

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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JUN - 3 2013

Appeal from Anderson County
R. Lawton McIntosh, Circuit Court Judge

S.C. Supreme Court

HOWARD THOMPSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213031

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON) 10TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD

-VS-) 05-GS-04-1700

HOWARD THOMPSON, III,)

DEFENDANT.)

MAY 21, 2007

ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

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

CHRISSY ADAMS, SOLICITOR

CATHERINE T. HUEY, ASSISTANT SOLICITOR

LAUREN HOGAN, ASSISTANT SOLICITOR

ATTORNEYS FOR THE STATE

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CIRCUIT COURT REPORTER

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NO EXHIBITS WERE INTRODUCED

VOIR DIRE

Date: May 21, 2007County: AndersonCase No: 05-GS-04-1700Judge: MacaulayPl./State: StatePl./State Atty: Catherine HueyDefendant: Howard ThompsonDefense Atty: Howard ThompsonCourt Reporter: Sharon L. Vizer-Hanks

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
130	Michael Miller	M	W				1
104	Larry Kelly	M	W			X-1	
29	Cynthia Burdette	F	W			X-2	
131	Donald Mixson	M	W			X-3	
79	Claude Hall	M	W				2
196	Nancy Whitfield	F	W			X-4	
71	Annette Gault	F	W				3
103	Patrick Kelley	M	W				4
168	Mark Small	M	W			X-5	
86	Kathryn Heeneey	F	W				5
65	Sally Foster	F	W				6
124	Rhonda Mauldin	F	W			X-6	
F-8	Curtis Miller, Jr.	M	W			X-7	
75	Martha Glenn	F	W			X-8	
57	Robert Edwards	M	B				7
33	Carl Cady	M	W		X-1		
63	John Ford	M	W				8
F-13	Cherry Whiten	F	W				9
147	Cynthia Perry	F	B		X-2		
20	Amergy Brooks	M	W				10
128	Stephanie McLees	F	W			X-9	

VOIR DIRE

Date: May 21, 2007
County: Anderson

Case No: 05-GS-04-1700
Pl./State: State

Judge: Macaulay
Pl./State Atty: Catherine Huey

Defendant: Howard Thompson Defense Atty: Howard Thompson

Court Reporter: Sharon L. VizerHanks

[illegible]

1 Monday, May 21, 2007

2 THE COURT: Now, ladies and gentlemen, as I
3 mentioned earlier, this is a term of General Sessions Court,
4 sometimes called Criminal Court. Its purpose is to resolve
5 questions of alleged criminal conduct arising between the
6 State of South Carolina and the defendant in a fashion which
7 will ensure the justice under the law as accomplished.

8 The trial of a case begins with the selection of a
9 jury. Both the State and the defendant are entitled to jurors
10 who approach the case with an open mind. The trial jury must
11 be free as humanly possible from any bias, prejudice or
12 sympathy for either side and free from any preconceived ideas
13 on the facts of the case or on the law of the case, therefore
14 certain questions will be asked of the petit jury panel, and
15 the questions which will be asked are designed to ensure that
16 each side has a fair and impartial jury.

17 Now, I might note that if any person should attempt
18 to talk with you or talked with you about any case that might
19 be scheduled for this term of court you are to report them
20 immediately so that I might take any appropriate action
21 because no one is to interfere with your duty as jurors here
22 in the Court of General Sessions in Anderson County.

23 Now, Madam Solicitor, if you would, please, call
24 your first case.

25 MS. HUEY: Yes, sir, Your Honor. May it please the

1 Court. Your Honor, the State calls State vs. Howard Thompson,
2 III, indicted for criminal sexual conduct with a minor, 1st
3 degree, indictment 2005-GS-04-1700.

4 THE COURT: Very good. We're about to begin the
5 selection of the jury in the case of The State of South
6 Carolina vs. Howard Thompson, III, indictment number
7 2005-GS-04-1700, charged in that indictment with criminal
8 sexual conduct with a minor in the 1st degree.

9 Mr. Thompson, if you would, please stand and look
10 upon the jury.

11 (The defendant complied.)

12 THE COURT: Thank you, sir. You may be seated.

13 Now, Mr. Thompson is representing himself in the
14 trial of this case, however Mr. Whiten of the Anderson County
15 Bar has been appointed to assist him, only as an adviser in
16 this matter.

17 If you would stand, please, Mr. Whiten, and
18 introduce yourself to the jury.

19 MR. WHITEN: I'm Charles Whiten. I practice law in
20 Anderson. I've been practicing law for 35 years in this city.
21 My office is just down the street. And I'm appointed, as the
22 Judge just advised, to advise Mr. Thompson in this case.

23 THE COURT: Very good. Thank you, sir.

24 Now, the State will be represented by Ms. Huey.

25 Assistant Solicitor, if you would, please stand and

1 introduce yourself and anyone that will be assisting you in
2 the trial of the case.

3 MS. HUEY: Yes, sir. Thank you, Judge.

4 My name is Catherine Huey. I'm assistant solicitor
5 here in Anderson County. Along with me is Lauren Hogan.
6 She'll be assisting me in this trial. And also seated with us
7 is our Solicitor, Chrissy Adams. She'll be helping with jury
8 selection. Thank you.

9 THE COURT: Ladies, if you would please stand and
10 look upon the jury.

11 The reason I do this, ask everybody to stand and
12 face the jury, as you might say, is because it's been my
13 experience these days that we might not know the names of
14 everybody that we come in contact with but we might recognize
15 a face. So we want to be sure that if there's anybody
16 involved in the trial of the case that if you do know or have
17 some contact with that you are aware of it at the time I ask
18 you these questions.

19 In this regard, is any member of the jury panel
20 related by blood or marriage, now or formerly, or a close
21 personal friend or business associate of the defendant, Howard
22 Thompson, III? If so, please stand.

23 Any member of the jury panel related by blood or
24 marriage, now or formerly, close personal friend or business
25 associate of the defendant, Howard Thompson, III, if you would.

1 please stand at this time.

2 (There was no response.)

3 THE COURT: Now, was any member of the jury panel a
4 member of the grand jury that returned the indictment in this
5 case? If so, please stand.

6 (There was no response.)

7 THE COURT: Now, I'm going to call out certain names
8 of potential witnesses in this case. And when I say potential
9 witnesses these are witnesses who may be called but do not
10 have to be called in the trial of the case. Therefore, if you
11 recognize the name --

12 And if they happen to be in the courtroom, the
13 potential witnesses at the time their names are called, if
14 they would please stand at that time.

15 Minor2 Sara Hiott; Brian Cain; Nikki Carson of
16 the Anderson County Sheriff's Office; Peter Normandin of the
17 Anderson County Sheriff's Office; Registered Nurse Kendra
18 Patten of AnMed; Dr. James Reese of AnMed; Adrienne Riley,
19 South Carolina Law Enforcement; Mary Mazyck; Aaron Neal;
20 Sherri Hunter; Mary Thompson; Jonathan Henderson; Jesse F.
21 Mazyck; Angela M. Smith; Hollie Harper; Pastor Charles Bell.

22 If there's any member of the jury panel related by
23 blood or marriage, close personal friend or business associate
24 of any of the following potential witnesses in this case if
25 they would please stand at this time.

1 Minor 2 Sara Hiott; Brian Cain; Nikki Carson;
2 Peter Normandin; Registered Nurse Kendra Patten; Dr. James
3 Reese; Adrienne Riley; Mary Mazyck; Aaron Neal; Sherri Hunter;
4 Mary Thompson; Jonathan Henderson; Jesse F. Mazyck; Angela M.
5 Smith; Hollie Harper; Pastor Charles Bell. If you would
6 please stand at this time.

7 Yes, ma'am, your name, please?

8 POTENTIAL JUROR: Cynthia Perry.

9 THE COURT: Yes, ma'am, and who do you know?

10 MS. PERRY: Relative of Mary Thompson, if it's the
11 lady that was in the court a little earlier. Mary Thompson.

12 THE COURT: Now, if she was a potential witness in
13 this case would that interfere with your ability to give both
14 the State and the defendant a fair and impartial trial?

15 MS. PERRY: No, sir.

16 THE COURT: Very good. Thank you, ma'am.

17 Anyone else?

18 (There was no response.)

19 THE COURT: Is any member of the jury panel or
20 members of their immediate family law enforcement officers or
21 related to a law enforcement officer? If so, please stand.

22 Now, this would include anyone who does have a
23 commission as constable in South Carolina. Any member of the
24 jury panel who is related to anyone that is a law enforcement
25 officer or they are a law enforcement officer themselves, if

1 they would please stand at this time.

2 Yes, sir, your name, please?

3 POTENTIAL JUROR: William Valentin. My brother is a
4 corrections officer.

5 THE COURT: Would that in any way interfere with
6 your ability to give both the State and the defendant a fair
7 and impartial trial in this case?

8 MR. VALENTIN: No, sir.

9 THE COURT: Very good. Thank you, sir.

10 Yes, ma'am?

11 POTENTIAL JUROR: Hollie Henderson. My uncle is a
12 police officer with the City of Anderson.

13 THE COURT: Would that in any way interfere with
14 your ability to give both the State and the defendant a fair
15 and impartial trial?

16 MS. HENDERSON: No, sir.

17 THE COURT: Very good. Thank you, ma'am.

18 Yes, ma'am?

19 POTENTIAL JUROR: My name is Roxanne Caldwell. My
20 brother-in-law is a state trooper.

21 THE COURT: All right. Would that in any way
22 interfere with your ability to give both the State and the
23 defendant a fair and impartial trial?

24 MS. CALDWELL: No.

25 THE COURT: We had one security officer, I think, is

1 that correct? Yes, sir, I'm sorry. If you would please stand
2 and give us your name for the record, please.

3 POTENTIAL JUROR: Larry Kelly.

4 THE COURT: And you are a security officer with
5 authority of arrest on property, of the property of your
6 employer?

7 MR. KELLY: It's all private property.

8 THE COURT: Now, would that in any way interfere
9 with your ability to give both the State and the defendant a
10 fair and impartial trial in this case?

11 MR. KELLY: No, sir.

12 THE COURT: Very good. Thank you, sir.

13 Is any member of the jury panel or members of their
14 immediate families or close personal friends ever been a
15 victim of a crime or convicted of a crime?

16 Now, I'm going to ask if that question applies to
17 you to stand. I'm going to ask you to come forward
18 individually so I might address your question -- or your
19 response to that question, or even if you have a question
20 about the question itself.

21 Has any member of the jury panel or members of their
22 immediate family or close personal friend ever been a victim
23 of a crime or convicted of a crime, if you'd please stand at
24 this time.

25 (The following side bar was reported.)

1 THE COURT: Yes, ma'am, your name, please?

2 POTENTIAL JUROR: Karen Thompson. I'm juror 181.

3 THE COURT: Yes, ma'am.

4 MS. THOMPSON: I don't know exactly what your
5 question is but my daughter was sexually assaulted by the
6 father.

7 THE COURT: Now, would that in any way interfere
8 with your ability to give both the State and defendant a --

9 MS. THOMPSON: Yeah.

10 THE COURT: Okay. I'm going to excuse you from the
11 trial of this case.

12 MS. THOMPSON: Okay.

13 THE COURT: Now, stay with us, but you won't have to
14 sit on this trial. Thank you, ma'am.

15 MS. THOMPSON: Thank you.

16 (WHEREUPON, Ms. Thompson returned to her seat, and
17 then the next potential juror approached to speak with the
18 Court.)

19 THE COURT: Yes, ma'am?

20 POTENTIAL JUROR: I'm 195. My husband has been
21 convicted of drugs.

22 THE COURT: All right. Would that interfere with
23 your ability to give both the State and the defendant a fair
24 and impartial trial in this case?

25 MS. WEBB: No.

1 THE COURT: Very good.

2 (WHEREUPON, Ms. Webb returned to her seat, and then
3 the next potential juror approached to speak with the Court.)

4 THE COURT: Yes, ma'am?

5 POTENTIAL JUROR: My name is Alston Brooks, 02 is my
6 number. I went to high school with Mr. Thompson, and I'm
7 afraid that would.

8 THE COURT: I'm going to excuse you on the trial of
9 this case.

10 MS. BROOKS: Thank you.

11 THE COURT: Thank you, ma'am.

12 (WHEREUPON, Ms. Brooks returned to her seat, and
13 then the next potential juror approached to speak with the
14 Court.)

15 POTENTIAL JUROR: William Fancher, number 59. My
16 daughter's boyfriend has been convicted of sexual offense with
17 a minor.

18 THE COURT: Would that interfere with your ability
19 to give both the State and the defendant a fair and impartial
20 trial?

21 MR. FANCHER: I have no idea, to be honest with you.

22 THE COURT: I'm going to excuse you on the trial of
23 this case. Stay with us, but you won't to be selected.

24 MR. FANCHER: Thank you.

25 (WHEREUPON, Mr. Fancher returned to his seat, and

1 then the next potential juror approached to speak with the
2 Court.)

3 THE COURT: Yes, ma'am?

4 POTENTIAL JUROR: About 20 years ago I was held at
5 gunpoint in my home for about 7 hours. The man who did this
6 later killed a girl in Anderson County.

7 And before he came to trial he tried to get an
8 inmate that was getting released to come to my home to kill me
9 so that I could not be a witness in the case. And that -- to
10 my understanding, that charge was dropped in his agreement to
11 plead guilty to the murder of the girl in Anderson.

12 THE COURT: Let me ask you, has all of that been
13 resolved, either with conviction, pleas?

14 POTENTIAL JUROR: He is in jail, yes.

15 THE COURT: But not resolved in your mind?

16 POTENTIAL JUROR: No.

17 THE COURT: Would that in any way interfere with
18 your ability to give both the State and the defendant a fair
19 and impartial trial in this case?

20 POTENTIAL JUROR: I would like to say no but I
21 cannot promise that.

22 THE COURT: I'm going to excuse you. Thank you very
23 much.

24 THE CLERK: And your name?

25 POTENTIAL JUROR: I'm sorry. Lori Burton, number

1 31.

2 (WHEREUPON, Ms. Burton returned to her seat, and
3 then the next potential juror approached to speak with the
4 Court.)

5 THE COURT: Yes, ma'am?

6 POTENTIAL JUROR: Judy Heard, number 85. I have a
7 son that's incarcerated.

8 THE COURT: What was he charged with?

9 MS. HEARD: Violation of probation.

10 THE COURT: What was his original charge?

11 MS. HEARD: Selling drugs.

12 THE COURT: Would that in any way interfere with
13 your ability to give both the State and the defendant a fair
14 and impartial trial?

15 MS. HEARD: No, sir.

16 THE COURT: Thank you, ma'am. Thank you for coming
17 forward.

18 (WHEREUPON, Ms. Heard returned to her seat, and then
19 the next potential juror approached to speak with the Court.)

20 THE COURT: Good morning.

21 POTENTIAL JUROR: Good morning. I'm Mark Small,
22 168. In 1992 I was a victim of an armed robbery in Washington
23 D. C.

24 THE COURT: Would that in any way interfere your
25 ability to give both the State and the defendant a fair and

1 impartial trial in this case?

2 MR. SMALL: No.

3 THE COURT: Very good. Thank you, sir.

4 (WHEREUPON, Mr. Small returned to his seat, and then
5 the next potential juror approached to speak with the Court.)

6 POTENTIAL JUROR: Number 100, Dorothy Jones.

7 THE COURT: Yes, ma'am.

8 MS. JONES: I've been charged with malicious injury
9 to personal property in the past.

10 THE COURT: Has it been resolved?

11 MS. JONES: Yes, sir.

12 THE COURT: Would that in any way interfere with
13 your ability to give both the State and the defendant a fair
14 and impartial trial?

15 MS. JONES: No, sir.

16 THE COURT: Very good. Thank you, ma'am.

17 (WHEREUPON, Ms. Jones returned to her seat, and then
18 the next potential juror approached to speak with the Court.)

19 THE COURT: Good morning.

20 POTENTIAL JUROR: Morning. Dorothy Ukpabi, number
21 188. My brother was convicted of check fraud.

22 THE COURT: Would that in any way interfere with
23 your ability to give both the State and the defendant a fair
24 and impartial trial in this case?

25 MS. UKPABI: No, it wouldn't.

1 THE COURT: Thank you, ma'am.

2 (WHEREUPON, Ms. Ukpabi returned to her seat, and
3 then the next potential juror approached to speak with the
4 Court.)

5 THE COURT: Good morning.

6 POTENTIAL JUROR: Good morning.

7 THE COURT: Or afternoon, excuse me.

8 POTENTIAL JUROR: Elizabeth King, 107.

9 THE COURT: Yes, ma'am.

10 MS. KING: And I was mugged when I was in college
11 and then another time when I was working, perused through my
12 wallet and threatened me if I followed them.

13 THE COURT: Has that been resolved?

14 MS. KING: That's been a long time ago.

15 THE COURT: Would that in any way interfere with
16 your ability to give both the State and the defendant a fair
17 and impartial trial?

18 MS. KING: I don't think so.

19 THE COURT: I'm going to excuse you from the trial
20 of this case. But thank you for coming up and telling me.

21 (WHEREUPON, Ms. King returned to her seat, and then
22 the next potential juror approached to speak with the Court.)

23 THE COURT: Yes, ma'am?

24 POTENTIAL JUROR: Cathy Bennett, number 12.

25 THE COURT: Yes, ma'am.

1 MS. BENNETT: When my daughter was 5 years old she
2 was sexually abused by a person in the neighborhood.

3 THE COURT: Would that affect your ability?

4 MS. BENNETT: I can honestly say I don't.

5 THE COURT: I will excuse you, but thank you very
6 much.

7 (WHEREUPON, Ms. Bennett returned to her seat, and
8 then the next potential juror approached to speak with the
9 Court.)

10 THE COURT: Yes, sir?

11 POTENTIAL JUROR: Adrain Banks, number 7.

12 THE COURT: Yes, sir.

13 MR. BANKS: I was just a victim of a burglary a
14 little over 2 years ago.

15 THE COURT: Would that in any way interfere with
16 your ability to give both the State and the defendant a fair
17 and impartial trial?

18 MR. BANKS: No. You were the Judge when he pled
19 guilty.

20 THE COURT: Okay. Thank you. Please forgive me.

21 (WHEREUPON, Mr. Banks returned to his seat, and then
22 the next potential juror approached to speak with the Court.)

23 THE COURT: Yes, ma'am?

24 POTENTIAL JUROR: Jacqueline Barker, number 8. I
25 was a victim of strong armed robbery October 1st, 1988.

1 THE COURT: And it's been resolved?

2 MS. BARKER: Yes.

3 THE COURT: Would that in any way interfere with
4 your ability to give both the State and the defendant a fair
5 and impartial trial?

6 MS. BARKER: No.

7 THE COURT: Very good. Thank you, ma'am.

8 (WHEREUPON, the side-bar was concluded.)

9 THE COURT: All right. Anybody else?

10 (There was no response.)

11 THE COURT: Is any member of the jury panel a member
12 of any organization, club or group that discusses or addresses
13 sexual abuse? If so, please stand.

14 (There was no response.)

15 THE COURT: Is any member of the jury panel a
16 guardian ad litem for minor children in actions pending or
17 processed in court? If so, please stand.

18 Any member of the jury panel a guardian ad litem for
19 minor children, if you would please stand at this time.

20 (There was no response.)

21 THE COURT: Is any member of the jury panel an
22 employee or consultant or ever been an employee or consultant
23 with the Department of Social Services? If so, please stand.

24 (There was no response.)

25 THE COURT: Now, this is going to be a multiple

1 question. Please do not stand until I ask you to do so.

2 Does any member of the jury panel own or work at a
3 childcare center, ever been a babysitter, paid or unpaid, or
4 kept children at a church during church services, or has any
5 member of the jury panel ever photographed their children
6 naked? Again, do not stand until I ask you to do so, if you
7 think any of those questions might apply to you or if you have
8 a question about the question itself.

9 Does any member of the jury panel own or operate or
10 work at a childcare center, or have ever been a babysitter,
11 paid or unpaid, kept children in a church during church
12 services, or ever photographed their own children naked? If
13 so, please stand.

14 All right. I think we have some babysitters.

15 (WHEREUPON, the following side-bars were reported.)

16 POTENTIAL JUROR: Hi. Hollie Henderson, number 87.
17 I have 3 small children and I obviously kept my nieces and
18 nephews so.

19 THE COURT: Would that in any way interfere with
20 your ability to give both the State and the defendant a fair
21 and impartial trial in this case?

22 MS. HENDERSON: Depending on the trial that --
23 depending on what --

24 THE COURT: I'm going to excuse you on the trial of
25 this case. Very good, thank you.

1 (WHEREUPON, Ms. Henderson returned to her seat, and
2 then the next potential juror approached to speak with the
3 Court.)

4 THE COURT: Yes, ma'am?

5 POTENTIAL JUROR: My name is Crystal Pelfrey. I'm
6 juror number 146. And I've been a babysitter for like 18
7 years.

8 THE COURT: Would that in any way interfere with
9 your ability to give both the State and the defendant a fair
10 and impartial trial in this case?

11 MS. PELFREY: Probably.

12 THE COURT: I'm going to excuse you. Thank you.

13 MS. PELFREY: Thank you.

14 (WHEREUPON, Ms. Pelfrey returned to her seat, and
15 then the next potential juror approached to speak with the
16 Court.)

17 THE COURT: Your name, please?

18 POTENTIAL JUROR: Phyllis Webb, 195.

19 THE COURT: Yes, ma'am.

20 MS. WEBB: I've babysat and kept kids in the nursery
21 at church.

22 THE COURT: All right. Would that in any way
23 interfere with your ability to give both the State and the
24 defendant a fair and impartial trial in this case?

25 MS. WEBB: No.

1 THE COURT: Very good. Thank you.

2 (WHEREUPON, Ms. Webb returned to her seat, and then
3 the next potential juror approached to speak with the Court.)

4 POTENTIAL JUROR: Hello, Your Honor. My name is
5 Carole Glenn, number 74.

6 THE COURT: Carole Glenn, 74?

7 MS. GLENN: Yes, sir. I just babysit my nieces and
8 nephews sometime.

9 THE COURT: All right. Would that interfere with
10 your ability to give both the State and the defendant a fair
11 and impartial trial in this case?

12 MS. GLENN: Not at all.

13 THE COURT: Very good. Thank you, ma'am.

14 (WHEREUPON, Ms. Glenn returned to her seat, and then
15 the next potential juror approached to speak with the Court.)

16 POTENTIAL JUROR: I'm Trent Berry, number 14.

17 THE COURT: Yes, sir.

18 MR. BERRY: I have a picture of my daughter when she
19 was a baby. She jumped up from a diaper change and I just
20 took a picture of her.

21 THE COURT: All right. Would that in any way
22 interfere with your ability to give both the State and the
23 defendant a fair and impartial trial?

24 MR. BERRY: No.

25 THE COURT: Thank you very much, sir.

1 (WHEREUPON, Mr. Berry returned to his seat, and then
2 the next potential juror approached to speak with the Court.)

3 POTENTIAL JUROR: Allison Ranck, juror number 152.
4 I have babysat in the past.

5 THE COURT: Would that in any way --

6 MS. RANCK: No, sir.

7 THE COURT: -- interfere with your ability to give
8 both the State and the defendant a fair and impartial --

9 MS. RANCK: No, sir.

10 THE COURT: Thank you, ma'am.

11 (WHEREUPON, Ms. Ranck returned to her seat, and then
12 the next potential juror approached to speak with the Court.)

13 POTENTIAL JUROR: Number 100, Dorothy Jones.

14 THE COURT: Yes, ma'am.

15 MS. JONES: I've been church daycare and vacation
16 bible school helper.

17 THE COURT: All right. Would that in any way
18 interfere with your ability to give both the State and the
19 defendant a fair and impartial?

20 MS. JONES: No, sir.

21 THE COURT: Very good. Thank you, ma'am.

22 (WHEREUPON, Ms. Jones returned to her seat, and then
23 the next potential juror approached to speak with the Court.)

24 THE COURT: Good afternoon, again.

25 POTENTIAL JUROR: Dorothy Ukpabi, number 188. I

1 babysit my 2 little great nieces sometimes.

2 THE COURT: Would that in any way interfere with
3 your ability to give both the State and the defendant a fair
4 and impartial trial in this case?

5 MS. UKPABI: No, I don't think so.

6 THE COURT: No, I need to be sure.

7 MS. UKPABI: Well, I mean, you know, it all depends,
8 I guess. Now, what was the question again?

9 THE COURT: Would that in any way, the fact that you
10 babysat your great niece and nephew, would that in any way
11 interfere with your ability to give both the State and the
12 defendant a fair and impartial trial?

13 MS. UKPABI: No. No, it would not affect. No.

14 THE COURT: Okay. Thank you, ma'am.

15 (WHEREUPON, the side-bar was concluded.)

16 THE COURT: Ladies and gentlemen, the reason I ask
17 that question, whether or not your experience would interfere
18 with your ability to give both the State and the defendant a
19 fair and impartial trial, is twofold. First of all, both the
20 State and the defendant are entitled to a fair and impartial
21 jury, but the second part of it is the fact that you are not
22 here at your request.

23 You are summoned to be here, and when you do your
24 duty as jurors I want to be sure that you are comfortable with
25 what you are doing. You are not asking to do it but the fact

1 is if you do it I want you to be sure that it would not create
2 a problem for you. So it's not only for the parties involved
3 but also for you.

4 So that's when I ask if something would interfere
5 with your ability to give both the State and the defendant a
6 fair and impartial trial it's twofold. So please understand
7 that. Just what I want to know is how you feel.

8 (WHEREUPON, the following side-bars were reported.)

9 THE COURT: Yes, ma'am?

10 POTENTIAL JUROR: I'm T-15, Cecile Cruce, and I've
11 done a lot of babysitting.

12 THE COURT: Would that interfere with your ability
13 to give both the State and the defendant a fair and impartial
14 trial?

15 MS. CRUCE: No.

16 THE COURT: Very good. Thank you, ma'am.

17 (WHEREUPON, Ms. Cruce returned to her seat, and then
18 the next potential juror approached to speak with the Court.)

19 POTENTIAL JUROR: Number 71, Annette Gault.

20 THE COURT: Yes, ma'am.

21 MS. GAULT: The only thing I've done is church
22 daycare.

23 THE COURT: All right. Now, would that in any way
24 interfere with your ability to give both the State and the
25 defendant a fair and impartial trial?

1 MS. GAULT: No, sir.

2 THE COURT: Thank you, ma'am.

3 (WHEREUPON, Ms. Gault returned to her seat, and then
4 the next potential juror approached to speak with the Court.)

5 THE COURT: Yes, ma'am?

6 POTENTIAL JUROR: I'm Teresa Crisp, 48. And I'm a
7 grandmother, so I've babysat.

8 THE COURT: Would that interfere with your ability
9 to give both the State and the defendant a fair and impartial
10 trial?

11 MS. GAULT: No, sir.

12 THE COURT: Thank you, ma'am.

13 (WHEREUPON, Ms. Gault returned to her seat, and then
14 the next potential juror approached to speak with the Court.)

15 POTENTIAL JUROR: Kathryn Heeney, I think 86. I've
16 babysat for many years, and I also ran a child's program at a
17 resort in South Georgia for 3 years.

18 THE COURT: Would that interfere with your ability
19 to give both the State and the defendant a fair and impartial
20 trial?

21 MS. HEENEY: No, sir.

22 THE COURT: Thank you, ma'am.

23 (WHEREUPON, Ms. Heeney returned to her seat, and
24 then the next potential juror approached to speak with the
25 Court.)

1 POTENTIAL JUROR: Number 128, Stephanie McLees. I
2 used to babysit in a nursery for church.

3 THE COURT: Ms. McLees, 128. All right. You
4 babysat in a church nursery?

5 MS. MCLEES: And babysit. Yes.

6 THE COURT: Would that in any way interfere with
7 your ability to give both the State and the defendant a fair
8 and impartial trial?

9 MS. MCLEES: No, Your Honor.

10 THE COURT: Thank you, ma'am.

11 (WHEREUPON, Ms. McLees returned to her seat, and
12 then the next potential juror approached to speak with the
13 Court.)

14 POTENTIAL JUROR: Rhonda Mauldin, 124.

15 THE COURT: Yes, ma'am.

16 MS. MAULDIN: I teach 2 to 5 year olds in Sunday
17 school, and I've kept nursery before.

18 THE COURT: All right. Would that in any way
19 interfere with your ability to give both the State and the
20 defendant a fair and impartial trial?

21 MS. MAULDIN: No.

22 THE COURT: Thank you, ma'am.

23 (WHEREUPON, Ms. Mauldin returned to her seat, and
24 then the next potential juror approached to speak with the
25 Court.)

1 THE COURT: Yes, sir?

2 POTENTIAL JUROR: Amery Brooks, number 20. My wife
3 and I do nursery duty at church.

4 THE COURT: All right. Would that in any way
5 interfere with your ability to give both the State and the
6 defendant a fair and impartial trial?

7 MR. BROOKS: No, sir.

8 THE COURT: Very good. Thank you, sir.

9 (WHEREUPON, Mr. Brooks returned to his seat, and
10 then the next potential juror approached to speak with the
11 Court.)

12 THE COURT: Yes, ma'am?

13 POTENTIAL JUROR: Dawn Cothran, number 44. I'm a
14 Sunday school teacher and I've worked in extended session in
15 our church keeping the young ones.

16 THE COURT: All right. Would that in any way
17 interfere with your ability to give both the State and the
18 defendant a fair and impartial trial?

19 MS. COTHRAN: No, sir.

20 THE COURT: Thank you, ma'am.

21 (WHEREUPON, Ms. Cothran returned to her seat, and
22 then the next potential juror approached to speak with the
23 Court.)

24 POTENTIAL JUROR: Cherry Whiten, T-13.

25 THE COURT: Transfer 13. Yes, ma'am.

1 MS. WHITEN: I've been a babysitter, paid and
2 unpaid, and I do nursery once a month in church.

3 THE COURT: Would that in any way interfere with
4 your ability to give both the State and the defendant a fair
5 and impartial trial?

6 MS. WHITEN: No, sir.

7 THE COURT: Thank you, ma'am.

8 (WHEREUPON, Ms. Whiten returned to her seat, and
9 then the next potential juror approached to speak with the
10 Court.)

11 THE COURT: Yes, ma'am?

12 POTENTIAL JUROR: Linda Shirley, juror 163. I have
13 babysat and keep children at my church's nursery.

14 THE COURT: Would that in any way interfere with
15 your ability to give both the State and the defendant a fair
16 and impartial trial?

17 MS. SHIRLEY: No.

18 THE COURT: Thank you, ma'am.

19 (WHEREUPON, Ms. Shirley returned to her seat, and
20 then the next potential juror approached to speak with the
21 Court.)

22 THE COURT: Yes, ma'am?

23 POTENTIAL JUROR: Roxanne Caldwell, number T-03.
24 And I have kept children in the nursery and have babysat
25 before.

1 THE COURT: Would that in any way interfere with
2 your ability to give both the State and the defendant a fair
3 and impartial trial?

4 MS. CALDWELL: No, sir.

5 THE COURT: Thank you, ma'am.

6 (WHEREUPON, Ms. Caldwell returned to her seat, and
7 then the next potential juror approached to speak with the
8 Court.)

9 THE COURT: Yes, ma'am?

10 POTENTIAL JUROR: Jacqueline Barker, number 8. I
11 babysat for my law professor when I was a college student, and
12 worked many years in the nursery at church.

13 THE COURT: All right. Would that in any way
14 interfere with your ability to give both the State and the
15 defendant a fair and impartial?

16 MS. BARKER: No.

17 THE COURT: Very good. Thank you, ma'am.

18 (WHEREUPON, Ms. Barker returned to her seat, and
19 then the next potential juror approached to speak with the
20 Court.)

21 POTENTIAL JUROR: Jennifer Johnson, Juror 99.

22 THE COURT: Yes, ma'am.

23 MS. JOHNSON: Just babysat, regular babysitting for
24 family members, parents.

25 THE COURT: Would that in any way interfere with

1 your ability to give both the State and the defendant a fair
2 and impartial trial?

3 MS. JOHNSON: No.

4 THE COURT: Thank you, ma'am.

5 (WHEREUPON, Ms. Johnson returned to her seat, and
6 then the next potential juror approached to speak with the
7 Court.)

8 THE COURT: Yes, ma'am?

9 POTENTIAL JUROR: Hali Holliday, number 91. I have
10 a baby niece who I keep all the time, and I also keep kids at
11 church.

12 THE COURT: Would that in any way interfere with
13 your ability --

14 MS. HOLLIDAY: Yes.

15 THE COURT: It would?

16 MS. HOLLIDAY: Yes.

17 THE COURT: I'm going to excuse you. Thank you very
18 much.

19 (WHEREUPON, Ms. Holliday returned to her seat, and
20 then the next potential juror approached to speak with the
21 Court.)

22 POTENTIAL JUROR: My name is Randy Parnell. I'm
23 number 143.

24 THE COURT: Yes, sir.

25 MR. PARNELL: My wife, she owns and operates a

1 daycare.

2 THE COURT: Would that in any way --

3 MR. PARNELL: No, sir, it would not.

4 THE COURT: -- interfere with your ability to give
5 the State and the defendant a fair and impartial --

6 MR. PARNELL: Do what now?

7 THE COURT: Would that in any way interfere with
8 your ability to give both the State and the defendant a fair
9 and impartial --

10 MR. PARNELL: No, sir.

11 THE COURT: Thank you, sir.

12 (WHEREUPON, Mr. Parnell returned to his seat, and
13 then the next potential juror approached to speak with the
14 Court.)

15 THE COURT: Yes, sir?

16 POTENTIAL JUROR: Mark Small, 168. The last 5 years
17 I was director of a high school youth group.

18 Also, in response to your first question, I'm a
19 member of the American Psychology Law Society. It's an
20 organization that regularly holds conferences in the topics
21 including child abuse and neglect and child ill treatment.

22 THE COURT: Would that in any way interfere with
23 your ability to give both the State and the defendant a fair
24 and impartial trial in this case?

25 MR. SMALL: No.

1 THE COURT: Very good. Thank you, sir.

2 (WHEREUPON, Mr. Small returned to his seat, and then
3 the next potential juror approached to speak with the Court.)

4 THE COURT: Yes, sir?

5 POTENTIAL JUROR: Carl Cady, 33. I just wanted to
6 be honest. I have watched children before in the daycare
7 church.

8 THE COURT: All right. Would that in any way
9 interfere with your ability to give both the State and the
10 defendant a fair and impartial trial in this case?

11 MR. CADY: No.

12 THE COURT: Very good. Thank you.

13 (WHEREUPON, the side-bar was concluded.)

14 THE COURT: All right. Anyone else?

15 (There was no response.)

16 THE COURT: Has any member of the jury panel formed
17 or expressed an opinion about any matter that might be
18 involved in this case? If so, please stand.

19 (There was no response.)

20 THE COURT: Is any member of the jury panel aware of
21 any interest, bias or prejudice towards either the State of
22 South Carolina or the defendant? If so, please stand.

23 (There was no response.)

24 THE COURT: Does any member of the panel know of any
25 reason why he or she could not give both the State of South

1 Carolina and the defendant a fair and impartial trial? If so,
2 please stand.

3 (There was no response.)

4 THE COURT: Any further questions or additional
5 questions from the State?

6 MS. HUEY: No, sir, Your Honor.

7 THE COURT: Any further questions, additional
8 questions from the defendant?

9 THE DEFENDANT: No, sir, Your Honor.

10 THE COURT: Very good.

11 Now, ladies and gentlemen, the way that we draw a
12 jury in General Sessions Court is that the clerk of court will
13 call out names that have been randomly -- you'll see that she
14 has a drum in front of her. Now, that drum contains capsules
15 which contains each of your names; one capsule, one name.
16 She's drawing those names from the capsule randomly.

17 And so when your name is called if you would come
18 forward to the front of the courtroom where the bailiff is
19 standing and look back towards the back of the courtroom.
20 Also, bring with you anything that you have with you at the
21 time when you come forward.

22 Madam Clerk, if you would, please, give us a jury.

23 Five for the State and 10, Mr. Thompson, 10 for the
24 defendant. All right.

25 Very good. You may proceed.

1 THE CLERK: Number 130, Michael Miller, 130.

2 (A white male came forward.)

3 THE CLERK: What say you for the State?

4 MS. HUEY: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 THE DEFENDANT: Swear him.

7 THE CLERK: Have a seat in the jury box, please,

8 Mr. Miller.

9 Number 104, Larry Kelly. Number 104

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MS. HUEY: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 THE DEFENDANT: Excuse him.

15 THE CLERK: You may go back and have a seat. Thank

16 you, Mr. Kelly.

17 Number 29, Cynthia Burdette, 29.

18 (A white female came forward.)

19 THE CLERK: What say you for the State?

20 MS. HUEY: Please present this juror.

21 THE CLERK: What say you for the defendant?

22 THE DEFENDANT: Excuse her.

23 THE CLERK: You may go back and have a seat. Thank

24 you.

25 Number 131, Donald Mixson. Number 131.

1 (A white male came forward.)

2 THE CLERK: What say you for the State?

3 MS. HUEY: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 THE DEFENDANT: Excuse him.

6 THE CLERK: I'm sorry, could you speak up.

7 THE DEFENDANT: Excuse him.

8 THE CLERK: You may return to your seat. Thank you.

9 Number 79, Claude Hall. Juror number 79.

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MS. HUEY: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 THE DEFENDANT: Swear him.

15 THE CLERK: Have a seat in the jury box, please,

16 Mr. Hall.

17 Number 196, Nancy Whitfield, 196.

18 (A white female came forward.)

19 THE CLERK: What say you for the State?

20 MS. HUEY: Please present this juror.

21 THE CLERK: What say you for the defendant?

22 THE DEFENDANT: Excuse her.

23 THE CLERK: You may return to your seat,

24 Ms. Whitfield.

25 Number 71, Annette Gault. Number 71.

1 (A white female came forward.)

2 THE CLERK: What say you for the State?

3 MS. HUEY: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 THE DEFENDANT: Swear him.

6 THE CLERK: Have a seat in the jury box, please,

7 Ms. Gault.

8 Number 103, Patrick Kelley. Number 103.

9 (A white male came forward.)

10 THE CLERK: What say you for the State?

11 MS. HUEY: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 THE DEFENDANT: Swear him.

14 THE CLERK: Have a seat, please, Mr. Kelley, in the

15 jury box.

16 Number 168, Mark Small. Number 168.

17 (A white male came forward.)

18 THE CLERK: What say you for the State?

19 MS. HUEY: Please present this juror.

20 THE CLERK: What say you for the defendant?

21 THE DEFENDANT: Excuse him.

22 THE CLERK: I'm sorry?

23 THE DEFENDANT: Excused.

24 THE CLERK: Excused. Thank you.

25 You may return to your seat.

1 Number 86, Kathryn Heeney. Number 86.

2 (A white female came forward.)

3 THE CLERK: What say you for the State?

4 MS. HUEY: Please present this juror.

5 THE CLERK: What say you for the defendant?

6 THE DEFENDANT: Swear her.

7 THE CLERK: Have a seat in the jury box, please,
8 Ms. Heeney.

9 Number 65, Sally Foster. Number 65.

10 (A white female came forward.)

11 THE CLERK: What say you for the State?

12 MS. HUEY: Please present this juror.

13 THE CLERK: What say you for the defendant?

14 THE DEFENDANT: Swear her.

15 THE CLERK: Have a seat in the jury box, please,
16 Ms. Foster.

17 Number 124, Rhonda Mauldin.

18 (A white female came forward.)

19 THE CLERK: What say you for the State?

20 MS. HUEY: Please present this juror.

21 THE CLERK: What say you for the defendant?

22 THE DEFENDANT: Excuse her.

23 THE CLERK: You may return to your seat,

24 Ms. Mauldin. Thank you.

25 Transfer 8, Curtis Miller, Jr. Transfer 8.

1 (A white male came forward.)

2 THE CLERK: What say you for the State?

3 MS. HUEY: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 THE DEFENDANT: Excuse him.

6 THE CLERK: You may return to your seat. Thank you,

7 Mr. Miller.

8 Number 75, Martha Glenn. Number 75.

9 THE CLERK: What say you for the State?

10 MS. HUEY: Please present this juror.

11 THE CLERK: What say you for the defendant?

12 THE DEFENDANT: She's excused.

13 THE CLERK: You may return to your seat. Thank you,

14 Ms. Glenn.

15 Number 57, Robert Edwards. Number 57.

16 (A black male came forward.)

17 THE CLERK: What say you for the State?

18 MS. HUEY: Please present this juror.

19 THE CLERK: What say you for the defendant?

20 THE DEFENDANT: Swear him.

21 THE CLERK: Have a seat in the jury box, please,

22 Mr. Edwards.

23 Number 33, Carl Cady.

24 (A white male came forward.)

25 THE CLERK: What say you for the State?

1 MS. HUEY: Please excuse this juror.

2 THE CLERK: You may return to your seat. Thank you,

3 Mr. Cady.

4 Number 63, John Ford.

5 (A white male came forward.)

6 THE CLERK: What say you for the State?

7 MS. HUEY: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 THE DEFENDANT: Swear him.

10 THE CLERK: Have a seat in the jury box, please,

11 Mr. Ford.

12 Transfer 13, Cherry Whiten. Transfer 13.

13 (A white female came forward.)

14 THE CLERK: What say you for the State?

15 MS. HUEY: Please present this juror.

16 THE CLERK: What say you for the defendant?

17 THE DEFENDANT: Swear her.

18 THE CLERK: Have a seat in the jury box, please,

19 Ms. Whiten.

20 Number 147, Cynthia Perry. Number 147.

21 (A black female came forward.)

22 THE CLERK: What say you for the State?

23 MS. HUEY: Please excuse this juror.

24 THE CLERK: Thank you, Ms. Perry.

25 Number 20, Amery Brooks. Number 20.

1 (A white male came forward.)

2 THE CLERK: What say you for the State?

3 MS. HUEY: Please present this juror.

4 THE CLERK: What say you for the defendant?

5 THE DEFENDANT: Swear him.

6 THE CLERK: Have a seat in the jury box, please,

7 Mr. Brooks.

8 Number 128, Stephanie McLees.

9 (A white female came forward.)

10 THE CLERK: What say you for the State?

11 MS. HUEY: Please present this juror.

12 THE CLERK: What say you for the defendant?

13 THE DEFENDANT: She's excused.

14 THE CLERK: Thank you, Ms. McLees.

15 Number 129, Angela Medlin, 129.

16 (A white female came forward.)

17 THE CLERK: What say you for the State?

18 MS. HUEY: Please excuse this juror.

19 THE CLERK: Thank you, Ms. Medlin.

20 Number 44, Dawn Cothran.

21 (A white female came forward.)

22 THE CLERK: What say you for the State?

23 MS. HUEY: Please present this juror.

24 THE CLERK: What say you for the defendant?

25 THE DEFENDANT: Swear her.

1 THE CLERK: Have a seat in the jury box, please,
2 Ms. Cothran.

3 Number 197, Antonio Williams, 197.

4 (A black male came forward.)

5 THE CLERK: What say you for the State?

6 MS. HUEY: Please present this juror.

7 THE CLERK: What say you for the defendant?

8 THE DEFENDANT: Swear him.

9 THE CLERK: Have a seat in the jury box, please,
10 Mr. Williams.

11 THE COURT: All right. Let's have 2 alternates; 2
12 and 1.

13 THE CLERK: Number 110, Jason Langston. Number 110.

14 (A white male came forward.)

15 THE CLERK: What say you for the State?

16 MS. HUEY: Please present this juror.

17 THE CLERK: What say you for the defendant?

18 THE DEFENDANT: Swear him.

19 THE CLERK: Have a seat on the second row, please,
20 Mr. Langston. You'll be our first alternate.

21 Number 170, Titania Smith, 170.

22 (A black female came forward.)

23 THE CLERK: What say you for the State?

24 MS. HUEY: Please present this juror.

25 THE CLERK: What say you for the defendant?

1 THE DEFENDANT: She's excused.

2 THE CLERK: You may return to your seat. Thank you,

3 Ms. Smith.

4 Number 155, Chase Reeves, 155.

5 (A white male came forward.)

6 THE CLERK: What say you for the State?

7 MS. HUEY: Please present this juror.

8 THE CLERK: What say you for the defendant?

9 THE DEFENDANT: Swear him.

10 THE CLERK: If you'll have a seat on the third row.

11 You'll be our second alternate, Mr. Reeves. Thank you.

12 THE COURT: Is there any reason this jury cannot be

13 sworn for the trial of this case, from the State?

14 MS. HUEY: Your Honor, may we approach?

15 THE COURT: Certainly.

16 (WHEREUPON, a bench conference was had.)

17 THE COURT: Again, the question is, is there any

18 reason this jury cannot be sworn for the trial of the case,

19 from the State?

20 MS. HUEY: No, sir, Your Honor.

21 THE COURT: From the defendant?

22 THE DEFENDANT: No, sir, Your Honor.

23 THE COURT: Very good. Thank you.

24 Dr. Heeney, I'm going to ask you to serve as

25 foreperson of this jury.

1 So when we come back -- and I think we'll be trying
2 the case -- no, we'll use this for a few minutes. I'm going
3 to ask you when you come back I'll give you some further
4 instructions.

5 At this time, I'm going to ask you to go with the
6 bailiff for a few minutes. I know it's late but I need to
7 take up some matters with the remainder of the jury, and it
8 will be just a few minutes and I'll bring you back and I'll
9 give you instructions for the day.

10 All right. Everybody else remain seated while the
11 jury retires.

12 Now, again, my instructions throughout the trial of
13 this case is that you are not to undertake the discussion of
14 this case among yourselves or permit anybody to discuss it
15 with you. So don't even discuss personalities or anything
16 else about the case.

17 Very good. If you would, please go with the
18 bailiff.

19 (WHEREUPON, the jury leaves the courtroom at
20 approximately 1:22 p.m.)

21 THE COURT: Ladies and gentlemen that were not drawn
22 on the trial of this case, I'm going to excuse you for the
23 balance of the day.

24 Also, you're being handed a sheet of paper that has
25 a telephone number on it. Your Clerk of Court, Ms. Phillips,

1 has made it possible so that you do not have to come back
2 every day to report to find out what's going to be done.

3 This is a telephone number that has an answering
4 machine that will go on after 6 o'clock. In other words,
5 after 6 o'clock if you would call this number there will be
6 instructions on the answering machine. It will either say
7 come in tomorrow morning at a certain time or to call back
8 tomorrow night. In other words, you might not have to come in
9 at all. And if you would do that, then that will save your
10 having to come in.

11 If you do not get the message from the answering
12 machine I regret that you'll have to get it from me at 9:30 in
13 the morning. So I think you'd want to be able to get it from
14 the machine or get it from the machine.

15 Now, it's a machine that's on all night long. So if
16 you don't get through the first time because the line is busy
17 or something keep calling until you finally do. And, of
18 course, as I say, do whatever the message says.

19 When you don't have to be here we want to spare any
20 further inconvenience, as much inconvenience as possible.
21 However, when it is necessary for you to be here then it's
22 absolutely critical that you are. So please do what the
23 message says.

24 Again, does everybody have the number? Anybody
25 doesn't have the number, raise your hand.

1 (There was no response.)

2 THE COURT: All right. Does everybody understand
3 what to do? Call the number after 6 o'clock until you get the
4 message and then do what that message says.

5 Very good. I thank you very much for your patience
6 with the Court today and I also look forward to working with
7 you this week. Again, thank you and you may be excused.
8 Thank you very much.

9 (WHEREUPON, the jury venire leaves the courtroom.)

10 THE COURT: Is there anything from the State before
11 we bring the jury back and dismiss them for the day?

12 MS. HUEY: No, sir, Your Honor.

13 THE COURT: From the defense?

14 THE DEFENDANT: Yes, sir. I would like to make a
15 motion for all recordings made by news crews, starting from
16 the beginning of today or from this day forward, as well as
17 motions for transcripts and names of stations that was
18 contacted.

19 THE COURT: Well, the only thing, I don't know if
20 any transcripts or recordings have been made but I will advise
21 both the State and the defendant that I have received 2
22 requests for electronic and photographic coverage pursuant to
23 Rule 605. One is from apparently Channel 4 WYFF, Ms. Foster,
24 for video cameras and wireless microphone; and then also from
25 WSPA, looks like Mr. Jolinie or Jolie. But again, it's with

1 WSPA.

2 I have as yet to sign those orders because I was
3 waiting until I complete the jury selection, because it's my
4 understanding there's no photography or recording to be made
5 of any juror. So I haven't done that as yet. And as far as
6 anything else that has occurred I'm not aware of.

7 What does the State say?

8 MS. HUEY: Your Honor, we would leave that to your
9 discretion.

10 THE COURT: I'm not exactly sure what discretion I
11 have for the State. If they are not a party to the action I
12 don't know if I can request production of their material.

13 THE DEFENDANT: I would like the information that
14 was provided to the prosecution this morning.

15 THE COURT: I beg your pardon?

16 THE DEFENDANT: I would like the information that
17 was provided to the prosecution.

18 THE COURT: Oh. Now, is there anything that the
19 State has about these matters?

20 MS. HUEY: Your Honor --

21 THE COURT: Have you been provided any sort of
22 documentation or anything?

23 MS. HUEY: No, sir, Your Honor. News Channel 4 has
24 contacted us, but we have not yet given them any information
25 because the trial is ongoing. We wouldn't do so until after

1 the trial.

2 THE COURT: Right.

3 MS. HUEY: Now, I believe the victim's family in
4 this case may be contacting the media.

5 THE COURT: Okay. Anything else, Mr. Thompson?

6 THE DEFENDANT: The names of the person that
7 contacts the solicitor's office, if we can subpoena that, Your
8 Honor.

9 THE COURT: All right. Who contacted -- I
10 understand.

11 All right, Madam Solicitor?

12 MS. ADAMS: Your Honor, if I may? Channel 4
13 contacted us, and from what I understand they don't want to
14 air an interview with the victim's family until they hear from
15 me. Now, that's the only information that I have gotten about
16 that. And I am not going to go on interview during -- when a
17 trial is in progress. So, you know.

18 Now, there was a blurb on the website that said --
19 that referred to this trial. You know, but other than that we
20 have had no contact with the media except for them contacting
21 us and telling us that the victim's family wanted to be
22 interviewed.

23 THE COURT: All right. Is that website that you
24 referred to available to --

25 MS. ADAMS: It's Channel 4's website.

1 THE COURT: So it's available to the defense as
2 well?

3 MS. ADAMS: Yes, sir. Yes, sir.

4 THE COURT: Anything else? Yes, sir?

5 THE DEFENDANT: I would also like to have the Court
6 sequester.

7 THE COURT: Sequester the witnesses?

8 All right. Any comment about that from the State?

9 MS. HUEY: Your Honor, if he can show the hardship
10 that would be caused to him without sequestering then the
11 State has no objection.

12 THE COURT: All right. Mr. Thompson, what do you
13 say? The State rule is a little bit different from the
14 federal rules. The federal rules, only the motion has to be
15 made in order to require sequestration of witnesses. The
16 State moves -- there's a little higher justification required.

17 THE DEFENDANT: Your Honor, I would like to have the
18 jury sequestered because of --

19 THE COURT: Oh, you mean the jury sequestered --

20 THE DEFENDANT: Yes.

21 THE COURT: -- during the trial?

22 I am going to instruct them that they are not to
23 read or listen to or see any sort of publicity on this case,
24 which will be the same thing I would instruct them during a
25 sequestration. But, no, I don't feel that the jury needs to

1 be sequestered here, and I'll deny that motion, but I will
2 give them the instruction about not to listen to or watch or
3 read anything about the case.

4 THE DEFENDANT: Thank you, Your Honor.

5 THE COURT: Yes, sir. Thank you.

6 All right. Anything else from the State?

7 MS. HUEY: Yes, sir, Your Honor, just one other
8 thing. When we were talking in chambers about the voir dire
9 questions a couple of questions that the defense wanted
10 related to prior convictions, false information to police.
11 And in going through the rap sheets only 2 people came close
12 to even having those kinds of convictions, and I provided that
13 list to Mr. Thompson. I just wanted to put that on the
14 record.

15 THE COURT: Prior to jury selection?

16 MS. HUEY: Well, when the juror number was called,
17 Your Honor, I walked over and handed it to them.

18 THE COURT: Is that correct, Mr. Thompson?

19 THE DEFENDANT: That's correct, Your Honor.

20 THE COURT: Very good. Thank you.

21 All right. Anything else from the State?

22 (There was no response.)

23 THE COURT: Anything else from you, Mr. Thompson?

24 THE DEFENDANT: No, sir, Your Honor.

25 THE COURT: As I say, I'm going to give the jury

1 preliminary instructions about not to discuss this case or to
2 watch, read or hear anything about the case and then excuse
3 them until 10 o'clock in the morning.

4 Anything from the State?

5 MS. HUEY: No, sir, Your Honor.

6 THE COURT: From the defense?

7 (There was no response.)

8 THE COURT: I'm going to excuse the jury until
9 10 o'clock in the morning, then we'll take up all motions and
10 everything this afternoon.

11 MS. HUEY: Yes, sir, Your Honor.

12 THE COURT: Is that all right, Mr. Thompson?

13 THE DEFENDANT: It's all right with me, Your Honor.

14 THE COURT: Very good. Thank you.

15 Ask the jury to join us, please.

16 (WHEREUPON, the jury enters the courtroom at
17 approximately 1:35 p.m.)

18 THE COURT: Madam forelady, ladies and gentlemen of
19 the jury, I've got to take up some matters with the parties in
20 this action before the case begins, and rather than keep you
21 here while we do that I'm going to suggest that you go home
22 for the evening, or the afternoon now and evening, then come
23 back at 10 o'clock in the morning, at which time we'll start
24 the trial of the case.

25 Now, this case could be of some interest to others

1 outside of the -- parties to the action. So therefore, I'm
2 going to instruct you and charge you, if you would, that you
3 are not to in any way read, listen to or look at anything that
4 might be about this case in the news or anybody discussing it
5 on the street, or anywhere else, or in the newspaper, or the
6 TV, or radio.

7 The reason for that, of course, is that you must
8 make your decision based on the testimony and evidence in this
9 courtroom, and nothing that you hear outside of the courtroom
10 or see or read outside of the courtroom will be of any value
11 to you but, in fact, it would destroy the system.

12 So you must, if somebody wants to talk to you about
13 it you say you cannot discuss it with them. If somebody wants
14 to -- or there's something going on on the TV, walk out of the
15 room; or the radio, just cut it off. You are not to listen to
16 it. And if anybody persists in doing that ask them not to,
17 but if they persist in doing it report them to me. It will be
18 your duty to do that because you are the sworn jurors for this
19 term of court and no one is to interfere with your proper
20 exercise of that duty.

21 Moreover, as I said, not only are you going to have
22 to do your -- or reach your verdict in this case based only on
23 the testimony and other evidence in this courtroom and your
24 deliberations in the jury room no one who has not heard the
25 first bit of testimony or evidence and not seen the first

1 exhibit can help you.

2 They won't be back there in the jury room with you
3 when you are reaching your verdict to report here to the
4 courtroom, and therefore they can only, as I say, interfere.
5 So please do not read, listen to or view anything that might
6 have to do with this case, and do not permit anybody to
7 discuss it with you or attempt to discuss it with you.

8 Now, I'll be here about 9:00 in the morning, and if
9 somebody persists I'll be glad to explain it to them if they
10 don't understand. Now, with that, I am going to excuse you
11 for the balance of the day, and if you'll come back at 10
12 o'clock in the morning.

13 We will be using the third floor courtroom, Doctor.

14 So if you will go with the bailiff he'll show you
15 the jury room you'll be using for the trial of this case. But
16 we'll be using the third floor then, and the reason I say
17 that, the configuration of the jury box is a little bit
18 different on the third floor.

19 It's two rows long and so, madam forelady, if you'll
20 sit in the first seat on the front row as you come in all the
21 way through.

22 Then the first alternate sits on the back row on the
23 end and the second alternate sits on the back row of the other
24 end next to the door. So you'll be the last to come in and
25 you'll be the first on the second row there. But with that,

1 everybody else can sit anywhere they want to. Those are the
2 only 3 assigned seats.

3 With that, you are excused, and I look forward to
4 working with you on the trial of this case.

5 Everyone else remain seated while the jury panel
6 retires from the courtroom.

7 (WHEREUPON, the jury leaves the courtroom at
8 approximately 1:40 p.m.)

9 THE COURT: All right. What time do you all want to
10 reconvene? It's 1:30 or 1:40.

11 MS. ADAMS: Judge, 2:30? Is that too soon?

12 THE COURT: Maybe 2:45. That will give us an hour.
13 All right. Let's do that, 2:45, and then we'll start back.

14 As I understand it, there is an order that relieved
15 Mr. Whiten from representation and advisory.

16 MR. WHITEN: Yes, Your Honor.

17 THE COURT: And, Mr. Thompson, you were advised --
18 what court did that, what judge?

19 THE DEFENDANT: Oh, yes, I was advised, and I think
20 the judge was Maddox.

21 THE COURT: Judge Maddox, he advised you on --

22 THE DEFENDANT: Cooper.

23 THE COURT: Judge Cooper, and he advised you on the
24 fact that an attorney might be of valuable assistance to you
25 and if you do proceed you do so at a certain disadvantage?

1 THE DEFENDANT: Yeah.

2 MS. HUEY: Judge, if I may? I believe it was Judge
3 Howard King.

4 THE COURT: All right. Judge King.

5 MS. HUEY: Yes, sir, and I have a document. It was
6 previously marked as a Court's exhibit.

7 THE COURT: Very well. I thank you. I wanted just
8 to be sure that you had been advised of the fact that an
9 attorney might be of valuable assistance to you, as well as
10 the dangers of representing yourself.

11 THE DEFENDANT: Thank you, Your Honor.

12 THE COURT: And apparently Judge King's order dated
13 January the 4th, 2007 and filed January the 8th, 2007, that
14 has been done, and I tell you I notice it's Court's Exhibit
15 Number 2. Was it made a part of the record?

16 MS. HUEY: Your Honor --

17 THE COURT: It should be a part -- well, it's been
18 filed. That's all right. Yeah, it's been filed. That's the
19 main thing I needed to know.

20 Very good. I'll see you at 2:45. We'll stand at
21 ease.

22 (WHEREUPON, a lunch break was taken, and after the
23 lunch break the trial of this case resumed in a different
24 courtroom with a different court reporter.)

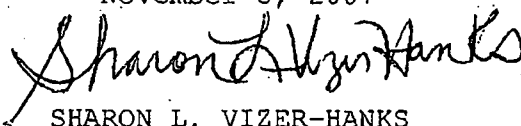
25

C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 10th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 21st day of May 2007.

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

November 5, 2007



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH) IN THE COURT OF GENERAL
 CAROLINA) SESSIONS
)
 COUNTY OF ANDERSON) INDICTMENT NO:
 2005-GS-04-1700

STATE OF SOUTH)
 CAROLINA)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL -- VOLUME II OF IV
) PAGES 57 THROUGH 208
 -VS-) AFTERNOON PROCEEDINGS
)
 HOWARD THOMPSON, III,)
)
 DEFENDANT.

MAY 21, 2007
 ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ALEXANDER S. MACAULAY, JUDGE

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

CATHERINE T. HUEY, ESQ.
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 ATTORNEY FOR THE STATE

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EXHIBITS

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S-2	VOLUNTARY STATEMENT 5-20-05 3:40 P.M.	--/138
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1 ***** START OF REQUESTED TRANSCRIPT *****

2 AFTERNOON PROCEEDINGS

3 THE COURT: ALL RIGHT. ALL RIGHT. WE ARE
4 BACK ON THE CASE OF THE STATE VERSUS HOWARD THOMPSON,
5 III, 2005-GS-04-1700. MS. HUEY IS REPRESENTING THE
6 STATE AND THE DEFENDANT, HOWARD THOMPSON, III IS PRO SE
7 WITH MR. WHITEN AS THE ADVISER UNDER THE FINAL ORDER OF
8 JUDGE KING.

9 WE HAVE HAD CERTAIN MOTIONS ALREADY. IF I
10 COULD, FOR THE BENEFIT OF THE RECORD HERE, THE DEFENDANT
11 MADE A MOTION TO SEQUESTER THE JURY, WHICH WAS DENIED.

12 THE COURT DID INSTRUCT THE JURY AS TO NOT TO
13 READ, LOOK AT, OR HEAR ANYTHING -- OR LISTEN TO ANYTHING
14 THAT MIGHT HAVE SOMETHING TO DO WITH THIS CASE, AND NOT
15 TO DISCUSS OR PERMIT ANYONE TO DISCUSS THE CASE WITH
16 THEM.

17 NOW, ALSO, A REQUEST OF THE COURT WAS MADE
18 AS TO CERTAIN MEDIA INFORMATION THAT MIGHT BE OUT THERE,
19 AND THE COURT ADVISED THE DEFENDANT THAT THE MEDIA IS
20 NOT A PARTY TO THE ACTION SO I HAVE NO ACCESS ON
21 JURISDICTION THERE, SO I DON'T KNOW WHAT MIGHT BE OUT
22 THERE. I UNDERSTAND THE MEDIA HAS BEEN MAYBE IN TOUCH
23 WITH SOME POTENTIAL WITNESS -- OR RATHER POTENTIAL
24 WITNESSES HAVE BEEN IN TOUCH WITH THE MEDIA. BUT MY
25 INSTRUCTIONS WOULD BE THAT NONE OF THE PARTIES SHOULD BE

1 CONVERSING WITH MEDIA IN THE EVENT THAT SOMETHING
2 UNTOWARD MIGHT HAVE BEEN SAID OR SOMETHING UNNECESSARY.

3 FOR THAT REASON -- THOSE REASONS, I HAVE
4 NOTHING I CAN DO TO PROVIDE ANYBODY WITH WHAT THE MEDIA
5 HAS AVAILABLE.

6 NOW, LET'S SEE. IF YOU COULD, MADAM
7 SOLICITOR, WHAT ARE THE MOTIONS WE HAVE -- OR LET ME ASK
8 YOU, WERE THERE ANY OTHER MOTIONS I NEED TO ADDRESS FOR
9 THE RECORD? AND ALL I'M ASKING FOR, IT'S ALREADY A
10 MATTER OF RECORD, BUT JUST FOR THE PROCEEDINGS THIS
11 AFTERNOON THAT WE HAVE ALREADY TAKEN UP CERTAIN MATTERS.
12 ANYTHING ELSE FROM THE STATE?

13 MS. HUEY: YOUR HONOR, THERE IS THE MATTER
14 OF A COUPLE OF THE STATE'S WITNESSES HAVE FAILED TO
15 APPEAR, EVEN THOUGH THEY ARE UNDER A SUBPOENA.

16 THE COURT: ALL RIGHT. WE WILL TAKE THAT UP
17 IN A LITTLE BIT.

18 MS. HUEY: OKAY.

19 THE COURT: BUT DO REMIND ME.

20 MS. HUEY: YES, SIR.

21 THE DEFENDANT: YOUR HONOR, CAN I HAVE A
22 MINUTE?

23 THE COURT: YES, SIR.

24 (WHEREUPON, THE DEFENDANT CONFERRED WITH
25 STAND-BY COUNSEL.)

1 **MOTION TO NOT ALLOW TESTIMONY RE SECOND WARRANT:**

2 **THE DEFENDANT:** YOUR HONOR, I WOULD LIKE TO
3 MAKE THAT MOTION FOR -- TO ELIMINATE OR RESTRICT THE
4 WITNESS FROM TESTIFYING OR PRESENTING ANY EVIDENCE
5 REGARDING THE INFORMATION THAT CAME FROM THE SECOND
6 WARRANT AND/OR INDICTMENT, BECAUSE IT IS MORE
7 PREJUDICIAL THAN PROBATIVE AND SHOULD NOT BE ALLOWED
8 INTO THIS TRIAL.

9 **THE COURT:** ALL RIGHT. IN OTHER WORDS, THIS
10 IS WHAT WE CALL LYLE INFORMATION I THINK, IS THAT NOT
11 CORRECT, MADAM SOLICITOR?

12 **MS. HUEY:** YES, SIR, YOUR HONOR.

13 **THE COURT:** DO YOU INTEND TO USE ANY OF THE
14 INFORMATION OTHER THAN THAT DIRECTLY RELATIVE TO THE
15 CHARGES IN THE INDICTMENT?

16 **MS. HUEY:** YOUR HONOR, IF I MAY GIVE A
17 LITTLE BIT OF BACKGROUND, WE ARE ABOUT TO DO THE JACKSON
18 V. DENNO HEARING ---

19 **THE COURT:** RIGHT.

20 **MS. HUEY:** --- AND IN THAT HEARING THE
21 DEFENDANT'S STATEMENTS WILL COME INTO PLAY. THE ONE
22 STATEMENT THAT HE GIVES INVOLVING THE VICTIM IN THIS
23 PARTICULAR CASE ALSO INVOLVES A VICTIM IN ANOTHER CASE,
24 AND I SAY THAT BECAUSE I WOULD LIKE TO GET INTO THE
25 ENTIRETY OF THE STATEMENT IN THE JACKSON V. DENNO

1 HEARING ONLY TO SHOW THE VOLUNTARINESS OF THE STATEMENT.
2 BUT AS FAR AS ANYTHING OTHER THAN JACKSON V. DENNO, YOUR
3 HONOR, WE WOULDN'T GET INTO ANY OF THAT INFORMATION
4 DURING TRIAL, THIS WOULD STRICTLY BE IN CAMERA.

5 COURT'S RULING ON DEFENDANT'S MOTION:

6 THE COURT: ALL RIGHT. WITH THAT
7 UNDERSTANDING, THEN, YOU ARE PERMITTED TO DO IT, IN
8 OTHER WORDS, TO DEVELOP SURROUNDING CIRCUMSTANCES OF THE
9 ALLEGED STATEMENTS, ALL RIGHT, AT THIS POINT UNLESS, AS
10 I SAY, THERE IS SOME BASIS FOR IT, THAT WOULD NOT BE
11 PERMITTED AT TRIAL, ANY OTHER ALLEGATIONS. ALL RIGHT.

12 SO WE HAVE FROM THE STATE WITNESS
13 AVAILABILITY AND STATEMENT, JACKSON V. DENNO.

14 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

15 MS. HUEY: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. FROM THE DEFENDANT?

17 THE DEFENDANT: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT. WHY DON'T WE START
19 WITH THE JACKSON V. DENNO, THEN.

20 MS. HUEY: WELL, YOUR HONOR, I WOULD BE
21 HAPPY TO DO THAT. BUT IN TERMS OF THE WITNESS
22 AVAILABILITY, I DIDN'T KNOW IF WE COULD DECIDE TO SEND
23 SOMEONE TO GO AFTER THE WITNESSES, WE GO AHEAD AND DO
24 THAT THIS AFTERNOON SO THEY COULD MAYBE APPEAR IN FRONT
25 OF YOU, SO THEY WOULD KNOW THAT THEY HAD TO BE HERE

1 TOMORROW?

2 THE COURT: ALL RIGHT. DO YOU HAVE THE
3 SUBPOENA?

4 MS. HUEY: YES, SIR, YOUR HONOR, I DO. I
5 HAVE TWO SUBPOENAS, ACTUALLY.

6 THE COURT: WERE THEY SERVED?

7 MS. HUEY: YES, YOUR HONOR, THEY WERE
8 PERSONALLY SERVED.

9 THE COURT: WHO SERVED THEM?

10 MS. HUEY: YOUR HONOR, TAMMY KERLEE WITH OUR
11 OFFICE SERVED THEM. I'LL SHOW THE DEFENDANT THE
12 SUBPOENAS, YOUR HONOR.

13 I'LL PASS THESE UP, JUDGE. WOULD YOU LIKE
14 ME TO MAKE THEM COURT'S EXHIBITS?

15 THE COURT: PLEASE.

16 (COURT'S EX. # 3, SUBPOENA FOR SARA HIOTT,
17 WAS MARKED FOR IDENTIFICATION.)

18 (COURT'S EX. # 4, SUBPOENA FOR BRIAN CAIN,
19 WAS MARKED FOR IDENTIFICATION.)

20 MS. HUEY: YOUR HONOR, I'M PASSING UP
21 COURT'S EXHIBITS THREE AND FOUR.

22 THE COURT: ALL RIGHT. I HAVE COURT'S
23 EXHIBIT NUMBER THREE, A SUBPOENA IN A CRIMINAL CASE, THE
24 CASE BEING *THE STATE VERSUS HOWARD THOMPSON, III*, AND
25 IT'S DIRECTED TO SARA HIOTT, REQUIRED TO BE IN THE

1 ANDERSON COUNTY COURTHOUSE MAY THE 7TH THROUGH MAY THE
2 25TH, 2007, AS DIRECTED, WHICH WAS SERVED ON THE -- ON
3 SARA HIOTT BY TAMMY KERLEE MAY THE 3RD, 2007 AT 4:20.

4 THERE ALSO IS ANOTHER SUBPOENA FOR BRIAN
5 CAIN -- IS THAT RIGHT?

6 MS. HUEY: YES, SIR, YOUR HONOR.

7 THE COURT: AGAIN, THE SAME DATES, THE 7TH
8 THROUGH MAY THE 25TH, AT THE ANDERSON COUNTY COURTHOUSE,
9 SERVED THE SAME DATE, APPARENTLY AT THE SAME TIME, BY
10 LEAVING IT WITH MS. HIOTT.

11 ALL RIGHT. ARE EITHER SARA HIOTT OR BRIAN
12 CAIN IN THE COURTROOM? (NO RESPONSE.) I'M GOING TO ASK
13 THE BAILIFF TO GO UPSTAIRS AND BE SURE THAT THEY'RE NOT
14 EITHER IN THE VESTIBULE, IN THE LOBBY OF THE FOURTH
15 FLOOR OR THIRD FLOOR.

16 (BAILIFF LEAVES COURTROOM.)

17 THE COURT: SOLICITOR, DID THE SOLICITOR'S
18 OFFICE IN ANY WAY RELIEVE THEM FROM BEING PRESENT TODAY?

19 MS. HUEY: NO, SIR, YOUR HONOR. IN FACT, I
20 CALLED THE NUMBER THAT MS. HIOTT GAVE ME, I CALLED AND
21 LEFT HER A MESSAGE ON FRIDAY INSTRUCTING HER
22 SPECIFICALLY TO BE HERE AT 9:00 THIS MORNING, AND I HAVE
23 YET TO SEE HER OR HER LIVE-IN BOYFRIEND, MR. CAIN, NOR
24 HAVE THEY LEFT ME A MESSAGE.

25 THE COURT: ALL RIGHT. WHEN WAS THE LAST

1 TIME YOU HAD CONTACT WITH EITHER INDIVIDUAL?

2 MS. HUEY: YOUR HONOR, I SPOKE WITH
3 MS. HIOTT LAST TUESDAY BEFORE I WENT OUT OF TOWN FOR A
4 CONFERENCE, IN PERSON. SHE CAME TO MY OFFICE.

5 THE COURT: IS THERE ANYTHING FROM THE
6 DEFENDANT AS TO THE SUBPOENAS?

7 THE DEFENDANT: YES, YOUR HONOR. I ASKED MY
8 LEGAL ADVISER TO SUBPOENA THE CELL PHONE RECORDS OF
9 MRS. HIOTT, AND EVIDENTLY MS. HIOTT'S COMPANY, ALLTEL
10 COMMUNICATIONS, HAVE NOT FORWARDED THAT INFORMATION, AND
11 IT WAS SIGNED, OR DATED MAY 9TH, 2007.

12 THE COURT: WHEN WAS IT SERVED?

13 MR. WHITEN, CAN YOU TELL THE COURT AS TO
14 WHEN YOUR SUBPOENA WAS SERVED?

15 MR. WHITEN: IT WAS FORWARDED ON MAY 9TH TO
16 ALLTEL.

17 THE COURT: HAVE YOU HAD ANY RESPONSE FROM
18 THE PHONE COMPANY?

19 MR. WHITEN: NO, SIR.

20 THE COURT: DO YOU KNOW IF THEY RECEIVED A
21 SUBPOENA?

22 MR. WHITEN: I CANNOT TESTIFY THAT THEY DID
23 OR DID NOT.

24 (THE BAILIFF RETURNED TO THE COURTROOM.)

25 THE COURT: WHERE IS ALLTEL LOCATED?

1 **MR. THOMPSON:** OVER HERE IT SAYS RALEIGH,
2 NORTH CAROLINA.

3 **THE COURT:** I'VE GOT A BIT OF A PROBLEM WITH
4 THAT. ALL RIGHT. IF YOU WOULD, PLEASE, SIR, STAND AND
5 RAISE YOUR RIGHT HAND.

6 (WHEREUPON, THE BAILIFF WAS SWORN BY THE
7 COURT.)

8 **THE COURT:** YOUR NAME, PLEASE?

9 **THE BAILIFF:** JEROME GREENBERG.

10 **THE COURT:** AND WHAT IS YOUR POSITION HERE
11 AT THE ANDERSON COUNTY COURTHOUSE?

12 **THE BAILIFF:** I'M A BAILIFF AT THE
13 COURTHOUSE.

14 **THE COURT:** AND WERE YOU GIVEN TWO NAMES TO
15 CALL, SARA HIOTT AND BRIAN CAIN?

16 **THE BAILIFF:** I DID, YOUR HONOR.

17 **THE COURT:** DID YOU HAVE ANY RESPONSE?

18 **THE BAILIFF:** NO, YOUR HONOR.

19 **THE COURT:** WAS THAT HERE ON THE THIRD FLOOR
20 AND THE FOURTH FLOOR?

21 **THE BAILIFF:** YES, SIR.

22 **THE COURT:** ALL RIGHT. ISSUE A BENCH
23 WARRANT FOR BOTH OF THOSE INDIVIDUALS.

24 **MS. HUEY:** THANK YOU, YOUR HONOR.

25 **THE COURT:** AS FAR AS ALLTEL RECORDS, I'M

1 NOT EXACTLY SURE. IF YOU PREPARE SOMETHING THAT WOULD
2 BE APPROPRIATE, MAYBE SERVICE LOCALLY OR SOMETHING LIKE
3 THAT, OR A FACSIMILE OR SOMETHING OF THAT NATURE.

4 THE DEFENDANT: WELL, IT'S BASED ON THE
5 CREDIBILITY OF A WITNESS.

6 THE COURT: SIR?

7 THE DEFENDANT: IT'S BASED ON THE
8 CREDIBILITY OF THE WITNESS, OF ONE OF OUR WITNESSES.

9 THE COURT: ALL RIGHT. I'LL HAVE TO TAKE
10 THAT UNDER ADVISEMENT. THAT WITNESS WON'T BE TESTIFYING
11 TODAY, I TRUST?

12 MS. HUEY: (SHOOK HEAD.)

13 THE COURT: DOES THE STATE INTEND TO PUT UP
14 OTHER WITNESSES OTHER THAN THE JACKSON V. DENNO?

15 MS. HUEY: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. I'LL TAKE IT UNDER
17 ADVISEMENT, "IT" BEING THE QUESTION OF ALLTEL RECORDS
18 AND REQUIRE THEIR PRODUCTION.

19 JACKSON V. DENNO HEARING:

20 THE COURT: ALL RIGHT. WE'RE BACK AGAIN ON
21 A STATEMENT ALLEGEDLY MADE BY THE DEFENDANT. MADAM
22 SOLICITOR?

23 MS. HUEY: YES, SIR, YOUR HONOR. MAY I CALL
24 MY FIRST WITNESS?

25 THE COURT: CERTAINLY.

1 **MS. HUEY:** THE STATE CALLS NIKKI CARSON TO
2 THE STAND.

3 (WHEREUPON, THE WITNESS WAS SWORN BY THE
4 CLERK.)

5 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
6 SPELL YOUR LAST NAME FOR THE RECORD.

7 **THE WITNESS:** NIKKI CARSON, C-A-R-S-O-N.
8 WHEREUPON,

9 **NIKKI CARSON,**
10 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
11 FOLLOWS:

12 **DIRECT EXAMINATION BY MS. HUEY:**

13 Q. MS. CARSON, WHERE DO YOU WORK?

14 A. ANDERSON COUNTY SHERIFF'S OFFICE.

15 Q. HOW LONG HAVE YOU BEEN INVOLVED IN LAW
16 ENFORCEMENT?

17 A. 13 YEARS.

18 Q. WHAT IS YOUR CURRENT POSITION?

19 A. I AM THE ADMINISTRATIVE LIEUTENANT AT THE
20 ANDERSON COUNTY SHERIFF'S OFFICE DETENTION DIVISION.

21 **THE COURT REPORTER:** COULD YOU PLEASE SPEAK
22 UP?

23 **THE WITNESS:** I AM THE ADMINISTRATIVE
24 LIEUTENANT AT THE ANDERSON COUNTY SHERIFF'S OFFICE
25 DETENTION DIVISION.

1 BY MS. HUEY:

2 Q. NOW, HOW LONG HAVE YOU BEEN IN THIS PARTICULAR
3 POSITION?

4 A. APPROXIMATELY 14, 15 MONTHS.

5 Q. AND PRIOR TO THAT WHAT WAS YOUR POSITION?

6 A. I WAS AN INVESTIGATOR WITH THE CRIMINAL
7 INVESTIGATIONS DIVISION AT THE SHERIFF'S OFFICE.

8 Q. DID YOU SPECIALIZE IN A CERTAIN AREA THERE?

9 A. SEX CRIMES AND CRIMES AGAINST CHILDREN.

10 Q. AND AGAIN, THAT WAS -- YOU WERE WORKING IN THAT
11 CAPACITY IN MAY OF 2005 THEN?

12 A. THAT'S CORRECT.

13 Q. NOW, AS AN INVESTIGATOR IN THE SEX CRIMES AND
14 CRIMES AGAINST CHILDREN UNIT, WHAT WERE SOME OF YOUR
15 DUTIES FOR THAT POSITION?

16 A. WE ACTUALLY INVESTIGATED INCIDENTS THAT WERE
17 REPORTED TO US OF A SEXUAL NATURE AND INVOLVING
18 CHILDREN.

19 Q. DID YOU HAVE OCCASION TO SPEAK WITH DEFENDANTS IN
20 THESE TYPES OF CASES, OR SUSPECTS?

21 A. YES.

22 Q. NOW, IN THIS PARTICULAR CASE INVOLVING MR. HOWARD
23 THOMPSON, III, DID YOU SPEAK WITH HIM REGARDING TAKING A
24 STATEMENT FROM HIM?

25 A. I DID.

1 Q. AND DID YOU ADVISE HIM OF HIS RIGHTS?

2 A. I DID.

3 Q. DID YOU DO SO USING A FORM WITH THE RIGHTS
4 LISTED?

5 A. I DID.

6 Q. MS. CARSON, I SHOW YOU WHAT HAS BEEN PREVIOUSLY
7 MARKED AS STATE'S EXHIBIT ONE FOR IDENTIFICATION
8 PURPOSES. IF YOU COULD PLEASE TAKE A LOOK AT THAT. IS
9 THIS THE FORM YOU USED, MS. CARSON?

10 A. IT IS.

11 Q. HOW ARE YOU ABLE TO RECOGNIZE THE FORM AS BEING
12 THE ONE YOU USED?

13 A. IT HAS MY SIGNATURE AS WELL AS THE DEFENDANT'S
14 SIGNATURE.

15 Q. NOW, MS. CARSON, WHAT TIME DID MIRANDA ACTUALLY
16 TAKE PLACE?

17 A. ACCORDING TO THE FORM, AT APPROXIMATELY 2:45 P.M.

18 Q. AND WHERE DID MIRANDA TAKE PLACE?

19 A. AT THE DEFENDANT'S HOME.

20 Q. WHO ELSE, IF ANYONE, WAS PRESENT?

21 A. MY PARTNER AT THE TIME, INVESTIGATOR NORMANDIN
22 WAS PRESENT AT THE TIME OF MIRANDA.

23 Q. AND OTHER THAN THE DEFENDANT, WAS ANYONE PRESENT
24 WITH HIM?

25 A. AT THE TIME OF MIRANDA I DON'T BELIEVE SO.

1 Q. NOW, CAN YOU TELL ME WHERE THIS TOOK PLACE,
2 EXACTLY?

3 A. I BELIEVE IT WAS IN THE FRONT ROOM OF THE HOME, I
4 BELIEVE IT TO BE A LIVING ROOM, AS SOON AS YOU COME
5 THROUGH THE FRONT DOOR.

6 Q. OKAY. AND CAN YOU -- DO YOU KNOW THE LOCATION OF
7 THE HOME?

8 A. IT'S , I'M NOT SURE IF IT'S PRONOUNCED WHITTEN
9 OR WHITTEN ROAD IN PELZER.

10 Q. IS THAT WITHIN ANDERSON COUNTY?

11 A. IT IS.

12 Q. YOU SAY THIS TOOK PLACE IN THE FRONT ROOM OF THE
13 HOUSE?

14 A. I BELIEVE SO.

15 Q. DO YOU KNOW IF YOU WERE SEATED OR IF YOU WERE
16 STANDING?

17 A. I BELIEVE WE WERE SEATED.

18 Q. IN WHAT KIND OF SEATS, ON A SOFA OR IN THE
19 KITCHEN?

20 A. IT WAS A SOFA.

21 Q. NOW, WHILE MIRANDA WAS BEING GIVEN, WAS HE DENIED
22 ANY COMFORTS?

23 A. NO.

24 Q. DID HE ASK YOU TO GO TO THE BATHROOM?

25 A. NO, HE DIDN'T.

1 Q. DID HE ASK YOU FOR SOMETHING TO DRINK?

2 A. HE DID NOT.

3 Q. AND AGAIN, THIS TOOK PLACE IN HIS OWN HOME?

4 A. IT DID.

5 Q. NOW, WAS HE IN HANDCUFFS?

6 A. NO.

7 Q. AND DID THIS FORM LIST THE RIGHTS THAT YOU
8 INFORMED THE DEFENDANT OF?

9 A. THEY DO. IT DOES.

10 Q. ALL RIGHT. NOW, IF YOU DON'T MIND, WOULD YOU
11 PLEASE READ THE RIGHTS THAT YOU INFORMED THE DEFENDANT
12 OF?

13 A. (READING):

14 YOU HAVE THE RIGHT TO REMAIN
15 SILENT.

16 ANYTHING YOU SAY MAY BE USED
17 AGAINST YOU IN COURT.

18 YOU HAVE THE RIGHT TO SPEAK TO A
19 LAWYER FOR ADVICE BEFORE YOU ARE ASKED
20 ANY QUESTIONS AND TO HAVE HIM PRESENT FOR
21 YOU DURING QUESTIONING.

22 IF YOU CANNOT AFFORD A LAWYER,
23 ONE WILL BE APPOINTED FOR YOU BEFORE ANY
24 QUESTIONING, IF YOU WISH.

25 IF YOU DECIDE TO ANSWER QUESTIONS

1 NOW WITHOUT A LAWYER PRESENT, YOU WILL
2 STILL HAVE THE RIGHT TO STOP ANSWERING
3 QUESTIONS AT ANY TIME.

4 YOU ALSO HAVE THE RIGHT TO STOP
5 ANSWERING AT ANY TIME UNTIL YOU SPEAK
6 WITH A LAWYER.

7 Q. NOW, DID YOU GO OVER THAT FORM WITH THE
8 DEFENDANT?

9 A. I DID.

10 Q. DID YOU MAKE SURE HE UNDERSTOOD HIS RIGHTS?

11 A. I DID.

12 Q. IN YOUR OPINION DID THE DEFENDANT UNDERSTAND HIS
13 RIGHTS?

14 A. IN MY OPINION HE DID.

15 Q. DID HE SEEM TO BE UNDER THE INFLUENCE OF
16 ANYTHING?

17 A. HE DID NOT.

18 Q. DRUGS OR ALCOHOL?

19 A. HE DID NOT SEEM TO BE.

20 Q. HOW ABOUT HIS PHYSICAL OR MENTAL CAPACITY?

21 A. HE APPEARED TO BE FINE.

22 Q. NOW, DID THE DEFENDANT DO ANYTHING TO INDICATE
23 THAT HE UNDERSTOOD HIS RIGHTS?

24 A. HE SIGNED THE WAIVER OF RIGHTS.

25 Q. WERE ANY THREATS OR PROMISES MADE IN ORDER TO GET

1 HIM TO SIGN THAT FORM?

2 A. THERE WERE NOT.

3 Q. AND WAIVE HIS RIGHTS?

4 A. SAY THAT AGAIN?

5 Q. OR WAIVE HIS RIGHTS.

6 A. NO.

7 Q. ANY INTIMIDATION?

8 A. NO.

9 Q. AND IN YOUR OPINION WAS THE WAIVER OF RIGHTS
10 VOLUNTARY, THEN?

11 A. IT WAS.

12 Q. DID THE DEFENDANT INDICATE TO YOU WHETHER HE
13 WISHED TO GIVE A STATEMENT AT THAT TIME?

14 A. AT THAT INITIAL TIME HE DID STATE THAT HE WOULD
15 TALK WITH US.

16 Q. OKAY. DID THE DEFENDANT THEN GIVE YOU A
17 STATEMENT?

18 A. HE DID.

19 Q. AND ABOUT WHAT TIME WAS THAT?

20 A. I BELIEVE IT WAS ON THE STATEMENT THAT HE GAVE.
21 APPROXIMATELY 3:30, 3:40.

22 Q. AND DID YOU HAVE THAT STATEMENT PUT IN WRITING?

23 A. WE DID.

24 Q. OKAY. DO YOU KNOW IF YOU WROTE IT OR IF HE WROTE
25 IT?

1 A. I BELIEVE THE DEFENDANT WROTE.

2 Q. MS. CARSON, I SHOW YOU WHAT'S PREVIOUSLY BEEN
3 MARKED AS STATE'S EXHIBIT TWO FOR IDENTIFICATION
4 PURPOSES. IF YOU COULD TAKE A LOOK AT THAT FOR ME.

5 NOW, DOES THAT LOOK FAMILIAR TO YOU, MS. CARSON?

6 A. IT DOES.

7 Q. IN WHAT WAY?

8 A. IT APPEARS TO BE THE STATEMENT THAT THE DEFENDANT
9 GAVE UPON OUR INITIAL ARRIVAL AT HIS HOME.

10 Q. AND AGAIN, I BELIEVE YOU SAID HE WROTE THE
11 STATEMENT?

12 A. THAT'S CORRECT.

13 Q. AND HOW EXACTLY DID THAT COME ABOUT?

14 A. UPON ARRIVAL MY PARTNER AND I SPOKE WITH THE
15 DEFENDANT, ADVISED HIM THAT THERE HAD BEEN AN INCIDENT
16 REPORT FILED WITH OUR DEPARTMENT, AND UPON COMPLETION OF
17 AN INVESTIGATION WE NEEDED TO GET HIS SIDE OF WHAT
18 HAPPENED, AND AT WHICH TIME HE AGREED TO GIVE US A
19 STATEMENT.

20 Q. NOW, DO YOU REMEMBER WHERE YOU ALL WERE IN THE
21 HOUSE WHEN THIS PARTICULAR STATEMENT TOOK PLACE?

22 A. I BELIEVE IT WAS STILL TOWARD THE FRONT OF THE
23 HOUSE. WE WERE BETWEEN THE LIVING ROOM AND A KITCHEN
24 AREA, AND I BELIEVE THERE WAS A TABLE THAT WAS IN WHAT
25 APPEARED TO BE A KITCHEN AREA. I BELIEVE THAT'S WHERE

1 THE STATEMENT WAS GIVEN.

2 Q. NOW, WERE YOU WITH HIM AS HE WAS WRITING THE
3 STATEMENT?

4 A. PERIODICALLY. THERE WERE ALSO SOME OTHER THINGS
5 THAT WERE GOING ON AT THE HOME. BUT YES.

6 Q. NOW, AFTER HE WAS FINISHED WRITING THIS
7 STATEMENT, THEN DID YOU READ IT BACK TO HIM OR HAND IT
8 TO HIM TO READ?

9 A. I READ IT BACK TO HIM.

10 Q. AND DID HE INDICATE THAT IT WAS HIS STATEMENT?

11 A. HE DID.

12 Q. HOW WAS HE ABLE TO DO THAT?

13 A. HE INDICATED THAT BY SIGNING.

14 Q. OKAY. AT ANY TIME DID HE REQUEST AN ATTORNEY,
15 MS. CARSON?

16 A. HE DID NOT.

17 MS. HUEY: YOUR HONOR, AT THIS TIME I WOULD
18 LIKE MS. CARSON TO PUBLISH THE STATEMENT. I DON'T KNOW
19 IF YOU WOULD JUST LIKE TO READ IT YOURSELF OR HAVE HER
20 READ IT ALOUD?

21 THE COURT: NO, MA'AM. IT'S IN -- FOR
22 PURPOSES OF THIS HEARING IT'S AN EXHIBIT.

23 MS. HUEY: IT'S STATE'S TWO, YOUR HONOR.

24 THE COURT: STATE'S TWO.

25 LET ME SEE IT.

1 THE WITNESS: (COMPLIES.)

2 THE COURT: ALL RIGHT. VERY WELL.

3 BY MS. HUEY:

4 Q. NOW, MS. CARSON, AGAIN, WAS ANYONE OTHER THAN
5 INVESTIGATOR NORMANDIN AND YOURSELF AND THE DEFENDANT
6 THERE AT THIS TIME?

7 A. AT THIS TIME I BELIEVE THE DEFENDANT'S MOTHER HAD
8 ARRIVED TO THE RESIDENCE.

9 Q. DO YOU KNOW WHERE SHE WAS IN THE HOUSE?

10 A. SHE WAS ALSO TOWARD THE FRONT AREA; I BELIEVE SHE
11 WAS IN AND OUT OF THE KITCHEN. SHE WASN'T STATIONARY,
12 BUT SHE WAS TOWARD THE FRONT PART OF THE HOUSE BETWEEN
13 THE LIVING ROOM AND THE KITCHEN.

14 Q. AND WAS SHE AWARE OF WHAT WAS GOING ON?

15 A. AT THAT TIME SHE WAS.

16 Q. NOW, MS. CARSON, WAS THIS THE ONLY STATEMENT THE
17 DEFENDANT GAVE?

18 A. NO.

19 Q. DID HE, IN FACT, GIVE YOU ANOTHER STATEMENT THEN?

20 A. HE DID.

21 Q. AT WHAT POINT DID THAT COME ABOUT?

22 A. DO YOU WANT ME TO GET INTO HOW WE GOT TO THAT
23 POINT?

24 Q. SURE.

25 A. WE WERE GIVEN CONSENT TO SEARCH BY THE DEFENDANT

1 AND HIS MOTHER TO SEARCH THE DEFENDANT'S ROOM, AND UPON
2 COMPLETING THAT SEARCH WE DID FIND ITEMS THAT WERE
3 DESCRIBED BY THE VICTIM. ONCE WE FOUND THOSE ITEMS, WE
4 DID GO BACK AND WE DID TALK WITH THE DEFENDANT A SECOND
5 TIME AND ADVISED HIM OF THE ITEMS THAT WERE FOUND AND
6 HOW WE CAME TO LOOK FOR THOSE ITEMS, AND AT THAT TIME
7 THE DEFENDANT AGREED TO GIVE A SECOND STATEMENT.

8 Q. AND DID HE DO SO IN FRONT OF HIS MOM AT THIS
9 POINT?

10 A. HE DID NOT.

11 Q. OKAY. DID HE TALK ABOUT HIS MOM AT ALL?

12 A. I BELIEVE HE AGREED TO GIVE THE STATEMENT BUT DID
13 NOT WANT TO GIVE IT IN THE PRESENCE OF HIS MOM.

14 Q. NOW I'M GONNA SHOW YOU WHAT'S BEEN MARKED FOR
15 IDENTIFICATION PURPOSES AS STATE'S THREE. DO YOU
16 RECOGNIZE THIS STATEMENT, MS. CARSON?

17 A. I DO.

18 Q. AND HOW ARE YOU ABLE TO RECOGNIZE THAT?

19 A. THIS IS THE SECOND STATEMENT THAT WAS GIVEN BY
20 THE DEFENDANT WITH HIS SIGNATURE ON IT.

21 Q. OKAY. NOW, HOW SOON AFTER THE FIRST STATEMENT
22 DID THIS COME ABOUT?

23 A. THE SECOND STATEMENT WAS GIVEN AT APPROXIMATELY
24 4:15, SO APPROXIMATELY 35 MINUTES.

25 Q. AND WHERE DID THIS PARTICULAR STATEMENT TAKE

1 PLACE?

2 A. THIS STATEMENT TOOK PLACE OUTSIDE IN MY CAR.

3 Q. AND WHEN YOU SAY IN YOUR CAR, WHAT KIND OF CAR
4 WERE YOU IN?

5 A. AN UNMARKED POLICE CAR.

6 Q. AT ANY TIME WAS THE DEFENDANT IN HANDCUFFS?

7 A. NO.

8 Q. IT WAS JUST THE TWO OF Y'ALL THERE IN THE CAR?

9 A. THAT'S CORRECT.

10 Q. DO YOU KNOW IF YOU HAD THE AIR-CONDITIONING
11 RUNNING OR WAS IT EVEN WARM ENOUGH FOR THAT?

12 A. I'M SURE I HAD THE AIR-CONDITIONING RUNNING. IT
13 WAS IN MAY. I DON'T RECALL EXACTLY IF IT WAS RUNNING.
14 BUT I DO HAVE AIR-CONDITIONING.

15 Q. WERE YOU BOTH IN THE FRONT SEAT OR THE BACK SEAT?

16 A. WE WERE BOTH IN THE FRONT SEAT.

17 Q. AND AGAIN, WHY DID YOU ALL GO OUTSIDE TO THE
18 PATROL CAR?

19 A. HE INDICATED THAT HE WAS WILLING TO GIVE A
20 STATEMENT BUT DID NOT WISH TO DISCUSS THIS IN FRONT OF
21 HIS MOTHER.

