

STATE OF SOUTH CAROLINA                      IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

**RECEIVED**

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Harold B. Cartwright, )

III, )

)

Plaintiff, )

vs. )

State of South )

Carolina, )

)

-----) Defendant.

**Feb 16 2023**

**S.C. SUPREME COURT**

TRANSCRIPT OF HEARING  
(VIA WEBEX)

February 25, 2022  
Aiken, South Carolina

B E F O R E:

The Honorable Robert Bonds, Judge Presiding

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1 P R O C E E D I N G S

2 \* \* \* \* \*

3 THE COURT: All right, good morning, folks.  
4 Good morning, Mr. Cartwright.

5 MR. CARTWRIGHT: Good morning, Your Honor, good  
6 morning.

7 THE COURT: All right, we've got everybody we  
8 need?

9 MR. NEUBAUER: Your Honor, we are waiting on  
10 Michael Routzong. I've reached out to him yesterday  
11 and this morning, and I have not heard back from him  
12 yet. If you don't mind, I'll call him real quick  
13 and find out where he's at, or how long it will take  
14 him.

15 THE COURT: Right. Mr. Routzong, he was the  
16 witness, correct?

17 MR. NEUBAUER: Yes, Your Honor.

18 THE COURT: Okay, no problem.

19 MR. NEUBAUER: Thank you.

20 THE COURT: Thank you.

21 MR. NEUBAUER: I apologize for the confusion,  
22 Your Honor. I reached out to Mr. Routzong, he'd  
23 attempted to join just your standard virtual  
24 courtroom, instead of the private link that we'd  
25 sent; so I just sent it back to him, and he should

1 be joining us here momentarily.

2 THE COURT: All right, great.

3 MR. NEUBAUER: And, Your Honor, I've just  
4 received a call back from Michael Routzong,  
5 apparently, his firewall is causing him some issues  
6 with accessing the courtroom. He's in Aiken, and is  
7 attempting to get one of the Aiken Public Defender's  
8 computers to use to access the hearing. I apologize  
9 for the delay.

10 THE COURT: All right, well, we'll just wait and  
11 see, if we can get him on, all right?

12 MR. NEUBAUER: Yes, Your Honor.

13 (BRIEF RECESS)

14 THE COURT: All right, Attorney General, are we  
15 ready to proceed?

16 MR. NEUBAUER: Yes, Your Honor.

17 THE COURT: Okay, and I think you're continuing  
18 your direct examination of your witness?

19 MR. NEUBAUER: Yes, Your Honor, that's correct.

20 THE COURT: All right, go ahead, sir.

21 MR. NEUBAUER: Thank you, Your Honor.

22 DIRECT EXAMINATION CONTINUES:

23 BY MR. NEUBAUER: (Continuing)

24 Q. Good morning, Mr. Routzong.

25 A. Good morning, sir.

1           Q.    I have a few more allegations to go through  
2 with you.  I believe we stopped on allegation, the  
3 -- Mr. Cartwright stated in the in-camera  
4 conversation with the Court that during his first  
5 trial the State introduced evidence and pictures  
6 showing the sheets were taken from one bedroom, but  
7 at the second trial they claimed that they were from  
8 the Applicant's son's bedroom, and you failed to  
9 cross-examine the State's witnesses regarding this  
10 discrepancy.  Do you recall this exchange with the  
11 Court?

12           A.    I recall from the transcript record that  
13 Mr. Carwright brought it to -- brought it to the  
14 Court's attention.  What I do not remember is if he  
15 had mentioned it to me before that.  I don't have  
16 any recollection or notes, and I do not recall being  
17 aware of that, prior to Mr. Cartwright bringing --  
18 I would have -- I would think Mr. Cartwright  
19 probably brought it to my attention at least before  
20 he stood up and -- and made the Court aware of it,  
21 but that -- it may have been after the State  
22 rested though, at that point; but I don't recall --  
23 and I don't recall catching that inconsistency at  
24 all, personally.

25           Q.    And you didn't handle the first trial,

1 correct?

2 A. Yes, sir, that's correct.

3 Q. And did you have a copy of the transcript  
4 from the first trial?

5 A. I do somewhere here.

6 Q. Going through that transcript, do you  
7 recall the State claiming that the sheets came from  
8 Brandy's room?

9 A. I don't -- I don't specifically recall --  
10 I don't specifically recall that, no.

11 Q. And you're saying you don't remember any  
12 conversations with Mr. Cartwright before trial,  
13 where -- or during the course of the trial where he  
14 told you that there were any discrepancies with the  
15 State's evidence, regarding where the bedsheet came  
16 from?

17 A. No, sir, I don't -- I don't specifically  
18 recall. A lot of times I will say -- as Mr. Hayes,  
19 I think, pointed out in earlier testimony, what we  
20 did was we worked in teams. We'd have two attorneys  
21 sitting on one trial; one would be lead, one would  
22 be second chair. And one of the purposes of a  
23 person in the second chair would be, to field  
24 questions from the Defendant, and if it -- if --  
25 if you could answer that, or -- or make

1 corrections. And a lot of times Defendants catch  
2 things that nobody else catches, obviously, so --  
3 but I do not specifically remember him bringing it  
4 up, but I would think, at least before he stood up  
5 and talked to the Judge, that he would have tried to  
6 get our -- drawn our attention to it. So I -- I  
7 think it's probably fair to say that there was some  
8 time before he told the Judge, he would have brought  
9 it -- brought it to our attention, but I don't know  
10 if the State had already rested. If they had  
11 rested, then I guess the proper thing to have done  
12 would have been to -- to recall a witness at that  
13 point in time, but I do not recall recalling any  
14 witnesses that the State provided.

15 Q. So your testimony is, that you don't  
16 remember, for certain, whether or not Mr. Cartwright  
17 brought that to your attention; that you think he  
18 might have, but you can't specifically remember?

19 A. That's correct. I would think he would  
20 have said something before he stood up to speak to  
21 the Judge, that would make sense. That would be the  
22 normal thing for a Defendant to do.

23 Q. And you said that if this is brought up  
24 after the State rested, that you could have recalled  
25 a witness to address this issue?

1           A.    I would think -- yes, sir, I would think I  
2 could have done that, that's correct.

3           Q.    And do you know why you would not have done  
4 that? I do not believe that you recalled any of the  
5 State's witnesses.

6           A.    I don't think I did either, and it's hard  
7 to say right now. I don't know that the idea  
8 actually appeared to me. I'm not so sure -- I'm  
9 not real sure. It's hard for me to remember, but  
10 I'm not real sure I considered it earthshaking; and  
11 I think probably -- let's look at it like this, now  
12 that is inconsistent -- an inconsistency,  
13 apparently, in the State's case, but what would  
14 account for that? They -- to me, the gravamen of  
15 the issue was - it was found on somebody's bed. And  
16 Mr. -- Mr. Cartwright's story, I believe, was that  
17 when he came home from work, I think it was, that he  
18 was -- his wife had masturbated him into the --  
19 and he had ejaculated onto the sheet. And I don't  
20 think -- I'm not sure whether that was in either of  
21 the bedrooms or in the laundry room. I'm not sure  
22 if I recall correctly. I guess the gravamen of the  
23 question would be why would anybody not just put  
24 that in the laundry room, and or do the laundry with  
25 it? How would it ever have made it back to either

1 bedroom? That doesn't seem to make sense, and I  
2 agree, if there was an inconsistency in the State's  
3 case, it should have been brought forward; and I  
4 don't recall other than his testimony, I think it  
5 might have been listed the inconsistency. And  
6 that's about all I can tell you about that. I think  
7 every time an inconsistency appears in the State's  
8 case, it should -- it should be brought forward  
9 somehow to the Jury. And I think, if I recall  
10 correctly, Mr. Cartwright testified to the Jury that  
11 that's not how it happened. The Police, even though  
12 it's an inconsistency, the question is, I would  
13 think, how did it show up in the bedroom instead of  
14 being just laundered?

15 MR. NEUGAUER: I beg the Court's indulgence.

16 WITNESS CONTINUES:

17 A. I apologize to everyone for being tardy. I  
18 was here on time, but I could not get my computer  
19 from Sumter to get past the firewall; but Mr. Bush  
20 here at Sumter managed to do a work around for me,  
21 but I do apologize to everybody. I should have paid  
22 closer attention to the email yesterday. I just  
23 thought it was the same old Webex link.

24 THE COURT: Sure.

25 BY MR. NEUBAUER: (Continuing)

1 Q. And just to go back to the point of where  
2 the bedsheet came from, you indicated that you  
3 believe Mr. Cartwright testified that the sheet did  
4 come from Hoss's room, correct?

5 A. I think that's what he testified to. I'd  
6 have to go back and look at the transcript, but I --  
7 I'm pretty sure Mr. Cartwright would not have let  
8 that fact escape.

9 Q. And I draw your attention to page 145 of  
10 the second portion of the transcript, line 13  
11 through 24.

12 A. Yes, sir.

13 Q. And if you just review that to yourself.

14 A. (Reviews document.) I have reviewed it,  
15 yes, sir.

16 Q. Okay. And so Mr. Cartwright, during his  
17 direct examination, addressed the issue of where, I  
18 guess, which bedroom he was pulled into when he and  
19 Buffy had a intimate moment, correct?

20 A. Yes, sir. Specifically, he says, "I pulled  
21 back onto the door around the corner to Hoss's room.  
22 She took me and pushed me back onto the bed and  
23 masturbated me with some panties."

24 Q. So do you -- through testimony were able  
25 to address where -- or which room the sheet came

1 from. Is there any reason why you would not have  
2 dove into the prior trial, and the discrepancy  
3 between testimony from the first trial and the  
4 testimony from the second trial regarding which room  
5 the sheet came from?

6 A. I can think of no reason why I would not  
7 have drawn the Jury's attention to that. I think  
8 that was an important fact. I think the gravamen of  
9 the question though is how did sperm get on a sheet,  
10 and Mr. Cartwright addressed that.

11 Q. Okay. Now, next allegation from Mr.  
12 Cartwright is that you provided erroneous legal  
13 advice regarding his decision to testify. Do you  
14 remember the conversations you had with Mr.  
15 Cartwright regarding his decision to testify at  
16 trial?

17 A. I believe it's always important, if we're  
18 -- if we're -- let me start out by saying it's a  
19 very attractive thought to have the last licks, as  
20 they say, or to have the closing argument last. If  
21 you're going to present evidence, then I think you  
22 should go to war with all your weapons, as they say.  
23 I believe in Defendant's getting up, and telling the  
24 Jury, "I didn't do it," because sometimes it's kind  
25 of lopsided that way if you don't, particularly in

1 criminal sexual conduct cases. There are other  
2 cases, where, you know, maybe the State just doesn't  
3 have enough evidence. I think there was a problem  
4 between the Court and -- and Mr. Cartwright's  
5 responses. I probably didn't control Mr. Cartwright  
6 as well as I should have, but my -- what I asked  
7 him to do, and I know we're going to get to this, in  
8 -- if we haven't already gotten to it; so what I  
9 tried to get Mr. Cartwright to do was tell him about  
10 himself a little bit to try to give the Jury a sense  
11 of who he is. And I probably -- this would be a  
12 normal thing for me to say in these -- in these  
13 kind of cases, or any -- any case, when I'm asking  
14 you a question, don't, you know, don't make me draw  
15 it out of you question-by-question. There are some  
16 things that -- that can just flow by themselves.  
17 Biographical information, I believe, is one of those  
18 things. However, I believe I failed miserably in --  
19 in controlling Mr. Cartwright. And maybe not  
20 anticipating what the Court found to be the  
21 appropriate, and so that led to a problem. I don't  
22 think it was overwhelming. I don't think he looked  
23 like a fool. I think he looked -- I think he  
24 pretty much appeared to the Jury as he is. He has  
25 convictions on things, and I -- I think -- I think

1 as best he could, that's what was presented to the  
2 Jury.

3 Q. And do you recall any conversation with Mr.  
4 Cartwright regarding, like, the State's ability to  
5 cross-examine him, and any potential criminal record  
6 that he may have that could be used to impeach him  
7 prior to him testifying?

8 A. I don't specifically remember, but that's  
9 what I normally always do. You have to let  
10 Defendant's know that, hey, they can talk to you  
11 about this, or that, or the other thing, yes, sir.

12 Q. And do you remember the Court informing Mr.  
13 Cartwright of his right to remain silent, and the  
14 implications of him testifying, that he could be  
15 cross-examined, or the State could try to use a  
16 prior record, if he had any, to impeach his  
17 testimony?

18 A. I don't specifically recall. I'd have to  
19 look -- look back at the transcript, but that's  
20 what the Court, particularly, Judge Early, I've  
21 never seen him waiver from that. He always -- he  
22 always did what was about to happen, the right to  
23 remain silent, the right to testify in their own  
24 defense. I don't know that he ever goes into, "Hey,  
25 you can be cross-examined." That's probably self-

1 explanatory, since you've watched half the trial.  
2 He normally would, you know, give the Defendant the  
3 opportunity to tell the Court whether they wanted to  
4 remain silent, usually, after the State rests  
5 itself. I -- and Mr. Cartwright's a very bright  
6 man, so I don't think -- I don't think there would  
7 be any issue about being -- understanding that he  
8 would be cross-examined.

9 Q. And I draw your attention to page 114 of  
10 the transcript, line 22 through 116, line 17, and,  
11 specifically, page 114, line 24 through page 115,  
12 line 10.

13 A. (Reviews document.) Yes, sir, he  
14 specifically, on line 115 -- page 115, line six, he  
15 specifically tells him that they can be cross-  
16 examined on any relevant subjects of the case or  
17 facts on the record.

18 Q. And --

19 A. I'm sorry, subjects of the case, and facts  
20 on the case, excuse me.

21 Q. And do you recall Solicitor Maloney inform  
22 the Court that there was no prior convictions that  
23 could have been used to impeach Mr. Cartwright's  
24 testimony? To be used to impeach him?

25 A. Mr. Maloney says, when asked, "Does he have

1 a record?" Mr. Maloney said, "Nothing, nothing, we  
2 will be," and then the Court interrupted Mr.  
3 Maloney, and said, "No impeachable."

4 Q. So did you feel that there was anything  
5 that would have prevented Mr. Cartwright from  
6 testifying at this trial?

7 A. I don't -- I don't have -- I don't have  
8 any recollection that Mr. Cartwright ever wanted to  
9 do anything else other than tell his side of the  
10 story. And some of it I think it was -- I -- and  
11 like I said, I always believe it's important,  
12 particularly, in CS -- CSC cases, where frequently  
13 there's not a lot of evidence, there's just somebody  
14 saying this happened. Well, you're kind of lopsided  
15 if you don't encourage the Defendant to tell his  
16 side of the story, and that's what I think about  
17 that.

18 Q. And you stated Mr. Cartwright wanted to  
19 testify at the trial?

20 A. My recollection is I didn't have to fight  
21 him about it. I think he was ready, willing and  
22 able to tell his side of the story.

23 Q. And, again, you feel that it was in his  
24 best interest to testify at this trial?

25 A. Yes, sir.

1           Q. All right. The next allegation is that  
2 your theory throughout the trial was that Nicki  
3 (phonetic) lied after Mr. Cart -- or Nicki lied and  
4 made up these allegations after Mr. Cartwright  
5 discovered pornographic photos of her online; and  
6 Mr. Cartwright is claiming that you failed to  
7 proffer any photographs into evidence to support  
8 this theory. Do you recall the photograph in  
9 question, that Mr. Cartwright alleged was Nicki?

10           A. I do.

11           Q. And during -- you guys spoke about this  
12 photograph during your preparations for this trial?

13           A. We did.

14           Q. And was there anything that made you  
15 believe that this was -- or that the photograph was  
16 of Nicki?

17           A. No, sir, other than Mr. Cartwright saying  
18 it was.

19           Q. And you still pursued the theory that  
20 after Mr. Cartwright saw this photo, that he  
21 believed was her, Mr. Cartwright took actions that  
22 irritated or infuriated Nicki?

23           A. Well, I think -- it's hard for me to  
24 speculate about Nicki, but -- and I understand what  
25 you're -- you're getting at, and I'm not trying to

1 be flippant or anything, but it's hard to speculate  
2 about Nicki, but at least the argument I think could  
3 be made, that anybody whose father would go to a --  
4 to the lengths of calling a -- calling Law  
5 Enforcement, and speaking to a -- I think it was a  
6 television station in Augusta, Georgia, if I'm not  
7 mistaken, I think anybody would understand that that  
8 would embarrass a young person half to death, and so  
9 they might be upset about that.

10 Q. And that was the theory that you proceeded  
11 with, correct?

12 A. Yes, sir. I think in -- I think everyone  
13 agrees that one of the questions in criminal sexual  
14 conduct cases is always, why would the accuser lie?  
15 Why would anybody make an allegation, and you have  
16 to answer that question.

17 Q. And do you feel that you were able to  
18 convey that theory without introducing the  
19 photograph?

20 A. I don't think the photograph was relevant  
21 at all. And -- and I mean other than -- it was  
22 relevant, the actual physical photograph was not  
23 relevant. Why -- if -- it would be different if -  
24 - it would be different, I suppose, if he hadn't  
25 already taken actions. In other words, if he hadn't

1 gone to Law Enforcement, if he hadn't gone and  
2 spoken to a television station. As I testified  
3 before, I think it even makes it worse if it's not  
4 her. So it -- it's -- it's a little bit wrong --  
5 it's -- it's bad enough to be accused of doing what  
6 you did successfully, it's even worse, arguably, to  
7 be accused of something you didn't do. So I don't  
8 think physically entering the photograph into  
9 evidence is a problem. Everybody -- every --  
10 anyone that -- everyone that I'm aware of, except  
11 Mr. Cartwright, said that it wasn't her.

12 Q. And so based on that you felt no need to  
13 further pursue the issue of the photograph, and  
14 whether or not she was the one in it, you -- or --  
15 or your theory was that Mr. Cartwright's insistence  
16 that it was her, and Mr. Cartwright's actions after  
17 finding the photograph, were enough to embarrass  
18 Nicki, that that could have caused her to make this  
19 accusation, correct?

20 A. Yes, sir.

21 Q. The next, Mr. Cartwright's alleged that you  
22 failed to object to the Court repeatedly stopping  
23 Applicant's testimony before the Jury and  
24 admonishing him for continuing to recite hearsay.  
25 Do you recall those exchanges?

1           A.    Yes, sir, that is one of the things that  
2 actually does pop up into memory, because I think --  
3 I don't know what more to say about that then I've  
4 already said. I probably failed to -- I certainly  
5 failed in the Court's view, in -- in asking a  
6 question, and waiting for an answer. And that's  
7 what the Court had anticipated and expected, but  
8 that is not what I asked Mr. Cartwright to do. I'd  
9 -- I believe I -- and this is something I would  
10 normally say to Defendants, "Don't make -- there  
11 are some -- some questions that -- that can be  
12 answered more extensively." Like if I asked Mr.  
13 Cartwright to please let the Jury know who he is,  
14 that's biographical, I don't necessarily -- if I  
15 tell him, "Look, these are the kind of things, let  
16 the Jury know what kind of person you are, the  
17 things that you'd done," which I specifically  
18 remember telling him to do, and he -- and I think  
19 he attempted to do that. That, evidently, wasn't  
20 what the Court expected, and I -- I disagree with  
21 the Court, but I did not object. I think, like I  
22 said, biographical information is one of those  
23 things that can kind of just flow, and it doesn't  
24 require a succession of questions, necessarily.

25           Q.    And I've reviewed the testimony of Mr.

1 Cartwright, and I believe there were eight instances  
2 where the Court interrupted him. Just as a general  
3 matter, have you practiced before Judge Early prior  
4 to this trial?

5 A. Yes, sir.

6 Q. And --

7 A. Probably -- probably six years or so, five  
8 or six years.

9 Q. And throughout his prior -- or throughout  
10 your prior interaction with him, have you seen him,  
11 I guess, interrupt or object to -- personally object  
12 to the testimony of a witness?

13 A. I don't recall -- I -- I can't specifically  
14 recall any incident. What you frequently noticed  
15 about Judge Early was -- would be that he would many  
16 times frown. Some of the times he would make facial  
17 expressions, but -- and I know that the Court -- Mr.  
18 -- or Judge Early was aware of that because he would  
19 always tell the -- the -- a Jury at the end of the  
20 evidence, when he's instructing the Jury, "If I've  
21 done anything to make you think I have an opinion,"  
22 is usually how he -- he would express it, "you  
23 should disregard that," but everybody, I think, if  
24 we're all honest, everybody knows that Judge Early  
25 would make facial expressions during testimony that

1 sometimes you would wish he would not. I never  
2 objected to any of those, and I didn't object this  
3 time.

4 Q. And do you recall if Mr. Earl -- or Judge  
5 Early made those same remarks during his Jury  
6 instruction in this case?

7 A. I feel pretty confident that he would have,  
8 since he always did.

9 Q. And I would draw your attention to page 202  
10 of the second portion of the transcript, line 13  
11 through page 203, line two.

12 A. Please tell me the lines again?

13 Q. Page 202, line 13 through page 203, line  
14 two.

15 A. (Reviews document.) In part, he says, "So  
16 if there's been any time during the trial of this  
17 case that I've rolled my eyes, or yawned, or  
18 whatever, picked up my glasses and chewed on them,  
19 or stretched, or whatever, and you think I'm  
20 commenting on the facts, please don't -- don't take  
21 anything that I've done in the trial to think that I  
22 have an opinion about the facts." That would pretty  
23 much be a similar remark by Judge Early, a normal  
24 remark.

25 Q. And going through Judge Early's

1 interactions with Mr. Cartwright, the majority of  
2 them concerned him either not answering a specific  
3 question or proceeding to give hearsay testimony.  
4 Have you ever seen Judge Early independently stop or  
5 admonish a witness for giving hearsay testimony  
6 outside of this trial, or outside of Mr.  
7 Cartwright's testimony?

8 A. Normally, Judge Early, I think -- I've  
9 practiced in front of him many years, and I don't  
10 specifically remember any -- I can't cite any  
11 particular case, my recollection is, he would -- I  
12 -- I don't think he would normally interfere in the  
13 -- in the testimony, but once the State or the  
14 Defense objected to something, and he sustained the  
15 objection, after that point, I think it would be  
16 normal for him to admonish a witness, who he already  
17 told, for example, he would -- he would say  
18 something like, "I've already told you you can't  
19 tell what somebody else says." And I don't know  
20 that it happened or not. I mean it's almost always  
21 contingent upon somebody objecting, I would think;  
22 but I -- I think there have been times when he went  
23 ahead without an objection, and just said, "Look, I  
24 told you don't do that," just to kind of keep things  
25 rolling along.

1 Q. In fact, that interaction occurred -- that  
2 exact interaction occurred on page 136, line 12  
3 through line 19; do you recall that?

4 A. (Reviews document.) It says so he -- I  
5 guess this was me, "So you don't really -- then you  
6 don't really know if Melinda asked him to babysit?"  
7 "No, she stated that she felt more comfortable," and  
8 Mr. Maloney objects at that point, "That's hearsay,  
9 Your Honor." The Court, "Come on, you can't testify  
10 -- testify about what somebody said. Please Mr.  
11 Routzong. Disregard that, ladies and gentlemen."

12 Q. And, again, on - or, again, on page 138,  
13 line three through line eight, saying, "Admonishment  
14 comes after you asked Mr. Cartwright to not testify  
15 about what someone told him," correct?

16 A. (Reviews document.) Yes, sir.

17 Q. And, similarly, on page 139, line eight  
18 through line 12, Judge Early interjects after  
19 Solicitor Maloney is objecting, correct?

20 A. (Reviews document.) Mr. Maloney says,  
21 "Your Honor, he asked him how he met Sandra Carson,"  
22 and then the Court says, "That's exactly right.  
23 Please listen to the question and respond to the  
24 question." And Mr. Cartwright said, "Yes, sir."

25 Q. Then, again, that next time Judge Early

1 interjects is page 141, line 13 through line 25.  
2 Again, this is concerning potential hearsay  
3 testimony, correct?

4 A. (Reviews document.) Yes, sir, it appears  
5 from the transcript, and I will read this. I asked  
6 a question, "What happened in 2001 between you and  
7 Amanda?" And Mr. Cartwright answers, "In 2001,  
8 Buffy had come to me. I was working in Charlotte."  
9 And then Judge Early probably anticipates that he's  
10 going to say what Buffy said to him after she came  
11 to him, so he cuts that off, and said, "Don't  
12 testify about what she said."

13 Q. And I believe that occurs two more times  
14 before Mr. Cartwright's finished testifying on  
15 direct. Would it be fair to say that most of Judge  
16 Early's admonishments came after Mr. Cartwright gave  
17 hearsay testimony?

18 A. It looks like one was in the anticipation  
19 of him giving it, and then he, subsequently, did try  
20 to give hearsay testimony; but it -- the answer to  
21 your question is, with that exception, it appears to  
22 be, yes.

23 Q. And did you, at the time, feel that there's  
24 a need to object to, or at least have a sidebar  
25 conversation with Judge Early concerning his

1 preemptive interruptions of Mr. Cartwright's  
2 testimony?

3       A. No, sir, I don't think -- and -- and right  
4 now I don't think there would be any - any good  
5 reason. Is it -- is it exactly proper? No,  
6 probably the Court should wait for somebody to  
7 object, but I think -- I think in the flow of the  
8 trial, it -- it's -- it's not really such a big  
9 deal, in my opinion. He anticipated and he -- his  
10 anticipation turned out to be correct in that Mr.  
11 Cartwright did go on to start to testify about what  
12 someone had told him. It's hard for Defendants not  
13 to do that. That's not -- that is now how we  
14 typically interact with each other. And then that's  
15 -- and in that sense, I don't specifically recall  
16 going over the requirements that you can't testify  
17 as to what somebody else says in most instances. I  
18 don't recall whether I went over that with Mr.  
19 Cartwright or not. I normally would, but, usually,  
20 it's not -- it's not something that witnesses tend  
21 to be able to get right very often, so that's about  
22 all I can tell you about that.

