

1 State of South Carolina) Court of Common Pleas
 2 County of Aiken) Second Judicial Circuit
 3
 4 Harold Cartwright,) Transcript of Record
 5)
 6 Petitioner/Applicant,)
 7)
 8 vs.) 2019-CP-02-01582
 9)
 10 State of South Carolina,)
 11)
 12 Respondent.)
 13

9 **RECEIVED**

10 **Feb 16 2023**

11 **S.C. SUPREME COURT**

February 3rd & 4th, 2022

Aiken, South Carolina
Via WebEx Videoconferencing

13 B E F O R E:

14 The Honorable Robert J. Bonds, Judge

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

17 Dayne C. Phillips, Esquire
On behalf of the Petitioner/Applicant

19 Michael J. Neubauer, Assistant Attorney General
On behalf of the State of South Carolina/Respondent

23 Reported by: Stacy S. Johnson,
Circuit Court Reporter

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*****NO EXHIBITS WERE MARKED*****

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Dashes --	intentional or purposeful interruption or change in thought
ellipses . . .	Trailing off
(ph.)	Phonetically written
[sic]	written as said
(inaudible)	unable to be understood due to low volume or quality of audio provided

1 (The following proceedings were held April 3, 2022,
2 via WebEx Videoconferencing, beginning at 11:31 AM.)

3 THE COURT: All right. Let's go ahead and start.
4 I'm happy -- go ahead and call the case, Attorney General
5 Neubauer.

6 MR. NEUBAUER: Yes, Your Honor. May it please the
7 Court? We are here today for the matter of Herald
8 Cartwright versus State of South Carolina. Case Number
9 2019-CP-02-01582.

10 In February of 2012, the Aiken County grand jury
11 indicted Applicant for one count of criminal sexual
12 conduct first degree, eight counts of criminal sexual
13 conduct with a minor first degree, nineteen counts of
14 lewd acts upon a child, and one count of criminal sexual
15 conduct third degree.

16 Applicant -- Applicant was originally tried on
17 November 13th and 14th of 2012 before the Honorable
18 Thomas A. Russo and a jury. Assistant Solicitor John
19 Weeks and Kevin Molony of the Second Circuit Solicitor's
20 Office prosecuted the case and Applicant was represented
21 by Robert Hardy of the Second Circuit Public Defender's
22 Office. However, following a hung jury Judge Russo
23 declared a mistrial.

24 Applicant was subsequently retried on April 15th
25 through 18th of 2013 before the Honorable -- Honorable

1 Doyet A. Early and a jury. Applicant was then represented
2 by Michael Routzong and David Hayes of the Second Circuit
3 Public Defender's Office. Kevin Molony and Ashley Agnew
4 of the Second Circuit Solicitor's Office prosecuted the
5 case.

6 At the conclusion of the trial, the jury found
7 Applicant guilty as indicted and Judge Early sentence --
8 Judge Early sentenced Applicant to concurrent sentences
9 of 30 years for criminal sexual conduct first degree
10 and criminal sexual conduct with a minor first degree.
11 Additionally, Applicant was sentenced to a concurrent
12 term of 15 years for each count of lewd act upon a child
13 and a consecutive 10-year sentence for criminal sexual
14 conduct third degree.

15 Applicant filed a notice of appeal and Applicant's
16 appeal was perfected by Chief Appellate Defender Robert
17 Dudek of the South Carolina Commission on Indigent
18 Defense, Appellate Division.

19 In his appeal, Applicant raised the following
20 issues: That the trial court erred by admitting
21 evidence of Appellant's attempted suicide when the
22 incarcener -- or when incarcerated on the charges in
23 the case since the evidence wasn't irrelevant and given
24 no relevance the probative value was substantially
25 outweighed by the prejudicial effect under Rule 403 of

1 the South Carolina Rules of Evidence; whether the Court
2 erred by admitting photographs of Appellant's prison
3 cell to corroborate the fact that he attempted to commit
4 suicide since the evidence was similarly not relevant
5 and unduly prejudicial if relevant; whether the Court
6 erred by allowing Dr. Alicia Benedetto to be qualified
7 as an expert in child sexual abuse dynamics when she,
8 frankly, acknowledged her job was to conduct interviews
9 and not conduct research or studies, and the judge thus
10 abused his discretion by qualifying her as an expert to
11 render opinion testimony under Rule 702 of the South
12 Carolina rules of evidence; whether the Court additionally
13 erred by qualifying Dr. Benedetto as an expert allowing
14 her to bolster the testimony of the alleged victims where
15 the jury would draw the impermissible inference that the
16 alleged victims were conducting themselves consistently
17 with other victims of child sexual abuse.

18 Following briefing and oral arguments, the
19 South Carolina Court of Appeals affirmed Applicant's
20 conviction and sentence in an unpublished opinion filed
21 on September 30, 2015. Applicant filed a petition for
22 re-hearing in the South Carolina Court of Appeals on
23 October 15th of 2015, and the Court of Appeals denied
24 Applicant's petition on December 4, 2015.

25 Applicant petitioned the South Carolina Court -- or

1 the South Carolina Supreme Court for a Writ of Certiorari
2 on January 25, 2016, raising the same issues that were
3 submitted to the South Carolina Court of Appeals. The
4 South Carolina Supreme Court granted Applicant's petition
5 on November 6, 2016. Following briefing, the South
6 Carolina Supreme Court affirmed Applicant's conviction
7 and sentence in a published opinion filed on September 26,
8 2018.

9 On June 26, 2019, Applicant filed an application
10 for post-conviction relief alleging he was being held
11 in custody unlawfully for the following reasons:
12 Ineffective assistant of counsel due to a failure to
13 adequately investigate victim AR's involvement in a
14 drug investigation by law enforcement, which prompted
15 the unrelated statement implicating Applicant of sexual
16 abuse; failure to adequately investigate and compare
17 the timeline of when Applicant lived in the home and the
18 timing of the allegations; failure to obtain or review
19 discovery; failure to cross-examine and impeach the
20 State's witnesses based on their inconsistent testimony
21 from the first trial to the second trial and the
22 witness's prior statements to law enforcement; failure
23 to interview witnesses who could have testified regarding
24 Applicant's good character and reputation when it was
25 reasonable and necessary to present this evidence at

1 trial; and failure to request a jury instruction on good
2 character and reputation; trial counsel provided erroneous
3 legal advice regarding Applicant's testimony that was not
4 within the range of competence of mandatory attorneys in
5 criminal cases; counsel failed to object and preserve
6 for appellate review the Court's jury instruction that
7 improperly shifted the burden of proof and misstated the
8 law; counsel failed to object and preserve for appellate
9 review inadmissible and unduly prejudicial evidence
10 during Applicant's trial; counsel -- and counsel failed
11 to object and preserve for appellate review the State's
12 improper closing argument that was a misstatement of
13 evidence and unduly prejudicial.

14 Applicant also alleges ineffective assistance of
15 appellate counsel for failing to file a petition for
16 Writ of Certiorari to the United States Supreme Court
17 on the novel issue in South Carolina of whether evidence
18 of an attempted suicide is an admission of guilt.

19 The State filed its return and a motion for more
20 definite statement on October 3, 2019, requesting
21 Applicant provide specific facts giving rise to the
22 allegations of ineffective assistance of counsel. On
23 June 24, 2020, Applicant through his counsel filed an
24 amended application for post-conviction relief clarifying
25 Applicant's original allegations while adding thirty-nine

1 allegations of ineffective assistance of counsel and
2 four additional allegations of ineffective assistance of
3 appellate counsel.

4 Prior to this hearing, the State has submitted a
5 court packet to Your Honor containing Applicant's trial
6 transcripts, his SCDC records, the clerk's record from
7 the Aiken County Clerk of Court, a copy of Applicant's
8 appellate records and the records of this application for
9 post-conviction relief.

10 At this time Applicant {sic} would request coun --
11 opposing counsel clarify which allegations they intend
12 to go forward on.

13 THE COURT: All right.

14 And it's Mr. Phillips?

15 MR. PHILLIPS: Yes, Your Honor.

16 THE COURT: You represent the Applicant,
17 Mr. Cartwright?

18 MR. PHILLIPS: I do, Your Honor.

19 THE COURT: Okay. And so the -- Attorney General,
20 you're asking him to clarify what he's moving forward on
21 today; is that correct, sir?

22 MR. NEUBAUER: Yes, Your Honor.

23 THE COURT: Okay. Do you want to go ahead and sort
24 of, I guess, state -- or let's go ahead and list out
25 those grounds, sir.

1 MR. PHILLIPS: I can be specific, Your Honor. So
2 the amended application requesting post-conviction
3 relief was filed on June 29th of 2019 and then we filed
4 a redacted version just to be safe given -- although the
5 victims, I believe some of them were adults at the time
6 of the trial, we just wanted to be safe and filed a
7 redacted amended application on July 9th of 2019.

8 THE COURT: Right.

9 MR. PHILLIPS: So we would be going forward with
10 the allegations listed in the amended application.
11 Specifically as to the ineffective assistance of
12 appellate counsel, we would not be going forward on the
13 directed verdict motion issue. We would removing that
14 and -- but as far as the ineffective assistance of
15 appellate counsel, we would be raising on all of the
16 issues that are contained and raised in the amended
17 application. As for the ineffective assistance of trial
18 counsel, we would -- as far as the clarification part
19 of it, we would be raising all of the issues as far as
20 ineffective assistance of trial counsel that were in the
21 amended application.

22 THE COURT: Okay.

23 MR. NEUBAUER: Thank you.

24 THE COURT: Yes, sir.

25 All right. Mr. Phillips, you've got the burden of

1 proof, this is your case now, and so we're happy to hear
2 from you, sir.

3 MR. PHILLIPS: Thank you, Your Honor.

4 THE COURT: Call your first witness.

5 MR. PHILLIPS: Thank you, Your Honor.

6 There was some discussion the other day that we
7 would have Bob Dudek be called the first witness, I
8 believe, out of scheduling, and I have no issue with
9 that, and -- in terms of helping out Mr. Dudek with the
10 -- the timing issue.

11 We'd call Robert Dudek as the first witness.

12 THE COURT: All right. Mr. Dudek, can you raise
13 your right hand for me.

14 (Whereupon, Robert Dudek was duly sworn by the
15 Court.)

16 THE COURT: All right. Thank you, sir.

17 Your witness, Mr. Phillips.

18 Thank you, Your Honor.

19 ROBERT DUDEK,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. PHILLIPS:

23 Q. Now, Mr. Dudek, is it fine if I call you Bob?

24 A. Of course.

25 Q. Okay. Bob --

1 THE COURT: Spell your last name, sir. I'm sorry.

2 THE WITNESS: Sure. Yes, Your Honor. It's
3 D-U-D-E-K.

4 THE COURT: Okay. Thank you.

5 THE WITNESS: Yes, sir.

6 THE COURT: Go ahead.

7 BY MR. PHILLIPS:

8 Q. All right. So, Mr. Dudek, you've raised four issues
9 before the South Carolina Supreme Court in this matter; is
10 that right?

11 A. Are you taking about on the certiorari petition?

12 Q. That's correct.

13 A. Yes, that's correct.

14 Q. And in the opinion of our South Carolina Supreme
15 Court, they basically kind of pushed them into two major
16 issues; is that fair to say?

17 A. Yes, sir.

18 Q. All right. One of those being the attempted suicide
19 as evidence of guilt and the second one being expertise and
20 bolstering of the expert witness?

21 A. Correct.

22 Q. Now with the attempted suicide as evidence of guilt,
23 that was a novel issue in South Carolina at the time?

24 A. The challenge to it I think it's fair to say was
25 novel. I had a prior case that -- my memory was the

1 Supreme Court had granted cert -- certiorari on it or I
2 was seeking certiorari on it and then my client dropped
3 before that appeal ever went through, but I think it's safe
4 to say at the time of Mr. Cartwright's appeal the issue I
5 raised was a novel issue and the issue raised by trial
6 counsel.

7 Q. Now in the opinion, our South Carolina Supreme Court
8 notes that there's a -- they looked to other jurisdictions
9 because of it being a novel issue, but only referenced New
10 Jersey. Did you do any specific research as far as other
11 jurisdictions outside of New Jersey?

12 A. I'm sure I did. Let me look at my (inaudible) the
13 petitioner here. I beg the Court's indulgence for this
14 moment.

15 THE COURT: Yes, sir.

16 A. I see that I had cited, I guess, Commonwealth versus
17 Jones from Pennsylvania. I think to answer your question,
18 I researched this issue pretty thoroughly.

19 Q. And what did you find as far as the jurisdictional
20 split as far as where different jurisdictions handled this
21 issue?

22 A. Well, there were different -- as I recall, there were
23 different ways other jurisdictions had handled it. Some of
24 them were there to be absolutely no jury instruction on it
25 one way or another. There were, you know, jurisdictions

1 that said there had to be a substantial nexus between the
2 suicide attempt and the arrest; meaning, that if they were
3 gonna introduce evidence of a suicide attempt that some
4 other jurisdictions wanted it pretty clearly established
5 that the suicide attempt was the result of the underlying
6 conviction or accusation, which was my underlying problem
7 with the issue, I guess, as a legal and kind of as a moral
8 matter, frankly, because, I mean, suicide attempts are --
9 you know, people commit suicide for a variety of reasons.
10 It can be the mere accusation itself could make them feel
11 hopeless or there are a lot of things going on in people's
12 lives that might -- might challenge --

13 THE COURT: Mr. --

14 THE WITNESS: I'm sorry.

15 THE COURT: Hold on one second.

16 Mr. Phillips, can you give me a little background?
17 I mean, I'm sorry, but it escapes me as to Mr. Dudek,
18 his qualifications, for what purposes his testimony is
19 being offered because at this point, you know, it seems
20 like we're getting into, well, lots of purposes for
21 suicide and so I don't know anything about Mr. Dudek.

22 MR. PHILLIPS: So generally Mr. Dudek would be a
23 State's witness, but I was helping the State out by
24 calling him first. I can go into all the background
25 information. I apologize.

1 THE COURT: Okay. Just briefly because I -- okay.
2 Well, see I -- because I just don't -- I don't know
3 anything about it.

4 MR. PHILLIPS: Understood. Thank you, Your Honor.

5 BY MR. PHILLIPS:

6 Q. Mr. Dudek, if you could, could you explain your title
7 and position at appellate defense and your history?

8 A. Okay. Right. I'm the chief appellate defender for
9 the Office of Appellate Defense, which is a division of
10 the Commission on Indigent Defense. I head an office of
11 twelve appellate defenders. We do appeals from the courts
12 of General Sessions to the Court of Appeals and the Supreme
13 Court. We do post-conviction appeals from the courts of
14 Common Pleas. We do SVP, sexually violent predator,
15 first-time appeals from jury trials that they've become a
16 sexually violent predator. I have done this for
17 thirty-one years. I started as an assistant appellate
18 defender in late 1989, early 1990. I then was promoted to
19 chief for capital appeals and in 19 -- '09 and then 2010 I
20 became the chief appellate defender.

21 THE COURT: All right. And thank you. That helps
22 me tremendously. And I'm -- I'm sorry. I just didn't
23 put one and one together.

24 Go ahead. Go ahead, Mr. Phillips.

25 MR. PHILLIPS: Yes, Your Honor. I apologize with

1 not doing the appropriate intros and since it was a
2 State witness, I went right into my issues, so I
3 apologize.

4 THE COURT: Yes, sir.

5 BY MR. PHILLIPS:

6 Q. So going specifically into the issue as we were
7 discussing regarding it being -- using an attempted
8 suicide as evidence of guilt being a novel issue in South
9 Carolina and the fact that there is a jurisdictional split
10 on how this issue is handled, you ultimately did not file
11 a petition for Writ of Certiorari in the United States
12 Supreme Court on this issue?

13 A. No, I did not.

14 Q. Okay. And with that issue being novel and a
15 jurisdictional split, was there any specific reason why you
16 didn't raise it?

17 A. Yes. I mean, I did not do a petition to the United
18 States Supreme Court, I guess, for a couple of reasons.
19 One is they're not an error correction court and, second
20 of all, I viewed this as a matter of state law really, not
21 Federal constitutional law. So although states went about
22 it in a different manner, I wasn't looking at it as a split
23 in states on an important question of constitutional law, I
24 just viewed it as a difference in states coming about this
25 issue as a matter of state law, how they handled this

1 matter as state law, so I -- so, Mr. Phillips, I didn't
2 look at it as a split on an important constitutional law
3 issue among the Federal circuits or among the states if
4 that answers your question. So that -- that's why I never
5 entertained and did not file a petition for certiorari in
6 the United States Supreme Court.

7 Q. Well, do you believe that Federal law is implicated
8 with this issue at all?

9 A. Well, I mean, I suppose it could be to answer your
10 question. On -- you know, as a matter of due process, I
11 suppose you could say well, you can never have a fair trial
12 if evidence that the person committed suicide after they
13 were arrested on a particular crime, if that comes in as
14 evidence of consciousness of guilt, but I guess as the
15 cliché goes, I would just think of that as a bridge too far
16 and never seriously entertained that idea. And if I'm
17 wrong, I'm wrong, and I certainly don't want Mr. Cartwright
18 to suffer, but I never thought of it about going -- about
19 making it a -- making it a matter of Federal constitutional
20 law in the United States Supreme Court.

21 Q. And specifically you didn't raise it as a Federal
22 issue in your petition or in your original cert --

23 A. Yeah.

24 Q. -- before the Supreme Court and then as in your
25 briefing petition?

1 A. Right. I mean, as a mat -- as a matter of state law,
2 we -- this evidence had been allowed I would say somewhat
3 routinely, which, again, was very bothersome to me that
4 the person was arrested for this crime and the defendant
5 subsequently attempted to commit suicide, the same as in
6 Mr. Cartwright's case, that he attempted to commit suicide
7 and they introduced photographs, as I recall, from the
8 prison or the county jail that showed that he attempted
9 suicide. So my attack was on that, that evidence coming in
10 as consciousness of guilt evidence, similar -- my motion
11 direct analogy, as you might recall, Mr. Phillips, was to
12 evidence of flight, that that evidence could come in if it
13 -- a sufficient nexus was drawn to show that the person
14 fled the jurisdiction or fled the area as consciousness of
15 his guilt, and I had a real problem with that, and my
16 attack on it was that, again, people commit suicide --
17 attempt to commit suicide or commit suicide for many, many
18 different reasons other than the fact that they've been
19 arrested for the crime and one of them could be just the
20 mere accusation itself of a horrible crime, particularly
21 in today's society, you know, a sex crime or a sex crime
22 involving a minor, but, again, my attack was on what was
23 happening in the State of South Carolina as far as that
24 evidence being admitted and I did not think of it,
25 correctly or incorrectly, as a much broader question of

1 Federal constitutional law.

2 Q. Okay. Is it your opinion that trial counsel had
3 preserved the Federal issue to be raised before our Supreme
4 Court?

5 A. That I -- that, again, I don't recall off the top of
6 my head, but suffice it to say -- I mean, that -- that's
7 not the way I went about it mainly.

8 Q. And, well, I guess -- and since you couldn't recall, I
9 know you're probably trying to look for it at this point,
10 let's assume that it was preserved, you made the -- the
11 specific decision not to raise the Federal issue?

12 A. I think that's fair to say. Again, I cited on
13 page 12 of my final brief in the Court of Appeals and then
14 on page 11 as far as how it was brought up in the lower
15 court and I -- what -- the judge then cited this Court's
16 opinion in State versus Orozco, 392 S.C. 212,
17 708 S.E.2d 227, Court of Appeals 2011, as support for the
18 suicide evidence being admitted. The judge ruled the
19 evidence was admissible and I dropped the footnote saying
20 certiorari was granted by the Supreme Court on October 17,
21 2012. This Court can take judicial notice of the fact that
22 the petitioner Orozco voluntarily dismissed his appeal
23 after certiorari was granted by the Supreme Court on the
24 issue of whether this Court erred by holding evidence of
25 his suicide attempt was admissible.

1 So I think it's -- and that's the gentleman I was
2 telling you about, Mr. Orozco, who I had cert granted on,
3 so this was my second go around in the state Supreme Court
4 on this issue of this evidence of suicide, but, again, my
5 attack was on this evidence being allowed mainly as a
6 matter of state law and I didn't see it as a broader
7 question to say like a due process question of Federal
8 constitutional law. That's not the way that it was
9 attacked.

10 Q. Thank you. And just to clarify, so my position is
11 if the Federal issue was preserved at the trial level, you
12 could have raised it before our Supreme Court and then
13 could have raised -- or could have filed a petition for
14 Writ of Certiorari to the United States Supreme Court to
15 challenge that issue. Is that --

16 A. If both -- if both of those if's are correct, then I
17 could have. I -- I chose not to raise it that way. That's
18 correct.

19 Q. Now the second part that the Court really addressed
20 was the expertise and bolstering of the expert witness.
21 Specifically you -- you raised -- or challenged the
22 qualification of Dr. Benedetto being qualified as an expert
23 in child abuse dynamics and then the second part was that
24 the admission of the testimony was highly prejudicial and
25 essentially amounts to bolstering. Our Supreme Court

1 disagreed.

2 Now going off that same lane as far as that specific
3 expert, the trial court itself -- do you believe the trial
4 court used the correct legal standard in qualifying the
5 State's expert witness? In other words, specifically where
6 the Court limited trial counsel's ability to voir dire the
7 witness regarding qualifications. The second part -- I
8 mean, I can break this up for you, but --

9 A. Yeah.

10 Q. -- let me kind of give you the overview and then I'll
11 break it up. That way you can easily digest it so I'm not
12 giving you so much of a compound question.

13 A. Okay.

14 Q. But essentially the trial court's application was an
15 incorrect legal standing in the sense that it was
16 qualifying the expert witness in the field of child abuse
17 dynamics, but limited the voir dire of the witness
18 regarding qualifications, qualified the witness in the
19 given field and only permitted questioning of the witness
20 about the reliability and validity of the field itself
21 after it was deemed an expert during the State's direct
22 examination while in the presence of the jury, not a -- not
23 a separate in-camera hearing.

24 So I know I gave you a lot there. To kind of break
25 it down, under the Council standard, and, again, State v.

1 White for non-scientific evidence, the standard that we're
2 supposed to use, do you believe that the Court used an
3 incorrect legal standard in qualifying the expert witness?

4 A. Well, again, the answer would be yes because, I mean,
5 as far as the gatekeeping functioning, again, and to give a
6 little background here, you know, my overall problem with
7 Dr. Benedetto, one, is she was, you know, being qualified
8 as an expert in, quote, child abuse dynamics, unquote, and
9 really there was the evolution of this law -- I mean, the
10 evolution of this area of the law starting -- well, before
11 that we had Douglas, which was my case in the South
12 Carolina Supreme Court, Kromah, which was also my case in
13 the South Carolina Supreme Court, and on this -- these
14 people or persons such as her being recognized as -- as an
15 expert in an area and then just giving testimony under the
16 guise of being an expert, which simply mirrored in large
17 part the testimony of the child so that it impermissibly
18 signalled to the jury that as an expert she believed that
19 the child was telling the truth.

20 So, no, I mean, I think the attack was on she should
21 not have been qualified as an expert and that by allowing
22 her to be an expert and to give expert opinion that
23 bolstered the credibility of the alleged victim.

24 Q. Well, and I -- I guess, my -- getting more specific,
25 my clarification question would be if the trial court --

1 if you believed the trial court used the incorrect legal
2 standard, there wasn't a specific issue raised as to State
3 v. White or Council and how the Court applied that standard
4 to qualify the expert witness and so did you not raise the
5 issue because it wasn't preserved or because you made a
6 decision to do so -- not to do so?

7 A. I -- off the top of my head, I don't remember
8 preservation or preservation problems. I simply -- I'm
9 certainly not trying to be flippant, but I would not have
10 raised the issue if I did not think it was preserved for
11 appellate review, and as you can see the way I raised the
12 issue was that the Court -- trial court erred by allowing
13 Dr. Benedetto to be qualified as an expert in child abuse
14 dynamics where she, frankly, acknowledged her job was to
15 conduct interviews and not conduct research or studies and
16 the judge thus abused her -- his discretion by qualifying
17 her as an expert to render opinion testimony under Rule 702
18 and it allowed her to give bolstering opinions. So, I
19 mean, you know, I -- that's -- that's what I did right or
20 wrong. That's the way I attacked it.

21 Q. So you would have essentially made an additional
22 argument under the legal standard as far as challenging how
23 it was qualified under White if it was properly preserved
24 and argued by trial counsel?

25 A. Again, I don't -- and, Mr. Phillips, I'm not trying

1 to avoid your question. It's been a long time. I don't
2 remember on the -- on error preservation. The record will
3 have to speak for itself. I don't want to guess. I hope
4 you respect that. I just don't want to guess.

5 Q. No, that's fair. That's quite -- quite fair.

6 Now moving onto -- and, again, I know you don't want
7 to guess, but if it wasn't preserved you said you wouldn't
8 have raised it bottom line?

9 A. Yes. If I thought -- I think I can safely say that.
10 If I thought something was not -- an issue was not
11 preserved for appellate review, I would not have raised it
12 unless it was a strategic matter where I was just positive
13 it wasn't -- something was not preserved for appellate
14 review and I just raised it just to get the appellate court
15 to clearly say it wasn't preserved for appellate review so
16 that would help my client at a later date in PCR, but I
17 have no memory of thinking of that in this case, that I
18 was trying to raise it in any -- for any PCR advantage
19 at a later date. So I think I was trying to keep myself
20 within the trial record as to what I raised on appeal.

21 Q. So as far as specific testimony of the expert
22 witness, the expert testifies at trial that a typical --
23 quote unquote, typical abuser has a favorite -- you know,
24 quote unquote, favorite age to sexually abuse, and -- and
25 answered in the affirmative to that question, trial counsel

1 objected contemporaneously to a leading -- arguing leading
2 and was overruled, but didn't make any objections regarding
3 going beyond the scope of the expertise regarding the
4 favorite age in the specific kind of argument of being,
5 say, like a psychological profiler of the accused or not
6 testifying as a blind expert, but more related to the exact
7 facts presented in this case.