22 Q. NOW, DID HE UNDERSTAND HIS RIGHTS WERE STILL IN
23 EFFECT?

24 A. HE DID.

25 Q. AND HOW WAS HE ABLE TO DO THAT?

1 A. HE WAS ADVISED THAT EVERYTHING FROM THE MIRANDA
2 STILL EXISTED, AND ON THE STATEMENT AT THE TOP WE DID GO
3 THROUGH ALL THE MIRANDA RIGHTS AGAIN AND HE AGREED AND
4 HE ALSO SIGNED.

5 Q. NOW, IN THIS PARTICULAR STATEMENT, WHO WROTE IT?

6 A. I WROTE IT.

7 Q. AND WHY DID YOU WRITE IT THIS TIME?

8 A. AT THIS TIME HE APPEARED TO BE SOMEWHAT, I DON'T
9 KNOW IF I SHOULD SAY RELIEVED AND JUST A LITTLE BIT -- I
10 DON'T KNOW QUITE THE WORD FOR IT, BUT I DID ASK HIM IF
11 HE WANTED TO WRITE IT OR IF HE WANTED ME TO WRITE IT FOR
12 HIM, AT WHICH TIME HE STATED THAT I COULD WRITE IT.

13 Q. AND IS THAT USUALLY YOUR PROTOCOL, DO YOU ASK?

14 A. IT IS.

15 Q. NOW, DID YOU WRITE THIS STATEMENT ACCURATELY AS
16 THE DEFENDANT TOLD YOU WHAT HAPPENED?

17 A. I DID.

18 Q. AND DID YOU READ IT BACK TO HIM OR HAND IT TO HIM
19 TO READ?

20 A. I READ IT BACK TO HIM AND ALSO HAD HIM INITIAL AT
21 SEVERAL AREAS THROUGHOUT THE STATEMENT.

22 Q. AND DID THE DEFENDANT INDICATE THAT IT WAS HIS
23 STATEMENT?

24 A. HE DID.

25 Q. HOW SO?

1 A. HE SIGNED HIS NAME STATING THAT THIS WAS HIS
2 STATEMENT.

3 Q. AND AGAIN, AT ANY TIME DID HE REQUEST AN
4 ATTORNEY?

5 A. HE DID NOT.

6 Q. NOW, IF THERE ARE MISTAKES IN THE STATEMENT OR
7 SOMETHING ALONG THOSE LINES, HOW IS THAT CORRECTED?

8 A. THEY ARE USUALLY SCRATCHED THROUGH AND THE
9 DEFENDANT IS ASKED TO INITIAL ACKNOWLEDGING THAT THIS
10 WAS A MISTAKE, A TYPO ERROR, AND THAT HE AGREED WITH
11 THAT.

12 Q. AND AGAIN, WAS THIS FORM, IN GOING THROUGH
13 MIRANDA DO YOU READ THE ENTIRE FORM, EVERYTHING THAT'S
14 ON THAT FORM?

15 A. THAT'S CORRECT.

16 Q. BEFORE HE SIGNS IT?

17 A. THAT'S CORRECT.

18 Q. AND AGAIN, HE UNDERSTOOD AS FAR AS YOU KNOW?

19 A. THAT'S CORRECT.

20 Q. SEEMED TO UNDERSTAND.

21 MS. HUEY: AND, YOUR HONOR, AGAIN AT THIS
22 TIME IF YOU WOULD LIKE TO READ THE STATEMENT.

23 THE COURT: I'LL READ IT. NOW, THIS IS
24 COURT'S EXHIBIT NUMBER THREE?

25 MS. HUEY: YES, SIR, YOUR HONOR.

1 THE COURT: ALL RIGHT.

2 BY MS. HUEY:

3 Q. NOW, MS. CARSON, AFTER THAT SECOND STATEMENT WAS
4 TAKEN, WHAT, IF ANYTHING, ELSE HAPPENED AFTER THAT?

5 A. AFTER THE SECOND STATEMENT WAS TAKEN, THE
6 DEFENDANT WAS ADVISED THAT HE WOULD BE PLACED UNDER
7 ARREST.

8 MS. HUEY: THAT'S ALL I HAVE FOR THIS
9 WITNESS AT THIS TIME.

10 THE COURT: ALL RIGHT. MR. THOMPSON?

11 CROSS-EXAMINATION BY MR. THOMPSON:

12 Q. MS. CARSON, HOW WELL DID I COOPERATE WITH YOUR
13 PARTNER, SERGEANT NORMANDIN, AND YOURSELF?

14 A. YOU WERE COOPERATIVE.

15 Q. WHEN YOU AND SERGEANT NORMANDIN MADE CONTACT WITH
16 ME AT MY RESIDENCE, WAS I PLACED UNDER ARREST?

17 A. INITIALLY WHEN WE MADE CONTACT WITH YOU, YOU WERE
18 NOT.

19 Q. WAS I PLACED IN POLICE CUSTODY?

20 A. YOU WERE NOT.

21 Q. WHEN WAS I PLACED INTO POLICE CUSTODY OR UNDER
22 ARREST?

23 A. AFTER GIVING THE SECOND STATEMENT.

24 Q. DID YOU ADMINISTER MY MIRANDA RIGHTS WHEN THE TWO
25 OF YOU MADE CONTACT WITH ME?

1 A. WE DID.

2 Q. NOW, ACCORDING TO YOUR PARTNER, HE SAID THAT HE
3 MADE CONTACT WITH THE SUSPECT IN QUESTION, WHICH IS
4 MYSELF, AT 12:45. THE MIRANDA RIGHTS WAS NOT READ UNTIL
5 2:45.

6 A. WE ARRIVED AT THE HOME AT APPROXIMATELY 2:45, OR
7 SOMEWHERE THERE AROUND THERE; I DON'T BELIEVE IT WAS
8 12:45.

9 Q. SO THEN CAN YOU TELL THE COURT WHY DOES YOUR
10 PARTNER STATE THAT YOU MADE CONTACT WITH HIM --
11 CONTACTED IN PERSON?

12 A. THE ONLY WAY I COULD EXPLAIN THAT IS THAT IT WAS
13 A TYPO, 12:45, 2:45, BUT I CAN'T...

14 Q. A TYPO MEANS THAT HE WOULD HAVE TYPED IT ON A
15 COMPUTER, CORRECT?

16 A. IT COULD MEAN IT -- IT COULD MEAN THAT YOU TYPED
17 IT OR IT COULD MEAN THAT YOU WROTE IT.

18 Q. HOW LONG IN LENGTH WAS THE INTERROGATION PROCESS?

19 A. THE FIRST STATEMENT WAS GIVEN AT APPROXIMATELY
20 3:40, THE SECOND STATEMENT WAS GIVEN AT APPROXIMATELY
21 4:15; SO THERE'S ABOUT A 35-MINUTE TIME SPAN BETWEEN THE
22 TIME THE FIRST STATEMENT WAS WRITTEN AND THE BEGINNING
23 OF THE SECOND STATEMENT.

24 Q. WHAT ABOUT THE QUESTIONING PROCESS?

25 A. DO YOU MEAN JUST FROM THE INITIAL TIME WE

1 ARRIVED? IF WE ARRIVED AT ---

2 Q. FROM THE TIME THAT YOU ARRIVED TO THE TIME YOU
3 DEPARTED.

4 A. I DON'T HAVE MY DEPARTURE TIME, BUT WE ARRIVED AT
5 APPROXIMATELY 2:45. THE FIRST STATEMENT WAS GIVEN AT
6 APPROXIMATELY 3:40.

7 Q. YOUR REASON FOR ADMINISTERING TO ME MY MIRANDA
8 RIGHTS IN THE MIDDLE OF THE INTERROGATION PROCESS, IS
9 THERE A REASON FOR THAT?

10 A. YOUR MIRANDA WAS NOT ADMINISTERED DURING THE
11 MIDDLE OF THE INTERROGATION PROCESS.

12 Q. ACCORDING TO YOUR PARTNER, MIRANDA -- OR YOU MADE
13 CONTACT WITH ME AT 2:45.

14 A. YOU ACTUALLY ---

15 Q. MY MIRANDA STATES 2:45. THAT IS A TWO-HOUR GAP.

16 A. EXACTLY. EXACTLY. I ARRIVED AT APPROXIMATELY
17 2:45. YOU ACTUALLY SIGNED YOUR MIRANDA AND YOUR MIRANDA
18 WAS GIVEN AT APPROXIMATELY 2:45.

19 Q. SO YOU ARE STATING THAT YOUR PARTNER, PETE
20 NORMANDIN, WHO NOW IS A SERGEANT, DID NOT DO HIS JOB
21 CORRECTLY?

22 A. NO, THAT'S NOT WHAT I'M STATING. I'M STATING
23 THAT THERE COULD BE AN ERROR ON THE TIME.

24 Q. OKAY. HOW MANY STATEMENTS WERE GIVEN BY MYSELF
25 ON MAY 20TH OF 2005?

1 THAT IS 9:26 P.M. ON A 12-HOUR CLOCK.

2 A. UNDER THOSE CIRCUMSTANCES A WARRANT WOULD HAVE
3 HAD TO BE OBTAINED. YOU CAN BE DETAINED UNTIL A WARRANT
4 IS OBTAINED, AND THE WARRANT WAS OBTAINED BY MY PARTNER.
5 AND THERE MAY BE A SERVICE TIME OF WHATEVER TIME. YOU
6 CAN BE HELD UNTIL A WARRANT IS OBTAINED.

7 Q. SO I WAS NOT PLACED OR PLACED UNDER ARREST AT
8 2126 ACCORDING TO THE INCIDENT REPORT?

9 A. THE WARRANT WAS SERVED ON YOU AT THAT TIME. YOU
10 WERE ACTUALLY PLACED UNDER ARREST SHORTLY THEREAFTER
11 YOUR SECOND STATEMENT.

12 Q. WHEN WAS I PLACED IN POLICE CUSTODY?

13 A. SHORTLY AFTER SECOND STATEMENT. I DON'T HAVE THE
14 EXACT TIME IN FRONT OF ME.

15 MR. THOMPSON: THAT'S ALL I HAVE.

16 THE COURT: ANY REDIRECT?

17 MS. HUEY: NO, SIR, YOUR HONOR.

18 THE COURT: ALL RIGHT, YOU MAY STEP DOWN.

19 (WHEREUPON, THE WITNESS WAS EXCUSED.)

20 THE COURT: CALL YOUR NEXT WITNESS.

21 MS. HUEY: YOUR HONOR, THE STATE CALLS PETE
22 NORMANDIN TO THE STAND.

23 (WHEREUPON, THE WITNESS WAS SWORN BY THE
24 CLERK.)

25 THE CLERK: PLEASE STATE YOUR FULL NAME AND

1 SPELL YOUR LAST NAME FOR THE RECORD.

2 THE WITNESS: PETER JOSEPH NORMANDIN,
3 N-O-R-M-A-N-D-I-N.

4 WHEREUPON,

5 PETER NORMANDIN,

6 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
7 FOLLOWS:

8 DIRECT EXAMINATION BY MS. HUEY:

9 Q. MR. NORMANDIN, WHERE DO YOU WORK?

10 A. ANDERSON COUNTY SHERIFF'S OFFICE.

11 Q. HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

12 A. 16 YEARS, MA'AM.

13 Q. WHAT IS YOUR CURRENT POSITION WITH THE SHERIFF'S
14 DEPARTMENT?

15 A. SHIFT SUPERVISOR SERGEANT, BRAVO SHIFT, ROAD
16 PATROL.

17 Q. HOW LONG HAVE YOU BEEN IN THIS PARTICULAR
18 POSITION?

19 A. I BELIEVE IT WAS APRIL '06 WHEN I TOOK THE
20 POSITION.

21 Q. AND PRIOR TO THAT, WHAT WAS YOUR POSITION?

22 A. INVESTIGATOR WITH THE ANDERSON COUNTY SHERIFF'S
23 OFFICE, IT WAS FIRST WITH CRIMES AGAINST PERSONS WHICH
24 HAD TO DO WITH YOUR HOMICIDES, ASSAULTS, AGGRAVATED
25 ASSAULTS, ROBBERIES; AND THEN WAS TRANSFERRED TO, CRIMES

1 AGAINST CHILDREN, SEX CRIMES.

2 Q. AND DID YOU WORK WITH NIKKI CARSON AT THAT TIME?

3 A. YES, I DID.

4 Q. AND WAS THAT YOUR POSITION AGAIN IN MAY OF 2005?

5 A. YES, MA'AM.

6 Q. NOW, AS AN INVESTIGATOR WITH THE SEX CRIMES AND
7 CRIMES AGAINST CHILDREN, WHAT WERE SOME OF YOUR DUTIES?

8 A. TO FOLLOW UP ON COMPLAINTS THAT HAD COME INTO THE
9 SHERIFF'S OFFICE THROUGH PATROL OR A WALK-IN THEMSELVES;
10 TO OBTAIN THE VICTIM'S STATEMENT AND WHATEVER EVIDENCE
11 WE COULD AND THEN WE WOULD GO CONTACT THE SUSPECT.

12 Q. AND IN THIS PARTICULAR CASE DID YOU, IN FACT,
13 CONTACT THE SUSPECT?

14 A. YES, MA'AM.

15 Q. DO YOU KNOW WHEN THAT OCCURRED?

16 A. I THINK THE -- IT WAS ON THE 20TH, MA'AM.

17 Q. OKAY. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS
18 DEFENSE EXHIBIT TWO. IS THAT YOUR INVESTIGATIVE
19 FOLLOW-UP, MR. NORMANDIN?

20 A. THESE ARE JUST A QUICK SYNOPSIS OF WHAT WAS GOING
21 ON. THIS IS SOMETHING THAT WAS BROUGHT UP, THE NEW
22 PROGRAM WITH THE SHERIFF'S OFFICE IS CASE MANAGEMENT, SO
23 IT'S NOT FULL DETAIL, IT'S JUST QUICK, WHAT WENT ON TO
24 GIVE TO THE SUPERVISOR SO HE KNOWS THAT WE'RE NOT -- THE
25 CASE IS BEING ACTIVELY -- WE'RE CONTACTING THE VICTIM,

1 WE'RE TRYING TO PROCEED WITH THE CASE.

2 Q. OKAY. AND IN THIS PARTICULAR SITUATION, WHAT
3 WERE YOUR NOTES AS TO PROCEEDING WITH THE CASE IN TERMS
4 OF THIS DEFENDANT?

5 A. WELL, IT STATES (READING):

6 AT 12:45 I MADE CONTACT WITH THE
7 SUSPECT, AND AFTER AN INTERVIEW SUSPECT
8 CONFESSED TO THE CRIME.

9 Q. OKAY. AND WHAT DOES 12:45 MEAN THEN?

10 A. TYPICALLY WHEN WE ARE GOING TO GO TO A SUSPECT'S
11 RESIDENCE OR TRY TO MAKE CONTACT WITH A SUSPECT, I CALL
12 THEM BY PHONE, YOU KNOW, EXPLAIN TO THEM THERE'S BEEN A
13 COMPLAINT. I DON'T EXPLAIN TO THEM, DON'T EXPLAIN MUCH,
14 THERE WAS A COMPLAINT, AND BEING IN PELZER, WE'RE IN
15 ANDERSON, I COULD VERY WELL HAVE CALLED HIM AND LET HIM
16 KNOW HE WAS GONNA BE HOME SO I COULD HAVE TALKED TO HIM
17 OR I COULD HAVE -- IT COULD HAVE BEEN A MESS-UP ON MY
18 END.

19 Q. OKAY. AND HOW LONG DOES IT TAKE TO GET TO PELZER
20 FROM ANDERSON?

21 A. I WOULD SAY 25 MINUTES, MAYBE ---

22 Q. OKAY. AND SO ---

23 A. --- 30 MINUTES.

24 Q. --- COULD THE NOTE FOR 12:45 MEAN THAT THAT'S
25 WHEN YOU WERE HEADING OUT TO TALK TO THE DEFENDANT?

1 A. IT COULD VERY WELL BE THAT, MA'AM.
2 UNFORTUNATELY, TWO YEARS AGO I DON'T REMEMBER THE EXACT
3 DETAIL.

4 Q. DOES THAT MEAN THAT YOU TALKED TO THE DEFENDANT
5 EXACTLY AT 12:45?

6 A. IT COULD BE I CONTACTED HIM BY PHONE.

7 Q. NOW, ON MAY 20TH, AGAIN YOU ACCOMPANIED
8 MS. CARSON TO THE DEFENDANT'S ADDRESS?

9 A. YES, MA'AM.

10 Q. AND WHAT WAS THE PURPOSE OF THAT VISIT?

11 A. TO CONDUCT THE DEFENDANT'S SIDE OF THE STORY, TO
12 WORK ON THE COMPLAINT.

13 Q. NOW, WHEN YOU ALL GOT THERE, DO YOU REMEMBER IF
14 YOU WERE PRESENT FOR THE DEFENDANT'S WAIVER OF RIGHTS?

15 A. I WAS IN THE HOUSE, IN AND OUT, NOT SITTING DOWN
16 NEXT TO HIM, NO.

17 Q. YOU DIDN'T WITNESS THE FORM?

18 A. NO, MA'AM, I DID NOT.

19 Q. OR WITNESS THE WAIVER OF RIGHTS?

20 A. NO, I DID NOT.

21 Q. HOW BIG IS THE HOUSE?

22 A. UM ---

23 Q. HOW MANY ROOMS, DO YOU THINK?

24 A. WHEN YOU WALKED IN YOU HAD THE LIVING ROOM. TO
25 THE LEFT -- I'M SORRY -- TO THE RIGHT YOU HAD THE

1 KITCHEN. YOU WALK PAST THE LIVING ROOM, YOU HAVE I
2 BELIEVE THERE WAS POSSIBLY TWO, MAYBE THREE ROOMS IN THE
3 HOUSE.

4 Q. IT'S A FAIRLY SMALL HOUSE?

5 A. IT'S A FAIRLY SMALL HOUSE.

6 Q. SO EVEN THOUGH YOU WEREN'T WITNESS TO THE WAIVER
7 OF RIGHTS, DID YOU LEARN THAT HE HAD WAIVED HIS RIGHTS?

8 A. YES, MA'AM.

9 Q. AND FROM WHOM DID YOU LEARN THIS?

10 A. DETECTIVE -- LIEUTENANT CARSON.

11 Q. AND IS IT TYPICAL FOR PARTNERS TO SHARE
12 INFORMATION?

13 A. YES.

14 Q. NOW, WERE YOU INVOLVED IN THE DEFENDANT'S FIRST
15 STATEMENT?

16 A. INVESTIGATOR CARSON WAS BUILDING A RAPPORT, WAS
17 WORKING ON THAT PART. I WAS -- MOM WAS ON SCENE, AND
18 EXPLAINING TO THE MOTHER OF THE DEFENDANT WHAT WAS GOING
19 ON, AND SMALL TALK, LETTING HER KNOW THAT, YOU KNOW,
20 WHAT THE INVESTIGATION WAS. AND THAT'S BASICALLY, YOU
21 KNOW, IT. I DIDN'T GET FULLY INVOLVED IN THE STATEMENT
22 ITSELF.

23 Q. AND THE DEFENSE EXHIBIT, MR. NORMANDIN, THAT'S
24 DEFENSE EXHIBIT ONE, DEFENSE EXHIBIT ONE, IS THAT YOUR
25 SUPPLEMENTAL REPORT?

1 A. YES, MA'AM.

2 Q. OKAY. AND WHAT DOES THAT TALK ABOUT?

3 A. I RESPONDED WITH LIEUTENANT CARSON TO THE
4 RESIDENCE. WE MADE -- FIRST WE MADE CONTACT WITH THE
5 VICTIM'S MOTHER, AND HER STATEMENT. AND THEN IT SAYS
6 MYSELF AND DETECTIVE CARSON MADE CONTACT WITH THE
7 SUSPECT AT HIS RESIDENCE, AND POST MIRANDA HE WAS
8 ADVISED OF THE COMPLAINT, AND HE, YOU KNOW, WAS GIVEN
9 VERBAL STATEMENTS THAT THERE WAS NO TOUCHING, THAT THE
10 CHILD HAD MESSED HIMSELF.

11 Q. NOW, IS THERE MENTION OF A WRITTEN STATEMENT?

12 A. YES, THERE IS.

13 Q. OKAY. AND ARE YOU FAMILIAR WITH THAT WRITTEN
14 STATEMENT?

15 A. AS FAR AS THE MESSING HIMSELF, NO, MA'AM. NO.
16 IN THIS REPORT...

17 Q. WHAT IS THAT REPORT INTENDED TO DO?

18 A. BASICALLY LET -- WHAT WE'VE DONE, YOU KNOW, WHAT
19 WAS DONE. YOU KNOW, WE MADE CONTACT, WE OBTAINED
20 STATEMENTS, WE'VE PLACED HIM UNDER ARREST, UNFOUNDED THE
21 CASE, OBTAINED EVIDENCE. IT'S JUST -- IT'S EVERYTHING
22 THAT WAS DONE.

23 Q. AND IN TERMS OF THE FIRST STATEMENT, THAT WAS
24 STATE'S TWO, WHICH I BELIEVE YOU HAVE IN FRONT OF YOU,
25 THE FIRST WRITTEN STATEMENT, STATE'S TWO -- THAT ONE

1 RIGHT THERE, YES -- NOW, AGAIN, THAT'S NOT IN YOUR
2 HANDWRITING?

3 A. NO, MA'AM.

4 Q. YOUR NAME IS NOT ON THAT?

5 A. NO, MA'AM.

6 Q. NOW, WERE YOU AWARE THE FIRST STATEMENT WAS GOING
7 ON, THOUGH?

8 A. YES, MA'AM.

9 Q. AND HOW WERE YOU AWARE OF THAT?

10 A. DETECTIVE CARSON LET ME KNOW.

11 Q. WERE YOU WITHIN EARSHOT OF MS. CARSON AND THE
12 DEFENDANT?

13 A. YES. I NEVER LEFT EARSHOT. IF I DID, I RAN
14 OUTSIDE TO GET SOME -- MAYBE TO GET ANOTHER FORM, BUT
15 THAT'S IT. I PRETTY MUCH STAYED IN THE RESIDENCE OR
16 AROUND.

17 Q. SO IN BEING IN EARSHOT, DID YOU EVER HEAR
18 MS. CARSON SAY ANYTHING INAPPROPRIATE TO THE DEFENDANT?

19 A. NO, MA'AM.

20 Q. THREATEN HIM IN ANY WAY OR COERCE HIM IN ANY WAY?

21 A. NO, MA'AM.

22 Q. ARE YOU FAMILIAR WITH HOW THE SECOND STATEMENT
23 CAME ABOUT, STATE'S THREE?

24 A. AFTER WE HAD LOCATED SOME PHOTOGRAPHS THAT WERE
25 EXPLAINED TO US IN THE INITIAL INTERVIEW WITH THE CHILD,

1 WE HAD AN IDEA WHAT WE WERE LOOKING FOR, SO A CONSENT TO
2 SEARCH WAS CONDUCTED, IT WAS SIGNED BY THE DEFENDANT AND
3 HIS MOTHER.

4 ONCE WE FOUND THE PICTURES, SPECIFICALLY ONE
5 PARTICULAR ONE THAT THE CHILD HAD IDENTIFIED, AND IT WAS
6 PRETTY, YOU KNOW, PRETTY SPECIFIC WHAT HE SAID AND WHAT
7 WE SAW WERE -- THAT WAS, YOU KNOW, ONE AND ONE, WE
8 BROUGHT THAT TO HIS ATTENTION, AND, YOU KNOW, AND TOLD
9 HIM, I SAID, THIS IS WHAT WE FOUND. THIS IS HOW WE
10 LEARNED TO FIND IT. WE WERE TOLD WHERE TO LOOK.

11 AND THAT'S WHEN HE DECIDED -- WELL, HE STATED
12 THAT HE WANTED TO MAKE ANOTHER STATEMENT BUT HE DIDN'T
13 WANT TO DO IT IN THE PRESENCE OF HIS MOTHER.

14 Q. AND DO YOU KNOW WHERE THE SECOND STATEMENT
15 OCCURRED THEN?

16 A. IT OCCURRED IN LIEUTENANT CARSON'S VEHICLE.

17 Q. AND WHAT WERE YOU DOING WHILE THIS WAS GOING ON?

18 A. TALKING TO MOM, STAYING WITH HER. I WOULD COME
19 OUTSIDE JUST TO CHECK ON DETECTIVE CARSON, GO BACK IN
20 AND TALK TO MOM OR ON THE PORCH. AT THAT POINT I STAYED
21 WHERE I COULD SEE INVESTIGATOR CARSON AT THE TIME.

22 Q. OKAY. AND WHILE YOU WERE WATCHING, DID YOU SEE
23 ANYTHING INAPPROPRIATE GOING ON?

24 A. NO, MA'AM.

25 Q. DID THE PROCESS BECOME HEATED AT ALL?

1 A. NO, MA'AM.

2 Q. WERE THERE ANY THREATS OR COERCION THAT YOU COULD
3 TELL?

4 A. NO, I DIDN'T SEE ANYTHING GOING ON INAPPROPRIATE.

5 Q. AT ANY TIME DID THE DEFENDANT TRY AND LEAVE THE
6 CAR?

7 A. LEAVE THE CAR?

8 Q. YES.

9 A. NO, MA'AM.

10 Q. AND AFTER THE SECOND STATEMENT WAS GIVEN, WHAT
11 DID YOU ALL THEN DO?

12 A. AT THAT POINT WE ADVISED HIM OF WHAT THE OUTCOME
13 WAS GONNA BE, HE WAS GONNA BE PLACED UNDER ARREST,
14 ADVISED HIM THAT -- HE WAS GRADUATING SCHOOL SATURDAY,
15 THAT IF HE CHOSE TO GRADUATE, AND WE WOULD HANDLE IT AS
16 SOON AS GRADUATION WAS OVER, THAT WAS AN OPTION GIVEN TO
17 HIM. HE SAID, NO, HE WANTED TO GET IT TAKEN CARE OF
18 THAT EVENING, SO AT WHICH TIME -- IT WAS AFTER THE
19 SECOND STATEMENT -- WE TRANSPORTED HIM TO THE DETENTION
20 CENTER.

21 AND THEN I WENT TO SPEAK TO JUDGE, I BELIEVE IT
22 WAS JUDGE MAULDIN. I ACTUALLY CALLED JUDGE MAULDIN AND
23 EXPLAINED TO HIM WHAT I HAD AND THAT I WAS EN ROUTE FROM
24 PELZER AND THAT IT WAS GONNA TAKE A WHILE.

25 Q. OKAY. AND ONCE HE WAS UNDER ARREST, DID YOU ALL

1 HANDCUFF HIM?

2 A. WHEN WE ADVISED HIM HE WAS UNDER ARREST, NO, WE
3 DIDN'T PLACE HIM IN HANDCUFFS AT THAT TIME.

4 Q. WHY NOT?

5 A. I DIDN'T HAVE ANY HANDCUFFS. IT WASN'T MY PATROL
6 VEHICLE; WE WERE IN INVESTIGATOR CARSON'S. AND WE WERE
7 DEALING WITH ANOTHER CASE EARLIER AND EVERYTHING WAS IN
8 MY CAR AND WE JUST TOOK HER CAR, NOT THINKING ABOUT IT.

9 Q. AND SHE DIDN'T HAVE HANDCUFFS, EITHER, THEN?

10 A. NO. THEY WERE LEFT IN MY VEHICLE. SO I
11 CONTACTED ROAD PATROL AND LET THEM KNOW WHAT WAS GOING
12 ON AND I NEEDED A SET, AND THEY CAME DOWN, HANDED US A
13 PAIR, AND WE CUFFED HIM AND PUT HIM IN THE FRONT SEAT OF
14 THE VEHICLE AND I SAT IN THE BACK, AND WE TRANSPORTED
15 HIM TO THE DETENTION CENTER.

16 Q. SO AT NO TIME PRIOR TO THE ARREST WAS THE
17 DEFENDANT ACTUALLY HANDCUFFED, THEN?

18 A. NO, MA'AM.

19 MS. HUEY: THAT'S ALL WE HAVE OF THIS
20 WITNESS, AND WE WOULD BE OFFERING STATE'S ONE, TWO AND
21 THREE INTO EVIDENCE.

22 THE COURT: ALL RIGHT. CROSS-EXAMINATION.

23 CROSS-EXAMINATION BY MR. THOMPSON:

24 Q. SERGEANT NORMANDIN, YOU STATED THAT, QUOTE,
25 EVERYTHING THAT WAS DONE, END QUOTE, IN YOUR

1 SUPPLEMENTAL, CORRECT?

2 A. WHAT WAS DONE AS FAR AS THE CASE?

3 Q. YES.

4 A. YES.

5 Q. SO ACCORDING TO YOUR OWN REPORT, A WRITTEN
6 STATEMENT WOULD HAVE BEEN DONE, CORRECT?

7 A. I THINK WE HASHED THIS OUT, THAT YOU OBTAIN, YOU
8 HAD WRITTEN TWO WRITTEN STATEMENTS, AND YOU MADE SEVERAL
9 ORAL STATEMENTS WHILE ON SCENE.

10 Q. WAS THE ---

11 A. THE STATEMENT ABOUT HIM MESSING HIMSELF, THERE
12 WAS NO WRITTEN STATEMENT, THAT WAS AN ORAL STATEMENT.

13 Q. DOES IT SAY ORAL IN THE REPORT?

14 A. NO, IT DOESN'T SAY ORAL IN THE REPORT.

15 Q. IT SAYS WHAT?

16 A. IT SAYS WRITTEN.

17 Q. IS THERE A WRITTEN REPORT OF THIS?

18 A. SIR, I EXPLAINED TO YOU ---

19 Q. IS THERE A WRITTEN REPORT OF THIS?

20 A. NO, THERE IS NO WRITTEN REPORT THAT YOU SAID HE
21 MESSED HIMSELF, THESE WERE ORAL STATEMENTS.

22 Q. SO YOUR REPORT WOULD HAVE BEEN FALSE?

23 A. IT'S NOT FALSE.

24 Q. WELL, YOU STATED JUST A MINUTE AGO THAT
25 EVERYTHING THAT WAS DONE IN THE CASE.

1 A. OKAY. AND YOU ARE ASKING ---

2 Q. AND IN YOUR REPORT ---

3 A. --- THAT YOU STATE, THAT YOUR FIRST STATEMENT
4 THAT HE MESSED HIMSELF WAS A WRITTEN STATEMENT AND I'VE
5 EXPLAINED THAT WAS NOT A WRITTEN STATEMENT. THAT COULD
6 BE AN ERROR ON MY PART. BUT THOSE STATEMENTS ARE NOT
7 FALSE AND THAT'S IN MY REPORT.

8 Q. WHAT IS YOUR TERM OF MAKING CONTACT?

9 A. I'M SORRY?

10 Q. WHAT IS YOUR TERM OF MAKING CONTACT?

11 A. CONTACT IN PERSON, BY PHONE.

12 Q. BY PHONE?

13 A. IN PERSON OR BY PHONE.

14 Q. I THINK YOU HAVE DEFENSE OR DEFENDANT'S EXHIBIT
15 NUMBER TWO, I BELIEVE, INVESTIGATIVE FOLLOW-UP?

16 A. THIS IS A FOLLOW-UP TO EXPLAIN THAT IT WAS A CASE
17 MANAGEMENT FOLLOW-UP TYPE THING.

18 Q. AND YOU STATED AT THE TOP OF THAT INVESTIGATIVE
19 FOLLOW-UP REPORT THAT YOU HAD CALLED?

20 A. I SAY I CALLED THE VICTIM'S MOTHER.

21 Q. CALLED, BY PHONE, CORRECT?

22 A. I CALLED THE VICTIM'S MOTHER.

23 Q. AND AT THE BOTTOM OF THAT REPORT IT STATES I MADE
24 CONTACT, THAT YOU MADE CONTACT WITH ME.

25 A. UH-HUH.

1 Q. THAT DOES NOT STATE THAT YOU CALLED. BUT YOU
2 STATED THAT YOU CALLED THE VICTIM'S MOTHER, BUT YOU
3 STATED THAT YOU MADE CONTACT WITH ME.

4 A. AS I EXPLAINED, THIS WAS SOMETHING THAT, THIS IS
5 JUST BASICALLY SO THE SUPERVISORS KNOW WHAT WE ARE
6 DOING.

7 Q. SO THIS CASE WAS TURNED OVER TO YOUR SUPERVISOR?

8 A. THE CASE ITSELF WAS. THIS FOLLOW-UP IS WHAT YOU
9 ARE TALKING ABOUT IS JUST A BRIEF CASE JUST SO THAT THE
10 SUPERVISORS KNOW WHAT'S GOING ON.

11 Q. WAS I ADVISED OF MY MIRANDA RIGHTS WHEN YOU MADE
12 CONTACT WITH ME?

13 A. DETECTIVE CARSON HAS ALREADY STATED SHE GAVE YOU
14 YOUR RIGHTS.

15 Q. IF I'M NOT MISTAKEN, YOU STATED JUST A MINUTE AGO
16 THAT YOU NOTIFIED ME BY PHONE, NOTIFIED ME OF THE
17 COMPLAINT, CORRECT?

18 A. I TYPICALLY CALL PEOPLE WHEN THEY ARE OUT OF THE
19 ANDERSON AREA, CALL THEM BY PHONE; THAT IS A TYPICAL
20 PRACTICE OF MINE TO MAKE SURE THAT IT'S NOT A WASTED
21 TRIP ALL THE WAY TO PELZER WHEN, IF I CAN'T MAKE CONTACT
22 WITH SOMEBODY, I'LL WORK ON A DIFFERENT CASE.
23 UNFORTUNATELY, YOUR CASE IS NOT THE ONLY ONE THAT WE
24 RECEIVE.

25 Q. COULD YOU GO TO DEFENDANT EXHIBIT NUMBER ONE,

1 WHICH WOULD BE THE SUPPLEMENTAL REPORT, I BELIEVE?

2 A. YES.

3 Q. IN THE SECOND PARAGRAPH IT STATES (READING):

4 ON MAY 20TH OF 2005 MYSELF AND
5 DETECTIVE CARSON MADE CONTACT WITH THE
6 SUSPECT AT HIS RESIDENCE.

7 CORRECT?

8 A. THAT'S WHAT IT STATES.

9 Q. WELL, IN YOUR INVESTIGATIVE FOLLOW-UP YOU STATE
10 THAT YOU MADE CONTACT AT 12:45. BUT YOU HAD NOT MADE
11 CONTACT WITH ME IN, ACCORDING TO THE ADVISORY OF RIGHTS,
12 AT 2:45?

13 A. AGAIN, THAT COULD EITHER BE BY PHONE, AS I'VE
14 EXPLAINED, TO GET IN TOUCH WITH YOU AT 2:45 -- I MEAN
15 12:45.

16 Q. AND IT ALSO STATES (READING):

17 POST MIRANDA HE WAS ADVISED OF
18 THE COMPLAINT THAT WAS RECEIVED FROM THE
19 VICTIM'S MOTHER.

20 A. IF I CONTACT SOMEBODY BY PHONE, I'M NOT GONNA
21 TELL THEM THAT THEY'VE JUST BEEN ALLEGED THAT THEY ARE A
22 CHILD MOLESTER; I CALL AND TELL THEM THERE'S BEEN A
23 COMPLAINT. I TRY TO BE CIVIL ABOUT IT. I TRY TO TALK
24 TO PEOPLE IN A CIVIL TONE. I LET THEM KNOW THAT THERE'S
25 BEEN A COMPLAINT FILED AGAINST THEM AND I WOULD LIKE TO

1 TALK TO THEM AND FOLLOW UP ON A COMPLAINT. THAT'S ALL I
2 USUALLY TELL THEM ON THE TELEPHONE.

3 Q. BUT YOU STATED THAT YOU CALLED ME AND ADVISED ME
4 OF THE COMPLAINT.

5 A. THERE HAD BEEN A COMPLAINT.

6 Q. ABOUT THE COMPLAINT. YOU STATED THAT ABOUT THE
7 COMPLAINT, NOT THE INCIDENT WHICH, ACCORDING TO YOUR
8 REPORT YOU STATE (READING):

9 POST MIRANDA HE WAS ADVISED OF
10 THE COMPLAINT.

11 THAT MEANS AFTER I HAD BEEN MIRANDIZED.

12 A. THAT WOULD BE A MORE IN-DETAILED COMPLAINT.

13 Q. SIR, DID I VOLUNTARILY COOPERATE DURING THE
14 INTERROGATION OR THE INVESTIGATION?

15 A. YES, SIR, YOU WERE VERY COOPERATIVE.

16 Q. STATE FOR THE RECORD WHAT WAS THE MEANING, THE
17 SOLE PURPOSE OF THE QUESTIONING.

18 A. TO FIND OUT IF A CRIME WAS COMMITTED.

19 Q. WHERE IS THE STATEMENT THAT YOU AND YOUR PARTNER
20 KEEP MENTIONING ON YOUR REPORTS? THESE REPORTS, THESE
21 REPORTS WERE GIVEN BY YOU ACCORDING TO YOU AND YOUR
22 PARTNER, BUT...

23 MR. THOMPSON: I'M GONNA ALSO ENTER THIS
24 INTO -- DEFENDANT'S EXHIBIT NUMBER 4.

25 (COUNSEL CONFER.)

1 (DEFENDANT'S EX. # 4, SUPPLEMENTAL REPORT,
2 NORMANDIN, WAS MARKED FOR IDENTIFICATION.)

3 BY MR. THOMPSON:

4 Q. DO YOU ACKNOWLEDGE THAT?

5 A. YES, SIR. IT'S THE SAME ONE AS THIS ONE.

6 Q. WHO IS THE REPORTING OFFICER ON EXHIBIT FOUR?

7 A. ON FOUR THAT'S MY NAME, MINE.

8 Q. NOW, IF I'M NOT MISTAKEN -- CAN I PLEASE SEE THE
9 BOTH OF THOSE?

10 A. YES, SIR YOU CAN (HANDING).

11 THE COURT: ALL RIGHT. NUMBER FOUR, HAVE
12 YOU SEEN THAT?

13 MS. HUEY: YES, SIR, YOUR HONOR.

14 THE COURT: ANY OBJECTION.

15 MS. HUEY: NO, SIR.

16 THE COURT: ALL RIGHT. NO OBJECTION.

17 DEFENDANT'S NUMBER FOUR IS IN.

18 (DEFENDANT'S EX. # 4 WAS RECEIVED IN
19 EVIDENCE.)

20 THE COURT: GO AHEAD.

21 BY MR. THOMPSON:

22 Q. ACCORDING TO THESE REPORTS -- YOU SAID THESE WERE
23 YOUR REPORTS.

24 A. YES, SIR.

25 Q. IN THE ONE THAT HAS YOUR NAME AS THE REPORTING

1 OFFICER, THERE WAS A WORD THAT YOU SPELLED INCORRECTLY.
2 YOU SPELLED CHARACTER (PHONETIC).

3 A. UH-HUH.

4 Q. ACCORDING TO NIKKI CARSON, AS BEING THE REPORTING
5 OFFICER, SHE SPELLED IT CHARACTER?

6 A. CAN YOU SHOW ME THAT, PLEASE?

7 Q. I WOULD BE GLAD TO (HANDING). SEVEN LINES DOWN
8 AT THE TOP OF THE PARAGRAPH, PARAGRAPH NUMBER ONE.

9 A. YES, SIR.

10 Q. SO THAT WOULD BE THE SAME REPORT, CORRECT?

11 A. YES, SIR.

12 Q. IS THERE A DATE AT THE BOTTOM OF THE BOTH OF
13 THOSE?

14 A. 5-23.

15 Q. ON BOTH OF THEM?

16 A. YES, 5-23.

17 Q. SO YOU GAVE THE SAME EXACT REPORT TWICE?

18 A. I COULD HAVE PRINTED IT OUT TWICE.

19 Q. WITH TWO DIFFERENT OFFICERS' NAME ON IT? IT
20 WOULD HAVE SHOWED UP AS PETE NORMANDIN THE FIRST TIME
21 AND THE SECOND TIME, NOT FIRST AND SECOND.

22 A. WHEN YOU OPEN STUFF BACK UP ON A COMPUTER ON THIS
23 PROGRAM, AS DETECTIVE CARSON HAD STATED, MY NAME AND HER
24 NAME ARE I THINK SIMULTANEOUS ON THE ROSTER. IF I DON'T
25 HIT P HARD ENOUGH, IT BUMPS UP N FOR NIKKI CARSON

1 BECAUSE IT GOES BY YOUR FIRST AND YOUR LAST INITIAL.

2 I DON'T TYPE VERY WELL. IF I DON'T HIT THE P
3 HARD ENOUGH, I JUST HIT N AND HIT ENTER AND IT WILL
4 BRING UP HER NAME.

5 NOW, GOING BACK, SHE COULD HAVE READ IT AND FOUND
6 THAT I HAD MISPELLED "CHARACTER" AND FIXED IT. I DON'T
7 KNOW WHAT TO TELL YOU IN REFERENCE TO THAT. OTHER THAN
8 THE WORD "CHARACTER" MISPELLED ON THERE ON THE REPORTS
9 AND THE TWO NAMES AT THE BOTTOM, IT APPEARS THAT THESE
10 REPORTS ARE IDENTICAL.

11 Q. SO YOU ARE SAYING THAT SHE COULD HAVE WENT BACK
12 AND CHANGED THE REPORT THAT YOU GAVE?

13 A. IF SHE FOUND A MISPELLED WORD, WE'RE PARTNERS
14 WORKING ON THE SAME CASE. I DON'T OBJECT TO THAT AS
15 LONG AS IT DOESN'T CHANGE THE MEANING OF THE STATEMENT
16 OR MAKE A FALSE STATEMENT.

17 Q. WHAT INFORMATION DID I STATE TO YOU WHEN YOU
18 FIRST MADE CONTACT WITH ME?

19 A. WHAT INFORMATION DID YOU STATE TO US?

20 Q. CORRECT.

21 A. YOU GAVE SEVERAL STATEMENTS, SIR, VERBAL
22 STATEMENTS.

23 Q. BUT I SAID WHEN YOU MADE CONTACT. I COULDN'T
24 HAVE GIVEN THREE DIFFERENT INFORMATIONS TO YOU AT THE
25 SAME TIME.

1 A. IT HAPPENS ALL THE TIME.

2 Q. ACCORDING TO YOUR REPORT THERE'S TIME FRAMES IN
3 BETWEEN EACH.

4 A. BUT ORAL STATEMENTS CAN BE GIVEN WITHIN EVERY TWO
5 OR THREE MINUTES AND SOMEONE CAN CHANGE A STORY WITHIN
6 TWO OR THREE MINUTES. SOMEONE CAN ADD SOMETHING.
7 ESPECIALLY UNDER DURESS, THEY MAY FORGET SOMETHING AND
8 THEN ADD IN TO A STATEMENT, YOU KNOW, A VERBAL
9 STATEMENT.

10 Q. NOW, YOU ARE SAYING THAT IN THOSE REPORTS THERE
11 IS A TYPO STATING THAT THERE WAS A WRITTEN STATEMENT?

12 A. I COULD HAVE PLACED WRITTEN STATEMENT IN USING
13 WHAT THE STATEMENT, EITHER WHAT YOU PERSONALLY WROTE OR
14 INVESTIGATOR CARSON WROTE AT THE TIME, I COULD HAVE PUT
15 WRITTEN STATEMENT BECAUSE THERE WERE WRITTEN STATEMENTS
16 TAKEN. THERE WAS ALSO ORAL STATEMENTS THAT WERE GIVEN
17 SPONTANEOUSLY.

18 Q. YOU SAW THE INFORMATION IN YOUR INVESTIGATOR
19 FOLLOW-UP. IS THAT CORRECT OR ACCURATE?

20 A. WHICH ONE ARE WE TALKING ABOUT?

21 Q. EXHIBIT NUMBER TWO, I BELIEVE.

22 A. ON THE 19TH WE CALLED THE VICTIM ON HER CELL
23 PHONE AND WE LEFT A MESSAGE. WE GOT IN TOUCH WITH THEM.
24 AND IT STATES AT 12:45, WHICH YOU HAVE HIGHLIGHTED, THAT
25 I MADE CONTACT WITH THE SUSPECT, AND AFTER AN INTERVIEW

1 SUSPECT CONFESSED TO THE CRIME AND CHARGED. WARRANTS
2 WERE SIGNED AND SERVED.

3 COULD I HAVE MESSED UP AND PUT THE WRONG TIME ON
4 THERE? CERTAINLY. I'M HUMAN. COULD I HAVE CALLED YOU
5 BY PHONE? CERTAINLY. DO I REMEMBER EVERYTHING THAT
6 HAPPENED TWO YEARS AGO, AS MINUTE STUFF LIKE THAT? NO.

7 Q. DURING THE ENTIRE INTERROGATION AND QUESTIONING
8 PROCESS WAS THE QUESTION FIRST POLICE TACTIC USED AT ANY
9 GIVEN TIME?

10 A. I'M SORRY. SAY THAT AGAIN?

11 Q. DURING THE ENTIRE INTERROGATION QUESTIONING
12 PROCESS, WAS THE QUESTION FIRST POLICE TACTIC USED AT
13 ANY GIVEN TIME?

14 A. UNFORTUNATELY, I DON'T UNDERSTAND WHAT -- DURING
15 THE INTERVIEW, I GET THAT POINT, AND WHAT WAS THE POLICE
16 TACTIC?

17 Q. DID YOU USE THE QUESTION FIRST POLICE TACTIC?

18 A. QUESTION FIRST? I DON'T KNOW WHAT, I DON'T KNOW
19 WHERE YOU ARE GETTING AT WITH THAT.

20 Q. THAT MEANS QUESTION BEFORE YOU MIRANDIZED AND
21 THEN QUESTIONED AFTER.

22 A. WE MADE CONTACT WITH YOU AT YOUR HOUSE.
23 INVESTIGATOR CARSON GAVE YOU YOUR MIRANDA WARNING. WHAT
24 WE DO AS INVESTIGATORS IS WE READ YOU MIRANDA WARNING
25 WHEN WE KNOW -- WHEN WE HAVE A COMPLAINT WE GIVE YOU

1 YOUR MIRANDA WARNING. THEN AFTER YOU STATE THAT YOU
2 UNDERSTAND YOUR WARNING AND YOUR RIGHTS, THAT'S WHEN WE
3 START QUESTIONING YOU.

4 Q. HOW LONG HAVE YOU BEEN ON THE FORCE?

5 A. I'VE BEEN IN LAW ENFORCEMENT 16 YEARS.

6 Q. 16 YEARS, WHICH WOULD MEAN THAT -- SO YOU ARE
7 SAYING THAT YOU WOULD MAKE A LOT OF MISTAKES IN JUST ONE
8 CASE?

9 A. I MAKE A LOT OF MISTAKES IN ONE CASE?

10 Q. A LOT OF MISTAKES. YOU GOT TYPOS, YOU GOT ---

11 A. A MISSPELLED WORD, YEAH.

12 Q. I MEAN, THERE'S A LOT OF THINGS THAT COULD HAVE
13 HAPPENED, BUT ---

14 A. WERE THERE MISTAKES? A TYPO, YES. NOT
15 REMEMBERING IF I CALLED YOU EXACTLY AT 12:45 OR IF I
16 MESSED UP AND PUT 2:45 -- I MEAN INSTEAD OF 12:45 I PUT
17 2:45, OF COURSE, THAT HAPPENS. BUT THE VALIDITY OF THE
18 CASE ITSELF AND THE QUESTIONING AND THE CHARGES ARE
19 ACCURATE. CAN THERE BE MISTAKES? OF COURSE.

20 Q. NOW, YOU STATED THAT THE QUESTIONING TOOK PLACE
21 AT MY PLACE OF RESIDENCE, CORRECT?

22 A. THAT'S WHAT WE HAVE BEEN TALKING ABOUT, AT YOUR
23 HOUSE, WHERE YOU LIVED.

24 Q. CAN YOU TELL THE COURT AGAIN WHOM ALL WAS AT THIS
25 RESIDENCE AT THE TIME?

1 A. I KNOW YOUR MOTHER WAS THERE. I'M NOT SURE IF
2 THERE WAS ANYBODY ELSE IN THERE. I BELIEVE THERE WAS A
3 SMALL CHILD THERE PRIOR, OR SOME OTHER CHILDREN, AND I
4 DON'T THINK -- I DON'T KNOW WHAT HAPPENED TO THEM. I
5 DON'T KNOW IF THEY WENT INTO A ROOM AND STAYED IN A ROOM
6 OR THEY LEFT THE RESIDENCE. I DON'T RECALL EXACTLY WHO
7 WAS AT YOUR HOUSE AT THE TIME WHEN WE MADE CONTACT WITH
8 YOU.

9 Q. AND YOU ALSO STATED THAT DURING THE TIME THAT
10 LIEUTENANT CARSON WAS QUESTIONING ME IN HER PATROL CAR,
11 THAT YOU WERE IN AND OUT OF THE RESIDENCE CHECKING IN ON
12 YOUR PARTNER, CORRECT?

13 A. THAT'S WHAT I WAS DOING, I WAS MAKING SURE SHE
14 WAS OKAY. SHE WAS QUESTIONING A MALE. THAT'S -- I DO
15 THAT WITH MY MALE PARTNERS AND I DO THAT WITH MY FEMALE
16 PARTNERS.

17 Q. WHY WOULD I REQUEST TO SPEAK TO HER AND NOT YOU?

18 A. I HAVE NO IDEA.

19 Q. DURING THE INTERROGATION WITH ME, WAS I
20 QUESTIONED BY THE SAME OFFICERS?

21 A. THERE WAS ONLY ME AND INVESTIGATOR CARSON AT YOUR
22 HOUSE.

23 Q. BUT ACCORDING TO YOUR INVESTIGATIVE FOLLOW-UP AND
24 THE DATE AND TIME OF ARREST, THERE IS AN APPROXIMATELY
25 EIGHT-HOUR-AND-41-MINUTE TIME FRAME. NOW, LAST TIME I

1 CHECKED YOU STATED IT COULD HAVE BEEN YOU WERE SPEEDING
2 THROUGH THE INVESTIGATIVE FOLLOW-UP, BUT YOU ALSO STATED
3 YOU HAVE BEEN ON THE FORCE 16 YEARS.

4 A. AND YOUR QUESTION?

5 Q. YOU WOULD HAVE READ THAT OVER BEFORE YOU SENT IT
6 TO YOUR THEN SUPERVISOR, CORRECT?

7 A. WOULD HAVE READ ---

8 Q. ARE YOU SAYING THAT YOU WOULD WRITE SOMETHING,
9 NOT KNOWING WHAT YOU WROTE, AND HAND IT TO YOUR
10 SUPERVISOR?

11 A. WHAT DIDN'T I KNOW I WROTE?

12 Q. AT 12:45 YOU MADE CONTACT WITH THE SUSPECT.

13 A. THAT COULD BE BY PHONE, THAT COULD HAVE -- I
14 COULD HAVE PUT A 1 IN FRONT OF THE 2 FOR 2:45 WHEN WE
15 MADE CONTACT WITH YOU.

16 Q. YOU STATE AT THE TOP OF THAT THAT YOU CALLED.
17 THERE'S A DIFFERENCE BETWEEN CALLED AND MAKING CONTACT.

18 A. NO.

19 Q. BUT YOU ALSO STATED THAT YOU MADE CONTACT WITH ME
20 AT MY RESIDENCE.

21 A. UH-HUH.

22 Q. THAT WOULD BE IMPERFECT.

23 A. I CAN PUT IN A REPORT I MADE CONTACT BY PHONE OR
24 BY PERSON. I USE CONTACT AS THE INITIAL CONTACT OR
25 CONTACT OF A PERSON. I DON'T -- FOR SEMANTIC REASONS I

1 MAY NOT PUT "CALLED."

2 Q. YOU STATED EARLIER THAT YOU, YOU WAS NOT PRESENT
3 DURING THE TIME OF ANY OF THESE STATEMENTS.

4 A. WHEN I CAME OUTSIDE WHEN YOU AND INVESTIGATOR
5 CARSON WERE SITTING IN THE CAR, I CAME OUT, LOOKED IN
6 AND WALKED AWAY.

7 Q. BEFORE ---

8 A. AS FAR AS ME BEING WITH YOU OR SITTING BEHIND YOU
9 OR SITTING NEXT TO YOU WHEN YOU MADE THESE STATEMENTS,
10 NO, I DID NOT.

11 Q. BEFORE MYSELF AND LIEUTENANT CARSON MAKING OUR
12 WAY TO HER PATROL VEHICLE, WERE YOU PRESENT AT THAT
13 TIME?

14 A. ON THE PORCH?

15 Q. YES.

16 A. YEAH.

17 Q. AND WHERE DID YOU GO FROM THERE?

18 A. PROBABLY BACK IN THE HOUSE TO TALK TO YOUR
19 MOTHER. SEE, YOUR MOTHER WAS CONCERNED WITH WHAT WAS
20 GOING ON.

21 Q. AND TO MY KNOWLEDGE MY MOTHER CAME OUT OF THE
22 RESIDENCE AND DID NOT GO BACK IN UNTIL AFTER I HAD LEFT.

23 A. I DON'T KNOW HOW -- I DON'T -- TO BE HONEST WITH
24 YOU, I'M NOT SURE IF YOUR MOTHER WENT IN AND OUT OF THE
25 HOUSE FIVE MILLION TIMES. YOU WERE IN A PATROL CAR

1 TALKING TO INVESTIGATOR CARSON, I WAS TALKING TO YOUR
2 MOM.

3 Q. BUT YOU SAID SPECIFICALLY THAT YOU WERE IN AND
4 OUT OF THE RESIDENCE.

5 A. I WAS IN AND OUT OF THAT HOUSE A FEW TIMES, YES,
6 SIR.

7 Q. I'M TALKING ABOUT DURING THE TIME THE CONFESSION
8 WAS BEING GIVEN, THE ALLEGED CONFESSION BEING GIVEN.

9 A. I WAS IN AND OUT OF YOUR HOUSE. I DON'T KNOW
10 WHEN I WAS IN AND OUT OF YOUR HOUSE, I DON'T HAVE A
11 TIME. I DIDN'T WRITE DOWN EVERY TIME I WALKED IN YOUR
12 HOUSE. BUT I WAS HAVING A CONVERSATION WITH YOUR
13 MOTHER.

14 Q. BUT YOU STATED UNDER OATH THAT YOU WERE IN AND
15 OUT OF THE RESIDENCE DURING THE TIME THAT THE
16 CONFESSION, CONFESSION WAS BEING GIVEN.

17 A. YES, BUT I WAS NOT SITTING WITH YOU.

18 Q. I UNDERSTAND THAT YOU WAS NOT SITTING WITH ME,
19 BUT THE KEY WORD IS IN AND OUT OF THE RESIDENCE. BUT
20 LAST TIME I CHECKED YOU WERE OUTSIDE OF THE RESIDENCE
21 AND NEVER MADE YOUR WAY BACK IN DURING THE TIME OF THE
22 CONFESSION.

23 A. WHEN YOU ARE MAKING A CONFESSION, IF YOU WERE
24 FOCUSING ON ME, IS THAT WHAT YOU ARE SAYING?

25 Q. YOU ARE NOT UNDERSTANDING THE QUESTION.

1 **THE COURT:** WELL, JUST ANSWER THE QUESTION.
2 YOU CAN EXPLAIN YOUR ANSWER.

3 **THE WITNESS:** YES, SIR.

4 A. I DON'T RECALL HOW MANY TIMES I WENT IN AND OUT
5 OF YOUR HOUSE, MR. THOMPSON, LIKE I EXPLAINED TO YOU. I
6 DON'T KNOW WHEN I WENT IN YOUR HOUSE, I DON'T KNOW WHEN
7 I CAME OUT OF YOUR HOUSE, OKAY? I CHECKED ON MY
8 PARTNER ---
9 BY MR. THOMPSON:

10 Q. SO YOU ARE SAYING THAT YOU DON'T KNOW WHEN YOU
11 CAME OR WENT IN AND OUT OF THE RESIDENCE, BUT YOU STATED
12 THAT YOU WERE IN AND OUT DURING THE TIME THE CONFESSION
13 WAS GIVEN. THAT MEANS A SPECIFIC TIME THAT YOU WERE IN
14 AND OUT ---

15 A. OKAY. ONCE THE SECOND -- ONCE THE SECOND
16 STATEMENT WAS GIVEN, WHERE YOU STATED WHAT YOU DID, I
17 WENT INSIDE AND SPOKE TO YOUR MOTHER AND EXPLAINED TO
18 HER WHAT WAS GOING ON.

19 Q. HOW DO YOU KNOW I STATED THAT?

20 A. WELL, IT'S WHAT I READ ON THE BOOK -- I MEAN WHAT
21 I READ ON THE PAPER. I WENT AND TOLD YOUR MOTHER THIS
22 IS WHAT'S ON THE PAPER, WHAT'S ON THE STATEMENT.

23 Q. OKAY.

24 A. I WAS KEEPING YOUR MOTHER -- I WAS GIVING YOUR
25 MOTHER COMMON COURTESY. HER CHILD HAS BEEN -- A

1 COMPLAINT HAS BEEN, YOU KNOW, PRESENTED BY HER CHILD
2 DOING A CRIME LIKE THIS. I WAS GIVING YOUR MOM, YOU
3 KNOW, A PARENTAL COURTESY, LETTING HER KNOW WHAT WAS
4 GOING ON, INSTEAD OF NOT TALKING TO HER AT ALL AND
5 HAVING HER WONDER WHAT WAS GOING ON. NOW, SIR, DO I
6 DON'T REMEMBER HOW MANY TIMES I WENT IN AND OUT OF YOUR
7 HOUSE? NO, I DON'T REMEMBER EXACTLY WHEN I WENT IN YOUR
8 HOUSE. THE STATEMENT ---

9 Q. SO YOU ARE SAYING THAT YOU DON'T KNOW FOR SURE
10 THAT YOU WENT INSIDE THE RESIDENCE AT THE TIME THE
11 CONFESSION WAS BEING GIVEN?

12 A. YOU WERE IN, YOU WERE IN INVESTIGATOR CARSON'S
13 CAR FROM THE TIME, START WAS ABOUT 4:15 AND IT ENDED
14 4:42. FOR APPROXIMATELY 30 MINUTES YOU WERE TALKING TO
15 INVESTIGATOR CARSON ABOUT YOUR STATEMENT. IN THAT 30
16 MINUTES HOW MANY TIMES DID I GO IN YOUR HOUSE? I DON'T
17 RECALL. THAT'S MY ANSWER. I DON'T RECALL HOW MANY
18 TIMES I WENT IN AND OUT OF YOUR HOUSE.

19 MR. THOMPSON: NO FURTHER QUESTIONS.

20 THE COURT: RE-EXAM?

21 MS. HUEY: JUST A COUPLE OF QUESTIONS.

22 REDIRECT EXAMINATION BY MS. HUEY:

23 Q. MR. NORMANDIN, AGAIN, HOW MANY WRITTEN STATEMENTS
24 WERE THERE BY THE DEFENDANT?

25 A. THERE WERE TWO WRITTEN STATEMENTS, MA'AM.

1 Q. OKAY. AND HOW MANY ORAL STATEMENTS BY THE
2 DEFENDANT?

3 A. THERE WERE A FEW, I DON'T KNOW HOW MANY.

4 Q. AND THE STATEMENT WE KEEP TALKING ABOUT, OF ^{Minor}
5 MESSING ON HIMSELF STATEMENT, THAT WAS AN ORAL
6 STATEMENT?

7 A. YES, MA'AM.

8 Q. DID YOU HEAR THIS ORAL STATEMENT YOURSELF?

9 A. YES, MA'AM, I DID.

10 Q. BUT THE WRITTEN STATEMENTS PRIMARILY INVESTIGATOR
11 CARSON WAS INVOLVED IN?

12 A. INVESTIGATOR CARSON DID MOST OF THE -- ALL THE
13 WRITTEN STUFF, AND THERE WAS A LOT OF TALKING GOING BACK
14 AND FORTH. AND IT'S A SMALL HOUSE. YOU HEAR THINGS,
15 YOU KEY IN ON THEM.

16 Q. AND WERE YOU OBSERVING THESE INTERVIEWS, SO TO
17 SPEAK, HERE AND THERE?

18 A. YES, MA'AM.

19 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

20 THE DEFENDANT: RECROSS?

21 THE COURT: RECROSS.

22 RECROSS-EXAMINATION BY MR. THOMPSON:

23 Q. IF I'M NOT MISTAKEN, YOU JUST STATED THAT, QUOTE,
24 IF I CAN REMEMBER CORRECTLY, THAT THESE STATEMENTS, THE
25 ORAL STATEMENTS, YOU SAID THAT THERE WERE A FEW.

1 A. UH-HUH.

2 Q. HAVE I BEEN PROVIDED WITH THESE FEW? THAT MEANS
3 MORE THAN ONE, TWO, THREE?

4 A. IT'S IN THE REPORT THAT YOU KEEP ON REFERRING
5 BACK TO THAT I PUT THE WRITTEN STATEMENT.

6 Q. HAVE I BEEN PROVIDED WITH THIS INFORMATION ---

7 A. AS FAR AS I KNOW, YOU WERE GIVEN EVERYTHING.

8 Q. --- AS FAR AS OVER TO THE SOLICITOR'S OFFICE OR
9 THE STATE?

10 A. I DIDN'T, I DIDN'T AUDIOTAPE YOUR STATEMENT;
11 THEREFORE, I COULDN'T HAND THAT OVER TO THEM. WHAT YOU
12 SAID VERBALLY OR WRITTEN IS SOMEHOW IN THESE REPORTS.
13 WHETHER IT'S A MISSPELLED WORD OR I PUT WRITTEN WHEN IT
14 WAS AN ORAL STATEMENT, THAT'S MY ERROR, OKAY? BUT
15 EVERYTHING THAT WAS PROVIDED TO YOU, AS FAR AS I KNOW,
16 ONCE THE BRADY MOTION WAS HANDED OVER, GAVE IT TO MADAM
17 SOLICITOR, AND THEY HAND IT OVER.

18 Q. IF I'M NOT MISTAKEN, EXHIBIT NUMBER FOUR -- MAY I
19 SEE THAT, PLEASE?

20 A. SURE (HANDING).

21 Q. YOU STATED FURTHER DOWN (READING):

22 UPON ADVISING HIM OF THE
23 INFORMATION THAT WAS GIVEN BY THE VICTIM,
24 THE SUSPECT CHANGED HIS ACCOUNTS OF THE
25 INCIDENT.

1 A. OKAY.

2 Q. THAT WOULD BE A WRITTEN OR ORAL STATEMENT?

3 A. THAT WOULD PROBABLY BE REFERRING TO WHEN YOU
4 STATED THAT IT WAS HOT IN THE HOUSE AND YOU WERE IN THE
5 BATHROOM AND YOU TOOK YOUR SHIRT OFF, AND THEN AFTER
6 OBTAINING -- LET ME SEE -- INFORMATION THAT WAS GIVEN
7 WOULD BE THE PHOTOGRAPHS THAT THE CHILD HAD POINTED OUT
8 TO US FOR WHAT YOU ALLEGEDLY SHOWED HIM. WHEN WE
9 LOCATED THOSE PHOTOGRAPHS, THAT'S THE INFORMATION, THAT
10 I FOUND THESE PICTURES OF WHATEVER.

11 Q. BUT YOU STATED THE SUSPECT CHANGED HIS ACCOUNT OF
12 THE INCIDENT.

13 A. YOU WENT FROM -- LET ME SEE -- YOU WENT FROM
14 SAYING THAT YOU NEVER TOUCHED HIM I BELIEVE WAS A
15 COMMENT -- I DON'T KNOW WHERE THAT CAME FROM, I BELIEVE
16 THAT CAME FROM INVESTIGATOR CARSON'S NOTES -- TO WHAT
17 THE SECOND STATEMENT READS. THAT'S THE INFORMATION THAT
18 WAS GIVEN TO YOU: THE PHOTOGRAPHS AND WHAT THE CHILD
19 HAD TOLD US.

20 Q. I'M GONNA READ WHAT YOU WROTE, OR PARAPHRASE
21 BRIEFLY.

22 A. SURE.

23 Q. (READING):

24 MAY 20TH, 2005 YOU AND CARSON,
25 DETECTIVE CARSON, MADE CONTACT WITH ME AT

1 MY RESIDENCE. POST MIRANDA I WAS ADVISED
2 OF THE COMPLAINT. I ADVISED YOU THAT
3 THERE WAS NO TOUCHING OF THE VICTIM OTHER
4 THAN CLEANING HIM UP. THAT A WRITTEN
5 STATEMENT WAS GIVEN, A SEARCH WAS
6 CONDUCTED, THE SUSPECT STATED THE BOOK
7 WAS A SCHOOL BOOK. UPON ADVISING HIM OF
8 THE INFORMATION THAT WAS GIVEN TO US BY
9 THE VICTIM, THE SUSPECT CHANGED HIS
10 ACCOUNTS OF THE INCIDENT.

11 AND THEN YOU HAVE THE SECOND STATEMENT
12 INFORMATION. WHERE IS THE FIRST STATEMENT INFORMATION?

13 A. I WOULD IMAGINE IT WOULD BE THIS AND THE VERBAL
14 STATEMENTS THAT YOU GAVE TO BEGIN WITH, SIR. I
15 DON'T ---

16 Q. ACCORDING TO YOUR REPORT, THAT INFORMATION THAT'S
17 IN YOUR REPORT IS NOT ON THAT STATEMENT.

18 A. ABOUT HIM MESSING HIMSELF?

19 Q. YES.

20 A. THAT COULD BE A VERBAL OR ORAL STATEMENT AND/OR A
21 WRITTEN ---

22 Q. THEN WHY DID YOU WRITE THAT AS BEING A WRITTEN
23 STATEMENT AS INFORMATION?

24 MS. HUEY: YOUR HONOR, WE JUST KEEP
25 BELABORING THIS POINT.

1 **THE COURT:** ASK HIM ONE LAST TIME. ASK HIM
2 THE QUESTION, YOU MAY ANSWER THE QUESTION AND EXPLAIN
3 YOUR ANSWER AND MOVE ON.

4 BY MR. THOMPSON:

5 Q. WAS THERE A WRITTEN STATEMENT GIVEN BY ME OF
6 INFORMATION OF THE VICTIM ALLEGEDLY MESSING ON HIMSELF?

7 A. IT WAS AN ORAL STATEMENT.

8 **THE COURT:** THAT'S NOT THE QUESTION. LISTEN
9 TO THE QUESTION CAREFULLY.

10 RESTATE THE QUESTION.

11 BY MR. THOMPSON:

12 Q. IN YOUR REPORT YOU STATED THAT I ADVISED YOU THAT
13 THERE WAS NO TOUCHING OF THE VICTIM OTHER THAN CLEANING
14 HIM UP, AND YOU ALSO STATED THAT THERE WAS A -- THAT I
15 HAD GIVEN A WRITTEN STATEMENT TO THAT ACCOUNT. IS THERE
16 AN EXISTENCE OF THIS STATEMENT?

17 A. THERE IS NO WRITTEN STATEMENT.

18 Q. IS THERE AN EXISTENCE ---

19 **THE COURT:** ALL RIGHT. NOW YOU CAN EXPLAIN.
20 LET HIM RESPOND.

21 **THE WITNESS:** IT COULD HAVE BEEN A VERBAL --
22 I MEAN, OBVIOUSLY IT'S GONNA BE A VERBAL STATEMENT THAT
23 YOU DID PROVIDE.

24 BY MR. THOMPSON:

25 Q. IN YOUR REPORT WHERE IS THE INFORMATION FROM THE

1 FIRST STATEMENT THAT YOU HAVE AS STATE'S EXHIBIT NUMBER
2 TWO?

3 A. WHERE IS THE -- SORRY. SAY THAT AGAIN? I DIDN'T
4 HEAR YOU.

5 Q. WHERE IN YOUR REPORT DO YOU HAVE THE INFORMATION
6 THAT IS LOCATED IN EXHIBIT NUMBER TWO OF THE STATE?

7 A. WOULD THAT BE IT HERE?

8 THE COURT: THAT'S STATE'S EXHIBIT TWO?

9 MR. THOMPSON: STATE'S EXHIBIT TWO.

10 THE COURT: STATE'S EXHIBIT TWO.

11 BY MR. THOMPSON:

12 Q. OR I HAND YOU EXHIBIT FOUR FROM DEFENSE OR
13 DEFENDANT.

14 A. AS FAR AS PUTTING IN HERE YOU SAID IT WAS 82
15 DEGREES. IS THAT WHAT YOU ARE TALKING ABOUT?

16 Q. YES.

17 A. I DIDN'T PUT IT IN HERE. IT'S IN HERE. THAT'S A
18 STATEMENT.

19 MR. THOMPSON: NO FURTHER QUESTIONS.

20 MS. HUEY: NO, SIR.

21 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

22 THANK YOU.

23 (WHEREUPON, THE WITNESS WAS EXCUSED.)

24 MR. THOMPSON: YOUR HONOR, CAN I OFFER MY
25 EXHIBITS INTO EVIDENCE?

1 **THE COURT:** I THINK WE'VE ALREADY ACCEPTED
2 THEM. LET'S JUST GO AHEAD AND DO -- I MEAN, YOU'VE GOT
3 MORE THAN DEFENSE FOUR? I HAVE -- AND LET'S BE SURE
4 THAT THE RECORD IS COMPLETE. I HAVE STATE'S EXHIBITS
5 ONE, TWO, THREE, AND DEFENSE EXHIBITS ONE, TWO, THREE,
6 FOUR, ALL ADMITTED WITHOUT OBJECTION.

7 IS THAT CORRECT, MADAM SOLICITOR?

8 **MS. HUEY:** DEFENSE EXHIBITS, YES, SIR, YOUR
9 HONOR.

10 **THE COURT:** IS THAT CORRECT, MR. THOMPSON?

11 **MR. THOMPSON:** THOSE FOUR ARE CORRECT.

12 **THE COURT:** AS FAR AS THE STATE'S EXHIBITS
13 ONE, TWO AND THREE; IS THAT CORRECT?

14 **MR. THOMPSON:** YES.

15 **THE COURT:** ALL RIGHT. ALL EXHIBITS ARE IN.
16 (STATE'S EXHIBITS #'S 1, 2, AND 3 WERE
17 RECEIVED IN EVIDENCE.)

18 **THE COURT:** ANYTHING ELSE.

19 **MS. HUEY:** AND, YOUR HONOR, I GUESS THE ORAL
20 STATEMENT WOULD NEED TO BE ADMITTED, AS WELL, EVEN
21 THOUGH IT IS NOT ACTUALLY WRITTEN.

22 **THE COURT:** NO, MOST ORAL STATEMENTS ARE NOT
23 WRITTEN.

24 **MR. THOMPSON:** YOUR HONOR, I WOULD LIKE TO
25 MAKE A MOTION.

1 **THE COURT:** ALL RIGHT. LET'S FIND OUT. IS
2 THAT THE STATE'S CASE ON THIS MATTER?

3 **MS. HUEY:** YOUR HONOR, THOSE WOULD BE THE
4 ONLY WITNESSES I WOULD PRESENT, YES, SIR.

5 **THE COURT:** ALL RIGHT. MR. THOMPSON, WHAT
6 IS YOUR MOTION?

7 **DEFENDANT'S MOTION FOR BRADY MATERIAL:**

8 **MR. THOMPSON:** I HAD PUT IN FOR A RULE 5
9 BRADY MATERIAL MOTION AND HAVE NOT RECEIVED IT. THE
10 ALLEGED INCONSISTENCIES IN THE CASE ARE ORAL REPORTS BY
11 OFFICER NORMANDIN AND OFFICER CARSON, AND I NEED TO BE
12 PROVIDED WITH THAT INFORMATION OF THE WRITTEN NOTES.

13 **THE COURT:** ALL RIGHT.

14 **MS. HUEY:** YOUR HONOR, I BELIEVE HE KEEPS
15 GETTING CONFUSED. THERE IS A BRIEF CASE SUMMARY WRITTEN
16 BY INVESTIGATOR CARSON WHICH HE HIMSELF MOVED INTO
17 EVIDENCE, AND IN THAT CASE SUMMARY IS CLEARLY NOTES THE
18 ORAL STATEMENT ABOUT Minor MESSING ON HIMSELF.

19 **THE COURT:** WELL, ARE THERE ANY WRITTEN
20 NOTES THAT ---

21 **MS. HUEY:** HE WAS GIVEN ALL THE NOTES AS
22 WELL, YOUR HONOR, FROM MS. CARSON, AND THEN SHE
23 SUMMARIZED IT IN A TYPED FASHION SO IT'S EASIER TO READ.

24 **THE COURT:** HOW ABOUT HIS STATEMENT, WAS HE
25 GIVEN HIS STATEMENT?

1 **MS. HUEY:** YOUR HONOR, I BELIEVE MS. CARSON
2 TESTIFIED THAT SHE TYPICALLY GIVES A COPY OF THE
3 STATEMENT, ESPECIALLY IF THE DEFENDANT ASKS FOR IT. HE
4 HAS SINCE BEEN GIVEN COPIES OF HIS STATEMENT.

5 **THE COURT:** HAS HE BEEN GIVEN COPIES SUBJECT
6 TO RULE 5?

7 **MS. HUEY:** YES, SIR, YOUR HONOR.

8 **THE COURT:** OKAY. NOW, THERE WILL BE
9 LIMITED, ONLY THOSE THINGS THAT THEY PROVIDED TO YOU.
10 NOW, ORAL STATEMENTS, AS I SAY, ORAL STATEMENTS AREN'T
11 WRITTEN, AND IF SOMEBODY BY WAY OF EXPLANATION OF
12 SOMETHING SAYS THAT THEY RECALL SOMETHING BEING SAID BUT
13 THAT WAS NOT WHAT WE SAY MEMORIALIZED, IN OTHER WORDS,
14 WRITTEN DOWN, THEN IT CAN'T BE USED.

15 **COURT'S RULING ON DEFENDANT'S MOTION:**

16 **THE COURT:** ALL RIGHT. SO YOUR MOTION --
17 FROM WHAT I UNDERSTAND AND WHAT THE SOLICITOR HAS
18 REPRESENTED TO THE COURT, IS THAT YOUR MOTION IS GRANTED
19 BECAUSE YOU HAVE BEEN PROVIDED ALL WRITTEN STATEMENTS
20 AND ALL EVIDENCES THAT HAVE BEEN -- NOTATIONS MADE OF
21 ORAL STATEMENTS, AND SO YOU HAVE GOTTEN EVERYTHING THAT
22 RULE 5 WOULD REQUIRE.

23 AND AT THAT POINT, THOUGH, AND THE STATE
24 NEEDS TO REMEMBER, THAT THAT MEANS THAT UNLESS THERE IS
25 SOMETHING THAT HAS NOT BEEN MEMORIALIZED -- OR THE ONLY

1 THING THAT CAN BE NEW, OR NOT NEW AS MUCH AS RECALL
2 SOMETHING THAT HAS NOT BEEN MEMORIALIZED, OTHERWISE IT
3 SHOULD BE IN YOUR RULE 5 RETURN. ALL RIGHT. ANYTHING
4 ELSE?

5 MR. THOMPSON: THE DEFENSE WOULD LIKE TO
6 CALL HOWARD THOMPSON TO THE STAND.

7 THE COURT: VERY GOOD. NOW, I THINK FOR
8 PURPOSES OF THIS TRIAL, LET ME SUGGEST SOME THINGS THAT
9 WILL APPLY. ALTHOUGH MR. WHITEN IS THE ADVISER, AND
10 THIS STATE DOES NOT PROVIDE FOR HIRED REPRESENTATION,
11 IT'S DISCRETIONARY BY THE COURT WHETHER OR NOT THE
12 DEFENDANT WILL HAVE REPRESENTATION.

13 AND IN THIS REGARD, ONE, I'M GOING TO PERMIT
14 MR. WHITEN, IF HE WANTS, TO CONDUCT THE EXAMINATION OF
15 THE DEFENDANT SO THAT ALL MATTERS MIGHT BE CONSIDERED --
16 WOULD BE IN THE FORM OF ADVICE, IN OTHER WORDS, WOULD
17 YOU WANT TO ADDRESS THIS MATTER OR SOMETHING OF THAT
18 NATURE, I'M GOING TO PERMIT YOUR PARTICIPATION IN THE
19 PRESENTATION OF THE DEFENDANT'S CASE ON THIS MATTER.

20 THE SECOND THING IS, CONCERNING THE NATURE
21 OF THE CHARGES IN THE INDICTMENT, I AM GOING TO REQUIRE
22 THAT SOMEBODY OTHER -- AND THAT, OF COURSE, WILL BE YOU,
23 MR. WHITEN -- TO CONDUCT CROSS-EXAMINATION OF THE
24 VICTIM.

25 I HAVE TRIED TO FIND AUTHORITY IN OUR STATE,

1 WITH NOT VERY MUCH SUCCESS; HOWEVER, THE CASE OF PARTIN
2 VERSUS COMMONWEALTH OF KENTUCKY, 168 S.W.3D, 23, A 2005
3 CASE OF THE SUPREME COURT OF KENTUCKY, PROVIDES THAT THE
4 TRIAL COURT'S DECISION TO REQUIRE STAND-BY COUNSEL TO
5 CROSS-EXAMINE VICTIMS OTHER THAN ALLOWING DEFENDANT, WHO
6 IS ACTING AS COUNSEL, TO CROSS-EXAMINE THEM DO NOT
7 VIOLATE THE DEFENDANT'S CONSTITUTIONAL RIGHTS TO
8 SELF-REPRESENTATION.

9 WITH THAT UNDERSTANDING THAT -- OF COURSE,
10 WE DO RECOGNIZE UNDER SECTION 16-3-1550 THAT THE
11 PROTECTION OF RIGHTS OF THE VICTIMS AS WITNESSES, AND IN
12 THIS CASE I THINK THAT WOULD BE APPLICABLE, AND THE WAY
13 TO ADDRESS IT WOULD BE FOR YOU, MR. WHITEN, TO CONDUCT
14 THE CROSS-EXAMINATION.

15 NOW, IN THIS REGARD, MR. THOMPSON, AS FAR AS
16 CROSS-EXAMINATION OF WITNESSES, YOU MAY PREPARE ANY
17 QUESTIONS THAT YOU WANT MR. WHITEN TO ASK. IT'S NOT
18 LIMITING YOU IN ANY WAY AS TO WHAT YOU WANT TO BE ASKED.

19 MR. THOMPSON: OKAY.

20 THE COURT: BUT I JUST FEEL THAT UNDER THE
21 CIRCUMSTANCES OF THE CASE, THAT THIS WOULD BE ONE WHERE
22 I WILL REQUIRE, IN FACT, MR. WHITEN TO DO THE ACTUAL
23 EXAMINATION. OF COURSE, HE'S NOT LIMITED TO WHAT YOU
24 WRITE. HE CAN AGAIN BY WAY OF ADVICE ASK THE RIGHT
25 QUESTIONS.

1 ALL RIGHT. NOW, WITH THOSE UNDERSTANDINGS,
2 LET'S TAKE A SHORT BREAK.

3 MS. HUEY: I WAS HOPING YOU WOULD SAY THAT.

4 (WHEREUPON, A RECESS WAS TAKEN.)

5 THE COURT: ALL RIGHT. LET'S COME TO ORDER.

6 BEFORE WE TOOK THE SHORT BREAK, I UNDERSTOOD
7 THAT THE DEFENDANT WANTED TO PRESENT EVIDENCE; IS THAT
8 RIGHT?

9 MR. THOMPSON: YOUR HONOR, I WOULD LIKE TO
10 OBJECT TO THE COURT'S RULING THAT I CANNOT QUESTION ALL
11 THE WITNESSES, INCLUDING THE ALLEGED VICTIM. I CHOSE TO
12 SERVE AS MY OWN ATTORNEY PRO SE, AND BELIEVE I HAVE THE
13 RIGHT TO CROSS-EXAMINE THE ALLEGED VICTIM.

14 THE COURT: WHAT DOES THE STATE SAY?

15 MS. HUEY: YOUR HONOR, WE, OF COURSE, AGREE
16 WITH THE COURT IN THAT THIS IS -- HE WILL STILL HAVE THE
17 RIGHT TO CONFRONT HIS WITNESSES. HE WILL BE ABLE TO
18 WRITE DOWN HIS QUESTIONS JUST AS YOU SUGGESTED AND
19 MR. WHITEN CAN ASK THOSE ON HIS BEHALF.

20 THIS IS AN EFFORT TO PROTECT THE VICTIM, WHO
21 IS NOW AGE EIGHT, YOUR HONOR, FROM HAVING TO NOT ONLY
22 SEE THIS DEFENDANT IN THE COURTROOM WHO ALLEGEDLY ABUSED
23 HIM, BUT ALSO HAVE HIM QUESTION HIM. I THINK THIS IS A
24 RIGHT OF THE VICTIM THAT WE HAVE TO CONSIDER.

25 THE COURT: ALL RIGHT. ANYTHING ELSE,

1 MR. THOMPSON?

2 MR. THOMPSON: JUDGE KING ORDERED FOR ME TO
3 REPRESENT MYSELF AND FOR CHARLES WHITEN TO BE A LEGAL
4 ADVISER, NOT SOMEONE QUESTIONING, THAT'S WHAT I TOOK THE
5 RIGHT TO CROSS-EXAMINE FOR.

6 THE COURT: ALL RIGHT.

7 MS. HUEY: AND, YOUR HONOR, IF I MAY ADD, I
8 KNOW THERE IS NOT A SOUTH CAROLINA CASE LAW ON POINT,
9 BUT I BELIEVE JUDGE NICHOLSON [SIC] HEARD A CASE FAIRLY
10 RECENTLY IN THIS CIRCUIT WHERE ONE OF OUR ASSISTANT
11 SOLICITORS REQUESTED THE SAME, AND JUDGE NICHOLSON DID
12 ALLOW THE DEFENDANT WHO WAS REPRESENTING HIMSELF TO
13 ACTUALLY HAVE HIS ADVISING ATTORNEY TO CROSS-EXAMINE THE
14 VICTIM. I BELIEVE THAT WAS STATE V. MICHAEL GIBERT.

15 THE COURT: THAT'S NOT GONE UP?

16 MS. HUEY: NO, SIR, IT'S NOT ON APPEAL OR
17 ANYTHING AS OF YET, BUT IT HAS BEEN DONE.

18 MR. THOMPSON: YOUR HONOR, ACCORDING TO
19 SECTION 17-23-60 (READING):

20 EVERY PERSON ACCUSED SHALL AT HIS
21 TRIAL BE ALLOWED TO BE HEARD BY COUNSEL,
22 MAY DEFEND HIMSELF, AND SHALL HAVE THE
23 RIGHT TO PRODUCE WITNESSES AND PROOF IN
24 HIS FAVOR AND TO MAKE THE WITNESSES
25 PRODUCED AGAINST HIM FACE TO FACE AS WELL

1 AS THE VICTIM.

2 THE COURT: ALL RIGHT. WELL, MR. THOMPSON,
3 OUR SUPREME COURT HAS NOTED IN *STATE VERSUS MURRELL*, 302
4 SOUTH CAROLINA 77, SUPREME COURT 1990, AS JUSTICE
5 O'CONNOR NOTED IN A CURRENT OPINION IN *CALLY VERSUS*
6 *IOWA*, 108 SUPREME COURT 2803 (READING):

7 THE ABSOLUTE RIGHT TO
8 FACE-TO-FACE CONFRONTATION MAY GIVE WAY
9 IN AN APPROPRIATE CASE OF COMPETING
10 INTERESTS, WHICH IS, OF COURSE, PART OF
11 THE SIXTH AMENDMENT.

12 AS I SAY -- AND I'M TRYING TO GET
13 THE CASE UP NOW -- IT WAS NOTED THAT
14 (READING):

15 THE SIXTH AMENDMENT OF THE UNITED
16 STATES CONSTITUTION TO DECLINE
17 REPRESENTATION BY COUNSEL AND
18 REPRESENT -- AND A DEFENDANT REPRESENT
19 HIMSELF AT TRIAL DOES NOT MEAN THAT HE
20 HAD A CONSTITUTIONAL RIGHT TO PERSONALLY
21 CROSS-EXAMINE THE VICTIM OF HIS CRIMES.

22 AS I SAY, THIS IS A RATHER NOVEL ISSUE THAT
23 I WAS PRESENTED WITH AT ABOUT 10:00 THIS MORNING, AND
24 I'M TRYING TO DO THE BEST THAT I CAN. BUT IF YOU WANT
25 FURTHER EXPLANATION, I'LL BE ABLE TO GIVE IT TO YOU IN A

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1 FEW MINUTES.

2 BUT WHY DON'T WE GO AHEAD ON THE HEARING ON
3 THE STATEMENTS, ADMISSIBILITY OF THE STATEMENTS AND THE
4 JACKSON V. DENNO HEARINGS AT THIS TIME?

5 SO I WILL NOTE YOUR MOTION. AND THAT WAS
6 ALSO WHY I GAVE YOU A LITTLE MORE NOTICE THAN I HAVE
7 BECAUSE YOU WILL HAVE BETWEEN NOW AND TOMORROW MORNING
8 TO TELL ME WHAT YOU WANT TO DO WITH IT AS FAR AS YOUR
9 ABILITY TO AND RIGHT TO CROSS-EXAMINE ALL WITNESSES TO
10 INCLUDE THE VICTIM, THE MINOR ALLEGED VICTIM. SO I'LL
11 HEAR YOU ON THE ADMISSIBILITY OF THE STATEMENTS AT THIS
12 TIME.

13 (THE DEFENDANT CONFERRED WITH HIS STAND-BY
14 COUNSEL.)

15 (WHEREUPON, THE WITNESS WAS SWORN BY THE
16 CLERK.)

17 THE CLERK: PLEASE STATE YOUR FULL NAME AND
18 SPELL YOUR LAST NAME FOR THE RECORD.

19 THE WITNESS: HOWARD THOMPSON, III,
20 T-H-O-M-P-S-O-N.

21 THE COURT: YOU MAY PROCEED.
22 WHEREUPON,

23 HOWARD THOMPSON, III,
24 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
25 FOLLOWS:

1 DIRECT EXAMINATION BY MR. WHITEN:

2 Q. HOWARD, COULD YOU PLEASE STATE YOUR NAME FOR THE
3 RECORD?

4 A. MY NAME IS HOWARD THOMPSON, III.

5 Q. AND ARE YOU REPRESENTING YOURSELF IN THIS CASE?

6 A. THAT IS CORRECT.

7 Q. ARE THERE ISSUES THAT, SURROUNDING YOUR ALLEGED
8 STATEMENT, THAT YOU WANT THE COURT TO HEAR FROM YOUR OWN
9 MOUTH?

10 A. YES, THERE IS.

11 Q. AND YOU HAVE BEEN SWORN TO TELL THE TRUTH UNDER
12 OATH?

13 A. CORRECT.

14 Q. CAN YOU TELL THE COURT WHEN THE FIRST TIME --
15 WHEN WAS THE FIRST TIME THAT YOU WERE CONTACTED BY THE
16 DETECTIVE CARSON OR NORMANDIN?

17 A. CONTACTED AS IN CALLING, OR PHYSICAL, IN PERSON?

18 Q. WELL, THE FIRST NOTICE YOU GOT FROM THEM.

19 A. WELL, AT 12:45.

20 Q. OKAY. CAN YOU, IN YOUR OWN WORDS, TELL THE COURT
21 THE WAY THAT -- THE ENTIRE DAY -- HOW THE ENTIRE DAY
22 PROGRESSED WITH REGARD TO CARSON AND NORMANDIN?

23 A. AT 12:45 WHEN I RECEIVED A CALL FROM SERGEANT --
24 WELL, AT THE TIME HE WAS DETECTIVE NORMANDIN, HE ADVISED
25 ME THAT THERE WAS A COMPLAINT FILED BY THE VICTIM'S

1 MOTHER AND THAT HE NEEDED INFORMATION FROM ME, AND AT
2 THAT GIVEN TIME HE ALSO ASKED IF I COULD PROVIDE HIM
3 WITH INFORMATION AS TO HOW WOULD HE GET TO MY RESIDENCE.

4 Q. LET ME STOP YOU JUST A MINUTE. IF YOU NEED TO
5 STOP AND REFER TO THE EXHIBITS THAT HAVE BEEN ADMITTED
6 INTO EVIDENCE, PLEASE DO SO AND SPEAK TO THEM AS YOU
7 ANSWER THESE QUESTIONS.

8 A. OKAY. AFTER NORMANDIN AND I HUNG UP ON THE
9 TELEPHONE, I DON'T KNOW HOW MUCH TIME FRAME IT WAS
10 BETWEEN THE TIME HE OR WE GOT OFF THE TELEPHONE OR THE
11 TIME THAT HE MADE IT TO MY RESIDENCE. AND THAT WHEN HE
12 DID MAKE IT TO MY RESIDENCE, I'M NOT SURE IF IT WAS
13 AROUND 2:45. IT WAS ACTUALLY SOMETIME AROUND 1:00. AND
14 TO MY KNOWLEDGE, WHEN THEY CAME TO MY RESIDENCE, I HAD
15 CONTACTED MY MOTHER THAT THEY WAS ON THEIR WAY THERE AND
16 THAT THEY HAD ARRIVED, AND SHE SAID SHE WAS TWO MINUTES
17 OUT FROM THE RESIDENCE, SHE WAS NOT AT THE RESIDENCE AT
18 THE TIME. AND I TOLD BOTH NIKKI CARSON AND PETE
19 NORMANDIN THAT I WOULD REMAIN SILENT UNTIL MY MOTHER
20 BECAME PRESENT.

21 AND AT THAT GIVEN TIME WHEN MY MOTHER ARRIVED,
22 WHEN SHE WAS STILL OUTSIDE, CARSON STATED TO ME THAT SHE
23 NEEDED ME TO SIGN MY RIGHTS.

24 Q. OKAY. YOU TOLD THEM THAT YOU WANTED TO REMAIN
25 SILENT UNTIL YOU SPOKE WITH YOUR MOTHER?

1 A. YES.

2 Q. OKAY. GO AHEAD. AND CARSON TOLD YOUR MOTHER DID
3 ARRIVE BUT YOU DID NOT -- YOU WERE NOT ABLE TO SPEAK
4 WITH HER BEFORE YOU MADE THIS STATEMENT?

5 A. BEFORE I WAIVED MY RIGHTS, I WAS NOT ALLOWED TO,
6 OR I WASN'T GIVEN THE CHANCE TO SPEAK WITH MY MOTHER
7 BECAUSE THEY REQUESTED FOR ME TO SIGN BECAUSE SHE WAS
8 PRESENT, BUT SHE WAS NOT IN EAR -- SHE WAS IN EYESIGHT.

9 Q. OKAY. SO DID YOU -- THIS STATEMENT THAT YOU
10 MADE, IT WAS THE FIRST STATEMENT THAT THEY PRESENTED, I
11 THINK IT'S EXHIBIT ONE -- I MEAN STATE'S EXHIBIT ONE; IS
12 THAT RIGHT? THE FIRST STATEMENT.

13 A. WHEN -- IT IS ACCURATE, I GAVE IT, BUT ---

14 Q. IS THAT THE RIGHT ONE, EXHIBIT ONE, THE FIRST
15 STATEMENT?

16 A. WELL, THEY GOT IT DOWN AT STATE'S EXHIBIT TWO.

17 Q. OKAY, EXHIBIT TWO. IN THAT STATEMENT -- DID YOU
18 GIVE THAT STATEMENT?

19 A. CORRECT.

20 Q. IN THAT STATEMENT DID YOU GIVE INFORMATION
21 REGARDING CONTACT, ANY KIND OF CONTACT, WITH Minor 2

22 A. NO, SIR, I DID NOT.

23 Q. WHAT DOES THE STATEMENT SAY, EXACTLY?

24 A. DO YOU WANT ME TO READ IT?

25 Q. YES, READ IT.

1 A. IT SAYS: (READING):

2 ON MAY 18TH Minor 2 GOT HERE
3 AT MY HOME AT 4:00 P.M. HE PLAYED MY
4 NINTENDO GAMECUBE FOR ABOUT TWO HOURS.
5 AT AROUND 6:00 P.M. Minor COMPLAINED ABOUT
6 IT BEING HOT, AND I -- AND IT WAS 82
7 DEGREES IN THE HOME. BEFORE I WENT TO
8 THE BATHROOM, I TURNED DOWN THE
9 AIR-CONDITIONING BELOW 60 DEGREES SO IT
10 COULD GET A LITTLE COOLER AND I WALKED
11 PAST THE BEDROOM AND Minor ASKED IF HE
12 COULD TAKE HIS SHIRT OFF.

13 I HESITATED TO SAY YEAH. I
14 AGREED TO ONLY HIS SHIRT, AND WENT TO THE
15 BATHROOM FOR ABOUT 30 TO 35 MINUTES.

16 I CAME OUT AROUND 6:35 TO 6:40
17 AND Minor WAS COMPLETELY UNDRESSED. I
18 ASKED HIM TO PUT HIS CLOTHING BACK ON AND
19 HE REFUSED. I WAITED FOR SARA TO ARRIVE,
20 AND WHEN SHE DID, I TOLD Minor THAT SHE
21 WAS HERE, HE HID BEHIND THE BED NEAR THE
22 WALL.

23 Q. AT THAT POINT YOU HAD TOLD THEM THAT Minor WAS
24 UNDRESSED?

25 A. CORRECT.

1 Q. BUT YOU TOLD THEM THAT HE WAS UNDRESSED BECAUSE
2 HE WAS HOT AND HE WANTED TO TAKE HIS SHIRT OFF?

3 A. CORRECT.

4 Q. SO YOU KNEW AT THAT POINT THAT HE WAS UNDRESSED
5 WHEN MS. HIOTT ARRIVED?

6 A. YES.

7 Q. OKAY. NOW, AFTER THAT STATEMENT, THAT'S THE
8 STATEMENT YOU GAVE HIM AFTER THEY ALLEGEDLY READ YOU
9 THOSE MIRANDA RIGHTS, CORRECT, THE FIRST STATEMENT?

