asked how many deny?

Q. I think the key thing that you emphasized in your direct examination testimony and then again here on cross-examination is the crucial importance that a forensic interviewer use open-ended questions, correct?

A. Correct.
Q. As the interview progresses --
A. Uh-huh.
Q. -- is it then appropriate to narrow the scope of the questions as the child presents information to the forensic interviewer?
A. Well, I think that -- I mean, Michael Lamb's protocol, which is one of the one most used, the NIH, I mean, their rule is you stay with open-ended questions and you use the child's statements to ask other questions, but you keep them pretty flexibly open-ended. And you delay as much as possible the use of specific questions. You may want to ask them at the very end.

And, although, he's never written about it, I think the feeling is but you draw a line when you do that, when you realize what the risks might be of answers to those questions, which might be at the end of an interview. But you really try your best to stay in this open dialogue and, you know, focusing in with more open-ended questions, but based upon what the child has already said.
Q. What things should a forensic interviewer look for in determining when it is that they need to cross that line and go into more specific questions?
A. I don't know.

Q. Okay.
A. I think that if they've had a lot of training they know where the line is. And I think they certainly should be aware of what the consequences are.
Q. But you would agree at some point it may be necessary to ask a specific question?
A. It might be necessary. A specific question.
Q. You've indicated your disapproval of the use of drawing. Is there anything to be concerned about, about the use of other aids in the course of a forensic interview? So, for example, maybe a small picture book? So for example, in this case, just to be clear in the question, I believe Tabitha used a book with pictures of children where she said this one says it's a dog and this one says it's a cat, which one's lying?
A. So that one was at the beginning.
Q. Yes.
A. And it was sort of a competence exercise.
Q. Okay.
A. In order to know that the child knows the difference between a truth and a lie.
Q. Okay.
A. Which, in fact, doesn't correlate with children's suggestibility, as it turns out, so it's not used very much.

Q. So that sort of exercise to confirm that they know the difference between a truth and a lie doesn't impact on whether or not the statements they're providing are accurate?

A. Yeah.

Q. I apologize.

A. Yeah. You're right it doesn't correlate with it at all.

Q. Okay. What about telling children that they have to tell the truth or this is the truth, things of that nature?

A. Well, some people do that and they say, you know, I want you to tell me things that you've seen. I've rarely seen this actually. You know, when we talk here, we only talk about things that we know that we have seen happen. We don't talk about things that people have told you or that you've made up. This is something that happened, that you have been there when it happened. I rarely see people do that, but sometimes it makes a difference, sometimes it doesn't.

No -- the things people use that were not used here is no guessing. If you don't know the answer, say I don't know the answer. If you don't understand the question, tell me you don't understand the question. If you don't understand a word, tell me and I'll use

another word. And then they have exercises that they go through. Again, I think those are good, but they're not practiced throughout. Anyway, I'm just saying. Those are common.

Q. Okay. So the -- and to clarify for my own notes here, you are stating that it's common to tell the child that there's no guessing, things of that nature?

A. Right. And tell me if you don't understand.

Q. Okay. And did I hear you correctly when you asserted that that was not done in this case?

A. I didn't see that.

Q. Would it surprise you if I told you that in the first interview --

A. Uh-huh.

Q. -- Tabitha did tell --

A. Right.

Q. -- the victim --

A. Uh-huh.

Q. -- if you don't understand something, say Ms. Tabitha I don't understand or something to that effect?

A. Okay, good.

Q. Okay.

A. Okay.

Q. Does the use of human figure drawings present any problems to suggestibility for essentially changing the

child's remarks?

A. Yes.

Q. Okay. How so?

A. Well, first of all, the focus is the child. Parts of the body that are of interest. I talked about this in my direct testimony. It makes children randomly point to places. And from the research, especially with young children, it's associated with many false reports of touching.

Q. Okay.

A. When no touching occurred.

Q. Is there ---

A. And it doesn't increase children's reports of truth. It doesn't recruit -- increase true reports, which is the point.

Q. Is there a more advisable method by which forensic interviewers could work with children to figure out what words they use for the different parts of their body?

A. That's a good one. There's a good one. I mean, usually they have to name parts of the body.

Q. Okay.

A. Just to make sure. They want to understand what names they use.

Q. Okay. And would it be more appropriate just to

use -- to point to ones own body --

A. You can do that.

Q. -- as opposed to pointing at the drawing?

A. You can do that. Uh-huh.

Q. Okay.

A. But other people do use the drawings just to get the names of the buttocks and the genitals. The only problem is it then tells the child this is gonna be the focus of this interview, so there are other ways to deal with it.

Q. Would you agree that depending on their stage of development, children have different capacities for describing location?

A. Location on their bodies or location geographically?

Q. Location of say where things occur, say at home or at school or in this place or that place?

A. Yeah. I guess it makes sense. I don't know of any studies that have looked at that. But surely by four years old. I mean, to tell you the truth, I don't know. But, you know, we all miss after time we also all we -- adults even mess up location, right? Remember ---

Q. Oh, I do it all the time.

A. Exactly. So I don't know if it's a developmental issue.

Q. But you would agree that a younger child is less likely to provide as much detail about a location as would, for example, an older child, let alone an adult?

A. Yes.

Q. Okay.

A. Well, I don't know. Sorry, I don't know.

Q. Is there a particular kind of reaction that we should expect or look for from a child when they are asked about potential abuse or suspected abuse from a parent or other authority figure?

A. I know that there have been studies about children's demeanor during -- children's demeanor while disclosing abuse or being interviewed about abuse, and there's a huge variety of reactions. I don't know of any one reaction that people will say uh-huh that's it.

Q. Children react in different ways?

A. Yes.

Q. Okay. Do you agree that some children who have been sexually abused may deny that abuse?

A. Yes.

Q. Would you agree that some children may wish to avoid talking about abuse when confronted with it by denying that it occurred?

A. Well, I know that they don't talk about it.

Q. Would you agree that children may endeavor to

avoid talking about abuse by changing the subject or deflecting?

A. I don't know.

Q. Would you agree that a child's concept of time and the concept of a sequence of events is noticeably different from that of an adult?

A. Yes.

Q. Okay.

A. Your concept of time, in other words.

Q. Okay. In what way might a child's concept of time differ from an adult?

A. Well, they don't really understand, you know, the concept of a few years ago versus a few weeks ago or, you know, as they get older they know yesterday, they know the days of the week, but they don't have a good concept of time until eight or nine years old or older.

Q. Well, even adults may have a bad concept of time if they're late to work everyday.

A. (Laughs.)

Q. If I recall correctly, one of the issues that you zeroed in on during your direct examination and in your report was the need for the forensic interview to terminate the forensic interviews when the child indicated that she was ready to, to go?

A. Yes.

Q. All right. What should a forensic interviewer do when she receives from the child a partial disclosure of abuse or perhaps even a full disclosure of abuse --

A. Uh-huh.

Q. -- And that is followed by the child expressing I want to go, I want to leave?

A. Okay. Well, there was no full disclosure of abuse in these interviews.

Q. Okay.

A. So the point is moot.

Q. What about a partial disclosure of abuse?

A. What, he touched me? And then by a recantation and it's in all kinds of interviews? I don't think that's a question relevant to these interviews.

Q. Well, it is a little relevant because it's the circumstances of where we were in the interviews, what the forensic interviewer had heard from the child, which you described in your way, and then she's confronted with the child indicating that she wishes to terminate the forensic interview.

A. I don't, I don't want to really spend a lot of time on this because I have a plane to catch, but --

Q. Okay.

A. -- you can go through the transcripts yourself and decide about that, about when the child asks to

leave and what -- what's directly happened before that or after that and how many times she does it. I don't think that that is relevant to what's happening here.

Q. Okay.

A. But you can do the research if you want. When I go home I'm glad to do it. I think it's an interesting question.

Q. I apologize. I'm trying to think of a good way to frame my next question here. It sounds to me that you would put little value or observe little correlation between [redacted] requests to terminate the interview and the broaching of the topic of Danny "D"; is that correct?

A. No.

Q. Okay.

A. No.

Q. Is there value to the forensic interviewer in recognizing that when she approaches the topic of Danny "D" that [redacted] shortly thereafter seeks to leave the interview?

A. Okay. Let's put it this way, the interviewer is always broaching the topic of Danny "D". I mean, it's not like, you know, every time the question comes up the child says I want to leave. That's not what happens.

Q. Well, you would agree that the forensic

interviewer spoke with [redacted] about completely unrelated, perhaps even mundane things, correct? For example, they spoke about Flopsy the rabbit.

A. Yeah, at the beginning.

Q. Spoke about -- right.

A. Yeah.

Q. Spoke about her father, Mr. Jolley, building a pond or pool or something like that.

A. Yeah, at the beginning. In the first interview.

Q. Okay.

A. Yeah.

Q. And they would talk about her drawings?

A. Sort of, yeah.

Q. And they would talk about Spring Fling?

A. I don't remember, but it's all in there.

Q. That one was very brief.

A. Okay.

Q. Easy to miss. Are there particular tools or methods that a forensic interviewer should use to try and keep the child's attention or is that part of just the entire setting that they have to establish ahead of time?

A. You'll have to ask Dr. Lamb that question.

Q. Okay. I earlier asked you if there was a common way in which children might react when they are abused

and asked about it. Is there a common way in which children might react if they were asked about abuse and they were, in fact, not abused?

A. Ah-hah. That's an interesting question. I don't know. I mean, many children who are asked about abuse who falsely claim yes, some of them cry, some of them sound flippant. I mean, I've, I've seen everything. So I don't think that there is a common way for either.

Q. You indicated that this is your first time getting to visit the great state of South Carolina, correct, and testify?

A. And testify, yes.

Q. I had to backtrack there for a minute because I didn't know if you've been to Charleston or anywhere else.

A. Oh, I've been to Charleston.

Q. Oh, wonderful.

A. Yeah.

Q. Glad to have you. Are you familiar with the law in the state of South Carolina as it relates to forensic interviews and their admissibility and courts in General Sessions?

A. I am not.

Q. All right. Are you familiar with the law in the state of South Carolina as it relates to the admission

of hearsay of prior disclosures of sexual abuse?

A. Vaguely, but not enough. I leave all that for the lawyers.

Q. Okay. Were you aware that when admitting hearsay of prior disclosures of sexual abuse that they have to be limited very strictly to time and place and no other details?

A. No.

MR. GROSE: I'm gonna object to that question as that's a misleading question, Your Honor.

THE COURT: Restate the question, if you would.

MR. JAMES: I'm having some difficulty. I'm not certain what it is I said that was misleading.

THE COURT: And I'm not saying it was, I'm just saying if you would restate it.

MR. GROSE: Well, he asked a question that goes to a rule, but he is ignoring the separate statute and which -- so it's a tricky misleading question. And she's already testified she leaves that stuff to the lawyers. So I...

BY MR. JAMES:

Q. Well, I'll ask this question instead then.

A. Okay.

Q. You leave that stuff to the lawyers.

A. Uh-huh.

Q. But your position here today is that the lawyer in this case absolutely, positively should have admitted the forensic interview videos?

A. Absolutely.

Q. Okay. But so you wouldn't leave that to the lawyers?

A. I mean, unless there was a statute that said he couldn't admit them.

Q. Okay. But you agreed earlier in this examination that to a certain extent the nature of the forensic interview is governed by the laws and practices of each state, correct?

A. Okay. So I don't know about that, but what I can tell you is this. Is that if -- I don't really care what the positions are. An interview is leading regardless of what the laws are. I mean, it's still leading. And so, you know, if someone says well, we use it because they say it's okay to do it, I say it doesn't matter that they say it's okay to do it. It's what the scientific evidence is. And it's still gonna have the same effect on the child regardless of the statutes, the paradigms and the law. So, you know, that's too bad. And then it's up to the lawyers to argue about that.

Q. As we so often do.

A. Okay.

MR. JAMES: Beg a moment of the Court's indulgence.

BY MR. JAMES:

Q. Earlier you indicated that that -- I'm stumbling over my own tongue right now.

A. Okay.

Q. I apologize.

A. Take your time.

Q. Earlier you indicated that there are studies based on verified examples of sexual abuse, correct?

A. Right.

Q. How is it that the example of sexual abuse in those cases is verified?

A. Well, okay. So, it's not -- the way they do this is that these are clinical studies where they'll have a bunch of kids who come into a clinic and they're interviewed and they look at, you know, whether the kid disclosed during an interview, yes or no. And then what the researchers or even the clinicians do is that they go through the file to see is there medical evidence, is there eye witness evidence to rule out sexual abuse or to rule in, even to rule in sexual abuse and a couple of other things.

So, I mean, it's kind of wobbly. But, you know, you just can't take a group of kids who have disclosed

or not disclosed and all you can do is put them in a disclosure and a no disclosure group. You can't put them into an abused group and a non-abused group. But you can kind of stuff, file it away a little bit more.

So there are a number of studies where we know something about the population. And, for example, there was a daycare case where there was a lot of suggestion, but they count that as children making disclosures. Well, they were making false disclosures.

And there are other kinds of studies where we know something about the population or about the methods used to interview the children. And we say these are not good studies to include if you want to calculate rates of true disclosures. It's, it's a difficult subject.

Q. You indicated you have been consulted on a number of occasions about providing expert testimony, correct?

A. Yes.

Q. Okay. Have you ever provided expert testimony on the behalf of any prosecutorial authority?

A. Once.

Q. Once, okay. May I ask which one?

A. Twice, for the same -- no, it was an armed services case.

Q. Okay.

A. I have consulted with prosecutors but not specifically to take it any further than phone conversations and stuff like that.

Q. Going back to the studies where we are confirming sexual abuse, these would be based on actual case files of actual children of actual alleged abuse?

A. Yes.

Q. And so it wouldn't be sort of a research setting where we're artificially creating some semblance of abuse?

A. That's correct.

Q. Okay. Are there studies that attempt to approximate abuse?

A. In a more controlled study?

Q. In a more controlled environment, dangerous game though that may be to play?

A. Yeah. Well, I don't really know. I mean, Michael Lamb will talk about all his studies where they've used, you know, very stringent interview protocols and they come up, you know, very similar rates of disclosure among them. I don't know how many of those they think are true cases or whatever. I can't answer that question.

Q. All right.

A. Are we almost finished?

Q. I am closing in on the end, I believe.
A. Okay. Because otherwise I have to leave and cancel my plane.
Q. You indicated that it is preferable for forensic interviews to be electronically reported, correct?
A. Yes.
Q. All right. Is that absolutely necessary in the therapeutic context where there might not be anticipated litigation?
A. It's not necessary. It would be lovely but I don't know who has time to transcribe them, you know.
Q. In the event that more than one forensic interview is necessary --
A. Okay.
Q. -- and so we get to a second one --
A. Uh-huh.
Q. -- how is it that the forensic interviewer should resume in that second interview, or should they start over anew like a ---
A. I don't know.
Q. Okay.
A. I really don't know.
Q. Okay. You indicated that an interviewer has bias or is subject to bias if they proceed into the forensic interviewer interview with a primary hypothesis driving

them; is that correct?

A. That's correct.

Q. But most forensic interviews are prompted by some disclosure of abuse, correct?

A. Yes.

Q. Okay. So is it -- are you saying that all forensic interviewers are subject to those bias?

A. All forensic interviewers know that there's concern that there was sexual abuse and they know that their job is to somehow provide evidence for or against that claim. But their bias goes when, you know, the child says something that they think is indicative of and that they then pay attention only to confirmatory evidence and they don't try to test an alternative hypothesis or they actually neglect disconfirmatory.

Also, in the case of forensic interviewers, I think it is also the case that most of the cases that they see -- actually, it's not true in Baltimore, it wasn't most of the cases. But a lot of the cases they see are sexually abused children. So it's not as though they're looking for a rare disease. So it's on their mind but, you know, there's a probability that this child is abused. And...

Q. You indicated that there were a great number of denials and recantations by [redacted] --

A. Uh-huh.
Q. -- in the course of the forensic interviews.
A. Right.
Q. What are you including in your determination of what is a denial? Are you including when she says I don't know?
A. Yeah. I don't know or no, that never happened or I don't know. It's not a disclosure. I guess we can count a don't know, disclosures, and denials are off topic. That's it? Okay.
COURT REPORTER: I didn't hear the end.
THE WITNESS: Okay. Huh?
COURT REPORTER: I didn't hear the end of what you said.
THE WITNESS: I didn't say anything.
MR. JAMES: I believe she was just asking me if that was the extent of my question.
Beg a moment of the Court's indulgence. I'm going through a number of questions, and as I do I'm identifying some of them as potentially more appropriate topic relating to Dr. Lamb. I'm trying to save you a bit of time.
THE WITNESS: Okay, thank you.
BY MR. JAMES:
Q. Nathan was brought up at least during the first,

second, and third forensic interviews, correct?

A. I remember first and second, yes.

Q. Okay. You would agree that the forensic interviewer, at least for a little bit, explored her stories about Nathan, correct?

A. I don't know if she explored, it's just that Nathan kept coming up. It was never tell me about Nathan. Who is Nathan?

Q. Well, she did elicit that Nathan was a classmate, correct?

A. Okay. There we go. That was good.

Q. Am I correct or do I misremember?

A. I don't have the whole thing before me here.

Q. Okay.

A. I don't. You'll have to go back and look.

Q. You indicated earlier in your review of Kim Rosborough's notes that [redacted] started to receive therapy at around October 2010 and that continued until around March 2011; is that correct?

A. That's my understanding.

Q. All right. And that she improved over the course of that therapy?

A. Yes.

Q. All right. And I cannot recall if you expressed a belief as to why she improved over the course of that

therapy.

A. I would hope it was the therapy.

Q. Okay. Were you aware that at that time or at about that same period of time the visitations with the applicant, Mr. Spade, had been suspended?

A. No. Uh, maybe.

Q. Okay. Were you aware that it was in November of 2010, very shortly after the therapy began, that the Jolleys sought to achieve a protective order such that visitation was suspended?

A. Yes.

Q. And do you have copies of the video or transcripts of the forensic interviews or both?

A. Both.

Q. Okay, great. And would you agree that each of the interviews lasted between 25 and 45 minutes?

A. No. There was one that was an hour and 15 minutes.

Q. Would you be surprised if I told you that none of them are quite that long?

A. Yeah.

Q. Okay.

A. Anyway. I just took it off the meter. Might have taken -- maybe it took ten minutes for them to come in and get settled.

Q. Do you recall why it is that the grandmother asked [redacted] about Danny "D", about Mr. Spade?

A. No, I don't.

Q. Okay. Did you have a transcript of the termination of parental rights hearing?

A. I did.

Q. Okay. Do you recall testimony in that proceeding that the grandmother asked [redacted] about Danny "D" because she overheard [redacted] on the phone with him telling him that he's bad and does bad things?

A. Oh, okay. There was a phone call and there was concern about the phone call.

Q. Okay. Do you recall in your review of the record testimony that indicated the applicant threatened cannot let [redacted] see the parents if she was not compliant with his requests and demands?

A. Well, that's what she said.

MR. JAMES: Okay. Beg a moment of the Court's indulgence.

BY MR. JAMES:

Q. Going back in time briefly to our discussion about the clinical studies and confirming sexual abuse through corroborating evidence, how often is it that sexual abuse can be confirmed through corroborating evidence?

A. Well, sometimes there is medical evidence. Sometimes there are eyewitnesses. Sometimes there are confessions.

Q. But all so often there is not any medical evidence due to delay, correct?

A. Sometimes there is. I mean, you know, there's not always delay.

Q. Right. And oftentimes there's not eyewitnesses because --

A. No. I wouldn't ---

Q. -- crimes are committed in private?

A. Yeah. I'm saying mostly it's on -- mostly it's on the basis of the child's word, but also with other facts coming in. But the child's part -- if the child says no, it didn't happen, you're not gonna bring my case to court.

MR. JAMES: I have no further questions for this witness. Thank you very much for your patience and cooperation.

THE WITNESS: Thank you.

THE COURT: Any redirect limited to what he went into?

MR. GROSE: No, sir, no questions. I know Dr. Bruck is wanting to catch her plane.

THE COURT: All right, ma'am, thank you very

much. Watch your step as you're stepping down.

THE WITNESS: Okay, thanks for the advice.

THE COURT: Any reason why this witness cannot be excused?

MR. JAMES: She can be excused.

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

MR. JAMES: Wish her a smooth and easy flight back home.

THE WITNESS: Well, thank you.

(Witness leaves witness stand and courtroom.)

THE COURT: All right. Let's just step down for about five minutes and be right back.

MR. JAMES: Thank you, Your Honor.

(A recess was had from 2:55 p.m. - 3:01 p.m.)

THE COURT: Lawyers approach.

(Bench conference was held off the record.)

THE COURT: Is the applicant ready to call their next witness?

MR. GROSE: Yes, sir. I call Meredith Thompson-Loftis.

THE COURT: Ma'am, just come right up here.

(Witness comes forward.)

MR. GROSE: Judge, she was qualified as an expert in trial. I'm not planning to go through all of that since you already have that.

Exhibit E

DANIEL SPADE VS. STATE OF SOUTH CAROLINA, DAY 2

THE COURT: My understanding is that the doctor took one of her reports with her and we were working on getting a substitute; is that correct?

MR. GROSE: I have a copy here.

THE COURT: Okay. Is the applicant ready to call their next witness?

MR. GROSE: Yes, sir.

THE COURT: Yes, sir.

MR. GROSE: At this time I call Dr. Michael Lamb.

(Witness comes forward.)

THE COURT: Doctor, just come right up here and place your left hand on the Bible and raise your right hand and let me swear you in. (Complies.)

Solemnly swear that the testimony you're about to give the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: Thank you. Watch your step as you're stepping up, but just have a seat in the red chair and pull the red chair up to the microphone.

DR. MICHAEL E. LAMB,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GROSE:

Q. Good morning. Can you please state your full name for the record.

A. My name is Michael Lamb.

Q. And what is your profession?

A. I'm a psychologist.

Q. Okay. And if I could, can I have you summarize your educational background, beginning with college?

A. I completed my first degree in psychology and economics at the University of Natal in South Africa. I then moved to the U.S. and did a master's degree at Johns Hopkins University in Baltimore. Another masters degree and Ph.D. at Yale University. Yeah, that was the end of my formal education.

Q. Okay. And have you practiced in your field?

A. I have, yes.

Q. All right. And could you describe your professional experience for the Court?

A. I had worked at several universities in this country. My first academic position was at the University of Wisconsin. I then worked at the University of Michigan and the University of Utah.

From there I moved to a position as a section chief at the National Institutes of Child Health and Human Development in the Washington D.C. suburbs and remained there for 17 years. In 2004 I moved to the

University of Cambridge in the United Kingdom, where I am now a professor.

Q. Okay. And you mentioned that you -- the job that you had for 17 years at -- in the Washington area. What was that again?

A. I was head of the section on social and emotional development at the National Institute of Child's Health and Human Development. It was a research position, so I lead a research unit with 20 or 25 employees. Our focus was on understanding children's testimony and developing ways of enhancing the quality of testimony that we were able to elicit from children.

Q. Okay. And as a result of that, was a protocol developed?

A. Yes. We developed a, an interview protocol as a way of showing interviewers how to conduct high quality interviews that elicited good information from children.

Q. Okay. And I'm gonna come back to that a little bit later. Have -- well, before I move on, has that protocol been published?

A. It has, yes. The initial versions were published in the 1990's. We've continued to work and refine it over the years. The last year we published a revised version in a book that summarized all of the research that had been conducted since the mid-1990's on its use

and value.

Q. All right. And have you been published in any peer review publications?

A. Yes. All of our associates have been published in peer review publications.

Q. Okay. And have you presented on topics at conferences, scientific conferences about interviewing children?

A. Yes.

MR. GROSE: Okay. Can we mark this as the next exhibit in order, please?

COURT REPORTER: Eighteen.

(Petitioner's Exhibit Number 18, Dr. Lamb's Curriculum Vitae, was marked for identification.)

BY MR. GROSE:

Q. I'm gonna hand you -- did you say 18?

COURT REPORTER: Yes, sir.

BY MR. GROSE:

Q. -- what's been marked as Petitioner's Exhibit Number 18. Do you recognize that?

A. Yes, I do.

Q. And what is that?

A. It's my curriculum vitae.

Q. Okay. And does that include a list of publications where you've been published?

A. Yes.

Q. As well as professional presentations that you've made?

A. It does, yes.

Q. Okay. And I'm not sure exactly what to offer you as an expert in, but I -- would it be fair to say that you are a psychologist with a specialty in interviewing children?

A. Yes.

MR. GROSE: And I would tender him as an expert at this time, Your Honor.

MR. JAMES: He's clearly imminently qualified in that, Your Honor, so there's no objection from the State.

THE COURT: All right. You may proceed in the questioning.

MR. GROSE: And I'll move the CV into evidence if I -- I don't know that I formally made that motion either.

MR. JAMES: No objection from the State, Your Honor.

THE COURT: Without objection, it'll be Applicant's 18.

(Petitioner's Exhibit Number 18 was entered into the record.)

BY MR. GROSE:

Q. All right. I think I want to begin by asking you to talk about the NICHD interview protocol that you were responsible in developing. I guess the first question is, you said that was a research position?

A. Correct, yes.

Q. Okay. And who funded the research that led to that protocol?

A. It was funded by the federal government. The NICHD is part of the US Department of Health. It was Health and Human Services when I went there. And the goal was to conduct research that in effect would enhance health and development in the country. So it was funded by the federal government initially until 2006, by which time I was living in the UK. And then it was funded by other agencies over there.

Q. Okay. And did you all have a design for the study that you were gonna do?

A. Yes. Our goal was to see whether we, as a profession and as people interested in child abuse, could do a better job of interviewing children that have been done. In the 1980's there were a number of really terrible mischaracters of justice in which people were incorrectly sentenced for offenses on the basis of poorly elicited testimony. And as appeals courts came

to overturn those convictions in recognition of the failures of evidence gathering, it became clear to us that there was something wrong with the way children were being interviewed.

By that time we knew a great deal about children's capacities. We knew what they could do. And we also knew how you could allow children to function at their best, rather than force them to function at their worst. And the initial design was to see whether we could simply take advantage of the information we had to develop ways of interviewing that would promote, would enhance the quality of information that came.

Our goal was to draw on what we knew about child development more generally and what we knew about cognition, how people thought, how they respond to questions, what are the best ways to take information from memory. And then to move outside the experimental situation in order to see whether these tools, these techniques would work in practice.

So from the very beginning most of our research was conducted in the field working with police officers and forensic interviewers whom we would train. We would observe the interviews, we would transcribe them, and we would review them with the interviewers and see whether we could enhance the, the way in which they practiced.

Most of the research we conducted using that, in both comparing interviews conducted by interviewers who had been trained to conduct interviews in the protocol, using the protocol with interviews conducted by the same people before they had been trained to do that, or by colleagues who have not been trained to do that.

And in a series of studies, what we've tried to show is that when you do adopt developmentally appropriate styles of questioning children, you get more information, you get higher quality information, you have fewer inconsistencies, and you get a clearer understanding of what actually happened to children, if something happened to them. And you can be more confident in your conclusion that nothing actually happened to them.

So the, the research design has involved comparing interviews conducted using different kinds of techniques and validating those against experimental research, but that builds on what we know about actually receiving the quality of information.

Q. Okay. When you say "experimental research", what do you mean by that?

A. Well, our research is sort of experimental in the field. That is, it's comparing two types of interviews. But the problem in the field, of course, is that we

usually don't know exactly what happened, and so we often have to conduct studies in contrived situations where we actually know what happened to children and we can then determine how accurately they're describing that information. And that helps us understand better what types questions are most likely to elicit accurate information. What types of questions or strategies tend to elicit confusion and inaccuracy.

Q. And obviously you didn't abuse children to be able to study, so how would you construct that type of controlled experiment?

A. In most of the cases we would have the children engage in some kind of activity. Often an activity that involved either dressing up or something that had to do with -- we often used a, a first aid instructional kit so children had a -- learned how to make bandages, how to fix injuries and so on so that we could then question them about those experiences. And, yes, we never abuse children for the purpose of research.

Q. And what age group of children were you working with?

A. We study children from the ages of three, usually until the age of 14, but sometimes until the age of 16.

Q. Okay. And between the field interviews or the field research that you did and the more controlled

research that you did, how many child interviews went into -- were considered in this study?

A. Well, overall it's, it's -- at the time we were initially developing the protocol and in the first few iterations of that, we were able to draw at a sum of 40,000 interviews that have been conducted in the field. I would say by now we must have studied more than 50,000 forensic interviews. And I would guess now a few thousand children that have been studied in laboratory sessions in studies that we designed as well as those that we drew on conducted by other researchers.

Q. Okay. So it's quite a large number?

A. Yes.

Q. Okay. And as far as when you were doing this research, what did you learn about the proper way to interview children or the best way to interview children?

A. There were a number of factors that you need to take into account when interviewing a child. First of all, making sure that the child is comfortable in the situation, so feels that she or he can trust the interviewer and confide if something has happened.

Secondly, it's important for the child to understand the purpose and the nature of the interview and to recognize that this is a really important

situation where it's important to tell the truth, where it's important not to guess, where the goal is not to make the interviewer think you're smart, but actually to talk only about things that happened and to recognize the fact that that child is the expert about the issues being considered. Whereas, the interviewer doesn't know what happened.

And setting, I would call those the ground rules for the interview is an important part of making sure that the child is prepared. Then it's important for the child to have some practice describing an experienced event. Recognizing that the interviewer wants a lot of detail about that and that the interviewer is skilled in asking followup questions that get the child to generate more information.

Secondly, it's -- sorry. Third, it's important that it's the child who raise the topic of abuse, of the focus of the discussion, not that this be a topic raised by the interviewer. And that in eliciting that initial, if you like, focal statement or identification of what the interviewer is about, it's important that the interviewer not only not suggest the topic, but use open-ended questions that allow the child to describe her experiences in her own words.

Once the child has made a description like that,

it's important for an interviewer to followup, asking further open-ended questions that build on what the child has said. In an ideal interview, the interviewer is quiet and the child is the person who is doing the talking. And it's the child who is raising the topics and the skilled interviewer who is encouraging the child to provide more information about those topics.

We want interviewers to avoid asking focused questions, introducing topics that the child hasn't mentioned. And, perhaps, most importantly to avoid suggesting information. Suggesting things that might have happened. And worst of all, suggesting to the child what kinds of responses that the interviewer is hoping to get from the child.

And by shaping the interview in that way and by allowing the child the opportunity to talk and by avoiding contamination of what the child is saying by asking suggestive questions, you're most likely to elicit actual, clear, and complete accounts of what happened.

Q. Okay. I want to go back to a couple of things that you talked about. You said it's important for the child to raise the topic of abuse. How, how is that done in practice?

A. In 80 percent of the forensic interviews that

we've studied, the child will say what happened in response to a question like, tell me why you came to talk to me today or a more simple question, tell me what happened. And in response to a question like that, children will provide a narrative account of what happened to them.

Q. Okay.

A. It may sometimes, especially with a young child, you may need to slightly narrow the focus, in which case the goal is to, again, provide as little information as possible yourself and allow the child to identify the person or the action, and that is the critical piece of information.

Q. All right. And so if you're dealing with a smaller child and younger child, like was involved in this case, what would be an appropriate way to narrow that focus?

A. Well, we would always encourage interviewers not to mention the name of a person and not to mention any specific act that there might have been suspected, but rather to talk about perhaps a location as a cue and use that as a way of narrowing the child's focus.

Q. Okay. And what is the importance of not introducing the name of the suspect or the type of act that you're trying to get information about?

A. Well, those are two of the most critical pieces of information that are at issue in the case of abuse, and so you don't want to signal to the child that I'm looking for information about X person, or I'm curious to know, want to know, want to hear you talk about touches of your body, things being put into your body and so on.

Q. Okay. And you also mentioned that you don't want to suggest certain responses.

A. Correct.

Q. And what is the importance of that?

A. Well, there are -- children in general like to please adults and so they're very focused on getting social approval. If you signal to the child I want to hear you talk about somebody touching your body, it's very eager -- easy, sorry, to shift their focus to talk about those sorts of issues because they want to please you.

It's also problematic because children may adopt that information and incorporate it into their memories so their memory becomes contaminated as a result of the introduction of information and particularly as a result of both introducing that information and suggesting that that's the kind of information that happened or because children look to adults as experts as signal from the

adults that this adult knows something and what she knows is what I should incorporate into my memory.

So all of those would be reasons why being suggestive is really problematic. It can easily contaminate the child's memory and she can become confused over time about what really happened and about what she had been told happened.

Q. Well, and you mentioned earlier incorporating that information into their memory. What do you mean by that?

A. I mean that memory is ultimately a constructive process that we build over time. We learn new things. We add them to pieces of information that we already have. And young children especially don't remember as much. A lot of the things that happened to them are hard to understand and they forget things more quickly.

And for all of those reasons children are very adept at looking to others for guidance and adults are understandably trying to help their children understand the world and provide additional information that helps them remember and understand things that happened to them.

When somebody says something or suggests something and your memory is hazy or you don't quite remember it, but the expert tells you that that

happened, there's a very real possibility, one that's been shown in multiple studies, that children will start to believe that that piece of information was part of their bonding of experience.

And that's why suggestive questioning is very problematic. It's problematic for people of all ages, but it's especially problematic for little people because they forget more rapidly because they are so used to -- so attuned to looking to other people to help them understand their world and remember their world.

Q. Okay. And so I've asked you some questions about the, what you've learned about the right ways to do interviews. Did your research also identify, I guess, bad strategies or bad techniques for doing interviews?

A. Well, we've certainly been talking about them right now.

Q. Yeah.

A. I mean, suggestive questioning is universally recognized as a problematic strategy as something that has the potential to contaminate memory, has the potential to elicit information that's not accurate, and has the potential to mislead the questioner to misunderstand what actually happened.

Q. And so I guess that leading questions are bad?

A. Yeah. Unfortunately, lawyers learn how to

question people in the worst possible way, but -- if you're talking about the accuracy of responses. And, certainly, leading questions are particularly problematic for little children.

Q. Okay. And are giving children choices of answers, can that be problematic?

A. Yeah. Forced choice questions are problematic in a number of ways. The first is that young children in particular tend to have a yes bias. So if you ask them a yes/no question, they're more likely to choose yes. And if you have other kinds of forced choice questions, they're usually constrained. They're suggesting one of these options is right.

And because children are eager to please the questioner, they tend to choose one of those options, even if it's a guess because you've got a 50 percent chance of being right if you take a guess. And what you really want to do is to convince this person that you're a smart kid who's cooperating in their questioning.

Q. And this may not be a fair question, but is it possible to summarize for the Court what the protocol is that you developed or your organization developed?

A. Yeah. The, the protocol was an attempt to provide interviewers with a, a structure for the interview, first of all, so that it reduced the memory

burn for them, for remembering what they should do to elicit the best information.

So it's structure the interview from an introductory section through making sure that the child understood the ground rules, had an opportunity to establish rapport with the interviewer, got some practice answering questions, learning that this interviewer, unlike most adults, really wanted detailed answers and would ask followup questions that probed for more information, then provided a non-suggestive, transition to talking about the possibility of abuse.

If there was an allegation made that asked open-ended questions and showed interviewers how to ask open-ended questions, how to followup. And if you really had to ask more focused questions, how to leave them until the very end of the interview.

The reason for doing that is that if you ask a bad question after the child has already provided a long narrative, you're not contaminating that information, you've elicited that without the introduction of potentially problematic material. So the protocol was essentially a structure with detailed examples of types of questions that could best be used to question children and elicit information from them.

Q. And as far as once you elicit the information and

then you ask the questions for followup, does the protocol address how to do that?

A. Yes, it does.

Q. And how is that?

A. Well, it gives examples of different types of questions that you could ask to followup different kinds of information and how to frame those in the most desirable way. That is the information that places the burden on the child to come up with the information. And how to avoid using more problematical contaminating ways to do that.

Q. And what types of information is it important to followup on?

A. Well, the idea -- the goal of a forensic interview with a child is to find out did something happen and if it happened, what happened, and to get that information in the child's words provided in a detailed accounting of that experience. And so the -- in order to get a narrative response, open-ended questions allow the child to structure the response as they remember it. Whereas, more focused questions ask for very narrow pieces of information that aren't necessarily imbedded in a narrative that allow the, the adult to understand what the child is saying.

Q. And is it important to test different hypotheses?

A. Well, it's important to not so much to ask the child was it A or B, but in the course of conducting an interview, it's important for an interviewer to be thinking about possible alternative explanations for what the child is saying and to provide the opportunity to the child to eliminate some or rule other possibilities in. And simply in the course of an interview, by the end of the interview, an interviewer needs to know that they have eliminated other possible interpretations of what the child is saying.

Q. Now, and I think we've already sort of touched on this, but when you were doing this research and developing this protocol was there an effort to follow the scientific method and to validate it?

A. Yes.

Q. All right. And just how, how do you do that for something like this?

A. Well, as I said earlier, we've used sort of two techniques. The one has been to compare in the context of real forensic interviews. The quality of information and the amount of information that we elicit from children using the protocol, as compared with the amount elicited, and the quality elicited when interviewers are using other kinds of interviews.

And the second technique has been to use the same

protocol when questioning children about other staged events, like the first stage structures. To see whether in fact you get more accurate information, asking some sorts of questions than others.

Q. And has the, the protocol, has it been peer reviewed?

A. It has, yes.

Q. Okay. You talked about the importance of trying to get accurate information. Can you explain the terms credibility and reliability, as how they apply to the research that you've done?

A. Yeah, I think -- well, I think about sort of three issues. One is the issue of competence, is whether a child can accurately describe an experienced event. The second issue, reliability, has to do with whether the child accurately describes what she recalls or things happen to her. And credibility really gets to the motivational issues of the child's -- the child's motivation to tell the truth in that context.

Q. All right. I want to -- well, before I do that, are you aware that there's other interview protocols other than the ones that you've developed?

A. Sure, I am.

Q. All right. And are you here to say that the only protocol that should be used is the NICHD investigative

interview protocol?

A. No, I wouldn't say that at all. I mean, I think I would say, however, the keys things were that the protocol didn't invent anything. It took what we knew about children. It took what we knew about how memory works and we put those together in a way that best helped interviewers elicit accurate information from children.

But the principles that we're talking about are principle that are universally recognized. Asking open-ended questions is universally recognized as the best way to get accurate information from people. Asking suggestive questions is universally recognized as a -- the best way to elicit inaccurate or confusing information from children.

So we simply tried to provide the tools that would help interviewers use the best and avoid the worst kinds of techniques. All of the interview protocols out there in various ways embrace those principles about the value of open-ended questions, the dangers of suggestion, the dangers of distracting children in the course of interviews and so on.

And the protocol is the only one that has been validated in the field. It's the only one that is researched based and researched tested. But what's

critically important, whatever protocol somebody says they're using is what they actually do. Somebody can sit through days and days of lectures on protocol A or protocol B.

That's really isn't what's important. What's important is what they do when they sit down with a child. Are they eliciting the best information from that child? And I certainly don't think you have to use the protocol to do that, but we do know that when you do that you're more likely to do so than if you don't follow that protocol.

Q. And particularly following the principles that you're talking about?

A. Exactly.

Q. Okay. Now, obviously you wouldn't be here if we didn't ask you to review this case. Have you reviewed this case to be able to offer an opinion?

A. I have, yes.

MR. GROSE: Okay. Can we mark this, please.

(Petitioner's Exhibit Number 19, Dr. Lamb's Report Summary, was marked for identification.)

BY MR. GROSE:

Q. I'm gonna hand you what's been marked as Petitioner's Exhibit Number 19.

A. Yeah.

Q. And what is that?

A. This is a copy of a letter I wrote for you about six months ago that summarized my analysis of the forensic interviews that were conducted in this case.

MR. GROSE: All right. And, Your Honor, at this time I would offer his report into evidence.

THE COURT: Any objection?

MR. JAMES: Without objection, Your Honor.

THE COURT: Without objection it'll be Applicant's 19.

(Petitioner's Exhibit Number 19 was entered into the record.)

BY MR. GROSE:

Q. And before we get into talking about the report, can you tell the Court what the focus of your review -- what your review of the case focused on.

A. I focused on the forensic interviews of this child and sought to see whether the interviews were conducted in a way that was most likely to elicit accurate information and whether there was some problematic factors that increased the likelihood that the information elicited might have been false.

Q. Okay. And so when you did this, did you have the videotapes of the five interviews to be able to watch?

A. I did. I watched all five interviews and I also

used the transcripts of those interviews.

Q. All right. And that was gonna be my next question. You had those available to you as well?

A. Yes.

Q. All right. Can you summarize what your opinion is after having reviewed those five interviews?

A. My opinion, which I summarize on the top of page two of my report, was that I thought that these were very poor forensic interviews; that they did not use techniques that were likely to elicit accurate information. And they were highly suggestive. They used a lot of developmentally inappropriate and competently inappropriate questions.

The child was frequently distracted and that made it difficult. And the combination of the questioning style, as well as the distractions meant that the information she provided was highly inconsistent, making it very difficult to determine what she was describing or saying.

And I was also concerned in these that the child made clear that there had been some negative stereotyping about the alleged offender. And the interviewer failed to followup to understand what does negative stereotyping mean and what impact it might have had on the children's -- the child's testimony.

Q. Okay. I want to go through some of these topics and I want to go in the same order that's really, that's laid out in your report. What concerns did you have about -- identify about suggestive interviewing?

A. Well, the key issue in that regard was that all of the key elements of the alleged offense were first introduced by the interviewer rather than by the child. It was the interviewer who focused attention on things you don't like, what else happened, where else were you touched? Were you touched? Did anything go inside you? What went inside you? What did it feel like? What did you -- where were the clothes? What did you do with your mouth? What happened with his mouth? Who showed pictures? Who showed new pictures? Who threatened?

All of the key issues were raised by the interviewer not only once but insistently and repetitively. And that raises concerns of the nature that I described earlier that this child was being signaled to introduce certain sorts of information in her testimony.

Q. And in your report you list some examples of some of those, don't you?

A. I do, yes.

Q. All right.

A. Which I don't remember, so don't ask me to recite

them all in detail.

Q. Well, if I could direct you to maybe page 4 of your report.

A. Yeah.

Q. You have -- you quote some of the, the question and answering.

A. Right.

Q. And so what was your concern with what --

And, Judge, you don't have a copy, do you? My bad.

A. I've got mine here.

Q. My apologies.

A. Is there a question I need to answer?

Q. Yes, I'm sorry. Looking at the text that you included in --

A. Yes.

Q. -- your report, what was your purpose for including that as an example?

A. Well, it's an example, I think of the -- how this child was trying to please the interviewer and how by asking lots of very focused questions the interviewer actually was eliciting information that was both inconsistent and hard to believe.

Q. Okay. And what do you mean by inconsistent and hard to believe?

A. Well, if you look at in this case here, the child is asked about you have to use your mouth for something. And then in followup questions it became the child says she used her mouth for biting and vomiting, which is, of course, not what the interviewer wanted her to talk about.

So the focus then switched to whether the accused used his mouth for something. The child said no. What did he want you to do with your mouth? And then you get this sequence of responses.

Child: "He wanted me to go -- to get this and go like this on his foot."

"Where else? And what did that taste like?" Again, taste introduced by the interviewer here.

"It tasted like I don't really know."

"Did anything come out of him right there?" Child -- so interviewer pointing, suggesting out of him his genitals.

Child noise, "what's come out?"

"What color was it?"

"It wasn't colored anymore. It was brown."

"It was Brown? Do you know what color it was?"

"I'd say it was orange."

"Where did it go?"

"I don't know."

And you have a sequence of questions where the interviewer and the child are not really communicating and the child is not providing useful or consistent information.

BY MR. GROSE:

Q. And on the, the next page, on Page 5 you have some more quotes from the interview with regard to, you know, did anything happen on these rooms.

A. Yes.

Q. And what was the purpose for including that?

A. Well, there are two purposes. The one is that throughout these interviews there's a great deal of inconsistency about where the alleged incidents took place and what, of course, happened in those locations. I thought this particular sequence here was interesting because the child's response is quite definitive but is ignored by the interviewer. So showing pictures of the accused's house:

"Did anything happen in these rooms?"

"No."

"The stuff you were telling me about."

"Yeah."

"And you said something that happened in Virginia. And some of it happened in the hotel?"

"Actually, no, nothing happened."

Which is a pretty clear statement by the child. And the interviewer's response is to not pick up on the child's response but to minimize it. "Oh, nothing in that room?" And the child says "no." But it's an example of the continued insistence of the interviewer to pursue her hypotheses rather than to listen to and follow the child.

Q. Okay. And then you have more text about -- on the bottom of that page about the locations, right?

A. Right.

Q. And what was the significance of that?

A. Well, there were two issues I think with respect to this that I was trying to illustrate. And one is that there were a lot of confusing questions asked here. Confusing in that they are developmentally inappropriate questions. They're inappropriate both because they don't specify what types of actions you're talking about and because they use pronouns that are easy for children to get confused by.

So in this case the interviewer starts this sequence by saying when these kinds of things happened. These kinds of things are very unclear. And so you can't be sure that the child and adult are thinking about the same kinds of things. What rooms did they happen in? And the child says, you know, "it only

happened in the playroom." But then later on she says: "Well, it also happened in the teepee room" because she's pushed in that direction.

And then at the final, at the top of page 6 is when the interviewer says: "Okay, did anything happen in the living room?" And the child responds: "Nothing. Nothing happened." And, again, the interviewer assumes that that's referring to nothing in the living room, rather than nothing generally.

But it's not at all clear from all of this what "it" is, what "these things" are. And what, if anything, happened in the living room, in the TV room, in the playroom, or anywhere at all because there's no clarity about what the action is or what the location is.

Q. Okay. And then right after that you go into the reference to the mouth again. And what was the significance of going into that particular part of the interview?

A. I think the issue there is that it's very unclear because the, the child is being asked to use drawings and it's not clear from the verbalization and from the figures that the child understands what the lines connecting aspects of her body to aspects of the accused's body might actually signify or signal.

Q. Okay. Now, the next thing that you talked about in your summary, or one of the next things, was negative stereotyping. And, again, what do we mean by that?

A. We know that when children are told that somebody is a bad person or a negative person, that they're more likely to say negative things about that person and they're more likely to inaccurately say negative things about that person. What is significant in this case is that there were signs that that the child has developed negative or expresses negative views about the accused.

What's not clear is where those come from and what risks might be associated with them. The one risk is, of course the fact that the child, having developed a negative stereotype, might be more willing to say something negative about a person.

But in this case there's the additional troubling concern that the child may have been encouraged to say negative things about that person. The thing I draw attention to in my report is the child says what she doesn't like about the accused is that he calls himself daddy. And she continues, and he's not my father. In fact, he is her father. And there are in a couple of interviews there's these discussions about her hostility, her dislike of him calling himself her father, and ending up with suggesting that she hangs up

the phone on him whenever he describes himself as her father.

Now, the issue that's never explored by the interviewer has to do with what does this mean? Who's telling the child that this man is not her father? What else are they telling this child? Where is she developing this negative attitude, and why is nobody correcting the child for behaving in this fashion? And what are the potential risks that could be associated with this?

And one hypothesis that an investigator would need to consider is, is somebody coaching this child? Is there an attempt being made to contaminate the child's memory around interactions with this person?

Q. And how would an interviewer followup on, say you get this information that's on page 6 of your report, what's the best way to followup on that?

A. Well, one thing would be to say, so to try to find out what is it that you dislike about this person? Who told you this? Who have you talked to about these issues? What have those people said to you? And more generally, what have people said to you about what you might say in this forum?

Q. All right. And what's listed in page 6, that came out of the early stages of the first interview. Am

I reading that correctly?

A. Correct. So it's the first interview and the second interview that's another long dialogue about this.

Q. Yeah. And so you see it coming up in two interviews. Was it followed up any better in the second interview?

A. No.

Q. Okay. In the, the middle of the page you have: "At no point in the interview did the interviewer challenge the child's incorrect assertion about her relationship to Danny Spade." What should the interviewer have done?

A. Well, she could have asked questions about who is Danny, and she could have asked questions about who is your daddy. And she could have asked, you know, those kinds of questions. And, as I said, also talked about who have you talked to about this?

Q. And asking who is Danny Spade is kind of an open-ended -- now that she's brought that up, it's kind of an open-ended question that lets her say ---

A. Right.

Q. Yeah. Okay. And then you talk about, you know, one purpose of the investigative interview is to explore alternative hypothesis. I'm looking at the bottom of

page 7 or the last full paragraph. What were you trying to illustrate by including that?

A. Well, in a case like this, especially where you have a lot of inconsistencies in the, in the child's statement, and especially where you have these troubling misconceptions expressed by the child, you have to -- one of your hypotheses is that the child was sexually abused. An alternative hypothesis is that the child wasn't sexually abused but has somehow been confused or thinks she might have been or is being told she might have been. And exploring that is then particularly critical in a case like this.

And so, what is noteworthy in this interview is that in the fifth interview, at the very end of this, there's this very brief attempt to do that. But by saying, "did anybody tell you what to say?" And the response is, "I don't know", which is not a very satisfying response, I think a better question would have been, did you talk to anybody? Tell me what you talked about. Would have given you a much more depth-full account of those discussions.

And then, but the interviewer's response to I don't know then says, "Did anybody tell you to talk about these things?" These things not being a very good thing to, to say, but may be the best because in this

case it's unclear what, if anything, may have happened. And, again, she says, "I don't know".

And there's no further attempt to explore has there been contamination going on? Is there something here that we need to explore, we need to understand better, either in this interview or by pursuing other aspects of the investigation? And that alternative hypothesis is never taken any further. So it's briefly raised. The responses are quite troublesome. And then the issue is left completely.

Q. So no followup?

A. No followup.

Q. All right. We've already -- I'm looking at page 8, number 4 where you go into failure to ask developmentally appropriate questions in the developmentally appropriate context. You've already touched on that a little bit, haven't you?

A. Correct. Yes.

Q. Is there anything else that you feel like you need to say with regards to that?

A. I think the key, the key thing that I haven't talked about here is to do with the use of drawings. And the use of drawings is problematic in many ways. One way is that it's quite distracting.

And if you look at these interviews you see that

this child was frequently distracted. Frequently started to draw things that had nothing to do with what the interviewer wanted her to focus on and draw. And that's an inherit problem with drawings.

Secondly, it's very problematic with young children to know whether they are using the drawings as a vehicle for describing a memory of something that happened or simply using the drawings as a stimulus for something else. So when the drawings that presented to her to try and show which parts of her body were touched by other parts of her body, that's a challenging thing for a four-year-old to do anyway on a drawing.

But setting that aside, in many cases she just used this as a prop. And she said she would be looking for the red crayon so she could draw hair on the drawing of herself, completely unrelated to using the drawing to describe something that happened, and providing a lot of context for this distracting, confusing conversation.

In the end she's asked to draw lines on the, on the drawings, but if you look at the wording that's used and associated with that and you look at the drawings, there's no way to conclude that she is trying to communicate that this part of his body did something to this part of her body. Those -- the drawings are as ambiguous as the words that are presented along with it.

So the drawings, in my opinion, end up being distractions and, therefore, removing her focus from describing what happened and adding to this creation of an inconsistent account.

Q. Okay. And I think that this is, the answer to this question is evident from what you just said, but the drawings, those were available to you and you reviewed them?

A. Correct.

Q. Okay. Anything else about developmental appropriate questions before we move on or have you covered that?

A. I think we've, we've covered that.

Q. Okay. You, you've also have talked about inconsistencies already. And beginning on page 9 you have a quite lengthy section on inconsistencies. What else do we need to let the judge know about your opinion regarding the inconsistencies?

A. I think, I believe I've made clear that part of the problem here is that the child frequently contradicts herself, frequently says things that are inconsistent with other things she has said, and changes the nature of descriptions, the locations of things, the nature of the alleged incidents, that it becomes very difficult to, to nail down what it is the child is

describing as having happened.

Q. All right. And I'm not necessarily gonna go through all of these, but you have a number of examples in your report, are those intending to be examples of the inconsistencies?

A. They are, yes. And they're intended to illustrate how the account changed. And I just pulled out sections of texts from each of the interviews that relate to the development of the allegation.

Q. Okay. And then on page 20 you summarize your conclusions.

A. Correct.

Q. And I think you've already done that earlier this morning; is that right?

A. Yes.

Q. Okay. If you had been contacted by the defense team prior to trial, would you have been able to share the same information with them that you've shared with the Court today?

A. Yes.

Q. Now, you mentioned a recent publication, but the bulk of your research was done before the 2014 trial; is that correct?

A. Correct.

Q. All right. And so then it would have been

available to them at that time?

A. That's correct.

Q. Okay. And would you have been able to point to, as you've done today, for defense counsel, point to the parts of the interviews that you thought were particularly problematic?

A. Yes.

Q. Okay. And do you think it would have assisted the jurors in this case to have viewed those interviews?

A. Yes.

Q. And do you think it would have assisted the jurors in this case or any other case to have heard some explanation of the scientific research, like what you've provided today?

A. Yes, I do.

Q. And why is that?

A. Because I think they would have put into much better context what the child actually said in the course of these interviews and would have allowed them to better understand the, the information that had been provided to them. What the risks were in taking information from young children. What steps can be taken to enhance the quality of that information, and what steps have not been taken, which resulted in a continued risk in that content.

MR. GROSE: Your Honor, we've been at it for just a little bit over an hour. Can I suggest that we take a break? I may be done or very close to done and that might speed it up a little bit.

THE COURT: All right. We'll step down for a few moments.

Doctor, I need to remind you, you're in the process of giving testimony, so when you step down do not have any discussions with anyone about the substance of your testimony.

THE WITNESS: Okay.

THE COURT: But you can step down.

THE WITNESS: Thank you.

MR. GROSE: Thank you, Your Honor.

MR. JAMES: Thank you, Your Honor.

(Witness leaves witness stand.)

(Recess was had from 10:36 a.m. - 10:46 a.m.)

(Witness resumes witness stand.)

MR. GROSE: May it please the Court?

THE COURT: Yes, sir.

BY MR. GROSE:

Q. I just have, I guess, a few final questions and I'm going to wrap it up. Throughout your testimony you talked a good bit about childhood development and what is developmentally appropriate. Is that something

that's part of your training and education and experience?

A. Yes.

Q. And you could describe that briefly, what your studies have been in that area?

A. Well, I did my -- the focus of my education was developmental psychology, understanding child development and the factors that explain children's developments and adjustment and understanding how their views of the world, their understanding, and their memory changes with age and development.

Q. Okay.

A. And so I would say for the last 45 years my research and my studies and my teaching have been focussed on development and developmental issues.

Q. Okay. And when we're talking, as we're kind of doing here, about ultimately an assessment of a child's testimony at trial, is it important to know what has gone on between the times of the interview and the time of the trial?

A. Absolutely.

Q. And why is that?

A. Well, particularly if there is going to be further testimony elicited later, one of the issues that has to be explored is the extent to which the memory has

changed or been changed by intervening events. So it's important always to understand when questioning a child either in a forensic interview or in a courtroom context whatever opportunities the child's had to talk about that and whether those conversations or therapy sessions or just chats with people could have raised topics that later got incorporated in the child's memory.

So, really, in order to understand whether there has been potential contamination, whether the memory has been preserved and how it's been preserved at the time, it becomes really important to, to look at those intervening stages. I mean, from a point of view of somebody like me, it's always puzzling that we are terribly careful about what happens to forensic information that gets sealed into a little plastic baggie at the scene of the crime and has to be signed in and out of evidence rooms so we know exactly where it's been, but we seldom do an equivalently careful analysis of when this information (indicating) has been and what potential there has been for that to be contaminated over time.

And as I said earlier, that's particularly important with a child. They forget more easily. They are more suggestible. There's a greater potential for contamination. So it's critically important to really

understand what's happening.

Q. And when a minute ago, and I'm speaking to the written record, when you said "this information", you pointed to your head, so you were talking about memory, I guess?

A. Exactly.

Q. Okay.

A. Yeah, sorry.

Q. All right. And so did you have available to you the therapy records from Ms. Thompson-Loftis in this case?

A. I did not look at the case therapy records, no.

Q. Okay.

A. I focussed on the forensic interviews.

Q. All right. And are you aware of the number of visits that [redacted] ---

A. I know that there were many therapy sessions at the time.

Q. Okay. And the number of sessions, that can sometimes be a concern?

A. Well, especially if there's not a good accounting of what happened in those sessions, yes.

MR. GROSE: Beg the Court's indulgence for a moment.

BY MR. GROSE:

Q. Thank you, Dr. Lamb, that's all I have. If you can answer any questions that the Attorney General's office might have.

A. Sure.

CROSS-EXAMINATION

BY MR. JAMES:

Q. Good morning, Dr. Lamb.

A. Good morning.

Q. I'm very glad to say good morning. I had to say good afternoon for our expert yesterday. My name is Johnny Ellis James, Jr., I am one of the attorneys representing the State of South Carolina in this PCR action. The majority of the questions that I have for you today go to general subjects about forensic interviewing, and so I'd like to spend some time with you talking about those.

A. Okay.

Q. As you noted in your direct examination, there is no, at this time, standard universal practice for conducting forensic interviews, correct?

A. Well, there were universally recognized principles.

Q. Okay. Such as using open-ended questions and avoiding suggestive questions, correct?

A. Such as those, correct.

Q. And avoiding leading questions like I'm using right now?

A. Correct.

Q. But there are a diverse assortment of different protocols that have been developed and promulgated by a variety of organizations, correct?

A. Yeah. There are three or four different, different approaches. I mean, and they're similar in that that they embrace the same principles.

Q. Okay.

A. They differ in some ways. And as I said earlier, the NICHD protocol is the only one that's been validated and based on research.

Q. Are you familiar with the National Child Advocacy Center?

A. Yes.

Q. Okay. And are you familiar with the protocol that they endorsed?

A. Well, they've developed a -- they try not to endorse any specific protocol. I've been working with them for the last 15 years on the incorporation of principles. Their goal has been to, you know, not choose a particular protocol but make sure that interviewers adhere to appropriate protocols and practices.

Q. Okay. What are some of the differences right now among the different protocols?

A. Well, the main difference is, as I said, only one of them has been validated and researched. And the main similarity is that they all talk about using open questions and avoiding suggestive questions. The NICHD protocol is much more structured. The finding words or child first emphasizes much greater use of drawings.

I think the critical thing I would say is that people often get confused by what sort of training an interviewer has had. It doesn't matter what training you had, what matters is what you do when you sit down with a child. And whether somebody tells me they've been trained to use the protocol I've worked on or used any other, I want to see what they actually do.

Q. So following up from that, there is no one particular right protocol but the emphasis is on what the forensic interviewer actually does at the forensic interview, doesn't it?

A. That's the most important, yeah.

Q. Okay. You indicated that a child's first approach actually emphasizes the use of drawings; is that correct?

A. They have with different degrees of specificity talked about using drawings, yes.

Q. Okay. So you indicated earlier in your testimony your disapproval of the use of drawings or the presentation of the opportunity to draw to the victim in this case, correct?

A. It's a distraction.

Q. Okay. And so do you disagree with the child production emphasizing the use of drawings as a part of a forensic interview?

A. As I said, what's important is what happened.

Q. Okay.

A. If you look at these videotapes, you see that this child was distracted, and the information provided on the drawings is quite hard to interpret because of how they were used. The -- when drawings are used late in an interview to clarify labels, to ascertain which -- what part of the body the child has been describing in a narrative, then there's much less potential harm done.

When the drawings are always available and there's extensive use of them, a child is provided with lots of crayons and so on, it's hard to keep the child focused on describing what happened and not let this become something that the child did yesterday afternoon with granny, which was draw and color on something. And that's the critical issue here. The forensic interview is an attempt to get information from a child.

It's not a play session. It's not an opportunity to be distracted. In fact, distractions are going to make it hard for the child to say what happened. So my concern, again, is really about look, look at what happened. How are they being used? And what are the risks associated with how they're being used?

Q. Okay. You indicated that if drawings used, for example, to identify the labels that they may use for different parts of their body, it should be later in the interview. Did I hear you correctly?

A. That's usually better because it allows the child to first describe the incident if there is an incident, yes.

Q. Does that open the door to any confusion in the course of the narrative if there's not an understanding between a forensic interviewer and the child as the terms may be used or is that the point of views you get afterwards to clarify any confusion that may arise in the interview?

A. To clarify this confusion but also to allow the interviewer to be sure that when the child describes her daisy that she's actually talking about her vagina.

Q. I did some brief fleeting research into the subject and part of my amazement was finding that you seem to be cited for about half of the authorities in

the field of forensic interviewing and I would not be surprised if you peer reviewed the other half. Are you aware that some research tends to argue in support that use of simple media with young children can be helpful at least in the abstract in the course of a forensic interview?

A. Simple media meaning?

Q. For example, crayons and paper or markers and paper?

A. Well, there are different ways. Some people think that it provides the child with something to, to do in the interview. I think the evidence shows that with young children that that's exactly what you don't want. You want to keep the child's attention focused on the interview.

There are some studies showing that the use of some drawings can be helpful, as I said, to identify and clarify body parts. They're not associated with the production of more information. They are associated with greater inaccuracies and more confusion.

Q. And as I try and take notes to myself up here, sometimes there's a moment of silence.

A. Sure.

Q. If you think of anything else that you would wish to say don't hesitate to keep going.

A. Great. Thank you.

Q. Would you agree or disagree that some children might have an easier time or might be more comfortable with communicating through drawings than they would be verbally?

A. As a general principle, yeah, some kids might.

Q. Okay.

A. Young kids, much less likely to be with a very young child. There are some older children who ask for the opportunity to, to write initially. But because young children are actually not very good at drawing and also because the drawing medium is associated with other kinds of fantasy uses, the problem is knowing that the resulting picture created by a young child is a representation of something that happened or may have begun as that and then later became an opportunity to draw a dragon or draw some or put a house in the corner, none of which are related to the story.

And the problem is that when you look at the picture you don't know when the child switched from representation to fantasy drawing to just having fun with the crayons. So the risk is always the confusion here, and that's a particular risk with very young children.

Q. And even when you're conducting a forensic

interview you want to avoid presenting opportunities to invite make believe or fantasy and things of that sort?

A. Correct.

Q. Some children may be more reluctant than others in disclosing abuses they've suffered, correct?

A. Correct.

Q. Are there common factors that may cause them to be more reluctant or less reluctant to disclose abuse to a forensic interviewer?

A. Most important is the nature of the relationship between the child and the suspected perpetrator.

Q. And could you expand on that a little bit?

A. Children are more reluctant to describe abuse by their carers, by the people that are looking after them, than by strangers or other people that they don't know as well.

Q. You would agree that it is common for victims of sexual abuse to delay at disclosing -- excuse me, I'm stumbling over my own tongue.

It is common for victims of sexual abuse to delay disclosing their abuse to others, correct?

A. A lot of children delay.

Q. Okay. And, in fact, they could delay for a very long time, days, months, even years?

A. Yes.

Q. And, in fact, there is some research out there to show that the delay -- that up to 60 to 80 percent of sexual abuse sufferers may delay all the way up to adulthood, correct?

A. Yeah. I think it's pretty hard to put a number on it. The assumption is that there are a lot of people who never disclose. We know that there are some of those, then you can't really compute those percentages. Some people disclose quickly, some people delay. Some people make an attempted disclosure that doesn't go anywhere. And I supposed delay neither signifies validity or lack of validity.

Q. Is there a common factor that is identified to show what actually causes people to disclose sexual abuse that they've suffered?

A. I'm not sure there is. Without wanting to sound glib because I don't mean to be glib, it's having the opportunity to do it. And most children and almost most victims don't find themselves in the situation where they can do that.

Q. When is it that the first forensic interview should be conducted?

A. As soon as possible.

Q. And why is that?

A. Because it minimizes the opportunities to forget

and it minimizes the opportunity for contamination.

Q. Is there a particular amount of time a forensic interview should last or should be limited to?

A. No. Not in terms of time wise. What's important is whether you continue to have the attention of the, the child that you're questioning.

Q. And let's go into that a little bit. What should a forensic interviewer do if the child comes in and they just immediately do not have their attention, they're distracted from the outset?

A. Well, I suppose it would depend on the circumstances. And I would say that the first thing that a forensic interviewer should do is try to minimize the chances that that will happen. So arrange to see a child early in the morning when they tend to be more attentive. You don't interview a four-year-old late in the afternoon. That's not a good way of keeping their attention.

Secondly, interview the child in a situation where there aren't other distractions. And, thirdly, create a situation where the child feels supported and comfortable with the person that they're interviewing with. And if you do those things, you're much less likely to be in a situation like the one that you described. If you really do find yourself in a

situation where the child can't engage, then it would make sense to reschedule that and try it another time.

Q. Is it appropriate to conduct multiple forensic interviews of the same child?

A. Sometimes, yeah.

Q. Okay. Are there any inherent dangers or problems in conducting multiple forensic interviews of the same child?

A. Well, the major risk is the potential for contamination. The way you limit that risk within the interview is by making sure that the interviews are at least electronically recorded so that it's possible to track the contamination and to show, you know, if there are consistencies or inconsistencies over time.

Q. So you're referring to potential contamination that might occur in between the forensic interviews?

A. I'm referring there to contamination by the interviews.

Q. Oh, okay.

A. You also, of course, have the potential for contamination between the interviews as well. And I suppose that's particularly risky if there's an awareness by adults that the child hasn't said something that was expected to be said.

Q. And correct me if I'm wrong, but during your

direct examination you indicated that it was important to encourage honesty to the child at the outset of the forensic interview, correct?

A. Yes.

Q. All right. And has your research shown that that increases the quality and accuracy of the information produced by the child?

A. Yeah, there is evidence. Not in the study that I did, but by one of my colleagues, Dr. Lion at USC, showed that getting children to promise to tell the truth did increase the accuracy of their statements.

Q. I think that we've continually circled around to, both in direct examination and a little bit earlier in this cross-examination, is that the key or one of the key factors coming across all the protocols and a point of all forensic interviews is that the forensic interviewer ask open-ended questions. At what point does it become appropriate for the forensic interviewer to narrow the focus of the questioning on the disclosures that the child may or may not make in the course of the interview?

A. Well, we encourage interviewers to ask only open questions and open followup questions until the child has provided a narrative account of the alleged incident or multiple alleged incidents and only then to ask

narrowly on focused questions. The rationale is that first they give the information is more likely to be accurate when it comes in response to open-ended questions.

Secondly, the answers to some of those focus questions will be provided by the child naturally in the course of providing the narrative so you won't have to ask those questions. And, thirdly, that by delaying those questions, you limit the contamination of the child's account.

The other technique that we train interviewers to use is that when you do ask a more focused question, that you immediately followup with an open-ended question. And like, well, tell me everything about that, so that you don't get into a sequence of very direct and focused questions that you switch back to allowing the child to take control and to lead the account where it should go, rather than allowing the interviewers hypotheses, which are often wrong, to guide that sequence of questions.

Q. What should a forensic interviewer do if he or she encounters a child who appears to be truly reluctant to discuss a certain subject or topic or person that is of central interest to the forensic interviewer?

A. Well, we've spent the last ten years working on

that question and then trying to develop protocols to work with children who are reluctant. The most important thing is to work on developing the rapport, providing the child with non-suggestive support to increase the child's comfort. And we've shown now in multiple studies that when you do that, children become more willing to talk about and to provide that kind of information.

Q. How should a forensic interviewer go about building that rapport?

A. By expressing interest in the child. By showing empathy for the child, and by respecting the child's displays of emotions, rather than as interviewers often do becoming more insistent and coercive in their questioning.

Q. What should a forensic interviewer do once a child indicates a desire to terminate the forensic interview? When they say I'm done, I want to go or when can I go or anything to that tune, as we saw throughout the transcripts and in these videos?

A. Well, there are a number of things that you can do. One is to try and refocus the child to understand what it is that the child is expressing in that. In a case like this where there were multiple interviews, perhaps the better solution would have been to abort the

interview and resume at a time that the child was more ready and willing. But, again, it's important in these situations to kind of do the hypothesis testing that we talked about earlier to try to figure out what is it about this, this situation that's eliciting the reluctance?

Q. Danny "D" wasn't the only subject of focus in terms of allegations in the course of these interviews, correct? There was an additional person of interest, shall we say, Nathan.

A. Yeah. I mean, it depends on what you mean by focus. There were references by the child Nathan. It was clear that the interviewer wasn't interested in following those up. So the focus of the interviewing was pretty much narrowly focused on Danny. The child did on a couple of occasions mention Nathan.

And I think it was a nice example, which I cite in my report, of how confusing it is when the interviewer kept using the pronoun he instead of using one of those names. And we have long dialogues at the end of which it's not clear at what point the child switched from talking about one to talking about the other.

Q. The forensic interviewer does ask some followup questions when Nathan, especially initially, is brought

up by the victim in this case, correct?

A. Yeah.

Q. Okay. And the child gives a pretty open and forthright brief narrative regarding Nathan, correct?

A. Yeah. I mean, in the case of Nathan too, there's a -- there are contradictions in the account.

Q. Right.

A. And she does -- and I don't have the transcripts in front of me, but I think the second time it comes up, maybe even the third time, she says nothing happened.

Q. In fact, that's one of the first things she says in the third interview is that she recants her story about Nathan.

A. Okay.

Q. How might a child's capacity to understand time differ from that of an adult?

A. Well, it differs in lots of ways. All of us are pretty poor at estimating units of time. The children are particularly poor. And while they will use the words minutes, hours, they really aren't -- don't have a sense of those units that they can accurately describe. And they're particularly not adept with navigating around calendar time and days of the week and those kind of things. By the age of four or five, children have a sense of basic seriation, what came before, what came

afterwards, but they're not very good at thinking backwards about events, for example.

Q. So a young child in a forensic interview may have a difficult time accurately expressing precisely when something occurred or how long it lasted for, things of that nature?

A. Absolutely.

Q. Okay. Is the same true for location?

A. I don't think so. I mean, if I understand what you mean by location. Location is often part of the way in which incidents are remembered. They are actions that took place in a particular location, and because actions are often related in that way they may be much more integrally involved.

Children are -- it's not a complicated competent construct to remember I was in this place or that place in a way that it's complicated to both know that time is important to actually encode that information. That's not part of it.

Q. Would you agree or disagree that the terms with which a child might describe a location might be different for a young child as opposed to an older child?

A. Yeah, conceivably. I'm not quite sure what you mean.

Q. So, for example, would you agree that a younger child might have a harder time stating that an event occurred in this city or that city, as opposed to at home or at my grandparent's house or at the fair?

A. So the child would certainly have -- would be more accurate in describing at home or not at home than a choice among multiple locations that aren't as familiar, yeah.

Q. All right.

A. That would be true with adults too, but adults might have other ways of remembering that detail.

Q. So with that in mind, if a child is inconsistent in stating that this occurred in Spartanburg versus this occurred in Greenville versus this occurred in Virginia versus this occurred in wherever, would that be surprising or unsurprising?

A. Well, I think that it would depend a lot on how that information was elicited.

Q. Okay.

A. You know, if it came in response to a lot of directed focused leading questions, then it might be less surprising than if the child volunteered that information in response to an open-ended question.

Q. Okay.

A. I mean, one of the advantages of open-ended

questions is that mostly what kids say is what they know well, what they really do remember.

Q. Is there any common characteristic in children, how they react when they're asked about abuse coming from a caregiver or person of authority?

A. I'm not sure what you mean, I'm sorry. Is it...

Q. Is there any way in which children react in the way when people ask them about whether they were abused by a parent or teacher or other guardian or other character?

A. Well, as I said earlier, children are more reluctant to disclose abuse by family members.

Q. Okay.

A. Is that what you meant?

Q. I think that's a good enough answer. I can't think of a way to ask that further.

A. Okay.

Q. Are there any common characteristics that forensic interviewers can look for in children to identify coaching? Are there any signs to show coaching or that a child is being coached?

A. There are no signs that are reliable signs. The key thing one looks for is the inconsistencies and the amount of detail in the narrative.

Q. Is it common for children to try to avoid

disclosing trauma by denying that it occurred?

A. Some children do. I'm not sure I would say that it's common. It certainly happens.

Q. Do you agree that some children attempt to avoid disclosing trauma by simply changing the subject or deflecting from questions about it?

A. Yeah.

Q. And would it be the same answer as to commonality, wouldn't say it's common but it occurs?

A. Well, a good interviewer knows how to followup with that and to try to, you know, develop the rapport to make the child more comfortable, if that's the issue.

Q. So it kind of goes back to that same treatment of other avoidance we discussed earlier that you're trying to build that relationship with the child, that you need to build that rapport with them and that sense of trust, correct?

A. Correct.

Q. All right. How do children react to trauma?

A. Children, like adults, react to trauma in a lot of different ways.

Q. Are there any common characteristics?

A. Well, the definition of -- if it's a situation with PTSD, then the characteristics of that would involve recurring thoughts, flashbacks, avoidance.

Q. And when you say avoidance, what do you mean, avoidance of the subject?

A. Avoidance of the subject. Avoidance of things that may be related to that. But the recurring thoughts and the flashbacks would be two of them in that type instance.

THE COURT: Doctor, your voice is trailing off.

THE WITNESS: I'm sorry.

BY MR. JAMES:

Q. My apologies, I'm wearing you out here with my slow back and forth.

A. Did you want me to repeat what I said?

THE COURT: If you would, just briefly.

THE WITNESS: So that, I was saying that recurrent thoughts and rumination about it would be the more common characteristics. My apologies, Your Honor.

BY MR. JAMES:

Q. How much might a child's fear of punishment or consequence impact their conduct in a forensic interview?

A. Consequence of what?

Q. Punishment. So, for example, if the child is told don't tell anybody or I'll take you away and you won't come back here, would that cause the child to be more likely or less likely to disclose during a forensic

interview?

A. So you mean if the child has been threatened?

Q. Correct.

A. Well, it might affect the child's behavior and it might affect disclosure.

Q. Would you agree that a child that has been threatened would likely be less likely to disclose the abuse that is related to the threat?

A. Yeah.

Q. Would you agree that they would then be more likely to engaged in efforts to avoid the subject, such as denial or deflection?

A. Conceivably so, yes.

Q. And to go off onto a completely different subject, you indicated that you've reviewed the videos of the forensic interviews, correct?

A. Correct.

Q. The transcripts of the same, correct?

A. Correct.

Q. And that you have the pictures from the forensic interviews, correct?

A. Yes.

Q. All right. And the original criminal trial transcript?

A. Yes.

Q. Were you provided any transcripts of Family Court proceedings, such as the termination of parental rights?

A. I believe I did. I'd like -- can I just look back here? I think I see ---

Q. Absolutely. Take your time, sir.

A. Yeah. So I did look at the TPR.

Q. Okay. How should a forensic interview proceed if they encounter a young child that has sexual knowledge beyond what a three, four, five-year-old child should know about, but doesn't make a disclosure of abuse?

A. I think that's a hard question to answer in the abstract. It would depend a lot on the other, the other circumstances. The general issue, first of all, would be sort of framing the alternative hypotheses that we talked about and how might the child have acquired this information. And might it be through inadvertently watching pornography? Could it be through personal experience?

And then to pursue those, where might have the child encountered pornography? Who might have been the purveyor? Could it have been inadvertent or could it have been deliberate? So one would first have to do some kind of an assessment of the situation before constructing an interview that was focused on those issues particularly.

Q. Perhaps go off and go through almost a process of elimination of other possibilities that may have resulted in this adult knowledge?

A. Correct.

MR. JAMES: Okay. I beg a moment of the Court's indulgence.

THE COURT: (Nods head up and down.)

BY MR. JAMES:

Q. We've been going at it for a little while now, do you need any additional water or a break or anything?

A. No, that was good. I got the chance to blow my nose then.

Q. Excellent.

A. Perfect timing.

Q. All right. I asked you earlier if there were any common characteristics to look for among children who have been abused. Now to ask the opposite. Are there any common characteristics among children in forensic interviews who have not been abused that a forensic interviewer can look for?

A. I think you'd asked me before about whether there were signs that children had been coached or not. You didn't ask me about behavioral signs of abuse.

Q. Okay.

A. But so now, what was the question on the table?

I apologize.

Q. I asked you earlier about signs of coaching. Not withstanding the, the loaded term of coaching, if a child has not been abused --

A. Yeah.

Q. -- and is being forensically interviewed, are there any common characteristics that a forensic interviewer would look for in order to confirm one way or the other that they have been abused?

A. Right. There aren't signs to tell you that the child has been coached. There aren't signs that they're directly, say, behavioral signs, that the child is lying.

Q. And did I hear you correctly a moment ago when you said we had not gone over behavioral characteristics of an abused child?

A. I believe you have not.

Q. Okay. What sort of behavioral characteristics would we look for in an abused child?

A. There are no valid signs that tell us simply by behavior that this child has been sexually abused. There may be some that alert suspicions and suggest that it would be appropriate to do a forensic interview. But a forensic interview as an information gathering exercise, not something to confirm that the child had

been abused.

Q. So there may be concerning red flags that might cause a child to be brought to therapy or a forensic interview but not necessarily that it would definitively confirm it?

A. That's correct.

Q. All right. What sorts of red flags would -- no that's an overbroad question. Strike that.

If a child in a forensic interview demonstrated a lack of sexual knowledge, would that tend to show that they were not subject of abuse?

A. I think that's a complicated question. Young children don't necessarily understand sex, and so they may not have a knowledge of sexual behavior even when they have been sexually abused, but they simply don't understand what happened to them. And so if that's what you're asking, I'm not sure that would be a particularly informative thing. I think what's critically important is for the interviewer to get the child to describe what happened to her.

Q. Right.

A. It's the adult who puts the label on it and says that was inappropriate sexual behavior. And, you know, I used to show in my training an interview of a child who came into the interview and said I was brutally

raped by my stepbrother. And that was an indication of a child who had been coached.

And as the story unfolded, the child also described how she'd been coached to say that and how she had learned those words. And what you want to do is let the child describe the event as an account of an experience rather than simply wait for specific words like that.

Q. And we're certainly endeavoring to get to the goal of eliciting a narrative from a child in a forensic interview but it may take some time to get the child to express that narrative. Do you agree?

A. That's true. But some time is an elastic term. I mean, roughly 80 percent of children in a forensic interview make an allegation in response to the first one or two open-ended questions and -- of those who make allegations. And in ---

Q. I believe earlier you may have used the number 80 percent, if I recall your direct examination correctly.

A. I'm not sure I used any percentage, but 80 percent do make an allegation in response to the first one or two --

Q. Okay.

A. -- open-ended questions. The majority of children who have been abused make that allegation in

the first forensic interview, and the average forensic interview that we studied lasts around 28 to 30 minutes. So the majority of children with an effective interviewer are providing a detailed narrative account in that relatively short period of time. There are some cases which will -- don't make a disclosure until like the second interview. And we talked earlier, I think, in cross but perhaps also in direct about some of the risks associated with multiple interviews.

Q. I believe that was during cross-examination.

A. Okay.

Q. And you go back to that anecdote that you provided a moment ago about the subject coming in and declaring I have been brutally raped and then it turns out that's coached, is the directness of the disclosure by the subject of forensic interview typically associated with coaching or non-coaching?

A. Not necessarily.

Q. Okay.

A. But it's, I think in that case it was the fact that it was blurted out at the beginning, but it didn't involve the use of developmentally appropriate language. And the child could say nothing beyond making that assertion.

Q. Okay. So just a lack of detail plus the

inappropriate language, plus the blurting it out?

A. And the ability to provide on that one.

Q. Okay. Just a combination of factors --

A. Correct.

Q. -- altogether?

A. Correct.

Q. We've discussed how forensic interviews should be electronically recorded in order to travel, especially if there's multiple interviews.

A. Right.

Q. In order to travel.

A. All interviews, even if there are multiple, but especially when there are multiple ones because that's where you have the greatest risks.

Q. Okay. Should therapeutic as opposed to forensic interviews also be reported?

A. Well, that's moving outside my, my care.

Q. Okay.

A. I think the key issue would be if those therapeutic interviews are later going to become forensically important, then they should be electronically recorded. If those therapeutic interviews are completely unrelated to and are not going to be the context of that, then I think those are different, those are different standards applied by

therapists.

Q. I'm down to my last piece of paper up here, so our journey's almost at an end.

A. Okay.

Q. And just to be clear, we discussed earlier that if a child is avoidant of the topic of central abuse or a particular person, that the answer may simply be to terminate and come back later or to continue to interview, perhaps come back to it?

A. Well, again, I would come back to this motion that the forensic interviewer should always be thinking of alternative hypotheses.

Q. Right.

A. And that would be another situation where you're trying to figure out what's going on here and is it just that the child came in tired and not attentive? Am I bombarding them with too many questions? Should I pull back and try and get the child back in focus? So there were multiple challenges in that situation.

Q. What if it's after they have made a partial disclosure of abuse and then they clam back up? Is the answer to that simply to return to building that rapport and that comfort and trust that we've discussed?

A. That turns out to be most effective.

Q. Okay. And, unfortunately, I offered that in a

leading question, so maybe that wasn't the most effective way of asking. You've indicated potentially using a specific location to narrow the focus of an inquiry. How specific of a location should a forensic interviewer use? Should they, say, state a building, a room?

A. Well, the child -- you start with the most open which was where. And then if you have to narrow it, then you want to also narrow it using categories that makes sense to a child. And home is something that makes sense. And some other specific location might make sense. Reference to a state in and of itself is not terribly useful as a, as a category for a, for a young child.

Q. Earlier you touched on the negative atmospherics with respect to Danny "D" elicited from the victim in this case. That could be due to some outside influence, correct?

A. That would be one hypothesis, yes.

Q. It could also be due to sexual abuse, correct?

A. Or some other negative experience.

Q. Okay. We've spent a lot of time this morning talking about what the forensic interviewer in this case did wrong. Were there any particular things you identified that the forensic interviewer did right or

that would be advisable to do in future forensic interviews?

A. As I sit here today I can't think of things, but that may be because I've been focused on the value of these interviews and the potential risks associated with them.

Q. Have you been -- would you agree that you've been focused on searching for the errors or the alleged errors in the interviews?

A. Well, I look through the interviews in the same way that I look through the interview -- any interview that's conducted by somebody I'm training. I go through and I look for indices of good practice, indices of bad practice, cases where you might have done something differently. And, unfortunately, these interviews were not good interviews.

Q. At trial prosecution proceeded only on a single allegation of sexual abuse, correct?

A. I believe so.

Q. All right. And in the course of these forensic interviews there were multiple other allegations of sexual abuse elicited from the victim in this case, correct?

A. There were multiple vague references to things, many of which were inconsistent and often retracted.

Q. But notwithstanding the facts that they may have been inconsistent or retracted, there were multiple allegations in the course of these interviews?

A. Over the course of the interviews?

Q. Yes.

A. Yeah.

Q. Okay. Would you agree that a jury might put some weight and value in the fact that there were multiple allegations?

A. That's a speculation.

Q. Earlier you indicated that you believe that it could have been helpful to the jury that the forensic interview tapes be introduced, correct?

A. Correct.

Q. Do you believe that it could have been hurtful to the applicant for the jury to hear about the other allegations?

A. I think the interviews would have been helpful to the extent that the jury was provided with the framework to understand what was happening, with an understanding of what the purpose of a forensic interview, what children are able to do, what the risks are associated with different types of questions. So, you know, simply showing the videotape itself, it's hard to speculate. It's the context that becomes really important.

Q. So by itself, the forensic interview -- I say by itself, there were five of them, but by themselves there's really no way of telling if it would have been helpful or hurtful, but you're saying that in the context of, for example, an expert witness you believe they would have been helpful?

A. Well, they would have provided illustrations of what the expert witness was talking about.

MR. JAMES: Okay. Beg a moment of the Court's indulgence. Your Honor, we've been going at it for a little while. May I request a five-minute recess?

THE COURT: All right. We'll step down for about five minutes. Doctor, again, don't have any discussions with anyone about the substance of your testimony, but you may step down as well.

(Witness leaves witness stand.)

(A recess was had from 11:56 a.m. - 12:03 p.m.)

(Witness resumes witness stand.)

BY MR. JAMES:

Q. Dr. Lamb, let's talk a little bit about these forensic interviews specifically. You would agree that the forensic interviewer did endeavor to establish a rapport with this child, correct?

A. Yes.

Q. All right. And she did endeavor to build trust

with the child, correct?

A. Yeah.

Q. And she did endeavor to identify the level of the child's confidence. For example, by asking her to drop the crayons in the different sides of a chair, correct?

A. Yes.

Q. And you would agree that the forensic interviewer in this case, Tabitha Webber, did instruct the child to tell the truth at the outset of every interview, correct?

A. I can't remember whether it was the beginning of every interview, but if that's true, yes.

Q. But certainly multiple times at the very least?

A. Yeah.

Q. Okay. And the forensic interviewer discussed Nathan with the victim in this case in every single interview, correct?

A. I don't recall it in every single interview, but it was --

Q. But certainly during ---

A. -- in several interviews.

Q. In several interviews. So she did followup on the subject of Nathan multiple times as an alternative hypotheses?

A. Actually, I think the subject of Nathan came up.

Q. Do you recall how the subject of Nathan came up?
A. Well, I believe in my report where there's one sequence there which shows how Nathan's name came up at the end of a sequence of questions where the interviewer seemed to think she was talking about Danny and the child may or may not have been talking about Danny or Nathan.
Q. Do you have a complete copy of the forensic interview transcript up there?
A. Not with me, no. I just have my report here.
Q. Okay.
MR. GROSE: The ones in evidence are right there, if you want, on the little table in front. Yeah.
MR. JAMES: Thank you.
MR. GROSE: You're welcome.
MR. JAMES: If I may approach the witness?
THE COURT: (Nods head up and down.)
BY MR. JAMES:
Q. I'm handing you a copy of Petitioner's Exhibit Number 9. This is the complete transcript of the April 7, 2011, forensic interview.
A. Yeah. And which one -- that's ---
Q. That's the first one.
A. First one, okay.
Q. It's April 7, 2011. And if you would, flip over

to pages 15 and 16.

A. Yep.

Q. All right. So on page 15, and this is after they have identified body parts, forensic interviewer asks if anybody has touched her in those private places. And for a little while there the child denies, correct?

A. Yeah.

Q. All right. And then at around lines 15 to 18, I don't know if you recall ---

A. Which page are we on now?

Q. I'm sorry, we're still on page 15.

A. Okay.

Q. Lines 15 to 18.

A. Yeah.

Q. Do you recall watching the video of this interview?

A. I watched all the interview videotapes, yeah.

Q. Okay. And would you agree that around line 17 the minor child gives sort of an ambiguous head shake that's indicated as negative here?

A. Correct.

Q. Okay. And then the forensic interviewer follows up asking the open-ended question "is there something that's happened?" Correct?

A. Well, the first one is "tell me about that."

Q. Okay.
A. Yeah.
Q. And then if you follow over to page 16, this is when the child first indicates Nathan on line 5.
A. Yeah.
Q. Okay. And then for the remainder of that page, and it's about a minute or so or two, perhaps more in the video, she discusses Nathan with the child, correct?
A. Yeah.
Q. And asks what Nathan did, correct?
A. Uh-huh.
Q. And then continues after asking about any big people on page 17 to ask about Nathan, correct?
A. Yep.
Q. All right. And the child discloses that Nathan touched her while she was sitting at a table drawing, correct?
A. Correct.
Q. And they continue to explore this over onto page 18, correct?
A. Yes.
Q. And still further onto page 19 where the child indicates that the teacher was aware of this, correct?
A. Yes.
Q. And it isn't until the end of that exchange that

Ms. Webber explains that she's trying to explore those kind of narratives, correct?

A. You mean in saying: "Those are the kinds of things I need to understand about, okay?"

Q. Correct.

A. Yeah.

Q. Okay. And so for an extended period of time here in the first interview, Tabitha Webber explores the story about Nathan, correct?

A. Yep.

Q. And there's nary a mention of Danny "D" in the course of that, correct?

A. That's correct.

Q. All right. And after that narrative they actually go back to building rapport and they're not talking about any kind of abuse at that point, correct?

A. After she says she wants to go.

Q. Right.

A. Yeah.

Q. And she re -- she refocuses her back on to getting her onto a more enjoyable line of questioning, correct?

A. Uh-huh.

Q. Okay. In the course of writing her name, the forensic interviewer asks her about another last name,

correct?

A. Yeah.

Q. Okay. And if I may approach briefly?

A. Uh-huh. So you're on page 20?

Q. Yes.

A. Yeah.

Q. I just want to confirm that this was a redacted copy of the transcript. And if you watched the video during this time, the child becomes a bit restless and withdrawn, correct?

A. Yeah.

Q. Such that prompts the forensic interviewer to ask if there's something that she's worried about.

A. Yeah.

Q. All right. And at that point the forensic interviewer starts -- I'm sorry, not the forensic interviewer, the child starts to discuss bad dreams she's been having, correct?

A. Yeah.

Q. And they discuss her dreams from page 20 through 22, correct?

A. I believe so. Okay.

Q. And after discussing the bad dream, the forensic interviewer asks if she had told her grandmother something, correct?

A. Yeah.
Q. And immediately the child indicates that she wishes to terminate the interview, correct? At line 20 on page 22.
A. Yeah. Well, at line 3 she says, "Did you tell mimi about something?"
Q. Correct.
A. "What was that about?"
"I had a bad dream at her house."
So there's a bit of discussion about the dream and falling before she says "I'm ready to go to the park."
Q. Okay.
A. So I'm not sure it's immediate.
Q. But on that second prompt she answers she's ready to go to the park?
A. The second one, something else that you told mimi?
Q. Right.
A. Yeah.
Q. And so they discussed the park briefly?
A. Yeah.
Q. And discussed pets and animals. And on page 24, that's when the forensic interviewer asks if there is somebody that the child does not want to talk about,

correct?

A. Yes.

Q. Okay. And she initially appears to deny, correct, that there is anybody she doesn't want to talk about.

A. Yeah.

Q. Okay.

A. And then she says "it's about a friend."

Q. Okay.

A. And then there's a second prompt, somebody you don't want to talk about.

Q. Uh-huh. And then there at line 7 is our first indication of Danny "D", correct?

A. Uh-huh.

Q. And it's the child who brings up painting here, correct?

A. Yeah.

Q. And she inserts an "I don't want to talk about him," correct?

A. Yeah.

Q. Should that be a red flag with the forensic interviewer?

A. I think this whole page is a bit of a red flag because she then goes on to explain why she doesn't want

to talk about him and she goes into this discussion about he calls himself daddy and he's not my father.

Q. Uh-huh.

A. Now, that to me is the large red flag.

Q. And follows that up with, "And I don't like it when he calls me that."

A. Yep.

Q. All right. And then ---

A. Which is an interesting example of developmentally inappropriate language.

Q. You believe that line 18 is developmentally inappropriate?

A. Well, it -- no. It shows the complications she has expressing what she wants to say because he's not calling her that, he's calling himself that. It's a confusion of pronouns.

Q. Okay. But that confusion of pronouns, as we discussed earlier, is common among children; isn't it?

A. Absolutely.

Q. Okay.

A. Yeah. But it's also a signal to the interviewer better be careful here.

Q. And then shortly after, the child again indicates that she wants to go to the park? On line 24, page 24.

A. Yeah.

Q. Okay. Then on the following page, the forensic interviewer attempts to refocus one last time, referencing a picture that they have been using through the interview, correct?

A. Yeah.

Q. Okay. And then the child indicates that she's ready to terminate once again at line 16, correct?

A. Correct.

Q. All right. And again, following up on this red flag, the forensic interviewer asks, "is there something you're scared to talk about?" And the child responds in the affirmative, correct?

A. Yeah.

Q. Okay. And then she again indicates her desire to terminate the interview, correct?

A. Yeah.

Q. And then the interview finally ends as the child was clearly no longer willing to participate.

A. Uh-huh.

Q. You would agree at that point that it's appropriate to terminate the interview, correct?

A. We weren't getting anything, yeah.

Q. I'm going to duck back out of these forensic interviews for a moment. Earlier I asked you if threats from a caregiver or person of authority might cause a

child to be more reluctant to disclose abuse and you indicated that it could, correct?

A. Well, you asked more generally about threats.

Q. Right.

A. But, yes.

Q. Okay. Would threats from the abuser himself cause a child to be more reluctant to disclose?

A. Yeah.

Q. Would threats from the abuser to engage in the act of abuse cause the child to be less likely to disclose?

A. It could.

Q. Okay. So if the abuser instructed the victim that they were to put their penis in their mouth or you won't see -- I won't take you home to your parents, that would potentially cause the child to be less likely to disclose the abuse, correct?

A. It could, yes.

Q. Okay. Fundamentally, the purpose of forensic interviews is as an investigative tool to elicit accurate information about things that have occurred in children, correct?

A. Correct.

Q. Okay. And most content there are only used in the context of criminal investigations, correct?

A. Yes.

Q. Okay. If a child discloses abuse in multiple locations, how do you clarify which abuse occurs in which location for jurisdictional purposes?

A. Well, it's a challenging one, especially with young children. First and foremost you want to get the child to give you as much narrative detail as possible about the incidents. And it gives you a clearer understanding of what happened. And it might elicit information that is location specific that might help you to narrow down those things.

Secondly, when you're dealing with children and have multiple incidents you have to triangulate what the child is saying with other information that's available. That is, when you know when a child was in a specific location, but when a child mentions locations, specific sorts of details, by triangulating that gives you a way of locating a specific incident at a specific place. When you don't get detailed narratives, you lack that sort of location specific information and that makes it especially difficult to nail things down.

Q. But if a child discloses abuse -- scratch that question.

Is it appropriate to use pictures of locations with children in order to determine whether or not abuse

occurred at that location?

A. Well, again, it depends on what information you have before and how selectively you use those, those pictures. And how clear it is what sort of information is being elicited. If they're pictures of familiar locations, they may be recognized as locations, but they may not necessarily be used very usefully to, to specify where something happened.

Q. Would you agree that there is some research to show that displaying a picture of a location to a child may prompt them to discuss memories of what has occurred at that location?

A. Yes.

Q. Okay. And so once you've received an infra-forensic interview, you would agree that it may be appropriate to use pictures in order to prompt the child to provide an area that has to have been to a specific location?

A. Yeah. It can be helpful to use pictures, like I said.

Q. All right. If I recall correctly from your earlier testimony that when you're looking for coaching you're looking for inconsistencies?

A. Well, one of the things that might happen is inconsistencies. With coaching, especially with young

children, you often have very sparse narratives without much detail. And it's when the child is pushed to create detail, those details become inconsistent because they're not moving to specific memories.

Q. If a person is coached on a particular narrative they would try to stick as closely as possible to that narrative that they've been coached on, correct?

A. Yeah. I mean, coaching is a broad term.

Q. Okay.

A. And it depends how specific it is and it also depends how young the person is being coached. I think you're adopting an adult perspective that you think that the coacher would be trying to get the child to stick to a specific narrative.

Q. And alternately, a child may be coached to no narrative. Coached to deny.

A. Well, yeah, you talked about that. That's also in the context of a threat.

Q. Uh-huh.

MR. JAMES: Beg a moment of the Court's indulgence. If I may approach the witness?

THE COURT: (Nods head up and down.)

BY MR. JAMES:

Q. I'm handing to you Petitioner's Exhibit Number 10. This is the complete transcript of the forensic

interview of the victim in this case dated April 8th, 2011.

A. Okay.

Q. Now, at the outset of this interview there is already a conversation occurring on page 2, correct? They're discussing the victim's ponytail.

A. Yeah.

Q. And then they start talking about her stuffed bunny and rabbits, correct?

A. Yes.

Q. And then onto page 3 and further onto page 4, the forensic interviewer continues to build a rapport and put the victim at ease by discussing her fish, her turtle, her tree house and clubhouse and her dog and so forth, correct?

A. Yes.

Q. And these are all good things to do at the outset of a forensic interview?

A. They are.

Q. Okay. And it isn't until page 5 that the forensic interviewer tries to identify a resumption by resuming the prior course in conversation by asking the victim if she recalls what the forensic interviewer's job is, correct?

A. Yes.

Q. And the child rather humorously responds that her job is to talk, correct?

A. Correct.

Q. And then continuing on to page 6, the forensic interviewer is continuing to explain what it is that she does and what it is she's trying to do and then returns to the subject. And at around lines 17 to 19 of page 6 that on the prior day they were discussing somebody that she didn't like talking about.

A. Excuse me for interrupting you, but actually, this is not a connected conversation, is it? The interviewer is talking about what her job is.

Q. Uh-huh.

A. "It's my job to understand about the kinds of things that might have happened, okay?" To which the child's response was: "Watch this, I can spell my brother's name." And she, the interviewer goes back to: "And I talk to kids all day about things that might have happened." And the child says: "Yep, that's my name and that's my brother's name."

Q. And how old is this child?

A. This child is four.

Q. Right.

A. My point is that you have a disconnected communication here, so that in arguing that the

interviewer is explaining her job, she's not connecting with the child and the child is being distracted by some of these other materials that are available in the room, by drawing and writing her names.

Q. But the forensic interviewer does patiently go back to the subject of what it is that she is there to do, correct?

A. Yes, she does.

Q. Okay. And, ultimately, they do get back on to the topics that they were discussing the prior day, correct?

A. Correct.

Q. And the child goes to Nathan, correct?

A. Yeah.

Q. And then also the forensic interviewer prompts her to offer a more complete answer, asking: "There was somebody else, wasn't there?" And the child replies: "Danny "D"." Correct?

A. Correct.

Q. And then they go off onto a tangent about the dog that she has drawn on the paper, correct?

A. Uh-huh.

Q. And then asks -- Tabitha acknowledges it. And then follows up by asking about, "Danny "D", how do you know him?"

A. Right.
Q. And the victim repeats what she said yesterday. In part, he calls himself daddy, which she's previously indicated she doesn't like, correct?
A. True.
Q. Okay. And then states: "He knows what he does" in a negative tone if you're listening to the video, correct?
A. Uh-huh.
Q. Okay. And Tabitha repeats it in order to confirm what it is that she said. And then when she follows up, she asks: "What does he do?" And the child gives a hesitant answer there. "He kinds of makes..." and then trails off, correct?
A. Yeah.
Q. All right. And then she follows up not by asking her what does he do that you not like, but asks her what does he do that you do like, correct?
A. Yeah.
Q. All right. And then she talks about the Easter stuff. And then she states that she doesn't like it, correct?
A. Yes.
Q. Okay. So she identifies that maybe getting Easter stuff is a good thing, but nonetheless she

doesn't like it.

A. Yes.

Q. Okay. And then following the prompts from the child, the child states: "I got -- he got something I really don't like." Well, I'm sorry.

First Tabitha asks: "Are there things that Danny "D" does that you don't like?" Offering the negative question that pairs with the positive question she previously asked, correct?

A. Yeah.

Q. And then the child answers that he got her something that she really doesn't like, correct?

A. Yeah.

Q. Okay. And then on the following page she again follows up with this same issue that she's having trouble with, is that he calls himself daddy. "Every morning when I see him and I talk to him, he calls himself daddy." Correct?

A. Uh-huh.

Q. Okay. And Tabitha follows up on this. "How do you talk to him?" And the child replies very conclusively "I hang up", correct?

A. Yeah.

Q. So she is following the child's lead here at this point, is she not?

A. Yes.

Q. Okay. And it's a good thing to follow the child's lead. You want the child who, who leads this conversation, correct?

A. Uh-huh.

Q. All right. And she, the child actually ties it back into this discussion of drawing that we've been talking about. She states "I hang up." Tabitha replies, "You hang up?" The child confirms with a nod of the head and then goes "Then I keep drawing." Correct?

A. Uh-huh.

Q. All right. And Tabitha again returns to the earlier question, "Are there things that you did -- that he did that you don't like?" And the child stumbles around and just indicates that there's something, but doesn't really state what it is. And Tabitha follows up "tell me about that." Correct?

A. Initially, yes.

Q. Initially offers that open-ended invitation to explain and the child starts "it's like" and then cuts off with "I don't know." Correct?

A. Yeah.

Q. Okay. Now, when dealing with a child at the age of four who has been suspected to have been subjected

to trauma, should we take I don't know as a firm clear answer that she doesn't know or is it possible that that's a response that she's using to try and avoid talking about the subject?

A. I would have used it as a chance to ask more information about what happened.

Q. Okay. Well, what sort of question would you ask following up, because at this point Tabitha's asked the open-ended question, tell me about the thing that he has done that she doesn't like? So what other kind of open-ended question would you suggest that she should have used?

A. Using the child's words. You said there's a thing that he did.

Q. Uh-huh.

A. Tell me about that.

Q. Okay. Instead Tabitha pivots off to a different sort of tangental subject.

A. Yeah. She switches to location.

Q. Okay. So she switches to location.

A. So she stops following up the narrative.

Q. Okay. And when she follows up with the location, the child indicates that she sees him at two locations, at his hotel and his house, correct?

A. Yeah.

Q. Okay. Now, his house is pretty specific. We can identify where Danny "D" lives, correct? We, being the adults here in the room?

A. Yeah.

Q. Okay. His hotel is a little bit bigger, correct?

A. Yes.

Q. All we know is that it is a hotel at which Danny "D" has been, correct?

A. Correct. And if I could interject, that's where you triangulate information because presumably the adults would be able to determine which hotel or hotels have been involved.

Q. So, for example, you might send an investigator out to check at hotels where you think he may have stayed?

A. Yeah.

Q. And get potentially the receipts and things of that sort?

A. Correct.

Q. All right. And having established that location, Tabitha actually loops back to, to an extent, to the previous discussion, what happened at the hotel and the child responds that he wrote on her hand and Tabitha acknowledges, correct?

A. Yeah.

Q. And then follows up by asking if there was anything else, correct?
A. Correct.
Q. And then she denies.
A. She says "that's it."
Q. That's it.
A. Yeah.
Q. She asks the sort of confirmatory question on page 9. And then acknowledging the child's reluctance asks, "Are there other things that happened with Danny "D" that are hard to talk about?"
A. Uh-huh.
Q. And the child responds: Some things are hard about to talk about, correct?
A. Hard about and talked about, yes.
Q. Right. Would you agree that it is helpful to the rapport between the forensic interviewer and the interviewee to exchange that certain things may be difficult to talk about?
A. Yes.
Q. Okay. And to acknowledge that these are potentially tough things that they're trying to talk about?
A. It's very important to, to acknowledge the child's expressed emotions.

Q. Okay. And then the child gives this somewhat ominous, somewhat vague response unprompted and it's about the learning stuff that he really knows and then pivots off onto another subject, correct?

A. Right. And they go back to the drawings.

Q. Right. And they go to discussing Flopsy, correct?

A. Right.

Q. And Flopsy is a rabbit?

A. Yeah.

Q. And they do that for a few pages until around page 11 where for the first time in this interview the child indicates that she's ready to go.

A. Yeah.

Q. Tabitha follows up the request to terminate by delaying it, the termination. And then asks, "does anybody give you touches that you don't like?"

Now, previously in the previous interview we've brought up the issue of touching in inappropriate places, correct?

A. Yes.

Q. Okay. And once again the child responds, "Nathan gives her touches that she really doesn't like." Correct?

A. Yeah.

Q. All right. And then we broaden the scope a little bit of what a touch is. Forensic interviewer asks: "Is there anybody who gives you hugs that you don't like?" And she starts explaining her family, correct?

A. Yeah.

Q. All right. And then touches a little bit on the drawing that she's doing, that she's got a fire. Tabitha asks: "Do any big people give you ones that you don't like?" Evidently referring back to hugs. And she replies that nobody does.

A. Right.

Q. Okay. And then they discuss about how she allegedly urinated herself and that's why she's wearing a little dress, a little tutu in the video.

A. Uh-huh.

Q. They discuss her fire drawing again. And once again Tabitha redirects her focus, correct?

A. Uh-huh.

Q. Now, throughout this, noting that she is distracted, forensic interviewer is allowing her to go into these distractions a little bit, but then also bringing her back onto the point of discussion, correct?

A. Yeah.

Q. Okay.

A. Temporarily.
Q. Temporarily.
A. I mean, because the distractions remain there, she's constantly diverted to those, so it makes for a very disjointed conversation, and there isn't any completed narrative about things that have happened.
Q. Okay. Is it common for four-year-olds to be distracted?
A. As I said before, you would try and set up a situation to avoid that distraction because you know that four-year-olds have trouble with their attention.
Q. Do you avoid that distraction by essentially just having a sterile room with a chair and a table?
A. You try to make it as child friendly and devoid of alternative things to do as you can.
Q. Okay. But as we discussed earlier, there is also some research to indicate that the drawing, however seemingly distracting, may also help the child facilitate communication, correct?
A. We talked about it being helpful to define terms and names of body parts, but having them available as constant alternative activities doesn't facilitate the interview. And you've just shown us in going through these pages exactly what the difficulties are when you leave those distractions there.

Q. But it does help her feel more comfortable, doesn't it?

A. More comfortable than what? What's the alternative? I watch interviews all the time with children who are perfectly comfortable talking to an interviewer and aren't distracted by drawing and choosing pencil crayons and leaving the interviewer not sure are we talking about the same thing. My point is only that you're trying to get the child to talk about her experiences.

Q. Correct. But she's also indicating here on multiple occasions when we do approach these experiences that she wishes to terminate the interview, correct?

A. Well, she's doing lots -- she's being distracted all the time. She's not being allowed to talk about those experiences. Yes, she does -- obviously this is not an interview that she particularly enjoys, which gets to the issue of whether there's a, a good rapport established and whether the child understands the purpose of this interview.

Q. Do you disagree that the drawings and permitting her to, to engage in them and in some instances communicate views through them gives an opportunity to reestablish the rapport between her and Tabitha? Because on multiple occasions here they, they stop and

talk about her drawings --

A. That's true, they do.

Q. -- and the things they represent.

A. They do.

Q. So it does, it does have that value to the interview, correct?

A. It has that value.

Q. Okay.

A. And it has a corresponding disadvantage.

MR. JAMES: Okay. Beg a moment of the Court's indulgence. Your Honor, if the parties may approach?

(Bench conference was held off the record.)

THE COURT: All right. Ladies -- there's no jury. All right.

MR. GROSE: He does have a flight this afternoon.

THE COURT: Do you want to tell him what time.

MR. GROSE: What time is your flight?

THE WITNESS: 4 o'clock.

MR. GROSE: So, I mean, if we come back at 2:15.

MR. JAMES: What do you say to 2 o'clock?

MR. GROSE: 2 o'clock? I mean, how much longer are you planning on taking? I mean, I've got some followup, but it's not gonna take long.

MR. JAMES: Okay. 20 to 30 minutes at the tops. I'm trying to overestimate how much time I have left.

THE COURT: What about finishing now?

MR. JAMES: I defer to Your Honor. I can keep going.

THE COURT: Let's try finishing now.

MR. JAMES: Okay.

BY MR. JAMES:

Q. Do you recall in the interviews, as we've discussed, that the forensic interviewer used photographs in order to clarify the locations they were discussing, correct?

A. Yes.

Q. Okay. And would you concede that that's an effective way to make clear what locations they're discussing?

A. It can be, yes.

Q. Okay. We have discussed how threats from the abuser may cause the child to become more reserved and less likely to discuss her abuse, correct?

A. Correct.

Q. All right. So how detailed of a narrative should we expect from a four-year-old child when she has been allegedly sexually abused? Well, not allegedly, speaking sexually abused by her father who she's afraid of? Or I can narrow the question. You would agree that all of these different factors I have listed together

serve to increase the likelihood that she is going to be withdrawn in her communications, correct?

A. They are likely to make her more reluctant.

Q. Okay.

A. Yeah, such factors would.

Q. Okay. And so should we expect a detailed narrative or should we expect a trail of bread crumbs in disclosure?

A. You should expect a narrative. It may be a delayed disclosure. The -- what you would expect to find in a slow disclosure is that there's a gradual addition of details as the -- as an account becomes clearer. And contradictory details are not what you would expect to find.

Q. And following into this and going back to your earlier testimony about which I think we've touched on twice now in glancing, you've indicated that perhaps around 80 percent of children will give a solid narrative on the first or second open-ended question, correct?

A. Correct. Or at least make a clear allegation that then gets elaborated further.

Q. Okay. What about the other 20 percent?

A. Some of them will require more opportunity, maybe more focusing before they make an allegation and then

can elaborate on.

Q. Okay. So the other 20 percent might require a little bit more narrowed questions followed by the open-ended questions in that structure that you previously indicated?

A. Correct.

Q. Okay. And is the form of their disclosure always going to come in a clear narrative or is it going to occasionally come out in a more broken up format?

A. Well, there's a lot of variability and ---

Q. Children disclose in different ways.

A. People disclose in different ways. And it depends a lot on the extent to which the interviewer is providing the structure that's going to allow the child to provide a thorough detailed narrative account. As you have indicated, sometimes children don't disclose all details immediately, but they're still able to provide narrative descriptions of what happened.

Q. In your report you take issue with the fact that the forensic interviewer did not correct the child as to whether or not the applicant was her father, correct?

A. I said that it raised questions about narrative negative stereotyping and should have triggered some kind of exploration of alternative hypotheses. And I think I pointed out three sorts of questions that were

raised by this.

Q. I would direct you to page 7 of your report.

A. Thank you, I was looking for it. Yeah.

Q. And you indicate: "However, at no point in these or any other interview did the interviewer challenge the child's incorrect assertion about her relationship to Danny Spade." Should the forensic interviewer actively challenge the child's recollection?

A. I would have challenged it in a, in a gentle way.

Q. Okay.

A. By asking what is his relationship.

Q. Okay.

A. But the key point here, and that's one of the three things that I list here that would have been appropriate to follow up on, what was being signified by those distinctions?

Q. Well, one of the assertions, the third one, is that she did not explore why the child disliked, referring to Daniel Spade as her father, correct?

A. Uh-huh.

Q. Wasn't it possible that she just doesn't like referring to him as her father because he sexually abused her?

A. That would have been one hypothesis I suppose, yeah.

Q. And then there would be other alternative hypothesis?

A. Yeah.

Q. And you indicated, if I recall correctly, that you would have followed up on the assertion that Danny "D" is not her father by perhaps asking the child more about Danny "D", correct?

A. Correct.

Q. Okay.

A. Which at one point she does try and ask him more about things with him.

Q. And she sticks to her guns and says: "He is not my father."

A. Yeah.

MR. JAMES: Okay. Beg a moment of the Court's indulgence.

THE COURT: (Nods head up and down.)

BY MR. JAMES:

Q. And as you indicated in your direct examination, the forensic interviewer did ask the child if anybody had told her what to say, correct?

A. Uh-huh.

Q. Okay. Thank you very much for your patience. I have no further questions.

THE COURT: Any redirect, limited to what he went

into?

MR. GROSE: Yes, sir.

THE COURT: Do you need anything?

THE WITNESS: I'm good, thank you.

REDIRECT EXAMINATION

BY MR. GROSE:

Q. He asked you some questions about that 80 percent figure. And I had a question about it because I think you said -- is that 80 percent of all children that are interviewed or is that 80 percent of the children who made an allegation?

A. It's of those who made allegations.

Q. Okay. So if ---

A. Roughly two-thirds of children make allegations when they're forensically interviewed in an appropriate way.

Q. Okay. So there's a third of children that don't make any allegations involving anybody?

A. Correct.

Q. Okay. And so when you give that 80 percent, that's 80 percent of two-thirds?

A. Correct.

Q. Okay. And so there was a lot of questions that were prefaced with we're talking about a four-year-old. And I think I had asked you some questions about the age

group that your researchers work with, and that was from 3 to 16 or maybe even older; is that right?

A. That's correct.

Q. Okay. And so the protocol that you were involved in developing, does that work with four-year-olds?

A. Yes, it does.

Q. Okay. And are four-year-olds able to give narratives?

A. Absolutely.

Q. Okay. He -- there was a lot of questions about reluctance to want to disclose or wanting to avoid topics and that sort of thing. When you encounter that, are you supposed to continue following the protocol or are you allowed to then break from the protocol and adopt other strategies that might be more risky?

A. No. We've tried to develop the protocol specifically to address cases of children who are reluctant. And so there are just more detailed discussions of how you maintain or build the trust so that you can continue to use the appropriate sorts of developmentally appropriate questions while promoting the child's trust in the interviewer.

Q. And, you know, going back to the question that I asked earlier about, I think you said a third of the children in your research don't make a disclosure in an

interview.

A. Yeah. That's what the mass, sort of, national data we have suggests.

Q. Okay. And so if you're interviewing a child and they make a denial that anything happened, how should the interviewer handle that?

A. Well, the interviewer should again be thinking of alternative hypotheses. One is, which should have always been in their mind, nothing happened. The other hypotheses are that something did happen and the child doesn't want to disclose. Others might be that the child has been put under some pressure one way or another. So those, those should be the, the various thoughts in the interviewer's mind as they try to steer the child to describing the experiences.

Q. All right. And we're starting to do something in our discussion that we want to try to avoid, I think, because when you say something happened, that something could have happened, but that doesn't necessarily mean it's sexual abuse either, does it?

A. That's correct.

Q. So it would be important for the questions to try to identify what the something might have been.

A. That's correct.

Q. Now, there was also some questions about location

and they were kind of at different stages during the cross-examination. And one of the things that you talk about is if the child says something that happened in a home or happened in school, those are things that are easy to identify, correct?

A. Yes.

Q. All right. And then when they say it happened, if they use a hotel, for example, I believe you used the word you have to start triangulating; is that right?

A. Yes. Because the child's not gonna remember it was at the Marriott hotel in downtown Greenville. The child is going to remember being in a hotel and it's the adults who have to figure out which hotel that was.

Q. All right. And so, would it be important if there was multiple hotels to look at multiple hotels?

A. Yes. If that was a critical piece of information for forensic purposes.

Q. Well, and what if a child were able to give as far as location tog name a city, would that be something that you would want to follow up on?

A. I would want to followup, but I'd be somewhat suspicious, I suppose. Kid usually don't remember things much by cities. I mean, I'm saying four-year-olds don't.

Q. Now, one of the things that you said in

cross-examination they were asking about, should therapy sessions be recorded. And if I'm remembering, and I don't want to put words in your mouth, but if I'm remembering correctly, you said that if it's just therapy, that's really not your tent, that's not your area, but you said that if they -- if the therapy is going to become forensically significant, then that might be something that should be recorded?

A. Absolutely.

Q. Okay. And so what do you mean by forensically significant?

A. Well, if the therapist is going to make forensic, offer forensic information in some type finding situation, then it becomes important.

Q. Like a courtroom?

A. Like a courtroom.

Q. Okay.

A. It's also important if the therapy is taking place before the person receiving therapy is going to give testimony to have a really good record of what happened in those sessions and to avoid the possible inference that there might have been contamination with the child's memory during that time.

Q. And so that sequence of events with conversations about the event occurring prior to testimony would be

important as to whether that should be recorded if that person's going to give testimony?

A. Especially if that person is going to give testimony, but also if there's a potential risk that there's going to be contamination with the child's memory.

Q. And you said we almost -- or you kind of indicated we needed to get better at how we handle that evidence, which is the child's memory in these cases.

A. Correct.

Q. That's correct? Both of us, me and the Attorney General, have asked you to point to and discuss specific areas of these interviews. I guess one of my first questions was is looking at these interviews as a body of work, were these good interviews?

A. No, they weren't good interviews.

Q. Okay. And in judging the quality of the interviews, would it be important for a fact finder to have the availability of all of the interviews to review?

A. Yes.

MR. GROSE: Beg the Court's indulgence. All right. That's gonna wrap it up, Your Honor.

MR. JAMES: Nothing further from the State, Your Honor.

Exhibit F

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2017-CP-42-02372

Daniel W. Spade	State of South Carolina
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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2020 MAY -7 PM 3:53
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

0132
Judge Code

5/7/2020
Date

For Clerk of Court Office Use Only

This judgment was entered on the 7 day of May, 2020 and a copy ~~mailed first class~~ emailed or placed in the appropriate attorney's box on this 7 day of May 2020 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

FILED
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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. LOCK

This is a post-conviction relief matter.

On February 26, 2014, after a trial that extended over three (3) days, applicant was convicted by a Spartanburg County jury of criminal sexual conduct with a minor (his biological daughter) under the age of 11 in the first degree. He was convicted based upon a single allegation made by his daughter that when she was 3, or just turned 4, he put his private part in her mouth while in a bathroom located beside a swimming pool at a hotel. His daughter was 7 years old when she testified at trial. He received a sentence of 35 years. On July 6, 2016, the Court of Appeals affirmed the applicant's conviction in an unpublished opinion. On August 18, 2016, his petition for rehearing was denied. On October 6, 2016, he filed his petition for writ of certiorari with the Supreme Court. His petition for certiorari was denied on June 16, 2017.

The initial PCR application was filed on July 13, 2017, and was revised on October 2, 2017, December 24, 2017, May 14, 2019 and, subsequent to the PCR hearing, at this Court's request, supplemented after receiving the previously thought to be non-existing DSS file.

This matter originally was heard during the May 2019 PCR term in Spartanburg County. Although initially set for three (3) days, the matter was extended to four (4) days to receive additional testimony. Subsequently, an order was issued by this Court to produce a related DSS file. This Court's impression was that the Order was issued to provide clarity to the record that either no such DSS file ever existed or that one could not be located. DSS, however, produced

the file. Subsequently, this Court performed an in-camera review of the file. The parties were informed that the file contained information potentially relevant to the PCR. With the cooperation of DSS, copies of the file (with the appropriate redactions) were produced to the parties. Subsequently, the parties provided briefs/memorandum related to the DSS file for guidance. This Court's opinion is that the DSS file can be seen as an unbiased collection of information related to the background of this matter.

The Court appreciates the assistance and cooperation of the parties while the Court conducted its review of the DSS information and substantial record before it.

After considering the testimony and documents presented during the hearing, the records of the prior proceedings, reviewing the video interviews of the minor, and considering the summations provided by the attorneys, this Court asks the Attorney General to prepare a proposed formal order denying the application. The proposed formal order should be consistent with the opinions expressed herein. Nevertheless, the proposed order should also address all issues arising from this PCR even if not expressly mentioned in this email summary. This Court will review the proposed order for changes. Even though this email will be incorporated into a form 4 for filing with the Clerk of Court's office, the formal order, once corrected, signed and filed, will be the final order of this Court. The form 4 order will contain no final rulings of this Court.

The substantive standard of review this Court applied to the information before it is derived from the two-prong test found in Strickland v. Washington. First, the conduct of the applicant's trial counsel was examined or measured for its reasonableness under existing professional norms to determine constitutional deficiencies. Secondly, any constitutional deficient conduct by his attorney was then examined for its prejudicial effect, if any, to the outcome.

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CLERK OF COURT
SPARTANBURG COUNTY
MAILBOX

A significant and material approach of the present PCR was to attack the decisions of trial counsel to not publish his daughter's forensic interviews to the jury and to not call expert witnesses to attack the credibility/reliability of the child's single trial accusation made against him by discrediting the forensic interviews. Since a substantial portion of the PCR testimony and evidence related to the forensic interviews, this Court's discussion of the forensic interviews will be disproportionately longer than its discussion of other issues.

The applicant's assertion at trial and as part of this PCR was that his daughter's claim was untrue because she was coerced or coached into saying it. PCR counsel buttressed his position that the allegation was untrue with the undisputable historical timing/link to the bitter domestic litigation then existing between the victim's mother and soon-to-be adoptive father, and the applicant. PCR counsel presented new evidence (evidence not presented during the criminal trial) that supported the timing/link of the beginning of the criminal process against applicant to a material development in the family court litigation that could have potentially derailed the victim's mother and soon-to-be adoptive father's desire to terminate applicant's parental rights with the child.

The history preceding the forensic interviews strangely link the motivation for the interviews to the domestic dispute. This history preceding the forensic interviews also do not disprove the single trial allegation against the Applicant. A therapist had recommended that

meetings/sessions should begin with the goal of long term association of the applicant with the child. These sessions were to involve all members of the family, including the applicant. Significant to this new evidence was the testimony of the child's family court guardian ad litem (GAL). Part of the GAL's testimony included that she was closed off from the minor by the mom and soon-to-be adoptive father. This Court easily concluded the GAL felt strong hostility from the mom and soon-to-be adoptive father. Their conduct and attitude towards the GAL materially interfered with her work as the GAL for the minor. This new evidence and the timing/link to the family court issues was further supported by the information revealed post-PCR hearing from the DSS file.

This Court was troubled that the legal history of this case includes private parties being encouraged to be uncooperative and thereby frustrate the work of the DSS and a family court GAL. This Court was also troubled that law enforcement made inconsistent factual statements to different courts.

Again, the forensic interviews were material to the PCR. PCR counsel was successful at discrediting the forensic interviews in this case. As part of the review process, the interviews were viewed by this Court. Certain sections of the video interviews were reviewed several times. The PCR hearing testimony of the Applicant's two expert witnesses and the testimony of the forensic interviewer were all considered. The audio recording of the PCR testimony was also reviewed by this Court post-PCR hearing.

The expert witnesses called by applicants have the highest credentials in their areas of expertise. They both can be considered experts of the highest esteemed. Also they both appeared credible on the witness stand. Together, they explained what are the "best-practices" for obtaining information from a child during a forensic interview. They both explained how the forensic interviews in this case deviated from their "best-practices". They were also critical of the prior sworn testimony of the forensic interviewer when that testimony was compared to what is reflected in the video interviews.

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SPARTANBURG COUNTY
ANDY V. COX

The forensic interviewer also testified during the PCR hearing. She strongly defended the techniques she used with the child in this case. While she acknowledged the expertise of the applicant's two expert witnesses and did not discredit their methodology, she advocated for her methodology and defended its application in this matter.

In reaching the conclusion that applicant PCR counsel was successful in discrediting the video interviews, this Court notes, again, that no witness challenged the credentials of the applicant's experts nor the validity of their methodology. Based on the information presented to this Court, these two witnesses presented the highest levels of expertise in their respective fields. They appeared extremely credible during the hearing. After viewing the videos and applying the standards offered by these experts, this Court agrees with their assessment that the forensic interviews were suggestive.

All three witnesses (Applicant's two experts and the forensic interviewer) felt the videos should have been played to the jury. Each felt that if videos had been played to the jury, the publication to the jury would have supported their respective positions. All three encouraged this Court to view the videos. As stated, this Court did so extensively.

The forensic interviewer and the applicant's two experts assisted the Court in understanding the complexities and challenges generally faced when attempting to obtain information from a minor victim. The forensic interviewer testified to her interaction with the applicant's daughter in obtaining information from her. The forensic interviewer also explained the historical need and her methodology in obtaining disclosures from child victims of sexual abuse. The applicant's two experts also explained the historical perspective of needing a reliable method to obtain information from a child so that wrongful convictions do not occur.

The present forensic interviews in this case may be classified as uncharacteristic in several respects. The forensic interviews were privately arranged (not by law-enforcement.) The more common practice is for the forensic interviewers to be arranged by law enforcement for law enforcement investigation purposes. The interviews here were arranged for a private purpose. The initial purpose for conducting the forensic interviews was to determine what, if any, bad thing(s) the child would disclose about the applicant. The motivation behind the initial arranging of the interviews may explain some of the manner of the questioning seen in the interview videos.

This Court notes that the term "disclosure" was used broadly by the witnesses. Also the relatedness of the child's trial testimony to what was disclosed on the videos is, at best, only related by inference.

As mentioned herein, the experts were critical of the forensic interviewer's suggestive style of questioning and lack of scrutiny of the child's statements. The testimony was that the applicant's daughter made some type of a "disclosure," that involved the applicant, to her maternal grandmother. The testimony was that this disclosure was revealed by the grandmother just after the therapist recommended that counseling sessions should include the applicant. The therapist's services were terminated after the grandmother revealed the "disclosure" and referral made for the interviews. Testimony was presented to this Court that indicated the "treating" therapist made the referral for the forensic interviews because of the disclosure. This Court can conclude that whatever "disclosure" may have been made to the therapist, it did not rise to the level of abuse or neglect to merit reporting to law enforcement. The earliest that law enforcement may have been notified was after the second interview. After the forensic interviews concluded, the child/victim did not return to the treating therapist. A new therapist was hired by the family. The new therapist was formerly employed with the forensic interviewing center. The new therapist regularly received referrals from the forensic interview center.

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SPARTANBURG COUNTY, SC

The exact nature of what the grandmother revealed about the initial disclosure is unknown from the videos. Even though the Applicant's daughter made repeated statements during the videos that the applicant had done nothing or otherwise exculpated the applicant, nothing was seen in the interviews (and applicant's experts were very critical of the interviewer) that tests the validity of the child's accusatory statements. Most evident was that the forensic interviewer failing to explore what may have influenced a young child of four years to "strongly" declare that her biological father was "not her father" in the videos even though the subject of fatherhood had not been brought up. Also, it appears the only direct questioning of the child about coaching occurred only for a few seconds at the end of the fifth (last) session while the child appeared to be running around the room.

Again, as suggested and encouraged by all three witnesses, this Court viewed the videos to determine the content of the videos INSTEAD of basing its decision on the testimony of the witnesses as to what was contained in the videos. In so doing, this court was able to view consistencies and inconsistencies in the descriptions offered by the forensic interviewer and the expert witnesses during the PCR hearing when compared with what is reflected in the videos.

Again, applicant claimed that his trial counsel was constitutionally deficient by not publishing the interview videos to the jury and not calling experts to testify before the jury to discredit the interviews. On this issue, this Court cannot find that applicant met his burden of proof.

The decisions concerning publication of the videos to the jury and the calling of experts to challenge the forensic interviews was a strategic trial decision. As such trial counsel's performance is accorded a favorable presumption, and a reviewing court proceeds applying the rebuttable presumption that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (here trial counsel articulated valid reasons for employing his strategy).

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SPARTANBURG COUNTY
AMY WILSON COX

In CSC with a minor cases where these type of forensic interviews were videotaped, every defense trial attorney faces the decision "what do I do about the videos?" The law, at the time of the applicant's trial and now, allows the publishing of the videos (subject to evidentiary rulings). In the applicant's trial, the state made the decision NOT to offer the video interviews for publication to the jury. Applicant's trial attorney also did not offer the videos for publication to jury. Trial counsel felt it best to defend against a single/isolated allegation rather than the other references made by the minor/victim (arguable some non-specific and vague) on the tapes. While this Court finds PCR counsel has been successful in discrediting the forensic interviews for being suggestive, this Court also agrees with the testimony and opinion of the forensic interview that if the videos were shown to the jury, they would view a young four year old child with non-age appropriate knowledge of potentially sexual matters. This Court cannot criticize trial counsel for his decision, even if that decision proved to be wrong. This Court also notes the use of the word "disclosure" by the forensic interviewer and applicant's experts and the broad difference in meaning.

The factual narrative from the trial and the PCR was that the applicant did not commit the offense and that his daughter's statement should not be believed because it was the product of an aggressively fought Family Court proceeding. The history of the corresponding Family Court action/proceedings cannot be contested. The Family Court timeline supports the inferences desired by the applicant. The timing of the initial disclosure by the grandmother after the counselor recommended therapy to include the applicant, the lack of cooperation by the family with the Family Court GAL after the grandparent revealed the disclosure, the private referral to the Child Advocacy Center (not by law enforcement), and the resistance by the family to

cooperate with DSS, are factual events consistent with applicant's narrative. Additionally, information from the DSS file also support applicant's narrative.

This factual narrative was presented to the jury during the criminal trial and argued by trial counsel. Notwithstanding, the jury convicted applicant. Again, at trial, applicant's attorney wanted to minimize the focus on the child's allegations. His attorney desired the focus to be on the motivation to fabricate the allegations.

The child did not appear before this Court. The only opportunity by this Court to witness the child was through the videos. As may be expected, she was a very young child speaking about some (although vague) adult subject matter through child-like means (primarily pointing at crayon drawn pictures). In contrast, her trial testimony reads that she was assured and unambiguous about what the applicant had done to her. Her testimony reads in stark contrast to the video interviews which, frequently, appeared chaotic and uncontrollable. The child/victim's video version of applicant's conduct towards her was not as clear or direct. Rather, her video statements generally ranged from that nothing bad happened, if something bad happened it was by a third person from class, to applicant doing something bad, including bad things happening involving her father's girlfriend while in Virginia.

His daughter's examination at trial was brief, just over five (5) pages in length. She was seven (7) years of age at the time of the trial. In response to the question, "can you tell the ladies and gentlemen what happened to you at the hotel?" her response was "he stuck his private part in my mouth." She went on to physically demonstrate to the jury what she meant by private part by pointing to its location using her own body and explaining that this event happened in the bathroom by the hotel's pool.

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SPARTANBURG COUNTY
ANNE WILLIAMS COX

In response to the direct examination, trial counsel performed a cross examination. The cross examination reads that his trial counsel performed a relevant and competent examination. Trial counsel's cross examination reads that he successfully made several points in attacking the credibility of the child, including the fact that the teddy bear she took with her to the witness stand and held while testifying was not her bear, the location of the pool/bathroom, the crowd at the pool and that the events she related did not happen in their hotel room's bathroom.

Trial counsel attempted to establish, as was strongly asserted through the PCR, that the child should not be believed because she was coached into creating the allegations against the applicant. At trial, and as part of the PCR, some very consequential facts were proven true to support this theory. Again, when the initial disclosure was made by the grandmother, motivation to influence the child existed due to the ongoing family court litigation. The timing of the disclosure was argued to be suspect due to it occurring immediately after the therapist recommended a joint meeting with the parents' child and the applicant. Once the disclosure was made, the services of the therapist ended. A private referral was made to the forensic interview service. Information suggested that the parents paid for the forensic interview services. Cooperation with the Family Court GAL ended. Once the multiple sessions of forensic interviews concluded, referral was made to a new therapist who was formerly with the forensic interview service.

The difficulty, again, for applicant's PCR purposes, was that the jury received these facts before returning their guilty verdict. Again, this Court cannot find error in trial counsel's decision to not publish the video tapes nor can error be found in not calling expert witnesses. The same clash/conflicting testimony concerning the interviews presented during the PCR hearing most likely would have been presented to the jury. The Court can conclude the reasoning why the State did not publish the videos. The videos potentially do more harm than good to the state's case. Also, from the State's position, the videos may at best, as described by the forensic interviewer, reflect generally age-inappropriate sexual knowledge by the child, but do not support the specific act alleged at trial. At best for the applicant, if the videos had been published and experts presented to the jury, the factual narrative that the child/victim's trial testimony was the result of undue influence potentially may have been enhanced. The risk was also present that the child single accusation against the applicant would have been made more believable.

Applicant also asserts trial counsel's efforts of objecting to the use of the private trial attorney who represented the victim's parents against the applicant in the prior trial of the related Family Court matter to assist the solicitor's office in prosecuting the criminal case was deficient. The PCR record established that the family court private trial attorney was associated late by the family's private counsel in the family court process for the purpose of conducting the family court trial. Applicant's trial counsel's objection was overruled and affirmed, for the most part, on appeal. The narrow issue which the Court of Appeal's felt was not preserved for review is the sole basic remaining issue to support the assertion of ineffective assistance of counsel. The issue also arose in a subsequent disciplinary matter opinion issued by the Supreme Court. The Supreme Court's opinion was shared with this Court. The narrow issue dealt with the lack of proper preservation for appellate review of the issue that no governor's commission was issued in accordance with SC Code section 1-7-70. Applicant failed to meet his burden of proof for PCR purposes. After reviewing section 1-7-470, this section does not apply to the volunteer/pro bono appointment of private counsel as a "special prosecutor" in the underlying criminal case. Also, the potential conflict issue was addressed in the Supreme Court's opinion related to private counsel. Absent a specific/actual showing of conflict, the conflict arises when private counsel uses his role a solicitor to gain an advantage in private litigation. No actual conflict was shown in the record before the trial judge.

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CLERK OF COURT
BARNWELL COUNTY, SC

Applicant took issue with the remarks given by the trial judge and statements made by his trial attorney that violate the State v. Beaty jurisprudence. Applicant was correct that the trial judge's statement and his attorney's statements crossed into the Beaty sphere of improper statements that shift the jury's focus away from the state's obligation of meeting its burden of proof. At the time of applicant's trial, Beaty had not been decided and its jurisprudence was not universally recognized. Also, given other arguments made by his attorney and statements of law made by the judge, prejudice cannot be found in the present record.

Applicant also took issue with the presentation of counselors Roseborough and Thompson-Lofits. The trial record reflects, however, that trial counsel made numerous objections. Most ruling, unfortunately for the applicant, were not favorable to him. The trial judge actually limited the testimony of Thompson-Lofits. This Court can find no error for PCR purposes by trial counsel under the South Carolina jurisprudence that existed at the time of the

trial in the manner in which he objected.

As part of his PCR, applicant raised various issues about venue. From a PCR perspective, venue, at best for applicant, was speculative. This Court viewed the evidence in this record as substantial that venue was not an issue in the case. If the criminal events happened, as the jury believed they did, they happened in Spartanburg County, or they did not happen at all. Law Enforcement and/or the solicitors did not hide evidence of venue. In the present case venue was in Spartanburg County, or the events did not happen.

Applicant also took issue with comments made by private counsel during closing argument. More specifically the "bad' and "good" comments that indicate the applicant was a bad person simply for being arrested and that the jury takes care of "good" people. In certain situations, this type of argument can be constitutionally improper.

The rule is that a solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the juror's passions or prejudices, and its content should stay within the record and reasonable inferences. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Improper comments do not automatically require reversal if they are not prejudicial. The argument in the present matter can be argues as wrong because it sought to have the jury view the evidence through an emotional lens rather than factual. More concerning in the present case was that private counsel acknowledged during the PCR that his motives in making the argument was to appeal to the jury's sympathies. Nevertheless, private counsel's argument did not rise to the constitutionally improper level as described in Vasquez v. State, 388 S.C. 447, 698 S.E.2d 561 (2010), or Simmons v. State, 331 S.C. 333, 503 S.E.2d 164 (1998). When private counsel's argument is viewed as a whole, it appears to be based on a proper analysis of the evidence and the burden of proof; and unlike in Simmons, private counsel did not misrepresent the law to the jurors. Counsel's argument was not the type of argument as found in Lappenier v. State, 416 S.C. 239, 785 S.E.2d 471 (2016).

FILED
2020 MAY -7 PM 3:50
CLERK OF COURT
SPARTANBURG COUNTY
JAMEY T. COX

The DSS file caused this Court concern. The file was produced after the present PCR hearing was conducted. This Court received briefing from the attorneys. The file's content can be read as having supported the underlying narrative offered by both sides. As stated, this Court views the DSS file as unbiased. Based on the briefing presented to this Court, the DSS file can best be characterized as cumulative of the information already known at the time of trial. The new information supported the idea that the family was uncooperative, even with DSS's effort to investigate, by adding factual details to what was presented during the PCR hearing. The file also added to issues which the applicant or his witnesses could have faced on cross examination if character became an issue at trial.

This Court cannot find error by appellate counsel and cannot find support for prosecutorial misconduct as alleged in the application. This Court is uncomfortable with the statement made in the family court case that "law enforcement" made the referral for the forensic interviews. This statement was not true.

Again, the Attorney General is asked to prepare a complete formal order for this Court to review. Other issues not referenced in this email may be included in the order as this Court felt the applicant had not met his burden of proof of establishing a deviation by his counsel or appears to have been abandoned. Issues related to the wiping of the applicant's computer (this was not an issue as there was no proof that the computer was wiped and it was not mentioned

before the jury), issues involving any events in Virginia (including applicant's ex-girlfriend) were not part of the trial presented to the jury (collateral issues), the calling or lack thereof of character witnesses (not an error and no prejudice) and failure of counsel to present mitigation evidence during sentencing phase (the trial judge made it clear the nature of the offense required the maximum) this Court cannot find prejudice due to judge's comments (the mitigation evidence was not presented during the PCR hearing to determine prejudicial effect) and other issues should be included in the order.

The Attorney General is asked to submit the proposed formal order within thirty (30) days. Again, thank you all for your assistance and cooperation.

FILED
2020 MAY -7 PM 3:53
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

Exhibit G

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

June 21, 2019

Via fax and US Mail

Ms. Hilton
Program Director
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Daniel W. Spade, SCDC# 358974

Dear Ms. Hilton:

I represent Mr. Spade, who I understand is a resident of the character dorm and Lee C.I. I want to inform you about my efforts to investigate a situation involving Mr. Spade and Sgt. Fox at the law library and the subsequent hearing into the matter. Enclosed please find my letters dated June 14, 2019 to various officials at SCDC and June 21, 2019 regarding Sgt. Fox employment records.

Thank you for your attention to this matter. Please contact me if your would like to discuss this matter further.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

June 14, 2019

Deputy Director Terre K. Marshall, MPH, CCHP-A
Health Services
S.C. Department of Corrections
P.O. Box 21787
4444 Broad River Road
Columbia, SC 29201

Regional Director Willie Davis
S.C. Department of Corrections
P.O. Box 21787
4444 Broad River Road
Columbia, SC 29201

Warden Kenneth Nelsen
Lee Correctional Institution
990 Wisacky Highway
Bishopville, SC 29010

Re: Daniel W. Spade, SCDC# 358974

Dear Deputy Director Marshall, Regional Director Davis, and Warden Nelsen:

I represent Mr. Spade and write to bring two matters to your attention that involve discrimination based on his mental health.

First, the Department of Corrections transferred Mr. Spade to Spartanburg County for his post-conviction relief hearing, which began on Wednesday, May 15, 2019 and concluded on Monday, May 20, 2019. The Department of Corrections did not send any of Mr. Spade's mental health medications with him. Mr. Spade's family contacted Dr. Beverly Wood several times to make sure Mr. Spade would receive his medication. Despite repeated assurances from Dr. Wood, Mr. Spade was denied access to his mental health medications until he returned to Lee Correctional Institution. I understand it can be dangerous to abruptly discontinue some of these medications without a tapering off period.

The second matter relates to Mr. Spade's work in the law library. For some time, Sgt. Fox was trying to get Mr. Spade removed from the law library. This was disturbing to Mr. Spade, and he communicated this information to his mental health counselor

Muldrow. When Sgt. Fox made disciplinary allegations, Mr. Spade had a number of witnesses he intended to call at his hearing, including Counselor Muldrow. Because of the charges, Mr. Spade was denied access to the law library, meaning he was not able to review the inmate discipline policy. Mr. Spade was not given any notice regarding the date and time of his disciplinary hearing. When Mr. Spade requested an opportunity to have his witnesses present, the hearing officer did not allow it. When Mr. Spade momentarily stepped into another room where one of his witnesses just happened to be located, the hearing officer ruled against Mr. Spade because of his absence, even though he was present. Mr. Spade and I are concerned that he would not have been treated in this manner by Sgt. Fox or the hearing officer but for his status as a mental health patient. At a minimum, denying Mr. Spade an opportunity to present his mental health counselor as a witness denied him his civil rights.

Please look into these two situations immediately and take corrective action. I look forward to hearing from you.

With kindest regards, I am

Yours very truly,

s/*E. Charles Grose, Jr.*
E. Charles Grose, Jr.

cc: General Counsel, SCDC

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: charles@groselawfirm.com
Web: GroseLawFirm.com

June 21, 2019

Via email (FOIA@doc.sc.gov) and US Mail

FOIA Coordinator
Office of General Counsel
South Carolina Department of Corrections
Post Office Box 21787
Columbia, SC 29221-1787

Re: Freedom of Information Act Request
Correctional Officer: Sgt. Fox

Dear Freedom of Information Act Officer:

Pursuant to the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10, *et. seq.*, please provide a copy of the personnel file of the correctional officer listed above. Information about state employees is subject to disclosure under the Freedom of Information Act. *Burton v. York Cty. Sheriff's Dep't*, 358 S.C. 339, 594 S.E.2d 888 (Ct. App. 2004). This request does not seek any information about salary or personal identification information, such as date of birth, social security number, or home address.

Unfortunately, I do not have the first name of this employee. However, a request to staff member, dated January 1, 2019, filed by one of my clients, Daniel Spade, is enclosed to help identify this employee. Your response should include all request to staff members, grievances, complaints, internal investigations regarding Sgt. Fox, regardless of whether these documents are contained in her personnel file or another location.

I agree to pay the cost of obtaining this information; however, if the cost exceeds $50.00, please contact me for prior authorization.

Thank you for your attention to this matter. Please let me know if you have any questions or if I can provide additional information. I look forward to receiving your response.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

REQUEST TO STAFF MEMBER

to the Major/Warden N
back in January

TO: NAME: TITLE:	DATE:
Major Thomas/Warden Nelson	1-25-19
INMATE'S NAME: Daniel Spade	**SCDC #:** 358974
INSTITUTION: Lee C.I.	**LIVING QUARTERS:** F6B-1228

Sir- let me start by saying that I am a model inmate; not a single write-up in 5 Years here at Lee. I have worked in Education/Law Library as a TA for most of that time. I have used my time productively and am now a Certified Paralegal. I tell you this so you know it takes a lot for me to get to this point of having to bring this ongoing issue to *your* attention. Since Sgt. Fox was positioned in the Library, the working conditions and atmosphere/morale has plummetted to an all-time low. Fox is continually verbally abusive to her own workers and yells at the top of her lungs at inmates who come in to study. For no good reason but the hours that I work (approved by Mental Health - Ms. Muldrow), she has threatened me for the last two months that she was going to fire me. When we returned after New Years, she yelled at me that her "New Year's resolution was to find a way to get me fired". This daily verbal & psychological abuse has continued - so much so that I had to report to my Psych counselor last week to discuss it. Other workers can attest to this and similar treatment by Fox. It came →

DISPOSITION BY STAFF MEMBER:

DATE:	SIGNATURE:

SCDC FORM 19-11 (REV.FEB 2001)

to a head yesterday when myself (along with Inmate Powell + Inmate Cooper) reported for work at 1:00 p.m. as usual at the East Yard side door. An inmate inside promptly went and told Fox we were outside waiting. Count was called and we kept waiting. The Yard Officers called multiple times and she just ignored them as well. 40 Minutes passed, we're forced to stand outside after count in plain view of the Warden's office, and Fox continued to just sit in her office talking. When she finally came to the door, I told her that what she continues to do, out of pure spite and to seemingly provoke arguments and altercations, was wrong. She then proceeded to refuse me entrance to my workplace without just cause. And she was clearly, as other witnessing officers will attest, was in the wrong (!) By this time, I was beside myself and the Yard Officers (Officer Scott and Officer Addison) came over to the door. They instructed me to just walk away and document it to her superior. My dorm officer, Lt. Brown, had also gotten involved to try to diffuse the situation. It is my understanding, given Officer Scott and Addison witnessed the entire and avoidable debacle, an Incident Report has also been done on Sgt. Fox. I fear that if Ms. Fox is allowed to continue to carry out her daily cussing and degradation of inmates in the Law Library, a place of education, it is only a matter of time before you have a litany of other avoidable issues solely due to her presence here. My family has consulted our attorney and is considering a civil rights suit against Fox but he has counseled that we wait to see what pro-active action (if any) is taken to return the Law Library to leadership who

Exhibit H

14:39:38 Friday, August 04, 2017

DASI110D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 08/04/17
DASI110M HUMAN RESOURCES MANAGEMENT SYSTEM C040483
PSDAS01A DISCIPLINARY HISTORY

SSN/EMPL#> **044716** > **FOX, VANESSA E** **CORRECTIONAL OFFICER I**

EFF DATE FED CODE PROBATION DATES
_ **03/20/17** **04** **00/00/00** TO **00/00/00** HOURS SUSPENDED: **40.00** RES-IND N
040 NEGLIENCE **060 REFUSE DIRECTIVE OF SUPV** MIN# - - -
2 SUSPENSION
CORRECTIONAL OFFICER II **LEE CORRECTIONAL INSTITUTION** **03/07/17**

PAGE > **0007**
PF4 > NEW EMP PF2 > ADD PF3 > UPDATE PF9 > DELETE PF12 > NAME SEARCH

14:39:35 Friday, August 04, 2017

DASI110D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 08/04/17
DASI110M HUMAN RESOURCES MANAGEMENT SYSTEM C040483
PSDAS01A DISCIPLINARY HISTORY

SSN/EMPL#> **044716** > **FOX, VANESSA E** **CORRECTIONAL OFFICER I**

EFF DATE FED CODE PROBATION DATES
01/24/14 **04** **00/00/00** TO **00/00/00** HOURS SUSPENDED: **40.00** RES-IND N
060 REFUSE DIRECTIVE OF SUPV MIN# **00-00-** -
2 SUSPENSION
CORRECTIONAL OFFICER II **LEE CORRECTIONAL INSTITUTION** **01/09/14**

09/14/16 **04** **00/00/00** TO **00/00/00** HOURS SUSPENDED: **8.00** RES-IND N
020 UNPROFESSIONAL CONDUCT MIN# **00-00-** -
2 SUSPENSION
CORRECTIONAL OFFICER II **LEE CORRECTIONAL INSTITUTION** **08/27/16**

PAGE > **0006**
PF4 > NEW EMP PF2 > ADD PF3 > UPDATE PF9 > DELETE PF12 > NAME SEARCH

14:39:31 Friday, August 04, 2017

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*DASI110D        SOUTH CAROLINA DEPARTMENT OF CORRECTIONS              08/04/17
 DASI110M            HUMAN RESOURCES MANAGEMENT SYSTEM                C040483
 PSDAS01A                   DISCIPLINARY HISTORY

SSN/EMPL#> 044716     > FOX, VANESSA E                  CORRECTIONAL OFFICER I


  EFF DATE      FED CODE  PROBATION DATES
  01/28/13        04  00/00/00  TO 00/00/00  HOURS SUSPENDED:   0.00  RES-IND N
020 UNPROFESSIONAL CONDUCT                                  MIN# 00-00-     -
1  WRITTEN WARNING
CORRECTIONAL OFFICER II      LEE CORRECTIONAL INSTITUTION              01/19/13

  05/07/13        04  00/00/00  TO 00/00/00  HOURS SUSPENDED:  24.00  RES-IND Y
170 INSUBORDINATION            060 REFUSE DIRECTIVE OF SUPV MIN# 00-00-     -
2  SUSPENSION
CORRECTIONAL OFFICER II      LEE CORRECTIONAL INSTITUTION              04/21/13



                                                                  PAGE > 0005
PF4 > NEW EMP  PF2 > ADD  PF3 > UPDATE  PF9 > DELETE  PF12 > NAME SEARCH
```

South Carolina Department of Corrections
Office of Inspector General, Division of Police Services

CASE STATUS REPORT

34-2015-482

INFORMATION DESCRIPTION	
CASE STATUS:	OPEN - ACTIVE
CREATE DATE:	01/05/2015
OPENING DATE:	11/02/2015
CLOSING DATE:	

CASE CLASSIFICATION	
CODE	DESCRIPTION
52	INMATE GRIEVANCES
74	VIOLATION OF EMPLOYEE-INMATE RELATIONS POLICY

CASE AGENT	ASSISTING AGENT	SUPERVISOR
COGGINS, N. F. (021235)		COGGINS, N. F. (021235)

INCIDENT LOCATION: LEE (0551)

INCIDENT DATE: 10/21/2015

SUBJECTS	
NAME (ID)	TYPE
ABRAMS, QUANDA L (034453)	E
FOX, VANESSA E (044716)	E

COMPLAINANTS	
NAME (ID)	TYPE
CLARK, TARELL SHANDO (00295774)	I

REMARKS:

On October 30, 2015 grievance Lee-0918-15 was received in Police Services Administration. Inmate Tarell Clark, SCDC ID 295774, wrote that on October 21, 2015, Sgt. V. Fox, EMPL ID 044716, taunted him by calling him a "snitch" and saying "poor baby." He had asked for a shave and haircut while he was up front to see medical. Then at his cell, he was talking to Fox, when Lt. Q. Abrams, EMPL ID 034453, reached out and slammed his flap, hitting him in his mouth and chipping a tooth. He wants a transfer.

MIN. None since 2/9/15. DISCIPLINARY- 10/18/15- Exhibit; MEDICAL- Numerous medical visits [redacted]

No action for inmate. He has asked for transfers every time he is housed at Lee CI as far back as 2012. To L. Martin with suggestion of referral to warden for Fox's remarks and flap protocol.

AGENT'S SIGNATURE: [signature] DATE: 11/2/15

APPROVED (SUPERVISOR'S SIGNATURE): DATE:

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC636

South Carolina Department of Corrections
Office of Inspector General
Division of Police Services

INMATE GRIEVANCE REVIEW ROUTING SLIP

Inmate Name & SCDC Number Tarell Clark 295774

Grievance Number: Lee-0918-15 Incident Date: 10/21/15

Persons Involved: Sgt. Fox

Lt. Abrams

Grievance reviewed by N. Coggins, Division of Police Services.

Returned to L. Martin, Inmate Grievance Branch on 11/02/2015

with the below disposition:

____ Investigation case number

✓ No Investigation: [redacted]

✓ Refer to: Warden- for Fox's comments and flap policies

****

✓ MIN None since 3/8/15

✓ Disciplinary 10/18/15- Exhibit-

✓ Medical [redacted]

✓ Other he has asked for a transfer every time he is housed at LEE CI since 2012

PCM Reference Number 34-2015-482

SCDC Form 23-69 (created September 2015)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC637

RECEIVED
OCT 28 2015

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

INMATE GRIEVANCE

INMATE NAME: Tarell Clark

SCDC NUMBER: 295774 295774

INSTITUTION: Lee CI

HOUSING UNIT: RHU 123 OCT 23 2015

WORK ASSIGNMENT: (Or)

OFFICE USE ONLY

Grievance No. LeeCI 0918-15

Code: General EXIS

Policy

Disc. Hear.

Class.

PREA

Date Received 10/28/15

IGC Initials

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

On oct the 21st I escorted into the holding cell area and placed in cell #3 were I waited to been seen by the doctor after seeing the doctor I was placed back in to the holding cell #3 were I waited to escorted back to my cell. Srg fox along wit Lt Arbum monitored the holding cell area as inmates was transported to see the doctor. I made the statment that I needed a hair cut & shave why I was up front since it had been at least a mat and a half since I had on Srg fox then said you not geting a cut or shave your snitching ass she continued saying that I was scared to go to the yard. as I made an effort to explain that I was only trying to get my hair cut and not an argument. Lt Abram who was standing to the side of my cell quickly and with out warning slamed the flap in my mouth causing a chip on my tooth on the right side of my mouth I still cuff so I could not block it Srg fox then walk to my cell and in a taunting manner said "poor baby" srg fox then ask Lt Abram to get the camra and she and began shaking her chemical munition at this time I was afraid I was t Escorted back to my cell I did not resist or Refuse Srg fox held my cuff as she slang me into my cell and said you good Lt Abram giggled grievance writing mutha fucka Due to this incident I fear for my life please help me

Tarell Clark 10-21-15

Grievant Signature Date

ACTION REQUESTED:

ACTION TAKEN BY IGC: ☐ PROCESSED ☐ UNPROCESSED ☐ OTHER

IGC Signature Date

(CONTINUE ON REVERSE SIDE)

SCDC 10-5 (Rev. October 2013)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC638

A copy of this grievance has been forwarded to the IGB for possible review by the Office of Inspector General Police worlas due to the allegations made in the grievance. 10/25/11

WARDEN'S DECISION AND REASON:

Warden Signature **Date**

- ☐ **I accept the Warden's decision and consider the matter closed.**
- ☐ **I do not accept the Warden's decision and wish to appeal.**

Grievant Signature **Date** **IGC Signature** **Date**

INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM

1. **An informal resolution shall be attempted prior to the filing of Step 1 by sending an Inmate Request to Staff Member (RTSM) form or Kiosk reference number to the appropriate supervisor. A copy of the answered RTSM must be attached to the grievance when the grievance is filed.**
2. **Complete each section in its entirety writing only in the space provided for inmate use. No additional pages will be permitted.**
3. **Only one (1) issue is to be addressed on each form.**
4. **Submit the completed form by placing it in the Grievance Box at your institution within eight (8) working days of the date on the RTSM response; policy grievances can be filed at any time. Disciplinary and Classification Review appeals must be submitted within five (5) working days of the hearing/review. Do not write in the space provided for the Warden's response.**
5. **If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, by placing your Step 2 appeal form in the Grievance Box at your institution.**

South Carolina Department of Corrections
Office of Inspector General, Division of Police Services

CASE STATUS REPORT

34-2015-573

INFORMATION DESCRIPTION	
CASE STATUS:	OPEN - ACTIVE
CREATE DATE:	01/05/2015
OPENING DATE:	12/29/2015
CLOSING DATE:	

CASE CLASSIFICATION	
CODE	DESCRIPTION
52	INMATE GRIEVANCES
69	USE OF FORCE

CASE AGENT	ASSISTING AGENT	SUPERVISOR
COGGINS, N. F. (021235)		COGGINS, N. F. (021235)

INCIDENT LOCATION: LEE (0551)

INCIDENT DATE: 10/13/2015

SUBJECTS		COMPLAINANTS	
NAME (ID)	TYPE	NAME (ID)	TYPE
FOX, VANESSA E (044716)	E	MCDUFFIE, JYNEEL DEONTAI (00356613)	I

REMARKS:

On December 23, 2015 grievance LEE-0894-15 was received in Police Services Administration. Inmate Jyneel McDuffie, SCDC ID 356613, wrote that on October 13, 2015 Sgt. Vanessa Fox, EMPL ID 044716, told him to come to his door. He replied that he was using the toilet. She gassed his room. More than one hour later, she returned to take him to medical. Instead of PUOF, it was for his sick call request. When returned to his room, she took his legal work and a Quran given to him by the chaplain and placed them into the trash in his presence. He wants her suspended and his own Quran from his property. He wants to sue her because his proof of legal deadline was on the papers she destroyed.

MIN- None for date. DISCIPLINARY - None for date; MEDICAL-10[redacted]no mention of gas incident. 10/20-hunger strike due to dispute with officer, no details. 10/24-CCC- says hunger strike to get transferred.

No action for inmate. Denied any problems in Medical. To L. Martin.

AGENT'S SIGNATURE: [signature] DATE: 12/29/15

APPROVED (SUPERVISOR'S SIGNATURE): DATE:

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC641

South Carolina Department of Corrections
Office of Inspector General
Division of Police Services

INMATE GRIEVANCE REVIEW ROUTING SLIP

Inmate Name & SCDC Number Jyneel McDuffie 356613

Grievance Number: LEE-0894-15 Incident Date: 10/13/15

Persons Involved: Sgt. Vanessa Fox

Grievance reviewed by N. Coggins, Division of Police Services.

Returned to L. Martin, Inmate Grievance Branch on 12/29/2015

with the below disposition:

____ Investigation case number

✓ No Investigation: Inmate denied incident in medical

____ Refer to:

****

✓ MIN None for date

✓ Disciplinary None for date

✓ Medical 10/13- call from officer inmate has breathing issues. Inmate denies breathing issues, no mention gas etc. 10/20- hunger strike; 10/22- off hunger strike; 10/24-CCC- was on hunger strike to get transfer

____ Other

PCM Reference Number 34-2015-573

SCDC Form 23-69 (created September 2015)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC642

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INMATE GRIEVANCE BRANCH
MEMORANDUM

TO: Nikki Coggins, Investigator,
Office of Inspector General,
Division of Police Services

FROM: James Simmons, III
Inmate Grievance Administrator
Inmate Grievance Branch

RE: Inmate Grievance Branch Transfer of Grievance File
Inmate: Deontia McDuffie, SCDC # 356613 Jyneel Deontai McDuffie
Grievance Number: Lee 894-15

DATE: December 21, 2015

Please be advised that the above-referred inmate has filed an OIGPS grievance pursuant to SCDC Policy GA-01-12 and procedures associated with that policy. The inmate's file is being transferred to you pursuant to this policy. You will note that a response to the grievance should be served on the inmate no later than 11/30/2015 in order to be in compliance with SCDC's policies and procedures.

Your return of such file to us, after your review, by 1/5/2016 will enable us to process the same so that it will be properly served on the inmate and processed by the appropriate local institution.

Please feel free to contact us should you need any assistance.

James Simmons, III
Inmate Grievance Administrator

CC: Inmate Grievance Branch File

GRIEVANCE TO OIGPS 12-21-15

GRIEVANCE BACK FROM OIGPS _____

UPDATE OIGPS AND OMS _____

OIGPS RESPONSE TO IGC _____

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC643

RECEIVED
OCT 13 2015

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INMATE GRIEVANCE FORM

STEP 1

Jyneel McDuffie

INMATE GRIEVANCE

INMATE NAME: Deontai McDuffie

SCDC NUMBER: 356613

INSTITUTION: Lee C.I.

HOUSING UNIT: BHU-124

WORK ASSIGNMENT: OCT 15 2015

OFFICE USE ONLY

Grievance No. LeeCI0899-15

Code: General ert/us

Policy

Disc. Hear.

Class.

PREA

Date Received 10/16/15

IGC Initials

STATEMENT OF GRIEVANCE (Indicate the date of incident, and if the grievance is a challenge to SCDC Policy, specify which policy. Include supporting documentation and attach answered RTSM or Kiosk reference number.)

On 10/13/15 around or about 3:00 pm Sgt. Fox Knowingly, Unlawfully, Maliciously, and Sadistically Violated my 8th amendment Right's By Viciously attacking me with Chemical. On the above Date and time Sgt. Fox Knocked on my Cell Door and ask me to come to my Door to be restrained in Leg and wrist manacles. I replyed: "Hold on one minute I am using the toilet". Approx. 10 seconds later Sgt. Fox open the food service flap on my cell Door and attacked me with Chemical without a Camera Present. Sgt. Fox then shut the flap and Exited A-Wing and returned an hour and half later [redacted] Sgt. Miller to take me to Medical. When [redacted] I thought was from Being attacked with Chemical Munition. However it was for My request to be Seen By Medical [redacted] After to My Cell, Sgt. Fox Conducted a Shake down of My Cell and in My Presence threw away Some of My legal papers the Qur'an the Chaplain Sent me. BHU Sgt. Fox Violated my 8th amendment, Deliberate Indifference, By attacking me with chemical Munition without a camera Present and Deliberately Denying me Medical Attention after She attacked me with Chemical Munition and Also throwing away Some of my legal Papers, which have the Proof of my Dead line, and Qur'an into the trash in my Presence.

Grievant Signature 10/13/15 Date

ACTION REQUESTED: I want to Sue Sgt. Fox. get my Quran out of my Propery. I want Sgt. Fox on Supension without Pay & Demoted to officer

ACTION TAKEN BY IGC: ☐ PROCESSED ☐ UNPROCESSED ☐ OTHER

A copy of this grievance has been forwarded to the Inmate Grievance Branch for possible review by the Office of Inspector General Police Services (PS) due to the allegations made in this grievance. The time frames stated in GA-01.12 "Inmate Grievance System" for responses to grievances are not applied to grievances sent to PS. Time frame for response begins once the grievance returns from PS. KHL 10/16/15

IGC Signature Date

(CONTINUE ON REVERSE SIDE)

SCDC 10-5 (Rev. October 2013)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC644

South Carolina Department of Corrections
Office of Inspector General, Division of Police Services

CASE STATUS REPORT

34-2015-573

INFORMATION DESCRIPTION	
CASE STATUS:	OPEN - ACTIVE
CREATE DATE:	01/05/2015
OPENING DATE:	12/29/2015
CLOSING DATE:	

CASE CLASSIFICATION	
CODE	DESCRIPTION
52	INMATE GRIEVANCES
69	USE OF FORCE

CASE AGENT	ASSISTING AGENT	SUPERVISOR
COGGINS, N. F. (021235)		COGGINS, N. F. (021235)

INCIDENT LOCATION: LEE (0551)

INCIDENT DATE: 10/13/2015

SUBJECTS		COMPLAINANTS	
NAME (ID)	TYPE	NAME (ID)	TYPE
FOX, VANESSA E (044716)	E	MCDUFFIE, JYNEEL DEONTAI (00356613)	I

REMARKS:

On December 23, 2015 grievance LEE-0894-15 was received in Police Services Administration. Inmate Jyneel McDuffie, SCDC ID 356613, wrote that on October 13, 2015 Sgt. Vanessa Fox, EMPL ID 044716, told him to come to his door. He replied that he was using the toilet. She gassed his room. More than one hour later, she returned to take him to medical. Instead of PUOF, it was for his sick call request. When returned to his room, she took his legal work and a Quran given to him by the chaplain and placed them into the trash in his presence. He wants her suspended and his own Quran from his property. He wants to sue her because his proof of legal deadline was on the papers she destroyed.

MIN- None for date. DISCIPLINARY - None for date; MEDICAL-1[redacted]no mention of gas incident. 10/20-hunger strike due to dispute with officer, no details. 10/24-CCC- says hunger strike to get transferred.

No action for inmate. Denied any problems in Medical. To L. Martin.

AGENT'S SIGNATURE: [signature]

DATE: 12/29/15

APPROVED (SUPERVISOR'S SIGNATURE):

DATE:

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC645

entered 1/30 tpm

SOUTH CA NA DEPARTMENT OF CORRE NS

EMPLOYEE CORRECTIVE ACTION

4 Vi t. V. Fox

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: B-1

REVIEW MEETING

Meeting Date: 1-30-09 Time: 1:45 pm Location: Warden's office

Alleged Violation: 070 - Reporting late for work Date of Incident: 1-14-09

Charging Party: A/W Bell Date: 1/19/09

Reprimanding Authority: Warden Pallito Date: 1/19/09

Receipt of Notification Employee Signature: [signature] Date: 1-20-09

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Code:

Reporting for Work Late - 070

CORRECTIVE ACTION

X	Written Warning			
_____	Probation	Effective Date: _____	No. of days: _____	
	Suspension	Effective Date:	No. of hours:	Return On:
_____	Demotion	Effective Date: _____	From	To
		_____ Without Salary Reduction	Position _____	
		_____ With Salary Reduction	Location _____	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: [signature] Date: 1-30-09

Reprimanding Authority: [signature] Date: 1/30/09

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC155

SOUTH OLINA DEPARTMENT OF CORR ONS

INCIDENT REPORT

Human Resources

Institution / Center:	Lee CI				
Date of Report:	1-14-09			Time of Report:	11:38 am
Reporting Official:	C Borgersrode # 017721			Date of Incident:	1-14-09
Location of Incident:				Time of Incident:	7:04 am
Inmate(s)/Resident:	SCDC#	Age	Race Sex	Employee(s) Involved:	
1.				1. V. Fox	
2.				2.	
3.				3.	
4.				4.	
5.				5.	

On the above date and approximate time: Officer Vanessa Fox received her third late slip of Sgt. Borgersrode have been the importance of coming to work on time. Officer Fox is being charged with,

(070) Reporting for work late, Failure to observe assigned work hours

Signature: Sgt. C Borgersrode

Evidence:

Witness(es):

Supervisor's Comments: Forwarded to Human Resources for consideration of (070)
AWB 1/14/09

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC156

entered 7/7

SOUTH CA JA DEPARTMENT OF CORRE NS

2 pgs V. Fox

EMPLOYEE CORRECTIVE ACTION

Employee Name: [redacted] SS#: [redacted]

Division/Institution: Lu - CI B-1

REVIEW MEETING

Meeting Date: 7-9-09 Time: [redacted] Location: Warden's office

Alleged Violation: 90 - Unauthorized Absence Date of Incident: 6/15/09

Charging Party: A/W Bell Date: 6/28/09

Reprimanding Authority: Warden Padula Date: 6/28/09

Receipt of Notification Employee Signature: Vanessa 3. Fox Date: 7-30-09

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Code:

Unauthorized Absence - 040

CORRECTIVE ACTION

X	Written Warning	Cannot be paid for date of absence		
_____	Probation	Effective Date: _____	No. of days: _____	
	Suspension	Effective Date:	No. of hours:	Return On:
_____	Demotion	Effective Date: _____	From	To
		_____ Without Salary Reduction	Position	
		_____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: X [signature] Date: X 7-7-09

Reprimanding Authority: [signature] Date: 7/7/09

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC152

SOUTH C. INA DEPARTMENT OF CORREC S

INCIDENT REPORT

Page 1 of 1

Institution / Center: Lee CF	Date of Report: 6/15/09
Reporting Official: ofc Atkinson	Date of Incident: 6/15/09
Location of Incident: Front Lobby	Time of Incident: approx 8:15 am

Inmate(s) / Resident(s) SCDC# Age Race Sex	Employee(s) Involved
1.	1. ofc Fox
2.	2. contraband ofc Williams
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

While shakendown ofc Fox, I ofc Atkinson heard contraband Williams tell ofc Fox that she could not bring her mesh bag in due to it not being see through. Ofc Fox then walked out the door.

Signature: ofc Atkinson Title:

Evidence: Disposition:

Witness(es):

Supervisor's Comments:	Action Taken
This is what officer Atkinson stated what happen, No Supervisor was advised during the incident No one was contacted by ofc Fox after she left the institution	( ) Counseling ( ) Informal Resolution
	( ) Extra Duty / Other
	( ) Incident is STG related
Signature: Capt. C. Johnson Title: Capt. 6/15/09	( ) Refer to Disciplinary Hearing

Major's Comments:	Refer to STG Committee:
	( ) Yes ( ) No ( ) Unknown
	This Incident is DRUG related:
	( ) Yes ( ) No ( ) Unknown
	Disciplinary Classification
Signature: Date:	( ) Major ( ) Minor ( ) Informal Resolution

SCDC 10-20A (Rev. June 1999)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC153

6/24 MW

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS Human Resources

INCIDENT REPORT

~~09-06~~ Information Only

Page 1 of 1

Institution/Center:	LEE Correctional Institution
Date of Report: 6-15-09	Time of Report: 10:40AM
Reporting Official: M. Williams	Date of Incident: 6-15-09
Location of Incident: Front Lobby at the Front Gate	Time of Incident: Approx. 8:05 AM

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. ofC. Fox 044716
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: While passing through the front lobby at the front gate I ofC. M Williams informed ofC. Fox that her Black Net Bag Wasn't in accordance to the Warden directive. ofC. Fox was informed several time by several different contraband officers, but, failed to comply. ofC fox stated that she was leaving to get a bag. I stated to her that I didn't tell her that She had to leave. Then I reported back to Contraband.

Signature: M. Williams

Evidence:

Witness(es):

Supervisor's Comments: This what ofC. M. Williams of Contraband stated; that happen at the front gate, Lt. Graham and Myself, Capt Johnson was notified after ofC. Fox left the institution she never returned or called were later notified by ofC Atkinson & Williams

Signature: [illegible] Johnson Title: Capt. Date/Time: 6/15/09 2?

Major/Responsible Authority: Forwarded to Human Resources for corrective action of (090) Unauthorized absence since she did not check with her supervisor about leaving.

Al Bell 6/16/09

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Close FOIA for Vanessa Fox Nov. 13, 2019 GC154

intend 4/13

SOUTH CA IA DEPARTMENT OF CORRE NS

4 days

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: B-1

REVIEW MEETING

Meeting Date: 4-13-10 Time: 9:30 am Location: Warden's office

Alleged Violation: 010 - Inappropriate Behavior Date of Incident: 3-17-10

Charging Party: A/w Bell Date: 4-5-10

Reprimanding Authority: Warden Pachulz Date: 4-5-10

Receipt of Notification Employee Signature: Refused to Sign Capt. C. Jones Date: 4/7/10
E. Ball 4-7-10

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Inappropriate Behavior Code: 010

CORRECTIVE ACTION

X	Written Warning			
_____	Probation	Effective Date: _____	No. of days: _____	
	Suspension	Effective Date:	No. of hours:	Return On:
_____	Demotion	Effective Date: _____	From	To
		_____ Without Salary Reduction	Position	
		_____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Refused to Sign Date: X

Reprimanding Authority: Date: 4/13/10

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC147

Control # 10-05-284

SOUTH C[illegible]INA DEPARTMENT OF CORREC[illegible]S

INCIDENT REPORT

Institution / Center:	Lee C.I.
Date of Report:	3-21-2010
Time of Report:	6:45p.m. Approx.
Reporting Official:	O/C V. Fox
Date of Incident:	3-17-2010
Location of Incident:	Sumter South
Time of Incident:	2:45 p.m. Approx.

Inmate(s)/Resident:	SCDC#	Age	Race	Sex
1. Darrel Evans	251541	[illegible]	[illegible]	[illegible]
2.				
3.				
4.				
5.				

Employee(s) Involved:
1. O/C V. Fox
2. O/C S. Wise
3. Sgt Miles
4. Unknown Nurse
5.

On the above date and approximate time: On March 17, 2010 during the lockdown of the entire institution I O/C V. Fox was assign to Sumter Unit (southside)! As I O/C V. Fox was Conducting my daily duties when Inm Darrel Evans #251541 notified me that he had not receive any of his medication ~~for~~ all day! Then I O/C V. Fox called [illegible]ical at Ext 2457 at approx. 11:30 a.m. and spoke with a Nurse to correct the mistake! I O/C V. Fox was told by medical that the Nurse coming around later with the medicatio WOULD have Inm D. Evans meds! Later that afternoon at approx. 2:45 p.m. a unknown Name Nurse & Sgt Miles enter the southside of Sumter Unit with the inmates medicating! 9 11 & 17 & O/C S. Wise was sorting out the mail! O/C S. Wise address the Nurse first about medication

Signature: O/C V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC148

1003243

SOUTH C INA DEPARTMENT OF CORREC S

INCIDENT REPORT

Page 1 of 1

Institution / Center: Lee	
Date of Report: 3-17-10	Time of Report: ~~3-17-10~~ WS 3:00PM
Reporting Official: Wanda Sermons	Date of Incident: 3-17-10
Location of Incident: Sumter Unit South side	Time of Incident: 2:40 PM

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Nurse Sermons
2.	2. Officer Fox
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

Approx 2:40 PM While passing meds on Sumter Unit South side. Officer Fox asked writer Nurse Sermons about an inmate meds that he was not receiving since yesterday. Instructed officer Fox that lockdown starter after the pill-line yesterday. So if the inmate did not receive his meds that was his fault. Officer Fox got loud and said "well he did not receive his meds at 4:30am pill pass." I Nurse sermons said well 04:30am is today. Officer Fox said "Well that is yesterday to me." I nurse Sermons told officer Fox that I would check into it. While walking away Officer Fox said "well do what you do then." I Nurse Sermons said "Dont worry I will." Officer Fox said "I am not a inmate so your not going to talk to me any way." I Nurse Sermons said "neither am I and your not going to talk to me any kind of way." While passing meds on top tier Officer Fox said "That's why people are getting shot in the chest around here now."

Signature: Wanda Sermons LPN

~~NS~~ Charge # 809 incident # 1003243 charging with threat to Evidence: ~~inflict harm on / assulting an employee and/or members of the~~

Witness(es): ~~Public~~.

Supervisor's Comments: This Report IS For Information. This is A very Serious Statement to say.

5:00 pm

Signature: Title: Date/Time: 3-17-10

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Close FOIA for Vanessa Fox Nov. 13, 2019 GC150

3/24

SOUTH C. DEPARTMENT OF CORREC — Human Resources

INCIDENT REPORT

320

Page 1 of 1

Institution/Center:	Ker CI				
Date of Report:	3 20 10		Time of Report:	Approx 8:00am	
Reporting Official:	Sgt Miles		Date of Incident:	3-17-10	
Location of Incident:	Kershaw South		Time of Incident:	Approx 1200pm	
Inmate(s)/Resident:	SCDC#	Age Race Sex	Employee(s) Involved:		
1.			1.	Officer Fox	
2.			2.	Nurse Sermon	
3.			3.		
4.			4.		
5.			5.		

On the above date and approximate time: I Sgt Miles was assiting with escorting the nurse around for the pill line in Kershaw South. Nurse Sermon was told by officer Fox that an inmate had not recived his meds since the day before. After several attempts by Nurse Sermon asking what was the specific time he got his last dose. Officer Fox stated it was 400 am that morning when he got his meds. Nurse Sermon stated that was not yesterday. officer stated 400 am for her is yesterday. Officer Fox and Nurse Sermon exchanged some words. Nurse Sermon droped the issue but officer Fox kept making remarks. I told her to drop it but Officer Fox continued. At the end of the pill passing out Officer Fox stated "that why people are getting shot in the chest around here for treating inmates any way.

Signature: Sgt Miles

Evidence:

Witness(es):

Supervisor's Comments: Fowarded to Human Resources for corrective action (010) for CO Fox. Her remarks were very inappropriate.
AWR 3/22/10

Signature: Title: Date/Time:

Major/Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken
( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC151

SOUTH C. INA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center:	L.E.C.I.				
Date of Report:	3-21-2010.			Time of Report:	6:45 pm approx
Reporting Official:	Ofc V. Fox			Date of Incident:	3-17-2010
Location of Incident:	Sumter south			Time of Incident:	2:45 pm approx.
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1.					1. Ofc V. Fox
2.					2. Ofc S. Wise
3.					3. Sgt Wiles
4.					4. Unknown Nurse
5.					5.

On the above date and approximate time: For an inmate on the N outside! The Nurse quickly became angry and aggravated with Ofc S. Wise questions! As the Nurse & Sgt Wiles walked over to my desk, I Ofc V. Fox attempt to ask the Nurse about Inm Evans medication! In my explanation of Inm Evans circumstance, I Ofc V. Fox struggle to explain the situation, because the Nurse refuse to listen! At this point the Nurse is trying to over talk me! And now she is extremely hostile and making negative remarks! To defend myself from this Nurse verbal assault, I Ofc V. Fox told the Nurse to get Out of my personal space, Stop yelling at me. and that I Not an inmate. As the Nurse walked around the wing passing out medication She continued making Negative Comments and then began arguing with the inmates

Signature: Ofc V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC149

entered 4/13 AM

SOUTH CAR A DEPARTMENT OF CORREC S

4 pages of file

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: Br I

REVIEW MEETING

Meeting Date: 4-13-10 Time: 9:35am Location: working office

Alleged Violation: 070- Refusing or failing to Observe Assigned work hours Date of Incident: 3-5-10

Charging Party: A/W Bell Date: 4-5-10

Reprimanding Authority: Warden Padula Date: 4-5-10

Receipt of Notification Employee Signature: Vanessa Fox Date: 4-[illegible]-2010 after

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Reporting to Work Late (2nd Offense) Code: 070

CORRECTIVE ACTION

_____	Written Warning			
X	Probation	Effective Date: 4/13/10	No. of days: 90	
	Suspension	Effective Date:	No. of hours:	Return On:
_____	Demotion	Effective Date:	From	To
		_____ Without Salary Reduction	Position	
		_____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: X Refused to Sign AM Date: X

Reprimanding Authority: [signature] Date: 4/13/10

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC137

070

SOUTH CA NA DEPARTMENT OF CORRECT

INCIDENT REPORT

Human Resources

Institution/Center:	Lee CI				
Date of Report:	3-9-10			Time of Report:	7:19 am
Reporting Official:	C Borgerson #022721			Date of Incident:	3-5-10
Location of Incident:	Briefing Room			Time of Incident:	6:53am
Inmate(s)/Resident:	SCDC#	Age	Race Sex	Employee(s) Involved:	
1.				1. OFC U. Fox (B1)	
2.				2.	
3.				3.	
4.				4.	
5.				5.	

On the above date and approximate time: Officer U Fox was given her third late slip. Officer Fox is now being written up for

070) Refusing or failing to observe assigned work hours.

Signature: Sgt C Borgerson

Evidence:

Witness(es):

Supervisor's Comments: Forwarded to Human Resources for corrective action of (070)

AW Beck 3/11/10

Signature: Title: Date/Time:

Major / Responsible Authority: Had some personal issues she was dealing with after moving w/ child getting adjusted.

Signature: Title: Warden Date: 4/12/10

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC138

LATE SLIP FORM

DATE: 3-5-10

FROM: Fox

TO: SHIFT SUPERVISOR

This is to report that I arrived at the institution for duty

at 6:53am (am/pm) and was _____ minutes late.

My reason/s for being late is as follows:

Late for Briefing

Signature of Employee

LATE SLIP FORM

DATE: 2-17-10

FROM: Fox

TO: **SHIFT SUPERVISOR**

This is to report that I arrived at the institution for duty

at 7:50Am (am/pm) and was 10 minutes late.

My reason/s for being late is as follows:

NO EXCUSE

Sgt Ferguson

Signature of Employee

LATE SLIP FORM

DATE: 3-1-16

FROM: _____

TO: **SHIFT SUPERVISOR**

This is to report that I arrived at the institution for duty

at 6p.48 (am/pm) and was ~~2000~~ two minutes late.

My reason/s for being late is as follows:

woke up late!

Signature of Employee

C/O V. Fox

SOUTH CAR A DEPARTMENT OF CORREC IS

4 pgs

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: B-1

REVIEW MEETING

Meeting Date: 4-13-10 Time: 9:00am Location: Warden's Office

Alleged Violation: 070 - Refusing or Failing to obey Assigned work Duties Date of Incident: 4-2-10

Charging Party: A/W Bell Date: 4-6-10

Reprimanding Authority: Warden Paramo Date: 4-6-10

Receipt of Notification Employee Signature: [signature] Date: 4-7-10

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Reporting to Work Late Code: 070

CORRECTIVE ACTION

_____	Written Warning			
_____	Probation	Effective Date: _____	No. of days: _____	
_____	Suspension	Effective Date:	No. of hours:	Return On:
_____	Demotion	Effective Date:	From	To
		_____ Without Salary Reduction	Position	
		_____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	
X	No action imposed (give reason). Combined w/ 070 on 4/12/10			
_____	Oral counseling only (not to be placed in employee's personnel file).			
	Referral to SCDC Employee Assistance Program (EAP).			

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Refused to Sign Date: 4/13/10

Reprimanding Authority: [signature] Date: 4/13/10

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC142

SOUTH C/ NA DEPARTMENT OF CORREC

INCIDENT REPORT

Human Resources

Institution/Center: Lee CI	
Date of Report: 4-2-10	Time of Report: 2:32 pm
Reporting Official: CBrogesade #02771	Date of Incident: 4-2-10
Location of Incident: Briefing Room	Time of Incident: 6:57 am
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. OFC V. Fox (BI)
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: OFC. V Fox has been given three Late slips OFC. Fox is now being Charged with

(070) Refusing or failing to obey assigned work hours.

Signature: [signature]

Evidence:

Witness(es):

Supervisor's Comments: Forwarded to Human Resources for corrective action if Cord.

[signature] 4/13/10

Signature: Title: Date/Time:

Major/Responsible Authority: Reviewed issues.

[signature] 4/13/10

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC143

LATE SLIP FORM

DATE: 3-29-10

FROM: OFC. U Fox

TO: SHIFT SUPERVISOR

This is to report that I arrived at the institution for duty

at 6:57 (am/pm) and was _____ minutes late.

My reason/s for being late is as follows:

Late for Work

Sgt. C Ferguson

Signature of Employee

LATE SLIP FORM

DATE: 3-20-2010

FROM: _____

TO: SHIFT SUPERVISOR

This is to report that I arrived at the institution for duty

at 6:40 (am)pm) and was three minutes late.

My reason/s for being late is as follows:

Said to me Lt Graham that she didn't have a Reason.

Arrived in briefing @ 6:52am

Signature of Employee

LATE SLIP FORM

DATE: March 17 2010

FROM: Fox

TO: **SHIFT SUPERVISOR**

This is to report that I arrived at the institution for duty

at 6:38 (am/pm) and was _____ minutes late.

My reason/s for being late is as follows:

I was delay at the front gate, because of a long line of people!

-Late for Briefing

Signature of Employee

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LEE CORRECTIONAL INSTITUTION

MEMORANDUM

TO: Vanessa Fox, Correctional Officer – SMU B1 Shift

FROM: A. J. Padula, Warden – Lee Correctional Institution

SUBJECT: ADMINISTRATIVE SUSPENSION

DATE: July 6, 2010

This is to notify you that you are being placed on administrative suspension without pay effective July 6, 2010 at 10:30am pending Corrective Action for "Unprofessional Conduct" and "Refusal to Carry Out Oral or Written Directions of a Supervisor". This suspension is in accordance with SCDC Policy ADM-11.04, "Employee Corrective Action" in that your presence presents a perceived threat or danger to the health and/or safety of other employees or to the operation or security of the institution.

If you choose to appeal this action through the Agency's Employee Grievance and Appeals Process, you must file your appeal with the Employee Relations Branch within fourteen (14) calendar days of receipt of this notification.

You have been provided the corrective action review meeting notice scheduling you to meet with me on Thursday July 8, 2010 at 12:00pm to respond to the allegations contained in the Incident Reports, copies of which you were also provided. If you fail to attend the review meeting it will be held in your absence.

If you have any questions concerning this action, you may contact Human Resources.

S/ _____
A. J. Padula, Warden

cc: Employee Relations Branch
Mr. Catoe
Office File

Receipt Acknowledged S/ _____ Date 7-6-2010

SOUTH CAR... A DEPARTMENT OF CORRE... IS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: Lee Correctional Institution

REVIEW MEETING

Meeting Date: 7/8/10 Time: 12:00 pm Location: Warden's Office

Alleged Violation: Unprofessional Conduct - 050 Date of Incident: 6/6/10

Refusal to Carry out Oral/Written Direction of Supervisor - 060

Charging Party: Cpt R Cribb Date: 7/6/10

Reprimanding Authority: Warden A. Padula Date: 7/6/10

Receipt of Notification Employee Signature: Refused to Sign Date: 7/6/10

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Refuse to Sign & Refuse Copy Cpt R Date: 7-6-10

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Inappropriate Behavior (Mel) Code: 010

CORRECTIVE ACTION

____	Written Warning			
X	Probation	Effective Date: 7/8/10	No. of days: 90	
X	Suspension	Effective Date: 7/6/10 @ 11am	No. of hours: 24	Return On: 7/10/10 11am
____	Demotion	Effective Date:	From	To
		____ Without Salary Reduction	Position	
		____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
____	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

____ No action imposed (give reason). _____

____ Oral counseling only (not to be placed in employee's personnel file).

____ Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Vanessa Fox Date: 7-8-10

Reprimanding Authority: [signature] Date: 7/8/10

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC124

SOUTH C INA DEPARTMENT OF CORREC S

INCIDENT REPORT

Institution / Center:	Kirby Correctional Inst.
Date of Report:	6 June 2010
Time of Report:	8:55 am
Reporting Official:	Lt Laura A. Ott.
Date of Incident:	6 June 2010
Location of Incident:	SMU
Time of Incident:	7:15 am approx.

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Vanessa Fox
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: Ofc. V. Fox was assigned to SMU South control room. Ofc. Fox after relieving the A-2 shift refused to open the wing door to allow officers access to the wing. Officers stood inside the sally port for approximately 10 minutes and she refused to let them in. Sgt Floyd went over to speak with Ofc Fox of this matter. She stated she was not letting anyone in until she wrote all information down from the outgoing shift. All officers were standing in the sally port. Lt. Ott spoke with Ofc. Fox. Lt. Ott instructed Ofc. Fox to open the door so that the officers could come on the wing. Ofc. ~~Fox to open the door so that~~ Ofc. Fox stated that she was tired of this mess and that she would open the door when she got time. Ofc. Fox became very loud and boisterous saying that

Signature:

Evidence:

Witness(es): Sgt Floyd, Lt. Wilson, Sgt. Scott

Supervisor's Comments: Request Immediate Corrective action for her behavior. Concur with Charges. Voted

Signature: Title: CpT Date/Time: 6 Jun 10 9:25

Major / Responsible Authority: CO Fox maintains that none of this is true; it is all made up as retaliation for her writing I/R's about documentation not being completed.

Signature: Title: Warden Date: 7/8/10

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC126

SOUTH C INA DEPARTMENT OF CORREC S

INCIDENT REPORT

Institution / Center:	Lee Correctional Inst.				
Date of Report:	6 June 2010			Time of Report:	8:55 am
Reporting Official:	Lt Davis C. Lt.			Date of Incident:	6 June 2010
Location of Incident:	SMU			Time of Incident:	6:15 am approx.
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1.					1. V. Fox
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time: Officer Fox was not until she finished doing what she was doing. I told Ofc. Fox that everything should have been written in the log book from the out going shift. Officer Fox still refused to open the door that he she was going to shut up with the behavior. Ofc. Fox was relieved by Sgt. Lloyd & Lt. Davis notified C. Central not to let Ofc. Fox through the access gate. I Lt Davis told Ofc. Fox not to leave until she talk to Capt. Cribb. Ofc. Fox stated that I told her to leave and she was leaving. This is an ongoing complaint from officers. Ofc. Fox does not want to do what she is asked to do and is not a team player. Very disrespectful to her supervisor and other staff members. ADM. 11.04 060 Refusing To Obey Directive 020 Unprofessional Conduct

Signature: Lt. C. Davis

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC127

SOUTH C INA DEPARTMENT OF CORREC

INCIDENT REPORT

Page 1 of 1

Institution / Center: LEE CI	
Date of Report: 7-6-2010	Time of Report: 7:30 AM
Reporting Official: Sgt. Lloyd 016267	Date of Incident: 7-06-2010
Location of Incident: SMU South Wing	Time of Incident: Approx 7:10 AM
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Ofc. Fox
2.	2. Cpl MacBride
3.	3. Ofc Anderson
4.	4. Ofc Farmer
5.	5.

On the above date and approximate time: Ofc Fox was assigned to South Wing control room and refused to let officers on the wing. They stood in the sally port for approx 10 mins, and could not do their jobs. I then gave Ofc Fox a directive to open South Wing door 5le refused. Lt. Davis was notified.

Ofc Fox is in total Violation of AD-11.04 Code 060 Refusal to obey and Carry out Oral or Written direction of Supervisor.

Signature: K. Lloyd

Evidence:

Witness(es):

Supervisor's Comments: Concur with Charges listed.

Signature: Title: Cpt Date/Time: 7-7-10 9:20

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC128

CONTROL 10-07 034

SOUTH CA NA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center: LEE C.I.	
Date of Report: 7-6-2010	Time of Report: 7:13 A.M. approx
Reporting Official: OFC V. Fox	Date of Incident: 7-6-2010
Location of Incident: South Control SMU	Time of Incident: 7:07 A.m. approx

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. ALL THE INMATES ON THE	1. OFC V. FOX
2. SOUTH WING	2. LT. DAVIS
3.	3. CPL MCBRIDE
4.	4.
5.	5.

On the above date and approximate time: I OFC V. FOX HAD JUST ENTER THE SOUTH CONTROL OF SMU. AS I ATTEMPT TO SECURE & CHECK MY AREA CPL MCBRIDE ENTERED THE SOUTH SIDE OF SMU. CPL MCBRIDE INSTANTLY DEMAND I LET HIM ONTO SOUTH CONTROL! I ATTEMPT TO EXPLAIN TO CPL MCBRIDE THAT I NEEDED ONE MINUTE. CPL MCBRIDE IMMEDIATELY BECAME ENRAGE & DISTURB BY THIS! NOT ONE MINUTE LATER SGT LLOYD & LT. DAVIS CAME DOWN TO THE SOUTH SIDE OF SMU! THEY ALL ARE WHOOP & HOWLING AT ME!! AT THIS POINT I WAS AFRAID OF WHAT THEY WERE GOING TO DO NEXT! LT. DAVIS ORDERED ME TO OPEN THE DOOR IN A LOUD DEGRADING TONE AND I COMPLY! WITH NO HESITATION LT. DAVIS BEGAN VERBAL ATTACKING

Signature: OFC V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC129

CONK01 10-07 004

SOUTH CA NA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center: LEE C.I.	
Date of Report: 7-6-2010	Time of Report: 7:13 A.M. APPROX.
Reporting Official: Ofc V. Fox	Date of Incident: 7-6-2010
Location of Incident: SMU South Central	Time of Incident: 7:08 A.M. APPROX

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. SOUTH WING OF SMU	1. Ofc V. Fox
2.	2. Lt. Davis
3.	3.
4.	4.
5.	5.

On the above date and approximate time: ME AND GETTING UP IN MY FACE YELLING SCREAMING ~~AT ANDY~~ "GET OUT OF HERE!!" AS I GRAB MY THINGS I ASKED WHERE AM I GOING? LT. DAVIS SCOLD IN AN OBNOXIOUS & HATEFUL VOICE "HOME WITHOUT PAY!!" I NEED SOME HELP THIS IS A HOSTILE WORK ENVIRONMENT. & I WAS HUMILIATED IN FRONT OF MY PEERS, & CO-WORKERS, AND INMATES! THIS SITUATION IS GROWING OUT OF CONTROL DAY BY DAY & I AM IN FEAR OF BEING ~~SE~~ SERIOUSLY PHYSICAL & MENTAL HARMED!

Signature: Ofc V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC130

SOUTH CAR \ DEPARTMENT OF CORREC S

5 pgs

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: Lee Correctional Institution

REVIEW MEETING

Meeting Date: 7/8/10 Time: 12:00 pm Location: Warden's Office

Alleged Violation: Unprofessional Conduct - 050 Date of Incident: 7/6/10

Refusal to Carry out Oral/Written Direction of Supervisor - 060

Charging Party: Cpt R Cribb Date: 7/6/10

Reprimanding Authority: Warden A. Padula Date: 7/6/10

Receipt of Notification
Employee Signature: [redacted] Date: 7/6/10

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

[redacted]

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC131

SOUTH C/ INA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center:	Ree Correctional Inst.					
Date of Report:	6 June 2010			Time of Report:	8:55 am	
Reporting Official:	/ Davis A. Lt.			Date of Incident:	6 June 2010	
Location of Incident:	SMU			Time of Incident:	715am approx.	
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:	
1.					1. Vanessa Fox	
2.					2.	
3.					3.	
4.					4.	
5.					5.	

On the above date and approximate time: Ofc. V. Fox was assigned to SMU South central room. Ofc. Fox after relieving the A-2 shift refused to open the wing doors to allow officers access to the wing. Officers stood inside the sally port for approximately 15 minutes and she refused to let them in. Sgt. Lloyd went over to speak with Ofc. Fox of this matter. She stated she was not letting anyone in until she wrote all information down from the outgoing shift. All officers were standing in the sally port. I, Lt. Davis spoke with Ofc. Fox. I Lt. Davis instructed Ofc. Fox to open the door so that the officer could come on the wing. Ofc. ~~Fox to open the door so that~~ Ofc. Fox stated that she was tired of this mess and that she would open the door when she get time. Ofc. Fox became very loud and boisterous saying that

Signature:

Evidence:

Witness(es): Sgt. Lloyd, Lt. Wilson, Sgt. Scott

Supervisor's Comments: Request Immediate Corrective action for her behavior. Concur with Charges. Noted

Signature: Title: CpT Date/Time: 6Jun10 9:15 A

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC132

SOUTH C/ NA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center:	Lee Correctional Inst.				
Date of Report:	6 June 2010			Time of Report:	8:55 am
Reporting Official:	Lt. Davis A. Lt.			Date of Incident:	6 June 2010
Location of Incident:	SMU.			Time of Incident:	7:15 am approx.
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1.					1. V. Fox
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time: Officer was wait until she finished doing what she was doing. I told Ofc. Fox that everything should have been written in the log book from the out going shift. Officer Fox still refused to open the door that no one was going to put up with this behavior. Ofc. Fox was relieved by Sgt. Lloyd. I Lt. Davis notified C- Central not to let Ofc. Fox through the access gate. I Lt. Davis told Ofc. Fox not to leave until she talk to Capt. Crubb. Ofc. Fox stated that I told her to leave and she was leaving. This is an ongoing complaint from officers. Ofc. Fox does not want to do what she is asked to do and is not a team player. Very disrespectful to her supervisors and other staff members. ADM. 11.04 060 Refers to Duty Directive: 020 Unprofessional Conduct

Signature: Lt. A. Davis

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC133

SOUTH C. INA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center: LEE CI	
Date of Report: 7-6-2010	Time of Report: 7:30 AM
Reporting Official: Sgt. Lloyd 016267	Date of Incident: 7-06-2010
Location of Incident: SMU South Wing	Time of Incident: Approx 7:10 AM
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Ofc. Fox
2.	2. Cpl. McBride
3.	3. Ofc. Anderson
4.	4. Ofc. Farmer
5.	5.

On the above date and approximate time: Ofc Fox was assigned to South Wing control room and refused to let officers on the wing. They stood in the sally port for approx 10 mins, and could not do their jobs. I then gave ofc. Fox a directive to open South Wing door 5 he refused. Lt. Davis was notified.

Ofc Fox is in total Violation of Adm 11.04 Code 060 Refusal to obey and Carry out Oral or Written direction of Supervisor.

Signature: K. Lloyd

Evidence:

Witness(es):

Supervisor's Comments: Concur with Charges listed.

Signature: [signature] Title: Cpt Date/Time: 6 July 10 9:20

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC134

CONTROL: 10-07 054

SOUTH CA NA DEPARTMENT OF CORREC

INCIDENT REPORT

Page 1 of 2

Institution / Center: LEE C. I.	
Date of Report: 7-6-2010	Time of Report: 7:13 A.M. approx
Reporting Official: OFC V. Fox	Date of Incident: 7-6-2010
Location of Incident: South Control SMU	Time of Incident: 7:07 A.M. approx

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. ALL THE INMATES ON THE	1. OFC V. FOX
2. SOUTH WING	2. Lt. Davis
3.	3. Cpl. McBride
4.	4.
5.	5.

On the above date and approximate time: I OFC V. FOX HAD JUST ENTER THE SOUTH CONTROL OF SMU. AS I ATTEMPT TO SECURE & CHECK MY AREA CPL MCBRIDE ENTERED THE SOUTH SIDE OF SMU. CPL MCBRIDE INSTANTLY DEMAND I LET HIM ONTO SOUTH CONTROL! I ATTEMPT TO EXPLAIN TO CPL MCBRIDE THAT I NEEDED ONE MINUTE. CPL MCBRIDE IMMEDIATELY BECAME ENRAGE & DISTURB BY THIS! NOT ONE MINUTE LATER SGT LLOYD & LT. DAVIS CAME DOWN TO THE SOUTH SIDE OF SMU! THEY ALL ARE WHOOP & HOWLING AT ME!! AT THIS POINT I WAS AFRAID OF WHAT THEY WERE GOING TO DO NEXT! LT. DAVIS ORDERED ME TO OPEN THE DOOR IN A LOUD DEGRADING TONE AND I COMPLY! WITH NO HESITATION LT. DAVIS BEGAN VERBAL ATTACKING

Signature: OFC V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC135

CONIKOI 10-07 004

SOUTH CA NA DEPARTMENT OF CORREC

INCIDENT REPORT

Institution / Center: LEE C.I.	
Date of Report: 7-6-2010	Time of Report: 7:13 A.M. APPROX.
Reporting Official: Ofc V. Fox	Date of Incident: 7-6-2010
Location of Incident: SMU South Control	Time of Incident: 7:08 A.M. APPROX

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1. SOUTH WING OF SMU	1. Ofc V. Fox
2.	2. Lt. Davis
3.	3.
4.	4.
5.	5.

On the above date and approximate time: ME AND GETTING UPIN MY FACE YELLING SCREAMING ~~AT ME!~~ "GET OUT OF HERE!!" AS I GRAB MY THINGS I ASKED WHERE AM I GOING? LT. DAVIS SCOLD IN AN OBNOXIOUS & HATEFUL VOICE, "HOME WITHOUT PAY!!" I NEED SOME HELP THIS IS A HOSTILE WORK ENVIRONMENT. & I WAS HUMILIATED IN FRONT OF MY PEERS, & CO-WORKERS, AND INMATES! THIS SITUATION IS GROWING OUT OF CONTROL DAY BY DAY & I AM IN FEAR OF BEING ~~SER~~ SERIOUSLY PHYSICAL & MENTAL HARMED!

Signature: Ofc V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC136

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LEE CORRECTIONAL INSTITUTION

MEMORANDUM

TO: Vanessa Fox, Correctional Officer – SMU B1 Shift

FROM: A. J. Padula, Warden

SUBJECT: DRIVER'S LICENSE SUSPENSION

DATE: October 20, 2010

The Department of Motor Vehicles has notified the agency that your driver's license will be suspended affective **November 17, 2010** for cancellation of insurance.

SCDC policy requires that you must provide documentation from the Department of Motor Vehicles that you have a provisional license or your license has been reinstated within 45 days of the effective date of the suspension or your employment will be terminated.

As of the effective date of suspension, until the required documentation has been received you will not be allowed to drive a state vehicle, or to drive a private vehicle onto state property.

S/ _____
A. J. Padula

cc: Mr. Oberman
Mr. Catoe
SGT Scarborough

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LEE CORRECTIONAL INSTITUTION
MEMORANDUM

THROUGH: Steven Nolan, Associate Warden for Operations

Clay Catoe, Human Resources Manager

TO: A. J. Padula, Warden

FROM: James C. Dean, Major

SUBJECT: **EMPLOYEE CORRECTIVE ACTION**

DATE: January 18, 2011

On December 15, 2010 at approximately 6:46am Officer Vanessa Fox called Lee Control and said she would be late because she was having car trouble. Officer Fox stated she would be in if she could get her car started. Lieutenant Anthony Davis explained to Officer Fox that this was not an excuse and that she needed to report to work. Officer Fox had also called Lee Control on December 10, 2010 and December 14, 2010 stating she was sick and would not be reporting for duty. On both of these dates Officer Fox did not do a call back to her supervisor.
In accordance with Agency Policy and Procedure ADM-11.04, "Employee Corrective Action", I am recommending Corrective Code # 090 "Unauthorized Absence From Work (Does not report for work: does not obtain approval for authorized leave: does not report for scheduled training: and will not be paid for day(s) of absence), be taken on Officer Vanessa Fox for failure to report for duty.

S/ James C. Dean

Attachment(s)
cc: File

SOUTH OLINA DEPARTMENT OF COI TIONS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: BCI/SMU

REVIEW MEETING

Meeting Date: 2-8-11 Time: 10:45AM Location: Wardens office

Alleged Violation: 090 - unauthorized Absence Date of Incident: 12-15-10

Charging Party: Major Dees Date: 1-24-11

Reprimanding Authority: Lynda Padula Date: 1-24-11

Receipt of Notification Employee Signature: Vanessa Fox Date: 1-28-11

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Unauthorized Absence Code: 090

CORRECTIVE ACTION

	Written Warning	Cannot be paid for 12/15/10		
X	Probation	Effective Date: 2/8/11	No. of days: 90	
	Suspension	Effective Date:	No. of hours:	Return On:
	Demotion	Effective Date:	From	To
		_____ Without Salary Reduction	Position	
		_____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Did not show for review meeting Date: _____

Reprimanding Authority: [signature] Date: 2/8/10

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC111

LEE CORRECTIONAL INSTITUTION

CALL –IN FORMS

TO: Lt Jenkins SUPERVISOR/SHIFT LT.

FROM: _____ SHIFT LT ___ SHIFT

TIME: 0600 (A.M./P.M.

DATE: 12-10-10

On the above date and approx. time: Ofc Fox

Called the institution stating he/she would (circle one):

(1) Be Late (2) Was Sick (3) Not Reporting for duty on the

B-1 shift for reason/s stated:

Sick

This employee states he/she can be reached at [redacted]

S/ McCullers
Control Room Officer

Supervisor/Shift Lt's Remarks: No call back

S/ Lt A. Davis
Supervisor/Shift Lt.

LEE CORRECTIONAL INSTITUTION

CALL –IN FORMS

TO: LT. Davis SUPERVISOR/SHIFT LT.

FROM: _____ SHIFT LT ___ SHIFT

TIME: 0646 A.M./P.M.

DATE: 12-15-10

On the above date and approx. time: ~~0~~ 0x. Fox

Called the institution stating he/she would (circle one):

(1) Be Late (2) Was Sick (3) Not Reporting -- for duty on the

B shift for reason's stated:

Car Trouble

This employee states he/she can be reached at [redacted]

S/ Attack
Control Room Officer

Supervisor/Shift Lt.'s Remarks: Officer called back. Stated that car wont start but will be in RSAP. LWOP

S/ LT. Davis
Supervisor/Shift Lt.

LEE CORRECTIONAL INSTITUTION

CALL-IN FORMS

TO: SMU SUPERVISOR/SHIFT LT.

FROM: _____ SHIFT LT ___ SHIFT

TIME: 0530 A.M./P.M.

DATE: 12/4/10

On the above date and approx. time: O/C Fox

Called the institution stating he/she would (circle one):

(1) Be Late (2) Was Sick (3) Not Reporting -- for duty on the

D-1 shift for reason/s stated:

This employee states he/she can be reached a [redacted]

S/ _____
Control Room Officer

Supervisor/Shift Lt's Remarks: Swor No call back

S/ L. A. Davis
Supervisor/Shift Lt.

File

SOU AROLINA DEPARTMENT OF COI IONS

INCIDENT REPORT

Page of

Institution / Center: LEE Correctional Inst.	
Date of Report: 12-21-2010	Time of Report: 7:00 p.m. approx
Reporting Official: Ofc Vi Fox	Date of Incident: 12-17-2010
Location of Incident: SMU.	Time of Incident: 7:30 p.m. approx

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Ofc Vi Fox
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: On 12-17-2010 I Ofc V. Fox discover that my wages were incorrect for this pay period. I didn't fill out a time sheet and/or sign off on a time sheet for this pay period. After speaking with Mr. Cato, I found out that I received Leave Without Paid. But these unforeseen emergencies could not be Avoid + the use of my leave could not be help. I would like to have the situation Corrected.

Signature: Ofc V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC116

SOU AROLINA DEPARTMENT OF CO TIONS

INCIDENT REPORT

Page 1 of 1

Institution / Center:	Lee Correctional Inst.
Date of Report:	14 December 2010
Time of Report:	9:11 am
Reporting Official:	SGT. R. Hann
Date of Incident:	14 December 2010
Location of Incident:	SMU
Time of Incident:	5:30 am

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Vanessa Fox
2.	2.
3. Inspr.	3.
4.	4.
5.	5.

On the above date and approximate time: Ms. Fox called out sick not reporting for duty. Ms. Fox failed to do a second call check to her supervisor. Request leave without pay for 14 December 2010.

Signature: SGT. R. Hann

Evidence:

Witness(es):

Supervisor's Comments: Concur with LWOP for the day of the infraction

Signature: [illegible] Title: C/T Date/Time: 15 Dec 10 1022

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC117

SOU AROLINA DEPARTMENT OF CC TIONS

INCIDENT REPORT

Page of

Institution / Center:	LEE Correctional INC.				
Date of Report:	12-21-2010			Time of Report:	7:00 p.m. approx
Reporting Official:	Ofc V. Fox #044716			Date of Incident:	12-17-2010
Location of Incident:	SMU.			Time of Incident:	7:30 p.m. approx

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1.					1. Ofc V. Fox
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time: On 12-17-2010 I Ofc V. Fox discover that my wages were incorrect for this pay period. I did not fill out a time sheet and/or sign off on a time sheet for this pay period. After speaking with Mr Cato, I found out that I received Leave Without Paid. But these unforeseen emergenies could not be Avoid + the use of my leave could not be help. I would like to have the situation Corrected.

Signature: Ofc V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC118

SOU AROLINA DEPARTMENT OF CO TIONS

INCIDENT REPORT

Institution / Center:	Lee Correctional Inst.
Date of Report:	10 December 2010
Time of Report:	7.22 am
Reporting Official:	H. R. Hair
Date of Incident:	10 December 2010
Location of Incident:	SHU
Time of Incident:	6.00 am approx.

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Vanessa Fox
2. Info	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: Ms. Fox called unit sick not reporting for duty. Ms. Fox failed to do a second call back to speak to sick supervisor. Request leave without pay for 10 December 2010.

Signature: H. R. Hair

Evidence:

Witness(es):

Supervisor's Comments: Concur with the LWOP for the day of the infraction

Signature: [illegible] Title: Cpt Date/Time: 15 Dec 10

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken
( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC119

SOU AROLINA DEPARTMENT OF COI TIONS

INCIDENT REPORT

Institution / Center:	Lee Correctional Inst.
Date of Report:	15 December 2010
Time of Report:	11.18 am
Reporting Official:	Lt. R Harris
Date of Incident:	15 December 2010
Location of Incident:	SMU
Time of Incident:	Approx. 6:46 am

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Vanessa Fox
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: Ms. Vanessa Fox called out that car trouble. Ms. Fox called back an hour after her shift began and stated that her car would not start. Ms. Fox stated that she needed her car if she could get her car started. Lt. Harris explained to Ms. Fox that this was not an excuse and that she needed to report to work.

* Request Leave Without Pay: 15 December 2010

Signature: Lt. Harris

Evidence:

Witness(es):

Supervisor's Comments: This is a reoccurring type incident. Recommend Corrective action and LWOP for day of the infraction

Signature: [illegible] Title: CPT Date/Time: 15 Dec 10

Major / Responsible Authority: Clo Fox called in on 12/14/10 - 12/10/10 - and again on 12/15/2010 - with Car trouble. (090) Unauthorized Absence Pay Lost

Signature: [illegible] Title: [illegible] Date: 12/16

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC120

entered 7/15 MM

SOU AROLINA DEPARTMENT OF C ECTIONS

7 pgs V.F.

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS# [redacted]

Division/Institution: B-1 / SMU

REVIEW MEETING

Meeting Date: 6/29/11 [redacted] Time: 9:00 Am Location: Warden office

Alleged Violation: 170 - Insubordination
020 - Unprofessional Conduct

Date of Incident: 6-13-11

Charging Party: Barrie Cribb Date: 6/22/11

Reprimanding Authority: Anthony Padula Date: 6/22/11

Receipt of Notification Employee Signature: Vanessa Fox Date: 7-5-11

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION**: (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Unprofessional Conduct Code: 020

CORRECTIVE ACTION

_____	Written Warning				
_____	Probation	Effective Date: _____	No. of days: _____		
X	Suspension	Effective Date: 7/16/11	No. of hours: 48	Return On: 7/22/11	
_____	Demotion	Effective Date: _____		From	To
		_____ Without Salary Reduction		Position	
		_____ With Salary Reduction		Location	
	Reassignment	From: $	To: $	Band/Level	
	Termination	Effective Date:		Concurrence/Approval	Date
Justification for Termination:				General Counsel Signature:	
				Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

X Referral to SCDC Employee Assistance Program (EAP). Pamphlet provided

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Vanessa Fox Date: 7-15-2011

Reprimanding Authority: Anthony Padula Date: 7/15/11

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC084

S [CAROLINA DEPARTMENT OF ECTIONS

INCIDENT REPORT

Institution / Center:	Lee C.I.
Date of Report:	10-13-2011
Time of Report:	3:00 p.m. approx.
Reporting Official:	C/O V. Fox
Date of Incident:	10-13-2011
Location of Incident:	SMU
Time of Incident:	2:30 p.m. approx.

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1.					1. C/O V. Fox
2.					2. Cpl. Tribble
3.					3. Lt. J. Davis
4.					4. Sgt McBride
5.					5. CO I Hickmen

On the above date and approximate time: I, Otc. V. Fox was given a relieve from "C" Control & informed Sgt. McBride that I was taking a break. Following Proper Chain of Command I informed Sgt McBride that I was trying to go see Warden Padula. Sgt McBride told me to let Lt. J. Davis know my situation. I then went to Lt. J. Davis & explain what problems I was having. Lt. J. Davis told me to call Warden Padilla to see if he could see me today. Next I went to Sgt. Bowman office and she allowed me to use the phone to call Warden Padilla Miss Pringle informed me that Warden Padula was busy, but may be free later this afternoon. I let Lt. J. Davis know what Miss Pringle said about the Warden. As Lt. J. Davis & myself walked back

Signature: C/O V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC085

S [CAROLINA DEPARTMENT OF ECTIONS

INCIDENT REPORT

Institution / Center:						
Date of Report:				Time of Report:		
Reporting Official:				Date of Incident:		
Location of Incident:				Time of Incident:		
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:	
1.					1.	
2.					2.	
3.					3.	
4.					4.	
5.					5.	

On the above date and approximate time: to the "C" Control Area. Cpt. Cribb came running out his office yelling & screaming at me. He then got up ~~to~~ in my face. As Lt. J. Davis & Sgt McBride told me to be quiet. Cpt Cribb threaten me several times and the staff to get me out of here. As Sgt McBride followed me to the front door and told me to go into the break room, Cpl. Hickman ~~grabbed~~ grab my right arm I told him to get the hell out my face & let me go. I OIC V. Fox feel as Cpt. Cribb was disrespectful and unprofessional disciping me infront staff & inmates. Cpt. Pinkney came to Smu and escorted me to Major Dean Office. I feel that this is a retaliation for going to see the Warden Kachula earlier.

Signature: OIC V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC086

S I CAROLINA DEPARTMENT OF ECTIONS

INCIDENT REPORT

Institution / Center: Lee Correctional Institution	
Date of Report: 13 Jun 11	Time of Report: 2:40 pm
Reporting Official: Cpt R Cribb	Date of Incident: 13 Jun 11
Location of Incident: C-Control Area	Time of Incident: 2:35 pm
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. OFC V Fox
2.	2. CPT R. Cribb
3.	3. LT J. Davis
4.	4. CPL F. Hickman
5.	5. SGT K. McBride

On the above date and approximate time: I CPT R.Cribb heard loud talking outside my office. I then stepped out and noticed OFC V. Fox yelling with LT J. Davis. I approached OFC Fox and instructed her not to yell at LT Davis and me in that manner. However OFC Fox continued to be Disrespectful and began to state fuck this shit. CPL McBride then began to escort OFC Fox out of the Area. CPL Hickman also was trying to calm OFC Fox down in which she also yelled out "Fuck You Hickman." OFC Fox was screaming in and responding in a threatening Manner and Pushed SGT. McBride. There was Several Inmates Observing these actions.

Signature:

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC087

S I CAROLINA DEPARTMENT OF ECTIONS

INCIDENT REPORT

Institution / Center:						
Date of Report:					Time of Report:	
Reporting Official:					Date of Incident:	
Location of Incident:					Time of Incident:	
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:	
1.					1.	
2.					2.	
3.					3.	
4.					4.	
5.					5.	

On the above date and approximate time:

These types of incident can't and should not be tolerated in such a Professional area. OFC Fox is in Violation of AOM 11.04 Code 17.0 Insubordination, Failure to be Cooperative with Supervisor, AOM 11.04 Code 020 Unprofessional Conduct Malicious Profanity.

Signature:

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC088

S I CAROLINA DEPARTMENT OF ECTIONS

INCIDENT REPORT

Page 1 of 1

Institution / Center: Lee CI	
Date of Report: 6-13-11	Time of Report: 3:33
Reporting Official: Cpl. F. Hickman	Date of Incident: 6-13-11
Location of Incident: Smu Front door way	Time of Incident: Approx: 2:35 pm
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Ofc. Fox
2.	2. Cpl. Hickman
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I Cpl. Hickman was passing by ofc. Fox and Cptn. Cribb. Ofc. Fox looked at me and said what are the fuck you looking at

Signature: Francis Hick

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC089

S(CAROLINA DEPARTMENT OF (ECTIONS

INCIDENT REPORT

Page of

Institution / Center: Lee CI						
Date of Report: 6-13-11					Time of Report: 347 pm	
Reporting Official: Sgt K McBride					Date of Incident: 6-13-11	
Location of Incident: SMU					Time of Incident: Appro 235 pm	
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:	
1.					1.	
2.					2.	
3.					3.	
4.					4.	
5.					5.	

On the above date and approximate time: I Sgt McBride was escorting OFC Fox back to her assigned post C-Control when She turned Around and pushed Me Against the Staff Restroom door. OFC Fox Also looked At Cpl Hickman And Said Get the Fuck out of My Face.

Signature:

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC090

S CAROLINA DEPARTMENT OF C CTIONS

INCIDENT REPORT

11-06-140

Page 1 of 1

Institution / Center: Lee CI	
Date of Report: 6-13-11	Time of Report: 330 pm
Reporting Official: LT. J. Davis	Date of Incident: 6-13-11
Location of Incident: Sma C-Area	Time of Incident: 2:35 p.m.
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Ofc. V. Fox
2.	2. Capt Cr. bb
3.	3. Sgt mcBride
4.	4. Cpl. T. Hickman
5.	5. Sgt Bowman

On the above date and approximate time: I LT. J. Davis was talking to Ofc. Fox outside of C-Control. She wanted to know why she could not go to the yard. At that time Capt. Cr. bb came to C-Control and stated because that was not her post. Ofc Fox got very loud and aggressive. I Attempted to escort her away from Capt. Cr. bb Sgt mcbride assisted. Ofc Fox and Sgt mcbride were going into the breakroom. Cpl Hick asked her what was wrong Ofc Fox stated Fuck You Shut the fuck ch. Sgt mcbride attempted to get her in the breakroom and she pushed Sgt mcbride in the Chest. Sgt Bowman Came and got her in the breakroom. Capt Cr. bb called me for Dorm and Capt. Pinkney Came to escort Ofc. Fox out of Smu.

Signature: LT.

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC091

Clay Catoe

From: Tony Padula
Sent: Tuesday, July 26, 2011 2:21 PM
To: Clay Catoe
Subject: Vanessa Fox - EAP

When I suspended CO Fox recently, I did a supervisory referral to EAP. They need a copy of that corrective action faxed to them.

Can you please fax to Christina at REACH a[redacted] and let me know when? Thanks.

Tony Padula, Warden
Lee Correctional Institution
990 Wisacky Highway
Bishopville, South Carolina 29010-1775
[redacted]

South Carolina Department of Corrections
990 Wisacky Hwy
Bishopville, SC 29010
Phone: 803-896-2441
Fax: 803-896-2443

Dept. Of Corrections

Fax

To: Christina **From:** South Carolina Department of Corrections

Fax: 803-738-8899 **Date:** 7/26/11

Phone: **Pages:** 9

Re: Fox - EAP **CC:**

☐ **Urgent** X **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

•Comments:

Lee - CI HR

Entered 7/15 MM

7 pgs

SOU... ...AROLINA DEPARTMENT OF C... ECTIONS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: B1 / SMU

REVIEW MEETING

Meeting Date: 6/29/11 Time: 9:00 Am Location: Warden office

Alleged Violation: 170 - Insubordination Date of Incident: 6-13-11
020 - Unprofessional Conduct

Charging Party: Ronnie Cribb Date: 6/22/11

Reprimanding Authority: Anthony Padula Date: 6/22/11

Receipt of Notification
Employee Signature: Vanessa Fox Date: 7-5-11

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Unprofessional Conduct Code: 020

CORRECTIVE ACTION

_____	Written Warning				
_____	Probation	Effective Date: _____	No. of days: _____		
X	Suspension	Effective Date: 7/16/11	No. of hours: 48	Return On: 7/22/11	
_____	Demotion	Effective Date: _____		From	To
		_____ Without Salary Reduction		Position	
		_____ With Salary Reduction		Location	
	Reassignment	From: $	To: $	Band/Level	
	Termination	Effective Date:		Concurrence/Approval	Date
Justification for Termination:				General Counsel Signature:	
				Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

X Referral to SCDC Employee Assistance Program (EAP). Pamphlet provided

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Vanessa Fox Date: 07-15-2011

Reprimanding Authority: [signature] Date: 7/15/11

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC094

I CAROLINA DEPARTMENT OF ECTIONS

INCIDENT REPORT

Institution / Center:	LEE C.I.
Date of Report:	10-13-2011
Time of Report:	3:00 p.m. approx.
Reporting Official:	Otc. V. Fox
Date of Incident:	10-13-2011
Location of Incident:	SMU
Time of Incident:	2:30 p.m. approx.

Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1. Otc V. Fox
2.	2. Cpl. Tribble
3.	3. Lt. J. Davis
4.	4. Sgt McBride
5.	5. CO I Hickmen

On the above date and approximate time: I, Otc. V. Fox was given a relieve from "C" Control & informed Sgt. McBride that I was taking a break. Following Proper chain of Command I informed Sgt McBride that I was trying to go see Warden Padula. Sgt McBride told me to let Lt. J Davis know my situation. I then went to Lt. J. Davis & explained what problem I was having. Lt. J. Davis told me to call Warden Padula to see if he could see me today. Next I went to Sgt. Bowman office and she allowed me to use the phone to call Warden Padula Miss Pringle informed me that Warden Padula was busy, but may be free later this afternoon. I let Lt. J. Davis know what Miss Pringle said about the Warden. As Lt. J. Davis & myself walked back

Signature: Otc V. Fox

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major / Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC095

S [CAROLINA DEPARTMENT OF [CTIONS

INCIDENT REPORT

Institution/Center:	
Date of Report:	Time of Report:
Reporting Official:	Date of Incident:
Location of Incident:	Time of Incident:
Inmate(s)/Resident: SCDC# Age Race Sex	Employee(s) Involved:
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time I to the C Control Area. Lt. Cribb came running and I was already yelling & pleading before the time that I got to the door. As Lt. Cribb approached me, several times and I'd started the first one I'd been maced. Immediately followed me to the front door and told me to Come to the front room. Lt. Pickrum grabbed my right arm & told him to get the hell out my face & let me go. I felt [illegible] Lt. Cribb was then practically dragging me out back & [illegible] Lt. Pickrum came to [illegible] and escorted me to Major [illegible] office. I feel that this is a retaliation [illegible] see [illegible]

Signature:

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major/Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC096

§ CAROLINA DEPARTMENT OF CTIONS

INCIDENT REPORT

Institution/Center: Lee Correct. Inst.	
Date of Report: 12 Jun 19	Time of Report: 2:18 pm
Reporting Official: Cpt E Cribb	Date of Incident: 12 Jun 19
Location of Incident: E-Control Area	Time of Incident: 2:35 pm

Inmate(s)/Resident	SCDC#	Age	Race	Sex	Employee(s) Involved
1					1 Ofc V Fox
2					2 Cpt E Cribb
3					3
4					4 Sgt E Bennett
5					5 Sgt E Bennett

On the above date and approximate time I, Cpt Cribb, heard talking outside my office. I stepped out and saw Ofc Fox walking with Inmate [redacted] SCDC# [redacted] to E-Control and instructed her to step in and wait on the bench. I then asked Ofc Fox what was going on and he stated that Inmate [redacted] was disrespectful and refused to follow his instructions. Ofc Fox stated that this shift Cpl [redacted] was also present and Ofc Fox stated that Inmate [redacted] was also disrespectful to Cpl [redacted]. Ofc Fox stated that Inmate [redacted] was also talking to Sgt [redacted] and refused to follow instructions. Ofc Fox then retrieved his OC and instructed Inmate [redacted] to step out of the office and to face the wall. Inmate [redacted] complied with the instructions and Ofc Fox then deployed a one second burst of OC spray to the facial area of Inmate [redacted]. Ofc Fox then instructed Inmate [redacted] to face the wall and to put her hands behind her back. Inmate [redacted] complied with the instructions and Ofc Fox then placed Inmate [redacted] in restraints. Ofc Fox then escorted Inmate [redacted] to the Medical Department for evaluation. Ofc Fox then returned to E-Control and completed his report.

Signature: [redacted]

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major/Responsible Authority:

Signature: Title: Date:

STG Related Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken
( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC-9-A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC097

CAROLINA DEPARTMENT OF CTIONS

INCIDENT REPORT

Institution/Center:

Date of Report:

Time of Report:

Reporting Official:

Date of Incident:

Location of Incident:

Time of Incident:

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved
1.					1.
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time:

These types of incidents do not
should be reported in such a
professional manner. Officer
involved was in violation
with Supervisor Adm 11.04 Code 020
unprofessional conduct. Material
Signature:

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major/Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

(1) Informal Resolution

(2) Administrative Resolution

(3) Refer to Disciplinary Hearing

SCDC-19.26A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC098

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: LCI

Date of Report: 6-13-11 Time of Report: 2:33

Reporting Official: Cpl. E. Hickman Date of Incident: 6-13-11

Location of Incident: Sally Port front door area Time of Incident: Approx. 2:25 PM

Inmate(s)/Resident	SCDC#	Age	Race	Sex	Employee(s) Involved
1.					1. C/O. Fox
2.					2. Cpl. Hickman
3.					3.
4.					4.
5.					5.

On the above date and approximate time I Cpl. Hickman was working Post #1 Sally Port. C/O. Fox looked at me and he stated that he had to call your building at

Signature: Ernest Hickman

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major/Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC099

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Page of

Institution/Center: [redacted] CI

Date of Report: 6-13-11 Time of Report: 3:47 pm

Reporting Official: Sgt. K. McBride Date of Incident: 6-13-11

Location of Incident: Yard Time of Incident: Approx 2:35 pm

Inmate(s)/Resident	SCDC#	Age	Race	Sex	Employee(s) Involved
1.					1.
2.					2.
3.					3.
4.					4.
5.					5.

On the above date and approximate time I, Sgt. K. McBride, was [illegible] of the [illegible] when I observed Inmate [redacted] SCDC# [redacted] [illegible] Inmate [redacted] SCDC# [redacted] [illegible] Inmate [redacted] SCDC# [redacted] [illegible]

SC[illegible]AROLINA DEPARTMENT OF C[illegible]TIONS

INCIDENT REPORT

11-06-148

Institution/Center: Lee CI

Date of Report: 6-13-11 Time of Report: 330 pm

Reporting Official: LT. Tillis Date of Incident: 6-13-11

Location of Incident: Smoke Area Time of Incident: 2:35 pm

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1.					1. Ofc. V. Fox
2.					2. Cpl. Clark
3.					3. Sgt. McBride
4.					4. Cpl. F. Watson
5.					5. Sgt. Branch

On the above date and approximate time: I Lt. Tillis was talking to Ofc. Fox outside of C-Control. She wanted to know why she could not go to the yard. At that time Capt. Crisp came to C-Control and asked her that was not her post. Ofc Fox got very irate and aggresive. I attempted to escort her away from Cpl Clark but instead of Ofc Fox and Sgt McBride came out of the Sallyport. Cpl Mcbride asked her what was going on. Ofc Fox stated that she had to use the restroom. Cpl Mcbride attempted to get her in the restroom and she pushed Sgt McBride in the chest. Sgt Bostwan Came and got her in the restroom. Cpl Crisp called over the radio for Cpl. Pinkney. Came to escort Ofc. Fox out of Smoke.

Signature: Lt.

Evidence:

Witness(es):

Supervisor's Comments:

Signature: Title: Date/Time:

Major/Responsible Authority:

Signature: Title: Date:

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC 19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC101

received 7/6 AM

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

8 pages

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: [redacted]

Division/Institution: BCI / SMCI

REVIEW MEETING

Meeting Date: 6/22/11 [redacted] Time: 9:15Am Location: Warden's office

Alleged Violation: 040 - Negligence Date of Incident: 6-18-11

Charging Party: Bruce Olsen Date: 6/22/11

Reprimanding Authority: Warden Podgis Date: 6/22/11

Receipt of Notification/Employee Signature: Vanessa Fox Date: 7-5-11

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Code:

Violation of Written Rules, Regs, Policies - 050

CORRECTIVE ACTION

X	Written Warning			
	Probation	Effective Date: _____	No. of days: _____	
	Suspension	Effective Date:	No. of hours:	Return On:
	Demotion	Effective Date: _____	From	To
		_____ Without Salary Reduction	Position _____	
		_____ With Salary Reduction	Location _____	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	
	No action imposed (give reason). _____			
	Oral counseling only (not to be placed in employee's personnel file).			
	Referral to SCDC Employee Assistance Program (EAP).			

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Vanessa Fox Date: 7-6-11

Reprimanding Authority: [signature] Date: 7/6/11

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC102

SOU AROLINA DEPARTMENT OF CO TIONS

INCIDENT REPORT

11-06-218

Page 1 of 1

Institution / Center: Lee CI					
Date of Report: 6-19-11				Time of Report: 540pm	
Reporting Official: LT. J. Davis.				Date of Incident: 6-18-11	
Location of Incident: Seneca South Wing #107				Time of Incident: APPROX. 1130Am	
Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. Phillip Byrd	281812		B/m		1. OFC V. Fox
2. Quenten Patterson	331709		B/m		2. OFC E. Anderson
3. Robert Gibson	273272		B/m		3. Sgt McBride
4. Ridriquez Ashford	294470		B/m		4.
5.					5.

On the above date and approximate time: Sgt. McBride, OFC Anderson, and OFC Fox along with LT. J Davis were Conducting haircuts on the south wing of Seneca. After OFC Fox and OFC Anderson placed Inm Ridriquez Ashford SCDC#294470 back in cell 106 and secure the door. OFC Fox was hand cuffing inmate Quenten Patterson SCDC#331709. OFC Anderson attempted to give OFC Fox another pair of cuffs for Inm Byrd. She (OFC Fox) stated that Inm byrd did not need a haircut and told him to go to the back of the cell uncestrained. OFC Fox then opened the door and Inm byrd ran out and attempted to assault Inm Robert Gibson SCDC# 273272. OFC Fox is in violation of 040 Negligence in Carrying out Job Duties and 050 Violation of Written Rules Regulations or Policies.

Signature: LT Davis

Evidence:

Witness(es):

Supervisor's Comments: Requesting Corrective action in accordance with AOM 11.04.

Signature: Title: Cpt Date/Time: 20 Jul 11 1044 hrs

Major / Responsible Authority: I concur with the above recommendation

Signature: Title: SMU Major Date: 6/20/11

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This Incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Action Taken

( ) Informal Resolution
( ) Administrative Resolution
( ) Refer to Disciplinary Hearing

SCDC19-29A (Rev. February 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC103

Control # 11-06-220

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution / Center: LEE CI	
Date of Report: 6/18/11	Time of Report: 215
Reporting Official: Ofc. E. Anderson	Date of Incident: 6/18/11
Location of Incident: SMU 5 Wing	Time of Incident: approx 1130 pm

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. Phillip Byrd	281812		B	M	1. E. Anderson
2.					2. Ofc. Fox
3.					3. Lt. Davis
4.					4. Sgt. McBride
5.					5.

On the above date and approximate time:

At approx 1130 am while doing haircuts I Ofc. Anderson and ~~and~~ Ofc. Fox was at Cell 106 & 107. We had just put inmate Ridgriquez Ashford# 294470 back in his cell his (106) rm mate Robert Gibson # 273272 was still in barber chair. After taking inmate Ashfords cuff off I closed 106 flap & passed cuffs to Ofc. Fox she placed handcuffs on inmate Quentin Patterson in Cell 107 I reached in my pocket to give her other set of handcuffs for inmate Phillip Byrd, Ofc. Fox said he not coming out to get haircut and unlocked the door. Inmate Phillip Byrd ran out of rm I Ofc Anderson grabbed him by his jumpshit but he snatched away and ran towards inmate Robert Gibson. Lt. Davis and Sgt. McBride Cased inmates Phillip Byrd and inmate Robert Gibson bring the situation under control.

Signature: E. Anderson

Evidence:

Witness(es):

Condition # 11-06-214

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution / Center:	LEE C.I.
Date of Report:	06-18-2011
Time of Report:	10:15 p.m. approx.
Reporting Official:	Otc V. Fox
Date of Incident:	06-18-2011
Location of Incident:	SMU S. Wing (A-Side
Time of Incident:	11:30 A.M. approx.

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. I/m Gibson Robert	273272	B		M	1. Otc V. Fox
2. I/m Byrd Phillip	281812	B		M	2. Otc E. Anderson
3. I/m Patterson Quenten	331709	B		M	3. Sgt M. Bridle
4. I/m Ashford Rodriquez	294470	B		M	4. Lt. J. Davis
5.					5.

On the above date and approximate time: I Otc V. Fox & Otc E. Anderson were conducting haircuts On A-side Of the South Wing of SMU at Rooms 106 & 107. After I/m Rodriquez Ashford #294470 received his haircut, I Otc V. Fox Escort him to cell #106. I then Secured him in his cell & Observed 2 I/ms in Cell 107. I open the food flap at Room 107 & placed I/m Quenten Patterson #331709 in hand cuffs. I/m Byrd Phillips #281812 Stated to me that he didn't need or want a haircut. I gave I/m P. Byrd a directive to step to the window to see if he needed a haircut. After I Overlooked I/m Byrd, I gave him another directive to step to the back of the cell. Next I Otc V. Fox open the door to cell #107 to

Signature: Otc V. Fox

Evidence:

Witness(es):

Close FOIA for Vanessa Fox Nov. 13, 2019 GC105

LCI-11-0106-219

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution / Center:	LEE C.I.		
Date of Report:	06-18-2011	Time of Report:	6:15 pm approx
Reporting Official:	Ofc V. Fox	Date of Incident:	6-18-2011
Location of Incident:	SMU S. Wing A-Side	Time of Incident:	11:30 Am approx

Inmate(s)/Resident:	SCDC#	Age	Race	Sex	Employee(s) Involved:
1. I/M Gibson Robert	273272		B	M	1. Ofc V. Fox
2. I/M Byrd Phillip	281812		B	M	2. Ofc E. Anderson
3. I/M Patterson Quentin	331709		B	M	3. Sgt K. McBride
4. I/M Ashford Rodriquez	294470		B	M	4. Lt. J. Davis
5.					5.

On the above date and approximate time: let I/M Patterson Q. out for a hair cut. At that time I/M Byrd Phillips push pass I/M Patterson, Q and ran out onto the floor. Once I/M Byrd was on the floor, he began Chasing I/M Gibson Robert around the A-side S. Wing. At this Point I/M P. Byrd was given several directives to Stop, but he refuse them all. Lt. J. Davis administer Chemical munitions to gain Control of both I/Ms. I/M Byrd Phillip #281812 is being Charged With 814 Inciting/Creating a Disturbance & 825 Refusing or Failing to Obey Orders

Signature:

Evidence:

Witness(es):

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC106

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MINI100D                SCDC OFFENDER MANAGEMENT SYSTEM                  06/21/11
OMMINSYA              MANAGEMENT INFORMATION NOTES (MINS)                C029897
                             DISPLAY MIN

PHASE: DISTRIBUTED
MIN#:  11-06-0551-0052       INCIDENT DATE/TIME> 06/18/11 11:30
SUBMITTED BY> LT. JASON DAVIS      SUBMITTING INST.> 0551  LEE
LOC OF INCIDENT> 07  SMU
                                                                 SER.INJURY:
CODE: 1> 1050 USE OF FORCE-IMMEDIATE RESPONSE          NUM 1> 000      SI 1> N
      2> 1800 REFUSAL TO OBEY DIRECT ORDER             NUM 2> 000      SI 2>
      3> 2100 DISCHARGING AEROSOL GAS                  NUM 3> 000      SI 3>
      4> 3000 MEDICAL/MENTAL HEALTH                    NUM 4> 000      SI 4>
      5>                                               NUM 5> 000      SI 5>
      6>                                               NUM 6> 000      SI 6>
INVOLVEMENT: > X INMATE  > X EMPLOYEE  >   VISITOR  >   OTHER INDIVIDUAL
>  00273272  GIBSON, ROBERT -          B/M   30
>  00281812  BYRD, PHILLIP A.          B/M   29
> EMPLOYEE   DAVIS, JASON
> EMPLOYEE   ANDERSON, EMILY
> EMPLOYEE   FOX, VANESSA
> EMPLOYEE   MCBRIDE, KEITH
             UPDATED BY> OBERMAN, BRUCE       DATE......> 06/21/11
MIN FOR SUBMITTING LOCATION DISPLAYED...
   PF2>VIEW NARRATIVE       PF5>LIST INVOLVEMENT       PF6>VIEW ROUTING
4-©              1 Sess-1    167.7.50.33              SCDC1483          1/2
```