8 MR. PHILLIPS: And I can -- Your Honor, I've got a
9 page for that I can -- if you want to share the screen
10 so I can show it to him. I'm not trying to hide the ball
11 and make it more confusing than it needs to be.

12 THE COURT: That's all right. I don't know that we
13 need to do that.

14 MR. PHILLIPS: All right.

15 BY MR. PHILLIPS:

16 Q. And, Mr. Dudek, it's on page 59 of the trial
17 transcript. I apologize.

18 A. Oh, that's okay. I have it -- I have it right here.
19 Just give me a second to find that page.

20 Q. Page 59 of Alicia Benevetto -- Benedetto's direct
21 examination.

22 A. Now, Mr. Phillips, is that a record on appeal cite or
23 a transcript cite?

24 Q. I apologize. It's a transcript cite.

25 A. Okay. I have -- give me a second. I have the

1 record on appeal, so I'm gonna have to do a little
2 cross-referencing.

3 Okay. I have Dr. Dena -- Benedetto's, okay, on
4 page 59. I'm with you now. Okay. I'm right with you and
5 I guess you said Line --

6 Q. Line 15. Yeah, Line 15 is the question from --

7 A. It is typical for an abuser to have like a favorite
8 age. Mr. Hayes: Objection, leading. Court overruled.
9 That's what you're talking about?

10 Q. That's -- that section right there, yes.

11 Now if trial counsel would have objected and also
12 -- or would have included in his objection that the
13 testimony went beyond the scope of expertise to go into
14 that testimony of a favorite age, would that have been
15 something that you would have raised on appeal?

16 A. I don't know -- you know, again, I don't know if I
17 would have raised it as a freestanding issue. I think
18 it's all part and parcel of my overall problem with
19 Dr. Benedetto's testimony. I mean, again, on the evolution
20 of this matter, you know, we objected to the -- the same
21 type experts, and this has changed -- this has changed the
22 title from like forensic interviewer to child abuse
23 assessment person and, again, it just -- it brought
24 together people who were advocates for the child, which
25 was what Dr. Benedetto was, and gave them this aura, which

1 I was complaining about incessantly in Kromah of being an
2 expert witness in this kind of pseudoscience or essentially
3 this junk science to put it bluntly, and so this would
4 have been part and parcel of my overall problem with her
5 testimony not being admissible because it did nothing but
6 bolster -- bolster the child's testimony or -- or signal to
7 the jury that Dr. Beno -- that Dr. Benedetto was an expert
8 in this subject matter and that she believed the child.

9 So to answer your question directly, I don't think I
10 would have raised it as a freestanding issue as a profiler
11 issue as you said it, but I think it just goes back to the
12 -- to the whole problem with this, is that whatever --
13 whatever evidence there is in the case, that the abuser
14 supposedly was grooming the child or buying her gifts or
15 showing her attention or -- or those kind of things, and it
16 -- it always goes along this same parallel of matching --
17 that the supposed expert's testimony mirroring or matching
18 what the child said happened in this case. So I don't
19 think I would have raised that as a freestanding issue --
20 legal issue. It would have just been part and parcel of my
21 overall complaint about Dr. Benedetto.

22 Q. So as far as -- and we'll -- we'll move on. I think
23 you -- you certainly clarified your position on it.

24 Now as far as the voir dire that was presented, the
25 defendant's proposed voir dire, the trial court decided

1 not to allow questions 1 and 3 that was presented.
2 Specifically, question 1 was have you, any of your family
3 or friends been impacted in any way by a sexual crime or
4 sexual assault or child molestation, and question number 3
5 was does any member of the jury panel believe that anyone
6 charged with crimes involving sexual molestation of a child
7 is more likely guilty than not, and you can kind of -- the
8 page I'm gonna reference is page 43 of the transcript.
9 Specifically, that issue wasn't raised on direct appeal.
10 Was -- was there a specific reason why that issue was not
11 presented to the appellate court?

12 A. I, frankly, don't recall. I -- you know, I think
13 the simple answer -- and, again, I don't specifically
14 remember -- would have been I would not have thought that
15 would have been a legal issue or the Court would have
16 said that -- that the refusal to ask those questions on
17 voir dire, you know, denied the defendant -- denied the
18 defendant a fair trial. Again, suffice it to say I didn't
19 -- I didn't raise it. If it was a winning issue, I
20 certainly had no strategic reason not to raise a winning
21 issue. So I think the safe answer and the correct and
22 honest answer would have been I did not think it was a
23 winning issue, and if I'm wrong, I'm wrong, and certainly
24 wouldn't want Mr. Cartwright to suffer if I was wrong.

25 Q. Now in your review of the case, there are a lot of

1 other issues that we -- that we've kind of raised, and I
2 know you don't know the record by heart, and a lot of
3 them there's some specific questions regarding error
4 preservation that I would have for you and I don't want to
5 go through every specific one, but the issue -- kind of
6 going back to what we discussed before, issues related to
7 -- if -- if there was an issue that was preserved for
8 appellate review that you felt was a winning issue, you
9 would have raised it in the brief?

10 A. Certainly. I mean, I -- you know, I'm trying to win
11 these -- trying to win these cases, so if I thought
12 something was a preserved winning issue, I would have
13 raised it or I wouldn't be doing my job and there would be
14 no excuse for not raising a winning issue.

15 Q. And -- and if there's an issue there that's not
16 preserved for appellate review, it would be for one of,
17 say, the four reasons that -- or four elements that trial
18 counsel would have needed to do to preserve those issues
19 so you would -- to give you the opportunity to raise it.
20 Is that fair to say?

21 A. I guess -- and the four you're talking, I mean, would
22 have been raised to the judge in a timely, specific manner,
23 it would have had to have been ruled upon by the trial
24 judge, you know, I would have had thought the trial judge
25 was wrong in his or her ruling, here his ruling, and, you

1 know, that it was prejudicial to my client.

2 Q. Now -- sorry about that. Now if he would have raised
3 any issues challenging the indictment as being overbroad,
4 specifically the case from State v. Baker, would that be an
5 issue that you would have raised on appeal?

6 A. I mean, the same answer. If I -- if I thought
7 something was a winning issue, I certainly would have
8 raised it.

9 Q. Well, I guess that's my -- that's my point. Because
10 that issue potentially is available in this case, but it
11 wasn't raised, had he raised that issue would you have
12 raised it on appeal?

13 A. I guess can we get more -- I mean, if I thought
14 something was a winning issue, I would have raised it.
15 What -- what indictment, if I may ask, are you talking
16 about?

17 Q. The point is it wasn't raised. What I'm --

18 A. Oh.

19 Q. -- asking is based on the evidence that was presented
20 at trial, what we have, the indictments themselves --

21 A. Yes.

22 Q. -- trial counsel didn't raise the Baker issues stating
23 that the indictments were overbroad. Had he done so, would
24 you have raised that in your brief?

25 A. If -- if I thought it was a meritorious winning issue,

1 I certainly would have raised it. I mean, if what you're
2 telling me is there was no challenge to the indictment,
3 then, again, you know, I don't have any reason to think I,
4 you know, scoured the indictments and lost a lot of sleep
5 over them if there was -- you know, if it wasn't even
6 raised to the trial judge, I wouldn't have, frankly, given
7 it a -- you know, again, not being flippant, but I doubt I
8 would have gave it a second thought because under Gentry,
9 you know, and those lines of cases it has to be brought up
10 prior to trial and if you're telling me it was not, then I
11 have no reason -- you know, I obviously wouldn't have
12 raised it.

13 Q. Right. And less -- less specific as to whether you
14 would have raised it in the sense of the record as it
15 stands, but had that issue been brought, would that have
16 been an issue you would have wanted to raise on appeal had
17 it been preserved?

18 A. If it -- if an issue as to the indictment had been
19 preserved, I would have taken a hard look at it.

20 Does that help or answer the question?

21 Q. It does. Same with a motion for severance of the
22 indictments? And I don't know if you remember the facts of
23 this particular case.

24 A. You know, I have a list of -- of objections, motions
25 and everything, and if -- you know, there -- there are

1 always many, many objections for the most part, a lot of
2 motions during a criminal trial, particularly a long one
3 like this, and if something is properly raised and
4 preserved, I would take -- you know, I would take a look
5 at it.

6 You know, in most criminal cases as you know,
7 Mr. Phillips, from having worked here yourself, you know,
8 there -- there are all kinds of objections and motions and
9 you narrow them down to sometimes, you know, one issue on
10 appeal, sometimes two, sometimes three, sometimes four.
11 I think Justice Toal in her book said there should never
12 be more than four issues. So, you know, it's just a
13 narrowing process, but if something's not raised at all
14 before the trial court, certainly then it's not there for
15 me to consider raising it at all.

16 Q. Understood. Now -- and I guess that would apply to
17 any other motions that would not have been preserved as you
18 stated.

19 MR. PHILLIPS: At this time I have no further
20 questions of the witness.

21 Thank you, Mr. Dudek.

22 THE COURT: All right.

23 THE WITNESS: Yes, sir. Thank you.

24 THE COURT: Attorney General Neubauer, do you have
25 any questions of this witness, sir?

1 MR. NEUBAUER: Yes, Your Honor.

2 THE COURT: Go ahead, sir. Your witness.

3 MR. NEUBAUER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. NEUBAUER:

6 Q. Good afternoon, Mr. Dudek.

7 A. Good afternoon sir.

8 Q. So regarding issues with the attempted suicide, you
9 raised this issue as an issue of state law in your petition
10 to the Court of Appeals and to the South Carolina Supreme
11 Court, correct?

12 A. That is certainly my memory, yes, sir.

13 Q. And you testified that you didn't feel that this was
14 an issue of Federal constitutional law, correct?

15 A. No, I didn't. In response to Mr. Phillips's question
16 also, I mean, I did not think of this as, say, a due
17 process or however else it could be raised as a matter of
18 Federal constitutional law, and I did not look at it that
19 way as far as any, you know, divisions in the circuits or
20 between, you know, lower state courts of last resort. I
21 was looking at it, as I said, like evidence of flight, it
22 had been allowed in this state as suicide attempts being
23 raised as consciousness of guilt evidence, and that always
24 bothered me, and that is the way that I raised it on
25 appeal. And I guess to further answer your question, I

1 mean, I remember during oral argument -- and you can go
2 back and check behind me, but I remember arguing this
3 issue and I think it was Chief Justice Beatty said, you
4 know, Mr. Dudek, every member of this court agrees with
5 you that it's wrong and the evidence that has come in in
6 this trial, you know, should not be allowed and it needs
7 to be a stricter foundation, but what's the prejudice?

8 So, you know, I think overall on the issue I kind of
9 got in a way, strangely enough, what I was after, it just
10 didn't do my client, Mr. Cartwright, any good, ironically
11 enough, from his conviction.

12 Q. And kind of in line with that, in the Supreme Court's
13 opinion they held that the facts here survive the strict
14 test for admissibility, but they did establish a guideline
15 to proceed with possible evidence of attempted suicides.
16 Do you remember that?

17 A. Well, I do, and I think there was a line in the
18 opinion that said that from here on this evidence of
19 suicide attempts would rarely be admitted. The State had
20 to prove that, you know, a jury can reasonably find a
21 suicide attempt occurred, the defendant was aware of the
22 occurrence of the alleged crime at the time of this suicide
23 and, most importantly, an unmistakable nexus exists by
24 clear and convincing evidence linking the suicide attempt
25 to a conscious -- to a guilty conscious derivative of the

1 offense for which the defendant is on trial. The only --
2 suicide attempt evidence may only be admitted when all
3 three factors have been met and the evidence survives a
4 Rule 403 analysis. And here's what I was looking for. We
5 recognize in view of our vigorous framework suicide attempt
6 evidence will rarely be admitted.

7 So I think, again, you know, a helpful overall
8 analysis, it just didn't do my client, who I was
9 representing on appeal, any good.

10 Q. And regarding your -- your failure to petition the
11 United States Supreme Court, do defendants have a right to
12 assistance of counsel while seeking a petition for a Writ
13 of Certiorari in the United States Supreme Court?

14 A. No, sir, they don't. They certainly do not. You
15 know, for that matter, now that you're asking the question,
16 you also do not have a right to the assistance of counsel
17 from a discretionary appeal between our State Court of
18 Appeals and our State Supreme Court, but I did that for
19 Mr. Cartwright because I felt strongly about it and thought
20 I had a chance to win in the South Carolina Supreme Court
21 and, you know, if I thought it was a matter of Federal
22 constitutional law, I could have won in the United States
23 Supreme Court. Even though he didn't have the right to
24 counsel, I would have done that for Mr. Cartwright also. I
25 just never thought of the issue that -- in that manner, and

1 if I was wrong, I was wrong.

2 Q. Yes, sir. And just for a little background, about how
3 many cases do you think that you've handled in the Court of
4 Appeals and the Supreme Court in South Carolina?

5 A. Thousands.

6 Q. And --

7 A. In over thirty years -- I mean, let's just say a
8 hundred a year, which I've certainly handled more than
9 that, you know, that would be, you know, I guess over
10 3,000 cases.

11 Q. And for any of those cases have you petitioned to the
12 United States Supreme Court in the past?

13 A. Yes, I have. I'm trying to -- yes. I mean, and not
14 all of them have been death penalty cases. I think every
15 death penalty case I've -- I've handled, I did petition the
16 United States Supreme Court and I've done it in a couple of
17 capital cases. So, yes, I have done that in the past.

18 Q. And that was going to be a follow-up question. Do
19 you know how many have not been a death penalty case or
20 non-death penalty cases?

21 A. I'm thinking only -- only a couple. It could be
22 more than that, two or three, that I -- and that's a
23 guess -- that I felt strongly about. One I'm remembering
24 in particular, which was a case which I think we were the
25 only state in the union which tried someone in their

1 absence and without them being represented by counsel, and
2 I think that, for what it's worth, was conferenced like
3 seven times in the United States Supreme Court before cert
4 was denied. So, anyway, I have done it in non-capital
5 cases also for whatever that's worth, if anything.

6 Q. Yes, sir. And do you have any idea how many times
7 that you -- or that your petition for Writ of Certiorari
8 to the United States Supreme Court has been granted?

9 A. Yeah, that's real easy. One. State versus William
10 Arthur Kelly, a death penalty case, was granted. My former
11 boss, David Bruck, came on and did the certiorari petition
12 and argued it in the U.S. Supreme Court and won five to
13 four, so I remember very well that was the only one I ever
14 was on the brief as, but I wasn't the -- I was on the
15 opinion, but I was not the final counsel of record.

16 Q. But just to clarify --

17 A. I was one of the counsel of record -- one of the
18 counsel of record, but not the counsel of record.

19 Q. Yes, sir. Just for clarification, in no non-death
20 penalty case that you'd petitioned to the United States
21 Supreme Court you had certiorari granted in, correct?

22 A. That is correct.

23 Q. And if you thought that this was an issue that you
24 could have won or that you would have, I guess, ultimately
25 been successful by petitioning the United States Supreme

1 Court, would you have pursued that?

2 A. If I thought I could have won this case in the
3 U.S. Supreme Court, I guarantee you I would have sought
4 certiorari from the United States Supreme Court. I never
5 thought of this court that way, so I was either right or
6 horrible mistaken, and if I was mistaken, I would not want
7 Mr. Cartwright to suffer because I was mistaken.

8 Q. Yes, sir. And regarding Ms. Benedetto -- first, you
9 did raise an issue of Ms. Benedetto being qualified as an
10 expert witness, correct?

11 A. Right. Again, I had a lot of problems with
12 Dr. Benedetto in cases preceding this one. Again, I
13 thought her -- she should not have been -- she should not
14 have been an expert and that, you know, once she's allowed
15 to testify, you know, with the aura of being an expert,
16 all her testimony did was mirror that of the allegations
17 of the child and thereby impermissibly bolstered the
18 testimony of the child, and that was some cases that
19 preceded this one and cases that subsequently came out
20 after Mr. Cartwright's cases. But, again, I tend to think
21 of these all as a continu -- continuum because I've been
22 involved in that whole issue of expertise in child abuse
23 cases going all the way back to State versus Douglas.

24 Q. And you didn't particularly raise an issue with the
25 court limiting voir dire to just their qualifications. Did

1 you see that as an issue?

2 A. Again, I do not -- I do not recall any problem or
3 issue that I -- that I would have raised as far as limiting
4 the scope of the voir dire of trial counsel regarding
5 Dr. Benedetto by Judge Early. I don't recall that being
6 an issue I seriously considered raising. Again, either
7 right or wrong the record is the record on what I raised
8 and what I didn't raise.

9 Q. And equally did you see there were any issues worth
10 appealing regarding Judge Early limiting questioning to
11 the reliability of the field after she was considered an
12 expert?

13 A. Can you -- can you ask that again? I'm sorry for
14 being dense.

15 Q. One of Mr. Cartwright's allegations is a failure to
16 raise and argue the issue that Judge Early only permitted
17 questioning of Ms. Benedetto about the reliability of the
18 field of child sexual abuse dynamics. Did you see that
19 as an issue or as one of the, I guess, prevailing issues
20 or more meritorious issues in this case?

21 A. I -- I raised the issues that I thought were the most
22 meritorious to give Mr. Cartwright the best chance to win
23 and, I mean, I -- I don't recall -- I know I didn't raise
24 it in the way you're articulating. So, I mean, the only
25 way I can think of to answer the question would be I didn't

1 raise it that way because I didn't consider it better than
2 the issues I raised that I hoped would get Mr. Cartwright a
3 fair trial -- I mean, a new trial.

4 Q. And despite your -- despite raising the issue of her
5 qualification as an expert, the Supreme Court ultimately
6 ruled against you, finding that based on her education and
7 understanding of the field she was qualified as an expert,
8 correct?

9 A. Right. The Court -- Court ruled against me on that
10 issue as well. That is correct.

11 Q. And then --

12 A. They found -- I'm looking at the opinion. We find
13 Dr. Beno's -- Benedetto's testimony did not improperly
14 bolster the victim's credibility, so the Court disagreed
15 with me on that. And, you know, so the Court, again, has
16 found -- bottom line was the Court disagreed that
17 Dr. Benedetto's testimony impermissibly bolstered the
18 credibility of the alleged victim.

19 Q. And you did raise the issue of her testimony as
20 bolstering a witness, correct?

21 A. Yes, the alleged victim.

22 Q. And regarding your -- or Mr. Cartwright's allegation
23 that you failed to raise the issue that her testimony was
24 beyond the scope of her expertise when she commented on an
25 abuser having a favorite age, you previously testified that

1 you would not have -- or you did not consider raising that
2 as an independent issue, correct?

3 A. That's correct. I mean, again, I -- I don't think I
4 would have raised an independent issue. It would have
5 been just another part of my overall complaint about
6 Dr. Benedetto's testimony and just another component --
7 just another component of my argument that as an -- as a,
8 quote, expert, unquote, she is impermissibly bolstering
9 the credibility of the witness by giving opinions on
10 matters she's not qualified to give opinions on thereby
11 bolstering the credibility of the alleged victim because
12 her opinions mirrored the testimony of the alleged victim
13 in the eyes of the jury.

14 In other words, I guess, to make it real clear, the
15 child testified here's what happened to me, me, me in this
16 case and then a supposed expert comes along and says, in
17 general, A happens, B happens, C happens and D happens and,
18 lo and behold, A through D all happened in this -- in this
19 case also.

20 Q. Okay. And you highlighted particular instances
21 throughout your argument where her testimony mirrored what
22 these victims stated, but you -- did you feel that it was
23 necessary to highlight that particular question or that
24 issue while raising your issues with her testimony?

25 A. No. And, I mean, I didn't. And if I remember

1 Mr. Phillips's question correctly, I think his complaint
2 was with trial counsel's objection only being to leading
3 and not to being a -- a broader objection as to it ought
4 -- requesting an improper opinion, if I'm paraphrasing
5 Mr. Phillips correctly. And if I'm wrong, I apologize to
6 him, but that's my memory of the question.

7 Q. And ultimately though you raised the issue of her
8 testimony bolstering the witnesses, the Supreme Court
9 ruled against you finding that her testimony served the
10 purpose of explaining the behavior common to sexually
11 abused victims and that Ms. Benedetto testified she didn't
12 interview any of these victims and she never stated that
13 she believed these victims; is that correct?

14 A. I think that's fair, yeah. Yes, sir.

15 Q. And now regarding the issue with the trial court
16 refusing to ask the defense's questions 1 and 3 during
17 voir dire, you ultimately chose not to raise these issues
18 in your brief, correct?

19 A. Right, I did not raise those.

20 Q. And you indicated that you did not think that it
21 would be a legal issue that would have merited appellate
22 review?

23 A. If I did not raise them, I would not have thought
24 that they were a meritorious issue or a winning issue;
25 otherwise, I would have raised them. I don't know how else

1 to answer that question otherwise other than, you know, I
2 did not have a strategic opinion -- I mean, a strategic
3 reason not to raise a winning issue, so I must not have
4 thought that was a -- a winning issue, and sit -- sitting
5 here today respectfully I still don't see that as being a
6 winning issue, and if I'm wrong, I'm wrong, and if I'm
7 wrong, I certainly apologize to Mr. Cartwright.

8 Q. And just to clarify, you don't have a duty to raise
9 all possible issues on appeal, correct?

10 A. Correct. Yes, sir.

11 Q. And you raised the issues that you thought were best
12 and that you could have raised, correct?

13 A. Yes, sir. That is correct also.

14 Q. And have you in the past raised -- regarding possible
15 issues that were not preserved, have you previously raised
16 issues that were not preserved for appellate review?

17 A. I mean, I certainly think that there have been
18 instances where I raised something. I might have been in
19 doubt whether it preserved, but suspected the Court -- the
20 Appellate Court was gonna think it was not preserved, and I
21 may have done that, so the Court explicitly in the opinion
22 says this is not preserved for appellate review because
23 then I kind of view it as, you know, your client in PCR on
24 that matter can almost be over the deficiency prong of
25 Strickland and then you're only arguing prejudice. So, I

1 mean, I know on occasions I've done that in the past, but
2 certainly don't think I did that on anything in this
3 particular case.

4 Q. And that kind of ties into the last question I was
5 going to ask you. If you thought that there were any
6 issues in this case that weren't preserved that would have
7 been beneficial to show deficiency in a PCR action, would
8 you have raised those to the Court of Appeals even though
9 they weren't preserved?

10 A. No. I mean, I don't remember ever in this appeal
11 going about the appeal as being -- you know, in other
12 words, I would not have -- the way my boss, Dan Stacey,
13 used to put this is, you know, you don't want to have a
14 steak sandwich and put baloney in it because it ruins the
15 steak sandwich. I wanted to win Mr. Cartwright's case and
16 I thought always of the suicide attempt issue as being my
17 best chance to win. Dr. Benedetto's testimony I certainly
18 had problems with and I raised that as a secondary issue.
19 Though I still hoped I could win on it, I was not gonna
20 throw in lesser issues that I did not think I was gonna win
21 on because that would detract from the attractiveness of
22 issues that I thought were rock solid, if that makes sense.
23 It hope does.

24 Q. It does.

25 MR. NEUBAUER: Thank you so much, sir. I have no

1 further questions at this time.

2 THE COURT: Any redirect, Mr. Phillips?

3 MR. PHILLIPS: Yes, Your Honor. I'll be brief.

4 REDIRECT EXAMINATION

5 BY MR. PHILLIPS:

6 Q. And, Mr. Dudek, you weren't able to raise a Federal
7 issue to the -- or file a petition for Writ of Certiorari
8 in the United States Supreme Court even if it -- even if
9 you wanted to because at the Court of Appeals you didn't
10 raise a Federal issue and you wouldn't have been -- and
11 then you didn't raise a Federal issue in your brief of
12 petitioner before our Supreme Court, so you didn't have the
13 ability to raise a Federal issue regardless; is that fair
14 to say?

15 A. I guess your -- I guess your question may be I did not
16 have a chance to raise a meritorious Federal issue to the
17 United States Supreme Court. Again, Mr. Phillips, I never
18 -- I never went into this case as a -- before the appellate
19 courts, which it would have to have been developed either
20 way that way in the trial court and the appellate court,
21 setting it up as matter of Federal constitutional law
22 because as you know, you know, there's no playing games in
23 the United States Supreme Court. It's either raised all
24 the way throughout as a matter of Federal constitutional
25 law or it's not and I -- and I never went about it as a

1 matter of Federal constitutional law. I went about it as
2 a matter of state law allowing this type of evidence of
3 suicide attempt, this consciousness of guilt evidence,
4 almost reflexively was wrong. That's what I was attacking
5 as a matter of state law and I think, again, I got most of
6 what I wanted on that. Unfortunately, it did not do my
7 client, Mr. Cartwright, here any good.

8 MR. PHILLIPS: No further questions of this witness,
9 Your Honor.

10 Thank you, Mr. Dudek.

11 THE WITNESS: Thank you, sir.

12 THE COURT: All right. Anything further,
13 Attorney General Nusbau -- Neubauer, concerning -- for
14 this witness?

15 MR. NEUBAUER: No, Your Honor.

16 THE COURT: All right. Thank you so much.

17 THE WITNESS: May I be excused, Your Honor?

18 THE COURT: Yes, sir, you can. Have a great day.

19 THE WITNESS: Yes, sir, Your Honor. Thank you
20 much.

21 (Witness excused.)

22 THE COURT: All right. Mr. Phillips, who do you
23 want to call next?

24 MR. PHILLIPS: We call Herald Cartwright.

25 THE COURT: All right. Do you want -- how long is

1 this gonna take?

2 MR. PHILLIPS: Being that it's 12:44, if -- if
3 Your Honor's kind of wanting to break for lunch around
4 1:00 -- I mean, I would say it might be best to break
5 for lunch and us do it straight through in the afternoon.

6 THE COURT: What I was doing is -- basically what
7 I was saying is, let's take ten minutes' break and then
8 we'll come back and let you call Mr. Cartwright, okay?