10 A. I KNOW FOR SURE THAT THIS IS NOT MY FIRST
11 STATEMENT, WRITTEN STATEMENT.

12 Q. WHAT WAS THE FIRST STATEMENT YOU GAVE?

13 A. I STATED TO THEM THAT I HAD TOUCHED THE CHILD BUT
14 IT WAS NOT IN A SEXUAL CONTACT, IT WAS CLEANING HIM UP.
15 AND IT WAS A WRITTEN STATEMENT.

16 Q. OKAY. YOU GAVE THAT WRITTEN STATEMENT?

17 A. I GAVE IT STRAIGHT TO NIKKI CARSON.

18 Q. BUT THAT STATEMENT DOES NOT APPEAR IN THIS
19 COURTROOM?

20 A. THAT STATEMENT HAS NOT APPEARED.

21 Q. AND YOU HAVE NOT BEEN PRESENTED A COPY OF THAT
22 STATEMENT?

23 A. NO, I HAVE NOT UNTIL THEY TURNED -- THE STATE
24 TURNED IT OVER TO ME.

25 Q. OKAY. SO THERE IS A MISSING STATEMENT, THE VERY

1 FIRST ONE YOU GAVE?

2 A. YES. I KNOW I GAVE IT. I KNOW IT'S THERE. I
3 KNOW IT'S SOMEWHERE. IF IT'S NOT, THEN I DON'T KNOW
4 WHAT THEY DID WITH IT.

5 Q. THEY PUT THAT INFORMATION IN THEIR INCIDENT
6 REPORT. THEY TOLD ABOUT THAT WRITTEN STATEMENT AND YOU
7 TESTIFIED AND YOU WERE CROSS-EXAMINED ABOUT THAT?

8 A. THEIR SUPPLEMENTAL, YES.

9 Q. IN THEIR SUPPLEMENTAL THEY SAID THAT YOU GAVE A
10 WRITTEN REPORT -- OR A WRITTEN STATEMENT ---

11 A. YES.

12 Q. --- ABOUT THE MESSING HIS PANTS?

13 A. YES.

14 Q. AND THAT WAS THE FIRST STATEMENT?

15 A. THAT WAS MY FIRST STATEMENT.

16 Q. OKAY. NOW, BETWEEN -- AFTER THE FIRST STATEMENT
17 ABOUT MESSING HIS PANTS AND THE SECOND STATEMENT ABOUT
18 WHEN HE GOT HOT, DID THEY PRESENT SOME EVIDENCE OR
19 SOMETHING TO YOU THAT -- OR DID YOU PRESENT SOMETHING TO
20 THEM IN THE FORM OF PICTURES?

21 A. WELL, AT THE TIME, AFTER I GAVE THIS STATEMENT
22 THAT THEY HAVE AS, THE STATE HAS IT IN EXHIBIT TWO, THEY
23 REQUESTED TO SEARCH MY RESIDENCE.

24 Q. OKAY. BUT LET ME ASK YOU THIS: BEFORE THEY
25 ASKED TO SEARCH YOUR RESIDENCE, IN THE FIRST STATEMENT

1 THAT THEY QUESTIONED YOU ABOUT OR THE SECOND STATEMENT
2 THEY QUESTIONED YOU ABOUT, DID THEY EVER TELL YOU OR
3 INFORM YOU THAT Minor HAD TOLD THEM THAT YOU SHOWED HIM
4 PHOTOGRAPHS? DID THEY EVER ALLEGE THAT Minor TOLD THEM
5 SOMETHING ABOUT THESE PHOTOGRAPHS BEFORE THEY QUESTIONED
6 YOU THOSE TWO TIMES? DID THEY TELL YOU Minor HAD SAID
7 ANYTHING ABOUT ANY PHOTOGRAPHS BEFORE?

8 A. AFTER THE SEARCH.

9 Q. AFTER THE SEARCH?

10 A. AFTER THE SEARCH.

11 Q. AFTER THEY PROVIDED THEM TO YOU, YOU GAVE THEM
12 PICTURES?

13 A. YES. THEY REQUESTED TO SEARCH THE RESIDENCE, I
14 GAVE THEM PERMISSION.

15 Q. BUT BEFORE THAT TIME THEY DID NOT TELL YOU
16 ANYTHING ABOUT ANY EVIDENCE THEY HAD THAT Minor TOLD THEM
17 ABOUT THESE PHOTOGRAPHS?

18 A. THAT IS CORRECT.

19 Q. OKAY. AND AFTER -- ONLY AFTER YOU GAVE HIM THE
20 PHOTOGRAPHS DID THEY TELL YOU, OH, YEAH, Minor TOLD US
21 ABOUT THIS ONE PHOTOGRAPH OR THE PHOTOGRAPHS. IS THAT
22 THE WAY IT WENT DOWN?

23 A. THEY TOLD ME THAT AFTER I HAD GIVEN THEM THE
24 PHOTOS, THEY STATED THAT I WAS LYING AND THAT THEY HAD
25 ALREADY TALKED TO THE VICTIM AND GOTTEN A DIFFERENT

1 STORY.

2 Q. WERE YOU SHOCKED BY THAT?

3 A. WELL, YEAH, IT ACTUALLY SHOCKED ME BECAUSE, I
4 MEAN, I GAVE IT TO THEM BECAUSE THEY REQUESTED IT, AND
5 THEN WHENEVER I ANSWERED THEIR QUESTION, THEY CALLED ME
6 A LIAR, OR NIKKI CARSON CALLED ME A LIAR OUT OF THE
7 PRESENCE OF HER PARTNER.

8 Q. SO THEY ACTUALLY -- CARSON ACTUALLY WROTE UP A
9 STATEMENT, HAD YOU SIGN THE FIRST STATEMENT, THE FIRST
10 TWO STATEMENTS, HAD YOU SIGN THEM, AND THEN INFORMED YOU
11 THAT THEY KNEW MORE THAN THEY WERE TELLING YOU?

12 A. YES.

13 Q. AND IN THE FIRST STATEMENT DID THEY EVEN READ YOU
14 YOUR RIGHTS?

15 A. NO.

16 Q. ALL RIGHT. DID YOU MAKE THAT STATEMENT THAT THEY
17 SAY THAT YOU MADE, STATE'S EXHIBIT NUMBER THREE?

18 A. IN THE BODY OF THE STATEMENT?

19 Q. IN THE ACTUAL STATEMENT.

20 A. THE ACTUAL STATEMENT IS NOT MINE.

21 Q. YOU DID NOT MAKE THAT STATEMENT?

22 A. I KNOW HOW TO SPELL AND WRITE FOR MYSELF. I
23 DON'T NEED NO ONE TO WRITE FOR ME.

24 Q. OKAY. YOU ACTUALLY WROTE THE FIRST STATEMENT?

25 A. I WROTE THE FIRST TWO STATEMENTS.

1 Q. YOU WROTE THE FIRST TWO STATEMENTS?

2 A. MY ONLY STATEMENTS.

3 Q. AND THE LAST ONE THERE, THOUGH, IS NOT YOUR
4 HANDWRITING?

5 A. NO.

6 Q. BUT THE FIRST ONE THAT ACTUALLY IS IN EVIDENCE IS
7 YOUR HANDWRITING, RIGHT?

8 A. YES.

9 Q. AND THE ONE THAT'S MISSING WAS YOUR HANDWRITING?

10 A. CORRECT.

11 Q. BUT THE ONE THAT THEY SAY THAT THEY WANT TO
12 PRESENT AS A, QUOTE, CONFESSION, NUMBER THREE, EXHIBIT
13 NUMBER THREE, YOU DIDN'T WRITE THAT ONE?

14 A. NO.

15 Q. AND CARSON OR NORMANDIN DIDN'T ASK YOU TO WRITE
16 THAT ONE?

17 A. NO.

18 Q. WHEN IS THE FIRST TIME YOU SAW THAT STATEMENT,
19 NUMBER THREE?

20 A. WHEN I RECEIVED MY MOTION OF DISCOVERY.

21 Q. AFTER YOU FILED YOUR MOTION FOR DISCOVERY?

22 A. CORRECT. I FILED A MOTION OF DISCOVERY MYSELF.

23 Q. AND THEY DID NOT GIVE YOU A COPY OF THAT ALLEGED
24 CONFESSION UNTIL AFTER YOU FILED YOUR DISCOVERY?

25 A. CORRECT.

1 Q. DID YOU EVEN KNOW THAT IT WAS IN EXISTENCE UNTIL
2 THAT POINT?

3 A. NO. NOW, THE FIRST STATEMENT, OR THE EXHIBIT TWO
4 OF STATE'S, I HAVE A COPY OF; I HAVE A COPY OF JUST
5 ABOUT EVERYTHING I ACKNOWLEDGED I SIGNED.

6 Q. OKAY. CAN YOU -- WOULD YOU PLEASE EXPLAIN THESE
7 INITIALS THAT ARE OUT FROM THE SIDE OF THE STATEMENT?

8 A. WELL, I ACKNOWLEDGE THAT THESE ARE MY INITIALS,
9 AND I ALSO ACKNOWLEDGE THE SIGNATURE AT THE BOTTOM. BUT
10 I CANNOT TELL YOU WHY THEY'RE ON THERE -- BUT DUE TO THE
11 FACT THAT SHE ASKED FOR ME TO INITIAL AND SIGN TO MAKE
12 SURE THAT SHE DID HER JOB AS A LAW ENFORCEMENT OFFICER,
13 I PROVIDED HER WITH THAT.

14 Q. WAS THAT IN THE CAR?

15 A. YEAH, THAT WAS IN HER PATROL VEHICLE.

16 Q. SO ACTUALLY, THOSE TWO STATEMENTS THAT HAVE BEEN
17 ADMITTED AS STATE'S EXHIBITS TWO AND THREE ARE ACTUALLY
18 THE SECOND AND THIRD WRITTEN STATEMENTS?

19 A. YES.

20 Q. DID THEY QUESTION YOU FIRST ABOUT THOSE
21 PHOTOGRAPHS BEFORE YOU GAVE -- BEFORE YOU ALLEGEDLY GAVE
22 THAT LAST STATEMENT IN THE CAR?

23 A. YES.

24 Q. DID THEY QUESTION YOU FIRST ABOUT THOSE
25 PHOTOGRAPHS?

1 A. THEY -- IT WASN'T THEY. NIKKI CARSON QUESTIONED
2 ME. NORMANDIN WAS STILL CONDUCTING THE SEARCH.

3 Q. AND IN THAT THIRD STATEMENT THAT THEY ALLEGEDLY
4 SAY YOU MADE, IS THERE ANY MENTION ABOUT THE PHOTOGRAPHS
5 IN THERE? YOU CAN LOOK AT IT.

6 A. EXHIBIT NUMBER THREE?

7 Q. YES.

8 A. NO, SIR, IT'S NOT.

9 Q. THERE'S NO MENTION OF THE PHOTOGRAPHS AT ALL?

10 A. NO.

11 Q. CAN I SEE IT A MINUTE? JUST LET ME LOOK AT IT
12 REAL QUICK.

13 A. (HANDING.)

14 Q. (HANDING). SO THEY LEFT OUT THEIR VERY BASIS FOR
15 QUESTIONING YOU ON THAT STATEMENT, THEY LEFT IT OUT OF
16 THE STATEMENT; IS THAT CORRECT?

17 A. YES.

18 Q. AND THAT WAS ALLEGEDLY SUPPOSEDLY IN THE MIDDLE
19 OF THEIR QUESTIONING OF YOU THAT DAY?

20 A. YES.

21 Q. SO THEY QUESTIONED YOU FIRST UNTIL THEY ALLEGEDLY
22 OBTAINED INCULPATORY INFORMATION AND THEN PUT THAT IN
23 THE STATEMENT THAT THEY ALLEGEDLY SAY YOU MADE?

24 A. THAT IS CORRECT.

25 Q. EXCEPT THAT THEY DIDN'T PUT THEIR BASIS FOR IT?

1 A. CORRECT.

2 Q. AND AGAIN, DID YOU MAKE THAT STATEMENT, THAT
3 THIRD EXHIBIT THREE?

4 A. NO.

5 Q. OKAY.

6 A. ONE, I KNOW HOW TO SPELL OCCASIONS. I DON'T
7 MISSPELL THE SAME WORD TWICE.

8 Q. WHEN YOU -- YOU SAID THAT A COUPLE TIMES. THIS
9 STATEMENT, EXHIBIT THREE, IS A HANDWRITTEN STATEMENT
10 THAT THEY SAY YOU MADE?

11 A. THAT'S WHAT THEY ARE SAYING.

12 Q. BUT IT'S GOT MISSPELLED WORDS IN THERE.
13 OCCASIONS IS ONE OF THEM. ANY OTHER MISSPELLED WORDS?
14 YOU DON'T MISSPELL WORDS, DO YOU?

15 A. NO, BECAUSE FOR ONE I TAKE MY TIME.

16 Q. OKAY. DO YOU SEE ANY OTHER MISSPELLED WORDS IN
17 THERE?

18 A. WELL, "OCCASIONS" IS SPELLED AT THE TOP AND AT
19 THE BOTTOM, BOTH ARE INCORRECT, AND BOTH ARE DIFFERENT
20 FROM EACH OTHER.

21 Q. IS THAT YOUR HANDWRITING?

22 A. NO.

23 Q. DID YOU INSTRUCT DETECTIVE CARSON TO WRITE THAT
24 FOR YOU?

25 A. AT NO TIME.

1 Q. AT NO TIME?

2 A. AT NO GIVEN TIME. I DON'T, I DON'T NEED NO ONE
3 TO WRITE ANYTHING FOR ME.

4 Q. OKAY.

5 A. IF I DON'T WRITE IT, IT DON'T GET WROTE.

6 Q. ALL RIGHT. ARE THERE ANY OTHER -- SINCE I'M YOUR
7 ASSISTANT, I'M NOT YOUR LAWYER -- IS THERE ANYTHING ELSE
8 YOU WANT TO TELL THE COURT ABOUT THOSE THREE STATEMENTS?

9 A. WELL, BESIDES THE FACT OF ONE OF THEM NOT BEING
10 IN THIS CASE AND NOT BEEN PROVIDED WITH ONE OF THEM
11 UNTIL THE MOTION OF DISCOVERY, I BELIEVE THAT WOULD BE
12 IT.

13 MR. WHITEN: OKAY. YOU'RE GONNA HAVE TO
14 ANSWER ANY QUESTIONS MS. HUEY HAS, OKAY?

15 CROSS-EXAMINATION BY MS. HUEY:

16 Q. MR. THOMPSON, SO YOU ADMIT ON THE STAND THAT AT
17 12:45 YOU DID RECEIVE A CALL FROM PETE NORMANDIN?

18 A. I ACKNOWLEDGE THAT I RECEIVED A CALL FROM HIM.

19 Q. EXCEPT YOU WERE GOING ROUND AND ROUND WITH HIM
20 ABOUT THAT, AND NOW YOU ARE SAYING THAT YOU DID RECEIVE
21 A CALL FROM HIM. IS THAT TRUE?

22 A. FOR HIM TO SAY THAT HE MADE CONTACT WITH ME AT
23 12:45 I UNDERSTAND CONTACT.

24 Q. DO YOU THINK OF CONTACT BEING TELEPHONE?

25 A. COME AGAIN?

1 Q. WHAT IS CONTACT?

2 A. CONTACT?

3 Q. UH-HUH.

4 A. BY PHONE.

5 Q. OKAY, THANK YOU.

6 NOW, YOU YOURSELF SAID YOU WERE UNAWARE OF THE
7 TIME FRAME BEFORE PETE NORMANDIN HAD GOTTEN TO YOUR
8 RESIDENCE; IS THAT RIGHT?

9 A. SAY THAT AGAIN?

10 Q. YOU SAID THAT YOU WERE UNAWARE THE EXACT TIME
11 FRAME BEFORE PETE NORMANDIN GOT TO YOUR RESIDENCE.

12 A. YES.

13 Q. YOU ARE UNAWARE?

14 A. I AM NOT SURE OF THE -- I KNOW HE DIDN'T ARRIVE
15 AT NO 2:45. IT DON'T TAKE NO TWO HOURS TO GET FROM THE
16 SHERIFF'S DEPARTMENT OR WHERE HE WAS LOCATED ---

17 Q. DID HE ARRIVE AT -- EXCUSE ME. DID HE ARRIVE AT
18 12:45?

19 A. NO, HE DID NOT ARRIVE AT 12:45.

20 Q. SO HE ARRIVED SOMEWHERE BETWEEN 12:45 AND 2:45.

21 A. YES.

22 Q. IS THAT FAIR?

23 A. YES.

24 Q. OKAY. NOW, YOU YOURSELF CAN'T REMEMBER THE EXACT
25 TIME HE ARRIVED, THOUGH?

1 A. NO.

2 Q. OKAY. AND THIS IS A MAJOR INCIDENT IN YOUR LIFE,
3 IS IT NOT?

4 A. WHAT, THIS CASE?

5 Q. UH-HUH. IT'S A BIG THING THAT'S HAPPENED TO YOU?

6 A. YEAH.

7 Q. OKAY. AND DO YOU THINK INVESTIGATOR NORMANDIN
8 HAS INVESTIGATED LOTS OF CASES IN THE PAST TWO YEARS
9 LET'S SAY?

10 A. IN THE PAST TWO YEARS?

11 Q. UH-HUH. OR HOW ABOUT JUST MORE THAN ONE?

12 A. I'M SURE HE HAS.

13 Q. OKAY.

14 A. HE'S A LAW ENFORCEMENT OFFICER.

15 Q. OKAY. NOW, YOU TALKED ABOUT HOW YOU WANTED TO
16 REMAIN SILENT UNTIL YOUR MOTHER GOT THERE, RIGHT?

17 A. UH-HUH.

18 Q. NOW, HOW OLD WERE YOU WHEN THIS OCCURRED?

19 A. 19.

20 Q. 19. 19 YEARS OLD?

21 A. I HAD JUST TURNED 19 ON MAY 12TH.

22 Q. OKAY. AND YOU WERE JUST ABOUT TO GRADUATE FROM
23 HIGH SCHOOL, RIGHT?

24 A. THE DAY BEFORE -- OR DAY AFTER THE INCIDENT.

25 Q. OKAY. AND YOU WERE SET TO GRADUATE?

1 A. SATURDAY AT 3:00.

2 Q. OKAY. SO YOU HAD A HIGH SCHOOL DIPLOMA IN YOUR
3 HAND, ABOUT?

4 A. I DIDN'T GET IT IN MY HAND BECAUSE I GOT
5 ARRESTED.

6 Q. OKAY. WHY DON'T YOU LOOK AT STATE'S EXHIBIT ONE.

7 A. I DON'T THINK I HAVE THAT.

8 Q. WELL, YOU SHOULD HAVE IT. I'M SORRY, IT'S RIGHT
9 HERE. THIS IS STATE'S EXHIBIT ONE (HANDING).

10 A. OKAY.

11 Q. NOW, WOULD YOU READ THE TOP THERE, AND WHAT IS
12 THE TIME ON THAT FORM?

13 A. IT SAYS 2:45 P.M.

14 Q. OKAY. SO AT 2:45 P.M. YOUR RIGHTS WERE READ TO
15 YOU. IS THAT YOUR SIGNATURE ON THAT FORM?

16 A. YES.

17 Q. AND DOES THAT INDICATE THAT YOUR RIGHTS WERE READ
18 TO YOU?

19 A. ACCORDING TO HER.

20 Q. DID YOU SIGN THE FORM?

21 A. LET ME ADVISE YOU OF SOMETHING.

22 Q. NO. ANSWER THE QUESTION FIRST. DID YOU SIGN THE
23 FORM?

24 THE COURT: ALL RIGHT. AS I SAY, NOW, THE
25 RULES GO BOTH WAYS, MR. THOMPSON. JUST AS I REQUIRED

1 THE OTHER WITNESSES TO ANSWER YOUR QUESTION AND THEN
2 THEY CAN EXPLAIN, YOU DO THAT AS WELL.

3 THE WITNESS: OKAY.

4 THE COURT: DO YOU WANT HER TO RESTATE THE
5 QUESTION.

6 THE WITNESS: YES.

7 BY MS. HUEY:

8 Q. DID YOU SIGN THE FORM, STATE'S EXHIBIT ONE?

9 A. YES.

10 THE COURT: ALL RIGHT. NOW YOU MAY EXPLAIN
11 YOUR ANSWER.

12 A. WHEN SIGNING IT, CARSON HAD IT IN HER HAND. SHE
13 DID NOT GIVE IT TO ME. SHE STILL HAD IT AT A LEVEL TO
14 WHERE I COULD ONLY REACH UP THERE AND SIGN. I'M SITTING
15 DOWN IN POSITION IN A CHAIR IN THE LIVING ROOM. SHE'S
16 STANDING IN FRONT OF ME. I DON'T HAVE THIS NOTE, BLACK
17 NOTEBOOK THAT SHE HAS IN MY HAND AT THIS TIME I'M
18 SIGNING THIS.

19 Q. SO YOU SIGNED SOMETHING WITHOUT READING IT?

20 A. CORRECT.

21 Q. DID SHE READ THOSE RIGHTS ALOUD TO YOU?

22 A. YES.

23 Q. OKAY. SHE SAID THEM ALOUD TO YOU ---

24 A. OUT OF THE PRESENCE OF MY MOTHER.

25 Q. --- BUT YOU DIDN'T READ THEM YOURSELF?

1 A. THAT IS CORRECT.

2 Q. NOW, YOUR FIRST STATEMENT -- WHAT I CALL THE
3 FIRST STATEMENT, I KNOW YOU DISAGREE -- STATE'S EXHIBIT
4 TWO, WHICH I BELIEVE YOU SHOULD HAVE IN FRONT OF YOU.

5 A. I HAVE IT.

6 Q. OKAY. WHAT TIME WAS THAT STARTED?

7 A. IT SAYS 3:40 P.M.

8 Q. 3:40 P.M. NOW, WAS YOUR MOTHER ALREADY HOME AT
9 THAT POINT?

10 A. ABSOLUTELY.

11 Q. OKAY. NOW, BACKING UP TO THIS ALLEGED FIRST
12 STATEMENT YOU GAVE ---

13 A. OKAY.

14 Q. --- ABOUT Minor MESSING ON HIMSELF.

15 A. OKAY.

16 Q. TELL ME HOW THIS CAME ABOUT. WHERE DID YOU GIVE
17 THIS WRITTEN STATEMENT? DID YOU WRITE IT OUT
18 YOURSELF ---

19 A. IT WAS WRITTEN ---

20 Q. --- AND SIGN IT?

21 A. --- IT WAS SIGNED BY ME.

22 Q. OKAY. AND WHO DID YOU GIVE IT TO?

23 A. I GAVE IT TO NIKKI CARSON.

24 Q. OKAY.

25 A. SHE DID WRITE THE INFORMATION AT THE TOP AND THE

1 TIME AT THE BOTTOM. THAT'S ALL SHE DID ON THE STATEMENT
2 AND HANDED IT TO ME.

3 Q. AND YOU FILLED IT OUT?

4 A. I FILLED IT OUT.

5 Q. TALKING ABOUT Minor MESSING ON HIMSELF?

6 A. THAT IS CORRECT.

7 Q. BUT WE DON'T HAVE THAT STATEMENT HERE TODAY?

8 A. APPARENTLY.

9 Q. BUT WE DO HAVE A STATEMENT THAT DOESN'T SEEM TO
10 HELP THE STATE ABOUT Minor BEING HOT, RIGHT, WHAT YOU
11 CALLED THE SECOND STATEMENT?

12 A. CORRECT.

13 Q. AND THAT DOESN'T HELP THE STATE, RIGHT? THAT'S
14 NOT A CONFESSION, RIGHT?

15 A. NO.

16 Q. OKAY. SO WE DO HAVE THAT STATEMENT. AND PLUS WE
17 HAVE NIKKI CARSON SAYING ORALLY THAT YOU TOLD HER ABOUT
18 Minor MESSING HIMSELF. IS THAT TRUE? ACCORDING TO THE
19 BRIEF CASE SUMMARY.

20 A. DURING THE WHOLE TIME THAT THEY WAS AT MY
21 RESIDENCE, ALL THEY DID WAS ASK ME DID I TOUCH HIM, DID
22 I TOUCH HIM, DID I TOUCH HIM. I TOLD HIM, THE BOTH OF
23 THEM, THAT YES, I DID TOUCH HIM, BUT IT WAS NOT IN A
24 SEXUAL WAY.

25 Q. OKAY. BUT YOU GAVE INCONSISTENT STATEMENTS THEN

1 BECAUSE FIRST YOU SAID HE MESSED HIMSELF AND THAT'S WHY
2 YOU HAD TO TOUCH HIM AND THAT'S WHY HE WAS NAKED?

3 A. CORRECT.

4 Q. OKAY. AND THEN SECONDLY HE WAS NAKED BECAUSE HE
5 WAS HOT.

6 A. CORRECT. BUT LET ME EXPLAIN.

7 Q. OKAY.

8 A. THE FIRST STATEMENT THEY ASKED IF I TOUCHED HIM.
9 AFTER THAT STATEMENT WAS GIVEN, THEY ASKED, WELL, WELL,
10 WHAT HAPPENED ON THE DAY OF THE INCIDENT? WELL, THAT'S
11 HOW THIS STATEMENT CAME ABOUT.

12 Q. OKAY. SO YOU ARE SAYING THEY ARE TWO SEPARATE
13 INCIDENTS?

14 A. YES. ONE HAPPENED ON MAY 17TH, WHICH I PUT A
15 DATE ON IT. WHEN I WROTE IT, I PUT ON MAY 17TH; AND
16 THIS ONE, THAT IS EXHIBIT TWO, IS DATED MAY 18TH, ON MAY
17 18TH.

18 Q. SO Minor WAS -- YOU ADMITTEDLY SAY Minor WAS NAKED
19 IN FRONT OF YOU ON MORE THAN ONE OCCASION?

20 A. WHAT YOU WANT ME TO DO? SEND HIM OUT THE DOOR
21 SMELLING?

22 THE COURT: JUST ANSWER THE QUESTION AND
23 THEN HE CAN EXPLAIN.

24 THE WITNESS: THAT IS CORRECT.

25 BY MS. HUEY:

1 Q. OKAY. ALL RIGHT. NOW, WHAT YOU CALL THE THIRD
2 STATEMENT, YOU WERE CLAIMING THAT YOU DID NOT GIVE THAT
3 STATEMENT WHATSOEVER?

4 A. NO.

5 Q. I KNOW YOU DIDN'T WRITE IT, WE CAN AGREE ON THAT,
6 RIGHT?

7 A. FULLY.

8 Q. OKAY. BECAUSE IF YOU HAD WRITTEN IT, THE
9 SPELLING WOULD HAVE BEEN CORRECT AND EVERYTHING?

10 A. YEAH.

11 Q. OKAY. BECAUSE YOU ARE A SMART GUY. RIGHT?

12 A. YES.

13 Q. WENT TO HIGH SCHOOL?

14 A. YES.

15 Q. 19 YEARS OLD AT THE TIME?

16 A. CORRECT.

17 Q. SO LET'S LOOK AT THAT THIRD STATEMENT, THEN,
18 STATE'S THREE. YOU GOT IT?

19 A. UH-HUH.

20 Q. JUST HOLD ON TO IT.

21 NOW, ON STATE'S THREE, TELL ME HOW MANY TIMES YOU
22 SEE YOUR INITIALS.

23 A. THREE TIMES.

24 Q. THREE TIMES. AND CAN YOU POINT ON THE EXHIBIT
25 WHERE THOSE ARE? CAN YOU HOLD IT UP AND POINT?

1 A. HERE (INDICATING).

2 Q. OKAY. ABOUT A THIRD OF THE ---

3 A. HERE (INDICATING).

4 Q. --- WAY DOWN IS THE FIRST ONE, AND ABOUT HALFWAY
5 DOWN IS THE SECOND ---

6 A. RIGHT HERE.

7 Q. --- AND JUST A LITTLE OVER HALF IS THE THIRD; IS
8 THAT RIGHT?

9 A. SAY AGAIN?

10 Q. THE FIRST INITIALS ABOUT A THIRD OF THE WAY DOWN
11 THE PAGE?

12 A. OKAY.

13 Q. AND THE SECOND INITIAL IS ABOUT HALFWAY DOWN THE
14 PAGE?

15 A. YES.

16 Q. AND THEN THE THIRD INITIAL IS JUST A LITTLE OVER
17 HALFWAY DOWN THE PAGE?

18 A. YES.

19 Q. OKAY. AND THEN AGAIN, YOUR SIGNATURE IS AT THE
20 VERY BOTTOM, RIGHT?

21 A. CORRECT.

22 Q. NOW, WHY DID YOU MAKE ALL THOSE INITIALS, THEN,
23 IF THAT WASN'T YOUR STATEMENT?

24 A. AS I SAID BEFORE, SHE REQUESTED FOR ME TO SIGN TO
25 MAKE -- TO ACKNOWLEDGE THAT SHE HAD DONE HER JOB. I

1 HAD ---

2 Q. SO EVEN THOUGH YOU ---

3 A. --- I COOPERATED COMPLETELY.

4 Q. OKAY. NO ONE IS SAYING YOU DIDN'T COOPERATE.

5 BUT THE QUESTION IS: WHY WOULD YOU SIGN AND INITIAL
6 THESE THINGS WHEN IT WASN'T YOUR STATEMENT, WHAT SHE WAS
7 SAYING WASN'T TRUE? WHY WOULDN'T YOU PUT A BIG X
8 THROUGH THIS AND SAY "NOT MINE"?

9 A. WELL, SHE DIDN'T READ IT TO ME.

10 Q. SHE DIDN'T READ YOU -- YOU DIDN'T HAVE AN
11 OPPORTUNITY TO READ IT SINCE YOU WERE INITIALING IT?

12 A. THEN SHE TURNED OVER -- WELL, THE ANSWER IS NO.
13 BUT SHE ALSO DID THE SAME AS THE ADVISORY OF RIGHTS.

14 Q. BUT YOU SAID YOURSELF ON THE ADVISORY OF RIGHTS
15 SHE READ THOSE TO YOU.

16 A. SHE READ THEM TO ME.

17 Q. OKAY. AND SHE DIDN'T READ THIS STATEMENT TO YOU?

18 A. NO.

19 Q. OKAY. WHY DON'T YOU FOLLOW ALONG WITH ME ON THE
20 LAST PARAGRAPH ON STATE'S EXHIBIT THREE.

21 A. OKAY.

22 Q. AND WHAT DOES IT READ? IT'S IN THE TYPED PRINT
23 UNDER NIKKI CARSON'S HANDWRITING.

24 A. UNDER NIKKI CARSON'S HANDWRITING?

25 Q. UH-HUH. IT STARTS WITH, "I HAVE READ".

1 A. (READING):

2 I HAVE READ THIS STATEMENT
3 CONSISTING OF NO PAGES, AND I CERTIFY
4 THAT THE FACTS CONTAINED THEREIN ARE TRUE
5 AND CORRECT. I FURTHER CERTIFY THAT --
6 I'M NOT SURE IF THAT'S AN I BECAUSE SHE
7 GOT A BY BESIDE IT -- I MADE NO REQUEST
8 FOR THE ADVICE OR PRESENCE OF A LAWYER
9 BEFORE OR DURING ANY PART OF THIS
10 STATEMENT, NOR AT ANY TIME BEFORE IT WAS
11 FINISHED DID I REQUEST THAT THIS
12 STATEMENT BE STOPPED. I ALSO DECLARED
13 THAT I WAS NOT TOLD OR PROMPTED WHAT TO
14 SAY IN THIS STATEMENT.

15 THE STATEMENT WAS COMPLETED AT
16 4:42 P.M. ON THE 20TH OF MAY, 2000 -- OR
17 19- -- WELL, THEY GOT 19 THERE -- 2005.

18 Q. AND WHO IS THE WITNESS?

19 A. NIKKI CARSON.

20 Q. AND WHO IS THE SIGNATURE OF THE PERSON GIVING THE
21 VOLUNTARY STATEMENT?

22 A. ME.

23 Q. YOU. OKAY. NOW, IN ADDITION TO GIVING A
24 CONFESSION -- OR EXCUSE ME -- IN ADDITION TO NIKKI
25 CARSON, IN YOUR WORDS, MAKING UP THIS CONFESSION, RIGHT,

1 HOW DID SHE KNOW ABOUT MR. AUSTIN PITTS?

2 A. SHE BROUGHT THE NAME TO ME AS WELL AS ANOTHER
3 NAME.

4 Q. SHE BROUGHT THE NAME TO YOU?

5 A. WE NEVER TALKED ABOUT THAT INFORMATION AT THE TOP
6 OF THIS STATEMENT IN THAT PATROL VEHICLE.

7 Q. I'M SORRY. WHAT INFORMATION AT THE TOP OF THE
8 STATEMENT, INVOLVING Minor 2

9 A. CORRECT.

10 Q. OKAY. EVEN THOUGH YOU INITIALED THREE TIMES IN
11 THE PORTION INVOLVING Minor 2

12 A. CORRECT.

13 Q. OR AT LEAST TWO, EXCUSE ME. RIGHT?

14 A. I SAID "CORRECT".

15 Q. YOU NEVER READ IT AND YOU ---

16 A. I NEVER READ IT.

17 Q. --- NEVER SAID IT, EVEN THOUGH YOU INITIALED IT
18 TWICE?

19 A. YES.

20 Q. AND WHY DON'T YOU BACK UP AND TELL ME WHERE
21 EXACTLY YOUR INITIALS ARE AND WHAT SENTENCE STARTS
22 THERE.

23 A. WHAT IT SAYS?

24 Q. UH-HUH.

25 A. IT SAID I WOULD SUCK HIS PENIS.

1 Q. AND YOUR INITIALS ARE RIGHT THERE, CORRECT?

2 A. CORRECT.

3 Q. ALL RIGHT. AND YOUR INITIAL IS ALSO WHERE, ABOUT
4 HALFWAY DOWN?

5 A. YES.

6 Q. AND WHAT IS RIGHT BY YOUR INITIAL THERE?

7 A. 50 TIMES.

8 Q. 50 TIMES. AND THE REASON YOU INITIALED THERE IS
9 THERE ARE SOME LITTLE SCRIBBLE MARKS; IS THAT RIGHT?

10 A. CORRECT.

11 Q. NOW, THE THIRD INITIAL, CAN YOU MAKE OUT WHAT WAS
12 SCRIBBLED OUT THERE?

13 A. IT LOOKS LIKE IN THE STATEMENT.

14 Q. OKAY. BUT THAT WAS CROSSED OUT BECAUSE THEN YOU
15 WENT ON TO GIVE ANOTHER CONFESSION, DIDN'T YOU?

16 A. NO.

17 Q. OKAY. ISN'T IT TRUE THAT DETECTIVE CARSON ASKED
18 YOU IS THERE ANY OTHER VICTIMS OUT THERE THAT WE NEED TO
19 KNOW ABOUT?

20 A. SHE ASKED ME ABOUT TWO.

21 Q. DID YOU PROVIDE HER ---

22 A. THERE WAS ONLY ONE ON THERE.

23 Q. --- WITH ROGER PITTS?

24 A. SHE ASKED FOR INFORMATION ON HIM, HIS ADDRESS,
25 PHONE NUMBER, NAME, SOCIAL SECURITY, I GAVE IT TO HER.

1 I DIDN'T KNOW HIS SOCIAL SECURITY SO I COULDN'T PROVIDE
2 IT.

3 Q. ISN'T IT TRUE THAT YOU PROVIDED HER WITH THAT
4 INFORMATION AFTER YOU CONFESSED TO HAVING ANAL SEX WITH
5 HIM?

6 A. INCORRECT.

7 Q. BUT AGAIN, YOU SIGNED THIS STATEMENT AT THE VERY
8 BOTTOM?

9 A. YES.

10 Q. 19 YEARS OLD AT THE TIME?

11 A. YES.

12 Q. ABOUT TO GRADUATE FROM HIGH SCHOOL?

13 A. YES.

14 Q. AND YOU USUALLY READ EVERYTHING YOU SIGN, DON'T
15 YOU?

16 A. WELL, WHEN IT COME TO LAW ENFORCEMENT, THE ANSWER
17 IS YEAH AND NO. BUT WHEN IT COMES TO LAW ENFORCEMENT,
18 THEY ARE SUPPOSED TO DO THEIR JOB CORRECTLY TO WHERE I
19 DON'T HAVE TO READ IT.

20 Q. NO, SIR. SHE ADVISES YOU OF THAT, DOES SHE NOT?

21 A. OF WHAT?

22 Q. DOESN'T SHE READ IT TO YOU?

23 A. ONLY MY MIRANDA.

24 Q. ONLY YOUR MIRANDA. SHE DIDN'T READ THIS THIRD
25 STATEMENT TO YOU THAT YOU SIGNED?

1 A. SHE DIDN'T READ ME THIS, NOR THE CONSENT TO
2 SEARCH.

3 Q. AND YOU SIGNED IT ANYWAY, EVEN THOUGH YOU
4 APPARENTLY CONFESSED TO MOLESTING TWO DIFFERENT BOYS?
5 YOU SIGNED IT ANYWAY?

6 A. MY SIGNATURE IS ON IT, BUT IT DON'T MEAN I
7 CONFESSED. I DIDN'T GIVE THE CONFESSION.

8 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

9 THE COURT: RE-EXAM?

10 MR. WHITEN: JUST ONE QUESTION.

11 REDIRECT EXAMINATION BY MR. WHITEN:

12 Q. YOU ACTUALLY WROTE OUT THE FIRST STATEMENT,
13 EXHIBIT, THE STATEMENT IN EXHIBIT NUMBER TWO?

14 A. YES.

15 Q. AT THE REQUEST OF DETECTIVE CARSON?

16 A. YES.

17 Q. AND SHE DID NOT REQUEST THAT YOU WROTE OUT
18 EXHIBIT NUMBER THREE, WHICH IS THE ONE THAT'S IN
19 QUESTION HERE? SHE DIDN'T ASK YOU TO WRITE THAT ONE
20 OUT?

21 A. NO.

22 Q. YOU DID NOT WRITE IT OUT?

23 A. NO.

24 MR. WHITEN: OKAY. THAT'S ALL THE QUESTIONS
25 I HAVE.

1 MS. HUEY: NOTHING FURTHER, JUDGE.

2 THE COURT: ALL RIGHT. MR. THOMPSON,
3 ANYTHING YOU WOULD LIKE TO SAY, I MEAN ON YOUR OWN, ON
4 THE MATTERS OF THE STATEMENTS, ALLEGED STATEMENTS? IS
5 THERE ANYTHING YOU WOULD LIKE TO ADD IN ADDITION TO
6 WHATEVER YOU HAVE ALREADY SAID, ANYTHING ELSE?

7 THE WITNESS: YES. YES, SIR, I HAVE, I DO.
8 NOW, ACCORDING TO THE OFFICERS, WE ARE
9 SUPPOSED TO INITIAL MISTAKES, OR SO TO SAY -- WHAT'S THE
10 WORD? WHERE THEY MESSED SOMETHING UP OR MISSPELLED
11 ANYTHING.

12 WELL, ALSO ON HERE AT THE TOP, WHERE IT GOT
13 HAVING BEEN BORN ON OF AT, IT'S SUPPOSED
14 TO SAY GREENVILLE, SOUTH CAROLINA, BUT SHE WROTE A 5 AND
15 A G ON TOP OF EACH OTHER, AS WELL AS JUST TWO LINES DOWN
16 FROM THE FIRST INITIAL, FOUR WORDS OVER, SHE WROTE
17 CHEST. BUT S IS WRITTEN OVER C AND T IS WRITTEN OVER K.
18 WHY IS MY INITIALS NOT ON THAT? THAT'S IT.

19 THE COURT: VERY GOOD. ALL RIGHT. THANK
20 YOU VERY MUCH. YOU MAY STEP DOWN.

21 (WITNESS LEAVES STAND.)

22 MR. THOMPSON: THE DEFENSE WOULD LIKE TO
23 CALL MARY MAZYCK TO THE STAND.

24 (WHEREUPON, THE WITNESS WAS SWORN BY THE
25 CLERK.)

1 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
2 SPELL YOUR LAST NAME FOR THE RECORD.

3 **THE WITNESS:** MARY ALICE MAZYCK,
4 M-A-Z-Y-C-K.
5 WHEREUPON,

6 **MARY MAZYCK,**
7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 **DIRECT EXAMINATION BY MR. THOMPSON:**

10 Q. HOW OLD ARE YOU?

11 A. THAT'S MEAN. 44.

12 Q. WERE YOU AWARE OF THE ALLEGED INCIDENT THAT TOOK
13 PLACE?

14 A. ABSOLUTELY NOT.

15 Q. ON MAY 18TH, WERE YOU ADVISED BY ANYONE THAT
16 SOMETHING OCCURRED?

17 A. NO.

18 Q. WHEN WERE YOU ADVISED?

19 A. ON THE EVENING OF THE 20TH.

20 Q. BY WHOM?

21 A. WHAT WAS THAT?

22 Q. BY WHOM?

23 A. YOU.

24 Q. AND ABOUT WHAT TIME DID I ADVISE YOU OF THAT?

25 A. TRUTHFULLY, AT THIS TIME I REALLY DON'T KNOW. I

1 DON'T KNOW.

2 Q. WERE YOU AT THE RESIDENCE WHEN I PROVIDED YOU
3 WITH THE INFORMATION, OR WERE YOU LOCATED SOMEWHERE
4 ELSE?

5 A. I WAS ABOUT TWO MILES AWAY FROM THE HOUSE ON MY
6 WAY HOME.

7 Q. AT THE TIME YOU ARRIVED AT THE RESIDENCE, WHO ALL
8 WAS PRESENT?

9 A. YOU AND THE TWO OFFICERS.

10 Q. WERE [SIC] THERE A SMALLER CHILD PRESENT?

11 A. I WAS TRYING TO MY BEST TO REMEMBER THAT. I
12 BELIEVE Minor 1 WAS THERE, AND THAT WAS THE QUESTIONS
13 THAT THEY WAS ASKING ME AT THE TIME, TOO. SO I BELIEVE
14 Minor 1 WAS THERE, MY GRANDSON.

15 Q. WHEN YOU ENTERED THE RESIDENCE, CAN YOU REMEMBER
16 WHAT ALL WAS SAID TO THE OFFICERS BY YOU? DID YOU
17 ADVISE THEM THAT THE VICTIM IS NOT DISCIPLINED OR
18 ANYTHING OF THAT NATURE?

19 A. IT WAS JUST -- WHEN I CAME IN, I WANTED TO KNOW
20 WHAT WAS GOING ON. THEY PROCEEDED TO SAY THERE WAS AN
21 INVESTIGATION -- THEY HAD AN INVESTIGATION GOING ON
22 BECAUSE THEY RECEIVED A COMPLAINT. THEY ASKED, YOU
23 KNOW, YOUR PERMISSION TO SPEAK TO THEM. I DIDN'T OBJECT
24 TO IT BECAUSE I RESPECT THE LAW, I APPRECIATE THEM. AS
25 LONG AS YOU WAS WILLING TO TALK TO THEM, I HAD NO

1 PROBLEM WITH THAT. I DIDN'T OBJECT TO IT.

2 Q. DO YOU KNOW WHY I WAS WILLING TO TALK AND
3 COOPERATE WITH THESE LAW ENFORCEMENT OFFICERS?

4 A. BY THE GRACE OF GOD, THAT WAS THE WAY I RAISED MY
5 CHILDREN, TO HAVE THE RESPECT FOR THE LAW THAT THEY DO
6 HAVE.

7 Q. DO YOU KNOW WHAT TYPE OF CAREER I WANTED TO GO
8 INTO AT THAT TIME?

9 A. A POLICE OFFICER.

10 Q. SO I WOULD HAVE KNOWN TO COOPERATE, CORRECT?

11 A. YES.

12 Q. AND AT THE TIME OF ME BEING INTERVIEWED OR
13 QUESTIONED, WERE YOU PRESENT?

14 A. DURING PART OF IT. I WOULD SAY THE FIRST PART OF
15 IT.

16 Q. DO YOU KNOW A STATEMENT WAS GIVEN IN YOUR
17 PRESENCE?

18 A. YES, IT WAS.

19 Q. AND AFTER THAT, WHERE WERE YOU WHEN I WAS BEING
20 INTERROGATED?

21 A. I WAS IN THE HOUSE. ALTHOUGH I HAD AS MUCH
22 RESPECT FOR THE LAW AS WE DO HAVE, I DECLINED TO WANT TO
23 KNOW WHAT WAS GOING ON WITH MY CHILD, AND THEY DECLINED
24 TO ALLOW ME TO STEP OUT OF MY OWN FRONT DOOR TO FIND
25 OUT. IF THEY SAY HE WAS IN THE CAR, I COULD HAVE AT

1 LEAST STOOD IN THE DOOR TO MAKE SURE MY CHILD WAS ALL
2 RIGHT. HE DECLINED AND REFUSED TO EVEN LET ME GO TO MY
3 FRONT DOOR.

4 Q. WHY DID HE DECLINE?

5 A. TO THIS DAY I DON'T KNOW WHY HE DID WHAT HE DID
6 THAT DAY.

7 Q. NOW, YOU SAY HE DECLINED ON YOU EXITING THE
8 RESIDENCE. WHY? DID I COOPERATE?

9 A. YEAH, YOU WAS COOPERATING, DEFINITELY.

10 Q. SO WHY WOULD HE DECLINE?

11 A. I DIDN'T UNDERSTAND IT, EITHER. I HAVE NEVER
12 UNDERSTOOD THAT. BUT TO LOOK AT EVERYTHING NOW AND TO
13 SEE EVERYTHING THAT HAPPENED THEREAFTER, I UNDERSTAND
14 NOW WHY HE DECLINED TO ALLOW ME TO AT LEAST SEE THAT MY
15 CHILD WAS ALL RIGHT. HE SAID HE WAS WORRIED ABOUT HIS
16 OFFICER BEING ALL RIGHT. HOW COME I COULDN'T BE CURIOUS
17 ABOUT MY SON BEING ALL RIGHT? I'D LIKE TO KNOW THE
18 ANSWER TO THAT.

19 Q. NOW, THE SEARCH, WHEN OR WHERE DID I GIVE
20 PERMISSION TO THEM -- OR YEAH -- WHEN DID I GIVE THEM
21 PERMISSION TO CONDUCT A SEARCH AND SEIZURE OF THE
22 RESIDENCE?

23 A. IT WAS SHORTLY AFTER I CAME IN, AFTER I ASKED
24 WHAT THEY WAS DOING AND YOU SAID IT WAS ALL RIGHT, I
25 WOULD BELIEVE IT WAS MAYBE WITHIN TEN MINUTES OF ME

1 WALKING THROUGH THE DOOR.

2 Q. AT ANY GIVEN TIME DID WE OR YOU ASK AND/OR
3 QUESTION BOTH NOW LIEUTENANT CARSON AND SERGEANT
4 NORMANDIN ON WHY WAS THE SEARCH NEEDED TO BE CONDUCTED?

5 A. THEY SAID THEY WAS LOOKING FOR SOMETHING IN
6 PARTICULAR. THEY DIDN'T TELL ME WHAT. THEY DIDN'T TELL
7 ME UNTIL AFTER THEY FOUND WHAT THEY WAS LOOKING FOR.

8 Q. WERE YOU -- WHILE YOU WAS IN THE RESIDENCE AND
9 OFFICER OR SERGEANT NORMANDIN DECLINED YOU EXITING YOUR
10 RESIDENCE, COULD YOU SEE ME IN THE PATROL CAR FROM EYE
11 DISTANCE?

12 A. HE WOULDN'T ALLOW ME TO MOVE. I WASN'T ALLOWED
13 TO LOOK OUT THE WINDOW. I WASN'T ALLOWED TO WALK TO THE
14 FRONT DOOR AND OPEN THE DOOR AND LOOK OUT. HE DECLINED
15 TO ALLOW ME ANY CONTACT WITH YOU AT THAT GIVEN TIME.

16 Q. THERE WAS A SMALL CHILD PRESENT, WHICH MEANS YOU
17 WOULD HAVE HAD TO STAY CLOSE BY, CORRECT?

18 A. TRUE.

19 Q. WHERE WAS THIS CHILD LOCATED?

20 A. WHEN I FIRST CAME IN, I BELIEVE Minor 1 WAS
21 SITTING IN A CHAIR OVER IN A CORNER, IN HIS LITTLE
22 CHAIR.

23 Q. WHERE WAS THE CHAIR?

24 A. IN THE LIVING ROOM SITTING RIGHT BESIDE THE
25 LITTLE BOOKSHELF.

1 Q. AND WHERE DID MOST OF THE QUESTIONS TAKE PLACE
2 AT?

3 A. IN THE LIVING ROOM RIGHT ON THE KITCHEN TABLE.
4 THEY WAS QUESTIONING YOU IN THE LIVING ROOM WHEN I GOT
5 THROUGH THE DOOR. THE HANDWRITTEN STATEMENTS THAT WAS
6 TAKEN BY THEM WAS WRITTEN AT THE KITCHEN TABLE. BUT
7 THIS CHILD WOULD BE IN BETWEEN BOTH OF THOSE ROOMS
8 BECAUSE HIS LITTLE SEAT WAS SITTING RIGHT THERE WHERE
9 BOTH, YOU GOT ACCESS TO BOTH ROOMS RIGHT THERE.

10 AND YOU ARE RIGHT, THAT BABY WAS THERE, BECAUSE
11 THAT WAS THE MAIN REASON FOR ME HAVING TO STAY IN THE
12 HOUSE. YOU'RE RIGHT. I ALMOST FORGOT THAT.

13 Q. NOW, I UNDERSTAND BEING COOPERATIVE WITH LAW
14 ENFORCEMENT, BUT DECLINING A RIGHT TO EXIT YOUR OWN
15 HOME, WHEN THERE IS NOT AN INCIDENT SCENE GOING ON AT
16 THAT TIME WHERE THEY TELL YOU STAY IN YOUR RESIDENCE,
17 THIS IS A POLICE MATTER ---

18 MS. HUFY: YOUR HONOR, I OBJECT. HE'S
19 TESTIFYING.

20 THE COURT: MR. THOMPSON, THIS MIGHT BE A
21 GOOD TIME TO GIVE A LITTLE ANNOUNCEMENT OR EXPLANATION
22 ABOUT THE RULES OF EVIDENCE. ONE, AND THIS IS WHAT I
23 THINK THE SOLICITOR WAS SAYING, IS THIS WAS A LEADING
24 QUESTION. A LEADING QUESTION IS A QUESTION THAT
25 SUGGESTS THE ANSWER, AND YOU ONLY ASK THE WITNESS TO

1 AGREE WITH YOU OR DISAGREE WITH YOU. BUT YOUR QUESTION
2 IS TESTIMONY OF THE PERSON DOING THE QUESTIONING AND NOT
3 THE WITNESS; AND THEREFORE, WE DO NOT PERMIT LEADING
4 QUESTIONS OF YOUR OWN WITNESS. SO MS. MAZYCK IS YOUR
5 WITNESS, SO YOU CAN'T ASK A LEADING QUESTION OF HER.

6 NOW, IF IT WAS THE OTHER SIDE'S WITNESS,
7 THEN YOU CAN LEAD. BUT WHEN IT'S YOUR OWN WITNESS, YOU
8 CAN'T LEAD, WHICH MEANS YOU CAN'T TESTIFY. YOU CAN ASK
9 HER QUESTIONS AND THEN SHE TESTIFIES IF SHE KNOWS THE
10 ANSWER. IF SHE DOESN'T KNOW THE ANSWER, THEN YOU HAVE
11 TO GO ON TO SOMETHING ELSE. DO YOU UNDERSTAND?

12 MR. THOMPSON: I UNDERSTAND, YOUR HONOR.

13 THE COURT: THANK YOU, SIR. YOU MAY
14 PROCEED. BY THE WAY, THESE RULES APPLY TO BOTH SIDES.
15 DON'T WORRY ABOUT THAT, EITHER. VERY GOOD. THANK YOU.
16 RESTATE YOUR QUESTION IF YOU WOULD LIKE TO.

17 MR. THOMPSON: WELL, ACTUALLY, I'M GONNA
18 MOVE ON.

19 THE COURT: VERY GOOD, ALL RIGHT, SIR.

20 BY MR. THOMPSON:

21 Q. DO YOU KNOW HOW LONG THE INTERROGATION LASTED?

22 A. THE INTERROGATION WITH YOU ALONE?

23 Q. WHILE IN ---

24 A. OR THE WHOLE THING IN GENERAL?

25 Q. WHILE YOU WAS THERE, WHILE YOU WAS PRESENT.

1 A. IF I HAD TO GUESS, IT WENT APPROXIMATELY AN HOUR
2 AND 45 MINUTES, GIVE OR TAKE, AND IT RAN LONGER, A LONG
3 TIME, BECAUSE I STARTED GETTING FRUSTRATED. THAT IS WHY
4 I REQUESTED IT GO OUTSIDE. I WAS GETTING FRUSTRATED
5 WITH WHAT WAS GOING ON MYSELF BECAUSE IT WAS TAKING TOO
6 LONG AND I REALLY DIDN'T UNDERSTAND.

7 Q. NOW, WHEN THE CONFESSION WAS BEING GIVEN, OR THE
8 ALLEGED CONFESSION AS EXHIBIT THREE SITS IN FRONT OF
9 YOU, WHEN DID THEY ALLOW ME TO EXIT THE VEHICLE, THE
10 PATROL VEHICLE?

11 A. TO EXIT IT? YOU MEAN AND GET OUT OF IT, OUT OF
12 THE VEHICLE?

13 Q. YES, MA'AM.

14 A. LET'S SEE. THE OFFICER CAME BACK IN BECAUSE I'M,
15 QUOTE, NO GOOD WITH THESE NAMES, OKAY, BUT I DO KNOW WHO
16 THEY ARE. HE CAME BACK IN AND HE PROCEEDED TO TELL
17 ME -- THAT FIRST HE TOLD ME THAT THEY WAS NOT GONNA TAKE
18 YOU DOWNTOWN, THAT THEY WAS GONNA ALLOW YOU TO GO TO THE
19 GRADUATION CEREMONY, AND THAT I WOULD BE ABLE TO BRING
20 YOU IN THE FOLLOWING EVENING AFTER THE CEREMONY.

21 THEN THEY JUST KEPT RATTLING. THEN HE TURNED
22 AROUND AND CAME BACK AND SAID, NO, WE'RE GONNA GO AHEAD
23 AND WE'RE GONNA ARREST HIM. AT THAT POINT HE ALLOWED ME
24 TO COME OUTSIDE. SO I DON'T KNOW EXACTLY WHAT TIME IT
25 WAS. I MEAN, I JUST DON'T -- I DIDN'T -- MY MIND WAS

1 BABBLED. I DIDN'T HAVE TIME ON MY MIND.

2 Q. DO YOU KNOW IF I RECEIVED ANY COPIES OF DOCUMENTS
3 I SIGNED?

4 A. YES, I DO. AND I WILL LIVE THE REST OF MY LIFE
5 IN JUST WHAT YOU CALL ANGER BEHIND THIS. IT TOOK ME SIX
6 WHOLE WEEKS TO FIND OUT WHAT THEY WAS HOLDING HIM WITH.
7 EVERYTHING THAT HE HAD ON HIM WHEN I CAME OUT THAT DOOR,
8 AFTER THE MAN TOLD ME HE WAS GONNA GO AHEAD AND ARREST
9 HIM, I KNEW THAT HE WAS GONNA ARREST HIM, SO I TOOK
10 EVERYTHING OFF OF MY CHILD, HIS BELT, EVERYTHING OUT OF
11 HIS POCKETS, HIS WALLET, EVERYTHING, I TOOK EVERYTHING
12 BECAUSE I DIDN'T WANT THEM TO HAVE THAT TO HOLD IT AS
13 HIS BELONGINGS. I TOOK IT AND TOOK IT IN THE HOUSE.

14 AFTER HE LEFT AND WENT DOWNTOWN, NORMALLY I WOULD
15 BE JUST DEVASTATED. AFTER HE WENT DOWN, THE DAY AFTER,
16 IT TOOK ME TO THE DAY AFTER TO GO THROUGH HIS BELONGINGS
17 BECAUSE I HAVE RESPECT FOR MY SONS AND I PRAY TO GOD
18 THEY RESPECT ME. SO THE NEXT DAY I GOT UP ENOUGH
19 COURAGE TO GO THROUGH THIS PAPERWORK, AND THE STATEMENTS
20 THAT HE HAD WAS THE STATEMENTS THAT I HAD WITNESSED HIM
21 WRITING AND I DID SEE HIM WRITE THESE STATEMENTS. I
22 READ THEM AND I COULD NOT FIGURE OUT FOR GOD KNOWS WHAT
23 WAS HOLDING HIM THERE ON THESE CHARGES BECAUSE I DID NOT
24 HAVE THIS INFORMATION.

25 I WENT TO CHARLES WHITEN AND ASKED CHARLES WHITEN

1 HOW WAS THEY HOLDING HIM, AND HE WAS THE ONE THAT
2 REQUESTED A COPY OF HIS PROFILE SO THAT I COULD ACTUALLY
3 READ THAT STATEMENT. I HAVE THE OTHER STATEMENTS. I
4 DON'T HAVE THAT ONE STATEMENT THAT'S BEEN HOLDING HIM
5 ALL THIS TIME. I NEVER RECEIVED A COPY, BUT I HAVE
6 RECEIVED A COPY OF ALL THE OTHER ONES. I HAVE A COPY OF
7 ALL THE OTHER ONES.

8 Q. YOU HAVE A COPY OF?

9 A. ALL THE OTHER STATEMENTS THAT WERE MADE IN THE
10 HOUSE THAT DAY.

11 Q. HOW MANY DOCUMENTS?

12 A. TO MY KNOWLEDGE THERE ARE TWO, THERE ARE TWO
13 STATEMENTS, AND THEN I HAVE A COPY OF THE STATEMENT THAT
14 I WROTE.

15 Q. OKAY. IS THERE AN ADVISORY OF RIGHTS DOCUMENT
16 THAT'S DOWN AS EXHIBIT ONE IN FRONT OF YOU? DOES THAT
17 LOOK LIKE THE ONE THAT YOU GOT OFF OF MY POSSESSION OR
18 OFF OF MY PERSON?

19 A. IF I HAVE THIS ONE RIGHT HERE, THAT MEANS THAT I
20 HAVE TWO STATEMENTS, HANDWRITTEN STATEMENTS BY YOU, AND
21 THIS ONE, TOO, 'CAUSE I READ THE TWO STATEMENTS THAT I
22 HAVE THAT YOU WROTE, I READ THEM. AND I KNOW ENOUGH
23 ABOUT THE LAW AND I COULDN'T FIGURE IT OUT. IT BABBLLED
24 ME VERY BAD TO WHERE I WENT TO CHARLES WHITEN AND I WAS
25 WILLING TO PAY HIM FOR HIM TO GET ME THE INFORMATION

1 THAT WOULD LEAD ME TO WHAT WAS HOLDING YOU.

2 MR. THOMPSON: NO FURTHER QUESTIONS.

3 THE COURT: CROSS-EXAMINATION?

4 CROSS-EXAMINATION BY MS. HUEY:

5 Q. MS. MAZYCK, NOW CLARIFY FOR ME WHEN YOU WERE
6 ADVISED OF YOUR SON'S -- OR WHY THEY WERE INVESTIGATING
7 YOUR SON?

8 A. SHORTLY AFTER I CAME INTO THE DOOR.

9 Q. OKAY. BUT I THOUGHT YOU SAID THAT YOU WERE NEVER
10 MADE AWARE OF WHAT WAS GOING ON.

11 A. OH, NO, I DIDN'T SAY THAT. I'M SAYING I WAS NOT
12 MADE AWARE OF WHAT WAS HOLDING HIM IN JAIL ON THESE
13 CHARGES. I WAS NOT ---

14 Q. BUT THEY TOLD YOU IT INVOLVED Minor 2

15 A. YES. THEY DIDN'T TELL ME THAT THEN, NO. THEY
16 DIDN'T TELL ME THAT UNTIL AFTER THEY -- HOWARD HAD GIVEN
17 THEM THE PICTURES IS WHEN THEY TOLD ME IT INVOLVED Minor
18 AT THAT POINT.

19 Q. YOU HAVE SEEN THESE PICTURES THAT WE KEEP TALKING
20 ABOUT?

21 A. YES, I SEEN THOSE PICTURES.

22 Q. HAD YOU SEEN THEM BEFORE?

23 A. NO.

24 Q. DID YOU KNOW YOUR SON HAD THEM?

25 A. NO.

1 Q. WHAT DID YOU THINK ABOUT THOSE?

2 A. ME PERSONALLY AS A MOTHER? I DIDN'T FEEL TOO
3 GOOD ABOUT THEM, I DIDN'T. I'M A MOTHER. I'M NOT GONNA
4 SAY ANYTHING IN THIS CASE.

5 Q. NOW, YOU SAID ON DIRECT THAT THE CONSENT TO
6 SEARCH WAS DONE AFTER ABOUT TEN MINUTES OF YOU WALKING
7 INTO THE DOOR; IS THAT RIGHT?

8 A. UH-HUH.

9 Q. BUT DIDN'T YOUR SON TESTIFY THAT IT WASN'T UNTIL
10 HE HAD GIVEN A SECOND STATEMENT THAT THEY DID THE
11 CONSENT TO SEARCH OR THEY FOUND THOSE PICTURES?

12 A. HE TOLD THEM WHERE THE PICTURES WAS.

13 Q. I'M SORRY?

14 A. HE TOLD THEM WHERE THE PICTURES WAS, THEY DIDN'T
15 HAVE TO DO A SEARCH FOR THOSE PICTURES.

16 Q. HE TOLD THEM EARLY ON WHERE THEY WERE?

17 A. RIGHT.

18 Q. NOW, DID YOU STAY IN THE HOUSE BECAUSE
19 MR. NORMANDIN WOULDN'T LET YOU OUTSIDE OR YOU WERE
20 WATCHING THE BABY?

21 A. I STAYED IN THE HOUSE BECAUSE HE WOULDN'T LET ME
22 OUTSIDE.

23 Q. WHAT WOULD YOU HAVE DONE WITH THE BABY IF YOU HAD
24 GONE OUTSIDE?

25 A. MA'AM, OUT OF NO DISRESPECT FOR THE LAW OF THE

1 LAND, THAT TAUGHT ME VERY WELL TO NEVER RESPECT THE
2 POLICE IN MY LIFETIME IS WHAT THEY DONE ON THE SCENE OF
3 MY HOUSE.

4 Q. WHAT WOULD YOU HAVE DONE WITH THE BABY?

5 A. TOOK HIM WITH ME.

6 Q. HOW WOULD YOU TAKE HIM?

7 A. NO. MY GRANDBABY, HE WAS TWO. ALL HE HAD TO DO
8 WAS LET ME STAND AT THE DOOR AND SEE MY CHILD. HE
9 DIDN'T HAVE TO LET ME GO OUT THE DOOR, SO I WOULDN'T
10 HAVE BEEN LEAVING MY GRANDSON. MY GRANDSON WOULD HAVE
11 BEEN RIGHT THERE AND I WOULD HAVE BEEN RIGHT THERE. I
12 WOULDN'T NEVER HAVE LEFT HIM.

13 Q. YOU ARE SAYING YOU WERE NOT ALLOWED TO SEE YOUR
14 SON AT ALL?

15 A. RIGHT.

16 Q. NOW, HOW OLD WAS HE AT THIS TIME?

17 A. MY SON? HE HAD JUST TURNED 19 LIKE A WEEK OR SO
18 PRIOR TO THIS.

19 Q. OKAY. KIND OF OLD FOR A HIGH SCHOOL GRADUATE.

20 A. YEAH. HE WAS DETAINED IN ONE OF HIS GRADES OVER
21 THE YEARS.

22 Q. OKAY. BUT HE WAS ABOUT TO GRADUATE AND HE
23 RECEIVED HIS DIPLOMA, HE JUST DIDN'T WALK.

24 A. RIGHT.

25 Q. NOW, WHEN YOU WERE TALKING ABOUT HOW LONG THE

1 INTERROGATION LASTED, I THINK ORIGINALLY YOU SAID
2 SOMETHING ABOUT AN HOUR AND 45 MINUTES?

3 A. I GUESSED AT IT, YES.

4 Q. AND IS THAT FROM START TO FINISH?

5 A. THAT'S A GUESS. WELL, NO. IF I HAD TO ADD THE
6 REST OF THEIR TIME ON TO IT, I GOT A LONG TIME 'CAUSE
7 THEY STAYED A LONG TIME JUST WAITING ON SOME OTHER
8 OFFICERS TO COME ---

9 Q. I'M JUST TALKING ABOUT THE INTERROGATION.

10 A. I WOULD SAY AN HOUR, HOUR AND 45 MINUTES.

11 Q. TO GIVE ORAL STATEMENTS AND TWO WRITTEN
12 STATEMENTS?

13 A. OH, NO. HE SAID THE INTERROGATION, THAT WAS THE
14 TIME THAT THEY WAS OUTSIDE AS FAR AS I UNDERSTOOD IT.
15 BUT DURING THE TIME THESE STATEMENTS WAS WRITTEN, THESE
16 WERE WRITTEN WITHIN THE FIRST, GOD, 30, 45 MINUTES
17 WITHIN ME COMING INTO THE HOUSE.

18 Q. NOW ---

19 A. I'M TRYING TO GUESS AT THIS TIME THING BECAUSE I
20 WASN'T GOOD AT IT BECAUSE MY MIND WAS ---

21 Q. IT'S BEEN A LONG TIME.

22 A. NO. BY THEN MY MIND WAS VERY CONFLICTED.

23 Q. WELL, LET ME ASK YOU ABOUT, YOU MADE MENTION OF
24 AFTER HE WAS ARRESTED BEFORE THEY ACTUALLY TOOK HIM
25 AWAY, YOU TOOK OFF ALL HIS ---

1 A. YES, I DID.

2 Q. --- POSSESSIONS SO THEY WOULDN'T GO DOWN TO THE
3 JAIL WITH HIM?

4 A. YES, I DID.

5 Q. OKAY. AND YOU WENT THROUGH HIS STUFF A WHILE
6 LATER?

7 A. A DAY AFTER, YES.

8 Q. WHAT -- AND YOU SAID YOU CAME ACROSS THESE
9 STATEMENTS?

10 A. NO. I ACTUALLY HAD THEM IN MY HAND. THEY WAS
11 FOLDED, ONE AT A TIME, THEY WAS FOLDED. AND THEN HIS
12 WALLET, HIS WALLET AND HIS BELT, ALL OF IT WAS JUST
13 LAYING TOGETHER. AND I GOT UP ENOUGH COURAGE TO GO AND
14 READ THEM BECAUSE I WANTED TO KNOW IF THEY HAD HIM ON
15 THESE CHARGES, HOW? AND THAT WAS WHEN I READ THE
16 STATEMENTS AND I COULDN'T SEE IT.

17 Q. OKAY. AND WHAT DID YOU DO WITH THEM AFTER THAT?

18 A. THEY'RE IN MY STORAGE BUILDING AND I CAN'T FIND
19 THEM FOR NOBODY; BUT GOD KNOWS, IF I HAVE TO I WILL. I
20 WILL TAKE THAT STORAGE BUILDING DOWN.

21 Q. YOU DON'T HAVE THEM WITH YOU TODAY?

22 A. NO, MA'AM, I DO NOT.

23 Q. OKAY. THEY ARE IN YOUR STORAGE BUILDING?

24 A. RIGHT, THEY ARE IN THAT STORAGE BUILDING. GOD
25 KNOWS WHERE WE'RE GOING TO FIND TO TEAR IT APART FROM,

1 BUT ---

2 Q. IF THESE WERE SO IMPORTANT, WHY WOULD YOU PUT
3 THEM AWAY LIKE THAT?

4 A. EVERYTHING I OWN IS IN A STORAGE BUILDING. IT'S
5 NOT THAT I PUT THEM AWAY, EVERYTHING IS AWAY. MY WHOLE
6 LIFE IS IN THAT STORAGE BUILDING.

7 Q. WHY DIDN'T YOU TAKE THEM DOWN TO HIM AT THE JAIL,
8 LET HIM HOLD ON TO THEM? OR HIS ATTORNEY, CHUCK WHITEN,
9 WHY DIDN'T YOU GIVE THEM TO HIM?

10 A. I WASN'T THINKING. I WAS -- I HAD -- I WAS
11 MESSED UP IN MY OWN WAY. I WASN'T THINKING TO JUST TAKE
12 EVERYTHING DOWN THERE. THIS HAPPENED LIKE IN JULY. SO
13 THEY HAD A WHOLE YEAR AND A HALF TO GET THESE THINGS
14 FROM ME THEN. AND WHAT THEY DIDN'T ---

15 Q. OR YOU COULD HAVE GIVEN THEM.

16 A. IF THEY WANTED THEM, IF THEY'D HAVE REQUESTED
17 THEM, I WOULD HAVE. BUT NO ONE DID. THEY WERE JUST
18 STAYING WITH ME. AND SO WHEN EVERYTHING -- I HAD TO
19 PACK EVERYTHING BECAUSE EVERYTHING I OWN IS IN THAT
20 STORAGE BUILDING UNTIL I REVISIT IT.

21 Q. SO THE BOTTOM LINE IN THIS COURTROOM TODAY, YOU
22 DON'T HAVE THOSE STATEMENTS THAT YOU SUPPOSEDLY HAVE?

23 A. NO, I DO NOT HAVE THEM, BUT IF I HAVE TO GET
24 THEM, I WILL.

25 MR. THOMPSON: RE-CROSS [SIC]?

1 THE COURT: CERTAINLY.

2 REDIRECT EXAMINATION BY MR. THOMPSON:

3 Q. WERE YOU EVER DIAGNOSED WITH A BRAIN TUMOR WHICH
4 WOULD AFFLICT YOUR ABILITY TO REMEMBER TIMES AND ---

5 MS. HUEY: OBJECTION, YOUR HONOR, LEADING.

6 THE COURT: NO, I'M GOING TO PERMIT THIS
7 QUESTION.

8 GO AHEAD. SHE CAN ANSWER IT YES OR NO OR I
9 CAN'T REMEMBER.

10 THE WITNESS: YES, I WAS. I HAVE A
11 COMPREHENSION DISABILITY.
12 BY MR. THOMPSON:

13 Q. FROM THE BRAIN TUMOR?

14 A. FROM BIRTH.

15 Q. WHICH ENABLES YOU TO REMEMBER TIME, CORRECT, OR
16 SPECIFIC TIMES?

17 A. SOMETIME I CAN, AND MOST OF THE TIME I CAN'T, BUT
18 SOMETIME I CAN. I DON'T KNOW WHAT'S THE DIFFERENCE IN
19 WHETHER IT'S IMPORTANT OR SOMETHING I WANT TO DO. I
20 DON'T KNOW WHAT MAKES IT STICK. NAMES, GONE, IT DON'T
21 PICK UP NOBODY'S NAME NO KIND OF WAY. IT'S JUST
22 OBSOLETE TO MY BRAIN.

23 Q. SO YOU WOULDN'T REMEMBER OR -- SO YOU WOULDN'T
24 REMEMBER THE EXACT TIME IT TOOK FROM THE TIME YOU
25 ENTERED THE RESIDENCE WHEN YOU ARRIVED TILL MAYBE THE

1 CONSENT TO SEARCH?

2 A. I WOULD HAVE TO GUESS AT THAT. THAT WAS WHAT I
3 DID. 'CAUSE I MEAN, IT WENT FROM THE BEGINNING OF ME
4 WALKING INTO THE RESIDENCE, I WAS DISTURBED FROM THE
5 PHONE CALL COMING IN.

6 Q. SO YOU WERE ACTUALLY DEVASTATED?

7 A. UH-HUH.

8 Q. SO YOU FELT LIKE TIME WAS MOVING FAST AT THAT
9 TIME, WHICH WOULD SAY THAT THINGS HAPPENED IN TEN, MAYBE
10 20 MINUTES OF ENTERING THE HOME UNTIL THE SEARCH AND
11 SEIZURE?

12 A. THE THING THAT UPSET ME THE MOST AND SCARES ME IS
13 THAT WITH YOU BEING MY BABY AND YOU BEING AS PROTECTIVE
14 AS YOU IS ABOUT CERTAIN THINGS IN LIFE, YOU CALLED ME
15 AND YOU SAID THAT THE POLICE ARE ON THE WAY TO THE HOUSE
16 AND YOU ARE CONCERNED, IT DEVASTATED ME ON THE SPOT TO
17 TRY TO FIND OUT WHY. BECAUSE YOU ARE SO PROTECTIVE OF
18 EVERYTHING YOU DO, IT JUST SCARED ME.

19 AND YOU ASKED ME ABOUT REMEMBERING? I CAN ONLY
20 GUESS, HONEY, ABOUT THE TIME FRAME TO THESE THINGS. I
21 CAN'T GIVE YOU ANYTHING. I DIDN'T HAVE A WATCH. I
22 DIDN'T HAVE A TIME, NO TIME ON ME TO TELL ME ANYTHING,
23 SO ---

24 Q. SO YOU WERE JUST GOING OFF OF ---

25 A. I GOT TO GUESS AT IT. AND I DO HAVE A REAL GOOD

1 MEMORY BANK. IT GOES IN THERE. IF IT GETS IN THERE,
2 I'LL REMEMBER IT, BUT IF IT GOES THROUGH IT, HUH-UH.

3 Q. AND YOU NO LONGER LIVE AT THE INCIDENT LOCATION
4 WHICH IS WHITTEN ROAD?

5 A. NO, I DON'T.

6 Q. IS ANY OF YOUR PROPERTY WITH YOU AT THIS GIVEN
7 TIME?

8 A. TRUTHFULLY, I LIVE OUT OF A BASKET. THAT'S HOW
9 LITTLE I AM RIGHT NOW. AND I HAVE A VERY HUGE STORAGE
10 BUILDING AND EVERYTHING THAT I OWN IS IN THAT STORAGE
11 BUILDING.

12 MR. THOMPSON: THANK YOU.

13 RECROSS-EXAMINATION BY MS. HUEY:

14 Q. HOW LONG HAVE YOU KNOWN THIS TRIAL HAS BEEN
15 PENDING?

16 A. THIS TRIAL HERE?

17 Q. UH-HUH.

18 A. I GUESS FROM THE MINUTE OF THE ARREST.

19 Q. AND, BUT MORE SPECIFICALLY WHEN IT WAS ACTUALLY
20 SET FOR TRIAL.

21 A. THAT'S A GOOD QUESTION. I'M GONNA HAVE TO GUESS.
22 LAST MONTH WHEN THEY FIRST HAD THE FIRST HEARING LIKE
23 THIS.

24 Q. OKAY. SO LAST MONTH. AND AT THAT TIME DID YOU
25 MAKE ATTEMPTS TO GO TO THIS STORAGE UNIT OF YOURS?

1 A. WE HAD MADE FOUR ATTEMPTS TO GO INTO THAT STORAGE
2 BUILDING TO FIND IT. I HAVE BEEN THROUGH EVERY BOX.
3 BUT TO MY KNOWLEDGE, AFTER GOING THROUGH EVERYTHING, I
4 LEFT THIS INFORMATION IN THE OPENING OF MY DRESSER, TOP
5 OF MY DRESSER DRAWER, WHICH IS DOWN UP UNDER ALL THAT
6 FURNITURE OVER THERE, AND MY SONS DON'T WANT TO
7 ACCOMMODATE ME TO TAKE EVERYTHING OUT OF THE STORAGE
8 BUILDING.

9 Q. YOUR SONS WHO ARE RELATED TO THE DEFENDANT?

10 A. YES.

11 Q. THEY DON'T WANT TO ACCOMMODATE YOU TO HELP FIND
12 IT?

13 A. THEY'VE ALREADY BEEN IN THERE ALL THOSE TIMES AND
14 THEY HAD TO BRING ALL THE BOXES OUT, THEY GOT TO GET
15 FREEZERS. IT'S AWFUL. THIS IS A STORAGE BUILDING.

16 Q. YOU CAN'T FIND THEM, THEN?

17 A. THANK YOU. AND SO I COULDN'T FIND THEM IN ALL
18 THE BOXES AND ALL THE STUFF WE COULD GET TO. THAT LEADS
19 ME TO KNOW EXACTLY WHERE THEY ARE AT. AND THEY DON'T
20 WANT TO GO BACK IN THERE AND PULL ALL THE HEAVYWARE OUT
21 TO GET TO IT. LIKE I SAID, IF WE HAVE TO, WE WILL.

22 MS. HUEY: THANK YOU.

23 MR. THOMPSON: THAT'S ALL.

24 THE COURT: YOU MAY STEP DOWN. THANK YOU,
25 MA'AM.

1 (WHEREUPON, THE WITNESS WAS EXCUSED.)

2 (WITNESS LEAVES STAND.)

3 THE COURT: CALL YOUR NEXT WITNESS.

4 MR. THOMPSON: THAT'S ALL WE HAVE.

5 THE COURT: ANY REPLY?

6 MS. HUEY: NO, SIR, YOUR HONOR.

7 THE COURT: I'D LOVE TO HEAR ARGUMENT TO A
8 DEGREE. I JUST NEED TO KNOW WHAT YOU CONSIDER THE MOST
9 CRITICAL PART OF YOUR MOTION TO, ONE, ADMIT THE
10 STATEMENTS AND WHICH STATEMENTS YOU WISH TO ADMIT AND/OR
11 PORTIONS THEREOF, AND THEIR VOLUNTARINESS AND
12 ADMISSIBILITY.

13 AND THEN I WOULD LIKE TO KNOW YOUR GROUND
14 FOR SUPPRESSING ANY STATEMENTS THAT THE STATE SEEKS TO
15 ADMIT OR PORTIONS THEREOF.

16 SO, IF YOU WOULD, I KNOW THE HOUR IS LATE,
17 BUT WE'VE GOT TO TAKE CARE OF IT BEFORE THIS TRIAL
18 STARTS.

19 MS. HUEY: I'M HAPPY TO GO FORWARD.

20 THE COURT: ALL RIGHT. VERY GOOD.

21 ARGUMENT ON BEHALF OF THE STATE:

22 MS. HUEY: YOUR HONOR, BRIEFLY -- AND I
23 WOULD BE HAPPY TO GO INTO MUCH MORE DETAIL IF YOU WANT
24 ME TO. ESSENTIALLY THE DEFENDANT IS 19 YEARS OLD, HE'S
25 ABOUT TO GRADUATE FROM HIGH SCHOOL, HE HAS A DIPLOMA.

1 THIS TOOK PLACE AT HIS OWN HOME, NOT AT THE
2 DETENTION CENTER, NOT IN HANDCUFFS. AS SOON AS POLICE
3 ARRIVED, THEY MIRANDIZED HIM AT THAT POINT, WHICH
4 ACCORDING TO NIKKI CARSON IS 2:45 IN THE AFTERNOON.
5 FROM THAT POINT FORWARD HE HAS BEEN MIRANDIZED, AND HE
6 SIGNED IT. AFTER HAVING BEEN READ THOSE RIGHTS HE
7 AGREED TO GIVE A STATEMENT.

8 AND IN NIKKI CARSON'S OPINION AND THE
9 STATE'S OPINION HE GAVE SEVERAL STATEMENTS. ONE WAS
10 ORAL AS WE KEEP HEARING ABOUT, THE STATEMENT WHERE HE
11 SAYS THAT Minor MESSED ON HIMSELF. THE SECOND STATEMENT
12 REFERS TO Minor BEING NAKED BECAUSE HE GOT HOT. AND THEN
13 THE THIRD STATEMENT, WHICH THE DEFENSE HAS A PROBLEM
14 WITH, IS THE CONFESSION.

15 NOW, IN GOING TO THE CONFESSION, THE
16 DEFENDANT INITIALED THE STATEMENT SEVERAL TIMES
17 THROUGHOUT, INDICATING THAT HE HAS READ THE STATEMENT,
18 IS ACKNOWLEDGING WHAT THE STATEMENT CONTAINS.
19 FURTHERMORE, HE SIGNS THAT STATEMENT. AND ADDITIONALLY,
20 HE CONFESSES IT TO A WHOLE OTHER VICTIM.

21 THE POLICE WENT OUT THERE TO INVESTIGATE ONE
22 VICTIM, Minor 2 AND WHEN THEY GOT THERE, HE THEN
23 CONFESSES TO ROGER ALLEN PITTS. NOW, I DON'T PLAN TO
24 GET INTO ANY OF THAT IN TRIAL, BUT I SAY THAT IN ORDER
25 TO GO TO THE VOLUNTARINESS OF THIS STATEMENT, WHICH

1 AGAIN THE DEFENDANT SIGNED AND DATED, INITIALED SEVERAL
2 TIMES.

3 AND I KNOW THEY WEREN'T READ ALOUD IN THE
4 COURTROOM, BUT MS. CARSON STATED SHE READ THE ENTIRE
5 STATEMENT FROM TOP TO BOTTOM. AND IF YOU WILL NOTICE ON
6 THIS STATEMENT, AT THE VERY TOP IT GOES OVER TO MIRANDA
7 AGAIN. SO AT ANY TIME HE COULD HAVE SAID, NO, I DON'T
8 WANT TO GIVE A STATEMENT; NO, THIS ISN'T MINE; I WANT AN
9 ATTORNEY. BUT INSTEAD HE GAVE A STATEMENT.

10 THE COURT: ALL RIGHT. MR. THOMPSON?

11 ARGUMENT BY MR. THOMPSON, THE DEFENDANT:

12 MR. THOMPSON: AN INITIAL FAILURE TO
13 ADMINISTER MIRANDA WARNING BEFORE ANY STATEMENT IS GIVEN
14 COMPLETELY TAINTS THE FOLLOWING STATEMENT -- SUBSEQUENT
15 STATEMENT MADE AFTER ANYONE HAS BEEN FULLY ADVISED OF OR
16 HAS WAIVED HIS OR HER MIRANDA RIGHTS, AS IN MY CASE,
17 EVEN WHEN ANY STATEMENTS WERE OR WERE NOT VOLUNTARY. IT
18 IS AN UNWARRANTED EXTENSION OF MIRANDA TO HOLD THAT A
19 SIMPLE FAILURE TO ADMINISTER THE WARNINGS UNACCOMPANIED
20 BY ANY ACTUAL COERCION OR OTHER CIRCUMSTANCES CALCULATED
21 TO UNDERMINE MY ABILITY TO EXERCISE MY FREE WILL SO
22 TAINTS THE INVESTIGATIVE PROCESS THAT A FOLLOWING
23 SUBSEQUENT VOLUNTARY AND INFORMED WAIVER IS INEFFECTIVE
24 FOR SOME INDETERMINATE PERIOD. WHEN MIRANDA WARNINGS
25 ARE INSERTED IN THE MIDST OF COORDINATED AND CONTINUING

1 INTERROGATION, THE LAW ENFORCEMENT OFFICERS ARE LIKELY
2 TO MISLEAD AND DEPRIVE ANYONE OF KNOWLEDGE ESSENTIAL TO
3 HIS OR HER ABILITY TO UNDERSTAND THE NATURE OF THEIR
4 RIGHTS AND THE CONSEQUENCES OF WAIVING IT.

5 THE UNITED STATES SUPREME COURT
6 HELD THAT SIMPLE FAILURE TO ADMINISTER
7 MIRANDA WARNING PRIOR TO AN ALLEGED GIVEN
8 CONFESSION, WHERE NO EVIDENCE OF COERCION
9 OR CALCULATION WAS PRESENT, RENDERED ANY
10 AND ALL SUBSEQUENT POST MIRANDA
11 STATEMENTS INADMISSIBLE.

12 AND THAT'S CITED FROM MORGAN VERSUS
13 HILLESTAD (PHONETIC).

14 NOW, THE UNITED STATES SUPREME COURT ALSO
15 HAS FREQUENTLY HELD UNCONSTITUTIONAL THE POLICE TACTIC
16 OF QUESTION FIRST, WHERE LAW ENFORCEMENT OFFICERS
17 INTENTIONALLY QUESTION A SUSPECT UNTIL INCULPATORY
18 INFORMATION IS GIVEN AND THEN PROVIDE MIRANDA WARNINGS
19 PRIOR TO HAVING THE SUSPECT REPEAT THE INCULPATORY
20 INFORMATION AFTER BEING MIRANDIZED.

21 THUS, THE CONFESSION DISCLOSED AFTER THE
22 WARNINGS WERE GIVEN WAS ALSO INADMISSIBLE.

23 NOW, WHETHER A SUSPECT IS IN POLICE CUSTODY
24 FOR MIRANDA PURPOSES IS AN OBJECTIVE DETERMINATION BASED
25 UPON THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING THE

1 INDIVIDUAL'S FREEDOM TO LEAVE THE SCENE, AND THE
2 PURPOSE, PLACE AND LENGTH OF THE QUESTIONING. THE
3 RELEVANT INQUIRY IS WHETHER A REASONABLE MAN IN MY
4 POSITION WOULD HAVE UNDERSTOOD MYSELF TO BE IN CUSTODY.

5 THE CUSTODIAL DETERMINATION IS NOT BASED
6 UPON -- OR ARE NOT BASED UPON THE SUBJECTIVE USE OF
7 EITHER ME OR THE OFFICERS. THE QUESTIONING PROCESS IN
8 THIS INVESTIGATION WAS INTEGRATED, COORDINATED, AND
9 CONTINUING INTERROGATION SUCH THAT GIVING MIRANDA
10 WARNINGS MID-INTERROGATION WAS INEFFECTIVE AND RENDERS
11 ANY AND ALL STATEMENTS INADMISSIBLE.

12 ACCORDING TO CRIMINAL LAW, NO COMPARISON MAY
13 BE CONSIDERED BY A JURY UNLESS FOUND BEYOND A REASONABLE
14 DOUBT, AND HAVE BEEN GIVEN FREELY AND VOLUNTARILY UNDER
15 THE TOTALITY OF CIRCUMSTANCES. AND IF I, HOWARD
16 THOMPSON, III, WAS PLACED INTO POLICE CUSTODY AT THE
17 TIME OF THE ALLEGED CONFESSION, AND THAT SHOULD BE BASED
18 UPON FACTS, THE JURY MUST BE CONVINCED THAT I MYSELF
19 RECEIVED AND UNDERSTOOD MY FIFTH AND SIXTH AMENDMENT
20 RIGHTS OF THE UNITED STATES CONSTITUTION BILL OF RIGHTS
21 AS MANDATED IN MIRANDA VERSUS ARIZONA, STATE VERSUS
22 PENDERGRASS AND STATE VERSUS DARBY.

23 NOW, ANY REFERENCE TO THIS ALLEGED
24 CONFESSION SHOULD BE SUPPRESSED BECAUSE I WAS NOT GIVEN
25 OR ADVISED OF MY MIRANDA RIGHTS PRIOR TO MAKING OR

1 DISCLOSING THE ALLEGED CONFESSION. IN MAKING THE
2 CUSTODIAL DETERMINATION, I, HOWARD THOMPSON, III, THE
3 DEFENDANT IN THIS CASE, WAS NOT FREE TO LEAVE.

4 CONSIDERING THE FACT THAT THE INTERROGATION
5 OCCURRED AT MY PLACE OF RESIDENCE AND NOT AT A LAW
6 ENFORCEMENT BUILDING, AS STATED IN GENERAL ORDERS 213 OF
7 THE SHERIFF'S DEPARTMENT, WHICH IS SIGNED BY DAVID
8 CRENSHAW HIMSELF; CONSIDERING THE FACT THAT THE
9 INTERROGATION, ACCORDING TO THE INVESTIGATION PAPERWORK
10 LASTED EIGHT HOURS AND 41 MINUTES IN LENGTH, AND BEING
11 CONCERNED WITH THE OFFICERS' PURPOSE IN THEIR METHOD OF
12 QUESTIONING.

13 THE COURT: ANYTHING ELSE?

14 MR. THOMPSON: I WOULD ALSO LIKE TO REFER TO
15 STATE VERSUS NAVY IN THIS CASE.

16 THE COURT: STATE VERSUS NAVY.

17 MS. HUEY: AND, YOUR HONOR I CAN DISTINGUISH
18 STATE VERSUS NAVY. IN THAT PARTICULAR CASE THEY DID
19 BEGIN QUESTIONING FIRST BEFORE THEY MIRANDIZED.

20 BUT AGAIN, I BELIEVE THE DEFENDANT HAS EVEN
21 ACKNOWLEDGED THAT HE WAS MIRANDIZED, HE WAS READ HIS
22 RIGHTS AS SOON AS THE POLICE GOT THERE.

23 THE COURT: MAY I SEE STATE'S EXHIBIT ONE,
24 PLEASE?

25 MS. HUEY: YES, SIR. YOUR HONOR, THIS IS

1 ONE, TWO AND THREE.

2 THE COURT: ALL RIGHT. ANYTHING ELSE?

3 MS. HUEY: NO, SIR, YOUR HONOR.

4 MR. THOMPSON: NO, SIR, YOUR HONOR.

5 THE COURT: THE ONLY STATEMENTS I HAVE
6 BEFORE ME ARE THE STATEMENTS MADE 5-20-2005 BEGINNING AT
7 3:40 P.M. AND APPARENTLY COMPLETED AT 3:50, IS THAT
8 RIGHT, P.M., WHICH IS A HANDWRITTEN STATEMENT ADMITTED
9 AND SIGNED ---

10 MS. HUEY: YES, SIR.

11 THE COURT: --- BY THE DEFENDANT.

12 ALSO, STATEMENT NUMBER TWO, WHICH AGAIN IS
13 THE SAME DATE, 5-20-05, WHICH APPARENTLY IS A
14 HANDWRITTEN STATEMENT DONE BY OFFICER CARSON FROM THE
15 TESTIMONY, STARTED AT 4:15, AND COMPLETED AT 4:42.

16 I ALSO HAVE THE ADVISORY OF RIGHTS, WHICH IS
17 EXHIBIT ONE, DATED 5-20-05, AND TIME, 2:45 P.M.

18 THE COURT'S RULING ON ARGUMENTS:

19 THE COURT: THERE ARE TWO THINGS I MUST SAY
20 AT THE BEGINNING, AND THAT IS THAT THE DEFENDANT
21 OBVIOUSLY IS VERY KNOWLEDGEABLE IN HIS OWN RIGHT AS TO
22 HIS RIGHTS. NOT ONLY HAS HE EXPRESSED THEM TODAY, BUT
23 ALSO IN HIS EXPRESSION OF MATTERS SET OUT IN STATE'S
24 EXHIBIT NUMBER TWO, WHICH I UNDERSTAND IS THE ONE THAT
25 HE ADMITS TO HAVING ACTUALLY WRITTEN HIMSELF.

1 NOW, ALSO, I HAVE TO GIVE HIM CREDIT FOR
2 CANDOR IN THE SENSE THAT HE ADMITS THAT HE WAS FIRST
3 CONTACTED AT 12:45 -- EXCUSE ME -- YES, 12:45 OR 12:15,
4 WHICHEVER, AND THAT IT WAS SOMETIME AFTER THAT THAT --
5 NO, CONTACT TIME WAS 12:45 A.M. [SIC] AND SOMETIME AFTER
6 THAT THE OFFICERS ARRIVED AND THAT HE WAS AWARE OF WHAT
7 THEY WERE INTERESTED IN.

8 HE ALSO HAS ADMITTED THAT AT LEAST HE WAS
9 READ HIS RIGHTS. AND OBVIOUSLY CONSIDERING HIS
10 EDUCATION, HE UNDERSTOOD HIS RIGHTS, AND I NOTE THAT HE
11 DID SIGN IN THE TWO PLACES NOT ONLY THAT HIS RIGHTS WERE
12 READ TO HIM BUT ALSO THAT HE UNDERSTOOD AND WAIVED THOSE
13 RIGHTS.

14 I FIND, AFTER CAREFULLY CONSIDERING ALL OF
15 THE EVIDENCE AND AM CONVINCED BY A PREPONDERANCE OF THE
16 EVIDENCE THAT THE DEFENDANT WAS FULLY ADVISED OF HIS
17 RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS, THOSE
18 RIGHTS BEING THE RIGHT TO REMAIN SILENT, THAT THE
19 STATEMENT CAN AND WILL BE USED AGAINST HIM IN A COURT OF
20 LAW.

21 HE HAD A RIGHT TO AN ATTORNEY. IF HE COULD
22 NOT AFFORD ONE, ONE WOULD BE APPOINTED FOR HIM. THE
23 RIGHT TO CONSULT WITH THAT ATTORNEY.

24 THE RIGHT TO INTERRUPT AND TERMINATE THE
25 INTERROGATION AT ANY TIME, AND IT WOULD CEASE UNTIL AN

1 OPPORTUNITY TO CONSULT WITH AN ATTORNEY.

2 I FIND THAT THESE WERE ALL EXPLAINED OR AT
3 LEAST THAT HE WAS AWARE OF THOSE RIGHTS AND THEY WERE
4 ADVISED TO HIM, AND THAT THE DEFENDANT KNOWINGLY AND
5 INTELLIGENTLY WAIVED THESE RIGHTS UNDER THE FIFTH AND
6 SIXTH AMENDMENTS.

7 I FURTHER FIND THAT THE ALLEGED STATEMENT OR
8 CONFESSION OBTAINED FROM THE DEFENDANT WAS FREELY AND
9 VOLUNTARILY GIVEN WITHOUT DURESS, WITHOUT COERCION,
10 WITHOUT UNDUE INFLUENCE, WITHOUT REWARD, WITHOUT PROMISE
11 OR HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY, WITHOUT
12 THREAT OF INJURY, WITHOUT COMPULSION OR INDUCEMENT OF
13 ANY KIND, AND THAT SUCH ALLEGED INCRIMINATING STATEMENT
14 WAS THE VOLUNTARY PRODUCT OF THE FREE NON-CONSTRAINED
15 WILL OF THE DEFENDANT.