MINI230D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 06/21/11
OMMINSYA DISPLAY MIN NARRATIVE C029897

MIN ID: 11-06-0551-0052 SUBJECT> MIN TEXT
PHASE.: DISTRIBUTED DATE SENT: 06/19/11 ARCHIVE IND..> N
SUBMITTING INST> 0551 LEE DELETE DATE..> 00/00/00

MIN TEXT..>
ON JUNE 18, 2011 AT APPROXIMATELY 11:30 AM AT LEE CORRECTIONAL INSTITUTION IN SMU, OFC. EMILY ANDERSON, OFC. VANESSA FOX, SGT. KEITH MCBRIDE, AND LT. JASON DAVIS WERE CONDUCTING HAIRCUTS ON THE SOUTH WING. OFC. FOX WENT TO CELL #107 AND RESTRAINED INMATE QUENTEN PATTERSON SCDC #331709. OFC. ANDERSON THEN HANDED ANOTHER SET OF HANDCUFFS TO OFC. FOX SO SHE COULD RESTRAIN INMATE PATTERSON'S CELL MATE, INMATE PHILLIP BYRD SCDC #281812. OFC. FOX STATED THAT INMATE BYRD WAS NOT COMING OUT FOR A HAIRCUT. OFC. FOX ISSUED A DIRECTIVE FOR INMATE BYRD TO GO STAND IN THE BACK OF THE CELL. OFC. FOX THEN UNLOCKED THE CELL DOOR. INMATE BYRD RAN OUT OF THE CELL AND RAN TOWARD INMATE ROBERT GIBSON SCDC #273272 (WHO WAS BEING ESCORTED BACK TO HIS CELL BY OFC. ANDERSON AFTER HE RECEIVED HIS HAIRCUT). LT. DAVIS GAVE LOUD VERBAL DIRECTIVES FOR INMATE BYRD TO STOP AND TO LIE ON THE FLOOR. INMATE BYRD DID NOT COMPLY WITH LT.

UPDATED BY> OBERMAN, BRUCE DELETE? N (MORE)
DATE.....> 06/21/11
PRESS PF9 FOR PAGE 1 OF NEXT MIN, PF2 FOR PAGE 2 OF NEXT MIN
PF5:LIST INVOLVE PF4:COPY F6:VIEW ROUTE F7:PREV F8:NEXT F12:MIN (PAGE 1)
4-© 1 Sess-1 167.7.50.33 SCDC1483 21/58

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MINI230D          SOUTH CAROLINA DEPARTMENT OF CORRECTIONS              06/21/11
OMMINSYA                    DISPLAY MIN NARRATIVE                       C029897

MIN ID: 11-06-0551-0052     SUBJECT> MIN TEXT
PHASE.: DISTRIBUTED         DATE SENT: 06/19/11     ARCHIVE IND..> N
SUBMITTING INST> 0551 LEE                           DELETE DATE..> 00/00/00

MIN TEXT..>
DAVIS' DIRECTIVES. LT. DAVIS ADMINISTERED CHEMICAL MUNITIONS TOWARD THE
FACIAL AREA OF INMATE BYRD. INMATE BYRD CONTINUED TO MOVE TOWARD INMATE
GIBSON. LT. DAVIS GAVE INMATE BYRD ADDITIONAL DIRECTIVES TO STOP MOVING
TOWARD INMATE GIBSON. INMATE BYRD DID NOT COMPLY WITH LT. DAVIS' DIRECTIVES.
LT. DAVIS ADMINISTERED ADDITIONAL CHEMICAL MUNITIONS TOWARD THE FACIAL AREA
OF INMATE BYRD. INMATE GIBSON HAD BEEN ATTEMPTING TO MOVE AWAY FROM INMATE
BYRD. INMATE GIBSON FELL TO THE FLOOR AND INMATE BYRD STARTED TO GRAB INMATE
GIBSON. LT. DAVIS CONTINUED TO YELL FOR INMATE BYRD TO STOP MOVING TOWARD
INMATE GIBSON. LT. DAVIS ADMINISTERED ANOTHER BURST OF CHEMICAL MUNITIONS
TOWARD THE FACIAL AREA OF INMATE BYRD. INMATE BYRD THEN COMPLIED WITH ALL
DIRECTIVES AND ALLOWED HIMSELF TO BE RESTRAINED BY LT. DAVIS. INMATE BYRD WAS
PLACED IN AN SMU HOLDING CELL. INMATE GIBSON WAS RETURNED TO HIS CELL. BOTH
 UPDATED BY> OBERMAN, BRUCE                    DELETE? N                (MORE)
 DATE......> 06/21/11
PRESS PF9 FOR PAGE 1 OF NEXT MIN, PF2 FOR PAGE 2 OF NEXT MIN
  PF5:LIST INVOLVE  PF4:COPY  F6:VIEW ROUTE  F7:PREV  F8:NEXT  F12:MIN (PAGE 1)
4-©              1 Sess-1   167.7.50.33            SCDC1483          21/58
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MINI230D          SOUTH CAROLINA DEPARTMENT OF CORRECTIONS              06/21/11
OMMINSYA                    DISPLAY MIN NARRATIVE                       C029897

 MIN ID: 11-06-0551-0052     SUBJECT> MIN TEXT
 PHASE.: DISTRIBUTED         DATE SENT: 06/19/11     ARCHIVE IND..>  N
 SUBMITTING INST> 0551 LEE                           DELETE DATE..>  00/00/00

MIN TEXT..>
INMATES WERE SEEN AGENCY CONTRACT NURSE JOYCE POLEN. NO INJURIES WERE NOTED.
INMATE BYRD WILL BE CHARGED ACCORDINGLY.

MK-9 SABRE RED CANISTER #1863754
BEGINNING WEIGHT: 340 GRAMS
ENDING WEIGHT:    220 GRAMS
AMOUNT USED:      120 GRAMS

 UPDATED BY> OBERMAN, BRUCE                    DELETE? N                 (END)
 DATE......> 06/21/11
PRESS PF9 FOR PAGE 1 OF NEXT MIN, PF2 FOR PAGE 2 OF NEXT MIN
  PF5:LIST INVOLVE  PF4:COPY  F6:VIEW ROUTE  F7:PREV  F8:NEXT  F12:MIN (PAGE 1)
4-©              1 Sess-1    167.7.50.33              SCDC1483          21/58
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SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

LEE CORRECTIONAL INSTITUTION

MEMORANDUM

TO: **Cecilia Reynolds, Warden**

FROM: **Bernadette Jefferson, Major**

SUBJECT: **EMPLOYEE CORRECTIVE ACTION**

DATE: **September 5, 216**

I Major Bernadette Jefferson have read all submitted documentation (Incident Reports 19-29a) written by Lt. Quanda Abrams (Shift Leader), Lt. Evoney Shaw (Shift Lt.) and Sgt. Vanessa Fox (Shift Sgt.) in reference to Sgt. Fox's Inappropriate behavior on August 27, 2016 in the Shift Office. Based on all the above, I Major Bernadette Jefferson am recommending that Sgt. Fox be held accountable for violations (010) Inappropriate Behavior-Conduct Unbecoming a SCDC Employee (may be related to poor judgement in the performance of duties or interaction with employees and/or managers) and (020) Unprofessional Conduct, Incompatible Activities, Malicious Profanity, Unethical Conduct, or Other Employee Behavior Having Potential or Actual Detriment to the Agency or State Operations ot Their Image (conduct can occur on/off the job)

Major Bernadette Jefferson

Attachment(s)
cc: File
Associate Warden Kenneth Sharp
Associate Warden Willie Davis
Associate Warden Steve Nolin

16-08-417

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
INCIDENT REPORT

Institution/Center: Lee Correctional Institution	Date of Report: August 27, 2016
Reporting Official (Full Name): O. Abrams	Time of Report: Approx 8:56AM
Employee ID #: 034453	Date of Incident: August 27, 2016
Location of Incident: Shift Office	Time of Incident: Approx 8:30AM

Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Sgt. V. Fox
2.	2. Lt. O. Abrams
3.	3. Lt. E. Shaw
4.	4.
5.	5.

On the above date and approximate time: Sgt. V. Fox came to the Shift Office to recieve her yard keys from me Lt. Abrams after being late for work. Lt. Shaw was in the office when I informed Sgt. Fox that I needed to speak with her. Sgt. Fox stated what do you need to speak with me about. I Lt. Abrams informed Sgt. Fox that she made a statement about me to another Supervisor and Ground inmates. Sgt. Fox stated to the Supervisor that I need a Lieutenant with some balls on the shift. Sgt. Fox admitted that she made that statement and she made it to Sgt. Patten. I Lt. Abrams informed Sgt. Fox if she didn't have anything nice to say about me then don't say nothing at all. Sgt. Fox became very loud and hostile slamming her post into her hand screaming at me in an unprofessional manner. Sgt. Fox stated yes I said it. You don't have nothing between your legs and I don't give a fuck about

Signature: Miranda J. Abrams Title: Lt.

Evidence:

Disposition of Evidence:

Supervisor's Comments: Forward to Major Jefferson for her review

Printed Name: [illegible] 9/26/16

Signature: [illegible] Title: Lt/M Date/Time: 1:34pm

Major/Responsible Authority:

Good Correct Act

Printed Name: [illegible]

Signature: [illegible] Title: [illegible] Date/Time: 9/5/16

STG Related - Refer to STG Committee
( ) Yes ( ) No ( ) Unknown

This incident is DRUG related
( ) Yes ( ) No ( ) Unknown

Responsible Authority Action Taken

( ) Informal Resolution

( ) Administrative Resolution

( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC228

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

16-08-417

Institution/Center: Lee Correctional Institution	Date of Report: August 27, 2016
Reporting Official (Full Name): Q. Abrams	Time of Report: Approx 8:56 AM
Employee ID #: 034453	Date of Incident: August 27, 2016
Location of Incident: Shift Office	Time of Incident: Approx 8:30 AM
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Sgt. V. Fox
2.	2. Lt. Q. Abrams
3.	3. Lt. E. Shaw
4.	4.
5.	5.

On the above date and approximate time: About nothing. I informed Sgt. Fox that she wasn't going to cuss me. Sgt. Fox stated that she wasn't my child and I can't tell her what to do. Sgt. Fox stated all you are going to do is write it up. I Lt. Abrams informed Sgt. Fox if she didn't like the way I was running the shift then she needed to request to go to another shift. Sgt. Fox stated that you need to go to another Q or let Lt Shaw run the shift since you don't care. Sgt. Fox continue to be very disrespectful towards me while continuing to slam her pist into her hand. I Lt. Abrams informed Sgt. Fox that she could go home with that attitude. She stated you need to go home, I am here to do my job and she walk out the office. Sgt. Fox was very nasty and disrespectful to her Supervisor when it comes to you saying anything to her. This is an on going situation with Sgt. Fox. Sgt. Fox is being written up

Signature: Miranda Q. Abrams Title: Lt.

Evidence:

Disposition of Evidence:

Supervisor's Comments: Forward to Major Jefferson for her review

Printed Name: A. Graham 8/26/16

Signature: Title: M/M Date/Time: 1:34 PM

Major/Responsible Authority:

David C. Carruth Major

Printed Name: Jennifer

Signature: Title: Date/Time: 9/5/16

STG Related - Refer to STG Committee

( ) Yes ( ) No ( ) Unknown

This incident is DRUG related

( ) Yes ( ) No ( ) Unknown

Responsible Authority

Action Taken

( ) Informal Resolution

( ) Administrative Resolution

( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC229

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

16-08-417

Institution/Center: Lee Correctional Institution	Date of Report: August 27, 2016
Reporting Official (Full Name): Q. Abrams	Time of Report: Approx 8:56 Am
Employee ID #: 034453	Date of Incident: August 27, 2016
Location of Incident: Shift Office	Time of Incident: Approx 8:30 Am

Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: (080) Unprofessional Conduct, Incompatible Activities, Malicious Profanity, Unethical Conduct on Other Employee Behavior (170) Insubordination, Failure to BE Cooperative with Supervisor.

Signature: Quanda L Abrams Title: Lt.

Evidence:

Disposition of Evidence:

Supervisor's Comments: Forward to Major Jefferson for her review

Printed Name: [illegible] 8/26/16

Signature: [illegible] Title: Lt/M Date/Time: 1347pm

Major/Responsible Authority:

Send to Correction Action

Printed Name: [illegible]

Signature: [illegible] Title: [illegible] Date/Time: 9/5/16

STG Related - Refer to STG Committee

( ) Yes ( ) No ( ) Unknown

This incident is DRUG related

( ) Yes ( ) No ( ) Unknown

Responsible Authority

Action Taken

( ) Informal Resolution

( ) Administrative Resolution

( ) Refer to Disciplinary Hearing

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC230

16-09-007

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: Lee C. I.	Date of Report: 08-31-2016
Reporting Official (Full Name): Sgt. V. Fox	Time of Report: 9:00p.m.approx.
Employee ID #: c044716	Date of Incident: 08-31-2016
Location of Incident: Gym	Time of Incident: 8:10 a.m.approx.
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Lt. E. Shaw
2.	2. Lt. Abrams
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

Major B. Jefferson called me and Lt. H. Johnson to come to her office. Once we entered her office Major B. Jefferson asked me did I refuse to write an incident report when Lt. E. Shaw gave me instructions to do so. I informed Major Jefferson that I DID NOT refuse to write an incident report, due to the fact that Lt. E. Shaw never gave me instructions to write an incident report! Lt. E. Shaw merely stated, "Fox you might wanna write an incident report!" I was then given instructions by Major B. Jefferson to write an incident report about what happened on Saturday August 27,2016.

On Saturday August 27, 2016 I Sgt. V. Fox went to Lee control to sign out the West yard keys and discovered that Lt. Abrams had already sign them out. I was shocked by this due to the fact that she had NEVER sign them out for me before. I walked to the West yard gym door to retrieve the West yard keys. As Lt. Abrams handed me the keys and she then directed me to come to the shift office where Lt. E. Shaw was sitting. Upon entering the shift office Lt. Abrams initiated a very unprofessional and vulgar conversation, accusing me of engaging in an inappropriate conversation with an INMATE pertaining to her job performance. Lt. Abrams furthermore stated that an inmate told her that I said "SHE DON'T HAVE AN BALLS!" At which time she began speaking loudly and acting in a belligerent

Signature: Vanessa Fox Title: Sgt.

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ☐ Yes ☐ No ☑ Unknown
Printed Name:	This incident is DRUG related ☐ Yes ☐ No ☑ Unknown
Signature: Title: Date/Time:	
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	☐ Informal Resolution ☐ Administrative Resolution ☐ Refer to Disciplinary Hearing
Signature: Title: Date/Time:	

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC231

16-09-007

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: Lee C. I.	Date of Report: 08-31-2016
Reporting Official (Full Name): Sgt. V. Fox	Time of Report: 9:00 p.m. approx.
Employee ID #: c044716	Date of Incident: 08-27-2016
Location of Incident: Gym	Time of Incident: 8:10a.m. approx.
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Lt. E. Shaw
2.	2. Lt. Abrams
3.	3. Unit Manager Graham
4.	4.
5.	5.

On the above date and approximate time:

manner stating, " I DON'T HAVE ANY BALLS!", "I'M NOT ABOUT TO GROW ANY!", "I DON'T HAVE AN S ON MY CHEST LIKE YOU!", " I DON'T CARE ABOUT THIS JOB!" AND "BECAUSE THE ADMINSTERATION DON'T CARE!" etc... Lt. Abrams continue in this manner for about three to four minutes. I Sgt. V. Fox attempted to defense myself from Lt. Abrams verbal assault but she just continued with attacking me about he said she said rumors! At this point Lt. Abrams states, "YOU GONNA RESPECT ME AND YOU BETTER KEEP MY NAME OUT YOUR MOUTH!" I Sgt. V Fox stated "I Don't have time for this! I am going to work!" As I am walking onto the West yard Lt. Abram follows me and yelled, " You Can Go Home!" This behavior from Lt. Abrams continued throughout the rest of the day. I had to call Unit Manager Graham to assist me with getting help on the West yard! I Sgt. V. Fox have been mistreat, disrespected, and my name has been slandered.

Signature: Vanessa Fox Title: Sgt

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ☐ Yes ☐ No ☐ Unknown
Printed Name:	This incident is DRUG related ☐ Yes ☐ No ☐ Unknown
Signature: Title: Date/Time:	
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	☐ Informal Resolution ☐ Administrative Resolution ☐ Refer to Disciplinary Hearing
Signature: Title: Date/Time:	

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC232

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

16-08-427

Institution/Center: Lee Correctional Institution	Date of Report: 8/27/16
Reporting Official (Full Name): Lt E. Shaw	Time of Report: approx 6:48 pm
Employee ID #: 045930	Date of Incident: 8/27/16
Location of Incident: Shift office	Time of Incident: approx 8:30am

Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Sgt V. Fox
2.	2. Lt Q. Abrams
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

I, Lt E. Shaw, was in the shift office when a verbal confrontation between Sgt. V. Fox and Lt Q. Abrams. Lt. Q. Abrams gave Sgt Fox the keys to the west yard and stated to Sgt. Fox that she needed to speak to her. Lt Q. Abrams stated "So I dont have no balls Fox, you need a Lt with balls." "Then you said that to the inmates." Sgt Fox replied "I didnt say that but what I did say I said it to Sgt. Hatten. I told Hatten I need a Lt. with balls, but you can say what I said around the inmates and you say around them you dont care." Lt. Q. Abrams stated "You gone respect me." Sgt Fox became a bit irate by hitting her fist in her hand stating "You got to give respect to earn it." You talk about respect you but you make it clear that you dont care." Lt Abrams replied "I dont care I dont have a S on my chest I can't make all of those inmates go in. All I care about is my officer safety." Sgt Fox stated "Shaw come down here and help put them inmates in, Shaw need to be Lt since you dont care." Lt. Abrams stated "So I dont have no balls Fox, I'm not a man I dont have balls." Sgt Fox stated "You dont have nothing between your legs." Lt. Abrams said "You gone respect me." Sgt Fox stated "I

Signature: Title:

Evidence:

Disposition of Evidence:

Supervisor's Comments: Refer to Major [illegible]

Printed Name: [illegible] 8/26/16

Signature: Title: Date/Time: 3:10PM

Major/Responsible Authority:

Order: Corrective Action

Printed Name: [illegible]

Signature: Title: Date/Time: 9/5/16

STG Related - Refer to STG Committee

( ) Yes ( ) No ( ) Unknown

This incident is DRUG related

( ) Yes ( ) No ( ) Unknown

Responsible Authority Action Taken

( ) Informal Resolution

( ) Administrative Resolution

( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC233

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

16-08-427

Institution/Center: Lee Correctional Institution	Date of Report: 8/27/16
Reporting Official (Full Name): Lt E. Shaw	Time of Report: approx 6:48 pm
Employee ID #: 045330	Date of Incident: 8/27/16
Location of Incident: Shift Office	Time of Incident: approx 8:30 am

Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Sgt V. Fox
2.	2. Lt Q. Abrams
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

dont give a fuck about that." Lt. Abrams then stated "You not going to cuss me, that one thing you not gone do." Sgt Fox stated "I dont care about that, all you gone do is write a incident report. Lt. Abrams then stated "you can leave." Sgt Fox replied "No you can leave."

Signature: Title:

Evidence:

Disposition of Evidence:

Supervisor's Comments: Refer to MAJOR LEVERSON

Printed Name: [illegible]

Signature: [illegible] Title: [illegible] Date/Time: 8/28/16 3:10pm

Major/Responsible Authority:

Send to Correctional Action

Printed Name: [illegible]

Signature: [illegible] Title: [illegible] Date/Time: 9/5/16

STG Related - Refer to STG Committee

( ) Yes ( ) No ( ) Unknown

This incident is DRUG related

( ) Yes ( ) No ( ) Unknown

Responsible Authority Action Taken

( ) Informal Resolution

( ) Administrative Resolution

( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC234

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: Lee CI	Date of Report: 8/31/16
Reporting Official (Full Name): Lt. E. Shaw	Time of Report: approx 9:10 am
Employee ID #: 045330	Date of Incident: 8/27/16
Location of Incident: Shift Office	Time of Incident: approx 6:00 pm
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

I Lt. E. Shaw, told Sgt. Fox that she needs to do an incident report on the incident between her and Lt. Abrams. Sgt. Fox stated "I'll do my incident report when we go to the Warden as my rebuttal."

Signature: Lt E. Shaw Title: Lt

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ( ) Yes ( ) No ( ) Unknown
Printed Name:	This incident is DRUG related ( ) Yes ( ) No ( ) Unknown
Signature: Title: Date/Time:	
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	( ) Informal Resolution ( ) Administrative Resolution
Signature: Title: Date/Time:	( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC235

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10 pages

SOUTH CA NA DEPARTMENT OF CORRE IS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Sgt. Vanessa Fox SS#: # 044716

Division/Institution: Lee CI

REVIEW MEETING

Meeting Date: September 14, 2016 Time: 9:00 Am Location: Warden's Office

Alleged Violation: Date of Incident: August 27, 2016

~~#010 - Inappropriate Behavior~~

#020 - Unprofessional Conduct

Charging Party: Major Jefferson Date: 9/9/16

Reprimanding Authority: Warden Reynolds Date: 9/9/16

Receipt of Notification Employee Signature: Vanessa Fox Date: 9-9-16

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Unprofessional Conduct Code: 020

CORRECTIVE ACTION

_____	Written Warning				
_____	Probation	Effective Date: _____	No. of days: _____		
X	Suspension	Effective Date: 9-14-16	No. of hours: 8	Return On: 9/20/16 11:00 a.m.	
_____	Demotion	Effective Date: _____		From	To
		_____ Without Salary Reduction		Position	
		_____ With Salary Reduction		Location	
	Reassignment	From: $	To: $	Band/Level	
	Termination	Effective Date:		Concurrence/Approval	Date
Justification for Termination:				General Counsel Signature:	
				Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: Refusal to Sign. Robin L. King Date: 9-14-16

Reprimanding Authority: Date: 9-14-16

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC226

South Carolina Department of Corrections
Lee Correctional Institution
Memorandum

To: Aaron S. Joyner, Warden

From: Kenneth Sharp, Associate Warden

Subject: **Employee Corrective Action**

Date: March 8, 2017

I, Associate Warden Sharp am submitting documentation (Incident Report 19-29a) written by myself concerning Unit Counselor Vanessa Fox having multiple inmates out of their cells on March 7, 2017 at approximately 6:00 p.m. while the F2 Unit A Side is on lockdown status.

Based on the above, I am recommending that Unit Counselor Fox be held accountable for violation of (040) negligence in carrying out job duties in a security or non-security setting as outlined in ADM.-11.04, "Employee Corrective Action."

S/ _____
Kenneth Sharp, Associate Warden

Attachment(s)
Warden Joyner
Associate Warden Tisdale
Associate Warden Sharp
Human Resources

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: LEE Correctional Institution	Date of Report: March 7, 2017
Reporting Official (Full Name): Kenneth Sharp	Time of Report: Approx. 6:00 PM
Employee ID #: 009716	Date of Incident: March 7, 2017
Location of Incident: F-4 A Wing	Time of Incident: Approx. 1:30 PM

Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. U/C Vanessa Fox
2.	2. OFC Jamie Porter
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I Associate Warden Kenneth Sharp Was Contacted by Warden Aaron Joyner in reference to multiple Inmates being out of their cells on F-4 A wing. I reported to the unit and observed 3 Inmates in the day room folding laundry. I Observed 4 Inmates on the wing cleaning up. I further Observed Mr. Case escorting 4 Inmates back inside the Unit. I went to Unit Counselor Fox and inquired about the Inmates being out She Stated that She had Inmates in the top and bottom Showers. She Stated "I have one in the top and one in the bottom." I then instructed Unit Counselor Fox put all the Inmates inside their cells with the exception of the ones who were suposed to be in the Showers.

Signature: Kenneth Sharp Title: Associate Warden

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ( ) Yes ( ) No ( ) Unknown
Printed Name:	This incident is DRUG related ( ) Yes ( ) No ( ) Unknown
Signature: Title: Date/Time:	
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	( ) Informal Resolution ( ) Administrative Resolution
Signature: Title: Date/Time:	( ) Refer to Disciplinary Hearing

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC210

South Carolina Department of Corrections
Lee Correctional Institution
Memorandum

To: Aaron S. Joyner, Warden

From: Kenneth Sharp, Associate Warden

Subject: **Employee Corrective Action**

Date: March 9, 2017

I, Associate Warden Sharp am submitting documentation (Incident Report 19-29a) written by myself concerning Unit Counselor Fox failing to submit an incident report as directed by myself on March 7, 2017 concerning her having multiple inmates out of their cells on that date in F2 Unit A side while on lockdown status.

Based on the above, I am recommending that Unit Counselor Fox be held accountable for violation of (060) Refusal to Carry out Oral or Written Directive of Supervisor as outlined in ADM.-11.04, "Employee Corrective Action."

S/ _____
Kenneth Sharp, Associate Warden

Attachment(s)
Warden Joyner
Associate Warden Tisdale
Associate Warden Sharp
Human Resources

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: LEE C.I.	Date of Report: March 10, 2017
Reporting Official (Full Name): Kenneth Sharp	Time of Report: Approx. 8:10 AM
Employee ID #: 009716	Date of Incident: March 7, 2017
Location of Incident: Associate Warden's office	Time of Incident: Approx. 6:30 PM
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. U/C Vanessa Fox
2.	2. C/O Jamie Porter
3.	3.
4.	4.
5.	5.

On the above date and approximate time: I Associate Warden Kenneth Sharp recieved a telephone call from U/C Vanessa Fox U/C Fox stated "C/O porter informed me that You wanted her to write an incident report." I stated yes, I told C/O porter to write an incident report stating why there were multiple Inmates out of their cells. I need you to write an incident as well explaining why mutiple Inmates were out of thier cells. U/C FOX stated I want to remain in my unit on tomorrow. U/C Fox never submitted an incident report, Nor did C/O Porter. I am requesting Corrective action for U/C Fox and C/O Porter. C/O porter is Charged with 060 refusing an oral directive of a Supervisor.

Signature: Kenneth Sharp Title: Associate Warden

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ( ) Yes ( ) No ( ) Unknown
Printed Name:	This incident is DRUG related ( ) Yes ( ) No ( ) Unknown
Signature: Title: Date/Time:	
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	( ) Informal Resolution ( ) Administrative Resolution
Signature: Title: Date/Time:	( ) Refer to Disciplinary Hearing

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC212

5 pages

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: # 044716

Division/Institution: Lee CI

REVIEW MEETING

Meeting Date: March 15, 2017 Time: 1:15 pm Location: Warden's Office

Alleged Violation: Date of Incident: 3-7-17, 3-9-17

#040 - Negligence in Carrying out job duty in a security setting

#060 - Refusal to Carry Out Oral or Written Directive of Supervisor

Charging Party: A/W Sharp Date: 3/8/17

Reprimanding Authority: Warden Joyner Date: 3/8/17

Receipt of Notification Employee Signature: U.C.V. Fox Date: 3/14/17 11:05 AM

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

✓ **INFORMAL RESOLUTION:** (Original corrective action imposed) Violation: Negligence 040, 060

Action: Refusal Effective Date:

Refusal Informal Resolution

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: 040 - Negligence Code: 040

060 - Refusal 060

CORRECTIVE ACTION

_____	Written Warning			
_____	Probation	Effective Date: ~~22 March 17~~	No. of days: ~~(3)~~	
✓	Suspension	Effective Date: 21 March 17	No. of hours: 40 ~~24~~ Return On: 28 March 17	
_____	Demotion	Effective Date:	From	To
		_____ Without Salary Reduction	Position	
		_____ With Salary Reduction	Location	
	Reassignment	From: $ To: $	Band/Level	
	Termination	Effective Date:	Concurrence/Approval	Date
Justification for Termination:			General Counsel Signature:	
			Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: X Vanessa Fox Date: 3-20-17

Reprimanding Authority: X Date: 3/20/17

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC208

C

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
LEE CORRECTIONAL INSTITUTION
MEMORANDUM

TO: Aaron S. Joyner, Warden

FROM: Arenda Thomas, Administrative Captain

SUBJECT: **Employee Corrective Action**

DATE: August 01, 2017

****

I, Administrative Captain Thomas, am submitting documentation (Incident Report) written by Captain A. Thomas concerning carrying out job responsibilities.

Based on the above, I am recommending that **Unit Counselor V. Fox** receive corrective action for violation of **060: Refusal to carry out oral or written direction of supervisor; 200: Leaving a security post without authorization and 020: Unprofessional conduct.**

S/ Arenda Thomas, Administrative Captain
Arenda Thomas, Administrative Captain

8-1-2017
Date

Warden Joyner
Associate Warden Tisdale
Associate Warden Sharp
Human Resources

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC200

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

17-07-317 Page 1 of 1

Institution/Center: Lee Correctional Institution	Date of Report: 7-31-2017
Reporting Official (Full Name): Glenda Thomas	Time of Report: Approx 2:52pm
Employee ID #: 010327	Date of Incident: 7-29-2017
Location of Incident: East Yard Office	Time of Incident: Approx: 6:15pm

Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Unit Counselor Vanessa Fox
2.	2. Lt Karen Gregg
3.	3.
4.	4.
5.	5.

On the above date and approximate time: On Saturday the 29th of July in 2017 at Lee Correctional Institution at approximately 6:15pm, Captain Glenda Thomas talked to Lt Karen Gregg in the east yard office. Captain Thomas informed Lt Gregg there was no one else to relieve Unit Counselor V. Fox from the east yard. Lt. Gregg stated, she is about to walk out! Captain Thomas heard Unit Counselor Fox state, "let that mutha fucker come run it!" Captain Thomas asked, Lt Gregg as she was laughing, What did she say?" She is handing me the keys and leaving." Captain Thomas went to the east yard office. Lt Gregg had the east yard keys as well as the west yard keys which she was assigned. Captain Thomas took the keys from Lt. Gregg. Unit Counselor Vanessa Fox is recommended for Corrective action #200 Leaving a security post without authorization and #020 Unprofessional Conduct.

Signature: Glenda Thomas Title: Captain

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ( ) Yes ( ) No ( ) Unknown
Printed Name:	This incident is DRUG related
Signature: Title: Date/Time:	( ) Yes ( ) No ( ) Unknown
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	( ) Informal Resolution ( ) Administrative Resolution
Signature: Title: Date/Time:	( ) Refer to Disciplinary Hearing

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC201

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

17-08-003 Page 1 of 1

Institution/Center: Lee Correctional Institution	Date of Report: 8-1-2017
Reporting Official (Full Name): Brenda Thomas	Time of Report: Approx: 11:50Am
Employee ID #: 010321	Date of Incident: 7-31-2017
Location of Incident: Major Office Area	Time of Incident: Approx: 4:00pm
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. Unit Counselor Vanessa Fox
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time: On Monday the 31st of July in 2017 at Lee Correctional Institution at approximately 4:00pm, Unit Counselor Vanessa Fox came by the major office area. She was directed by Captain Brenda Thomas to write a report on the conversation she and Lt. Karen Gregg had on Saturday, 7-30-2017 when they were in the east yard office. When Lt. Gregg was on the phone with Captain Thomas. She refused to write a report. Unit Counselor Vanessa Fox is recommended for Corrective Action # 060 Refusal to Carry Out Oral or Written Direction of Supervisor.

Signature: Brenda Thomas Title: Captain

Evidence:

Disposition of Evidence:

Supervisor's Comments:	STG Related - Refer to STG Committee ( ) Yes ( ) No ( ) Unknown
Printed Name:	This incident is DRUG related ( ) Yes ( ) No ( ) Unknown
Signature: Title: Date/Time:	
Major/Responsible Authority:	**Responsible Authority Action Taken**
Printed Name:	( ) Informal Resolution ( ) Administrative Resolution
Signature: Title: Date/Time:	( ) Refer to Disciplinary Hearing

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC202

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

INCIDENT REPORT

Institution/Center: LEE CI	Date of Report: 07/29/17
Reporting Official (Full Name): KAREN GREGG	Time of Report: APPROX:8:30AM
Employee ID #: 047408	Date of Incident: 07/29/17
Location of Incident: EAST YARD	Time of Incident:APPROX:6:15 PM
Inmate(s)/Resident: SCDC # Age: Sex: Race:	Employee(s)/Witnesses Involved:
1.	1. U/C FOX
2.	2.
3.	3.
4.	4.
5.	5.

On the above date and approximate time:

I LT. KAREN GREGG NOTFIED CAPT.THOMAS THAT U/C FOX WAS READY TO LEAVE.SHE STAYED TO HELP THE SHIFT UNTIL 6:00PM. I TOLD CAPT. THOMAS THAT SHE WAS LEAVING AND THAT SHE HANDED ME THE KEYS.ABOUT TIME SHE COLLECT HER THINGS, CAPT .THOMAS WAS THERE TO RETRIEVE KEYS FOR THE EAST YARD.

Signature: Karen P Gregg Title: LT.

Evidence:

Disposition of Evidence:

Supervisor's Comments:

Printed Name:

Signature: Title: Date/Time:

Major/Responsible Authority:

Printed Name:

Signature: Title: Date/Time:

STG Related - Refer to STG Committee

☐ Yes ☐ No ☐ Unknown

This incident is DRUG related

☐ Yes ☐ No ☐ Unknown

Responsible Authority Action Taken

☐ Informal Resolution

☐ Administrative Resolution

☐ Refer to Disciplinary Hearing

SCDC Form 19-29A (Rev. January 2005)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC203

(C)

5 pages

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

EMPLOYEE CORRECTIVE ACTION

Employee Name: Vanessa Fox SS#: #044716

Division/Institution: Lee CI

REVIEW MEETING

Meeting Date: August 8, 2017 Time: 1:00 Location: Warden's Office

Alleged Violation: Date of Incident: 7-31-17

~~#060 – Refusal to carry out oral or written direction of supervisor~~

~~#200 – Leaving a security post with authorization~~ #030 – Unprofessional Conduct

Charging Party: Captain Thomas Date: 8/2/17

Reprimanding Authority: Warden Joyner Date: 8/2/17

Receipt of Notification Employee Signature: V. C. V. Fox Date: 8-4-17

_____ I choose to waive the 24-hour advanced notice of the review meeting.

Employee Signature: Date:

INFORMAL RESOLUTION

_____ **INFORMAL RESOLUTION**: (Original corrective action imposed) Violation: _____

Action: _____ Effective Date: _____

In consideration of the reduced corrective action listed below, I agree to waive my appeal rights. I voluntarily agree to enter into Informal Resolution and I understand that I have seven (7) calendar days from this date to reconsider my decision by certified letter to the Reprimanding Authority at which time the original procedure violation/corrective action listed above will be restored.

Employee Signature: Date:

VIOLATION CHARGE

Procedure Violation: Unprofessional Conduct Code: 020

CORRECTIVE ACTION

_____	Written Warning				
_____	Probation	Effective Date: 8/9/17	No. of days: 1		
✓	Suspension	Effective Date:	No. of hours: 8	Return On: 8/10/17	
_____	Demotion	Effective Date:		From	To
		_____ Without Salary Reduction		Position	
		_____ With Salary Reduction		Location	
	Reassignment	From: $	To: $	Band/Level	
	Termination	Effective Date:		Concurrence/Approval	Date
Justification for Termination:				General Counsel Signature:	
				Employee Relations Signature:	

_____ No action imposed (give reason). _____

_____ Oral counseling only (not to be placed in employee's personnel file).

Referral to SCDC Employee Assistance Program (EAP).

SIGNATURES

I acknowledge receipt of this action and understand that this information will be placed in my personnel file unless no action is imposed. I also understand that repeat violation(s) may result in termination of my employment. If I choose to appeal a grievable action and I have not agreed to Informal Resolution, I must contact the Employee Relations Branch within 14 calendar days of the effective date of the action to file an appeal.

Employee: V. C. V. Fox Date: 8/8/17

Reprimanding Authority: Date: 8/8/17

Original – Employee Personnel File Pink – Employee Relations Yellow – Employee White – Employee Notice of Review

SCDC 16-50(July 2004)

Grose FOIA for Vanessa Fox Nov. 13, 2019 GC199

Exhibit I

THE COURT: Thank you, sir. You may be excused as well.

THE WITNESS: Thank you.

(Witness leaves witness stand and courtroom.)

MR. GROSE: I call Alex Wolf.

(Witness comes forward.)

THE COURT: Just come right up here and put your left hand on the Bible and raise your right and let me swear you in. (Complies.)

Solemnly swear that the testimony you're about to give the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT: Thank you, ma'am. Watch your step, but take a step up and have a seat in the red chair and pull the red chair up to the microphone.

ALEXANDRIA MARIE WOLF,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GROSE:

Q. Would you state your full name for the record?

A. Alexandria Marie Wolf.

Q. And are you an attorney?

A. I am.

Q. And I'm not asking for an address or anything,

but where is the home base for your practice?

A. Spartanburg, South Carolina.

Q. All right. And how long have you been an attorney?

A. Twenty-seven years.

Q. Okay. And as part of your practice have you practiced with Family Court?

A. Yes.

Q. And as part of your practice, have you ever been appointed as guardian ad litem in Family Court cases?

A. Many times.

Q. Okay. And were you appointed as a guardian ad litem for [redacted], later named [redacted]?

A. Several times.

Q. Okay. And when you say "several times", can you explain what you mean by that?

A. I was appointed in the original action that was brought. I say original, it was the first one that I was brought into when Mr. Spade was wanting visitation and Mrs. Jolley was wanting child support and the kind of standard establish paternity and step up and do the dad thing.

And then the second occasion, after I think about a year after the first litigations concluded, Ms. Jolley filed a second piece of litigation asking to suspend

visitation, wanting the child support addressed, allocation of some medical expenses and some things like that.

Q. Okay. And ultimately she asked for termination of parental rights in the -- before there were ever any charges.

A. They had amended while that second petition was out. I don't believe, to the best of my recollection, they did not amend until after the charges had been secured.

Q. Okay. And was there a trial in front of Judge Georgia Anderson?

A. That was one of the original trials, yeah.

Q. Okay. All right. So you were a guardian in that case?

A. I was.

Q. Okay. And then there was the later action to suspend visitation that was eventually amended into the termination of parental rights case where Danny's parental rights were terminated?

A. Right.

Q. Okay. And were you the guardian for that case as well?

A. Yes.

Q. Okay. And in the period of time there was any

allegations of child sexual abuse, did the Jolleys cooperate with you as the guardian?

A. Very much so.

Q. Okay. And then do you remember when the allegations of sexual abuse came up?

A. They were brought to my attention on May 31st of 2011.

Q. Could it have been March 31st?

A. Yeah. I'm sorry. Yeah, right.

Q. I have trouble with times too, but what's more important is how did it come to your attention?

A. The maternal grandfather just showed up at my office, just walked in.

Q. And that's Gail Smith?

A. Yes.

Q. Oh, I'm sorry, Mike Smith?

A. Yes.

Q. Yeah.

A. And I didn't have any clients with me, I was simply working at my desk and my office is a converted house. It's an office but if you walk through you kind of enter the big room and then my office is right, right there. So he came in and he just introduced himself and told me that his wife said that Danny had done something to [redacted] and he didn't know what to do.

Q. Okay. And in your role as guardian ad litem, at that point what did you do?

A. I asked him, one, not to give me any further explanation. I didn't want to hear anything secondhand. And I said the proper thing to do would be to immediately contact my client, [redacted] therapist, Ms. Rosborough, and let her know. And that Ms. Rosborough would know what to do from there in terms of working on the issue within the confines of the therapeutic relationship.

And I asked him not to discuss anything further or to have his wife discuss anything further with [redacted]. And he made me promise not to tell anybody that he had been there and, especially not to let Mr. Jolley, the stepfather, know that he had been there and that he had said something had happened.

Q. Okay. Now, as far as your role as guardian, did that present any -- well, before I get to that.

You mentioned Kim Rosborough, the therapist.

A. Yes.

Q. And up to the point of the disclosure [redacted] had been in therapy with Kim.

A. Since October of 2010.

Q. Okay. And how was that therapy progressing?

A. According to the reports I was receiving from the

Jolleys, it was progressing very, very well.

Q. Okay. And at that time in March, right before the allegations were reported, what were -- and you were in contact with the therapist too, weren't you?

A. I did not speak with her directly. The Jolleys were contacting me every week, sometimes multiple times a week, and so they were keeping me updated what was happening with Kim and how she was doing with Kim and what she was talking about with Kim, so I did not contact Kim directly, no.

Q. Okay. And were you aware of whether or not Kim was wanting to have a therapy session where she was gonna introduce Danny, sort of a family meeting?

A. Yes.

Q. And how did that correspond or coincide with the allegations of sexual abuse from a timeframe perspective?

A. It was -- the meeting that there was -- that the -- the meeting in which Kim told Heather that she wanted Heather and Danny and David and [redacted] to sit down together so that Heather could see how [redacted] was interacting with, with Danny. That was a conversation that she had, that was had on the 28th. And then on the 31st was when the grandfather showed at my office.

Q. Okay. And after the allegations of child sexual

abuse were made, what happened with regards to continuing or terminating therapy with Ms. Rosborough?

A. According to the e-mails that I received from Ms. Jolley, the work with Ms. Rosborough stopped almost -- I had no note showing that there was anything further after that. There was a referal made to the Children's Advocacy Center and then the only other information that I got from Ms. Jolley was copies of e-mail messages sent to Ms. Rosborough saying basically we're not going to be working with you any further.

Q. All right. And was that one of the e-mails you were showing me last night?

A. Yeah.

Q. And do you have that with you today?

A. I should. It might just take me a second.

Q. That's -- take your time.

A. I have one e-mail that Heather sent to Ken and was copied to me on May 31st, which indicated that they were now going to see Meredith in Greenville, which was how I found out that they had changed therapists. And then there was another e-mail -- and then that e-mail talks about we'd love to get together with you and basically confront you about some things that were said at the bond hearing and we're not really sure you knew some of those things, but...

And then the other was a June 14th where the attorney for the Jolleys contacted Ms. Rosborough's office and cancelled the appointment that they had scheduled. And then Heather e-mailed and also confirmed that the appointment should have been cancelled by their attorney. They apologized if it wasn't. And they would not be meeting with Kim any further.

Q. And what was the date of that e-mail?

A. The first one was May 31st and the second one was June 14th.

Q. And the first one was from Heather and the second one was from the lawyers?

A. The second one was also from Heather and it referenced that the lawyer should have already cancelled the ---

Q. Okay. All right. Now after the allegations of child sexual abuse were made, did the Jolleys continue to cooperate with you?

A. That's hard to answer because to me the allegation was something happened, and that was what I was told on the 31st of, of March. There was a couple more weeks in between where Mr. Jolley was continuing to contact me about [redacted], and I don't know whether he knew that there had been an allegation made or where they were in the whole process of working with Kim.

Then about two weeks later he confronted me, and that's how I learned that he was aware, but it was very odd because he, he just smiled at me. I can't put it any better way. He just said, well, now we all know what's been happening. And I didn't know what was happening. I did not know the allegation. I Had no understanding exactly of what had been said to Kim or what the grandmother had said or what.

It was very clear, though, that just by grandmother's warnings about please don't let Mr. Jolley know, Mr. Jolley did now know. And after that statement, then his affect, there was no further contact with him until I had to do a home visit later on in the fall of that year in preparation for the final hearing in Family Court.

Q. All right. And it's probably self-evident, but why did you have to do the home visit?

A. Any time we're getting ready for a trial it's simply good practice as a guardian ad litem you've got to go lay eyes on their kid.

Q. Okay.

A. They had moved since the last litigation, so I had not been to the new home and I insisted that I needed to see where my child was living and how she was doing at least a couple weeks prior to the hearing.

Usually I make sure I'm there within three days of the final hearing.

Q. Okay. And what happened when you went to that home visit?

A. Well, the appointment with Ms. Jolley, I scheduled a home visit with her two weeks before the actual visit. She came to my office and I explained that I have to come and see it. She was very polite and very pleasant and looking forward to seeing me.

When I arrived at the house I was greeted at the door by Mr. Jolley and he was, he was very angry. I don't know why. I said, hello. I smiled. Mrs. Jolley, Heather, kind of hurried up beside him and welcomed me in. It was clear he wasn't opening the door for me. And he walked behind her. She walked me into the living room where Heather -- or where [redacted] was sitting. And he sat down on a chair and she sat down on a chair, Heather. [redacted] was sitting on a couch and he just stared at me. He just stared through me. He was not a happy camper.

And I started chatting with [redacted]. And, you know, getting ready to do my come show me the new house and the, you know, the bunny rabbit in the backyard and did my plan of standard. You know, good to see you again, and show me all the art work and all the other

cool kid stuff going through the home.

And Mr. Jolley was standing behind me following me around with [redacted]. And eventually Ms. Jolley put her hand on his arm and said leave them. And [redacted] and I went upstairs to look at the dance floor he had built for her, which was way cool. She thought it was way cool. And I could hear Heather talking to him downstairs and telling him you need to settle down.

So we stayed up there just for a few minutes. And, of course, you always keep the door open, you don't want to be alone with any child. And we went back downstairs and he was still somewhat subdued but his posture was aggressive and his temperament was, to say you could cut it with a knife is an understatement. I couldn't get out of there fast enough. And so I said my goodbyes and I left. I didn't see him again until the trial and his attitude was still the same at the trial.

Q. Okay. Now, at the trial you ultimately agreed that, you know, Danny's rights should be terminated; is that correct?

A. My testimony was, was it's not my position to make a, you know, to make a conclusion of fact for the court. That's the court.

Q. Right. And I want to be clear, you didn't make a conclusion of fact regarding sexual abuse for the court,

did you?

A. Did not.

Q. Okay.

A. Did not. My position was this child needs to be out of this situation. This has to end. This litigation has to end. However it is intended, it must end. This child cannot continue being put through what she's been put through. And understanding I had been shut down from the litigation once. As I understand it, Mr. Jolley was aware of the allegations. So everything I had up until then was based on the weekly phone calls and tracking all the interaction, and the child's anxiety levels and what was being said by Mr. Spade over the phone. And there was anxiety there created by both sides and it needed to stop.

Q. In the context of the litigation, the litigation, too, was having an effect on the child?

A. It was. Mr. Jolley was e-mailing me and complaining about things that his wife was doing. And Mrs. Jolley was complaining about things that Mr. Spade wasn't doing and their admissions that the child was overhearing this. No one wanted it that way, but even Mr. Jolley had to admit in an e-mail that [redacted] overheard him arguing with his wife about him and his wife, what she should or should not be doing. And the

older she was getting, the more of this she could absorb and it was horrible.

Q. It was what?

A. It was horrible for this little girl.

THE COURT: All right. Ma'am, if you would, your voice is trailing off and we're having difficulties.

THE WITNESS: I'm sorry.

MR. GROSE: Beg the Court's indulgence one moment.

THE COURT: Uh-huh.

BY MR. GROSE:

Q. Did anybody contact you about testifying at Danny's trial?

A. Mr. Shabel subpoenaed my file. There were audio recordings in there from our conversations that had taken place between my client and her dad up until my work was shut down. And they had asked me if I would be willing to testify and I said yes.

Q. Let me ask you about those recordings. Did you listen to those recordings?

A. I was not able to play back all of them. I had the summaries because every time there was a recording made, Mr. Jolley would e-mail me and tell me the content and then he sent them electronically. And then I reduced them to a CD, an audio CD and I could hear them

on audio CD.

Q. Okay. And how do they sound interacting?

A. Most of the time it was pleasant, dad talking to his daughter that he hadn't had a lot of contact with. And I say that, at least when I got involved, I was appointed in December 27th of 2010, and his visitation had already been suspended. So of all the conversations that I was hearing had occurred after he had not seen her for a couple months.

But she was chatty. It was almost like she wasn't really sure who he was, but she didn't care. She was chatty. Someone was talking to her and she was happy about that. I listened for things about what she called him or how she referred to him or voices in the background, that kind of thing.

Q. Okay.

A. But they were not anxiety laden. They were not -- I was looking for something that said this child is uncomfortable with this conversation, with this person and I wasn't hearing any of that.

Q. Okay. You said that Mr. Shabel had subpoenaed your file.

A. (Nods head up and down.)

Q. And you had been -- is that a "Yes"?

A. That is a yes, I'm sorry.

Q. When I'm on the witness stand I forget too -- same thing. And did you know when Danny's criminal trial took place?

A. I was not told ahead of time. I had sent my file and those recordings to, to Ken's office and didn't hear anything further. Now, understand all of us, including Mr. Brannon, work in Family Court, so they would pass by and I would ask him, you know, is the trial coming up? When's it? But the actual trial being scheduled, I did not know about. The only way I knew that it actually happened was because I think on one of the days of trial there were multiples. I don't know. But I had come down to, what I call "big court" and Mr. Jolley was there and I recognized him. So then I realized the only reason he could be here is because they were prosecuting Mr. Spade.

Q. And after the trial, did Mr. Spade ever contact you?

A. He did.

Q. Okay. And did you write him back in March of 2014?

A. I did.

Q. Is this the letter that you wrote?

A. Yes, sir.

Q. Okay. And I'm gonna just ask you a couple

questions about that letter. The first one is did you say anything in there about you not being called as a witness in the trial?

A. I did. I had shared with Mr. Spade that I was surprised -- I was more than surprised, I was stunned that they had not called me. I felt the information that I had had up until the point where I was closed out of the communications with the Jolleys was relevant. Would have given a good background on how, at least, the timeline and especially where my client was in her unjust position to all that was being alleged.

Q. And when you say "where she was", that includes what you testified earlier about where she was in her therapy with Ms. Rosborough?

A. Yes, sir. And the fact that she was doing well in school. We have the school reports that everything was going well. And the information I had from my other sources. I had done an investigation. As far as just waiting for the phone calls from the Jolleys, I had interviewed witnesses. I had contacted the folks in Virginia, the girlfriend of Mr. Spade or fiancee at the time, the guardian ad litem. And I, I was stunned that they did not call me. I had all of this information and I had been putting it together and it was an investigation.

Again, because I was charged with an investigation under the Family Court. Certainly nothing as vast and comprehensive perhaps what the State was gonna do, but it was still an independent investigation and I didn't understand why that would not have been relevant to one side or the other in the, in the trial.

Q. And you could have testified about your observations from listening to the phone calls?

A. Yes.

Q. And you could have testified about how the contact was cut off at some point after the allegations were made?

A. Yes.

Q. And you could have testified about the visit that you had with the Jolleys, the home visit before the TPR hearing?

A. Yes.

Q. And in that letter did you also make a recommendation as to whether or not Danny should share your letter with subsequent counsel on appeal or postconviction?

A. Yes.

Q. Okay. Thank you.

Beg the Court's indulgence for a moment.

That's all the questions I have at this time,

Your Honor.

CROSS-EXAMINATION

BY MS. JAMESON:

Q. Good morning, Ms. Wolf. Do you have a copy of the 2012 termination of parental rights trial in front of you up there?

A. No.

Q. Have you reviewed it before coming to court today?

A. No.

Q. Okay. I'm gonna hand it to you and ask you to read a few pages. And I don't know if Your Honor would like. It's probably about seven or eight pages, so if she could have some time to review that to herself. And I'm handing you, this has been marked as an exhibit in this proceeding. This is Petitioner's Exhibit 14. If you will turn to page -- I've turned to page 517 for you. Does this appear to be where the conclusion of this termination of parental rights you give your report to the court, starting at line 15?

A. I'd have to review it.

Q. Yes.

A. I want to see where you are.

Q. Okay. If you'll go ahead and review that through the end of your recommendation to the court, just to

yourself. I have some questions to ask you about that.

THE COURT: Can counsel hand me Exhibit 14?

MS. JAMESON: Yes, sir.

THE COURT: Thank you.

MS. JAMESON: Certainly, Your Honor.

BY MS. JAMESON:

Q. Do you mind if we switch copies? That way you'll have a clean one without the notes?

A. Sure. Is this the only ---

Q. Yes. This is all three volumes of the entire proceeding.

A. Okay, compressed?

Q. Yes.

A. Okay.

MR. GROSE: I'm sorry, what pages are we on again?

MS. JAMESON: 517 through the conclusion of her report.

MR. GROSE: Okay.

MS. JAMESON: Thank you.

THE WITNESS: Okay. It does look like it's the end of the trial. It's the second time that I testified.

BY MS. JAMESON:

Q. So you're actually giving your report, not

testifying, correct? You're giving your report as the guardian ad litem to, to the Family Court judge?

A. Yes.

Q. Did you review what you told the Court in your report?

A. Just briefly, yes.

Q. Okay. So you testified earlier that your experiences with David Jolley were pretty unpleasant, at least starting in April of 2011, correct?

A. You'll have to point me where you are.

Q. No, no today in this proceeding right now. I'm gonna, I'm gonna ask you some questions about that in a second.

A. Okay.

Q. You testified earlier that after the disclosure was made there were a couple of weeks where you were still talking to David Jolley, communicating with him, correct?

A. He was still e-mailing me, yeah.

Q. Okay. And then I think you said about a few weeks later he confronted you, correct?

A. Correct.

Q. And I think the words you used was that he had snarled at you, correct?

A. Yeah.

Q. And then you said you had no further contact with David Jolley until your final home visit in the fall. Was that in the fall of 2011 or 2012? You said later that year, which would be 2011.

A. I'd have to look at my notes to tell you for sure. Do you want me to do that?

Q. Yeah. That would be great because the trial was in 2012, correct, the TPR trial?

A. Give me a second. It was a long time ago in my world.

Q. It was. This all happened eight, nine years ago, correct?

A. (Witness nods head up and down.)

Q. Is that a "Yes"? Sorry, I need a response for the court reporter.

A. That's correct. I'm double checking. As I said, I know when I got appointed was in December of 2010, and I started my work January of 2011.

Q. For the second time you were appointed --

A. Correct.

Q. -- for [redacted] guardian, correct?

A. Correct. Yeah.

Q. So you've been dealing with [redacted] and Heather Smith and David Jolley, later Heather Smith-Jolley, starting with the first time you were appointed as the

guardian back in 2008?

A. 2008/2009.

Q. Okay.

A. Yeah. But, yeah, the trial, the TPR trial was in 2012, so I was shut out of the, of the loop, for lack of a better word, when the disclosure was made. And then to the best of my recollection, and I'm looking at my notes because as a guardian you have to keep detailed notes of every time you talk to anyone or anything about the case. And there wasn't much of anything from either of the Jolleys really from like June on of 2011.

Q. Okay. So this confrontation with David Jolley, where did it occur?

A. Well, and that's what I can't recall. I don't know. He did not come to my office, and I don't know if it was something at the Family Court. All I could remember was the words that he said to me and, and I was taken aback because I didn't know what he was referring to and he didn't talk about it. I mean, he didn't say, hi, you know, I'm really angry. It was just, it was just like a flashback, so I honestly can't remember where it was. It wasn't even written down in my notes like he called and said this where all of my other notes show.

Q. But you just said it's really important for you

as a guardian to take detailed notes, correct?

A. To keep track of like, yeah, what I'm billing for and every time I talk to somebody and take -- accept information about the case.

Q. But you didn't regarding this very negative interaction with David Jolley?

A. No.

Q. Okay. You said he confronted you. I -- we can't get into any hearsay of what he said to you specifically. You don't even remember specifically what he said to you, correct?

A. No. I remember exactly what he said.

Q. Can you give us the substance? What did he confront you about?

A. That's what was really sort of odd about it. He just simply snarled at me and said: "Now we all know, don't we?"

Q. And that was it?

A. That was it.

Q. Okay.

A. And then he just -- then he was gone.

Q. So now we all know what happened in a snarl and that was it?

A. Yeah.

MR. GROSE: Objection. Misstating the witness's

testimony.

THE COURT: All right.

BY MS. JAMESON:

Q. Can you say again exactly the phrase that, that he said to you?

A. Now we all know what happened, don't we?

Q. And that was it? That was the interaction?

A. That was it.

Q. Okay. And you don't recall where it happened?

A. I'm sorry, I do not.

Q. Was it after you got this disclosure from Mike Smith you said that you told Mike, [redacted] grandfather, to call Kim Rosborough and she would --

A. Advise them.

Q. -- advise of a treatment or what to do at that point, correct?

A. Correct.

Q. In regards to the best interest of your client, [redacted], correct?

A. Well, in regards to how to handle the disclosure.

Q. Okay. Did you contact Mr. Spade?

A. I contacted Mr. Spade. I contacted his attorney.

Q. Ken Shabel or Shawn Campbell?

A. Ken Shabel.

Q. What did you tell him?

A. I told him that there had been a disclosure; that the contact with his client would be halted until Kim Rosborough had done some kind of work to find out what was happening.

Q. And you testified that you didn't know what specifically the allegation was, correct?

A. Correct.

Q. But you knew it was sexual in nature, correct?

A. I knew that it was an allegation of touching, but I did not know if it was a sexual touching or, or what.

Q. Just some type of abuse. Either sexual or physical abuse, correct?

A. Just a touching.

Q. Touching?

A. That's just it.

Q. Well, what did you interpret a touching to mean when Mr. Smith came to your office?

A. I didn't. That's exactly what I don't do. I don't draw conclusions when I don't have any information.

Q. Okay. So you told Mike to call Kim Rosborough. You called Ken Shabel, Mr. Spade's attorney. Did you contact the Jolleys?

A. No.

Q. Why not? You contacted Mr. Spade, one of the

parents of your client. Why didn't you contact the Jolleys?

A. Because the grandfather said that he was gonna contact Kim Rosborough and Kim would contact the Jolleys.

Q. So you made a decision back in 2011 that you were going to communicate with one biological parent and not the other?

MR. GROSE: And, again, objection. Mischaracterizing the testimony. She said she contacted the law firm and she's twisting it.

MS. JAMESON: I believe she -- I believe she didn't. I believe you testified that you contacted the counsel for one of the biological parents, correct?

A. Correct.

Q. But you didn't contact the Jolleys or the Jolleys' attorney, did you?

A. No. The grandfather was contacting Kim Rosborough and Kim, Kim was in touch with the Jolleys' attorney. So, no, I did not.

Q. And you testified that Mike Smith expressed concern that he didn't want the Jolleys to find out, correct? He didn't want Heather and David to know?

A. He specifically told me do not tell David. We don't know what he'll do.

Q. And at that point you contacted counsel for one biological parent and not the other, correct?

A. Yes.

Q. Do you know if Ken Shabel ever contacted Mr. Spade about this?

MR. GROSE: Objection, speculation.

THE COURT: I mean, that's a direct question. She can answer it if she knows.

THE WITNESS: I don't know if he did. Mr. Spade contacted me several days later and didn't seem to have any -- didn't reveal to me that he was aware of anything that was going on. He was calling me to complain about a, a phone conversation that didn't go well.

Q. You testified at the 2012 TPR proceeding, correct?

A. Yes.

Q. And you gave your recommendation to the court. But you also were a witness, correct?

A. Yes. I was called by the Jolleys.

Q. And as a representative for your client, [redacted] [redacted] at the time, you were afforded the opportunity to question witnesses as well, correct?

A. Correct.

Q. And you did question several witnesses, correct?

A. Correct.

Q. Including Heather Jolley and David Jolley, correct?

A. I don't recall. I'd have to review the transcript.

Q. But if the transcript reflects that you did cross-examine Heather Smith, you don't have any reason to dispute that, correct?

A. Do you mean Heather Jolley, ma'am?

Q. Yes. Excuse me. Heather Jolley at that time.

A. Yes. If the transcript says that, I have no reason to believe that's not an accurate transcript.

Q. And you testified that shortly thereafter these allegations came to light in March, April of 2011, the Jolleys were not helpful any longer, correct?

A. Correct. And, in fact, I was told by their lawyer there's nothing you need to do. We will let you know if there is anything else we need from you.

Q. And at the 2012 TPR hearing, I think you even equated it as the Jolleys were 120 percent helpful and supportive before these allegations came to light, correct?

A. I don't know.

Q. They were extremely helpful before?

A. They were cooperative.

Q. Communicating with you on a regular basis,

correct?

A. Yes.

Q. Do you recall -- and then afterwards zero communication, is what you testified?

A. It dwindled down in the weeks afterwards until my phone calls were not getting returned. And then I finally confronted their attorney and she confirmed that they would not be having anymore contact with me.

Q. So you did get the e-mails in May from the Jolleys, correct? From either Heather or David, May 11th, 2011, about working with Kim Rosborough?

A. I did receive some continued e-mails after the grandfather came to my office, yes.

Q. Okay. And then I think there was also an e-mail on June 14th you referenced on your direct testimony dealing with the Jolleys' attorney saying that an appointment with Kim Rosborough should have been cancelled, correct?

A. Yes. My file indicates that that was one of the documents that came from Kim's file. And then the June 14th was also the date of the letter from the Jolleys' attorney confirming that there was nothing I should be doing any further; that they would let me know if there was.

Q. But at that time they wanted the communication

with the Jolleys to go through counsel, correct?

A. No. No one ever said that.

Q. When you cross-examined Heather Jolley at the 2012 trial, you broached the subject of her lack of cooperation, correct?

A. I don't recall, ma'am. I never got a copy of the transcript, and I haven't studied what you've just handed me. I've looked at what you've given me to look from my -- the end portion, but I have not examined of any recollection of what was testified to when I was called to testify on behalf of the Jolleys.

Q. So you never, you've never reviewed a copy of the 2012 termination of ---

A. No, ma'am.

Q. But you've been in contact with counsel for Mr. Spade, correct?

A. Since when or could you be more certain?

Q. Well, you sent a letter in 2014 to Mr. Spade indicating that you'd like to help with TPR, correct, or his direct appeal?

A. Are you talking about the letter that I just testified to?

Q. Yes.

A. The one that I said I was stunned at what had happened --

Q. Yeah.
A. -- when I learned about the trial?
Q. Yes. That you'd be more than happy to assist?
A. Yeah.
Q. Yes.
A. I didn't communicate that with, with this lawyer. That was done with Mr. Spade.
Q. But you did with Mr. Spade, that you would be an advocate for him in any future proceeding?
A. Oh, that I'd be available if he had a lawyer that felt that I was -- that the information I had was relevant.
Q. If you'll look at the transcript over there of the 2012 TPR proceeding and turn to page 432, which is where your cross-examination of Heather Smith-Jolley starts. And if you'll look at page 444, starting with line 6 and kind of review that and the next two pages to yourself briefly.
A. Okay. 446 starting at what line?
Q. 444, starting at line 6, please.
A. Okay, go ahead.
Q. So you broached the subject with Heather Jolley that communications were to go through her attorney at that time, correct?
A. No.

Q. If you'll look at page 444, line 9, do you remember getting the instruction that your attorney was gonna handle everything now and your focus was just gonna be on making sure [redacted] okay?

A. Correct.

Q. You asked her that. So you knew at the time that they wanted everything to go through the attorneys, correct? That was the reason the communication had stopped?

A. No.

Q. You didn't know that at the time of this trial in 2012?

A. Oh, at the time of the trial I did. What I'm referring to here is the fact that they work with the therapist, was all gonna go through the attorneys, that I was not expected to contact the guardian -- not the guardian, the new therapist.

I participated in the depositions and that's how I learned there was a new therapist, but up until this point -- and at some point they hired Doug Brannon and so no one said you must go through the attorneys. All I had was the June letter from Ms. Moore saying there's nothing further you need to do, we'll let you know when there is.

I made no effort to reach out to them after that

because Ms. Moore's letter was very clear. However, I did make repeated efforts to contact Ms. Moore at her office and then also Mr. Brannon and they would not respond. They would not provide the information I asked for. So I don't know if their instruction had been to their attorney, what it was, but it was clear their attorneys were not cooperating with me.

Q. And Heather and David Jolley both testified at the 2012 trial, correct?

A. Yes.

Q. So that was six years ago, much closer to when all of this was happening, correct?

A. Yes. When you say "all of this was happening" I'm not sure which this, the criminal prosecution or the ---

Q. The -- no, not the criminal prosecution. All of the recollections of your interactions with David Jolley and your interactions with Heather and your interactions with [redacted], those were much more contemporaneous to the 2012 trouble, correct?

A. Yes. Yes, because it's now been six years.

Q. Six years since that and seven or eight years since your work began with [redacted], correct?

A. Correct. Correct. And I always have to go back to my notes because, you know, there's -- I've probably

done 400 cases involving child abuse since then, so in order to keep things straight I have to go back to my notes.

Q. And you testified earlier how crucial it is that you take good notes in cases where you're a guardian, correct?

A. Yes.

Q. Okay. But you don't have any notes about this very negative interaction with David Jolley in April of 2011?

A. I do not. I don't have any written notes. Again, it was not a planned interaction and it wasn't -- it didn't take place in my office, it didn't take place in an appointment. It was an in-passing event.

Q. When you say "written notes", what other kind of notes do you take?

A. I only know how to write.

Q. So you don't have any notes of this interaction?

A. No. No. It would have been something where I would have had to have gone back to my office and pulled the file and wrote down and said, you know, something to Mr. Jolley.

Q. You testified earlier that the, according to your report from the Jolleys, the therapy sessions with Kim Rosborough were progressing very well, correct?

A. Yes.
Q. That [redacted] appeared to have made some significant progress with her anxiety, correct?
A. According to what Heather was e-mailing to me, yes.
Q. And this was when they were still being cooperative with you, correct?
A. Yes.
Q. Are you aware of whether Mr. Spade had any visitation with [redacted] at this time?
A. No. His visitation was suspended and that's why the Court ordered a guardian ad litem be appointed because they had a temporary hearing and in that hearing visitation was suspended and the Court ordered a guardian be appointed to do a separate investigation to assist the Court in their determination at a final hearing.
Q. You testified that in your role as [redacted] guardian you contacted people in Virginia regarding this case, correct?
A. Correct.
Q. And I believe one of the people you referenced was Cara, correct?
A. Correct.
Q. Can you tell the Court who Cara is?

A. At that time she was introduced to me or told that she was the fiancee to Danny Spade. That information came from the Jolleys' attorney.

Q. Do you recall when you spoke to Cara?

A. I do.

Q. When was that?

A. I spoke with Cara on March 25th of 2011 at 5:54 p.m. It was an appointment that we had made in advance for a telephone consultation.

Q. Is that the only time you spoke with Cara?

A. Yes.

Q. Were you aware that there had been a change in their relationship status at any point after that, Mr. Spade and Cara's relationship status?

A. My understanding was the relationship was always in flux. And then what I was able to gather from finally being able to review the State's file was that they continued to be in flux after the criminal charges were levied.

Q. Were you aware that he was arrested in July of 2011 for numerous charges against Cara?

A. Yes.

Q. Are you aware of whether there are any reports of sexual abuse of a similar nature against their child in common of the same age?

A. Who's their?
Q. Cara and Mr. Spade's child?
A. I don't know if there were allegations. I did contact the guardian ad litem for that Family Court litigation in Virginia and discussed it with him, but there's nothing in my notes that show there was an abuse allegation, a sexual abuse allegation against Mr. Spade.
Q. When did you contact that guardian ad litem in Virginia?
A. Can I give you this back or set it aside?
Q. No. I still have some questions on it, so if you can just put it to the side.
A. Yes. If I can put it on the ground because I don't want it to ---
Q. Here, I'll take it up here.
A. Yeah, it is fragile.
Q. Thank you.
A. You're welcome. 12/22/2011.
Q. Is that the only time?
A. Yes.
Q. And what sort of information did you get from that guardian in that Family Court case in Virginia?
MR. GROSE: Objection, hearsay.
THE COURT: The way the question's phrased I'll allow it.

BY MS. JAMESON:

Q. Can you summarize the information that came from that case?

A. Sure. That he had been appointed. There were issues of domestic violence in Virginia pertaining to Mr. Spade and his then fiancee. And he had begun working with the children up there and looking at photographs the children had been drawing. And we discussed his take on what was happening with his clients up there.

Q. When you say "work that had been done and pictures that had been drawn", what do you mean by that?

A. Apparently, and I have to say apparently, but in the packages that I got from the Jolleys' attorney, Ms. Moore, there was art work that the Spade children had done that indicated that they were seeing domestic violence or being exposed to it.

And so I don't know the confines in which that artwork was produced, who asked for it or whatever. It was simply provided to me and, therefore, I was able to followup with the guardian. And he said: I see this piece of artwork is coming from one of your clients, one of your little people and my information from Ms. Moore is that there's concerns of Domestic Violence in the home and that gave the basis for the discussion.

Q. And that was in December of 2011?
A. Yes.
Q. Did you ever followup with the guardian ad litem in Virginia?
A. I did not. I followed up with Cara.
Q. When did you follow up with Cara?
A. March 25th, 2011.
Q. But you spoke to the guardian ad litem in Virginia in December, so...
A. Correct.
Q. So nine months after you talked to Cara?
A. No, ma'am, three months. December 22nd, 2011, May 25th, 2011.
Q. You talked to Cara --
A. Or March.
Q. -- in March of 2011?
A. Yes.
Q. And then you spoke with the guardian ad litem in December of 2011?
A. Okay, yes.
Q. So did you ever followup with Cara?
A. No. No. And my apologies. The information had been given to me in a packet with from Ms. Moore. The interview with Cara followed up with the guardian at the end of 2011.

Q. May I approach, Your Honor, and return the transcript?

THE COURT: (Nods head up and down.)

BY MS. JAMESON:

Q. I'm gonna return the transcript of the 2012 termination of parental rights proceeding and we're back on page 517, which is your report to the court. There's a few passages that I'm gonna ask you to look at. Do you recall what overall your recommendation was to the court?

A. That the litigation end and this child be protected from further trauma of being caught in litigation for almost five years of her little life.

Q. So you ultimately recommended that Mr. Spade's parental rights be terminated, correct?

A. Essentially, yes. I mean, that's the only way this would end.

Q. If you'll turn to page 521, line 17. You tell the court then that -- is "she" in that instance [redacted]? You tell the court that she's got a daddy, he's there 24/7, correct?

A. Correct.

Q. And you were referencing David Jolley at this time, correct?

A. Correct.

Q. If you'll turn to page 525 and review lines five through seven to yourself, please.

MR. GROSE: I'm sorry, which page?

MS. JAMESON: 525.

BY MS. JAMESON:

Q. At that portion you tell the Family Court I've had terrific contact with no concerns or lack of confidence in the stepfather's abilities, correct?

A. Correct.

Q. And you're referencing David Jolley, correct?

A. Correct.

Q. If you'll turn to page 528 and review lines 3 through 17 to yourself.

A. Okay.

Q. In the first paragraph, lines 3 through 9, you appear to be informing the Family Court that Mr. Spade has failed to make child support payments, correct?

A. I'm informing the Court that the dad did not make his child support payments.

Q. And there are grounds sufficient to terminate his parental rights, correct?

A. Correct.

Q. And then you go on to say: "I'm very well and truly satisfied that no relief short of that is going to be what my client deserves." Correct?

A. Correct.

Q. So you believe that your client, [redacted], deserves David Jolley to be her father; the rights of Mr. Spade to be terminated, correct?

A. Those are two questions. One, that the rights need to be terminated --

Q. Yes.

A. -- because the ending of this litigation was the only thing that was going to protect this child from the further trauma that she had been through simply because of litigation and everything that goes with it. That's not to say that I did not have my concerns and have expressed those concerns with Mr. Jolley's attorney and Mrs. Jolley.

Q. When did you tell the Family Court that?

A. Nobody asked. Nobody cared.

Q. This was your time to give your recommendation on behalf of your client, correct?

A. Correct.

Q. And we just reviewed portions where you talk about he's a great dad, he's there 24/7, correct?

A. He is.

Q. And you had no concerns or lack of confidence in David Jolley's ability to be a father of [redacted], correct?

A. Correct.
Q. If you'll look at the next paragraph, lines 10 through 17. You tell the Court your client needs one dad, one home, correct?
A. Correct.
Q. And that dad is David Jolley, correct?
A. At this point in time he is the only other option.
Q. And, again, you just told the court glowing things about David Jolley, correct?
A. Correct.
Q. You also say she never needs to be in a hotel room by herself. She never needs to be sent out of state, correct?
A. Correct.
Q. Why did you tell the Family Court that?
A. Because that's the scenario that brought about the tremendous concerns on the part of the Jolleys. Their litigation was brought because this child came back from a visitation and her behavior had been indicative that she was suffering from some type of anxiety or stress.
Q. Severe anxiety and stress, correct?
A. According to the Jolleys, yes.
Q. Different than what she'd experienced previously

in her life before these unsupervised visits with her biological father, correct?

A. I don't know because I wasn't that involved at that point. A very bad whole year had gone by since I had been last involved. I don't know. The attorney for the Jolleys gave me a list of his visitation dates. There was no indication anything was a problem.

The crux of their, of their initial suit, it was he's not paying child support, he's not calling when he's supposed to be calling and we want him to pay for her portion of her medicals.

Q. That was the original suit that did not result in the termination of parental rights, correct, the 2009 proceeding?

A. It was opened under the case number that I was appointed in December of 2010.

Q. Which would be the second action, correct?

A. Yes. I can't tell you that there wasn't another one in between that I wasn't aware of.

Q. Do you have your file from when you were appointed on the first Family Court action?

A. I don't.

Q. So you only brought a portion of your file with you here today?

A. I brought the file that had to do with the TPR,

not the file that had to do with the ---

Q. Well, which TPR, there's been two?

A. Well, that's just it. There's only one that I know of, was the one that where after the allegations were raised, Doug Brannon amended his pleadings or amended Ms. Moore's pleadings to now ask for a termination of parental rights.

MS. JAMESON: Moment of indulgence, Your Honor.

THE COURT: (Nods head up and down.)

BY MS. JAMESON:

Q. So you're not aware that there was a TPR proceeding that went to trial in June of 2009 under the case number 2008-DR-42-2075?

A. I'd have to see a transcript or something to, to refresh my memory. There's so much filed between these parties.

Q. It's hard to remember from so long ago, isn't it?

A. It is.

Q. There's been a lot going on in this case, correct?

A. Correct. Which is why I only brought the file that had to deal with when I got appointed in December 2010 and...

Q. So you don't recall whether you were appointed for an action that arose in 2008 for [redacted]?

A. I was working with [redacted] when she was around two years of age, which she would have been in 2008, but I can't tell you that I can recollect exactly what the pleadings were and who was filing and who was wanting what.

MS. JAMESON: May I approach, Your Honor?

THE COURT: Yes.

BY MS. JAMESON:

Q. I'm approaching with a transcript, which appears to be for a two-day proceeding in June 2009 under the Family Court case captioned 2008-DR-42-2075. Are you listed on the cover as the guardian ad litem?

A. Yes.

Q. Okay. So you have a whole other case file in this case, correct?

A. Correct.

Q. That you just didn't bring to court today?

A. Correct.

Q. And you have no memory of that proceeding, correct?

A. I have a memory of it, but I can't give you details about who filed what and what went where and, and yeah.

Q. And note taking is really important you said.

A. When you're the guardian, yes.

Q. And we don't have any of your notes here today from that first proceeding?

A. No. But if you'd let me go get them, I'd be glad to, or had you asked for them I would have brought them.

Q. You weren't subpoenaed as a State's witness, were you?

A. When?

Q. For this case.

A. No.

Q. If you'll turn back to the transcript from the 2012 proceeding and turn to page 529. If you'll look at lines 8 through 10. When you tell the court: "And I know this father is not happy with this recommendation. I know he's not been able to participate with me," who are you referencing as father and he?

A. This father would be the biological father, Danny Spade.

Q. So you're informing the court that Mr. Spade hasn't been able to participate with you in the proceedings, correct?

A. Once he was arrested, no.

Q. And if you will go ahead and read for the record lines 14 through 21 what you, what you tell the court there.

A. Do you want me to paraphrase it or read it?

Q. No. If you'll read that, please.

A. Oh, sure. "But for today, for here, for now, for why I'm on the stand I need this Court to grant the relief to award the termination of parental rights. There's no doubt in my mind it's in my client's best interest and order the name change and return to just being a little girl with a mom and a dad and a baby brother and some pretty cool bunny rabbits and the most amazing tree house you could possibly imagine."

MS. JAMESON: A moment's indulgence, Your Honor. Your Honor, there's a few page sites that I need to identify and then we'll be almost done. Do you mind if we take a brief recess so I can identify those?

THE COURT: You want her to go ahead and identify them, is that what you're saying?

MS. JAMESON: Yeah. If I can mark them, it'll be easier to question the witness and it'll be a lot quicker than if I try to flip through them one at a time, so if we could have a very brief recess I can almost conclude.

THE COURT: All right. We'll step down for a few moments.

MS. JAMESON: Thank you.

THE COURT: You'll be in the process of giving your testimony. Don't have any discussions with anyone

about the substance of your testimony, but you can step down as well.

(Witness leaves witness stand.)

(A recess was had from 11:57 a.m. - 12:05 p.m.)

(Witness resumes witness stand.)

MS. JAMESON: Thank you, Your Honor.

BY MS. JAMESON:

Q. Ms. Wolf, you talked about a moment ago that you didn't call Mr. Spade directly, you called his attorney, Ken Shabel, correct?

A. At the time that you were indicating, meaning after the grandfather had come to my office?

Q. After the disclosure. Excuse me, I should have been more clear with my words. In March of 2011, late March, after this disclosure, I believe you said on the 31st of March when Mike Smith comes to your office.

A. Uh-huh. Yes.

Q. Your testimony was that you called Ken Shabel, correct?

A. I called Ken Shabel some point after I had sent Mr. -- the grandfather to contact Kim Rosborough.

Q. And you testified you didn't directly call Mr. Spade, correct?

A. Correct. I testified that Mr. Spade contacted me.

Q. A few days later. And I believe your testimony was that he didn't appear to know about these allegations, correct?

A. Correct. He wasn't calling me to discuss anything other than the last conversation he had with his daughter and the concerns he had about that.

Q. Can you turn to page 126 of the 2012 termination proceeding and review 126 to 128 to yourself, please.

A. Give me those pages again.

Q. 126 towards the bottom and then lines -- well, where it says continue direct exam. So lines eight on 126 through line -- the entirety of 127, please.

A. On page 126, line 8 it says answer. This is Meredith Thompson-Loftis direct by Mr. Brannon. Is that what you're wanting me to read, ma'am?

Q. No.

A. Then I must be on the wrong page.

Q. I'm sorry.

MR. GROSE: Yeah, I was gonna say...

BY MS. JAMESON:

Q. It's been a long proceeding.

A. It's okay.

Q. 196, I apologize. 196, starting right here.

A. Okay. 196.

Q. This appears to be your redirect by Mr. Brannon,

correct?

A. Correct.

Q. Okay. Yeah, if you'll just review that. I have some questions about 196 and 197 for you.

A. Okay.

Q. So it appears that you testified in 2012 that you actually did call Mr. Spade, correct?

A. It does. It appears also I testified that I also called Ms. Moore, so apparently I did call both.

Q. Yes, it does. And Ms. Moore was counsel for the Jolleys, correct?

A. Yes.

Q. And you testified because you could not reach Mr. Shabel you then made a call to Mr. Spade directly, correct?

A. Correct. But I didn't have a conversation with him. I made a call and left a message for him, but I did not talk with him.

Q. Where does it say that you didn't talk to Mr. Spade? I see on her that you left a message for Mr. Shabel, but it says: "I then made a call to the defendant to tell him I was recommending the phone conversations cease, that a disclosure had been made", correct?

A. Correct.

Q. Where do you indicate that you only left a message for Mr. Spade?

A. Because it says I made a phone call to tell him. It doesn't say I spoke with him and told him.

Q. But before you indicate to the court specifically you left a message for Mr. Shabel, correct?

A. In this, in this testimony?

Q. Yes. Lines 4 through 5 on 197.

A. Yeah. It says: "I think I left a message with Mr. Shabel." It says: "I contacted then counsel of record, Ms. Moore, for this side."

Q. Yes,on the next page.

A. Right. And then according to my notes, I think I left a message with Mr. Shabel. I could not recall the recollectly --recollect that.

Q. But according to your testimony in October of 2012 you made a call to Mr. Spade, correct?

A. Correct.

Q. To tell him you were recommending the phone conversations cease. This was the phone visitation with [redacted], correct?

A. Correct.

Q. That he was still -- that was still outgoing.

A. Correct.

Q. Even though the physical visitations had ceased,

correct?

A. Correct.

Q. And they ceased at this time due to the increased anxiety of [redacted], correct?

A. They had ceased because there had been an order rendered in December of 2010 that said there will be no more visitation and a guardian is appointed to investigate the situation before visitation would resume basically.

Q. And that was brought by the Jolleys based on concerns about [redacted] anxiety and behavior, correct?

A. According to the pleadings provided me, yes.

Q. Not based on any sexual abuse at that time? That proceeding started in the fall of 2010, correct?

A. I have no recollection that there was anyone alleging any sexual abuse at that time.

Q. And you previously testified you didn't know exactly what [redacted] had disclosed or said it was some type of touching, correct?

A. That's what the grandfather told me.

Q. But you testified in 2012 that you were told by the grandfather that Mr. Spade had put his weenie in [redacted] face, correct?

A. I did not testify that's what he told me. That's according to the police investigation. When the State

finally let me look at the criminal file, then I was able to gather the rest of the information.

Q. But that's not what you testified to on page 197. You testified that you were told by papa -- and is papa Mike Smith?

A. Let me double check.

Q. If you'll review lines 13 through 25 to yourself on 197.

A. Okay.

Q. So you were told by -- is papa Mike Smith?

A. Yes.

Q. So it appears you were told by papa that the allegation was that -- made by [redacted], was that Mr. Spade had put his weenie in [redacted] face, correct?

A. I did not -- that was not the information I was given at the time. That was the information that I learned later when the State allowed me to review the criminal file.

Q. Where do you say that on page 197?

A. Oh, I don't say it. It wasn't asked. You've got to remember this was a year after I had been -- almost a year that I had been shut out. I had to -- I had to go to the solicitor's office. I asked for the files, I was told no. I asked for medical records, I was told no. I asked for physical evidence of any of the allegations, I

was told no.

Even in January -- June of 2012 I asked Ms. Jolley, what are the allegations? She couldn't even or wouldn't even tell me. So when I was testifying at the end of this, this was after the entirety of my investigation in getting the information from all the other sources, because I could not get them from the plaintiff's attorneys.

Q. Can you turn to page 198, the next page then and read lines 1 through 3 to yourself.

A. Uh-huh.

Q. It appears that that's the verbatim statement from Mike Smith of what [redacted] disclosed, correct?

A. Correct.

Q. That's what you're telling the Court?

A. But not the verbatim statement disclosed to me. The verbatim statement found in the other records.

Q. You testified that you tirelessly tried to get information from the solicitor's office, correct?

A. Not tirelessly. After two or three times, it was clear that they were under the instructions not to cooperate with me.

Q. And that's your speculation, that the solicitor's office was told not to cooperate with you?

A. That was what I was led to believe.

Q. What specific dates did you contact the solicitor's office to get information about this case?

A. September of 2012 and then was finally given permission to review the file in your office, was not allowed to make copies on October 4th of 2012.

Q. So, who did you speak with on September of 2012?

A. I don't know if it was Amy Goulding or just a staff member. I can't be for certain.

Q. You didn't document that?

A. Just documented that I had called. Documented that I had called Andrea Moore's office. Documented that I had called Mr. Brannon's office.

Q. So in September of 2012, is that the first time you contacted the solicitor's office?

A. No. I had spoken with Amy earlier and had been told the investigation is still ongoing, we won't release any information.

Q. What date was that?

A. I don't recall. Amy at that point was working as an officer in Family Court.

Q. Did you document that?

A. No.

Q. But documentation is really important, you testified, correct?

A. Yes.

Q. So the first documentation in your file is September of 2012 you contacted the solicitor's office, don't know who you spoke with and asked her to review the file, correct?

A. Correct.

Q. And you were given permission to come in their office and review the file, correct?

A. The next month, yes.

Q. Yeah. You were given a date of October, correct?

A. That's the appointment that we scheduled. That's why it's in my notations because that's the actual contact date when the information was finally ---

Q. Did you go review the file on October 4th, 2012?

A. Yes. That's why it's in my notes. That's the date of the activity that occurred.

Q. So based on your documentation, you contacted the solicitor's office once and were given permission to review the file and made an appointment at that date?

A. To the best of my recollection, I contacted several times.

Q. But that's not documented in your file, correct?

A. Correct.

Q. And documentation is important, you testified?

A. Correct. Yes, it is important, but I don't document every time I call and someone says so and so is

not available or, you know, we'll give her the message.
Q. How ---
A. The important part was that I was allowed to access the file before the trial so I could prepare for the trial.
Q. And you work. You were able to access it 11 days before, correct?
A. On the fourth. I don't know how many days that was before the trial.
Q. If the record reflects that the TPR proceeding started on October 15th, 2012, you have no reason to believe that's not accurate, correct?
A. Correct.
Q. So you reviewed the entire solicitor's office file at that point in time on October 4th?
A. I can tell you I reviewed their file. I can't tell you that they gave me the entire file.
Q. Do you have any reason to believe they didn't give you the whole file?
A. At the time I didn't know because I had been given information that there was additional information out there.
Q. By who?
A. At first Ms. Moore had indicated it. At first Ms. Jolley had indicated it. There was a doctor's

appointment with this child. There was supposed to have been an examination of this child. According to the records that the father had been told he had given this child a sexually transmitted disease, and so I was under the impression that they had tested for that and those records were supposed to be there somewhere.

Q. Who specifically gave you that impression? You've just listed a few different people that you talked to about that. Who specifically?

A. Heather Jolley and attorney Andrea Moore.

Q. Okay. When did you have that conversation with them?

A. I don't know when I had the conversation with Heather. I know I started asking Doug Brannon and Ms. Moore about it and then finally got an answer about a week before trial. A voice message from Doug saying there is no medical evidence, which I just assume that there was no sexually transmitted disease.

Q. Do you have documentation in your file of when you had that conversation with Heather?

A. I don't know if it's in an e-mail or if it's from the interview that I had with her when I met with her in my office to schedule the home visit.

Q. A moment ago you testified you, you don't document everything. You don't document calls you've

made if, if it's not -- how do you decide what's documented?

A. Okay. If the call doesn't go through, if it just says tried to -- if I called someone and had to leave a message and didn't have any actual conversation that would have given me any information to further my investigation, then usually I don't write it down.

Q. So when you talk to Amy Spaulding at some point in time before September 2012 and she told you the case was ongoing, you didn't think that was important to document?

A. No. Because the case is always not done. That's just standard procedure.

Q. But I thought standard procedure was to document while the case is going on.

A. The standard procedure for the solicitor's office is not to reveal information with an ongoing investigation. I expected them to, to not give me the information at that time.

Q. But it was still an ongoing investigation in October of 2012, correct?

A. I don't know. Nobody would talk to me.

Q. When you say "no one would talk to you", you don't have anything in your file to back that up? It sounds like you called to talk to Amy Goulding and she

first told you the investigation --

MR. GROSE: Objection; argumentative.

BY MS. JAMESON:

Q. -- was ongoing, correct?

THE COURT: I sustain the objection.

BY MS. JAMESON:

Q. The first time you talked to Amy Goulding, she told you the case was ongoing and there was no file to review yet, correct?

A. To the best of my recollection. I didn't necessarily call her, though, because, again, we were in Family Court and she prosecuted juvenile cases. At that point I was defending juvenile cases. You know, it was not unusual for them to say, no, you can't review the file.

I did subpoena from the defendant's file. That's where I got my initial information about the investigation because they had gotten their discovery, I suppose, after the criminal charges. So I had that information in hand. And then was finally able to get the solicitor's office to let me come to their office. They wouldn't provide a copy but I could review it.

And so, again, I'm accumulating information and I'm documenting the information I'm accumulating. That would be the basis for my testimony saying, okay, this

is what I now understood to have been the allegation. Whether that really was the allegation, I cannot say.

Q. But you testified in 2012 on page 198 that the verbatim statement from the grandfather was he put his weenie in my face, correct?

A. But the verbatim statement was not to me, ma'am. It was to somebody else in the file. I didn't discuss it with him. I did not want to become part of this investigation. I wanted to stay outside as an investigator. I don't talk to people who say a child said something or make disclosure, only about disclosures.

I mean, clearly I was talking to, to Mr. Jolley about everything he said [redacted] had said and vice versa, but the moment you say someone told me someone has touched a child inappropriately, I do not have any further discussion and do not want to know any further details. That is handled solely from the confines of the therapeutic relationship. And this young lady had an excellent therapeutic relationship. That's where I sent them.

And if you'll look at Kim Rosborough's file, he called her that morning and he called her that evening. So he called her, then he came to see me for advice. I sent him to Kim Rosborough and he called her that night.

So it was well handled the way it should have been handled, but no one coming to me and saying this is what's been said.

Q. Are you a mandated reporter for abuse allegations?

A. I don't know if at that time the statute required it.

Q. Did you followup with Kim Rosborough after you called Mr. Spade to let him know about these allegations?

A. Did I followup with Kim to find out?

Q. What was going on with your client, whether Mike Smith had followed up with her about getting [redacted] some, some therapy or investigating these disclosures?

A. No. No. I put the call into the attorneys and that was it.

Q. Did you follow up with the Child Advocacy Center?

A. No. No one told me that they even sent the child to the Advocacy Center until the end of the litigation.

Q. So you made the calls to the attorneys and to Mr. Spade and then didn't follow up with any of your client's care providers?

A. No. At that point my client's care providers were still in communication with me.

Q. When did you talk to Kim Rosborough next?

A. At the deposition.
Q. When was that?
A. 4/20/2012.
Q. So almost a -- more than a full year after these disclosures were brought to your attention by Mike Smith?
A. Correct. Because Kim had been shut out of the therapy in, I'm assuming, May. Although, that, again, is only coming from the information the Jolleys gave me.
Q. Going back to who you spoke with at the solicitor's office, are you sure that it was Amy Goulding?
A. I can't tell you for sure. Say you call, you don't get a solicitor, you get the person at the front and then they'll relay your message back. Then if you get an appointment, you'll be taken to the back and then a solicitor will give you permission. In this case I was handed a notebook and told to sit in one of the offices. I can't tell you which office it was. I can't tell you which particular solicitor it was.
Q. You didn't document that?
A. No. Just documented that I was able to review the file and the notes from looking at the file, information that I could get from the file.
MS. JAMESON: Moment's indulgence, Your Honor.

No further questions, Your Honor.

THE COURT: Any redirect limited to what she went into?

MR. GROSE: Yes, sir.

REDIRECT EXAMINATION

BY MR. GROSE:

Q. I hopefully will not be very long. After the allegations were reported, you indicated that you got a phone call from Danny.

A. And to clarify, when you say reported?

Q. Okay. Yeah, thank you. After Mike Smith came to your office --

A. Yes.

Q. -- you indicated at some point in your cross-examination that you had a phone call from Danny.

A. Yes.

Q. And was the subject matter of that, that he was providing you information about parental alienation?

A. I have no recollection that the term parental alienation was discussed.

Q. Okay.

A. But I can tell you that the, the crux of the conversation was the concern that the child wasn't being allowed to call him daddy. And then when he's on the phone and says things like I love you, then the Jolleys

tell the child, no, he's just being silly. I don't know if that's parental alienation. I can tell you that I did not have that sophisticated terminology with Mr. Spade or anybody in this case.

Q. Okay. Fair enough. But that's what you remember talking about and that's what your notes reflect?

A. Yes. It was concerns about the last conversation, which he felt had gone really well but there was some concerns still about calling this child (sic) daddy and that it was not allowed by the child.

Q. All right. They asked you about page 197 of the transcript from the TPR hearing. Can you go to that?

A. Yes, sir.

Q. And I'm gonna look at line 13 where the question is: Were you made aware by papa -- papa is Mr. Smith, correct?

A. Yes.

Q. Not the detail because at that point the disclosure made to mimi -- mimi is Ms. Smith, correct?

A. The grandmother.

Q. Yes. Was pretty shallow of a disclosure. I mean, you didn't know the depth of these disclosures, did you? And if you will please read your answer from line 17 to 22.

A. "Well, I just knew what I testified to

previously. He put his weenie in my face, but I didn't know if that was throwing a hotdog at her or that there had been a fight, I just knew that there was something that made this child upset; therefore, we needed to stop until Kim Rosborough had spoken to her."

Q. Okay. And when you say "stop", that stopped the process of having the meeting to reunite Danny, correct?

A. Yes, sir.

Q. And to talk, Kim was the therapist and would be an appropriate person to perhaps know how to handle that, correct?

A. Correct.

Q. And are you aware of whether or not Kim Rosborough made a referral to the Child Advocacy Center or a suggestion to the Child Advocacy Center?

A. I was made aware of that several weeks later.

Q. Okay. Now, can you go to page 175 of the transcript.

A. I'm there.

Q. Okay. And at line 4 you were asked: "Prior to March 30th of 2011, describe the level of cooperation you received from the Jolleys in your investigation." What was your answer?

A. "120 percent."

Q. "Since March 30 of 2011, please describe the

level of cooperation you received from the Jolleys in your investigation." And your answer?

A. "April 2011 through August of 2012, zero."

Q. And then the question was at line 12: "Did you make efforts?" And your answer at line 13?

A. "I did."

Q. Question line 14: "Did you write a letter to their counsel in June of 2011 explaining some of your efforts?"

A. "I did."

Q. At line 17: "Would you recognize a copy of that letter if you saw it?"

A. "I would."

Q. All right. And it looks like that they put the letter into evidence at that point; is that right?

A. It appears so.

Q. Okay. Then over on page 176 -- well, line 9 is where they put it into evidence, 9 through 10. And then at line 12 Mr. Shabel asked you: "Ms. Wolf, considering your experience as a guardian ad litem, did the lack of cooperation concern you?" And what was your answer?

A. "It did."

Q. And the question was: "Why?" And your answer at line 16, please?

A. "The timing was a concern. I had known that Kim

Rosborough was working towards bringing the parties together, and yet on the eve of those arrangements being made, and I guess I should say that the defendant has also advised that he had a telephone conversation scheduled with Ms. Rosborough concerning the appointment that would bring everybody together. And then all of a sudden I get a grandfather on my door, which was okay. I gave him specific instructions on how I wanted him to proceed.

And then the next contact I get was a rather terse e-mail from Mr. Jolley, not in response to anything I had done or said, but in response to the situation as he perceived it, and then everything went down from there. It wasn't don't talk to the guardian, don't give -- it was don't talk to the guardian, don't give any information to the guardian.

In fact, the information I tried to find out within 24 hours of talking to another individual in my investigation, I would get a phone call from petitioner's counsel. Every move I made seemed to be followed up by some problem that caused the petitioner's counsel to call me and complain or try to correct what I had done."

Q. Okay. And when you talk about defendant in that, you were talking about Danny Spade; is that right?

A. Yes, sir.
Q. And when you say "petitioner's counsel", who are you talking about?
A. Andrea Moore.
Q. Okay. And then the question on Line 13, it said: "Until August of 2012 there was no cooperation?" And the answer?
A. "That's correct."
Q. Question: "That's basically in excess of a year?"
A. "Correct."
Q. At line 17 -- oh, that was your answer. Line 18: "What changed in August of 2012?"
A. "The case was getting ready for trial. The Jolleys had relocated during the course of the litigation and I needed to be able to do my home visits to be able to tell the Court that I had seen their current home."
Q. "And from where did they relocate?" Well, there was an objection there. But when it came back, on page 178, let's see. I'm sorry, they approached the bench.
All right. On 179 Mr. Shabel withdrew the question, but he re-asked the question 179, line 5. "Ms. Wolf, I think you were discussing the fact that the Jolleys had moved, you need to do a home visit." And

your answer was?

A. "Yes."

Q. And the question was: "Go from there." And your answer, please, beginning at line 9.

A. "I made a couple of phone calls back and forth to Meredith Loftis before going to the home. At this point there had been no specifics provided to me as far as what the child was alleging. There had been a statement from plaintiff's counsel that a wolf mask had been worn and my concern was that, one, my last name is Wolf, and so I didn't want anything to do with my name or me being associated with something negative this child may or may not have experienced.

So I was not able to get Meredith on a conference call. So I went ahead and scheduled the home visit with the intention of just going to the house, looking at it, making sure my client had all of her needs being met. I'm trying not to do anything that would cause her to be uncomfortable."

Q. And then at line 24 the question was: "By the way, when you actually -- when were you actually told that Meredith was involved?" And the answer?

A. "I did not know Meredith's identity. I only knew that when the child went to do the CAC, that she was no longer going to be seeing Kim Rosborough, but there was

another therapist and that name was not provided to me. And that was also sort of along the timing of don't call us, we're gonna call you when we've got information. So I did not pursue any further, more aggressively with counsel."

Q. And then there was a question: "You were present in my office in April of 2012 for a deposition of Kim Rosborough?"

A. "I was."

Q. "And without going into the details of Kim Rosborough's testimony, was that the day that you learned that Meredith -- of Meredith-Loftis' identity?"

A. "Yes."

Q. Okay. And then he thanks you and at line 16 he asks you to tell about the home visit. And there was an objection. And then at line 22: "Was there anything in the home visit that caused you concern about the Jolleys' level of cooperation with your investigation?" And then at 180, line 25, your answer, please.

A. "Mr. Jolley was hypervigilant. Clearly uncomfortable when I tried to speak with the child. When he was present, she answered -- he answered all of my questions for her. Silly questions like what's the name of the bunny rabbit? Everything he had an answer for and he would not let me pursue anything further.

I was allowed to go upstairs with my client unattended. And, in fact, Mrs. Jolley, who I couldn't see behind me, I could hear her talking to him, discouraging him from following me. It was very tense and uncomfortable."

Q. Question at line 11: "Did they make any demand of you when you walked up to the room?"

A. "No. No. Like I said, my client went up first and then I followed. And I could hear Mr. Jolley talking to his wife. And she was talking with a very soothing, very calm voice and they did not follow me up the stairs."

Q. "All right. Anything else from the home visit that caused you concern?" And your answer?

A. "Just that sense of hypervigilance; although, I had at that time very little information about what allegedly was done to my client. Mr. Jolley had taken my client to the zoo earlier that day. She mentioned something about seeing a wolf and the next thing I know Mr. Jolley's voice was in the background, we don't talk about those things around here. And it was just like, boom, shut down. Everything shut down."

Q. Okay. And then it says, the question on 182 at line 3: "She was talking to you about something that happened that day?"

A. "Yeah."
Q. And then the question: "A trip to the zoo?"
A. "Right."
Q. And question: "And she mentioned a wolf?" And your answer?
A. "Right."
Q. "And that got Mr. Jolley upset?" And your answer?
A. "Yeah. Not -- you know, not yelling, but just, you know, the response wasn't so much for my client as it was immediately from him. We don't talk about that around here. And I don't know how I could explain it, but that whole ambiance was just very, very severe."
Q. And then he asked at line 16: "Was the child afraid to talk to you?"
A. "She was."
Q. And then he asked: "Was the child ready to talk to you?"
A. "Yes."
Q. And the question was: "Did the child at that point seem reserved?" And your answer?
A. "Only when Mr. Jolley said we don't talk about wolves around here. And that was before we went up to the bedroom and she showed me this really cool bedroom."
Q. Okay. "And she hadn't seen you in how long?"

A. "Oh, God, like, two-plus years."

Q. Question at line 1 on 183: "But despite the fact that she hadn't seen you in two-plus years, she walked up to the bedroom?" And your answer?

A. "Yeah. And I do think that had a lot to do with Heather talking to her because I was surprised that she would remember me, but Heather had done a fabulous job with that. I'm very confident that Heather kind of paved the way and made things more comfortable for us."

Q. "And did you ask her her name? Did you clarify [redacted] name?" And then he says: "Yeah, let me ask you this. There's been some testimony about the ability of this child to talk to strangers about basic questions." What was your answer?

A. "Well, I'm a way cool guardian. But, no, she was kind of -- once I got her away from her stepfather, and even the second part of the interview, Heather was reading a book to us on the couch. And at that point the stepfather was in the other room on his cellphone talking. And she was real interactive, real comfortable. No problems."

Q. And the question: "To the extent that you were allowed to talk to her and to the extent that she was allowed to answer, did she seem afraid of you?"

A. "No."

Q. "Did she seem afraid to talk to you?"

A. "No."

Q. On 184, line 1: "Ms. Wolf, in the course of your investigation have you been granted access to any information that would allow you to assist the Court in making a decision on this motion?" And you asked for clarification.

"In the course of your investigation, have you been granted access to information that would allow you to assist the Court in making a determination to the motion?" And your answer?

A. "I'm sorry. It's such a broad question and you've got pretty much 99 percent of what my work has been able to accomplish, which is those audios and tracking situation until the CAC became involved."

Q. Okay. And the question line 30: "Have you seen any personal evidence of fear of Danny "D"?" And you asked for clarification. "Fear of?" And the question is just "Danny "D"." And what was your answer?

A. "No, I have not seen my client with Danny "D". except for years ago when we had that initial litigation."

Q. Now, in some of your testimony -- I mean, the Jolleys live in a nice house. I mean, I've not been there, but all indications are they live in a nice

house, at least what you observe, right?

A. Yes.

Q. And she has nice things?

A. Yes.

Q. And so when you were asked earlier about some things not being included in your recommendation, there was also things that you talked about here today that were included in your testimony, right?

A. Yes.

Q. And I think that your ultimate concern was to get an end to all this litigation for [redacted]?

A. Yes.

Q. Okay. And I think that you -- and it might have been in cross, but you testified about, you know, you becoming aware of evidence that the Family Court case was being talked about in the presence of [redacted].

A. The Jolleys had sent me e-mails indicating that that had happened.

Q. Okay. And it had happened in their house?

A. Yes.

Q. And generally speaking, I don't do much Family Court work, didn't do any until a few years ago, but generally speaking we try to keep the parties from talking about the litigation in front of the children.

A. And, in fact, there would be a restraining order,

as I believe there was, at the temporary order in this case.

Q. And as [redacted] was getting older, you were concerned about her having more exposure to that. Is that fair to say?

A. Yes. And I should clarify as a Family Court practitioner. It's not so much sitting down with a parent, some do, talking with the child, but where the child can overhear. And more times than not, you know, little ones will be in the next room, but if mom and dad are talking they're gonna wander and they're gonna hear something or they'll be listening in.

And that was one of the e-mails, was that unbeknownst to the Jolleys, when they were discussing Mr. Spade, the little one had overheard and they knew she overheard. So, again, it's not that they were intentionally trying to make ---

Q. Okay. Well...

A. It was happening.

Q. Well, and that's a good point. In fact, there was, I'm told somebody named Judge Brown who came up with all these conditions that I see attached to orders. And the restraining orders are not just talking with the child, but they're about in the presence of the child or allowing other people to talk about the litigation in

the presence of the child.

A. That's correct. It's called Judge Brown's Standard Visitation and Restraining Orders.

Q. And that, that goes to the concern -- tried to address the concern that you were just testifying about?

A. Yes, sir.

Q. Okay. I want to turn -- have you turn to page 445, please. And what I really want to do is have you look at your answer. And you're welcome to look at anything else around it, but your answer at line 13 to 16 over question. And does that tend to convey -- let's see. And that's not in your testimony, I don't think actually. But does that tend to convey that there was some instructions to the Jolleys about having communication with you?

A. Yes.

Q. And Deandrea or Andrea that it refers to would be their lawyer?

A. Yes.

Q. If I could have you turn to 197. I think she asked you some questions about that. I don't think I've asked you about that yet. No, I did ask you about that earlier, I'm sorry.

Beg the Court's indulgence for a moment.

Just looking real quick at the question and

answer on 197, lines 13 to 22, is it fair to say at that point you were also open to alternate hypotheses about what the weenie meant?

A. Yes.

Q. Thank you. That's all I have.

MS. JAMESON: No further cross.

THE COURT: All right. Thank you, ma'am. You may step down. Any reason why the witness cannot be excused?

MR. GROSE: I would move that she be excused. She's under my subpoena, so...

MS. JAMESON: No objection.

THE COURT: All right. You may be excused as well. Just take your stuff, but anything that's an exhibit, just be sure and leave there. We've already have one witness -- two witnesses walk out with stuff.

THE WITNESS: Okay.

THE COURT: Lawyers approach.

(Bench conference was held off the record.)

(Witness leaves witness stand and courtroom.)

THE COURT: All right. We're down until 2:15.

(Lunch Recess was had from 12:50 p.m. - 2:16 p.m.)

MR. GROSE: I call Mike Mizak.

(Witness comes forward.)

Exhibit J

THE STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
COUNTY OF SPARTANBURG	)	
Daniel W. Spade	)	
Petitioner,	)	**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO ALTER OR AMEND JUDGMENT**
vs.	)	
Heather Jolley	)	
Respondent,	)	**Case No. 2010-DR-3372**

Petitioner hereby moves this Court to Alter or Amend Judgment, pursuant to Rule 59 (e), SCRCP, filed by the Honorable James F. Fraley as it specifically relates to the December 17, 2018 Order allowing Respondent's Counsel Doug Brannon to re-represent his former private clients [Jolleys] *after* his Government service prosecuting the same matter. The proper resolution of this matter "lies at the intersection of legal ethics and the constitutional protections afforded criminal defendants". (*quoting* **Freund v. Butterworthm**, 117 F.3d 1543 (1997)) As discussed herein, Attorney Brannon is ethically obligated to recuse himself but since he refuses to do so, this Court should disqualify him in keeping with the fair administration of justice.

PROCEDURAL AND BACKGROUND HISTORY

Respondents, David and Heather Jolley, initiated their 1st TPR attempt against Petitioner, Daniel Spade, in 2008. A trial was held and the Honorable Georgia V. Anderson considered all of the evidence and ruled in favor of Petitioner. The following year, Respondents unsuccessfully attempted to stop *two* separate Court-ordered visits. Later that year, by motion of Respondents in November 2010, Petitioner's visitation was temporarily suspended pending GAL Alexandria Wolf and then-counselor Kim Roseborough's involvement and assessment of origin of alleged "anxiety" in child-in-common. In March of 2011, Ms. Roseborough met with the Jolleys and recommended that Petitioner's visitation with his child resume. Ms. Roseborough assessed the anxiety was strictly related to "adjustment disorder" related to the ongoing custody / visitation issues between Petitioner / Respondents. *Three days* after Roseborough's meeting with the

Respondents in which it was conveyed to them that visits would resume, accusations of a disclosure of sexual abuse against Petitioner were made. On April 3, 2011, Petitioner was arrested on these criminal charges at his home. Petitioner declared from the beginning and continues to vehemently declare his complete innocence of any abuse whatsoever. Given the new leverage afforded them through the criminal charges, Respondents then filed for a second TPR basing their justification on the criminal accusations / charges of abuse. A trial was held by this Honorable Court in the Fall of 2012. Petitioner unsuccessfully attempted to have the Family Trial stayed until *after* the criminal trial so he could fully and properly defend himself of the allegations that in essence allowed the Respondents to even bring a second TPR. Attorney Doug Brannon represented Respondents and Attorney Ken Shabel represented Petitioner. This Court subsequently ruled in the favor of Respondents at trial and allowed Mr. Jolley to adopt Petitioner's biological daughter. In February of 2014, Petitioner's criminal trial was held and on the morning of trial Family Attorney Brannon was appointed a Special Prosecutor / Assistant Solicitor. Petitioner's Family Attorney, Ken Shabel, was one of two attorneys representing his defense. Petitioner was convicted and sentenced to (35) years.[1] Attorney Shabel was again retained to perfect Petitioner's Direct Appeal. In March of 2016, Petitioner received a letter from Shabel conveying ***his need to recuse himself from any further representation given the fact that he and Brannon were going to be partners in the same firm.*** [2] Shabel also reiterated his belief in Petitioner's complete innocence and that he was in fact wrongly convicted.

As new evidence and 'Brady' material began to surface, subsequently leading to clear and convincing evidence of Perjury / Fraud Upon the Court at the second TPR trial, Petitioner filed a *pro-se* Motion for a New Trial pursuant to Rules 60 (b)(2)(3)(5) in October 2018. The Honorable Judge Fraley, seeking to ensure truth and fairness in all dealings in His Court, granted a 30-minute hearing which was convened on December 6, 2018. At the hearing, Attorney Brannon was present to attempt to re-represent the Respondents. Petitioner specifically objected

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[1] In the years since trial, evidence has surfaced proving perjury by State witnesses, prosecutorial misconduct to *include* Attorney Brannon ('Giglio' violation), and 'Brady' violations. (see Order from Attorney General's Office, conceding one of these violations by Special Prosecutor Brannon, attached to Motion for New Trial).

[2] Petitioner has attached a copy of letter indicating Shabel's need to recuse himself was due to

that Brannon should be immediately disqualified from any further representation of the Jolleys based on multiple conflicts of interest related to him being a State Prosecutor at Petitioner's criminal trial which entailed the same matter(s) and parties he would now be further assisting in the Family Court.[3] Attorney Brannon vigorously conveyed to this Court that there was no conflict while omitting that he was also now a **partner** with Petitioner's former long-time Family Court counsel in these matters, Ken Shabel. This Court over-ruled Petitioner's objection to ethical conflicts and ruled that Brannon would be allowed to further represent the Respondents. Petitioner was then half-way allowed to present a couple instances (but not all) of Detective Nikki Cantrell's contradictive testimony at the 2012 TPR trial. This amounted to only a small portion of the overall evidence proving fraud at the hands of Counsel Brannon / Respondents and a denial of Petitioner's right to a *fair trial*. Given the limited time apportioned to the hearing, the additional evidence needing to be presented / heard, and enough cause shown via the evidence that was presented, this Honorable Court ordered a forthcoming half-day hearing so as to allow for a fully developed record and consideration.

In advance of this hearing and in order to allow this Court the ability to ***fully*** consider ***all*** of the facts and Rules of Professional Conduct pertaining to such a conflict of interest as will be discussed herein, Petitioner files this Motion to Alter or Amend the initial Judgment that there is no conflict-ethical or otherwise. Attorney Brannon should be promptly disqualified for the following reasons:

I. Attorney Brannon now partners in the same law firm with *Petitioner's* former and long-time Family Attorney in these matters.

During the discussion of the inherent conflict of interest at the December 6th hearing, Brannon strategically neglected to disclose to this Court that he is now a law firm partner with Attorney Ken Shabel – Petitioner's long-time Family Attorney who represented Mr. Spade at *both* TPR trials. This in and of itself creates an inherent

[3] Petitioner further conveyed to this Court that Brannon had additionally and disturbingly already been determined to have "unclean hands" in these similar matters per the Attorney General's

conflict of interest. As he prides himself to be a "seasoned" attorney, certainly he was keenly aware of this. Yet, Attorney Brannon vehemently argued against a *pro se* inmate litigant and to this Honorable Court that there was no conflict. Given the fact that currently Attorney Brannon and Attorney Shabel, once adversarial counsel to the parties / matters in this case at the last TPR trial, are now in the **same** firm … let us search for insight on the issue within the rule of ethical law.

Rule 1.9(b), RPC, Rule 407, SCACR states:

b) A lawyer shall not knowingly represent a person in the same or substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client.

1. Whose interests are materially ***adverse*** to that person; and

2. About whom the lawyer had acquired information protected by Rule 1.6(c) that is material to the matter

In this case, you don't "just" have an attorney who previously worked in a firm that represented a client. Here you have *both* attorneys, adversaries at the TPR trial and in possession of material information for each party, now working together in the same small firm. As a higher court has opined, "a showing that two attorneys are partners or present 'themselves to the world at large as partners,' and whose interest overlap 'in the acceptance of clients and in the sharing of fees' is sufficient to ground a conflict of interest claim, assuming that there is proof that the clients' interests may have been in conflict". **U.S. v. Jiang**, 140 F.3d 124 (1998)) Petitioner's former attorney Ken Shabel formally recused himself, *during* the criminal direct appeal process, from further representation due to his decision to join Brannon's firm and the accompanying *ethical issues / conflict of interest.* (see enclosed "Exhibit A") Conversely, Brannon seems content to violate ethical guidance and warnings spelled out in the Rules of Professional Conduct while spewing *half-truths* and omitting material facts to this Honorable Court in order to skirt the law and serve his own agenda.

As it relates to imputation of conflicts of interest, **Rule 1.10** gives additional guidance to lawyers associated in a firm:

b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm **unless**:

1. ***The matter is the same or substantially*** *related* to that in which the formerly associated lawyer represented the client; and

2. ***Any lawyer remaining in the firm*** has information protected by Rule 1.6 and 1.9 (c) that is material to the matter.

II. Improper Consideration / Weight given to Court of Appeals' 2015 decision on the Issue of Conflict.

Attorney Brannon successfully argued to this Court, as judiciary support for his position that there is no current conflict, by presenting the 3-year old Court of Appeals decision on this issue from Petitioner's criminal direct appeal. However, what has not been considered is that the Court of Appeals made a ruling on a limited set of circumstances *at that time* – that of whether it is a conflict for a private Family Attorney to be appointed a special prosecutor against the adverse party in the same matter as the family litigation.[4] They ***did not have before them***, nor were they constrained by the Rules of Professional Conduct discussed herein, the fact that this private attorney-turned-Prosecutor would then attempt to *re-represent* the same clients in the same Family Court matters after being a "government officer" against the Petitioner. Petitioner argued this exact conflict at the December 6th hearing. In addition, the Court of Appeals knew not that the private attorney-turned-prosecutor would thereafter join forces with his former court adversary (and Petitioner's own counsel) in the same firm.

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[4] A question also arises of whether the Court of Appeals' decision was even an ethically prudent one given **Rule 1.11 [Comment 4]**: "A lawyer should not [even] be in a ***position*** where benefit to the other [private] client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other [private] client by reason of access to confidential government information about the client's adversary only through the lawyer's government service". (emphasis added)

If this issue as it currently stands with its additional facts and circumstances, activating specific Rules of Professional Conduct, were to be reconsidered by the High Court, Petitioner would contend there would likely be a very different decision. Attorney Brannon might not enjoy what the High Court would likely say of his attempt to even do so and his obligatory material omissions to this Court. Thus, if only for the sake of judicial economy, it should be corrected in *this* Honorable Court and done so in advance of the forthcoming ½-day evidentiary hearing where evidence will be presented of additional Fraud Upon this Court. And if only to save himself from himself … correction is needed to vitiate Attorney Brannon's current unethical representation so as bring to a halt his growing trail of illegalities in this case.

III. Special Conflicts of Interest For Former Government Officers

Petitioner unsuccessfully argued to this Court at the December 6th hearing that Attorney Brannon should be disqualified as he was formerly appointed as a Special Prosecutor for the State in the criminal trial against Petitioner. Both trials involved the same matters / allegations / parties as the family court litigation. It goes without saying that as he now attempts to re-represent the Jolleys as private clients that there is a grave risk, certainly at the least an *appearance* of impropriety, that he could use information gained as a prosecutor to further benefit these same private clients. Petitioner asserts it would be prudent and necessary for this Court to take steps to avoid such a potential impropriety especially given the evidence Petitioner will place on the record at the forthcoming half-day Hearing of Fraud upon this Court *involve willful misconduct by Attorney Brannon.* Let us again gain insight from the Rules of Professional Conduct. **Rule 1.11(a) (2), SCACR**, states the following:

> Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer …shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

Digging a bit deeper, the reasoning behind the instruction to avoid such a conflict as exists in this case is explained in greater detail under **"Comment [4]" of Rule 1.11:**

> This Rule represents a balancing of interests. On the one hand, where the successive clients are a government agency and another client, public or private, the risk exists that power or discretion vested in that agency might be used for the special benefit of the other client. A lawyer should not be in a position where benefit to the other client might affect performance of the lawyer's professional functions on behalf of the government. Also, unfair advantage could accrue to the other client by reason of access to confidential government information about the client's adversary obtainable only through the lawyers government service ...
>
> Thus a former government lawyer is ***disqualified*** only from particular matters ***in which the lawyer participated personally and substantially.***[5]

Additionally, **Rule 1.7 [Comment 23a]** further attempts to delineate an avoidable situation of attorney conflict from one where there isn't even an appearance of impropriety:

> A lawyer serving as a part-time prosecutor is not necessarily disqualified from simultaneously representing other civil or criminal defense clients in private practice. If the prosecutions handled by the lawyer are limited in nature and scope, the lawyer may be able to represent other clients in criminal or civil matters **that are not related to any of the cases that the lawyer has prosecuted.**

SUMMARY

Clearly, the line drawn by the law of this land lies within a former or part-time prosecutor, involved in the same matters, than attempting to re-represent in private practice the same party involved in the former prosecutor's case for the State. But to push the envelope even further, the conflict in this case is exacerbated by the fact that the Petitioner's and Respondent's attorneys now share matching office furniture, break bread together in between Family Court hearings, and cash the same signatured checks. Incontrovertible is the fact that Attorney Brannon

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[5] Worth noting, clearly the matters are so substantially intertwined that Assistant Solicitor Jennifer Jordan deemed it critical enough to take time out of her busy prosecutorial schedule to be in-court for this *Family* Hearing.

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and the Respondents entered the December 6th hearing facing serious evidence of Fraud Upon the Court at the TPR trial. Then, by the willful *omission* of a material fact that could and should have been disclosed before, during, and after the discussion of an active conflict, Attorney Brannon in essence again ***defrauded*** this Honorable Court.

The South Carolina Rules of Professional Conduct, as discussed herein, are meant to protect even the *appearance* of the fair administration of justice. Currently this is not being achieved. As the Order of this Court allowing Attorney Brannon to "pick back up" the representation of his former private clients currently stands, it exists in ***contradiction*** to the ethical laws of the State and guidance on this issue.

CONCLUSION

The belief in our system of justice steps backwards when an attorney's "seasoning" is steeped more in finding ways to successfully skirt the rules of ethics and law than in actually *reading and applying* the rules of ethics and law.

Petitioner prays that this Honorable Court, considering the totality of the circumstances, **GRANT** the Motion to Alter or Amend Judgment and Order that Respondent's Attorney, N. Douglas Brannon, and any other attorney within his firm be disqualified from any further representation related to Family Court matters between these parties.

Done this 9th, Day of January 2019

Daniel W. Spade, #358974,
Petitioner, Pro-se
Certificated Paralegal

990 Wisacky Hwy.
Bishopville, SC 29010

THE STATE OF SOUTH CAROLINA	)	**IN THE FAMILY COURT**
	)	
COUNTY OF SPARTANBURG	)	
	)	
Daniel W. Spade	)	**Case No.**: 2010-DR-3372
Petitioner,	)	
	)	
v.	)	
	)	**Certificate of Service**
Heather Jolley	)	
Respondent.	)	
	)	
	)	

I certify that I have served a copy of **Motion to Alter or Amend Judgment** and accompanying **Memorandum of Law in Support of Motion** via Attorney of Record placing a copy in the US Mail, postage paid, on the date reflected below, address to

N. Douglas Brannon
229 Magnolia Street
P.O. Box 3254
Spartanburg, SC 29304

By _____

Daniel W. Spade, #358974,
Certificated Paralegal
990 Wisacky Hwy.
Bishopville, SC 29010

January 9, 2019
Spartanburg, South Carolina

Exhibit K

STATE OF SOUTH CAROLINA	)	
	)	**IN THE FAMILY COURT**
COUNTY OF SPARTANBURG	)	
Daniel Spade,	)	
	)	**ORDER FOR CONTINUANCE**
Petitioner,	)	
	)	**2010-DR-42-3372**
vs.	)	
	)	
Heather Jolley,	)	
	)	
Respondent.	)	

Date of Hearing	:	**March 26, 2019 @ 2:00 p.m.**
Trial Judge	:	**James F. Fraley, Jr.**
Attorney for Petitioner	:	**Pro se**
Attorney for Respondent	:	**N. Douglas Brannon**
Court Reporter	:	**Laura McDaniel**

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 APR 29 P 2:23

This matter was before the Court for a half (½) day trial on two (2) Motion's filed by the Petitioner. The first of these Motion's was to unseal the Court's file in this matter. The underlying case was for termination and adoption. By statute, the file was sealed at the close of the trial in this matter. The second Motion was for a new trial based on newly discovered evidence and fraud upon the Court. The Petitioner was present and represented himself in this matter. The Respondent was not present but was represented by attorney N. Douglas Brannon of the Spartanburg County Bar.

At the call of the case counsel for the Respondents made a Motion to dismiss both Motion's filed by the Petitioner. The basis for the Respondent's Motion to dismiss is found in SCRCP 60b which states "any Motion to set aside an Order must be filed no later than one (1) year after the entrance of the Final Order". Additionally, Respondents base the Motion to dismiss on the following language found in SC Code Section 63-9-770(B)"...extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." Counsel for the Respondent

informed the Court that the Final Order in this matter was clocked with the Court in December, 2012. These Motion's were not filed until October, 2018, well beyond the one (1) year restriction set forth in Rule 60b(2) SCRCP. Additionally, counsel for the Respondents pointed out to the Court that the Petitioner was present throughout the trial in this matter and did in fact present a defense in this TPR and adoption case.

After hearing Petitioner's argument against the Respondents' Motion to dismiss, this Court grants the Respondents' Motion to dismiss in regards to Rule 60b(1) (2) and (3) SCRCP. The Court further finds that the Petitioner did not base either Motion on SCRCP 60b(4). The Court declines to rule on the Respondents' Motion to dismiss in regard to SCRCP 60b(5) as well as SC Code Section 63-9-770(B). The Court will hold in abeyance ruling on the Respondents' Motion's in regard to SCRCP 60b(5) and SC Code Section 63-9-770(B) until it has heard the testimony to be presented in this matter. The ruling on that Motion is reserved.

FILED
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SPARTANBURG COUNTY
2019 APR 10 PM 2:29

Petitioner then voiced his dismay that the Respondents were not present at this hearing despite his attempts to serve them personally with subpoena's for their appearance. Based on the fact that the Respondents did not appear, this ~~Court finds that the matter shall be continued.~~ the unusual message on Respondent's house, and Respondent's attempt to serve subpoenas on Respondents, this case shall be continued.

Based on the foregoing it is therefore:

ORDERED, ADJUDGED AND DECREED that this matter shall be continued and reset for one (1) full day.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Respondents Heather Jolley and David Jolley shall be present for the trial of this matter.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the ruling on the Respondents' Motions to dismiss in regard to SCRCP 60b (5) and SC Code Section 63-9-770(B) are reserved pending the testimony in this matter.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petitioner's questioning of the Respondents is limited to questions regarding SCRCP 60b(5) and SC Code Section 63-9-770 (B).

IT IS SO ORDERED.

GIVEN under my hand and the Seal of this Court this 9 day of April, 2019.

S/James F. Fraley, Jr.

James F. Fraley, Jr.
Family Court Judge

Spartanburg, SC

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SPARTANBURG COUNTY
2019 APR 10 PM 2:28

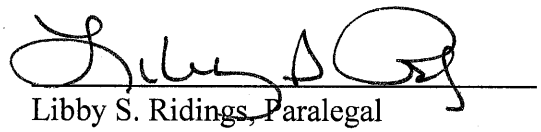
A CERTIFIED COPY
CLERK OF COURT
SPARTANBURG COUNTY
BY: _____ D.C.
DATED 4-10-19

2010-DR-42-3372

STATE OF SOUTH CAROLINA	)	**IN THE FAMILY COURT**
	)	
COUNTY OF SPARTANBURG	)	**SEVENTH JUDICIAL CIRCUIT**
Daniel Spade,	)	
	)	
Petitioner,	)	**CERTIFICATE OF SERVICE**
	)	
vs.	)	**2010-DR-42-3372**
	)	
Heather Jolley,	)	
	)	
Respondent.	)	

I certify that I have this 25th day of April, 2019 served a copy of the Order For Continuance on the Petitioner by depositing copies thereof in the United States mail, postage prepaid, Certified Mail, Return Receipt Requested, addressed to:

Daniel W. Spade #00358974
C/O SCDOC
990 Wisacky Hwy.
Bishopville, SC 29010



Libby S. Ridings, Paralegal
Kennedy& Brannon Law Firm
Post Office Box 3254 (29304)
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Spartanburg, S.C.
864-707-2020 telephone
864-707-2030 facsimile