9 MR. PHILLIPS: Perfect.

10 THE COURT: So it's 12:44. Let's be back at 12:55,
11 okay?

12 MR. PHILLIPS: Yes, Your Honor.

13 THE COURT: Is that all right for everybody?

14 MR. NEUBAUER: That works for me.

15 THE COURT: Madam Court Reporter, is that okay for
16 you?

17 THE COURT REPORTER: That's fine.

18 THE COURT: Thank you.

19 All right. We'll see everybody back in ten minutes.

20 MR. PHILLIPS: Thank you.

21 (Recess taken at 12:44 PM.)

22 (Back on the record at 12:58 PM.)

23 THE COURT: Have we got everybody we need to start?

24 MR. PHILLIPS: I believe so, Your Honor.

25 THE COURT: Okay. Mr. Phillips, in that case why

1 don't you call your next witness, sir.

2 MR. PHILLIPS: Yes, Your Honor.

3 (Pause in proceedings.)

4 THE COURT: All right. Are we ready, Mr. Phillips?

5 MR. PHILLIPS: Yes, Your Honor.

6 THE COURT: Okay. Mr. Phillips, you're calling --
7 you're calling your client, Mr. Cartwright?

8 MR. PHILLIPS: That's correct.

9 THE COURT: Okay. Mr. Cartwright, how about raise
10 your right hand for me, sir.

11 (Whereupon, Harold Cartwright was court sworn by
12 the Court.)

13 THE COURT: All right. You can put your hand down.
14 Go ahead.

15 HAROLD CARTWRIGHT,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PHILLIPS:

19 Q. Good afternoon, Mr. Cartwright. Can you hear me okay?

20 A. Yes, sir.

21 Q. Do we have a microphone for him? Obviously --

22 Mr. Cartwright, you're not hearing how we're hearing it,

23 but it appears to be a little bit -- if you could, state

24 your full name and I just -- we're not hearing -- it's not

25 coming through to us in a -- in a good way.

1 A. (Unintelligible.)

2 THE COURT: Earlier he was perfect.

3 MR. PHILLIPS: Do you think maybe if they log out
4 and log back in? One of those issues. I just know we
5 can't take the testimony from Madam -- Madam Court
6 Reporter can't take down the testimony, so.

7 THE COURT: No.

8 THE WITNESS: Can you hear me better now?

9 THE COURT: Perfect.

10 MR. PHILLIPS: That's it.

11 BY MR. PHILLIPS:

12 Q. All right. Mr. Cartwright?

13 A. Yes, sir.

14 Q. Tell us about how this started as far as your
15 representation. You've had two trials in this case; is
16 that right?

17 A. Yes, sir.

18 Q. All right. And the attorneys that you had in the
19 first trial are different than the attorneys you had in
20 your second trial?

21 A. Yes, sir.

22 Q. Your first trial ended in a hung jury and mistrial?

23 A. Yes, sir.

24 Q. Do you know why your lawyers changed from the first
25 trial to the second trial?

1 A. Yes, sir. I was taken to the county. Mr. Rout --
2 Mr. Harte was attempting to because of funds resign as my
3 attorney and I had went to Aiken County, I -- I wasn't
4 gonna let him because he had represented me in the first
5 trial, and I -- we had made arrangements that, you know,
6 I could get payment to him if I had -- (transmission
7 interruption).

8 THE COURT: All right. You've got to repeat that,
9 sir. You broke up.

10 A. Yes, sir. I -- we went back to Aiken county.
11 Mr. Harte was gonna stop representing me because of funds
12 and --

13 Q. That's after the first trial he said he wasn't gonna
14 continue. He moved to be relieved, is that specific
15 enough?

16 A. Yes, sir.

17 Q. And did you have a hearing on that matter?

18 A. We went to Aiken County for a hearing and they brought
19 me some papers to sign to see if I was eligible for an
20 attorney was my belief. I did not have my glasses at that
21 time in the county where I could actually, you know, read
22 everything without being strained and I never did show up
23 in front of the Court. They said that I had relieved
24 Mr. Harte of his duties and opted for a public defender.

25 Q. Did you relieve him?

1 A. Well, yes, sir. According to the paperwork I did.

2 Q. Well, I'm asking you specific. Not the paperwork.

3 A. Oh, no, sir. I had intended upon going before the
4 judge and -- and letting the judge know that I -- I
5 couldn't afford at that point in the trial to have new
6 representation because the court date came within --
7 within not even two months I was back in trial with the
8 new representation.

9 Q. Okay. And that's what I wanted to get to. And so
10 you never went in front of a judge on the motion to be
11 relieved because you would have asked that your same
12 attorney from the first trial, Mr. Harte, would have been
13 appointed to represent you to continue representation; is
14 that fair to say?

15 A. Yes, sir.

16 Q. And you were never given that opportunity?

17 A. No, sir. Not before the judge.

18 Q. Now once you found out that the public defender's
19 office had been appointed to represent you, how much time
20 before you went to trial once you learned that? How much
21 time passed before you went to trial?

22 A. I would say it was not even two -- two months.

23 Q. And so when was the first time that you met your
24 lawyer, Mr. Routzong?

25 A. At Aiken County I would say sometime in December or

1 first of -- around January of 2013 -- 2012 and January of
2 2013.

3 Q. So you had the trial in November with Mr. Harte and
4 about January or February is the first time you met with
5 Mr. Routzong?

6 A. Yes, sir.

7 Q. How many times did you meet with Mr. Routzong prior
8 to trial?

9 A. Three or four.

10 Q. Could you repeat that?

11 A. Three or four times at the most and one time on the --
12 on the phone we talked, which I didn't want to talk on the
13 phone, but he insisted that they weren't listening, and we
14 did.

15 Q. And what all did you discuss during those three to
16 four meetings?

17 A. We discussed basically strategy and of how to defend.
18 He wanted to know, you know, how I felt on the subject of
19 calling in my ex-wife. I didn't want to call her. I did
20 want to call in some hostile witnesses, which he objected
21 to. There was a big discussion though of the -- the
22 bedroom picture, Exhibit 5, and the sheets that were
23 presented in the trial. I actually had obtained a set of
24 sheets for Mr. Routzong to use in trial to show that they
25 were off of my son's bed and not my daughter's bed

1 according to the picture they would have used in trial.

2 Q. So, I guess, being specific, you talked about hostile
3 witnesses. Who were they that you said you wanted him to
4 call a hostile witness? Who did you tell him you wanted
5 him to interview and investigate?

6 A. Barbara, the grandmother, and Regan (ph.) Jackson.

7 Q. You said Barbara, the grandmother?

8 A. Yes, sir.

9 Q. And Regan Jackson?

10 A. Yes, sir.

11 Q. Why did you want him to call those witnesses at trial?

12 A. Because all through the first trial, I -- they said
13 that -- that they had talked to nobody, they hadn't told
14 their mother, they hadn't told anybody, and in my reading
15 of all of this it was real obvious to me that knowing
16 Amanda and her background that she and her boyfriend, and I
17 had put them out of the house, that there was something
18 going on because she had called her grandmother and -- and
19 according to her grandmother's statements saying that
20 things had happened between me and Nikki, which Nikki
21 denied during that time, but then they went back again
22 before the trial and during their statements to say that
23 she had told her uncle and her aunt and her grandmother,
24 which she denied during the trial and at various times, but
25 then it was to me to show the jury that it's completely

1 unacceptable that five adults -- grown adults supposedly
2 spoke and had been told according to this testimony that
3 this man has been molesting this child and not go to the
4 police, but yet while Elizabeth (transmission interruption)
5 interrogating for drugs all of a sudden she's gonna tell
6 them that these things are going on.

7 Q. And let me stop you right there.

8 A. Yes, sir.

9 Q. So you had a discussion with him about -- the
10 allegation came up when she was under investigation related
11 to drug -- to drug charges?

12 A. Yes, sir.

13 THE COURT: Who was?

14 THE WITNESS: Amanda.

15 THE COURT: Amanda?

16 THE WITNESS: (Nods head.)

17 THE COURT: All right. Go ahead.

18 BY MR. PHILLIPS:

19 Q. And so she was under investigation for potential drug
20 charges when this came up. Did you ask him to investigate
21 further? Did you-all have any discussions about trying to
22 do any additional investigation related to the fact that
23 she had this potential bias?

24 A. Yes, sir. I had requested to be able to obtain the
25 files of this investigation.

1 Q. And what was his response to that? So he was aware of
2 it?

3 A. Yes, sir. He was aware and nothing ever happened on
4 it.

5 Q. Now he -- you know, your trial counsel advanced the
6 theory at trial regarding Casey of the fact that you were
7 the person who had her boyfriend at the time arrested and
8 ultimately convicted and where he was on a -- for a sex
9 offense. Is that accurate?

10 A. Yes, sir. As a matter of fact, on the 10th day of
11 December, 1999, I -- on the 2nd, it was supposed to be in
12 court, but I filed charges on December 2, 1999, against
13 him and -- and filed for emergency custody of my children
14 to get them out of Melinda's protection or custody so that
15 they could come live with me.

16 Q. Now for Brandi Brown, the issue -- your trial counsel
17 raised essentially three issues regarding her as far as the
18 fact that after her biological father passed there was a
19 Social Security deposit of \$20,000; is that right?

20 A. Yes, sir.

21 Q. And that money was given to you?

22 A. Yes, sir.

23 Q. And --

24 A. It went into my account.

25 Q. And what did you do with the money?

1 A. Her father had never done anything for her throughout
2 her life and when I found out he died I took her to the
3 funeral and took her to the Social Security office to file
4 for Social Security on his behalf benefits.

5 Q. And what did you do with the money?

6 A. Well, in 2008 I had lost my job and I had -- we had
7 ended up living in my mother's yard in a shed temporarily,
8 and I used that money to get us the funds to (transmission
9 interruption). After --

10 THE COURT: (Inaudible.)

11 MR. PHILLIPS: Could you repeat that?

12 Yes, sir. Yes, Your Honor.

13 BY MR. PHILLIPS:

14 Q. Could you repeat that, please?

15 A. Yes, sir. I used it to get us a place to live.

16 Q. And it was your contention that she was angry about
17 that?

18 A. Not at first, but she became angry about it after my
19 -- my step -- my -- my son had moved in and I caught him
20 and her -- or K-Mart caught them stealing condoms and I
21 realized that there may be something more going on between
22 the two of them. My son, I caught him using drugs. I ran
23 Amanda and her boyfriend off because they were bringing
24 drugs around the house and decided (transmission
25 interruption) my son left and --

1 THE COURT: You have to repeat -- when it breaks up
2 like that, I'm gonna need to ask you to repeat each time
3 just so we can try to make sure we've got a better record
4 and I understand.

5 Go ahead.

6 MR. PHILLIPS: Absolutely, Your Honor.

7 BY MR. PHILLIPS:

8 Q. Mr. Cartwright, could you repeat the last sentence
9 that you just said?

10 A. Yes, sir. She became very angry and wanted her money
11 after I found out about the pictures of her on the Internet
12 and (transmission interruption) --

13 Q. And you said -- if you could repeat that. I think
14 you said -- talking about the pictures on the Internet. Be
15 specific to that. That broke up.

16 A. Yes, sir. When I found the pictures of her on the
17 porn site and started interrogating her about those things,
18 she became increasingly angry and wanted her money so that
19 she could leave.

20 Q. Now talking about these specific issues as far as
21 cross-examination, was there discussions with Mr. Routzong
22 about what defenses would be raised at trial, specifically
23 as to these -- what discussions did you have with him
24 regarding the defenses -- potential defenses?

25 A. Yes, sir. It all started at -- back with my first

1 wife as far as the -- I filed for custody of my children
2 when I found out that Melinda was allowing Casey to have a
3 relationship with a 24-year-old man on the 2nd of December.
4 On the 7th of December, she goes to Floyd County and files
5 for contempt of court charges and then states that I had
6 been -- reportedly Casey said that I had been molesting
7 her. Then within a year of -- in 2000, she started calling
8 Bran -- my wife, Buffy, and making accusations that I was
9 messing with Amanda -- Elizabeth and she even called the
10 school, and that's when all the charges took place in 2001
11 and eventually Amanda goes and recants her story after
12 breaking -- after Sandra Parsons had went to DSS with her
13 during her interview because she had told the woman that it
14 didn't happen, but that's -- you know, that was the start
15 of -- all of these accusations to start with was back in
16 that period of my divorce.

17 Q. Did you have discussions with him about potential
18 expert witnesses?

19 A. Yes, sir, I did on the fact of -- most specifically on
20 the fact that Buffy had -- as I had stated in court in the
21 first trial -- had ejaculated me on the 24th in my son's
22 bedroom with panties and I was wondering why come no DNA
23 was found on any of the panties that they had confiscated
24 even if they had even the right ones at that time and also
25 the fact that my brother had the computers of the girls

1 that he needed to get and put into evidence, which ended up
2 getting gone. They -- the girls said they never had any
3 computer, but at any rate (transmission interruption).

4 Q. Mr. Cartwright, I'm gonna need you to repeat that last
5 part. We missed you.

6 A. On the computers that my sister had bought for my
7 children, Amanda and Elizabeth, there was evidence on those
8 computers of their activities on the Internet that were
9 never brought into play.

10 Q. So, I mean -- and to be more specific, you discussed
11 about potentially having an expert review DNA records with
12 him. Did you-all ever go that deep into the discussion or
13 more broad?

14 A. Yes, sir. I felt that we needed to have those items
15 retested because, you know, like I had testified, I -- my
16 DNA was on those sheets, I know that, and I told them how
17 my DNA got there, offered through the first trial with the
18 -- he had the sheets up there and asked me, he said well, I
19 guess you can remember -- the prosecutor asked me I guess
20 you can remember what the sheets looked like and I said
21 yes, sir, I can, and he brought them up there and threwed
22 them on the table and I said those are my son's sheets off
23 of my son's bed, and then in the second trial there's a
24 picture of my son's bedroom instead of my daughter's
25 bedroom for Exhibit 5, which I stated in the trial. I even

1 told my attorney right as soon as it happened that that --
2 that's not the same picture, you know, they changed the
3 evidence. Even their testimony around the picture changed,
4 it was a -- a total switch up, and he didn't do anything
5 about it or say anything, and then when I asked the judge,
6 he told me that was a problem between me and my attorney.

7 Q. Well, going in the same process, you talked about how
8 there was evidence that the prosecution presented and
9 arguments that was different from the first trial to the
10 second and you alluded that there's inconsistencies between
11 the first trial and the second trial. Did you ever discuss
12 with Mr. Routzong about obtaining the transcript from the
13 first trial so he could use it for impeachment?

14 A. Yes, sir, I did. I told him that in the first trial
15 that there was -- Amanda in her testimony mentioned nothing
16 about -- I told him about the sheets that had the bedroom
17 in the picture, I told him about Amanda's testimony which
18 had changed, and I did get a transcript from him that came
19 from the solicitor's office and when I read it I noticed
20 that the -- it was a partial transcript and I noticed that
21 Amanda had said things in this transcript that were not
22 said in the trial and the things that were said in the
23 transcript, well, she didn't mention anything about
24 somebody holding a gun and a knife to her while they were
25 sexually abusing her, and I told that to my attorney. And

1 so I bought another transcript, ordered it from the court
2 reporter and paid for it, and I told my attorney, I said
3 well -- when we were talking, I said well, it's okay
4 because I've ordered another transcript. Mr. Hayes said
5 well, I wish you wouldn't have done that, and it struck me
6 odd when he said that, but I did. When my transcript got
7 to the jailhouse, it was late in the afternoon before I got
8 it and I had to sign off because it had been opened, and
9 I've tried repeatedly to buy the CD's of the trial and have
10 not been able to get the CD's to the trial because it was
11 recorded and, of course, it was -- the whole trial was on
12 Channel 12 News. I was speaking into a microphone and
13 looking into a camera. Everybody was that was in that
14 trial.

15 Q. And you're referencing the first trial?

16 A. Yes, sir.

17 Q. Now as specific advice that he gave you during that
18 three to four visits, what all did you cover as far as your
19 right to a jury trial, the right to present a defense,
20 potential defenses, cross-examination, your ability to
21 testify? Did he review all of those rights with you?

22 A. (Transmission interruption).

23 Q. Mr. Cartwright, we lost -- we lost you for a second.
24 You -- again, it's just cutting out, so bear with us here.
25 If you could repeat it.

1 A. No, sir. Not that I recall. I don't remember going
2 over any of those things. Now at one time he did tell me
3 that -- he said something about (transmission interruption)
4 being a witness on the stand.

5 Q. Mr. Cartwright, we'll have to get you to start over.
6 I'm sorry.

7 A. Yes, sir. He did speak one time on me being a witness
8 on the stand and I told him, you know, that I was in the
9 last trial and that I didn't have any reason to change my
10 testimony because the truth is the truth and he told me
11 that every chance I got to speak if I was gonna testify to
12 talk about myself personally so that the jury would know
13 what kind of person I am and kind of get to know me.

14 Q. Did he ever discuss specifically the State wanting
15 to use the evidence of suicide -- or, excuse me, the
16 allegation of suicide as evidence of guilt?

17 A. He said that they were gonna put that on the trial and
18 that they would use that for that matter and, like I told
19 him, I -- you know, I don't understand that, I -- I came
20 and I turned myself in when I found out about these charges
21 against me. I was in the jail. I'd been through a lot in
22 the last four, five, six years. I'd lost my house, I lost
23 my wife's car, we lived in a shed for a year, I was having
24 problems with my -- my children, which, I mean, it's all on
25 the record. My first -- me and my wife had fallen out of

1 love seemingly. We weren't having no sexual relations
2 (transmission interruption) --

3 THE COURT: Again, Mr. Cartwright. Back it up a
4 little bit.

5 MR. PHILLIPS: It -- it just started to get worse
6 and so, if you could, just kind of start that process
7 over, walk me through that again, your response.

8 A. Yes, sir. And like I told him, that the -- you know,
9 the record pretty much speaks for itself as to why -- what
10 reasons caused me to commit suicide. It weren't the
11 charges that were brought against me, although when Casey
12 joined in on the charge it was the tip of the iceberg. I
13 had lost my house, lost my wife's car. I had -- we lived
14 in a shed for almost a year with my family. I took \$20,000
15 and used -- of my youngest stepdaughter's money to put us
16 in a house, which me and her were fighting about. I hadn't
17 been able to see my kids or grandchildren in almost seven
18 or eight years and now my son came to live with me and
19 moved out, I'm fighting with everybody in my family, and me
20 and my wife were falling out of love, hadn't made love in
21 almost five years. So, yeah, I -- at that point in time I
22 -- I did, I made a decision that I didn't want to live any
23 longer, but it wasn't because I was in jail. I just had a
24 real hard time for the last -- I don't know. It seemed to
25 be forever.

1 Q. Now going to, again, your prep -- or your attorney's
2 preparation, meeting with you those three to four times,
3 what all -- I mean, to make sure, what else did you discuss
4 that you haven't presented that -- or did discuss with him
5 or things that you told him to do during those meetings
6 that -- that weren't -- that didn't come to fruition at the
7 trial?

8 A. Yes, sir. On -- on the fact of the pictures of my
9 stepdaughter and -- the pornographic pictures, I gave him
10 a list of people that he could talk to and call for a
11 witness that could identify them easily. I told him -- I
12 gave him a list of -- I've got it right here. Yes, sir.
13 I -- I gave him a list of witnesses that he could call that
14 could identify Brandi Brown and her friends in that picture
15 to show that they were lying about that. Her and every
16 witness that testified against me knew that that was her in
17 those pictures. I told him to talk to Bradshaw McKenzie,
18 Zoey Engelbert, Joe Eminaker (ph.), (transmission
19 interruption), Alex Joiner and to -- and all of them could
20 have identified Brandi or Nikki in the picture and the --
21 and of -- and Desiree, Martha, and Ashley Townsend.

22 Q. So take -- take a step back. Take it slow because it
23 broke up a little bit. Name the people that you said could
24 have identified them.

25 A. Bradshaw McKenzie, Zoey Engelbert, Joe Eminaker,

1 Britany Cartier (ph.), Marie Tyler, Kathy Weiner (ph.),
2 Alex Joiner. All of them could identify the girls in the
3 pictures. They were all friends that went to school
4 together.

5 Q. Now one of the things that has come up was the -- a
6 timeline. Did you and your lawyer have a discussion
7 regarding the timeline of when you lived in the home? So
8 these allegations are over an expansive amount of time, you
9 know, years, and with that expansive amount of time that
10 the allegations are there, did you have a discussion with
11 your lawyer as far as the timelines of when you lived in
12 the home, when you weren't in the home, as potential alibi?

13 A. Yes, sir, I did.

14 Q. Could you be specific as to that?

15 A. Yes, sir. Give me just a second. I've got the notes
16 here that I've had for -- yes, sir. On -- on 7-17-2001,
17 the accusations against Elizabeth were reported. I moved
18 out of the house. I was arrested in 9-12-2001. I was out
19 of the house. I got bonded. They dismissed the charges in
20 12-3-2002. I was working out of town when they dismissed
21 them at Cyclone Development and did not return home until
22 -- I was in Atlanta and I did not return home until maybe
23 (transmission interruption).

24 Q. Mr. Cartwright, we've got to start over. Just the
25 last part -- just last part right there.

1 A. Okay. I did not move back into the house until two
2 days before Amanda's 12th birthday --

3 Q. So what's the date range you lived --

4 A. -- in 2003.

5 Q. So what's the date range that you lived in Atlanta?

6 A. Sir?

7 Q. The dates you said you lived in Atlanta outside the
8 home, what's the date range for that?

9 A. That was from 2000 and then ten -- about the 10th
10 month of 2002 all the way until the 10th month 15th day of
11 2003.

12 Q. Now when you moved back into the home, how long did
13 you live there?

14 A. Less than two months. Our house caught fire before
15 Christmas and we was -- it was to then and we had to move
16 out for a little over -- or right at a year. We moved in
17 with my brother-in-law and moved back in 12-3-2004.

18 Q. You said 12-3?

19 A. Yes, sir. December 3, 2004.

20 Q. You lived with your brother-in-law during that period
21 of time in between after the house burned down?

22 A. Yes, sir. My insurance company was paying them for us
23 to stay there.

24 Q. Now did you discuss this specific timeline with your
25 lawyer?

1 A. Yes, sir. I had told him of these -- about this, that
2 he check with the -- you know, the fire commissioner and
3 whatnot and get the exact dates. I wasn't sure of the
4 exact day, but I was, you know, pretty close as far as the
5 fire, when the fire happened.

6 Q. Did he have the arrest warrants or indictments and
7 sit down and go through the timeline with you to see how it
8 could be used in your defense?

9 A. No, sir.

10 Q. I'm sorry. If you could repeat that. You broke up.

11 A. No, sir.

12 Q. Now is there anything else that you want to present
13 or testify to specifically regarding allegations of
14 ineffective assistance of counsel? I'll have plenty of
15 questions for him, but as to his representation of you, is
16 there anything else that you want to present to the Court
17 while you're -- while you have the opportunity to testify?

18 A. No, sir, not that I can think of. I mean, I believe
19 that's it.

20 MR. PHILLIPS: No further questions, Your Honor.

21 THE COURT: All right, Mr. Phillips. Thank you.

22 Attorney General Neubauer, yes, sir.

23 MR. NEUBAUER: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. NEUBAUER:

1 Q. Good afternoon, Mr. Cartwright.

2 A. Good afternoon.

3 Q. So the first trial in this case was in November of
4 2012, correct?

5 A. Yes, sir.

6 Q. And the second trial was April of 2013, correct?

7 A. Yes, sir.

8 Q. So that would have been about five months in between
9 the two trials, correct?

10 A. Yes, sir.

11 Q. And you said shortly into 2013 Mr. Routzong and
12 Mr. Hayes began representing you, correct?

13 A. It was -- it was shortly into '13. I'd say a good --
14 it was almost two and a half, three months before I was
15 dismissed by Mr. Harte. The dates are somewhere. I mean,
16 we've got them. I've got them somewhere. I don't know the
17 exact date, but if I could -- it would take me a while to
18 dig through and find them, but, yes, sir essentially.

19 Q. And you indicated that you met with Mr. Routzong about
20 three to four times in that period of time?

21 A. Three or four, four or five maybe. It wasn't very
22 often.

23 Q. Okay. And do you recall ever reviewing discovery or
24 discussing the State's evidence with Mr. Routzong?

25 A. As far as discovery or evidence?

1 Q. Right.

2 A. Yes, sir. I -- I -- I did discuss discovery with
3 him as far as all the inconsistent testimony and the fact
4 that I wanted to bring out the fact that -- that nobody --
5 that how unbelievable the story was when you try to tell
6 somebody that six people or five grown adults know about
7 something and the only time it comes to light is when one
8 of them's getting ready to get charged with drug charges.
9 It makes no sense. When I found out my wife had allowed
10 my daughter to be in the room with a 24-year-old man, the
11 very next day I drove all the way to Floyd county to file
12 charges (transmission interruption).

13 Q. Pardon me, but -- I'm sorry, sir. I'm sorry, sir. I
14 don't mean to cut you off. We just need -- your audio kind
15 of cut out right there. Could you repeat the last thing
16 that you said, that last sentence?

17 A. Yes, sir. I was telling him that a responsible adult
18 does not sit around and say oh, Lord, he's molesting that
19 child and not gonna tell somebody (transmission
20 interruption.)