16 NOW, I HAVE FOUND THESE STATEMENTS TO BE
17 FREE AND VOLUNTARY IN ACCORDANCE WITH THE CONSTITUTIONAL
18 PROTECTIONS BY THE PREPONDERANCE OF THE EVIDENCE.
19 HOWEVER, IT IS A QUESTION OF FACT TO BE DETERMINED BY
20 THE TRIER OF THE FACT, THE JURY, BEYOND A REASONABLE
21 DOUBT WHETHER OR NOT, ONE, THE STATEMENT WAS MADE,
22 FIRST; AND THEN IF IT WAS, WAS IT DONE AFTER PROPER
23 ADVISING OF RIGHTS AND THE WAIVER OF THOSE RIGHTS AND
24 THE KNOWING AND INTELLIGENTLY GIVING THOSE RIGHTS FREELY
25 AND VOLUNTARILY; THAT HE KNOWINGLY AND INTELLIGENTLY

1 WAIVED HIS RIGHTS. THAT WILL BE FOR THE JURY TO
2 DETERMINE.

3 NOW, THAT WAS AS TO THE ADVISORY OF RIGHTS
4 AND VOLUNTARY STATEMENT MARKED STATE'S EXHIBIT TWO, AND
5 VOLUNTARY STATEMENT, EXHIBIT THREE, AS TO THOSE MATTERS
6 AT ISSUE IN THIS CASE UNLESS THERE IS SOME -- I DO NOT
7 FIND THAT THE STATEMENT RELATIVE TO AUSTIN PITTS IS AT
8 ALL -- OR MATTERS THAT RELATE TO AUSTIN PITTS AS OF TO
9 THIS MATTER, UNLESS SOME TESTIMONY IN THE RECORD AT THE
10 TIME SHOULD MAKE IT SO. ONLY AS IT PERTAINS TO THE
11 ALLEGED VICTIM IN THIS CASE DO I PERMIT THIS EVIDENCE.

12 NOW, AS FAR AS ANY OTHER STATEMENT THAT
13 ALLEGEDLY WAS MADE AT THE SAME TIME, INASMUCH AS THERE
14 IS EVIDENCE OF SUCH A STATEMENT HAVING BEEN MADE,
15 ALTHOUGH IT CAN'T BE FOUND AT THIS TIME, I FIND THAT
16 APPARENTLY AND ALLEGEDLY THEY WERE ALL MADE AT THE SAME
17 SITTING, SO TO SPEAK, AND FOR THE COMPLETENESS OF
18 STATEMENTS THAT I WILL PROFFER TESTIMONY AS TO WHAT WAS
19 CONTAINED IN THOSE STATEMENTS MADE ALSO BE ADMITTED.

20 AND I WOULD ADVISE OR RECOMMEND TO YOU
21 READING CABRERA-PENA, WHICH IS A RECENT CASE IN THE LAST
22 THREE YEARS ON COMPLETENESS AND PRO SE DEFENDANTS.

23 ALL RIGHT. ANYTHING ELSE?

24 MS. HUEY: NO, SIR, YOUR HONOR, NONE FROM
25 THE STATE.

1 **THE COURT:** OH, AND AS FAR AS THE RECORDS
2 ARE CONCERNED, I HAVEN'T FOUND ANYTHING THAT WOULD
3 REQUIRE INTRODUCTION OF WITNESSES, NOT FROM OUT OF
4 STATE.

5 **MR. WHITEN:** YOUR HONOR, SINCE I'M THE ONE
6 THAT SENT THE SUBPOENA, I WILL ATTEMPT TO FOLLOW IT UP
7 BEFORE TOMORROW.

8 **THE COURT:** VERY GOOD. WE'LL SEE.

9 ALL RIGHT. LADIES AND GENTLEMEN, ANYTHING
10 ELSE BEFORE WE RECEDE FOR THE EVENING?

11 **MS. HUEY:** JUDGE, ONE OTHER THING I FORGOT
12 TO MENTION EARLIER. THE DEFENDANT WAS EVALUATED BACK ON
13 SEPTEMBER 12TH OF 2006. WE HAVE PREVIOUSLY MADE THIS A
14 COURT'S EXHIBIT, AS WELL, COURT'S EXHIBIT ONE, JUST TO
15 PUT ON THE RECORD.

16 **THE COURT:** WELL, I CAN ASSURE YOU THAT FROM
17 MY OBSERVATION OF THE DEFENDANT DURING THESE PROCEEDINGS
18 I FIND THAT HE'S KNOWINGLY, INTELLIGENT, VERY MUCH IN
19 CONTROL OF HIS FACULTIES. SO I FIND THAT APPARENTLY
20 FROM THE FORENSIC PSYCHIATRIST OF THE DEPARTMENT OF
21 MENTAL HEALTH HAVE FOUND THAT HE WOULD BE PASSING BOTH
22 THE ABILITY TO KNOW -- CONFORM TO CRIMINAL
23 RESPONSIBILITY AS WELL AS BEING ABLE TO PARTICIPATE IN
24 THESE PROCEEDINGS.

25 ALL RIGHT. THIS WILL BE MADE PART OF THE

1 RECORD, TOO. NOW, THIS WAS COURT'S EXHIBIT NUMBER ONE
2 AT A PRIOR HEARING, SO THAT MEANS IT'S STILL A PART OF
3 THE RECORD.

4 MS. HUEY: YES, SIR, JUDGE.

5 THE COURT: VERY WELL. ALL RIGHT. DO WE
6 HAVE ANY REPORT ON ANY OF THE SUBPOENAS?

7 MS. HUEY: YOUR HONOR, WE HAVE MADE CONTACT
8 AND THEY WILL BE HERE IN THE MORNING.

9 THE COURT: VERY GOOD. ALL RIGHT. WE'LL
10 STAND IN RECESS UNTIL 10:00 TOMORROW MORNING. THANK YOU
11 VERY MUCH FOR YOUR PATIENCE.

12 (COURT ADJOURNED AT 7:00 P.M., TO RESUME ON
13 TUESDAY, MAY 22, 2007, AT APPROXIMATELY 10:00
14 A.M.)

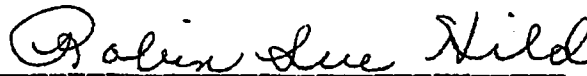
15 ***** END OF REQUESTED TRANSCRIPT *****
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CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
VOLUME II, MAY 21, 2007, PAGES 57 THROUGH 207, RELATIVE
TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ANDERSON
COUNTY, SOUTH CAROLINA, ON THE 21ST DAY, 22ND DAY, AND
23RD DAY OF MAY, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 8, 2007



ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH) IN THE COURT OF GENERAL
 CAROLINA) SESSIONS
)
 COUNTY OF ANDERSON) INDICTMENT NO:
 2005-GS-04-1700

STATE OF SOUTH)
 CAROLINA)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL -- VOLUME III OF IV
) PAGES 209 THROUGH 396
 -VS-)
)
 HOWARD THOMPSON, III,)
)
 DEFENDANT.

MAY 22, 2007
 ANDERSON, SOUTH CAROLINA

B E F O R E:

HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A JURY.

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

CATHERINE T. HUEY, ESQ.
 ASSISTANT 10TH CIRCUIT SOLICITOR
 ATTORNEY FOR THE STATE

HOWARD THOMPSON, III
 PRO SE DEFENDANT

CHARLES WHITEN, ESQ.
 STAND-BY ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
 CIRCUIT COURT REPORTER
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1 ***** START OF REQUESTED TRANSCRIPT *****

2 (WHEREUPON, THE CASE OF THE STATE OF SOUTH
3 CAROLINA VERSUS HOWARD THOMPSON, III,
4 CONTINUED ON TUESDAY, MAY 22ND, 2007, AT
5 10:00 A.M.)

6 THE COURT: ALL RIGHT. WE'RE BACK IN THE
7 CASE OF STATE OF SOUTH CAROLINA VERSUS HOWARD THOMPSON,
8 III, 2005-GS-04-1700. IT IS MY UNDERSTANDING THE JURY
9 IS NOW COMPLETE. ALSO, THEY HAVE SENT OUT A NOTE, OR A
10 QUESTION: CAN EACH JUROR TAKE NOTES DURING THE
11 PROCEEDINGS? IT'S TODAY'S DATE AND SIGNED BY THE
12 FOREPERSON.

13 I'VE HAD A SIDE-BAR WITH THE PARTIES AND
14 EXPLAINED TO THEM MY POLICY IN SUCH CASES, THAT THE
15 JURORS DO NOT TAKE NOTES IS MY RECOMMENDATION, AND I
16 WILL SO INSTRUCT THEM.

17 IS THERE ANY EXCEPTION TO THAT INSTRUCTION
18 NOT TO TAKE NOTES, FROM THE STATE?

19 MS. HUEY: NO, SIR, YOUR HONOR.

20 THE COURT: FROM THE DEFENSE?

21 MR. THOMPSON: NO, YOUR HONOR.

22 THE COURT: THANK YOU, SIR. THANK YOU,
23 MA'AM.

24 ALL RIGHT. ASK THE JURY TO JOIN US, PLEASE.

25 MS. HUEY: YOUR HONOR, COULD I PUT SOMETHING

1 ON THE RECORD FIRST?

2 THE COURT: WAIT A MINUTE. HOLD THE JURY.

3 YES, MA'AM.

4 MS. HUEY: SORRY, JUDGE. I JUST WANTED TO
5 LET THE COURT KNOW THAT IN MY OPENING STATEMENT I DO
6 PLAN ON REFERRING TO THE DEFENDANT'S STATEMENTS SINCE
7 YOU DID ALLOW IT TO COME IN YESTERDAY. I WON'T GO INTO
8 MUCH DETAIL ABOUT IT, BUT I AM GOING TO MAKE A REFERENCE
9 TO IT.

10 THE COURT: ALL RIGHT. ANYTHING FROM THE
11 DEFENDANT ON THAT?

12 (WHEREUPON, THE DEFENDANT CONFERRED WITH
13 STAND-BY COUNSEL.)

14 MR. THOMPSON: AS LONG AS THE REDACTED PART
15 IS NOT IN THIS ---

16 THE COURT: THEY CANNOT USE THE EXHIBITS
17 THEMSELVES, BUT THEY CAN REFER TO THE FACT THAT
18 STATEMENTS WERE MADE, AND THAT WILL BE A QUESTION OF
19 FACT FOR THE JURY; BUT MOREOVER, AS YOU MENTIONED,
20 NOTHING THAT WOULD BE NOT RELEVANT TO THE ISSUES IN THIS
21 PARTICULAR CASE.

22 MS. HUEY: AND ACTUALLY, AS TO THE REDACTED,
23 I GAVE THE DEFENDANT A COPY FOR HIS REVIEW.

24 DO YOU HAVE IT?

25 MR. THOMPSON: YES, I DO.

1 **MS. HUEY:** AND, YOUR HONOR, WE DO HAVE A
2 REDACTED STATEMENT WHICH I'LL MARK AT THE APPROPRIATE
3 TIME, AND THE DEFENDANT HAS REVIEWED IT AND HE AGREES IT
4 HAS BEEN PROPERLY REDACTED.

5 **THE COURT:** ALL RIGHT. IS THAT CORRECT,
6 MR. THOMPSON?

7 **MR. THOMPSON:** THAT IS CORRECT, YOUR HONOR.

8 **THE COURT:** THANK YOU, SIR.

9 ALL RIGHT. ONE OTHER THING WHILE WE'RE
10 WAITING FOR THE JURY, I DO UNDERSTAND, AS WE PERHAPS
11 KNEW, THERE WAS COVERAGE OF THE PROCEEDINGS YESTERDAY,
12 BUT I HAD INSTRUCTED THE JURY BEFORE I DISMISSED THEM
13 FOR THE DAY THAT THEY WERE NOT TO WATCH, LISTEN TO, OR
14 READ ANYTHING ABOUT THIS MATTER, AND I INTEND TO INQUIRE
15 OF THE JURY BEFORE I SWEAR THE JURY TO BE SURE THAT
16 THERE HAS BEEN NO PROBLEM WITH THAT INSTRUCTION.

17 IS THERE ANYTHING FROM THE STATE ON THE
18 COURT PROCEEDING IN THAT FASHION?

19 **MS. HUEY:** NO, SIR, YOUR HONOR.

20 **THE COURT:** DO YOU HAVE ANY SUGGESTIONS?

21 **MS. HUEY:** OTHER THAN ASKING THE JURY IF
22 THEY DID, IN FACT, WATCH THE NEWS OR LOOK ON THE
23 INTERNET.

24 **THE COURT:** ASSUMING WE GET THERE. ANYTHING
25 FROM THE DEFENDANT?

1 (WHEREUPON, THE DEFENDANT CONFERRED WITH
2 STAND-BY COUNSEL.)

3 MR. THOMPSON: YOUR HONOR, MAKE SURE THAT
4 YOU ASK THEM ABOUT THE WEBSITES THAT ARE ALSO ON-LINE,
5 IF THEY HAVE ACCESS TO THAT. THAT'S ALL.

6 THE COURT: YOU MEAN NOT TO SAY TO INCLUDE
7 ANY INTERNET ACCESS?

8 MR. THOMPSON: YEAH, THAT WOULD BE FINE.

9 THE COURT: ALL RIGHT. ANYTHING ELSE NOW
10 BEFORE WE BRING THE JURY IN, FROM THE STATE?

11 MS. HUEY: NO, SIR, YOUR HONOR.

12 THE COURT: FROM THE DEFENDANT?

13 MR. THOMPSON: NO, SIR.

14 THE COURT: VERY GOOD. IF YOU WOULD,
15 PLEASE, ASK THE JURY TO JOIN US.

16 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
17 10:14 A.M.)

18 THE COURT: ALL RIGHT. LET THE RECORD
19 REFLECT THAT THE JURY AND ALTERNATES ARE IN THE
20 JURY-BOX.

21 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
22 JURY, BEFORE WE PROCEED, I NEED TO ASK YOU SOME
23 QUESTIONS ABOUT MY INSTRUCTION TO YOU YESTERDAY.
24 APPARENTLY THERE HAS BEEN SOME PUBLIC ATTENTION TO THIS
25 PROCEEDING; I'M NOT EXACTLY SURE WHAT WAS DONE. AND I'M

1 GOING TO ASK YOU AS A GROUP TO RESPOND INDIVIDUALLY.

2 HAS ANY MEMBER OF THE JURY PANEL SEEN OR
3 READ OR HEARD, TO INCLUDE INTERNET ACCESS, ANYTHING
4 ABOUT THIS CASE AT ANY TIME THAT YOU CAN RECALL? IF YOU
5 WOULD, PLEASE RAISE YOUR HAND IF YOU HAVE.

6 HAS ANY MEMBER OF THE JURY PANEL HEARD OR
7 WATCHED, READ, OR LISTENED TO ANYTHING ABOUT THIS CASE:
8 NEWSPAPER, VIDEO, OR INTERNET, T.V. OR RADIO OR PRINT
9 MEDIA? IF YOU HAVE, IF YOU WOULD PLEASE RAISE YOUR HAND
10 AT THIS TIME. (NO RESPONSE.)

11 VERY GOOD. AND I DO WANT TO COMMEND YOU FOR
12 THAT AND THANK YOU FOR IT.

13 NOW, IS THERE ANYTHING FURTHER FROM THE
14 STATE?

15 MS. HUEY: NO, SIR, YOUR HONOR.

16 THE COURT: ANYTHING FROM THE DEFENDANT?

17 MR. THOMPSON: NO, SIR, YOUR HONOR.

18 THE COURT: MADAM CLERK, IF YOU WOULD PLEASE
19 SWEAR THE JURY.

20 (WHEREUPON, THE JURY WAS SWORN BY THE CLERK
21 OF COURT.)

22 THE COURT: NOW, MADAM FORELADY, LADIES AND
23 GENTLEMEN OF THE JURY, I HAVE RECEIVED A MESSAGE OR A
24 NOTE FROM THE JURY: CAN EACH JUROR TAKE NOTES DURING
25 THE PROCEEDINGS?

1 I'M GOING TO ADDRESS THAT IN MY PRELIMINARY
2 REMARKS, AND IF THERE IS ANY FURTHER QUESTION ABOUT IT,
3 I'LL BE GLAD TO FURTHER EXPLAIN IT.

4 **PRELIMINARY INSTRUCTIONS BY THE COURT TO THE JURY:**

5 **THE COURT:** MADAM FORELADY, LADIES AND
6 GENTLEMEN OF THE JURY, I AM SURE EACH OF YOU NOW FULLY
7 APPRECIATES THAT THIS COURT, THE COURT OF GENERAL
8 SESSIONS FOR ANDERSON COUNTY, EXISTS FOR THE PURPOSE OF
9 RESOLVING QUESTIONS OF ALLEGED CRIMINAL CONDUCT ARISING
10 BETWEEN THE STATE OF SOUTH CAROLINA AND THE DEFENDANT.

11 IT IS A GUARANTEED RIGHT OF EVERY CITIZEN
12 THAT A CHARGE OF CRIMINAL CONDUCT BE PRESENTED IN OPEN
13 COURT ACCORDING TO CERTAIN RULES OF PROCEDURE. THE
14 STATE HAS NOT ONLY AN EQUAL RIGHT BUT THE DUTY TO
15 PRESENT A CHARGE OF CRIMINAL CONDUCT IN OPEN COURT
16 ACCORDING TO THE SAME RULES AND PROCEDURE. EACH OF THE
17 PARTIES, THEREFORE, BOTH THE STATE AND THE DEFENDANT,
18 THEN HAVE AN EQUAL RIGHT TO THE OPPORTUNITY OF THIS
19 JUDICIAL PROCEEDING AND TO HAVE YOU AS A JURY SELECTED
20 AND NOW SWORN FOR THE TRIAL OF THIS CASE.

21 ONE OF THE MOST IMPORTANT ASPECTS OF YOUR
22 DUTY AS THE JURY LIES ESSENTIALLY IN THE OATH THAT YOU
23 HAVE NOW TAKEN TO WELL AND TRULY TRY AND DETERMINE THE
24 FACTS IN THIS CASE. THAT OATH IN A VERY ESSENTIAL WAY
25 SAYS THAT YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS

1 CASE.

2 OBVIOUSLY, EACH CASE TRIED IN COURT WOULD
3 INVOLVE A QUESTION ABOUT WHAT HAPPENED OR HOW SOMETHING
4 CAME TO HAPPEN, OR WHOM, IF ANYONE, DID ANYTHING IN A
5 PARTICULAR OCCURRENCE OR CIRCUMSTANCE. FROM THIS POINT
6 FORWARD, THEN, NO ONE NOT CONCERNED WITH THE TRIAL HAS
7 THE RIGHT TO DECIDE ANY QUESTION OF FACT IN THIS TRIAL
8 EXCEPT FOR YOU, THE JURY. THE FACTS THEN ARE FOR YOUR
9 RESOLUTION AND YOUR DECISION AND YOURS ALONE.

10 AND AFTER YOU HEAR ALL THE EVIDENCE IN THE
11 CASE, THEN IT WILL BE YOUR DUTY BY YOUR MUTUAL AND JOINT
12 DISCUSSIONS TO DETERMINE THE TRUTH OF THIS CASE BY
13 DECIDING THE WEIGHT AND THE BELIEVABILITY OF EACH PART
14 OF THE EVIDENCE AND BY APPLYING THE LAW OF THE CASE
15 THERETO.

16 NOW, AS TRIAL JUDGE I AM THE JUDGE OF THE
17 LAW IN THIS CASE. IT IS ALSO MY RESPONSIBILITY, AMONG
18 OTHER DUTIES, TO PRESIDE OVER THE TRIAL, TO RULE ON THE
19 ADMISSIBILITY OF EVIDENCE OFFERED DURING THE PROGRESS OF
20 THE TRIAL, AND TO STATE TO YOU, THE JURY, THE LAW
21 APPLICABLE TO THE CASE. THE CONSTITUTION OF SOUTH
22 CAROLINA MANDATES THAT I, AS THE TRIAL JUDGE, CANNOT
23 DIRECTLY OR INDIRECTLY COMMENT ABOUT THE FACTS IN THE
24 CASE.

25 THE PROCESS OF A VERDICT THEN IS SIMPLY THAT

1 YOU, THE JURY, FIRST DETERMINE WHAT IS THE TRUTH OF THE
2 FACTS AND THEN APPLY TO THAT TRUE STATE OF FACTS THAT
3 PRINCIPLE OF THE LAW APPLICABLE, AND BY THAT PROCESS
4 DETERMINE AND REPORT TO THIS COURT YOUR FINAL VERDICT IN
5 THE CASE, SPEAKING THE TRUTH OF THE CASE AS YOU
6 DETERMINE IT.

7 I WILL MORE FULLY STATE TO YOU THE
8 PRINCIPLES OF LAW APPLICABLE TO THE ISSUES IN THIS CASE
9 BEFORE THE CASE IS SUBMITTED TO YOU FOR YOUR DECISION.
10 HOWEVER, THERE ARE CERTAIN PRINCIPLES OF LAW APPLICABLE
11 TO THE FRAMEWORK OF EVERY CASE IN GENERAL SESSIONS
12 COURT. IN A VERY BASIC FASHION I WILL OUTLINE SEVERAL
13 OF THESE BASIC PRINCIPLES TO YOU FOR YOUR GUIDANCE.

14 THE DEFENDANT HAS ENTERED A PLEA OF NOT
15 GUILTY TO THE CHARGE CONTAINED IN THE INDICTMENT. NOW,
16 THE INDICTMENT IN A CASE IS NOT EVIDENCE AND IT IS
17 SIMPLY THE WRITTEN INSTRUMENT THAT CONTAINS THE CHARGE
18 OR CHARGES AGAINST THE DEFENDANT, AND IT SERVES AS THE
19 FORMAL DOCUMENT BY WHICH THE CASE IS PROCESSED INTO THIS
20 COURT.

21 THE PLEA OF NOT GUILTY PLACES UPON THE STATE
22 THE BURDEN OF PROOF. AS TO WHAT IS MEANT BY THE TERM
23 BURDEN OF PROOF, THE DEFENDANT IS PRESUMED UNDER THE LAW
24 INNOCENT OF ALL CHARGES CONTAINED IN THE INDICTMENT.
25 THE BURDEN OF PROOF REQUIRES THE STATE TO PROVE GUILT

1 BEYOND A REASONABLE DOUBT AND, THEREFORE, CONSISTENT
2 WITH THAT BURDEN OF PROOF, THE DEFENDANT OR THE ACCUSED
3 PARTY SHALL BE PRESUMED INNOCENT, AND THAT PRESUMPTION
4 OF INNOCENCE IS SUFFICIENT TO COMPEL A VERDICT OF NOT
5 GUILTY OR A VERDICT OF ACQUITTAL UNLESS YOU, THE JURY,
6 CONCLUDE THAT THE STATE HAS SATISFIED ITS OBLIGATION TO
7 PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT.

8 NOW, THE TERM REASONABLE DOUBT MEANS THE
9 KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO
10 HESITATE TO ACT.

11 NOW, THE CASE WILL BE OPENED BY THE
12 SOLICITOR, AFTER WHICH THE SAME OPPORTUNITY WILL BE
13 AFFORDED TO THE DEFENDANT TO MAKE AN OPENING STATEMENT.
14 WHEN ALL THE EVIDENCE HAS BEEN RECEIVED BY THE COURT,
15 COUNSEL FOR THE STATE AND THE DEFENDANT WILL STATE TO
16 THE JURY THEIR RESPECTIVE POSITIONS, AFTER WHICH THE
17 COURT WILL FULLY STATE THE APPLICABLE LAW IN THIS CASE.

18 OBVIOUSLY, ALL PARTS OF THE CASE ARE
19 IMPORTANT. YOU DO NOT KNOW WHICH WITNESS IN A CASE WILL
20 MOST IMPRESS YOU, WHETHER THE FIRST WITNESS OR THE LAST
21 WITNESS. IN REACHING YOUR FINAL CONCLUSION YOU WILL
22 NEED THE GUIDANCE AND THE JUDGMENT OF THE OTHER JURORS.
23 YOU WILL NEED THE GUIDANCE OF PRINCIPLES OF LAW THAT
24 WILL BE STATED TO YOU BY THE COURT.

25 FOR ALL THESE REASONS, THEN, IF WE HAVE ANY

1 RECESS PERIOD WHEN YOU RETIRE TO YOUR JURY ROOM OR
2 DURING AN OVERNIGHT OR MEAL RECESS, I INSTRUCT THAT YOU
3 DO NOT -- YOU MUST NOT UNDERTAKE TO DISCUSS THIS CASE
4 AMONG YOURSELVES UNTIL THE CASE IS FINALLY GIVEN TO YOU
5 FOR YOUR DELIBERATION, NOR ARE YOU TO DISCUSS THIS CASE
6 WITH ANYONE OR PERMIT ANYONE ELSE TO DISCUSS THE CASE
7 WITH YOU. IF ANYBODY SHOULD TRY TO DO SO, AS I
8 INSTRUCTED YOU YESTERDAY, REPORT THEM IMMEDIATELY SO I
9 MAY TAKE APPROPRIATE ACTION.

10 ALSO REMEMBER THE VERDICT IN THIS CASE MUST
11 BE A UNANIMOUS VERDICT OF ALL 12 JURORS.

12 NOW, A FEW OTHER THINGS I NEED TO MENTION
13 BEFORE WE BEGIN. AS I SAID EARLIER, ALTHOUGH I AM THE
14 ONLY PERSON WHO CAN TELL YOU WHAT THE LAW IS, YOU AND
15 YOU ALONE ARE THE ONLY ONES WHO CAN DETERMINE THE FACTS.
16 I DO NOT HAVE THE RIGHT TO INDICATE HOW I MAY FEEL ABOUT
17 THE EVIDENCE PRESENTED, AND THROUGHOUT THIS TRIAL MY
18 INTENTION WILL BE TO ACT IMPARTIALLY TOWARDS EACH PARTY.

19 SECOND, FROM TIME TO TIME AN ATTORNEY OR THE
20 DEFENDANT WILL OBJECT TO SOME BIT OF TESTIMONY OR
21 EVIDENCE WHICH THE OTHER SIDE IS SEEKING TO PRESENT. AS
22 IN SPORTS, BUSINESS OR ANY OTHER STRUCTURED ACTIVITY,
23 THERE ARE CERTAIN RULES THAT BOTH SIDES MUST OBEY IN
24 PRESENTING EVIDENCE. THESE RULES HAVE A DEFINITE
25 PURPOSE. THEY ENSURE THAT THE INFORMATION YOU RECEIVE

1 IS THE MOST TRUSTWORTHY AND RELIABLE EVIDENCE AVAILABLE.
2 AN OBJECTION IS A PROCEDURE WE USE FOR AN ATTORNEY TO
3 CALL A POSSIBLE VIOLATION OF THE RULES TO THE COURT'S
4 ATTENTION. FOR THIS REASON YOU SHOULD NOT HOLD A
5 PARTY'S OBJECTION AGAINST HIS CLIENT OR HER CLIENT, NOR
6 SHOULD YOU CONCLUDE FROM ANY RULING ON THE OBJECTION
7 THAT I FAVOR ONE SIDE OR THE OTHER.

8 AND FINALLY, I WOULD ASK THAT YOU PAY THE
9 CLOSEST ATTENTION POSSIBLE TO THE EVIDENCE PRESENTED TO
10 YOU. I WOULD ALSO ASK THAT YOU DO NOT TAKE NOTES, FOR
11 IF THE NOTE TAKER MAKES AN ERROR, HIS NOTES OR HER NOTES
12 CAN BE DETRIMENTAL AND NOT HELPFUL DURING DELIBERATIONS.
13 THE TIME-TESTED SYSTEM IS THAT EACH OF YOU LISTEN
14 CAREFULLY, AND I'M CONFIDENT THAT YOU WILL DO THAT.

15 NOW, THE REASON I SUGGEST THAT YOU NOT TAKE
16 NOTES, AS I'VE SAID, YOU ARE TO MAKE YOUR DETERMINATION
17 ON THE FACTS IN THIS CASE BASED ON THE SWORN TESTIMONY
18 FROM THE WITNESS STAND, EXHIBITS AND OTHER EVIDENCE
19 INTRODUCED IN THIS COURTROOM. THEREFORE, YOU MUST
20 CONCENTRATE ON WHAT IS HAPPENING AT THE TIME IT OCCURS.

21 BY TAKING NOTES IT'S MY EXPERIENCE THAT WE
22 HAVE A TENDENCY TO CONCENTRATE ON THE NOTE, TO BE SURE
23 THAT WHAT WE WRITE DOWN IS WHAT WE HEARD OR THINK WE'VE
24 HEARD. ALSO, SOMETIMES SPELLING GETS INVOLVED IN IT AS
25 WELL AS GRAMMAR AND OTHER CONSIDERATIONS WHICH MIGHT

1 INTERFERE, AS I SAY, WITH WHAT IS HAPPENING AT THE TIME,
2 THE TESTIMONY OF THE WITNESS AND Demeanor, AS I'LL
3 EXPLAIN LATER, AND OTHER MATTERS THAT MAKE IT DIFFICULT
4 OR WOULD INTERFERE WITH RECEIVING THE INFORMATION THAT
5 YOU HAVE TO MAKE YOUR DECISION ON.

6 ALSO, IF THE NOTE IS IN ERROR, IN OTHER
7 WORDS, IN THAT CONCENTRATING ON THE NOTE YOU MIGHT MISS
8 PART OF THE NOTE, A SINGLE WORD. I USE THE WORD "NOT",
9 THAT CHANGES THE MEANING ENTIRELY OF THE NOTE. SO
10 THEREFORE, AND IF IT GETS INTO THE JURY ROOM AND 11
11 PEOPLE SAY, WELL, I HEARD THIS, AND ONE PERSON SAYS, I
12 HAVE A NOTE WRITTEN HERE IN BLACK AND WHITE, SO TO
13 SPEAK, AND IT SAYS SOMETHING ELSE, THAT HAS MORE EFFECT
14 THAN PERHAPS IT'S ENTITLED TO. SO FOR ALL OF THOSE
15 REASONS I SUGGEST THAT YOU DO NOT TAKE NOTES.

16 NOW, HAVING SAID THAT, I TAKE NOTES. NOW,
17 PLEASE UNDERSTAND IT'S NOT ONE OF THOSE DO AS I SAY, NOT
18 AS I DO. THE FACT IS THAT WE HAVE DIFFERENT PURPOSES IN
19 THIS COURTROOM. YOU AND YOU ALONE ARE THE ONLY ONES
20 THAT CAN DETERMINE THE VALUE, THE WEIGHT OF THE
21 TESTIMONY AND OTHER EVIDENCE. I AM NOT CONCERNED ABOUT
22 THE VALUE OR THE WEIGHT OF EVIDENCE. I'M ONLY CONCERNED
23 WHETHER SOMETHING OCCURRED THAT IS REQUIRED TO HAPPEN IN
24 A TRIAL OF A CASE, SO WHAT I'M DOING IS JOTTING DOWN
25 WHAT HAPPENS, NOT THE SIGNIFICANCE OF IT, NOT THE WEIGHT

1 OF IT OR THE VALUE OF IT. THAT IS FOR YOUR
2 DETERMINATION AND YOURS ALONE.

3 ALSO, I MIGHT NOTE THAT IN THIS PARTICULAR
4 CASE THE DEFENDANT IS REPRESENTING HIMSELF. MR. WHITEN
5 IS ACTING AS ADVISER TO THE DEFENDANT, SO THE DEFENDANT
6 WILL HAVE THE MOST IMPORTANT PART IN THE CASE, AND
7 OCCASIONALLY MR. WHITEN WILL ASSIST THE DEFENDANT. SO
8 UNDERSTAND THAT THE STATE WILL BE REPRESENTED BY THE
9 SOLICITOR AND THE DEFENDANT IS REPRESENTING HIMSELF WITH
10 THE ADVICE OF AN ATTORNEY.

11 VERY WELL. WITH THAT I'LL RECOGNIZE THE
12 SOLICITOR FOR HER OPENING STATEMENT.

13 MS. HUEY: MAY IT PLEASE THE COURT?

14 THE COURT: MS. HUEY.

15 **OPENING STATEMENT ON BEHALF OF THE STATE:**

16 MS. HUEY: BETWEEN FEBRUARY AND MAY OF 2005,
17 THIS DEFENDANT, HOWARD THOMPSON, TOOK ADVANTAGE OF A
18 SIX-YEAR-OLD LITTLE BOY WHOM HE WAS BABY-SITTING. HE
19 TOOK ADVANTAGE OF HIM BECAUSE INSTEAD OF PLAYING HIDE
20 AND SEEK OR TAG OR HELPING WITH HIS HOMEWORK, OR READING
21 TO HIM, HE INSTEAD WOULD MAKE Minor 2 TAKE OFF ALL OF
22 HIS CLOTHES AND THEN HE WOULD PERFORM ORAL SEX ON Minor
23 HIOTT. HE IN TURN WOULD MAKE Minor 2 PERFORM ORAL
24 SEX ON HIM. AND, LADIES AND GENTLEMEN, THAT'S WHY WE
25 ARE ALL HERE TODAY. WE ARE HERE BECAUSE THIS DEFENDANT,

1 HOWARD THOMPSON, HAS BEEN CHARGED WITH CRIMINAL SEXUAL
2 CONDUCT WITH A MINOR IN THE FIRST DEGREE.

3 IT IS MY JOB TO PROVE TO YOU BEYOND A
4 REASONABLE DOUBT THAT HOWARD THOMPSON IS, IN FACT,
5 GUILTY OF THIS OFFENSE. AND IN ORDER TO DO THAT I MUST
6 PROVE TO YOU TWO ELEMENTS: NUMBER ONE, THAT A SEXUAL
7 BATTERY OCCURRED; AND NUMBER TWO, THE VICTIM WAS UNDER
8 THE AGE OF 11 AT THE TIME THE INCIDENTS OCCURRED, NUMBER
9 TWO IS PRETTY SELF-EXPLANATORY.

10 NUMBER ONE, SEXUAL BATTERY, HAS A COUPLE OF
11 DEFINITIONS. IT COULD BE SEXUAL INTERCOURSE, BEING
12 ANAL. IT CAN BE FELLATIO, CUNNILINGUS, LATIN TERMS FOR
13 ORAL SEX. IT CAN BE INTRUSION, HOWEVER SLIGHT, INTO
14 ANOTHER PERSON'S BODY BY ANOTHER PERSON'S BODY PART OR
15 OTHER OBJECT. THAT'S A SEXUAL BATTERY.

16 NOW, I'VE ALREADY TOLD YOU THAT IN THIS
17 PARTICULAR CASE THE DEFENDANT IS CHARGED WITH PERFORMING
18 ORAL SEX ON Minor 2 PERFORMING FELLATIO, AND THEN IN
19 TURN HE WOULD MAKE Minor PERFORM ORAL SEX ON HIM,
20 FELLATIO. THESE ARE ELEMENTS OF CRIMINAL SEXUAL CONDUCT
21 WITH A MINOR IN THE FIRST DEGREE.

22 NOW, THE THING ABOUT SEX CRIMES IS THAT
23 THERE USUALLY AREN'T A LOT OF WITNESSES. SEX IS A
24 PRIVATE ACT, IT HAPPENS WHEN NO ONE ELSE IS AROUND, IT
25 HAPPENS BEHIND CLOSED DOORS. AND THAT'S WHAT WENT ON

1 BETWEEN THE DEFENDANT AND ^{Minor} FROM FEBRUARY TO MAY.

2 EXCEPT FOR A FATEFUL DAY IN MAY, MAY 18TH,
3 2005, SARA HIOTT, ^{Minor 2} MOTHER, WAS ABLE TO GO PICK HER
4 CHILDREN UP EARLIER THAN NORMAL THAT DAY. SHE DIDN'T
5 CALL FIRST LIKE SHE USUALLY DOES. AND WHEN SHE GOT TO
6 THE DEFENDANT'S HOUSE, KNOCKED ON THE FRONT DOOR, NO ONE
7 ANSWERED.

8 SHE WENT ON INSIDE TO LOOK FOR HER CHILDREN.
9 NO ONE WAS IN THE FRONT ROOM. SO SHE WENT ON TO THE
10 DEFENDANT'S BEDROOM, WENT TO OPEN IT AND IT WAS LOCKED.

11 SHE KNOCKED ON THE DOOR, AND THE DEFENDANT
12 OPENED THE DOOR, WITHOUT HIS SHIRT ON, JUST SHORTS ON,
13 AND THEN SHE SAW HER SON COMPLETELY NAKED. WELL, SHE
14 ~~SCOOPED UP HER CHILDREN AND GOT OUT OF THERE.~~

15 AND LATER ON HER SON WAS TAKEN TO THE
16 HOSPITAL WHERE HE WAS SEEN BY DR. REESE. AND YOU WILL
17 HEAR TESTIMONY FROM SARA HIOTT AND YOU WILL HEAR
18 TESTIMONY FROM DR. REESE, THE EMERGENCY ROOM PHYSICIAN
19 WHO TREATED HIM.

20 NOW I WANT TO GO AHEAD AND TELL YOU NOW THAT
21 YOU MAY NOT HEAR FROM ^{Minor} HIMSELF. ^{Minor} WAS SIX AT THE
22 TIME. THIS DECISION IS UP TO HIS MOTHER. HE'S GONE
23 THROUGH AN ORDEAL, AND IT'S UP TO HIS MOTHER TO DECIDE
24 WHETHER HE'S UP TO GOING THROUGH ANOTHER ORDEAL AT THIS
25 TRIAL. I WANTED TO GO AHEAD AND TELL YOU THAT.

1 NOW, WHILE YOU MAY NOT HEAR FROM Minor 2 YOU
2 WILL HEAR FROM THE DEFENDANT BECAUSE HE GAVE A WRITTEN
3 STATEMENT TO POLICE TELLING EXACTLY WHAT HE DID TO Minor 2

4 AND THAT'S PART OF THE STATE'S CASE. LIKE I
5 SAID, THERE AREN'T GONNA BE A LOT OF WITNESSES, IT WON'T
6 BE VERY LONG, BUT THAT DOESN'T MAKE IT ANY LESS
7 IMPORTANT. IT'S IMPORTANT TO THIS DEFENDANT, HOWARD
8 THOMPSON, AND IT'S CERTAINLY IMPORTANT TO Minor 2 AND
9 HIS MOTHER. THANK YOU.

10 THE COURT: MR. THOMPSON?

11 OPENING STATEMENT BY MR. THOMPSON, THE DEFENDANT:

12 MR. THOMPSON: HELLO, MY NAME IS HOWARD
13 THOMPSON, III. AT THE TIME OF THIS ALLEGED INCIDENT I
14 WAS 19 YEARS OF AGE, GOING TO HIGH SCHOOL. WELL, BEING
15 19 YEARS OF AGE AND GOING TO HIGH SCHOOL AND BASICALLY
16 DOING ALL AT THE SAME TIME, GETTING READY FOR GRADUATION
17 AND BEING ARRESTED A DAY BEFORE YOUR GRADUATION FOR A
18 CRIME THAT I WAS FALSELY ACCUSED OF.

19 NOW, ON THE DATE OF THIS INCIDENT MRS. HIOTT
20 LEFT HER CHILDREN, BOTH Minor 2 AND HER
21 TWO-YEAR-OLD, Minor 3 NOW, SHE DID NOT
22 QUESTION THE FACT OF WHETHER I HAD MY SHIRT OFF AT THIS
23 TIME. DID I? YES, I HAD MY SHIRT OFF WHEN SHE LEFT HER
24 CHILDREN. I HAD MY SHIRT OFF WHEN SHE PICKED UP HER
25 CHILDREN. BUT I WAS ALSO CLOTHED FROM THE WAIST DOWN.

1 NOT IN A PAIR OF SHORTS. COMING FROM HIGH SCHOOL, I
2 DRESS LIKE I AM HERE TODAY.

3 NOW, DUE TO THE FACT THAT I WAS ARRESTED A
4 DAY BEFORE MY GRADUATION, I REALLY NEVER GRADUATED, I
5 NEVER WALKED ACROSS THE STAGE, I NEVER HAD THAT CHANCE.
6 THEY GAVE ME AN OPTION, AND I STATED TO THEM, TO THE
7 OFFICERS -- THEY GAVE ME THE OPTION -- THAT I WAS
8 INNOCENT AND THAT, SINCE I WAS INNOCENT, I'M GONNA GET
9 THIS OVER WITH. THERE'S NO NEED IN EXTENDING THIS THIS
10 LONG.

11 NOW, WHEN YOU ARE FALSELY ACCUSED, A LOT OF
12 THINGS HAPPEN, A LOT. NOW, FOR ME, MY WHOLE WORLD
13 COLLAPSED, MY WHOLE WORLD. I WAS KNOWN BY A LOT OF
14 PEOPLE. I WOULD RISK MY LIFE TO SAVE OTHERS. THAT WAS
15 THE PROFESSION I WANTED TO TAKE UP, WAS TO BE A LAW
16 ENFORCEMENT OFFICER.

17 NOW, THERE CANNOT BE A GREATER NIGHTMARE, A
18 GREATER NIGHTMARE, GREATER THAN THIS. THIS TOPS
19 NIGHTMARE.

20 NOW, A LOT OF THINGS HAVE HAPPENED TO ME
21 BEFORE. AS YOU CAN SEE, I AM A VICTIM OF A HOUSE FIRE.

22 MS. HUEY: OBJECTION, YOUR HONOR, I BELIEVE
23 THE DEFENDANT IS TESTIFYING.

24 THE COURT: I'M GOING TO PERMIT LIMITED
25 BACKGROUND DISCUSSION, OR AT LEAST STATEMENTS.

1 YOU MAY PROCEED. LET'S DO LIMIT WHAT WE
2 HAVE TO THE ISSUES OF THIS CASE. THANK YOU.

3 MR. THOMPSON: NOW, BUT THIS BEING FALSE
4 ACCUSATIONS, HAS BROUGHT ME TO THE EDGE OF DESPAIR AND
5 IT HAS PUT MY LIFE ON HOLD.

6 YOU CAN REALLY SAY THAT THESE CHARGES, WHO
7 WERE THEY FOUND BY? WERE THEY FOUND BY THE MOTHER, THE
8 ALLEGED VICTIM, OR WAS THEY FOUND BY A FATHER FIGURE
9 ACTING AS FATHER?

10 DID THE MOTHER COMPLAIN? NO. HER ONLY
11 COMPLAINT WAS THAT SHE RETRIEVED HER CHILDREN AND SAW ME
12 WITH MY SHIRT OFF. HER ONLY COMPLAINT. ONLY.

13 THE FATHER'S COMPLAINT, WELL, ENDED UP HIM
14 TAKING THE CHILD TO THE HOSPITAL. WHERE WAS THE MOTHER?
15 WAS THE MOTHER PRESENT AT THE TIME THEY ARRIVED? NO.
16 WHAT TIME DID SHE GET THERE? SOON AFTERWARDS.

17 NOW, I KEPT Minor 2 MAYBE SEVEN MONTHS,
18 IN BETWEEN SEVEN, SEVEN MONTHS, POSSIBLY. I ALSO KEPT
19 HIS TWO-YEAR-OLD BROTHER, WHOM IS NOW FOUR YEARS OF AGE.
20 AND I BABY-SITTED HIM MORE THAN THE VICTIM. BUT THE
21 PARENTS' CONCERN ABOUT THEIR TWO-YEAR-OLD WAS NOT A
22 QUESTION. I HAD BOTH OF THESE CHILDREN, AS WELL AS MY
23 NEPHEW AT THIS TIME, IN THE SAME ROOM WITH THE DOOR
24 LOCKED.

25 NOW, DURING THE MONTHS THAT I KEPT Minor AND

1 BRIAN AUSTIN, SEVERAL PEOPLE, INCLUDING MY MOTHER, MARY
2 MAZYCK; HER SPOUSE, MR. NEAL ---

3 THE COURT: MR. THOMPSON, NOW WE ARE GETTING
4 AWAY FROM WHAT YOU INTEND IS YOUR DEFENSE. WE ARE
5 GETTING INTO FACTUAL EVIDENCE THAT WOULD HAVE TO BE
6 DEVELOPED BY THE WITNESSES. SO LET'S JUST STATE WHAT
7 YOU INTEND TO ESTABLISH, NOT WHAT YOU ARE GOING TO RELY
8 ON, ALL RIGHT?

9 MR. THOMPSON: OKAY, YOUR HONOR.

10 ON MAY 18TH, BRIAN BECAME THE COMPLAINING
11 PARTY IN THIS CASE, AND JUST BEFORE SARA CAME TO PICK UP
12 HER CHILDREN, TWO OF HER CHILDREN FROM MY CARE, Minor
13 TOLD ME HE WAS HOT. HE TOLD ME HE WAS HOT. I HAVE MY
14 SHIRT OFF. IT WAS 82 DEGREES AT HOME. IT WAS
15 SUMMERTIME. DID I HEAR HIM? YES. I ACKNOWLEDGED IT
16 AND I SAID I DID GIVE PERMISSION. BUT TO SAY THAT I
17 SEXUALLY ASSAULTED HIM? I CAN'T SAY THAT I DIDN'T. I
18 WAS FALSELY ACCUSED.

19 NOW, AFTER MRS. HIOTT RETRIEVED HER CHILDREN
20 AND TOOK THEM TO THE COMPLAINANT, HE TOOK THE CHILD TO
21 THE HOSPITAL. THERE'S THE TIME FRAME. THERE'S A LOT OF
22 THINGS THAT HAD HAPPENED BETWEEN THAT TIME FRAME THAT
23 HAPPENED. HE CALLED ME, HE NOTIFIED ME, ASKING ABOUT MY
24 SIDE. I TOLD HIM THE STORY. MRS. HIOTT TOLD HIM THE
25 SAME EXACT STORY THAT I TOLD HIM OVER THE TELEPHONE.

1 BUT CAN HE REALLY SAY THAT I SEXUALLY
2 ASSAULTED, NOT HIS SON, HIS STEPSON?

3 NOW, I DO KNOW THAT BRIAN TOLD Minor 2 OR I
4 DON'T KNOW WHAT BRIAN TOLD Minor TO PERSUADE HIM TO TELL
5 A STORY THAT WAS VERY UNTRUE. HE HAD THE WHOLE TIME.
6 BUT THAT'S NOT FOR ME TO DECIDE.

7 I DO KNOW THIS, AND I BASED IT UPON THE
8 FACTS AND EXPERIENCE, THAT Minor 2 FEARS FOR
9 BRIAN AUSTIN, BRIAN THOMAS CAIN. INCIDENTS PRIOR TO
10 THIS WILL PROVE THAT.

11 HAVE I EVER HARMED Minor OR BRIAN AUSTIN?
12 NEVER. WILL I? NO. DO I CARE ABOUT BRIAN AUSTIN, Minor
13 ALLEN AND SARA MARIE HIOTT? YES. Minor NEEDS A FATHER
14 FIGURE. THAT'S NOT -- I AM NOT THE COMPLAINANT IN THIS
15 CASE. I WOULD NEVER HARM Minor 2 NEVER HAVE, NEVER WILL.
16 I'VE BEEN FALSELY ACCUSED.

17 AND I WANT YOU ALL TO KNOW THAT BY THE WAY
18 THE STATE IS GONNA PRESENT THIS CASE, YOU WILL SEE IT.
19 EVERYTHING OVERLAPS. EVERYTHING. THANK YOU.

20 **MS. HUEY:** YOUR HONOR, I CALL SARA HIOTT.

21 (WHEREUPON, THE WITNESS WAS SWORN BY THE
22 CLERK.)

23 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
24 SPELL YOUR LAST NAME FOR THE RECORD.

25 **THE WITNESS:** SARA MARIE HIOTT, H-I-O-T-T.

1 WHEREUPON,

2 SARA HIOTT,

3 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION BY MS. HUEY:

6 Q. MS. HIOTT, HOW OLD ARE YOU?

7 A. 26.

8 Q. HOW FAR DID YOU GO IN SCHOOL?

9 A. NINTH.

10 Q. DO YOU CURRENTLY WORK?

11 A. NO.

12 Q. HAVE YOU PREVIOUSLY WORKED?

13 A. YES.

14 Q. WHERE HAVE YOU WORKED IN THE PAST?

15 A. THE HICKORY POINT AND PELZER POINT.

16 Q. WHAT KIND OF PLACES ARE THOSE?

17 A. CONVENIENCE STORES.

18 Q. ABOUT HOW LONG DO YOU THINK YOU WORKED AT THOSE
19 CONVENIENCE STORES?

20 A. A COUPLE OF YEARS.

21 Q. DO YOU LIVE IN ANDERSON?

22 A. YES.

23 Q. DO YOU HAVE ANY CHILDREN?

24 A. YES.

25 Q. HOW MANY CHILDREN DO YOU HAVE?

- 1 A. THREE.
- 2 Q. IS Minor 2 YOUR SON?
- 3 A. YES.
- 4 Q. HOW OLD IS Minor NOW?
- 5 A. EIGHT.
- 6 Q. AND Minor 2 FATHER IS WHOM?
- 7 A. ALLEN.
- 8 Q. ALLEN?
- 9 A. HIOTT.
- 10 Q. AND WHERE IS ALLEN HIOTT?
- 11 A. HE IS DECEASED.
- 12 Q. ARE YOU IN A NEW RELATIONSHIP NOW?
- 13 A. YES.
- 14 Q. WHO IS THAT WITH?
- 15 A. BRIAN CAIN.
- 16 Q. HOW LONG HAS THAT BEEN?
- 17 A. SIX YEARS.
- 18 Q. WHAT ARE YOUR OTHER CHILDREN'S AGES?
- 19 A. THREE MONTHS AND FOUR.
- 20 Q. AND YOUR FOUR-YEAR-OLD'S NAME IS?
- 21 A. Minor 3
- 22 Q. NOW, MS. HIOTT, DO YOU KNOW THE DEFENDANT IN THIS
- 23 CASE?
- 24 A. YES.
- 25 Q. AND IS HE IN THE COURTROOM TODAY?

1 A. YES, HE IS.

2 Q. CAN YOU POINT HIM OUT FOR US?

3 A. HE'S RIGHT THERE.

4 Q. HOW DO YOU KNOW HIM?

5 A. THROUGH HIS MOTHER.

6 Q. AND WHAT'S HIS MOTHER'S NAME?

7 A. MARY.

8 Q. HOW DO YOU KNOW MARY?

9 A. THROUGH WORK, I MET HER AT WORK.

10 Q. NOW, AT SOME POINT DID THIS DEFENDANT, HOWARD

11 THOMPSON, BEGIN BABY-SITTING FOR YOU?

12 A. YES.

13 Q. AND WHO WOULD HE BABY-SIT FOR YOU?

14 A. WHO WOULD HE BABY-SIT FOR ME?

15 Q. UH-HUH.

16 A. MY TWO CHILDREN.

17 Q. OKAY. AND AGAIN, THAT'S Minor 2

18 A. Minor AND AUSTIN.

19 Q. AND AUSTIN. AND HOW OLD WERE THEY AT THE TIME

20 THAT ---

21 A. TWO AND SIX.

22 Q. THAT'S HOW OLD THEY WERE WHEN MR. THOMPSON

23 STARTED BABY-SITTING?

24 A. YES.

25 Q. NOW, WHAT KIND OF ARRANGEMENT DID YOU HAVE WITH

1 MR. THOMPSON AS FAR AS BABY-SITTING GOES?

2 A. HE WOULD WATCH THEM WHEN I WENT IN FOR WORK
3 SECOND SHIFT, AND I WOULD PICK THEM UP OR HIS MOTHER
4 WOULD BRING THEM TO MY WORK WHEN SHE CAME IN TO WORK.

5 Q. AND -- I'M SORRY.

6 A. --- WHEN SHE CAME IN TO WORK SHE WOULD BRING THEM
7 SOMETIMES IF SHE WAS ABLE TO.

8 Q. DID SHE WORK THE LATER SHIFT THAN YOU?

9 A. YEAH, SHE WORKED THIRD.

10 Q. AND WHAT WERE THE HOURS YOU WOULD WORK FOR SECOND
11 SHIFT?

12 A. I BELIEVE IT'S SOMEWHERE MAYBE TWO TO THREE TO
13 TEN P.M.

14 Q. SO TWO OR THREE IN THE AFTERNOON TO 10:00 P.M. AT
15 NIGHT?

16 A. YES.

17 Q. NOW, IN TERMS OF HIM BABY-SITTING, WOULD YOU PAY
18 HIM TO BABY-SIT?

19 A. SOMETIMES.

20 Q. BUT OTHER TIMES HE WOULD JUST KEEP THEM?

21 A. YEAH. HE LIKED TO KEEP THEM, AND HE SAID DON'T
22 WORRY ABOUT THE MONEY.

23 Q. AND HOW MANY DAYS A WEEK WOULD HE KEEP THEM?

24 A. FOUR, FIVE.

25 Q. IN A ROW?

1 A. YEAH.

2 Q. SO THEY WOULD STAY WITH HIM THE ENTIRE TIME YOU
3 WERE AT WORK TYPICALLY?

4 A. UH-HUH.

5 Q. NOW, HOW WOULD THE DEFENDANT KNOW YOU WERE READY
6 TO COME GET THEM?

7 A. I WOULD CALL AND LET HIM KNOW I'M GETTING OFF
8 WORK, TO HAVE THEM READY.

9 Q. AND HOW FAR WAS YOUR WORK FROM THE DEFENDANT'S
10 HOUSE?

11 A. FIVE MINUTES, MAYBE.

12 Q. NOW I WANT TO DRAW YOUR ATTENTION TO MAY 18TH OF
13 2005.

14 A. OKAY.

15 Q. DO YOU REMEMBER PICKING UP YOUR CHILDREN ON THAT
16 DAY?

17 A. YES.

18 Q. WHERE WERE YOU WORKING THEN?

19 A. AT PELZER POINT.

20 Q. AND AGAIN, IS THAT THE GAS STATION THAT'S NEARBY?

21 A. YES.

22 Q. NOW, ON THIS PARTICULAR DAY DID YOU CALL BEFORE
23 YOU WENT TO GET THEM?

24 A. NO.

25 Q. AND WHY DID YOU NOT?

1 A. BECAUSE THEY WERE REALLY BUSY AND I DIDN'T THINK
2 ABOUT IT, AND I WAS IN A HURRY.

3 Q. OKAY. AND WHAT TIME WERE YOU GOING TO PICK THEM
4 UP THAT DAY?

5 A. IT WAS ABOUT 7:30 OR SO.

6 Q. IT WAS ABOUT 7:30?

7 A. YES.

8 Q. NOW YOU SAID EARLIER THAT YOU TYPICALLY LET THEM
9 STAY THERE UNTIL AROUND TEN?

10 A. RIGHT.

11 Q. WHY ON THIS DAY WERE YOU GETTING THEM EARLY?

12 A. WELL, BECAUSE BRIAN GOT OFF WORK EARLY, AND I WAS
13 ABLE TO GET THEM EARLY BECAUSE HE COULD KEEP THEM.

14 Q. WAS BRIAN YOUR BOYFRIEND?

15 A. RIGHT.

16 Q. SO YOU WENT EARLY TO PICK UP YOUR CHILDREN AND
17 YOU DIDN'T CALL BEFORE YOU WENT; IS THAT RIGHT?

18 A. RIGHT.

19 Q. NOW, WHEN YOU GOT TO THE DEFENDANT'S HOUSE, WHAT
20 HAPPENED?

21 A. I KNOCKED ON THE DOOR AND NO ONE CAME TO THE DOOR
22 SO I JUST WALKED ON IN. I FELT COMFORTABLE DOING SO.

23 Q. HAD YOU BEEN GIVEN PERMISSION IN THE PAST TO DO
24 THAT?

25 A. YEAH. NORMALLY I WOULD JUST WALK IN BECAUSE THEY

1 WERE ALL HANGING OUT IN THE LIVING ROOM.

2 Q. OKAY. AND IS THE LIVING ROOM, WHERE IS THAT IN
3 RELATION TO THE FRONT DOOR?

4 A. AS SOON AS YOU WALK IN THE FRONT DOOR YOU'RE IN
5 THE LIVING ROOM.

6 Q. ARE YOU IN THE LIVING ROOM?

7 A. YEAH.

8 Q. OKAY. NOW, WAS ANYONE IN THE LIVING ROOM?

9 A. NO.

10 Q. SO WHAT DID YOU DO THEN?

11 A. I WALKED BACK TO HOWARD'S BEDROOM.

12 Q. AND ONCE YOU GOT INTO HIS BEDROOM, WHAT HAPPENED,
13 IF ANYTHING?

14 A. I WENT TO THE DOOR BUT IT WAS LOCKED.

15 Q. COULD YOU HEAR ANYTHING GOING ON?

16 A. NO.

17 Q. ONCE YOU REALIZED IT WAS KNOCKED, WHAT DID YOU
18 THEN DO?

19 A. I KNOCKED AND HE OPENED THE DOOR.

20 Q. AND WHAT, IF ANYTHING, DID YOU NOTICE ABOUT
21 HOWARD WHEN HE OPENED THE DOOR?

22 A. HE HAD NO SHIRT ON.

23 Q. AND COULD YOU TELL WHAT KIND OF BOTTOMS HE HAD
24 ON?

25 A. IT WAS EITHER BOXERS OR SHORTS. I DIDN'T LOOK

1 HARD ENOUGH TO BE ABLE TO TELL WHICH IT WAS.

2 Q. AND THEN COULD YOU SEE YOUR CHILDREN IN THE ROOM?

3 A. YES.

4 Q. HOW ABOUT AUSTIN, WHERE WAS HE?

5 A. HE WAS WATCHING T.V. I BELIEVE AT THE END OF THE
6 BED.

7 Q. AND HOW ABOUT Minor 2

8 A. HE WAS ON THE SIDE OF THE BED COMPLETELY NAKED
9 HOLDING A SHEET.

10 Q. DID YOU ASK THE DEFENDANT ANYTHING WHEN YOU SAW
11 THIS?

12 A. YES. I ASKED HIM WHY HIS CLOTHES WERE OFF, AND
13 HE SAID HE WAS HOT AND HE WANTED TO TAKE HIS CLOTHES OFF
14 AND HE WAS GONNA MAKE HIM PUT THEM BACK ON.

15 Q. DID HE SAY WHY HIS SHIRT WAS OFF?

16 A. NO.

17 Q. AFTER YOU SAW THIS, AND MR. THOMPSON EXPLAINED
18 WHY Minor WAS NAKED, COMPLETELY NAKED, WHAT DID YOU THEN
19 DO?

20 A. I ASKED Minor WHY HIS CLOTHES WERE OFF. HE SAID
21 HE DIDN'T KNOW. AND I TOLD HIM TO GET HIS CLOTHES ON,
22 LET'S GO, AND I GRABBED THEM AND LEFT.

23 Q. AND HOW WAS Minor ACTING?

24 A. NORMAL.

25 Q. HE SEEMED OKAY?

1 A. YEAH. WHEN I ASKED HIM WHY HIS CLOTHES WERE OFF,
2 HE SEEMED A LITTLE, YOU KNOW, ANXIOUS, A LITTLE SCARED,
3 YOU KNOW, JUST LOOKING AT ME AND LOOKING AT HIM, BUT
4 THAT'S ABOUT IT.

5 Q. OKAY.

6 MR. THOMPSON: YOUR HONOR, I OBJECT TO
7 HEARSAY. X

8 MS. HUEY: YOUR HONOR, I BELIEVE IT'S AN
9 EXCITED UTTERANCE OR A PRESENT SENSE IMPRESSION.

10 THE COURT: ALL RIGHT. I'M GOING TO
11 OVERRULE THE OBJECTION.

12 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
13 JURY, HEARSAY IS SOMETHING WE HEAR SOMEBODY SAY, IT'S
14 ALMOST LIKE TAKING THE NOTES I TALKED TO YOU ABOUT
15 EARLIER. THE REASON THAT YOU DON'T PERMIT IT IS BECAUSE
16 HEARSAY IS NOT ALWAYS TRUSTWORTHY IN THE SENSE THAT YOU
17 CAN'T BE CERTAIN WHAT YOU HEAR IS REALLY WHAT WAS SAID,
18 AND ALSO THE PERSON WHO SAYS IT IS NOT THERE TO ASK HIM
19 ABOUT IT TO BE SURE THAT YOU GOT IT RIGHT.

20 HOWEVER, THERE ARE CERTAIN EXCEPTIONS TO THE
21 HEARSAY RULE WHERE THERE IS A CERTAIN TRUSTWORTHINESS
22 PROVIDED; IN OTHER WORDS, IT'S NOT SOMETHING THAT
23 SOMEBODY THOUGHT UP TO SAY. IN OTHER WORDS, THEY
24 HAVEN'T HAD TIME TO THINK WHAT SHOULD I SAY OR ANYTHING
25 LIKE THAT. IT'S AN INSTANTANEOUS RESPONSE DONE AT

1 THE -- IN THE MOMENT WHEN SOMETHING OCCURRED. AND SO
2 THEREFORE, BECAUSE OF THEIR TRUSTWORTHINESS, WE PERMIT
3 THAT SORT OF STATEMENT, MUCH LIKE WE PERMIT WHAT ONE
4 SEES OR ONE TOUCHES, THEY CAN DESCRIBE THAT. WHEN A
5 WITNESS IS TESTIFYING TO WHAT SOMEBODY SAID IN A
6 PARTICULAR INCIDENT, AT THE TIME OF THE PARTICULAR
7 ALLEGED INCIDENT, THEN THAT DOES GIVE IT THE INITIAL
8 TRUSTWORTHINESS TO BE CONSIDERED.

9 NOW, ALL TESTIMONY, AS WELL AS WHAT ONE
10 TESTIFIES TO AS TO WHAT THEY APPRECIATE BY REASON OF THE
11 EXERCISE OF THEIR SENSES, TO INCLUDE HEARING, IS FOR
12 YOUR DETERMINATION AND YOUR EVALUATION.

13 YOU MAY PROCEED.

14 BY MS. HUEY:

15 Q. NOW, MS. HIOTT ---

16 MR. THOMPSON: YOUR HONOR?

17 THE COURT: YES, SIR.

18 MR. THOMPSON: I WOULD LIKE TO TAKE UP A
19 MATTER OUTSIDE THE PRESENCE OF THE JURY.

20 THE COURT: CERTAINLY, ALL RIGHT.

21 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
22 JURY, IF YOU WOULD PLEASE RETIRE TO THE JURY ROOM, AND
23 PLEASE DO NOT DISCUSS THIS CASE AMONG YOURSELVES IN ANY
24 WAY.

25 (WHEREUPON, THE JURY LEFT THE COURTROOM AT

1 10:56 A.M.)

2 THE COURT: ALL RIGHT. YES, SIR.

3 MR. THOMPSON: I WOULD LIKE TO TAKE A
4 TEN-MINUTE BREAK TO TALK WITH MY ADVISER NOW.

5 THE COURT: ALL RIGHT. WE'LL DO THAT. ALL
6 RIGHT. THAT WILL BE FIVE -- LET'S SAY TEN AFTER ELEVEN.
7 WE'LL STAND AT EASE FOR TEN MINUTES.

8 (WHEREUPON, A RECESS WAS TAKEN.)

9 THE COURT: MADAM WITNESS, YOU UNDERSTAND
10 YOU ARE STILL UNDER OATH SO YOU CAN'T DISCUSS YOUR
11 TESTIMONY WITH ANYBODY, BUT YOU CAN WALK AROUND AND DO
12 ANYTHING YOU WOULD LIKE. JUST YOU CAN'T DISCUSS YOUR
13 TESTIMONY.

14 MAY I SEE THE MEDIA, PLEASE, IN CHAMBERS?
15 ALL THOSE FROM THE MEDIA, INCLUDING THE CAMERAMEN, IF I
16 MAY.

17 (WHEREUPON, A RECESS WAS TAKEN.)

18 (STATE'S EX. # 4 WAS MARKED FOR
19 IDENTIFICATION.)

20 (STATE'S EX. NO. 5 WAS MARKED FOR
21 IDENTIFICATION.)

22 (STATE'S EX. NO. 6 WAS MARKED FOR
23 IDENTIFICATION.)

24 (STATE'S EX. NO. 7 WAS MARKED FOR
25 IDENTIFICATION.)

1 (STATE'S EX. NO. 8 WAS MARKED FOR
2 IDENTIFICATION.)

3 (STATE'S EX. NO. 9 WAS MARKED FOR
4 IDENTIFICATION.)

5 (STATE'S EX. NO. 10 WAS MARKED FOR
6 IDENTIFICATION.)

7 (STATE'S EX. NO. 11 WAS MARKED FOR
8 IDENTIFICATION.)

9 (STATE'S EX. NO. 12 WAS MARKED FOR
10 IDENTIFICATION.)

11 (STATE'S EX. NO. 13 WAS MARKED FOR
12 IDENTIFICATION.)

13 **THE COURT:** BACK ON THE RECORD.

14 ANYTHING FROM THE STATE?

15 **MS. HUEY:** NO, SIR, YOUR HONOR.

16 **THE COURT:** MR. THOMPSON?

17 **DEFENDANT'S MOTION TO LIMIT HEARSAY TESTIMONY:**

18 **MR. THOMPSON:** THE MOTION I WOULD LIKE TO
19 MAKE IS IN LIMINE TO PROHIBIT THE TESTIMONY OF ANY
20 WITNESSES PERTAINING TO Minor 2 HEARSAY UNDER THE
21 RULE 801.

22 **THE COURT:** WHICH PART OF 801?

23 **MR. THOMPSON:** PART (B) (1) -- UNDER 801 (A)
24 (1) (B).

25 **THE COURT:** THERE IS NO 801 (B). I THINK

1 THE ONLY PART YOU HAVE IS (D) THAT HAS SUBPARTS (1) AND
2 (2). WHAT IS IT, AS TO HEARSAY?

3 MR. THOMPSON: YES, YOUR HONOR.

4 THE COURT: WELL, HEARSAY, AS I SAID, THE
5 EXCEPTIONS TO THE HEARSAY RULE ARE FOUND IN 803, AND IN
6 THIS CASE THIS WOULD BE IT WAS RULED BEFORE, I GUESS THE
7 OLD RES GESTAE RULE, WHICH IS ACTUALLY 803 (1), PRESENT
8 SENSE IMPRESSION; OR (2), EXCITED UTTERANCES. THEY'VE
9 BEEN DIVIDED INTO THOSE TWO PARTS.

10 AND THEN, OF COURSE, (3) IS EXISTING STATE
11 OF MIND. ALL OF THOSE HAVE TO DO WITH PRESENT SENSE
12 IMPRESSIONS AND DONE WHILE -- FOR THE EXISTING STATE OF
13 MIND OF THE DECLARANT. SO I'M GOING TO DENY THAT.

14 ALSO, I MIGHT NOTE THAT IN SEXUAL BATTERY
15 CASES THERE IS A CERTAIN LEEWAY IN WHAT CAN BE TESTIFIED
16 TO AS WHAT WOULD OTHERWISE BE HEARSAY AS LONG AS IT
17 PERTAINS TO THE ACTUAL EVENT WITHOUT PARTICULARITY, IN
18 OTHER WORDS, FOR IDENTIFICATION PERPETRATOR, BUT YOU CAN
19 TESTIFY AS TO TIME AND PLACE AND WHAT, WITHOUT GETTING
20 INTO THE SPECIFICATION OF THE ACT.

21 MR. THOMPSON: YOUR HONOR, CAN I HAVE A
22 SECOND?

23 THE COURT: YES, SIR. THOSE MATTERS THAT
24 DEAL WITH WHAT WOULD NORMALLY BE OF CONCERN OR
25 CONSIDERED HEARSAY.

1 (WHEREUPON, THE DEFENDANT CONFERRED WITH
2 STAND-BY COUNSEL.)

3 MR. THOMPSON: YOUR HONOR, I BELIEVE THAT
4 THAT'S ONLY AFTER THE DECLARANT TESTIFIES.

5 THE COURT'S RULING ON DEFENDANT'S MOTION:

6 THE COURT: WELL, AS I SAY, MY POINT ON THE
7 STATEMENTS BY A VICTIM OF SEXUAL BATTERY IS JUST BY
8 REFERENCE THAT THE HEARSAY RULE IS RELAXED IN CERTAIN
9 AREAS, EVEN IF THEY DON'T FALL UNDER THE PARTICULAR
10 EXCEPTION. I FOUND IN THIS PARTICULAR CASE -- AND IF
11 I'M NOT CORRECT I WILL BE CORRECTED, I'M SURE -- THAT
12 THE STATEMENT WAS SOMETHING TO THE EFFECT "I DON'T KNOW"
13 WHILE YOU WERE ASKED WHY YOU WERE IN THIS STATE OF
14 UNDRESS. SO I FIND ALL OF THOSE -- THAT STATEMENT WOULD
15 BE THE EXCEPTION TO THE HEARSAY RULE ALTOGETHER WITHOUT
16 EVEN THE CONSIDERATION OF THE EXCEPTION FOR STATEMENTS
17 BY VICTIMS, VICTIMS AFTER EXAMINATION -- OR RATHER AFTER
18 TESTIFYING.

19 NO, I FIND THAT THE STATEMENT THAT WAS MADE
20 AND ANY STATEMENT THAT MIGHT BE MADE WOULD FALL WITHIN
21 THE OLD RES GESTAE, THE PRESENT SENSE IMPRESSION,
22 EXCITED UTTERANCES, EXISTING STATE OF MIND WOULD BE
23 ADMISSIBLE AND DENY YOUR MOTION TO LIMIT SUCH TESTIMONY.

24 ANYTHING ELSE? YOUR OBJECTION AND YOUR
25 MOTION AND MY RULING IS NOTED FOR THE RECORD, SIR, SO

1 YOU DON'T HAVE TO RENEW IT.

2 MR. THOMPSON: YOUR HONOR?

3 THE COURT: YES, SIR.

4 MR. THOMPSON: THE DECLARANT -- THE
5 TESTIMONY HAS NOT BEEN ENTERED, AND UNDER LANDER --

6 THE COURT: YOU ARE TALKING ABOUT A SEXUAL
7 BATTERY CASE. I'M TALKING ABOUT THE RULES OF EVIDENCE
8 WHERE'S IT'S NOT HEARSAY, IT'S AN EXCEPTION TO THE
9 HEARSAY RULE.

10 LET ME REMIND YOU OF ANOTHER RULE, EVEN
11 THOUGH YOU ARE NOT A PRACTICING ATTORNEY. THERE ARE
12 CERTAIN REQUIREMENTS I HAVE TO MEET IN ORDER TO DO MY
13 PART AS FAR AS THE CONDUCT OF THE TRIAL, AND THAT IS
14 THAT ONCE THE COURT'S RULED, NO FURTHER ARGUMENT IS
15 NECESSARY UNLESS I ASK FOR IT. DO YOU UNDERSTAND?

16 MR. THOMPSON: YES, SIR, I DO.

17 MR. WHITEN: MAY WE APPROACH JUST A MOMENT?

18 THE COURT: CERTAINLY.

19 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
20 CONFERRED WITH THE COURT OUT OF THE PRESENCE
21 OF THE COURT REPORTER.)

22 THE COURT: BY THE WAY, JUST FOR EVERYBODY'S
23 EDIFICATION, ONE RULE THAT APPLIES AND I WAS RELATING
24 TO -- REFERRING TO WAS RULE 43 (I) OF OUR RULES OF CIVIL
25 PROCEDURE (READING):

1 COUNSEL SHALL NOT ATTEMPT TO
2 FURTHER ARGUE ANY MATTER AFTER HE HAS
3 BEEN HEARD AND THE RULING OF THE COURT
4 HAS BEEN PRONOUNCED. NO ARGUMENT SHALL
5 BE MADE ON OBJECTIONS TO ADMISSIBILITY OF
6 EVIDENCE OR CONDUCT AT TRIAL UNLESS
7 SPECIFICALLY REQUESTED BY THE COURT.

8 SO YOUR OBJECTIONS ARE NOT PRESERVED UNLESS
9 I ASK FOR IT. AND THAT APPLIES TO BOTH THE STATE AND
10 THE DEFENDANT.

11 ALL RIGHT. ANYTHING ELSE?

12 MS. HUEY: NO, SIR, YOUR HONOR.

13 THE COURT: ANYTHING ELSE FROM THE
14 DEFENDANT?

15 MR. THOMPSON: NO, SIR, YOUR HONOR.

16 THE COURT: VERY GOOD. THANK YOU. ALL
17 RIGHT. SUBJECT TO THE COURT'S RULINGS WE WILL PROCEED.
18 ALL RIGHT. ASK THE JURY TO JOIN US.

19 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
20 11:26 A.M.)

21 THE COURT: YES, MA'AM, IF YOU WOULD PLEASE
22 TAKE THE STAND. AND YOU DO UNDERSTAND YOU ARE STILL
23 UNDER OATH?

24 THE WITNESS: YES.

25 THE COURT: THANK YOU, MA'AM.

1 LET THE RECORD REFLECT THE JURY AND
2 ALTERNATE IS IN THE JURY-BOX.

3 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
4 JURY, WE WILL NOW CONTINUE WITH THE EXAMINATION OF THE
5 WITNESS.

6 BY MS. HUEY:

7 Q. NOW, MS. HIOTT, I BELIEVE WE LEFT OFF SOMEWHERE
8 ALONG THE LINES OF YOU EXPLAINING WHAT YOU DID AFTER YOU
9 PICKED Minor AND AUSTIN UP.

10 A. YES.

11 Q. YOU GOT THEM TOGETHER AND THEN WHERE DID YOU GO?

12 A. I LEFT TO BRING THEM TO BRIAN.

13 Q. OKAY. YOU TOOK THEM TO BRIAN. AND WHERE WAS
14 BRIAN?

15 A. AT THE STORE WHERE I WAS WORKING AT, WAITING FOR
16 ME.

17 Q. I'M SORRY. AT THE STORE WHERE YOU WORKED?

18 A. EXCUSE ME?

19 Q. THE STORE WHERE YOU WERE WORKING?

20 A. YES, MA'AM.

21 Q. OKAY. AND HE WAS WAITING THERE TO TAKE THE
22 CHILDREN TO YOUR HOME?

23 A. YES.

24 Q. NOW, DID YOU EXPLAIN TO BRIAN WHAT YOU HAD SEEN?

25 A. YES.

1 Q. AND HOW DID SEEING WHAT YOU SAW AFFECT YOU?

2 A. WELL, I WAS KIND OF IN SHOCK. I DIDN'T KNOW WHAT
3 TO THINK.

4 Q. BUT YOU TOLD BRIAN WHAT YOU HAD SEEN?

5 A. ABSOLUTELY, YES.

6 Q. AND THEN AT SOME POINT DID Minor END UP GOING TO
7 THE HOSPITAL?

8 A. YES.

9 Q. NOW, WHO TOOK Minor TO THE HOSPITAL?

10 A. BRIAN.

11 Q. AND WHY WAS IT BRIAN AND NOT YOU?

12 A. WELL, I WAS AT WORK AND HE CALLED ME AND TOLD ME
13 HE WAS GOING TO THE HOSPITAL. THAT'S WHY I LEFT WORK
14 AND WENT TO THE HOSPITAL AND MET THEM THERE.

15 Q. OKAY. BECAUSE YOU -- I BELIEVE YOU HAD TESTIFIED
16 EARLIER THAT YOU HAD GONE TO PICK THE KIDS UP AROUND
17 7:30?

18 A. RIGHT.

19 Q. BUT YOU TYPICALLY WORKED UNTIL TEN?

20 A. YES.

21 Q. SO YOU STILL HAD TO WORK LONGER BEFORE YOU
22 ACTUALLY GOT OFF?

23 A. WELL, AS SOON AS HE SAID THAT HE WAS TAKING HIM
24 TO THE HOSPITAL, I LEFT WORK.

25 Q. OKAY. BUT IF HE HADN'T GONE TO THE HOSPITAL, YOU

1 WOULD HAVE STAYED AT WORK; IS THAT CORRECT?

2 A. RIGHT.

3 Q. BUT HE DID GO TO THE HOSPITAL?

4 A. YES.

5 Q. AND SO DID BRIAN LET YOU KNOW THAT HE WAS TAKING
6 HIM TO THE HOSPITAL?

7 A. YES.

8 Q. AND THEN AT THE HOSPITAL DID YOU MEET WITH
9 ANYBODY THERE?

10 A. I DON'T REMEMBER. I JUST -- Minor WAS IN THERE
11 WITH THE DOCTORS AND BRIAN WAS THERE, AND THERE WAS JUST
12 TOO MANY PEOPLE ---

13 Q. DID YOU EVER GIVE A STATEMENT TO POLICE?

14 A. I BELIEVE SO.

15 Q. OKAY. NOW, MS. HIOTT, IS Minor GOING TO TESTIFY
16 TODAY?

17 A. NO.

18 Q. AND WHY NOT?

19 A. BECAUSE HE WAS SCARED ---

20 MR. THOMPSON: OBJECTION, YOUR HONOR.

21 THE COURT: RESTATE YOUR QUESTION.

22 MS. HUEY: YOUR HONOR, I ASKED HER IF Minor
23 WAS GOING TO TESTIFY TODAY.

24 THE COURT: WHAT'S YOUR OBJECTION?

25 (WHEREUPON, THE DEFENDANT CONFERRED WITH

1 STAND-BY COUNSEL.)

2 MR. THOMPSON: YOUR HONOR, THE STATE DOES
3 NOT HAVE THE RIGHT TO STATE THAT THE VICTIM OR WHY THE
4 VICTIM IS NOT GOING TO TESTIFY.

5 THE COURT: ALL RIGHT. IS THAT WHERE YOU'RE
6 GOING?

7 MS. HUEY: YOUR HONOR, I THINK I DO HAVE A
8 RIGHT TO EXPLAIN TO THE JURY, SINCE I DO HAVE THE
9 BURDEN, ON WHY THE VICTIM IS NOT HERE. SHE DOESN'T HAVE
10 TO TELL ME WHAT Minor TOLD HER, I'M NOT TRYING TO ELICIT
11 HEARSAY TESTIMONY, I JUST WANT TO KNOW WHY SHE AS A
12 MOTHER IS NOT LETTING HER SON TESTIFY.

13 THE COURT: ALL RIGHT. I'M GOING TO
14 OVERRULE THE OBJECTION.

15 YOU MAY ANSWER THE QUESTION.
16 BY MS. HUEY:

17 Q. SO, MS. HIOTT, AS A MOTHER, WHY IS HE NOT GOING
18 TO BE TESTIFYING TODAY? WITHOUT TELLING WHAT Minor SAID
19 TO YOU.

20 A. WELL, HE IS SCARED AND I DON'T WANT TO PUT HIM
21 THROUGH THAT.

22 MS. HUEY: THAT'S ALL I HAVE. THANK YOU.

23 THE COURT: ALL RIGHT. CROSS-EXAMINATION?

24 CROSS-EXAMINATION BY MR. THOMPSON:

25 Q. ON THE DAY OF THE INCIDENT DID YOU HAVE A BRIEF

1 CONVERSATION WITH ME BEFORE GOING TO YOUR PLACE OF WORK?

2 A. WHAT DO YOU MEAN? BEFORE?

3 Q. YES.

4 A. NOT THAT I CAN RECALL. I'M SURE I SAID HI, HOW
5 ARE YOU, SOMETHING.

6 Q. DO YOU REMEMBER IF I WAS COMPLETELY CLOTHED
7 OR ---

8 A. NO, I DO NOT.

9 Q. HAVE YOU EVER OBSERVED ME HAVING MY SHIRT OFF
10 WHILE EITHER DROPPING OFF OR PICKING UP YOUR CHILDREN
11 FROM ME BEFORE?

12 A. NO.

13 Q. NOW, YOU STATED EARLIER THAT WHEN YOU RETRIEVED
14 YOUR, THE TWO CHILDREN, THAT Minor WAS HOLDING A SHEET,
15 CORRECT?

16 A. YES.

17 Q. NOW, YOU STATED TO AN OFFICER THAT HE WAS HOLDING
18 A PILLOW CASE, AM I CORRECT?

19 A. I DON'T RECALL. IT WAS WHITE, IT WAS A SHEET OR
20 IT COULD HAVE BEEN A PILLOW CASE, BUT HE WAS HOLDING IT
21 IN HIS HANDS LIKE HE WAS TRYING TO COVER UP HIS PRIVATE
22 PARTS WHEN HE SAW ME WALK IN.

23 Q. YOU ALSO SAID THAT BRIAN CALLED YOU, STATING THAT
24 HE WAS ON HIS WAY TO THE HOSPITAL?

25 A. YES.

1 Q. AND ABOUT WHAT TIME DID HE NOTIFY YOU OF THAT
2 INFORMATION?

3 A. I DON'T KNOW. I DON'T REMEMBER WHAT TIME IT WAS.

4 Q. HOW LONG DID IT TAKE FOR ME TO UNLOCK THE DOOR OF
5 THE BEDROOM AT THAT PARTICULAR TIME?

6 A. YOU DID IMMEDIATELY.

7 Q. AND YOU STATED THAT I WAS WEARING WHAT?

8 A. SHORTS.

9 Q. SHORTS?

10 A. UH-HUH.

11 Q. OR BOXER BRIEFS?

12 A. OR BOXERS, SHORTS OR BOXERS. EITHER WAY, THEY'RE
13 BOTH SHORTS.

14 Q. AND AFTER ARRIVING AT THE ANDERSON AREA MEDICAL
15 CENTER, AND YOUR SPOUSE CALLING THE SHERIFF'S OFFICE,
16 DID YOU STATE TO AN INVESTIGATOR -- OR CAN YOU REMEMBER
17 ACTUALLY STATING TO ANY INVESTIGATOR THAT THE CHILD WAS
18 BEING KEPT BY ME FOR MAYBE UP TO A YEAR OR HALF A YEAR?

19 A. I'M SURE I DID.

20 Q. HOW LONG -- HOW LONG DO -- DID I KEEP YOUR
21 CHILDREN FROM ---

22 A. PROBABLY AROUND SIX MONTHS OR SO.

23 Q. FROM THE TIME YOU LEFT YOUR CHILDREN IN MY
24 CUSTODY OR CARE FROM THE TIME YOU PICKED THEM UP?

25 A. WHAT TIME?

1 Q. YEAH. ON A DAILY BASIS.

2 A. FROM 2:00 TO 3:00 TO MAYBE BETWEEN 10:00 AND
3 11:00 AT NIGHT.

4 Q. SO YOU WOULD PICK YOUR CHILDREN UP FROM ME AT
5 10:00, 11:00 AT NIGHT?

6 A. YES. OR YOUR MOTHER WOULD BRING THEM TO ME WHEN
7 SHE CAME IN TO WORK.

8 Q. MRS. HIOTT, WHEN YOU GAVE A REPORT OR STATEMENT
9 TO INVESTIGATOR CARSON -- AM I CORRECT?

10 A. UH-HUH.

11 Q. -- YOU -- DID YOU STATE THAT THE CHILD DOES NOT
12 DO THIS AT HOME OR THIS IS NOT HIS CHARACTER?

13 A. RIGHT.

14 Q. DID I REPLY ANYTHING BACK AT THAT GIVEN TIME?

15 A. DID YOU REPLY?

16 Q. YEAH.

17 A. WHEN I ASKED -- WHEN I TOLD YOU THAT HE DIDN'T DO
18 THAT AT HOME?

19 Q. YES.

20 A. I DON'T THINK SO. YOU SAID HE WAS HOT AND DIDN'T
21 WANT TO PUT HIS CLOTHES BACK ON. WE DIDN'T HAVE A
22 CONVERSATION. I GOT IN THERE, SAID WHAT WE SAID, AND I
23 TOOK OFF.

24 Q. NOW, WHY DID YOU NOT TAKE YOUR CHILD TO THE
25 HOSPITAL? I DON'T UNDERSTAND THE FACT THAT ---

1 A. BECAUSE AT THE TIME I WASN'T THINKING THAT HE WAS
2 DOING THAT TO MY CHILD. THAT'S NOT THE FIRST THING THAT
3 CROSSED MY MIND. FIRST I WAS IN SHOCK. I DIDN'T
4 UNDERSTAND WHY HE WAS NAKED. WHEN I SAW MY SON NAKED, I
5 DIDN'T SAY, OH, I THINK HE'S MOLESTING MY CHILD. YOU
6 GOT TO TALK TO YOUR CHILD TO FIND OUT WHAT HAPPENED
7 FIRST BEFORE YOU ASSUME SOMETHING LIKE THAT.

8 Q. DID YOU TALK TO HIM?

9 A. YEAH, I TRIED. HE DIDN'T TELL ME ANYTHING.

10 Q. WHAT DID I STATE TO YOU WHEN YOU WENT TO RETRIEVE
11 YOUR CHILDREN FROM MY CARE?

12 A. FROM WHERE?

13 Q. FROM MY CARE.

14 A. WHAT DID YOU STATE TO ME?

15 Q. AFTER THE DOOR WAS OPEN.

16 A. UH-HUH. YOU DIDN'T SAY ANYTHING WHEN YOU OPENED
17 THE DOOR. I ASKED YOU WHY HIS CLOTHES WERE OFF. YOU
18 SAID HE WAS HOT AND DIDN'T WANT TO PUT HIS CLOTHES BACK
19 ON AND THAT WAS IT.

20 Q. THAT WAS THE ONLY CONVERSATION OR STATEMENT THAT
21 YOU MADE TO ME; THERE WAS NOTHING ELSE THERE, RIGHT?

22 A. NOT THAT I CAN REMEMBER.

23 Q. OKAY. YOU ALSO STATED THAT YOU BROUGHT THEM TO
24 BRIAN AND LET HIM KNOW WHAT HAPPENED, CORRECT?

25 A. CORRECT.

1 Q. NOW, HOW LONG DOES IT TAKE TO GET FROM THE PELZER
2 POINT ---

3 A. UH-HUH.

4 Q. --- TO ANDERSON AREA MEDICAL CENTER?

5 A. I DON'T KNOW. MAYBE 15 MINUTES, 20 MINUTES. I
6 GUESS IT DEPENDS ON HOW FAST YOU DRIVE.

7 Q. DID YOU EVER STATE ANYTHING TO YOUR SPOUSE, BRIAN
8 CAIN ---

9 A. DID I EVER SPEAK TO BRIAN CAIN?

10 Q. --- BESIDES THE FACT THAT YOUR CHILD WAS FOUND
11 NAKED BEHIND THE DOOR WITH ME WHILE MY SHIRT WAS OFF?

12 A. I TOLD HIM WHAT I SAW AND THAT WAS IT.

13 Q. DID YOU TELL HIM THIS AFTER YOU PUT HIM -- OR
14 AFTER HE PUT THEM IN HIS VEHICLE OR...

15 A. YES.

16 Q. SO YOU NEVER STATED THAT YOU CALLED HIM AND
17 ADVISED HIM OF THAT?

18 A. NO, I DON'T BELIEVE SO.

19 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
20 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)
21 BY MR. THOMPSON:

22 Q. WHEN YOU WAS AT THE ANDERSON AREA MEDICAL CENTER,
23 YOUR EXACT WORDS STATE: CALLED HER COMMON LAW SPOUSE,
24 CAIN, AND ADVISED HIM OF THE SITUATION.

25 A. NO. I REMEMBER GETTING THE KIDS, BRINGING THEM

1 TO THE STORE, HE STUCK THE KIDS IN THE CAR, AND I TOLD
2 HIM RIGHT THERE WHAT HAPPENED.

3 Q. SO YOU NEVER CALLED HIM?

4 A. I'M SURE WE CALLED ON THE PHONE BECAUSE HOW WOULD
5 I KNOW THAT HE WAS STILL AT THE HOSPITAL?

6 Q. BUT YOU STATED TO AN OFFICER OF THE LAW THAT YOU
7 ADVISED HIM AFTER YOU CALLED HIM ---

8 A. WELL, MAYBE THAT WAS WRITTEN WRONG.

9 Q. --- CALLED YOUR COMMON LAW SPOUSE.

10 BUT IN YOUR STATEMENT YOU SAY YOU BROUGHT THEM TO
11 BRIAN.

12 A. I BROUGHT THEM TO BRIAN AFTER I LEFT YOUR HOUSE.
13 HE THEN TALKED TO Minor 2 WENT HOME, AND THEN TOOK HIM TO
14 THE HOSPITAL. AND THEN WHEN I FOUND OUT THAT HE WAS
15 GOING TO THE HOSPITAL, I LEFT WORK AND WENT TO THE
16 HOSPITAL.

17 Q. HOW MANY DAYS OUT OF THE WEEK DID I KEEP Minor
18 DURING THE SIX MONTHS BETWEEN OCTOBER 20TH, 2005, AND
19 MAY 2005?

20 A. ABOUT FOUR OR FIVE DAYS OUT OF THE WEEK.

21 Q. WE NEVER MADE AN AGREEMENT THAT UNTIL SCHOOL WAS
22 OVER, THAT, TO PROTECT YOUR CHILDREN FROM HARM OR RAIN
23 OR ANYTHING, TO MAKE IT A TWO-DAY SITUATION OR A TWO-DAY
24 BABY-SITTING ON MONDAYS AND TUESDAYS, FOR INSTANCE?

25 A. NO, I DON'T RECALL THAT.

1 Q. YOU DON'T RECALL THAT?

2 A. I'M NOT SURE WHAT YOU'RE GETTING AT.

3 Q. DID YOU SAY ONE DAY PER WEEK, MAYBE, OR NOT 50
4 TIMES?

5 A. YOU WATCHED HIM MORE THAN ONE DAY A WEEK.

6 Q. I, I WATCHED HIM MORE THAN ONE DAY A WEEK?

7 A. YES.

8 Q. WHEN YOU ARRIVED AT THE ANDERSON AREA MEDICAL
9 CENTER, WERE YOU PRESENT DURING ANY OF THE PHYSICAL
10 EXAMINATIONS WITH YOUR CHILD?

11 A. NO.

12 Q. CAN YOU STATE WHY?

13 A. BECAUSE WE WEREN'T ALLOWED TO BE IN THE ROOM
14 WHILE THEY WERE DOING THAT.

15 Q. YOU OR YOUR COMMON-LAW SPOUSE RIGHT OVER THERE?

16 A. I DON'T BELIEVE HE WAS IN THERE, EITHER.

17 MR. THOMPSON: NO FURTHER QUESTIONS AT THIS
18 TIME.

19 THE COURT: RE-EXAM?

20 MS. HUEY: YES, YOUR HONOR, JUST A FEW
21 QUESTIONS.

22 REDIRECT EXAMINATION BY MS. HUEY:

23 Q. NOW, MS. HIOTT, YOU TESTIFIED ON CROSS THAT YOU
24 HAD NEVER SEEN THE DEFENDANT WITHOUT HIS SHIRT OFF
25 BEFORE?

1 A. NOT THAT I CAN REMEMBER.

2 Q. NOW, YOU ALSO SAID THAT Minor WAS TRYING TO COVER
3 HIMSELF UP WITH SOME SORT OF SHEET OR PILLOW CASE?

4 A. YES.

5 Q. AND WHY WAS THAT?

6 A. WHY WAS HE TRYING TO COVER HIMSELF UP?

7 Q. UH-HUH.

8 A. HE WAS PROBABLY EMBARRASSED ONCE HE SAW ME AND
9 TRIED TO COVER UP SO HE'D -- HE PROBABLY THOUGHT HE WAS
10 GONNA GET IN TROUBLE.

11 Q. NOW, IN TERMS OF GOING TO THE HOSPITAL, YOU DID
12 GO BACK TO WORK WHERE BRIAN WAS ---

13 A. RIGHT.

14 Q. --- IS THAT RIGHT?

15 A. WELL, AT THE TIME THE REASON I WENT BACK TO WORK
16 WAS BECAUSE, I MEAN, I DIDN'T REALIZE THAT HAD BEEN
17 GOING ON OR WHAT WAS GOING ON. I SURELY DIDN'T WANT TO
18 BELIEVE THAT.

19 Q. BUT NONETHELESS, YOU TOLD BRIAN WHAT YOU HAD
20 SEEN?

21 A. RIGHT.

22 Q. AND THEN AFTER BRIAN SPOKE WITH Minor2 BRIAN TOOK
23 Minor TO THE HOSPITAL?

24 A. RIGHT.

25 Q. BUT DID BRIAN LET YOU KNOW THAT HE WAS GOING TO

1 THE HOSPITAL?

2 A. RIGHT.

3 Q. AND DID YOU LEAVE IMMEDIATELY THEREAFTER ---

4 A. YES.

5 Q. --- LEAVE TO MEET HIM AT THE HOSPITAL?

6 A. YES.

7 Q. AND YOU HAD TO LEAVE WORK EARLY TO DO THIS, IS
8 THAT CORRECT?

9 A. YES.

10 Q. NOW, THERE WAS MENTION OF Minor NOT TAKING HIS
11 CLOTHES OFF AT HOME.

12 A. RIGHT.

13 Q. DID HE DO THAT SORT OF THING AT HOME?

14 A. NEVER.

15 Q. WHEN HE GOT HOT?

16 A. NEVER.

17 Q. HOW ABOUT JUST PLAYING AROUND, WOULD HE EVER JUST
18 TAKE OFF HIS CLOTHES?

19 A. NEVER.

20 MS. HUEY: THAT'S ALL I HAVE.

21 THE COURT: ANY RECROSS?

22 MR. THOMPSON: RECROSS.

23 RECROSS-EXAMINATION BY MR. THOMPSON:

24 Q. DOES YOUR SON, Minor ALLEN, KNOW THE DIFFERENCE
25 BETWEEN WHAT'S RIGHT AND WHAT'S WRONG?

1 A. YES.

2 Q. HE DOES?

3 A. YES.

4 Q. IS HE DISCIPLINED?

5 A. SOMEWHAT.

6 Q. SOMEWHAT? NOW, WILL YOU TELL THE COURT ONE MORE
7 TIME WHERE WAS YOUR SON STANDING WHEN THE DOOR WAS BEING
8 OPEN?

9 A. ON THE SIDE OF THE BED.

10 Q. OFF THE SIDE OF THE BED?

11 A. ON THE SIDE OF THE BED.

12 Q. HE WASN'T STANDING IN THE CORNER?

13 A. NO.

14 Q. FROM THE STATEMENT YOU TOLD THE OFFICER THAT
15 QUESTIONED YOU AT YOUR RESIDENCE, YOU TOLD THEM THAT
16 YOU, QUOTE: OBSERVED YOUR SON IN THE CORNER OF THE
17 BEDROOM.