23       Q. And from your personal opinion, do you  
24 think that Judge Early's comments throughout Mr.  
25 Cartwright's testimony painted Mr. Cartwright in a

1 negative light in front of the Jury?

2 A. I don't think it was helpful. I don't  
3 think the Court was out-of-bounds. I don't think it  
4 was helpful for Mr. Cartwright. I have, for years,  
5 when I've thought about this case, felt like it  
6 didn't -- he didn't appear to be a likeable person,  
7 as much as I kind of wanted him to appear. He  
8 appears to be headstrong, but that is Mr.  
9 Cartwright, he is headstrong. He has convictions,  
10 he has beliefs, and he acts on them; and so in that  
11 -- in that sense, I don't necessarily think it's a  
12 bad thing. Mr. Cartwright is who he is, and I think  
13 -- I don't think -- I don't think his testimony and  
14 his interactions with the Court made him likeable,  
15 necessarily. I don't think it's what -- I don't  
16 think it's way the Jury (Webex glitch).

17 Q. And next, Mr. Cartwright's alleged you  
18 failed to --

19 THE COURT: Hold on -- hold on a second. Hold  
20 on a second. I'm looking at this, has -- has Trial  
21 Court failed to object and preserve for appellate  
22 review? The Trial Court repeatedly -- or Trial  
23 Counsel, excuse me, failed to object and preserve  
24 for appellate review the Trial Court repeatedly  
25 stopping the Applicant's testimony before the Jury

1 sua sponte admonishing going on. So, you know, we  
 2 went on for 20 minutes on this. The only thing I  
 3 got out of that was he disagreed with the Court, but  
 4 not -- but did not object. And so before you move  
 5 on, why didn't he object? That's all -- that's all  
 6 I need to know. And the only thing I have written  
 7 down is at one point, not such a big deal. So let  
 8 me just ask, Mr. Routzong, why did you not object?  
 9 That's all I need to know.

10 BY WITNESS:

11 A. The answer, Your Honor, is that I did not  
 12 feel it -- it -- it -- it went to that level -- it  
 13 -- it rose to that level that I had to bring it to  
 14 the Court's attention.

15 THE COURT: All right, that's all I needed to  
 16 know, sir, thank you. All right you can proceed.

17 MR. NEUBAUER: Thank you, Your Honor, sorry.

18 BY MR. NEUBAUER:

19 Q. Next allegation, you failed to object to  
 20 the State's improper closing argument, there was a  
 21 misstatement of the evidence and prejudicial. And  
 22 do you recall Solicitor Maloney's closing argument  
 23 in this case?

24 A. Not specifically, your -- your -- Mr.  
 25 Neubauer, I don't specifically recall. I don't

1 recall there being any -- I don't recall anything --  
2 I -- I may have missed it, but I don't recall  
3 anything objectionable.

4 Q. And the close argument begins on page 186,  
5 and continues through page -- I beg your pardon,  
6 198. So I'm not going to ask you to read the whole  
7 thing, but in summary, Solicitor Maloney addressed  
8 Mr. Cartwright's belief that everybody was lying --  
9 or summarized it as everyone's lying in this case.  
10 That each of his daughters have fabricated  
11 allegations against him, and the State has -- or  
12 Investigator Gaskins has lied. Did -- now going  
13 through this closing argument, at any point, did you  
14 feel there was anything objectionable that Mr.  
15 Malloy -- or Maloney said?

16 A. Evidently not, I did not object, so either  
17 I missed it, if there was something objectionable,  
18 or I didn't find it to be objectionable; it would  
19 have to be one of those two.

20 Q. And through your practice as an attorney,  
21 have you objected to closing arguments in the past?

22 A. Rarely, but it has happened.

23 Q. And in the past what has led you to object  
24 to a prosecutor's closing argument?

25 A. Oh gosh, you're asking me for a specific --

1 THE COURT: We don't need to get into that.

2 MR. NEUBAUER: My apology.

3 THE COURT: Yeah, we -- we don't need to  
4 pontificate about why he's objected in the past to  
5 closing arguments. It would seem to me that he's  
6 outlined the attorney (Webex broke up) the facts by  
7 some witnesses in a complete different version of  
8 the facts by other witnesses. And he asks, and he  
9 quotes, "What I'm assuming that means is that he's  
10 got specific concern about failing to object to that  
11 comment that was made." And so what I'd like to do  
12 is set -- Attorney General Neubauer, did he have --  
13 did your witness have any -- did the lawyer have any  
14 problems with this particular statement? I mean it  
15 -- it seems like -- it seems like we need to be a  
16 little more direct on trying to move this thing  
17 along, sir.

18 MR. NEUBAUER: Yes, I apologize, Your Honor, I  
19 was -- I've had to break these allegations down into  
20 different phases throughout the trial, and I was  
21 just trying to thoroughly cover each of them. I --

22 THE COURT: No --

23 MR. NEUBAUER: I --

24 THE COURT: I promise you, you -- you've been  
25 thorough. I -- I promise you you've been thorough,

1 sir, but I mean, you know, I -- I really think that  
2 -- and -- and also, if he gets into something else  
3 that you need to respond to, then I think that would  
4 be great for a re -- for -- for redirect. So, for  
5 instance, if counsel in cross-examination, you know,  
6 gets into something on number 35, point 35, that you  
7 didn't -- weren't able to bring out, then,  
8 certainly, on -- on redirect, sir, that would be  
9 perfect, but why don't you ask him about what it  
10 looks like counsel is -- is concerned with.

11 And, Counsel, I'm not putting any words in your  
12 mouth, sir, I'm just reading this document, and I'm  
13 going to be happy to hear from you and allow you to  
14 fully cross-examine this witness, okay, sir?

15 MR. PHILLIPS: Yes, Your Honor, I don't -- I  
16 understand.

17 THE COURT: All right. Go ahead -- go ahead,  
18 Attorney General.

19 BY MR. NEUBAUER:

20 Q. And just going back specifically to the  
21 closing argument from Solicitor Maloney, in point,  
22 38, counsel -- or Mr. Cartwright's alleged you  
23 failed to object to the Prosecutor's improper  
24 closing, or improper comments during closing  
25 arguments, and failed to move for a period of

1 instruction and mistrial, claiming that the  
2 Prosecutor's comments were calculated to rise the  
3 Jury's passions and prejudice, and bolster the  
4 credibility of the witness. Now, regarding comments  
5 that -- in summary, Mr. Malloy -- or Maloney  
6 indicated that Mr. Cartwright didn't appear to be a  
7 credible witness, or that he's attempting to create  
8 a story that these witnesses fabricated this  
9 testimony against him, and these allegations. Did  
10 you feel that this was an objectionable comment?

11 A. No, sir.

12 Q. And did you feel, at any point, that Mr.  
13 Maloney was attempting to arouse the Jury's passions  
14 or prejudice?

15 A. The answer to that, sir, is, I think to a  
16 certain extent that's what all of us do, we try to  
17 do that, it's whether or not it crosses a -- a line,  
18 or is unfair, and I did not find it objectionable.

19 Q. Okay. And next, as far as Judge Early's  
20 jury instruction, Applicant's claimed you failed to  
21 request a Jury instruction on good character and  
22 reputation. Did you feel any need to raise -- or to  
23 request that specific Jury instruction?

24 A. No, sir.

25 Q. Why did you not feel the need to raise

1 that, or to request that instruction?

2 A. I don't think -- I don't think we put any  
3 evidence in as to his good character. I don't  
4 recall doing that at least.

5 Q. So --

6 A. I don't know -- I don't know what's -- I  
7 don't know what the Jury would -- I don't know what  
8 the Jury would base -- make any decision based on  
9 that instruction.

10 Q. And now there's a few allegations regarding  
11 somewhat a search for the truth argument, or comment  
12 during Judge Early's instruction, specifically, Mr.  
13 Cartwright's raised issue with Judge Early  
14 indicating you got a version of facts from some  
15 witnesses, and a completely different version from  
16 other witnesses. And he goes on to say, this is on  
17 page 203, line 13, "Who do you believe who's telling  
18 the truth? What are the true facts in this case?"  
19 And then on the next page, page 204, line five  
20 through eight, "You have the right, and it's your  
21 duty to determine what the true facts are, and what  
22 the truth is, and who is telling the truth." Did  
23 you feel that this was akin to a search for the  
24 truth argument to the Jury, or an in search for the  
25 truth instruction to the Jury?

1           A.    (Reviews document.) I would probably today  
2 object to anything like that. I did not find it  
3 objectionable at the time.

4           Q.    And prior to those comments from Judge  
5 Early on page 201, he states, line, 12 through line  
6 24, "The State has the burden of proving the  
7 Defendant's guilt beyond a reasonable doubt," and  
8 further expounds upon the State's burden of proof.  
9 Did you feel that the ref -- or do you feel that he  
10 clearly stated to the Jury that the State has to  
11 prove these allegations, beyond a reasonable doubt?

12          A.    (Reviews document.) Yes, sir.

13          Q.    And then regarding the comments to  
14 determine who's telling the truth, I'll go back to  
15 the specific complaint, line six through eight of  
16 page 203, you got a version of facts by some  
17 witnesses, and a completely different version of  
18 facts by other witnesses, that it -- that leads into  
19 Judge Early's instructions regarding who is telling  
20 the truth. Did you feel that the way that those  
21 comments were worded, and the order that they came  
22 in, that it shifted the State's burden of proof, or  
23 that they were designed to tell the Jury, the  
24 fireman, whose testimony they believed?

25          A.    I believe the latter is the case.

1           Q.   And, again, you don't think that it had an  
2 effect on the Jury -- or that it shifted the burden  
3 of proof from the State to the Defendant, correct?

4           A.   I don't think that shifted the burden of  
5 proof from the State to the Defendant. I can't  
6 speculate as to what -- what affect it had on the  
7 Jury, I don't --

8           Q.   Yes, sir. And, finally, that Mr.  
9 Cartwright's alleged you failed to object to the  
10 Court's Jury instruction, that pursuant to our State  
11 law, the testimony of victims in these cases does  
12 not need to be corroborated. Do you recall this  
13 comment?

14          A.   I do.

15          Q.   And that's on page 210, line 18, through  
16 page 211, line two. Did you feel -- he cites,  
17 specifically, to Section 16-3-552 through 16-3-558.  
18 I've -- I'm not sure if you've had an opportunity to  
19 review those sections.

20          A.   I'm familiar with those sections. I can --  
21 I have a book right here, as a matter of fact, but I  
22 am familiar with those sections.

23          Q.   And I believe having reviewed it, or having  
24 reviewed the South Carolina Code of Laws, Judge  
25 Early misstated the section that he was referring

1 to, specifically, criminal sexual conduct is covered  
2 through Section 16-3-652 through 658.

3 A. Yes, sir.

4 Q. Would you agree with that? And could you  
5 re -- did you say you have a copy of the South  
6 Carolina Code of Law with you?

7 A. I do.

8 Q. If you could review Section 16-3-657.

9 A. Yes, sir, I have it right in front of me.  
10 It says, "The testimony of the victim need not be  
11 corroborated in prosecutions under Section 16-3-652  
12 through 658."

13 Q. Now, would you agree that Judge Early's  
14 instructions to the Jury were correct regarding the  
15 need for testimony to be corroborated in criminal  
16 sexual conduct cases?

17 A. Yes, sir.

18 Q. And do you feel the fact that he misstated  
19 the Code Sections, while giving this Jury  
20 instruction, that by incorrectly stating the Code  
21 Sections, he misinformed the Jury?

22 A. I do not.

23 Q. And if Section 657 indicates that testimony  
24 does not need to be corroborated, do you feel that  
25 it would have been proper for you to object to this

1 Jury instruction?

2 A. No, sir. I didn't -- I don't like it,  
3 obviously. I think it can lend itself to a  
4 misunderstanding by the Jury, so I don't like it,  
5 but it's not a misstatement of law; and that's his  
6 obligation is to give the Jury the law.

7 Q. And throughout the course of Judge Early's  
8 Jury instruction, did you feel that there was  
9 anything that he said that was objectionable, or  
10 that you needed to correct?

11 A. I do not recall anything I would have  
12 objected.

13 Q. And on page 214, line 22 through 25, Judge  
14 Early asked if there's any objections, questions,  
15 additions, or deletions to the charges given, or any  
16 problem with the verdict forms; do you recall that?

17 A. I'm reading it right now, yes, sir, I do  
18 recall.

19 Q. And on the following page you actually  
20 requested he modify or add something to his Jury  
21 instruction, correct?

22 A. Yes, sir.

23 Q. And, ultimately, did that lead to Judge  
24 Early reinstructing the Jury?

25 A. It looks like -- it looks like I was

1 complaining about the fact that the minor was -- is  
2 defined as being someone under the age of 18; and  
3 then it looks like Judge Early said, "Well, I told  
4 them," and I'll -- I'll read what Judge Early says,  
5 "Well, I'm reading the statutes. The statute says,  
6 'A minor under the age of 18 that report to be -- I  
7 read that they have to prove that the minor was 16,  
8 under 16, I read that."

9 Q. And he -- Judge Early charged the Jury  
10 based off of the statute, correct?

11 A. Yes, sir.

12 Q. And he -- and at no point did you add any  
13 objections or issues with his Jury instruction  
14 regarding search for the truth language, or  
15 regarding his comments about victim testimony not  
16 needing to be corroborated, correct?

17 A. I don't think I made any other objection,  
18 no, sir.

19 Q. All right, and it's because you did not  
20 feel that those were objectionable?

21 A. That's correct. At the time I did not.

22 Q. Thank you.

23 MR. NEUBAUER: I have no further questions, at  
24 this time.

25 THE COURT: All right, thank you. Let's take a

1 ten-minute break, and then we'll try to start and  
2 see where we go with your cross-examination, all  
3 right, folks?

4 MR. NEUBAUER: Yes, Your Honor.

5 THE COURT: I'll see everybody -- is that all  
6 right, Ms. Young?

7 COURT REPORTER: Yes, Your Honor, that's great,  
8 thank you.

9 THE COURT: Okay, great, so it's -- well, we'll  
10 start back at 11 o'clock, okay?

11 COURT REPORTER: See you then.

12 MR. NEUBAUER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (BRIEF RECESS)

15 THE COURT: All right, Counsel, are you ready  
16 for -- let's see if we can get Mr. Routzong. There  
17 he is. Counsel, are you ready for your cross-  
18 examination of the witness?

19 MR. PHILLIPS: Yes, sir, give me one moment.

20 THE COURT: There -- there I am, now -- you look  
21 a lot better now, I can see your smiling face on a  
22 Friday.

23 MR. PHILLIPS: Yes, Your Honor.

24 THE COURT: All right, I'm happy --

25 MR. PHILLIPS: Give me just a --

1 THE COURT: I'm happy --

2 MR. PHILLIPS: Give me just a second, I just had  
3 my packet of papers tip over, so --

4 THE COURT: Oh, oh.

5 MR. PHILLIPS: -- give me one second. I know.  
6 All right. All right, Your Honor, I believe -- I  
7 believe I'm ready to proceed.

8 THE COURT: Yes, sir.

9 BY MR. PHILLIPS:

10 Q. Mr. Routzong, can you hear me?

11 THE COURT: I can hear you fine. Mr. Routzong,  
12 is your sound on?

13 MR. NEUBAUER: I think he may be --

14 MR. ROUTZONG: I'm on.

15 THE COURT: There we are. Mr. Routzong, can you  
16 hear us?

17 MR. ROUTZONG: Yes, sir.

18 THE COURT: Okay, great, thank you, sir. All  
19 right, counsel, you go right ahead.

20 MR. PHILLIPS: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. PHILLIPS:

23 Q. Mr. Routzong, what date did you get this  
24 case where you were appointed?

25 A. I would have had it sometime before March

1 of 2013, because that's the earliest note I have,  
2 that says I spoke to -- spoke to Mr. Cartwright for  
3 30 minutes.

4 Q. Let's start there, what -- what date is  
5 that, the first -- the first note you have?

6 A. March 5th of 2013.

7 Q. All right, and so he had his first trial  
8 back in November of the previous year; is that  
9 correct?

10 A. Yes, sir.

11 Q. All right, and then he had his trial, the  
12 one that you represented him in, in April?

13 A. Yes, sir.

14 Q. All right, and, you know, specifically,  
15 that was April 15?

16 A. Yes, sir.

17 Q. All right, is when it started. So your  
18 first note with him is March 5th of 2013, just a  
19 little over a -- a month before that second trial?

20 A. Yes, sir.

21 Q. Okay. Now, when did you get the transcript  
22 of that first trial?

23 A. I don't know the answer to that question.  
24 It doesn't have a date on it when it was received.  
25 Oh, well, it was received by the Solicitor on 28th

1 of January, 2013, I would have gotten it sometime  
2 after that. That's the only date stamped on the --  
3 on the --

4 Q. So you don't have any notes of when you  
5 first started to review that transcript? There's no  
6 notes, as far as trial preparation?

7 A. No, sir.

8 Q. All right. As far as your investigation,  
9 what witnesses did you speak with?

10 A. The only ones I can recall speaking with  
11 are Mr. Cartwright, and I think there was another  
12 gentleman, might have been a relative or a friend of  
13 Mr. Cartwright. Other than that, I don't recall --  
14 it would have been the gentleman that I got the  
15 picture of the -- he took a picture of the camper  
16 that was spraypainted.

17 Q. And -- and do you have it in your notes who  
18 that was? Do you have any idea who that is?

19 A. Not off the top of my head, no, sir.

20 Q. Well, your notes, your -- your notes from  
21 your case file.

22 A. No, sir, I don't think it's in there.

23 Q. All right. Now, with that, so your first  
24 note in the case is March 5th, the trial starts on  
25 April 15th, they've had this pretty contested hung

1 jury trial back in November. At -- at that point,  
2 when you have this, say, 40 days from when you first  
3 started working on the case, you believed you had a  
4 sufficient amount of time to conduct a full and  
5 complete investigation in this case in 40 days?

6 A. My recollection is that's true.

7 Q. Well, and as far as recollection, I mean,  
8 specific, there wasn't anything else that you wanted  
9 to do on the case, in other words; there was no  
10 other things that Mr. Cartwright had specifically  
11 asked you to conduct as far as interviews or  
12 evidence to obtain?

13 A. No, sir, I don't recall any other person.

14 Q. And, again, as far as your notes are  
15 concerned, is any of that contained in your notes as  
16 far as your trial preparation?

17 A. No, sir.

18 Q. Now, was there anything that you -- okay.

19 A. I'm sorry, go ahead, sir, you're good.

20 Q. I -- I assume you're probably grabbing your  
21 notes.

22 A. Yes, sir.

23 Q. So was there anything specific that you  
24 tried to do to make sure you could challenge the  
25 credibility of these witnesses?

1           A. I think the best answer I can give you on  
2 that, Mr. Phillips, is, this was over an extended  
3 period of time. These are all people that are  
4 either related blood or marriage to Mr. Cartwright.  
5 I didn't not try to interview any of those witnesses  
6 against him. What I tried to do was, based on what  
7 Mr. Cartwright told me, to try to figure out why  
8 they were lying, and present evidence of that to the  
9 Jury.

10           Q. Now, as far as -- and, again, let me -- I  
11 have everything originally redacted, but I -- I know  
12 we've been using the name, so I'll continue to do  
13 that for this hearing. So for Amanda, specifically,  
14 Amanda Reddick, her involvement, or at least the  
15 allegation that she was involved in a drug  
16 investigation by Police, when did you become aware  
17 of that?

18           A. It would had to have been either on the  
19 10th of March, which I doubt, that was only a 30-  
20 minute telephone conversation, or sometime around  
21 the -- I have a note that says I met with Mr.  
22 Cartwright at the -- our Detention Center on the 4th  
23 of April, and that we spoke for several hours, and I  
24 met with Mr. Cartwright on the 13th, and spoke to  
25 him two hours, so I'd dare say it would probably

1 have been on the -- around April 5th -- April 4th.

2 Q. How many -- I guess I -- I can take a step  
3 back, how many times did you meet with him in  
4 preparation of trial from March 5th to the start of  
5 the trial on April 15th? How many times did you  
6 meet with him?

7 A. The only notes I have are two different  
8 days and a telephone call.

9 Q. So you met with him twice, a phone call on  
10 the 5th, and the dates for the meetings were when?  
11 I apologize.

12 A. I have a note that says I spoke with him  
13 several hours on the 4th of April, and then I have a  
14 note that says I spoke to him a couple hours on the  
15 13th of April.

16 Q. Okay, so you had the phone call on March  
17 5th, a meeting or a phone call on April 4th, meeting  
18 or phone call on April 13th. So as far as your  
19 preparation with Mr. Cartwright, that -- that's  
20 encompassed in what your -- your dealings with him  
21 prior to this trial; is that fair to say?

22 A. That's the only thing I can say, because  
23 that's the only thing I have notes on.

24 Q. And as far as the -- kind of jumping back  
25 forward, with Amanda Reddick's -- the allegations

1 that she was involved in a drug investigation that  
2 ultimately prompted this, you know, kind of  
3 unrelated statement, as you said, this was a  
4 credibility case, that she's a key-witness, in the  
5 sense that not only she's making these allegations,  
6 she's the victim in the case, but her credibility is  
7 at issue. It's -- I mean that -- as you said, it's  
8 the gravamen, it's the linchpin of this case. What  
9 investigation did you do into that allegation that  
10 she had a pending drug case, that there might have  
11 been possible deals or offers? Was there anything  
12 done on your end to investigate that?

13 A. I did not ask Law Enforcement, or the  
14 Solicitor's Office, if there were any investigation,  
15 or whether or not any deals were made.

16 Q. Now, as far as expert witnesses, I  
17 understand that Mr. Cartwright has, you know, he  
18 testified, and you addressed the DNA issue, as  
19 specifically with his defense, did you discuss any  
20 other type of potential experts before he decided to  
21 testify, about whether to have -- potentially, look  
22 into obtaining the DNA records from SLED to see  
23 whether there was any potential issues with  
24 admissibility?

25 A. No, sir.

1 Q. Did you ever discuss that with him? I just  
2 want to make that clear on my question, I apologize.

3 A. I have -- I have no specific recollection.  
4 I -- I would think, at the time, I would have  
5 probably not wanted to do that, since he never  
6 denied that the DNA belonged to him.

7 Q. As -- as far as the electronic evidence  
8 that was seized, did you ever discuss anything as  
9 far as hiring someone to do any extractions or  
10 examinations of that evidence?

11 A. Did not consider that, no, sir.

12 Q. Now, there was testimony, I believe you  
13 were able to hear Mr. Cartwright, regarding his  
14 timeline of when he lived in the home, there was  
15 times when he didn't live in the home, essentially,  
16 like an alibi; and so with that, did you ever  
17 discuss that with him?

18 A. I have, yes. As a matter of fact I had  
19 gone -- I have a note, I saw it the last time we  
20 were doing this, that it was a timeline. I don't  
21 know where I put that thing. It was on a yellow  
22 pad, and it was a timeline. However, to  
23 specifically answer your -- answer your question, I  
24 don't think I probably would have considered that a  
25 -- a fruitful avenue on this, because we're talking

1 about periods of time over a year. As you know, Mr.  
2 Phillips, an alibi normally means somebody's got  
3 their eyes on somebody, and they can say  
4 specifically that they were not where the incident  
5 took place. And so over a period of years, it would  
6 be very difficult to allege an alibi, people could  
7 come or -- and they could go.

8 Q. Well, I understand the exact defense of how  
9 you present a specific date and time alibi, but as  
10 the defense of trying to layout this timeline, one  
11 that you could try to tie-up in closing argument,  
12 what made -- what was your reason and your rationale  
13 for not trying to present that as a defense?

14 A. Probably what I just said. To me, an alibi  
15 is very specific, date, time. I know on this date,  
16 at this time a -- a person is at this place, and I  
17 can call a witness who will testify to that. When  
18 you're talking about a period of years, that becomes  
19 problematic.

20 Q. Did it ever occur as far as try it with you  
21 and your cross-examination, these witnesses, trying  
22 to get them to commit to some dates that,  
23 ultimately, you then later could have used with the  
24 timeline?

25 A. If it's not in the transcript, Mr.

1     Phillips, then I didn't do it.

2             Q.     With Mr. Cartwright, when did you obtain  
3     all the discovery in the case?

4             A.     I would -- I honestly -- I don't know if  
5     this is -- let me see, because I took all the  
6     discovery. I did not make copies of it, I just -- I  
7     just looked over several different -- several  
8     different file folders, so let me see, if I go to  
9     the main one, whether I can answer that question.  
10    One -- one issue is, I think this case was in our  
11    office assigned to another attorney first, and that  
12    looks like it was prior to Mr. Hart, so we probably  
13    would have had a copy of the discovery perhaps as  
14    early as -- as --

15            Q.     I'm not trying to be -- Mr. Routzong, I'm  
16    not trying to be difficult, and certainly want to  
17    show all respect, but I'm not asking about  
18    probabilities or maybes, you know, what date did you  
19    receive the discovery?

20            A.     I don't have a specific date, or I don't --  
21    I can't answer that. Our office -- our office had  
22    it as early as May of 2011, so somewhere, as  
23    specific as I can be, somewhere between 2011 and --  
24    and March of 2013, we received the discovery on it.

25            Q.     But there's no cover -- there's no cover --

1 so, obviously, a private counsel tried that first  
2 case in November. There's no cover letter when they  
3 sent you all the updated discovery? Because  
4 anybody, like you said, that's tried a case in South  
5 Carolina, I know the prosecutors had to turn over  
6 every bit of evidence way before then, so I'm sure  
7 the private counsel had discovery that wouldn't have  
8 necessarily been potentially in that other file. So  
9 there was nothing -- there wasn't a new packet of  
10 discovery that came over to your office; is that  
11 what you're saying? You only had what was  
12 originally in the file from before private counsel  
13 got involved?

14 A. I can't specifically answer your question.  
15 I don't know.

16 Q. Okay.

17 A. I --

18 Q. I'm just trying to -- just trying to nail  
19 down that time.

20 A. Yes, sir.

21 Q. So as far as not sure when you got the full  
22 discovery file from the Prosecutor's office, whether  
23 it was before private counsel, or after the first  
24 trial, when -- at which of these meetings did you  
25 sit down with him and go through that entire

1 discovery file for trial preparation?