21 Q. I'm sorry, sir. We're still -- it's still a little
22 muffled.

23 A. Yes, sir.

24 Q. Okay.

25 A. Like I said, I -- I had told him that I wanted to

1 present them as hostile witnesses (transmission
2 Interruption) Regan and Barbara because it does not make
3 any sense in a -- in my mind or anybody else that's
4 reasonable I don't believe that five grown adults would
5 know or have been told that a man is molesting a child and
6 not go forward and say something about it to the officials,
7 that they sit back and wait until one of them is getting
8 ready to be charged with drugs or being investigated for
9 drugs, whatever, I don't know because I don't have any
10 paperwork on that, but that's when it comes out. It just
11 -- it don't make sense. Just like my first wife, I tried
12 to take my children away from her and having my step -- or
13 my (transmission interruption) boyfriend locked
14 (transmission interruption) I did that immediately. I
15 didn't sit around and know about it and --

16 MR. PHILLIPS: Mr. Cartwright, we need you to --
17 we need you to go back and repeat that. I'm sorry.

18 THE WITNESS: Yes, sir. Just like whenever my
19 first wife was allowing my 14-year-old daughter to be
20 molested by a 23 or 24-year-old baby-sitter, I did not
21 sit around and know about it. I went the very next day,
22 drove 400 and something miles to Floyd county and filed
23 charges on that like any reasonable adult would do, but
24 funnily -- funny she goes and, you know, puts charges
25 against me that -- within a week after that. All of a

1 sudden I become the bad guy. It's just -- but that's
2 why I wanted Mr. Hayes to call them as hostile witnesses
3 because it don't make sense. Five people don't know
4 something like that and not go to the police.

5 BY MR. NEUBAUER:

6 Q. Yes, sir.

7 A. That's --

8 Q. Now just briefly for clarity, you don't know for
9 certain that Amanda was ever charged for anything related
10 to drugs in the incident you're referring to, correct?

11 A. I know for a fact that her and her first boyfriend
12 were dealing drugs, so --

13 Q. But he was not -- sorry. Do you know whether she was
14 charged?

15 A. No, sir.

16 Q. Okay. Now regarding trial strategy, do you remember
17 what Mr. Routzong and you discussed as far as a strategy
18 for trial?

19 A. Yes, sir. We discussed that he was gonna call in
20 Melinda as a witness and I argued that I wanted Regan
21 Jackson and Barbara called in as hostile witnesses that
22 he didn't want to do and me and him had a big fallout
23 about that in the dressing room, that I -- I didn't care
24 for them to (transmission interruption) into the courtroom
25 because I didn't feel that it was anything other than just

1 blusterous. I had also wanted to separate the witnesses
2 being able to just listen to each other's testimony and
3 then back each other up during the trial, which didn't
4 happen. For whatever reason I don't know.

5 Q. Okay. But -- and you brought up something about
6 discussing issues of photographs and which bedroom the
7 sheets came from with Mr. Routzong. Do you remember what
8 he said about that when you guys talked about it?

9 A. Yeah, he said that he didn't want to bring that
10 picture in because I wanted her picture to be put in there
11 because it looked just like her and that he --

12 Q. Sir, that's not the photograph I was talking about.
13 You addressed an issue with the State using a photograph
14 of a bedroom and saying that's the bedroom the sheets came
15 from. Did you not discuss -- did you discuss that with
16 Mr. Routzong prior to trial?

17 A. Yes, sir. I even brought a set of -- I bought a set
18 of bedsheets that matched the ones that was on my son's bed
19 for him to use as an exhibit that he never did.

20 Q. And do you remember did he give you any explanation
21 about what he thought you guys should do regarding that
22 issue?

23 A. He said that he would bring it out by cross-examining
24 them on these things, which never happened.

25 Q. Okay. And just regarding the DNA that was found on

1 the sheets, did you ever deny that your DNA or your semen
2 was found on that sheet?

3 A. No, sir.

4 Q. Okay. And as far as possible defenses, did -- did
5 you guys have any discussions about defenses that you could
6 bring up during a trial?

7 A. Yes, sir.

8 Q. Do you remember what you guys discussed?

9 A. It was what I had just told you earlier. One of the
10 biggest parts that I felt like that a jury -- that what the
11 motive was for them going into that was the fact that all
12 those people were told, she just got through sitting there
13 and denying ever telling these people. Regan Jackson was
14 never mentioned as being told anything and he was the main
15 one in all of their depositions that they gave to the
16 police that she was able to open up to and talk to and he's
17 an Army Ranger in the military and had been for many years
18 and had done many tours in Afghanistan and I doubt for a
19 minute that she -- he or anyone else in his position or
20 Regan for that matter, Army intelligence, would sit back
21 and say oh, well, she don't want her mom to know, so we're
22 not gonna say that. That ain't happening in the real
23 world. I'm sorry. And all those people found out and she
24 told them supposedly that this was happening. Unless it
25 was all a ploy just to keep Amanda from going to jail, I

1 don't see them keeping their mouths shut that I was
2 supposedly molesting these children. I know if I would
3 have been told something like that, I would have drove all
4 the way to Floyd county the very next day just like I did
5 in the case with my daughter to let it be known; hey,
6 there's something going on here with this child, you-all
7 need to look into this. You don't sit around and wait.
8 And then she said that she wasn't planning on saying
9 nothing. Unh-unh. It -- none of it makes sense. If you
10 look at the record as a whole and sit down and read all the
11 testimony back and forth that who all supposedly knew, it
12 don't none of it make sense. It's -- just a reasonable
13 adult when you tell them hey, I'm being molested by this
14 man, if it's your aunt, your grandmother, your mother, your
15 sister, your uncle, they're going -- they're going to
16 authorities if not -- not right then, fast, quick and in a
17 hurry. I know I would and I believe anybody sitting before
18 me would.

19 Q. And when you guys were talking about defenses, did
20 Mr. Routzong give you any advice about the defenses,
21 whether or not he thought they would be successful or any
22 issues of, I guess, raising a certain defense?

23 A. He told me when we got into our argument basically
24 right there before the trial that the strategy was up to
25 him, that I was not gonna dictate strategy to him, that

1 ultimately that was his decision, and I accepted that and
2 went to trial because we were already in the proceedings.
3 The jury had already been selected. We were (transmission
4 interruption).

5 Q. I'm sorry. Can you -- I'm sorry. Can you stop for
6 a second and go back to that last sentence? You cut out
7 again. And I apologize for interrupting.

8 A. Yes, sir. I -- I was told that he was in charge of
9 the -- the strategy and I wasn't, I was his client, and he
10 listened to me, but he was gonna make the decision, and we
11 went to trial. We were already in trial, had already
12 selected a jury, and I was in the dressing room at that
13 time getting dressed.

14 Q. And as far as witnesses, you named a list of
15 witnesses that you wanted Mr. Routzong to speak to. Do
16 you remember having any follow-up conversation with
17 Mr. Routzong about those witnesses or whether he talked to
18 them or what they might have said?

19 A. As far as I know, nobody was talked to. I don't -- I
20 don't recollect any -- any conversation about the witnesses
21 as far as been spoke to or as to what they would have said.
22 I just trusted that they was gonna speak the truth of the
23 matter whether they liked me or didn't like me. I trusted
24 that they would speak the truth (transmission interruption)
25 and that's how I felt about it.

1 Q. Yes, sir. And did you ever provide Mr. Routzong with
2 any character witnesses that he could call that would
3 testify, I guess, about your character?

4 A. Yes, sir. I had -- I had mentioned some people. I
5 don't know if he took note of them or not, but I had told
6 him that Sandy Morton was a coworker of mine. My uncle,
7 Larry Brent (ph.). There was a city inspector that I
8 worked with a lot, Bruce Myers. A friend of mine, Sonny
9 Vandiver (ph.), an ex-boss, Ted Mavins (ph.). Martin
10 Speedy, an ex-boss. Neeley Page and Reggie Mavins were
11 ex-bosses and people that he could speak to that -- that
12 could.

13 Q. And ultimately I don't think these witnesses were
14 called. Did you guys discuss why they wouldn't have --
15 you wouldn't have called character witnesses?

16 A. No, sir.

17 Q. Okay. And you talked to him about the drug
18 investigation involving Amanda. Do you remember what he
19 said about that investigation or whether he looked further
20 into it?

21 A. As far as he told me was that he couldn't find
22 anything on it. Even -- even Robert Harte in the first
23 trial tried to find out something about it and he couldn't
24 get anything on it either.

25 Q. Okay. And you testified at your trial and did you

1 want to testify or did Mr. Routzong talk you into
2 testifying?

3 A. He felt that it would be good that I testify because
4 I had testified at the first trial and then -- and then I
5 was advised to -- to tell -- every chance I got to tell
6 about myself, which made me look like a fool, and in
7 closing the prosecutor even charged -- cashed in on it and
8 said and I could keep on going with his ridiculous stories,
9 including the youngest American (transmission interruption)
10 shrimper in Cuba.

11 So, I mean, his advice on my testifying just made me
12 look like a complete fool and the prosecutor used that in
13 his closing testimony to -- to convince the jury that I was
14 untrustworthy, they couldn't believe nothing I was saying.

15 Q. And do you remember the judge telling you that you
16 had the right to remain silent and that you didn't have to
17 testify if you didn't want to?

18 A. Yeah, I believe they read me those rights when I was
19 put in jail or when they arrested me when I turned myself
20 in.

21 Q. And --

22 MR. NEUBAUER: I beg the Court's indulgence for
23 just one second.

24 THE COURT: Yes, sir.

25 BY MR. NEUBAUER:

1 Q. Do you remember telling the judge I wish to testify,
2 Your Honor. I want to tell the truth of what's been going
3 -- or what's went on here. There's only been a little bit
4 of it disclosed.

5 A. Yes, sir. I remember saying that.

6 Q. So you did, in fact, want to testify?

7 A. Yes, sir. I -- I wanted to testify to tell the jury
8 I felt in my mind to (transmission interruption) tell my
9 side of things as far as what had went on and I wanted to
10 testify and bring out the fact of these other things, but
11 my attorney didn't do these things with me. And I -- and I
12 even asked the judge and when the jury was un-present about
13 certain things because me and my lawyer were having a hard
14 time during that trial getting on the same page.

15 Q. And do you remember what you said to the judge during
16 sentencing?

17 A. Yes, sir. I remember even before sentencing I told
18 him that it -- that I know at one time I told him that it
19 would be simple for me to prove. If I could just call all
20 the jurors, I could prove that the pictures had been
21 changed from one trial to the next because one set of
22 jurors is gonna point at one bedroom and the other set of
23 jurors is gonna point at another bedroom. I remember
24 telling him that.

25 Q. Do you remember ultimately just reaffirming that you

1 felt you weren't guilty despite the jury's finding?

2 A. Oh, yes, sir. Yes, sir. I did tell him, you know,
3 that he's -- they locked up a man that's not guilty of what
4 he's been charged with.

5 MR. NEUBAUER: I beg the Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. NEUBAUER: I have no further questions at this
8 point.

9 THE COURT: Any redirect, Mr. Phillips?

10 MR. PHILLIPS: Yes, Your Honor. I'll be brief.

11 REDIRECT EXAMINATION

12 BY MR. PHILLIPS:

13 Q. Specific as to the question regarding the review of
14 the discovery, was there any discovery that he did not
15 review with you that you were surprised that the evidence
16 was presented at trial? In other words, there was evidence
17 that was presented at trial that you had not been -- had
18 not been made aware of or discussed with your lawyer?

19 A. Yes, sir. The -- the biggest thing was the -- the
20 exhibits, the pictures of the exhibits, and the fact that
21 the pictures of the exhibits weren't locked in from the
22 first trial to the second trial and the numbering of the
23 exhibits didn't make sense to me because I've always -- I
24 mean, I don't -- I'm not a law officer or -- or an attorney
25 or any of that myself, but I've always thought that when

1 you take evidence there's supposed to be a little number in
2 the picture, not wrote on the picture, but in the actual
3 picture so that the pictures can't be shuffled around and
4 changed as exhibits as happened to me. Had that been done
5 and had I had those exhibits in my possession during the
6 first trial and numbered as to what those exhibits are,
7 they're switching the pictures of the bedrooms would not
8 have taken place period.

9 Q. Well, outside of the -- the exhibit numbers, did he
10 review all of the photographs with you? Had you seen the
11 photographs that were presented at trial prior to trial?

12 A. No, sir.

13 Q. Okay. So that was my question. He didn't review
14 those photographs with you. He reviewed basically the
15 evidence packet, the paperwork, but he never reviewed the
16 photographs with you prior to trial?

17 A. No, sir. I still to this day (transmission
18 interruption) that I've seen any of those pictures.

19 Q. You're gonna have to -- you're gonna have to repeat
20 it.

21 A. I still to this day other than at trial have never
22 seen any of those pictures that they have in their
23 collection except for the one that (transmission
24 interruption) that I --

25 Q. You've got to repeat the last -- the last little bit.

1 The last four or five words. I apologize.

2 A. I said except for the one that they sent to you saying
3 that it was Exhibit 5 and it was used in both trials, which
4 is not true.

5 Q. And he never looked into or investigated that issue?

6 A. No, sir.

7 Q. You stated before that -- as far as given -- with
8 the timeline. Did you ever discuss you working out of town
9 and provide any relevant dates to your attorney regarding
10 that?

11 A. Yes, sir, I -- I did. I told him that I didn't come
12 back to the house as soon as the charges were dismissed,
13 that I was working in Atlanta for Cyclone.

14 Q. Did he ever get any of those records?

15 A. Sir?

16 Q. Do you know whether he ever obtained any of those
17 records?

18 A. No, sir. I don't know whether he did or not. I've
19 never seen any of them.

20 MR. PHILLIPS: No further questions, Your Honor.

21 THE COURT: All right. Any -- any additional
22 questions, Attorney General?

23 MR. NEUBAUER: No, Your Honor.

24 THE COURT: All right.

25 Thank you, Mr. Cartwright.

1 (Witness excused.)

2 THE COURT: Mr. Phillips, you can call your next
3 witness.

4 MR. PHILLIPS: We have no further wit -- witnesses.
5 It'd just be the State -- should be just the State
6 witness left, Your Honor.

7 THE COURT: All right. Mr. Neubauer, are you ready
8 to proceed?

9 MR. NEUBAUER: Yes, Your Honor.

10 (Pause in proceedings.)

11 THE COURT: The State's witness.

12 MR. NEUBAUER: Yes, Your Honor.

13 Briefly the State would first call Mr. David Hayes.

14 THE COURT: All right. Mr. Hayes, where are you?

15 MR. HAYES: Right here, Your Honor.

16 THE COURT: Can you raise your right hand, sir.

17 (Whereupon, David Hayes was duly sworn by the
18 Court.)

19 THE COURT: Thank you, sir.

20 Your witness.

21 MR. NEUBAUER: Thank you, Your Honor.

22 DAVID HAYES,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. NEUBAUER:

1 Q. Good afternoon, Mr. Hayes.

2 A. Good afternoon.

3 Q. And we've spoken briefly, but how long have you been
4 practicing law, sir?

5 A. Since 2009.

6 Q. And how much of that has been in criminal law?

7 A. All of it.

8 Q. And you were appointed to represent Mr. Cartwright
9 after his prior counsel was relieved, correct?

10 A. No. Michael Routzong was appointed and at the time
11 our office would split into teams and I would sit second
12 chair with Mr. Routzong on trials.

13 Q. Yes, sir. So Mr. Routzong was the primary attorney
14 in this case and handled most of the trial?

15 A. That's correct.

16 Q. And your -- or I guess your involvement in this trial
17 was really limited to arguing the issue revol -- or
18 involving Dr. Benedetto, correct?

19 A. That's correct.

20 Q. And as far as the actual trial itself, beyond your
21 pre-trial motion to prevent Ms. Benedetto being qualified
22 and then the cross-examination of Ms. Benedetto, what were
23 your roles throughout the course of the trial?

24 A. I would sit between Mr. Routzong and Mr. Cartwright
25 and I would buffer so that Mr. Routzong could to pay

1 attention to what was going on and we could take notes and
2 I can answer his questions while we were in trial.

3 Q. And do you remember him ever raising an issue with a
4 different photo or the bedsheet being from a different bed
5 throughout the course of the trial?

6 A. Quite honestly, I don't remember a whole lot about
7 the trial. This was nine years ago and, unfortunately, I
8 -- I don't recall a whole lot about it.

9 Q. And Mr. Cartwright has alleged that you failed to
10 object to the Court applying an incorrect legal standard as
11 far as qualifying Ms. Benedetto as an expert. If we could
12 just kind of break that down piece by piece. Did you see
13 any issue -- well, first, you addressed her qualification
14 as an expert both pre-trial and during the trial, correct?

15 A. Yes. I -- I did a motion pre-trial and then I was
16 the one that was gonna cross-examine (transmission
17 interruption).

18 Q. I'm sorry. You cut out at the very end of that last
19 sentence, sir.

20 A. I was gonna be the one -- I did a motion pre-trial and
21 then I was also the one that was gonna cross-examine her on
22 the issue during the trial.

23 Q. Yes, sir. And do you remember exactly what your
24 argument was against her being qualified as an expert?

25 A. First, it was under 702. That the science wasn't

1 needed, that this was a he said/she said issue and that
2 there was nothing that Dr. Benedetto could come forward and
3 tell the jury that wasn't common sense already and that it
4 was an improper bolstering move by the solicitor's office.

5 Q. And that pre-trial motion was denied by Judge Early,
6 correct?

7 A. That's correct.

8 Q. And then you, again, during her qualification in trial
9 -- or in the course of the trial objected to her being
10 qualified for the same reason, correct?

11 A. I did.

12 Q. And you attempted to get into the validity of the
13 science while voir diring her about her qualifications,
14 correct?

15 A. I don't remember, but after reading the transcript,
16 yes, that's what it appears.

17 Q. And ultimately Judge Early determined that you could
18 only question her about her qualifications, not so much the
19 validity of the field?

20 A. That's correct.

21 Q. And did you feel that there was a need to object at
22 that point to his determination?

23 A. He instructed me and I did as I was instructed at that
24 point. You --

25 Q. And do you feel that you -- I'm sorry. I didn't mean

1 to cut you off there.

2 A. You were only gonna push back so much and I had
3 already made my objection and he gave me an instruction to
4 move on.

5 Q. Yes, sir. And do you feel if you had objected to
6 him limiting your voir dire that it would have made a
7 difference or you would have been able to proceed with that
8 line of questioning?

9 A. I have no idea.

10 Q. And you did specifically raise the issue with her
11 being qualified as a witness in -- or an expert witness in
12 the field of child sexual abuse dynamics?

13 A. Yes.

14 Q. And that was ultimately denied. He decided to qualify
15 her as an expert in that field despite the case law that
16 you cited?

17 A. Yes, sir.

18 Q. And you then proceeded to challenge in your
19 cross-examination not only her qualifications, but the
20 validity of the field itself and why did you feel that that
21 was necessary at that time?

22 A. Well, he -- he stopped me from doing it in -- in --
23 when I first made the motion. When I went to ask her the
24 questions about qualification and about the science, he
25 limited me so the only way to get it in was to do it

1 through cross-examination in front of the jury.

2 Q. And do you remember what your issue was with the field
3 at that time -- or the field that she was qualified as an
4 expert in?

5 A. I was aware of the issues that Bob Dudek was going
6 after in the Court of Appeals, was having an expert come in
7 and testify as a bolstering witness as to the credibility
8 of the victim, which is what it essentially ends up being.
9 So when this case -- I watched some of the original trial
10 and when we were appointed I knew it -- it was gonna be a
11 trial a second time. I contacted Bob Dudek and talked to
12 him and I believe it was January of that year Kromah came
13 out and Mr. Dudek had sent me information and gave me the
14 information about Kromah and I proceeded to attack it that
15 way so that he could continue to try to argue this and --
16 and narrow down the issues in the Court of Appeals.

17 Q. And ultimately despite that challenge, despite the
18 case law that you reviewed, did Mr. Early -- or not Mister,
19 did Judge Early agree with you or disagree?

20 A. No, he -- he -- he allowed it.

21 Q. And did you feel that there were any additional
22 objections you could have made during her qualification as
23 an expert at that time?

24 A. I -- I don't recall. I mean, I made the -- I made
25 objections as I saw them at the time.

1 Q. Yes, sir. And we'll go specifically to testimony from
2 Ms. Benedetto. This is in the second portion of the trial
3 transcript, page 61. She's asked --

4 MR. NEUBAUER: I apologize, Your Honor. I thought
5 I had the correct page.

6 BY MR. NEUBAUER:

7 Q. Is it typical for an abuser to have like a favorite
8 age and you objected to that question, correct?

9 A. I did.

10 Q. And do you remember what your objection was for?

11 A. I believe it was hearsay.

12 Q. And do you know why you --

13 A. No, I'm sorry. Leading.

14 Q. Leading.

15 A. Yes, sir.

16 Q. And do you know why you -- or you objected as a
17 leading question?

18 A. At the time in the middle of the trial, I heard that
19 there was something wrong and the question did appear to
20 me to be leading, going down a different path, and that was
21 the objection that came to mind.

22 Q. Did it ever occur to you at that time that it would
23 -- or you could have also objected as the -- or testimony
24 beyond the scope of her expertise?

25 A. I don't recall. Obviously I didn't according to the

1 record and I don't -- I don't recall.

2 Q. And your objection was ultimately overruled by the
3 Court, correct?

4 A. It was.

5 Q. Do you think if you'd made a -- this is, I guess,
6 asking your opinion, but do you think that expanding on
7 your objection and claiming it was beyond the scope, that
8 would have brought the Court to sustain your objection as
9 opposed to overruling it?

10 A. I -- I have no way of knowing that.

11 Q. Yes, sir.

12 MR. NEUBAUER: I beg the Court's indulgence
13 briefly, Your Honor.

14 THE COURT: Sure.

15 MR. NEUBAUER: At this point I have no further
16 questions.

17 THE COURT: All right. Mr. Phillips, any
18 cross-examination, sir?

19 MR. PHILLIPS: Yes, Your Honor.

20 THE COURT: Your witness.

21 MR. PHILLIPS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. PHILLIPS:

24 Q. Good afternoon, Mr. Hayes. How are you?

25 A. Doing good.

1 Q. So in -- talking about your objection to Ms. Benedetto
2 that -- that was the State's expert witness and, of course,
3 was raised on appeal by Bob Dudek, I know you heard some
4 of the questions I was asking regarding that. Specifically
5 as to limiting your ability to voir dire in the presence of
6 the jury, you never made the objection that this needed to
7 occur in-camera, outside the presence of the jury, did you?

8 A. I don't recall if we had a sidebar and argument prior
9 or a meeting in chambers about the issue. I know that
10 when I did the motion and then when I was trying to voir
11 dire her, he limited me on what I could do. And if you've
12 ever been in front of Judge Early, you know there's a point
13 where you stop pushing back and the only way I could see to
14 get it in and to do it was to do it in cross-examination.

15 Q. Now as far as the qualification is concerned, are
16 you aware of State v. White, the -- basically the case
17 -- the opinion that walks through the analysis for
18 admitting nonscientific evidence or qualifying an expert
19 as in nonscientific -- from a nonscientific point of view?

20 A. I -- I don't recall if -- if I was aware of it at the
21 time or not.

22 Q. All right. And then the --

23 A. I'm sure --

24 Q. Go ahead.

25 A. The case that I recall, and I can't remember the name,

1 we've had multiple trials in South Carolina, but it was
2 about the foot impressions inside the tennis shoe and the
3 court laid out the -- the process.

4 Q. Understood. So between State versus Council, State
5 versus Taft, and State versus White, you couldn't --

6 A. Council.

7 Q. -- and so you didn't take into consideration to make
8 that argument of State versus White, admitting basically
9 expert testimony of a nonscientific nature? That wasn't
10 something that -- it wasn't a strategic decision not to
11 make that argument?

12 A. No. I -- I think I was actually trying to make that
13 argument in whole, but the way he limited me I wasn't able
14 to go down the second prong in my argument. One, that it
15 was a junk science and then, two, that it wasn't needed to
16 be presented to the jury because it wasn't an issue of
17 complexity that was needed to be explained.

18 Q. Right. So as far as the legal standard is concerned
19 -- remember he was qualified -- or she was qualified in
20 child sex abuse dynamics, you know, the legal standard for
21 the qualification, you said Judge Early limited you and
22 didn't allow you to put it on the record. Did you request
23 to proffer that argument?

24 A. I don't remember.

25 Q. Okay.

1 A. And it could -- and it could have been that he just
2 completely threw me off my game when he did that to me
3 and I was trying to figure out how I was gonna get these
4 questions out for the record. I just don't recall and --
5 and to be brutally honest, when the AG called me the other
6 day, I forgot I even did the motion. I just thought I sat
7 in the middle between the two. I didn't recall any of this
8 until I went and looked at the file yesterday.

9 Q. Did you have anything in your notes regarding State
10 verses White?

11 A. I don't recall State versus White, so I don't know. I
12 remember seeing Kromah and one more that was in that line
13 and then my notes and my drafted motion, the copies for it,
14 and then all my notes while we were in trial because there
15 was a question as to why we didn't Batson.

16 Q. Understood. So there -- there wasn't any specific
17 strategic decision on your part not to try to make those
18 arguments as far as, you know, the judge's improper legal
19 -- using an improper legal standard for qualification?

20 A. No.

21 Q. It wasn't a strategic decision to make that argument?

22 A. No. You know, I was -- my goal in doing this motion
23 was, one, to try to win it and keep her from getting on the
24 stand because I believe that was completely improper and
25 then, two, if I wasn't successful at the trial level to

1 give Mr. Dudek enough to be able to make an argument in the
2 Court of Appeals to continue his battle there.

3 Q. Now there was the discussion, I believe it was on
4 page 59, or the colloquy back and forth where the
5 prosecutor elicits basically -- basically a lead -- a
6 leading question that's overruled regarding for a, quote
7 unquote, typic -- typical abuser to have a favorite age.
8 Again, in retrospect, having -- you know, having time to
9 look at it in hindsight, would it be an argument that you
10 would have made that it was beyond the scope of her
11 expertise to make that determination even though it's a
12 leading question? Well, I guess it was overruled, but.

13 A. Well, I -- I still say it's a leading question and
14 Monday morning quarterbacking, looking back at it knowing
15 more about where she was going, may -- maybe I would have
16 made that objection. I -- I can't tell you. At the time
17 the leading is the one that came to mind and I wasn't -- at
18 this time I think this was the first case we tried with
19 this kind of expert, seeing that she was getting ready to
20 step outside of the scope, I -- I would have maybe made a
21 motion or an objection, but I can't tell you that I would
22 or wouldn't have. I don't know at that time.