18 A. NO, I DON'T RECALL SAYING THAT. I KNOW EXACTLY
19 WHERE HE WAS STANDING: HE WAS STANDING ON THE SIDE OF
20 THE BED ON THE LEFT.

21 Q. YOU SAID IT WAS NOT YOUR SON'S CHARACTER TO TAKE
22 OFF HIS CLOTHING ON HIS OWN, CORRECT?

23 A. CORRECT.

24 Q. CAN YOU TELL THE COURT WHAT EXACTLY IS HIS
25 CHARACTER?

1 A. WELL, HE DOESN'T WALK AROUND NAKED.

2 Q. NOW, WHOSE IDEA WAS IT TO FILE A COMPLAINT WITH
3 THE SHERIFF'S OFFICE?

4 A. WHOSE IDEA?

5 Q. YES.

6 A. IT WAS ME AND BRIAN'S IDEA.

7 Q. DID YOU GIVE THE INVESTIGATORS THAT TOOK A
8 STATEMENT FROM YOU AT YOUR RESIDENCE THE SAME
9 INFORMATION AS YOU DID WITH THE OFFICERS AND
10 INVESTIGATOR AT THE ANDERSON AREA MEDICAL CENTER?

11 A. I'M SURE I DID.

12 Q. DO YOU KNOW WHO INTERVIEWED YOUR SON?

13 A. NO, I CAN'T RECALL THE NAME.

14 MR. THOMPSON: NO FURTHER QUESTIONS.

15 THE COURT: RE, RE-EXAM?

16 MS. HUEY: YOUR HONOR, I HAVE ONE OTHER
17 THING.

18 FURTHER REDIRECT EXAMINATION BY MS. HUEY:

19 Q. MS. HIOTT, THE DEFENDANT KEEPS ASKING YOU
20 QUESTIONS ABOUT YOUR STATEMENT. AND I ASKED YOU EARLIER
21 IF YOU HAD GIVEN A WRITTEN STATEMENT TO POLICE. YOU
22 SAID YOU THOUGHT YOU HAD; IS THAT CORRECT?

23 A. YEAH.

24 Q. OKAY.

25 (STATE'S EX. # 4, STATEMENT OF SARA HIOTT,

1 WAS MARKED FOR IDENTIFICATION.)

2 BY MS. HUEY:

3 Q. LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S
4 EXHIBIT FOUR FOR I.D. PURPOSES. COULD YOU TAKE A LOOK
5 AT THAT FOR ME? DOES THAT APPEAR TO BE YOUR STATEMENT,
6 MS. HIOTT?

7 A. YES.

8 Q. AND IS YOUR SIGNATURE, IN FACT, ON THAT
9 STATEMENT?

10 A. YES.

11 Q. DID YOU WRITE THAT STATEMENT YOURSELF OR DID
12 INVESTIGATORS WRITE IT FOR YOU?

13 A. I WROTE IT.

14 Q. OKAY. AND IN WRITING IT CAN YOU TELL US WHAT YOU
15 WROTE YOURSELF ABOUT WHERE Minor WAS IN THE ROOM WHEN YOU
16 WALKED IN? YOU CAN TAKE A MINUTE TO READ IT IF YOU NEED
17 TO.

18 A. ALL RIGHT. IT SAYS: Minor WAS ON THE LEFT SIDE
19 OF THE BED NAKED.

20 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

21 MR. THOMPSON: RECROSS.

22 RECROSS-EXAMINATION BY MR. THOMPSON:

23 Q. IS THERE ANY SENSE OF TRUST BETWEEN YOU AND
24 MYSELF?

25 A. IS THERE ANY WHAT?

1 MS. HUEY: OBJECTION, YOUR HONOR. I BELIEVE
2 HE'S SUPPOSED TO LIMIT IT TO WHAT I ASKED ON CROSS.

3 THE COURT: WE HAVE BEEN RELAXING THE RULES
4 SOMEWHAT, BUT THAT'S BEYOND ANY OF THE TESTIMONY WE HAVE
5 HAD SO FAR, SO I'M GOING TO SUSTAIN THE OBJECTION. IT'S
6 NOT APPROPRIATE UNDER OUR RULES.

7 BY MR. THOMPSON:

8 Q. HAVE YOU EVER HAD PROBLEMS WITH ME BEFORE MAY
9 18TH, 2005?

10 A. NO.

11 MS. HUEY: YOUR HONOR, AGAIN, I WOULD
12 JUST ---

13 THE COURT: THE QUESTION HAS BEEN ASKED.
14 LET'S MOVE ON.

15 BY MR. THOMPSON:

16 Q. BEFORE THIS INCIDENT DATE, HAVE YOU EVER BEEN IN
17 FEAR OF YOUR LIFE AGAINST YOUR COMMON-LAW SPOUSE, BRIAN
18 CAIN?

19 MS. HUEY: OBJECTION, YOUR HONOR.

20 THE COURT: SUSTAINED.

21 BY MR. THOMPSON:

22 Q. YOUR CHILDREN ARE YOUR LIFE, CORRECT?

23 MS. HUEY: OBJECTION, YOUR HONOR.

24 THE COURT: I DIDN'T HEAR THE QUESTION.

25 MR. THOMPSON: THE CHILDREN ARE HER LIFE

1 POTENTIALLY.

2 THE COURT: I'M GOING TO PERMIT THE
3 QUESTION, BUT I'M NOT EXACTLY SURE IF IT'S A LINE OR
4 IT'S JUST A RHETORICAL QUESTION.

5 BUT GO AHEAD, YOU CAN ANSWER.

6 THE WITNESS: YES, THEY ARE.

7 BY MR. THOMPSON:

8 Q. SO IF THERE WAS ANY RECOGNITION OF SOMETHING
9 GOING ON DURING THIS TIME, YOU WOULD NOTICE YOUR SON
10 ACTING STRANGE, CORRECT?

11 A. YES, I'M SURE. I HOPE I WOULD.

12 Q. DID HE ACT STRANGE ON THIS DATE?

13 A. NO.

14 MR. THOMPSON: NO FURTHER QUESTIONS.

15 THE COURT: VERY WELL. ANY RE- RE-
16 REDIRECT?

17 MS. HUEY: NO, SIR.

18 THE COURT: YOU MAY STEP DOWN. THANK YOU
19 VERY MUCH, MA'AM.

20 (WITNESS LEAVES STAND.)

21 THE COURT: ALL RIGHT. YOU MAY CALL YOUR
22 NEXT WITNESS.

23 MS. HUEY: THANK YOU, YOUR HONOR. THE STATE
24 CALLS DR. JAMES REESE.

25 (WHEREUPON, THE WITNESS WAS SWORN BY THE

1 CLERK.)

2 THE CLERK: PLEASE STATE YOUR FULL NAME AND
3 SPELL YOUR LAST NAME FOR THE RECORD.

4 THE WITNESS: JAMES EDWARD REESE, R-E-E-S-E.
5 WHEREUPON,

6 JAMES EDWARD REESE,
7 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
8 FOLLOWS:

9 DIRECT EXAMINATION BY MS. HUEY:

10 Q. DR. REESE, WHAT IS YOUR OCCUPATION OR PROFESSION?

11 A. I'M AN EMERGENCY ROOM DOCTOR.

12 Q. ARE YOU LICENSED IN SOUTH CAROLINA?

13 A. YES, MA'AM.

14 Q. HOW LONG HAVE YOU BEEN LICENSED?

15 A. SINCE 1998.

16 Q. WHAT MEDICAL COLLEGE DID YOU ATTEND?

17 A. THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN
18 CHARLESTON.

19 Q. WHERE DID YOU DO YOUR RESIDENCY?

20 A. EAST CAROLINA SCHOOL OF MEDICINE AT PITT COUNTY
21 MEMORIAL HOSPITAL.

22 Q. AND WHAT AREA WAS YOUR RESIDENCY?

23 A. EMERGENCY MEDICINE.

24 Q. AND WHERE ARE YOU CURRENTLY EMPLOYED?

25 A. AT ANDERSON AREA MEDICAL CENTER.

1 Q. HOW LONG HAVE YOU BEEN THERE?

2 A. I BEGAN THERE THE SUMMER OF '98.

3 Q. IN YOUR PRACTICE AS AN EMERGENCY ROOM PHYSICIAN,
4 WHAT KIND OF PATIENTS DO YOU SEE ON A DAILY BASIS?

5 A. A WIDE VARIETY.

6 MR. THOMPSON: OBJECTION, YOUR HONOR, THAT'S
7 IRRELEVANT.

8 THE COURT: OVERRULED.

9 BY MS. HUEY:

10 Q. I'M SORRY. WHAT KIND OF PATIENTS DO YOU SEE ON A
11 DAILY BASIS?

12 A. JUST A WIDE VARIETY. ALL AGES, ALL COMPLAINTS.
13 JUST, YOU NAME IT I SEE IT.

14 Q. AND AT YOUR PRACTICE HAVE YOU EVER COME ACROSS
15 THOSE ALLEGED TO HAVE BEEN SEXUALLY ASSAULTED?

16 A. YES, MA'AM.

17 Q. ADULTS WHO HAVE BEEN -- CLAIMING TO HAVE BEEN
18 SEXUALLY ASSAULTED?

19 A. YES, MA'AM.

20 Q. AND HOW ABOUT CHILDREN?

21 A. CHILDREN, AS WELL.

22 Q. AND WHEN YOU SEE A CHILD, GENERALLY SPEAKING, HOW
23 IS IT DIFFERENT IN ANY WAY?

24 A. YOUR APPROACH IS SOMEWHAT DIFFERENT IN THAT YOU
25 DON'T WANT TO SCARE CHILDREN, YOU DON'T WANT TO BE TOO

1 CONFRONTATIONAL. YOU WANT TO ALLOW THEM TO KIND OF JUST
2 KIND OF TELL THEIR STORY. NOT THAT YOU WOULDN'T BE
3 CONFRONTATIONAL WITH AN ADULT, AS WELL, BUT YOU HAVE TO
4 BE A LITTLE MORE GENTLE WITH CHILDREN. SOMETIMES YOU
5 HAVE TO SPEAK IN THEIR LANGUAGE, YOU HAVE TO USE TERMS
6 THAT THEY WOULD ACTUALLY UNDERSTAND.

7 Q. NOW, ON OR ABOUT MAY 18TH OF 2005, DID YOU HAVE
8 AN OCCASION TO SEE Minor 2 PROFESSIONALLY?

9 A. YES, MA'AM.

10 Q. AND WHEN AND WHERE DID YOU SEE HIM?

11 A. I SAW HIM IN THE EMERGENCY DEPARTMENT ON MAY THE
12 18TH, I DO NOT RECALL THE TIME OF DAY THAT I ACTUALLY
13 SAW HIM.

14 Q. DO YOU RECALL IF HE WAS WITH ANYBODY?

15 A. THERE WERE A LOT OF PEOPLE THERE. THE FACES ARE
16 HARD TO REMEMBER AT THIS POINT, BUT LAW ENFORCEMENT WAS
17 THERE, SOMEONE FROM SOCIAL SERVICES WAS THERE, THE
18 PARENTS WERE THERE, AND I BELIEVE THE STEPFATHER WAS
19 THERE, AS WELL.

20 Q. NOW, DO YOU RECALL HIS AGE AT THE TIME?

21 A. HE WAS SIX YEARS OF AGE.

22 Q. AND WHAT WAS HIS CONDITION OR DEMEANOR LIKE AT
23 THE TIME?

24 A. HE SEEMED OKAY. HE DIDN'T SEEM UPSET OR
25 ANYTHING.

1 Q. WHEN YOU SAW HIM, HAD SOME TIME PASSED?

2 A. YES. WHEN HE WAS FIRST BROUGHT TO THE EMERGENCY
3 DEPARTMENT, OFTEN, ESPECIALLY IN CASES LIKE THIS, THE
4 LAW ENFORCEMENT IS CONTACTED, SOCIAL SERVICES IS
5 CONTACTED, SO THERE'S A LOT OF PEOPLE, AND I MAY
6 ACTUALLY BE INVOLVED IN ANOTHER CASE AT THE TIME THE
7 PATIENT ARRIVES, SO THERE IS OFTEN A DELAY BETWEEN THE
8 TIME I SEE THE CHILD AND OTHER PEOPLE SEE THE CHILD, AND
9 THAT'S PROBABLY THE CASE THAT NIGHT.

10 Q. DO YOU HAVE AN IDEA HOW LONG THE DELAY COULD BE,
11 AN HOUR OR TWO?

12 A. DEPENDING ON HOW BUSY WE ARE, SOMETIMES IT CAN BE
13 THREE OR FOUR HOURS. CUSTOMARILY IT'S WITHIN A COUPLE
14 OF HOURS.

15 Q. NOW, DR. REESE, WHAT'S YOUR FIRST STEP WHEN YOU
16 MEET WITH A CHILD, FINALLY?

17 A. I JUST SAY HELLO, I INTRODUCE MYSELF. I EXPLAIN
18 THAT I'M A DOCTOR AND I'M THERE TO TAKE A LOOK AT HIM,
19 THAT I'M GOING TO ASK SOME QUESTIONS AND I'M GOING TO
20 EXAMINE THEM.

21 Q. AND THAT YOU ARE GOING TO DO AN EXAM?

22 A. DO AN EXAM, YES, MA'AM.

23 Q. AND HOW DO YOU KNOW WHAT KIND OF EXAM TO DO?

24 A. IT'S USUALLY DICTATED BY THE COMPLAINT. IN THIS
25 CASE IT'S A PRETTY THOROUGH EXAM. IF SOMEONE COMES IN

1 WITH AN ANKLE SPRAIN, THEN IT'S A LIMITED EXAM; BUT WHEN
2 SOMEONE COMES IN WITH A COMPLAINT LIKE THIS, IT'S PRETTY
3 MUCH A HEAD-TO-TOE EXAM.

4 Q. AND IN DOING THE EXAM, DO YOU NEED TO KNOW FROM
5 THE PATIENT WHAT HAPPENED TO THE PATIENT?

6 A. IT'S HELPFUL. IT'S VERY BENEFICIAL BECAUSE THEN
7 YOU CAN KIND OF GUIDE YOUR EXAM A LITTLE MORE. YOU CAN,
8 YOU KNOW, YOU DON'T HAVE TO EMPHASIZE AS MUCH CERTAIN
9 AREAS AS YOU DO OTHER AREAS. SO IT IS BENEFICIAL TO
10 KNOW THAT.

11 Q. I'M SORRY. YOU SAID BENEFICIAL...

12 A. IT'S VERY BENEFICIAL TO KNOW WHAT THE COMPLAINT
13 IS.

14 Q. NOW, IN THIS PARTICULAR PLACE DID YOU DO THAT
15 WITH Minor 2 DID YOU FIND OUT WHY HE WAS THERE?

16 A. I DID.

17 Q. AND DID WHAT YOU FIND OUT HELP WITH YOUR MEDICAL
18 DIAGNOSIS AND TREATMENT?

19 A. IT DID.

20 Q. AT THIS TIME I WOULD LIKE FOR YOU TO TELL US WHAT
21 Minor TOLD YOU HAPPENED THEN, WITHOUT GETTING INTO WHO
22 DID ANYTHING TO HIM. JUST WHAT HE SAID?

23 A. HE TOLD ME THAT ---

24 MR. THOMPSON: OBJECTION, YOUR HONOR, THAT'S
25 HEARSAY.

1 **THE COURT:** MADAM SOLICITOR?

2 **MS. HUEY:** YOUR HONOR, THERE'S A MEDICAL
3 DIAGNOSIS AND TREATMENT EXCEPTION. I DID NOT WANT TO
4 GET INTO THE PERPETRATOR'S NAME WHATSOEVER, JUST WHAT
5 THE CHILD SAID SO HE WAS ABLE TO TREAT HIM.

6 **THE COURT:** YOU ARE SAYING THESE ARE
7 STATEMENTS MADE FOR PURPOSES OF MEDICAL DIAGNOSIS OR
8 TREATMENT?

9 **MS. HUEY:** YES, SIR, YOUR HONOR.

10 **THE COURT:** AND THEY ARE DESCRIBING
11 (READING):

12 MEDICAL HISTORY OR PAST SYMPTOMS,
13 PAIN, OR SENSATION OR THE INCEPTION OF
14 THE GENERAL CHARACTER OF THE CAUSE OR
15 EXTERNAL SOURCE THEREOF INSOFAR AS
16 REASONABLY PERTINENT TO THE DIAGNOSIS OR
17 TREATMENT?

18 **MS. HUEY:** YES, SIR, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. I'LL PERMIT THE
20 STATEMENT LIMITED TO THOSE -- THAT INFORMATION.

21 **MS. HUEY:** THANK YOU.

22 BY MS. HUEY:

23 Q. DR. REESE, WHAT DID ^{Minor} SAY HAD HAPPENED TO HIM?

24 A. HE TOLD ME HE HAD BEEN TOUCHED, HE USED THE WORD
25 HIS WEE WEE, WHICH HE CONFIRMED WAS HIS PENIS, AND

1 TOUCHED ON HIS BUTT.

2 Q. OKAY. DID HE SAY ANYTHING ELSE?

3 A. HE SAID THAT HE HAD BEEN TOUCHED THERE BY
4 SOMEONE'S HANDS AND SOMEONE'S MOUTH.

5 Q. NOW, AS A RESULT OF RECEIVING THIS INFORMATION
6 FROM THE CHILD, WHAT WAS YOUR NEXT STEP?

7 A. TO EXAMINE HIM.

8 Q. AND DID YOU, IN FACT, EXAMINE HIM?

9 A. I DID.

10 Q. AND WHAT, IF ANYTHING, DID YOU FIND ON YOUR EXAM?

11 A. I DID NOT REALLY FIND ANY PHYSICAL FINDINGS AT
12 ALL. I DID NOT FIND ANY SIGNS OF ANY TRAUMA, ANY
13 BRUISING, NO SCRATCHES, ABRASIONS. HE HAD A NORMAL EXAM
14 FOR HIS AGE, FOR A SIX-YEAR-OLD MALE.

15 Q. NOW, IS THIS UNUSUAL OR USUAL; CAN YOU TELL US
16 ANYTHING ABOUT THIS KIND OF FINDING?

17 A. IT'S VERY COMMON. IT'S ACTUALLY MORE THE RULE
18 THAN THE EXCEPTION.

19 Q. AND WHY IS THAT, GENERALLY SPEAKING?

20 A. GENERALLY SPEAKING, YOU DON'T GET A LOT OF
21 INJURIES, ESPECIALLY IN WHAT HE WAS DESCRIBING. IN
22 TERMS OF ORAL SEX, YOU REALLY JUST DON'T GET A LOT OF
23 TRAUMA WITH THAT EXPERIENCE.

24 AND ACTUALLY, EVEN WITH OTHER TYPES OF ASSAULT,
25 WHETHER IT BE ANAL OR VAGINAL, THAT'S THE SAME WITH

1 THAT, AS WELL. THE BODY IS DESIGNED TO EXPAND, IT'S
2 FLEXIBLE, AND SO YOU RARELY ACTUALLY SEE ANY SIGNIFICANT
3 FINDINGS OF SEXUAL ABUSE WHEN IT OCCURS.

4 Q. NOW, DID YOU DO AN ANAL EXAM ON HIM, AS WELL?

5 A. I DID. I EXAMINED HIS ANAL AREA. I DID NOT DO A
6 DIGITAL EXAM ON HIM, MEANING I DID NOT STICK MY FINGER
7 IN HIS BOTTOM TO EXAMINE THE INTERNAL PORTION OF HIS
8 RECTUM, BUT I SPREAD HIS BUTTOCKS AND DID A VISUAL
9 INSPECTION OF HIS ANUS.

10 Q. NOW, YOU SAY THAT IN YOUR REPORT -- AND I'M GOING
11 TO READ -- THAT HE DENIED ANY TYPE OF PENETRATION?

12 A. THAT'S CORRECT.

13 Q. AND WHAT DID YOU MEAN BY PENETRATION?

14 A. HE WAS REFERRING TO HIS ANAL AREA. THERE WAS
15 NO -- AGAIN, THERE WERE NO SIGNS OF ANY PENETRATION OF
16 THAT AREA, BUT THAT WAS THE AREA OF EMPHASIS AT THE
17 TIME.

18 Q. NOW, DID YOU DO ANYTHING OTHER THAN THE PHYSICAL
19 EXAM?

20 A. I ASKED HIM -- I SPOKE WITH HIM. I TOOK JUST A
21 BRIEF HISTORY AND THEN EXAMINED HIM. THAT WAS PRETTY
22 MUCH THE -- ALL THAT OCCURRED.

23 Q. DID YOU TAKE ANY SWABS OR ANYTHING ALONG THOSE
24 LINES?

25 A. WE DID. WE TOOK FORENSIC SWABS FROM THE ANAL

1 AREA.

2 Q. AND IN YOUR EXPERIENCE IS THERE LIKELY TO BE A
3 RESULT FROM ANY OF THOSE?

4 A. IT WOULD BE UNUSUAL UNLESS EJACULATION HAD
5 OCCURRED AND THAT EJACULATION HAD OCCURRED RECENTLY,
6 WITHIN A DAY OR SO.

7 Q. AND BUT IN THIS CASE HE DENIED ANAL PENETRATION?

8 A. THAT'S CORRECT.

9 Q. NOW, DR. REESE, HAD THE PARENTS BEEN -- NOT BEEN
10 THERE OR ANYTHING LIKE THAT, DO YOU HAVE A DUTY TO
11 DISCLOSE TO LAW ENFORCEMENT WHEN THIS HAPPENS?

12 A. OH, YES, ABSOLUTELY.

13 MS. HUEY: THAT'S ALL I HAVE RIGHT NOW,
14 JUDGE.

15 THE COURT: CROSS-EXAMINATION?

16 CROSS-EXAMINATION BY MR. THOMPSON:

17 Q. DR. REESE, YOU STATED THAT THE EXAM LOOKED
18 NORMAL, CORRECT?

19 A. YES, SIR, IT APPEARED NORMAL.

20 Q. AND YOU ALSO STATED THAT THERE WAS NO ABRASIONS,
21 TEARS, BRUISINGS OF ANY KIND?

22 A. THAT'S CORRECT, SIR.

23 Q. WERE THOSE TESTS OR EXAMS DONE ON BOTH ANAL AND
24 GENITAL AREAS?

25 A. YES, SIR.

1 Q. AND YOU SAY THAT THE VICTIM LOOKED CALM?

2 A. HE SEEMED LIKE JUST A NORMAL SIX-YEAR-OLD BOY.

3 Q. HE DIDN'T SEEM AFRAID?

4 A. NO, SIR.

5 Q. HE DIDN'T EVEN LOOK SIDE-TRACKED?

6 A. NO. AS I RECALL, HE DID NOT SEEM FEARFUL AT ALL.

7 GENERALLY SPEAKING, HE, IN THIS CASE AS WELL, HE WAS
8 JUST A LITTLE BIT TIMID, BUT THAT'S THE CASE WITH MOST
9 SIX-YEAR-OLD BOYS, ESPECIALLY WHEN YOU START TALKING TO
10 THEM ABOUT THEIR PRIVATE PARTS OR EXAMINING THEIR
11 PRIVATE PARTS, THEY'RE SOMEWHAT TIMID.

12 Q. NOW, WHEN YOU CONDUCTED THE EXAM, WAS THERE
13 ANYONE PRESENT?

14 A. YES, SIR, THERE WERE PEOPLE IN THE ROOM AT THE
15 TIME OF THE EXAM. THERE WAS A NURSE ACCOMPANYING ME,
16 AND TO BE HONEST, THERE WERE A COUPLE OTHER PEOPLE IN
17 THE ROOM, BUT I COULDN'T TELL YOU WHO THEY WERE OR THEIR
18 NAMES.

19 Q. WOULD EITHER ONE OF THEM BE THE PARENTS?

20 A. POSSIBLY SO. I DON'T RECALL FOR SURE. I DON'T
21 KNOW THAT I DOCUMENTED WHO WAS ACTUALLY IN THE ROOM WHEN
22 I ENTERED THE ROOM, SO IT WOULD UNFORTUNATELY BE A GUESS
23 IF I WERE TO TRY TO DO SO.

24 MR. THOMPSON: NO FURTHER QUESTIONS.

25 THE COURT: RE-EXAM?

1 MS. HUEY: I DON'T HAVE ANYTHING, JUDGE.

2 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

3 (WITNESS LEAVES STAND.)

4 THE COURT: THANK YOU, DOCTOR.

5 MS. HUEY: MAY THE DOCTOR BE EXCUSED?

6 THE COURT: ANY OBJECTION?

7 MR. THOMPSON: NO, SIR.

8 THE COURT: ALL RIGHT. VERY WELL. YOU MAY
9 BE EXCUSED. THANK YOU, DOCTOR.

10 (WHEREUPON, THE WITNESS WAS EXCUSED.)

11 MS. HUEY: YOUR HONOR, THE STATE CALLS NIKKI
12 CARSON TO THE STAND.

13 (WHEREUPON, THE WITNESS WAS SWORN BY THE
14 CLERK.)

15 THE CLERK: PLEASE STATE YOUR FULL NAME AND
16 SPELL YOUR LAST NAME FOR THE RECORD.

17 THE WITNESS: NIKKI NICOLE CARSON,
18 C-A-R-S-O-N.

19 WHEREUPON,

20 NIKKI CARSON,

21 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
22 FOLLOWS:

23 DIRECT EXAMINATION BY MS. HUEY:

24 Q. MS. CARSON, WHERE DO YOU WORK?

25 A. THE ANDERSON COUNTY SHERIFF'S OFFICE.

1 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED THERE?

2 A. FOR THREE YEARS.

3 Q. DID YOU HAVE PRIOR LAW ENFORCEMENT EXPERIENCE?

4 A. I HAVE A TOTAL OF 13 YEARS LAW ENFORCEMENT
5 EXPERIENCE.

6 Q. WHAT IS YOUR CURRENT POSITION IN THE SHERIFF'S
7 OFFICE?

8 A. I AM THE ADMINISTRATIVE LIEUTENANT ASSIGNED TO
9 THE DETENTION DIVISION.

10 Q. HOW LONG HAVE YOU BEEN IN THIS POSITION?

11 A. A LITTLE OVER 13, 14 MONTHS, I BELIEVE.

12 Q. WHAT WAS YOUR PRIOR POSITION BEFORE BEING MADE
13 LIEUTENANT?

14 A. I WAS AN INVESTIGATOR ASSIGNED TO THE CRIMINAL
15 INVESTIGATIONS DIVISION WITH THE SHERIFF'S OFFICE.

16 Q. OKAY. THE INVESTIGATIONS DIVISION?

17 A. YES.

18 Q. AND DID YOU HAVE A SPECIFIC AREA OF THE
19 INVESTIGATIONS DIVISION?

20 A. SEX CRIMES AND CRIMES AGAINST CHILDREN.

21 Q. NOW, IN ORDER TO INVESTIGATE SEX CRIMES AND
22 CRIMES AGAINST CHILDREN, WHAT KIND OF TRAINING DID YOU
23 RECEIVE FOR THIS TYPE OF INVESTIGATION?

24 A. I RECEIVED WHAT'S CALLED FINDING WORDS TRAINING.
25 IT'S A TRAINING PROTOCOL DESIGNED TO INTERVIEW CHILD

1 VICTIMS.

2 Q. DO YOU ALSO HAVE TO ATTEND OTHER TRAININGS?

3 A. CORRECT.

4 Q. THAT MAY NOT BE NECESSARILY RELATED TO SEXUAL
5 ABUSE?

6 A. THAT'S CORRECT.

7 Q. MS. CARSON, DID YOU BECOME INVOLVED IN THE
8 INVESTIGATION OF THIS PARTICULAR DEFENDANT, HOWARD
9 THOMPSON?

10 A. I DID.

11 Q. AND HOW DID THAT COME ABOUT?

12 A. THAT CAME ABOUT AS A RESULT OF AN INCIDENT REPORT
13 THAT WAS FILED WITH THE SHERIFF'S OFFICE AND WAS
14 REFERRED TO OUR INVESTIGATIONS DIVISION FOR FOLLOW-UP
15 INVESTIGATION.

16 Q. DO YOU KNOW ABOUT WHEN THAT CAME TO YOU?

17 A. I BELIEVE IT WAS MAY 20TH IS WHEN IT WAS REFERRED
18 TO US.

19 Q. NOW, WHEN THIS COMPLAINT COMES ACROSS YOUR DESK,
20 WHAT IS THE FIRST STEP USUALLY?

21 A. THE FIRST STEP WOULD BE TO MAKE CONTACT WITH THE
22 COMPLAINANT AND -- THE VICTIM AND CONDUCT AN INTERVIEW
23 TO FIND OUT THE SPECIFICS OF THE COMPLAINT.

24 Q. AND DID YOU, IN FACT, DO THAT?

25 A. I DID.

1 Q. AND YOU MET WITH THE VICTIM IN THIS CASE, Minor
2 HIOTT?

3 A. I DID.

4 Q. NOW, WHEN YOU MEET WITH Minor 2 WHAT KIND OF
5 INTERVIEW IS THAT CALLED?

6 A. IT'S CALLED A FORENSICS INTERVIEW.

7 Q. AND WHAT EXACTLY IS A FORENSIC INTERVIEW?

8 A. A FORENSIC INTERVIEW, AS I SAID EARLIER, IS AN
9 INTERVIEW TO, IT'S A CERTAIN TECHNIQUE THAT WE USE TO
10 INTERVIEW CHILD VICTIMS. IT'S DESIGNED FOR THE CHILD
11 TO, TO RELAY THE SPECIFICS OF THE INCIDENT, OPEN-ENDED
12 QUESTION, NON-SUGGESTIVE QUESTIONING. IT ALLOWS THE
13 CHILD TO USE THEIR OWN WORDS.

14 Q. IS THERE A CERTAIN PROTOCOL THAT'S FOLLOWED?

15 A. IT IS. THERE IS A PROTOCOL CALLED R.A.T.A.C.
16 THAT'S USED FOR THIS.

17 Q. R.A.T.A.C.?

18 A. R.A.T.A.C.

19 Q. DO YOU REMEMBER WHAT THAT STANDS FOR?

20 A. R.A.T.A.C., THE R IS FOR RAPPORT BUILDING, WHERE
21 THE OFFICER BUILDS A RAPPORT WITH THE CHILD AND MAKES
22 THE CHILD FEEL COMFORTABLE.

23 A IS FOR ANATOMY IDENTIFICATION WHICH ALLOWS THE
24 CHILD TO IDENTIFY THE BODY PARTS IN THEIR OWN WORDS,
25 WHAT THEY CALL EACH SPECIFIC BODY PART.

1 Q. LET ME STOP YOU THERE. IN YOUR EXPERIENCE DO
2 CHILDREN HAVE A LOT OF DIFFERENT WORDS FOR PRIVATE
3 PARTS?

4 A. THAT'S CORRECT, THEY DO.

5 Q. WHAT ARE SOME OF THE WORDS YOU COME ACROSS?

6 A. WEE WEE, TOO-TOO, BOTTOM, SOME SAY BUTT, JUST --
7 MONKEY; SEVERAL DIFFERENT THINGS.

8 Q. SO YOU DO AN ANATOMY REPORT?

9 A. THAT'S CORRECT.

10 Q. OKAY. AND THEN AFTER THAT WHAT DO YOU THEN DO?

11 A. I'M TRYING TO THINK.

12 Q. AT SOME POINT DO YOU NEED TO FIGURE OUT WHETHER
13 THEY ARE COMPETENT TO TALK TO YOU?

14 A. EXACTLY. THERE'S A PROCEDURE THAT YOU GO
15 THROUGH -- GO THROUGH TO DETERMINE WHETHER THEY ARE
16 COMPETENT, WHETHER THEY CAN UNDERSTAND AND RELAY THIS
17 INFORMATION TO YOU.

18 Q. AND WHAT IS THAT CALLED?

19 A. THE PROCEDURE?

20 Q. DO YOU USE A BOOK OR ANY KIND OF ---

21 A. THERE'S A BOOK THAT WE USE, IT'S NOT NECESSARILY
22 CALLED ANYTHING. BUT THERE'S A BOOK WE USE AND WE SHOW
23 THEM DIFFERENT TYPES OF PICTURES AND, YOU KNOW, WE'LL
24 ASK, WE'LL READ WHAT THAT PERSON IS DOING AND WE'LL ASK
25 THE CHILD, IS THIS TRUE OR FALSE? AND THE CHILD STATES

1 WHETHER IT'S TRUE OR FALSE. IT'S TO DETERMINE IF THEY
2 CAN COMPREHEND WHAT THE PICTURE IS DOING.

3 Q. AND THEN AFTER THAT, WHAT'S THE NEXT STEP?

4 A. I CAN'T REMEMBER WHAT THE T IS. THERE IS THE A,
5 WHICH IS THE ABUSE SCENARIO, WHERE THE CHILD GETS INTO
6 TELLING YOU OR EXPLAINING THE ABUSE SCENARIO.

7 AND THEN THERE IS CLOSURE, WHERE YOU KIND OF
8 CLOSE OUT WITH THE CHILD AND KIND OF TALK TO THEM AND
9 MAKE THEM FEEL COMFORTABLE.

10 Q. YOU SAID YOU COULDN'T FIGURE OUT THE T?

11 A. IT'S -- THE T IS TOUCH INQUIRY, WHERE YOU TALK
12 ABOUT GOOD TOUCHES AND BAD TOUCHES WITH THE CHILD, AND
13 THEY TELL YOU WHAT'S A GOOD TOUCH AND THEY TELL YOU, YOU
14 KNOW, WHAT'S A NOT SO GOOD TOUCH OR WHAT MAKES THEM FEEL
15 UNCOMFORTABLE.

16 Q. OKAY. AND GENERALLY SPEAKING, WHAT ARE GOOD
17 TOUCHES TO THE CHILD?

18 A. MOST CHILDREN THAT I TALK TO, HUGS AND KISSES
19 FROM MOMMY, DADDY, PATS ON THE HEAD, SOME HAVE SAID PATS
20 ON THE BACK WHEN THEY GET GOOD GRADES, THOSE ARE SOME OF
21 THE GOOD TOUCHES.

22 Q. OKAY. AND IS THIS THE PROTOCOL YOU FOLLOWED WITH
23 Minor 2

24 A. IT IS.

25 Q. NOW, IN Minor 2 CASE WHAT KIND OF RULES OR

1 GUIDELINES DID YOU ESTABLISH FOR THE INTERVIEW, IF ANY?

2 A. I WAS THE ONLY OFFICER PRESENT. THE PARENTS WERE
3 NOT ALLOWED TO BE PRESENT DURING THE INTERVIEW JUST TO
4 MAKE THE CHILD COMFORTABLE, TO MAKE SURE THAT THE CHILD
5 WASN'T INFLUENCED BY ANYTHING, AND JUST LET THE CHILD
6 SPEAK IN HIS OWN WORDS.

7 Q. AND WHERE WAS THE INTERVIEW CONDUCTED?

8 A. AT THE SHERIFF'S OFFICE.

9 Q. DID YOU HAVE A SPECIFIC ROOM YOU USE?

10 A. THERE WAS A ROOM AT THE TIME WE USED THAT WAS --
11 WE USED SPECIFICALLY FOR THAT, JUST TO MAKE THE CHILDREN
12 FEEL MORE COMFORTABLE. IT WAS VERY CHILD-ORIENTED.

13 Q. AND IN WHAT WAY?

14 A. THERE WAS A SOFA, THERE WERE COLORING BOOKS,
15 STUFFED ANIMALS. I THINK THERE WAS A SMALL TABLE AND A
16 SMALL CHAIR.

17 Q. NOW, IN SPEAKING WITH A CHILD, DO YOU TRY AND GET
18 THE FAMILY HISTORY FROM THEM?

19 A. I DO.

20 Q. AND WHAT'S THE PURPOSE OF THAT?

21 A. JUST TO FIND OUT WHO THE CHILD LIVES WITH, THE
22 NAMES OF THE DIFFERENT FAMILY MEMBERS, THAT SORT OF
23 THING.

24 Q. HOW ABOUT ANY KIND OF A MEDICAL HISTORY OR
25 ANYTHING LIKE THAT?

1 A. I DON'T BELIEVE THAT I GOT INTO ANY MEDICAL
2 HISTORY.

3 Q. DID YOU KNOW IN THIS CASE THAT Minor HAD BEEN TO
4 THE HOSPITAL?

5 A. I BELIEVE AT THIS POINT I KNEW HE HAD GONE TO THE
6 HOSPITAL, BUT I'M NOT SURE.

7 Q. NOW, I BELIEVE YOU SAID YOU GOT INVOLVED IN THIS
8 CASE AROUND THE 20TH OF MAY?

9 A. THAT'S CORRECT.

10 Q. WHEN DID YOU DO THE INTERVIEW WITH Minor 2

11 A. IT WAS ON THE 20TH AT SOMEWHERE AROUND 10:00,
12 10:30 A.M.

13 Q. AND IN YOUR OPINION DID Minor SEEM TO BE
14 COMPETENT?

15 A. Minor APPEARED TO BE COMPETENT.

16 Q. HOW DID HE DO ON THE TRUE-FALSE TEST?

17 A. IN ORDER TO CONTINUE ON WITH THE REST OF THE
18 PROTOCOL, THE CHILD HAS TO GET I BELIEVE IT'S FOUR OUT
19 OF SIX, AND Minor DID GET HIS FOUR OUT OF SIX WHICH LED
20 ME TO BELIEVE THAT HE WAS COMPETENT. HE DID IDENTIFY OR
21 HAVE NAMES FOR ALL OF THE BODY PARTS, THE ANATOMY, AND
22 UNDERSTOOD WHAT IT MEANT.

23 Q. NOW, DID YOU PUT IN PLACE ANY KIND OF SAFEGUARDS
24 WHEN YOU INTERVIEWED HIM TO PREVENT ANY TYPE OF
25 INFLUENCE?

1 A. THE INTERVIEW WAS A PRIVATE INTERVIEW WITH MYSELF
2 AND Minor 2 THE PARENTS WERE NOT INCLUDED. AS A MATTER
3 OF FACT, I THINK THEY STAYED OUT IN THE WAITING ROOM.

4 Q. AND IN TERMS OF THE QUESTIONS YOU ASK Minor 2 JUST
5 THE FORM OF THOSE QUESTIONS?

6 A. VERY NON-SUGGESTIVE, NON-LEADING, OPEN-ENDED
7 QUESTIONS WHICH ALLOWED THE CHILD TO USE HIS OWN WORDS.
8 I DIDN'T ASK, DID THIS HAPPEN TO YOU OR DID THIS PERSON
9 DO ANYTHING TO YOU. I ALLOWED THE CHILD TO EXPLAIN TO
10 ME WHAT HAD HAPPENED AND WHO WAS INVOLVED.

11 Q. NOW, AND WITHOUT TELLING ME WHAT Minor TOLD YOU,
12 DID HE, IN FACT, DISCLOSE SOMETHING TO YOU?

13 A. HE DID.

14 Q. NOW, AS A RESULT OF THE DISCLOSURE WHAT WAS YOUR
15 NEXT STEP?

16 A. OUR NEXT STEP WAS TO MAKE CONTACT WITH THE
17 DEFENDANT, MYSELF AND MY PARTNER AT THE TIME PROCEEDED
18 TO GO TO THE DEFENDANT'S HOME TO SPEAK WITH THE
19 DEFENDANT AND TO ALSO LOOK FOR PHOTOGRAPHS THAT WERE
20 DESCRIBED OF NAKED MEN IN VARIOUS POSES.

21 Q. OKAY. THAT WAS AS A RESULT OF SPEAKING WITH
22 Minor 2

23 A. THAT'S CORRECT.

24 Q. NOW, DO YOU KNOW ABOUT WHAT TIME YOU WENT OUT TO
25 MEET WITH THE DEFENDANT?

1 A. I BELIEVE WE ARRIVED SOMEWHERE AROUND 2:45 P.M.

2 Q. AND WAS ANYONE THERE WHEN YOU GOT THERE?

3 A. AS I RECALL, THE DEFENDANT WAS THERE AT THE
4 RESIDENCE.

5 Q. AND WAS HE BY HIMSELF?

6 A. I THINK, IF I RECALL CORRECTLY, THERE WAS A SMALL
7 CHILD, APPEARED TO BE MAYBE ONE OR TWO, AND I THINK THE
8 DEFENDANT MAY HAVE STATED THIS WAS HIS NEPHEW OR
9 SOMETHING TO THAT EFFECT.

10 Q. OKAY. NOW, DID YOU SPEAK WITH THE DEFENDANT IN
11 REGARDS TO TAKING A STATEMENT FROM HIM?

12 A. I DID.

13 Q. AND IN DOING SO DID YOU ADVISE HIM OF HIS RIGHTS?

14 A. YES.

15 Q. NOW, TYPICALLY WHAT IS YOUR PROTOCOL WHEN YOU
16 ADVISE SOMEONE OF HIS RIGHTS, WHEN DOES IT HAPPEN?

17 A. IMMEDIATELY UPON MAKING CONTACT WITH THE
18 DEFENDANT OR SUSPECT IN THAT PARTICULAR SITUATION HE IS
19 ADVISED OF HIS RIGHTS TO COUNSEL, NOT TO SPEAK WITH US
20 UNTIL HE HAS COUNSEL PRESENT AND SO ON AND SO FORTH.

21 Q. OKAY. SO WHEN YOU SAY YOU GOT THERE AROUND 2:45,
22 HOW SOON AFTER DID YOU GIVE THE MIRANDA WARNINGS?

23 A. PROBABLY ONCE WE GOT THERE AND ADVISED HIM OF THE
24 COMPLAINT, THE MIRANDA WOULD HAVE FOLLOWED.

25 Q. NOW, WHEN GIVING MIRANDA RIGHTS, DO YOU DO SO

1 USING A FORM WITH THE RIGHTS LISTED?

2 A. YES.

3 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
4 EXHIBIT ONE. DO YOU RECOGNIZE THAT FORM?

5 A. YES.

6 Q. WHAT IS THAT FORM, MS. CARSON?

7 A. THIS IS THE ADVISORY OF RIGHTS THAT WAS -- THAT
8 WERE GIVEN TO THE DEFENDANT.

9 Q. AND HOW ARE YOU ABLE TO RECOGNIZE THAT?

10 A. THERE'S MY SIGNATURE AS A WITNESS AND THE
11 DEFENDANT'S SIGNATURE STATING THAT HE UNDERSTOOD HIS
12 RIGHTS.

13 Q. SO ACCORDING TO THAT FORM, WHAT TIME DID MIRANDA
14 TAKE PLACE?

15 A. 2:45 P.M.

16 Q. AND WHERE DID MIRANDA TAKE PLACE?

17 A. AT THE DEFENDANT'S HOME, IN THE LIVING ROOM AREA.

18 Q. OKAY. NOW, WHERE DOES THE DEFENDANT LIVE,
19 EXACTLY?

20 A. THE DEFENDANT LIVES AT WHITTEN ROAD IN
21 PELZER.

22 Q. AND IS THAT IN ANDERSON COUNTY?

23 A. IT IS.

24 Q. SO YOU SAY IT TOOK PLACE IN THE DEFENDANT'S HOME.
25 DO YOU KNOW WHAT PART OF THE HOME?

1 A. I BELIEVE IT WAS THE LIVING ROOM, THE FRONT ROOM
2 THAT YOU GET TO AS SOON AS YOU COME INTO THE HOUSE.

3 Q. AND AGAIN, I BELIEVE YOU SAID THAT NO ONE ELSE
4 WAS THERE AT THIS TIME?

5 A. NO.

6 Q. WHEN YOU WERE READING MIRANDA TO HIM AND GOING
7 OVER HIS RIGHTS, DID HE EVER SAY HE WANTED TO LEAVE?

8 A. HE DID NOT.

9 Q. DID HE SAY HE NEEDED TO GO TO THE BATHROOM?

10 A. HE DID NOT.

11 Q. DID HE SAY HE WANTED A DRINK OF WATER?

12 A. NO.

13 Q. WAS HE EVER REFUSED ANYTHING THAT HE ASKED FOR?

14 A. HE WAS NOT.

15 Q. WAS HE IN HANDCUFFS?

16 A. HE WAS NOT.

17 Q. WAS HE SEATED?

18 A. I BELIEVE HE WAS SEATED.

19 Q. AND AGAIN, THIS FORM LISTS THE RIGHTS ON IT THAT
20 YOU INFORMED THE DEFENDANT OF?

21 A. IT DOES.

22 Q. AT THIS TIME, MS. CARSON, I WOULD LIKE YOU TO
23 READ INTO THE RECORD WHAT THOSE RIGHTS ARE THAT YOU READ
24 TO THE DEFENDANT.

25 A. (READING):

1 YOU HAVE THE RIGHT TO REMAIN
2 SILENT. ANYTHING YOU SAY MAY BE USED
3 AGAINST YOU IN COURT. YOU HAVE THE RIGHT
4 TO SPEAK WITH A LAWYER FOR ADVICE BEFORE
5 YOU ARE ASKED ANY QUESTIONS AND HAVE HIM
6 WITH YOU DURING QUESTIONING. IF YOU
7 CANNOT AFFORD A LAWYER, ONE WILL BE
8 APPOINTED FOR YOU BEFORE ANY QUESTIONING
9 IF YOU WISH. IF YOU DECIDE TO ANSWER
10 QUESTIONS NOW WITHOUT A LAWYER PRESENT,
11 YOU WILL STILL HAVE THE RIGHT TO STOP
12 ANSWERING AT ANY TIME. YOU ALSO HAVE THE
13 RIGHT TO STOP ANSWERING AT ANY TIME
14 BEFORE YOU SPEAK WITH A LAWYER.
15 Q. AND DID YOU GO OVER THAT FORM WITH THE DEFENDANT?
16 A. I DID..
17 Q. AND DID YOU MAKE SURE HE UNDERSTOOD THOSE RIGHTS
18 AS YOU READ IT TO HIM?
19 A. I DID.
20 Q. IN YOUR OPINION DID HE SEEM TO UNDERSTAND HIS
21 RIGHTS?
22 A. HE SEEMED TO UNDERSTAND VERY WELL HIS RIGHTS.
23 Q. DID HE SEEM TO BE UNDER THE INFLUENCE OF
24 ANYTHING?
25 A. HE DID NOT.

1 Q. ALCOHOL, DRUGS?

2 A. HE DID NOT.

3 Q. OKAY. HOW ABOUT HIS PHYSICAL OR MENTAL CAPACITY?

4 A. HE WAS ASKED -- HE WAS GRADUATING I BELIEVE THE
5 NEXT DAY. HE HAD A 12TH-GRADE EDUCATION, HE SEEMED VERY
6 WELL AWARE.

7 Q. AND WHAT WAS HIS AGE AT THE TIME?

8 A. I BELIEVE HE WAS 19.

9 Q. NOW, ONCE THOSE RIGHTS WERE READ TO HIM BY YOU,
10 DID THE DEFENDANT DO ANYTHING TO INDICATE THAT HE
11 UNDERSTOOD HIS RIGHTS?

12 A. HE DID BY SIGNING HIS WAIVER, SIGNING THE WAIVER
13 OF HIS RIGHTS.

14 Q. AND WERE ANY THREATS OR PROMISES MADE TO GET HIM
15 TO SIGN THE FORM?

16 A. NO.

17 Q. ANY INTIMIDATION?

18 A. NO.

19 Q. WAS HIS WAIVER OF RIGHTS VOLUNTARY?

20 A. YES.

21 Q. AND AT SOME POINT HE INDICATED THAT HE WANTED TO
22 GIVE YOU A STATEMENT?

23 A. YES.

24 Q. IS THERE ANOTHER PORTION ON THAT FORM THAT HE HAS
25 TO SIGN?

1 A. THERE IS.
2 Q. OKAY. IF YOU COULD READ THAT FOR US, AS WELL?
3 A. ON?
4 Q. ON THE MIRANDA FORM.
5 A. (READING):

6 I HAVE READ THIS STATEMENT OF MY
7 RIGHTS. I UNDERSTOOD WHAT MY RIGHTS ARE.
8 I AM WILLING TO MAKE A STATEMENT AND
9 ANSWER QUESTIONS. I DO NOT WANT A LAWYER
10 AT THIS TIME. I UNDERSTAND AND KNOW WHAT
11 I AM DOING. NO PROMISES OR THREATS HAVE
12 BEEN MADE TO ME AND NO PRESSURE OR
13 COERCION OF ANY KIND HAS BEEN USED
14 AGAINST ME.

15 Q. AND AGAIN, DID THE DEFENDANT INDICATE THAT HE
16 UNDERSTOOD THAT?

17 A. HE DID BY SIGNING IT.

18 MS. HUEY: AT THIS TIME WE WOULD ADMIT
19 STATE'S ONE INTO EVIDENCE.

20 THE COURT: ALL RIGHT. MADAM FORELADY,
21 LADIES AND GENTLEMEN OF THE JURY, THE COURT DETERMINES
22 THE ADMISSIBILITY OF EVIDENCE, BUT YOU MUST DETERMINE
23 THE EXISTENCE OF WHETHER THAT EVIDENCE IS VOLUNTARY AND
24 WEIGHT OF ANY ALLEGED STATEMENT MADE BY THE DEFENDANT.
25 YOU MUST MAKE THE ULTIMATE DETERMINATION OF WHETHER OR

1 NOT THE DEFENDANT, IN FACT, MADE THE ALLEGED STATEMENT.
2 IF YOU DETERMINE THE DEFENDANT MADE THE STATEMENT, YOU
3 MUST THEN DETERMINE WHETHER THE STATEMENT WAS MADE
4 FREELY AND VOLUNTARILY.

5 FINALLY, YOU WILL DECIDE WHAT WEIGHT, IF
6 ANY, SHALL BE GIVEN TO ANY ALLEGED STATEMENT.

7 YOU MUST DETERMINE WHETHER THE ALLEGED
8 STATEMENT WAS PRODUCT OF AN ESSENTIALLY FREE AND
9 UNCONSTRAINED CHOICE BY ITS MAKER. THE STATE MUST PROVE
10 THE VOLUNTARINESS OF A STATEMENT BEYOND A REASONABLE
11 DOUBT. IF YOU DETERMINE BEYOND A REASONABLE DOUBT THAT
12 A STATEMENT WAS GIVEN FREELY AND VOLUNTARILY, THEN YOU
13 MAY GIVE THE STATEMENT SUCH FURTHER CONSIDERATION AS YOU
14 DEEM PROPER.

15 IF YOU DETERMINE THAT THE ALLEGED STATEMENT
16 WAS NOT THE FREE AND VOLUNTARY WILLFUL EXPRESSION OF THE
17 DEFENDANT, THEN YOU SHOULD NOT CONSIDER THE STATEMENT AS
18 EVIDENCE.

19 IN DETERMINING WHETHER THE DEFENDANT'S WILL
20 WAS OVERCOME IN OBTAINING THE STATEMENT, THE LAW
21 REQUIRES YOU TO CONSIDER WHAT IS KNOWN AS THE TOTALITY
22 OF THE CIRCUMSTANCES. YOU SHOULD CONSIDER BOTH THE
23 CHARACTERISTICS OF THE DEFENDANT AND THE CIRCUMSTANCES
24 SURROUNDING ANY QUESTIONING OR INTERROGATION. SOME OF
25 THE FACTORS THAT THE LAW SAYS YOU MAY CONSIDER ARE THE

1 AGE OF THE DEFENDANT, THE DEFENDANT'S EDUCATIONAL
2 BACKGROUND, THE DEFENDANT'S MENTAL ABILITY OR CAPACITY,
3 AND THE DEFENDANT'S BACKGROUND ALONG WITH ALL OTHER
4 FACTS AND CIRCUMSTANCES SURROUNDING THE MAKING OF THE
5 ALLEGED STATEMENT.

6 IN DETERMINING THE VOLUNTARINESS OF ANY
7 ALLEGED STATEMENT YOU SHOULD CONSIDER WHETHER THE
8 DEFENDANT WAS ADVISED OF AND UNDERSTOOD HIS OR HER
9 CONSTITUTIONAL RIGHTS. THE LAW REQUIRES THAT BEFORE ANY
10 INTERROGATION OR QUESTION OF A PERSON IN CUSTODY MAY
11 BEGIN, THE LAW ENFORCEMENT OFFICER MUST ADVISE THE
12 ACCUSER OF HIS MIRANDA RIGHTS. THIS MEANS THAT THE
13 AUTHORITIES ADVISED THE ACCUSED THAT THE USED HAS THE
14 RIGHT TO REMAIN SILENT, THAT IS THE RIGHT TO SAY NOTHING
15 AT ALL; THAT ANY STATEMENT COULD BE USED AGAINST THE
16 ACCUSED IN A COURT OF LAW; THAT THE ACCUSED HAS A RIGHT
17 TO HAVE A LAWYER PRESENT, THAT IF THE ACCUSED CANNOT
18 AFFORD ONE A LAWYER WOULD BE APPOINTED TO REPRESENT HIM
19 OR HER WITHOUT ANY COST; AND THAT THE ACCUSED COULD STOP
20 MAKING A STATEMENT AT ANY TIME. OTHER FACTORS TO
21 CONSIDER ARE THE PLACE AND LENGTH OF ANY DETENTION AND
22 THE NATURE OF THE QUESTION.

23 YOU MUST CAREFULLY SCRUTINIZE ALL OF THE
24 SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO
25 AN ALLEGED STATEMENT. YOU MUST BE SATISFIED BEYOND A

1 REASONABLE DOUBT THAT THE STATEMENT WAS MADE BY THE
2 DEFENDANT, UNINFLUENCED BY PROMISE OF REWARD OR THREAT
3 OF HARM. IF YOU FIND A REASONABLE DOUBT THAT ANY
4 ALLEGED STATEMENT WAS GIVEN VOLUNTARILY, THAT ANY
5 ALLEGED STATEMENT WAS GIVEN VOLUNTARILY, YOU MUST DECIDE
6 WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE STATEMENT.
7 IF YOU FIND THE STATEMENT WAS NOT VOLUNTARY, THEN IN
8 THAT EVENT YOU MUST NOT CONSIDER THE STATEMENT AS
9 EVIDENCE FOR ANY PURPOSE.

10 WITH THAT UNDERSTANDING, MADAM SOLICITOR,
11 YOU MAY PUBLISH THE STATEMENT.

12 BY MS. HUEY:

13 Q. MS. CARSON, DID THE DEFENDANT, IN FACT, GIVE YOU
14 A STATEMENT?

15 A. HE DID.

16 Q. AND AT ABOUT WHAT TIME WAS THAT?

17 A. I BELIEVE HE GAVE AN INITIAL STATEMENT AT 3:40
18 P.M.

19 Q. AND I'M SORRY TO BACK UP. BUT BACKING UP TO
20 MIRANDA, WHEN WAS MIRANDA ACTUALLY GIVEN, WHAT TIME?

21 A. 2:45.

22 Q. SO THE FIRST STATEMENT THAT WAS GIVEN BY THE
23 DEFENDANT WAS GIVEN AROUND 3:40?

24 A. 3:40.

25 Q. AND WAS THAT STATEMENT PUT INTO WRITING?

1 A. IT WAS.

2 Q. I'M GONNA SHOW YOU WHAT'S BEEN MARKED AS STATE'S
3 TWO. WILL YOU TAKE A LOOK AT THAT, PLEASE. DO YOU
4 RECOGNIZE THAT, MS. CARSON?

5 A. THIS IS THE FIRST STATEMENT THAT WAS GIVEN BY THE
6 DEFENDANT.

7 Q. OKAY. AND WHO ACTUALLY WROTE THIS PARTICULAR
8 STATEMENT?

9 A. THE DEFENDANT.

10 Q. AND HOW DID THAT COME ABOUT?

11 A. THE DEFENDANT AGREED TO GIVE US HIS SIDE OF THE
12 INCIDENT AND AGREED TO WRITE THE STATEMENT.

13 Q. IS THAT TYPICALLY HOW IT'S DONE, HE WRITES IT OR
14 YOU WRITE IT, OR DOES IT MATTER?

15 A. DEPENDING ON THE CIRCUMSTANCES, THEY ARE GIVEN AN
16 OPTION IF THEY WOULD LIKE TO WRITE IT OR IF THEY WOULD
17 LIKE FOR THE OFFICER TO WRITE IT FOR THEM.

18 Q. IN THIS PARTICULAR CASE HE WANTED TO WRITE IT
19 HIMSELF?

20 A. RIGHT.

21 Q. NOW, ONCE A STATEMENT HAS BEEN WRITTEN, DO YOU
22 READ IT BACK TO HIM OR HAND IT TO HIM FOR HIM TO READ?

23 A. IF THEY WRITE THEIR OWN STATEMENT, CERTAINLY THEY
24 ARE READING IT WHILE THEY'RE WRITING IT. IF THEY HAVE
25 ASKED ME OR REQUESTED THAT I WRITE THE STATEMENT, I

1 ALWAYS READ IT BACK TO THEM AND HAVE THEM SIGN THAT THIS
2 IS THEIR STATEMENT AND THEIR WORDS.

3 Q. AND DID THE DEFENDANT INDICATE THAT THIS WAS HIS
4 STATEMENT?

5 A. HE DID.

6 Q. HOW DID HE DO THAT?

7 A. HE WROTE THE STATEMENT AND HE ALSO SIGNED HIS
8 NAME.

9 Q. AT ANY TIME WHILE HE WAS GIVING THIS STATEMENT,
10 DID HE SAY HE WANTED AN ATTORNEY?

11 A. HE DID NOT.

12 MS. HUEY: AT THIS TIME WE WOULD MOVE
13 STATE'S TWO INTO EVIDENCE, YOUR HONOR, AND HAVE
14 MS. CARSON PUBLISH THE STATEMENT TO THE JURY.

15 THE COURT: VERY WELL.

16 THE WITNESS: (READING):

17 ON MAY 18TH Minor 2 GOT HERE
18 AT MY HOME AT 4 P.M. HE PLAYED MY
19 NINTENDO GAMECUBE FOR ABOUT TWO HOURS.
20 AT AROUND 6:00 P.M. Minor COMPLAINED IT
21 BEING HOT AND IT WAS 82 DEGREES IN THE
22 HOME. BEFORE I WENT TO THE BATHROOM, I
23 TURNED THE AC BELOW 60 DEGREES SO IT
24 COULD GET A LITTLE COOLER, AND I WALKED
25 PAST THE BEDROOM AND Minor ASKED IF HE

1 COULD TAKE HIS SHIRT OFF.

2 I HESITATED TO SAY YEAH, AND I
3 AGREED TO ONLY HIS SHIRT AND WENT TO THE
4 BATHROOM FOR ABOUT 30 TO 35 MINUTES.

5 CAME OUT AROUND 6:35 TO 6:40 AND
6 Minor WAS COMPLETELY UNDRESSED. I ASKED
7 HIM TO PUT HIS CLOTHES BACK ON; HE
8 REFUSED. I WAITED FOR SARA TO ARRIVE,
9 AND WHEN SHE DID, I TOLD Minor THAT SHE --
10 I TOLD Minor THAT SHE WAS -- I TOLD Minor
11 THAT SHE WAS -- HE HID BEHIND THE BED
12 NEAR THE WALL.

13 Q. OKAY. AND WAS THAT THE ONLY WRITTEN STATEMENT TO
14 YOU?

15 A. IT WAS NOT.

16 Q. DID HE, IN FACT, GIVE YOU ANOTHER WRITTEN
17 STATEMENT?

18 A. HE GAVE A SECOND STATEMENT.

19 Q. HOW ABOUT ANY ORAL STATEMENTS MADE TO YOU?

20 A. THE DEFENDANT GAVE SEVERAL ORAL STATEMENTS
21 REGARDING THE INCIDENT.

22 Q. OKAY. AND WHAT KIND OF ORAL STATEMENTS DID HE
23 MAKE?

24 A. UPON OUR INITIAL ARRIVAL, HE STATED THAT BETWEEN
25 4:00 AND 6:00 Minor HAD POOPED ON HIMSELF AND THAT HE,

1 THE DEFENDANT, GOT A RAG AND ASKED Minor TO TAKE HIS
2 UNDERWEAR AND PANTS OFF. THE DEFENDANT WENT ON TO STATE
3 THAT Minor KEPT HIS SHIRT ON AND HE TOLD Minor TO SIT
4 THERE UNTIL HE CLEANED HIM UP. HE STATED THAT HE
5 CLEANED BEHIND AND IN THE FRONT AREA OF Minor WITH A RAG
6 AND A PAPER TOWEL.

7 Q. OKAY. SO THERE WAS AN ORAL STATEMENT ABOUT Minor
8 MESSING ON HIMSELF?

9 A. CORRECT.

10 Q. OKAY. AND THE FIRST WRITTEN STATEMENT WAS ABOUT
11 Minor BEING HOT?

12 A. CORRECT.

13 Q. NOW, AT WHAT POINT DID THE SECOND STATEMENT COME
14 ABOUT?

15 A. AFTER THE FIRST, THE INITIAL STATEMENT WE DID
16 OBTAIN CONSENT TO SEARCH FROM THE DEFENDANT AND THE
17 MOTHER. AS A RESULT OF THE CONSENT TO SEARCH, PICTURES
18 WERE FOUND THAT WERE DESCRIBED BY ---

19 Q. I'LL STOP YOU RIGHT THERE FOR JUST A SECOND.
20 WHAT IS THE PROTOCOL IN OBTAINING A CONSENT TO SEARCH?

21 A. THERE IS A FORM THAT WE HAVE THE HOMEOWNER TO
22 SIGN, AND SINCE WE WERE SEARCHING THE DEFENDANT'S ROOM,
23 THE DEFENDANT ALSO SIGNED THE CONSENT TO SEARCH.

24 MS. HUEY: WILL YOU MARK THIS FOR ME?

25 (STATE'S EX. # 15, CONSENT TO SEARCH, WAS

1 MARKED FOR IDENTIFICATION.)

2 BY MS. HUEY:

3 Q. MS. CARSON, I'M GONNA HAND YOU WHAT'S BEEN MARKED
4 AS STATE'S EXHIBIT 15. DO YOU RECOGNIZE THAT FORM?

5 A. I DO.

6 Q. AND WHAT IS THAT FORM?

7 A. THIS IS THE FORM, THE CONSENT TO SEARCH FORM
8 SIGNED BY THE DEFENDANT AND THE DEFENDANT'S MOTHER.

9 Q. AND WITH THAT FORM DID THEY INDICATE THAT THEY
10 WERE OKAY WITH YOU SEARCHING WITHOUT A SEARCH WARRANT?

11 A. THAT'S CORRECT.

12 MS. HUEY: YOUR HONOR, AT THIS TIME WE MOVE
13 STATE'S 15 INTO EVIDENCE.

14 THE COURT: ALL RIGHT. ANY OBJECTION?
15 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
16 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

17 MR. THOMPSON: NO, SIR.

18 THE COURT: ALL RIGHT. WITHOUT OBJECTION
19 STATE'S NUMBER 15 IS ADMITTED INTO EVIDENCE.

20 (STATE'S EXHIBIT # 15 WAS RECEIVED IN
21 EVIDENCE.)

22 BY MS. HUEY:

23 Q. MS. CARSON, COULD YOU READ THE TOP OF THE CONSENT
24 FORM TO THE JURY, PLEASE?

25 A. (READING):

1 I, HOWARD THOMPSON, HAVING BEEN
2 INFORMED BY MY CONSTITUTIONAL RIGHT NOT
3 TO HAVE A SEARCH MADE OF THE PREMISES
4 HEREINAFTER MENTIONED WITHOUT A SEARCH
5 WARRANT AND OF MY RIGHT TO REFUSE TO
6 CONSENT TO SUCH A SEARCH, HEREBY
7 AUTHORIZE DETECTIVE ANN CARSON AND
8 DETECTIVE PETE NORMANDIN DEPUTY, DEPUTY
9 SHERIFFS OF ANDERSON COUNTY, SOUTH
10 CAROLINA, TO CONDUCT A COMPLETE SEARCH OF
11 MY PREMISES.

12 Q. AND IT IS SIGNED BY THE DEFENDANT?

13 A. IT IS.

14 Q. ALL RIGHT. AND WHO ELSE SIGNED IT?

15 A. THE DEFENDANT'S MOTHER.

16 Q. WHEN DID THE DEFENDANT'S MOTHER GET THERE?

17 A. SHORTLY AFTER OUR ARRIVAL, I DON'T KNOW THE EXACT
18 TIME, BUT SHE GOT THERE VERY SHORTLY AFTER WE ARRIVED.

19 Q. AND OTHER THAN BEING GONE THOSE FIRST FEW MINUTES
20 WHILE Y'ALL WERE THERE, WAS SHE THERE THE REST OF THE
21 TIME?

22 A. SHE WAS.

23 Q. NOW, AFTER GETTING THE CONSENT TO SEARCH, WHAT,
24 IF ANYTHING, DID YOU ALL FIND?

25 A. WE FOUND PHOTOGRAPHS THAT HAD BEEN DESCRIBED BY

1 THE VICTIMS. I BELIEVE IT WAS TEN PHOTOGRAPHS OF NUDE
2 MALES IN DIFFERENT POSES.

3 Q. OKAY. AND AS A RESULT OF OBTAINING THESE PHOTOS,
4 WHAT DID YOU THEN DO WITH THEM?

5 A. WE WENT BACK AND WE TALKED WITH THE DEFENDANT AND
6 ADVISED HIM OF WHAT WE HAD FOUND.

7 Q. OKAY. AND AS A RESULT OF YOU TELLING HIM WHAT
8 YOU HAD FOUND, THESE PHOTOCOPIES OF NAKED MALES, WHAT
9 THEN HAPPENED?

10 A. AFTER, AFTER SPEAKING WITH THE DEFENDANT AND
11 ADVISING HIM OF WHAT WE HAD FOUND AND THE INFORMATION
12 THAT WE WERE GIVEN IN ORDER TO FIND THOSE, THE DEFENDANT
13 AGREED TO GIVE A SECOND STATEMENT.

14 (MS. HUEY SHOWS STATE'S EXHIBITS 4 THROUGH 13
15 TO DEFENDANT).

16 MS. HUEY: YOUR HONOR, I'M GONNA SHOW
17 MS. CARSON EXHIBITS FOUR THROUGH 13.

18 DO YOU RECOGNIZE THOSE ITEMS?

19 MR. THOMPSON: YOUR HONOR, I OBJECT. I HAVE
20 A MATTER THAT NEEDS TO BE ADDRESSED OUTSIDE THE JURY
21 PRESENCE.

22 THE COURT: ALL RIGHT. VERY GOOD.

23 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
24 JURY, I'M GOING TO ASK YOU TO RETIRE TO THE JURY ROOM
25 FOR A FEW MINUTES. I NEED TO TAKE UP A MATTER OF LAW

1 WITH THE ATTORNEYS AND THE DEFENDANT.

2 AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE
3 CASE AMONG YOURSELVES IN ANY WAY.

4 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
5 12:35 P.M.)

6 THE COURT: ALL RIGHT. STATE YOUR
7 OBJECTION.

8 MR. THOMPSON: THE FOUNDATION HAS NOT BEEN
9 SET YET. IT IS ADEQUATE TO THE FACT THAT IT IS ALSO
10 IRRELEVANT. SHE HAD ALREADY STATED THAT THE VICTIM
11 DISCLOSED THAT INFORMATION TO HER.

12 THE COURT: HOW IS IT IRRELEVANT?

13 (WHEREUPON, THE DEFENDANT CONFERRED WITH HIS
14 STAND-BY COUNSEL.)

15 THE COURT: THE REASON I SAY THAT, IT'S MY
16 UNDERSTANDING THAT FROM INFORMATION RECEIVED FROM THE
17 ALLEGED VICTIM, THEY MADE CONTACT WITH A SUSPECT FOR THE
18 PURPOSES OF -- TO LOOK AT PHOTOS OF, I THINK THE TERM
19 WAS NAKED MEN, AND THAT WAS THE REASON THEY MADE
20 CONTACT. SO OBVIOUSLY IT WAS SOMETHING THEY WERE ACTING
21 ON AND IT WOULD BE NECESSARY TO SUBSTANTIATE THE CAUSE
22 FOR THE INQUIRY.

23 MR. THOMPSON: YOUR HONOR, THE FOUNDATION IS
24 HEARSAY.

25 THE COURT: WELL, NO OBJECTION WAS MADE TO

1 IT AT THE TIME THAT IT WAS ELICITED, SO I HAVE TO THINK
2 THAT THE HEARSAY OBJECTION SHOULD HAVE BEEN MADE.

3 ALL RIGHT. I'M GOING TO HAVE TO OVERRULE
4 YOUR OBJECTION ON HEARSAY.

5 WHAT ELSE?

6 SHE HASN'T IDENTIFIED THE EXHIBITS AS BEING
7 THE ONES THAT SHE DISCOVERED, BUT I TRUST YOU'RE GOING
8 TO GET THAT FAR.

9 MS. HUEY: YES, SIR.

10 THE COURT: ALL RIGHT.

11 MR. THOMPSON: THAT'S ALL.

12 THE COURT: VERY GOOD. SUBJECT TO THE
13 COURT'S RULING.

14 LET ME ASK YOU WHILE THE JURY IS OUT. IT'S
15 ABOUT 20 TO ONE. HOW MUCH LONGER DO YOU THINK YOU WILL
16 HAVE WITH THIS WITNESS?

17 MS. HUEY: JUDGE, I HAVE TO GET INTO THE
18 SECOND STATEMENT. PROBABLY ANOTHER 20 MINUTES I WOULD
19 IMAGINE.

20 THE COURT: THE SECOND STATEMENT WILL TAKE
21 LONGER THAN THAT. I HATE TO BREAK A WITNESS'S
22 TESTIMONY, BUT I ALSO DON'T WANT TO PUT THE DEFENDANT IN
23 THE POSITION HE HAS TO TAKE CROSS-EXAMINATION AT A LATE
24 HOUR. I'M GONNA SUGGEST, SINCE THE JURY IS OUT AT THIS
25 TIME, AND WE ARE ALL AT A POINT WHERE WE ARE CONSIDERING

1 NEW EVIDENCE, THAT WE GO TO LUNCH, AND I'M GONNA GIVE
2 THEM THE BENEFIT OF 1:30 OR -- I WILL SAY 1:45 OR 2:00.
3 THAT WILL GIVE THEM ABOUT AN HOUR, AN HOUR OR A LITTLE
4 LONGER.

5 ALL RIGHT. ANY OBJECTION FROM THE STATE OR
6 ANY SUGGESTION FROM THE STATE.

7 MS. HUEY: YOUR HONOR, I THINK THAT'S
8 APPROPRIATE.

9 THE COURT: MR. THOMPSON?

10 MR. THOMPSON: NO OBJECTION.

11 THE COURT: VERY GOOD. ALL RIGHT. OFFICER,
12 I'M GOING TO ASK YOU TO STEP DOWN, BUT REMEMBER THAT YOU
13 ARE STILL UNDER OATH SO YOU CANNOT DISCUSS YOUR
14 TESTIMONY WITH ANYONE.

15 THE WITNESS: YES, SIR.

16 THE COURT: THANK YOU, MA'AM.

17 (WITNESS LEAVES STAND.)

18 THE COURT: ALL RIGHT. AS SOON AS THE
19 LIEUTENANT STEPS DOWN, I'LL ASK THE JURY TO JOIN US.
20 NOW, OF COURSE, EVERYTHING THAT'S BEEN TESTIFIED TO AND
21 INTRODUCED STAYS IN THE COURTROOM. YOU WOULD BE
22 SURPRISED HOW MANY LAWYERS WALK OUT WITH EXHIBITS.

23 MS. HUEY: I KNOW. IT'S EASY TO DO.

24 THE COURT: EVERYONE ELSE REMAIN SEATED.
25 ASK THE JURY TO JOIN US.

1 (WHEREUPON, THE JURY ENTERED THE COURTROOM.)

2 12:43 P.M.)

3 THE COURT: ALL RIGHT. MADAM FORELADY,
4 LADIES AND GENTLEMEN OF THE JURY, WE ARE AT A POSITION
5 THAT A BREAK FOR LUNCH WOULD PROBABLY BE BETTER THAN TO
6 ASK YOU TO STAY BACK IN THE JURY ROOM ANY LONGER. I
7 WOULD SUGGEST THAT WE COME BACK FROM LUNCH AT EITHER
8 1:45 OR 2:00. I'LL LEAVE THAT UP TO YOU. NOW, THIS IS
9 NOT A UNANIMOUS VERDICT, IT'S ONLY A CONSENSUS OF THE
10 JURY. WHAT TIME WOULD YOU LIKE TO COME BACK? JUST
11 CHECK WITH YOUR JURORS. 1:45 OR 2:00?

12 (JURY CONFERS.)

13 THE FORELADY: 2:00.

14 THE COURT: 2:00. VERY GOOD. AND IF YOU
15 WOULD, PLEASE, COME BACK TO THE JURY ROOM WHERE YOU ARE,
16 WHERE YOU HAVE BEEN YESTERDAY AND TODAY, AND AGAIN DO
17 NOT UNDERTAKE DISCUSSION OF THE CASE AMONG YOURSELVES OR
18 PERMIT ANYONE TO DISCUSS THE CASE WITH YOU. THANK YOU
19 VERY MUCH.

20 EVERYONE REMAIN SEATED WHILE THE JURY
21 RETIRES FROM THE COURTROOM.

22 OH, AND DO NOT WATCH THE NEWS, CHECK
23 WEBSITES, READ PAPERS OR LISTEN TO THE RADIO.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
25 12:44 P.M.)

1 **THE COURT:** ANYTHING FROM THE STATE BEFORE
2 WE TAKE A RECESS?

3 **MS. HUEY:** NO, SIR, YOUR HONOR.

4 **THE COURT:** ANYTHING FROM THE DEFENDANT?

5 **MR. THOMPSON:** NO, SIR, YOUR HONOR.

6 **THE COURT:** VERY GOOD. I'LL SEE YOU BACK AT
7 2:00.

8 (A LUNCHEON RECESS OCCURRED.)

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25 //

AFTERNOON PROCEEDINGS

THE COURT: LIEUTENANT, IF YOU WOULD,
PLEASE.

(WITNESS RESUMES STAND.)

THE COURT: YES, MA'AM.
ANYTHING FROM THE STATE BEFORE WE BRING THE
JURY BACK?

MS. HUEY: NO, SIR, YOUR HONOR.

THE COURT: ANYTHING FROM THE DEFENDANT?

MR. THOMPSON: NO, SIR, YOUR HONOR.

THE COURT: ALL RIGHT. VERY GOOD. ASK THE
JURY TO JOIN US, PLEASE.

LIEUTENANT, YOU UNDERSTAND YOU ARE STILL
UNDER OATH?

THE WITNESS: I DO, YOUR HONOR.

THE COURT: VERY GOOD, THANK YOU.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT
2:11 P.M.)

THE COURT: ALL RIGHT. LET THE RECORD
REFLECT THE JURY AND ALTERNATES IN THE JURY-BOX.

MADAM FORELADY, LADIES AND GENTLEMEN OF THE
JURY, WE WILL NOW CONTINUE WITH THE EXAMINATION OF THE
WITNESS. VERY GOOD.

MS. HUEY: THANK YOU, YOUR HONOR.

1 BY MS. HUEY:

2 Q. MS. CARSON, I BELIEVE WE LEFT OFF TALKING ABOUT
3 PICTURES, PHOTOGRAPHS?

4 A. YES.

5 Q. COULD YOU JUST BACK UP A LITTLE BIT AND TELL ME
6 AGAIN HOW YOU CAME ACROSS THE PICTURES?

7 A. WE CAME ACROSS THE PICTURES AS A RESULT OF THE
8 CONSENT TO SEARCH AND AS A RESULT OF INFORMATION
9 OBTAINED FROM THE VICTIM.

10 (STATE'S EXHIBITS 4, 5, 6, 7, 8, 9, 10, 11,
11 12, AND 13, PHOTOGRAPHS OF NAKED MEN, WERE
12 MARKED FOR IDENTIFICATION.)

13 BY MS. HUEY:

14 Q. OKAY. NOW I'M GONNA SHOW YOU WHAT'S BEEN MARKED
15 AS STATE'S EXHIBITS FOUR THROUGH 13. IF YOU COULD TAKE
16 A LOOK AT THESE FOR ME.

17 THE COURT: WHAT ARE THOSE NUMBERS, AGAIN?

18 MS. HUEY: YOUR HONOR, THAT'S FOUR THROUGH
19 13.

20 THE COURT: VERY WELL.

21 BY MS. HUEY:

22 Q. MS. CARSON, DO YOU RECOGNIZE THESE PICTURES?

23 A. I DO. THESE WERE THE PHOTOGRAPHS THAT WERE FOUND
24 IN THE DEFENDANT'S ROOM.

25 Q. AND DO THOSE FAIRLY AND ACCURATELY DEPICT WHAT

1 YOU SAW AND THAT YOU TOOK INTO CUSTODY?

2 A. THEY DO.

3 MS. HUEY: YOUR HONOR, AT THIS TIME WE WOULD
4 MOVE STATE'S FOUR THROUGH 13 INTO EVIDENCE.

5 THE COURT: ANY ---

6 MR. THOMPSON: NO OBJECTION, YOUR HONOR.

7 THE COURT: ALL RIGHT. SUBJECT TO THE
8 COURT'S RULING, THE PHOTOGRAPHS WILL BE ADMITTED INTO
9 EVIDENCE.

10 MS. HUEY: THANK YOU, YOUR HONOR.

11 (STATE'S EXHIBITS 4 THROUGH 13 WERE RECEIVED
12 IN EVIDENCE.)

13 MS. HUEY: MAY WE PUBLISH THEM TO THE JURY
14 OR WOULD YOU RATHER HOLD OFF?

15 THE COURT: IT'S WHEN YOU WANT TO PUBLISH
16 THEM, YOU MAY.

17 (MS. HUEY PUBLISHES STATE'S EXHIBITS 4
18 THROUGH 13 TO THE JURY.)

19 BY MS. HUEY:

20 Q. AND, MS. CARSON, AGAIN, WHERE EXACTLY DID YOU
21 RETRIEVE THESE PHOTOGRAPHS?

22 A. THESE PHOTOGRAPHS WERE RETRIEVED FROM A BOOK BAG
23 DESCRIBED BY THE VICTIM THAT WAS FOUND IN THE
24 DEFENDANT'S BEDROOM.

25 Q. THE DEFENDANT'S BEDROOM?

1 A. THAT'S CORRECT.

2 Q. NOW, AS A RESULT OF RETRIEVING THESE PHOTOS DID
3 YOU SHOW THESE TO THE DEFENDANT?

4 A. WE ADVISED THE DEFENDANT THAT THIS IS INFORMATION
5 THAT WE HAD RECEIVED, THESE WERE THE ITEMS THAT WERE
6 FOUND, AND ASKED HIM IF HE WANTED TO, YOU KNOW,
7 ELABORATE ON THE PHOTOS.

8 Q. OKAY. AND AT ANY TIME DO YOU THINK THAT HE
9 WANTED TO GIVE ANOTHER STATEMENT?

10 A. AT THAT TIME HE DID.

11 Q. OKAY. AND HOW DID THAT SECOND STATEMENT COME
12 ABOUT?

13 A. AFTER INFORMING HIM OF THE LITERATURE WE HAD
14 FOUND AND HOW WE WERE LED TO THAT LITERATURE, HE AGREED
15 TO GIVE A SECOND STATEMENT.

16 Q. WAS HIS MOTHER PRESENT FOR THE SECOND STATEMENT?

17 A. HE INDICATED THAT HE WOULD BE WILLING TO GIVE A
18 STATEMENT BUT THAT HE DID NOT WANT TO DO IT IN THE
19 PRESENCE OF HIS MOTHER.

20 Q. HE DID NOT WANT TO?

21 A. HE DID NOT WANT TO.

22 Q. AND AS A RESULT OF HIM NOT WANTING TO DO THIS IN
23 FRONT OF HIS MOTHER, WHERE DID YOU ALL GO TO DO THE
24 STATEMENT?

25 A. WE WENT TO MY VEHICLE WHICH WAS PARKED IN FRONT

1 OF THE RESIDENCE.

2 Q. AND WHAT KIND OF VEHICLE WAS IT?

3 A. IT IS A TAN IN COLOR UNMARKED FORD CROWN
4 VICTORIA.

5 Q. AND WHERE WERE YOU SEATED IN THE CAR?

6 A. IN THE FRONT SEAT.

7 Q. WAS HE IN HANDCUFFS AT THIS TIME?

8 A. NO.

9 Q. IN SPEAKING WITH HIM AND WHEN HE INDICATED HE
10 WANTED TO GIVE A STATEMENT, DID HE WRITE IT AT THIS TIME
11 OR DID YOU?

12 A. I WROTE IT.

13 Q. AND WHY IS IT DIFFERENT THIS TIME?

14 A. I ASKED IF HE WANTED TO WRITE IT OR IF HE WOULD
15 LIKE FOR ME TO WRITE HIS WORDS FOR HIM, AND HE INDICATED
16 THAT HE WANTED ME TO WRITE HIS STATEMENTS.

17 Q. AND SO AT THAT TIME DID YOU, IN FACT, DO THAT?

18 A. YES.

19 Q. MS. CARSON, I'M GOING TO SHOW YOU STATE'S EXHIBIT
20 16 ^ . IF YOU COULD TAKE A LOOK AT THAT, PLEASE. DO
21 YOU RECOGNIZE THAT ITEM?

22 A. YES. THIS IS THE SECOND STATEMENT THAT WAS
23 OBTAINED FROM THE DEFENDANT.

24 Q. AND HOW ARE YOU ABLE TO RECOGNIZE IT AS THAT?

25 A. IT'S MY SIGNATURE ALONG WITH THE SIGNATURE OF THE

1 DEFENDANT.

2 Q. WHEN YOU ARE DOING THIS STATEMENT, DO YOU WRITE
3 IT DOWN FIRST, DO YOU TAKE NOTES? WHAT'S THE PROCEDURE
4 YOU USUALLY FOLLOW?

5 A. I USUALLY HAVE THE DEFENDANT EXPLAIN TO ME AND AT
6 VARIOUS POINTS I'LL STOP THE DEFENDANT AND WRITE DOWN
7 WHAT THEY ARE SAYING AND I'LL READ IT BACK TO THEM;
8 EVERY TWO OR THREE LINES, MAYBE, I'LL READ IT BACK TO
9 THEM AND WE WILL CONTINUE.

10 Q. AND IS THAT WHAT YOU DID IN THIS CASE?

11 A. THAT'S CORRECT.

12 Q. ALL RIGHT. WHAT THEN IF THERE IS SOME SORT OF
13 CLERICAL ERROR OR SOMETHING ALONG THOSE LINES?

14 A. IF THERE'S A CLERICAL ERROR, I WOULD ASK THE
15 DEFENDANT TO INITIAL AT THAT CLERICAL ERROR TO VERIFY
16 THAT THEY ARE AWARE THAT THIS WAS AN ERROR AND THIS WAS
17 SCRATCHED OUT OR WHATEVER, AND THEY IN TURN WOULD
18 INITIAL.

19 Q. WOULD IT BE THE SAME IF THERE WAS A FACTUAL
20 ERROR?

21 A. CORRECT.

22 Q. OKAY. AND ARE THERE ALSO INITIALS MADE BY THE
23 DEFENDANT ON THAT PARTICULAR STATEMENT?

24 A. IT IS.

25 Q. NOW, WHEN YOU ARE DONE WITH IT, DO YOU READ IT TO

1 THEM OR DO YOU GIVE IT BACK FOR HIM TO READ?

2 A. I READ THE STATEMENT BACK TO THE DEFENDANT TO
3 MAKE SURE THAT THEY UNDERSTAND THAT THESE ARE THEIR
4 WORDS AND THAT THEY DO CONCUR THAT THESE ARE THEIR
5 WORDS.

6 Q. DID HE, IN FACT, INDICATE THAT THIS WAS HIS
7 STATEMENT?

8 A. HE DID AND HE INDICATED BY SIGNING HIS NAME.

9 Q. AND AGAIN, AT ANY TIME DID HE REQUEST AN
10 ATTORNEY?

11 A. NO.

12 MS. HUEY: YOUR HONOR, AT THIS TIME WE WOULD
13 MOVE STATE'S 15 ^ INTO EVIDENCE.

14 THE COURT: ALL RIGHT. SUBJECT TO THE
15 COURT'S PRIOR RULING, THE STATEMENT IS ADMITTED. BUT
16 NOW AGAIN, REMEMBER, AS I INSTRUCTED TO YOU EARLIER, IT
17 IS FOR YOU TO DETERMINE WHETHER OR NOT THE STATEMENT WAS
18 GIVEN FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY,
19 AND MORE IMPORTANTLY, THAT IT IS THE STATEMENT OF THE
20 DEFENDANT. ALL OF THOSE ARE FOR YOUR DECISION AND IT
21 MUST BE FOUND BEYOND A REASONABLE DOUBT.

22 YOU MAY PROCEED.

23 MS. HUEY: THANK YOU.

24 BY MS. HUEY:

25 Q. MS. CARSON, IF YOU WOULD, I'D LIKE YOU TO READ

1 THE STATEMENT ALOUD; I WOULD LIKE YOU TO START AT THE
2 VERY TOP AS YOU WOULD READ IT TO HIM.

3 THE COURT: JUST A MOMENT. I THINK THAT'S
4 PLAINTIFF'S EXHIBIT NUMBER 3?

5 MS. HUEY: YOUR HONOR, THIS IS A DIFFERENT
6 VERSION.

7 THE COURT: WHAT NUMBER ARE WE ON? I'M
8 SORRY.

9 MS. HUEY: IT'S SUPPOSED TO BE STATE'S
10 EXHIBIT 16.

11 THE WITNESS: SIXTEEN.

12 THE COURT: STATE'S EXHIBIT NUMBER 16 IS
13 ADMITTED SUBJECT TO THE COURT'S RULINGS.

14 (STATE'S EXHIBIT # 16 WAS RECEIVED IN
15 EVIDENCE.)

16 THE WITNESS: (READING):

17 BEGINNING AT THE END OF FEBRUARY
18 I BEGAN ENGAGING IN SEXUAL ENCOUNTERS
19 WITH Minor 2 ON MORE THAN ONE
20 OCCASION I WOULD INSIST THAT Minor TAKE
21 OFF HIS CLOTHES AND I WOULD TAKE OFF MINE
22 AND WE WOULD GET IN THE BED. I WOULD
23 SUCK HIS PENIS. WE WOULD BE TAKING TURNS
24 GETTING UNDER THE COVERS. Minor WOULD
25 LICK ON MY NECK, CHEST, PENIS, DOWN TO MY

1 FEET. I WOULD ALSO LICK ^{Minor} ABOUT HIS
2 BODY. THIS HAPPENED A LOT, PROBABLY IF
3 NOT 50 TIMES. I WOULD NEVER FORCE ^{Minor}
4 TO DO THIS, IT WOULD JUST HAPPEN.

5 BY MS. HUEY:

6 Q. IS THERE ANYTHING AT THE BOTTOM OF THAT
7 INDICATING THAT IT IS THE DEFENDANT'S STATEMENT?

8 A. HIS SIGNATURE.

9 Q. DOES HE ALSO INDICATE WHERE THIS INCIDENT
10 OCCURRED?

11 A. YES, HE DOES. (READING):

12 THE ENCOUNTERS WITH ^{Minor} OCCURRED
13 IN MY ROOM AT MY RESIDENCE AT WHITTEN
14 ROAD IN PELZER.

15 Q. IS THAT AGAIN IN ANDERSON COUNTY, MS. CARSON?

16 A. IT IS.

17 Q. NOW, MS. CARSON, WHEN YOU READ THAT STATEMENT
18 BACK TO HIM TO MAKE SURE IT IS HIS AND HE SIGNS IT, IS
19 THERE A PORTION BEFORE HIS SIGNATURE THAT HE HAS TO READ
20 AND ACKNOWLEDGE?

21 A. IT IS.

22 Q. OKAY. AND WILL YOU PLEASE READ THAT FOR ME.

23 A. (READING):

24 I HAVE READ THIS STATEMENT
25 CONSISTING OF PAGES, AND I CERTIFY THE

1 FACTS CONTAINED THEREIN ARE TRUE AND
2 CORRECT. I FURTHER CERTIFY THAT I MADE
3 NO REQUEST FOR THE ADVICE OR PRESENCE OF
4 A LAWYER BEFORE OR DURING ANY PART OF THE
5 STATEMENT, NOR AT ANY TIME BEFORE IT WAS
6 FINISHED DID I REQUEST THAT THE STATEMENT
7 BE STOPPED. I ALSO DECLARE THAT I WAS
8 NOT TOLD OR PROMPTED WHAT TO SAY IN THE
9 STATEMENT.

10 Q. OKAY. NOW, ADDITIONALLY, MS. CARSON, IS MIRANDA
11 STILL IN EFFECT?

12 A. IT IS.

13 Q. AND THE WAIVER OF MIRANDA?

14 A. IT IS.

15 Q. OKAY. DOES THAT FORM INDICATE THAT, AS WELL?

16 A. IT DOES, AT THE VERY TOP IT KIND OF GOES BACK
17 OVER MIRANDA AND ADVISES THEM THAT THEIR MIRANDA RIGHTS
18 ARE STILL IN EFFECT.

19 Q. AND DID YOU READ THAT PORTION ALOUD TO HIM, AS
20 WELL?

21 A. I READ THE VOLUNTARY STATEMENT TO HIM.

22 Q. UPON RECEIVING THIS SECOND STATEMENT FROM THE
23 DEFENDANT, WHAT WAS YOUR NEXT STEP?

24 A. ONCE WE RECEIVED THE SECOND STATEMENT, I SPOKE
25 WITH MY PARTNER. THE DEFENDANT WAS THEN DETAINED AND

1 TRANSPORTED TO THE ANDERSON COUNTY DETENTION CENTER.

2 Q. DID YOU MEET WITH ANY OTHER WITNESSES IN
3 CONNECTION WITH THIS CASE?

4 A. AT THIS TIME, NO.

5 Q. HAD YOU ALREADY MET WITH SARA HIOTT?

6 A. YES.

7 Q. AND DID YOU TAKE A WRITTEN STATEMENT FROM HER?

8 A. YES.

9 Q. NOW, MS. CARSON, I BELIEVE THERE WAS TESTIMONY
10 ABOUT Minor 2 LITTLE BROTHER BEING IN THE ROOM WHEN THIS
11 OCCURRED?

12 A. RIGHT.

13 Q. DID YOU EVER INTERVIEW Minor 2 BROTHER?

14 A. NO.

15 Q. AND WHY NOT?

16 A. AT THE TIME THE CHILD WAS TWO AND WAS TOO YOUNG
17 TO BE INTERVIEWED OR TO VERBALIZE OR TO UNDERSTAND.

18 Q. WOULD YOU HAVE BEEN ABLE TO USE THE FORENSIC
19 INTERVIEW PROTOCOL FOR A TWO-YEAR-OLD?

20 A. NO. THAT PROTOCOL IS NOT -- IT'S NOT RECOMMENDED
21 FOR CHILDREN OF THAT AGE SIMPLY BECAUSE THEY CAN'T
22 UNDERSTAND, THEY CAN'T COMPREHEND, OR RELAY INFORMATION.

23 Q. AND, MS. CARSON, YOU DID MENTION PETE NORMANDIN
24 BEING WITH YOU?

25 A. YES.

1 Q. OKAY. AND WAS HE THERE THROUGHOUT THIS PROCESS?

2 A. HE WAS.

3 Q. WAS HE WITH YOU BY YOUR SIDE THE ENTIRE TIME?

4 A. THE ENTIRE TIME HE WAS NOT. THERE WAS A LOT THAT
5 WAS GOING ON AT THE RESIDENCE. THE MOTHER WAS AT THE
6 RESIDENCE, AS WELL. HE IN TURN, WHILE I WAS SPEAKING
7 WITH THE DEFENDANT, WAS TRYING TO KEEP THE MOTHER
8 ABREAST OF WHAT WAS GOING ON. WE WERE CONDUCTING A
9 SEARCH, AND AT TIMES HE WOULD BE IN A DIFFERENT ROOM OR
10 DOING SOMETHING DIFFERENT THAN WHAT I WAS DOING.

11 Q. WOULD HE PERIODICALLY CHECK ON YOU, THOUGH?

12 A. YES, HE WOULD.

13 MS. HUEY: YOUR HONOR, THAT'S ALL I HAVE AT
14 THIS TIME.

15 THE COURT: CROSS-EXAMINATION.

16 CROSS-EXAMINATION BY MR. THOMPSON:

17 Q. DID YOU OR YOUR PARTNER, SERGEANT NORMANDIN,
18 SPEAK WITH THE ORIGINAL COMPLAINANT IN THIS CASE?

19 A. THE ORIGINAL COMPLAINANT I BELIEVE SPOKE WITH THE
20 INITIATING OFFICER WHO DID THE INITIAL REPORT. I DON'T
21 BELIEVE I SPOKE WITH THE ORIGINAL COMPLAINANT.

22 Q. HOW WAS I INFORMED OF THIS CASE?

23 A. HOW WERE YOU INFORMED? I BELIEVE YOU WERE
24 CONTACTED BY MY PARTNER. MY FIRST CONTACT WITH YOU WAS
25 AT 2:45 P.M. ON THE 20TH OF MAY.