2 A. I don't have a specific note on that, so I  
3 can't answer specifically.

4 Q. Now, earlier there was testimony regarding  
5 the good character part. Did Mr. Cartwright ever  
6 tell you to get individuals to testify on his behalf  
7 as far as good character?

8 A. I don't -- I -- I don't specifically  
9 recall. And I would not say -- if he says that he  
10 did, I -- I have no -- no way of replying to that, I  
11 don't know. I don't have a note on it.

12 Q. Now, as far as his decision to testify, at  
13 which meeting did you discuss that with him?

14 A. I don't have a specific note on that.

15 Q. Did you explain that process? In other  
16 words, when you're explaining to him his decision to  
17 testify, there -- there, you know, obviously,  
18 there's a lot of risks involved with testifying.  
19 Could you explain how your strategy was in  
20 explaining that -- the risks, the cost benefit of  
21 him testifying given the nature of this case?

22 A. As I'm trying to be as specific as you  
23 requested, I don't have the specific notes. I can  
24 -- I can tell you how I normally would handle it,  
25 but I can't tell you, specifically, how I handled it

1 with Mr. Cartwright.

2 Q. That's -- that's fine, if you don't have  
3 the notes, I don't need anything further.

4 A. Yes, sir.

5 Q. You never filed any supplemental motion  
6 discovery to get SLED's entire forensic examination,  
7 kind of a full case jacket, with the DNA evidence?

8 A. Did you ask me, have I ever, or in this  
9 case?

10 Q. Well, I guess we could start, have you ever  
11 done that before?

12 A. Yes, sir.

13 Q. All right, did you do it in this case?

14 A. No, sir.

15 Q. And why is it important? Why have you done  
16 it in other cases?

17 A. The issue was in dispute.

18 Q. Now, as to voir dire's concerned, I  
19 understand that we don't have attorney conducted  
20 voir dire, but for individual voir dire, given the  
21 sensitive nature of the criminal sexual conduct  
22 case, did you ever ask, essentially, to have the  
23 jurors questioned individually, so not to take the  
24 entire veneer?

25 A. I believe I have a copy of the voir dire

1 somewhere. I may be able to answer that question.  
 2 In the voir dire file, the only thing I have are the  
 3 notes when we picked the jury, so I don't know  
 4 specifically the answer to your question. I don't  
 5 recall doing it, normally -- I don't want to say  
 6 normally, so -- the answer to your question is, I  
 7 don't have a copy of the voir dire, so I can't  
 8 answer that.

9 Q. And as far as -- you -- you have the trial  
 10 transcript for this one, correct?

11 A. I do, yes, sir.

12 Q. On page 41 there's the discussion, or at  
 13 least there is -- it shows where jurors approached  
 14 the Judge regarding similar types of behavior during  
 15 this voir dire process, and did you -- it appears  
 16 you did not make any additional points to put on the  
 17 record those conversations between the Trial Court  
 18 and those jurors; is that fair to say? I mean I  
 19 don't see it anywhere in the transcript. There  
 20 wasn't anything on your behalf to try to preserve  
 21 that for appellate review.

22 THE COURT: All right, hold on, Counsel, I --

23 MR. PHILLIPS: I apologize, Your Honor, let me  
 24 re --

25 THE COURT: Well, no, no, no, no, no, no, you --

1 you're fine, I'm just trying to follow. You've got  
2 a pretty detailed application, and so I was  
3 wondering, what -- where is -- where is this issue?  
4 Does the issue concern a voir dire, or is that B2 on  
5 seven?

6 MR. PHILLIPS: Let me get.

7 THE COURT: Or where are we?

8 MR. PHILLIPS: Let me get that pulled up,  
9 because the way I do it is I break out each  
10 individual issue for my little prep.

11 THE COURT: Okay, well, I'm -- I'm sorry about  
12 that.

13 MR. PHILLIPS: No, no, no, that's -- let's see,  
14 let me make sure I'm following in the same footsteps  
15 so I can tell you exactly where to go. Because  
16 that's the problem with the -- my application, I  
17 think it's kind of all over the place. All right,  
18 let me get to the exact. I'll actually pull it up.  
19 Give me one second, Your Honor, it'd be easier to  
20 search it.

21 THE COURT: Yes, sir.

22 MR. PHILLIPS: All right, Your Honor, that's  
23 actually -- it appears to be on page ten of the  
24 application, Subsection 9. Essentially, it's Trial  
25 -- the issue is Trial Counsel failed to object and

1 moved for individual voir dire, when the Trial Court  
2 indicated counsel during voir dire process, that  
3 several jurors approached him, quote, "Similar types  
4 of behavior," and specifically, or notably that  
5 Trial Counsel failed to preserve for appellate  
6 review the issue of any resulting prejudice, because  
7 none of those conversations between the Trial Court  
8 and those jurors were placed on the record, and none  
9 of those juror numbers were placed on the record  
10 with whom the Judge spoke.

11 THE COURT: Okay, hold -- hold on, page ten,  
12 Section 9?

13 MR. PHILLIPS: Yes, Your Honor.

14 THE COURT: Okay, I've got you, all right, at  
15 the top. Okay, go ahead, sir, I'm sorry. Thank  
16 you.

17 MR. PHILLIPS: Yeah, my fault, I'll make sure to  
18 -- I'll have this up for control, if we can make  
19 sure we're always on the same page.

20 BY MR. PHILLIPS:

21 Q. So, specifically, Mr. Routzong, when you  
22 had those specific jurors go and approach the Trial  
23 Court regarding similar types of behavior during the  
24 voir dire process, those conversations between the  
25 Trial Court and those potential jurors, as well as

1 their juror numbers, that was not placed on the  
2 record?

3 A. No.

4 Q. Was there any strategic reason for not  
5 doing that?

6 A. No, sir, I was unaware that it wasn't in  
7 the record, until I got a transcript from the AG's  
8 office, and -- and we discussed it, Mr. Neubauer and  
9 I.

10 Q. Are you --

11 A. It was the first time I was aware.

12 Q. And are you aware for the rules of error  
13 preservation for the Appellate Court, that issues  
14 that are not contained in the record then are not  
15 specifically objected to or ruled upon, are not  
16 preserved for Appellate review?

17 A. I am.

18 Q. So those conversations, had they contained  
19 potential prejudicial things, obviously, there's no  
20 way to know now, that we're, essentially, deprived  
21 of -- of having that opportunity to have it reviewed  
22 specifically for this action?

23 A. That's correct, but at the time I thought  
24 it was being recorded by the court reporter, because  
25 the meetings always take place next to the court

1 reporter. I was kind of shocked it wasn't in the  
2 record.

3 Q. Now, for the follow-up voir dire questions  
4 of a potential juror that indicated that one of the  
5 investigating officers -- that he knew one of the  
6 investigating officers, but was not asked how they  
7 knew the officer, what strategic decision did you  
8 have for not doing follow-up voir dire regarding  
9 that potential juror?

10 A. At that --

11 Q. And -- and I apologize, page 28, I  
12 apologize, or at least I think it is, let me pull it  
13 up.

14 A. Page 28 of the transcript?

15 Q. I -- actually, I think I got that --  
16 disregard that page, I think I wrote that one down  
17 wrong. Let me actually -- well, I'll come back to  
18 that specific page.

19 A. Yes, sir.

20 Q. But, specifically, in the voir dire -- in  
21 -- during the voir dire questioning of a potential  
22 juror, he indicated that he knew one of the  
23 investigating officers. Was there any strategic  
24 reason why you wouldn't have asked for follow-up  
25 voir dire, to determine whether he could be fair and

1 impartial?

2 A. The answer to that question is that I would  
3 have just not chosen that if that juror came up. I  
4 don't know what number we're talking about. Do you  
5 know what the Juror's number is?

6 Q. Well, and -- and I -- and I think that --  
7 that -- I think that was the other part is the fact  
8 that I don't believe we have the Juror's number as  
9 well.

10 A. I have here notes of when we chose the  
11 Jury. I can -- if you want me to try to find  
12 someone? I don't know if you want me to do that or  
13 not, but I can tell you that, if somebody knows  
14 somebody in Law Enforcement, I would just simply --  
15 if they come up, I strike that person, and so that  
16 wouldn't be --

17 Q. If we could, your notes regarding Juror  
18 Number 4, you -- you move to strike Juror Number 94,  
19 and that's on page 48, I believe. And to be  
20 specific, on page 48, you move to strike Juror  
21 Number 94 for cause. The Trial Court denied that.  
22 Ultimately, you were forced to use a strike on the  
23 Juror. Was there any strategic reason why you  
24 didn't ask to preserve for Appellate review,  
25 specifically, why Juror Number 94 was called up, and

1 stated that she had a relative that was a victim,  
2 quite, "As the Court knows?"

3 A. The answer to your question is, is, you  
4 know, based on the transcript, it looks like we only  
5 -- we did not use all of our strikes anyway. I  
6 probably was worried about having to use all of our  
7 strikes if it had become an issue, which it wasn't.  
8 I think we only used nine strikes, so I don't think  
9 that -- that's probably not too hurtful to Mr.  
10 Cartwright. It might -- it's --

11 Q. So do you - do you have any notes,  
12 regarding the conversation Jury Number 94 had with  
13 the Trial Court, which prompted you to move to  
14 strike?

15 A. I don't have any notes on that, no, sir.

16 Q. And you didn't provide any additional --  
17 was there any strategic reason why you didn't  
18 provide any additional argument on the Motion to  
19 Strike, as to why it was prejudicial for that Juror  
20 to be -- why -- to support the Motion to Strike for  
21 cause? In other words, not to preserve it for  
22 Appellate review?

23 A. I don't think I made any other motions, no,  
24 sir, no strategic reason.

25 Q. As far as the Jury panel's concerned, was

1 there a strategic reason why you didn't move to  
2 quash the panel pursuant to Batson, where the State  
3 utilized statutory strikes, that it struck two white  
4 females from the petit jury, and sat 11 white  
5 jurors, six of whom were female?

6 A. I -- I don't think -- I do not believe --  
7 at the time I thought there was a Batson issue.

8 Q. You haven't -- so in your notes there's  
9 nothing listing out, as far as what were the reasons  
10 given --- well, I guess you didn't -- we didn't make  
11 the motion, so there'll -- specifically, there  
12 wasn't a strategic reason for not making the Batson,  
13 at the time, other than you didn't believe there was  
14 a Batson issue available; is that your testimony?

15 A. Yes, sir. That's somewhat imprecise. I  
16 didn't think there was a Batson issue.

17 Q. Now, as far as -- and I -- this probably  
18 should have been asked earlier, as far as the  
19 sequestration, you failed to move to sequester the  
20 witnesses. As you said that, in -- in your words,  
21 that the gravamen of this case was really about  
22 credibility of these witnesses. What strategic  
23 reason did you have for failing to move to sequester  
24 the witnesses?

25 A. Well, I -- I would sequester witnesses if I

1 thought one testimony would -- would influence the  
2 other. I think their testimony was already pretty  
3 locked in from the prior trial, and so everybody  
4 already knew what everybody was going to say. I  
5 don't know if Mr. Hart sequestered witnesses, but in  
6 the interim they certainly had time to talk to one  
7 another. I don't think -- I don't think I could, at  
8 the time, discern any reason to sequester the  
9 witnesses, or I just didn't consider it, it's one of  
10 those two. And the answer -- specific answer to  
11 your question is, I don't think I had any strategic  
12 reason.

13 Q. And given now, obviously, hindsight's  
14 20/20, seeing how the testimony was presented, and  
15 how the State referred to prior witness testimony  
16 while questioning later witnesses, since this was a  
17 re-trial, would -- and would you have moved to  
18 sequester the witnesses? Was it prejudicial, as far  
19 as the cross-examination, and -- and as far as the  
20 direct examination that was presented with these  
21 witnesses, had they been sequestered?

22 A. I don't know how to answer that question,  
23 Mr. Phillips, truly. I -- I don't know what I -- I  
24 would do now. It might be completely different than  
25 I did then. As you said, whatever I did then,

1 obviously, did not persuade the Jury, so -

2 Q. And -- and now that you've had the  
3 opportunity, you were there at trial, and now that  
4 you've had an opportunity to review the transcript,  
5 would it have been strategic for you to move to  
6 sequester those witnesses?

7 A. Honestly, I don't know how to answer that  
8 question. I guess the best thing I could do,  
9 because I'm not aware of any -- any reason. I guess  
10 that's the best answer I could give you.

11 Q. And -- and I guess in context of my  
12 questions, where the State referred to prior witness  
13 testimony of questioning witnesses in a re-trial, as  
14 well as inconsistent testimony, that even you  
15 elicited through cross-examination?

16 A. I -- I have to stay with my -- my answer,  
17 Mr. Phillips. I -- I -- I don't know how to answer  
18 your question any other way.

19 Q. Now, as far as the indictments are  
20 concerned, was there a strategic reason on your part  
21 for not moving to quash the 28 indictments as  
22 unconstitutionally overbroad and vague,  
23 specifically, since a later case that comes out,  
24 State v. Baker in 2015?

25 A. No strategic reason.

1           Q.   And since each of these indictments had  
2 alleged offenses that occurred at unspecified times  
3 over a period of years, and the combined indictments  
4 covered a total of an 18-year span, with -- since  
5 you didn't have a strategic reason to move to quash,  
6 now, looking back, given the nature of having 28  
7 indictments spanning over an 18-year period, each  
8 individual unspecified times of a year in -- in  
9 between for each, would you now move to quash those  
10 indictments, as being unconstitutionally overbroad  
11 and vague?

12           A.   Based on the case law that has arisen, I --  
13 I would agree with you, that's exactly what I would  
14 do.

15           Q.   Now, as far as the indictments are  
16 concerned and the three key witnesses in here, the  
17 -- the witnesses really contained in those  
18 indictments, was there a strategic reason why you  
19 failed to move to sever those charges, essentially,  
20 from basically trying to have this as three separate  
21 trials, where there were three distinct large  
22 periods of time, that didn't arise out of a single  
23 change of circumstances, and weren't proved by the  
24 same evidence?

25           A.   I don't think -- the answer to your

1 question is no, I don't -- I think probably now I  
2 would have done that. I -- I think probably, at the  
3 time --

4 Q. And I put a lot of -- that was a long  
5 question, so let me kind of break it up.

6 A. Sure.

7 Q. Since we have these three -- these three  
8 witnesses that had, obviously, allegations that  
9 spanned the three distinct periods of time, and had  
10 different evidence, do you think, strategically, it  
11 would be appropriate to move to sever those cases,  
12 so the Jury would only be hearing one single set of  
13 period of time, a single set of -- say a proof of  
14 evidence that's not related to the others? Because  
15 it is -- because they weren't proved by the same  
16 evidence. Do you think it's now appropriate to move  
17 -- to make a motion to sever those indictments?

18 A. I -- I probably would now, but then I don't  
19 -- I don't recall -- recall all of my thought  
20 process. And as I said, I didn't write any of my  
21 thought processes down. If I can -- if -- if you'll  
22 permit me to go back onto the question of the  
23 indictments, because I may have misunderstood your  
24 question in part. I would say that any indictment  
25 that encompasses a period of time, probably more

1 than a year, that motion needs to be made. On the  
2 other hand, in this particular case, and I don't --  
3 I'd have to review the indictments again, but I  
4 recall from the last time we were altogether, it --  
5 it occurred to me that if I were prosecuting the  
6 case, that's probably what I would have done,  
7 because the witnesses were alleging specific ages.  
8 And so I think the State used birthdays, one, let's  
9 say, March 5th of 2012 to March 5th of 2013, that  
10 would have encompassed a certain age; but any  
11 indictments that expanded -- that were more than a  
12 year, I think that's probably objectionable. So if  
13 there are any indictments there that -- that were  
14 more than a year in length, I should have done  
15 differently, but the ones that were just encompassed  
16 a year, if I were prosecuting, that's what I would  
17 do, it's -- it's logical. I -- I'm sorry, I had to  
18 kind of think about it for a minute, but I thought  
19 maybe I had misunderstood your question.

20 Q. No, understood. So with these 28  
21 indictments that span over 18 years, had -- the --  
22 there was no strategic reason that you had for  
23 failing to move to sever those, based on the  
24 witnesses, or excuse me, the -- the victims in the  
25 case?

1           A.    No strategic reason.  I think that if -- I  
2 think now I probably would want to sever them, yes,  
3 sir.  There's always a danger that, you know, when  
4 you have an extensive amount of indictments like  
5 that, that somebody could -- well, a juror might  
6 conclude well something -- something had to happen,  
7 you've got all these indictments, and so it become  
8 -- I think what we were betting on, in part though,  
9 was that we could demonstrate to the Jury that these  
10 witnesses were not happy with their dad, or stepdad,  
11 and that they had reasons to lie.

12           Q.   And then the other part of that would be,  
13 that there's just overwhelming evidence, where you  
14 have three victims spanning, again, 28 indictments  
15 over 18 years period of time, yet the -- the  
16 evidence -- again, they were distinct and large  
17 periods of time, as far as the allegations, they're  
18 -- the proof didn't arise out of a single change of  
19 circumstances that weren't proved by the same  
20 evidence; is that -- I mean that's fair to say, as  
21 far as the potential for the prejudice there, you  
22 would agree?

23           A.    I -- I do agree.  I -- I don't specifically  
24 remember what my thought processes at the time were.  
25 Clearly, now in hindsight, I can easily look back

1 and say, "Gee, I wished I would have severed that."  
2 So the answer to your question is that there is  
3 danger there.

4 Q. So, specifically, in this case, the  
5 Defendant had made a statement, what was your -- do  
6 you have anything in your notes regarding discussing  
7 a Jackson v. Denno hearing with Mr. Cartwright?

8 A. No, sir. I -- I don't know why I would  
9 have done a Denno hearing, but I don't recall that  
10 -- I'd have to look at the discovery again. I'm not  
11 sure he made a statement to the police. I don't  
12 recall that right now.

13 Q. And I guess, specifically, it's related to  
14 -- and I -- let me clarify that for you, that there  
15 was, specifically, a consent to search form, State's  
16 Exhibit Number 9, the buccal swab obtained from the  
17 State on State's Exhibit Number 10, and then the DNA  
18 testing regarding that, having a Jackson v. Denno to  
19 flush out those issues of where the State  
20 specifically got that information from him directly.

21 A. I can say at the time I would not have  
22 looked at that as a Denno issue.

23 Q. Now, you did address this on direct  
24 examination regarding the initial instructions, the  
25 Trial Court's initial instructions to the Jury,

1 specifically, that, quote, "You 12 collectively act  
2 as one. You decide -- decide what the true facts  
3 are," end quote, and then later quote, "You will be  
4 in position then to render a true and just verdict  
5 -- a verdict that speaks the truth of the case," end  
6 quote, quote, "It's your civic responsibility to pay  
7 close attention in deciding who's telling the  
8 truth," end quote. I believe that's kind of citing  
9 pages 33, 57, 59 through 62. And you said you did  
10 not believe that that amounted to the search for the  
11 truth language, in the sense of -- of violating of  
12 due process and burden shifting?

13 A. I can tell you at the time, and even now, I  
14 probably would not object to that. I mean that's  
15 kind of what -- that's kind of what -- there's only  
16 -- I think there's only so many ways in -- in any  
17 language you can express a concept. You -- you want  
18 people to listen, and make a determination as to  
19 what is fact, and what's not. Of course, the State  
20 has the burden of proof. The real question is, has  
21 the State proven beyond a reasonable doubt their  
22 case? But somewhere lodged in that logically is a  
23 determination of a truth. And so that -- I think  
24 that's somewhat different, because, if you tell them  
25 to search for a truth, then you're asking them, or

1 inviting them maybe to fill in gaps with their own  
2 experiences, or something that's not in evidence.  
3 That's a little bit different than just asking them  
4 to make conclusions of truth based on the evidence.

5 Q. Well -- and you do agree that with the  
6 burden being on the State, it has to be addressing  
7 the fact that use of the search for the truth  
8 language as being burden shifting; you agree with  
9 that?

10 A. Yeah, I do.

11 Q. Now, with the initial opening statements to  
12 the Jury, using, you know, again, the word true, and  
13 truth, variations of that numerous times, again,  
14 specifically, when the burden is completely on the  
15 State to present all the evidence, to meet all the  
16 elements beyond a reasonable doubt that that is --  
17 that is, essentially, what the Jury, as a -- the  
18 finders of fact have to -- have to make. They have  
19 to decide whether the State has presented the  
20 evidence to satisfy all elements, beyond a  
21 reasonable doubt. You -- you -- your position's  
22 that, given these explanations about truth and just  
23 verdict, that that is not burden shifting?

24 A. That is my position, yes.

25 Q. Now, specifically, was there any strategic

1 reason why you didn't object to the State's opening  
2 statement of stating that when they were referencing  
3 the indictments, essentially, stating "That -- that  
4 these are the dates for when all this is said and  
5 done, it's important to see how we've grouped these  
6 indictments together, especially, in relation to my  
7 questions regarding the motions to quash the  
8 indictments and the motion to sever the  
9 indictments?"

10 A. Can you tell me what line you're referring  
11 to, so I can --

12 Q. Yes, sir.

13 A. 'Cause I'm not quite sure I understood that  
14 question.

15 Q. Yes, sir, so I apologize. So I think go  
16 back to -- it's page 65 through 67, during the  
17 opening statement the Prosecutor references the  
18 indictments, and basically said, "That these are the  
19 dates. When all this is said and done, it's  
20 important to see how we've grouped these indictments  
21 together." And in context of the failure to move to  
22 quash, or move to sever on kind of both of them,  
23 specifically, in light of that -- in light of our  
24 prior questions and your answers, do you believe,  
25 you know, that now that would be an objectionable

1 statement?

2 A. That -- that -- so if Mr. Maloney -- when  
3 Mr. Maloney said, "That it's important that you see  
4 how we group these indictments together," was that  
5 an objection?

6 Q. Correct, is that a prejudicial and  
7 objectionable statement, given the light that you  
8 didn't move to sever?

9 A. I have to answer that question by saying,  
10 no, I don't think it's objectionable.

11 Q. And given that it wasn't -- there wasn't a  
12 prior motion to sever, that leads into your quote or  
13 your answer for that it's not objectionable,  
14 correct? Is that why you believe that it's not  
15 objectionable?

16 A. Well, I'm -- I'm trying to answer as  
17 specifically and as succinctly as I can, but it's  
18 hard for me right now to go back, because we were  
19 not successful in this trial, and so anything that I  
20 could go back to and say maybe I should have done  
21 this differently is -- that's very enticing. I can  
22 say that, as best as I can answer your question, at  
23 the time, I did not consider severing these charges.  
24 I think there was a danger in that that is not good,  
25 but at the same time, basically, the entire case I

1 think that we tried to present is that all these  
2 folks right here have a reason to be mad at Mr.  
3 Cartwright. And I think maybe the Jury saw a little  
4 bit of the -- how Mr. Cartwright, his personality,  
5 and his interactions with the Judge. He's not  
6 necessarily a likeable man, that doesn't mean he's  
7 guilty of anything. And I think we tried to provide  
8 reasons for the Jury to consider that maybe this  
9 didn't happen, okay, and -- and here are the  
10 reasons, but looking back on it now, would it have  
11 been better to do three trials instead of -- instead  
12 of one trial? I think there's good arguments, but  
13 -- and is it objectionable for me -- I -- I'm not  
14 really sure I see the argument that his statement to  
15 the Jury in openings, that you pay attention to the  
16 group -- how we group these indictments, it -- it's  
17 objectionable to this extent, I think, and perhaps I  
18 should have objected, indictments are not really  
19 evidence. And so in a way it's possible that he's  
20 -- he's saying, hey, as evidence, look how we, you  
21 know, we grouped these indictments. Now that I  
22 think would be objectionable.

23 Q. And -- and I apologize for being confusing,  
24 that was my question, I apologize, thank you, that  
25 was it. You -- you clarified that for me, 'cause

1 that -- that was my question, as far as his  
2 reference to the indictments, since they're not  
3 evidence in the way he presented them.

4 A. Yes, sir.

5 Q. Now, going onto the next -- next question,  
6 now, is -- back in the trial transcript that there  
7 was a specific witness that you, ultimately, decided  
8 to stipulate to a witness' medical condition  
9 regarding having stage four cancer, obviously,  
10 before the second trial, and did not object to the  
11 admission of her prior testimony at trial, where she  
12 was, again, as far as you knew, still alive. Had  
13 you been provided any documentation to prove she had  
14 cancer?

15 A. I think there was a letter that was  
16 presented to the Court, and I don't think Mr.  
17 Cartwright disagreed with the fact that she had  
18 cancer. I didn't really, at the time, have any  
19 doubts that she was gravely ill, and I think -- I  
20 think the State received a letter that they  
21 presented to the Court, as well, and I got a chance  
22 to look at it. I didn't really have any question  
23 about it, no doubts.

24 Q. And as far as having her prior testimony  
25 being admitted during the second trial, other than

1 the fact that her -- her illness was provided, was  
2 there anything else that was provided, and, again,  
3 you said -- well, I guess, specifically, you said  
4 the letter that was provided to the Court, do you  
5 have that in your case file?

6 A. I do not. I don't think I have a copy of  
7 that, no, sir.

8 Q. Was she ever subpoenaed to be present at  
9 the trial?

10 A. Not by me.

11 Q. And your -- what was the strategic reason  
12 for just allowing that to be admitted?

13 A. The answer to that question is a couple  
14 reasons probably. Reason one, I didn't have any  
15 doubt that she was gravely ill. I -- I don't know  
16 if she's since passed away or not, but that was the  
17 impression I got at least from the letter, that they  
18 said now they're just trying to -- I believe the  
19 word they used was palliative. So I didn't have any  
20 questions about that. I thought it was -- I thought  
21 if I were to force the State to bring somebody who's  
22 gravely ill, probably has oxygen tanks, and probably  
23 looks incredibly unhealthy, that would make it more  
24 sympathetic to the Jury, and I expected her to  
25 testify substantially, the same as she did in the

1 prior trial. And so, true, I missed out on an  
2 opportunity to cross-examine her, but I doubt -- I  
3 didn't have any doubts in my mind that -- that the  
4 testimony would be substantially the same.

5 Q. Now, regarding on direct examination with  
6 Cassie Autrey (phonetic), specifically, I believe  
7 it's on page 81, during her direct examination, was  
8 there any strategic reason why you -- you didn't  
9 object or move to strike under Rules 401 and 403,  
10 basically, the State's questioning, quote, "Now  
11 sitting here today, telling these events to these  
12 three strangers, how are you doing?" Like, going  
13 into a state-of-mind at the current time.

14 And her response is, "Lord, I would rather be at  
15 home with my children, but it's something that needs  
16 to be done. I'm finally getting to tell what  
17 happened." Does -- what, specifically, about that  
18 do you find that it's not objectionable, or was  
19 there any reason why you did not object?

20 A. I did not think it was objectionable at the  
21 time, because that -- I think most of us, when we  
22 call a witness to the stand, we attempt to ask them  
23 easy questions to try to get them comfortable. Mr.  
24 Maloney chose to frame it the way he did. I think  
25 most people frame it in the sense of just brief

1 biographical information. I didn't really find that  
2 objectionable. As I'm reading it today, I don't  
3 really find it objectionable.

4 Q. Now, on page 94, 95, specifically, the  
5 testimony of Melinda Lively, there was questioning  
6 from the State, "Did you hear Cassie testify?" And  
7 then she later indicates that she didn't contact  
8 police, because of threats from the Applicant, as,  
9 quote -- as Cassie stated, was there any strategic  
10 reason for failing to object to that improper  
11 bolstering?

12 A. It doesn't appear to me to be bolstering.  
13 He -- I'm not sure why he asked it. I guess -- I  
14 guess that was his way of introducing the  
15 relationship between Cassie and -- and the witness,  
16 Melinda. I guess that was a way to introduce their  
17 relationship. I didn't really find that to be  
18 objectionable.

19 Q. Well, based on my prior question about the  
20 failure to move to sequester, had they been  
21 sequestered, that question would not have been  
22 available to the witness; you would agree to that?

23 A. Yes, sir. It would be -- it wouldn't -- it  
24 wouldn't have been a reasonable question, yes, sir.

25 Q. And -- and so, again, when the second part

1 of that is that she indicates, specifically, Ms.  
2 Lively testifies that she didn't contact police  
3 because of threats, and she says, "As they," you  
4 know, excuse me, as Cassie Autrey stated that quote,  
5 that's the improper bolstering that I was -- and I  
6 just want to make sure I touch back on that, that  
7 second part, where Melinda Lively references  
8 Cassie's -- or Casey's testimony is improper  
9 bolstering? In other words, elicited by the  
10 Prosecutor's question?

11 A. I think that could be objectionable, yes,  
12 sir. I don't know -- I -- I would say -- I don't  
13 know -- I guess it could be considered bolster.  
14 That -- that's -- that's part of our problem, I  
15 think. We've only got so many different ways in --  
16 in any language we can express something. I think  
17 -- I didn't take it to be bolstering what she said,  
18 as much as just agreement. I guess maybe that's --  
19 that's a distinction without a difference, but  
20 that's pretty close. I -- I would have to say it's  
21 -- I would have to say it's close to bolstering, if  
22 it's not bolstering. So it -- it -- it is possible  
23 that I could -- I should have objected. I don't  
24 recall at the time, nor do I now, really find it --  
25 that it's something I would have objected to, I

1 don't know. It's a -- it's a -- it's a close call.

2 Q. Thank you. So next question, and there is,  
3 on page 103, still with Melinda Lively's testimony,  
4 there is, specifically, the testimony where she  
5 says, "In 1999," or excuse me, this is the question  
6 that leads into her response. The Prosecutor asks,  
7 "In 1999 or 2000," it says, "whenever this pace --  
8 paperwork was showed from your divorce, is that the  
9 first time you found out or allege that your  
10 daughter had been abused, essentially, by the  
11 Defendant?" And then her reply is, "Yes, when she  
12 was four." Was there any strategic reason for not  
13 objecting for the prejudicial hearsay that went  
14 beyond the scope of time and place? And I'll also  
15 constitute it improper bolstering.

16 A. I don't think there's any strategic reason.  
17 That's -- that is something that I think she's  
18 restricted to time and place.

19 Q. Well -- and you did object, but you didn't  
20 provide any specific objection with it, in other  
21 words, to preserve it for Appellate review, there's  
22 no specific objection as -- stating that it went  
23 beyond time and place, or bolstering.

24 A. It looks like the objection I made was --  
25 had had something --

1 Q. Asked and answered.

2 A. -- completely different, yeah.

3 Q. Yeah.

4 A. So I don't think -- I don't think I  
5 objected at all to that.

6 Q. Was there any specific reason why -- that  
7 you didn't object to it regarding it being hearsay  
8 or bolstering?

9 A. Not -- there's no strategic reason for  
10 that, no, sir.

11 Q. Now, on page 111 of the trial transcript  
12 for Amanda Reddick's direct testimony, there is a  
13 quote where she says, "My mom told me to lie," then  
14 and you have the objection, essentially. Was there  
15 any specific reason why you didn't move to strike  
16 that testimony where is it sustained by the Trial  
17 Court?

18 A. No reason. No -- no strategic reason. I  
19 can give you a reason, perhaps at the time, I would  
20 put it like this, I probably would move to strike  
21 now. At the time, that being wrapped up in the  
22 trial, I probably thought to myself, oh, this is  
23 already in front of the Jury, and I probably already  
24 moved on at that point. To answer your question,  
25 there's no strategic reason. Do I think -- do I

1 think moving to strike would have made any  
2 difference? Probably not, because it's already in  
3 front of the jury.

4 Q. On page 115, still Amanda Reddick's direct  
5 testimony from the State, the direct examination,  
6 was there any specific reason why you failed to move  
7 to strike leading testimony there that was sustained  
8 by the Trial Court? It's page 115.

9 A. And what line is it, sir?

10 Q. Specifically, the Prosecutor asks, "At any  
11 point," 13 or 14, "did he have you perform oral sex  
12 on him?" She says, "No, sir." You object, you --  
13 under leading questions, and it's sustained. Is  
14 there any specific reason why you didn't move to  
15 strike that testimony or is it the same answer as  
16 -- as -- yeah.

17 A. No, same.

18 Q. Now, from pages kind of -- pages 172  
19 through 176, and page 180 there's discussion  
20 regarding Brandy Brown's disclosures of abuse. Now,  
21 your questioning of that on re -- on redirect  
22 examination, the State basically -- or the  
23 Prosecutor's quote says, "Mr. Routzong talked a  
24 whole lot about you telling people about what  
25 happened, so let's talk about that." And,

1 specifically in regards to your cross-examination,  
2 through your, I guess, your attempt to impeach  
3 Brandy Brown's testimony, regarding her disclosures  
4 of abuse, where the State on redirect examination  
5 was able to reinforce her disclosures, was there any  
6 trial strategy? I guess now looking back, any  
7 reasonable trial strategy to do that?

8 A. Okay, I'm -- can you -- can you ask me that  
9 again? I'm --

10 Q. Yeah, so -- so, essentially, during your  
11 cross-examination, you would attempt to impeach  
12 Brandy Brown's testimony, or her disclosures of  
13 abuse; yet then on direct, excuse me, redirect  
14 examination, the Prosecutor, essentially,  
15 capitalizes on that, and gets to reinforce, and go  
16 through all those disclosures of abuse, and his  
17 specific quote is, "Mr. Routzong talked a whole lot  
18 about you telling people about what happened, so  
19 let's talk about that." And goes back through the  
20 disclosures of abuse with redirect examination.  
21 Again, from a trial strategy standpoint, was that --  
22 and, you know, your cross-examination which elicited  
23 this redirect examination of the disclosures of  
24 abuse, was there a strategic reason of what you  
25 tried to attempt in going through the disclosures of

1 abuse of Brandy Brown? And I know that -- that's  
2 kind of a convoluted way to -- to ask the question,  
3 but what strategic reason, during that cross-  
4 examination -- was there -- were you trying to  
5 accomplish? And I guess there's a -- the sub  
6 question comes after that, so --

7 A. Well, during the cross-examination, I was  
8 probably -- and I hate to use the word "probably,"  
9 but without reading the whole thing again, I no  
10 doubt was trying to impeach the witness. I don't  
11 know how successful I was. Apparently, not very,  
12 you know, considering the outcome of the trial. And  
13 there had been gendered the response by Mr. Maloney,  
14 so I think I can answer your question like this. I  
15 would con -- I would have considered, at the time,  
16 that that would be the purpose of redirect. If I  
17 had any success impeaching the witness, if I were  
18 prosecuting the case like Mr. Maloney, I would -- I  
19 would think that pro -- the purpose of redirect  
20 would be to -- to ask the things, try to get some  
21 clarity, try to spin it the way I wanted to, based  
22 on the questions that the defense counsel was  
23 asking. So I -- I -- I don't know that I see  
24 anything objectionable now.

25 Q. Now, going through the next question, I

1 don't know if you remember this from prior  
2 testimony, not this morning, but during when we were  
3 doing your direct examination before, the discussion  
4 about you acting out, as a person or the witness,  
5 that, basically, there was a person that acted as a  
6 witness on the stand as Buffy Brown, the Applicant's  
7 ex-wife and mother of Amanda and Casey -- Cassie,  
8 where the Prosecutor for direct and cross,  
9 basically, the question was, there was inflections  
10 and mannerisms that was portrayed, basically, the  
11 acting out of this testimony, and you had your --  
12 your position was that it was not objectionable or  
13 prejudicial. So, specifically, having you, you  
14 know, present that testimony, now looking back, was  
15 it a strategic reason for you -- or would it have  
16 been objection -- objectionable to have you have  
17 someone else, a third party, not counsel for, you  
18 know, the Defendant at the time, to read part of the  
19 testimony, or part -- act as part of that?

20 A. I have given this a lot of thought. I can  
21 tell you, at the time, I believe my -- my thought  
22 process was, this is going to come in, and so as far  
23 as I know, I don't know of anybody else -- I haven't  
24 run across anybody else that the State ever asked to  
25 participate in part of their case. I think, at the

1 time, I was worried about certain things being  
2 emphasized that the State wanted to be emphasized,  
3 and I would -- and I thought to myself, well, I will  
4 emphasize the things that -- that the Defense needs  
5 to emphasize in speech, so on, and so forth. Now,  
6 in fairness to Mr. Cartwright, you, and the State, I  
7 have given this a lot of thought, and so that would  
8 have been my reasoning then, that would have been my  
9 strategic reason. Now, you've asked me a separate  
10 question, would I do it now? I've given it a lot of  
11 thought, and I -- I daresay there's a couple  
12 problems with doing it. The first problem is, if  
13 you're -- you may be leading the Jury to wonder to  
14 themselves, well, the State -- or the Defense is  
15 participating in the State's case, and I'm not  
16 saying that happened. I think there's a danger in  
17 that. And I think the other thing, there's no way  
18 of knowing, it would all depend, but if -- if  
19 something's just being read into the record in a  
20 very monotone way that's helpful to the State, or in  
21 this case I think there was some helpful things on  
22 both sides that, arguably, that were useful to both  
23 sides. If somebody just reads it in as a monotone,  
24 then it might -- at some point in time, the Jury  
25 might just -- just blank all of it out, just tune

1 all of it out, that would be human nature. So I --  
2 I would say, upon reflection, there's a couple  
3 dangers in that -- in doing that, and I felt -- I  
4 think I've confirmed in my own mind, I probably  
5 wouldn't do that again, because -- and I've asked  
6 other attorneys, and the -- and didn't tell the --  
7 what my opinion of it was, and all of them seem to  
8 indicate that they were worried about the -- the --  
9 the testimony, and the inflections, the bias that  
10 might be given by the State, so they -- they think a  
11 lot like I do; but I think now -- I don't think I  
12 would do that, because I'm worried about the danger  
13 that maybe a Jury person would sit there and go,  
14 "Well, that -- the Defense is participating in the  
15 State's case, I think that's a problem perhaps." I  
16 hope I've answered your question. I'm trying to be  
17 as fair to everybody as I can. That's -- that's my  
18 answer.

19 Q. You did, thanks, Mr. Routzong. You did,  
20 thank you, and thank you for being candid. Now,  
21 during Buffy Brown's prior testimony that was,  
22 essentially, presented, that was read into the  
23 record, as far as a -- and, I guess, trying to be  
24 specific as possible, that there was testimony on  
25 page 184 in the trial transcript, that arguably

1 could have went beyond the scope of time and place,  
2 and constituted improper bolstering, where the  
3 Prosecutor asked, and the police found out about the  
4 Defendant had been, you know, molesting, and -- and  
5 she agreed, and she intentionally replied in the  
6 affirmative. In other words, on page 184 the  
7 Prosecutor starts to go through the 2001  
8 investigation questioning about, "Did Law  
9 Enforcement and yourself find out the Defendant had  
10 been molesting Amanda?" She answers in the  
11 affirmative, "Yes." "After Law Enforcement became  
12 involved, did Amanda, eventually, tell the  
13 authorities that she had not been sexually abused?"  
14 And -- and she goes into that, essentially, is there  
15 any strategic reason for not objecting as  
16 prejudicial hearsay that went beyond time and place  
17 to constitute improper bolstering?

18 A. No, there is no strategic reason to not  
19 object, and to confine the remarks to time and place  
20 that I can think of. I'm not so sure it's  
21 bolstering that much, but, certainly, that's the  
22 rule, so they -- that should have been objected to,  
23 and confine to time and place.

24 Q. Now, on page 119 of the -- the trial  
25 transcript, Amanda Reddick's direct testimony.

1 Specifically, you objected, "Your Honor, I'm having  
2 a real hard time hearing her testimony," and she  
3 ordered her to speak up. Was -- and this was  
4 regarding testimony where she had -- she just  
5 testified about alleged threats and demands for oral  
6 sex. In hindsight, would that be one of the issues  
7 as far as trying to preserve that for Appellate  
8 review, in trying to, essentially, object  
9 specifically to that testimony? I guess you'd have  
10 to go back, if you have a chance to look at it.

11 A. Yes, sir.

12 Q. All right, do you find anything  
13 objectionable regarding that testimony now when you  
14 have an opportunity to review where, essentially,  
15 she -- the Court orders her to speak up, regarding  
16 that specific threats of -- or the alleged threats  
17 and demands for oral sex?

18 A. No, Mr. Phillips, I -- I think that that  
19 was the Court's response when I asked the Court to  
20 ask her to speak up, because I couldn't hear her,  
21 and, of course, I have to hear what she's saying, so  
22 I -- I don't have a problem with that.

23 Q. Now, on page 128 during your cross-  
24 examination of Amanda, you, essentially reaffirmed  
25 her version of events, quote, "You're saying it was

1 your mom, Buffy Cartwright, that, ultimately,  
2 convinced you to recant," end quote. And Amanda  
3 responds, "Yes." Now, as far as the kind of  
4 reaffirming the -- reaffirming the State's,  
5 essentially, position, as far as the -- their direct  
6 testimony, was there any specific reason why you  
7 asked that question to reaffirm, essentially, her --  
8 her direct examination testimony?

9 A. Well, I -- it appears that I was going  
10 somewhere, and I had the -- that would have been in  
11 the context. That was to place her in the context  
12 of my question, I think, so I don't find that  
13 objectionable.

14 Q. Okay, so your testimony is, it was a lead-  
15 in question to where your next cross was going?

16 A. That appears to be where I was going, yes,  
17 sir.

18 Q. All right, and -- and, again, reviewing  
19 your -- your cross-examination questions after that,  
20 what strategic reason was it for the lead-in?

21 A. If I may briefly re-read this, and -- and  
22 we're beginning on -- is it at the beginning on line  
23 eight, I guess, on 128, or is it --

24 Q. Yes. Yeah, I think that's -- yes, you're  
25 right.

1           A.    (Reviews document.)  It looks like I was  
2 trying to draw attention to the paradoxical moving  
3 back and recant -- or recanting, and then looking  
4 back, and now she's saying these things happened  
5 several times.  It looks like -- it seemed like it  
6 was almost -- it looks like I was trying to draw  
7 attention that it would paradoxical for her to move  
8 back, and into a situation where she was being  
9 molested according to her several times a week.  I  
10 think that's where I was going with that.  You know,  
11 I had to -- to place it in context for the Jury to  
12 understand, hey, how can it be that somebody's being  
13 abused like this, would recant, and then move back  
14 into the home of their abuser?  I think that appears  
15 to be where I was going.

16           Q.   Now, you said you had a copy of the  
17 original -- the first trial transcript; is that  
18 right?

19           A.   I do.

20           Q.   And so -- well -- and you don't have to --  
21 to grab it right this second.  What I'm saying is,  
22 during -- I believe on page 29 of the second trial  
23 transcript, when you're cross-examining Amanda,  
24 there's specific testimony where you're trying to  
25 impeach her, and you are referencing, essentially,

1 her prior testimony, that she said it under oath.  
 2 Was there any strategic reason why you didn't use  
 3 the first trial transcript to impeach her?

4 A. Well, I don't think --

5 Q. Testimony from the first trial?

6 A. Yeah, that's probably because, if she  
 7 responds -- I don't recall, I'd have to look at the  
 8 other transcript. It's certainly the case that, if  
 9 there was a difference between the first transcript,  
 10 his trial testimony, and the second one, it's clear  
 11 that I didn't get it; but, apparently, from what I  
 12 can tell, everything I wanted to release I tried to  
 13 get in the second one, and there wasn't any need to  
 14 reference the -- the first trial, apparently, I was  
 15 satisfied. So I was either ignorant of some fact  
 16 that happened in the first trial, or I was just  
 17 satisfied with what I heard in this one as much as I  
 18 could be.

19 Q. Thank you. Now, was there any strategic  
 20 reason for failing to move to -- or failing to  
 21 object to move to strike the DSS case worker's  
 22 testimony? I believe it's page 138, of the trial  
 23 transcript, quote -- where DSS becomes involved in  
 24 the case, and says quote, "If it means the legal  
 25 statute in the South Caro -- in the State of South

1 Carolina, we take it as a report, and go interview  
2 the family."

3 A. I don't find anything really objectionable.  
4 I could see -- I mean there's an argument to be  
5 made, but, frankly, I don't think that's  
6 objectionable. I think it's just some -- we're  
7 constrained by language to, you know, to communicate  
8 something in just so many ways, and I know that's  
9 why we get -- we go to law school to figure out the  
10 ways that are proper; but in this particular case,  
11 she's just -- she's just answering the question,  
12 "Well, how does DSS become involved?" I think she  
13 -- she went beyond a little bit maybe. Probably  
14 not, actually. They have a statute, they have rules  
15 they have to follow. When we get a report, here's  
16 our rules, this is what we have to do. She's very  
17 succinctly just telling him, this is how we got  
18 involved. I don't -- I'm not really troubled by  
19 that too much.

20 Q. And -- and now as far as your cross-  
21 examination of the DSS case worker going --  
22 specifically, going into that reference of the  
23 complaint legal statute, was there any strategic  
24 reason for not going directly into that with the DSS  
25 case worker?

1           A.    You might have to help me, specifically,  
2 what you are referring to that maybe I should have  
3 gone into it with her a little bit.

4           Q.    Well, as far as the DSS case worker, as you  
5 said, it's a -- a way for the DSS case worker to  
6 explain how they become involved in the DSS  
7 investigation, and this is a criminal matter that's  
8 entirely separate. This is a 2001 DSS  
9 investigation. She's talking about that there's a  
10 complaint, there's -- it meets the legal statute.  
11 Your cross-examination of the DSS case worker, one,  
12 objecting speci -- or, excuse me, let me take it  
13 back. But cross-examining that DSS case worker on  
14 the -- basically -- specifically, it related to the  
15 statute itself, basically clarifying for the Jury  
16 that nothing was made, that it was just a complaint  
17 that was filed that they said met the statutory  
18 determination, not that the findings met the  
19 statutory determination. I -- I think that's where  
20 I was trying to go with that.

21           A.    It seems to -- you know, it seems to me  
22 what you're -- what you're asking me is, should I  
23 have gone into a deep -- go more deeply in a sense  
24 of saying, well, this is a -- you're not gaging any  
25 burdens of proof, or anything like that. For

1 example, there's no burden of proof involved at all.  
2 They get a complaint, they investigate it. It's  
3 founded, or it's not founded. That's a completely  
4 different thing than the proof that's required in  
5 Court, and that the -- you're saying the Jury may  
6 have inferred that the two things -- you know, if  
7 they by getting a complaint and opening up a case,  
8 that they've -- they think they've made a  
9 determination of -- of -- by some burden of proof  
10 that there was evidence. And so the answer to your  
11 question is, I perhaps should have gone more deeply.  
12 Like I say, I didn't think about it like that. At  
13 the time, it was just a -- to me, it was just a --  
14 the opening context for the Jury to understand why  
15 DSS would become involved; but I don't disagree that  
16 there could have been questions asked in hindsight.

17 THE COURT: All right, hold on one second.

18 MR. PHILLIPS: Yes, Your Honor.

19 (OFF RECORD)

20 THE COURT: All right, I'm back. I'm sorry  
21 about that. Somebody was turning on some music, I  
22 guess, getting an early start on the weekend.

23 MR. PHILLIPS: Yes, Your Honor, thank you.

24 BY MR. PHILLIPS:

25 Q. Specifically staying with the DSS agent's

1 testimony, there was -- I believe we're -- we're  
2 staying on page 138, the DSS agent testified, quote,  
3 "That she received a call from her supervisor saying  
4 we've received a report of sexual abuse concerning  
5 Amanda Reddick, and her stepfather, Harold  
6 Cartwright." Now, as far as -- I -- I think you've  
7 already touched on it, but there was no strategic  
8 reason not that you failed to object or move to  
9 strike, it's going beyond time and place, regarding  
10 that specific allegation of abuse from 2001 with the  
11 DSS agent?

12 A. No strategic reason.

13 Q. Now, during -- on page 92, with the DNA  
14 expert's testimony, the State asked whether DNA  
15 could be destroyed; it goes into the effect of  
16 washing and drying sheets would have the effect that  
17 washing and drying sheets would have on DNA. When  
18 you didn't go into that during your cross-  
19 examination, was there any strategic reason why you  
20 didn't move -- or object and move to strike the  
21 State's redirect examination into those issues? And  
22 I guess to try to be a little bit more clear, I  
23 apologize, on your cross-examination you didn't go  
24 into whether DNA can be destroyed or have effect  
25 based on washing and drying sheets, or the

1 destruction of DNA, specifically, in your cross-  
2 examination of this DNA expert; however, when the  
3 State went into that in their redirect examination,  
4 was there any strategic reason why you didn't object  
5 and move to strike that testimony?

6 A. May I ask you what page that's on, again?  
7 I couldn't see it on 93.

8 Q. Or is it 92? I apologize.

9 A. Is that the - that's the second -- the  
10 second trans -- or second book, or the first book?

11 Q. That should be second book, 92. Lily  
12 Gulman (phonetic) redirect examination.

13 A. Okay, yes, sir, okay. May I have a second  
14 to review? I'll be brief.

15 Q. Of course.

16 A. (Reviews document.) The reason -- what I'm  
17 looking for is -- I think when I looked at this  
18 before, I felt like I had opened the door a little  
19 bit to that line of questioning. I had felt like  
20 this -- 'cause I had looked at that -- that question  
21 earlier a couple weeks ago, and I felt like there  
22 was -- the door to that line of questioning.

23 Q. Now, having an opportunity to review your  
24 cross-examination, do you see anything that you  
25 would make that argument now?

1           A.    No, sir, I don't see it now. I may have to  
2 -- I don't see -- for some reason, I have the  
3 impression that I kind of opened the door to that,  
4 but I don't see it now. But on -- yeah. The  
5 specific answer to your question is, there's not a  
6 strategic reason for me not to have objected. I  
7 don't think I found it objectionable. I mean  
8 whether or not it could be destroyed or not, that  
9 might have been important, let's suppose, for  
10 example, if someone said, "Well, this event happened  
11 on the sheet, and it's not there anymore." And if I  
12 were on the -- bring out the deal of the fact that,  
13 "Well, they said it happened on the sheet, and  
14 there's no evidence of that." And then -- and let's  
15 suppose on cro -- on a direct examination the person  
16 said, "Well, I washed the sheet." In other words,  
17 it might become important if -- if they're needed to  
18 be an explanation why it's no longer there. I don't  
19 know that it's particularly hurtful for Mr.  
20 Cartwright's case, if the Jury is told that it can  
21 be destroyed, it wasn't destroyed, and Mr.  
22 Cartwright wasn't denying that the -- the DNA was  
23 his, so I don't think it was particularly hurtful.  
24 And I apologize for taking so longer to answer your  
25 question, but I thought I had opened the door on

1 that, but perhaps I didn't. I don't see it now.

2 Q. No, I appreciate you being thorough with  
3 that. Now, page 104 of the -- in -- in that second  
4 book, the State, ultimately, failed to have the  
5 jailer identify -- during the direct examination,  
6 identify the Defendant, the Applicant in this case.  
7 And on redirect examination, he asked the question  
8 on page 104 to make the identification in Court.  
9 Was there any specific reason why you didn't object  
10 and move to strike that testimony?

11 A. (Reviews document.) I'm reviewing my -- my  
12 cross, so just give me a second, please, sir. Well,  
13 the only thing -- the only other -- the answer to  
14 your question is, no, but I -- looking back at the  
15 transcript, it must be said in fairness to everyone,  
16 that I'm the one that mentioned Mr. Cartwright's  
17 name, and -- and I direct your attention to page  
18 104, line one. In my cross-examination, I said,  
19 "Any other problems with Mr. Cartwright since that  
20 time?" And I got a response, "Not that I'm aware  
21 of." And so I'm the one that actually introduced  
22 Mr. Cartwright as the person that the -- had  
23 attempted to -- to hang himself. So at that point,  
24 I -- I think it's probably not objectionable for  
25 them to go ahead, and -- and ask that question. I

1 think I already opened the door by saying it's Mr.  
2 Cartwright.

3 Q. And since he -- since the Prosecutor did  
4 not iden -- have the jailer to the in Court  
5 identification, had you not elicited that testimony,  
6 again, strategically now looking back, would it have  
7 been better not to open that door to have the in  
8 Court identification that occurs on redirect  
9 examination?

10 A. I think the answer to your question is,  
11 yes, I probably shouldn't have opened the door. I  
12 don't think -- and I have to say yes to both  
13 questions. I would have to say it would have been  
14 objectionable had I not opened the door; and I am  
15 the one that opened the door, so there's no doubt  
16 that that is just a fact.

17 Q. Now, bear with me, I just -- it's pretty  
18 contested -- I know you attested to on direct  
19 examination, regarding your discussions with Mr.  
20 Cartwright. In the first trial the State presents  
21 evidence of pictures of sheets that were tested for  
22 DNA from Brandy Brown's bedroom; and then in the  
23 second trial the State elicits testimony based on  
24 different pictures of the same sheets that were  
25 taken from the older brother, Hoss's bed. Now,

1 could you walk us through -- I'm just trying to  
2 build this out so I can -- I don't want to just  
3 throw out a bunch of broad questions, I want to get  
4 a little more specific. Was there any reason why  
5 you didn't cross-examine those witnesses regarding  
6 the discrepancy in presenting that -- that evidence  
7 as far as from the first trial to the second trial,  
8 why it changed?

9 A. I cannot give you the specific reason, no,  
10 sir.

11 Q. And, now, and not only through cross-  
12 examination, your closing argument, was there any  
13 strategic reason why that wasn't pointed out and  
14 presented?

15 A. In closing argument -- well, I don't have a  
16 reason for doing that. I think Mr. -- I would have  
17 been able to do that because Mr. Cartwright  
18 testified that there was a difference, I believe, so  
19 I could have talked about that, but I didn't. On  
20 the other hand, as I pointed out before, really, I  
21 -- I'm not so overwhelmed by where the picture was  
22 taken, or -- or I think it's an inconsistency, and  
23 it certainly wouldn't help, if the Jury had been  
24 made aware of it. I think I was more focused on the  
25 fact that we have an explanation as to why wherever

1 the sheet was kept, it wasn't laundered, it's very  
2 odd, and Mr. Cartwright provided an explanation as  
3 to how that got on there. And I think that was the  
4 most important thing I wanted to stress to the Jury  
5 as to that.

6 Q. Understood. Thank you. Now, as far as  
7 your theory for why Brandy Brown lied, essentially,  
8 that the Defendant discovered pornographic pictures  
9 of her on the Internet, and as you said publicly,  
10 essentially, it -- I guess we would frame it as  
11 embarrassing her, and her -- as her being the motive  
12 for presenting these allegations. And they had  
13 State witnesses that testified, like, kind of  
14 repeatedly, that she was not in any such -- such  
15 pictures. Was there any reason why you failed to  
16 proffer those photographs into evidence to support  
17 that theory of defense? In other words, did you try  
18 to have that picture presented -- admitted into  
19 evidence, to be more specific?

20 A. I don't know that I can tell you a reason  
21 why I didn't. I -- I know -- I guess I would have  
22 to ask myself what would be the reason I would? And  
23 as I pointed out before -- I guess my point is, that  
24 if somebody's guilty of something and they're called  
25 out on it, that's bad. If they're not guilty of

1 something and they're accused of it, arguably,  
2 that's worse, and makes the motive stronger. And so  
3 I don't really -- I'm not really too troubled by the  
4 fact that I didn't put that picture.

5 Q. And so I guess -- so the strategic reason  
6 for not doing it, I -- and I'm not trying to -- I  
7 think you've answered it, but I'm just trying to  
8 make sure I -- I have a good holding of the reason  
9 why you didn't, specifically, try to -- to have that  
10 marked, since -- since it was such a contested issue  
11 and part of your theory.

12 A. And I -- I -- I have to be -- I want to be  
13 specific and exact. I'm not -- it's not my  
14 testimony that that was the reason I didn't. I -- I  
15 think it's probably more accurate to say that I  
16 didn't really think it was that relevant. And I  
17 don't doubt that I had these same arguments in my  
18 mind, but I don't have any notes to -- to verify  
19 that. I would say the most accurate thing I could  
20 say is, I -- I'm just not troubled by not putting  
21 that in there. It's not -- it's not helpful. I  
22 don't think it's that -- that helpful to the case,  
23 and it's not hurtful not to have it in for the  
24 reasons I've said.

25 Q. Did you do any investigation prior to trial

1 to try to prove that the individuals in the picture  
2 were the individuals that Mr. Cartwright said they  
3 were? Obviously, we have testimony during the trial  
4 where there was a denial of being in the picture,  
5 but was there -- there any investigation done on --  
6 on your end regarding that, to prove identity?

7 A. I recall no such investigation.

8 Q. And as far as the witnesses denying their  
9 involvement in the picture, despite that the defense  
10 there is essentially that Brandy Brown had  
11 essentially been embarrassed by this public  
12 profession of -- on the news by the Applicant of  
13 saying that he found these pictures, and what it  
14 does to young people, that having that admitted is  
15 trying to support that it was something that  
16 actually occurred. You said you -- it's your  
17 opinion that it was not relevant, and would not have  
18 been helpful to the defense?

19 A. Not the picture. I don't -- I'm -- I don't  
20 really think that anybody was disputing that he did  
21 -- that he -- the -- the hurtful thing to the  
22 children here would have been the thing that's not  
23 in dispute, and that is, that he went to Law  
24 Enforcement and he -- and he did an interview with a  
25 television station, I believe. Those things weren't

1 in dispute, so I don't -- I'm not troubled by the  
2 picture.

3 Q. So during direct examination you - you  
4 addressed the Trial Court's admonishment of the  
5 Applicant, and instructing the Pro -- Prosecutor to  
6 object more, and you said you found this not  
7 objectionable. Now, specifically, what was not  
8 objectionable about it? The fact that the Trial  
9 Court was interjecting himself sua sponte telling  
10 the Prosecutor to object, and stop, and admonishing  
11 the Applicant specifically. What's not  
12 objectionable about it? Like what -- what's your  
13 strategic standpoint?

14 A. Well, you raise a good -- you raise a good  
15 question, and a good issue. Anyone who has  
16 practiced in front of Judge Early -- I'm aware of  
17 only one time that an attorney in this Circuit  
18 objected to a comment by Judge Early, and I was not  
19 present, I only heard afterwards. I think I'm being  
20 as precise as -- as I can, I -- I am always  
21 reluctant to -- I'm always reluctant when I know a  
22 Judge, and I know that he's -- he's like that with  
23 everybody. I'm always reluctant to try to find --  
24 well, I should put it like this, I'm always  
25 interested to find out where the line is that I'm

1 being disrespectful to the Court, and where  
2 everybody knows that, you know, it -- it's not -- it  
3 might not be what you would -- it would be -- it  
4 might not be what you want him to do, him or her,  
5 but you might not be happy about it, but it might  
6 not be objectionable. I can tell you that with our  
7 Judge Early, he was always the same during trial,  
8 during Court. I think maybe to a certain extent, we  
9 knew how he was, and -- and we expected him to be a  
10 certain way, and he always was. And I think you  
11 just have to look at it overall. Could -- could we  
12 object to something like that? Maybe. Is it always  
13 wise to do that? Our judges tend to be human beings  
14 as well, and we don't want to put them in a bad  
15 mood, we just want a smooth trial, but we have to  
16 protect the defendants. So it's -- it's always a --  
17 it's always a question where that line's at. I  
18 didn't think that line had been crossed by Judge  
19 Early.

20 Q. Understood. And -- and in this case the  
21 Trial Court was already repeatedly stopping his  
22 testimony, admonishing him, the Prosecutor, to  
23 object more. As a zealous advocate, you have a duty  
24 to object; you agree to that?

25 A. I do.

1 Q. If there's anything improper being done in  
2 the Courtroom?

3 A. I do.

4 Q. And --

5 A. I do agree with you.

6 Q. And it's your testimony that what Judge  
7 Early did, that's not -- it doesn't - I'm not -  
8 you're saying that he made, you know, he's making  
9 faces during trial, he's doing these things, and  
10 that's just the way Judge Early was, was your  
11 testimony; but you, as a zealous advocate, has a  
12 duty to provide that defense -- zealous defense. If  
13 something in -- is improper that's done in the  
14 Courtroom, you have a duty to object to it?

15 A. I do.

16 Q. And it's your testimony that none of that  
17 was improper?

18 A. As I sit here right now and recall this,  
19 because when it -- this is something you would  
20 recall, and, no, sir, I can't say that I felt like  
21 the Court went to far; but and in fairness to Mr.  
22 Cartwright, and the State, and the Court, I'd have  
23 to say, you know, when you practice in front of  
24 Judge Early for so many years, you've gotten used to  
25 a lot of things. I don't -- it's hard for me to

1 answer that question, Mr. Phillips. I -- I can sit  
2 here and say I did not feel like he crossed any  
3 line, but I wasn't real happy about what was going  
4 on, because you don't like to see any witness  
5 struggle; and that Mr. Cartwright was kind of  
6 struggling and -- and, in part, probably because of  
7 the interjections by Judge Early. But Judge Early  
8 expected his Court to be run a certain way, and to a  
9 certain extent, I think maybe I gave the wrong  
10 impression to Mr. Cartwright. Because I do,  
11 specifically, remember an agreement with Mr.  
12 Cartwright. I told him, "Please, you know, you let  
13 the Jury know who you are." Well, he did. I think  
14 he tried to do that. And I -- I think I probably  
15 didn't control him quite as well as I could have, or  
16 maybe prepared him for that as well as I could. I  
17 don't want to blame this necessarily on the Court,  
18 because everybody knew what Judge Early expected.  
19 It's a real tough question, and it's --

20 Q. I guess let me be specific, again. So  
21 where a Trial Court sua sponte tells a prosecutor to  
22 object more, that's not improper?

23 A. I -- yeah, the answer to your question is I  
24 do believe that's improper, yes, sir.

25 Q. And if a Judge makes faces during a trial,

1 in reaction to testimony; is that improper?

2 A. Yes, sir, but that -- may I say I don't  
3 specifically remember -- I would -- I would be  
4 amazed if Judge Early did not make faces during this  
5 trial, but I don't specifically remember any  
6 instances; and I know we -- we have to confine  
7 ourselves to the specifics. That was me -- when I  
8 was stating about the Judge really making faces, or  
9 things that I observed over many trials and -- that  
10 he conducted, so -- and he, himself, recognized  
11 that, as I said.

12 Q. And -- and you've practiced law for a long  
13 time. How many cases have you tried?

14 A. I don't know the answer to that, sir. I've  
15 never kept track.

16 Q. But I mean you've tried a significant  
17 number of cases?

18 A. I've tried several, yes, sir.

19 Q. The -- and have you found that the jurors  
20 follow the Judges closely?

21 A. I honestly don't know the answer to that.  
22 When I have had discussions with -- well, not me,  
23 but I've asked people to have discussions with  
24 jurors, they've almost always confined themselves to  
25 the evidence that was presented, or the demeanor of

1 the witnesses. I've never had any J=jurors respond  
2 to anything about the Court.

3 Q. All right. Now, as far as the State's --  
4 again, the State's closing arguments, you know,  
5 specifically as -- I'm trying to get your exact page  
6 number for you here.

7 A. Yes, sir.

8 Q. Bear with me one moment. While I'm looking  
9 this up, I'll go to my next question. So on page  
10 203, during the Trial Court's final instructions to  
11 the Jury, the Jury charge, specifically, the charge  
12 that states, quote, "You've got a version of facts  
13 by some of the witnesses, and a complete different  
14 version of facts by other witnesses." Is there --  
15 your position on that line, whether it crosses the  
16 threshold of being an improper charge on the facts?  
17 Basically, the comment on the facts by the Trial  
18 Court, regarding witness testimony?

19 A. No, sir, I'm not troubled by that -- that  
20 too much. I think that's a -- I think -- I would  
21 think that would the Court's effort to tell the  
22 Jurors what their job is. You've got to consider  
23 all these witnesses. You have to consider -- of  
24 course, we were saying different things than what  
25 the State was saying, and it's their job to sift

1 through all that, and see if the State's proven  
2 their case beyond a reasonable doubt. I'm taking a  
3 lot out of that, but the answer to your question is,  
4 no, I'm not too troubled by that.

5 Q. Now, on page 204 to 212, again, during the  
6 Court's closing instructions to the Jury, quote, "It  
7 is your duty to determine what the true facts are,  
8 and what the truth is, and who is telling the  
9 truth." Next quote is, "You are to make your  
10 decision based solely on what you determine the true  
11 facts are in this case," specifically, citing that  
12 last, "You are to make your decision based on what  
13 you determine the true facts are in this case."  
14 With the question we had earlier, with the opening  
15 instructions, regarding violation of -- a potential  
16 violation of due process and burden shifting, with  
17 this search for the truth language, again, reviewing  
18 that now, is there a strategic reason why you didn't  
19 object to those closing instructions?

20 A. I don't think their -- I don't really think  
21 their objection, while I don't find those to be  
22 burden shifting, and I will, again, say that it's  
23 different to say that there's a truth, and, you  
24 know, there may be a truth, you may -- this fact  
25 happened, there's a truth that's concealed there.

1 It's a lot different to ask somebody to search for  
2 that. If you ask for the -- if you ask for them to  
3 search for a truth, you're inviting or enticing them  
4 to provide their -- the -- or to fill in the gaps.  
5 So I don't think this feels asking the -- the Jury  
6 to fill in any gaps. I think it's just they're  
7 constrained by the English language to say, hey,  
8 there's a truth here, and -- now he's not -- he's  
9 not putting it squarely on -- he's not saying it  
10 like that, because -- at this point, that -- that --  
11 the question is, has the State proven their case  
12 beyond a reasonable doubt? He's not saying it like  
13 that, but he's saying there's a truth here perhaps,  
14 and you should try to, in your deliberations, find  
15 that truth, or examine that truth rather. That's a  
16 different -- and to me there's a difference between  
17 that, and telling somebody to go search for it,  
18 maybe enticing them to fill in the gaps with their  
19 own experiences, so on and so forth.

20 Q. Thank you. Now, on page 210 and 211, if  
21 you're aware of State v. Stukes, a 2016 case that,  
22 essentially, found the jury instruction about our  
23 State law, that the testimony of the victim in the  
24 case need not be corroborated. In that -- in his --  
25 in the Applicant's trial, that was presented in the

1 instructions. Was there any strategic reason why  
2 you didn't object to that specific --

3 A. No strategic reason. I don't -- I don't  
4 think I disagreed, at the time, that that was a  
5 statement of the law.

6 Q. And while I'm still trying to pull the  
7 exact page number, was there anything specific, as  
8 far as your recollection, if you need a minute to  
9 review the Prosecutor's closing arguments, regarding  
10 comments that you believed was calculated to  
11 unfairly or unduly arouse the Jurors' passions or  
12 prejudice and bolster the credibility of the State's  
13 witnesses?

14 A. I -- off the top of my head, Mr. Phillips,  
15 I can't answer your question. If -- do you have  
16 anything specific in mind?

17 Q. Yes, give me one second, I apologize to you  
18 and the Court. Specifically, Mr. Routzong, looking  
19 at page 187 in the closing argument, where  
20 Prosecutor states that there was no motive to lie is  
21 one -- one portion.

22 A. Well, if my argument was they had a motive  
23 to lie, and I would not be surprised if the State  
24 says that there was no motive to lie, that's what I  
25 would do..

1           Q.   Now, is -- I mean, specifically, regarding  
2   that specific evidence that was presented at trial,  
3   certainly, you don't believe that to be calculated,  
4   as far as bolstering -- any credibility of any  
5   states witnesses?

6           A.   I think it -- I think they're bolstering,  
7   but I don't -- I think that's not -- I think that's  
8   permissible. I think he's just saying this is my  
9   case. And just, briefly, while we were -- I had a  
10  chance to look at it --

11          Q.   Well, I get -- and let me be more specific.  
12  Some of the other parts, specifically, is my  
13  question regarding calculated to arouse the Jurors'  
14  passions or prejudice. On page 189, the Prosecutor  
15  goes into quote, line five, "...and ejaculates him on  
16  her bed with the panties against her will." And  
17  then he goes onto say, "Golly, I feel bad for him,  
18  don't you? You've got to, the poor guy, the suicide  
19  attempt. Did you hear him say this? They -- they  
20  hate me, because I love them." Basically, him --  
21  the way he attacked that part in his -- or the way  
22  he presented that in his closing argument. Do you  
23  find any of that objectionable?

24          A.   No, sir, it's probably effective,  
25  certainly, after -- I don't find it objectionable.

1 What -- basically, if I can sum up what the State  
2 was doing, they were -- they were using what I would  
3 call the what a bad day defense. Look at all the  
4 things that had -- that happened to you as an  
5 innocent person, you know, for -- for these facts to  
6 make you appear to be guilty. I think throughout  
7 his closing argument, that is, basically, what he  
8 was trying to do. I think it was effective. I  
9 don't think it was objectionable.

10 Q. Now, on page 192 of the transcript, the  
11 Prosecutor states in his closing, "That's  
12 corroboration, ladies and gentlemen, you don't even  
13 need that." Was there any specific reason why you  
14 didn't object? Again, obviously, at the time, that  
15 statute -- or that State v. Stukes had not been  
16 found yet, was there any other reason why you didn't  
17 find that to be objectionable?

18 A. I have no strategic reason.

19 Q. Now, again, on the same page, the  
20 Prosecutor goes into, "I told you to listen why he's  
21 in jail, then he's out of jail, he's bonded out."  
22 Essentially, walks through that process. "He's  
23 bonded out of jail," focusing on his incarceration  
24 in that time, was there anything specific that --  
25 strategic reason why you didn't object to that?

1           A. Let me read that just a second, I'll be  
2 real quick. (Reviews document.) Not really. It  
3 sounds to me like what he's, apparently, doing is,  
4 he's saying that the only time she's not molested  
5 is, basically, when he was in jail during this  
6 period of time. So I don't remember -- bonded out  
7 of jail, that was the first -- that was the first  
8 allegation.

9           Q. In reference of him with his incarceration,  
10 you don't find any of that being objectionable,  
11 having that go before the Jury of him being  
12 incarcerated for a period of time?

13          A. To be as precise as I can, I think that  
14 comes -- I think that perhaps comes close to being  
15 objectionable, because it -- it -- it entices the  
16 Jury to -- this is -- if I can digress for a minute.  
17 The reason we don't have people appear in trial  
18 during -- or during their trial in -- in orange  
19 jumpsuits is, we don't want the -- the Jury to  
20 conclude from that that they're bad or they're, you  
21 know, that -- that the State has a case right, that  
22 they're, it's -- it kind of makes them less human,  
23 and that's why we always dress people out for trial,  
24 obviously. And this other -- this other instance, I  
25 would use that, the -- the part about dressing

1 people out at the trial to kind of help me explain  
2 where you're going, I think. You're saying, well,  
3 the fact that he's incarcerated, that was  
4 prejudicial in the sense that he probably did  
5 something. Just like if you have somebody in an  
6 orange jumpsuit, then they probably did something.  
7 But I think that the -- what the State's actually  
8 trying to do, and probably why it's not  
9 objectionable is, they're saying, look, these events  
10 are continually happening, and -- and she said the  
11 only time it stopped was when he wasn't around, one  
12 of those times was when he was incarcerated. As I'm  
13 reflecting on this, it probably is something that  
14 could have been objected to. Do I think it was the  
15 final nail in this case? I don't think so. I  
16 think, if I heard it again, I might object to it.  
17 At the time, it probably didn't occur to me to be  
18 objectionable. And I don't have a strategic reason  
19 for that, I probably just didn't think it was  
20 objectionable. It -- it placed this -- these events  
21 in a true context. He was incarcerated, and the --  
22 she felt like that was a break for her.

23 Q. Now, the grandmother --

24 THE COURT: Gentlemen, let me tell you, we --  
25 we're going to take a break for lunch, okay?

1 MR. PHILLIPS: Your Honor, I'm -- I'm right at  
2 the end, it --

3 THE COURT: Well, let me ask you this.  
4 Solicitor, are you going to have any cross-  
5 examination or redirect?

6 MR. NEUBAUER: Yes, Your Honor, I have a few  
7 questions.

8 THE COURT: Okay, well, we're going to break for  
9 lunch, we'll back --

10 MR. NEUBAUER: Yes, Your Honor.

11 THE COURT: -- we'll be back at 2 o'clock. Is  
12 that -- is that okay, Ms. Young?

13 COURT REPORTER: Yes, Your Honor, that's good.

14 THE COURT: All right, great, we'll have  
15 everybody back at 2 o'clock. Thank you.

16 COURT REPORTER: Thank you.

17 THE COURT: Thank you.

18 COURT REPORTER: Thank you.

19 (LUNCH RECESS)

20 THE COURT: All right, folks, we ready?

21 MR. NEUBAUER: Yes, Your Honor.

22 MR. PHILLIPS: Yes, Your Honor.

23 THE COURT: Okay, great. And can you -- you can  
24 -- you can hear us, Mr. Cartwright?

25 MR. CARTWRIGHT: Yes, sir.

1 THE COURT: Okay, thank you, sir. All right,  
2 Counsel, you can proceed with your cross-  
3 examination.

4 MR. PHILLIPS: Thank you, Your Honor. Can you  
5 hear me okay?

6 THE COURT: Yes, sir.

7 MR. PHILLIPS: Thank you.

8 BY MR. PHILLIPS:

9 Q. Mr. Routzong, in your preparation for this  
10 trial, did you attempt to get all the -- or review  
11 the exhibits from the original trial?

12 A. No, sir.

13 Q. Did you -- as far as the photographs that  
14 were admitted into evidence, those exhibits, and  
15 what was contained in the discovery, do you have any  
16 notes showing that you reviewed those photographs  
17 with Mr. Cartwright in preparation for the second  
18 trial?

19 A. No, sir.

20 Q. As far as the allegation that -- not the  
21 allegation, the presentation of the State's case in  
22 the first trial where what was presented as far as  
23 pictures of the bedroom, it being different in the  
24 second trial of -- in the first trial there was a  
25 picture admitted in the daughter's bedroom, whereas,

1 in the second trial, the picture was admitted in the  
2 son's bedroom, was there any preparation in regards  
3 to that issue done on your behalf, and, in other  
4 words, to be prepared for confrontation, as cross-  
5 examination of that issue, or presentation of your  
6 defense as far as how the State changed their theory  
7 of the case?

8 A. I don't have any notes on that, so I can't  
9 be more specific than to say I don't -- I don't  
10 think I was aware of any problem with that prior to  
11 Mr. Cartwright, at some point, mentioning it before  
12 he stood up to talk to the Judge, so I wouldn't have  
13 prepared for something I wasn't aware of the issue  
14 until that point in time. That's probably as  
15 accurate as I can be.

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

17 THE COURT: All right, thank you. Attorney  
18 General, do you have any redirect, sir?

19 MR. NEUBAUER: Yes, Your Honor, and I'll keep it  
20 brief.

21 THE COURT: No problem.

22 MR. NEUBAUER: Thank you.

23 REDIRECT EXAMINATION

24 BY MR. NEUBAUER:

25 Q. Mr. Routzong, regarding the allegation of

1 failure to investigate a timeline for these  
2 allegations, you stated that you, I guess, compiled  
3 a general timeline of when you felt the -- or when  
4 these events occurred, correct?

5 A. I -- well, the -- the last time we all met  
6 together I -- I looked through the file, and I came  
7 across what appeared to be a timeline. I haven't  
8 looked for it since today, since I asked -- since I  
9 was asked the question. I don't remember -- I don't  
10 -- my recollection from looking at it a couple weeks  
11 ago is, that there was a timeline, but it didn't --  
12 it didn't appear to be very extensive, or anything.  
13 I don't -- I don't have any recollection that -- I  
14 understand Mr. Cartwright's point, in terms of -- of  
15 making sure there's a presentation to the Jury about  
16 times that he would not have been present. I think,  
17 from my point of view, at that time, it's fair to  
18 say that over such an expansive period of time, I  
19 just don't think there's any reasonable way to -- to  
20 kind of nail that down. People can be there one day  
21 and gone the next. Like, I'm -- I'm pretty sure  
22 there's no logbook of Mr. Cartwright's life over  
23 that period of time. It just would not have  
24 occurred to me, and does not occur to me to this  
25 day, to be the most important thing to be presented

1 to the Jury. The -- the whole thing was these  
2 people are changing their stories, they have reasons  
3 to lie, that was the defense.

4 Q. And to be clear, the allegations weren't  
5 that Mr. Cartwright on one specific -- one  
6 particular day committed one particular act,  
7 correct?

8 A. Yes, sir, that's correct.

9 Q. And throughout the timeline that you  
10 compiled, or a timeline that you may have  
11 investigated, was there anything suggesting that Mr.  
12 Cartwright was out of the children's lives for an  
13 entire calendar year?

14 A. Mr. Neubauer, I can't answer that question.  
15 I don't have any note on that. It's my -- what I do  
16 recall is there were just lengthy periods of time  
17 when Mr. Cartwright had told me he might have been  
18 in Atlanta. But the -- the problem with that is, I  
19 -- I lived in -- at one time in Nashville,  
20 Tennessee, for example. I can't tell you when I  
21 went to South Carolina or Ohio, and I know I did, I  
22 can't tell you when. It's that kind of a problem,  
23 but you're -- I don't know how you credibly present  
24 to a -- a Jury, other than to Mr. Cartwright, which  
25 would be a self-serving statement. And he's just

1 like, "Well, I wasn't there during this whole period  
2 of time." I mean you -- you can -- you can do that.  
3 The Jury would have to make of that what they would,  
4 I guess, but you have -- you have testimony to the  
5 contrary, so it's really difficult to nail that  
6 down. And that's why I don't mind the one-year part  
7 of the -- in the indictments, but, you know, when  
8 you talk about trying to nail down a timeline over  
9 several years, that's very difficult.

10 Q. Yes, sir. And regarding discovery, you  
11 said you were -- your office would have received  
12 this sometime between May of 2011 and March of 2013,  
13 you can't pinpoint the specific date, correct?

14 A. That's correct.

15 Q. And you would have -- or you said that you  
16 reviewed discovery with Mr. Cartwright, prior to  
17 proceeding to trial?

18 A. I don't -- it's -- I -- I am -- I am  
19 confident that I did. I don't have any notes on  
20 that, but I -- I certainly spoke to him, according  
21 to my notes, for several hours. I can't imagine I  
22 wouldn't have had discovery with him -- with me. He  
23 certainly would have wanted to see it, so I can only  
24 say that I spoke to him for a long period of time,  
25 according to my notes. We had to talk about

1 something, so I'm sure --

2 Q. And in the discovery would there have been  
3 photos from the house or photos from the crime  
4 scene?

5 MR. PHILLIPS: And, Your Honor, I'm going to  
6 have to object to speculation. He said he doesn't  
7 know, it's not in his notes, and he doesn't have any  
8 specific memory of it.

9 THE COURT: I'm going to overrule your  
10 objection, he can answer the question.

11 A. But, sir, I don't specifically remember if  
12 there were photos in there. I -- I don't -- I don't  
13 -- I can say this, I don't think that those photos  
14 were the foremost in my mind in his defense, and I  
15 could be wrong. Clearly, we lost the trial, but I  
16 just don't think those photos -- those photographs  
17 were really the most important part of his defense.

18 Q. And disregarding the comments made during  
19 Jury voir dire, do you -- or there were points where  
20 there were conversations or a reference to potential  
21 jurors telling the Judge that they either were  
22 themselves a victim of abuse, or knew someone that  
23 was a victim of abuse. Was it -- are you saying  
24 that you were not aware, at the time, the -- those  
25 comments were not a part of the record, and this

1 conversation is not part of the record?

2 A. That's correct. I was very surprised to  
3 find that out.

4 Q. And at the time you were under the belief  
5 they were part of the record. Would you have had  
6 any reason to, specifically, request the court  
7 reporter put them on the record?

8 A. No, sir.

9 Q. All right. And --

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

12 BY MR. NEUBAUER:

13 Q. Regarding allegation number six, that you  
14 failed to move the Court to conduct a follow-up voir  
15 dire, regarding a potential Juror, who indicated she  
16 knew an investigating officer. That's on the --  
17 during the first trial transcript, page 30, line --  
18 actually, it starts page 29, line 16 through page  
19 30, line seven. Do you recall the juror stating her  
20 name and her juror number prior to stating that she  
21 knew someone with the Public Defender's Office?

22 A. According to the transcript she did, yes,  
23 sir.

24 Q. And then the actual Jury selection begins  
25 on page 44, and it appears that Jurors that were --

1 that went through the selection were Juror 4, 57,  
2 123, 29, 99, 101, 75, 81, 10, 177, 61, 60, 94, 182,  
3 169, 39, 171, 13, 141. I believe there is more from  
4 there, but I think -- was this juror -- was the  
5 juror whom indicated she knew someone in the  
6 Solicitor's Office, was she selected for the Jury?

7 A. It doesn't appear -- the transcript doesn't  
8 appear to me that she was.

9 Q. So do you feel that the lack of a follow-up  
10 voir dire prejudiced Mr. Cartwright?

11 A. I'm -- I'm unable to see how it could  
12 happen that he was prejudiced from that.

13 Q. Thank you. And regarding issues with  
14 quashing the indictments for being constitutionally  
15 vague or overbroad, Mr. Cartwright cited to the case  
16 of State v. Baker, that was decided in February 11th  
17 of 2015, that's two years, approximately, after this  
18 trial occurred, correct?

19 A. Yes, sir.

20 Q. So would there have been any reason for  
21 you, at that time, to anticipate that there would be  
22 a potential issue with the indictments based on  
23 State v. Baker?

24 A. Not based on the -- not based on case law  
25 at the time, sir.

1 Q. And are you familiar with the case of State  
2 v. Wade, 306 SC 79?

3 A. No, sir, not off the top of my head.

4 Q. And --

5 A. I can look it up if you want me to.

6 Q. I won't waste anymore of the Court's time  
7 regarding that. I'll just draw the Court's  
8 attention to the case, State v. Wade, 306 SC 79.  
9 And regarding the issue of possibly severing these  
10 charges for separate trials, you'd indicated that  
11 there was a -- that you contemplated this, but there  
12 was a possible danger with severing the charges.  
13 Could you go into that further of what the danger  
14 would have been if you'd severed these charges into  
15 separate trials?

16 A. And I need to probably review the  
17 indictments again. If he was charged with three  
18 most serious -- I'm sorry, two most serious, or  
19 three serious charges, you could, potentially, run  
20 the risk of getting struck out under the life  
21 without parole. If you get notice of life with  
22 parole, that would be one danger I can think of.  
23 I'm sorry, I didn't look at -- review the  
24 indictments that -- to review what he was actually  
25 charged with, but there's -- there's certainly a

1 danger to that, in that regard.

2 Q. And would you have contemplated that while  
3 making a potential decision to sever or to not sever  
4 the charges in this case?

5 A. I hope I would, but I -- I don't  
6 specifically remember it, and I don't have any  
7 notes, Mr. Neubauer, about that. I didn't write  
8 that -- wouldn't normally write something like that  
9 down probably.

10 Q. Yes, sir.

11 A. I'm learning that I should have, but --

12 Q. And regarding Buffy Cartwright's status as  
13 being unavailable for trial, Mr. Phillips asked you,  
14 specifically, if there was anything that was  
15 presented to you and the Court indicating that she  
16 was, in fact, severely ill, or unavailable. I'd  
17 draw the Court's attention to page four of the first  
18 portion of the transcript, specifically, line ten  
19 through 17. And Solicitor Moore -- Solicitor  
20 Maloney indicates that you've stipulated to the  
21 authenticity of a letter from her Hospice Care Nurse  
22 stating she is unavailable to be here. She has  
23 stage four lung cancer. Her diagnosis is palliative  
24 in nature, and the treatment at this point is only  
25 pain management. Did you have any reason to believe

1 that Ms. Cartwright was in any condition to appear  
2 to testify?

3 A. No, sir, I didn't have any reason to doubt  
4 -- to doubt the -- the authenticity of that letter.

5 Q. And further, regarding the testimony from  
6 Melinda Lively, page 95, Mr. Phillips questioned you  
7 regarding, potentially, bolstering comment. He  
8 referenced line 20 through 24 on that page where  
9 Melinda Lively indicates, "I was scared for our  
10 lives, I was threatened by their father, as Cassie  
11 stated." You thought that that was potentially  
12 bolstering, correct?

13 A. I think there's an argument to be made that  
14 it is.

15 Q. Would you -- I apologize, would you be  
16 willing to read the following question and answer  
17 from line 25 on page 95 through line three of page  
18 96?

19 A. Starting with line 25, "Question, I need  
20 you to testify, don't tell me what Cassie said. You  
21 tell me why didn't you call the police?" "Answer,  
22 he basically held us at gunpoint, and threatened to  
23 kill us if we told anybody about it."

24 Q. Would you feel that that testimony was  
25 bolstering, or her own testimony, not reliant on the

1 prior testimony of Cassie Autrey?

2 A. The best answer and the fairest answer I  
3 could give to everybody here is to say there's an  
4 argument to be made that -- that it could be  
5 bolstering, because she's -- she is corroborating --  
6 well, it could be argued that she's corroborating  
7 what the other person said, but I think it's, at the  
8 same time, and in fairness to the State's case on  
9 this, it's pretty clear that he got a very definite  
10 answer from her as to what happened without relying  
11 on the other witness.

12 Q. Yes, sir. And regarding issues with the  
13 testimony from the DSS agent, Michelle Prince, on  
14 page 138, line 22 through 139, line two, Ms. Prince  
15 was asked how she first became involved in the case,  
16 and she responded that she received a call from an  
17 Intake supervisor saying they received a report of  
18 sexual abuse concerning Amanda Reddick. Did you  
19 feel that that constituted hearsay?

20 A. I think as the truth of the matter that  
21 started it, it was, as I said, it's for the context  
22 of -- or the beginning of the explanation as to how  
23 DSS got involved. I don't think it's hearsay.

24 MR. NEUBAUER: I beg the Court's indulgence for  
25 one second, Your Honor.

1 THE COURT: Uh-huh. Yes, sir.

2 BY MR. NEUBAUER:

3 Q. And did you feel that that was hearsay --  
4 further, did you feel that that was bolstering  
5 testimony to indicate how Ms. Prince had become  
6 involved in the case?

7 A. I -- I don't think it's bolstering, no,  
8 sir.

9 Q. All right.

10 A. It's not effective bolstering at least,  
11 impermissible bolstering. I -- if I were on the  
12 jury, I probably would not have noticed very much  
13 about that, but it's -- that would be real  
14 speculation on my part.

15 Q. And regarding issues with SLED, and not  
16 receiving a full copy of the DNA, now, since they  
17 got a full, I guess, workup of the case, did you  
18 feel any need to do a deep dive into the SLED  
19 analysis of the bedsheets?

20 A. No, sir, because that -- that part really  
21 wasn't in dispute, so where our side it -- it wasn't  
22 in dispute.

23 Q. And had Mr. Cartwright admitted that it was  
24 his semen on the bedsheet?

25 A. Yes, sir, he gave an explanation, as to how

1 it got there, but he didn't --

2 Q. Yes, sir.

3 A. -- he didn't dispute that.

4 Q. Further, regarding the interruptions from  
5 Judge Early during Mr. Cartwright's testimony, would  
6 it be fair to say the majority of the comments from  
7 Judge Early followed objections by the State?

8 A. On the part that refreshed my memory from  
9 the transcript, that seemed to be the case, yes,  
10 sir.

11 Q. And, finally, regarding the jury  
12 instruction about victims' statements not needing to  
13 be corroborate -- or corroborated for CSC cases like  
14 -- like this, Mr. Cartwright has cited State v.  
15 Stokes, and are you familiar with that case, sir?

16 A. Not off the top of my head.

17 Q. And that cite 416 SC 493, that was decided  
18 in May -- on May 4th of 2016, that would have been  
19 about three years after this trial, correct?

20 A. Yes, sir.

21 Q. Would there be any reason for you to have  
22 anticipated the -- the jury instruction, regarding  
23 victims' statements not needing to be corroborated,  
24 would be found impermissible three years after this  
25 trial occurred?

1           A.    No, sir.

2           Q.    And -- thank you.

3           MR. NEUBAUER:  I have no further questions, at  
4 this point.

5           THE COURT:  All right, anything else on recross?

6           MR. PHILLIPS:  Very brief, Your Honor.

7           THE COURT:  Yes, sir.

8                               RECROSS-EXAMINATION

9                   BY MR. PHILLIPS:

10          Q.    Mr. Routzong, in regards to the questioning  
11 regarding the motion to quash the indictment in  
12 State v. Baker, State v. Baker is not a seminal  
13 case; in other words, the base case law, the black  
14 letter law for, you know, having an indictment  
15 that's unconscionably over vague and overbroad,  
16 that's not a new concept that was a novel issue that  
17 was addressed by the Court in Baker, is it?  You're  
18 on mute, if you could -- Mr. Routzong, we can't hear  
19 you.

20          A.    I'm sorry.  I'd be fibbing if told you --  
21 if I could tell you, I need to review the case, but  
22 I don't disagree.  I have no reason to disagree with  
23 you.

24          Q.    But I mean my point is, that you -- you  
25 knew that although State v. Baker didn't exist, you

1 knew at the time you had the ability to move to  
2 quash an indictment based on it being vague and  
3 overbroad? At the time of the trial you knew that?

4 A. Yes, sir, I -- I think that's a fair thing  
5 to say. I will say this, in my experience up until  
6 that point in time, it was -- it was not unusual to  
7 have indictments that went for longer than a year.  
8 I don't think I recognized it at the time as being  
9 overbroad; but, you know, getting the -- getting  
10 back to the specifics here, as I've testified, I --  
11 I think this -- I think the indictments, unless  
12 there's one in there I can't remember, and you might  
13 be able to cite it for me, but most of them, I  
14 think, were a period of time of one year that  
15 corresponded to the ages that the accuser said that  
16 these -- that's happened. And I think when you're  
17 dealing with children, that's not -- that would not  
18 be considered an unusual thing.

19 Q. Understood.

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

21 THE COURT: All right. Attorney General, do you  
22 have any other witnesses?

23 MR. NEUBAUER: No, Your Honor, the State has no  
24 further witnesses; however, if Your Honor would  
25 allow, I would like a brief closing argument to try

1 and summarize the extensive testimony we've had in  
2 this case.

3 THE COURT: I will be happy to hear from you,  
4 and then I'm also happy to hear from counsel for Mr.  
5 Cartwright. Go right ahead, sir.

6 MR. ROUTZONG: Your Honor?

7 THE COURT: Yeah.

8 MR. ROUTZONG: May I be excused?

9 THE COURT: Yes, sir. Any objection to Mr.  
10 Routzong being excused?

11 MR. NEUBAUER: No, Your Honor.

12 THE COURT: Okay, hold -- hold on. Your client  
13 has indicated he wants to say something, Counsel.

14 MR. PHILLIPS: Mr. Cartwright?

15 MR. CARTWRIGHT: I was just curious if -- if I  
16 would be able to ask Mr. Routzong a question.

17 MR. PHILLIPS: It'd have to go through me. We  
18 don't allow for the hybrid counsel. I'd have to ask  
19 him the question.

20 MR. CARTWRIGHT: Okay, okay. Well --

21 MR. PHILLIPS: Your Honor, unfortunately, given  
22 the virtual nature of this, I'm not -- it's not the  
23 usual course, where I'm sitting beside him, and he  
24 can -

25 THE COURT: Then ask the question. Does the

1 State care?

2 MR. NEUBAUER: Depending on the context of the  
3 question, I may object, but I have no issue with at  
4 least --

5 THE COURT: All right.

6 MR. NEUBAUER: -- seeing what the question may  
7 be.

8 THE COURT: And I know -- all right. Sir, if --  
9 if you want to ask a question, if it meets with your  
10 lawyer's approval, I'll certain allow you to ask Mr.  
11 Routzong a question, okay?

12 MR. CARTWRIGHT: Okay.

13 THE COURT: So go ahead and ask the question.  
14 Is that okay, Counsel, for Mr. Cartwright?

15 MR. PHILLIPS: Yes, Your Honor, given the  
16 virtual nature, I appreciate it.

17 THE PLAINTIFF: Mr. Routzong, I just wanted to  
18 ask if you remember me having my brother bring you a  
19 set of bedsheets before the trial that were brand  
20 new, that were the same as what was in my son's  
21 bedroom? And -- and wasn't it odd that my son's  
22 bedroom was never mentioned throughout discovery,  
23 nor throughout the whole first trial, until I used  
24 that as my defense, that those sheets were not out  
25 of her bedroom, they were out of my son's bedroom?

1 But I -- my brother still has the sheets that he  
2 brought you, and they're still in the package they  
3 were mailed from. I just wanted to know if you  
4 remembered that conversation me and you had.

5 THE COURT: Thank you. Mr. Routzong?

6 MR. ROUTZONG: I -- I remember the bedsheets,  
7 and I remember your brother bringing it, but I don't  
8 have any notes on that, and I apologize, Mr.  
9 Cartwright. I will say -- but you asked me two  
10 questions, so that's the answer to the first one. I  
11 do remember your brother bringing them over. The  
12 second question you asked me, do I find it odd? And  
13 so, Mr. -- Your Honor, if -- if -- if there's an  
14 inconsistency -- if that's -- if that's an  
15 inconsistency great enough to have prejudiced Mr.  
16 Cartwright, if there's an argument to be made about  
17 that, I'm not quite so sure I see it, but that  
18 doesn't mean it's not there. I will say this, where  
19 the sheets were located, I wonder if that's as  
20 important as how the semen got on them. Now, he did  
21 testify that -- that they started off in the laundry  
22 room, and they ended up in -- in -- in the other  
23 bedroom. It's kind of odd that -- to me, it's kind  
24 of odd, and maybe it's not odd to that situation,  
25 what's odd is that it wasn't washed, it wasn't

1 thrown in the laundry. Why would it still be in  
2 that room? And that's probably a question the Jury  
3 asked themselves.

4 MR. CARTWRIGHT: And -- and --

5 MR. PHILLIPS: So --

6 MR. CARTWRIGHT: Yes, sir?

7 BY MR. PHILLIPS:

8 Q. Mr. Cartwright, and if -- and you can let  
9 -- Mr. Routzong, I think the heart of it was in the  
10 first trial, once Mr. Cartwright presented that as  
11 his defense, his son's bedroom, the State's  
12 strategy, their theory of the case changed. What we  
13 had discussed about earlier on cross-examination.  
14 When he brought you those bed sheets and explained  
15 that, you know, what, essentially, had been provided  
16 him, the theory had changed in the second trial, why  
17 didn't -- why wasn't that addressed? What strategic  
18 reason was, you know, provided that you didn't  
19 address that issue of the State changing their  
20 theory on that evidence?

21 A. The most -- the most clear I can try to  
22 make that for you, Mr. Phillips, is, I don't -- I  
23 don't think I was aware that there was a change --  
24 change of strategy, at least not from my viewpoint.  
25 My -- my viewpoint, well, the sheets could have been

1 moved here or there, or wherever, it doesn't matter,  
2 the question is how did they get on there? And he  
3 had the opportunity to testify to that. It's --  
4 it's just kind of very strange that it -- let's --  
5 let's assume that his testimony is accurate. We  
6 have no reason, other than the verdict, I'm not  
7 trying to reargue that; but if we assume for a  
8 minute that what he said was true, it could have  
9 been moved anywhere at that point. Why wasn't it  
10 washed? Why wasn't, you know, but the whole thing  
11 is, he -- he offered an explanation as to why  
12 there's his DNA on the sheet. It was not believed  
13 by the Jury. And I do agree with you, any  
14 inconsistencies in a case, and I agree, in fairness  
15 to Mr. Cartwright, and there's many inconsistencies  
16 that you can point out that's helpful to the  
17 defense, with the inconsistencies of the State's  
18 case. If -- if that's an inconsistency, and it  
19 appears to be, it should be brought forward to -- to  
20 the Jury. I -- I don't disagree with that. I'd be  
21 a fool not to agree with that. That's as accurate  
22 as I can tell you about my strategy. My focus was  
23 on how did it get on the sheets? And, apparently,  
24 it -- apparently, I was not -- to me, it didn't make  
25 much sense, since sheets can be moved here and

1 there, how did they get out of there? Wherever the  
2 -- if somebody wanted to plant them, they could have  
3 put it on his son's bedroom, he could have put it in  
4 her bedroom. If you believe him, somebody had to  
5 put it there, and it was maybe just forgotten, I  
6 don't know. That's as clear as I -- I apologize,  
7 that's as clear as I can try to make that.

8 THE COURT: All right, any -- anything further,  
9 in regards to your client's question, Counsel?

10 MR. PHILLIPS: None from me, Your Honor. Mr.  
11 Cartwright?

12 MR. CARTWRIGHT: Just one thing is, in -- in --  
13 in making his initial statement, --

14 MR. NEUBAUER: Yeah. Your Honor --

15 MR. CARTWRIGHT: -- there was --

16 MR. NEUBAUER: -- I feel we are going beyond the  
17 scope of the initial question, and --

18 THE COURT: All right, well, I -- I note the  
19 objection for the record, let's go, Mr. Cartwright.  
20 Let me hear from you, and we'll see what's on -- and  
21 I'll note your objection for the record.

22 MR. CARTWRIGHT: The -- the initial statement,  
23 the DNA was only brought into play by testimony to  
24 start with. The initial statement was nothing had  
25 happened that day, nothing. It was two weeks,

1 almost ten days later before they received an  
2 accusation that something had took place.

3 THE COURT: All right.

4 MR. CARTWRIGHT: Yes.

5 THE COURT: Well -- and -- and, Mr.

6 Cartwright --

7 MR. CARTWRIGHT: On that day.

8 THE COURT: Mr. Cartwright, I appreciate you  
9 letting me know that, but at this point it's not --  
10 it's not -- it's not appropriate to make statements,  
11 it's -- it's questioning the witness; and so I think  
12 you've made your point, and, certainly, I -- I  
13 understand completely what -- what the both -- point  
14 of the counter point is on that as it relates to the  
15 -- the sheets, and bringing up inconsistencies, and  
16 what Mr. Routzong thought was the significance of  
17 the -- of the sheets, and -- and where they were. I  
18 certainly understand where everybody's coming from.  
19 So with that, Mr. Routzong, I've got no objection to  
20 you, sir, being excused. Anything further for him  
21 for the State?

22 MR. NEUBAUER: No, Your Honor.

23 THE COURT: All right, from the Defense?

24 MR. PHILLIPS: No, Your Honor.

25 THE COURT: All right, Mr. Routzong, thank you.

1 Have a good weekend, sir.

2 MR. ROUTZONG: You have a good weekend everyone.

3 THE COURT: Yes, sir.

4 MR. PHILLIPS: Thank you.

5 THE COURT: All right, I'm happy to hear -- Mr.  
6 Neubauer, I'm happy to hear from you, sir.

7 MR. NEUBAUER: Thank you, Your Honor.

8 CLOSING STATEMENT

9 MR. NEUBAUER: It's the State's contention  
10 that Mr. Cartwright has failed to meet his burden of  
11 proof establishing, number one, his counsel's  
12 performance was deficient, or, two, that it  
13 prejudiced him. Initially, his counsel indicated he  
14 reviewed -- or he would have -- he believes he would  
15 have reviewed discovery with Applicant, indicating  
16 he does not recall Applicant providing him with the  
17 names of any witnesses for him to investigate. He's  
18 indicated that he met with Mr. Cartwright's brother  
19 to receive photos of the trailer that they've lived  
20 in, that that was the only witness that he was  
21 provided to meet with. Counsel testified that he  
22 investigated each aspect of the case, and felt that  
23 -- or that he felt was relevant to Applicant's  
24 defense, or he did not investigate an issue further  
25 based on a strategic decision that he did not

1 believe they were necessary.

2 Counsel has a duty to make a reasonable  
3 investigation. He's indicted he investigated -- his  
4 investigation was tailored to the issues that he  
5 thought were relevant for the defense of Mr.  
6 Cartwright. Further, Mr. Cartwright, has a duty to  
7 present any evidence or facts that could have been  
8 developed through further investigation, and he's  
9 failed to do so. That Mr. Cartwright's indicated  
10 that counsel could have looked into stuff -- into  
11 more stuff. He's failed to present any evidence,  
12 which if it had been discovered, it would have made  
13 a difference throughout this case.

14 Counsel's indicated his reasoning for not  
15 sequestering the witnesses was that they previously  
16 testified in a prior trial, and they -- there was a  
17 likelihood that they knew what the other was going  
18 to say already. Additionally, according to State v.  
19 Carmack, 388 SC 190, the mere opportunity for the  
20 State's witnesses to compare testimony is  
21 insufficient to compel sequestration. Mr.  
22 Cartwright and his attorney have alleged that the  
23 witnesses should have been sequestered to avoid in  
24 that hearing what the other witnesses would have  
25 said; however, based on the case law that exists,

1 that would not have been a sufficient reason to  
2 sequester witnesses. Further, counsel has indicated  
3 the valid reason why he did not believe there was a  
4 need to sever the charges, as if these charges had  
5 been severed, and Mr. Cartwright had been convicted  
6 separately through different trials, he could have  
7 been facing a great -- a larger sentence --

8 MR. PHILLIPS: Objection, Your Honor, that --  
9 there was no testimony to this.

10 THE COURT: And that -- that's -- he's surmising  
11 his closing is what he says the evidence shows. I'm  
12 going to overrule that. I'll give wide latitude.  
13 This is a -- this is an example of an objection  
14 during a closing. That was part -- part of this  
15 evidence today we were about to go into some, it had  
16 some of that. Kind of ironic. But I -- I'll --  
17 I'll let him continue, and I'll give you every  
18 opportunity to respond, Counsel.

19 MR. PHILLIPS: Thank you, Your Honor.

20 THE COURT: Go ahead, sir.

21 MR. NEUBUER: Further, during our initial day of  
22 this hearing, Mr. Routzong indicated that he felt  
23 the charges related to the same general form of  
24 conduct, though they occurred at different times, so  
25 that might have been a reason why he felt the

1 sequestration what -- or not sequestration, but  
2 severance of the charges might not have been  
3 necessary. Though Applicant argues the indictments  
4 were vague or overbroad, the indictments mirror the  
5 language of the statute Applicant was charged with,  
6 and were limited to a one-year portion of time,  
7 correlating with the victims' age. According to  
8 State v. Wade, which is 306 SC 79, the Supreme Court  
9 held an indictment was not -- or an indictment in a  
10 first degree criminal sexual conduct with a minor  
11 case was not unconstitutionally vague or overbroad,  
12 even though the alleged offense occurred at some  
13 point with a two-year time period. These  
14 indictments were specifically tailored to one-year  
15 time periods correlating with the victims' ages, and  
16 based on the case law at the time, it would have --  
17 it would not have been considered unconstitutionally  
18 vague or overbroad. Counsel testified he did not  
19 feel the need to hire an expert witness in the case,  
20 regarding DNA or the photo. Counsel indicated that  
21 Mr. Cartwright admitted that it was his semen on the  
22 bedsheets, so further investigations in the DNA was  
23 unnecessary. And further, the introduction of the  
24 photo itself was not necessary in Mr. Routzong's  
25 eyes, as he was able to convey the same general

1 point by expressing that Mr. Cartwright found this  
2 photo, believed it was his stepdaughter, and pursued  
3 it not only to police, but to a local news station.  
4 Regarding voir dire, Wall v. Keys, SC -- or 331 SC  
5 310, it was indicated the manner in which questions  
6 regarding jurors are related to a party, has an  
7 interest, or has expressed or formed an opinion, his  
8 pursuit of -- I apologize, I have like half of that  
9 quote.

10 THE COURT: It's okay.

11 MR. NEUBUER: The scope of -- I apologize,  
12 further, the scope of additional voir dire is within  
13 the sound discretion of the Trial Court. Though  
14 counsel requested certain questions be added to the  
15 Court's voir dire, it was in the Court's discretion  
16 to decide which voir dire questions were asked, and  
17 the Court declined to include two questions that  
18 Counsel had requested for this case. Regarding  
19 issues of specific testimony that Counsel could have  
20 objected to, Counsel has indicated that he did not  
21 believe the testimony was objectionable at the time;  
22 and though Counsel has indicated in hindsight that  
23 he could have objected, Strickland v. Washington  
24 requests that the Court assess Counsels'  
25 performance, while making effort -- every effort to

1 eliminate the distorting effects of hindsight.  
2 Counsel properly objected numerous times throughout  
3 the trial, and was successful throughout many of the  
4 objections. Though there are instances where he  
5 could have objected further, Counsel has indicated  
6 his reasoning, at the time, that he did not feel  
7 those particular matters were objectionable  
8 throughout the course of the trial. Though he's  
9 assessed that with the hindsight and the ability to  
10 review the transcript almost a decade later, he sees  
11 that there are instances where he probably could  
12 have objected. Regarding the search for the truth  
13 argument, Applicant has cited the case of State v.  
14 Alexi, and in this case, the Court indicated that  
15 reference to the Jury's duty to determine the truth  
16 from testimony that's presented after the Jury's  
17 been fully instructed on the State's burden of  
18 proof, does not create a reasonable likelihood that  
19 the Jury will adeem the State's burden of proof to  
20 have been shifted to the Defendant. The -- that  
21 instance is exactly what occurred here. Judge Early  
22 informed the Jury of the State's burden of proof,  
23 and tailored his search to the truth language, if  
24 you want to call it that, to the Jury's  
25 determination of which facts they felt were true in

1 this case, not who they believed, the Defendant, or  
2 the State. I feel that it is disingenuous to equate  
3 this case to a search for the truth language, and as  
4 it merely shows that Judge Early was attempting to  
5 tell the Jury to determine which witness testimony  
6 they believed and make their decision on whether the  
7 State has met their burden of proof based on the  
8 testimony that they believed credible. As far as  
9 the issues with challenging Dr. Alicia Benedetto,  
10 Counsel indicated he saw an issue with Benedetto  
11 being qualified as an expert witness, and challenged  
12 her qualification, both before the trial and at the  
13 time that she was qualified. Counsel indicated that  
14 he based his argument for not having Ms. Benedetto  
15 qualified on case law he received from Mr. -- or  
16 from Robert Dedick (phonetic) while he was preparing  
17 for this trial. Further, regarding his failure to  
18 object is beyond the scope of qualifications -- or  
19 objecting to testimony from Benedetto as beyond the  
20 scope of her qualifications. Counsel indicated that  
21 he felt the question was improper and objected, but  
22 he may not have made the best possible objection at  
23 that time. As far as Applicant's issues with  
24 Appellate counsel goes, Appellate counsel does not  
25 have an obligation to raise every nonfrivolous issue

1 that is presented by the record. Appellate counsel  
2 indicted his reason for raising the issues that he  
3 did on appeal, and why he chose not to address other  
4 issues. Additionally, Appellate counsel testified  
5 he had previously raised issues that were not  
6 preserved for review to have the Court establish  
7 that they were not properly preserved, but he  
8 elected to not do so in this case, and instead  
9 focused his argument on the issues he thought had  
10 the highest chance of success. And further the case  
11 of Nichols v. United States, that 563 F.3d 249, has  
12 clearly indicated that applicants do not have a  
13 constitutional right to assist in some Appellate  
14 counsel for petitions to the United States Supreme  
15 Court, though Mr. Dedick, if he felt he probably  
16 could have raised the issue of using Mr.  
17 Cartwright's attempted suicide during the course of  
18 a trial, that that could have been raised in the  
19 Supreme Court. There was no obligation for Mr.  
20 Dedick to do. So we feel that though there are  
21 issues that could have been raised in hindsight,  
22 regarding Mr. Routzong's assistance and Mr. Dedick's  
23 assistance, that those, at the time, would have been  
24 -- or that the actions of both counsels, at the  
25 time, would have been deemed reasonable, though it

1 may not have been perfect representation, it is  
2 clearly competent representation and reasonable  
3 representation; and we feel the Applicant has failed  
4 to show how counsel was deficient or how he was  
5 prejudiced by counsel's performance.

6 THE COURT: Let me ask you something.

7 MR. NEUBAUER: Yes, sir.

8 THE COURT: I understand -- now, this -- I don't  
9 understand why he would not go and try to put the  
10 picture into evidence, because -- or try to confirm  
11 that it was a picture of -- of the -- the victim.  
12 Because a) if it was the picture of the victim,  
13 everything in this case rises on credibility of the  
14 -- of the witness, the victim, and that's -- that's  
15 the ship rises or falls. And so if the picture's  
16 in, and the victim denies it, and the expert says  
17 it's her, the Jury could look at it and see that  
18 it's her, then that, potentially, destroys her  
19 credibility. I -- and quite frankly makes the  
20 gentleman whose testimony was, that -- no offense,  
21 Mr. Cartwright, that you're not a likeable guy, I'm  
22 I don't know you, sir, I'm taking the evidence --  
23 the information I've received over the past three or  
24 four days we've been together, spread out over  
25 several weeks, it kind of makes him, potentially,

1 more likeable. I just -- I don't understand that.

2 MR. NEUBAUER: And, Your Honor, I believe -- and  
3 I'm -- I believe that this testimony came out  
4 through the course of this, however, during my  
5 conversation with Mr. Routzong, as well, it may have  
6 come out, I am certain that I asked Mr. Routzong  
7 whether he believed the woman indicated -- or in the  
8 photo was, in fact, the victim, and he indicated  
9 that he did not believe that after reviewing the  
10 photo; and that he felt that the introduction of the  
11 photo showing minors exposing themselves as not  
12 necessary to the issue. That he was able to convey  
13 his defense, which was by raising -- by Mr.  
14 Cartwright raising this issue, by Mr. Cartwright  
15 bringing it up to police, bringing it up to Nicki  
16 (phonetic), bringing it up to Hoss, going to the  
17 news with it, that that alone, that exposure, that  
18 -- the manner in which that was addressed would have  
19 either embarrassed or infuriated Nicki enough to  
20 cause her to fabricate these allegations. So it was  
21 his belief that he was able to convey the same point  
22 without needing to introduce a photo that may or may  
23 not have been the victim.

24 THE COURT: Okay, all right. Thank you, sir.  
25 All right, Counsel, I'm happy to hear from you, as

1 it relates to closing, and anything that I -- I  
2 brought up. I just -- I brought that up simply  
3 because I was curious as to the thought behind it,  
4 and I think -- I think the -- I think the Attorney  
5 General certainly provided me with some food for  
6 thought, as it relates to the questions that I  
7 raised. Go ahead.

8 CLOSING STATEMENT

9 MR. PHILLIPS: Thank you, Your Honor. Regarding  
10 the allegations of ineffective assistance of  
11 counsel, trial counsel denied Applicant's right to  
12 effectiveness of counsel as guaranteed by the 6th  
13 and 14th Amendments to the United States  
14 Constitution, Article 1, Sections 3 and 14 of the  
15 South Carolina Constitution. Specifically, Trial  
16 Counsel's unreasonably deficient performance fell  
17 below an objective standard of reasonableness, under  
18 prevailing, professional norms, and prejudiced the  
19 Applicant, because there's a reasonable probability  
20 that but for Trial Counsel's errors, the result of  
21 the proceedings would have been different, on  
22 deciding, essentially, the Strickland v. Washington  
23 standards for ineffective assistance of counsel  
24 claims. In conclusion, that counsel's conduct so  
25 undermined the proper functioning of the adversarial

1 process, that the trial could not be relied upon as  
2 having produced a just result. Also, the second  
3 part is, that Appellate counsel denied Applicant's  
4 right to effective assistance of counsel as  
5 guaranteed by the 6th and 14th Amendments to the  
6 United States Constitution, and Article 1, Sections  
7 3 and 14 of the South Carolina Constitution.  
8 Specifically, Appellate counsel's unreasonably  
9 deficient performance prejudiced the Applicant,  
10 because there's a reasonable probability that but  
11 for Appellate counsel's errors, the results of the  
12 proceeding would have been different. Specifically  
13 as to the allegations, starting, again, with the  
14 testimony, Your Honor, I think in this case, as you  
15 heard, there was a trial, that the first trial  
16 occurred in November. The first time that Routzong,  
17 according to his notes, spoke with -- the first note  
18 that he had, spoke over the phone to an incarcerated  
19 Applicant was March 5th. The trial in this case  
20 started on April 15th. He says he met with him,  
21 potentially, because he said one of them,  
22 potentially, could have been a phone call, he wasn't  
23 -- his notes were -- he said he definitely spoke to  
24 him for a couple of hours, that's what both of the  
25 other notes said on April 4th and April 13th. He

1 had no notes, specifically, related to any  
 2 witnesses. No notes as to whether he reviewed the  
 3 discovery with him. No notes as to really any of  
 4 the allegations that were addressed during this  
 5 hearing as far as his preparation, and his strategic  
 6 reasons for presenting the defense that he -- that  
 7 he did, and in his preparation for trial.  
 8 Specifically, in his advisement of rights to the  
 9 Applicant, as to his decision to testify, he had no  
 10 notes, as to how he discussed that with him, again,  
 11 as to the preparation and -- and investigation in  
 12 this case. If Your Honor -- I mean I can cite all  
 13 the relevant case law to each individual allegation.  
 14 I don't know if Your Honor would -- I didn't -- I  
 15 wouldn't --

16 THE COURT: No, but I've got a question.

17 MR. PHILLIPS: Yes, Your Honor.

18 THE COURT: When did he get the transcript?

19 MR. PHILLIPS: I asked that question on --

20 THE COURT: Yeah, you did, and so I thought  
 21 maybe you knew the answer. You know, sometimes  
 22 lawyers know the answer before they ask the --

23 MR. PHILLIPS: I wish --

24 THE COURT: -- the question.

25 MR. PHILLIPS: I wish I did. That's the

1 problem, we don't have any record of it, neither did  
2 he.

3 THE COURT: Well, that's kind of a quick  
4 turnaround for -- this was a November trial?

5 MR. PHILLIPS: That's correct, from --

6 THE COURT: And he was in -- and the -- and the  
7 second trial started the middle of April?

8 MR. PHILLIPS: Yes, your Honor.

9 THE COURT: That's a quick turnaround.

10 MR. NEUBAUER: I have a -- I apologize for  
11 interjecting. I've a copy of the transcript from  
12 the first trial, and the only note shows that it was  
13 received by the Solicitor's Office on January 28th  
14 of 2013, but again, as Mr. Phillips indicated  
15 there's no record stating when Mr. Routzong would  
16 have received that from the Solicitor.

17 THE COURT: I mean -- but that's still -- I mean  
18 I would assume -- and I'm looking at -- and I'm  
19 looking right here, and you're right it was -- it  
20 was the - the court reporter's Certificate of  
21 Reporter is dated January 27th, so, you know --

22 MR. PHILLIPS: The -- I mean the issue is he had  
23 no notes of when he even received it, or when he  
24 reviewed it for preparation of it. I mean, again,  
25 generally, when you're preparing for trial, you do

1 take notes, specifically, if you're reviewing a  
2 transcript for impeachment evidence. And, again,  
3 there was no notes as to his preparation in his  
4 review of that transcript or when he received it.  
5 He didn't have even any records to who when he  
6 received the discovery, or if he received the  
7 updated discovery, or any -- as far as the case  
8 file, how he received the case file after the  
9 private attorney -- the hung jury from the first  
10 trial from the private counsel.

11 THE COURT: Now, Mr. Phillips, I would agree  
12 with you that the -- the thing that -- I practiced  
13 criminal law for 30 years, it's a pretty quick  
14 turnaround from 3/5 to 4/15 for a trial --

15 MR. PHILLIPS: That --

16 THE COURT: -- of this significance. Quite  
17 frankly, I think everybody really acknowledges --  
18 acknowledges that, but I -- I understand the issues  
19 about not documenting or having that information,  
20 but go -- go ahead, go ahead.

21 CLOSING STATEMENT CONTINUES:

22 MR. PHILLIPS: Well, specifically, going --  
23 I mean, again, with that amount of time that the  
24 heart of it was that he did not have the ability to  
25 be fully prepared. Now, his testimony was -- was

1 different than that.

2 THE COURT: Correct.

3 MR. PHILLIPS: And so, you know, the next  
4 question, had he said that he did not have enough  
5 time would have been -- that they would have been  
6 appropriate to move for a continuance, but that's  
7 not what his testimony was. His testimony --  
8 testimony was he believed he was prepared, or at  
9 least that's my recollection of the testimony. Now,  
10 I disagree based on the fact of the short turnaround  
11 time, as Your Honor, noted, and his notes of what he  
12 did have is one phone call and two meetings, and not  
13 knowing when he had the full discovery file or the  
14 trial transcript from the first one. If he ends up  
15 getting the trial -- the first trial transcript and  
16 discovery after one of those meetings, then we know,  
17 for a fact, that that never happened. One of the  
18 allegations before Your Honor is that he didn't  
19 review the full discovery file with Mr. Cartwright  
20 and go through the evidence. Again, specifically,  
21 as to his failure to prepare for trial, but not only  
22 to review that evidence with Mr. Cartwright, going  
23 into trial. Specifically, as to -- we kind of walk  
24 in the same -- I'll -- I'll address the Appellate  
25 counsel real quick, because it's pretty -- pretty

1 brief. Our main issues with the ineffective  
2 assistance of Appellate counsel, we're not waiving  
3 all the issues raised, but the specific ones I want  
4 to bring to the Court's attention is, essentially,  
5 that Trial Counsel, based on Appellate's counsel  
6 failure to bring the issue of -- or the incorrect  
7 legal standards for qualifying the expert, that it's  
8 either ineffective assistance of Appellate counsel  
9 for not raising that issue, or its ineffective  
10 assistance of Trial Counsel for failing to preserve  
11 for Appellate review the -- the legal standard that  
12 was presented to qualify the expert, Ms. Benedetto.  
13 Since her -- her testimony, at least from my review  
14 of it, was a very critical point in what was present  
15 to the Jury, which we've had the case law to support  
16 how it's a very thin line with this type of expert  
17 testimony, and walking that line of where the  
18 prejudice get -- where it gets -- underly  
19 prejudicial to a Defendant, especially with the  
20 blind experts in here. Also, the second part is  
21 that the expert's testimony went beyond the scope of  
22 her expertise. Either Appellate counsel was  
23 ineffective for failing to raise that issue, or  
24 Trial Counsel was ineffective for failure to  
25 preserve that issue for Appellate review. Those are

1 the two that I really want to point out,  
2 specifically, as to Appellate counsel, again, not  
3 waiving the other issues raised, those are the ones  
4 that I wanted to put out, specifically. As to Mr.  
5 Hayes' testimony, you'll have to give me second,  
6 Your Honor, I'm going back through notes, since he  
7 didn't testify in the previous hearing, that he  
8 didn't recall any of the conversations with Mr.  
9 Cartwright, or any -- or any preparation for  
10 pretrial motions, and preparation for this trial, he  
11 was not able to provide any testimony to support  
12 Trial Counsel, Mr. Routzong's preparation for trial.  
13 There was no corroborating evidence that they -- of  
14 -- of what was actually done to prepare for the  
15 trial. And there really wasn't, other than the --

16 THE COURT: Whoa, whoa, whoa, wait. I'm sorry,  
17 I'm -- I'm trying to multi-task. I'm trying to look  
18 at something here --

19 MR. PHILLIPS: Yes, Your Honor.

20 THE COURT: -- and I'm listening to you, and I  
21 can't multi-task, so let's back up. Let's back up a  
22 second. What were you just saying?

23 MR. PHILLIPS: That co-counsel, second Chair,  
24 Mr. Hayes, there was no testimony from him that,  
25 essentially, said, you know, here are the things --

1 outlining the things they did to prepare for trial,  
2 other than Mr. Hayes did say he called the Office of  
3 Appellate defense for his specific legal issue as  
4 far as the expert, but there was no testimony from  
5 Mr. Hayes that would support that Mr. Routzong, lead  
6 counsel, had done all the things necessary to  
7 prepare for trial. The issues that we're going into  
8 -- to address, specifically, again, that we know  
9 there was only --

10 THE COURT: Right.

11 MR. PHILLIPS: -- two meetings with the  
12 Applicant in this case. And, again, I'm not -- as,  
13 Your Honor, kind of pointed, and didn't want me to  
14 go case law more specific than I have to; but,  
15 specifically, in this case, there wasn't any  
16 specific investigation into any specific witnesses.  
17 There were no notes on that. There wasn't any  
18 questioning, or a follow-up on any potential bias of  
19 Amanda Reddick, and any -- and her boyfriend, and  
20 any potential criminal investigation or charges that  
21 were presented.

22 THE COURT: But what -- what assistance did you  
23 want him to -- to -- because don't you have that  
24 burden?

25 MR. PHILLIPS: As far as presenting the

1 witnesses, specifically, yes, Your Honor. The --  
2 the main -- the critical issue is, as far as his  
3 cross-examination not presenting a specific witness  
4 here, because, yes, we would have to call a specific  
5 witness, if there was one that would -- that would  
6 be involved; but one where he failed to even look to  
7 see if there was anything pending with the -- the  
8 boyfriend, at the time, based on -- again, I don't  
9 think it was totally flushed out during the hearing,  
10 but in the trial transcript, there's the -- the  
11 daughter admits that there was a pending -- and that  
12 she -- she denies there was anything pending with  
13 her, but admits that she was trying to help her  
14 boyfriend. And so --

15 THE COURT: Were there --

16 MR. PHILLIPS: She did -- she does admit that  
17 there was some motive for her --

18 MR. NEUBAUER: Your Honor, I would -- I  
19 apologize, I would object just to the statement that  
20 she said she was trying to help her boyfriend.

21 THE COURT: Well --

22 MR. NEUBAUER: And I believe the record will  
23 reflect that she was giving information regarding a  
24 drug investigation involving her boyfriend, not that  
25 she was trying to assist him. And I apologize, I

1 just wanted to clarify that particular point.

2 THE COURT: All right, well, I'll note your  
3 objection for the record. I overrule you. Let's --  
4 go ahead, sir.

5 MR. PHILLIPS: Thank you, Your Honor. Again,  
6 there was the testimony from the Applicant regarding  
7 his timeline of the times when he was not in the  
8 home, and was working out-of-state, and I understand  
9 counsel's testimony, but you had a broad timeline  
10 here, but, specifically, going to our issue of a  
11 motion to quash the indictments, when you have a  
12 span of 18 years, 28 indictments, all of them  
13 spanning over a year; and then the issue of having  
14 an overbroad or vague indictment, it's not a novel  
15 issue. State v. Baker is not the watershed case  
16 that -- that makes this issue for the first time.

17 THE COURT: Yeah, but -- yeah, but in these type  
18 of cases, and I -- when I've had them, it always  
19 seems like the indictments are -- are rather -- are  
20 rather broad timewise, simply because of other  
21 things. I think you're dealing with children. I  
22 mean that --

23 MR. PHILLIPS: Well --

24 THE COURT: That just seems pretty -- I mean to  
25 my experience, that's pretty routine of these type

1 -- in this types of cases; is that not - is that not  
2 the case?

3 MR. PHILLIPS: Well, it's routine, but that's  
4 why State v. Baker shows the prejudice, the -- the  
5 whole heart of why it's so difficult in those cases  
6 to provide a alibi defense. If they had any  
7 specific dates in that range, then he could show  
8 whether he was in the home or not with -- with, you  
9 know, where he was living at the time. I think the  
10 even stronger argument, I think a very strong  
11 argument is, the severance argument. You have three  
12 victims in a case that have different offers of  
13 proof, that have distinct -- distinct date ranges,  
14 and it wasn't a continuous course of conduct. I  
15 think that is a case where counsel has an absolute  
16 duty to move to sever those, because now you have,  
17 basically, the State able to bolster, that you have  
18 three children all claiming abuse, again, over this  
19 vast amount of indictments; and because all --  
20 they're not provable by the same evidence, and  
21 they're not from a continuous force of conduct,  
22 they're perfect for a severance, and the State could  
23 try them individually, and they -- each case can  
24 stand on their own. And that in and of itself, by  
25 not moving to sever those cases, especially, even in

1 this case, where he didn't move to sever or  
2 sequester the witnesses, you have the opportunity,  
3 wherein, essentially, the prejudice is just -- it's  
4 just too high, it's a -- it's a mountain too high to  
5 climb. There's no way that a jury, in my opinion,  
6 when you have 28 indictments and three children  
7 making these allegations, and there are different  
8 offers of proof cases that could stand on their own,  
9 for the defense attorney not to move to sever those  
10 cases, to me, is one of the strongest, most -- to  
11 me, shocking arguments that we have, because I  
12 think, if you stand -- if you separate these cases  
13 individually, of course, the State to try to 404B  
14 them, but that's a whole other issue to try -- that  
15 -- as far as the admission of -- of that evidence,  
16 as well. I tried a CSC last November, we had a  
17 motion to sever in that case, it was granted, and  
18 certain things didn't come in through 404B, and that  
19 we had a not guilty verdict. I think that is --  
20 what evidence, obviously, goes before the Jury is  
21 paramount. When they have 28 indictments, three  
22 victims, and they're all, basically, saying the same  
23 thing, you have this unduly prejudicial bolstering,  
24 essentially, of -- just -- just the same problem you  
25 have with propensity evidence.

1           THE COURT: And you can tell where there's  
2 smoke, there's fire.

3           MR. PHILLIPS: That you took the words out of my  
4 mouth, I was about to say that, sir. Yes, exactly,  
5 the whole problem with propensity evidence. And so  
6 the -- to me, the severance issue is one -- is -- is  
7 definitely one of the strongest issues he has on  
8 proving ineffective assistance of counsel. With  
9 that being said, as far as just trying to walking  
10 through. Now, as far as the discussions, there  
11 was --

12          THE COURT: Let me ask you something. What  
13 about his argument -- the only argument I heard him  
14 making concerning severance, was this whole really,  
15 I guess, the -- the, you know, the 40 bad act type  
16 of evidence, but his being L-locked. I mean that --  
17 that -- I heard him talking about that, more than  
18 anything else. What about that?

19          MR. PHILLIPS: Well --

20          THE COURT: That is a -- that's a -- that's a  
21 valuable consideration.

22          MR. PHILLIPS: Well, I think his testimony now  
23 was that he would -- he would have moved to sever,  
24 and there was no strategic reason. So I mean he  
25 says he would have moved to sever now, but as far as

1 the -- the other part of that, given the nature of  
2 the sentence imposed, and the amount of the time  
3 that you can get with this, with consecutive  
4 sentences, I don't think there's really any  
5 differences, other than the fact that somebody could  
6 try to on most serious -- serious offenses, try to  
7 actually seek the L-lock (phonetic); but when you're  
8 facing, again, his sentences was imposed here, he  
9 got 40 years, that's a De Facto life sentence,  
10 especially when you do the life calculations with  
11 SEDC. He's facing -- he received 30 years on the  
12 first degree. Again, only one set was a consecutive  
13 sentence, every -- everything else was concurrent in  
14 this case.

15 THE COURT: All right. All right, go ahead, go  
16 ahead.

17 MR. PHILLIPS: Thank you, Your Honor.

18 CLOSING STATEMENT CONTINUES:

19 MR. PHILLIPS: Specifically, it's regarding  
20 the discussion of suicide being argued as evidence  
21 of guilt. Again, having no notes regarding that  
22 issue, and being prepared to specifically address  
23 that issue, we argue is also ineffective assistance  
24 of counsel, especially considering it was a novel  
25 issue that was raised on appeal. Unfortunately, as

1 you heard, the -- from Appellate counsel, that it  
2 wasn't federalized and he had not thought about it  
3 being a federalized issue, one that you could be  
4 able to petition the United States Supreme Court to  
5 review. Also, with voir -- during the voir dire  
6 there were other witnesses -- or, excuse me, other  
7 potential jurors, who said they had -- there were  
8 similar types of behavior from -- which was related  
9 to the trial, none of that discussion with the Trial  
10 Court was put on the record, and none of those juror  
11 numbers were put on the record. And, again, a lot  
12 of this, Your Honor, were put in a very difficult  
13 place like you -- when you asked earlier about when  
14 he received the transcript. And it's very difficult  
15 to prove a negative, because it -- we -- we have --  
16 we have no -- he has no notes, and we have no  
17 ability to -- to know the answer. Just like we have  
18 no idea what those jurors told the Judge, and what  
19 their juror numbers are, especially in a case as  
20 charged as a sex abuse case with children. When  
21 somebody had similar types of behavior that,  
22 potentially, there could be arguments for  
23 ineffective assistance of counsel, if not moving to  
24 strike for cause those jurors, but we'll never know,  
25 because he didn't preserve that for Appellate

1 review. He didn't have that preserved for the  
2 record. As far as --

3 THE COURT: Yeah, but he didn't even use all of  
4 his strikes, right?

5 MR. PHILLIPS: Well, and I -- I mean I guess  
6 that -- that goes back to the next part of it, it's  
7 if he was put in a position, where, again, I  
8 understand, Your Honor's position there, where he  
9 didn't use all of his strikes, but when it comes to  
10 those people in the jury pool, I still think he has  
11 to preserve that for the record, and make sure --  
12 because, again, I don't know whether those Jurors  
13 were called, and I -- it doesn't -- I don't -- I  
14 can't make an argument that he should have struck  
15 them, I don't know their juror numbers, that's the  
16 -- again, it's -- it's very difficult in these cases  
17 to prove the unknown. Because one of the jurors  
18 that got seated could have been one of those jurors  
19 that went up at the bench conference and said  
20 something that they should have been struck for  
21 cause, or at least should have made a strategic  
22 decision to strike them using statutory strikes, but  
23 we'll never -- we'll never know that, because he  
24 didn't preserve it

25 THE COURT: You're saying that -- and -- and you

1 figure, if he walked up to a bench conference, and  
2 he indicated that he did walk up to the bench  
3 conference, as I recollect. I'm assuming that's  
4 what it was. I think he testified that he was  
5 there. He was inches -- I say inches, very close to  
6 the court reporter, I think he testified to that.  
7 They were right there. She -- he was assuming that  
8 the court reporter, that he or she, was do -- make  
9 -- making notes of -- of this, so I mean it -- it  
10 would seem to me it's -- in as much detail as he  
11 recalled, as it relates to that, that if -- that if  
12 someone's going to make a disclosure to the Judge,  
13 that he would make note of that, and go back, and  
14 strike somebody who'd do a comp, or whatever. And,  
15 of course, I guess your -- your question is, not  
16 that you -- not -- you're not saying that he didn't  
17 do that, it's just that you don't know whether he  
18 did that, and that's what's prejudicing your client?

19 MR. PHILLIPS: Sort of, yeah, halfway  
20 there. So, Your Honor, I agree that you would  
21 assume that he would have notes of these things, but  
22 there would be -- there -- if we go that route, I  
23 believe, if he was providing competent, effective  
24 assistance of counsel, there'd be notes of a lot of  
25 the questions that we've had today, and like you

1 said, there'd be notes of the discussions, and  
2 identifying the jurors and what they said, but we  
3 don't have notes of anything. I mean nothing -- none  
4 of my -- most of my questions, I -- my answer I  
5 wrote is no notes on my -- on my sheet.  
6 Specifically, as to Juror Number 94's conversation  
7 with the Trial Court, having some type of -- as a  
8 relative with the victim, as his quote, as the Court  
9 knows he had no notes on that. He did move to  
10 strike for cause, which was denied, but he has no  
11 notes on that, and he did, ultimately, use a strike  
12 on that juror, but he had no notes regarding that  
13 issue, as well. Again, in this case, giving  
14 credibility being such a cornerstone of the case,  
15 Trial Counsel's failure to sequester the witnesses,  
16 I understand it's a low bar there, but given the  
17 type of cross-examination necessary, the impe -- how  
18 critical impeachment is of witnesses, not to move to  
19 sequester these witnesses and allow them to hear  
20 each other's testimony, and to make sure, again, how  
21 things are -- are -- are being done in the  
22 Courtroom. And I understand there was a -- a first  
23 trial, but that doesn't alleviate counsel's duty to  
24 ensure that the Applicant receives a fair trial.  
25 Again, still going back to his ability to be

1 prepared within let's say 40 days of a very, very  
2 serious trial, with 28 indictments, is what's more  
3 shocking to me. We've -- we've addressed the motion  
4 to quash issue, the motion to sever. He --

5 THE COURT: What about the comments of the  
6 Judge? What about -- what about the facial  
7 expressions? So is there -- is there a notation of  
8 facial expressions being made, or -- or people are  
9 just saying that's the way that this Judge  
10 particularly is. And I can say I've appeared in  
11 front of Judge Early before, I'm new to this bench,  
12 and I've tried cases in front of Judge Early in  
13 Aiken County. And so what I'm asking is, is there a  
14 -- is there anything in the record that reflects to  
15 these nods, or shakes, or whatever was kind of being  
16 spoken of as eloquently as possibly could be spoken  
17 of the testimony that we received, but that's what  
18 I'm trying to figure out.

19 MR. PHILLIPS: Well, that -- and that goes to  
20 the heart of it, there was no objection by counsel  
21 to put that on the record. I think, you know, when  
22 you're looking at --

23 THE COURT: Put what on the record?

24 MR. PHILLIPS: Facial expressions, those --  
25 those -- the demeanor. Because what we do have on

1 the record is the Judge intervening and -- and  
2 stopping the Applicant's testimony.

3 THE COURT: Got that. And I -- and he made a  
4 comment about --

5 MR. PHILLIPS: Making the -- telling the  
6 Prosecutor to object, yeah.

7 THE COURT: Right. I - I understand that, we've  
8 got a record of that. What I'm asking is though, is  
9 there anything in the record that reflects any type  
10 of -- of facial matters, or his -- I mean where is  
11 that coming from?

12 MR. PHILLIPS: Specifically, it came -- it came  
13 from Mr. Routzong, he's the one that had interjected  
14 the facial expressions through his testimony.

15 THE COURT: Today?

16 MR. PHILLIPS: That's right.

17 THE COURT: Or -- yeah, or -- or whatever we --  
18 he -- okay, so not in the transcript?

19 MR. PHILLIPS: Not to my knowledge.

20 THE COURT: In the transcript.

21 MR. PHILLIPS: Not to my --

22 THE COURT: Anything in the - and, of course, I  
23 understand facial expressions generally wouldn't  
24 appear in the transcript, what I'm saying is, no one  
25 made any objection and said that -- you're saying

1 that Routzong has now said that -- that -- that  
2 Judge Early was doing this?

3 MR. PHILLIPS: Yes.

4 MR. NEUBAUER: And, Your Honor?

5 THE COURT: Yes.

6 MR. NEUBAUER: I apologize, I would interject  
7 and just say that I believe Routzong's testimony was  
8 Judge Early had a habit of doing that throughout the  
9 - his representa -- or the times he's, I guess,  
10 tried a case in front of him, but there was no  
11 testimony provided today saying that he specifically  
12 made facial expressions during this trial, and,  
13 additionally, there's nothing on the record showing  
14 the -- any expressions, or any physical demeanor by  
15 Judge Early was, I guess --

16 THE COURT: Well, and - and, too, this is a  
17 little bit different, you know, I'm not just being  
18 quiet, and letting you make your closing, but I'm  
19 really trying to help -- help myself better  
20 understand what's going on, because believe it or  
21 not, I pretty much read those -- this stuff, and --  
22 and have a pretty good grasp of the testimony that  
23 went on today. So -- and -- and that was my  
24 recollection was that Judge -- that he was  
25 testifying that Judge Early, for lack of better

1 words, this was his habit, or this is the way he was  
2 when he always was doing it, that's what I picked up  
3 on, but I didn't recall him saying that -- and what  
4 you're saying is, Mr. Phillips, is, you believe he  
5 was specifically referring to this trial?

6 MR. PHILLIPS: Yeah, I -- I think he had a line  
7 that he said, if it -- at least at one point, where  
8 he said -- I think it's yes, but I think he also had  
9 a line that he said, if he didn't happen in this  
10 trial, he would be shocked, that that was the way he  
11 ran his courtroom, I think.

12 THE COURT: Your client's wanting to say  
13 something now. It's not an appropriate time for him  
14 to do anymore speaking.

15 MR. PHILLIPS: Yes, Your Honor, and I'll address  
16 -- I'll --

17 THE COURT: Sorry about that. Go -- go ahead,  
18 counsel, I'm not gonna interrupt you, go ahead.

19 MR. PHILLIPS: Your Honor, so I think -- believe  
20 one of the lines that Mr. Routzong had was that he  
21 would have been shocked if there wasn't that going  
22 on throughout the trial, based on all of his other  
23 trials; and I think he might have alluded to, but he  
24 -- remember he -- I hate to kind of go back to the  
25 same thing, and I know I'm beating a little bit of a

1 dead horse, but he didn't have -- Trial Counsel,  
2 basically, didn't have much memory of the trial,  
3 other than what was kind of memorialized, in many  
4 respects.

5 THE COURT: Well, that's not necessarily unfair,  
6 given the length of time we're facing. I don't -- I  
7 don't know that that, you know --

8 MR. PHILLIPS: But he did say he found the other  
9 issues objectionable, that were -- that are  
10 contained in the --

11 THE COURT: Yes, sir. Yes, sir.

12 MR. PHILLIPS: And, of course, one of the things  
13 that he said he didn't find objectionable, but I --  
14 I would still just bring to Your Honor's attention,  
15 and I know you -- Your Honor has a good grasp of --  
16 of the allegations, is in the Trial Court's opening  
17 instructions, as well as in the closing charges to  
18 the Jury, the references, the quotes regarding true  
19 and just verdict, speaks the truth, essentially, the  
20 search for the truth language, the burden shifting  
21 under State v. Daniels, that when having them at  
22 both the beginning and end of the trial as bookends,  
23 I think it highlights and enhances the prejudice of  
24 what the -- our Supreme Court has now said several  
25 times, and -- and, essentially, admonished the Bar

1 -- or the Bench and Bar from presenting this. And I  
 2 know this was in the standard instructions until --  
 3 hopefully, I think they took them out, but I -- I  
 4 know until somewhat recently they were still there,  
 5 which is -- which is incredible to me, but --

6 THE COURT: The books say they three months ago  
 7 still had them in there.

8 MR. PHILLIPS: So I know that -- I mean I know  
 9 it's a -- it's a problem that, although they keep  
 10 admonishing the Bench about it, I -- I think, like  
 11 you said, there's still in the jury instructions,  
 12 the standard jury instructions that are provided.  
 13 And so I -- I do feel this is a problem, because the  
 14 only thing that I think the Judge can comment on, in  
 15 -- in that regard is that there is an absolute  
 16 burden on the State to prove each and every element  
 17 beyond a reasonable doubt. And as far as the Jury's  
 18 finders of fact, they are the finders of fact, but  
 19 they can't comment on the truth part, the truth  
 20 function part of it, because that dilutes the  
 21 burden. That's the burden shifting --

22 THE COURT: All right. What else do you got?

23 MR. PHILLIPS: And, again, I -- instead of  
 24 hitting every issue, I'm going to just hit on the  
 25 ones that I know Your Honor wants me to highlight,

1 as Your Honor says, you have a good handle on all  
2 the other issues.

3 THE COURT: Now, I don't want you to cut short.

4 MR. PHILLIPS: No, I mean I'll make sure that we  
5 -- I mean, generally, in PCR cases, Your Honor, what  
6 I -- what I've also done is, where we provide,  
7 essentially, kind of memorandums with the --  
8 outlining the arguments as, you know, a little bit  
9 more of a legal memoranda, instead of the  
10 application, outlining the arguments presented; but,  
11 specifically, in this case, we believe that Trial  
12 Counsel failed to object to the Trial Court's  
13 application of an incorrect legal standard,  
14 regarding the qualifying of the State's expert  
15 witness. As I said earlier, it would -- there'd be  
16 either a -- either a failure to preserve the issue  
17 for Appellate review, or Appellate counsel failed to  
18 raise the issue, but, specifically, under the  
19 standard, there wasn't any -- Mr. Hayes testified  
20 that there wasn't a proffer, and, you know, he -- he  
21 -- he said quite frankly, he forgot that he did the  
22 motion, but when he looked back, there wasn't a  
23 proffer on the legal standard that was presented.  
24 And in this case, our arguments are where the Trial  
25 Court limited counsel's voir dire, regarding

1 questioning the -- regarding questioning the  
2 witness' qualifications, qualified the witness as an  
3 expert, and the -- essentially, the standard  
4 provided was incorrect. It only permitted the  
5 questioning of the witness, based on reliability and  
6 validity in the field itself, after he was already  
7 -- after he had already deemed the person an expert.  
8 That colloquy -- basically, how all that lays out in  
9 the transcript, in my opinion, was all incorrect in  
10 how it should have been done to qualify the expert  
11 witness, but the incorrect legal standard, I think,  
12 is the bigger issue on ineffective assistance of  
13 counsel. Again, our other arguments that Trial  
14 Counsel failed to object and move to strike the  
15 expert witness testimony from going beyond the scope  
16 of her expertise. Specifically, as a expertise, the  
17 area of expertise focused on was a perspective of a  
18 child experiencing abuse, but the witness improperly  
19 testified, essentially, as a psychological profiler  
20 of the accused, and kind of went into, basically,  
21 kind of what was typical for an abuser to have a  
22 favorite age to sexually abuse. And our argument's  
23 that -- that that should have been objected to, and  
24 properly preserve for Appellate review. Trial  
25 Counsel said he -- he never subpoenaed the -- the

1 witness, specifically, that had the medical  
2 condition, they couldn't come to trial, that he  
3 relied solely on the letter. There was no  
4 additional records, or anything else provided and  
5 allowed for that testimony to be read into the  
6 record, which he participated in, which I -- I agree  
7 with him, and he says a reflection. He doesn't know  
8 of any other case where that's really done, where  
9 the defense counsel participates in the State's  
10 case, as a State's, you know, partici -- while  
11 presenting State's evidence. And so kind of all --  
12 all of that together we argue is prejudicial, should  
13 -- should have been objected to, should have -- or  
14 should not have stipulated to, and he should have  
15 her subpoenaed. I understand it's a very sensitive  
16 subject, but he still has a duty to provide a  
17 zealous defense to the Applicant; and given the  
18 nature of how credible that different testimony --  
19 that testimony is, as far as kind of holding -- as  
20 far as say corroborative testimony of the other --  
21 the other victim's -- the victim's testimony, it  
22 would be imperative that he, one, make sure that she  
23 was there to testify, two, at least allow for the  
24 Court to make that determination, instead of him  
25 stipulating it. And the -- the next part is one

1 being, you know, having -- being prepared for that.

2 THE COURT: Yeah, of course -- of course, if it  
3 was true, which is what he testified to, if it was  
4 true, he didn't have a reason to doubt it, she comes  
5 up there with, you know, on death's door with a  
6 feeding tube and oxygen, I mean isn't that going to  
7 garner unbelievable sympathy for her testimony,  
8 perhaps jurors to put undue emphasis on her  
9 testimony, by virtue of her being a, you know, a  
10 dying witness, almost a dying declaration, somebody  
11 who would not lie?

12 MR. PHILLIPS: Well, certainly --

13 THE COURT: That was his -- that was his counter  
14 to it, as I recollect, and --

15 MR. PHILLIPS: Well, I agree, Your Honor, as far  
16 as what you're presenting. The problem is with the  
17 stipulation, we never make it that far for the Court  
18 to make that determination. In other words, had  
19 there been more information provided by the  
20 Solicitor's office, then the Judge, as Your Honor,  
21 would have said, "Sure, she -- she is excused, we  
22 can read the testimony in," but his stipulation kind  
23 of prevents that adversarial nature of at least  
24 having that extra layer of proof, that, again, and  
25 -- and once he has confirmation, he could have then

1 easily agreed and stipulated at that point, but he  
2 stipulated without any additional.

3 THE COURT: How would he get the confirmation?  
4 The Court would have the witness come? Because --

5 MR. PHILLIPS: Well, I -- we don't know anything  
6 about the letter, that's the problem is, he didn't  
7 have the letter in his file. We don't know anything  
8 about the letter. It wasn't marked as a Court's  
9 exhibit. He -- I mean, again, as -- if we're  
10 talking about Appellate review, I understand that it  
11 -- it's difficult, but as somebody that's argued  
12 Appellate cases when the Appellate Court doesn't  
13 have --

14 THE COURT: Yeah.

15 MR. PHILLIPS: -- anything to review, I mean I  
16 don't know what the letter says. Was it from a  
17 medical doctor, specifically? Was it her, you know,  
18 treating physician? We don't -- we don't know, and  
19 that -- again, it's difficult to prove it negative  
20 when we don't have the evidence.

21 THE COURT: Have you read some of the  
22 information out of the -- out of the transcript,  
23 concerning the -- the letter? Didn't -- didn't the  
24 Solicitor in his closing -- didn't they bring that  
25 up? Was palliative care, and it was -- wasn't that

1 in the transcript?

2 MR. NEUBAUER: Yes, Your Honor, it was  
3 stipulated to on page four of the initial part of  
4 the transcript. There was a letter from Hospice  
5 itself, which was a medical facility that she would  
6 have been in.

7 THE COURT: Right, right.

8 MR. NEUBAUER: -- where she would have been held  
9 at, and that --

10 THE COURT: Okay.

11 MR. NEUBAUER: -- more cancer, palliative,  
12 and on pain management.

13 THE COURT: All right, that -- that --

14 MR. NEUBAUER: -- was only on pain management.

15 THE COURT: Hold on, yeah, hold -- hold on, hold  
16 on. That -- I've got you, that -- that's enough,  
17 Attorney Neubauer.

18 MR. NEUBAUER: I apologize.

19 THE COURT: No, you're fine, but, yeah. All  
20 right, go -- go ahead, and I'm -- I'm not going to  
21 ask any more questions.

22 MR. PHILLIPS: Oh, no, you're fine, Your Honor,  
23 ask as many as you need. From Melinda Lively's  
24 testimony, we brought up the -- essentially, the  
25 bolstering on the direct examination of the

1 Prosecutor asking her, "Did you hear Casey Autrey,  
2 or Cassie Autrey's test -- did you hear her  
3 testify?" And then, basically, reiterating through  
4 the questioning, about not contacting police,  
5 because of threats. As, you know, the -- as the  
6 victim stated, essentially, bolstering another  
7 witness by saying, she's -- she was there to hear  
8 her testify, then have her bolster it by confirming  
9 that she did, and that's -- that's her testimony  
10 that that was correct. Basically, corroborating for  
11 another witness that was the key witness.

12 THE COURT: All right.

13 MR. PHILLIPS: All right, as far as -- again,  
14 for failure to object to preserve for Appellate  
15 review, there was the -- on direct examination of  
16 Melinda Lively, regarding -- there was an objection  
17 by Mr. Routzong for asked and answered that was  
18 overruled. Our argument was that it, again, it went  
19 beyond the scope of time and place, and constituted  
20 improper bolstering, where he -- the Prosecutor  
21 asks, "In 1999 or 2000, whenever this paperwork was  
22 just showed to you from the divorce, is that the  
23 first time you found out, or alleged that your  
24 daughter had been abused by the Defendant?" And  
25 then she -- she confirms, "Yes," and starts to go

1 into that -- that process, or explanation, excuse  
2 me. There was a failure to move to strike on --  
3 obviously, Your Honor's well -- well aware of those  
4 issues, where he had been sustained on the issues of  
5 striking testimony, "If my mom told me to lie," then  
6 he gets it sustained, as well as objection. Leading  
7 objection to the -- for the main -- one of the main  
8 complaining witnesses. As to -- again, the  
9 recreation of the testimony, he -- like, as he said  
10 he's had a lot of time - Mr. Routzong said he had a  
11 lot of time to reflect on that, and he wouldn't have  
12 done it again this time. That he's never ever heard  
13 of a defense counsel participating like that in that  
14 type of situation. He had no -- there was no  
15 strategic reason for why he did it, and,  
16 specifically could have object -- objected to it.  
17 As to the DSS -- the testimony from the DSS agent,  
18 as far as the DSS complaint, an investigation from  
19 2001, based on the cross-examination that was  
20 presented, Mr. Routzong admitted that he should have  
21 crossed further, to provide the explanation that --  
22 the fact that the DSS investigation from 2001 was  
23 not only unrelated, but the fact that a complaint  
24 was alleged was not any way indicative that there  
25 was a finding of abuse, or that anything related to

1 confirm that allegation; which, you know, in my  
2 opinion, it shouldn't be admissible at all, but with  
3 that, he agreed that there should have been further  
4 cross-examination to have that presented to be  
5 clearly. He agreed there was no strategic reason  
6 for failing to object, or move to strike, when the  
7 testimony of the DSS agent went beyond scope of time  
8 or place. When she said she received a call from  
9 her supervisor saying, "We received a report of  
10 sexual abuse concerning Amanda Reddick, and here  
11 stepfather Harold Cartwright," and that testimony.  
12 During the testimony of the jailer, the Prosecutor  
13 failed to specifically identify Mr. Cartwright, and  
14 through cross-examination, Mr. Routzong admitted  
15 that he was the one that, essentially, brought in  
16 the Defendant's identity through his questioning,  
17 and then it was allowed. And then on redirect the  
18 Prosecutor did the in-court identification, allowing  
19 that specifically, as to the picture that -- with  
20 the rooms were concerned from the first trial to the  
21 second trial. In the first trial you had the  
22 picture being different from the second trial, where  
23 they used the son's bedroom, that was obviously part  
24 of what Mr. Cartwright's follow-up question was,  
25 where, essentially, Mr. Routzong admitted that he

1 failed to cross-examine the State's witnesses on  
2 this discrepancy of what was presented from the  
3 first trial to the second trial, their -- their  
4 theory. And then what was presented -- and then his  
5 failure to present that in closing argument,  
6 essentially, a cross and close issue, regarding the  
7 State, basically, changing their theory of how this  
8 took place, or where -- the location of where this  
9 took place, and the evidence they presented. Now,  
10 as far as the main issue that Your Honor had,  
11 regarding the picture that was found on the  
12 Internet, and there was the denials by the State  
13 witnesses, and by indicating that, you know, Brandy  
14 Brown was not in any such pictures, and -- and the  
15 other pictures that were referenced during the  
16 trial, and, of course, Mr. Cartwright's testimony  
17 regarding that. Mr. Routzong testified he didn't  
18 believe it to be relevant or helpful, however, it  
19 went -- it struck at the heart of the State's case,  
20 or at least the credibility of the State's key  
21 witnesses as to their motive and bias to lie,  
22 specifically, if that was a provable -- although  
23 they denied that if he was to at least admit it and  
24 mark it, it would have been preserved for Appellate  
25 review, and would have been able to be presented,

1 specifically, on -- on that issue on appeal, as  
2 well, if denied, if he would have proffered it, as  
3 well, if he was denied the ability to present it,  
4 admit it into evidence. As to the issue where there  
5 was a case that the law did change on State v.  
6 Stukes, a 2016 case, where our South Carolina Code  
7 of Laws says that the -- a victim in the -- in a  
8 criminal sexual conduct case need not be  
9 corroborated, where the State v. Stukes finds that  
10 that charge to the Jury is unconstitutional. In  
11 this case it wasn't objected to. I understand State  
12 v. Stukes is a case that comes out after this trial,  
13 but it was an issue that was there. It could have  
14 been objected to, it could have been presented, same  
15 as it was in Stukes, and would have been available  
16 to be argued for Mr. Cartwright, as it was for Mr.  
17 Stukes. Specifically, as far as arguments are  
18 concerned, United States v. Cronin 466 US 648, that  
19 Trial Counsel failed to subject the prosecution's  
20 case. It's a meaningful adversarial testing by not  
21 adequately preparing for trial and having an  
22 unreasonable trial strategy. We believe given the  
23 context and the short amount of time that he had in  
24 this voluminous case, with the 28 indictments, and  
25 the three different victims in this case that had

1 the different offers of proof, given the fact that  
2 he had only spoke to the Applicant three times, but  
3 only met with him twice, according to his notes, I  
4 -- I think is indicative, given a lot of the other  
5 issues that we've presented as a -- kind of a  
6 cumulative error argument, that would fall under a  
7 chronic type of -- of issue.

8 With that, Your Honor, I'll be happy to address  
9 any other questions, any specifics. Obviously,  
10 we're not waiving any of the other allegations that  
11 were raised, but we believe that to be the heart of  
12 the Applicant's case.

13 THE COURT: All right. Well, gentlemen, let me  
14 just tell you, it's been a pretty thorough PCR.  
15 Y'all both did a good job. Longest PCR I've ever  
16 attended as a -- even as a -- my first set as the  
17 Judge, but, no, I had -- no, this is part of the  
18 first week we had, but as far as being a lawyer,  
19 Lord have mercy, not this long. We've -- we've --  
20 we've put in three -- three days of work on this.  
21 And I think there's, you know, I think they're all  
22 grounds that needed to be covered, at least hashed  
23 out. What I'm going to do is, I'm just going have  
24 each of you send me proposed Orders, and what I'm  
25 going end up doing is, I guarantee you I'll be

1 marking through whatever I end up doing. It ain't  
2 going be either one of your Orders, but send me  
3 something outlining proposed Order, send it to the  
4 other side, and probably what I'm going end up doing  
5 is probably coming up with some combination thereof,  
6 and putting something together, probably adding to  
7 it, in addition, and I'll put something together.  
8 Is 30 days enough time for y'all to do that,  
9 Attorney General Neubauer?

10 MR. NEUBAUER: Your Honor, I hate to ask, would  
11 it be fine if I requested 45 days? I have a oral  
12 argument with the Supreme Court on March 9th that's  
13 going take --

14 THE COURT: Sure, that's -- that's absolutely  
15 fine. Mr. Phillips, you don't object to that, do  
16 you?

17 MR. PHILLIPS: No, I would -- I would ask the  
18 same, if we could --

19 THE COURT: Is 45 days good?

20 MR. PHILLIPS: Barring a trial coming out of the  
21 woodwork, given the current schedule, 45 days should  
22 be sufficient.

23 THE COURT: Well, y'all, if there's a problem,  
24 y'all talk it out, and let me know, okay?

25 MR. PHILLIPS: Yes, Your Honor, thank you.

1 MR. NEUBAUER: Thank you, Your Honor.

2 THE COURT: All right, Mr. Cartwright, good luck  
3 to you, sir. A lot of -- a lot of information to  
4 take in. You've got good folks working all around,  
5 and so that makes it easier, certainly, for me. I  
6 appreciate it. So, gentlemen, I'm going to go ahead  
7 -- Cathy, thank you so much for your time today, and  
8 I hope you have a great weekend, okay?

9 COURT REPORTER: Thank you, Your Honor, hope you  
10 do also.

11 THE COURT: All right, thank y'all, bye-bye.

12 MR. NEUBAUER: Thank you, Your Honor.

13 (Whereupon, the hearing was concluded at 3:44 p.m.)

14 ---END OF TRANSCRIPT---

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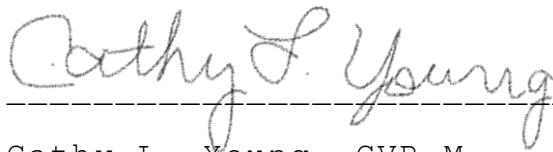
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CERTIFICATE OF REPORTER

I, Cathy L. Young, CVR-M, for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appear, in the Circuit Court for Aiken County, South Carolina, on the 25th day of February, 2022.

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

A handwritten signature in cursive script that reads "Cathy L. Young". The signature is written in dark ink and is positioned above a horizontal dashed line.

Cathy L. Young, CVR-M

Court Reporter and Notary

Public in and for South Carolina

My Commission expires: 3-28-2029