23 Q. But now outside having -- you know, outside the heat
24 of the battle, having time to reflect on it and look at it,
25 would -- would you have made the objection that it was

1 outside the scope that she was qualified to --

2 A. Possibly. Yeah.

3 Q. Thank you. Was there any other pre-trial motions that
4 you were directly involved in or any other testimony in the
5 trial?

6 A. I don't recall actually taking the front and center on
7 any other issues.

8 MR. PHILLIPS: No further questions, Your Honor.

9 THE COURT: All right. Thank you.

10 Any redirect?

11 MR. NEUBAUER: Yes, Your Honor. Just very briefly.

12 REDIRECT EXAMINATION

13 BY MR. NEUBAUER:

14 Q. You stated your argument was centered on the new case
15 law that you received from Bob Dudek, State verse Kromah,
16 and just for clarity's sake for the Court, that is
17 401 S.C. 340 and 737 S.E.2d 490. Did you feel that this
18 was, I guess, the best case law that you could have cited
19 in support of your motion?

20 A. Yes, it -- it was the newest in the line. It -- like
21 I said, it came out in January, if I'm not mistaken, and
22 we were trying this, I believe, in April of the same year.

23 Q. And do you recall what the case of Kromah was in
24 regards to, kind of the --

25 A. What the gist of it is?

1 Q. Yes, sir.

2 A. They were having an expert, I can't remember which one
3 it was at the time, it might have been the Child Advocacy
4 Center person, come forward and testify and basically
5 saying yes, we believe that the kid's telling the truth,
6 which was bolstering the testimony.

7 Q. And did you feel that the argument was in line with
8 the argument that you were making to prevent Ms. Benedetto
9 from testifying as an expert?

10 A. Yes. Now -- now in Kromah, if I'm not mistaken, they
11 specifically said it, and when I made the motion here, I
12 believe Judge Early limited it and said as long as she
13 ain't saying that she believes them, then I'm gonna allow
14 it. It's been done in the past and we're gonna do it
15 today.

16 Q. And so you still feel that that was the best argument
17 that you could have made regarding her qualification as an
18 expert?

19 A. Yes.

20 Q. And as far as objections with Judge Early, you made a
21 comment, you only push so far with Judge Early. Could you
22 elaborate further on that?

23 A. He was very strict on how he ran the courtroom. Not
24 -- not a bad thing, not a good thing. It's you know at a
25 certain point where to stop and after being in front of him

1 for a while, I knew if I went another step I was gonna get
2 abolished in front of the -- the jury, and that was the bad
3 thing, too.

4 Q. So would you say that it was a strategic decision on
5 your part to stop pushing -- that you felt you preserved
6 your general issue and you knew that if you continued to
7 push this that you might get sandblasted in front of the
8 jury by Judge Early?

9 A. Yes. And I knew that if I waited until I got to
10 cross-examination I could still get the information that I
11 was seeking out and I had already been ruled against.

12 Q. And did you ultimately on cross-examination get out
13 the information that you were seeking?

14 A. I believe so.

15 MR. NEUBAUER: No further questions about this
16 issue.

17 THE COURT: All right. Anything further,
18 Mr. Phillips?

19 MR. PHILLIPS: Yes, Your Honor. Just briefly.

20 RECROSS-EXAMINATION

21 BY MR. PHILLIPS:

22 Q. And, again, I know there was the discussion of Kromah,
23 but with the specific issues that are addressed in Kromah,
24 it didn't go directly to the issue of qualification of a
25 nonscientific expert; is that right?

1 A. I haven't -- it's been a while since I've read Kromah
2 and I don't remember if that was a discussion in there or
3 not.

4 Q. And was that --

5 A. That, too, was another -- a whole other issue.

6 Q. And just to -- and, again, to make sure the record's
7 clear, the references to State versus White is -- the
8 398 S.C. 376, is the 2009 case of our Supreme Court;
9 reference to Council, the seminal case, is 335 S.C. 1,
10 1999, and, again, in arguing specifically as the correct
11 legal standard for the qualification of a nonscientific
12 expert.

13 And so, again, with Kromah, I know you haven't had
14 a chance necessarily -- or you can't necessarily recall
15 whether that addresses that specific issue, but that wasn't
16 part of your -- you didn't make a strategic decision not
17 to object on that basis, on an incorrect legal standard for
18 the qualification?

19 A. I don't recall. I just remember I was making the
20 motion and he cut me off and said you're not gonna go down
21 this path.

22 MR. PHILLIPS: No further questions, Your Honor.

23 THE COURT: All right. Thank you.

24 Thank you very much, sir. I appreciate your
25 testimony.

1 THE WITNESS: Thank you, Your Honor.

2 MR. PHILLIPS: Thank you.

3 (Witness excused.)

4 THE COURT: I tell you what. Let's take a -- let's
5 take a ten-minute break and we'll come back and you can
6 call your next witness then.

7 Is that all right with everybody?

8 MR. NEUBAUER: Yes, Your Honor. And I believe the
9 testimony of Michael Routzong will be rather lengthy. I
10 discussed with him the issues last night and it took a
11 few hours for us to go through. I just wanted to give
12 the Court kind of a heads-up.

13 THE COURT: Well, that's why we're gonna take a
14 little break before we start it. I kind of figured
15 that might be the case.

16 (Recess taken at 2:23 PM.)

17 (Back on the record at 2:36 PM.)

18 THE COURT: All right. Is Mr. Neubauer there?

19 MR. NEUBAUER: Yes, Your Honor.

20 THE COURT: Okay. Mr. Neubauer, are you ready
21 to proceed with your next witness, sir?

22 MR. NEUBAUER: Yes, Your Honor.

23 The State would call Mr. Routzong.

24 THE COURT: All right. Mr. Routzong, would you
25 please raise your right hand?

1 (Computer feedback.)

2 THE COURT: I'm getting some bad feedback from
3 somebody.

4 All right. Mr. -- Mr. Rout --

5 MR. NEUBAUER: I believe that Mr. Routzong is
6 logged in on his phone, as well as his computer, and
7 that may be causing a feedback loop.

8 THE COURT: All right. Hold on a second.

9 All right. Let me know if my IT specialist, also
10 known as my law clerk, can fix this.

11 (Pause in proceedings.)

12 THE COURT: Can you hear me, sir?

13 THE WITNESS: Yes, Your Honor.

14 THE COURT: Okay. Great. Can you raise your right
15 hand for me, sir?

16 THE WITNESS: Yes, sir.

17 (Whereupon, Michael Routzong was duly sworn by the
18 Court.)

19 THE COURT: All right. And would you please say
20 and spell your last name for me, sir.

21 THE WITNESS: Michael Routzong, R-O-U-T-Z-O-N-G.

22 THE COURT: Thank you, sir.

23 All right, Mr. Routzong.

24 Your witness, Attorney General.

25 MR. NEUBAUER: Yes, Your Honor. Thank you.

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MICHAEL ROUTZONG,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. NEUBAUER:

Q. Good afternoon, Mr. Routzong. How are you doing
today?

A. Good afternoon, sir.

Q. Just briefly to start with, how long have you been
practicing law, sir?

A. Since 2004, 2005.

Q. And what percentage of that practice is criminal law?

A. All of it.

Q. Yes, sir. And you were ultimately appointed to
represent Mr. Cartwright, correct?

A. Yes, sir.

Q. Do you remember when you were appointed?

A. It would have been -- it would have been shortly after
Mr. Harte was relieved. I'm not sure when. Normally, if
-- I do not work in this office anymore, I work in Sumter,
and I have printed off my notes, but that's one of the
things I didn't go seek out, but I probably should have.
I should have anticipated that, but it would have been
shortly after Mr. Harte was relieved.

Q. Yes, sir. And do you recall how the charges against
Mr. Cartwright arose or how he came to be arrested for

1 this?

2 A. I think they disclosed something to DS -- one of the
3 -- one of the children disclosed something to DSS and I
4 think it -- it kind of started from there, but that was
5 early on. I think that charge probably was dismissed and
6 then there was other disclosures.

7 Q. And ultimately he had one child and two stepchildren
8 accused him of criminal sexual conduct, correct?

9 A. Yes, sir.

10 Q. And did you meet with Mr. Cartwright to discuss the
11 charges against him?

12 A. Yes, sir. I agree with Mr. Cartwright, and that's
13 what my notes reflect, about three to four times, then
14 there was a phone call. That's all I have in my notes,
15 including the computer, and what I can find in my
16 handwritten notes. It says that I met with him on a
17 couple of occasions for several hours is what my notes say.

18 Q. And did you -- during your conversations with him,
19 would you guys have gone over discovery in this case?

20 A. I believe we did, yes, sir.

21 Q. Do you remember really all that -- what was in the
22 discovery file or what the State's evidence was in this
23 case?

24 A. Well, the -- the State's evidence would be the
25 testimony of the children. There was the suicide. They

1 alleged that was -- that was evidence of guilt. There
2 was DNA evidence and there were some pictures that were
3 entered into evidence, but the problem in the case against
4 Mr. Cartwright would have been the testimony of his
5 children.

6 Q. Yes, sir. And briefly regarding those photos, do
7 you remember having an opportunity to review those with
8 Mr. Cartwright prior to the trial?

9 A. I do not. It would have come on a disk and I don't --
10 I don't specifically remember. I'm a little bit surprised
11 that he testified that I didn't because that would be
12 unusual. The evidence, I think, came on a disk. I -- I
13 had the ability to bring my computer and show him all the
14 evidence, that's what I normally would do, but I don't see
15 anything reflected in my notes one way or the other and
16 would be unusual for me not to do that.

17 Q. And in your normal course of practice, you would
18 review the entire discovery file with a client prior to
19 pleaing or going to trial?

20 A. That would be normal, yes, sir.

21 Q. And ultimately he'd been tried prior to your
22 representation and that was a -- declared a mistrial. Was
23 there any talk of a plea negotiation at that point or did
24 you guys focus on a trial strategy for a retrial?

25 A. The only plea offer I -- I saw would have been one

1 given to Barry Thompson, who's another attorney in our --
2 in this office, and I think that was probably prior to
3 Mr. -- Mr. Cartwright's trial with Mr. Cartwright -- I'm
4 sorry, with Mr. Harte. That's the only thing I -- I saw
5 and I don't recall any -- I don't recall -- I don't recall
6 Mr. Cartwright ever wanting to have a plea offer or enter
7 into plea negotiations. I don't think that -- my
8 recollection is that was never -- never in -- in his
9 desires.

10 Q. So during your meetings with Mr. Cartwright, did he --
11 or did you discuss his version of the facts of this case
12 and his theory as to how these charges came about?

13 A. Yes, sir. We discussed, you know, these kinds of
14 cases really come down to a simple question. I think
15 everybody that defends this would agree that if it didn't
16 happen, why are they lying, and that is probably always the
17 theory. If somebody says it happened, there's seldom or
18 frequently not very much evidence forensically, physical
19 evidence, that kind of thing. I mean, there's not usually
20 witnesses, so it always come down to who's lying. Why
21 would they lie.

22 Q. And did Mr. Cartwright develop an opinion of why these
23 witnesses may have been lying?

24 A. Yes, sir. I think that's reflected in the trial
25 strategy. There were a lot of reasons. Yeah, I would have

1 only learned from Mr. Cartwright as to why his children
2 were upset with him, one of which, arguably, was money;
3 one of which was the reporting to the police about a -- a
4 photograph that Mr. Cartwright uncovered on the Internet.
5 He reported to police and subsequently I think he did an
6 interview with a television station if I'm not -- in
7 Augusta, Georgia, I think is what -- where that was at.
8 And then there was an -- an issue of one of the children --
9 I think Mr. Cartwright testified to this a few moments ago,
10 there was an issue of an older man who subsequently --
11 subsequently became his -- his -- his child's husband, but
12 he has to register as a sex offender, I think he went to
13 prison, so there's a host of reasons potentially why his
14 children might be fibbing on Mr. Carter -- Cartwright.
15 Excuse me.

16 Q. And did Mr. Cartwright ever provide you with names of
17 any witnesses who might have been beneficial to him in this
18 case?

19 A. I don't specifically remember that and there's a
20 couple of things I can say about that. I was a little bit
21 surprised to hear the number of names. I don't -- I think
22 I counted maybe six people. I didn't write the names down,
23 but there were probably six people he referenced. I do not
24 recall him saying any of those, and I don't have any notes
25 that I see on any of those people, so I -- I hesitate to

1 agree with him that he told me the names of those people.
2 On the other hand, there may be -- were he to have told me,
3 it looks like if you put his reputation into evidence or
4 you tell people to talk about his reputation, and it looks
5 to me like he probably has some prior criminal convictions
6 that would have been in front of a jury, and I noticed that
7 -- I think one of them, a grand larceny, might have been
8 able to come in any way. I -- I looked at the transcript
9 again. I think the information -- the grand larceny, that
10 definitely would have come in and would have been a good
11 reason to not put his reputation in as evidence and call
12 those kind of witnesses.

13 Q. So the fact that there was that criminal record that
14 could have been brought in, I guess, to oppose a good
15 reputation or good character evidence or witnesses, would
16 that have been a reason for you not to pursue character
17 witnesses?

18 A. To be exact, my testimony is I don't recall
19 specifically, but the fact that he had those in there, only
20 one of which would have been -- I think the other one was
21 a -- I want to be exact. I'll look it up. I think I wrote
22 it down actually. A burglary and a grand larceny and they
23 were in the eighties. The -- the grand larceny probably
24 could have come in at any time, but certainly the burglary
25 was well outside the timeframe permitted by the rule. We

1 may have been asking for trouble and I would -- I would
2 probably tell Mr. Cartwright today if I represented him
3 and we were going to trial, that that would definitely be
4 a danger in calling reputation evidence witnesses.

5 Q. And if Mr. Cartwright had provided you with the names
6 of witnesses, be it character witnesses or other witnesses
7 he wanted you to call, would you have pursued those or at
8 least spoken with those witnesses to see what they would
9 have said or how they could have been useful in this case?

10 A. I certainly would today. I can't really -- it would
11 be -- it would not be accurate for me to testify what I had
12 done nine years ago if I had talked to them. I certainly
13 would -- I would talk to people. I really have my doubts
14 whether I would have put -- I would have put people like
15 that in there. I think Mr. Cartwright did a pretty good
16 job in his -- in his direct examination of explaining to
17 him his commit -- explaining to the jury his commitment to
18 his children, for example, and -- and I think he testified
19 today that he would -- he drove a great distance when he
20 found that one of his children could be in danger of an
21 unfortunate relationship. He drove a great deal of time.
22 I think that came out in his direct examination, if I
23 recall correctly. I just don't -- I think I would probably
24 encourage him not to call any reputation witnesses today,
25 but it would be speculation for me to -- or would not be

1 accurate for me to testify what I would have done nine
2 years ago.

3 Q. And in your normal practice, if you're provided with
4 the names of witnesses, would you speak with them to see
5 what information they have or how they could be beneficial
6 to a case that you're handling?

7 A. I would like -- I'd like to think today I'm very good
8 at investigating cases. I have the benefit of having very
9 good investigators that work with me as I did here in the
10 office in Aiken and if I had anything that needed to be
11 investigated by professional investigators, I certainly had
12 that ability.

13 Q. Now did you and Mr. Cartwright discuss any possible
14 legal defenses that could have been raised at trial?

15 A. Well, as I said, Mr. Cartwright's case, as it is
16 frequently true in a lot of these cases, the defense is
17 trying to -- trying to persuade or entice the jury not to
18 believe the people that are saying these very bad things
19 about Mr. Cartwright. So the answer to the question is the
20 -- the defense is trying to explain to people -- to the
21 jury why these accusers might be lying.

22 Q. And was that ultimately your strategy during this
23 trial?

24 A. Yes, sir.

25 Q. Did you convey that to Mr. Cartwright while you guys

1 were preparing for this trial?

2 A. I dare say I -- I did because I wouldn't have known
3 what the -- what to ask or -- or have a theory as to why
4 they're lying without Mr. Cartwright's help.

5 Q. And you briefly discussed the State's evidence.
6 There's an allegation raised by Mr. Cartwright that you
7 failed to request a Jackson versus Denno hearing to
8 determine whether he voluntarily consented to have a -- a
9 buccal swab performed to obtain his DNA. Did you feel that
10 you needed a Denno hearing for that issue?

11 A. As best as I can recall, sir, that -- that is kind of
12 falling in the -- in the -- in some ways. I know it's kind
13 of a normal course, but -- and I have argued this many
14 times in the -- in the courtroom, that I think anybody --
15 any time the State seeks to get a -- a DNA sample from the
16 defendant that it's appropriate for a Schmerber hearing to
17 be held, and the reason I think that is, it's -- you know,
18 for one thing, it's the law, and -- at least that's the
19 case law, and I think it prevents tampering with evidence.
20 That -- that really is the -- the gravamen of the issue.
21 Could they take somebody's DNA and put it on something
22 because they really believe that they're not -- that that
23 person's guilty and they want to make sure there's DNA on
24 the appropriate objects. I haven't persuaded any -- any
25 court yet to agree with me on that it seems --

1 Q. And --

2 A. -- but in this particular case I don't think that
3 Mr. Cartwright, as he testified earlier, had any -- any
4 qualms about whose DNA was on that and he offered an
5 explanation. He said he --

6 Q. At any point did Mr. Cartwright deny to you that his
7 DNA was on the bedsheet that was obtained?

8 A. I don't recall him ever denying that.

9 Q. Did he ever argue that his semen wasn't on the
10 bedsheets?

11 A. I don't recall him ever arguing that. I think he's
12 been very forthcoming that it was his and he offered us an
13 explanation.

14 Q. So would you have felt a need to request or hire a DNA
15 expert to analyze the bedsheet or the semen for any DNA
16 that was found on the bedsheets?

17 A. At that time I did not, no, sir.

18 Q. And, additionally, if he denied that he -- or he
19 admitted that his DNA was on the sheets, did you feel
20 a need to further investigate SLED and obtain all
21 procedural documents from SLED such as policy, procedure,
22 qualifications, lab bench notes and the overall testing
23 of the semen stain from the bedsheets?

24 A. No, sir, I didn't see any need for that.

25 Q. And, additionally, did you feel there was any need for

1 any expert witnesses to be hired for Mr. Cartwright in this
2 case?

3 A. I'm not aware of any expert that I would have needed.
4 The defense in this case was really based on the things
5 that Mr. Cartwright told me, the -- the theories about why
6 they would be lying.

7 Q. And Mr. Cartwright has alleged you failed to hire
8 an expert witness to conduct an independent review of
9 forensic evidence presented by the State and testify in
10 rebuttal the State's evidence, specifically regarding
11 electronic evidence seized by the police. Do you have any
12 memory of electronic evidence seized by the police and why
13 an expert would have been needed?

14 A. Excuse me. No, that's kind of surprising. I don't --
15 I don't recall -- I don't recall -- I don't recall whether
16 electronic devices were seized.

17 Q. And Mr. Cartwright in his testimony made reference to
18 Nikki and Amanda's, I guess, conduct and behavior on the
19 Internet. I believe it's in regard to a -- a photograph
20 that he believed he found of Nikki. Did you feel any need
21 for an expert witness to analyze the photograph that he's
22 referenced?

23 A. Okay. Now there's a couple of things I can say about
24 that. The first thing probably that's worth noting is
25 whether or not it is, in fact, the people that he thought

1 it was. He went to the police and he went to -- and he
2 spoke to a television station I think it was in Augusta.
3 He caused a -- and I'm not -- I'm not saying that
4 Mr. Cartwright -- I think -- I'm not saying that he did
5 wrong by doing these things. I'm not alleging that at all.
6 I think that it -- it actually goes towards something good
7 to be said about Mr. Cartwright, that he was very careful
8 and very proactive about protecting his kids arguably, but
9 whether it was them on the picture or it's not on the
10 picture, the -- the point would be that was a source of
11 immense embarrassment arguably to the persons that were
12 involved and I dare say it can be said that if it wasn't
13 them on there, then they should be even more irritated,
14 and they -- the testimony was, I believe, that there was --
15 it was not them. It's one thing to be accused correctly.
16 That's sometimes irritating because you got caught. If
17 you get -- if you get accused falsely, I dare say that
18 engenders more -- or could engender even more anger. So I
19 don't really feel like it was necessary to have somebody
20 come and say yes, I know this person and that's them right
21 there.

22 Q. So you didn't feel any need to further pursue the
23 photograph and make a determination of where it came from
24 to use in his defense?

25 A. No, sir. The -- the -- the point is he -- he caused

1 quite a sensation that arguably was embarrassing to the
2 person that he said that was on that photograph.

3 Q. And did you bring this issue up in front of the jury
4 as a possible reason for his child to be upset with him?

5 A. I believe I did. I think I -- I think I addressed
6 that with him and I addressed that in the closing argument,
7 I believe.

8 Q. And he -- Mr. Cartwright has raised issues with
9 one victim, Amanda, being involved in a possible drug
10 investigation. Do you remember speaking with
11 Mr. Cartwright about this?

12 A. I'm pretty sure I would have. I don't have any notes
13 that reflect it. You know, my notes really say some things
14 like I discussed this with the defendant for several hours
15 and, you know -- you know, I have reviewed the transcript
16 and I noticed that -- that Mr. Harte asked about that and I
17 think I addressed it as well. I think that -- I think that
18 could be interesting maybe in the sense of -- of impeaching
19 the witness a little bit because of the drugs, but to
20 actually -- to actually -- I probably did not believe that
21 the State would have made a deal with that person in
22 exchange for her testimony. I don't think she was ever
23 actually charged with anything, one, so I doubt that --
24 that's not how the narcotics folks work. They're not gonna
25 really be interested in Mr. Cartwright's issues, they're

1 gonna be interested more in people that deal with drugs and
2 I know it -- it would not necessarily be confined to the
3 narcotics department, but I -- I just don't think it -- I
4 would find it hard to believe that any deal was struck with
5 any of the police departments in a -- in an effort to -- to
6 -- to ensnare Mr. Cartwright. I just don't think that
7 happened.

8 So I -- I did not investigate that, whether or not
9 there was a deal, I think that's true, but I don't think
10 I would have. I just don't believe that's -- I think it's
11 -- I think it's -- the issue was he actually made the
12 allegation that that person was on drugs and I think she
13 subsequently denied it.

14 Q. And you raised that allegation by Mr. Cartwright to
15 Amanda as far as a possible reason why she could be
16 fabricating a story, correct?

17 A. I think I would have. I should have read my closing
18 arguments a little bit. That would probably have been the
19 way to do that, but I'm pretty sure that's -- that would
20 have been the -- I don't know. That might have been -- I'm
21 not sure. I'd have to look back at the transcript to tell
22 you the truth because that might have been so tenuous I may
23 -- may not have addressed that in the argument. Like I
24 said, if I didn't, I should have no doubt because that
25 would have been a reason certainly to -- or that would have

1 fit our theory that those folks were upset because he was
2 contacting law enforcement at least twice about two
3 different issues.

4 Q. Yes, sir. And you just made reference to a --
5 attempting to impeach witnesses. Do you remember trying
6 to impeach witnesses based on prior testimony?

7 A. I don't recall that at all. That -- I -- I don't
8 recall any issues as far as that goes. I would dare say
9 I did not. To answer your question directly, no, I don't
10 think I did, but I don't recall any issues.

11 In my closing argument, I -- I -- I told the -- the
12 jury that Amanda testified that she was called into the
13 sheriff's office because her ex-boyfriend was involved with
14 drugs. She says it wasn't me, they just wanted to know
15 what I thought, and I went on to say that wasn't reasonable
16 and made an argument to the jury. That's probably the
17 extent of my presentation to the jury.

18 MR. NEUBAUER: I beg the Court's indulgence, Your
19 Honor.

20 BY MR. NEUBAUER:

21 Q. In the trial transcript, the first portion from
22 April 15th and 16th, I draw your attention to page 130 and
23 131. If you could review that to yourself and tell me if
24 that helps refresh your memory regarding --

25 A. This is Mr. -- this is Mr. Cartwright's examination?

1 Q. This is your examination of Ms. Rettig, Amanda Rettig.

2 A. It looks like I asked her, You don't recall that you
3 testified in your prior hearing that you were involved with
4 drugs? I was talking to them about drugs and the things
5 that I knew that was going on with my ex-boyfriend. But
6 you actually testified in the other proceeding that you
7 were involved -- and then the Court -- the Court advises me
8 to follow the rule and -- and refresh her memory with the
9 -- the transcript I think is where we were with that.

10 Q. Yes, sir. And Mr. Cartwright's raised an allegation
11 of failure to prepare by failing to have a copy of the
12 transcript available. Do you remember whether or not you
13 had a copy of the transcript available to impeach
14 witnesses?

15 A. Well, I noticed in my file -- I don't specifically
16 remember now, but I looked in my file and under different
17 people's name, I had a -- for example, I think if I pull
18 out -- if I pull out Amanda -- Amanda's file, among other
19 things that I have in there is a copy -- a partial copy of
20 a transcript from the prior trial. So I dare say based on
21 my -- what I have in the box here and in the various files,
22 I did have a copy of the transcript.

23 Q. So -- so you ultimately did not succeed in impeaching
24 the witnesses -- or may not have succeeded in impeaching
25 the witnesses' testimony with the transcript of the prior

1 trial, you had obtained at a minimum portions of the
2 transcript to use to show contradictory statements,
3 correct?

4 A. It looks like I -- it looks like I at least began to
5 do that. I don't know how successful I was, but at least I
6 -- I began to do that when I cross-examined Amanda Rettig.
7 And I think -- and I looked through the file earlier and I
8 did find a whole transcript from the -- the Harte trial,
9 so probably what I did is I -- when I came to the various
10 people, I made copies of their testimony and put it in the
11 various files and -- and wrote that person's name on it.
12 That appears to be what I did.

13 Q. Yes, sir. And you briefly discussed -- did you have
14 an overall theory or strategy for this case?

15 A. Yes, sir. As succinctly as I could put it, the -- the
16 people that are saying that Mr. Cartwright did these things
17 and why.