1 Q. AND WHEN WERE YOU ASSIGNED TO THIS CASE?

2 A. THE CASE WAS REFERRED, TWO INVESTIGATIONS, AND MY
3 FIRST CONTACT WITH ANYBODY INVOLVED IN THIS CASE WAS ON
4 THE 20TH OF MAY.

5 Q. DO YOU KNOW WHEN YOUR PARTNER WAS ASSIGNED TO
6 THIS CASE?

7 A. I CAN'T TELL YOU FOR SURE WHEN HE RECEIVED THE
8 INCIDENT REPORT.

9 Q. WOULD Y'ALL HAVE RECEIVED AN INCIDENT REPORT AT
10 THE SAME TIME OR HE WOULD RECEIVE IT, THEN YOU RECEIVED
11 IT?

12 A. NOT NECESSARILY. IT DEPENDS UPON WHO THE
13 INITIAL -- THE REPORT WAS ASSIGNED TO. THE ASSIGNING
14 OFFICER OR THE OFFICER THAT IT WAS ASSIGNED TO WOULD
15 RECEIVE IT; AND I DON'T KNOW WHEN HE ACTUALLY OR WHAT
16 TIME HE ACTUALLY RECEIVED THE REPORT.

17 Q. OKAY. NOW, YOU STATED THAT YOU MADE CONTACT WITH
18 ME AT 12- -- WELL, AT 2:45, CORRECT?

19 A. CORRECT.

20 Q. AFTER YOU READ ME MY MIRANDA RIGHTS, DID YOU
21 ADVISE ME OF THE COMPLAINT BEFORE OR AFTER I HAD BEEN
22 MIRANDIZED?

23 A. I DON'T KNOW AT WHAT POINT YOU WERE ADVISED.
24 IT'S NORMAL PROCEDURE WHEN WE SPEAK WITH YOU TO ADVISE
25 YOU OF THE INCIDENT OR THE COMPLAINT, ASK YOU IF YOU ARE

1 WILLING TO TALK, AND READ YOU YOUR MIRANDA ADVISING YOU
2 OF YOUR RIGHTS.

3 Q. NOW, YOU STATED SPECIFICALLY EARLIER THAT UPON
4 ARRIVAL, WHICH YOU ARRIVED AT 2:45, THAT YOU HAD ADVISED
5 ME OF THE COMPLAINT; IS THAT CORRECT?

6 A. WHEN WE ARRIVED, YOU WERE ADVISED OF THE
7 COMPLAINT, YES, THAT'S CORRECT.

8 Q. BUT YOU DON'T KNOW FOR SURE IF I HAD BEEN ADVISED
9 OF THE COMPLAINT BEFORE OR AFTER I HAD BEEN MIRANDIZED?

10 A. YOU WERE MIRANDIZED PRIOR TO ANY QUESTIONING
11 BEING ASKED. YOU WERE ADVISED OF THE COMPLAINT AND YOU
12 WERE MIRANDIZED BEFORE ANY QUESTIONING WAS INITIATED.

13 Q. HOW MANY STATEMENTS WERE GIVEN BY MYSELF ON MAY
14 20TH, 2005, EITHER ORAL OR WRITTEN?

15 A. THERE WERE TWO WRITTEN STATEMENTS. YOU GAVE I
16 BELIEVE THREE DIFFERENT ACCOUNTS VERBALLY, BUT THERE
17 WERE TWO WRITTEN STATEMENTS.

18 Q. DID I OR WAS I PROVIDED COPIES OF THESE WRITTEN
19 VOLUNTARY STATEMENTS?

20 A. IT IS STANDARD PROCEDURE TO GIVE THE DEFENDANTS A
21 COPY OF THEIR STATEMENTS, CORRECT.

22 Q. SO YOU GAVE ME A COPY OF THIS WRITTEN VOLUNTARY
23 STATEMENT?

24 A. TO THE BEST OF MY KNOWLEDGE, YOU WERE GIVEN
25 COPIES OF YOUR STATEMENT.

1 Q. FOR THE RECORD, PLEASE STATE WHEN WAS I PLACED
2 INTO POLICE CUSTODY OR UNDER ARREST.

3 A. THAT WOULD HAVE BEEN AFTER YOUR SECOND STATEMENT.
4 THE TIME ON THE SECOND STATEMENT, THE TIME THAT WE BEGAN
5 WAS 4:15, I THINK THE ENDING TIME WAS 4:42 P.M., SO
6 SOMEWHERE THEREAFTER 4:42 P.M.

7 Q. SOMEWHERE AFTERWARDS?

8 A. SOMEWHERE AFTER 4:42.

9 Q. TEN MINUTES, 15 MINUTES?

10 A. POSSIBLY.

11 Q. NOW, ACCORDING TO THE INCIDENT REPORT, IT HAS ON
12 THERE THE DATE AND TIME OF ARREST, AND IT STATES MAY
13 20TH, 2005, AT 2126 ON THE 24-HOUR CLOCK, 9:26 ON A
14 12-HOUR CLOCK, CORRECT?

15 A. RIGHT, CORRECT.

16 Q. SO THE SECOND STATEMENT THAT HAS BEEN INTRODUCED
17 ENTERED AT 4:42?

18 A. THAT'S CORRECT.

19 Q. AND I WAS PLACED UNDER ARREST SOON AFTERWARDS,
20 CORRECT?

21 A. THAT'S CORRECT.

22 Q. FROM 4:42 TO 9:26 WOULD PROBABLY BE SOMEWHERE
23 AROUND FOUR HOURS, CORRECT?

24 A. CORRECT.

25 Q. SO CAN YOU TELL THE COURT EXACTLY WHAT HAPPENED

1 IN BETWEEN THOSE FOUR HOURS?

2 A. AT 4:42 YOUR SECOND STATEMENT WAS ENDED. YOU
3 WERE TRANSPORTED AT IT LOOKS LIKE 5:16 TO THE ANDERSON
4 COUNTY DETENTION CENTER AND YOU WERE BOOKED IN. IN YOUR
5 SITUATION A WARRANT HAD TO BE OBTAINED, THE JUDGE HAD TO
6 BE CONTACTED FOR US TO OBTAIN THE WARRANT, AND THE
7 WARRANT WAS SERVED ON YOU LATER THAT NIGHT, BUT YOU WERE
8 ARRESTED AND DETAINED UNTIL SERVICE OF THE WARRANT.

9 Q. WAS I ARRESTED AT THE SCENE?

10 A. YOU WERE ARRESTED AT YOUR HOME, YES.

11 Q. ACCORDING TO THE INCIDENT REPORT IT SAID I WAS
12 NOT ARRESTED AT THE OFFENSE SCENE. THE OFFENSE SCENE IS
13 WHERE WAS I ARRESTED AT, AM I CORRECT?

14 A. THAT'S CORRECT.

15 Q. SO IF I WAS ---

16 A. YOU WERE TAKEN INTO CUSTODY AT THE OFFENSE SCENE.

17 Q. NOW, YOU GOT INFORMATION FROM Minor 2 THE
18 VICTIM, WHICH LED TO A SEARCH AND SEIZURE, CORRECT?

19 A. THAT'S CORRECT.

20 Q. DID YOU OR YOUR PARTNER CONDUCT THE SEARCH?

21 A. WE BOTH CONDUCTED A SEARCH.

22 Q. BOTH OF YOU?

23 A. CORRECT.

24 Q. WHAT WERE THEY LOCATED ON, AGAIN?

25 A. WHAT WERE -- I'M SORRY?

1 Q. WHERE DID YOU FIND THESE PHOTOS AT?

2 A. THE PHOTOS WERE INSIDE A NOTEBOOK, I BELIEVE,
3 THAT WAS INSIDE A BOOK BAG, BACKPACK WITHIN THE BEDROOM.
4 I'M NOT SURE OF THE EXACT LOCATION OF THE BACKPACK.

5 Q. DURING THE SEARCH, OR DID YOU SEARCH FOR ANY
6 DISKS, COMPUTERS, MAGAZINES OR OTHER XEROX MATERIAL OF
7 SUCH?

8 A. OUR SEARCH WAS BASED ON THE INFORMATION THAT WAS,
9 THAT WAS OBTAINED FROM THE VICTIM. THE ITEMS LISTED IN
10 THE SEARCH WERE ITEMS THAT WERE DESCRIBED BY THE VICTIM.

11 Q. THE ITEMS FOUND, WERE THERE -- WERE THEY XEROXED
12 COPIES?

13 A. THEY WERE COPIES.

14 Q. WHICH WOULD TAKE A COMPUTER TO XEROX THEM,
15 CORRECT?

16 A. I WOULD ASSUME.

17 Q. AND YOU NEVER QUESTIONED THAT THERE WAS A
18 COMPUTER AT HAND OR ---

19 A. NO.

20 Q. DID YOU PICK THESE PHOTOGRAPHS OUT OF A BIG
21 NOTEBOOK, OR DID YOU PICK THE NOTEBOOK UP YOURSELF AND
22 GO INSIDE THE NOTEBOOK AND FIND THIS INFORMATION?

23 A. IF I REMEMBER CORRECTLY, YOU AIDED US IN SHOWING
24 US THE NOTEBOOK AND WE WERE GOING THROUGH THE NOTEBOOK,
25 AND THAT'S WHEN WE SAW THE PHOTOS.

1 Q. IF I'M NOT MISTAKEN, YOU SAID EARLIER THAT THE
2 PHOTOS WERE FOUND INSIDE THE BOOK BAG, NOT A NOTEBOOK,
3 CORRECT?

4 A. THE PHOTOS WERE FOUND INSIDE A NOTEBOOK THAT WAS
5 INSIDE A BOOK BAG.

6 Q. DID I HAND THEM TO YOU OR...

7 A. I DON'T RECALL WHETHER YOU ACTUALLY HANDED THEM
8 TO ME. YOU CERTAINLY AIDED US IN PROVIDING US
9 INFORMATION WHEN WE QUESTIONED ABOUT THE BOOK BAG. BUT
10 IF THEY CAME FROM YOUR HAND TO MINE, I'M NOT EXACTLY
11 SURE.

12 Q. DID YOU REQUEST TO SPEAK TO ME AFTER, AFTER OR
13 BEFORE THE VOLUNTARY STATEMENT WAS GIVEN ---

14 A. DID I ---

15 Q. --- THE STATE'S FIRST VOLUNTARY STATEMENT?

16 A. DID I REQUEST TO SPEAK WITH YOU?

17 Q. YES.

18 A. BEFORE THE SECOND STATEMENT?

19 Q. YES.

20 A. I SPOKE WITH YOU ON YOUR FRONT PORCH BEFORE THE
21 SECOND STATEMENT.

22 Q. WAS ANYONE PRESENT?

23 A. MY PARTNER, DETECTIVE NORMANDIN, WAS PRESENT.

24 Q. DID YOU ASK ME AT THAT GIVEN TIME IF I HAD SHOWN
25 THOSE PHOTOS TO Minor 2

1 A. THAT'S A POSSIBILITY. I'M NOT SURE IF I ASKED
2 YOU THAT DIRECTLY, I'M NOT SURE. IT'S BEEN TWO YEARS
3 AGO, AND I'M NOT SURE IF I ASKED YOU DIRECTLY IF YOU HAD
4 SHOWN THOSE TO Minor 2 I'M SURE AS PART OF THE
5 INVESTIGATION I ASKED HOW IT CAME ABOUT THAT THE VICTIM
6 WAS ABLE TO GIVE US THIS INFORMATION.

7 Q. HOW WELL DID I COOPERATE WITH SERGEANT NORMANDIN
8 AND YOURSELF?

9 A. YOU WERE VERY COOPERATIVE.

10 Q. VERY, CORRECT?

11 A. CORRECT.

12 Q. NOW, HOW LONG IN LENGTH WAS THE QUESTIONING
13 PROCESS, AGAIN?

14 A. WE ARRIVED AT YOUR RESIDENCE AT ABOUT 3:40 ON THE
15 20TH, AND WE LEFT AT ABOUT 5:15, 5:16.

16 **MR. THOMPSON:** MAY I HAVE A MINUTE TO
17 CONSULT WITH MY ADVISORY?

18 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
19 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

20 **MR. THOMPSON:** THIS HAS ALREADY BEEN
21 INTRODUCED AS EXHIBIT NUMBER ONE, DEFENSE, OR
22 DEFENDANT'S --

23 HOLD ON (SHOWS TO MS. HUEY).

24 (HANDING TO WITNESS.)

25 BY MR. THOMPSON:

1 Q. DO YOU ACKNOWLEDGE THAT?

2 A. YES. IT'S ONE OF OUR SUPPLEMENTAL REPORTS.

3 Q. ONE OF OUR?

4 A. IT'S A SHERIFF'S OFFICE SUPPLEMENTAL REPORT
5 PERTAINING TO YOUR CASE.

6 Q. WHO'S THE REPORTING OFFICER LOCATED AT THE BOTTOM
7 OF THAT?

8 A. IT HAS CARSON, N N.

9 Q. WHICH WOULD BE?

10 A. THAT WOULD BE ME.

11 Q. NIKKI CARSON, CORRECT?

12 A. UH-HUH, CORRECT.

13 Q. NOW, IF I'M NOT MISTAKEN, THAT'S YOUR REPORT; IT
14 HAS YOUR NAME ---

15 A. IT HAS MY NAME.

16 Q. --- AS THE REPORTING OFFICER?

17 A. IT HAS MY NAME AS THE REPORTING OFFICER.

18 Q. CAN YOU READ THE FIRST LINE AT THE TOP?

19 A. IT SAYS (READING):

20 ON MAY 20TH, 2005 I ALONG WITH
21 DETECTIVE NIKKI CARSON MADE CONTACT WITH
22 THE COMPLAINANT, THE VICTIM'S MOTHER --

23 -- DO YOU WANT ME TO KEEP GOING?

24 Q. UH-HUH.

25 A. (READING):

1 -- WHO ADVISED THAT SHE WENT TO
2 THE SUSPECT'S RESIDENCE AND WALKED INTO
3 THE RESIDENCE TO RETRIEVE HER CHILD THAT
4 WAS BEING CARED FOR BY THE SUSPECT.

5 Q. OKAY, THANK YOU. ON MAY 20TH, 2005, I ALONG WITH
6 DETECTIVE NIKKI CARSON. WHO'S NAME IS AT THE BOTTOM OF
7 THAT?

8 A. MY NAME IS AT THE BOTTOM OF THE REPORT.

9 Q. WHO IS "I"?

10 A. THIS REPORT WAS WRITTEN BY MY PARTNER. AND I'VE
11 EXPLAINED PREVIOUSLY THAT IN OUR COMPUTER SYSTEM, IN OUR
12 INCIDENT REPORTING SYSTEM, THAT NORMANDIN IS VERY CLOSE
13 TO NN CARSON AND THAT THERE WAS AN ERROR. IF YOU PUSH,
14 PRESS ONE BUTTON, YOU CAN VERY WELL GET ANOTHER
15 OFFICER'S NAME IN A REPORT, AND THIS WAS AN ERROR WHERE
16 MY NAME WAS PUT IN THE REPORT VERSUS NORMANDIN.

17 Q. OKAY. IN THE SECOND PARAGRAPH CAN YOU READ THE
18 THREE SENTENCES, FIRST THREE SENTENCES?

19 A. FIRST THREE?

20 Q. YES.

21 A. (READING):

22 ON MAY 20TH, 2005 MYSELF AND
23 DETECTIVE CARSON MADE CONTACT WITH THE
24 SUSPECT AT HIS RESIDENCE LOCATED AT
25 WHITTEN ROAD IN PELZER, SOUTH CAROLINA.

1 POST MIRANDA HE WAS ADVISED OF THE
2 COMPLAINT THAT WAS RECEIVED FROM THE
3 VICTIM'S MOTHER. THE SUSPECT ADVISED
4 THAT THERE WAS NO TOUCHING OF THE VICTIM
5 OTHER THAN THE SUSPECT CLEANING THE
6 VICTIM UP AFTER THE VICTIM HAD MESSED
7 HIMSELF AND THE SUSPECT HAD GIVEN A
8 WRITTEN STATEMENT TO THAT ACCOUNT.

9 Q. OKAY, THANK YOU. NOW I'M GONNA GO BACK TO THE
10 THIRD SENTENCE (READING):

11 THE SUSPECT ADVISED THAT THERE
12 WAS NO TOUCHING OF THE VICTIM OTHER THAN
13 THE SUSPECT CLEANING THE VICTIM UP AFTER
14 THE VICTIM HAD MESSED HIMSELF AND THE
15 SUSPECT HAD GIVEN A WRITTEN STATEMENT TO
16 THAT ACCOUNT. A WRITTEN STATEMENT.

17 MR. THOMPSON: THESE HAVE ALREADY BEEN
18 MARKED AS STATE'S EXHIBIT TWO AND THREE (SHOWING TO
19 MS. HUEY).

20 BY MR. THOMPSON:

21 Q. WHAT I HAVE HERE ARE THE TWO VOLUNTARY STATEMENTS
22 THAT WERE ALLEGEDLY MADE BY ME (HANDING). CAN YOU READ
23 THAT TO YOURSELF, PLEASE, LIEUTENANT?

24 A. I'VE READ IT.

25 Q. YOU'VE READ IT. DOES THAT STATEMENT CONSIST OF

1 THE VICTIM MESSING ON HIMSELF?

2 A. IT DOES NOT.

3 Q. OKAY. I'LL SWITCH OUT WITH YOU (HANDING).

4 DOES THAT STATEMENT CONSIST OF THAT INFORMATION?

5 A. IT DOES NOT.

6 Q. BUT THIS -- THE VICTIM HAD MESSED ON HIMSELF IS A
7 GIVEN WRITTEN STATEMENT.

8 A. THAT -- THOSE STATEMENTS WERE MADE VERBALLY BY
9 YOURSELF. THEY WERE INDICATED IN MY BRIEF CASE SUMMARY
10 AS WELL AS MY PARTNER'S INCIDENT REPORT THAT YOU GAVE
11 THESE STATEMENTS.

12 Q. YOUR PARTNER -- THIS IS YOUR PARTNER'S REPORT?

13 A. THAT'S CORRECT.

14 Q. HAD GIVEN A WRITTEN STATEMENT TO THIS ACCOUNT.

15 MR. THOMPSON: THIS HAS BEEN ENTERED AS
16 DEFENDANT'S EXHIBIT THREE (SHOWING TO MS. HUEY).

17 THE COURT: ANY OBJECTION?

18 MS. HUEY: NO, SIR, YOUR HONOR.

19 THE COURT: WITHOUT OBJECTION, DEFENDANT'S
20 EXHIBIT NUMBER 3 IS ADMITTED.

21 (DEFENDANT'S EXHIBIT # 3 WAS RECEIVED IN
22 EVIDENCE.)

23 BY MR. THOMPSON:

24 Q. DO YOU ACKNOWLEDGE THAT?

25 A. THIS IS A COPY OF MY NOTES, BRIEF CASE SUMMARY OF

1 THIS INCIDENT.

2 Q. HOW CAN YOU DETERMINE THAT? IT HAS YOUR
3 SIGNATURE?

4 A. THESE ARE MY NOTES. THIS IS THE NOTES THAT I
5 COMPILED.

6 Q. YOU CAN IDENTIFY THEM, CORRECT?

7 A. CORRECT.

8 Q. CAN YOU ALOUD READ THE INFORMATION THAT YOU HAVE
9 PROVIDED IN THAT?

10 A. IT SAYS (READING):

11 POST-MIRANDA HOWARD STATED THAT
12 ON 5-18-2005 THAT HE WAS WATCHING Minor
13 HIOTT AFTER SCHOOL AT HIS RESIDENCE.
14 HOWARD STATES THAT AROUND 6:00 P.M. Minor
15 ASKED TO TAKE OFF HIS SHIRT AND THAT
16 AFTER HOWARD CAME FROM THE BATHROOM THAT
17 Minor HAD NO CLOTHES ON.

18 HOWARD STATES THAT HE ASKED Minor
19 TO PUT CLOTHES BACK ON. AT ABOUT 7:15
20 P.M. HOWARD STATES THAT Minor² MOM CAME
21 TO PICK HIM UP.

22 HOWARD WENT ON TO STATE THAT
23 BETWEEN 4:00 AND 6:00 P.M. THAT Minor
24 POOPED ON HIMSELF AND THAT HE GOT A RAG
25 AND ASKED Minor TO TAKE OFF HIS UNDERWEAR

1 AND PANTS. HOWARD STATES THAT CODY KEPT
2 SHIRT ON AND HE TOLD Minor TO SIT THERE
3 WHILE HE GOT A RAG AND A BI-LO BAG TO PUT
4 THE DIRTY TOWELS IN AND CLEANED HIM.

5 HOWARD STATES THAT HE CLEANED
6 BEHIND AND IN THE FRONT AREA OF Minor WITH
7 A RAG AND A PAPER TOWEL. HOWARD STATES
8 THAT AT NO TIME DID HE TOUCH Minor WITHOUT
9 A RAG, NOR DID HE TOUCH PENIS OR BUTT.
10 HOWARD STATED THAT HE NEVER TOOK HIS
11 PANTS DOWN OR OFF.

12 HOWARD STATED THAT Minor HAD EXTRA
13 UNDERWEAR IN A DRAWER AT THE HOUSE AND
14 THAT HE TOLD Minor TO PUT HIS CLOTHES BACK
15 ON. HOWARD STATED THAT Minor WALKED
16 AROUND IN A SHIRT AND UNDERWEAR WHILE HIS
17 CLOTHES WERE WASHING.

18 HOWARD ALSO STATES THAT HE HAS
19 BEEN KEEPING Minor ALMOST A YEAR AND HE
20 HAS NEVER TAKEN OFF HIS UNDERWEAR BEFORE.

21 STATEMENT WAS GIVEN AT
22 APPROXIMATELY 3:40 ON 5-20-2005. THE
23 SECOND STATEMENT WAS GIVEN AT
24 APPROXIMATELY 4:15 ON 5-20-2005. SEE THE
25 SECOND STATEMENT.

1 Q. IS THERE A WRITTEN VERSION OF THIS?

2 A. THERE IS NOT.

3 Q. THERE IS NOT?

4 A. THIS IS WHAT YOU VERBALLY STATED TO US -- TO
5 MYSELF.

6 Q. IS THERE A WRITTEN VERSION OF WHAT YOU HAVE IN
7 FRONT OF YOU?

8 A. NO.

9 Q. NO?

10 A. YOU WERE GIVEN AN OPPORTUNITY TO WRITE YOUR
11 STATEMENTS, AND THE ONLY STATEMENTS ARE THE TWO THAT
12 HAVE BEEN ENTERED.

13 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
14 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

15 MR. THOMPSON: I AM ENTERING THIS AS EXHIBIT
16 5 OF DEFENDANT'S.

17 THE COURT: LET'S GO OFF THE RECORD WHILE
18 THE COURT REPORTER MARKS IT. IN OTHER WORDS, DON'T SAY
19 ANYTHING.

20 (DEFENDANT'S EX. # 5, HANDWRITTEN NOTES,
21 CARSON, WAS MARKED FOR IDENTIFICATION.)

22 THE COURT: ALL RIGHT. BACK ON THE RECORD.
23 THIS IS DEFENDANT'S EXHIBIT NUMBER FIVE?

24 MR. THOMPSON: CORRECT.

25 THE COURT: HAS THE STATE SEEN IT?

1 MS. HUEY: NO, SIR, I HAVE NOT.

2 MR. THOMPSON: (HANDING).

3 THE COURT: ANY OBJECTION?

4 MS. HUEY: NO, SIR, YOUR HONOR.

5 THE COURT: WITHOUT OBJECTION, DEFENDANT'S
6 EXHIBIT NUMBER FIVE IS ADMITTED.

7 (DEFENDANT'S EXHIBIT # 5 WAS RECEIVED IN
8 EVIDENCE.)

9 BY MR. THOMPSON:

10 Q. DO YOU RECOGNIZE THAT?

11 A. THESE ARE MY NOTES.

12 Q. ARE THEY WRITTEN?

13 A. THEY ARE, THEY ARE WRITTEN.

14 Q. YOU JUST STATED THAT THEY WEREN'T.

15 A. YOU ASKED IF THERE WAS A WRITTEN STATEMENT.

16 THERE WAS NO WRITTEN STATEMENT.

17 Q. I ASKED YOU IF IT WAS A COPY ---

18 THE COURT: JUST A MOMENT. FIRST OF ALL,
19 THE JURY WILL BE THE JUDGES OF WHAT THE QUESTIONS WERE,
20 AND THE RESPONSES.

21 HOWEVER, FOR THE PURPOSES OF EXAMINATION,
22 RESTATE YOUR QUESTION SO THEY WILL BE SURE THAT BOTH YOU
23 AND THE WITNESS UNDERSTANDS THE QUESTION. JUST RESTATE
24 THE QUESTION THAT YOU WANTED TO ASK.

25 BY MR. THOMPSON:

1 Q. YOU STATED EARLIER THAT YOUR BRIEF CASE SUMMARY
2 REPORT, THERE WASN'T A WRITTEN VERSION IN IT, CORRECT?

3 A. THERE IS NOT A WRITTEN VERSION. THERE ARE NOTES,
4 THERE ARE HANDWRITTEN NOTES THAT I HAVE TAKEN TO AID ME
5 IN COMPLETING MY BRIEF CASE SUMMARY.

6 Q. CAN YOU READ WHAT EXHIBIT FIVE STATES?

7 A. DO YOU WANT THE HIGHLIGHTED PART OR JUST ---

8 Q. THE ENTIRE, FROM BEGINNING TO END.

9 A. 4 P.M. -- AND THESE ARE JUST, THESE ARE JUST
10 NOTES SO THERE IS NO, I GUESS, COMPLETE SENTENCES, BUT
11 THESE ARE... (READING):

12 4 P.M. ASKED TO TAKE HIS SHIRT
13 OFF BEFORE I WENT TO THE BATHROOM. WHEN
14 I CAME OUT, HAD ON NO CLOTHES ON. ASKED
15 HIM TO PUT HIS CLOTHES BACK ON.

16 7:15 MOM SHOWS UP TO PICK
17 CHILD -- I CAN'T SEE. IT'S BETWEEN,
18 BETWEEN SOMETHING. THE COPY DIDN'T COME
19 OUT VERY WELL.

20 HE POOPED ON SELF. GOT RAG AND
21 ASKED HIM TO TAKE OFF UNDERWEAR AND
22 PANTS. KEPT HIS SHIRT ON. TOLD HIM TO
23 SIT THERE AND I WENT AND GOT RAG AND THE
24 BI-LO BAG TO PUT DIRTY TOWELS IN AND
25 CLEANED HIM UP. TOLD HIM TO PUT CLOTHES

1 BACK ON. HAD EXTRA UNDERWEAR IN DRAWER.
2 WALKED AROUND IN SHIRT AND
3 UNDERWEAR WHILE CLOTHES WERE WASHING.
4 CLEANED BEHIND AND IN FRONT AREA
5 WITH RAG AND PAPER TOWEL.
6 AT NO TIME DID I TOUCH HIM
7 WITHOUT A RAG.
8 NEVER TOUCHED HIS PENIS OR BUTT.
9 SHIRT WAS OFF. NEVER TOOK PANTS
10 DOWN OR OFF. TOLD ME NO. I WAS IN MY
11 ROOM WATCHING T.V., NORMALLY LOCK MY
12 DOOR.
13 NO SEX BEHAVIORS, KEEPING KIDS
14 ALMOST A YEAR. NEVER TAKEN OFF UNDERWEAR
15 BEFORE. EVERY BLUE MOON PANTS ARE OFF.
16 Q. AND AT WHAT TIME DID YOU MAKE CONTACT WITH ME
17 AGAIN, JUST FOR THE RECORD?
18 A. 2:45 IS WHEN WE MADE CONTACT WITH YOU.
19 Q. 2:45, OKAY. DID I RECEIVE A COPY OF EVERYTHING
20 THAT HAS MY SIGNATURE ON IT?
21 A. I WOULD SAY SO, YES.
22 Q. YOU WOULD SAY YES?
23 A. UH-HUH.
24 Q. COULD I SEE EXHIBIT NUMBER THREE OF STATE'S?
25 A. (HANDING).

1 Q. NOW, CAN YOU TELL THE COURT WHAT IS THE PURPOSE
2 OF THE MIRANDA?

3 A. THE PURPOSE OF THE MIRANDA IS TO ADVISE THE
4 DEFENDANT SUSPECT OF HIS RIGHTS TO AN ATTORNEY BEFORE
5 BEING QUESTIONED.

6 MR. THOMPSON: JUST A SECOND.

7 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
8 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

9 BY MR. THOMPSON:

10 Q. NOW, CAN YOU REPEAT THAT ANSWER, PLEASE?

11 A. TO ADVISE THE DEFENDANT OF HIS RIGHTS.

12 Q. TO ADVISE ME OF MY RIGHTS. FIRST, FIRST. THIS
13 IS LAW ANALYSIS (READING):

14 THE PURPOSE OF MIRANDA WARNINGS
15 IS TO ADVISE THE DEFENDANT ---

16 MS. HUEY: YOUR HONOR, I OBJECT.

17 THE COURT: WHAT I'M GOING TO DO IS PERMIT
18 THE READING OF A TREATISE, WHICH DOES NOT MEAN THAT IT
19 WILL BE ADMITTED INTO EVIDENCE.

20 GO AHEAD. YOU MAY READ -- HOW LONG IS IT?

21 MR. THOMPSON: ONE SENTENCE, YOUR HONOR.

22 THE COURT: VERY GOOD. YOU MAY READ IT.

23 MR. THOMPSON: (READING):

24 THE PURPOSE OF THE MIRANDA
25 WARNINGS IS TO APPRISE THE DEFENDANT OF

1 HIS CONSTITUTIONAL PRIVILEGE NOT TO
2 INCRIMINATE HIMSELF WHILE IN THE CUSTODY
3 OF LAW ENFORCEMENT. WHILE IN.

4 Q. WHEN WAS I PLACED INTO POLICE CUSTODY?

5 A. SHORTLY AFTER YOUR SECOND STATEMENT, WHICH WOULD
6 HAVE BEEN SOMEWHERE AROUND 4:42 P.M.

7 Q. SO WHAT WAS THE PURPOSE OF ADMINISTERING THE
8 MIRANDA AT THE BEGINNING AND NOT UNTIL -- OR HOLD ON.
9 LET ME REPHRASE THAT.

10 WHAT DOES THE MIRANDA REQUIRE?

11 A. WHAT DOES THE MIRANDA REQUIRE?

12 Q. YES.

13 A. IT REQUIRES THAT THE DEFENDANT IS ABLE TO
14 UNDERSTAND AND COMPREHEND WHAT IS CONTAINED IN THE
15 MIRANDA RIGHTS AND THAT THE DEFENDANT UNDERSTANDS WHAT
16 THEIR RIGHTS ARE.

17 MR. THOMPSON: YOUR HONOR, THIS IS ALSO ONE
18 SENTENCE LONG.

19 THE COURT: ALL RIGHT, VERY WELL.

20 MR. THOMPSON: (READING):

21 MIRANDA REQUIRES THAT WARNINGS BE
22 GIVEN TO A SUSPECT AFTER HE OR SHE HAS
23 BEEN TAKEN INTO CUSTODY OR DEPRIVED OF
24 HIS OR HER FREEDOM IN ANY SIGNIFICANT
25 WAY.

1 BY MR. THOMPSON:

2 Q. AFTER HE OR SHE HAS BEEN TAKEN INTO CUSTODY.

3 A. IT IS COMMON PRACTICE FOR THE SHERIFF'S OFFICE TO
4 ADVISE SUSPECTS OF THEIR RIGHTS PRIOR TO BEING
5 QUESTIONED OR ASKED ANY QUESTIONS ABOUT THE INCIDENT.

6 Q. NOW, WHO WAS I SUPPOSED TO HAVE CONFESSED TO?

7 A. YOU GAVE TWO SEPARATE STATEMENTS, BOTH STATEMENTS
8 WERE GIVEN TO MYSELF.

9 Q. TO YOU, VERBALLY ---

10 A. YOU GAVE TWO WRITTEN ---

11 Q. --- A CONFESSION, A CONFESSION?

12 A. YOU GAVE A WRITTEN STATEMENT TO YOUR ACCOUNT
13 CONCERNING THIS INCIDENT TO MYSELF.

14 Q. WHILE IN YOUR PATROL VEHICLE?

15 A. THAT'S CORRECT.

16 Q. THAT I DISCLOSE INFORMATION TO YOU, CORRECT?

17 A. THAT'S CORRECT.

18 Q. WHICH WOULD MEAN VERBALLY; IS THAT CORRECT?

19 A. YOU WERE AWARE THAT YOU WERE GIVING A WRITTEN
20 STATEMENT; AS YOU WERE VERBALIZING, I WAS WRITING THE
21 STATEMENT AT YOUR REQUEST, WHICH YOU AGREED TO.

22 MR. THOMPSON: NO FURTHER QUESTIONS AT THIS
23 TIME.

24 THE COURT: REDIRECT?

25 MS. HUEY: YES, SIR, JUST A FEW THINGS.

1 REDIRECT EXAMINATION BY MS. HUEY:

2 Q. NOW, MS. CARSON, IS IT NORMAL FOR YOU TO GIVE
3 MIRANDA BEFORE Y'ALL START ANY KIND OF QUESTIONING?

4 A. IT IS.

5 Q. IS THAT YOUR COMMON PROCEDURE?

6 A. THAT'S MY COMMON PROCEDURES, TO MAKE SURE THAT
7 THE DEFENDANTS ARE ---

8 Q. IN THE COURSE OF THE INVESTIGATION? I'M SORRY.

9 A. IT IS. TO MAKE SURE THE DEFENDANTS ARE AWARE OF
10 RIGHTS PRIOR TO BEING ASKED QUESTIONS.

11 Q. AND AGAIN, YOU GAVE HIM MIRANDA AS SOON AS YOU
12 GOT TO HIS HOUSE AT 2:45?

13 A. THAT'S CORRECT.

14 Q. AND AS FAR AS THE TIME FRAME, YOU WERE WITH THE
15 DEFENDANT FROM 2:45, AND THE LAST STATEMENT ENDED AROUND
16 4:42, I BELIEVE YOU SAID?

17 A. YES.

18 Q. IS THAT RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND WHY DID YOU HAVE TO WAIT TILL 5:16?

21 A. WE ACTUALLY HAD TO CALL FOR ANOTHER OFFICER TO
22 COME OUT TO THE SCENE BEFORE THE DEFENDANT WAS ACTUALLY
23 TRANSPORTED TO THE DETENTION CENTER.

24 Q. AND WHY WAS THAT?

25 A. BECAUSE WE DIDN'T HAVE HANDCUFFS WITH US DUE TO

1 OTHER CALLS WE HAD GONE ON. MY PARTNER AND I DRIVE TWO
2 SEPARATE CARS, AND WE HAD GOTTEN TO MY CAR, AND WHEN WE
3 GOT THERE, NEITHER OF US HAD HANDCUFFS, WE WERE BOTH IN
4 PLAIN CLOTHES.

5 Q. SO AFTER HE WAS PLACED UNDER ARREST, DID YOU ALL
6 QUESTION HIM ANY MORE?

7 A. NO.

8 Q. BUT REGARDLESS, MIRANDA WAS STILL IN EFFECT?

9 A. CORRECT.

10 Q. AND IN THAT SECOND STATEMENT, DO YOU GO OVER
11 MIRANDA, AS WELL?

12 A. THAT'S CORRECT.

13 Q. SO ESSENTIALLY IT WAS ISSUED TWICE?

14 A. CORRECT.

15 Q. NOW, THERE WAS TALK OF YOUR PARTNER'S
16 SUPPLEMENTAL REPORT?

17 A. CORRECT.

18 Q. THAT ISN'T A REPORT THAT YOU DID?

19 A. NO, IT IS NOT.

20 Q. AND WAS MR. NORMANDIN A WITNESS TO THE FIRST
21 STATEMENT?

22 A. WE WERE BOTH IN THE HOUSE. THE DEFENDANT WAS
23 WRITING THE FIRST STATEMENT, AND I BELIEVE AT THE TIME
24 HE WAS BACK AND FORTH IN THE KITCHEN AND HE WOULD TALK
25 WITH THE MOM AND HE WOULD COME BACK. BUT HE WAS NOT

1 THERE THE WHOLE TIME AS THE FIRST STATEMENT WAS BEING
2 WRITTEN.

3 Q. WOULD HE KNOW EVERYTHING THAT WAS IN THE FIRST
4 STATEMENT?

5 A. DURING THE TIME THAT IT WAS BEING WRITTEN, NO.

6 Q. WAS HE THERE FOR THE VERBAL STATEMENT?

7 A. YES.

8 Q. SO WHEN MR. NORMANDIN REFERS TO A WRITTEN
9 STATEMENT ABOUT ^{Minor} MESSING ON HIMSELF, COULD HE BE
10 MISTAKEN?

11 A. CORRECT. HE COULD BE MISTAKEN FOR THE
12 INFORMATION THAT THE DEFENDANT VERBALLY TOLD US AND NOT
13 NECESSARILY WHAT THE DEFENDANT WAS PUTTING INTO HIS
14 FIRST STATEMENT.

15 Q. THERE'S ALSO TALK ABOUT YOUR INVESTIGATIVE NOTES.
16 WHY DO YOU DO THOSE?

17 A. INVESTIGATIVE NOTES ARE JUST NOTES WHEN WE'RE OUT
18 ON THE SCENE AND DOING AN INVESTIGATION, WE DON'T HAVE
19 TIME TO SIT DOWN AND WRITE EVERYTHING VERBATIM, SO WE
20 KIND OF JUST WRITE THE KEY THINGS THAT WILL HELP US
21 REMEMBER WHEN WE GET BACK TO THE OFFICE AND ARE ABLE TO
22 PUT THAT INFORMATION INTO THE COMPUTER.

23 Q. OKAY. AND THOSE NOTES, THOSE ARE IN YOUR
24 HANDWRITING?

25 A. THAT'S RIGHT.

1 Q. OKAY. AND BASED ON THOSE NOTES DID YOU THEN
2 DEVELOP A BRIEF CASE SUMMARY?

3 A. I DID.

4 Q. AND AGAIN, WITH THE NOTES, THERE ARE, I BELIEVE
5 YOU MENTIONED SEVERAL TIMES ON THOSE NOTES?

6 A. CORRECT.

7 Q. IS THAT WHEN YOU WERE ACTUALLY TAKING THE NOTES
8 OR IS THAT REFERRING TO THE DEFENDANT'S TIME FRAME?

9 A. THAT WAS REFERRING TO THE DEFENDANT'S TIME FRAME,
10 THE TIME FRAME THAT THE DEFENDANT GAVE, THE SEQUENCE OF
11 EVENTS THAT HE GAVE AND AT WHAT TIMES.

12 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

13 MR. THOMPSON: RECROSS?

14 THE COURT: CERTAINLY.

15 MR. THOMPSON: I HAVE A COUPLE MORE
16 QUESTIONS FOR YOU, LIEUTENANT.

17 **RECROSS-EXAMINATION BY MR. THOMPSON:**

18 Q. STATE'S EXHIBIT NUMBER THREE (HANDING), CAN YOU
19 TELL THE COURT THE PROCEDURE ON MISTAKES?

20 A. ANY TIME THERE IS AN ERROR IN A VOLUNTARY
21 STATEMENT, I ALWAYS ASK THE DEFENDANT TO INITIAL AT THAT
22 AREA TO ACKNOWLEDGE THAT THERE WAS A MISTAKE MADE BY
23 MYSELF; WHETHER IT WAS A MISSPELLED WORD OR WHAT HAVE
24 YOU, I ASK THAT THE DEFENDANT, THE PERSON GIVING THE
25 STATEMENT INITIAL THAT THEY ARE AWARE THAT THAT WAS AN

1 ERROR, A CLERICAL ERROR.

2 Q. MISSPELLED WORDS AND MISTAKES. MISSPELLED WORDS.
3 MISSPELLED WORDS. MAY I SEE THAT, PLEASE?

4 A. UH-HUH (HANDING).

5 Q. MISSPELLED WORDS. I HAVE A COPY OF MY OWN
6 (HANDING).

7 OKAY. I WANT YOU TO START FROM THE TOP WHERE IT
8 SAYS DATE AND READ THAT, READ ALOUD AS YOU ADDRESS THE
9 COURT.

10 A. (READING):

11 DATE, 5-20-05, PLACE, WHITTEN
12 ROAD, PELZER. TIME STARTED, 4:15 P.M.

13 I, THE UNDERSIGNED, HOWARD
14 THOMPSON, AM 19 YEARS OF AGE, HAVING BEEN
15 BORN ON AT GREENVILLE, SOUTH
16 CAROLINA. I NOW LIVE AT ---

17 Q. BEFORE YOU GO ANY FURTHER, ON
18 AT WHAT?

19 A. AT GREENVILLE, SOUTH CAROLINA.

20 Q. IS THERE ANY MISTAKE RIGHT THERE?

21 A. IT LOOKS LIKE THE G WAS PROBABLY WRITTEN IN
22 TWICE, I DON'T KNOW, WRITTEN OVER.

23 Q. IF I'M NOT MISTAKEN, IT WAS WRITTEN OVER A 5. IS
24 THERE INITIALS BY THAT?

25 A. NO, THERE'S NOT.

1 Q. AND NOW, WHERE IT SAYS I, THE UNDERSIGNED, HOWARD
2 THOMPSON. AM I HOWARD THOMPSON?

3 A. YES, YOU ARE.

4 Q. NOW, YOU SAY THAT YOU READ THIS BACK TO ME,
5 CORRECT?

6 A. CORRECT.

7 Q. WELL, WOULDN'T I HAVE CORRECTED YOU ON MY REAL
8 NAME?

9 A. THAT WOULD HAVE BEEN UP TO YOU. I DON'T KNOW
10 WHETHER YOU WOULD HAVE OR NOT.

11 Q. OKAY. AND WOULD YOU CONTINUE FROM "I NOW LIVE".

12 A. (READING): -- AT WHITTEN ROAD IN PELZER.

13 Q. STOP RIGHT THERE. WHITTEN ROAD, PELZER.
14 THAT'S THE SECOND TIME THAT'S WRITTEN. AT THE BOTTOM OF
15 THIS, IT STATES (READING):

16 THE ENCOUNTERS WITH Minor OCCURRED
17 IN MY ROOM AT MY RESIDENCE AT WHITTEN
18 ROAD IN PELZER.

19 THAT'S ALSO ANOTHER MISTAKE AT THE TOP, TOO.
20 ARE THERE INITIALS BESIDE THAT?

21 A. IT DOES NOT.

22 Q. OKAY. CAN YOU START AGAIN AT "I HAVE BEEN DULY
23 WARNED?"

24 A. (READING):

25 I HAVE BEEN DULY WARNED AND

1 ADVISED BY N. CARSON, A PERSON WHO HAS
2 IDENTIFIED HIMSELF AS A DETECTIVE, THAT I
3 DO NOT HAVE TO MAKE ANY STATEMENT AT ALL,
4 NOR ANSWER ANY QUESTIONS --

5 DO YOU WANT ME TO CONTINUE ON?
6 DO YOU WANT ME TO READ THE WHOLE THING?

7 Q. YEAH.

8 A. (READING):

9 -- THAT I DO NOT HAVE TO MAKE ANY
10 STATEMENT AT ALL, NOR ANSWER ANY
11 QUESTIONS OR DO ANYTHING THAT MIGHT TEND
12 TO GO AGAINST ME OR INCRIMINATE ME IN ANY
13 MANNER, AND THAT ANY STATEMENT I MAKE CAN
14 AND WILL BE USED AGAINST ME ON THE TRIAL
15 OR TRIALS FOR THE OFFENSE OR OFFENSES
16 CONCERNING WHICH THE FOLLOWING STATEMENT
17 IS HEREIN MADE.

18 I WAS ALSO WARNED AND ADVISED OF
19 MY RIGHTS TO THE ADVICE AND PRESENCE OF A
20 LAWYER OF MY OWN CHOICE BEFORE OR AT ANY
21 TIME DURING THE QUESTIONING OR STATEMENT
22 I MAKE, AND IF I AM NOT ABLE TO HIRE A
23 LAWYER, I MAY REQUEST AND HAVE A LAWYER
24 APPOINTED FOR ME, BY THE PROPER
25 AUTHORITY, WITHOUT COST OR CHARGE TO ME.

1 I DO NOT WANT TO TALK TO A
2 LAWYER, AND I HEREBY KNOWINGLY AND
3 PURPOSELY WAIVE MY RIGHT TO THE ADVICE
4 AND PRESENCE OF A LAWYER BEFORE AND
5 DURING ANY QUESTIONING OR AT ANY TIME
6 BEFORE OR WHILE I VOLUNTARILY MAKE THE
7 FOLLOWING STATEMENT TO THE AFORESAID
8 PERSON, KNOWING THAT ANYTHING I SAY CAN
9 AND WILL BE USED AGAINST ME IN A COURT OR
10 COURTS OF LAW.

11 I DECLARE THAT THE FOLLOWING
12 VOLUNTARY STATEMENT IS MADE TO THE
13 AFORESAID PERSON OF MY OWN FREE WILL
14 WITHOUT PROMISE OF HOPE OR REWARD,
15 WITHOUT FEAR OR THREAT OF PHYSICAL HARM,
16 WITHOUT COERSION, FAVOR OR OFFER OF
17 FAVOR, WITHOUT LENIENCY OR OFFER OF
18 LENIENCY BY ANY PERSON OR PERSONS
19 WHOMSOEVER.

20 BEGINNING AT THE END OF FEBRUARY
21 I BEGAN ENGAGING IN SEXUAL ENCOUNTERS
22 WITH Minor 2 ON MORE THAN ONE
23 OCCASION I WOULD INSIST THAT Minor TAKE
24 OFF HIS CLOTHES AND I WOULD TAKE OFF MINE
25 AND WE WOULD GET IN THE BED.

1 Q. OKAY. WOULD YOU STOP RIGHT THERE, PLEASE. THE
2 SECOND SENTENCE DOWN IN THE STATEMENT, WHERE IT SAYS "ON
3 MORE THAN ONE OCCASION"?

4 A. UH-HUH.

5 Q. CAN YOU SPELL WHAT IS WRITTEN AS OCCASION?

6 A. O-C-C-A-I-S-O-N.

7 Q. WHAT IS THE CORRECT SPELLING OF OCCASION?

8 A. I HAVE IT AS O-C-C-A-I-S-O-N.

9 Q. SO THAT'S A MISSPELLED WORD, CORRECT?

10 A. I BELIEVE IT IS.

11 Q. SO IT WOULD HAVE AN INITIAL BY IT, CORRECT?

12 A. IF THAT IS MY BELIEVING OF HOW IT SHOULD BE
13 SPELLED, IF I HAD REALIZED IT WAS MISSPELLED, THERE
14 WOULD HAVE BEEN AN INITIAL BESIDE IT.

15 Q. OKAY. COULD YOU CONTINUE, "AND I WOULD INSIST"?

16 A. (READING):

17 I WOULD INSIST THAT Minor TAKE OFF
18 HIS CLOTHES AND I WOULD TAKE OFF MINE AND
19 WE WOULD GET IN THE BED. I WOULD SUCK
20 HIS PENIS. WE WOULD BE TAKING TURNS
21 GETTING UNDER THE COVERS. Minor WOULD
22 LICK ON MY NECK, CHEST, PENIS, DOWN TO MY
23 FEET.

24 Q. OKAY, THANK YOU.

25 THE SECOND SENTENCE THAT I HAD YOU READ

1 (READING): Minor WOULD LICK ON MY NECK, CHEST, PENIS,
2 DOWN TO MY FEET. LET'S GO TO THE WORD "CHEST". IS
3 THERE ANY INDENTIONS OR MISTAKES IN THAT WORD?

4 A. THE S AND THE T WERE WRITTEN AND DARKENED IN.

5 Q. SO IT WAS WRITTEN OVER A LETTER?

6 A. THAT'S CORRECT.

7 Q. IS THE T VERY NOTICEABLE?

8 A. IN MY OPINION, YES.

9 MR. THOMPSON: YOUR HONOR, IS IT OKAY IF I
10 SHOW THE JURY?

11 THE COURT: HAS THIS BEEN ADMITTED INTO
12 EVIDENCE?

13 MR. THOMPSON: YES, IT'S STATE'S EXHIBIT
14 NUMBER 3.

15 MS. HUEY: YOUR HONOR, I BELIEVE IT'S
16 STATE'S 16.

17 THE COURT: STATE'S EXHIBIT NUMBER 16.

18 ALL RIGHT. YOU CAN STEP DOWN AND -- THE
19 WITNESS CAN STEP DOWN, AND WITH YOU CAN SHOW THE JURY
20 WHAT YOU ARE REFERRING TO. JUST REMEMBER THE WITNESS IS
21 THE ONE TESTIFYING. IF YOU WOULD STEP DOWN WITH THE
22 EXHIBIT.

23 MR. THOMPSON: I WILL GIVE HER 16 REDACTED
24 VERSION. I BELIEVE YOU HAVE IT UP THERE.

25 THE COURT: OKAY. STEP DOWN TO THE JURY-BOX

1 AND BE SURE THAT SHE -- I WANT YOU JUST TO POINT OUT FOR
2 THE JURY WHAT YOU ARE REFERRING TO.

3 (THE WITNESS LEFT THE WITNESS STAND.)

4 THE COURT: BE SURE, MR. THOMPSON -- LET'S
5 DON'T GET IN THE BOX. AGAIN, THEY WILL HAVE THE
6 EXHIBITS, SO WHAT YOU WILL REALLY BE DOING IS JUST
7 POINTING TO WHERE THEY WILL BE LOOKING ON THE EXHIBIT
8 WHEN IT GETS TO THEM.

9 THE WITNESS: (COMPLIES.)

10 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

11 MR. THOMPSON: THANK YOU, YOUR HONOR.

12 (THE WITNESS RESUMED THE WITNESS STAND.)

13 BY MR. THOMPSON:

14 Q. SO WOULD THAT HAVE AN INITIAL BESIDE THAT?

15 A. IT DOES NOT. COULD IT HAVE HAD AN INITIAL OR
16 SHOULD I HAVE PUT AN INITIAL THERE? PROBABLY. OR
17 SHOULD I HAVE HAD YOU PUT YOUR INITIALS THERE?
18 PROBABLY.

19 MR. THOMPSON: NO FURTHER QUESTIONS.

20 THE COURT: RE, RE, RE-EXAM?

21 MS. HUEY: NO, SIR, I DON'T HAVE ANYTHING
22 FURTHER.

23 THE COURT: VERY GOOD. YOU MAY STEP DOWN.
24 THANK YOU, MA'AM.

25 (WHEREUPON, THE WITNESS WAS EXCUSED.)

1 **THE COURT:** I THINK IT WOULD BE TIME TO TAKE
2 A BREAK. MADAM FORELADY, YOU AND THE JURY RETIRE TO THE
3 JURY ROOM. IF THERE'S REFRESHMENTS BACK THERE, YOU
4 MIGHT AS WELL TAKE THIS AS YOUR AFTERNOON BREAK. I
5 MIGHT ALSO TELL YOU THAT IT'S MY POLICY OR WHATEVER, IT
6 DOESN'T ALWAYS WORK, IS THAT USUALLY WE BREAK AT 5:00.
7 I DO NOT LIKE TO SPLIT WITNESSES AS I DID OVER LUNCH,
8 BUT I USUALLY DO NOT TAKE WITNESSES THAT WILL GO BEYOND
9 5:00, BUT WE MIGHT FINISH A LITTLE EARLY, AND SOMETIMES
10 IF IT'S NECESSARY TO COMPLETE A WITNESS'S TESTIMONY, I
11 MIGHT GO A LITTLE BIT BEYOND 5:00.

12 I TELL YOU THIS BECAUSE IF ANY OF YOU NEED
13 TO MAKE CALLS OR SOMETHING LIKE THAT WHEN WE GET TO THAT
14 TIME, JUST LET US KNOW AND I WILL HAVE PHONES MADE
15 AVAILABLE. BUT WE SHOULD BE OUT BY 5:00 OR VERY CLOSE
16 THEREAFTER. VERY GOOD.

17 SO AGAIN, PLEASE DO NOT UNDERTAKE DISCUSSION
18 OF THE CASE AMONG YOURSELVES IN ANY WAY WHEN YOU RETIRE
19 TO THE JURY ROOM. AND WHEN YOU ARE READY TO COME BACK,
20 JUST KNOCK ON THE DOOR AND WE WILL CONTINUE WITH THE
21 TRIAL AT THAT TIME.

22 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
23 3:14 P.M.)

24 **THE COURT:** ANYTHING FROM THE STATE BEFORE
25 WE TAKE A BREAK?

1 MS. HUEY: NO, SIR, YOUR HONOR.

2 THE COURT: ANYTHING FROM THE DEFENDANT?

3 MR. THOMPSON: NO, SIR, YOUR HONOR.

4 THE COURT: ALL RIGHT. WE'LL STAND AT EASE
5 UNTIL THE JURY IS READY TO COME BACK.

6 (WHEREUPON, A RECESS WAS TAKEN.)

7 THE COURT: ANYTHING FROM THE STATE BEFORE
8 WE BRING THE JURY BACK?

9 MS. HUEY: NO, SIR, YOUR HONOR.

10 THE COURT: FROM THE DEFENDANT?

11 MR. THOMPSON: NO, SIR, YOUR HONOR.

12 THE COURT: VERY GOOD. ASK THE JURY TO JOIN
13 US.

14 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
15 3:34 P.M.)

16 THE COURT: LET THE RECORD REFLECT THAT THE
17 JURY AND ALTERNATE ARE IN THE JURY-BOX.

18 YOU MAY CALL YOUR NEXT WITNESS.

19 MS. HUEY: THANK YOU, YOUR HONOR. THE STATE
20 CALLS PETE NORMANDIN TO THE STAND.

21 (WHEREUPON, THE WITNESS WAS SWORN BY THE
22 CLERK.)

23 THE CLERK: PLEASE STATE YOUR FULL NAME AND
24 SPELL YOUR LAST NAME FOR THE RECORD.

25 THE WITNESS: PETER JOSEPH NORMANDIN,

1 N-O-R-M-A-N-D-I-N.

2 WHEREUPON,

3 **PETER JOSEPH NORMANDIN,**

4 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS

5 FOLLOWS:

6 **DIRECT EXAMINATION BY MS. HUEY:**

7 Q. NOW, MR. NORMANDIN, WHERE DO YOU WORK?

8 A. ANDERSON COUNTY SHERIFF'S OFFICE.

9 Q. HOW LONG HAVE YOU BEEN WITH THEM?

10 A. SIX YEARS.

11 Q. AND DID YOU HAVE ANY PRIOR LAW ENFORCEMENT
12 EXPERIENCE?

13 A. YES, MA'AM. I HAVE A TOTAL OF 16 YEARS.

14 Q. WHAT IS YOUR CURRENT POSITION WITH THE SHERIFF'S
15 OFFICE?

16 A. I'M A ROAD SERGEANT, BRAVO SHIFT, I SUPERVISE THE
17 PATROL UNITS.

18 Q. NOW, PRIOR TO THIS PARTICULAR ASSIGNMENT, WHAT
19 WAS YOUR POSITION?

20 A. I WAS ASSIGNED TO CRIMINAL INVESTIGATION DIVISION
21 AT THE SHERIFF'S OFFICE, SEX CRIMES AND CRIMES AGAINST
22 CHILDREN; AND PRIOR TO THAT I WAS A HOMICIDE AND CRIMES
23 AGAINST PERSONS, WHICH WOULD INCLUDE ROBBERIES, ASSAULT
24 AND BATTERIES, HIGH AND AGGRAVATED, STUFF LIKE THAT,
25 STABBINGS.

1 Q. SO IN MAY OF 2005, THOUGH, YOU WERE AN
2 INVESTIGATOR SPECIFICALLY IN SEX CRIMES AND CRIMES
3 AGAINST CHILDREN?

4 A. YES, MA'AM.

5 Q. AND WERE YOU WORKING WITH NIKKI CARSON AT THIS
6 TIME?

7 A. YES, MA'AM.

8 Q. NOW, WHAT KIND OF TRAINING DID YOU RECEIVE FOR
9 THIS TYPE OF INVESTIGATION?

10 A. WELL, I LATER ON -- I HAD BEEN TRANSFERRED
11 RECENTLY INTO CRIMES AGAINST CHILDREN, SEX CRIMES, WHEN
12 THIS CASE CAME UP. BUT I WENT IN DEFINING WORDS, I WENT
13 TO HOW TO DEAL WITH THE ELDERLY, THE MENTALLY
14 HANDICAPPED AS FAR AS SEX CRIMES GO. THROUGHOUT MY TIME
15 UPSTAIRS I WAS SENT TO SEVERAL DIFFERENT SCHOOLS.

16 Q. NOW, DID YOU BECOME INVOLVED IN THE INVESTIGATION
17 OF THIS PARTICULAR EVENT?

18 A. YES, MA'AM.

19 Q. AND DID YOU DO SO WITH NIKKI CARSON?

20 A. YES, MA'AM.

21 Q. WHAT WAS YOUR INVOLVEMENT; WHEN DID YOUR
22 INVOLVEMENT START?

23 A. MY INVOLVEMENT WAS -- THE CASE WAS ASSIGNED --
24 WELL, THE CASE GOT SENT UPSTAIRS -- THE CASE WAS TAKEN,
25 THE REPORT, ON MAY THE 18TH AT NIGHTTIME, AROUND, OH, I

1 GUESS AROUND -- THE OFFICER GOT ON SCENE AT THE HOSPITAL
2 AT NINE MINUTES TO NINE ON THE 18TH. THEN IT IS
3 FORWARDED UPSTAIRS TO THE INVESTIGATIONS.

4 Q. OKAY. AND SO WHEN DO YOU THINK YOU RECEIVED IT?

5 A. IT WOULD BE IN THE MORNING. I WOULD HAVE
6 RECEIVED IT WHEN I CAME IN TO WORK THE NEXT MORNING.

7 Q. OKAY. NOW, WERE YOU INVOLVED IN Minor 2 FORENSIC
8 INTERVIEW AT ALL?

9 A. NO, I WAS NOT. I WAS NOT TRAINED IN IT AT THAT
10 POINT, I WOULD HAVE NO INVOLVEMENT WITH THAT.

11 Q. YOU WEREN'T IN THE ROOM OR ANYTHING?

12 A. NO, MA'AM.

13 Q. DID YOU KNOW IT WAS GOING ON NONETHELESS?

14 A. I SPOKE TO INVESTIGATOR CARSON AS THINGS
15 PROGRESSED, YES, MA'AM.

16 Q. IS IT TYPICAL FOR PARTNERS TO SHARE INFORMATION?

17 A. YES. WITH CRIMES AGAINST CHILDREN OR ANY
18 INVESTIGATIONS ITSELF, WHEN YOU HAVE PARTNERS, WE WERE A
19 TWO-PERSON UNIT, SO IF SHE WAS WORKING ON A CASE AND I
20 WAS WORKING ON A CASE, SEPARATE ONE, WE WOULD STILL TALK
21 TO EACH OTHER ABOUT THE OTHER'S CASES, AND THEN ON
22 CERTAIN ONES WE WOULD -- YOU KNOW, SHE WOULD HAVE
23 SPECIFIC INVOLVEMENT AND I WOULD HAVE ANOTHER
24 INVOLVEMENT IF IN IT, PICK UP THE SLACK, OR IF SHE
25 NEEDED SOMETHING ELSE, I WOULD HELP HER OUT WITH THAT.

1 Q. WOULD Y'ALL HAVE A LEAD INVESTIGATOR,
2 NECESSARILY?

3 A. AT TIMES, YES. AT THIS TIME, BEING JUST
4 TRANSFERRED INTO IT, I STEPPED BACK. YOU KNOW, I WANTED
5 TO LEARN, I DIDN'T WANT TO -- I WANTED TO MAKE SURE WE
6 HAD ALL OUR THINGS, OUR PROCEDURES DONE CORRECTLY.

7 Q. SO YOU ASSISTED NIKKI?

8 A. I ASSISTED HER.

9 Q. ONCE THE FORENSIC INTERVIEW HAPPENED, WHAT DID
10 YOU ALL THEN DO AS A RESULT?

11 A. ONCE THE INTERVIEW WAS OVER, INVESTIGATOR CARSON
12 ADVISED ME OF WHAT WAS TOLD TO HER, AND WHAT WAS
13 DISCLOSED AS FAR AS ANY POSSIBLE EVIDENCE, AND THIS
14 BEING IN THAT CASE PICTURES PARTICULARLY. IT WOULD GO
15 OVER IN SPECIFIC PICTURES ---

16 MR. THOMPSON: OBJECTION, YOUR HONOR.

17 THE COURT: JUST A MOMENT.

18 STATE YOUR OBJECTION.

19 MR. THOMPSON: HEARSAY.

20 THE COURT: HE DIDN'T SAY ANYTHING THAT
21 SOMEBODY SAID. HE SAID THAT HE DID SOMETHING IN
22 RESPONSE TO SOMETHING THAT OCCURRED. OVERRULED.

23 BY MS. HUEY:

24 Q. AFTER LEARNING OF THIS, WHAT WAS YOUR NEXT STEP?

25 A. TO MAKE CONTACT WITH THE SUSPECT.

1 Q. AND DO YOU KNOW WHEN YOU MADE CONTACT WITH THE
2 SUSPECT?

3 A. WELL, THE NOTES THAT HAVE BEEN -- IT WAS 12:45
4 STATES I MADE CONTACT.

5 Q. AND IN THAT PARTICULAR CASE WHAT DOES CONTACT
6 MEAN?

7 A. WITH ME CONTACT MEANS I TALK TO YOU ONE WAY OR
8 ANOTHER.

9 Q. AND WHY WOULD YOU CALL FIRST?

10 A. WELL, BEING A TWO-MAN UNIT, AND UNFORTUNATELY
11 WITH THE AMOUNT OF CASELOAD WE HAVE, YOU KNOW, IN SEX
12 CRIMES, I WOULD RATHER USE MY TIME WISELY THAN JUST TO
13 DRIVE UP TO PELZER FROM ANDERSON. IF I'M NOT SURE
14 YOU'RE GONNA BE HOME, IF YOU ARE A SUSPECT AND I CALL
15 YOU AND YOU ARE NOT HOME, WELL, THEN I CAN WORK ON
16 ANOTHER CASE THAT I CAN GET AHOLD OF SOMEBODY. SO TO ME
17 I MAKE -- I TRY TO CONTACT MY SUSPECTS, AND IF THEY ARE
18 WILLING TO TALK TO ME I SHOOT ON UP THERE. I GET MY
19 STUFF TOGETHER AND THEN I GO UP.

20 Q. AND HOW FAR IS PELZER FROM ANDERSON?

21 A. OH, I DON'T KNOW HOW MANY TIMES. IT SEEMS
22 FOREVER SOMETIMES WHEN YOU GET BEHIND A SLOW CAR OR
23 SOMETHING.

24 Q. HOW LONG DO YOU THINK IT TOOK TO YOU DRIVE THERE?

25 A. PROBABLY 30 MINUTES. YOU KNOW, NOT FAMILIAR WITH

1 THE AREA, I'VE BEEN EMPLOYED WITH ANDERSON FOR SIX
2 YEARS, AND I WAS ASSIGNED AS ROAD PATROL AND I STAYED IN
3 LOWER ANDERSON, SOUTH SIDE, WEST SIDE AREA, SO IT'S
4 CONSIDERED ZONE FIVE, AND UP IN PELZER, PIEDMONT IS
5 CONSIDERED THE DISTRICT, AND MY PATROL EXPERIENCE DIDN'T
6 VENTURE THAT HIGH VERY MUCH, SO SPECIFIC ROADS WERE
7 DIFFICULT AND LOOKING AT MAPS AND STUFF.

8 Q. AND WHEN YOU CALLED YOU WOULD ALSO GET
9 DIRECTIONS?

10 A. I BELIEVE SO. GIVE ME A ROUNDABOUT WHERE I CAN
11 FIND YOU. AND IF YOU DRIVE AROUND IN ANDERSON, YOU KNOW
12 HALF THE ROAD SIGNS ARE NOT ON THERE. SO YOU COULD TELL
13 ME IT'S OFF THIS ROAD, BUT IF IT'S NOT THREE ROADS FROM
14 IT, I MAY TAKE SOME TIME TO FIND IT.

15 Q. WHAT TIME DO YOU THINK YOU ALL ACTUALLY ARRIVED
16 AT THE DEFENDANT'S HOUSE?

17 A. ACCORDING TO THE LOG, IT'S 2:45.

18 Q. NOW, ONCE YOU GOT TO THE DEFENDANT'S HOUSE -- AND
19 AGAIN, WERE YOU WITH NIKKI AT THIS TIME?

20 A. YES, MA'AM.

21 Q. OKAY. Y'ALL DROVE THE SAME CAR?

22 A. YES, MA'AM.

23 Q. ONCE Y'ALL GOT TO THE DEFENDANT'S HOUSE, WHAT WAS
24 THE FIRST THING THAT HAPPENED?

25 A. INVESTIGATOR CARSON, WE STARTED OFF WITH MIRANDA,

1 YOU KNOW, LET HIM KNOW WHAT WAS GOING ON AND HIT HIM
2 WITH MIRANDA.

3 Q. AND IS THAT TYPICALLY HOW IT'S HANDLED?

4 A. WITH US IT IS. IN INVESTIGATIONS, IT'S BETTER,
5 IT'S BETTER TO LET YOU KNOW YOUR RIGHTS FROM THE GET-GO
6 THAN TRY TO SURPRISE YOU. IT'S BEEN MY EXPERIENCE IN
7 LAW ENFORCEMENT, YOU KNOW, IF YOU TRY TO BE SNEAKY, YOU
8 KNOW, THERE'S A DISTRUST. BUT IF I TELL YOU RIGHT UP
9 FRONT THAT YOU HAVE THE RIGHT TO REMAIN SILENT, THEN YOU
10 KNOW YOU DON'T HAVE TO TALK TO ME AND THEN I CAN GO
11 ABOUT MY BUSINESS AND FIGURE OUT WHAT MORE WE NEED TO
12 DO.

13 Q. SO THAT IS, IN FACT, WHAT HAPPENED?

14 A. UH-HUH.

15 Q. NOW, DO YOU KNOW THE DEFENDANT INDICATED THAT HE
16 WANTED TO GIVE A STATEMENT?

17 A. YES, MA'AM.

18 Q. AND WERE YOU PRESENT FOR THAT FIRST STATEMENT?

19 A. I DIDN'T STAY IN THE ROOM WITH INVESTIGATOR
20 CARSON, I WAS IN AND OUT. MOM HAD SHOWED UP. MOM
21 DIDN'T WANT TO KNOW WHAT WAS GOING ON. SO I DID A LOT
22 OF SMALL TALK.

23 Q. I'M SORRY, SHE SAID SHE DID NOT WANT TO KNOW WHAT
24 WAS GOING ON?

25 A. SHE DIDN'T WANT TO KNOW WHAT WAS GOING ON AS FAR

1 AS WHAT THE COMPLAINT WAS, SO I JUST, BASICALLY JUST
2 SMALL TALK, JUST TO PASS THE TIME, I MEAN, UNTIL WE GET
3 TO THE NEXT STEP OF WHAT WE'RE GONNA DO.

4 Q. NOW, WAS NIKKI OR THE DEFENDANT EVER OUT OF YOUR
5 EARSHOT WHILE THE FIRST STATEMENT WAS GOING ON?

6 A. NO. WE WERE INSIDE THE HOUSE AT THIS POINT.

7 Q. AT ANY POINT DID YOU EVER HEAR ANYTHING
8 INAPPROPRIATE COMING FROM NIKKI CARSON IN THAT FIRST
9 STATEMENT?

10 A. NO.

11 Q. ANY THREATS OR COERCION?

12 A. NO, MA'AM.

13 Q. ANY INTIMIDATION?

14 A. NO.

15 Q. NOW, ARE YOU FAMILIAR WITH HOW THE SECOND
16 STATEMENT CAME ABOUT?

17 A. THE SECOND STATEMENT CAME ABOUT -- YOU ARE
18 TALKING ABOUT THE WRITTEN STATEMENT, CORRECT?

19 Q. THE SECOND WRITTEN STATEMENT.

20 A. THE SECOND STATEMENT CAME ABOUT IS ONCE WE
21 OBTAINED THE CONSENT TO SEARCH AND WE WERE LOOKING FOR
22 SPECIFIC ITEMS, SPECIFIC PICTURES THAT THE JUVENILE
23 HAD ---

24 MR. THOMPSON: OBJECTION, YOUR HONOR.

25 THE COURT: STATE YOUR OBJECTION.

1 MR. THOMPSON: HEARSAY.

2 THE COURT: AGAIN, THEY'RE SAYING THEY ARE
3 LOOKING FOR SOMETHING AS A RESULT OF THE CONVERSATION,
4 NOT WHAT WAS SAID. OVERRULED.

5 A. WE WERE LOOKING FOR SPECIFIC PICTURES THAT THE
6 CHILD HAD TOLD INVESTIGATOR CARSON ---

7 THE COURT: WHOA, THAT IS HEARSAY.

8 BY MS. HUEY:

9 Q. WITHOUT SAYING WHAT THE CHILD SAID, AS A RESULT
10 OF SPEAKING TO THE CHILD ---

11 A. AS A RESULT OF SPEAKING TO THE CHILD, WE LOOKED
12 FOR SPECIFIC PICTURES.

13 Q. OKAY. AND DID YOU ALL, IN FACT, FIND THOSE
14 PICTURES?

15 MR. THOMPSON: YOUR HONOR?

16 THE COURT: YES, SIR.

17 MR. THOMPSON: MAY I REQUEST A LEGAL MATTER
18 OUTSIDE THE PRESENCE OF THE JURY?

19 THE COURT: CERTAINLY. ALL RIGHT.

20 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
21 JURY, IF YOU WILL RETIRE TO THE JURY ROOM FOR JUST A
22 MOMENT. AGAIN, DO NOT UNDERTAKE DISCUSSION OF THE CASE
23 AMONG YOURSELVES IN ANY WAY.

24 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
25 3:45 P.M.)

1 **THE COURT:** ALL RIGHT. STATE YOUR
2 OBJECTION.

3 **MR. THOMPSON:** YOUR HONOR, I MADE A MOTION
4 IN LIMINE BASED ON HEARSAY, AND THE OBJECTION -- HOLD
5 ON, YOUR HONOR.

6 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
7 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

8 **MR. THOMPSON:** YOUR HONOR, I'LL START OVER.
9 I MADE A MOTION IN LIMINE WHICH LIMITS HEARSAY, AND I
10 ALSO OBJECT TO HEARSAY, AND THE WITNESS WENT BACK ON TO
11 HEARSAY, AND I'M ASKING FOR A MOTION FOR A MISTRIAL.

12 **THE COURT:** ALL RIGHT. ANY REFERENCE TO A
13 CONVERSATION WITH THE PARTY, YOU WANT TO ELIMINATE ANY
14 REFERENCE OR CONVERSATION TO A PARTY?

15 **MR. THOMPSON:** YES, SIR.

16 **THE COURT:** WHETHER THAT REFERENCE TO THE
17 CONVERSATION IS OFFERED FOR THE TRUTH OR NOT, BUT JUST
18 THAT THE ---

19 **MR. THOMPSON:** I ALSO MAKE A MOTION FOR A
20 MISTRIAL.

21 **THE COURT:** PARDON?

22 **MR. THOMPSON:** I ALSO MAKE A MOTION FOR A
23 MISTRIAL.

24 **THE COURT:** MISTRIAL, ALL RIGHT. OVERRULED
25 ON THE MISTRIAL.

1 WHAT DO YOU SAY?

2 MS. HUEY: YOUR HONOR, I THINK MR. NORMANDIN
3 DIDN'T UNDERSTAND THAT HE'S NOT ALLOWED TO SAY WHAT THE
4 CHILD SAID, AND WE'RE ABOUT TO MOVE ON TO ANOTHER
5 SUBJECT. IF YOU FEEL LIKE A CURATIVE INSTRUCTION SHOULD
6 BE DONE, I WOULD BE HAPPY TO HAVE THAT.

7 THE COURT: ALL RIGHT. ANYTHING ELSE? (NO
8 RESPONSE.)

9 MISTRIAL IS DENIED.

10 I DON'T FIND THAT THE TESTIMONY IS HEARSAY
11 AS SUCH. IT'S NOT NECESSARILY OFFERED FOR THE TRUTH,
12 IT'S OFFERED FOR THE FACT THAT A CONVERSATION TOOK PLACE
13 AND AS A RESULT OF THAT CONVERSATION, THEY WERE LOOKING
14 FOR CERTAIN ITEMS AND THEY FOUND CERTAIN ITEMS. ANY
15 REFERENCE TO ACTUAL WORDS OR STATEMENTS MADE WOULD BE --
16 OR THAT COULD BE CONSTRUED AS HEARSAY. SO I'M GOING TO
17 INSTRUCT THE WITNESS NOT TO TALK ABOUT WHAT SOMEBODY
18 MIGHT HAVE SAID. HE CAN SAY, WELL, I HAD A CONVERSATION
19 WITH SOMEONE AND AS A RESULT OF THAT CONVERSATION I WENT
20 TO LOOK FOR SOMETHING.

21 THE WITNESS: YES, SIR.

22 THE COURT: BUT NOT AS FAR AS ACTUALLY
23 SAYING THAT, THE WORDS OR ANYTHING LIKE THAT, THAT'S
24 SOMETHING ELSE. THAT'S HEARSAY.

25 ALL RIGHT. ANYTHING ELSE FROM THE STATE?

1 MS. HUEY: NO, SIR, YOUR HONOR.

2 THE COURT: SUBJECT TO THE COURT'S RULINGS
3 ON BOTH THE MOTION IN LIMINE, AND THE MOTION TO EXCLUDE
4 THE TESTIMONY OF THE WITNESS, AND YOUR MOTION FOR A
5 MISTRIAL BEING DENIED, OVERRULED, OR CONTINUED.

6 ALL RIGHT. ASK THE JURY TO JOIN US.

7 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
8 3:49 P.M.)

9 THE COURT: MADAM FORELADY, LADIES AND
10 GENTLEMEN OF THE JURY -- BY THE WAY, LET THE RECORD SHOW
11 THEY'RE ALL IN THE BOX -- AN OBJECTION HAS BEEN MADE TO
12 CERTAIN TESTIMONY AS BEING HEARSAY. PLEASE UNDERSTAND
13 THAT ANYTHING THAT SOMEONE OFFERS FOR THE TRUTH OF WHAT
14 THEY HEAR SOMEBODY SAY, WHEN THEY ARE TALKING ABOUT THE
15 WORDS THAT THEY ARE USING AS BEING THE TRUTH OF
16 SOMETHING, IS HEARSAY.

17 WE HAVE ALREADY DISCUSSED THERE ARE CERTAIN
18 EXCEPTIONS WHICH GIVE A FORM OF TRUSTWORTHINESS TO
19 STATEMENTS THAT ARE MADE IN A CONTEXT AT A TIME BEFORE
20 WE CAN ADDUCE OR GIVE SOME METHOD TO CREATING SOMETHING
21 WHICH SOMEONE WANTS TO SAY OR HEAR SOMEBODY SAY, IF IT'S
22 DONE SPONTANEOUSLY UNDER THE EXCITEMENT OF THE EVENT OR
23 SOMETHING LIKE THAT, THAT GIVES IT CERTAIN
24 TRUSTWORTHINESS.

25 BUT ALSO, DO UNDERSTAND THAT ANYTHING THAT

1 ONE HEARS IS NOT IN ITSELF HEARSAY, BECAUSE HEARING IS
2 ONE OF THOSE SENSES WE ALL USE EVERY DAY, AND UNLESS WE
3 OFFER IT FOR WHAT IT'S GOING TO BE THE TRUTH OF WHAT
4 SOMEBODY SAID, WHAT WE THINK WE HEAR, IT'S NOT
5 HEARSAY -- IF IT IS NO MORE THAN WHAT WE THINK WE HEAR,
6 IN OTHER WORDS, IF WE HEAR A BUMP IN THE NIGHT, THAT
7 DOESN'T MEAN THERE'S A DEMON UNDER YOUR BED. YOU MIGHT
8 GET UP AND INVESTIGATE AND YOU MIGHT FIND OUT IT'S A CAT
9 OR SOMETHING LIKE THAT. BUT YOU HEARD SOMETHING. IT'S
10 NOT THE TRUTH OF WHAT YOU THOUGHT IT WAS, IT'S THE FACT
11 THAT YOU HEARD -- YOU REACTED IN RESPONSE TO WHAT YOU
12 HEARD. THE SAME AS YOU SEE SOMETHING, THE SAME AS YOU
13 TOUCH SOMETHING. THE STOVE, IF IT'S HOT, YOU KNOW IT'S
14 HOT, IT'S A SENSE THAT YOU HAVE.

15 BUT YOU CANNOT PROVE A FACT BY BASED ON WHAT
16 SOMEBODY ELSE TOLD YOU, AND THAT'S WHAT HEARSAY IS, YOU
17 CAN'T EXERCISE YOUR SENSES. IF YOU DO SOMETHING IN
18 REACTION TO THAT, WHAT YOU HEAR, THAT IS ADMISSIBLE,
19 SAME, AS I SAY, IF YOU REACT TO SOMETHING THAT YOU SEE
20 OR TOUCH.

21 SO WITH THAT WE'LL CONTINUE, AND ALL OF OUR
22 WITNESSES ARE TO BE ADMONISHED NOT TO TALK ABOUT WHAT
23 THEY THOUGHT SOMEBODY HEARD AS MUCH AS WHAT THEY DID IN
24 RESPONSE TO WHAT THEY THOUGHT THEY HEARD.

25 ALL RIGHT. NOW YOU MAY PROCEED.

1 MS. HUEY: THANK YOU, JUDGE.

2 THE COURT: AND DISREGARD ANYTHING THAT HAS
3 BEEN SAID THAT THEY HEARD SOMEBODY SAY..

4 GO AHEAD.

5 BY MS. HUEY:

6 Q. DID YOU FIND SOME PICTURES?

7 A. YES, MA'AM, WE DID.

8 Q. WERE YOU ASSISTING NIKKI IN THE SEARCH FOR THOSE
9 PICTURES?

10 A. YES, MA'AM.

11 Q. I'M GONNA SHOW YOU WHAT'S BEEN PREVIOUSLY
12 ADMITTED AS STATE'S 4 THROUGH 13. WILL YOU TAKE A LOOK
13 AT THOSE?

14 A. YES, MA'AM.

15 Q. AND DO YOU RECOGNIZE THOSE PICTURES?

16 A. YES, MA'AM.

17 Q. ARE THOSE, IN FACT, THE PICTURES THAT YOU TOOK
18 FROM THE DEFENDANT'S HOUSE?

19 A. YES.

20 Q. WHEN ASSISTING NIKKI CARSON?

21 A. YES, MA'AM.

22 Q. HAVE THEY BEEN ALTERED IN ANY WAY?

23 A. NO.

24 Q. NOW, ONCE THOSE PICTURES WERE RECOVERED, WHAT
25 HAPPENED NEXT, IF ANYTHING?

1 A. I SPOKE TO THE DEFENDANT THE SECOND TIME, ADVISED
2 HIM THAT THE FIRST STATEMENT HE HAD GIVEN AND ANY ORAL
3 STATEMENTS THAT HE HAD GIVEN, YOU KNOW, WHAT ELSE IS
4 GOING ON HERE? YOU KNOW, WHAT MORE IS THERE? NOW WE
5 HAVE WHAT WE WERE LOOKING -- WHAT WE WERE ADVISED WE
6 NEEDED TO LOOK FOR, WE DUG A LITTLE DEEPER INTO AN
7 INVESTIGATION.

8 Q. AND DID HE, IN FACT, SAY HE WANTED TO GIVE A
9 SECOND STATEMENT THEN?

10 A. YES, MA'AM.

11 Q. OKAY. AND HOW DID HE WANT TO GIVE THE SECOND
12 STATEMENT?

13 A. OUT OF EARSHOT OF HIS MOM. HE WANTED TO TALK TO
14 INVESTIGATOR CARSON, AND HE GAVE A WRITTEN STATEMENT.

15 Q. AND SO DID THAT, IN FACT, HAPPEN?

16 A. YES, MA'AM.

17 Q. WHERE WAS THE SECOND STATEMENT DONE?

18 A. IT WAS IN INVESTIGATOR CARSON'S VEHICLE.

19 Q. AND WHERE WERE YOU WHILE THAT WAS GOING ON?

20 A. IN THE HOUSE, ON THE PORCH, BACK AND FORTH
21 CHECKING ---

22 Q. AND WHAT ELSE -- I'M SORRY, GO AHEAD.

23 A. CHECKING ON INVESTIGATOR CARSON BECAUSE SHE WAS
24 IN THE VEHICLE, YOU KNOW, WITH A SUSPECT. PARTNERS TEND
25 TO CHECK ON EACH OTHER TO MAKE SURE EVERYBODY IS ALL

1 RIGHT.

2 Q. AND IN CHECKING ON MS. CARSON, DID YOU EVER GO UP
3 TO THE VEHICLE?

4 A. YES.

5 Q. AND DID YOU EVER SEE ANYTHING INAPPROPRIATE
6 ANYTIME BETWEEN MS. CARSON AND THE DEFENDANT?

7 A. NO.

8 Q. WAS THE DEFENDANT HANDCUFFED AT THE TIME?

9 A. NO, HE WAS NOT.

10 Q. DID HE SEEM TO BE CALM?

11 A. YES.

12 Q. DID YOU WITNESS ANY KIND OF INTIMIDATION OR
13 COERCION FROM NIKKI CARSON?

14 A. NO, MA'AM.

15 Q. AND THEN WHAT, IF ANY, OTHER INVOLVEMENT DID YOU
16 HAVE WITH THE CASE?

17 A. ONCE WE OBTAINED THE INFORMATION, YOU KNOW, THE
18 SECOND STATEMENT, HE WAS ADVISED THAT CHARGES WERE GONNA
19 BE FILED, HE WAS GONNA BE PLACED UNDER ARREST. AND HE
20 WAS OFFERED AN OPPORTUNITY, KNOWING HE WAS GRADUATING
21 TOMORROW, SATURDAY, WE OFFERED HIM THE OPPORTUNITY, DO
22 YOU WANT TO GO WALK AND GET YOUR DIPLOMA, WALK ACROSS
23 THE STAGE? AND HE STATED, NO, THAT HE WANTED TO GO
24 AHEAD AND GET IT OVER WITH.

25 Q. AND DID IT TAKE A WHILE FOR Y'ALL TO ACTUALLY GET

1 HIM DOWN TO THE STATION?

2 A. YES, IT DID. AS INVESTIGATOR CARSON HAD STATED,
3 WE HAD TAKEN HER VEHICLE THAT AFTERNOON. WE SWAP OFF
4 CARS. WHATEVER IS CLOSEST WHEN WE GET OUT OF THE
5 OFFICE, WE JUST JUMP IN THE CAR. HERS HAPPENED TO BE
6 CLOSER. WE HAD JUST FINISHED AN INVES- -- WE WERE DOING
7 SOMETHING EARLIER. EVERYTHING WAS IN MY CAR. WE DIDN'T
8 HAVE HANDCUFFS.

9 WHEN YOU DEAL WITH CHILDREN, WE WORE PLAIN
10 CLOTHES. I'D ALWAYS WEAR A DIFFERENT COLOR SHIRT. I
11 WOULDN'T WEAR WHITE AND BLACK, I WOULD WEAR PINK AND
12 BLACK OR WHATEVER MY WIFE PICKED OUT FOR ME FOR THE DAY.
13 AND I WORE A GUN, BUT IT WAS SMALLER GUN, AND A BADGE.
14 BUT WE DIDN'T WEAR HANDCUFFS ON OUR BELT BECAUSE WE
15 DON'T HAVE THE HANDCUFF CASE LIKE WHEN WE WOULD IN
16 UNIFORM. SO WITH THAT I DIDN'T HAVE IT ON MY BELT. SO
17 I USUALLY KEEP THEM IN THE DOOR OF MY CAR. WE DIDN'T
18 TAKE MY CAR, YOU KNOW, WE TOOK INVESTIGATOR CARSON'S
19 CAR.

20 Q. WAS MS. CARSON IN PLAIN CLOTHES AS WELL?

21 A. YES.

22 Q. NOW, DID YOU DO A SUPPLEMENTAL REPORT?

23 A. YES, MA'AM.

24 Q. AND I THINK THERE'S BEEN REFERENCE TO YOUR
25 SUPPLEMENTAL REPORT?

1 A. YES, MA'AM.

2 Q. I SHOW YOU DEFENSE EXHIBIT ONE. THIS IS DEFENSE
3 EXHIBIT ONE. IS THAT YOUR SUPPLEMENTAL REPORT?

4 A. YES, MA'AM.

5 Q. NOW, IN THAT REPORT IS THERE A MENTION OF A
6 WRITTEN STATEMENT REGARDING Minor MESSING ON HIMSELF?

7 A. YES, THERE IS.

8 Q. OKAY. AND WHAT, IF ANYTHING, DOES THAT MEAN TO
9 YOU?

10 A. WELL, TWO STATEMENTS WERE OBTAINED. THE FIRST
11 ONE WHERE HE SAID IT WAS HOT AND WEAR A SHIRT, AND THE
12 SECOND ONE WHERE HE STATED ENCOUNTERED, OR HAD SEXUAL
13 ENCOUNTERS WITH THE CHILD. THERE WAS VERBAL STATEMENTS
14 BEING MADE. WHEN I DID THE REPORT, I COMPILED
15 INVESTIGATOR CARSON'S NOTES ALONG WITH MENTAL STUFF THAT
16 WE REMEMBER AND WENT THROUGH.

17 I SEEN IT ON A PIECE OF PAPER THAT HE MESSED
18 HIMSELF; I PUT IT ON THERE IT WAS A WRITTEN STATEMENT.
19 THAT WAS MY ERROR. AT THAT POINT IT WASN'T A WRITTEN
20 STATEMENT, IT WAS IN HER WRITTEN NOTES, SO THAT WOULD BE
21 ONE OF MY ERRORS.

22 Q. HOW MANY WRITTEN STATEMENTS ARE THERE?

23 A. THERE'S TWO WRITTEN STATEMENTS.

24 Q. AND THEN THE ORAL STATEMENT; IS THAT CORRECT?

25 A. IT'S AN ORAL STATEMENT, YES.

1 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

2 THE COURT: THANK YOU VERY MUCH.

3 CROSS-EXAMINATION?

4 CROSS-EXAMINATION BY MR. THOMPSON:

5 Q. FOR THE RECORD CAN YOU STATE WHEN YOU WAS
6 ASSIGNED TO THIS CASE?

7 A. I'M SORRY?

8 Q. CAN YOU STATE FOR THE RECORD WHEN YOU WERE
9 ASSIGNED TO THIS CASE?

10 A. WELL, THE CASE WAS WRITTEN -- THE REPORT WAS
11 WRITTEN ON MAY 18TH, 2005, AT NIGHTTIME, SO I AM
12 ASSUMING THE 19TH, WHEN I CAME IN TO WORK I WAS ASSIGNED
13 THE CASE.

14 Q. ON THE 19TH?

15 A. THAT'S WHAT I SAID, YES, SIR, THE 19TH.

16 Q. DID YOU SPEAK WITH SARA HIOTT YOURSELF?

17 A. NO. I CALLED HER ON THE 19TH, LEFT A MESSAGE ON
18 THE CELL PHONE THAT I RECEIVED HER COMPLAINT.

19 Q. WHO INTERVIEWED THE VICTIM Minor 2

20 A. INVESTIGATOR CARSON.

21 Q. YOU NEVER WAS DISCLOSED ANY INFORMATION FROM THE
22 VICTIM?

23 A. NO. INVESTIGATOR CARSON CONDUCTED THE FORENSICS
24 INTERVIEW, AND ANY INFERENCE THAT WAS PASSED ON TO
25 HIM -- TO HER WAS HANDED ON TO ME.

1 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
2 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

3 MR. WHITEN: YOUR HONOR, MAY WE APPROACH FOR
4 A MOMENT?

5 THE COURT: CERTAINLY.

6 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
7 CONFERRED WITH THE COURT OUT OF THE PRESENCE
8 OF THE COURT REPORTER AND THE JURY.)

9 MS. HUEY: YOUR HONOR, MAY WE APPROACH
10 AGAIN?

11 THE COURT: YES, MA'AM.

12 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
13 CONFERRED WITH THE COURT OUT OF THE PRESENCE
14 OF THE COURT REPORTER AND THE JURY.)

15 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
16 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

17 MR. THOMPSON: I WOULD LIKE TO ADD THIS AS
18 EXHIBIT 6 FOR IDENTIFICATION ONLY.

19 THE COURT: VERY GOOD.

20 (DEFENDANT'S EX. # 6, WARRANT, WAS MARKED FOR
21 IDENTIFICATION.)

22 BY MR. THOMPSON:

23 Q. CAN YOU IDENTIFY THAT?

24 A. IT'S A COPY OF A WARRANT.

25 Q. IS THAT YOUR HANDWRITING?

1 A. THAT'S MY BAD HANDWRITING, YES.

2 Q. CAN YOU READ IT TO THE COURT?

3 A. (READING):

4 THE VICTIM GAVE FULL DISCLOSURE

5 TO THE AFFIANT.

6 Q. WHO IS THE AFFIANT?

7 A. I'M THE AFFIANT.

8 Q. WHEN DID YOU GET IN CONTACT WITH THE SUSPECT,
9 AGAIN?

10 A. WHEN I GOT IN CONTACT WITH YOU?

11 Q. YES, ME.

12 A. I CONTACTED YOU AT 12:45 ON THE 20TH I BELIEVE
13 YOU HAD HIGHLIGHTED. 12:45 I CALLED YOU ON THE PHONE OR
14 I MADE CONTACT WITH YOU.

15 Q. DID YOU ADVISE ME OF ANYTHING AT THAT TIME?

16 A. THAT THERE HAD BEEN A COMPLAINT AND WE NEEDED TO
17 TALK TO YOU ABOUT IT.

18 Q. YOU HAD THE ADDRESS OF MY RESIDENCE, CORRECT?

19 A. YES, UH-HUH.

20 Q. AND YOU WERE NOT AWARE OF THE LOCATION AT THAT
21 TIME, CORRECT?

22 A. WHERE IT WAS ON THE MAP IN ANDERSON, NO.

23 Q. YES. HOW DID YOU GET INFORMATION AS TO HOW TO
24 GET TO MY RESIDENCE?

25 A. I SPOKE TO YOU AND YOU GAVE ME INFORMATION.

1 THERE'S TWO WHITTEN ROADS IN ANDERSON, AT LEAST TWO THAT
2 I KNOW OF.

3 Q. THERE'S A WHITTEN ROAD IN PELZER?

4 A. THERE'S ONE IN ANDERSON ON 29 NORTH.

5 Q. OKAY. YOU STATED THAT I GAVE AN ORAL STATEMENT
6 CONCERNING THE MATTER OF THE VICTIM MESSING ON HIMSELF,
7 CORRECT?

8 A. YES.

9 Q. BUT ONCE AGAIN, I BELIEVE YOU HAVE EXHIBIT ONE,
10 DEFENDANT'S?

11 A. LET ME LOOK FOR IT REAL QUICK.

12 YES, SIR, RIGHT HERE.

13 Q. WHO IS THE REPORTING OFFICER THERE AT THE BOTTOM,
14 PLEASE?

15 A. HIGHLIGHTED ON THE ONE HERE?

16 Q. YES.

17 A. IT SAYS N N CARSON.

18 Q. ALL RIGHT.

19 A. I'D LIKE TO EXPLAIN.

20 Q. YOU HAVE ALREADY EXPLAINED THAT.

21 MS. HUEY: JUDGE ---

22 THE COURT: I'M NOT SURE. HE CAN ANSWER THE
23 QUESTION AND THEN EXPLAIN HIS ANSWER.

24 GO AHEAD.

25 THE WITNESS: OKAY. AS INVESTIGATOR CARSON,

1 OR LIEUTENANT CARSON HAD STATED EARLIER, ON OUR COMPUTER
2 SYSTEM IF YOU HIT -- IT'S BASED ON YOUR FIRST AND LAST
3 INITIAL. I DON'T TYPE VERY WELL, ADMITTEDLY, AND A LOT
4 OF TIMES EVEN AS SUPERVISOR I GO AHEAD AND I MAY HIT P.
5 I TRY TO USE MY FINGERS, ALL OF THEM INSTEAD OF HEN
6 PECKING. I MAY NOT HIT P HARD ENOUGH, BUT I DO HIT N.
7 AND A LOT OF TIMES IT POPS UP HER NAME, AND I GO AHEAD
8 AND HIT, WITHOUT LOOKING IT'S, YOU KNOW, THAT TAB, THAT
9 TAB, THAT TAB, SO I HIT THE NAME, THEN IT'S THE DATE AND
10 THEN IT'S LIKE THE BADGE NUMBER OR MY COMPUTER NUMBER,
11 AND THAT UNFORTUNATELY HAPPENS QUITE OFTEN. I CATCH
12 MYSELF MORE OFTEN NOW BECAUSE OF MESSING UP IN THE VERY
13 BEGINNING. BUT THAT'S THE REASON WHY IF I DON'T HIT P N
14 THAT QUICK, IT CAN THROW UP NIKKI CARSON OR IT CAN OPEN
15 UP A FIREFIGHTER, PELHAM MEDLOCK (PHONETIC) IF I HIT P
16 AND NOT M HARD ENOUGH. SO...

17 BY MR. THOMPSON:

18 Q. WELL, WE'RE GONNA GET BACK TO THE PART WHERE
19 YOU'VE STATED IN THE WARRANT THAT ONLY NIKKI -- OR YOU
20 STATED THAT THE VICTIM GAVE FULL DISCLOSURE TO THE
21 AFFIANT, AND YOU BEING THE AFFIANT. AND IN YOUR
22 SUPPLEMENTARY REPORT, OR YOUR SUPPLEMENTAL, YOU STATED
23 (READING):

24 WE THEN MADE CONTACT WITH THE
25 VICTIM AND UPON DETECTIVE CARSON'S

1 INTERVIEW WITH THE VICTIM.

2 WHICH ONE IS ACCURATE?

3 A. WE MADE CONTACT WITH THE VICTIM. WE BOTH -- YOU
4 KNOW, WHOEVER IS THE -- WHOEVER IS ASSIGNED THE CASE
5 MAKES CONTACT WITH THE VICTIM. AGAIN, INVESTIGATOR
6 CARSON AT THIS TIME WAS FORENSICS INTERVIEW CERTIFIED.
7 I WAS NOT. THEREFORE, I WAS NOT GOING TO GO AHEAD AND
8 GET INVOLVED IN THAT FORENSICS INTERVIEW.

9 Q. SO THE VICTIM NEVER DISCLOSED INFORMATION TO YOU,
10 BUT THEN AGAIN YOU WROTE IT YOURSELF IN YOUR OWN
11 HANDWRITING ON THE WARRANT?

12 A. OKAY. AS I STATED EARLIER, WHEN WE WORK A CASE,
13 WE WORK IN TANDEM AS PARTNERS. HER NOTES, HER REPORT,
14 WE USE EACH OTHER'S PAPERWORK.

15 Q. YOU ALSO STATED THAT MY MOTHER DID NOT WANT TO
16 KNOW ANY INFORMATION ON WHAT WAS GOING ON AT THAT GIVEN
17 TIME WHEN YOU -- WHEN SHE BECAME PRESENT.

18 DID SHE DISCLOSE ANY INFORMATION TO YOU?

19 A. DID YOUR MOTHER DISCLOSE ANY INFORMATION TO ME?

20 Q. YES, SIR.

21 A. AS TO WHAT?

22 Q. AS TO THE INCIDENT.

23 A. I DON'T THINK YOUR MOM HAD KNOWLEDGE OF THE
24 INCIDENT.

25 Q. DID SHE MENTION ANYTHING AFTER THE SEARCH OR...

1 A. I DON'T RECALL WHAT EXACTLY YOUR MOM WAS SAYING.
2 I MEAN, WE WERE THERE ON BEHALF OF THE VICTIM, OKAY? WE
3 WERE TRYING TO FIGURE OUT IF THERE WAS A CRIME THAT WAS
4 COMMITTED AND TO FOLLOW THROUGH.

5 Q. CAN YOU TELL THE COURT WHY I WAS NOT TRANSPORTED
6 TO A LAW ENFORCEMENT OFFICE?

7 A. YOU WERE TRANSPORTED TO JAIL.

8 Q. FOR INTERROGATION.

9 A. WE INTERVIEWED YOU AT YOUR RESIDENCE. YOU DON'T
10 HAVE TO BE PULLED INTO THE SHERIFF'S OFFICE OR AN
11 INTERROGATION ROOM TO BE INTERVIEWED.

12 Q. IT'S NOT AGAINST DEPARTMENT POLICY?

13 A. NOT THAT I'M AWARE OF.

14 Q. NOW, BEFORE MY MOTHER BECAME PRESENT, AND AFTER
15 YOU AND YOUR PARTNER, LIEUTENANT CARSON, MADE CONTACT
16 WITH ME, DID I ADVISE YOU OR -- OR AND/OR LIEUTENANT
17 CARSON THAT I WOULDN'T REMAIN SILENT AND I WOULD NOT
18 SIGN AWAY MY RIGHTS UNTIL MY MOM BECAME PRESENT?

19 A. I BELIEVE YOU WANTED TO WAIT TILL YOUR MOM GOT
20 THERE BEFORE YOU TALKED.

21 Q. WAS SHE PRESENT WHEN I WAIVED MY RIGHTS?

22 A. I DON'T REMEMBER WHEN YOUR MOM WALKED IN THE
23 DOOR. I'M SORRY. I DIDN'T LOOK AT MY WATCH WHEN SHE
24 WALKED IN.

25 Q. I WAS ADVISED OF MY RIGHTS AT 2:45, CORRECT?

1 A. YES, SIR.

2 Q. WAS THIS WHEN YOU MADE CONTACT WITH ME OR ON THE
3 TELEPHONE?

4 A. I WOULDN'T READ YOU YOUR RIGHTS OVER THE
5 TELEPHONE. THAT WOULD BE USELESS BECAUSE I WOULDN'T
6 KNOW WHO YOU WERE.

7 Q. OKAY. DID YOU READ ME MY RIGHTS AFTER THE
8 ALLEGED CONFESSION?

9 A. I NEVER READ YOU YOUR RIGHTS BECAUSE I NEVER
10 SPOKE TO YOU ABOUT ANY CONFESSION.

11 Q. DID I SEEM TO BE VOLUNTARILY COOPERATIVE DURING
12 THE INTERROGATION?

13 A. AS INVESTIGATOR CARSON STATED EARLIER, YOU WERE
14 VERY COOPERATIVE.

15 Q. NOW, STATE FOR THE RECORD WHAT WAS THE MEANING
16 AND PURPOSE OF THE QUESTIONING.

17 A. TO ASCERTAIN IF A CRIME WAS COMMITTED AND
18 THEREFORE TO OBTAIN EVIDENCE FOR CHARGES IF A CRIME HAS
19 BEEN COMMITTED. IS THAT THE QUESTION YOU ARE ASKING?

20 Q. SO YOU WERE THERE FOR INCULPATORY INFORMATION
21 OR...

22 A. INCULPATORY? I'M SORRY. I DON'T KNOW THAT WORD.
23 I APOLOGIZE.

24 Q. DAMAGING INFORMATION.

25 A. WE WERE THERE TO OBTAIN INFORMATION THAT WAS

1 RELAYED FROM INVESTIGATOR CARSON TO MYSELF TO CONDUCT AN
2 INVESTIGATION. WHEN WE GOT THERE, YOUR MIRANDA WARNING
3 WAS READ TO YOU BEFORE YOU WERE INTERVIEWED OR GAVE ANY
4 STATEMENTS.

5 Q. NOW, DURING THE SEARCH, WHO ACTUALLY CONDUCTED
6 THE SEARCH AT THE RESIDENCE?

7 A. INVESTIGATOR CARSON, MYSELF, AND YOU WERE WITH
8 US.

9 Q. YOU STATED EARLIER THAT I HAD EXITED THE BEDROOM
10 TO GIVE ANOTHER STATEMENT OR GIVE MY ALLEGED FIRST
11 STATEMENT?

12 A. NEVER SAID THAT. I NEVER SAID YOU EXITED THE
13 BEDROOM THAT I'M AWARE OF.

14 Q. SO I WROTE A STATEMENT STANDING UP?

15 A. I DON'T KNOW WHERE YOU WROTE THE STATEMENT. AS
16 INVESTIGATOR CARSON STATED TO YOU EARLIER, WHEN SHE WAS
17 BEING CROSS-EXAMINED, SHE WAS THE ONE. I WAS IN AND
18 OUT, YOU KNOW, GET A STATEMENT FORM, GET THIS, GET THAT,
19 GET THINGS READY, GET A CONSENT TO SEARCH.

20 Q. DID YOU SEARCH THE RESIDENCE?

21 A. DID I SEARCH THE RESIDENCE? NO. I JUST ---

22 Q. DID YOU EVER SEARCH THE RESIDENCE BY YOURSELF AT
23 ANY GIVEN TIME?

24 A. I WAS IN YOUR ROOM, YES, AFTER THE PICTURES WERE
25 OBTAINED, I WENT LOOKING FOR MORE.

1 Q. WAS ANYONE PRESENT AT THAT TIME?

2 A. I THINK YOUR MOM WAS IN THE DOORWAY AT THAT TIME.

3 Q. AND YOUR PARTNER WAS NOWHERE TO BE FOUND?

4 A. I THINK AT THAT POINT SHE WAS TALKING TO YOU.

5 Q. AND YOU DIDN'T CHECK IN AND OUT PERIODICALLY TO
6 MAKE SURE THAT NOTHING WAS HAPPENING BETWEEN ---

7 A. WELL, AT THE TIME I THINK YOU ARE TALKING ABOUT,
8 THE PICTURES WERE JUST FOUND. SHE NEVER LEFT THE HOUSE
9 AT THIS POINT. SHE WAS STILL INSIDE THE HOUSE. THIS IS
10 A SMALL HOUSE. THE FRONT ROOM IS A SMALL LITTLE T WHERE
11 THE OTHER ROOMS ARE BROKE OFF TO, AND I WAS INSIDE YOUR
12 ROOM. HAD ANYTHING GONE ON, I WOULD HAVE HEARD IT AND
13 TOOK CARE OF IT, BUT EVERYTHING WAS CORDIAL.

14 MR. THOMPSON: NO FURTHER QUESTIONS AT THIS
15 TIME.

16 THE COURT: ALL RIGHT. RE-EXAM?

17 REDIRECT EXAMINATION BY MS. HUEY:

18 Q. MR. NORMANDIN, AGAIN, AS PARTNERS IS IT TYPICAL
19 FOR YOU ALL TO SHARE INFORMATION?

20 A. YES, MA'AM, ESPECIALLY WITH SEX CRIMES. PROPERTY
21 CRIMES, DETECTIVES, THEY INTERCHANGE WHO STOLE WHAT. I
22 FOUND THIS STUFF AT A PAWN SHOP TYPE OF DEAL, WHO MAY BE
23 A THIEF IN AN AREA.

24 SEX CRIMES, INVESTIGATORS ARE A LOT TIGHTER THAN
25 THAT. YOU KNOW, A VICTIM MAY CLING TO AN OFFICER, ME OR

1 THE OTHER OFFICER BETTER THAN THE OTHER... THEY MAY HAVE
2 A BETTER RAPPORT. SO TYPICALLY ANYTHING SHE'S TOLD IS
3 RELAYED TO ME, AS VICE VERSA. IN THAT PARTICULAR
4 SECTION, YOU KNOW, IT'S FAMILY, YOU KNOW, WE'RE REAL
5 TIGHT, WE'RE IN THE SAME OFFICE, SMALL OFFICE, YOU KNOW.
6 IT'S NOT FROM ME TO THIS LADY RIGHT HERE WHERE WE GOT UP
7 AND TALK TO EACH OTHER.

8 Q. AND LET ME ASK YOU THIS: IN TERMS OF THE ARREST
9 WARRANT, DID YOU EVEN NEED THE VICTIM'S DISCLOSURE, THE
10 CONFESSION TO GET A WARRANT?

11 A. NO. I TOOK THE NOTES THAT WAS GIVEN, WHAT HE
12 STATED IN MY REPORT THAT'S HIGHLIGHTED FROM DEFENSE
13 NUMBER ONE, IT SAYS I MADE CONTACT -- ME -- I MADE
14 CONTACT WITH JUDGE MAULDIN AFTER ADVISING HIM THE
15 VICTIM'S AND THE SUSPECT'S DISCLOSURE -- DISCLOSURE, I'M
16 SORRY -- AS WELL AS THE PHOTOS AND DESCRIPTION WHERE
17 THEY WERE LOCATED IN THE ROOM.

18 AND THE JUDGE FOUND, YOU KNOW, PROBABLE CAUSE.
19 WHEN I WRITE THE WARRANTS, OR WHEN I HANDWRITE THE
20 WARRANTS, I JUST START WRITING AND GO. WHAT SHE WAS
21 TOLD IS, YOU KNOW, IN THIS PARTICULAR SEX CRIME IS WHAT
22 I WAS TOLD. UNLESS SHE'S OUT ON THE STREET, BUT THIS
23 WAS A CASE WHERE WE WORKED TOGETHER HAND IN HAND, PER
24 SE.

25 Q. NOW, LET ME ASK YOU THIS ABOUT HIS MOM BEING

1 THERE. I KNOW YOU DON'T KNOW EXACTLY WHAT TIME SHE GOT
2 THERE, BUT WAS IT SHORTLY BEFORE MIRANDA WAS GIVEN?

3 A. YES.

4 Q. WAS IT BEFORE HE WROTE FIRST STATEMENT?

5 A. YES.

6 Q. DO YOU KNOW WHEN MIRANDA WAS GIVEN?

7 A. ACCORDING TO PAPERS, AS SOON AS WE WALKED IN.
8 BECAUSE WHEN WE GOT THERE, HE ALREADY KNEW THAT WE WERE
9 COMING. I CALLED HIM. HE STATED -- HE GAVE ME
10 DIRECTIONS HOW TO GET TO HIS HOUSE. WE MADE CONTACT.
11 SO HE KNEW WHY WE WERE COMING. I MEAN, NOT WHY. BUT HE
12 KNEW WE WERE COMING.

13 AS SOON AS WE MADE CONTACT, INVESTIGATOR CARSON,
14 SINCE SHE OBTAINED THE FORENSICS INTERVIEW AND SHE HAD
15 INFORMATION FIRSTHAND, AND I HAD IT SECONDHAND FROM HER,
16 I WENT AHEAD AND ASKED HER TO GO AHEAD AND RUN IT
17 THROUGH COURSE.

18 Q. AND SO THE MOM WAS THERE FOR THE FIRST STATEMENT.
19 WAS SHE ALSO THERE FOR THE SECOND STATEMENT?

20 A. SHE WAS AT THE HOUSE, YES.

21 Q. AND HOW ABOUT THE ORAL STATEMENT, WAS THE MOTHER
22 THERE FOR THAT?

23 A. COULD BE. I'M NOT POSITIVE. BECAUSE STUFF WAS
24 SAID IN THE BEGINNING, YOU KNOW, WORDS. I DON'T KNOW
25 WHEN THE ACTUAL WRITTEN STATEMENT WAS DONE OR WHEN THE

1 VERBAL STATEMENT WAS DONE COMPARED TO THE WRITTEN
2 STATEMENT, BUT IT WAS ALL IN THAT TIME FRAME.

3 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

4 THE COURT: RECROSS?

5 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
6 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

7 RECROSS-EXAMINATION BY MR. THOMPSON:

8 Q. YOU ADMITTED THAT AFTER I WAS READ MY RIGHTS,
9 THAT I DID WANT TO REMAIN SILENT UNTIL MY MOTHER BECAME
10 PRESENT?

11 A. YOU SAID YOU WANTED TO GIVE A STATEMENT AFTER
12 YOUR MOM GOT THERE, I BELIEVE. I DON'T REMEMBER YOU
13 SAYING YOU WANTED TO REMAIN SILENT. I REMEMBER
14 SOMETHING TO THE EFFECT THAT YOU WANTED TO WAIT UNTIL
15 YOUR MOM GOT TO HOUSE BEFORE YOU MADE A STATEMENT, AND
16 THEN SHORTLY THEREAFTER SHE CAME ON IN.

17 Q. SO A STATEMENT WAS MADE -- WAS THE STATEMENT MADE
18 BEFORE OR AFTER -- THE WRITTEN STATEMENT MADE --
19 WRITTEN -- LET ME REPHRASE IT.

20 WAS THE STATEMENT WRITTEN BEFORE OR AFTER THE
21 SEARCH?

22 A. I DON'T RECALL EXACTLY WHEN. THE SECOND
23 STATEMENT WAS DONE AFTER THE SEARCH, I KNOW THAT BECAUSE
24 ONCE WE FOUND THOSE PICTURES, WE BROUGHT IT TO YOUR
25 ATTENTION THAT THIS IS WHAT WE FOUND AND THIS IS THE

1 INFORMATION THAT WE HAVE OBTAINED, WHAT WE WERE LOOKING
2 FOR, AND THAT'S WHEN THE SECOND STATEMENT WAS DONE. SO
3 I KNOW THAT FOR -- TO BE FACT THAT THE SECOND STATEMENT
4 WAS DONE AFTER WE FOUND THE PICTURES.

5 Q. DURING THE SEARCH WHO PICKED UP THE NAVY BLUE
6 NOTEBOOK OUT OF THE BOOK BAG?

7 A. I'M NOT SURE. IT WAS EITHER YOU OR INVESTIGATOR
8 CARSON. I'M NOT POSITIVE. IF IT'S IN MY NOTE, IF IT'S
9 IN MY REPORT, THEN I WOULD HAVE TO GO THROUGH IT AND
10 LOOK FOR IT. IF YOU WILL OBLIGE ME, I'LL LOOK THROUGH
11 IT REAL QUICK.

12 IT SAYS IN THE REPORT THAT DETECTIVE CARSON
13 PICKED UP THE NAVY BLUE ZIPPERED NOTEBOOK AND OPENED IT.

14 Q. WELL, DID YOUR PARTNER TESTIFY THAT I HANDED HER
15 THE PHOTOGRAPHS?

16 A. YOU MAY HAVE HANDED HER PHOTOGRAPHS AS SHE
17 UNZIPPED YOUR BOOK AND YOU BROUGHT THEM OUT AND YOU
18 STATED WHY THEY WERE IN THERE.

19 Q. WERE THERE ANYTHING ELSE THAT YOU CAME ACROSS
20 DURING THAT SEARCH?

21 A. IN YOUR BOOK?

22 Q. BOOK, OUT OF THE BOOK?

23 A. JUST THE PHOTOGRAPHS THAT WE TOOK INTO CUSTODY
24 AND STUFF THAT RELATED TO THE DISCLOSURE THAT I WAS
25 ADVISED.

1 Q. SO YOU NEVER CAME ACROSS ANY CODES, POLICE CODES
2 OF ANY KIND?

3 A. POLICE CODES?

4 Q. YES.

5 A. I DON'T RECALL IT. YOU MAY HAVE THEM IN THERE.
6 A LOT OF PEOPLE HAVE THEM IN SCANNERS. YOU CAN GET THEM
7 AT RADIO SHACK.

8 MR. THOMPSON: NO FURTHER QUESTIONS.

9 THE COURT: RE, RE-EXAM?

10 MS. HUEY: NO, SIR, YOUR HONOR.

11 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

12 (WHEREUPON, THE WITNESS WAS EXCUSED.)

13 THE COURT: YOU CAN CALL YOUR NEXT WITNESS.

14 MS. HUEY: YOUR HONOR, THE STATE RESTS AT
15 THIS TIME.

16 THE COURT: ALL RIGHT. MADAM FORELADY,
17 LADIES AND GENTLEMEN OF THE JURY, THE STATE HAS NOW
18 RESTED. AS A MATTER OF FACT, I HAVE TO TAKE UP SOME
19 MATTERS WITH THE PARTIES BEFORE ANYTHING ELSE, SO THIS
20 IS A GOOD TIME TO BREAK FOR THE DAY. I APOLOGIZE ABOUT
21 HAVING TO KEEP YOU WAITING FOR A PERIOD OF TIME AND I'LL
22 TRY NOT TO DO THAT AGAIN. BUT I THINK IT'S RATHER
23 THAN -- WELL, IT'S JUST GOING TO TAKE US SOME TIME TO
24 TAKE UP THE MATTER WE NEED TO TAKE UP, SO I AM GOING TO
25 EXCUSE YOU AND ASK YOU WHAT TIME WOULD YOU LIKE TO START

1 AT IN THE MORNING?

2 I TRY TO BE CANDID WITH YOU, NOT ONLY
3 CANDID, BUT FAIR ALSO. I LIVE ABOUT AN HOUR AWAY, AND
4 IT TAKES ME A WHILE, AND I USUALLY GO BY MY OFFICE EARLY
5 IN THE MORNING. 10:00 IS A GOOD TIME FOR ME. NOW, YOU
6 HAVE BEEN VERY UNDERSTANDING AND PATIENT WITH THE COURT
7 AND I WOULD -- IF YOU WANT TO START EARLIER, I COULD DO
8 IT. BUT IF 10:00 IS ALL RIGHT WITH YOU, I WOULD SUGGEST
9 WE COME BACK AT 10:00 AND START AT THAT TIME.

10 AGAIN, DO NOT UNDERTAKE THE DISCUSSION OF
11 THE CASE AMONG YOURSELVES OR PERMIT ANYBODY TO DISCUSS
12 IT WITH YOU, AND AS I'VE SAID EARLIER, INASMUCH AS THERE
13 HAS BEEN SOME MEDIA ATTENTION, DO NOT WATCH, LISTEN, OR
14 READ ANYTHING ABOUT THIS CASE TO INCLUDE ANY INTERNET
15 ACCESS THAT YOU MIGHT HAVE. IT'S IMPORTANT AND I THINK
16 YOU UNDERSTAND HOW IMPORTANT THIS CASE IS TO EVERYBODY
17 AND IT NEEDS TO BE RESOLVED IN THE PROPER FASHION, AND
18 THE ONLY THING THAT CAN DISTURB THAT IS TO LET SOMETHING
19 INTERFERE WITH THE PROPER RESOLUTION OF IT, SO I ASK YOU
20 AGAIN AND CHARGE YOU TO DO SO.

21 AND WITH THAT I'LL SEE YOU IN THE MORNING AT
22 10:00.

23 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
24 RETIRES FROM THE COURTROOM.

25 (WHEREUPON, THE JURY LEFT THE COURTROOM AT

1 4:31 P.M.)

2 THE COURT: ANYTHING FURTHER FROM THE STATE?

3 MS. HUEY: NO, SIR, YOUR HONOR.

4 THE COURT: ALL RIGHT. ARE ALL YOUR
5 EXHIBITS IN? THE ONES THAT CONCERN ME, I THINK I MIGHT
6 HAVE MISSED THE FIRST ONE, STATE'S EXHIBIT ONE SHOULD
7 HAVE BEEN WHAT, THE MIRANDA?

8 MS. HUEY: YES, SIR, THE MIRANDA.

9 THE COURT: I THINK I MIGHT HAVE MISSED THAT
10 ONE. I THINK YOU MOVED FOR ADMISSION AND HE GAVE A
11 STATEMENT WHICH WOULD HAVE BEEN STATE'S EXHIBIT TWO.

12 STATE'S EXHIBIT ONE IS ADMITTED.

13 (STATE'S EXHIBITS 1 AND 2 WERE RECEIVED IN
14 EVIDENCE.)

15 MS. HUEY: THANK YOU.

16 THE COURT: THAT SHOULD BE ALL YOUR
17 EXHIBITS. ANYTHING ELSE?

18 MS. HUEY: NO, SIR, YOUR HONOR.

19 THE COURT: WOULD YOU LIKE SOME TIME,
20 MR. WHITEN?

21 MR. WHITEN: YES, SIR.

22 THE COURT: ALL RIGHT. LET'S NOT TAKE TOO
23 MUCH TIME.

24 MR. THOMPSON: I NEED FIVE, FIVE TO TEN.

25 THE COURT: PERFECT. ALL RIGHT. THAT WOULD

1 BE GOOD. WE'LL TAKE FIVE MINUTES AND THEN WE'LL JUST
2 SIT IN PLACE UNLESS YOU NEED TO REFRESH YOURSELVES.

3 (OFF-THE-RECORD DISCUSSION.)

4 MS. HUEY: YOUR HONOR, I'M SORRY. MAY
5 MR. NORMANDIN BE EXCUSED, YOUR HONOR?

6 THE COURT: ANY OBJECTION TO THE SERGEANT
7 BEING EXCUSED?

8 MR. THOMPSON: IT'S ALL RIGHT.

9 THE COURT: ALL RIGHT. WITHOUT OBJECTION.
10 HOW ABOUT LIEUTENANT CARSON?

11 MS. HUEY: I BELIEVE LIEUTENANT CARSON IS
12 GONNA STAY FOR THE DURATION. THANK YOU, SIR.

13 THE WITNESS: THANK YOU, YOUR HONOR.

14 (MR. NORMANDIN LEFT THE COURTROOM.)

15 THE COURT: ANYTHING FURTHER FROM THE STATE?

16 MS. HUEY: NOT YET, YOUR HONOR.

17 THE COURT: MR. THOMPSON, WHAT DO YOU HAVE
18 TO SAY? ANYTHING?

19 MOTION FOR DIRECTED VERDICT BY MR. THOMPSON:

20 MR. THOMPSON: YES. I WOULD LIKE TO MOVE
21 FOR A MOTION OF DIRECTED VERDICT OF NOT GUILTY ON THE
22 GROUNDS THAT THERE IS NO FACTUAL EVIDENCE BY WHICH THE
23 JURY COULD FIND ME GUILTY OF GUILT BEYOND A REASONABLE
24 DOUBT.

25 THE COURT: WHAT DOES THE STATE SAY?

1 **MS. HUEY:** YOUR HONOR, THE STATE SAYS THAT
2 WHEN THE COURT IS CONSIDERING A DIRECTED VERDICT MOTION,
3 THAT YOU ARE NOT CONCERNED WITH THE WEIGHT OF THE
4 EVIDENCE, MERELY THE EXISTENCE OF THAT, AND IN THIS
5 PARTICULAR CASE NOT ONLY DO WE HAVE THE CONFESSION, YOUR
6 HONOR, WE DO HAVE CIRCUMSTANTIAL EVIDENCE SUCH AS THE
7 MOTHER WALKING IN ON THE DEFENDANT WITH HIS SHIRT OFF
8 AND HER CHILD COMPLETELY NAKED.

9 SECONDLY, WE HAVE THE TESTIMONY OF DR. REESE
10 WHO TREATED THE VICTIM AT THE HOSPITAL, AND THROUGH HIS
11 MEDICAL DIAGNOSIS AND TREATMENT ---

12 **THE COURT:** WELL, LET'S BE CAREFUL. BECAUSE
13 (READING):

14 THE PATIENT'S HISTORY AS GIVEN TO
15 THE TREATING PHYSICIAN IS ADMISSIBLE ONLY
16 AS INFORMATION THE PHYSICIAN MAY HAVE
17 RELIED UPON IN FORMING HIS OR HER
18 PROFESSIONAL OPINION, AND NOT AS
19 SUBSTANTIVE EVIDENCE OF THE FACTS
20 RELATED. IF THE TRUTH OF THE STATEMENTS
21 MADE IS IMPORTANT, IT WILL HAVE TO BE
22 ESTABLISHED THROUGH OTHER EVIDENCE.

23 STATE V. BROWN, 286 S.C. 445, 334 S.E.2D
24 816.

25 **MS. HUEY:** WELL, YOUR HONOR, IN ADDITION TO

1 MEDICAL EVIDENCE, THERE WAS THE DISCLOSURE MADE TO NIKKI
2 CARSON AS A RESULT OF THE PICTURES OF THE NAKED MEN THAT
3 WERE RECOVERED FROM DEFENDANT'S HOUSE THROUGH HIS
4 CONSENT TO SEARCH.

5 AND ADDITIONALLY, YOUR HONOR, THE STATE IS
6 LARGELY RELYING ON STATE V. LADNER, THE MOST RECENT
7 CASE, YOUR HONOR, I BELIEVE IT'S FROM APRIL OF THIS
8 YEAR. HERE'S A COPY FOR THE COURT, YOUR HONOR, AND I
9 HAVE PROVIDED ONE TO THE DEFENSE.

10 THE COURT: LADNER. VERY GOOD. I COULDN'T
11 FIND IT. THANK YOU.

12 MS. HUEY: YOUR HONOR, IN THIS PARTICULAR
13 CASE I BELIEVE THE FACTS ARE VERY SIMILAR, AND THE STATE
14 SURVIVED THE DIRECTED VERDICT MOTION IN THIS CASE, AS
15 WELL.

16 THE CASE INVOLVED A C.S.C. TRIAL WHERE THE
17 VICTIM DID NOT TESTIFY AT TRIAL; HOWEVER, AN EXCITED
18 UTTERANCE OF THE VICTIM WAS ALLOWED IN THE TESTIMONY.

19 (THE COURT CONFERRED WITH THE LAW CLERK OFF
20 THE RECORD.)

21 THE COURT: ALL RIGHT. I'M SORRY, GO AHEAD.

22 MS. HUEY: THAT'S OKAY. YOUR HONOR, THERE
23 WAS AN EXCITED UTTERANCE OF THE VICTIM ALLOWED IN THE
24 TESTIMONY. THERE WAS ALSO MEDICAL EVIDENCE OF THE
25 VICTIM ALLOWED INTO TESTIMONY, AND THEN, THIRDLY, THE

1 DEFENDANT CONFESSED.

2 THE COURT: WELL, HERE THERE WAS NO MEDICAL
3 TESTIMONY, I MEAN MEDICAL, PHYSICAL FINDINGS. I HAVEN'T
4 READ LADNER. AS I SAY, IT JUST CAME DOWN A COUPLE WEEKS
5 AGO. BUT ALL THE TESTIMONY AS FAR AS PHYSICAL EVIDENCE
6 IS THAT THERE WAS NO EVIDENCE, WHICH WAS NOT UNUSUAL,
7 BUT THAT WAS -- AND WHAT I WAS SAYING IN THE STATE V.
8 BROWN IS WHERE YOU ARE RELYING ON THE EXCEPTION TO
9 HEARSAY AS BEING ABLE TO PROVE THE SUBSTANTIAL OR
10 SUBSTANTIVE FACTS AND YOU CAN'T DO THAT. I HAVEN'T READ
11 THIS. I IMAGINE IT'S THE SAME. BUT I CAN UNDERSTAND
12 HOW YOU CAN RELY ON WHAT THE PHYSICIAN FOUND AND HOW IT
13 WAS RELATED TO WHAT HE FOUND. BUT ANYWAY, AS I SAY, DO
14 PROCEED..

15 MS. HUEY: WELL, YOUR HONOR, THAT'S THE
16 STATE'S POSITION. AGAIN, I DO THINK THIS CASE IS VERY
17 SIMILAR TO STATE V. LADNER WHERE AGAIN THE VICTIM DID
18 NOT TESTIFY, AND OBVIOUSLY THE VICTIM DID NOT TESTIFY IN
19 THIS CASE.

20 (THE COURT CONFERRED WITH THE LAW CLERK OFF
21 THE RECORD.)

22 MS. HUEY: WE DO BELIEVE, YOUR HONOR, THAT
23 THERE'S EVIDENCE FOR THIS CASE TO GO TO THE JURY ASIDE
24 FROM THE DEFENDANT'S CONFESSION.

25 THE COURT: VERY GOOD.

1 MR. THOMPSON?

2 MR. THOMPSON: YOUR HONOR, THIS CASE IS
3 DISTINGUISHED FROM LADNER BECAUSE THERE WAS NOT ANY
4 EXCITED UTTERANCE AS TO TESTIMONY.

5 THE COURT: WELL, EXCITED UTTERANCES REALLY
6 DON'T REQUIRE IT. I THINK IT'S JUST IMMEDIATELY
7 THEREAFTER, AND I THINK IT'S BEEN AS LONG AS THREE OR
8 FOUR HOURS THAT'S BEEN DETERMINED TO BE THEREAFTER. SO
9 I THINK THERE IS CERTAIN, AS FAR AS THE EXCITED
10 UTTERANCES, I THINK YOU MIGHT HAVE SOMETHING THERE.

11 BUT I'LL TELL YOU, REALLY, MY WHOLE -- IN
12 THIS CASE, THE OTHER EVIDENCE IS REALLY THE SECOND
13 STATEMENT. NOW, THAT'S GOING TO BE A MATTER FOR THE
14 JURY TO DETERMINE AS TO WHETHER IT WAS FREELY AND
15 VOLUNTARILY GIVEN OR GIVEN AT ALL, BECAUSE YOU SAID THAT
16 YOU HAVE NEVER SEEN IT AND INITIALED IT WITHOUT LOOKING
17 AT IT AND READING IT AND ALL THAT. THAT'S SOMETHING FOR
18 THE JURY TO DECIDE. SO I, I THINK THAT THERE IS,
19 WHEREAS THE JURY IS TO GIVE IT SUCH WEIGHT, IF ANY, TO
20 THE STATEMENT, THAT IS SOME EVIDENCE UNDER OUR RULE 19.

21 IN ADDITION, A CONVICTION BASED UPON A
22 DEFENDANT'S CONFESSION CANNOT BE SUSTAINED WITHOUT PROOF
23 OR CORROBORATING CORPUS DELECTI-TYPE STATEMENT ALIUNDE,
24 MEANING IT DOESN'T HAVE ANYTHING ELSE OTHER THAN THE
25 BARE STATEMENT.

1 HERE THE EVIDENCE, AS I SAY, IN NOT ONLY THE
2 SECOND STATEMENT BUT PHOTOGRAPHS AND THINGS THAT WERE
3 FOUND THAT APPARENTLY WERE THE RESULT OF INFORMATION
4 THAT PROVIDED -- WITHOUT THE INVESTIGATION COULD NOT
5 HAVE BEEN FOUND OR AT LEAST CORROBORATED WHAT THE
6 INVESTIGATION WAS BASED ON.

7 **COURT'S RULING, DEFENDANT'S MOTION FOR DIRECTED VERDICT:**

8 **THE COURT:** NOW, INASMUCH AS I DO FIND SOME
9 COMPETENT EVIDENCE OF THE CORPUS DELICTI, EITHER DIRECT
10 OR CIRCUMSTANTIAL, THAT TEND TO PROVE GUILT OF THE
11 ACCUSED FROM WHICH THEY CAN FAIRLY AND LOGICALLY DEDUCE,
12 I DO FEEL THAT THE CASE SHOULD BE SUBMITTED TO THE JURY,
13 AND THE MOTION FOR DIRECTED VERDICT IS DENIED. BUT I
14 WILL BE READING LADNER OVER THE EVENING.

15 ALL RIGHT. LET ME ASK YOU. THIS IS AN
16 UNUSUAL CASE. DO YOU HAVE OTHER MOTIONS?

17 **MR. THOMPSON:** YES. I WOULD LIKE TO ASK FOR
18 IDENTIFICATION NUMBER SIX TO BE ADMITTED INTO EVIDENCE.

19 **THE COURT:** NOW, IS THAT THE WARRANT?

20 **MS. HUEY:** THAT'S THE ARREST WARRANT, YOUR
21 HONOR.

22 **THE COURT:** UNFORTUNATELY, I THOUGHT YOU
23 WERE GOING TO DO IT, BUT YOU NEVER ACTUALLY ASKED THE
24 WITNESS, AND UNDER 613 (B), WHICH IS PRIOR INCONSISTENT
25 STATEMENTS, THE ONLY TIME IT'S ADMITTED IS WHEN IT'S

1 DENIED. IF A WITNESS DOES NOT ADMIT THAT HE HAS MADE
2 THE PRIOR INCONSISTENT STATEMENT, EXTRINSIC EVIDENCE OF
3 SUCH STATEMENT IS ADMISSIBLE. HOWEVER, IF THE WITNESS
4 ADMITS MAKING THE PRIOR STATEMENT, EXTRINSIC EVIDENCE
5 THAT THE PRIOR STATEMENT WAS MADE IS INADMISSIBLE.

6 HERE HE ADMITTED THAT HE MADE THE STATEMENT
7 ON THE WARRANT, AND HE EXPLAINED WHY, SO IT'S UP TO THE
8 JURY TO ACCEPT HIS EXPLANATION. BUT THE FACT IS THE
9 EXTRINSIC EVIDENCE, WHICH MEANS THE EXHIBIT ITSELF, WILL
10 NOT COME IN, SO I DENY YOUR MOTION AND IT REMAINS --
11 IT'S A PART OF THE RECORD, THOUGH, FOR REVIEW IF
12 SOMEBODY NEEDS TO DO SO.

13 HE ADMITTED MAKING THE STATEMENT SO THAT
14 MEANS THAT -- BUT YOU CAN TALK ABOUT THE INCONSISTENCY;
15 THAT'S THERE BY HIS ADMISSION, AND THAT'S WHAT THE RULE
16 PROVIDES.

17 ALL RIGHT. ANYTHING ELSE? ANYTHING ELSE
18 FROM THE DEFENDANT?

19 MR. THOMPSON: NO, YOUR HONOR.

20 THE COURT: ALL RIGHT. LET ME ASK YOU, THIS
21 MIGHT BE A TIME TO ADVISE -- FIRST OF ALL, DO YOU HAVE
22 ANY RECORD OF PRIOR CONVICTIONS OF THE DEFENDANT?

23 MS. HUEY: NO, SIR, YOUR HONOR.

24 THE COURT: ALL RIGHT. KNOWING THAT, DOES
25 THE WITNESS -- I MEAN DOES THE DEFENDANT WISH TO BE A

1 WITNESS, IN OTHER WORDS, BE PUT UNDER OATH, WHICH WOULD
2 BE SUBJECT TO QUESTIONS ABOUT CREDIBILITY, OR DOES HE
3 WISH TO PROCEED AS HE'S BEEN DOING? NOW, THE OTHER
4 CAUTION IS, IF YOU PROCEED AS YOU ARE DOING NOW, YOU ARE
5 NOT UNDER OATH, IN OTHER WORDS, YOU ARE NOT A WITNESS,
6 YOU ARE AN ADVOCATE. DO YOU UNDERSTAND THAT?

7 MR. THOMPSON: YES, YOUR HONOR, I DO.

8 THE COURT: BUT YOU CAN BECOME A WITNESS,
9 BUT THAT MEANS THAT YOU GO UNDER OATH AND THAT THE STATE
10 CAN IMPEACH YOU LIKE ANY WITNESS MAY BE IMPEACHED.

11 MR. THOMPSON: OKAY.

12 THE COURT: YOU MAY CONSULT WITH YOUR
13 ATTORNEY -- I MEAN YOUR ADVISER, EXCUSE ME.

14 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
15 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

16 THE COURT: YES, SIR.

17 MR. THOMPSON: I WOULD LIKE TO HAVE TIME TO
18 THINK ABOUT IT.

19 THE COURT: NO QUESTION ABOUT THAT AT ALL;
20 IN FACT, THAT'S WHAT I WAS GOING TO SUGGEST. AND THAT'S
21 WHY I ALSO DECIDED TO ADJOURN A LITTLE BIT -- OR RECEDE
22 A LITTLE EARLY TODAY SO THAT YOU WOULD HAVE A CHANCE TO
23 DISCUSS IT WITH YOUR ADVISER AND ANYONE ELSE THAT YOU
24 LIKE, BUT THE DECISION ULTIMATELY HAS TO BE YOURS.

25 AND IN FACT, I WILL PUT YOU UNDER OATH WHEN

1 I GET YOUR RESPONSE IN THE MORNING, NOT FOR THE PURPOSE
2 OF THE JURY BUT FOR THE PURPOSE OF BEING SURE YOU
3 UNDERSTAND THE DECISION YOU MAKE IS YOURS AND THAT IT'S
4 ALSO A VERY IMPORTANT ONE AND IT NEEDS TO BE MADE IN A
5 PROPER FASHION. AS I SAY, THE RIGHT IS TO TESTIFY,
6 OFFER ANY EVIDENCE THAT YOU WANT TO DO THAT YOU FEEL IS
7 APPROPRIATE, THAT, OF COURSE, IS APPROPRIATE UNDER THE
8 RULES.

9 BUT THE SECOND THING IS UNDER YOUR
10 CONSTITUTIONAL RIGHT UNDER THE FIFTH AMENDMENT YOU ARE
11 NOT REQUIRED TO DO ANYTHING AS A WITNESS OR AS A PARTY.
12 IN OTHER WORDS, YOU CAN STAY ABSOLUTELY SILENT, YOU
13 DON'T HAVE TO SAY ANYTHING AT ALL. YOU DON'T HAVE TO
14 PUT UP THE FIRST WITNESS OR ANYTHING ELSE. AND I WOULD
15 INSTRUCT THE JURY THAT THE FACT THAT YOU DO NOT TESTIFY
16 OR THAT YOU DON'T PUT UP ANY WITNESSES, THAT'S JUST THE
17 WAY YOU DECIDE TO GO. IT CANNOT BE HELD AGAINST YOU IN
18 ANY WAY; THAT YOU ARE JUST EXERCISING YOUR RIGHT UNDER
19 THE FIFTH AMENDMENT. IT CAN'T EVEN BE DISCUSSED BY THE
20 JURY IN THE JURY ROOM.

21 SO YOU NEED TO UNDERSTAND THE TWO THINGS ARE
22 THAT YOU CAN EITHER TESTIFY AND EXERCISE YOUR RIGHT TO
23 TESTIFY IF YOU WANT TO PRESENT EVIDENCE, OR YOU HAVE THE
24 SAME IMPORTANT RIGHT NOT TO TESTIFY AND RELY ENTIRELY ON
25 THE STATE'S CASE. NOW, THE SECOND WOULD NOT PREVENT YOU

1 FROM GIVING A FINAL ARGUMENT AND ALL OF THAT, AS YOU
2 WOULD CONTINUE PARTICIPATING AND PRESENTING WITNESSES
3 AND THE LIKE IF YOU WOULD WANT TO.

4 MR. THOMPSON: YES, SIR.

5 THE COURT: SO YOU MAKE YOUR MIND UP
6 TOMORROW. AND THE JURY WON'T KNOW ANYTHING ABOUT IT
7 UNTIL AT THE END I'LL TELL THEM THAT THE MERE FACT THAT
8 YOU DID NOT TESTIFY CAN'T BE EVEN DISCUSSED; OR IF YOU
9 HAVE ANY OTHER APPROPRIATE CHARGE, BECAUSE THIS IS A
10 LITTLE BIT UNUSUAL CASE.

11 ALL RIGHT. ANYTHING ELSE FROM THE
12 DEFENDANT?

13 MR. THOMPSON: NO, SIR, YOUR HONOR.

14 THE COURT: ANYTHING FROM THE STATE?

15 MS. HUEY: NO, SIR, YOUR HONOR.

16 THE COURT: ALL RIGHT. I WOULD SUGGEST,
17 LET'S TRY TO BE HERE ABOUT 9:30 IN THE MORNING.

18 IS THAT ALL RIGHT FROM THE STATE?

19 MS. HUEY: YES, SIR, YOUR HONOR.

20 THE COURT: MR. THOMPSON, IS THAT ALL RIGHT
21 WITH YOU?

22 MR. THOMPSON: YES, SIR.

23 THE COURT: LET'S BE HERE AT 9:30 TO TAKE UP
24 THIS MATTER. BUT BE PREPARED ADVISE THE COURT OF YOUR
25 DECISION.

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(COURT ADJOURNED AT 5:00 P.M., TO RESUME AT
APPROXIMATELY 9:30 A.M. ON THE 23RD DAY OF
MAY, 2007.)

***** END OF REQUESTED TRANSCRIPT *****

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
VOLUME III OF IV, MAY 22ND, 2007, PAGES 209 THROUGH 394,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
ANDERSON COUNTY, SOUTH CAROLINA, ON THE 21ST DAY, 22ND
DAY, AND 23RD DAY OF MAY, 2007

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 8, 2007

ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH) IN THE COURT OF GENERAL
 CAROLINA) SESSIONS
)
 COUNTY OF ANDERSON) INDICTMENT NO:
 2005-GS-04-1700

STATE OF SOUTH)
 CAROLINA)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL -- VOLUME IV OF IV
) PAGES 397 THROUGH 479
 -VS-)
)
 HOWARD THOMPSON, III,)
)
 DEFENDANT.

MAY 23, 2007
 ANDERSON, SOUTH CAROLINA

B E F O R E:

HONORABLE ALEXANDER S. MACAULAY, JUDGE; AND A JURY.

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

CATHERINE T. HUEY, ESQ.
 ASSISTANT 10TH CIRCUIT SOLICITOR
 ATTORNEY FOR THE STATE

HOWARD THOMPSON, III
 PRO SE DEFENDANT

CHARLES WHITEN, ESQ.
 STAND-BY ATTORNEY FOR THE DEFENDANT

ROBIN SUE HILD, FCRR, RPR
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1 ***** START OF REQUESTED TRANSCRIPT *****

2 (WHEREUPON, THE TRIAL OF THE STATE OF SOUTH
3 CAROLINA V. HOWARD THOMPSON, III, RESUMED ON
4 WEDNESDAY, MAY 23RD, 2007, AT 9:55 A.M.)

5 THE COURT: ANYTHING FROM THE STATE BEFORE
6 WE PROCEED?

7 MS. HUEY: NO, SIR, YOUR HONOR.

8 THE COURT: MR. THOMPSON, HAVE YOU HAD AN
9 OPPORTUNITY TO CONSIDER WHETHER OR NOT YOU ARE GOING TO
10 PROCEED, FIRST WITH A DEFENSE; OR TWO, OR RELY ON YOUR
11 PLEA OF NOT GUILTY WHICH, OF COURSE, LEAVES THE BURDEN
12 ON THE STATE TO PROVE YOU GUILTY BEYOND A REASONABLE
13 DOUBT; OR ANOTHER PART BEING DEFENSES YOU WISH TO
14 PRESENT, DO YOU WISH TO TAKE THE STAND AND TESTIFY UNDER
15 OATH? HAVE YOU HAD THE OPPORTUNITY TO CONSIDER THOSE
16 TWO QUESTIONS?

17 MR. THOMPSON: YES, I HAVE, YOUR HONOR, AND
18 MY DECISION IS TO PUT UP A DEFENSE.

19 THE COURT: VERY GOOD. AND HOW ABOUT YOUR
20 DECISION TO -- I'LL ASK YOU TO RAISE YOUR RIGHT HAND.

21 (WHEREUPON, THE DEFENDANT WAS SWORN BY THE
22 COURT.)

23 COURT'S QUESTIONING OF DEFENDANT RE TESTIFYING:

24 THE COURT: ALL RIGHT. THANK YOU. NOW THIS
25 IS GOING TO BE LIMITED SOLELY TO YOUR DECISION TO

1 TESTIFY OR NOT TO TESTIFY.

2 YOU DO UNDERSTAND THAT YOU HAVE THE RIGHT TO
3 TESTIFY, AND YOU MAY DO SO IN YOUR OWN BEHALF. HOWEVER,
4 IF YOU DO TESTIFY, YOU WILL BE SUBJECT TO
5 CROSS-EXAMINATION AND IMPEACHMENT, JUST AS ANY OTHER
6 WITNESS. DO YOU UNDERSTAND THAT?

7 MR. THOMPSON: YES, SIR, I DO.

8 THE COURT: THAT INCLUDES BOTH THE RIGHT TO
9 TESTIFY AND THE RIGHT NOT TO TESTIFY.

10 MR. THOMPSON: YES, SIR, I DO.

11 THE COURT: HAVE YOU HAD AN OPPORTUNITY TO
12 DISCUSS THESE MATTERS WITH YOUR ADVISER?

13 MR. THOMPSON: YES, I HAVE.

14 THE COURT: AND HAVE YOU HAD AN OPPORTUNITY
15 TO FULLY CONSIDER THE DECISION WHETHER OR NOT TO
16 TESTIFY?

17 MR. THOMPSON: YES, I HAVE.

18 THE COURT: DO YOU HAVE ANY QUESTIONS OF THE
19 COURT AS TO WHETHER OR NOT YOU SHOULD TESTIFY -- AS FAR
20 AS YOUR RIGHTS TO EITHER TESTIFY OR NOT TO TESTIFY?

21 MR. THOMPSON: NO, SIR, I DO NOT.

22 THE COURT: HAVE YOU DECIDED WHAT YOU WOULD
23 LIKE TO DO?

24 MR. THOMPSON: I WOULD LIKE NOT TO TAKE THE
25 WITNESS STAND.

1 **THE COURT:** NOT TO TESTIFY. VERY WELL.

2 NOW, I SHOULD ALSO TELL YOU THAT IF YOU
3 DECIDE NOT TO TESTIFY, I WILL INSTRUCT THE JURY THAT
4 THEY CANNOT CONSIDER YOUR DECISION TO EXERCISE YOUR
5 RIGHT UNDER THE FIFTH AMENDMENT AGAINST YOU IN ANY WAY.
6 IN FACT, THEY ARE NOT EVEN TO DISCUSS IT. DO YOU
7 UNDERSTAND THAT?

8 **MR. THOMPSON:** YES, SIR.

9 **THE COURT:** DO YOU HAVE ANY QUESTIONS OF THE
10 COURT?

11 **MR. WHITEN:** YOUR HONOR, I NEED TO APPROACH
12 JUST FOR A SECOND.

13 **THE COURT:** OH, CERTAINLY.

14 (WHEREUPON, COUNSEL APPROACHED THE BENCH AND
15 CONFERRED WITH THE COURT OUT OF THE PRESENCE
16 OF THE COURT REPORTER.)

17 **THE COURT:** YOU HAVE CONSULTED WITH YOUR
18 ADVISER, MR. WHITEN?

19 **MR. THOMPSON:** YES, SIR, I HAVE.

20 **THE COURT:** I JUST WANTED TO NOTE FOR THE
21 RECORD IT IS YOUR DECISION AS TO WHETHER OR NOT TO
22 TESTIFY AND TO PRESENT A DEFENSE.

23 **MR. THOMPSON:** THAT IS CORRECT, YOUR HONOR.

24 **THE COURT:** IN OTHER WORDS, YOU HAVE HEARD
25 HIS ADVICE, BUT YOU HAVE MADE YOUR OWN DECISION?

1 MR. THOMPSON: MY OWN DECISION, THANK YOU.

2 THE COURT: ALL RIGHT, THANK YOU, SIR.

3 ALL RIGHT. LET'S SEE. ANYTHING FROM THE
4 STATE BEFORE I BRING THE JURY BACK?

5 MS. HUEY: NO, SIR, YOUR HONOR.

6 THE COURT: ANYTHING FROM THE DEFENSE?

7 MR. THOMPSON: NO, SIR, YOUR HONOR.

8 THE COURT: VERY GOOD, THANK YOU.

9 OH, LET ME ASK YOU, I DID -- I ASKED MY LAW
10 CLERK TO SEE IF THERE WERE GOING TO BE ANY REQUESTS FOR
11 CHARGES. ANYTHING FROM THE STATE?

12 MS. HUEY: NO, SIR, YOUR HONOR.

13 THE COURT: ANYTHING FROM THE DEFENSE?

14 MR. THOMPSON: CAN I HAVE A MOMENT?

15 THE COURT: ALL RIGHT.

16 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
17 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

18 MR. THOMPSON: THERE IS NONE, UNLESS THERE
19 IS SOMETHING THAT HAPPENS BEFORE THE END OF THE TRIAL.

20 THE COURT: VERY WELL. I JUST WANTED TO
21 KNOW IF WE CAN START THE DEFENSE NOW AND CALL THE JURY
22 BACK.

23 VERY GOOD. ASK THE JURY TO JOIN US.

24 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
25 10:14 A.M.)

1 **THE COURT:** ALL RIGHT. LET THE RECORD
2 REFLECT THAT THE JURY AND ALTERNATES ARE IN THE
3 JURY-BOX.

4 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
5 JURY, WE WILL NOW PROCEED WITH THE DEFENDANT'S CASE.

6 MR. THOMPSON, I RECOGNIZE YOU TO CALL YOUR
7 FIRST WITNESS.

8 **MR. THOMPSON:** I WOULD LIKE TO CALL AARON
9 NEAL TO THE WITNESS STAND, PLEASE.

10 (WHEREUPON, THE WITNESS WAS SWORN BY THE
11 CLERK.)

12 **THE CLERK:** PLEASE STATE YOUR FULL NAME AND
13 SPELL YOUR LAST NAME FOR THE RECORD.

14 **THE WITNESS:** AARON ENIS N-E-A-L, NEAL.
15 WHEREUPON,

16 **AARON NEAL,**
17 AFTER FIRST HAVING BEEN DULY SWORN, TESTIFIED AS
18 FOLLOWS:

19 **DIRECT EXAMINATION BY MR. THOMPSON:**

20 Q. STATE YOUR RELATIONSHIP TO ME, MR. NEAL, PLEASE,
21 SIR. STATE YOUR RELATIONSHIP TO ME.

22 A. I'M YOUR MOTHER'S BOYFRIEND.

23 Q. OKAY. WERE YOU PRESENT DURING THE TIME THAT
24 MRS. SARA HIOTT'S CHILDREN, Minor 2 AND Minor 3
25 , WERE BEING CARED FOR BY MYSELF?

1 A. YES, SIR.

2 Q. HOW DOES I FEEL TOWARDS SARA HIOTT'S CHILDREN?

3 A. VERY LOVING AND VERY CARING. ANY TIME THEY WAS
4 KEPT IN THE HOUSE, YOU WERE ALWAYS CARING AND LOVING FOR
5 THEM.

6 Q. HOW DOES HER CHILDREN RESPOND TO MY PRESENCE?

7 A. THEY ALWAYS LOVE TO SEE YOU, THEY RUSH TO GET IN
8 THE HOUSE. THEY DID EVERYTHING THEY COULD TO GET TO YOU
9 BEFORE THEY GET ANYTHING IN THE HOUSE.

10 Q. HOW MANY DAYS OUT OF A WEEK DID I BABY-SIT OR
11 CARE FOR BRIAN AUSTIN AND Minor ALLEN?

12 A. I KNOW IT WAS A PRETTY GOOD BIT. I NEVER WAS
13 THERE VERY MUCH WHILE YOU WERE THERE CARING FOR THEM,
14 BUT THEN AGAIN, I WAS, YOU KNOW, THERE WHEN THEY WERE
15 DROPPED OFF OR THEY WERE JUST LEFT THERE WITH YOU. I
16 KNOW YOU CARED, YOU KNOW, PRETTY DEEP FOR THEM.

17 Q. DO I HAVE A HARD TIME WITH Minor ALLEN AND BRIAN
18 AUSTIN IN DEALING WITH THEM HAVING RESPECT OR BEING
19 OBEDIENT?

20 A. NOT THAT I EVER RECALLED DURING THE TIME I SAW
21 YOU WITH THEM.

22 Q. DO I WALK AROUND THE RESIDENCE WITH OR WITHOUT MY
23 SHIRT ON?

24 A. USUALLY WITH YOUR SHIRT ON.

25 Q. OKAY. AM I HARD TO GET ALONG WITH, MR. NEAL?

1 A. NO, SIR, NOT THAT I CAN TELL YOU OF.

2 Q. HOW MANY DAYS OUT OF THE WEEK DID YOU WORK?

3 A. USUALLY I WAS THERE AT NIGHT MOSTLY, BUT
4 SOMETIMES I WOULD COME HOME FOR LUNCH. USUALLY I WAS
5 WORKING SEVEN DAYS A WEEK.

6 Q. WERE THESE CHILDREN EVER THERE A LONG PERIOD OF
7 TIME WITHIN A DAY?

8 A. I REALLY DON'T KNOW. AT SOME POINTS I THINK THEY
9 WERE, WHEN I WAS AT HOME THEY WERE THERE FOR SO MANY
10 HOURS. OTHER THAN THAT I REALLY DON'T KNOW. I KNOW
11 WHILE THEY WERE THERE, THEY WERE DEEPLY CARED FOR IN
12 YOUR CARE, SO...

13 Q. CAN YOU TELL THE COURT WHO ALL WAS PRESENT IN
14 THIS RESIDENCE, OR THAT RESIDED IN THIS RESIDENCE AT
15 THIS TIME OF MAY OF 2005?

16 A. IT WAS MYSELF, YOUR MOTHER, THE TWO KIDS, I THINK
17 SHERREE WAS THERE, AND JONATHAN AND MYSELF ARE ABOUT THE
18 ONLY PEOPLE I KNEW OF THAT WERE THERE.

19 MR. THOMPSON: NO FURTHER QUESTIONS FOR THIS
20 WITNESS.

21 THE COURT: CROSS-EXAMINATION?

22 MS. HUEY: YES, SIR, YOUR HONOR.

23 CROSS-EXAMINATION BY MS. HUEY:

24 Q. MR. NEAL, YOU TESTIFIED THAT THE DEFENDANT WOULD
25 BABY-SIT Minor AND AUSTIN A LOT?

1 A. (NODDED HEAD.)

2 Q. AND YOU SAID THEY WERE THERE FOR SEVERAL HOURS AT
3 A TIME, A LONG PERIOD OF TIME?

4 A. YES.

5 Q. BUT DID YOU ALSO TESTIFY THAT YOU WERE NOT THERE
6 MUCH?

7 A. NO, I WASN'T THERE MUCH.

8 Q. OKAY. SO THERE WERE TIMES WHEN -- OBVIOUSLY
9 TIMES THEN WHEN THE DEFENDANT AND THE CHILDREN WOULD
10 HAVE BEEN ALONE TOGETHER WITHOUT YOU THERE?

11 A. NO, I DIDN'T SAY THAT AT ALL. WHAT I SAID WAS
12 THE FACT THAT I WAS THERE SOMETIMES AND THEN SOMETIMES I
13 WASN'T. SOMETIMES I WOULD COME HOME ON LUNCH BREAK OR
14 SOMETHING LIKE THAT OR LATE IN THE AFTERNOON, AND THE
15 SAME PEOPLE WERE, YOU KNOW, NORMALLY THERE WHEN THEY
16 LIVED WITH ME.

17 Q. WHO LIVED WITH YOU?

18 A. WELL, MY GIRLFRIEND WAS LIVING WITH ME.

19 Q. OKAY. YOUR GIRLFRIEND IS THE DEFENDANT'S MOTHER,
20 RIGHT?

21 A. RIGHT.

22 Q. AND I BELIEVE YOU ALSO SAID THERE WERE TWO KIDS
23 LIVING THERE?

24 A. NO, THEY WEREN'T LIVING THERE, THEY WERE VISITING
25 THERE; THEY WEREN'T LIVING THERE, THEY WERE JUST

1 VISITING THERE.

2 Q. OKAY. I'M SORRY. WHEN YOU SAY TWO KIDS, THEN,
3 ARE YOU REFERRING TO Minor AND AUSTIN?

4 A. RIGHT.

5 Q. OKAY. BUT YOU WEREN'T THERE WITH THEM ALL THE
6 TIME?

7 A. NO, SIR -- NO, MA'AM, I WASN'T.

8 MS. HUEY: THAT'S ALL I HAVE, JUDGE.

9 THE COURT: RE-EXAM?

10 REDIRECT EXAMINATION BY MR. THOMPSON:

11 Q. WERE THESE CHILDREN IN THE PRESENCE OF ADULTS?

12 A. NO. JUST MAINLY YOU, I THINK, AND SHERREE AND
13 JONATHAN AND YOUR MOTHER. AND THEN, AND THEN SOMETIME
14 WHEN I CAME, I MEAN YOU WERE JUST THERE AND THAT I KNOW
15 OF.

16 MR. THOMPSON: NO FURTHER QUESTIONS.

17 THE COURT: ANY RECROSS?

18 MS. HUEY: NO, SIR, YOUR HONOR.

19 THE COURT: VERY GOOD. YOU MAY STEP DOWN.

20 THANK YOU, SIR.

21 (WHEREUPON, THE WITNESS LEFT THE WITNESS
22 STAND.)

23 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

24 MR. THOMPSON: I WOULD LIKE TO CALL JONATHAN
25 HENDERSON TO THE WITNESS STAND, PLEASE.

1 DIRECT EXAMINATION BY MR. THOMPSON:

2 Q. HOW OLD ARE YOU, SHERREE?

3 A. 21.

4 Q. HOW MANY CHILDREN DO YOU HAVE?

5 A. I HAVE TWO.

6 Q. AND THEIR AGES?

7 A. I HAVE A ONE AND A HALF-YEAR-OLD AND A
8 FOUR-YEAR-OLD.

9 Q. YOU LIVED IN THE SAME RESIDENCE DURING THE TIME
10 THAT Minor 2 AND BRIAN AUSTIN WERE BEING CARED FOR BY
11 ME, CORRECT?

12 A. YES.

13 Q. NOW, YOU HAVE A FOUR-YEAR-OLD SON?

14 A. UH-HUH.

15 Q. WHO WAS TWO YEARS OF AGE IN THE YEAR OF 2005,
16 CORRECT?

17 A. YES.

18 Q. WAS HE EVER PRESENT DURING THE TIME OF THIS
19 INCIDENT?

20 A. YES. YOU WATCHED HIM AS I WENT TO WORK.

21 Q. WERE YOU EVER CONCERNED WITH YOUR SON BEING
22 AROUND ME?

23 A. NO.

24 Q. DID I TAKE IN MRS. HIOTT'S TWO CHILDREN INTO MY
25 HEART AND ADD THEM INTO MY LIFE AND DAILY ACTIVITIES?

1 A. YES, YOU DID. EVERYWHERE WE WENT, THEY WENT,
2 EVEN WHEN WE WENT OUT TO EAT. WE WENT OUT TO EAT ONE
3 TIME AT RED LOBSTER AND HOWARD TOOK ME WITH US; HE PAID
4 FOR THEM TO GO. I MEAN, THEY WERE PART OF OUR FAMILY.

5 Q. DID THESE CHILDREN EVER SEEM TO BE IN FEAR?

6 A. NO. THEY ALWAYS, EVERY TIME THEY CAME, I MEAN,
7 THEY WERE LIKE READY TO COME OVER. THEY WERE SO HAPPY
8 TO GET THERE, YOU COULD JUST SEE THE SMILE ON THEIR
9 FACE. THEY WERE HAPPY. THERE WAS TIMES THEY EVEN SPENT
10 THE NIGHT. THEY, I MEAN, DIDN'T WANT TO GO HOME, THEY
11 ALWAYS WANTED TO STAY.

12 Q. SO CAN YOU STATE AGAIN HOW DID Minor 2 REACT
13 TO MY PRESENCE?

14 A. HAPPY, JOYFUL, GLAD TO BE OVER. LIKE I SAID,
15 THEY EVEN WANTED TO STAY; THEY SPENT THE NIGHT, THEY
16 EVEN SPENT THE NIGHT.

17 Q. SO HE WASN'T SCARED OR AFRAID ---

18 A. HUH-UH.

19 Q. --- OR ANYTHING TO COME HERE?

20 A. NO, NOT AT ALL.

21 Q. DID HE EVER STATE THAT HE NEVER WANTED TO RETURN?

22 A. YEAH, HE DID ONE TIME SAY HE DIDN'T WANT TO GO
23 HOME, THERE WAS TIMES WHEN HE DID SAY THAT.

24 Q. DO YOU KNOW WHY HE WOULD SAY THAT?

25 A. I DON'T KNOW WHY AT ALL. I CAN'T REMEMBER WHY.

1 Q. NOW, WHILE ^{Minor 2} AND BRIAN AUSTIN WAS IN MY
2 CARE, WHAT DAILY ACTIVITIES DID THE TWO OF THEM AND I
3 PARTICIPATE IN?

4 A. YOU TOOK THEM OUTSIDE TO PLAY BALL, YOU HAD THEM
5 IN A ROOM JUST TO PLAY NINTENDO, THEY WERE WATCHING T.V.
6 I MEAN, YOU WOULD GO IN THE KITCHEN, FIX THEM SOMETHING
7 TO EAT. IT'S LIKE THEY WERE FOLLOWING YOU: WHEREVER
8 YOU WENT, THEY WENT.

9 Q. NOW, BRIAN AUSTIN WAS HOW OLD AT THE TIME?

10 A. TWO.

11 Q. AND YOU HAVE A TWO-YEAR-OLD SON?

12 A. YES. THEY'RE LIKE THREE DAYS APART, FOUR DAYS
13 APART.

14 Q. DOES YOUR SON KNOW HOW TO OPEN DOORS?

15 A. HE WAS LEARNING AT THAT TIME BUT HE DIDN'T KNOW
16 HOW.

17 Q. DID BRIAN AUSTIN KNOW HOW TO OPEN DOORS?

18 A. NO. MY SON WAS MORE LIKE TEACHING HIM HOW TO DO
19 CERTAIN THINGS. HE -- WHAT'S HIS NAME, AUSTIN -- WHAT
20 HE DIDN'T KNOW, IT WAS LIKE MY SON WOULD BE MORE OF A
21 ROLE MODEL BECAUSE HE KNEW A LITTLE BIT MORE THAN WHAT
22 AUSTIN KNEW.

23 Q. DID YOU EVER CARE FOR THESE CHILDREN YOURSELF?

24 A. YES, THERE WAS TIMES I HAD THEM BY MYSELF FOR
25 LIKE TWO OR THREE HOURS WHILE YOU WENT TO THE STORE; OR

1 IF YOU HAD TO GO TO YOUR MAMA'S JOB FOR A LITTLE BIT OR
2 WHATEVER, THERE WAS TIMES I ACTUALLY HAD TO KEEP THEM
3 FOR TWO OR THREE HOURS BY MYSELF.

4 Q. ON MAY 18TH WAS YOUR SON PRESENT?

5 A. YES, HE WAS, BECAUSE I WAS AT WORK.

6 Q. HOW MANY DAYS OUT OF A WEEK OR -- YEAH -- HOW
7 MANY DAYS OUT OF THE WEEK DID I BABY-SIT OR CARE FOR
8 MRS. HIOTT'S TWO CHILDREN?

9 A. I WOULD SAY THEY WERE OVER THERE ALL THE TIME. I
10 SAW THEM ALL THE TIME. THERE WAS TIMES WHEN THEY WOULD
11 GET DROPPED OFF WITH ME UNTIL YOU GOT HOME FROM SCHOOL.

12 Q. AND YOU STATED THAT THESE CHILDREN DIDN'T SEEM TO
13 BE IN FEAR OF ANY KIND?

14 A. NOT AT ALL.

15 Q. DID Minor ALLEN HAVE ACCIDENTS FREQUENTLY?

16 A. YES.

17 Q. AND HOW WOULD HE BE CLEANED?

18 A. YOU WOULD WIPE HIM UP WITH A TOWEL. IF MY CHILD
19 HAD SOME WIPES AT THE TIME, YOU WOULD USE WIPES TO KEEP
20 HIM CLEAN. WE HAD A WASHER AND DRYER, SO YOU WOULD WASH
21 CLOTHES TO PUT BACK ON THEIR BACKS IF THEY DIDN'T HAVE
22 AN EXTRA PAIR OF CLOTHES.

23 MR. THOMPSON: NO FURTHER QUESTIONS.

24 THE COURT: CROSS-EXAMINATION?

25 //

1 CROSS-EXAMINATION BY MS. HUEY:

2 Q. MS. HUNTER, YOU SAID THAT YOU WERE AT WORK ON MAY
3 18TH, 2005?

4 A. UH-HUH.

5 Q. AND IS IT FAIR TO SAY THAT YOU WEREN'T WITH
6 HOWARD AND Minor AND AUSTIN THE ENTIRE TIME?

7 A. NOT THE ENTIRE TIME.

8 Q. THERE WERE TIMES WHEN YOU WEREN'T THERE AND
9 HOWARD WAS JUST WITH THEM?

10 A. UH-HUH.

11 MS. HUEY: OKAY. THAT'S ALL I HAVE.

12 THE COURT: RE-EXAM?

13 MR. THOMPSON: NO FURTHER QUESTIONS.

14 THE COURT: ALL RIGHT. YOU MAY STEP DOWN.

15 THANK YOU, MA'AM.

16 (WITNESS LEAVES STAND.)

17 MR. THOMPSON: DEFENSE RESTS ITS CASE.

18 THE COURT: ANY REPLY?

19 MS. HUEY: NO, SIR, YOUR HONOR.

20 THE COURT: MADAM FORELADY, LADIES AND
21 GENTLEMEN OF THE JURY, I NEED TO TAKE UP SOME MATTERS
22 WITH THE PARTIES, SO I'M GOING TO ASK YOU TO RETIRE TO
23 THE JURY ROOM.

24 AGAIN, THE TESTIMONY AND EVIDENCE HAS BEEN
25 COMPLETED, BUT THE TRIAL HAS NOT. WE STILL HAVE THE

1 FINAL ARGUMENT AS WELL AS THE CHARGE ON THE LAW.

2 NOW, I MIGHT NOTE THAT IN THIS CASE THE
3 DEFENDANT HAS REPRESENTED HIMSELF, WHAT WE CALL *PRO SE*,
4 ON HIS OWN BEHALF, AND DID NOT TAKE THE STAND, SO I
5 DON'T WANT YOU TO IN ANY WAY MAKE ANY SORT OF
6 CONSIDERATION OF THE FACT THAT HE DID NOT TAKE THE STAND
7 AND TESTIFY BECAUSE THE LAW DOES NOT COMPEL A DEFENDANT
8 IN A CRIMINAL CASE TO TAKE THE WITNESS STAND AND TESTIFY
9 UNDER OATH. NO PRESUMPTION OF GUILT MAY BE RAISED AND
10 NO INFERENCE OF ANY KIND MAY BE DRAWN FROM THE
11 DEFENDANT'S DECISION NOT TO TESTIFY UNDER OATH.

12 IN THIS CASE THE DEFENDANT HAS BEEN ACTING
13 *PRO SE*, THAT IS, HE HAS UNDERTAKEN TO REPRESENT HIMSELF
14 WITHOUT BEING FORMALLY REPRESENTED BY A LICENSED
15 ATTORNEY. ALTHOUGH HE HAS HAD AN ADVISER, HE HAS
16 REPRESENTED HIMSELF ENTIRELY.

17 UNLIKE THE TESTIMONY OF THE SWORN WITNESSES,
18 A *PRO SE* DEFENDANT'S STATEMENTS ARE NOT TESTIMONY AND
19 ARE INSTEAD ADVOCACY. THEY ARE TO BE GIVEN THE SAME
20 CONSIDERATION AS THE STATEMENTS THAT AN ATTORNEY MAKES
21 IN THE REPRESENTATION OF A CLIENT.

22 AGAIN, WITH THAT, I'M GOING TO ASK YOU TO
23 RETIRE AND THEN CALL YOU BACK. YOU MIGHT AS WELL BE
24 READY TO COMPLETE THE CASE WHEN YOU COME BACK.

25 SO BE SURE THEY HAVE ANY REFRESHMENTS.

1 AND WHEN WE COME BACK, WE'LL TRY TO COMPLETE
2 THE WHOLE CASE. AGAIN, DO NOT UNDERTAKE DISCUSSION OF
3 THE CASE AT THIS TIME.

4 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
5 10:45 A.M.)

6 **THE COURT:** ALL RIGHT. LET ME ASK YOU, IS
7 THERE ANY EXCEPTION FROM THE COURT'S CHARGE ON THE FACT
8 THAT THE DEFENDANT EXERCISED HIS RIGHT UNDER THE
9 CONSTITUTION NOT TO TESTIFY ---

10 **MS. HUEY:** NO, SIR, YOUR HONOR.

11 **THE COURT:** --- NOT TO TESTIFY UNDER OATH?

12 **MS. HUEY:** BUT ON THAT NOTE, I WOULD LIKE TO
13 MENTION SOMETHING.

14 **THE COURT:** WHAT'S THAT?

15 **MS. HUEY:** YOUR HONOR, I UNDERSTAND HE
16 DOESN'T WISH TO TESTIFY, AND I JUST WOULD LIKE HIM TO BE
17 ADMONISHED THAT HE CAN'T TESTIFY DURING CLOSING
18 ARGUMENT.

19 **THE COURT:** BOTH SIDES UNDERSTAND THAT THE
20 ONLY THING THEY CAN ARGUE HAS TO BE SOMETHING THAT'S IN
21 THE RECORD; IN OTHER WORDS, IT CAN'T BE SOMETHING
22 OUTSIDE OF THE RECORD BUT ANYTHING THAT'S BEEN A PART OF
23 THE RECORD HERE.

24 **MS. HUEY:** IN FRONT OF THE JURY, YOUR HONOR,
25 RIGHT. THE REASON I SAY THAT ---

1 **THE COURT:** I'M SAYING IN THE RECORD. IF
2 IT'S IN THE RECORD, IT'S IN FRONT OF THE JURY. ANYTHING
3 THAT WAS EXCLUDED IS NOT IN FRONT OF THE JURY.

4 **MS. HUEY:** I'M SORRY. I WAS MENTIONING --
5 I'M SAYING BECAUSE AT THE JACKSON V. DENNO HEARING THERE
6 WAS TALK OF THIS OTHER WRITTEN STATEMENT THAT ---

7 **THE COURT:** THE JURY WASN'T HERE, SO THAT
8 ISN'T PART OF THE RECORD.

9 **MS. HUEY:** THANK YOU, SIR.

10 **THE COURT:** BUT, AS I SAY, ANYTHING, AS WE
11 SAY, YOU HAVE TO REMAIN WITHIN THE RECORD; IN OTHER
12 WORDS, YOU CANNOT TESTIFY TO SOMETHING OUTSIDE THAT
13 HASN'T BEEN TESTIFIED TO OR EXHIBITS. AND YOU CAN ARGUE
14 INFERENCES AND THINGS OF THAT NATURE, BUT YOU CAN'T GO
15 BEYOND THE RECORD. THAT APPLIES TO BOTH THE STATE AND
16 THE DEFENDANT.

17 NOW, IS THERE ANY EXCEPTION TO MY CHARGE TO
18 THE JURY ON THE RIGHT OF THE DEFENDANT NOT TO EXERCISE
19 HIS RIGHT? (NO RESPONSE.)

20 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
21 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

22 **THE COURT:** NOW I'M GOING TO GIVE ANOTHER
23 CHARGE DURING -- A MORE COMPLETE CHARGE DURING THE
24 CHARGE TO THE JURY AS TO YOUR RIGHT TO DO THAT. I JUST
25 DIDN'T WANT THEM TO BE LEFT WITH AN IDEA THAT YOU WOULD

1 HAVE TO TESTIFY.

2 HOW LONG DO WE NEED TO ARGUE?

3 MS. HUEY: TO ARGUE, JUDGE?

4 THE COURT: YES, MA'AM.

5 MS. HUEY: IT WILL PROBABLY TAKE 20 MINUTES
6 OR SO.

7 THE COURT: IF YOU GO OVER AN HOUR, I'LL LET
8 THE JURY TAKE ANOTHER BREAK BEFORE I CHARGE THEM, SO IF
9 YOU WOULD STAY WITHIN THE 20 MINUTES OR SO APIECE.

10 NOW, THE STATE OPENS, THEN THE DEFENSE
11 ARGUES AND THE STATE CLOSES.

12 MS. HUEY: AND, YOUR HONOR I WOULD LIKE TO
13 WAIVE OPENING ON THE LAW.

14 THE COURT: DO YOU WANT HER TO WAIVE
15 OPENING? DO YOU WANT TO HEAR WHAT SHE HAS TO SAY?

16 MR. THOMPSON: IT MIGHT HELP, YOUR HONOR.

17 THE COURT: ALL RIGHT. TALK TO YOUR
18 ADVISER.

19 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
20 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

21 MR. THOMPSON: THAT'S FINE, YOUR HONOR.

22 THE COURT: ALL RIGHT. SO THE STATE -- THE
23 DEFENDANT AGREES TO THE STATE WAIVING OPENING ARGUMENTS,
24 SO THE DEFENDANT WILL ARGUE FIRST, THEN THE STATE WILL
25 CLOSE.

1 ALL RIGHT. AND AS I SAY, IF IT GETS
2 LENGTHY, CUMULATIVE, THEN I'LL HAVE TO EXERCISE MY
3 DISCRETION AS TO WHETHER OR NOT THE JURY NEEDS A BREAK
4 BEFORE WE PROCEED WITH THE CHARGE.

5 LET'S SEE. WE MIGHT AS WELL -- LET ME SEE
6 WHAT WE HAVE IN WAY OF A CHARGE.

7 MR. THOMPSON: YOUR HONOR?

8 THE COURT: YES, SIR. OH, YOU NEED TO MAKE
9 YOUR MOTIONS. ALL RIGHT. VERY GOOD. LET ME ASK YOU.
10 ANYTHING FROM THE STATE AS FAR AS THE CASE
11 IS CONCERNED AT THIS POINT?

12 MS. HUEY: NO, SIR, YOUR HONOR.

13 THE COURT: ALL RIGHT. FROM THE DEFENDANT?
14 DEFENDANT'S MOTION FOR DIRECTED VERDICT:

15 MR. THOMPSON: I WOULD LIKE TO MOVE FOR A
16 DIRECTED VERDICT OF NOT GUILTY MOTION BASED ON THE
17 GROUND THAT THERE IS NO FACTUAL EVIDENCE BY WHICH THE
18 JURY COULD FIND ME GUILTY BEYOND A REASONABLE DOUBT.

19 NOW, THERE HAS BEEN NO EVIDENCE AT ALL
20 CORROBORATING MY ALLEGED STATEMENT. NO ONE HAS
21 TESTIFIED THAT I COMMITTED A SEXUAL ACT ON Minor 2 THE
22 DOCTOR DIDN'T IDENTIFY ME AS -- HOLD ON.

23 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
24 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

25 MR. THOMPSON: THE DOCTOR DIDN'T IDENTIFY ME

1 AS COMMITTING A SEXUAL ACT ON Minor 2 OR EVEN AS TO THE
2 ALLEGED TIME AND DATE THE ACTS WERE COMMITTED. THE
3 POLICE OFFICER DIDN'T TESTIFY THAT I COMMITTED ANY ACTS
4 OF SEXUAL ABUSE. THERE IS NO NEXUS, OR EVIDENCE. THE
5 PHOTOGRAPHS DID NOT -- HOLD ON.

6 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
7 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

8 MR. THOMPSON: THE PHOTOGRAPHS DID NOT
9 SUPPORT ME OR SUPPORT IDENTIFICATION OF ME AS BEING THE
10 PERPETRATOR THAT I COMMITTED A SEXUAL ACT WITH Minor AND
11 ABSOLUTELY NO EVIDENCE WAS PRESENTED BEFORE THE STATE
12 INTRODUCED MY STATEMENT AS EVIDENCE. THERE HAS BEEN NO
13 EVIDENCE OF EXCITED UTTERANCES, AS WELL.

14 THE COURT: WHAT DOES THE STATE SAY?

15 MS. HUEY: YOUR HONOR, WE WOULD REITERATE
16 OUR ARGUMENT FROM YESTERDAY. WE DO BELIEVE THERE IS
17 CORROBORATING EVIDENCE. I THINK IT WOULD HAVE BEEN
18 IMPROPER FOR THE DOCTOR TO HAVE NAMED THE DEFENDANT AS
19 THE PERPETRATOR, AND WE AVOIDED THAT AS SUCH. HE DID,
20 HOWEVER, SPECIFY THAT Minor HAD TOLD HIM THAT HE HAD BEEN
21 TOUCHED ON HIS WEE WEE I BELIEVE WERE HIS WORDS BY
22 SOMEONE'S HAND AND MOUTH. HE WAS TOLD THAT IN ORDER SO
23 THAT HE COULD MEDICALLY EXAMINE THE CHILD.

24 IN ADDITION, WE HAVE THE MOTHER WALKING IN
25 ON THE CHILD COMPLETELY NAKED.

1 WE ALSO HAVE A DISCLOSURE TO LAW
2 ENFORCEMENT, ALTHOUGH WE DON'T KNOW WHAT THE DISCLOSURE
3 WAS. AS A RESULT OF THAT, THEY KNEW TO GO TO THE
4 DEFENDANT'S HOUSE AND LOOK FOR PICTURES OF THESE NAKED
5 MEN.

6 AND, YOUR HONOR, I BELIEVE THE DEFENSE'S
7 CASE, HIS ONE WITNESS ALSO ADDS TO OUR CASE IN THAT HE
8 TALKS ABOUT THE CHILDREN BEING NAKED AND THAT HE THOUGHT
9 IT WAS WEIRD.

10 THE COURT: HE SAID HE DIDN'T UNDERSTAND, HE
11 DIDN'T USE THE WORDS THAT YOU SUGGESTED.

12 ALL RIGHT. ANYTHING ELSE FROM THE
13 DEFENDANT?

14 MR. THOMPSON: NO, SIR, YOUR HONOR.

15 THE COURT: WELL, I DO FIND THAT THE RECENT
16 CASE OF STATE VERSUS LADNER IS EXTREMELY HELPFUL,
17 OPINION NUMBER 26310, FILED APRIL 23RD, 2007, JUST
18 WITHIN THE LAST MONTH. THERE, THE VICTIM DID NOT
19 TESTIFY, BUT THE EXAMINING PHYSICIAN WAS ABLE TO TESTIFY
20 AS TO THE INFORMATION HE RECEIVED FOR TREATMENT OF THE
21 VICTIM THAT IMPLICATED OR AT LEAST DESCRIBED WHAT THE
22 ALLEGED BATTERY WAS, AND IT WAS ADMITTED AS BEING NOT IN
23 VIOLATION OF THE CONFRONTATION CLAUSE IN OUR
24 CONSTITUTION OF THE UNITED STATES IN SOUTH CAROLINA.

25 MOREOVER, THE ONLY STATEMENT WE HAD REALLY

1 FROM THE CHILD, I THINK, WAS THAT HE DIDN'T KNOW WHY HE
2 WAS UNCOVERED, AND THAT WAS NOT THE SAME STATEMENT, BUT
3 IT WAS AGAIN AN EXCITED UTTERANCE THAT WAS ADMITTED ALSO
4 IN THE LADNER CASE, AS IN THIS CASE.

5 **COURT'S RULING ON MOTION FOR DIRECTED VERDICT:**

6 **THE COURT:** IN DECIDING A MOTION FOR
7 DIRECTED VERDICT, THE COURT MUST CONSIDER THE TESTIMONY
8 AND EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE
9 NON-MOVING PARTY, WHICH WOULD BE THE STATE IN THIS CASE;
10 AND AGAIN THE COURT IS NOT CONCERNED WITH THE WEIGHT OF
11 THE EVIDENCE BUT MERELY WHETHER OR NOT THERE IS ANY
12 RELIABLE EVIDENCE BY WHICH A VERDICT MAY BE PROPERLY
13 FOUND.

14 IN THIS CASE THE TESTIMONY PLACES THE
15 APPELLANT WITH THE VICTIM AT THE TIME OF THE ALLEGED
16 INCIDENT. THERE, THE DEFENDANT'S ONLY INCULPATORY
17 STATEMENTS BELIEVED AS BEING MADE BY THE DEFENDANT AND
18 WHETHER THEY WERE FREELY AND VOLUNTARILY GIVEN AND OF
19 COURSE WITH THE CONSTITUTIONAL RIGHTS WHICH IS TO BE
20 DETERMINED BY THE JURY ALONE IS ENOUGH TO SUBMIT THE
21 CASE TO THE JURY.

22 THEREFORE, THE DEFENDANT'S MOTION FOR
23 DIRECTED VERDICT IS DENIED.

24 **CHARGE CONFERENCE:**

25 **THE COURT:** ALL RIGHT. AGAIN, AS FAR AS

1 CHARGES, THE GENERAL CHARGE ON CREDIBILITY OF WITNESSES,
2 PRESUMPTION OF INNOCENCE, REASONABLE DOUBT.

3 THE DEFINITION OF REASONABLE DOUBT THAT I
4 USE IS STATE V. MANNING (READING):

5 A REASONABLE DOUBT IS THE KIND OF
6 DOUBT THAT WOULD CAUSE A REASONABLE
7 PERSON TO HESITATE TO ACT.

8 NOW, IF THEY SHOULD REQUEST A FURTHER CHARGE
9 ON REASONABLE DOUBT, I USUALLY USE THE VICTOR V.
10 NEBRASKA. BUT MY GENERAL CHARGE ON REASONABLE DOUBT IS
11 THE MANNING CHARGE.

12 THEN DIRECT AND CIRCUMSTANTIAL EVIDENCE.

13 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
14 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

15 THE COURT: CRIMINAL INTENT.

16 THAT THE INDICTMENT IS NOT EVIDENCE BUT
17 MERELY THE DOCUMENT BY WHICH THE CASE IS PROCESSED TO GO
18 TO TRIAL.

19 AND THEN, AS I SAID EARLIER, I WILL CHARGE
20 THE JURY ON THE DEFENDANT'S DECISION TO EXERCISE HIS
21 RIGHT NOT TO TESTIFY IS NOT TO BE GIVEN CONSIDERATION BY
22 THEM IN ANY WAY.

23 NOW, LET ME READ WHAT I INTEND AT THIS TIME
24 TO CHARGE THE JURY, SO LISTEN CAREFULLY (READING):

25 I INSTRUCT YOU AND EMPHASIZE THAT

1 THE FACT THAT THE DEFENDANT DID NOT TAKE
2 THE STAND AND TESTIFY UNDER OATH IS NOT A
3 FACTOR TO BE CONSIDERED BY YOU IN ANY WAY
4 IN YOUR DELIBERATION AND IN YOUR
5 CONSIDERATION OF THE QUESTION OF GUILT OR
6 THE INNOCENCE OF THE DEFENDANT. IT MUST
7 NOT BE CONSIDERED BY YOU IN ANY MANNER
8 WHATSOEVER. THE DEFENDANT HAS AN
9 ABSOLUTE CONSTITUTIONAL RIGHT TO REMAIN
10 SILENT AND HIS ASSERTION OF THIS RIGHT
11 MUST NOT BE CONSIDERED BY YOU IN YOUR
12 DELIBERATIONS.

13 I REPEAT: UNDER YOUR OATH YOU
14 ARE TO DRAW NO CONCLUSION WHATSOEVER OF
15 THE FACT THAT THE DEFENDANT IN THIS CASE
16 DID NOT TAKE THE STAND AND TESTIFY UNDER
17 OATH. THE FACT THAT THIS DEFENDANT DID
18 NOT TESTIFY UNDER OATH SHOULD NOT EVEN BE
19 CONSIDERED OR DISCUSSED IN THE JURY ROOM.

20 THE BURDEN OF PROOF, AS I HAVE
21 STATED TO YOU, IS ON THE STATE. THE
22 DEFENDANT IS NOT REQUIRED TO PROVE HIS
23 INNOCENCE, AND THE BURDEN OF PROOF
24 REMAINS ON THE STATE TO PROVE HIS GUILT
25 BEYOND A REASONABLE DOUBT.

1 AS I STATED TO YOU EARLIER IN
2 THIS CASE, THE DEFENDANT HAS BEEN ACTING
3 PRO SE, THAT IS, HE HAS REPRESENTED
4 HIMSELF. UNLIKE THE TESTIMONY OF A SWORN
5 WITNESSES, A PRO SE DEFENDANT'S ADVOCACY
6 ON HIS OWN BEHALF IS NOT TESTIMONY UNDER
7 OATH AND, THEREFORE, IS NOT EVIDENCE IN
8 THE CASE. THE DEFENDANT'S PRO SE
9 ADVOCACY IS TO BE GIVEN THE SAME
10 CONSIDERATION AS THE ADVOCACY OF A
11 LICENSED ATTORNEY IN THE REPRESENTATION
12 OF HIS CLIENT.

13 IS THERE ANY EXCEPTION TO THAT PROPOSED
14 CHARGE, FROM THE STATE?

15 MS. HUEY: NO, SIR, YOUR HONOR.

16 THE COURT: FROM THE DEFENDANT?

17 MR. THOMPSON: NO, SIR, YOUR HONOR.

18 THE COURT: VERY GOOD.

19 THEN I WILL CHARGE THEM ON THE STATEMENT,
20 THAT THE STATEMENTS GIVEN BY OR ATTRIBUTED TO THE
21 DEFENDANT, THAT, OF COURSE, IT'S THEIR DUTY TO FIND
22 BEYOND A REASONABLE DOUBT THAT THEY WERE GIVEN FREELY
23 AND VOLUNTARILY IN ACCORDANCE WITH HIS CONSTITUTIONAL
24 RIGHTS, AND THAT THEY WERE NOT THE RESULT OF ANY UNDUE
25 INFLUENCE, AS WELL AS DID HE MAKE A STATEMENT IN THE

1 FIRST PLACE. SO ALL THREE CONSIDERATIONS WOULD HAVE TO
2 BE ESTABLISHED BEYOND A REASONABLE DOUBT BEFORE THEY CAN
3 BE GIVEN ANY CONSIDERATION WHATSOEVER.

4 THEN I WILL CHARGE FIRST-DEGREE CRIMINAL
5 SEXUAL CONDUCT WITH A MINOR, PRETTY MUCH FOLLOWING THE
6 STATUTE.

7 AND AGAIN I'LL CHARGE REASONABLE DOUBT AS TO
8 WHETHER OR NOT THE STATE HAS MET ITS BURDEN OF PROOF TO
9 SHOW ALL THE ELEMENTS OF CRIMINAL SEXUAL CONDUCT WITH A
10 MINOR IN THE FIRST DEGREE BEYOND A REASONABLE DOUBT; IF
11 THEY FAIL TO DO SO, THEN THE DEFENDANT MUST BE FOUND NOT
12 GUILTY.

13 ALL RIGHT. AND ALSO, OF COURSE, THAT THEY
14 HAVE NO FRIENDS TO REWARD OR ENEMIES TO PUNISH AND MUST
15 BE CONTROLLED SOLELY BY THE TESTIMONY AND THE EVIDENCE
16 AND THE CHARGE ON THE LAW IN THIS CASE.

17 ALL RIGHT. ANYTHING FURTHER FROM THE STATE?

18 MS. HUEY: NO, SIR, YOUR HONOR.

19 THE COURT: ANYTHING FROM THE DEFENDANT?

20 MR. THOMPSON: NO, SIR, YOUR HONOR.

21 THE COURT: VERY GOOD. ALL RIGHT. YOU
22 MIGHT WANT TO TAKE A FEW MINUTES AND THEN WE'LL GO TO
23 THE JURY.

24 ALL RIGHT. WE'LL STAND AT EASE FOR LET'S
25 SAY TEN MINUTES, UNTIL 11:15.

1 (WHEREUPON, A RECESS WAS TAKEN.)

2 THE COURT: ANYTHING FROM THE STATE BEFORE
3 WE BRING THE JURY BACK?

4 MS. HUEY: NO, SIR, YOUR HONOR.

5 THE COURT: FROM THE DEFENDANT?

6 MR. THOMPSON: NO, SIR, YOUR HONOR.

7 THE COURT: ASK THE JURY TO JOIN US, PLEASE.

8 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT
9 11:24 A.M.)

10 THE COURT: ALL RIGHT. LET THE RECORD
11 REFLECT THAT THE JURY AND ALTERNATES ARE IN THE
12 JURY-BOX.

13 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
14 JURY, AS I MENTIONED EARLIER, THIS WILL BE THE FINAL
15 STAGES OF THIS TRIAL. FIRST WE WILL HAVE THE ARGUMENT
16 BY THE DEFENDANT; AND THEN THE STATE, HAVING THE BURDEN
17 OF PROOF, WILL HAVE THE FINAL ARGUMENT.

18 NOW, PLEASE REMEMBER, ARGUMENTS ARE NOT
19 EVIDENCE, BUT THEY ARE THE WAY THE PARTIES TRY TO GET
20 YOU TO ACCEPT THEIR VERSION OF THE EVIDENCE, AND SO AT
21 THE TIME IF THE PARTIES HAVE THAT OPPORTUNITY TO BRING
22 TO YOU THEIR VIEW OF THE EVIDENCE, AND THEN AFTER THAT I
23 WILL CHARGE YOU ON THE LAW THAT'S APPLICABLE TO THIS
24 CASE.

25 WITH THAT I WILL RECOGNIZE MR. THOMPSON FOR

1 HIS CLOSING ARGUMENT.

2 CLOSING ARGUMENT BY MR. THOMPSON, THE DEFENDANT:

3 MR. THOMPSON: CHILDREN ARE A GREAT BLESSING
4 AND A RESPONSIBILITY. THERE ARE TWO HIGHLIGHTS I HAVE
5 HERE. ONE, CHILDREN MUST FACE THE PRINCIPLE OF
6 OBEDIENCE. WE ARE LIVING IN AN AGE WHEN DISOBEDIENCE OF
7 PARENTS IS MATURING INTO BRAWLING DEFIANCE OF ALL THAT'S
8 RIGHT.

9 THE ROOT CAUSE OF THE UNREST IN SOCIETY IS
10 IN THE TOTAL LACK OF DISCIPLINE AND OBEDIENCE IN THE
11 HOME. A CHILD WHO HAS NEVER LEARNED TO OBEY HIS PARENTS
12 IS GOING TO HAVE NO RESPECT FOR AUTHORITY ANYWHERE,
13 WHETHER IT IS VESTED IN HIS TEACHERS AT SCHOOL, IN THE
14 PERSON OF HIS OR HER EMPLOYER AT WORK, IN THE POLICEMEN
15 ON THE STREETS, OR IN THE MAN SITTING ON THE BENCH.

16 IN THE HOME A CHILD LEARNS A GREAT PRINCIPLE
17 OF OBEDIENCE WHICH STANDS HIM IN GOOD STEED WHEN HE GETS
18 INTO THE WORLD. THE CHARACTER WHICH IS FORMED IN A HOME
19 DETERMINES THE KIND OF PERSON THE CHILD WILL BECOME.

20 TWO. PARENTS MUST FACE THE POSSIBILITY
21 OF -- THERE ARE FIVE THINGS PARENTS NEED TO LEARN WHEN
22 IT COMES TO THEIR CHILDREN: ONE, PARENTS NEED TO LEARN
23 HOW TO EXERCISE GUIDANCE IN DISCIPLINING THEIR CHILDREN.
24 IT IS EASY TO BE TOO INDULGENT BUT IT IS JUST AS EASY TO
25 BE TOO HARSH. BUT BOTH EXTREMES ARE WRONG.

1 TWO. PARENTS NEED TO LEARN THE CORRECT
2 AMOUNT OF DISCIPLINE WHICH SHOULD BE ADMINISTERED.
3 CHILDREN ARE TO HONOR AND TO OBEY THEIR PARENTS.

4 PARENTS, ESPECIALLY FATHERS, WILL NOT BULLY
5 THEIR CHILDREN. SOME PARENTS ARE TOTALLY UNREASONABLE
6 IN THEIR DEMAND AND BRUTAL IN THEIR DISCIPLINE. IT IS
7 ALSO TOO EASY TO MAKE DEMANDS AND PUNISHMENT IN ANGER,
8 WHICH ARE BOTH ALSO WRONG.

9 THREE. PARENTS NEED TO LEARN THE CORRECT
10 APPROACH TO DISCIPLINE. MOST PARENTS MAKE IT EXTREMELY
11 DIFFICULT FOR THEIR CHILDREN TO OBEY THEM. THIS CAN BE
12 DONE WHEN PARENTS EXPECT THEIR CHILDREN TO FEEL TAXED
13 WHICH ARE BEYOND THEIR STRENGTH, AND WHEN PARENTS SET
14 UNREASONABLE GOALS OR TIMELINESS.

15 IT CAN BE DONE PSYCHOLOGICALLY BY CHOOSING
16 THE WRONG MOMENT OR THE WRONG MOVE IN LAYING DOWN THE
17 LAW. IT CAN BE DONE BY CREATING AN ATMOSPHERE OF FEAR,
18 HOSTILITY, MISTRUST, OR SUSPICION.

19 IT CAN BE DONE BY FAILURE TO FOLLOW THROUGH
20 ON WARNINGS, THUS CONDITIONING THE CHILD TO BELIEVE THAT
21 THE PARENT DOES NOT REALLY MEAN WHAT HE OR SHE SAYS.

22 FOUR. PARENTS NEED TO LEARN THE CORRECT
23 MANNER OF DISCIPLINE. CHILDREN NEED TO BE TAUGHT WHAT
24 TO BELIEVE AND HOW TO BEHAVE.

25 AND FIVE, PARENTS NEED TO LEARN THE CORRECT

1 ATTITUDE FOR DISCIPLINE. A REAL EFFORT NEEDS TO BE MADE
2 TO KEEP THE CHANNELS OF COMMUNICATION OPEN WITHIN THE
3 FAMILY. PARENTS SHOULD TALK WITH THEIR CHILDREN IN A
4 SYMPATHETIC AND UNDERSTANDING WAY ABOUT THE CHILDREN'S
5 INTERESTS, THEIR PROBLEMS, THEIR HOPES, THEIR
6 FRUSTRATIONS, AND THEIR FEARS.

7 THE TIME TO BEGIN WITH CHILDREN IS WHEN THEY
8 ARE VERY YOUNG. IT IS SURPRISING AT WHAT A TENDER AGE
9 AN INFANT WILL ASSERT HIS OWN WILL OF DEFIANCE OF THE
10 WILL OF THE PARENT. IT HAPPENS IN THE CRADLE, AS WELL.
11 A PARENT WHO DOES NOT ... AT A TENDER AGE WILL NOT BE
12 SURPRISED AS PARENTS -- OR NEED NOT BE SURPRISED THAT
13 THE CHILD WAS AT THE ... OF PARENTS.

14 I WOULD LIKE TO TELL YOU A STORY THAT
15 ENCOURAGED ME. ON APRIL 4TH, 1991, TOM CUMMINGS
16 (PHONETIC) AND HIS TWO COUSINS, ROBERT AND JULIE, WERE
17 ASSAULTED THAT NIGHT. THE POLICE WERE CALLED AND ROBERT
18 AND JULIE WERE STILL MISSING. SINCE TOM WAS STILL
19 ALIVE, POLICE QUESTIONED HIM. DETECTIVE CHRIS PAPPAS,
20 P-A-P-P-A-S, ASKED TOM IF HE HAD MURDERED HIS TWO
21 COUSINS. TOM'S REPLY WAS "NO."

22 AT THE END OF THAT PARTICULAR QUESTIONING,
23 THE DETECTIVES STOOD UP, WITHIN INCHES OF TOM'S FACE,
24 DISGUSTED. THEY REPLIED, YOU CAN LIE TO THE BOYS
25 UPSTAIRS BUT YOU CANNOT LIE TO US. YOU ARE TELLING A

1 LIE.

2 NOW WE'RE GOING TO START OVER BY TELLING THE
3 TRUTH NOW. IN THIS CASE THE STATE, THE EVIDENCE, DID I
4 COMMIT THIS CRIME? WAS SEXUAL BATTERY, DID SEXUAL
5 BATTERY TAKE PLACE? DID I TOUCH THEM? NO.

6 HE WAS -- HE MAY HAVE BEEN FOUND NAKED. THE
7 DOOR WAS SOON UNLOCKED, AS MS. HIOTT STATED. IF
8 SOMETHING HAPPENED, IT WOULD HAVE TOOK TIME TO OPEN AN
9 UNLOCKED DOOR COMING FROM AN UNCONDITIONAL POSITION.

10 THE STATEMENT. DID THE INFORMATION COME
11 FROM ME? THE OFFICERS STATED THAT MY MOTHER WAS NOT
12 INTERESTED IN WHAT WAS GOING ON WITH HER CHILD. I'M HER
13 CHILD. WHY WOULD A MOTHER NOT BE INTERESTED IN WHAT'S
14 GOING ON WITH HER CHILD? A CARING MOTHER. A CARING
15 MOTHER WANTS TO KNOW DETAILS AND ARE SOON TO ASK
16 QUESTIONS, REGARDLESS OF WHAT THE ANSWER MAY BECOME.

17 WHO TOOK THE CHILD TO THE HOSPITAL? WAS IT
18 THE MOTHER? IF AN EMERGENCY OCCURRED OF THAT NATURE,
19 WOULD A PARENT IMMEDIATELY TAKE OFF OF WORK AND HAVE
20 SOMEONE FILL IN FOR THEM OR WOULD THEY STAY AT WORK
21 BECAUSE NOTHING REALLY HAPPENED? THAT'S THE QUESTION.

22 WHY THE FATHER? WHY DID THE VICTIM NOT
23 DISCLOSE INFORMATION TO HIS MOTHER? THIS IS THE
24 BIOLOGICAL MOTHER IN QUESTION. THE FATHER, NOT
25 BIOLOGICAL.

1 (CELL PHONE GOES OFF IN COURTROOM.)

2 HE HAD AMPLE OPPORTUNITY TO TALK WITH HIS
3 CHILD AND PUT THINGS INTO HIS HEAD THAT WAS VERY UNTRUE.

4 THIS CHILD IS VERY SMART. HE NEVER STATED
5 THAT HE DIDN'T WANT TO COME BACK TO THE RESIDENCE AS OF
6 MRS. HIOTT STATING THAT HE WAS IN FEAR OF HIS LIFE. HE
7 WAS IN FEAR. BUT YOU HAVE HEARD TESTIMONY, TESTIMONY
8 STATING THAT THESE CHILDREN, SARA MARIE HIOTT'S TWO
9 CHILDREN, WAS NOT IN FEAR, WERE CARED FOR BY NUMEROUS
10 PEOPLE, NUMEROUS. BUT THE QUESTION STILL STANDS. WHAT
11 REALLY HAPPENED?

12 MY THEORY. THE REASON WHY THE VICTIM DID
13 NOT DISCLOSE THE INFORMATION TO HIS MOTHER IS NOTHING
14 HAPPENED. WHY THE FATHER? FEAR. FEAR.

15 IT HAS BEEN STATED BEFORE THAT TERRIBLE
16 INJUSTICES HAS ALLEGED TO HAVE HAPPENED. I DID NOT GIVE
17 A CONFESSION. HOW DO I KNOW? BECAUSE I DIDN'T DISCLOSE
18 THAT TYPE OF INFORMATION. BECAUSE I DON'T SPEAK OF
19 LIES. I'M A CARING PERSON. I OPEN MY HEART OUT TO
20 THOSE WHO STAB ME IN THE BACK.

21 NOW, I ACKNOWLEDGE THAT NOW THE CHILD FEARS
22 ME. IF HE FEARED ME ON THIS DATE, A FEARING CHILD WOULD
23 BE UNCOMFORTABLE, CAN'T THINK STRAIGHT, AND IS WILLING
24 TO GIVE INFORMATION TO THE ONE PERSON THAT MEANS THE
25 MOST TO HIM. AND THAT ONE PERSON WOULD BE HIS MOTHER,

1 SARA HIOTT.

2 I NOT ONLY STAND BEFORE YOU AS A DEFENDANT,
3 PRO SE, BUT AS AN INNOCENT MAN. BUT IT'S NOT MY
4 DECISION. THE DECISION IS YOURS. I KNOW WHAT HAPPENED.
5 I KNOW WHAT DIDN'T HAPPEN. BUT THE DECISION IS STILL
6 YOURS. GUILT HASN'T BEEN PROVEN BEYOND A REASONABLE
7 DOUBT THAT SOMETHING OCCURRED, HAS IT? THE EVIDENCE
8 OVERLAPS.

9 WELL, THERE'S ONLY ONE DECISION THAT CAN BE
10 MADE OR THAT I AM WANTING YOU TO DECIDE -- NO, I HAVE TO
11 TAKE THAT BACK. I CAN'T WANT. I NEED YOU ALL TO MAKE
12 THE RIGHT DECISION BY REVIEWING INFORMATION, REVIEWING
13 THE TESTIMONY.

14 DID THE DOCTOR SAY WHAT HAPPENED? DID THE
15 DOCTOR SAY THAT I WAS THE PERPETRATOR? WHO STATED I WAS
16 THE PERPETRATOR, ALLEGED PERPETRATOR? NO ONE. BUT IT'S
17 NOT MY DECISION. IT'S NOT MY DECISION.

18 THERE IS ONE QUESTION, ONE QUESTION TO THOSE
19 THREE ANSWERS BY DELIBERATION, BY A VERDICT. SEXUAL
20 BATTERY. DID SEXUAL BATTERY OCCUR? DID IT OCCUR BEYOND
21 A REASONABLE DOUBT? I SEE NO EVIDENCE. I SEE NONE.

22 THE REASON WHY I CHOOSED YOU TO BE JURY
23 MEMBERS WAS TO MAKE THE RIGHT DECISION. NOT ONLY IS MY
24 LIFE ON TRIAL TODAY, MY LIFE, BUT MY HOPES AND MY DREAMS
25 ARE, AS WELL. SO THAT ONE DECISION THAT NEEDS TO BE

1 MADE, YOU MUST ACQUIT. YOU MUST ACQUIT.

2 NOW, I UNDERSTAND THAT THERE MAY BE AN
3 AGENDA, THERE MAY BE A SENSE OF FEAR AND HOSTILITY FROM
4 THE OPPOSING SIDE. I DON'T UNDERSTAND THAT. I ALSO
5 DON'T UNDERSTAND WHY WE ARE HERE TODAY. IT TOOK TWO
6 YEARS FOR ME TO REALIZE THAT WHAT THIS WAS WAS COMING TO
7 THIS. AND IT ALL HAPPENS IN THIS VERY ROOM. BUT ONCE
8 AGAIN, AS I SAY, IT IS YOUR DECISION. IT IS WITHIN YOUR
9 HANDS. BEYOND A REASONABLE DOUBT. I ASK, YOU MUST
10 ACQUIT.

11 TESTIMONY, THE EVIDENCE, WHAT DOES IT PROVE?
12 WHAT DOES IT PROVE? IT IS STILL YOUR DECISION AND IT IS
13 NO LONGER IN MY HANDS.

14 THE COURT: MADAM SOLICITOR?

15 MS. HUEY: THANK YOU, MAY IT PLEASE THE
16 COURT.

17 CLOSING ARGUMENT ON BEHALF OF THE STATE:

18 MS. HUEY: THE DEFENDANT TOOK ADVANTAGE OF
19 Minor 2 THAT'S WHAT THIS CASE IS ABOUT, AND THAT'S
20 WHAT THE EVIDENCE IN THIS CASE HAS SHOWN BEYOND A
21 REASONABLE DOUBT.

22 NOW, WHAT IS BEYOND A REASONABLE DOUBT? IT
23 IS NOT BEYOND EVERY DOUBT, BECAUSE THERE ARE FEW THINGS
24 IN LIFE THAT WE CAN KNOW WITH ABSOLUTE CERTAINTY. IT
25 CAN BE DEFINED AS A DOUBT IN WHICH YOU HESITATE TO ACT,

1 BUT AGAIN, IT'S NOT BEYOND EVERY DOUBT.

2 I WANT TO GO THROUGH THE EVIDENCE AND SHOW
3 YOU HOW THERE IS MORE THAN ENOUGH EVIDENCE TO CONVICT
4 THIS DEFENDANT OF CRIMINAL SEXUAL CONDUCT WITH A MINOR
5 IN THE FIRST DEGREE. NOW, WHEN I STARTED THIS CASE, I
6 STATED THERE PROBABLY WOULDN'T BE A LOT OF WITNESSES,
7 AND THERE WEREN'T. FOUR WITNESSES TOOK THE STAND FOR
8 THE STATE.

9 IT BEGAN WITH SARA HIOTT, THE VICTIM'S
10 MOTHER. SHE TESTIFIED ABOUT THE RELATIONSHIP WITH THE
11 DEFENDANT, HOW SHE USED HIM AS HER BABY-SITTER; THAT
12 THEIR TYPICAL ARRANGEMENT WAS THAT WHILE SHE WAS AT
13 WORK -- SHE WORKED SECOND SHIFT, AROUND 2:00 OR 3:00 IN
14 THE AFTERNOON TO AROUND 10:00, 11:00 AT NIGHT. DURING
15 THAT TIME FRAME THE DEFENDANT WAS IN CHARGE OF HER
16 CHILDREN: Minor 2 SIX YEARS OLD AT THE TIME; AND ALSO
17 AUSTIN, TWO AT THE TIME.

18 NOW, TYPICALLY SHE WOULD CALL THE DEFENDANT
19 AND LET HIM KNOW THAT SHE WAS ON HER WAY TO PICK UP THE
20 CHILDREN, AND AGAIN TYPICALLY SHE WOULD PICK UP THE
21 CHILDREN BETWEEN 10:00 AND 11:00. WELL, ON MAY 18TH,
22 2005, SARA HIOTT HAD AN OPPORTUNITY TO GO GET HER
23 CHILDREN EARLY, AND SHE WAS IN A HURRY. SHE DIDN'T CALL
24 THE DEFENDANT TO LET HIM KNOW SHE WAS COMING OVER. AND
25 SHE GOT THERE EARLY. AND WHAT DID SHE SEE WHEN SHE GOT

1 THERE?

2 NO ONE WAS IN THE FRONT ROOM, AND THE
3 DEFENDANT'S BEDROOM DOOR WAS LOCKED. AND WHEN SHE
4 KNOCKED ON THAT DOOR, THE DEFENDANT OPENED IT, NO SHIRT
5 ON, JUST SHORTS, MAYBE BOXER SHORTS AT THAT; AND HER SON
6 WAS COMPLETELY NAKED, HOLDING MAYBE A PILLOW CASE OR A
7 SHEET OVER HIS PRIVATES AS IF HE WAS EMBARRASSED,
8 ASHAMED THAT HE WAS BEING SEEN WITHOUT HIS CLOTHES ON.

9 AND WHEN SHE ASKED HIM, "WHY DON'T YOU HAVE
10 YOUR CLOTHES ON?" WHAT DID HE SAY IMMEDIATELY? "I
11 DON'T KNOW." NOT "I WAS HOT, MOMMY." "I DON'T KNOW."

12 NOW, THE DEFENDANT CLAIMS THE CHILD TOOK HIS
13 CLOTHES OFF BECAUSE HE WAS HOT. BUT SARA HIOTT WENT ON
14 TO SAY THAT HE DIDN'T DO THAT SORT OF THING AT HOME, HE
15 DIDN'T JUST TAKE OFF ALL HIS CLOTHES AND WALK AROUND
16 NAKED. HE KNEW HE WASN'T SUPPOSED TO DO THAT AT HOME.

17 NOW, YOU DIDN'T HEAR FROM Minor DURING THIS
18 TRIAL, AND THAT WAS A DECISION MADE BY THE MOTHER IN
19 THIS CASE. SHE SAID THAT HE WAS SCARED, HE DIDN'T WANT
20 TO BE HERE. BUT EVEN THOUGH HE DIDN'T TESTIFY, THERE IS
21 STILL PLENTY OF EVIDENCE, BECAUSE WE ALSO KNOW THAT Minor
22 WAS TAKEN TO THE HOSPITAL THAT SAME NIGHT AFTER SARA
23 WALKED IN ON THE DEFENDANT AND HER SON, NAKED. HE WAS
24 TAKEN TO THE HOSPITAL BY HER BOYFRIEND AND SHE WENT AND
25 MET THE BOYFRIEND AND HER SON AT THE HOSPITAL. SHORT

1 TIME FRAME.

2 YOU HEARD THE TESTIMONY OF DR. REESE. HE
3 SAID THAT IN ORDER TO TREAT Minor2 TO KNOW HOW TO EXAMINE
4 HIM, TO KNOW HOW TO DIAGNOSE HIM, THAT HE HAD TO FIND
5 OUT FROM Minor WHAT HAPPENED. AND WHAT DID HE SAY THAT
6 Minor SAYS?

7 "SOMEONE TOUCHED ME ON MY WEE WEE" I BELIEVE
8 WERE HIS WORDS. MOUTH, HAND. HE HAD TO KNOW THAT IN
9 ORDER SO THAT HE COULD TREAT HIM. NOW, THAT'S ALSO
10 IMPORTANT BECAUSE IN THESE KIND OF CASES THERE AREN'T
11 GOING TO BE INJURIES, BRUISES, CUTS, D.N.A. WE'RE
12 TALKING ABOUT A SEXUAL BATTERY HERE THAT INCLUDES ORAL
13 SEX. THE DOCTOR TESTIFIED HE DIDN'T EXPECT TO SEE
14 INJURY IN AN ORAL SEX CASE. THAT'S IMPORTANT FOR YOU
15 ALL TO KNOW. HE WASN'T EXPECTED TO FIND ANYTHING.

16 NOW, WHEN INVESTIGATORS CARSON AND NORMANDIN
17 GOT INVOLVED, THEIR FIRST STEP WAS TO SPEAK WITH Minor2
18 THE VICTIM, AND NIKKI CARSON, HAVING BEEN TRAINED IN
19 FORENSIC INTERVIEWING OF CHILDREN, DID THE INTERVIEW.
20 SHE FOLLOWED THE PROTOCOL, SHE DID IT ONE-ON-ONE SO HE
21 WOULD NOT BE INFLUENCED, ASKED OPEN-ENDED QUESTIONS AND
22 THROUGH THIS INTERVIEW Minor DISCLOSED TO HER. AND AS A
23 RESULT OF THIS DISCLOSURE NIKKI CARSON KNEW THAT SHE
24 NEEDED TO GO MEET WITH THIS DEFENDANT, HOWARD THOMPSON,
25 THAT SHE NEEDED TO GO MEET WITH HIM AND ALSO SEARCH HIS

1 HOUSE FOR PHOTOS OF NAKED MEN. SHE LEARNED THAT FROM
2 Minor 2 AND THE PHOTOS ARE IN EVIDENCE. YOU HAVE ALREADY
3 SEEN THEM.

4 NOW, WHEN NIKKI CARSON AND INVESTIGATOR
5 NORMANDIN GET TO THE DEFENDANT'S HOUSE, THEIR FIRST STEP
6 IS TO IMMEDIATELY MIRANDIZE HIM, LET HIM KNOW WHAT HIS
7 RIGHTS ARE. THEY DON'T WANT HIM TO SAY ANYTHING HE
8 DOESN'T WANT TO SAY. IF HE WANTS AN ATTORNEY, HE NEEDS
9 TO GET AN ATTORNEY, AND HE NEEDS TO BE AWARE OF THOSE
10 RIGHTS. THEY WENT OVER THE FORM, HE SIGNED THE FORM.
11 AGAIN, YOU WILL SEE THAT IN EVIDENCE.

12 HE ALSO SIGNED LATER ON DOWN THE FORM SAYING
13 THAT HE WANTED TO GIVE A STATEMENT. THERE ARE TWO
14 WRITTEN STATEMENTS IN EVIDENCE. THE FIRST STATEMENT IS
15 WRITTEN BY THE DEFENDANT HIMSELF, AND IT TALKS ABOUT
16 Minor BEING HOT AND THAT'S WHY HIS CLOTHES WERE OFF.
17 WELL, I ALSO WANT YOU TO PAY ATTENTION TO THAT FIRST
18 STATEMENT AND NOTICE HOW THE DEFENDANT SAYS HE WAS IN
19 THE BATHROOM FOR 30 TO 35 MINUTES WHILE THE TWO,
20 TWO-YEAR-OLD, I BELIEVE, AND Minor WERE IN THE HOUSE BY
21 THEMSELVES, NOT WATCHING THEM FOR 30 TO 35 MINUTES.

22 ALSO NOTICE HOW HE TALKS ABOUT Minor BEING
23 HOT, THAT HE TOOK OFF HIS CLOTHES, AND THAT HE WAS JUST
24 WAITING FOR SARA TO GET THERE TO PICK THEM UP. HE
25 DIDN'T KNOW SARA WAS COMING. SHE TYPICALLY PICKS THEM

1 UP AT 10:00 OR 10:30, NOT 7:30 WHEN SHE ARRIVED THAT
2 DAY. LOOK AT THE INCONSISTENCIES IN HIS OWN WRITTEN
3 STATEMENT IN HIS OWN HANDWRITING. NOT TO MENTION HIS
4 VERBAL STATEMENT TO POLICE SAYING THAT Minor HAD MESSED
5 ON HIMSELF AND THAT'S WHY HE TOOK OFF HIS CLOTHES SO
6 THAT HE COULD CLEAN HIM UP. THAT WAS A VERBAL STATEMENT
7 MADE TO THE POLICE.

8 NOW, AGAIN I MENTIONED NIKKI CARSON SAYING
9 THAT SHE WENT TO THE HOUSE NOT ONLY TO SPEAK WITH THE
10 DEFENDANT BUT ALSO POSSIBLY TO RECOVER PICTURES OF THE
11 NAKED MEN. WELL, THEY DID RECOVER THOSE PHOTOS OF THE
12 NAKED MEN IN THE DEFENDANT'S BOOK BAG IN HIS BEDROOM.

13 AND WHEN THE DEFENDANT WAS SHOWN THESE
14 PICTURES, THAT'S WHEN HE DECIDED TO COME CLEAN AND GET
15 IT OFF HIS CHEST. HE DIDN'T WANT TO DO THAT IN FRONT OF
16 HIS MOTHER. I DON'T KNOW. WAS HE EMBARRASSED? WAS HE
17 ASHAMED? I DON'T KNOW. HE WANTED TO BE OUTSIDE OF HER
18 PRESENCE.

19 AND SO NIKKI AND THE DEFENDANT WENT TO A
20 PATROL CAR, UNMARKED PATROL CAR. THEY SAT IN THERE. AT
21 THIS TIME HE DIDN'T WANT TO WRITE THE STATEMENT HIMSELF.
22 AGAIN, WAS HE EMBARRASSED, WAS HE ASHAMED TO PUT IT IN
23 WRITING WHAT HE HAD BEEN DOING TO Minor FOR FOUR MONTHS?
24 MAYBE.

25 BUT WE DO KNOW THAT HE SIGNED THE STATEMENT,

1 THAT HE INITIALED IT IN SEVERAL PLACES THROUGHOUT THE
2 BODY OF THE STATEMENT. AND AS YOU READ IT, I WANT YOU
3 TO NOTICE WHERE THESE INITIALS ARE. H.T. AT THE LINE "I
4 WOULD SUCK HIS PENIS." THAT'S WHERE HE INITIALED. H.T.
5 AT "50 TIMES." AND "HOWARD THOMPSON" AT THE BOTTOM.

6 HE KNEW WHAT WAS IN THIS STATEMENT. HE
7 INITIALED IT, HE SIGNED IT. THE INITIALS ARE TRUE
8 SCRIBBLE MARKS BECAUSE INVESTIGATOR CARSON DIDN'T WANT
9 ANYONE TO THINK THAT SHE CROSSED SOMETHING OUT ON
10 PURPOSE WITHOUT THE DEFENDANT KNOWING ABOUT IT.

11 NOW, ARE THERE SOME MISSPELLINGS? SURE.
12 ARE THERE SOME CLERICAL MISTAKES? SURE. BUT TAKE A
13 LOOK AT THE DEFENDANT'S OWN STATEMENT IN HIS HANDWRITING
14 AND SEE IF THERE ARE ANY GRAMMATICAL ERRORS. THERE WAS
15 NO COMPUTER, NO SPELL CHECK. THIS WAS DONE IN SOMEONE'S
16 OWN HANDWRITING.

17 NOW, ADDITIONALLY THE DEFENDANT WANTS YOU TO
18 BELIEVE THAT HE DID NOT CONFESS TO THIS. BUT PAY
19 ATTENTION TO THE DETAILS OF THE STATEMENT. THE TIME
20 FRAME GIVEN, FOUR-MONTH TIME FRAME. THE DETAILS OF HOW
21 IT WOULD OCCUR, THAT THIS WOULD HAPPEN UNDER THE COVERS.
22 THEY WOULD TAKE TURNS UNDER THE COVERS. THE AMOUNT OF
23 TIMES IT HAPPENED. 50 TIMES. THE FACT THAT IT WAS
24 RECIPROCATED. THAT'S A LOT OF STUFF FOR AN OFFICER TO
25 MAKE UP. IT'S ABOVE AND BEYOND.

1 YOU ALL HAVE TO USE YOUR COMMON SENSE WHEN
2 YOU GO BACK IN THAT JURY ROOM. YOU HAVE TO SAY, WHAT
3 MAKES SENSE? WHAT REALLY HAPPENED TO Minor 2 HOW DOES IT
4 ALL FIT TOGETHER? HOW DOES WHAT SARA HAS TO SAY,
5 DR. REESE HAS TO SAY, NIKKI CARSON, PETE NORMANDIN, WHO
6 ALSO OVERHEARD THE INCONSISTENT VERBAL STATEMENT ABOUT
7 CODY MESSING ON HIMSELF. NOW, WHICH ONE WAS IT: DID HE
8 MESS ON HIMSELF, WAS HE HOT, OR WAS HE PERFORMING ORAL
9 SEX ON HIM? IT WAS THE LATTER. THAT'S WHAT MAKES
10 SENSE.

11 PETE NORMANDIN WAS THERE TO ASSIST NIKKI
12 CARSON IN THE INVESTIGATION, RIGHT-HAND MAN. HE KEPT AN
13 EYE ON THINGS. HE NEVER SAW ANYTHING INAPPROPRIATE. HE
14 HELPED WITH THE SEARCH. HE KNEW THE STATEMENTS WERE
15 GOING ON. THAT WAS HIS ROLE.

16 NOW, THE DEFENDANT IN THIS CASE HAS ZERO
17 BURDEN, IT IS ALL ON ME, AND I WELCOME THAT BURDEN. BUT
18 JUST AS YOU HAVE TO WEIGH THE CREDIBILITY OF MY
19 WITNESSES, YOU ALSO HAVE TO WEIGH THE CREDIBILITY OF
20 HIS. AND LET'S TALK ABOUT THE THREE WITNESSES THAT HE
21 PUT UP.

22 FIRST OF ALL, NONE OF THEM WERE THERE THE
23 ENTIRE TIME THE DEFENDANT WAS WITH Minor AND AUSTIN. SO
24 WHAT DOES THAT MEAN? THE DEFENDANT AND Minor AND AUSTIN
25 WERE ALONE TOGETHER AT TIMES. AGAIN, WHERE DO SEX

1 CRIMES OCCUR? BEHIND CLOSED DOORS, LOCKED DOORS, WHEN
2 NO ONE ELSE IS AROUND.

3 BUT WHAT'S EXTREMELY INTERESTING TO ME IS
4 THAT HIS OWN BROTHER TESTIFIED THAT THE KID WOULD BE
5 NAKED A LOT IN HOWARD'S BEDROOM WITH HOWARD IN THERE,
6 THE DEFENDANT, AND HE DIDN'T UNDERSTAND IT. AND THAT
7 AFTER THIS INCIDENT CAME TO LIGHT, HE WENT TO SARA
8 HIOTT, THE VICTIM'S MOTHER, AND SAID, "YEAH, I DON'T
9 UNDERSTAND THAT. I THOUGHT SOMETHING WAS GOING ON." HE
10 ADMITTED TO TELLING HIS MOTHER HE THOUGHT SOMETHING WAS
11 GOING ON AND THAT HIS MOTHER DIDN'T BELIEVE HIM.
12 DEFENSE WITNESS.

13 THE DEFENDANT TOOK ADVANTAGE OF Minor 2
14 HE COMMITTED SEXUAL BATTERY ON HIM AGAIN AND AGAIN AND
15 AGAIN AND AGAIN AND AGAIN AND AGAIN. THERE IS EVIDENCE
16 BEYOND A REASONABLE DOUBT TO CONVICT HIM OF THIS CRIME.
17 HE TOOK ADVANTAGE OF Minor 2 DON'T LET HIM DO IT AGAIN.

18 (SEVERAL PEOPLE LEAVE COURTROOM.)
19

20 THE COURT'S CHARGE TO THE JURY:
21

22 THE COURT: MADAM FORELADY, LADIES AND
23 GENTLEMEN OF THE JURY, AS JURORS IN THIS CASE YOU HAVE
24 CERTAIN FUNCTIONS AND RESPONSIBILITIES TO PERFORM WHICH
25 ARE ENTIRELY SEPARATE AND DISTINCT FROM THOSE OF MINE AS

1 THE TRIAL JUDGE. I AM PROHIBITED BY OUR CONSTITUTION
2 FROM CHARGING YOU ON THE FACTS OF THIS CASE. I'M ALSO
3 PROHIBITED FROM DISCUSSING THE FACTS OF THE CASE WITH
4 YOU OR IN ANY WAY INTIMATING WHAT MY FEELINGS, IF ANY,
5 ARE ABOUT THE FACTS OF THE CASE. IT IS YOUR
6 RESPONSIBILITY AND YOURS ALONE TO PASS UPON ALL ISSUES
7 OF FACT IN THE CASE.

8 I WOULD, THEREFORE, CHARGE YOU THAT IF
9 DURING THE COURSE OF THE TRIAL OR DURING MY CHARGE YOU
10 HAVE BEEN GIVEN OR LEFT WITH THE IMPRESSION OR FEELINGS
11 THAT I DO HAVE A PERSONAL FEELING ABOUT THE FACTS OF
12 THIS CASE, I WOULD SPECIFICALLY INSTRUCT YOU THAT YOU
13 ARE TO DISREGARD THAT FEELING OR IMPRESSION. MOREOVER,
14 YOU ARE THE SOLE JUDGES OF WHAT THE TESTIMONY WAS AND
15 NOT THE ARGUMENT OF COUNSEL.

16 IT IS ALSO YOUR DUTY AND YOURS ALONE TO
17 WEIGH THE TESTIMONY AND EVIDENCE IN THE CASE AND TO PASS
18 UPON THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES.

19 IN THIS CONNECTION YOU HAVE THE RIGHT TO
20 BELIEVE ALL THAT A WITNESS TELLS YOU OR DISBELIEVE ALL
21 THAT WITNESS TELLS YOU. YOU HAVE THE RIGHT TO BELIEVE A
22 PART OF WHAT A WITNESS TELLS YOU AND TO DISBELIEVE A
23 PART OF WHAT A WITNESS TELLS YOU. YOU HAVE THE RIGHT TO
24 TAKE INTO CONSIDERATION ANY BIAS OR PREJUDICE OR
25 INTEREST YOU FEEL A WITNESS MIGHT HAVE IN THE CASE.

1 I SAY THIS MERELY TO EMPHASIZE THAT THE
2 WEIGHT YOU SEE FIT TO GIVE TO THE TESTIMONY, TO THE
3 CREDIBILITY OF THE WITNESSES, AS WELL AS ALL ISSUES OF
4 FACT ARE FOR YOUR SOLE DETERMINATION.

5 AS JUDGES OF THE FACTS YOU ARE THE SOLE
6 JUDGES OF THE CREDIBILITY, THAT IS, THE BELIEVABILITY OF
7 THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. IN
8 PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO
9 CONSIDERATION MANY THINGS, SUCH AS THE APPEARANCE AND
10 MANNER OF THE WITNESS ON THE STAND, SOMETIMES REFERRED
11 TO AS THE Demeanor OF THE WITNESS.

12 WAS THE WITNESS FORTHRIGHT OR HESITANT? WAS
13 THE WITNESS'S TESTIMONY CONSISTENT OR DID IT CONTAIN
14 DISCREPANCIES? WHAT WAS THE ABILITY OF THE WITNESS TO
15 KNOW THE FACTS ABOUT WHICH HE OR SHE TESTIFIED? DID THE
16 WITNESS HAVE A CAUSE OR A REASON TO BE BIASED OR
17 PREJUDICED IN FAVOR OF THE TESTIMONY HE OR SHE GAVE?
18 WAS THE TESTIMONY OF THE WITNESS CORROBORATED OR MADE
19 STRONGER BY OTHER TESTIMONY AND EVIDENCE OR WAS IT MADE
20 WEAKER OR IMPEACHED BY SUCH OTHER TESTIMONY AND
21 EVIDENCE?

22 AS JURORS YOU HAVE THE RIGHT TO BELIEVE A
23 SMALL PORTION OF A WITNESS'S TESTIMONY AND DISCARD THE
24 LARGER OR VICE VERSA. YOU MAY BELIEVE ALL OF A
25 WITNESS'S TESTIMONY OR NONE. MOST CERTAINLY, YOU DO NOT

1 DETERMINE THE MATTER OF CREDIBILITY OR BELIEVABILITY BY
2 COUNTING UP THE NUMBER OF WITNESSES WHO MAY HAVE
3 TESTIFIED ON BEHALF OF THE PARTIES. THROUGHOUT THIS
4 ENTIRE PROCESS YOU HAVE BUT ONE SINGLE OBJECTIVE AND
5 THAT IS TO SEEK THE TRUTH, REGARDLESS OF FROM WHAT
6 WITNESS THE TESTIMONY MAY HAVE COME.

7 NOW, BY THAT SAME CONSTITUTION AND LAW WHICH
8 MAKES YOU THE FINDERS OF THE FACTS AND EVIDENCE, AS I
9 HAVE DISCUSSED WITH YOU, I AM AS THE JUDGE MADE THE SOLE
10 AND ONLY INSTRUCTOR ON THE LAW, AND YOU MUST ACCEPT AS
11 CORRECT THE LAW WHICH I CHARGE AND APPLY TO IT THE
12 EVIDENCE AS YOU FIND IT AND REACH YOUR VERDICT. IF I
13 SHOULD MAKE AN ERROR IN THE LAW AS I INSTRUCT IT TO YOU,
14 THERE IS ANOTHER TIME AND PLACE THAT ERROR CAN BE
15 CONSIDERED AND, IF NECESSARY, CORRECTED. BUT FOR THE
16 PURPOSES OF THIS CASE TODAY YOU MUST ACCEPT THE LAW AS I
17 CHARGE IT TO YOU TO BE THE CORRECT LAW.

18 AND FINALLY I CHARGE IN YOU THIS REGARD.
19 THAT YOU, NOR FOR THAT MATTER I, SHOULD NOT BE CONCERNED
20 WITH WHAT THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE
21 YOU THE LAW TO BE.

22 NOW, I INSTRUCT YOU AND EMPHASIZE THAT THE
23 FACT THAT THE DEFENDANT DID NOT TAKE THE STAND AND
24 TESTIFY UNDER OATH IS NOT A FACTOR TO BE CONSIDERED BY
25 YOU IN ANY WAY IN YOUR DELIBERATION AS TO WHETHER THE

1 DEFENDANT IS GUILTY OR NOT GUILTY OF THE CHARGE AGAINST
2 HIM. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
3 WHATSOEVER. A DEFENDANT HAS THE ABSOLUTE CONSTITUTIONAL
4 RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT
5 MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

6 I REPEAT: UNDER YOUR OATH YOU ARE NOT TO
7 DRAW ANY CONCLUSION WHATSOEVER FROM THE FACT THE
8 DEFENDANT IN THIS CASE DID NOT TAKE THE STAND AND
9 TESTIFY UNDER OATH. THE FACT THE DEFENDANT DID NOT
10 TESTIFY UNDER OATH SHOULD NOT EVEN BE DISCUSSED IN THE
11 JURY ROOM.

12 THE BURDEN OF PROOF, AS I HAVE STATED TO
13 YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO
14 PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE
15 STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

16 AS I STATED TO YOU EARLIER, IN THIS CASE THE
17 DEFENDANT HAS BEEN ACTING *PRO SE*, THAT IS, HE HAS
18 REPRESENTED HIMSELF. UNLIKE THE TESTIMONY OF A SWORN
19 WITNESS, A *PRO SE* DEFENDANT'S ADVOCACY ON HIS OWN BEHALF
20 IS NOT TESTIMONY UNDER OATH AND, THEREFORE, IS NOT
21 EVIDENCE IN THE CASE. THE DEFENDANT'S *PRO SE* ADVOCACY
22 IS TO BE GIVEN THE SAME CONSIDERATION AS THE ADVOCACY OF
23 A LICENSED ATTORNEY IN THE REPRESENTATION OF HIS CLIENT.

24 NOW, THE DEFENDANT HAS PLED NOT GUILTY TO
25 THIS INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE

1 STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED
2 WITH COMMITTING AN ILLEGAL OFFENSE IN SOUTH CAROLINA IS
3 NEVER REQUIRED TO PROVE HIMSELF INNOCENT. I CHARGE YOU
4 THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE
5 DEFENDANT IN A CRIMINAL CASE, NO MATTER WHAT THE
6 SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE
7 PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE
8 INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY
9 EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
10 REASONABLE DOUBT.

11 NOW, THIS PRESUMPTION OF INNOCENCE DOES NOT
12 END WHEN YOU BEGIN YOUR DELIBERATION, BUT IT ACCOMPANIES
13 THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A
14 VERDICT OF GUILT BASED UPON EVIDENCE SATISFYING YOU OF
15 THAT GUILT BEYOND A REASONABLE DOUBT. THE PRESUMPTION
16 OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED UPON
17 THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE
18 DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT
19 BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT
20 BEYOND A REASONABLE DOUBT.

21 THE PRESUMPTION OF INNOCENCE IS NOT A MERE
22 LEGAL THEORY, IT'S NOT JUST A LEGAL PHRASE; IT IS A
23 SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED
24 UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF
25 THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT. NOW,

1 REASONABLE DOUBT IS THAT KIND OF DOUBT THAT WOULD CAUSE
2 A REASONABLE PERSON TO HESITATE TO ACT.

3 NOW, THERE ARE TWO TYPES OF EVIDENCE
4 GENERALLY PRESENTED IN A TRIAL: DIRECT EVIDENCE AND
5 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE
6 TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL
7 KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS
8 EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO
9 BE PROVED.

10 CIRCUMSTANTIAL EVIDENCE IS PROOF BY A CHAIN
11 OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTANCE OF A
12 FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES
13 COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE
14 INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE
15 AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION. IT IS
16 PROOF THAT DOES NOT ACTUALLY ESTABLISH THE FACT IN
17 QUESTION, BUT THAT ASSERTS OR DESCRIBES SOMETHING ELSE
18 FROM WHICH YOU MAY EITHER REASONABLY INFER THE TRUTH OF
19 THE FACT OR REASONABLY INFER AN INCREASE IN THE
20 PROBABILITY THAT THE FACT WAS TRUE.

21 FOR CIRCUMSTANTIAL EVIDENCE TO BE SUFFICIENT
22 TO WARRANT THE FINDING OF A FACT, THE CIRCUMSTANCES MUST
23 LEAD TO THAT FACT WITH REASONABLE CERTAINTY. THE FACTS
24 AND CIRCUMSTANCES SHOULD BE CONSIDERED IN LIGHT OF
25 ORDINARY EXPERIENCE AND COMMON SENSE. THE EXISTENCE OF

1 A FACT CANNOT BE BASED ON SPECULATION, SURMISE OR
2 CONJECTURE.

3 THE LAW MAKES ABSOLUTELY NO DISTINCTION
4 BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT
5 OR CIRCUMSTANTIAL EVIDENCE, NOR IS A GREATER DEGREE OF
6 CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF
7 DIRECT EVIDENCE.

8 NOW, CRIMINAL INTENT IS A STATE OF MIND THAT
9 OPERATES WITH AN ACT OR OMISSION IN THE COMMISSION OF
10 CRIME. CRIMINAL INTENT, AS I SAY, IS A MENTAL STATE.
11 CRIMINAL INTENT IS NORMALLY BASED UPON THE CONCURRENCE
12 OF TWO FACTORS: AN EVIL MIND AND AN EVIL DOING HAND.
13 PROOF OF INTENT NECESSARILY RESTS ON INFERENCES FROM
14 CONDUCT.

15 NOW, IN INDICTMENT NUMBER 2005-GS-04-1700
16 THE DEFENDANT, HOWARD THOMPSON, III, IS CHARGED WITH
17 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST
18 DEGREE. I REMIND YOU THAT THE FACT THE DEFENDANT WAS
19 ARRESTED, CHARGED AND INDICTED IN THIS CASE IS NOT
20 EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS
21 EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT PRESENT ANY
22 INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY THE FORMAL
23 INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE
24 DEFENDANT, IT IS THE FORMAL DOCUMENT BY WHICH THE CASE
25 IS BROUGHT INTO COURT.

1 NOW, THERE HAVE BEEN ADMITTED INTO THE
2 RECORD IN THIS CASE STATEMENTS ALLEGEDLY TO HAVE BEEN
3 MADE BY THE DEFENDANT. BEFORE YOU MAY CONSIDER THESE
4 STATEMENTS AS EVIDENCE FOR ANY PURPOSE, YOU MUST
5 DETERMINE FOUR QUESTIONS.

6 ONE, DID THE DEFENDANT MAKE THE STATEMENT?

7 TWO, WAS THE DEFENDANT WARNED OF HIS
8 CONSTITUTIONAL RIGHTS?

9 THREE, DID THE DEFENDANT KNOWINGLY AND
10 INTELLIGENTLY WAIVE HIS CONSTITUTIONAL RIGHTS?

11 AND FOUR, WERE THE STATEMENTS GIVEN
12 VOLUNTARILY?

13 NOW, THE FACT THAT THE COURT HAS ADMITTED
14 THE STATEMENT INTO EVIDENCE SHOULD NOT BE CONSIDERED BY
15 YOU AS ANY EVIDENCE WHATSOEVER THAT THE DEFENDANT HAS
16 MADE SUCH A STATEMENT OR THAT THE REQUIRED
17 CONSTITUTIONAL SAFEGUARDS WERE, IN FACT, PROVIDED AND
18 WAIVED BY THE DEFENDANT, OR THAT THE STATEMENTS WERE
19 VOLUNTARILY GIVEN, BECAUSE ALL OF THESE ISSUES ARE FOR
20 YOU, THE JURY, TO DETERMINE. THE STATE MUST PROVE
21 BEYOND A REASONABLE DOUBT EACH OF THE FOUR REQUIREMENTS
22 THAT I HAVE JUST STATED TO YOU BEFORE YOU MAY CONSIDER
23 THE STATEMENT AS EVIDENCE FOR ANY PURPOSE WHATSOEVER.

24 AS TO THE FIRST REQUIREMENT, DID THE
25 DEFENDANT MAKE THE STATEMENT, IF YOU CONCLUDE THAT THE

1 DEFENDANT DID NOT MAKE THE STATEMENT, YOU MUST THEN
2 COMPLETELY AND TOTALLY DISREGARD THAT STATEMENT.

3 AS TO THE SECOND REQUIREMENT, WAS THE
4 DEFENDANT WARNED OF HIS CONSTITUTIONAL RIGHTS, WHEN AN
5 INDIVIDUAL IS TAKEN INTO CUSTODY OR OTHERWISE DEPRIVED
6 OF HIS FREEDOM OR ACTION IN ANY SIGNIFICANT WAY BY A LAW
7 ENFORCEMENT OFFICER, HE MUST BE WARNED OF CERTAIN
8 CONSTITUTIONAL RIGHTS PRIOR TO AND BEFORE ANY
9 QUESTIONING. AND THESE RIGHTS ARE:

10 ONE, THE RIGHT TO REMAIN SILENT, THAT IS THE
11 RIGHT TO SAY NOTHING AT ALL.

12 TWO, THAT ANY STATEMENT MADE BY THE
13 DEFENDANT CAN AND WILL BE USED AGAINST THE DEFENDANT IN
14 A COURT OF LAW.

15 THREE, THE RIGHT TO SELECT A LAWYER OF HIS
16 CHOICE. IF THE DEFENDANT IS WITHOUT MONEY OR RESOURCES
17 TO EMPLOY A LAWYER, THE COURT WILL APPOINT AND PROVIDE A
18 LAWYER TO REPRESENT HIM WITHOUT COST OR EXPENSE IF HE SO
19 DESIRES.

20 FOUR, THE RIGHT TO CONSULT WITH A LAWYER
21 BEFORE ANSWERING ANY QUESTIONS OR MAKING ANY STATEMENT.

22 AND FIVE, THE RIGHT TO HAVE THE LAWYER
23 PRESENT AT ALL TIMES DURING INTERVIEWS AND ALL
24 INTERROGATIONS.

25 IF YOU DETERMINE THAT THESE CONSTITUTIONAL

1 WARNINGS WERE NOT GIVEN TO THE DEFENDANT PRIOR TO THE
2 INTERROGATION, THE TAKING OF THE STATEMENT, OR THE
3 DEFENDANT WAS NOT AFFORDED THE OPPORTUNITY TO EXERCISE
4 THESE RIGHTS, THEN YOU MUST COMPLETELY DISREGARD THE
5 STATEMENT, AND IN THAT EVENT YOU CANNOT CONSIDER THE
6 STATEMENT AS EVIDENCE IN ANY MANNER WHATSOEVER.

7 AS TO THE THIRD REQUIREMENT, DID THE
8 DEFENDANT KNOWINGLY AND INTELLIGENT WAIVE HIS
9 CONSTITUTIONAL RIGHTS, IF YOU FIND THE DEFENDANT DID NOT
10 KNOWINGLY AND INTELLIGENTLY WAIVE HIS CONSTITUTIONAL
11 RIGHTS, THEN ANY ANSWER GIVEN BY HIM OR ANY STATEMENT
12 MADE BY HIM CANNOT BE USED AGAINST HIM AND YOU MUST
13 COMPLETELY DISREGARD ALL OF THE TESTIMONY CONCERNING ANY
14 SUCH ANSWERS OR ALLEGED STATEMENT.

15 AS TO THE FOURTH REQUIREMENT, WAS THE
16 STATEMENT GIVEN VOLUNTARILY. THE STATEMENT IS NOT
17 VOLUNTARY AND MAY NOT BE USED AGAINST A DEFENDANT UNLESS
18 IT IS THE PRODUCT OF THE ESSENTIALLY FREE AND
19 UNCONSTRAINED CHOICE BY ITS MAKER. THE TRUE TEST TO BE
20 APPLIED IS WHETHER A STATEMENT IS FREELY AND VOLUNTARILY
21 AND UNDERSTANDINGLY MADE WITHOUT COMPULSION OR
22 INDUCEMENT.

23 IN DETERMINING WHETHER OR NOT AN ALLEGED
24 STATEMENT OF THE DEFENDANT WAS VOLUNTARY, YOU MAY
25 CONSIDER ALL OF THE FACTS AND CIRCUMSTANCES SURROUNDING

1 THE TAKING OR MAKING OF THE STATEMENT. WITH REGARD TO
2 THE ALLEGED STATEMENTS OF THE DEFENDANT, THE STATE MUST
3 PROVE BY THE ELEMENTS EACH AND EVERY REQUIREMENT WHICH I
4 HAVE INSTRUCTED TO YOU BEYOND A REASONABLE DOUBT BEFORE
5 YOU CAN CONSIDER THE ALLEGED STATEMENTS AS EVIDENCE IN
6 THIS CASE. ABSENT ONE OF THESE REQUIREMENTS ABOUT WHICH
7 I'VE INSTRUCTED YOU, THE ALLEGED STATEMENT MUST BE
8 DISREGARDED COMPLETELY, AND IN THAT EVENT YOU WILL
9 AFFORD NO EVIDENTIARY WEIGHT WHATSOEVER TO THEM OR TO
10 ANY PART OF THEM.

11 AS I SAID, THE DEFENDANT IS CHARGED WITH
12 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST
13 DEGREE. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
14 THE DEFENDANT ENGAGED IN A SEXUAL BATTERY WITH THE
15 VICTIM. THE SEXUAL BATTERY IS SEXUAL INTERCOURSE,
16 CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY
17 INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S
18 BODY OR ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF
19 ANOTHER PERSON'S BODY, EXCEPT WHEN THE INTRUSION IS
20 ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR
21 DIAGNOSTIC PURPOSES.

22 THE STATE MUST PROVE BEYOND A REASONABLE
23 DOUBT THAT THE VICTIM WAS LESS THAN 11 YEARS OF AGE AT
24 THE TIME OF THE SEXUAL BATTERY.

25 AND THIRD, THE CONSENT, WILLINGNESS,

1 INDIFFERENCE OR IGNORANCE ON THE PART OF THE MINOR, IF
2 ANY, AS TO WHAT WAS TAKING PLACE DOES NOT IN ANY WAY
3 AFFECT THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A
4 MINOR.

5 IF YOU HAVE A REASONABLE DOUBT AS TO WHETHER
6 OR NOT THE STATE HAS MET ITS BURDEN OF PROOF AND SHOWN
7 ALL THE ELEMENTS OF CRIMINAL SEXUAL CONDUCT WITH A MINOR
8 IN THE FIRST DEGREE, THEN YOU WOULD FIND THE DEFENDANT
9 NOT GUILTY ON INDICTMENT NUMBER 2005-GS-04-1700.

10 ON THE OTHER HAND, IF YOU HAVE NO REASONABLE
11 DOUBT THAT THE STATE HAS PROVEN EACH REQUIRED ELEMENT OF
12 THE CRIME OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
13 FIRST DEGREE, THEN YOU WOULD FIND THE DEFENDANT GUILTY
14 ON INDICTMENT NUMBER 2005-GS-04-1700.

15 NOW, MADAM FORELADY, LADIES AND GENTLEMEN OF
16 THE JURY, YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL
17 JURORS SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS
18 OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO
19 SO, THEN NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR
20 VERDICT AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS
21 JURORS.

22 YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR
23 EXPRESSIONS OF OPINIONS, IF ANY, WHICH YOU MAY HAVE
24 HEARD ON THE OUTSIDE, BUT YOU ARE TO DECIDE THIS CASE
25 ACCORDING TO THE TESTIMONY THAT YOU HAVE HEARD FROM THE

1 LIPS OF SWORN WITNESSES ALONG WITH THE OTHER EVIDENCE
2 THAT MAY HAVE BEEN INTRODUCED.

3 AS TO THOSE QUESTIONS TO WHICH AN OBJECTION
4 WAS SUSTAINED, YOU MUST NOT SPECULATE AS TO WHAT THE
5 ANSWER MAY HAVE BEEN OR THE REASON FOR THE OBJECTION.
6 YOU MUST NOT CONSIDER FOR ANY PURPOSE ANY OFFER OF
7 EVIDENCE WHICH WAS REJECTED OR ANY EVIDENCE THAT WAS
8 STRICKEN BY THE COURT. SUCH MATTER IS TO BE TREATED AS
9 THOUGH YOU HAVE NEVER KNOWN IT.

10 YOU MUST NEVER SPECULATE TO BE TRUE ANY
11 INSINUATIONS SUGGESTED BY A QUESTION ASKED OF A WITNESS.
12 A QUESTION IS NOT EVIDENCE AND IT MAY BE CONSIDERED ONLY
13 AS IT SUPPLIES MEANING TO THE ANSWER.

14 NOW, MADAM FORELADY AND LADIES AND GENTLEMEN
15 OF THE JURY, AS I SAID EARLIER, YOU ARE THE JUDGES OF
16 THE FACTS IN THIS CASE AND YOU ARE TO DETERMINE ONLY IF
17 THE DEFENDANT IS GUILTY OR NOT GUILTY BASED UPON THE
18 TESTIMONY AND EVIDENCE PRESENTED IN THE TRIAL AFTER
19 APPLYING THE LAW AS I'VE GIVEN IT TO YOU. IF FROM THE
20 EVIDENCE YOU HAVE A REASONABLE DOUBT AS TO WHETHER OR
21 NOT THE DEFENDANT IS GUILTY, IT IS YOUR DUTY TO ACQUIT
22 HIM AND WRITE THE TWO WORDS "NOT GUILTY". UNDER THE
23 OATH YOU TOOK YOU SWORE TO TRY THIS CASE BASED ONLY AND
24 SOLELY ON THE TESTIMONY AND EVIDENCE AND LAW PRESENTED
25 AND HEARD IN THE COURTROOM. IT IS YOUR DUTY TO LAY

1 ASIDE ALL BIAS, PREJUDICE OR SYMPATHY YOU MAY HAVE IN
2 REACHING YOUR VERDICT. YOU HAVE NO FRIENDS TO REWARD OR
3 ENEMIES TO PUNISH IN THIS CASE.

4 I MIGHT NOTE THAT THE WORD VERDICT COMES
5 FROM THE LATIN TERM VEREDICTO, WHICH MEANS TO SPEAK THE
6 TRUTH. ABIDE BY YOUR OATH AND VERDICT WHICH DOES, IN
7 FACT, SPEAK THE TRUTH.

8 NOW, MADAM FORELADY, I'VE PREPARED A VERDICT
9 FORM FOR YOU TO USE IN YOUR DELIBERATIONS. DO REMEMBER
10 THAT WHATEVER VERDICT THAT YOU REACH, IT MUST BE
11 UNANIMOUS, THAT IS ALL 12 MEMBERS OF THE JURY MUST REACH
12 THAT SAME VERDICT. IF YOU WILL NOTICE, IT PROVIDES
13 INDICTMENT NUMBER 2005-GS-04-1700, CRIMINAL SEXUAL
14 CONDUCT WITH A MINOR IN THE FIRST DEGREE.

15 YOU HAVE TWO POSSIBLE VERDICTS. THE FACT
16 THAT ONE COMES BEFORE THE OTHER HAS NO SIGNIFICANCE
17 WHATSOEVER. IT PROVIDES: WE, THE JURY, UNANIMOUSLY
18 FIND THAT THE DEFENDANT, HOWARD THOMPSON, III, IS GUILTY
19 OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST
20 DEGREE, OR NOT GUILTY. NOW, WHICHEVER VERDICT IS THE
21 UNANIMOUS VERDICT OF ALL 12 MEMBERS OF THE JURY, MADAM
22 FORELADY, IF YOU WOULD CHECK THE APPROPRIATE VERDICT,
23 EITHER GUILTY OR NOT GUILTY. ONCE THE FORM HAS BEEN
24 COMPLETED, IF YOU WOULD DATE IT AND SIGN YOUR NAME ON
25 THE LINE PROVIDED.

1 IF YOU WOULD PLEASE HAND THE VERDICT FORM
2 BACK TO THE BAILIFF.

3 I'M GOING TO ASK YOU ONE MORE TIME TO RETIRE
4 TO THE JURY ROOM AND DO NOT BEGIN YOUR DELIBERATIONS
5 UNTIL I SEND IN THE VERDICT FORM TOGETHER WITH THE
6 EXHIBITS THAT HAVE BEEN INTRODUCED IN THIS CASE. ONCE
7 YOU RECEIVE THE VERDICT FORM AND EXHIBITS, YOU MAY BEGIN
8 YOUR DELIBERATIONS, BUT I NEED TO TAKE UP SOME MATTERS
9 WITH THE PARTIES BEFORE YOU GET THE CASE AND START YOUR
10 DELIBERATIONS. SO I'M GOING TO ASK YOU NOW TO RETIRE.

11 ONCE YOU REACH A VERDICT AND THE VERDICT
12 FORM HAS BEEN COMPLETED, KNOCK ON THE DOOR AND WE'LL
13 RETURN AND RECEIVE YOUR VERDICT. IF YOU WOULD PLEASE
14 RETIRE TO THE JURY ROOM. I'M GOING TO ASK THE
15 ALTERNATES, IF YOU WOULD, PLEASE, REMAIN WITH ME, AND
16 THE REST OF THE JURY TO RETIRE FROM THE COURTROOM.

17 EVERYONE ELSE REMAIN SEATED WHILE THE JURY
18 RETIRES FROM THE COURTROOM.

19 (WHEREUPON, THE JURY LEFT THE COURTROOM AT
20 12:19 P.M., EXCEPT FOR THE TWO ALTERNATES.)

21 **THE COURT:** ANY EXCEPTIONS OR REQUESTS,
22 ADDITIONAL REQUESTS TO CHARGE FROM THE STATE?

23 **MS. HUEY:** NO, SIR, YOUR HONOR.

24 **THE COURT:** FROM THE DEFENDANT?

25 **MR. THOMPSON:** NO, SIR, YOUR HONOR.

1 **THE COURT:** VERY GOOD. ALL RIGHT. BE
2 SURE -- CHECK THE EXHIBITS AND BE SURE EVERYTHING THAT
3 GOES BACK OR THAT IS SUPPOSED TO GO BACK GOES BACK AND
4 NOTHING THAT IS NOT SUPPOSED TO GO BACK DOES.
5 MR. THOMPSON, MR. WHITEN, IF Y'ALL WANT TO CHECK THE
6 EXHIBITS TO BE SURE THAT THEY ARE RIGHT.

7 ALL RIGHT. WE WILL STAND AT EASE WAITING
8 FOR A JURY VERDICT.

9 (THE COURT CONFERRED WITH THE TWO ALTERNATES
10 OFF THE RECORD, AFTER WHICH THE ALTERNATES
11 WERE EXCUSED.)

12 (COUNSEL CONFER WITH THE COURT REPORTER ABOUT
13 THE EXHIBITS OFF THE RECORD.)

14 **THE COURT:** ANYTHING ELSE?

15 **MR. WHITEN:** YES, YOUR HONOR. WE'VE GOT
16 KIND OF A PROBLEM.

17 **THE COURT:** WE'RE BACK ON THE RECORD.

18 **MS. HUEY:** YOUR HONOR, IT SEEMS THAT IN A
19 COUPLE OF THE DEFENSE EXHIBITS THERE'S REFERENCE TO THE
20 OTHER VICTIM.

21 **THE COURT:** OKAY. LET'S SEE WHAT WE HAVE.

22 **MR. WHITEN:** YES, YOUR HONOR.

23 (DEFENDANT APPROACHES BENCH WITH DEFENSE
24 EXHIBITS.)

25 **THE COURT:** NOW, IS THIS...

1 MR. THOMPSON: THE SECOND PARAGRAPH, THE
2 LAST LINE.

3 THE COURT: OH, GRACIOUS.

4 MR. THOMPSON: IT SHOULD BE REDACTED.

5 THE COURT: CAN YOU REDACT IT? WELL, IT HAS
6 TO BE REDACTED BECAUSE IT'S NOT...

7 MS. HUEY: WE MIGHT NEED TO ---

8 THE COURT: WELL, WHAT YOU DO IS MAKE A COPY
9 OF THIS, REDACT IT, AND THEN MAKE A COPY OF THE REDACTED
10 COPY.

11 AND, MADAM COURT REPORTER, JUST FOR
12 CONSISTENCY, JUST TO BE SURE THAT IT REMAINS IN THE SAME
13 FORMAT, DO AN ADDITIONAL EXHIBIT FOR THIS.

14 AND IS THERE ANOTHER ONE? IS THIS THE SAME
15 THING?

16 MR. THOMPSON: IT'S LOCATED IN THE SAME
17 PLACE, AS WELL.

18 THE COURT: ALL RIGHT. AUSTIN PITTS,
19 SOMEBODY ELSE?

20 MR. THOMPSON: THAT'S THE SECOND VICTIM.

21 THE COURT: AUSTIN PITTS.

22 MADAM SOLICITOR?

23 MS. HUEY: YES, SIR.

24 THE COURT: LET'S LOOK TO BE SURE WE DO IT
25 RIGHT.

1 MADAM CLERK, MAYBE IT WILL BE BEST IF YOU
2 WILL DO THIS. WE NEED AT LEAST ONE COPY OF -- WELL, THE
3 SECOND PAGE HERE, I THINK IT IS, AND THEN ONE COPY OF
4 EACH OF THESE. THEN Y'ALL GET YOUR BLACK MARKER OUT AND
5 REDACT OUT WHAT YOU WANT, AND THEN MAKE ANOTHER COPY SO
6 IT DOESN'T BLEED THROUGH.

7 ALL RIGHT. WE'LL STAND AT EASE.

8 MS. HUEY: YOUR HONOR, HAVE THE ALTERNATES
9 BEEN EXCUSED FOR THE WEEK?

10 THE COURT: YES.

11 (THE ALTERNATES RETURNED TO THE COURTROOM.)

12 (STATE'S EX. # 16, REDACTED VOLUNTARY
13 STATEMENT DATED 5-20-05 AT 4:15 P.M.,
14 DEFENDANT'S EX. 3, WAS MARKED FOR
15 IDENTIFICATION AND RECEIVED IN EVIDENCE.)

16 THE COURT: ALL RIGHT. PRIOR TO PUTTING THE
17 EXHIBITS TOGETHER TO GO BACK TO THE JURY, THE COURT WAS
18 ADVISED BY THE DEFENDANT THAT DEFENDANT'S EXHIBIT ONE,
19 FOUR, AND FIVE CONTAINED NOTATIONS OR COMMENTS THAT
20 WOULD BE REDACTED, ARE NOT TO GO BACK, AND THAT HAS BEEN
21 DONE, AND WE'LL SEND A COPY BACK, A REDACTED COPY BACK
22 FOR EACH OF THOSE EXHIBITS.

23 HAS THE STATE REVIEWED THE EXHIBITS?

24 MS. HUEY: YES, SIR, YOUR HONOR.

25 THE COURT: HAS THE DEFENDANT REVIEWED THE

1 EXHIBITS?

2 MR. THOMPSON: YES, SIR, YOUR HONOR.

3 THE COURT: ALL RIGHT. IS THERE AN
4 AGREEMENT AS TO THE WAY TO PROCEED? WE'LL SEND THE
5 REDACTED COPIES WHICH HAVE BEEN REIDENTIFIED WITH THE
6 SAME NUMBERS SO THERE WON'T BE ANY DIFFERENCE FROM ANY
7 OF THE OTHER EXHIBITS, THEY WILL ALL HAVE THE SAME
8 STAMPS AS WELL AS COLORING AND THINGS OF THAT NATURE.

9 ALL RIGHT. WITH THAT UNDERSTANDING I'LL
10 SEND ALL THE EXHIBITS BACK AS NOW CONSTITUTED AND ASK
11 THE JURY TO BEGIN THEIR DELIBERATIONS.

12 ANYTHING ELSE FROM THE STATE?

13 MS. HUEY: NO, SIR, YOUR HONOR.

14 THE COURT: FROM THE DEFENDANT?

15 MR. THOMPSON: NO, SIR, YOUR HONOR.

16 (THE CLERK CONFERRED WITH THE COURT OFF THE
17 RECORD.)

18 THE COURT: I'M GOING TO ASK, SINCE IT'S
19 ABOUT A QUARTER TO ONE, THE CLERK TO GO IN AND JUST TAKE
20 ORDERS FOR LUNCH. IS THERE ANY OBJECTION TO THAT FROM
21 THE STATE?

22 MS. HUEY: NO, SIR, YOUR HONOR.

23 THE COURT: FROM THE DEFENDANT?

24 MR. THOMPSON: NO, SIR, YOUR HONOR.

25 (JURY STARTED DELIBERATIONS AT 12:45 P.M.)

1 (COURT'S EX. # 6, UNREDACTED DEFENDANT'S EX.
2 # 4, WAS MARKED FOR IDENTIFICATION.)

3 (COURT'S EX. # 7, UNREDACTED DEFENDANT'S EX.
4 # 1, WAS MARKED FOR IDENTIFICATION.)

5 (COURT'S EX. # 8, UNREDACTED PAGE 2 OF
6 DEFENDANTS'S EX. # 5, WAS MARKED FOR
7 IDENTIFICATION.)

8 (A VERDICT WAS REACHED BY THE JURY AT 2:15
9 P.M.)

10 **THE COURT:** ALL RIGHT. IT IS MY
11 UNDERSTANDING THE JURY HAS REACHED A VERDICT. ANYTHING
12 FROM THE STATE BEFORE WE BRING THE JURY BACK?

13 **MS. HUEY:** NO, SIR, YOUR HONOR.

14 **THE COURT:** FROM THE DEFENDANT?

15 **MR. THOMPSON:** NO, SIR, YOUR HONOR.

16 **THE COURT:** THANK YOU, SIR.

17 LADIES AND GENTLEMEN, IF ANYONE IS NOT ABLE
18 TO CONTROL THEMSELVES OR FEEL LIKE THERE IS GOING TO BE
19 SOME SORT OF REACTION TO WHATEVER THE VERDICT IS, AND I
20 DON'T KNOW WHAT THAT MIGHT BE, I WOULD DIRECT YOU NOW TO
21 LEAVE THE COURTROOM. I WILL NOT PERMIT ANY SORT OF
22 OUTBURSTS, REGARDLESS OF THE VERDICT. IF YOU CANNOT
23 ABIDE BY THAT, PLEASE DO LEAVE NOW. (NO RESPONSE.)

24 VERY WELL. ASK THE JURY TO JOIN US, PLEASE.

25 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT

1 2:24 P.M.)

2 THE COURT: MADAM FORELADY, I UNDERSTAND THE
3 JURY HAS REACHED A VERDICT?

4 THE FORELADY: WE HAVE, YOUR HONOR.

5 THE COURT: IF YOU WOULD, PLEASE HAND IT UP
6 TO THE CLERK.

7 MADAM CLERK, IF YOU WOULD PLEASE PUBLISH IT.
8 JUST A MOMENT.

9 (DEFENDANT'S FAMILY ENTERS COURTROOM.)

10 THE CLERK: INDICTMENT 2007-GS-04-1700, THE
11 STATE OF SOUTH CAROLINA VERSUS HOWARD THOMPSON, III, THE
12 VERDICT OF THE JURY IS GUILTY. WE, THE JURY,
13 UNANIMOUSLY FIND THE DEFENDANT, HOWARD THOMPSON, III,
14 GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
15 FIRST DEGREE. THAT'S SIGNED KATHERINE G. HEENEY,
16 FORELADY.

17 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
18 JURY, IF THIS IS YOUR VERDICT, WOULD YOU PLEASE INDICATE
19 BY RAISING YOUR RIGHT HAND?

20 ALL HANDS RAISED, VERDICT OF THE JURY, YOUR
21 HONOR.

22 THE COURT: IS THERE ANYTHING FROM THE STATE
23 BEFORE I DISCHARGE THE JURY?

24 MS. HUEY: NO, SIR, YOUR HONOR.

25 THE COURT: ANYTHING FROM THE DEFENDANT?

1 (WHEREUPON, STAND-BY COUNSEL, MR. WHITEN,
2 CONFERRED WITH THE DEFENDANT OFF THE RECORD.)

3 MR. THOMPSON: I WOULD LIKE TO HAVE THE JURY
4 POLLED.

5 THE COURT: VERY WELL.

6 MADAM CLERK?

7 THE CLERK: YES, YOUR HONOR?

8 POLLING OF THE JURY:

9 THE CLERK: I'LL ASK EACH OF YOU
10 INDIVIDUALLY IF THIS WAS YOUR VERDICT IN THE JURY ROOM
11 AND IF IT'S STILL YOUR VERDICT.

12 KATHERINE HEENEY, WAS THIS YOUR VERDICT AND
13 IS IT STILL YOUR VERDICT?

14 THE FORELADY: YES, MA'AM.

15 THE CLERK: MICHAEL MILLER, WAS THIS YOUR
16 VERDICT AND IS IT STILL YOUR VERDICT?

17 JUROR MILLER: YES, MA'AM.

18 THE CLERK: CLAUDE HALL, WAS THIS YOUR
19 VERDICT AND IS IT STILL YOUR VERDICT?

20 JUROR HALL: YES, MA'AM.

21 THE CLERK: ANNETTE GAULT, WAS THIS YOUR
22 VERDICT AND IS IT STILL YOUR VERDICT?

23 JUROR GAULT: YES, MA'AM.

24 THE CLERK: PATRICK KELLEY, WAS THIS YOUR
25 VERDICT AND IS IT STILL YOUR VERDICT?

1 JUROR KELLEY: YES, MA'AM.

2 THE CLERK: SALLIE FOSTER, WAS THIS YOUR
3 VERDICT AND IS IT STILL YOUR VERDICT?

4 JUROR FOSTER: YES, MA'AM.

5 THE CLERK: ROBERT EDWARDS, WAS THIS YOUR
6 VERDICT AND IS IT STILL YOUR VERDICT?

7 JUROR EDWARDS: YES, MA'AM.

8 THE CLERK: JOHN FORD, WAS THIS YOUR VERDICT
9 AND IS IT STILL YOUR VERDICT?

10 JUROR FORD: YES, MA'AM.

11 THE CLERK: CHERRY WHITEN, WAS THIS YOUR
12 VERDICT AND IS IT STILL YOUR VERDICT?

13 JUROR WHITEN: YES, MA'AM.

14 THE CLERK: AMERY BROOKS, WAS THIS YOUR
15 VERDICT AND IS IT STILL YOUR VERDICT?

16 JUROR BROOKS: YES, MA'AM.

17 THE CLERK: DAWN COTHRAN, WAS THIS YOUR
18 VERDICT AND IS IT STILL YOUR VERDICT?

19 JUROR COTHRAN: YES, MA'AM.

20 THE CLERK: ANTONIO WILLIAMS, WAS THIS YOUR
21 VERDICT AND IS IT STILL YOUR VERDICT?

22 JUROR COTHRAN: YES, MA'AM.

23 THE CLERK: YOUR HONOR, THE JURY HAS BEEN
24 POLLED, ALL ANSWERED IN THE AFFIRMATIVE.

25 THE COURT: THANK YOU VERY MUCH.

1 ANYTHING FURTHER FROM THE DEFENDANT BEFORE I
2 DISMISS THE JURY?

3 MR. THOMPSON: NO, SIR.

4 THE COURT: VERY GOOD.

5 MADAM FORELADY, LADIES AND GENTLEMEN OF THE
6 JURY, THE COURT IS NEVER INTERESTED IN A VERDICT, ONLY
7 HOW THAT VERDICT IS REACHED. AND ALTHOUGH IT LOOKS LIKE
8 I'M DOING EVERYTHING UP HERE EXCEPT PAYING ATTENTION, I
9 HAVE DEVELOPED THE ABILITY TO KEEP UP WITH WHAT'S GOING
10 ON IN THE COURTROOM, AND I NOTICED THAT ALL OF YOU, AS
11 DID THE ALTERNATES IN THIS CASE, PAID VERY CAREFUL AND
12 CLOSE ATTENTION, NOT ONLY TO THE TESTIMONY AND THE
13 EVIDENCE, BUT ALSO THE PRESENTATIONS BY THE PARTIES.

14 AND I THANK YOU FOR YOUR SERVICE. I KNOW
15 NONE OF YOU ASKED TO BE HERE, BUT HAVING BEEN SUMMONED,
16 YOU MET YOUR DUTY AND YOU REACHED A VERDICT THAT WAS IN
17 ACCORDANCE WITH YOUR CONSCIENCE, AND NO ONE AT ALL CAN
18 IN ANY WAY QUESTION THAT VERDICT.

19 I MIGHT NOTE THAT ALSO A VERDICT IS A
20 UNANIMOUS VERDICT OF ALL 12 OF YOU, IT'S NOT THE VERDICT
21 OF ANY ONE, AND NO ONE IS TO IN ANY WAY DISCUSS THIS
22 VERDICT WITH YOU OR ATTEMPT TO DO IT. NOW, IF YOU WANT
23 TO DISCUSS THIS WITH SOMEONE, YOU CAN; AND IF YOU SHOULD
24 DECIDE THAT YOU DON'T WANT TO DISCUSS IT ANY FURTHER,
25 THEN YOU CAN TELL THEM TO STOP AND THAT WILL BE THE END

1 OF IT. IF THEY SHOULD INSIST, I'M GOING TO ASK YOU TO
2 CONTACT THE CLERK OF COURT AND I WILL TAKE THE
3 APPROPRIATE ACTION BECAUSE, AS I SAY, YOU WERE SUMMONED
4 HERE NOT AT ANY REQUEST OF YOURS, AND YOU HAVE DONE YOUR
5 DUTY AND YOU HAVE DONE IT WELL.

6 OUR JURY SYSTEM COULD NOT FUNCTION WITHOUT
7 CITIZENS' WILLINGNESS TO MEET THAT DUTY. IN FACT, I
8 THINK IT WAS WINSTON CHURCHILL IN THE 20TH CENTURY THAT
9 SAID THAT NO GREATER SERVICE CAN A CITIZEN IN PEACETIME
10 SERVE THAN THAT AS A JUROR. AND FOR YOUR SERVICE, AS I
11 SAY, ANDERSON COUNTY AS WELL AS OUR JUDICIAL SYSTEM OF
12 SOUTH CAROLINA OWES YOU A DEBT OF GRATITUDE AND I THANK
13 YOU.

14 I WISH THAT I COULD DO SOMETHING FOR YOU.
15 THE ONLY THING I CAN SUGGEST IS MONDAY, WHEN I QUALIFIED
16 THE ENTIRE JURY PANEL, I ASKED IF ANY MEMBERS OF THE
17 JURY PANEL HAD SERVED AS A JUROR IN THE LAST THREE
18 YEARS. AT LEAST YOU WON'T HAVE TO SERVE FOR ANOTHER
19 THREE YEARS. BUT I DO HOPE YOUR SERVICE HAS NOT BEEN
20 WITHOUT SOME BENEFIT TO YOU. THANK YOU VERY MUCH.

21 EVERYONE ELSE PLEASE REMAIN SEATED WHILE THE
22 JURY RETIRES FROM THE COURTROOM.

23 MADAM FORELADY, I DO NEED TO SEE YOU,
24 THOUGH, IF YOU WOULD APPROACH.

25 (THE COURT CONFERRED WITH THE FORELADY OFF

1 THE RECORD, AFTER WHICH THE FORELADY WAS
2 EXCUSED.)

3 THE COURT: ALL RIGHT. IF THE DEFENDANT
4 WOULD COME AROUND.

5 SENTENCING BY THE COURT:

6 THE COURT: ALL RIGHT. AS I UNDERSTAND, THE
7 OFFENSE OCCURRED IN 2005; IS THAT RIGHT?

8 MS. HUEY: YES, SIR, YOUR HONOR.

9 THE COURT: THE PENALTY AT THAT TIME WAS UP
10 TO 30 YEARS?

11 MS. HUEY: YES, SIR, YOUR HONOR.

12 THE COURT: THE NEW PENALTY IS WHAT, MINIMUM
13 25 YEARS TO LIFE?

14 MS. HUEY: YES, SIR.

15 THE COURT: ALL RIGHT. DOES THE STATE OR
16 THE VICTIMS HAVE ANYTHING THEY WOULD LIKE TO TELL THE
17 COURT?

18 UNIDENTIFIED MAN: YES, SIR, YOUR HONOR.

19 THE COURT: IF YOU WOULD, PLEASE IDENTIFY
20 YOURSELF FOR THE RECORD.

21 MR. CAIN: MY NAME IS BRIAN THOMAS CAIN,
22 LAST NAME C-A-I-N.

23 THIS MAN HAS CAUSED A GREAT DEAL OF HARM AND
24 PAIN FOR OUR FAMILY; NOT ONLY FOR OUR IMMEDIATE FAMILY
25 BUT FOR OUR EXTENDED FAMILY, AS WELL. THIS HAS BEEN A

1 LONG, HARD TWO YEARS THAT HE HAS PUT US THROUGH. AND
2 ALTHOUGH THIS TRIAL HAS COME TO AN END AND A VERDICT HAS
3 BEEN REACHED, IT'S REALLY TRULY ONLY THE BEGINNING OF
4 THE HEALING PROCESS THAT WILL NEVER END FOR OUR SON.

5 IF THERE WAS SUCH A SENTENCE, I WOULD
6 REQUEST THAT WE COULD TAKE HIM DOWNSTAIRS AND LET MY SON
7 PUT A NOOSE AROUND HIS NECK AND HANG HIM IN THE FRONT OF
8 THE COURTHOUSE. BUT SINCE THERE IS NOT, YOUR HONOR, I
9 ASK THAT YOU PLEASE GIVE HIM THE MAXIMUM SENTENCE THAT
10 THE LAW ALLOWS FOR THE CRIME THAT HE HAS COMMITTED
11 AGAINST MY SON, NOT ONLY AGAINST OUR SON, BUT THE OTHER
12 VICTIM THAT HE CONFESSED TO, AS WELL, THAT THE JURY WAS
13 NOT AWARE OF, AND ALSO TO PREVENT HIM FROM HARMING ANY
14 OTHER CHILDREN IN THE FUTURE.

15 THAT'S ALL, YOUR HONOR.

16 **THE COURT:** THANK YOU VERY MUCH.

17 ANYONE ELSE? (NO RESPONSE.)

18 SOLICITOR, ANYTHING ELSE?

19 **MS. HUEY:** NO, SIR, YOUR HONOR.

20 **THE COURT:** DOES THE DEFENDANT HAVE ANY
21 PRIOR RECORD?

22 **MS. HUEY:** HE DOES NOT HAVE A PRIOR RECORD;
23 YOUR HONOR.

24 **THE COURT:** ALL RIGHT, MR. THOMPSON, ALSO,
25 MR. WHITEN, ANYTHING YOU WOULD LIKE TO SAY, EITHER ONE?

1 **MR. THOMPSON:** YOUR HONOR, I DON'T THINK I
2 SHOULD GET THE MAXIMUM PENALTY BECAUSE I HAVE NO
3 CRIMINAL RECORD, AND I'VE DONE NOTHING WRONG. I WENT
4 THROUGH SCHOOL. THAT'S ALL I HAVE TO SAY.

5 **MR. WHITEN:** YOUR HONOR, ALL I HAVE AS AN
6 ADVISER IS HIS YOUTH. THAT WOULD BE THE ONLY OTHER
7 FACTOR THAT I BELIEVE MIGHT SHOULD BE CONSIDERED BY YOU,
8 BY YOUR HONOR, OTHER THAN WHAT'S ALREADY BEEN PRESENTED
9 IN THE TRIAL BY THE OTHER PEOPLE HERE.

10 **THE COURT:** JUST A MOMENT, PLEASE.

11 (THE COURT CONFERRED WITH THE LAW CLERK OFF
12 THE RECORD.)

13 **THE COURT:** ONE OF THE -- I NEED TO USE A
14 SENTENCE SHEET THAT'S BEEN AMENDED.

15 **MS. HUEY:** OH, I'M SORRY, JUDGE.

16 **THE COURT:** DO WE HAVE ONE?

17 **THE CLERK:** YOUR HONOR, I CAN PRINT YOU OUT
18 ONE. I HAVE IT RIGHT HERE.

19 **MR. WHITEN:** ONE MORE THING I GUESS I NEED
20 TO MENTION, THAT HE WOULD TECHNICALLY BE ELIGIBLE FOR
21 Y.O.A. IF YOU WOULD PLEASE ADVISE.

22 **MS. HUEY:** I'M NOT SURE THAT'S THE CASE WITH
23 C.S.C. FIRST.

24 **THE COURT:** I'M NOT SURE, EITHER. I THINK
25 THIS IS A VIOLENT CRIME, ISN'T IT?

1 MS. HUEY: YES, SIR, YOUR HONOR, AND MOST
2 SERIOUS AT THAT.

3 JUDGE, I CAN AMEND THAT IF YOU WOULD LIKE.
4 I JUST NEED TO LOOK AT THE ORIGINAL.

5 THE COURT: YOU'VE GOT TO FILL IT IN. WE'RE
6 WORKING RIGHT NOW.

7 MS. HUEY: OKAY. HOW MUCH TIME SERVED?

8 MR. WHITEN: HE SERVED IN ---

9 THE COURT: ACTUAL TIME.

10 MR. WHITEN: YES, SIR.

11 MS. HUEY: I BELIEVE IT'S JUST AT TWO YEARS,
12 MAYBE, AND A COUPLE OF DAYS. HE WAS ARRESTED ON MAY
13 20TH, AND TODAY IS THE 23RD.

14 MR. WHITEN: TWO YEARS AND THREE DAYS.

15 THE COURT: IS IT MOST SERIOUS, AS WELL?

16 MS. HUEY: YES, SIR, YOUR HONOR.

17 THE COURT: I'LL TELL YOU WHAT. WHY DON'T
18 YOU FILL OUT THAT PORTION THAT YOU NEED TO (HANDING).

19 MS. HUEY: YES, SIR, YOUR HONOR.

20 THE COURT: ANYTHING ELSE, MR. THOMPSON?

21 MR. THOMPSON: NO, SIR, YOUR HONOR.

22 THE COURT: INDICTMENT NUMBER

23 2005-GS-04-1700, THE STATE OF SOUTH CAROLINA VERSUS
24 HOWARD THOMPSON, III, THE SENTENCE OF THE COURT IS THAT
25 THE DEFENDANT BE COMMITTED TO THE STATE DEPARTMENT OF

1 CORRECTIONS FOR A TERM OF 30 YEARS, PLUS PAY THE COSTS
2 AND ASSESSMENTS AS APPLICABLE. THE DEFENDANT IS TO BE
3 GIVEN CREDIT FOR TWO YEARS, TWO [SIC] DAYS TIME SERVED.

4 THE DEFENDANT IS TO BE PLACED ON THE CENTRAL
5 REGISTRY FOR CHILD ABUSE AND NEGLECT PURSUANT TO SECTION
6 17-25-135, AND ALSO IS TO REGISTER AS A SEX OFFENDER
7 PURSUANT TO SOUTH CAROLINA RULES, SECTION 23-3-430, AND
8 TO SUCCESSFULLY COMPLETE SEX OFFENDER COUNSELING AND
9 TREATMENT.

10 GOOD LUCK TO YOU, SIR.

11 ALL RIGHT. WE'LL STAND IN RECESS FOR A FEW
12 MINUTES.

13 (THE TRIAL IN THE MATTER OF *THE STATE OF*
14 *SOUTH CAROLINA VERSUS HOWARD THOMPSON, III,*
15 *WAS CONCLUDED AT 3:00 P.M.)*

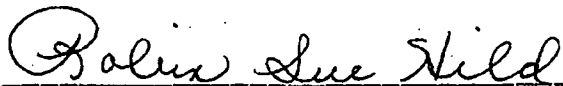
16 ***** END OF REQUESTED TRANSCRIPT *****
17
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25

CERTIFICATE OF COURT REPORTER

I, THE UNDERSIGNED, ROBIN SUE HILD, FCRR, RPR,
OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT
OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE
TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND THE
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
VOLUME IV OF IV, MAY 23RD, 2007, PAGES 397 THROUGH 478,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
ANDERSON COUNTY, SOUTH CAROLINA, ON THE 21ST DAY AND
22ND DAY AND 23RD DAY OF MAY, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 8, 2007


ROBIN SUE HILD, FCRR, RPR
CIRCUIT COURT REPORTER

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

A TRUE COPY

MAY 13 2013

Richard A. Hilly
CLERK OF COURT

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

Alexander S. Macaulay, Circuit Court Judge

Case No. 2005-GS-04-1699

Case No. 2005-GS-04-1700

The State,.....Respondent.

V.

Howard Thompson, III,.....Appellant.

NOTICE OF APPEAL

Howard Thompson, III., appeals his conviction and sentence in this case. The sentence was imposed by the Honorable Alexander S. Macaulay on May 23, 2007.

May 29, 2007

Charles W. Whiten, Jr.
Charles W. Whiten, Jr.

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864-225-6268

Adviser to Appellant

Other Counsel of Record:

Catherine Huey,

Assistant Solicitor

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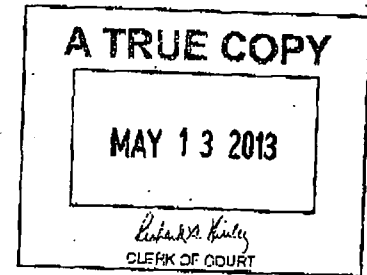
2007 MAY 31 A 11:03

FILED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of General Sessions

Alexander S. Mccaulay, Circuit Court Judge



The State, ... Respondent,
v
Howard Thompson, III Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage prepaid on May 29, 2007 and addressed as follows:

The Honorable Kenneth A. Richstad
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

The Honorable Cathy Phillips
Clerk of Court for Anderson County
P.O. Box 8002
Anderson, South Carolina 29622

Catherine Huey
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FILED
2007 MAY 31 A 11:03
CLERK OF COURT
ANDERSON COUNTY
SOUTH CAROLINA

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HOWARD THOMPSON, III,

APPELLANT

FINAL BRIEF OF APPELLANT

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err by not adequately informing appellant of the dangers of self-representation so that he could make an intelligent waiver of his right to counsel?
2. Did the trial court err in overruling appellant's objection to victim's mother testifying that victim was too scared to testify?

STATEMENT OF THE CASE

On June 28, 2005, the Anderson County Grand Jury indicted Howard Thompson III on the charges of criminal sexual conduct (CSC) with a minor 1st degree and criminal sexual conduct with a minor 2nd degree. On December 7, 2006, Thompson appeared before the Honorable Howard P. King for a hearing on Thompson's motion to relieve his appointed counsel and represent himself in the trial of the indictments. Judge King filed an order on January 8, 2007 wherein he granted Thompson's motion and ordered that appointed counsel was relieved but would appear with Thompson as an advisory counsel only.

On May 21-22, 2007, Thompson proceeded to trial before the Honorable Alexander S. Macaulay and a jury on the charge of CSC 1st degree with a minor. The jury returned a verdict of guilty as indicted. Judge Macaulay sentenced Thompson to thirty years. Judge Macaulay ordered that Thompson register as a sex offender and that his name be placed on the Central Registry for Child Abuse and Neglect.

Thompson's advisory counsel filed a notice of appeal on May 29, 2007. This appeal follows.

ARGUMENT

1.

The trial court erred by not adequately informing appellant of the dangers of self-representation so that he could make an intelligent waiver of his right to counsel.

Howard Thompson, a nineteen year old man who was scheduled to graduate from high school within a few days, was charged with criminal sexual conduct first degree with a six year old boy that he babysat. ROA p. 22, lines 16 – 25. Thompson represented himself at trial. ROA p. 17, lines 14 – 25.

After jury selection on May 21, 2007, Judge Macaulay asked Thompson if he had been advised that that an attorney might be of valuable assistance to him and that proceeding without an attorney would put him at a certain disadvantage. Thompson told him that he had and that the judge was Judge Maddox. Then Thompson said the judge was Judge Cooper. The Solicitor then said correctly that it was Judge Howard King, and told the judge that there was document indicating this which was marked as a court exhibit. ROA p. 17, line 14 – p. 18, line 3. Judge Macaulay then said that he just wanted to make sure that Thompson had been advised. He cited Judge King's order filed January 8, 2007. ROA, p. 18, lines 7 – 19.

On December 7, 2006, Thompson appeared before the Honorable Howard P. King for a hearing to determine if Judge King would relieve Thompson's attorney and allow Thompson to represent himself. At the hearing, Thompson's attorney, Charles Whiten, Esquire, told the court that Thompson had a mental evaluation and was found to be competent to stand trial. ROA, p. 8, lines 4 – 7.

Judge King asked Thompson if he was familiar with the Rules of Evidence. Thompson replied: "Not enough". Judge King then asked him to explain hearsay. Thompson replied: "My word against his". Judge King said that that was not really the rule on hearsay. Judge King then asked him if he was familiar with the Rules of Criminal procedure. Thompson replied: "Partially". ROA p. 13, lines 3 – 20. When Judge King asked him if he knew the elements of the crimes for which he was charged which were CSC 1st Degree and CSC 2nd Degree, Thompson said he did not know. Thompson's attorney then told the court that he had explained these to Thompson but maybe Thompson did not understand. ROA, p. 14, lines 13 – 20.

The Sixth and Fourteenth Amendments of the Federal Constitution guarantee that a person brought to trial in any state or federal court be afforded the right to assistance of counsel before he can be validly convicted. Faretta v. California, 422 U.S. 806 (1975).

The Sixth Amendment as made applicable to the States by the Fourteenth guarantees that a defendant in a state criminal trial has an independent constitutional right of self-representation and that he may proceed to defend himself without counsel when he voluntarily and intelligently elects to do so. Id. at 806. Criminal defendants have a right to fully present a defense through themselves or counsel. S.C. Const. Art.1, Section 14. This right embraces all questions of law and fact which may arise at any time during the prosecution. State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952).

When an accused manages his own defense, he relinquishes many traditional benefits associated with right to counsel, and he must relinquish such benefits "knowingly and intelligently". Faretta v. California, *supra*, citing U.S.C.A. Const. Amend. 6. A defendant need not have the skills and experience of lawyer in order competently and

intelligently to choose self-representation, but he should be made aware of the dangers and disadvantages of self-representation, so that record will establish that he knows what he is doing and that his choice is made with his eyes open. Faretta v. California, *supra*.

The United States Supreme Court ruled in Indiana v. Edwards, Op. No. 07-208 (United States Supreme Court filed June 19, 2008) that the Constitution does not forbid states from insisting upon representation by counsel for those competent enough to stand trial but who suffer from mental illness to the point where they not competent to conduct trial proceedings by themselves.

Judge King knew that Thompson had been sent for a mental evaluation for some reason but he did not ask to see the evaluation. Thompson may have had a mental illness diagnosed but still been found competent. In addition, the nature of the crime for which Thompson was charged (having sex with a six year old child) would present a reasonable probability that Thompson suffered from some mental dysfunction.

Judge King erred in allowing Thompson to represent himself when it was clear that Thompson did not have sufficient knowledge of the legal system. Thompson did not understand the elements of the crimes for which he was charged even after they had been explained to him. Thompson told the judge that he did not know the evidence rules or criminal procedure rules. Thompson did not have enough information to intelligently make the decision to represent himself.

At trial, Judge Macaulay did not explain what the dangers of self-representation were. He simply asked if this had been explained to Thompson. Without full information, Thompson could not know if he understood all of the dangers or not. It had been five months since the hearing in which these dangers were explained to Thompson. At trial,

Thompson had forgotten the name of the judge so it is reasonable to believe that he had forgotten what was explained to him at the December 2006 hearing.

For the above reasons, the case should be remanded for a new trial.

2.

The trial court erred in overruling appellant's objection to victim's mother testifying that victim was too scared to testify.

Howard Thompson, a nineteen year old man who was scheduled to graduate from high school within a few days, was charged with having oral sex with a six year old boy that he babysat while the child's mother worked. ROA p. 19, lines 16 – 25. The State did not call the child victim as a witness to testify. The State did call the child's mother who did testify. ROA p. 31, lines 15 -17; p. 20, line 2 – p. 21, line 3.

During the mother's testimony, the State asked her if the child was going to testify. The mother said he was not. The State then asked her why he was not going to testify. The mother said because he was scared. Thompson objected at that point. Thompson said that the State did not have the right to state why the victim was not going to testify. The judge overruled the objection and told the mother to answer the question. ROA p. 31, line 15 – p. 32, line 15. The mother then said that he was scared and she did not want to put him through that. ROA p. 32, line 17 – 21.

Rule 602, SCRE, provides that a witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. The rule requiring personal knowledge serves at least two purposes: (1) to identify the source of the witness's knowledge and to provide the surrounding circumstances to aid the fact finder in evaluating the reliability of the testimony; (2) to prevent a witness from offering conclusions and speculations. South Carolina Evidence 47 (Second Edition 2000) citing State v. Pitts, 256 S.C. 420, 182 S.E.2d 738 (1971); Gentry v. Watkins-Carolina Trucking Co., 249 S.C. 316, 154 S.E.2d 112 (1967).

The mother did not state how she knew the child was scared. This was pure speculation on her part. The objection should have been sustained. In Mincey v. State, 314 S.C. 355, 444 S.E.2d 510 (1994), the Court ruled that failure to object to prosecutor's comments in closing argument suggesting that witnesses testified falsely due to intimidation by defendant was ineffective assistance of counsel. The Court provided that references to threats or dangers to witnesses are improper unless evidence is offered connecting defendant with threats. No evidence was presented connecting Thompson to any threats to child.

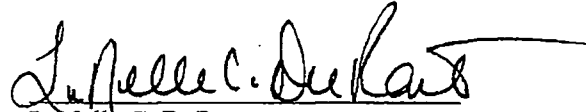
Thompson suffered prejudice because the testimony made it appear that the child was scared of Thompson which made him appear guilty or that he had harmed the child.

For the above reasons, the conviction and sentence should be reversed and the case should be remanded for a new trial.

CONCLUSION

For the foregoing reasons, the case should be remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "LaNelle C. DuRant", with a long horizontal flourish extending to the right.

LaNelle C. DuRant
Appellate Defender

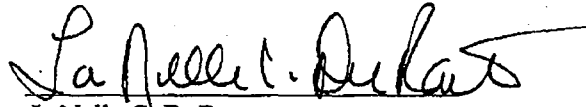
ATTORNEY FOR APPELLANT

This 10th day of February, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 10, 2009



LaNelle C. DuRant
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

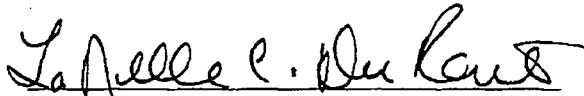
V.

HOWARD THOMPSON, III,

APPELLANT

CERTIFICATE OF SERVICE

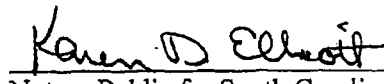
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 10th day of February, 2009.



LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of February, 2009.



(L.S.)
Notary Public for South Carolina
My Commission Expires: March 19, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Anderson County
Hon. Alexander S. Macaulay, Circuit Court Judge

The State,

Respondent,

v.

Howard Thompson, III,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

- I. Appellant was adequately informed of the dangers of self-representation and made a knowing and voluntary waiver of his right to counsel. Additionally, Appellant failed to preserve this issue for review on appeal.
- II. The trial court did not err in overruling Appellant's objection to the testimony of the minor victim's mother regarding why she did not allow the minor victim to testify at trial.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.