18 Q. And you and Mr. Cartwright discussed this prior to
19 trial, correct?

20 A. I -- I don't -- I -- I -- I very much believe we -- we
21 discussed everything. I wouldn't have known what to say
22 but for the fact that I -- I spoke with him.

23 Q. And you ultimately proceeded in trial to use this
24 strategy of knowing why he thought the victim may have a
25 reason to lie or fabricate a story?

1 A. That was the strategy, yes, sir.

2 Q. Now regarding the indictment, Mr. Cartwright's raised
3 issue with failing to move to quash the indictments due to
4 them being vague or overbroad. Did you see an issue with
5 the indictments?

6 A. No, sir. Frankly, if I had been prosecuting this
7 case, I probably would have done it exactly like the State
8 did. Once again, we have a -- a situation here where
9 probably young children are saying that events happened
10 and my experience thus far, and I'm sure the Court and
11 everybody here has experienced it, children don't tend to
12 -- to write things down in a diary, especially young
13 children, so you're dealing with -- with relatively broad
14 timeframes. So she said -- I think a lot of the testimony
15 is this happened when I was five years old, six years old,
16 seven years old, so the State I think wisely based their
17 indictments on various ages. So it would be the birthday
18 -- I think it was the birthday of a child starting, let's
19 say, the fifth year, so -- so now you're five years old, up
20 until your sixth birthday because that's how the children
21 remembered things. They didn't have specific dates, they
22 didn't have -- I don't really think they even had -- a lot
23 of times you can expect children to say things like it
24 happened at Christmas or it happened when I was in school,
25 so you can narrow it down a bit, but in this case they --

1 they said it happened when they were a certain age and I
2 think if I had prosecuted it, I would have done exactly
3 what the State did.

4 Q. And do you remember if the witnesses indicated that
5 it happened only on -- like it was limited to one time
6 throughout a certain age?

7 A. My recollection after reviewing the -- this a little
8 bit, they were -- that was another thing that's probably
9 not plausible, but they said it happened many times,
10 sometimes in the same day, so to address the alibi issue
11 was just one of the -- the problems. I don't -- I don't
12 think -- it is my recollection that Mr. Cartwright never
13 gave me an alibi, an alibi being I was with this person,
14 they had my eyes on -- their eyes on me and I couldn't have
15 done this. I don't recall Mr. Cartwright ever giving me
16 an alibi, nor did I expect him to be able to because they
17 were alleging rather nonspecific dates just that -- that
18 had just occurred during the time period when they were a
19 certain age, so I don't think an alibi would have been
20 possible based on what I -- I recall in this case.

21 Q. And just briefly going back to the indictments, do
22 you remember if each indictment was -- or do you remember
23 the amount of time that each indictment was limited to?

24 A. Some of them -- they're different -- they're
25 different dates, I believe, based on different birthdays,

1 but it's October 17, 2000, to October 16, 2001, so you're
2 encompassing a specific discrete age.

3 Q. So would it be accurate in saying that each in --
4 each indictment was limited to only one year, not a -- not
5 multiple years?

6 A. That's correct. One year.

7 Q. And -- and so based on that and the case law at the
8 time, you did not feel a need to object for the indictments
9 being overbroad or vague?

10 A. Well, the answer to your question is no. You never --
11 one never likes them to be that broad if you're a defense
12 attorney, but I don't think there was an argument to be
13 made that it was overly broad.

14 Q. Yes, sir. And regarding the possible pretrial
15 issues, do you remember stipulating that a witness, Buffy
16 Cartwright, was unavailable to testify at the second trial?

17 A. I do.

18 Q. Do you remember Ms. Cartwright's condition at the time
19 of the second trial?

20 A. I believe she -- she testified at the earlier trial
21 and I think there was a letter that was subsequently
22 stipulated to that she had Stage 4 cancer and she was not
23 doing well at all. Lung cancer.

24 Q. And -- and ultimately you agreed that her prior
25 testimony could be introduced instead of her testifying

1 again. Do you remember why you would have agreed to that?

2 A. I think there were things in there -- there's two --
3 probably two reasons. I don't think it would have done any
4 good to object to it because I think she literally was not
5 available under 804(a)(4). I mean, she was -- the evidence
6 showed that she was seriously ill. She would not have been
7 able to be there and so the judge would have let in her
8 testimony any way. She was cross-examined, so they were
9 under oath, so there's pretty good guarantees that her
10 testimony was -- that -- that the rules of evidence and
11 that -- those issues had been complied with and I didn't
12 have no reason to believe that she would have testified to
13 anything else. I think she would have been consistent with
14 her prior testimony and I think there were some things in
15 there that were helpful. I think there were a lot of
16 things in there that were not helpful, but certainly there
17 were things in there that were helpful.

18 Q. Would that have played into why you chose to not
19 require her to testify again?

20 A. Yes, sir. I think that pretty much sums it up.

21 Q. And you did not move to sequester the witnesses in
22 this case, correct?

23 A. No, sir. I don't recall doing that. I -- I dare say
24 I did not. I think that's in the transcript. I did not do
25 that.

1 Q. And why would you not have moved to sequester the
2 witnesses in this case?

3 A. I don't -- I can tell you probably why. I don't know
4 that I can answer that question specifically, but I think
5 they were -- they'd already been through a trial. I'm
6 pretty sure everybody knew what everybody was gonna testify
7 to. They're -- they're really all discrete testimonies.
8 They're not really testimonies that are connected, I don't
9 think, one to the other. There -- there is a -- kind of
10 a pattern perhaps of some of the allegations. I don't
11 know that I would say they were unique. They might be
12 somewhat unique, but I don't think there was any reason to
13 sequester the -- the witnesses and -- and, frankly, the
14 main witnesses were all victims and I dare say the Court
15 probably would not have sequestered the -- the victims.
16 They have a right to be at the trial.

17 Q. Yes, sir. Now you also did not move to sever the
18 charges from different victims; is that correct?

19 A. That's correct.

20 Q. Do you feel that you could have moved to sequester the
21 victims -- or sequester -- I apologize -- move to sever the
22 charges relating to each victim?

23 A. I absolutely believe I could have moved to do that.

24 Q. Do you know why you chose not to?

25 A. I don't know that I ever -- I, frankly, don't know

1 that I ever considered doing it. If I look back now on why
2 I wouldn't have done it, there are reasons based on the
3 somewhat unique nature of some of these instances to -- to
4 explain to the Court there were -- one can only commit
5 certain kinds of -- I mean, there's only a discrete number
6 of possibilities that a person can commit sexual crimes
7 against somebody else, I guess, there's just a few ways
8 of doing it, but some of them involved specifically issues
9 of maybe laying on the back and -- and just humping the
10 person. I -- I believe that was the word they used.
11 Humping. If somebody commits an -- or if somebody coerces
12 or forces somebody to do oral sex, that's not particularly
13 unique. It is what it is. There's not that many
14 possibilities. I guess the issue I'm -- or the issue I'm
15 getting to, would they have been able to Lyle in some of
16 these as bad acts? I don't know the answer to that.
17 That's a possibility. I don't -- frankly, I do not
18 remember actually considering severing these -- these
19 cases.

20 Q. Yes, sir. And there's a few allegations regarding
21 the selection of the jury in this case and we can start --
22 initially you -- Applicant alleges that you failed to move
23 to quash the jury panel through a Batson motion where the
24 State imposed a statutory -- or only used two statutory
25 strikes and both were used on white females. Do you feel

1 that you wanted or needed to make a Batson charge in this
2 case?

3 A. I did not feel any charge was necessary. I think
4 the -- based on the -- the jury pool, I think it was -- it
5 was a good jury. It's unfortunate they -- that they came
6 back with a guilty verdict. I think Mr. Hayes actually
7 refreshed my memory to a certain degree yesterday. He
8 said one of them -- one of those people had a criminal
9 record I believe he said and he said it would have been
10 likely that we would have struck the other one and I -- I
11 think it was because that person had a connection to law
12 enforcement in -- in I want to say Wagener, South Carolina.
13 So, you know, if that's the case, it's not unreasonable
14 for the State to strike somebody that had even a minor
15 criminal record because they might have a bad impression
16 of the State and I don't see how Mr. Cartwright was harmed
17 if we would have struck the other person anyway because
18 they had a connection to law enforcement.

19 Q. Yes, sir. And there were questions that were asked
20 during voir dire and at multiple times witnesses -- or not
21 witnesses, but potential jurors came and spoke with Judge
22 Early about why, one, the question related to them or how
23 it may affect their ability to proceed on this jury. Do
24 you remember those instances happening?

25 A. Not specifically, no, sir.

1 Q. And --

2 MR. NEUBAUER: I beg the Court's indulgence, Your
3 Honor.

4 BY MR. NEUBAUER:

5 Q. We can look at the first half the trial transcript,
6 page 30, lines 1 through -- actually begins on page 29,
7 line 22 through page 30, line 13. If you could review
8 that to yourself. This is one of the instances that
9 Mr. Cartwright has raised issue with.

10 A. Is this in regard to the fact that the -- the sidebar
11 occurred and there's no record of it?

12 Q. Not this one, sir. This is regarding a juror who knew
13 a member of the public defender's office.

14 A. Oh. Yeah, that -- that was our circuit public
15 defender, Mr. Gibbons, that she knew. I recall that now.

16 Q. And Mr. Cartwright has alleged that you failed to move
17 the Court to conduct follow-up voir dire for -- to find out
18 if the juror could be fair and impartial. Do you recall
19 whether the juror -- potential juror indicated they could
20 be fair and impartial?

21 A. The Court said, Okay. The fact that you know
22 Mr. Gibbons, who happens to work in the public defender's
23 office right now, would that in any way preclude or keep
24 you from being fair and impartial in the trial of the case?
25 The juror said no, sir.

1 Q. And were -- from reading that, do you recall if you
2 were satisfied with that answer?

3 A. I -- frankly, I -- I most likely thought it would be
4 a good thing. It's rare that we get to see people on
5 the jury that -- that actually know folks in the public
6 defender's office and certainly it wouldn't be usually a
7 defendant. So, no, I -- I don't think I would have been
8 shocked at the answer that she gave. I would have -- I
9 think it was perfectly reasonable to accept what she said.

10 Q. Yes, sir. Additionally --

11 MR. NEUBAUER: I beg the Court's indulgence.

12 BY MR. NEUBAUER:

13 Q. One of the allegations is failed -- counsel failed to
14 conduct individual voir dire when the trial court indicated
15 that several jurors approached him regarding similar types
16 of behavior and --

17 MR. NEUBAUER: I beg the Court's indulgence.

18 BY MR. NEUBAUER:

19 Q. This would be, I believe, the first portion of the
20 transcript, page 41.

21 A. I'm looking at it now.

22 Q. Line 9 through 15.

23 A. Yes, sir.

24 Q. Do you remember any of these conversations regarding
25 jurors telling Judge Early that they had -- the previous

1 question was, Do I have any members of the jury panel who
2 have been a victim or subject to similar types of behavior,
3 sexual misconduct or abuse from the hands of someone? Do
4 you remember discussions with potential jurors where they
5 indicated they had been the victim of or were familiar with
6 someone who was the victim of sexual misconduct?

7 THE COURT: Let's hold off one second.

8 Mr. Phillips, is your client still there?

9 MR. PHILLIPS: I'm checking. It says that he's got
10 low bandwidth, and he's on mute, so.

11 Mr. Cartwright?

12 THE COURT: Here, I can -- let's see. Let me see.

13 MR. PHILLIPS: I thought it was gonna pop back up,
14 but it -- it did not.

15 THE COURT: All right. Well, I'm trying to --
16 Monica?

17 All right. I -- I tried to un -- unmute him and my
18 assistant tells me that he's not processing.

19 MR. PHILLIPS: The --

20 THE COURT: It's not us.

21 MR. PHILLIPS: -- low bandwidth symbol is gone.

22 You know, I don't know if it's an issue where they need
23 to log out and log back in or whether they can even hear
24 us. And I believe they're out of the room now.

25 THE COURT: Well, all we can do is wait and see if

1 he pops back up and re-add him to the meeting, but -- I
2 mean, we don't have any numbers to the jail or anything
3 like that, so.

4 MR. NEUBAUER: Yes, Your Honor. And I've spoken
5 with Ms. Jameson. She's indicated that she will reach
6 out to SCDC to see if we can determine what the issue
7 is at this point.

8 THE COURT: All right. Well, then -- then I'm --
9 we'll just be at ease for a minute and see if we can get
10 him back on there, okay, folks?

11 MR. NEUBAUER: Thank you.

12 MR. PHILLIPS: Yes, Your Honor.

13 (Pause in proceedings.)

14 THE COURT: All right. I'm informed that they're
15 on, but there's no video or audio capabilities so we
16 cannot make them a panelist.

17 MS. JAMESON: I will call the institution yet again.
18 I'll update everyone after I get off the phone with them.
19 Thanks. Sorry.

20 THE COURT: Thank you.

21 (Pause in proceedings.)

22 THE COURT: Mr. Cartwright, are you there?

23 Mr. Cartwright?

24 All right. For whatever reason, folks, it won't
25 allow me to make him a panelist. Wait a second though.

1 All right. For some reason -- explain the dynamics
2 here.

3 LAW CLERK: It will not allow me to make them a
4 panelist. Our AA's still trying. I see there's three
5 people. If that doesn't work, a private WebEx link will
6 allow me to just have them come in and out without the
7 making a panelist issue. Sometimes that is easier.

8 (Pause in proceedings.)

9 THE COURT: Yes, sir. Because I want to make sure
10 that you're present, that you can be heard, sir, and that
11 you can hear everything that has transpired, all right,
12 sir?

13 THE APPLICANT: Yes, sir. And I surely appreciate
14 it.

15 THE COURT: Yes, sir.

16 All right. And so, Mr. Attorney General, are you
17 ready to proceed? This -- you were still examining
18 Mr. Rout -- Routzong.

19 MR. NEUBAUER: Yes, Your Honor. And I believe we
20 were discussing issues with voir dire during the jury
21 selection process.

22 THE COURT: Right.

23 BY MR. NEUBAUER:

24 Q. Now I referenced page 41 of the trial transcript,
25 line 9 through 15. Do you recall jurors coming up to

1 speak to Judge Early regarding members -- or being a victim
2 of sexual misconduct or abuse at the hands of someone else?

3 A. I -- I reviewed the transcript and I -- I know exactly
4 what you're referring to, yes, sir.

5 Q. Yes, sir. And did you feel that there was a need to
6 have these conversations conducted on the record?

7 A. I am surprised that it's -- that it's not on the
8 record because normally all of these are conducted right
9 beside the court reporter and I was not aware that she
10 wasn't putting all of this into the record. It's always
11 conducted -- here in Aiken it's always conducted when the
12 judge steps down from the bench, he stands beside the court
13 reporter, the attorneys gather around and we listen to what
14 the person is telling the judge.

15 Q. And do you recall that happening in this case?

16 A. It is a sidebar. Obviously I can't recall
17 specifically every -- each instance, but they always have
18 the same pattern. I am surprised it wasn't on the record.
19 I would have -- I would have thought it was on -- it would
20 have been on the record, but I do know that every time
21 somebody comes up for a sidebar, I leave my seat as the --
22 as the solicitor does, and we go up there and we listen to
23 the conversation with the judge.

24 Q. So you would have been a party to these conversations
25 between potential jurors and Judge Early?

1 A. Yes, sir.

2 Q. And if you knew that these conversations were not a
3 part of the record at that time, would you have requested
4 that they be part of the record?

5 A. Probably not unless I heard something. These
6 conversations are normally things that the -- the -- every
7 -- every judge I've ever been -- done a trial in front of
8 does the same thing. They will ask the jury if there's
9 anything they -- that they don't want to discuss openly,
10 they'll ask them to come forward and the judge will hear
11 them. Normally it will be things like -- it can be
12 anything from I was a victim of a -- of a criminal sexual
13 conduct case, my -- my Uncle Joe did this to me. Of
14 course, we would not probably want somebody like that on
15 the jury and we listen in on that. And it could be things
16 like I was ill, I have a doctor's appointment, and people
17 don't want to discuss their medical situation in public, so
18 they will come up and -- so most of the time I would not
19 see any need to put that, you know -- but I am surprised.
20 I just thought as a matter of course since where we were
21 standing that the -- the court reporter would have placed
22 it in the record. I am surprised about that. I can't
23 really think of any reason that it shouldn't be, but would
24 I have -- would I have objected had I known? Probably not.
25 Q. And if anything that was said was troubling or

1 something you thought was relevant to this case or that
2 you, I guess, felt strongly needed to be on the record,
3 would you have made that request at the time?

4 A. It has not happened to me yet, but I can -- I can
5 imagine there would be situations where I would -- I would
6 -- you know, if you really had a situation where you were
7 worried about the judge excusing somebody -- this has not
8 happened, but if you were worried about the judge excusing
9 somebody because they were a certain color, you know, if
10 everybody that came up there was whatever color it is and
11 the judge kept excusing those people, but kept other people
12 that had a similar problem, then you would have a -- you
13 might have concerns. That has never happened to me yet. I
14 don't anticipate it happening.

15 Q. Yes, sir. And now I'd like to draw your attention
16 to page 48. We're still in the jury selection process.
17 Juror Number 94, Susanna Hopkins (ph.) was called -- the
18 State requested she be presented and you moved to strike
19 her stating there would be a strike for cause, she has a
20 relative that was a victim as the court knows. Do you
21 recall this incident?

22 A. I don't recall, but I've reviewed the transcript. I
23 know Mr. Hayes and I talked about this. I -- I think we
24 had not exhausted all of our strikes. We were hoping -- I
25 suppose the -- the issue is why would you ask to be struck

1 for cause if you haven't exhausted your strikes yet, so I
2 guess we were trying to save the strike in case we needed
3 it. I think we -- I think we struck nine people. We would
4 have had one more strike.

5 Q. So you ultimately didn't use all your strikes in this
6 case?

7 A. That's correct.

8 Q. And did you feel that there was a need -- you
9 indicated she had a relative that was a victim. Did you
10 feel that there was a need to have her conversation about
11 her relative's abuse be put on the record?

12 A. As I said, I didn't know that it wasn't being put in
13 the record. If it happened to me today, I probably --
14 unless there was something very unusual, I probably would
15 not -- I would probably not ask the Court to put it in the
16 record. I -- I have the opportunity to listen to what's
17 going on and I've never -- in the trials that I've done, I
18 haven't had reason to -- to worry or -- or object to or ask
19 the Court to make a record of something. Most of them I --
20 I would believe are already on the record.

21 Q. And now we'll move to Judge Early's opening
22 instructions to the jury. One of Mr. Cartwright's
23 allegations is you failed to object to the instruction to
24 the jury that -- words tantamount to a search for the
25 truth, and that occurred on page 57 from line 12 through

1 line -- I believe that's the correct spot. I apologize.
2 I believe that to be the wrong location.

3 MR. NEUBAUER: I beg the Court's indulgence, Your
4 Honor.

5 THE COURT: Sure.

6 BY MR. NEUBAUER:

7 Q. All right. This would be page 59, line 6 through
8 page 60, line 1. Specifically they drew issue with lines
9 18 on page 59 through line 1 on page 6 {sic}. Do you
10 recall what the context of this instruction was?

11 A. The context would have been just the judge's opening
12 remarks to the jury. I don't see specifically where it
13 says he's instructing them to search for the truth. I said
14 -- I see where he says a verdict that speaks the truth.

15 Q. And in regard to references to the truth, do you see
16 exactly what Judge Early was stating?

17 A. It's -- I'm gonna put -- to answer your question, I
18 would answer it like this. I think it's pretty clear in
19 all of his remarks that he says he -- for example, I'm the
20 -- the judge of the law. He tells them that they're the
21 judge of the facts. He tells them that the burden of proof
22 is on the State. I think he's probably -- I am not a Latin
23 scholar, but I think he's kind of incapsulating the meaning
24 of a verdict, it means true saying or true statement. I
25 think there's nothing objectionable that -- I -- I don't

1 think there's anything I can see there that I would have
2 objected to or should I have objected to.

3 Q. Did you feel at any point that those references to
4 the truth or you determine who's telling the truth or the
5 believability of witnesses, did you feel that that shifted
6 the State's burden or in any way led the jury to believe
7 that they did not have to find that the State prove their
8 case beyond a reasonable doubt?

9 A. That's a dangerous -- that's dangerous territory, but
10 I don't think the line was crossed here. I mean, you can
11 only ask people to find and determine -- to determine the
12 facts; that the English language requires us, if we're
13 gonna speak English, to use certain words if we're trying
14 to convey a certain meaning. The search for the truth is
15 one of those that possibly could invite somebody to fill in
16 the gaps. I -- I certainly think the most appropriate way
17 of conveying it is determine whether or not the State has
18 proven their case beyond a reasonable doubt. I don't know
19 -- if it is objectionable, I -- I -- I would be surprised
20 if it swayed anybody, if that -- if that fact swayed
21 anybody.

22 Q. And just to reiterate, you didn't feel that shifted
23 the State's burden of proof, that particular language?

24 A. I really don't see how -- how it -- as I said, you
25 know, you can only try to express it in certain ways, and

1 there's probably a preferred way, but that doesn't mean
2 everything's -- knowing it's the totality sways the jury
3 one way or the other. So I would have to say no, I don't
4 -- I don't think this by itself swayed the jury.

5 Q. And similarly I'll draw your attention to page 57,
6 lines 2 through 11. At that point did Judge Early inform
7 the jury that the State had the burden of proof -- proving
8 this case beyond a reasonable doubt?

9 A. Yes, it does.

10 Q. And then further, he goes on in the next paragraph
11 from line 12 through line 23, and what exactly do you
12 believe Judge Early is getting at with that paragraph?

13 A. It appears that he -- he reiterated that the State
14 has the burden of proof and that he's getting ready to
15 talk about how -- he's giving them a roadmap basically of
16 how the trial's gonna go. He talks about his opening
17 statements, he talks about the solicitor's opening
18 statements. I think we go in there and he -- somewhere
19 in there he'll say that their opening statements are not
20 evidence, they're the lawyers trying to explain to the jury
21 the things that they believe are relevant and what to look
22 for.

23 Q. And one of Mr. Cartwright's allegations directly deals
24 with line 18 through line 22, specifically 21 and 22. When
25 Judge Early indicated what they intend to prove, do you

1 feel that this portrayed to the jury that the defendant had
2 to prove anything or was trying to prove anything in this
3 case?

4 A. I understand -- I understand -- I understand what's
5 being alleged, but the answer to your question is no. What
6 we have here -- as I said, you're constrained by language
7 to -- to explain to -- to people that are not familiar
8 with it or even if they are familiar with how court goes,
9 you're telling them basically the -- the solicitor hopes to
10 prove that the allegations are true and the defense hopes
11 to prove not only that they're not true, but that in our --
12 in this particular case that the -- the evidence that
13 Mr. Cartwright put forward is true. So, of course, we're
14 both trying to say -- we're both saying that -- I am saying
15 that Mr. Cartwright is saying true things, the State is
16 saying their -- their witnesses are saying true things, so
17 we're both trying to prove to the jury that -- that each
18 side is saying true things. I mean, I understand that the
19 defense doesn't have to -- we constantly or frequently say
20 to each other that the defense doesn't have to prove
21 anything, but I doubt that that's really true. If you have
22 allegations on one side that -- that stand alone, you --
23 you want to certainly disprove those by proving that the
24 witnesses or the evidence that you're putting on is true as
25 opposed to the State's case, which is untrue.

1 Q. Okay. And you, again, did not feel that any of those
2 comments from Judge Early gave any indication to the jury
3 that the State did not have to prove Mr. Cartwright's guilt
4 beyond a reasonable doubt?

5 A. I do not.

6 Q. If you felt that way, would you have objected?

7 A. If I felt that way and I -- that would mean I
8 recognized it as being objectionable. I certainly am
9 capable and would have objected.

10 Q. Have you -- throughout your legal practice, have you
11 ever had to object to a judge's instruction to the jury
12 either during opening or closing?

13 A. The answer is yes, I have had reasons to object. I
14 don't recall so much about -- I can't really recall
15 anything about opening statements, but sometimes in closing
16 statements, yes.

17 Q. And you have objected to those instances in the past,
18 correct?

19 A. That's correct.

20 Q. So it -- would it be safe to say that it did not occur
21 to you that this was an objectionable statement from Judge
22 Early?

23 A. I don't think it's objectionable.

24 Q. All right. Now next, one of Mr. Cartwright's
25 allegations regards your opening when you state, and I'm

1 paraphrasing, I will find the exact thought, if these
2 witnesses are telling the truth, then Mr. Cartwright can't
3 be innocent, but if -- if these witnesses aren't telling
4 the truth, then Mr. Cartwright is innocent. Do you
5 remember this argument?

6 A. I reviewed it in the -- in the transcript, so I am
7 familiar with it.

8 Q. And I would draw your attention to page 68, para --
9 line 19 through page 69, line 8, specifically the language
10 occurs on 22 through 25. Do you remember exactly what you
11 were attempting to convey with that remark?

12 A. Yes, sir. When -- when somebody thinks about -- when
13 you're -- when someone thinks about what it means to
14 presume somebody's innocent and they have to stay that way
15 during the whole trial, how do you convey that to the jury,
16 and the way I chose to do it and have done it many times is
17 explain to the jury that that really means that you have to
18 presume that the witnesses and in this case that are saying
19 Mr. Cartwright committed criminal sexual conduct against
20 his children, those witnesses that the State presents are
21 either mistaken or they're lying because if you presume
22 somebody's in -- innocent and you -- and the -- and the
23 postulation or the hypothesis is Mr. Cartwright is guilty
24 of criminal sexual conduct because three people say he is,
25 so that's -- so they're saying that that's the case, well,

1 if you presume that somebody's innocent of those, you have
2 to presume that that's not the case, and I tried to say --
3 the way I tried to explain that to the jury is A, these
4 witnesses are either lying or they're -- they're mistaken
5 and that's a presumption that you have to carry all the way
6 back to the jury room until you begin deliberations. And,
7 of course, you know, obviously the logical result is well,
8 if they're telling the truth, then -- then Mr. Cartwright
9 is guilty, but, you know, if he -- this is just a logical
10 discussion. I mean, this is -- if he's not guilty -- if
11 you don't believe those people after deliberating about it,
12 then he's not guilty.

13 Q. And --

14 A. Sometimes attorneys will -- to establish credibility
15 with the jury will say things like hey, you know, if you --
16 if you find that he's -- you believe the witnesses and the
17 State's proven their case beyond a reasonable doubt, you
18 should find him guilty. I've heard that in trials before.
19 I don't normally do that, that was not my intention here,
20 but sometimes it's a strategy adopted by defense attorneys
21 to establish credibility with the jury.

22 Q. And ultimately the State turned and used that
23 comment in their closing -- I apologize -- indicating as
24 Mr. Routzong said in his opening, if you believe the
25 victims, then the Applicant --

1 THE COURT: What page is that?

2 MR. NEUBAUER: I apologize. I beg the Court's
3 indulgence.

4 Your Honor, that would be the second portion of the
5 trial transcript on page 197.

6 THE COURT: Thank you.

7 MR. NEUBAUER: Line 19 through 23.

8 THE COURT: All right. Thank you.

9 MR. NEUBAUER: Sorry. 19 and 20.

10 BY MR. NEUBAUER:

11 Q. First, despite the State using the same logic in
12 their closing, did you feel the -- or do you still feel
13 that your comments in opening, the point that you were
14 trying to convey, was proper for this case?

15 A. Yes. The answer to your question is yes. And as I
16 keep saying -- as I keep saying or trying to indicate,
17 that is simply true. That's always going to be true.
18 it's -- that's not what shifted any -- that didn't shift
19 the burden, it did not -- my remarks -- I -- I don't
20 think my remarks that were used by the State swayed the
21 jury. The jury understands -- that's why we picked them.
22 They understand that if somebody -- if you believe these
23 witnesses, then you should find them guilty, that is not a
24 revelation to anybody, and it certainly wouldn't be -- it
25 wouldn't be a revelation commun -- communicated by me for

1 the first time to the -- the State or the solicitors. If
2 you believe their witnesses, they'll be found guilty.

3 Q. And did you see any issue with Solicitor Molony using
4 that same logic or argument or even your quote in his
5 closing?

6 A. No, sir. Frankly, I always do that myself,
7 particularly in opening statements. I rarely get to close
8 last, but usually in opening statements, I will seize on
9 something the State says that -- that I can use in my
10 opening. I look for it and I do that myself. They're
11 simply doing the same thing, I guess, in this case to me.
12 I -- I don't -- I think it's a -- I don't see any problem
13 with it.

14 Q. Now jumping to Solicitor Molony's opening statement,
15 one of the allegations was failure to object to the
16 State's opening where they invited the jury to utilize
17 the indi -- the indictments in their deliberations.
18 That's specifically on page 64, line 8 through 20. More
19 specifically, line 13 through 20. I'll give you an
20 opportunity to review that.

21 Do you -- did you feel that it was objectionable for
22 Solicitor Molony to reference the indictments in the way
23 that he did?

24 A. That is not good. I -- I -- I don't believe that is
25 good. And the indictments are not evidence, they shouldn't

1 be considered as evidence by the jury. I don't think
2 that's good in any way, so I think I could have objected
3 to that, yes, sir.

4 Q. Have you in the past objected to opening statements
5 by a solicitor?

6 A. I can't recall opening statements. Closing
7 statements, frequently, but -- well, not frequently, but
8 it's happened. But I can't recall anything in terms of
9 opening statements.

10 Q. And at the time if you thought that was objectionable,
11 would you have objected?

12 A. Probably. If I thought it was objectionable, I would
13 have objected to it.

14 MR. NEUBAUER: I beg the Court's indulgence, Your
15 Honor.

16 BY MR. NEUBAUER:

17 Q. And if you'll look at page 25 of the first part of
18 the trial transcripts, lines 19 through 22, Judge Early
19 indicates that the indictments are not evidence in this
20 case. Did you feel that Solicitor Molony's reference to
21 the indictments and the dates that are listed on them led
22 the jury to believe that they could use those as evidence?

23 A. I don't have any reason to believe that at all.

24 Q. Okay. Now we have a handful of allegations regarding
25 your cross-examination and failure to object during the

1 State's case in chief. First, we've previously discussed
2 you attempting to impeach the State's witnesses based on
3 their prior inconsistent statements. Do you have an oppor
4 -- did you have an opportunity to review the transcript of
5 the first trial before this trial began?

6 A. I evidently did because I separated it out in the --
7 in the files. I have one for Nikki, one for Amanda. There
8 should be another one in there. And I -- I had -- I stuck
9 in Brandi, I guess it is. I stuck in there -- at least in
10 Amanda's, I stuck in there partial copies, and in Nikki's
11 I stuck it in there as well. I stuck in partial portions
12 that referred to those particular witnesses from the prior
13 trial.

14 Q. And you ultimately attempted to impeach Amanda
15 Rettig's testimony based on her prior statements, correct?

16 A. I think there was a brief -- there was a brief attempt
17 where she said something slightly different, I think. I
18 don't know how successful I was, but I think there was an
19 attempt. I think I said something like you previously
20 testified.

21 Q. Yes. And that's on page 130 of the transcript,
22 line 24 through page 131, line 15. Do you recall a
23 discussion you had with Judge Early about your attempt to
24 use the prior testimony?

25 A. I don't recall that.

1 Q. And I'd have you draw your attention to page 131,
2 line 1 through 15.

3 A. Oh, yes. Okay. Now I do recall, yes. I attempted
4 to impeach her with a prior statement. I did not follow
5 the rule by showing her -- allowing her to review and
6 Judge Early correctly told me to follow the rules.

7 Q. So it wouldn't be a misstatement to say that you did
8 not have specific pages and lines marked to impeach her
9 testimony with, correct?

10 A. That's what I told the Court. I evidently picked up
11 the -- I -- I noticed in one of them I had marked in yellow
12 lines things I wanted to -- so I would -- apparently I told
13 the Court that I evidently picked up the wrong one because
14 it wasn't marked the way I thought it was or else -- else I
15 didn't mark it at all. It looks like I -- I said I might
16 have marked it on the other transcript, that -- that's what
17 I told the Court, and Judge Early says well, we need to
18 move along now, and I said yes, sir.

19 Q. And then looking on that same page, line 17 through
20 the following page, 132, line 13, you -- despite not using
21 the transcript, you did -- or did you attempt to get the
22 same testimony out of Ms. Rettig during the course of the
23 trial?

24 A. It looks like I kind of went there. I don't know how
25 successful I was in actually impeaching her with that. I

1 -- I want to say -- really I wonder -- it does make a
2 difference, I think, perhaps in terms of, you know,
3 another instance of when -- another instance maybe that
4 we could show that somebody was being inconsistent, but
5 the more important, I think, issue was that Mr. Cartwright
6 was the genesis of her contact with law enforcement giving
7 her a reason to be upset with him.

8 Q. And do you feel that you were still able to convey
9 the -- that point, that -- the allegations about
10 Mr. Cartwright only came about because she had that
11 involvement with law enforcement?

12 A. My recollection is that was -- that part of it was
13 successful, yes, sir.

14 Q. And do you think that using the prior transcript to
15 impeach her would have helped convey that message more
16 thoroughly?

17 A. It doesn't look to me like I -- I utilized it very
18 well, frankly, but, like I said, my testimony here today,
19 I've been asked many questions and I -- some things I don't
20 recall. Of course, this is nine years ago or eight years
21 ago. Almost nine. I don't recall some things. It
22 wouldn't -- it wouldn't be particularly surprising if
23 somebody was unable to recall what they said in a prior
24 trial. Now I -- I realize and I will concede that if you
25 -- if you got your story straight, it shouldn't change too

1 much, so a lot of times it's just the -- the details. I
2 will point out in addition that I think the important
3 issue was getting across to the jury, as I said, that
4 Mr. Cartwright was concerned about his daughter being on
5 drugs or being involved with somebody that had -- that had
6 drugs, called the police, and that was the genesis of --
7 of that young lady's problems and her encounter with the
8 police.

9 Q. Okay. And something -- another allegation,
10 Mr. Cartwright alleges you failed to object under Rule 401
11 and 403 to the testimony of Kathy Autry. That's on
12 page 81, line 17 through 22. Do you recall this
13 interaction between Solicitor Molony and Ms. Autry?

14 A. Can you repeat the lines, please, sir?

15 Q. Yes, sir. It will be lines 17 through 21.

16 A. I do recall this.

17 Q. And did you feel that that line of questioning was
18 objectionable as prejudicial or not relevant?

19 A. No, I -- frankly, if I had been Mr. -- Mr. Molony --
20 I think if I had been Mr. Molony and I was prosecuting this
21 case, I would be -- I would be pleased to present testimony
22 to the jury that the person would rather be doing something
23 else than testifying as they said, but it's something that
24 needs to be done. That -- from the State's point of view,
25 I wouldn't want to get something like that in. It was --

1 you know, it's always a little bit suspect if somebody
2 really, really, really, really wants to testify about
3 something. That -- that sounds like they have an ax to
4 grind. Mr. Molony, I think, elicited -- was trying to
5 elicit testimony that's not really particularly
6 comfortable, telling all this stuff to this -- these --
7 these juries -- this jury -- the jury, the petit jury, and
8 -- and her response simply is I know I'd rather be doing
9 something else at home with the children specifically is
10 what she said. I don't find that to be objectionable. I
11 think -- I think that's a good trial technique. You're
12 just -- you're telling the jury this person doesn't have
13 an ax to grind, they're -- now from my point of view at
14 that time -- this is easy for me to diagnose right now. I
15 think at that time I -- I -- it just didn't occur to me to
16 object to it. I just -- it doesn't strike me as anything
17 objectionable.

18 Q. Yes, sir. And if you'd seen it as objectionable, if
19 you thought that it wasn't relevant at all to her -- well,
20 first, do you feel that it was relevant to her testimony to
21 indicate that she would rather not be there, but she was
22 doing what she felt needed to be done?

23 A. As I said, it was -- from the State's point of view
24 and the jury's point of view -- from the defense point of
25 view, it's probably not helpful because it shows that she

1 doesn't have an ax to grind, but I would -- I would argue
2 it's probably relevant to their point of view to show that
3 I'm not -- I'm not here trying to -- to grind -- or bury a
4 hatchet in Mr. Cartwright, it's -- I'd rather be doing
5 something else, but I had to be here because it was the
6 right thing to do. That's a message I would think that's
7 hurtful to the defense. It's not objectionable. It's
8 relevant to the State's case.

9 Q. Did you think that it was unduly prejudicial?

10 A. The answer is no. It's prejudicial, but it's not
11 unfairly prejudicial.

12 Q. So you think that if you'd objected under 403 it would
13 have passed based on the balancing test?

14 A. I think it would. Yes, sir.

15 Q. Now we'll jump -- next there's an allegation you
16 failed to object to bolstering testimony from Melinda
17 Lively. This would be first on page 94, lines 21 and 22,
18 and then next on page 95, line 20 through page 96, line 3.
19 Do you recall the first comments from Solicitor Molony on
20 page 94?

21 A. That -- did you hear Kathy Autry testify is probably
22 the relevant portion.

23 Q. And then on the following page, line 23 specifically
24 through line 24, Ms. Lively testified I was scared for our
25 lives, I was threatened by their father as Kathy stated.

1 The following lines, line 25 and then line 1 of page 96,
2 did you feel a need to object after Solicitor Molony
3 informed Ms. Lively I need you to testify, don't tell me
4 what Kathy said, you tell me why you didn't call the
5 police?

6 A. No, sir. That -- that seems to have fixed it I would
7 think.

8 Q. So before you had an opportunity to object, Solicitor
9 Molony corrected the, I guess, supposed bolstering
10 testimony?

11 A. Yes, sir. That's probably -- as he corrected it, it
12 probably -- if there -- I doubt that there was much impact
13 on the jury one way or the other if I'm -- if I'm -- from
14 the testimony as Kathy stated. It probably wasn't much
15 impact on the jury one way or the other, but if there was
16 Mr. Molony correcting it would be more powerful than my
17 objection arguably.

18 Q. Well, Mr. Cartwright's raised another allegation of
19 failure to object to Mr. Molony's redirect of Melinda
20 Lively. It's on page 103, line 16 through 19. First,
21 let me draw your attention to your cross-examination on
22 page 101, lines 1 to 21. If you could review that and, I
23 guess, inform the Court what exactly you were getting at
24 with that line of questioning?

25 A. Evidently what I was getting at there was I was asking

1 Ms. Lively about a delay apparently -- an apparent delay in
2 alleging that the 14-year-old -- their 14-year-old daughter
3 had been a victim of sexual abuse until I think they had --
4 or, no, Mr. -- Mr. Cartwright had filed a -- in the -- in
5 the Superior Court of Floyd County, Georgia -- I may have
6 to go back a little bit farther for the context. Oh, this
7 is when Mr. Cartwright -- reading from the transcript, you
8 learned -- Mr. Cartwright learned that you had been
9 permitting his oldest daughter, 14 years old, to engage in
10 a sexual relationship with a 23-year-old man. Do you
11 remember that allegation in this complaint? And the
12 answer, I remember him making allegations, but we never
13 went in front of a judge in a court. And you don't deny
14 that was filed December 1st of '99 in Aiken County, South
15 Carolina? She did not deny, the answer was no. Six days
16 later, the Superior Court of Floyd County, Georgia, you
17 don't deny that you filed a civil action or a citation for
18 contempt? I don't remember. The answer is, I don't
19 remember. I don't deny.

20 And this is six days after he filed his complaint, so
21 apparently she never made an allegation against him until
22 he filed the complaint. So it sounds like where I was
23 going with that is her actions were out of revenge.

24 Q. And, specifically, one question is, And she first told
25 you regarding the sexual abuse by Mr. Cartwright in '99?

1 That's line 18 and 19. Do you feel that -- do you feel
2 that Solicitor's Molony's question on page 103, line 16
3 through 18, in '99 -- well, previous to '99, had you
4 learned that your daughter had been abused by the
5 defendant, did you feel that was outside the scope of your
6 cross-examination?

7 A. Probably not. If I look back on my cross-examination,
8 I -- I -- I asked her specifically -- that was the context
9 around -- I certainly was talking about 1999 when she
10 filed a complaint and that apparently was the first time
11 officially that Kathy -- Casey -- Kathy and Michelle
12 Cartwright, your 14-year-old daughter, had been the victim
13 of abuse, so I -- I pretty clearly talked about that in my
14 -- in my cross, so I don't think it was outside of the
15 scope of my cross-examination.

16 Q. Okay. Next we are jumping to the testimony of Amanda
17 Rettig, an allegation of failure to move to strike hearsay
18 testimony from Ms. Rettig.

19 MR. NEUBAUER: I beg the Court's indulgence. I'm
20 attempting to find the specific remark.

21 THE COURT: Yes, sir.

22 BY MR. NEUBAUER:

23 Q. This would be on page 110, line -- just for context
24 starts talking about her recanting to the solicitor,
25 specifically going for a meeting at the courthouse with

1 the solicitor. That would be on line 19. On line 23 of
2 page 110, Solicitor Molony asked what happened on the way
3 to the meeting. Ms. Rettig responded on the way there my
4 mom told me to lie. You objected as leading, the Court
5 sustained this objection. Did you feel a need at that
6 point to move to strike the statement by Ms. Rettig?

7 A. I actually did not consider that although I think it
8 has to be said that at that point it's already in front of
9 the jury, but I -- the answer to your question is no, I did
10 not feel the need.

11 Q. And you could have moved to strike that, but you chose
12 not to. Again, why did you feel the reason to not -- or
13 feel the -- why did you not feel the need to move to strike
14 that testimony?

15 A. It's hard to say why I didn't feel the need. I can
16 say as -- as I'm reviewing it now, it's already in front
17 of the jury. I think -- you know, those are one of those
18 things that you can tell people -- I mean, the judge can
19 tell -- order that that be stricken from the record, but
20 it's not stricken from the minds of the people that heard
21 it. That would be the jury.

22 Q. And a similar allegation is raised regarding Amanda
23 Rettig's testimony. This would be on page 115. Solicitor
24 Molony asked a line of questioning. This humping
25 (inaudible) act that you referred to earlier in the morning

1 time, did that continue when you were 13, 14? At any
2 point, 13 or 14, did he have you perform oral sex on him?
3 And you object as they're all leading questions and that
4 objection was sustained. Again, you did not move to strike
5 the testimony. Why, again, did you feel -- not feel the
6 need to strike?

7 A. I think I should have. I think that's certainly a
8 -- the appropriate thing to do. It would have been
9 appropriate in this instance. On the other hand, the
10 jury's already heard it. I have my doubts whether it's
11 stricken from their minds, so I -- I doubt very much that
12 it had any -- asking the Court to strike that would have
13 had any positive impact on the jury.

14 Q. And if you'd moved to strike that testimony, do you
15 feel that that would have made a difference as far as the
16 jury was concerned regarding that testimony?

17 A. I can't know for sure, but I doubt it.

18 Q. Thank you.

19 A. Yes, sir.

20 Q. In addition -- we'll jump few pages forward. We're
21 still in the testimony of Ms. Rettig. She's testifying
22 about an incident where Mr. Cartwright, I guess, coerced or
23 threatened her to perform oral sex on him. On page 119,
24 line 8 and 9, you interject during her testimony and say
25 Your Honor, I'm having a real hard time hearing her

1 testimony. Did you feel that there was an issue with you
2 requesting her to speak up or that you may have been
3 bolstering or any way benefiting her while testifying?

4 A. I fail to see how I can listen to what's -- the
5 testimony is if I -- and I -- if I can't hear it, I fail to
6 see how I could possibly do anything else. It's much more
7 important that I hear the testimony and certainly for all I
8 know the jury may have heard the testimony and if they hear
9 it twice, so be it, but I've got to hear it. I know that
10 for sure.

11 Q. And --

12 A. So the answer to your question is no, I don't think
13 there's anything wrong with asking the jury -- the witness
14 to speak up.

15 Q. Do you feel it's reasonable to have made that request
16 or at least make the Court aware of your inability to hear
17 the testimony?

18 A. Absolutely reasonable.

19 Q. Okay. Now the next allegation regards the testimony
20 of -- I apologize for getting around to the page here.

21 This would be the testimony of the DSS agent, Ms. --

22 MR. NEUBAUER: I apologize, Your Honor. I beg the
23 Court's indulgence.

24 THE COURT: Yes, sir.

25 BY MR. NEUBAUER:

1 Q. This would be Michelle Prince. So in the testimony
2 of Michelle Prince, DSA -- or DSS agent, this is on
3 page 138, line 12 and 13, Solicitor Molony asked explain
4 how DSS becomes involved in these cases and her response,
5 lines 15 through 17, indicates somebody calls to report
6 and makes a complaint and if it meets the legal statute
7 in South Carolina, we take a report and go interview. Did
8 you feel that you should have objected to this comment as
9 it's lowering the State's burden of establishing that
10 Mr. Cartwright had committed these crimes?

11 A. No, sir. I think it's pretty clear this is not a
12 question specifically about Mr. Cartwright's case, it's a
13 -- it's a question directed to how does DSS become involved
14 in any case. So I don't see how that could be bolstering
15 or supporting anything regarding Mr. Cartwright. I think
16 it's simply a person trying to answer the question how
17 does DSS get involved in the case. Well, somebody makes
18 a complaint. So one could imagine that somebody could
19 complain to DSS that their neighbor's children eat too much
20 pizza. Well, if -- if DSS -- you know, for all we know the
21 -- the neighbor is against high a carbohydrate diet, so the
22 DSS agent would receive the complaint and then probably say
23 well, is this anything that I'm required to worry about and
24 they would probably conclude no. That's simply a -- a --
25 she's simply trying to answer the question and communicate

1 to the jury that DSS gets complaints, they -- they look and
2 see if it's anything they should be worried about and then
3 if it is, they -- they investigate.

4 Q. So would -- based on the fact that Ms. Prince stated
5 that -- and if it meets the legal statute, do you feel that
6 that particular language indicated that she had already
7 made the determination that Mr. Cartwright had committed a
8 crime?

9 A. No, sir. As I -- as I said, I think this was not in
10 reference only to Mr. Cartwright, it's just generally
11 speaking, so I -- I think that would be a very attenuated
12 connection to only Mr. Cartwright's case.

13 Q. And do you think that that language would have led the
14 jury to believe that Mr. Cartwright had committed a crime
15 just because DSS began investigating?

16 A. I doubt it. I -- I think -- I think anybody that when
17 you read it or when you listen to it, you know that that's
18 not what she's saying. She's simply saying we're -- we're
19 tasked to investigate, and there is. I think Title 63 is
20 chock full of statutes that refer to children and -- and
21 the things that DSS is supposed to look at and what they're
22 required to investigate and so on and so forth, and I think
23 that's simply what she was trying to say.

24 Q. Yes, sir. Further in the testimony of Ms. Prince,
25 on the same page, line 22 through 139, page -- page 139,

1 line 2, Ms. Prince is asked to explain to the jury how
2 she became involved in this case. She then indicates
3 that she received a call from her intake supervisor
4 saying that there was a report of sexual abuse concerning
5 Amanda Rettig and Herald Cartwright. Mr. Cartwright has
6 alleged that this -- you should have objected as this
7 comment was hearsay beyond the scope of the time and place,
8 bolstering and double hearsay. What is your response to
9 that allegation for those grounds that you should have
10 objected on?

11 A. That's page 139?

12 Q. 138, line 22 through 139, line 2.

13 A. My first reaction is it's probably not hearsay
14 because it's not -- it's not -- it's not for the truth of
15 the matter asserted, it's -- it's actually for the reason
16 how the DSS folks got involved in this case. So I don't
17 think it's hearsay. It's -- it's really just trying to
18 answer the question how they got involved. And anyway
19 they're not really citing what the intake supervisor said.
20 I guess in a way they are, but it's not -- certainly I
21 doubt it's for the truth of the matter asserted.

22 Q. Do you feel that that comment was bolstering the
23 allegations of the -- of Amanda Rettig in this case?

24 A. I -- I don't really see how it is. It's -- I mean,
25 if -- if you -- if it's okay to ask the question, you --

1 if it's a -- if the question is how did you get involved,
2 I think you have to answer it, but I think it's
3 satisfactory to say I got a call. It wouldn't be -- it
4 wouldn't be satisfactory to say I just came to the
5 realization somehow. You have to say well, we received a
6 -- a complaint about criminal sexual conduct. That falls
7 within our purview.

8 THE COURT: How much more do you got?

9 MR. NEUBAUER: Your Honor, we're just going through
10 the allegations. I have 1, 2, 3, 4, 5, 6 --

11 THE COURT: All right. We're breaking for the day.

12 MR. NEUBAUER: Yes, sir. I apologize.

13 THE COURT: No, that's all right. Listen. This
14 is a very important case. It's a case that Mr. Phillips
15 has a -- a lot of different matters for you to respond
16 to and he's gonna have I'm sure a very -- quite frankly,
17 I -- I would anticipate a lengthy cross-examination of
18 your witness and what I want to do is I want to give
19 everybody time to present their case and we're just not
20 gonna be able to continue. It's 5:11 and we've been
21 going strong except for a few technical breaks since
22 11:30 this morning.

23 MR. NEUBAUER: Yes, Your Honor.

24 THE COURT: So what I'm gonna do is I'm gonna have
25 you, sir, get together with Mr. Phillips, with the

1 witness, and you-all are gonna have to come to a time
2 where we can reconvene this matter because we can't
3 go for another hour and a half tonight doing this and
4 I suspect it will take at least that long and I want
5 everybody to be -- to have an opportunity to eat and
6 take a break. And, like I said, we've been going at it.

7 So I just -- I just think we've got to -- we've
8 got to break right now and I'm just gonna leave it upon
9 you-all to come up with a time working with my clerk
10 when we can complete this matter because it just can't
11 be done today. It's not fair to the court reporter,
12 it's not fair to the parties because it's too important
13 of a matter to just -- to just push through for lack of
14 better words. I don't want to do that.

15 I hope that meets with your approval, Mr. Neubauer.

16 MR. NEUBAUER: Yes, Your Honor.

17 THE COURT: Do you got any objection to that or
18 problem with that? If you do, I want you to tell me.

19 MR. NEUBAUER: No, Your Honor. I completely
20 understand. I anticipated that this would be a long
21 matter. I was speaking with Mr. Routzong yesterday
22 regarding this and we were on the phone for about five
23 hours going over all of this information.

24 THE COURT: All right. Let me ask you this,
25 Mr. Phillips. Any objection to go ahead -- and I hate

1 to cut off him mid answer, but I just started wondering
2 and I said let me -- let me interrupt right now while
3 I'm thinking about it and ask -- and you certainly if
4 you need to get the court reporter to give you whatever
5 you need for him to -- for the witness to finish his
6 question or probably just pick up with that question
7 again when we start back.

8 But, Mr. Phillips, any problems, sir, with working
9 with Mr. Neubauer and my clerk and trying to find a time
10 when we can reconvene, sir?

11 MR. PHILLIPS: No, Your Honor.

12 THE COURT: Is that a problem?

13 MR. PHILLIPS: No. As long as we have the
14 opportunity -- I know logistically we run into problems.
15 We've got to stay in front of Your Honor since you've
16 already had the ability to weigh credibility of the
17 witnesses.

18 THE COURT: Certainly.

19 MR. PHILLIPS: As long as I have the opportunity
20 to have the cross-examination. Like you said, it will
21 -- it will be lengthy, but that's -- we're just here
22 for, like you said, to have a fair process and that
23 opportunity to have it done in a manner that --

24 THE COURT: Certainly.

25 MR. PHILLIPS: Like you said, we've been going

1 strong. We have no objection to that.

2 THE COURT: And, Mr. Routzong, you've -- you've
3 been giving very complete, thorough and thoughtful
4 answers, okay, and so, again, I appreciate that.

5 And so what I'd like to do is to go ahead and
6 break. So let me just ask you this. I -- I see that
7 Attorney General Jameson's on the line.

8 Attorney General Jameson, do you have any problems
9 or anything to add as it relates to this matter and
10 taking a break and reconvening at some time that's
11 agreeable?

12 MS. JAMESON: No, not at all, Your Honor.

13 Tomorrow we were able to move Ashley Prior to
14 9:00 AM and then we have an 11:30. Nothing is in
15 the afternoon, if that's a possibility for anyone. We
16 would just have to make sure we are able to coordinate
17 with the Department of Corrections to make sure that
18 Mr. Cartwright can.

19 THE COURT: Well, let me tell you what. I'm --
20 well, I'm generally very flexible, but I find out that
21 sometimes this job requires you-all to not be flexible
22 because I never know where I'm going or how long
23 something's gonna last.

24 Tomorrow afternoon, I mean, if folks can make it,
25 fine. If they can't, then I understand. And you can

1 coordinate with my clerk and we can try to do something.
2 I've got -- I've got Colleton court next week, but --
3 and the roster looks soft as pluff mud, so I could end
4 up having a whole bunch of time next week on my hands,
5 but I -- I don't know. I'll have a better idea tomorrow
6 afternoon, but if tomorrow afternoon's good, fine. If
7 not, you-all can just work together with my clerk, she's
8 great, and we can reschedule then.

9 Madam Court Reporter, that doesn't oppose -- you
10 don't oppose breaking for the day, do you?

11 THE COURT REPORTER: Not at all.

12 THE COURT: You don't want to go another hour and
13 a half, do you?

14 THE COURT REPORTER: No, sir.

15 THE COURT: All right. I -- I'm with you. I can
16 tell. I thank you for your patience today --

17 THE COURT REPORTER: Un-huh.

18 THE COURT: And thank you for pushing through with
19 this.

20 THE COURT REPORTER: You're welcome.

21 THE COURT: And, again, it's an important case for
22 Mr. Cartwright, it's an important case to the State, and
23 so we'll do that.

24 So I'm gonna go ahead and sign off and I'll look
25 forward if tomorrow -- you-all talk and caucus. If

1 tomorrow works, tomorrow afternoon, I'm available.

2 Let's not -- let's start -- if we're gonna start
3 tomorrow, let's give enough time to finish the first
4 one and get a sandwich so I don't have to eat in front
5 of you.

6 My clerk walked in here and said Judge, do you
7 realize they can see you eating? I said yes, I do.

8 So, in any event, just let me know, folks.

9 Have a great evening, okay?

10 MS. JAMESON: Thank you. We'll see you in the
11 morning.

12 THE COURT: Thank you very much.

13 (Whereupon, the proceedings were adjourned at
14 5:14 PM on February 3, 2022.)

15 (The following proceedings were held February 4,
16 2022, via WebEx Videoconferencing, beginning at 2:15 PM.)

17 THE COURT: All right, Mr. Neubauer.

18 MR. NEUBAUER: I apologize for the delay, Your
19 Honor.

20 THE COURT: All right. Mr. Neubauer, I think you
21 were, I guess, direct examining Mr. Routsong -- or
22 Routzong and I interrupted you because we were gonna
23 just go ahead and break for the evening, and so I'm
24 happy to have you resume your examination, sir.

25 MR. NEUBAUER: Yes, Your Honor. I beg the Court's

1 indulgence for one second. After finishing yes -- or
2 our afternoon's hearing, I have to pull everything back
3 up for Mr. Cartwright.

4 CONTINUED DIRECT EXAMINATION

5 BY MR. NEUBAUER:

6 Q. I believe the last issue we were addressing was
7 the testimony of the DSS agent where Mr. Cartwright has
8 alleged Mr. Routzong failed to object as beyond the
9 scope of time and place, bolstering and double hearsay,
10 and this would be on page 138, line 24 through page 139,
11 line 2.

12 Again, Mr. Routzong, do you recall this question from
13 Solicitor Molony to Ms. Pri -- or Ms. Prince?

14 A. Only insofar as it's reflected in the transcript.

15 Q. Okay. And having reviewed that question, do you feel
16 that it was objectionable?

17 A. The answer to that question is no. She's simply --
18 she's responding to how she became involved in the
19 question. She's simply saying that she received a call
20 from the intake supervisor and she does say that we had
21 received a report of sexual abuse concerning Amanda, but
22 it's -- I don't -- I'd argue it's probably not hearsay,
23 it's not for the matter -- the truth of the matter
24 asserted --

25 Q. Yes, sir.

1 A. -- because it's for the purpose of -- of simply saying
2 this is how DSS became involved.

3 Q. Yes, sir. And -- all right. The next allegation
4 raised by Mr. Cartwright is -- while you were attempting
5 to impeach the testimony of -- I believe it's Nikki Brown
6 and Brandi Brown. You questioned Ms. Brown about multiple
7 people whom she reported the alleged abuse to. Do you
8 recall this instance?

9 MR. NEUBAUER: And I beg the Court's indulgence,
10 Your Honor. I'm attempting to find the exact line to
11 help.

12 BY MR. NEUBAUER:

13 Q. That would be page 174, line 25. Well, I believe it
14 would be page 174 starting around line 1. There's a
15 conversation regarding you questioning Ms. Brown about the
16 story or testimony that she gave to investigators and then
17 specifically line 24 through page 175, line 17. If you
18 could review that.

19 A. Yes, sir.

20 Q. And then, again, Mr. Cartwright's drawn issue to --
21 well, first, what were you asking -- or what was the exact
22 line of questioning there or what were you trying to gather
23 from the witness with this questioning?

24 A. Trying to communicate to the jury that -- that --
25 what it looks to me like, I was trying to communicate to

1 the jury that she had not disclosed to certain people.

2 Q. Yes, sir. And then in Mr. Cartwright's allegation,
3 he draws attention to page 177, line 15 through 19, where
4 Solicitor Agnew states Mr. Routzong talked to you a whole
5 lot about you telling people about what happened, so let's
6 talk about that. Did you tell your sister what's going
7 on? Mr. Cartwright had alleged that this reaffirmed the
8 State's case and could not be deemed a valid trial
9 strategy. Do you remember what or how exactly did that
10 line of questioning play into your trial strategy?

11 A. Without -- when -- in these kinds of cases, without
12 going into the issue of when a person discloses and why
13 they didn't disclose, that's always an effort to try to
14 entice the jury to say well, if this happened, why didn't
15 they disclose to someone.

16 Q. And you testified yesterday that your trial strategy
17 was to show why these -- why the victim may be lying or
18 may be fabricating a story. Do you feel that this line of
19 questioning was in line with your overall trial strategy to
20 show how or why these witnesses may have lied throughout
21 this allegation?

22 A. This probably wouldn't be so much about a lie, but it
23 would be the lack of disclosure, but, you know, that's
24 often fruitless because everybody knows that sometimes
25 people disclose, sometimes they don't. So the only thing

1 -- the only thing you're left to do sometimes is try to
2 entice the jury to wonder about that and maybe cause
3 reasonable doubt.

4 Q. Yes, sir. And did you feel that -- in your own
5 opinion, do you feel that you were -- that your line of
6 questioning was, I guess, successful in an attempt to
7 raise reasonable doubt or that that line of questioning
8 was tailored to try to raise reasonable doubt?

9 A. Well, based on the result I'd have to say it was not
10 successful.

11 Q. Yes, sir. Now next Mr. Cartwright's alleged that you
12 failed to object to the solicitor -- or to -- well, the
13 testimony of Ms. Buffy Brown being acted out in front of
14 the jury. Do you recall how Ms. Brown's -- or Ms. Buffy
15 Brown's testimony was handled during this trial?

16 A. I had -- I did refresh my memory. I had forgotten
17 that I had participated in the reenactment, but after
18 looking at -- briefly looking at the transcript, I
19 remembered that. I think Ms. Agnew may have played
20 herself, I don't know, and then I was in the part of
21 Mr. Bob Harte who was representing him at that time, I
22 think, and then they had someone else, I don't -- I'm not
23 familiar with who that is anymore, I probably did at the
24 time, offering Buffy's responses.

25 Q. And do you recall why Ms. Buffy Brown was not at this

1 second trial?

2 A. She was not available the State alleged and I -- I
3 did not object. She had -- she was very seriously ill
4 apparently with Stage 4 cancer, I don't think that was in
5 dispute, and I think they received a letter saying she
6 probably shouldn't come or maybe that she ought not come at
7 all and some -- some caretaker and -- to probably get to
8 the heart of the question, it would probably have been a
9 lot more sympathetic to the jury to have somebody who was
10 obviously quite ill be forced to come and testify probably
11 substantially to what was already in the record, she had
12 already been cross-examined by Mr. Harte, she was under
13 oath, and that was why I -- I did not object.

14 Q. So she'd been cross-examined in this previous trial.
15 Mr. Harte since had an opportunity to question her
16 regarding the testimony that she gave during the initial
17 trial in November of 2012. Did you feel that there was any
18 issue with her testimony being presented?

19 A. Well, when I look at it -- when I look at it now, I
20 see some things that are helpful, some things that are not
21 helpful. I would -- I would have to say under the rule,
22 and this -- I'm sorry I can't be -- my memory is not more
23 exact, but I -- looking back on it now I would say it
24 would probably have been fruitless to object because I
25 think under the rule it's pretty clear that she was not

1 available and it would have come in. So there were things
2 -- there were things that -- that were helpful and things
3 that were not helpful in that prior testimony.

4 Q. And specifically regarding the decision to have her
5 testimony acted out, did you feel any issue -- well, let me
6 just start with kind of a general background. Have you
7 seen that sort of prior testimony be introduced in that
8 manner before?

9 A. I had not. That was the first time I'd seen it.

10 Q. You've not seen it since?

11 A. (Nonverbal response.)

12 Q. Did you think that it was unreasonable to have that
13 testimony restated to the jury verbally as opposed to just
14 publishing a copy -- a written copy of her prior testimony?

15 A. At the time I did not think it was unreasonable. I
16 don't know that I think it's unreasonable now. Either way
17 it gets in the hands of the jury.

18 Q. And part of Mr. Cartwright's allegation is the
19 inflections and mannerisms that were used throughout the
20 testimony of Buffy Brown were as the prosecutor saw fit
21 rather than how it actually occurred. Do you recall there
22 being any issues with how the testimony was recited?

23 A. I do -- I do not recall any issues with that and, on
24 the other hand, that would be true from, you know, if it
25 were just read into the record. Whoever reads it into the

1 record could also not had a very impactful way of repeating
2 what Mr. Harte said, so I -- I think that sort of cuts both
3 ways. If there were mannerisms or expressions on one side,
4 then I had the opportunity to do that on the other side.

5 Q. And --

6 A. I should say I don't specifically recall any -- any
7 problems with the people exaggerating or -- or excessive
8 mannerisms.

9 Q. And if you'd seen any of those throughout the course
10 of the trial, do you believe you would have objected?

11 A. I don't -- I don't know the answer to that,
12 Mr. Neubauer, because anything that -- anything that's --
13 I should object to anything that does not appear to be
14 appropriate, so that -- I -- I should -- that's true then
15 and it's true now. That's the best way I can answer, I
16 think.

17 Q. And you did not object at any point to mannerisms or
18 inflections that were, I guess, conveyed through the
19 rereading of Buffy Brown's prior testimony?

20 A. I don't -- I don't remember that being a problem at
21 all.

22 Q. And have you had to have prior testimony of an
23 unavailable witness introduced in a trial before or after
24 Mr. Cartwright's?

25 A. That's been a very rare occurrence. I can't think

1 of any right off the top of my head where that's ever
2 happened after that.

3 Q. So it's not something that has happened often with you
4 or that you've had many experiences with?

5 A. That's correct.

6 Q. Okay. And specifically within the testimony of Buffy
7 Brown there is an allegation that you failed to object
8 during Buffy Brown's testimony on the basis of hearsay,
9 beyond the scope of time and place and bolstering, and the
10 prosecutor asked Ms. Brown if she and police found out that
11 the Applicant had been molesting Amanda Rettig, to which
12 Buffy replied yes, and --

13 MR. NEUBAUER: I beg the Court's indulgence, Your
14 Honor. I'm trying to find the exact lines.

15 THE COURT: All right.

16 BY MR. NEUBAUER:

17 Q. This would be, I believe, page 184, line 3 through 6.
18 And having had an opportunity to review that, do you feel
19 that you should have objected as this hearsay being beyond
20 the scope -- or as this being hearsay beyond the scope of
21 time and place?

22 A. I don't know. That is a very good question that I --
23 I'd have to give some thought to. Since this had already
24 -- this was simply the transcript of the trial, it may be
25 that I should have asked the Court if that could be

1 redacted. I don't believe that would have been successful
2 and I don't know that I can object. I'm wondering -- I
3 wonder if I could object to the whole thing. It probably
4 would not have been as successful to object to part of it.
5 It would be -- it would always -- it would always be nice
6 to keep out everything that's prejudicial to a defendant.
7 And I will say this. There are unfairly prejudicial
8 things and there are things that are just prejudicial to a
9 person's case, and I'm not sure how I could have handled
10 that by an objection unless I had objected to the whole
11 thing.

12 Q. So you do not believe that you had the ability to
13 raise new objections to testimony that was being introduced
14 from a prior proceeding?

15 A. I don't see how. I -- I would have to -- the only way
16 I could think that I could have kept that out would have
17 been to object to the whole thing, which I think would come
18 under -- under -- what is it, 804? I think it would have
19 come in any way, she's not available, and I don't think I
20 would have been successful if I'd have asked them to redact
21 something that's prejudicial. You can't -- that doesn't
22 make any sense. Of course, the State's allowed to put on
23 their case.

24 Q. And I would -- and you stated that Ms. Buffy Brown
25 was unavailable. I would draw the Court's attention to

1 page 4 of the transcript, lines 5 through 17, where the
2 State addresses the unavailability of the witness, and
3 specifically line 15 through 17 -- well, we can go line 13
4 through 17. Mr. Molony indicates that she has Stage 4 lung
5 cancer. She will not be here all week. Her diagnosis is
6 palliative and the treatment at this point is only on pain
7 management. Do you recall or did you have an opportunity
8 to review the letter from the hospice facility that she was
9 at prior to this trial?

10 A. I do not specifically remember honestly and I -- and
11 I don't believe I have any notes on that. That would have
12 happened -- I feel that that would have been something that
13 would have been shared and that would have been the normal
14 thing. Before it gets passed up to the judge, they would
15 show it to me, I would have reviewed it and then it would
16 have gone to the judge. I don't -- I don't recall anything
17 out of the ordinary in that -- in that regard.

18 Q. And would the indication that her -- she has Stage 4
19 cancer, her treatment is palliative in nature and is
20 focussed on pain management, how did you interpret her
21 state at that time and you were unable to actually see her?

22 A. I relied on -- I relied on the -- the facts that we
23 had in front of us. There was some prior testimony where
24 she said she had Stage 4 cancer. That was a couple of
25 months before that, I think, and so I didn't have any doubt

1 that she had Stage 4 cancer.

2 Q. Did you feel that she would have been able to
3 appear for the entire four-day trial or to provide clear
4 testimony?

5 A. Based on what we knew -- based on what I knew at the
6 time and I -- I have to kind of -- how do I put this? It's
7 hard for me to specifically remember what I knew or what I
8 didn't knew -- or -- or know or what I think or what I
9 thought at that time. That's very difficult for me to
10 testify to now, but I can say I didn't have any doubt she
11 had cancer. I didn't have any reason to doubt that her
12 condition had worsened since she testified last time. We
13 had the testimony already. She would have testified, I
14 believe, substantially the same. That would have been a
15 reasonable conclusion, I think. And also I think it --
16 you're forcing somebody who's going to appear to be in very
17 poor health. If the State could have gotten her there, she
18 would have been in very poor health and probably pretty
19 sympathetic I would think to most people in the courtroom.

20 Q. And you indicated that your belief was that the only
21 way that you could have objected to specific lines of her
22 previous testimony would have been to object and attempt to
23 keep the entire testimony out, correct?

24 A. I think so because -- well, I didn't do it, so, you
25 know, I can't speculate what Judge Early would have done.

1 In fairness to -- to Mr. Cartwright and the Court, I can't
2 really speculate on what Judge Early would have done. He
3 never had a chance to consider that, but I would have my
4 doubts that any judge is gonna allow me to -- to redact
5 prejudicial things like that to the case on only one side.
6 That would -- he -- he would -- I feel confident most
7 judges would say you can object to the whole thing and we
8 can talk about that, but I don't know that he would let me
9 redact things that -- that were not objected to and that
10 they're in the record. Now if Mr. Harte had objected to
11 it and it was in the -- let's say he didn't ask it to be
12 stricken from the record, and I don't know if that would
13 have had an effect even on the transcript, but if it wasn't
14 objected to then, it's in -- it's part of the case.

15 Q. Yes, sir. And to go back to the testimony on
16 page 184, did you feel that that comment bolstered the
17 testimony of Nikki Brown? Or I apologize. It would have
18 been Amanda Rettig.

19 A. Can you tell me exactly what line you're referring to
20 so I'll know exactly?

21 Q. 184, line 3 through 5.

22 A. I would say the answer to that -- I'm not -- I
23 don't know that it unfairly bolsters it, but it -- it
24 probably does a pretty good job of corroborating the
25 State's position. I don't know if it was unfair or not.

1 Q. Yes, sir. Now next Mr. Cartwright has alleged you
2 failed to object to redirect of the DNA expert as beyond
3 the scope of cross when the State immediately asked if
4 DNA can be destroyed and the effects of washing and drying
5 sheets. That would be in the second portion of the
6 transcript, the -- that would be page 92 of the second
7 portion, line 1, and (transmission interruption) for
8 cross-examination on page 88, line 17 and page 91, line 24.

9 A. And your question was whether or not I should have --

10 Q. Do you feel that that -- or the question can DNA be
11 destroyed or the comment in a case like this, these sheets,
12 if you wash the sheets, would that have any effect on the
13 DNA, do you feel that that was testimony beyond the scope
14 of your cross-examination?

15 A. I don't think so because that was kind of where I was
16 going. I mean, I didn't ask that particular question, but
17 I was certainly asking questions about touch DNA and how
18 -- what that means, how does it get there and different
19 mixtures. I think where I was going with that was there
20 seems to be all these events and people are alleging that
21 they had clothes on during those events and yet there's
22 no touch DNA, there's no semen on the clothes, and -- and
23 I think we have to recall that they kept saying very
24 specific, unique -- probably not really unique, somewhat
25 unique, but it would begin with humping from behind, if I

1 -- if I recall correctly. I mean, there's a lot of
2 touching, there's a lot of touching of -- allegedly of
3 Mr. Cartwright's genitalia on -- on their clothes, so if I
4 were Mr. Molony based on that -- that line of questioning,
5 if there's an absence of it, then I -- since I bring it
6 up, if I was Mr. Molony prosecuting the case, I might want
7 to ask that question, well, maybe the absence of it can be
8 accounted for by the destruction of the DNA.

9 Q. And if you did object as beyond the scope of cross,
10 do you think that that objection would have been successful
11 ultimately?

12 A. If -- if -- if the Court reasoned as I just did, I
13 don't think it would have been.

14 Q. Yes, sir. Now Mr. Cartwright's next allegation
15 regards the testimony of James Hettich, who was the
16 jailer who saw Mr. Cartwright hanging in his cell.
17 Mr. Cartwright's alleged you failed to object on
18 redirect to the State requesting Mr. Hettich identify
19 Mr. Cartwright. The objection should have been that this
20 is beyond the scope of cross. Did you feel that it was
21 proper -- or that you could have or should have objected
22 in that moment? The redirect would be on page 104.

23 A. Yes, sir.

24 Q. I believe specifically lines 10 through 20.

25 A. It will take me a second to look at this now.

1 Mr. Molony did not appear to have asked the deputy to
2 identify Mr. Cartwright and -- probably I opened the door
3 to that question frankly. On page 104, line 1, I said
4 and the prob -- the thing is -- I think where I was going
5 with this, and I will read the line, it says any other
6 problems with Mr. Cartwright since that time, so I
7 definitely identified Mr. Cartwright as the person that
8 we were talking about there and Mr. Molony looks like he
9 chose to repeat that to make sure that that was the case.
10 Arguably it looks like I opened the door for that. And
11 the rea -- where I was going with that, I -- I believe, is
12 -- you know, if he was -- if he's so -- if this -- if this
13 is really about these events, these charges, rather than
14 just everything going to hell in a hand basket so to speak
15 and not out of guilt, why wouldn't they continue to have
16 problems with him I think is what I was trying to get the
17 jury to infer from that.

18 Q. Yes, sir. So you feel that you may have opened the
19 door for an identification through your cross?

20 A. Well, I don't think his question was -- I don't know
21 that his question was beyond the scope since I'm the one
22 that -- that was attempting to say hey, Mr. Cartwright's
23 not a -- you know, Mr. Cartwright's not trying to -- did
24 not try to kill himself anymore, so maybe it's not about
25 these charges, maybe it was just a momentary, very grave,

1 despondency.

2 Q. Yes, sir. And now Mr. Cartwright's next allegation
3 regards an in-camera conversation between Judge Early,
4 Solicitor Molony, yourself and Mr. Cartwright where
5 Mr. Cartwright asks the Court a question regarding photos
6 that were introduced during this trial and photos that
7 were introduced in the first trial, and I believe
8 Mr. Cartwright somewhat touched on this yesterday in his
9 testimony. I believe specifically this begins page 116,
10 line 18 going through line -- or page 119 line 3.

11 Now Mr. Cartwright -- and, again, he addressed this
12 issue yesterday in court stating that his belief is in the
13 first trial the State claimed that the sheets came from
14 Nikki's bedroom and provided a photo of Nikki's bedroom,
15 yet in the second trial the State indicated that it came
16 from Hoss's bedroom and that Nikki was staying in there.
17 Do you recall Mr. Cartwright ever addressing this issue
18 prior to him addressing the Court?

19 A. I do not, but that doesn't mean -- at that point in
20 time since the testimony had already been put in there,
21 I believe, and I don't specifically remember him, but
22 Mr. Cartwright has a -- obviously has a very good memory
23 about this, so I -- I wouldn't deny at all that he
24 mentioned it, but it -- it probably was pretty close to --
25 to the time that he stood up and was asking the judge a

1 question when the jury was outside. I don't think it was
2 -- I don't think it would have been before that.

3 Q. And do you recall ever addressing this prior to the
4 trial?

5 A. I know -- I doubt if -- I doubt I would have addressed
6 it because we wouldn't have -- Mr. Cartwright would not
7 have discovered it until the testimony that there may be
8 some kind of a -- a problem with the -- the testimony as
9 to the -- where the photos came from, and if that's the
10 case truly, then I -- when that testimony was elicited
11 by the State that's when I should have -- I should have
12 recognized that and cross-examined the -- the person
13 testifying and I -- I don't -- it makes me wonder if --
14 if maybe Mr. Cartwright didn't recognize it until after
15 that because I -- I certainly come over to the table after
16 I finish questions to ask pe -- ask everybody at the table
17 have I missed anything. That would be the normal thing to
18 do. I do not specifically remember if I did this on this
19 issue, but that is what I normally do. I come over and I
20 say is there any -- any problem. It might be the case that
21 Mr. Cartwright --

22 (Internet transmission interruption.)

23 (Pause in proceedings.)

24 (Internet connection reestablished.)

25 THE COURT REPORTER: The Internet or my --

1 everything went down.

2 THE COURT: Let me ask you this. From the State,
3 what's your position on moving forward with the court
4 reporter not being able to see us and us not being
5 able to see her, but her being able to just record this
6 audio?

7 MR. NEUBAUER: This is the first time I've
8 personally experienced this issue. I am uncertain
9 that it would be a major issue as long as she is able
10 to determine what we are saying and who is speaking at
11 any given point. I'm not sure if others have dealt with
12 this in the past and -- or if we would have any issue.

13 THE COURT: Well --

14 MR. PHILLIPS: My --

15 THE COURT: Go ahead.

16 MR. PHILLIPS: Yes, your Honor. I apologize for
17 jumping in. I see the -- it doesn't appear that this
18 Zoom proceeding's being recorded. I would have some
19 -- some concern if we don't have the Zoom recording as
20 a backup. I just -- I don't want to -- I would hate
21 to have to do a motion to try to recreate --

22 (Internet transmission interruption.)

23 (Internet connection reestablished.)

24 THE COURT REPORTER: I'm sorry. It just keeps
25 circling. It's like the WebEx app is just circling.

1 I can try to reset the router.

2 THE COURT: No, I'll tell you we're gonna take a
3 break.

4 (Pause in proceedings.)

5 THE COURT: Mr. Cartwright?

6 THE APPLICANT: Yes, sir.

7 THE COURT: We are going to get this rescheduled as
8 soon as we can, okay, Mr. Cartwright?

9 THE APPLICANT: Yes, sir.

10 THE COURT: Mr. Cartwright, we want this to be
11 right. You understand that. It's important to you, it's
12 important to the State. Okay, sir?

13 THE APPLICANT: Yes, sir, Your Honor. Thank you.

14 THE COURT: Thank you.

15 All right, folks.

16 THE COURT REPORTER: Sorry about that.

17 THE COURT: That's all right. No problem.

18 THE COURT REPORTER: Yeah, I've just never had it
19 happen before.

20 THE COURT: That's quite all right, okay, Stacy?

21 THE COURT REPORTER: Okay. I'm sorry.

22 MR. NEUBAUER: Thank you, Your Honor.

23 (Whereupon, the proceedings were adjourned at
24 3:12 PM on February 4, 2022, to be continued at a later
25 date.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 February 3rd and 4th, 2022, recorded via WebEx Videoconferencing, and transcribed by me to the best of my ability.

This transcript may contain quoted material. Such material is reproduced as read by the speaker. This transcript may also contain transmission interruptions and/or technical difficulties and inaudible or unintelligible indications due to being conducted remotely via videoconferencing.

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

October 6, 2022

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER