

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Dorchester County

Honorable D. Craig Brown, Circuit Court Judge

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Apr 19 2023

S.C. SUPREME COURT

JONATHAN M. BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001561

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

COURT OF GENERAL SESSIONS

Jonathan Brown,

PLAINTIFF,

v.

State of South Carolina,

DEFENDANT.

TRANSCRIPT OF HEARING

C/A #:2013-GS-18-1408-1410

Dorchester County Courthouse
July 14, 2014 (Day One of Trial)

BEFORE:

HONORABLE MAITE MURPHY, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Glen Justis
Assistant Solicitor Kyle Ward
Attorney for The State of South Carolina

First Circuit Public Defender John Loy
First Circuit Public Defender Pierce Wehman
Attorney for Jonathan M. Brown

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

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2 The Court: Ladies and Gentlemen, now that you've
3 been qualified as potential jurors, the next step is the
4 selection process where we actually begin the first trial
5 up this morning. Solicitor, if you would call your case.

6 Mr. Justice: Thank you, Your Honor. If it pleases
7 the Court. The first case up for trial is the State of
8 South Carolina vs. Jonathan Michael Brown. He is charged
9 on three true billed indictments. The first one is
10 indictment number 2013-GS-18-1408, one count of criminal
11 sexual contact with a minor in the first degree. The
12 second indictment is 2013-GS-18-1409, criminal sexual
13 contact with a minor in the first degree. And finally,
14 the third indictment 2013-GS-18-1410, criminal sexual
15 contact with a minor first degree.

16 The Court: Ladies and Gentlemen we are about to
17 begin the case of the State of South Carolina vs.
18 Jonathan Michael Brown. Before we select the jury we
19 will inform you of what the indictments are. The first
20 indictment states that in Dorchester County, South
21 Carolina on or about July 28, 2013, the Defendant,
22 Jonathan Michael Brown did engage in sexual battery with
23 a minor who was less than eleven (11) years of age. And
24 that the defendant had **Victim I** perform fellatio
25 upon the defendant. This offense is in violation of 16-

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1 3-655 of the South Carolina Code of laws as amended.

2 The next indictment states that in Dorchester
3 County, South Carolina on July 28, 2013, the Defendant,
4 Jonathan Michael Brown did engage in sexual battery upon
5 a minor who was less than eleven (11) years of age. And
6 the defendant did penetrate the victims, **victim 2**
7 **[REDACTED]**, vaginal with his finger. The offense is in
8 violation of 16-3-655 of the South Carolina Code of laws
9 as amended.

10 The last indictment states that in Dorchester County
11 South Carolina between the dates of July 25 of 2011 and
12 July 27, 2013, the Defendant Jonathan Michael Brown did
13 engage in criminal sexual battery upon a minor who was
14 less than the age of eleven, in that the Defendant did
15 anally penetrate the victim and had the victim perform
16 fellatio o him and this offense being a violation of 16-
17 3-655 of the South Carolina Code of Laws of South
18 Carolina as amended.

19 Before we select the jury, there are several
20 questions which I will ask you regarding this matter.

21 Has anyone ever been related by blood or marriage to
22 the defendant in this matter Mr. Jonathan Brown. If so,
23 please stand. I find that there is no one standing.

24 Has anyone in the jury panel ever had a close,
25 personal or social relationship with Mr. Brown? If so,

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1 please stand. I find that there is no one standing.

2 The following is list of potential witnesses in this
3 case. Rachel Brown, Victim 1 [REDACTED], Audrey Hagenow,
4 Victim 2 [REDACTED], Jonathan Jourdan with the Summerville
5 Police Department, Sergeant Tim Jones, with the
6 Summerville Police Department, Sergeant Randy Olsen, with
7 the Summerville Police Department, Detective Jason Mosher
8 with the Summerville Police Department, Detective Ryan
9 Braga with the Summerville Police Department, Detective
10 Rick Gebhardt with the Summerville Police Department,
11 Chris Tipton with the Summerville Police Department,
12 Jessica Carpenter with the Summerville Police Department,
13 Neil Terranova with the Summerville Police Department,
14 Rhonda Cumbee, RN with Summerville Medical Center, Jodi
15 Smoot, RN with MUSC, Dr. Carrie Busch with MUSC, PSO
16 Aaron Cook with MUSC Public Safety, Helen Usher with the
17 Dorchester County Children's Center, Danielle Nickles
18 with Dorchester County Children's Center, Verona Gibson
19 of SLED, Jessica Herron of SLED and Amanda Webb of SLED.
20 Is any member of the jury panel related by blood or
21 marriage or has anyone ever had a close personal or
22 social relationship with any of the potential witnesses
23 that I have listed? Is so, please stand.

24 Yes, sir. If you'd like to come forward.

25 (Juror approaches)

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1 Bailiff: Juror Number 24.

2 The Court: Mr. Bryan. Yes, sir.

3 Juror #24: I know Aaron Cook. He was in my squad in
4 the reserves.

5 The Court: Okay. Having had that relationship would
6 you be able to set that aside and listen to the evidence
7 as it comes from the witness stand and be fair and
8 impartial to both the State and the Defendant?

9 Juror #24: Yes, ma'am.

10 The Court: All right. You can stay with us.

11 Bailiff: Juror Number 217.

12 The Court: Ms. Smith. Yes, ma'am.

13 Juror #217: I know some of the detectives.

14 The Court: Okay. Having that relationship, do you
15 think you could set that aside and listen to the evidence
16 and be fair and impartial to both the State and the
17 Defendant?

18 Juror #217: I don't think so.

19 The Court: Okay. What I will do I will transfer you
20 to a civil term of court. Thank you.

21 Bailiff: Juror #128.

22 The Court: Ms. Killion. Yes, ma'am.

23 Juror 128: Working with the Town of Summerville, I
24 know some of the individuals with the Summerville Police
25 Department.

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1 The Court: What I want to ask you is can you set
2 those relationships aside and be fair and impartial to
3 both the State and the Defendant?

4 Juror #128: I guess I would have a problem since I
5 know the detectives.

6 The Court: Okay. Would you prefer to serve on a
7 civil case rather than a criminal case?

8 Juror #128: I don't know.

9 The Court: Why don't we transfer her to a civil
10 case.

11 Bailiff: Juror #31.

12 The Court: Ms. Cornelia Castleman.

13 Juror #31: I taught Officer Jones' daughter and I
14 know Aaron Cook.

15 The Court: Could you listen to the testimony from
16 the witness stand and render a fair and impartial verdict
17 for both the State and the defense?

18 Juror #31: I can.

19 The Court: Stay with us. Ladies and Gentlemen the
20 attorneys that will be trying this case for the state is
21 Mr. Glen Justis. If you would introduce yourself and the
22 members of the Solicitor's office that will be assisting
23 you in this matter and the members that are employed at
24 the Solicitor's office.

25 Mr. Justis: Yes, ma'am. May it please the Court.

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1 My name is Glen Justis. I'm an assistant solicitor here
2 in Dorchester County. Trying the case with me is
3 assistant solicitor Kyle Ward. Seated to my left is
4 Detective Jason Mosher of the Summerville Police
5 Department. We all work for the elected Solicitor, which
6 is David Pascoe. He is the elected solicitor for
7 Dorchester, Orangeburg and Calhoun counties. The other
8 solicitors in our office include Phil Giese, Anna Welch,
9 Don Sorenson and Virgil Deas. Thank you.

10 The Court: Has anybody of the jury panel every been
11 represented by any of the attorneys with the solicitor's
12 office or anybody in their office. If so, please stand.
13 I find there is no one standing.

14 Does anyone in the juror panel have a close personal
15 or social relationship with the Solicitor's office? If
16 so, please stand.

17 The attorney for the Defendant in this matter is Mr.
18 Loy. Mr. Loy if you'll please stand and introduce the
19 members of your office that will be assisting you.

20 Mr. Loy: Thank you, Your Honor. My name is John
21 Loy. I work with the Public Defender's office here in
22 Dorchester County. I represent Mr. Brown today. Seated
23 at counsel table with me also is Pierce Wehman, another
24 attorney in our office. Other attorneys in my office
25 include Mark Leiendecker, we also have Ms. Mary LeMatty,

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1 Michelle Suggs and Ash Chisholm. Additionally, we have a
2 few attorneys in juvenile court. Those would be Gina
3 McAlhaney and Al Biggs.

4 The Court: All right, Mr. Loy. Has anyone had a
5 close, personal or social relationship with anyone with
6 the public defender's office. If so, please stand.

7 (Some jurors stand)

8 If you all would please come forward.

9 Bailiff: Juror #31.

10 The Court: Yes, ma'am.

11 Juror #31: I taught Mr. Loy's son and just this past
12 year I taught his girlfriend's daughter.

13 The Court: Anything from that relationship would
14 rendered you from listening to the testimony from the
15 witness stand and render a fair and impartial trial for
16 both the state and the defense?

17 Juror #31: No it would not.

18 The Court: Stay with us.

19 Bailiff: Juror #5.

20 The Court: Hello, sir. Mr. Anderson?

21 Juror #5: I am real good friends with Mary LeMatty.
22 I thought that guy on the jury was her son. We've been
23 on vacation together. I don't know if that has to do
24 with anything to do with anything but you asked so I'm
25 telling it.

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1 The Court: I appreciate that. That's why we ask it.
2 She's not trying this case. Is there anything about
3 having that relationship with Ms. LeMatty, could you
4 render a fair and impartial verdict to both the State and
5 the defense?

6 Juror #5: Absolutely.

7 The Court: Stay with us. Was there any member of
8 the grand jury that issued the indictments in this? If
9 so, please stand. I find no one standing.

10 Is there any member of the jury panel which has as
11 it's primary concern as law enforcement or victim's
12 rights. These groups would include but are not limited
13 to MADD, SADD or Citizens Against Violent Crime. I find
14 that there is no one standing.

15 Has any member of the jury panel formed or expressed
16 any opinion or issue or matter involved in this case. If
17 so, please stand. I find that there is no one standing.

18 Is there any member of the jury panel who is aware
19 of any bias or prejudice towards either the state or the
20 defendant in this case? If so, please stand.

21 Yes, sir. If you would come forward.

22 Bailiff: Juror #152.

23 The Court: Mr. McCants.

24 Juror #152: I hate sex offenders.

25 The Court: I understand what you're saying. I don't

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1 think anyone is comfortable as far as a sex offender.
2 Your duty as a juror is to listen to the testimony. The
3 defendant right now is innocent. Do you think that you
4 could be fair impartial to both the state and the
5 defendant and render a verdict?

6 Juror #152: I don't.

7 The Court: We are going to transfer him to a civil
8 term.

9 Bailiff: Juror #75.

10 The Court: Mr. Germond?

11 Juror #75: Yes.

12 The Court: Yes, sir.

13 Juror #75: I was raped as a child.

14 The Court: Do you think that you could render a fair
15 and impartial verdict for both the state and the defense?

16 Juror #75: I would like to say I could but I think I
17 would be pretty bias to that situation.

18 The Court: Would you prefer a civil term of court or
19 just not this type?

20 Juror #75: Just not this.

21 The Court: Just this particular situation. Okay.
22 We'll transfer you to another term.

23 Has any member or the jury or a close family member
24 ever been the victim of a violent crime? If so, please
25 stand.

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1 Yes, sir. Would you like to come forward?

2 Bailiff: Juror #102.

3 The Court: Mr. Hennig?

4 Juror #102: Yes.

5 The Court: Yes, sir.

6 Juror #102: My oldest son was a victim of sexual
7 abuse by a neighbor guy.

8 The Court: Having had that experience in your
9 family, do you think that you could set that aside and
10 render a fair and impartial verdict for the state and the
11 Defendant?

12 Juror #102: I could.

13 The Court: Okay.

14 Bailiff: Juror #266.

15 The Court: What's your number again?

16 Bailiff: #266.

17 The Court: Mr. Woftczak. Yes, sir.

18 Juror #266: My granddaughter was molested.

19 The Court: Having had that experience in your
20 family, do you think that you could set that aside and
21 listen to the evidence that is presented from the witness
22 stand?

23 Juror #266: I do not.

24 The Court: Okay. We'll transfer you to another
25 time.

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1 Bailiff: Juror #25.

2 The Court: Yes, sir.

3 Juror #25: My cousin got killed and then two years
4 ago my cousin got raped.

5 The Court: Okay. Having those two incidents in the
6 family, do you think you could set that aside and listen
7 to the testimony that comes from the witness stand and
8 render a fair and impartial verdict in this case?

9 Juror #25: I don't know. It's kind of hard for me.
10 We were close. You said this was molesting a child and
11 she was a child.

12 The Court: Would you be more comfortable serving in
13 a civil trial?

14 Juror #25: That would be fine. I'm not trying to get
15 out of it.

16 The Court: Thank you for letting us know. We'll
17 transfer you to a civil term of court. They will notify
18 you.

19 Bailiff: Juror #160.

20 The Court: Ms. Messick?

21 Juror #160: (Affirmative response).

22 The Court: Yes, ma'am.

23 Juror #160: I have custody of my two grandchildren
24 that were abused and neglected by their mother and her
25 boyfriend. She is serving eight years, he is serving

1 fifteen years.

2 The Court: Okay. That's been a difficult time for
3 you. Do you think having that experience you could set
4 that aside and listen to this case?

5 Juror #160: I just don't know.

6 The Court: We certainly don't want to put you in a
7 position that you can't be fair and impartial. Can you
8 be fair and impartial?

9 Juror #160: I don't think so.

10 The Court: I know it's a difficult situation. Why
11 don't we just put you on a civil term. We'll transfer
12 you to a civil term.

13 Does any member of the jury panel know why they
14 could not serve on this case with a particular emphasis
15 being placed on your ability to be fair to both the state
16 and the defendant? If so, please stand.

17 Bailiff: Juror #81.

18 The Court: Ms. Govnes? Yes, ma'am.

19 Juror #81: I was molested when I was younger. I
20 can't be fair and impartial.

21 The Court: Okay. I appreciate your telling me that.
22 What we can do is would you be more comfortable being on
23 a civil term?

24 Juror #81: Yes. Thank you.

25 The Court: Transfer her to a civil term.

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1 Bailiff: Juror #136.

2 The Court: Yes, ma'am.

3 Juror #136: (Crying).

4 The Court: Take your time.

5 Juror #136: (Can't understand, crying).

6 The Court: She's got to take down what you're
7 saying.

8 Juror #136: I can't even listen to the charges
9 without getting like this. (Crying).

10 The Court: Would you be more comfortable on a civil
11 term of court and not a criminal case.

12 Juror #136: (Crying).

13 The Court: We'll transfer you to a civil term.
14 Thank you.

15 Bailiff: Juror #231.

16 The Court: Yes, ma'am.

17 Juror #231: I still I think I can do it but I just
18 wanted you to be aware that my daughter was physically
19 attacked and I was a victim of child abuse. I still
20 believe I can do it.

21 The Court: The standard is having that experience in
22 your family if you can set that aside and listen to the
23 evidence and be fair and impartial to both the state and
24 the defense?

25 Juror #231: I think I can. I just want you to be

1 aware.

2 The Court: That's why we ask but we need to be sure
3 that you can be fair and impartial?

4 Juror #231: Yes, ma'am.

5 The Court: Okay. Stay with us.

6 Does the state or the defense have any additional
7 voir dire?

8 Mr. Justis: None from the State, Your Honor.

9 Mr. Loy: No, Your Honor. Thank you.

10 The Court: Ladies and Gentlemen, we will now take a
11 brief recess so that we can get the strikes ready here
12 for the jury selection this afternoon. So, it will take
13 us what madam clerk, ten, fifteen minutes?

14 Clerk: Ten minutes.

15 The Court: About ten minutes before we begin with
16 the actual jury selection.

17 (There was a break taken)

18 The Court: Ladies and Gentlemen, now we're going
19 to go on with the selection of this jury trial. As your
20 name is called come forward and face the front as to
21 whether or not you will be seated on the jury or excused
22 from the jury. Please take no offense; there are many
23 reasons a jury may be struck or placed on the jury.
24 There's many different reasons for that, so please don't
25 take any, take it personally. If you are selected, since

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1 we have a little bit of a different set up here this
2 afternoon, if you would sit here in these reserved spaces
3 here in front. Madam clerk, you ready?

4 Clerk: Yes. As I call you name please come
5 forward and just stand there in the middle aisle. Juror
6 #236, Lora Sweat. Hurry up, thank you so much. What says
7 the State?

8 Mr. Justis: Please present the juror.

9 Clerk: The defense?

10 Mr. Loy: Swear Ms. Sweat please.

11 Clerk: Have a seat in the jury panel right there
12 to your right. Juror #191, Carl Purifoy. What says the
13 State?

14 Mr. Justis: Please present the juror..

15 Clerk: The defense?

16 Mr. Loy: Excuse the juror please.

17 Clerk: Have a seat back in the audience. Juror #
18 264, Cynthia Wilson. What says the State ?

19 Mr. Justis: Please present the juror.

20 Clerk: The defense?

21 Mr. Loy: Excuse Ms. Wilson please.

22 Clerk: Have a seat back in the audience. Juror #
23 270, Timothy Wright. What says the State?

24 Mr. Justis: Please present the juror.

25 Clerk: The defense?

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1 Mr. Loy: Swear the juror please.

2 Clerk: Have a seat in the jury panel. Juror #192

3 Craig Pursley. What says the State?

4 Mr. Justis: Please present the juror.

5 Clerk: The defense?

6 Mr. Loy: Swear the juror please.

7 Clerk: Have a seat in our panel. Here sir. Juror

8 #71, Charles Gable. What says the State?

9 Mr. Justis: Please present the juror.

10 Clerk: The defense?

11 Mr. Loy: Swear the juror.

12 Clerk: Have a seat in our jury panel. Juror #20,

13 Benita Bradley. What says the State?

14 Mr. Justis: Please excuse the juror.

15 Clerk: Have a seat back in the audience. Juror

16 #6, Michael Ard. What says the State?

17 Mr. Justis: Please present the juror.

18 Clerk: The defense?

19 Mr. Loy: Excuse Mr. Ard from this trial.

20 Clerk: Juror #44, Christopher Devera. What says

21 the State?

22 Mr. Justis: Please present the juror.

23 Clerk: The defense?

24 Mr. Loy: Swear the juror please.

25 Clerk: Have a seat in the panel. Juror #181,

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1 Annette Pelzer. What says the State?

2 Mr. Justis: Please present the juror.

3 Clerk: The defense?

4 Mr. Joy: Please excuse Ms. Pelzer.

5 Clerk: Have a seat back in the audience. Juror
6 #269, Christopher Woolridge. What says the State?

7 Mr. Justis: Please present the juror.

8 Clerk: The defense?

9 Mr. Loy: Swear the juror please.

10 Clerk: Juror # 130, Jack Kirlin. What says the
11 State?

12 Mr. Justis: Please present the juror.

13 Clerk: The defense?

14 Mr. Loy: Swear the juror please.

15 Clerk: Juror #244, Frank Todd, Jr. what says the
16 State?

17 Mr. Justis: Please present the juror.

18 Clerk: The defense.

19 Mr. Loy: Swear Mr. Todd.

20 Clerk: Have a seat in the jury panel. Juror #166,
21 Sharon Moorner. What says the State?

22 Mr. Justis: Please present the juror.

23 Clerk: The defense? Excuse the juror from this
24 trial please. Have a seat back in the audience. Juror
25 #197, Adair Roark. What says the State?

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1 Mr. Justis: Please present the juror.

2 Clerk: The defense?

3 Mr. Loy: Swear the juror
4 please.

5 Clerk: Have a seat in the jury panel. Juror #226,
6 Branden Stalvey. What says the State?

7 Mr. Justis: Please present the juror.

8 Clerk: The defense?

9 Mr. Loy: Swear the juror please.

10 Clerk: Juror #27, Daphney Carmen. What says the
11 State?

12 Mr. Justis: Please excuse the juror.

13 Clerk: Have a seat back in the audience. Juror #79,
14 Juan Gonzales. What says the State?

15 Mr. Justis: Please present the juror.

16 Clerk: The defense?

17 Mr. Loy: Swear the juror please.

18 Clerk: Have a seat in our panel. Juror #114, Paul
19 Humphreys. What says the State?

20 Mr. Justis: Please present the juror.

21 Clerk: The defense?

22 Mr. Loy: Excuse Mr. Humphreys, please.

23 Clerk: Have a seat back in the audience. Juror #135,
24 Nathan Lee. What says the State?

25 Mr. Justis: Please present the juror.

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1 Clerk: The defense.

2 Mr. Loy: Swear Mr. Lee please.

3 Clerk: Have a seat in the jury panel. That is
4 twelve? Juror #153, Alexandria McDermed. What says the
5 State?

6 Mr. Justis: Please excuse the juror.

7 Clerk: Have a seat back in the audience. Juror #246,
8 Mark Troeder. What says the State?

9 Mr. Justis: Please present the juror.

10 Clerk: The defense?

11 Mr. Loy: Swear the juror please.

12 Clerk: Have a seat in our panel. Juror 175, Kerry
13 Nowosielski. What says the State?

14 Mr. Justis: Please present the juror.

15 Clerk: The defense?

16 Mr. Loy: Excuse the juror.

17 Clerk: Have a seat back in the audience. Juror #99,
18 Sarah Hathcock. What says the State?

19 Mr. Justis: Please present the juror.

20 Clerk: The defense?

21 Mr. Loy: Excuse the juror please.

22 Clerk: Juror #251, Donald Wagner. What says the
23 State?

24 Mr. Justis: Please present the juror.

25 Clerk: The defense?

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1 Mr. Loy: Swear the juror please.

2 Clerk: Have a seat in our panel. Juror #174, Michael
3 Nevels. What says the State?

4 Mr. Justis: Please excuse the juror.

5 Clerk: Have a seat back in the audience. Juror
6 #179, Shannon Payne, Jr. What says the State?

7 Mr. Justis: Please present the juror.

8 Clerk: The defense.

9 Mr. Loy: Swear Mr. Payne please.

10 Clerk: Have a seat in the jury box. Thank you
11 Judge.

12 The Court: Any exceptions or objections from either
13 the State or the defense on the selection of this jury?

14 Mr. Justis: None from the State Your Honor.

15 Mr. Loy: No Your Honor. Thank you.

16 The Court: Ladies and gentlemen that have been
17 selected on the jury, what we will now do is I will ask
18 you to follow the Bailiffs to the jury room, which would
19 be upstairs. If you could show them where they will go
20 and then we will begin the actual opening statements of
21 this case this afternoon. The remainder of the jury
22 panel, is this the only case up for trial this week?

23 Mr. Justis: Yes Your Honor.

24 The Court: So for those of you that have been
25 selected if you would go ahead and follow the Bailiff to

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1 your jury room.

2 (Jury Exits Courtroom 3:19)

3 (Panel excused for the week at 3:20 p.m.)

4 (Court Break 3:20 p.m. - 3:40)

5 The Court: It has come to my attention that we've
6 had a matter come up regarding a juror potentially not
7 fully disclosing information pursuant to the voir dire,
8 so if we could have juror #79, Mr. Gonzales brought in.
9 (Mr. Gonzales enters Courtroom)

10 The Court: Good afternoon Mr. Gonzales. I'm going
11 to get the Clerk to swear you in.

12 Clerk: Raise your right hand and state your name
13 for the record.

14 Mr. Gonzales: Juan Carlos Gonzales.

15 Clerk: Do you solemnly swear or affirm to tell the
16 truth, the whole truth and nothing but the truth, so help
17 you God?

18 Mr. Gonzales: I do.

19 The Court: Mr. Gonzales, it's been brought to my
20 attention that you may potentially know someone with the
21 Solicitor's office, Mr. Don Sorenson. Do you know Mr.
22 Sorenson.

23 Mr. Gonzales: Oh yes.

24 The Court: Okay, is there any particular reason why
25 you did not disclose that during the qualification

1 process?

2 Mr. Gonzales: Absolutely not. I didn't think about
3 it, just forgot about him.

4 The Court: Okay, having the fact that you know Mr.
5 Sorenson could you set that relationship aside and listen
6 to the testimony as it comes to you from the witness
7 stand and be fair and impartial both to the State and
8 the defense?

9 Mr. Gonzales: Yes.

10 The Court: And will you follow the law as I give it
11 to you?

12 Mr. Gonzales: Yes.

13 The Court: And you can be completely fair and
14 impartial and set that relationship aside?

15 Mr. Gonzales: Yes.

16 The Court: So basically it was not intentional. Is
17 that what you're telling me?

18 Mr. Gonzales: No.

19 The Court: Did you hear his name being stated?

20 Mr. Gonzales: Uh no.

21 The Court: Okay, any further questions from either
22 the State or from the defense?

23 Mr. Justis: None from the State Your Honor.

24 Mr. Loy: No Your Honor.

25 The Court: Thank you Mr. Gonzales.

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1 Mr. Gonzales: Sure. Based upon the questioning of
2 Mr. Gonzales it certainly would appear that it was an
3 unintentional miscommunication. Either he didn't hear or
4 he didn't understand, but certainly he stated very
5 clearly that he can set that relationship aside and be
6 fair and impartial to both the State and the defense. So,
7 I will allow him to remain on the jury. Is there any
8 objection or anything further from either the State or
9 the defense on this issue?

10 Mr. Justis: None from the State Your Honor.

11 Mr. Loy: Your Honor, on behalf on Mr. Brown we would
12 ask to have the juror excused from the --- I listened to
13 his testimony and I also heard the things that he said.
14 This is not a matter of the record, but I will present to
15 the Court that my conversations with Mr. Sorenson and I
16 believe in his conversations in chambers with Your Honor,
17 he indicated specifically that Mr. Gonzales knows me, he
18 knows where I work. As a matter of fact, last week he
19 mentioned to me that he was coming for jury duty in that
20 context his response that I didn't hear his name and I
21 didn't hold that intentionally, but it seems between the
22 two it seems disingenuous. That he would have mentioned
23 it to Mr. Sorenson a week ago that he was coming for jury
24 duty and Mr. Sorenson saying he knows where I work and
25 then to come in here and be surprised after his name was

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1 published downstairs and try to take the position, well,
2 I just didn't hear it, it slipped by me. I think that's
3 the reason that we have the alternates that we have and
4 I'd ask to have him removed.

5 The Court: Anything further Mr. Justice?

6 Mr. Justis: Nothing further Your Honor.

7 The Court: Out of an abundance of caution Mr. Loy I
8 think I am going to grant your motion and we'll go onto
9 the next alternate. You're absolutely right, that's why
10 we have alternates, considering the fact that these are
11 very serious charges. So, again, out of an abundance of
12 caution, I will grant your motion.

13 Mr. Loy: Thank you Your Honor.

14 The Court: You can excuse Mr. Gonzales from the
15 jury. Make sure he doesn't discuss it with anyone.
16 Anything else before we can bring the jury out?

17 Mr. Loy: Nothing from the defense Your Honor.

18 Mr. Justis: According to my records Your Honor,
19 that would be juror 246 would be the first alternate?

20 The Court: Correct, that would be Mark Troeder.

21 Mr. Justis: Correct, Your Honor.

22 The Court: I have a note here from Frank Todd,
23 juror #244 that states girlfriend works for Charleston
24 county victims' advocacy department. Her name is Joyce,
25 can't really make it out. I don't believe that specific

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1 question was asked whether he had friends or family
2 members that work specifically for law enforcement so
3 what position does the State and the defense take on
4 this?

5 Mr. Justis: The State's position would be that it's
6 normally not one of the questions we ask, so the fact
7 that that wasn't disclosed, I don't think really makes a
8 difference.

9 The Court: Anything Mr. Loy?

10 Mr. Loy: Your Honor, you gave us ample opportunity
11 to submit the voir dire. I didn't request whether or not
12 anybody was related to anybody who was employed as a
13 victim advocate, so I certainly don't think I'm in a
14 position to complain that it wasn't revealed. The note
15 said she works for Charleston County?

16 The Court: Right.

17 Mr. Loy: And I'm sorry, the person is Kephart?

18 The Court: It's hard to read; it looks like K-E-P-
19 H-A-R-T, best I can tell.

20 Mr. Loy: It's not the Gebhardt in our file?

21 The Court: Right.

22 Mr. Loy: Your Honor my only concern is if that
23 person is concerned about it at this point, I would ask
24 you to inquire. If they say it's not going to affect
25 their judgment. If they're having second thoughts at this

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1 point and think this may affect them, then that's their
2 call, but if they say no it's not going to affect me, I
3 just want to make you aware of it and I'm still fair and
4 impartial, then I think they're qualified.

5 The Court: Any objection to that?

6 Mr. Justis: I would think they're qualified, but if
7 you want to, you know, inquire into that, it just might
8 be because they saw Mr. Juan Carlos get booted.

9 The Court: Right.

10 Mr. Justis: Now everyone's starting to worry about
11 every single person that they might know, be related to
12 or have met in their life. You know, whether or not
13 that's going to disqualify them.

14 Mr. Loy: We didn't ask the question but to sua ponte
15 on his own, he's back there thinking.

16 The Court: I think just to be overly cautious I'll,
17 I'll just ask him if he can set it aside and be fair and
18 impartial.

19 Mr. Jutsice: Thank you Your Honor.

20 The Court: Let's bring out Mr. Todd.

21 (Mr. Todd enters courtroom)

22 The Court: Mr. Todd?

23 Mr. Todd: Yes, ma'am.

24 The Court: If you would come up here please, let's
25 swear you in.

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1 Clerk: Put your hand on the Bible and raise your
2 right hand. Please state your full name for the record.

3 Mr. Todd: Frank B. Todd, Jr.

4 Clerk: Do you solemnly swear or affirm to tell the
5 truth, the whole truth and nothing but the truth, so help
6 you God?

7 Mr. Todd: I do.

8 The Court: Mr. Todd I received your note regarding
9 the fact that your girlfriend works for the Charleston
10 county victims' advocacy department and I appreciate your
11 candor. You understand that that was not one of the
12 questions asked, so that's probably why you didn't
13 respond to that question, but that is something that
14 obviously that has come to mind for you. Is that
15 something that you can set aside and view the evidence
16 presented from the witness stand and be fair and
17 impartial to both the State and the defense in this case?

18 Mr. Todd: I can't honestly say that I could.

19 The Court: Is there a particular reason then why
20 you did not answer the question as to if there's any
21 reason why you can't be fair and impartial to both the
22 State and the defense?

23 Mr. Todd: Well, I don't want to be impartial, but
24 just from the cases I've talked to her about, I may have
25 some bias.

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1 The Court: What I'm asking you is why did you not
2 disclose that when I asked that question?

3 Mr. Todd: It didn't even dawn on me. Somebody in
4 the room mentioned something about child care and stuff
5 like that and it just hit me at that moment. I did not,
6 not disclose it.

7 The Court: So what you're telling me now is during
8 the qualification process you felt you could be fair and
9 impartial, and now you're saying that you cannot?

10 Mr. Todd: Well, I didn't think about, you ask what
11 your spouse did. I don't have a spouse, I have a
12 girlfriend. I've talked to her and she's talked to me
13 about some of the issues they have.

14 The Court: Okay, Mr. Todd I'm going to ask you to
15 just go back into the hallway. Do not go into the jury
16 room, but just go into the hallway for now.

17 Mr. Todd: Okay.

18 The Court: Well, it looks like it's a good thing we
19 picked three alternates as we started this trial. I don't
20 see any way that he's going to be able to stay so, we'll
21 excuse him as well and go with, go with our last
22 alternate. Any objection from the State or defense?

23 Mr. Justis: No, Your Honor. I'm showing juror 251
24 to be the next in line to take his place.

25 The Court: Right that would be Mr. Wagner or Donald

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1 Wagner.

2 Mr. Justis: That's correct Your Honor.

3 The Court: Anything further now before we bring out
4 the jury?

5 Mr. Loy: No, Your Honor. Thank you very much.

6 The Court: We'll mark this as a court's exhibit.
7 Let's have our jury and we'll have Mr. Frank just sit in
8 the hallway.

9 (Jury enters courtroom at 3:58)

10 The Court: Mr. Wagner? Okay, you're an alternate,
11 so if you don't mind taking that end chair there, that'd
12 be great. Thank you. Okay, Madam Clerk, if you would
13 please swear our jury in. Actually, Mr. Payne, you're an
14 alternate, so you were actually in the correct seat.
15 That's fine, we're just all getting a little extra
16 exercise today.

17 Clerk: If you will all please stand and raise your
18 right hands. Do you solemnly swear or affirm that you
19 shall well and truly with true deliverance make between
20 the State of South Carolina and the defendant at bar whom
21 you shall have the charge and a true verdict in according
22 to the law and evidence? If you accept this oath please
23 say I do and be seated.

24 Jury: I do.

25 Clerk: Thank you.

OPENING STATEMENTS BY MR. WARD:

Mr. Ward: Thank you Your Honor. May it please the Court?

The Court: Yes sir.

Mr. Ward: Eight year old **Victim 2** came down from Indiana with her grandmother to visit her aunt, uncle and two cousins **Victim 1** and Nicole last July. It was suppose to be a fun weekend at the beach. Little did she know her life would change forever when her uncle, Jonathan Brown, sitting right there in the middle, raped her while his six year old daughter was right beside them and then he made **Victim 2** watch while he forced his six year old daughter, **Victim 1**, to perform oral sex on him.

Ladies and gentlemen, the Defendant is charged with three counts of criminal sexual conduct with a minor in the first degree. A person is guilty of this if he engages in a sexual battery on a person under eleven years of age. What a sexual battery means is sexual intercourse, anal intercourse, oral sex or any intrusion, however slight into the genital or anal openings of another person's body.

It is the State's duty during this trial, to prove beyond a reasonable doubt that the Defendant committed these crimes, but that does not mean beyond any all doubt. Just at the end of this trial, if you are firmly

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1 convinced the Defendant committed these crimes, you must
2 find him guilty.

3 Let's go back to July 28, 2013. It's late at night
4 and the Defendant arrives back at home. Everyone's in
5 bed, except his wife, Rachel Brown. She, eventually, goes
6 to bed and the Defendant goes and wakes up, gets **Victim** and
7 **Victim 1** out of bed and says let's watch a movie. They go
8 into the living room and sit down on the couch. That's
9 when the Defendant takes **Victim 2** clothes off and then
10 vaginally and anally rapes her while his daughter is
11 right beside them. When **Victim 2** then refuses to perform oral
12 sex on him he tells his daughter, **Victim 1** to perform oral
13 sex on him and makes her do that to show **Victim** how to do
14 it.

15 The next morning, **Victim 2** wakes up to go to church with
16 her grandma and Nicole. Nicole is **Victim 1** younger
17 sister and on the way to church **Victim** tells her grandma
18 what the Defendant did just a few hours earlier. Grandma
19 immediately calls **Victim 1** mom and then **Victim**,
20 Grandma, mom and Nicole go to Summerville hospital. Law
21 enforcement is called and Detective Mosher takes
22 statements from both girls, **Victim** and **Victim 1**. Both **Victim**
23 and **Victim 1** tell Detective Mosher that while the
24 Defendant was doing these things to them, he was using
25 his cell phone and taking photographs.

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1 The girls then go to MUSC hospital to have a sexual
2 assault kit performed on them and from those assault kits
3 evidence is found that you will hear about during this
4 trial. While that's going on, Detective Mosher obtains an
5 arrest warrant for the Defendant. He along with other
6 officers in the Summerville Police Department go to the
7 house to arrest the Defendant. When they made contact
8 with him, the Defendant has his cell phone on him. He's
9 arrested and the cell phone is collected for further
10 evidence. Search warrants are then obtained for the
11 house and to search the cell phone. A search of the house
12 they are able to find numerous pieces of evidence for
13 this trial. Detective Gebhardt with the Summerville
14 Police Department then searches the cell phone. He's
15 looking for any saved photographs or videos. He's not
16 able to find any, but what he is able to do though is use
17 a forensic program to search deleted files in the memory
18 card of the phone and what he finds is numerous photos
19 and videos on it.

20 Nothing I say can or will prepare you for what you
21 will see. And, at the end of this trial, the State would
22 ask you to return a verdict of guilty on all three
23 charges against the Defendant. The State, we are
24 confident, at the end of this trial after you have heard
25 all the testimony from the witness stand and seeing all

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1 the evidence, there will be no doubt the Defendant
2 committed these sick and twisted crimes.

3 Mr. Loy: Objection Your Honor. We think that's
4 inflammatory language.

5 The Court: Overruled. Mr. Loy.

6 OPENING STATEMENTS BY MR. LOY:

7 Good afternoon ladies and gentlemen. I'm going to
8 ask y'all to do something that's not easy under the
9 circumstances that you find yourself in, but simply to
10 think back on the oath that you took, the promises that
11 you made, and to abide by those. The judge told you she
12 would instruct you on the law and that it's your duty,
13 your obligation and your swore oath to abide by her
14 instruction on the law. And what she told you that every
15 person is presumed innocent of any wrongdoing, any person
16 accused of a crime has a right to a trial and in that
17 trial, at that trial, the State would have the obligation
18 of producing evidence to prove guilt beyond any and every
19 reasonable doubt.

20 It's difficult in a case like this just because of
21 the emotional reaction people have to an accusation such
22 as this. When we were downstairs in the jury room
23 earlier, and the indictments were read saying this is
24 what the Defendant has been accused of, there were folks
25 who visibly reacted just to the accusation itself and so

1 what I'm asking you to do is to follow the oath that you
2 took and if you have an emotional reaction, and some of
3 you probably did, and said you can put it aside, I
4 understand that. It's strong language, but it's not
5 proof. When the Judge reads an indictment, all she does
6 is tells you what the accusation is. As we never have a
7 trial up here in General Sessions where someone hasn't
8 been accused of something. That's how a criminal trial
9 starts, there's an accusation made. So that's not
10 evidence, it doesn't prove anything. It just tells you in
11 this case what a person has been accused of.

12 Now, in this case the Solicitor alluded to some
13 facts. Mr. Brown was home, his, with this family, his
14 niece had come to visit him, his mother in law was
15 visiting in the home also and his little niece **Victim 2**
16 was there visiting with his daughter **Victim 1**. The case
17 will really hinge on the testimony of these two little
18 girls and it's absolutely imperative that you listen to
19 them, you watch them, you do the things the judge
20 instructed you, that is you watch how they behave on the
21 stand and see whether or not their testimony is
22 contradictory or consistent and see whether or not it's
23 just proof beyond a reasonable doubt, because those are
24 the two folks who are going to be called to the witness
25 stand to say this is what happened.

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1 Now, **Victim 2** I don't think he told you, there's
2 video tapes, these children were interviewed and video
3 tapes were taken of their interview, so we have some idea
4 of what it is y'all are going to hear. **Victim 2** was
5 interviewed by a care giver of some type and it was
6 videotaped. This was shortly after she reported this
7 instance. And, she said, I was staying at Uncle
8 Jonathan's house, my grandmother was there, my aunt was
9 there, my cousin was there, Mr. Brown came in, Jonathan
10 Brown came in, he got us up out of bed and then, on this
11 video tape she's going to say I was sodomized. She's not
12 going to use this language. She's going to talk like a
13 child and say he put it in my butt or he pushed it in or
14 whatever, she's going to describe having been sodomized
15 by a grown man in the living room and I believe she's
16 going to describe having been as the Solicitor indicated
17 vaginally raped. It's going to say she was on her hands
18 and knees and assaulted. That she was flat on her back
19 and taken advantage of and physically assaulted along
20 these lines. That with these other adults in the house,
21 she ran crying from Mr. Brown. He chased her down,
22 grabbed her, caught her, continued the assault. That at
23 some point during this scenario, her grandmother got up
24 and came in the room where these things were supposedly
25 happening. Didn't perceive any problem, didn't pick up on

1 an issue. Said goodnight, got a glass of water or
2 whatever it was, no one complained to her, no one was
3 bleeding, bloody, screaming and crying, etc. Grandma
4 went back to bed. When people woke up in the morning
5 there was no indication anything was amiss at all.
6 Grandmother then took Victim 2 to church and Victim 2 made
7 this report, which is absolutely unfounded in evidence.
8 As the Solicitor indicated to you, she was taken to the
9 hospital, she was examined and I'm sure it was an
10 unpleasant experience for her, but it's something that is
11 necessary under those circumstances and anally she's not
12 injured. She doesn't need stitches, she's not bleeding,
13 she's not hurt. There aren't tears or problems. She's an
14 eight year old child who says within a few hours I have
15 been raped by an adult man. Vaginally, there are no
16 injuries to her. She's not bleeding, torn, bruised,
17 nothing like that to support this contention. Her story,
18 and you'll hear it both from the witness stand and
19 obviously I can't predict exactly what you'll hear from
20 the witness stand, but I've reviewed the tape. The tape
21 will support the things that I've told you. Now, Victim 1
22 who was the child of Mr. Brown, she was brought in also,
23 because Victim 2 says Victim 1 is in on what has gone on,
24 she's been part and partial of this process. Victim 1 is
25 victim of some abuse. Victim 1 has had experiences that a

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1 child her age should not have happened and the evidence
2 will show you that, but the State has promised to show
3 you however is that Mr. Brown is he perpetrated that and
4 they can't do it. **Victim 1** comes to the hospital, perhaps
5 the same morning. I mean people are reacting quickly.
6 They're doing what they are supposed to do. And she gets
7 down to the hospital and she tells them nothing happened.
8 I don't know what she's talking about, we're fine.
9 Subsequently, she is interviewed and her interview is put
10 on tape also. **Victim 1** is going to come in and testify and
11 you'll also have the opportunity to observe her and her
12 credibility of a witness, as a witness and I don't
13 intergrate her; she's a child and she's a beautiful
14 little girl. She is not a credible witness. She can't be
15 relied upon, she cannot tell a credible story and the
16 things she says do not make sense. She says initially
17 when she's interviewed I don't know what **Victim 2**
18 talking about, because none of that happened. No, **Victim 2**
19 and I went to sleep and that was the extent of it. I
20 don't know what they're talking about and she's pushed a
21 little in that area and she's pushed a little and then
22 she starts to say things and the interviewer acts
23 interested and then she says more. She says, and so she
24 says things like, oh, yes it happened like **Victim 2** said
25 and it happened to me in Alaska too, where daddy did it.

1 And, oh, yes, there was a teacher's aide who works at my
2 school and she comes over and we all take off our clothes
3 and take pictures together, and, oh, yes, sometimes we
4 use one of those cameras, kind of like one of those
5 looney tunes cartoon where you get up under the hood and
6 you flash the power and we take pictures like that and
7 sometimes it's just me and mom and grandma and
8 everybody's naked on the playground and we all get
9 together and do these things. And her testimony is so
10 outlandish, it's so unsupported, it's factually
11 impossible. And, again, she's a child and she lives in a
12 fantasy world. I don't know where her experience with
13 adult sexuality came from, but there's been some of it,
14 but she can't point it out. She says there's a secret
15 laboratory in her house behind the stove where these
16 things are done. There are other secret rooms where
17 people go and these things occur. And again, a miriad of
18 people for law enforcement to go through and seek
19 warrants against or indictments for some sort of sexual
20 misbehavior, including if I recollect correctly, her own
21 mom. None of those folks were zeroed in however, it's
22 only been Mr. Brown. Now, those are the two witnesses
23 that will be the crux of the State's case. I just ask you
24 to remember your oath, you walk in with an open mind, to
25 listen to the evidence, consider what you hear and

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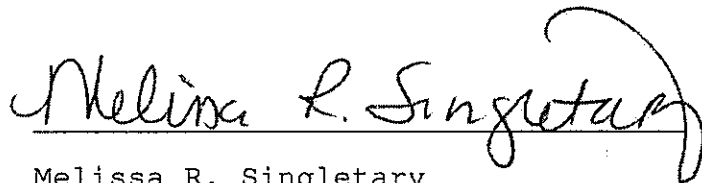
1 likewise consider what you do not hear and return a true
2 verdict at the end of this trial. Thank you very much for
3 your attention.
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CERTIFICATE

This is to certify that the transcript in the matter of Jonathan Brown vs. The State of South Carolina, consisting of Forty-One (41) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 16th day of October, 2014.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2013-GS-18-1408
	)	2013-GS-18-1409
	)	2013-GS-18-1410
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(Days 2 & 3 of 3)
	)	
JONATHAN MICHAEL BROWN,	)	
	)	
Defendant.	)	
	)	

July 15-16, 2014
St. George, South Carolina

B E F O R E:

THE HONORABLE MAITE' MURPHY, Judge; and a jury

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KRYSTAL J. SMITH
Court Reporter

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1 JULY 15, 2014

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record.
4 The State appeared through counsel of record. This
5 second day of the trial began at 9:47 a.m.)

6 THE COURT: Good morning, everyone. Thank you. Everyone
7 can have a seat. Everybody ready to proceed?

8 MR. JUSTIS: The State is ready, Your Honor.

9 MR. LOY: Ready, Your Honor.

10 THE COURT: All right. Let's have our jury, please.

11 (Whereupon, the jury enters the courtroom at 9:48 a.m.)

12 THE COURT: Good morning, ladies and gentlemen of the
13 jury. I hope you had a nice evening. We're about to begin
14 the trial of this case. Before we do so, sir, in the gray
15 shirt right there, what is your name?

16 THE JUROR: My name is Nathan.

17 THE COURT: Nathan?

18 THE JUROR: Yes, ma'am.

19 THE COURT: And your last name?

20 THE JUROR: Lee.

21 THE COURT: Mr. Lee, since you are sitting in that spot,
22 I'm going to appoint you as our foreman. So congratulations.

23 THE JUROR: Thank you.

24 THE COURT: Actually, that just means that you're the
25 liaison to the Court. Your voice doesn't have any more weight

1 than the others, but you're responsible for communicating
2 with the Court if there's any questions throughout the trial
3 and, of course, for the verdict form, which I will explain
4 later.

5 But if you would, please pay close attention. Solicitor,
6 you may call your first witness.

7 MR. JUSTIS: Thank you, Your Honor. At this time, the
8 State calls **Victim 2**.

9 (Whereupon, there is a pause in the proceedings until the
10 witness enters the courtroom.)

11 THE CLERK: Please place your left hand on the Bible
12 and raise your right hand and state your full name for the
13 record.

14 THE WITNESS: **Victim 2**.

15 THE CLERK: Do you solemnly swear or affirm to tell the
16 truth, the whole truth, and nothing but the truth, so help you
17 God?

18 THE WITNESS: Yes.

19 THE CLERK: Thank you. You can have a seat.

20 THE COURT: Your witness.

21 MR. JUSTIS: Thank you, Your Honor. May it please the
22 Court.

23 THE COURT: Yes, sir.

24 **Victim 2**, being first duly
25 sworn, testifies as follows:

Victim 2 - DIRECT BY MR. JUSTIS

DIRECT EXAMINATION

1

2 BY MR. JUSTIS:

3 Q: Good morning, Victim 2 .

4 A: Good morning.

5 Q: When I'm talking to you this morning, I need you to --

6 you can adjust that microphone. You can kind of pull it

7 forward if you need to. I need you to speak real loud because

8 the court reporter needs to take down everything you say.

9 And I'm going to try to speak loud so that it will help you

10 speak loud. Okay? Can you tell us where you live, Victim 2 ?

11 A: I live in La Porte, Indiana.

12 Q: And how long have you lived in La Porte, Indiana?

13 A: I don't know.

14 Q: Has it been all your life or did you live somewhere else?

15 A: I lived in Michigan City and then I moved to La Porte,

16 Indiana.

17 Q: Okay. And how old are you?

18 A: Nine years old.

19 Q: And what grade are you going into this fall?

20 A: Fourth grade.

21 Q: And do you like school?

22 A: Sometimes.

23 Q: Sometimes? What's your favorite part about school?

24 A: Probably either math, reading or gym.

25 Q: Okay. And have you ever had an opportunity to come to

Victim 2 - DIRECT BY MR. JUSTIS

1 South Carolina before?

2 A: Mm-hmm. Yes.

3 Q: And when was the last time you were in South Carolina?

4 A: Last year.

5 Q: Okay. And why did you come to South Carolina last year?

6 A: To visit family for their birthday.

7 Q: Okay. And who did you come with?

8 A: My grandmother.

9 Q: Do you know her name?

10 A: Audrey Hagenow.

11 Q: And how did you get here?

12 A: We -- we -- we drove.

13 Q: And it was just you and Grandma?

14 A: Mm-hmm. Yes.

15 Q: And who did you come to see?

16 A: **Victim 1** and Nicole.

17 Q: And who is **Victim 1** and Nicole?

18 A: My cousins.

19 Q: And who do they live with?

20 A: They live with their mom and their dad.

21 Q: Would that be your aunt and uncle?

22 A: Yes.

23 Q: Okay. How old -- do you know how old **Victim 1** and Nicole
24 are?

25 A: **Victim 1** is going to be seven pretty soon and Nicole is

Victim 2 - DIRECT BY MR. JUSTIS

1 going to turn five.

2 Q: Okay. And so you came -- you stated you came for their
3 birthday?

4 A: Yes.

5 Q: Okay. And what kind of things did you do when you --
6 when you were -- when you came to visit? What kind of fun
7 things did you do?

8 A: We swam and we played games and watched TV.

9 Q: Okay. And where -- where did you swim?

10 A: At the neighbor's pool.

11 Q: Okay. Did you have a chance to go to the beach while you
12 were here?

13 A: Yes.

14 Q: And who went to the beach with you?

15 A: My grandma, Victim 1 and Nicole.

16 Q: Okay. And -- so let's talk about that trip. Let me take
17 your attention back to specifically the last Saturday night
18 before you came home from that trip. Do you remember that
19 night?

20 A: Yes.

21 Q: What do you remember about that night? Just kind of
22 start from the beginning and tell me what you remember.

23 (Whereupon, there is no verbal response.)

24 MR. JUSTIS: May I approach the witness, Your Honor?

25 THE COURT: You may.

Victim 2 - DIRECT BY MR. JUSTIS

1 Q: Do you need a moment?

2 A: (Crying) Yes.

3 MR. JUSTIS: May we take a moment, Your Honor?

4 THE COURT: Certainly. Take your time.

5 (Whereupon, there is a pause in the proceedings.)

6 Q: I know this is difficult, Victim 2 but I just need you to
7 tell me what you remember. Okay? Can you do that?

8 A: But I don't know where to start.

9 Q: Okay. What were you doing that night?

10 A: I was trying to tell the girls that tomorrow was an early
11 day and that they needed to get to bed, but Victim 1 asked me
12 if I wanted to watch a movie and I was like no, you need to
13 get to bed and I do too. And then she kept asking me to,
14 like, nothing bad is going to happen to you. Come on. I'm
15 like, okay, fine. And then we watched "Eloise" and then I got
16 tired and then I was ready to go and then he caught me.

17 Q: Okay. Take a breath. So you told us that Victim 1 asked
18 you to watch a movie?

19 A: Yes.

20 Q: Do you remember the name of the movie?

21 A: "Eloise."

22 Q: Okay. And did you -- did you go to watch the movie with
23 Victim 1?

24 A: Yes.

25 Q: And where -- where did you watch the movie? What --

Victim 2 - DIRECT BY MR. JUSTIS

1 A: In the living room.

2 Q: Okay. So you were in the living room. Whose house was
3 it?

4 A: Rachel's.

5 Q: Okay. So you were in -- and Rachel is your --

6 A: Aunt.

7 Q: Your aunt. So you're in Aunt Rachel's house. That's
8 where Victim 1 lives?

9 A: Mm-hmm.

10 Q: And you're watching "Eloise" in the living room?

11 A: Yes.

12 Q: Okay. Who all is in the living room with you?

13 A: The bad guy and Victim 1 and me.

14 Q: Okay. When you say "bad guy," who do you mean?

15 A: Um --

16 Q: Can you tell me a name?

17 MR. LOY: Your Honor, may the solicitor and I approach
18 for a moment?

19 THE COURT: You may.

20 (Whereupon, a bench conference is held off the record.)

21 THE COURT: Ladies and gentlemen of the jury, we're going
22 to take a -- just a brief five-minute recess. If you would,
23 please step outside. Do not discuss the case with anybody or
24 allow anyone to discuss the case with you. We'll be right
25 back with you.

Victim 2 - DIRECT BY MR. JUSTIS

1 (Whereupon, the jury exits the courtroom at 9:58 a.m.)

2 THE COURT: Victim 2 are you okay, honey?

3 THE WITNESS: Mm-hmm.

4 THE COURT: Okay. I know this is very difficult for you.

5 Okay? And you're doing a great job. Just take your time.

6 If you need to take a break, you just need to let us know.

7 Okay?

8 THE WITNESS: Mm-hmm.

9 THE COURT: Just take a deep breath and take a break and
10 just make sure that you answer the questions that Mr. Justis
11 asks you, but I've got to ask you to please when you refer to
12 people, you can't call them names. Okay? You can't say "the
13 bad guy." I know that's how you might feel, but you can't say
14 that. Okay? You can call people by their -- by their given
15 names. Like if you know the person's first or last name, you
16 can refer to them like that. Okay?

17 THE WITNESS: Mm-hmm.

18 THE COURT: Are you okay with that? Do you need to go to
19 the restroom or take a little break or are you okay?

20 THE WITNESS: I'm okay.

21 THE COURT: All right. You let us know when you -- when
22 you're ready to go ahead. Okay?

23 THE WITNESS: I'm ready.

24 THE COURT: You're ready? Okay, honey. Anything
25 further?

Victim 2 - DIRECT BY MR. JUSTIS

1 MR. JUSTIS: Nothing from the State, Your Honor.

2 MR. LOY: No, Your Honor. Thank you.

3 THE COURT: All right. Let's have our jury back, please.

4 (Whereupon, the jury enters the courtroom at 9:59 a.m.)

5 THE COURT: Solicitor, you may proceed.

6 MR. JUSTIS: Thank you, Your Honor.

7 BY MR. JUSTIS:

8 Q: Okay. Victim, tell me again who the people were in the
9 living room that evening with you?

10 A: Victim 1 me, and Jon.

11 Q: Okay. And so you were in the living room. What do you
12 remember? Start from the beginning. What do you remember
13 happening after you got into the living room?

14 A: He asked me which movie I wanted to watch and I said,
15 "Eloise." And then I got tired in the middle of it and I
16 tried to leave, but then he tried to catch me and he caught
17 me. And then he sat me down and -- on his knee and --

18 Q: What happened when he set you on his knee?

19 A: He made me touch his boy part.

20 Q: Okay. Did he have his -- was his clothes on, off or
21 something else?

22 A: They were on.

23 Q: Okay. And did you do that?

24 A: Yes.

25 Q: Okay. And then what happened?

Victim 2 - DIRECT BY MR. JUSTIS

- 1 A: I don't remember.
- 2 Q: Did you go to bed after that?
- 3 A: No.
- 4 Q: Well, what -- tell me what happened after that?
- 5 A: I can't remember exactly what happened, but I know it
- 6 went on for a really long time.
- 7 Q: Okay. And -- I'm sorry. Were you going to --
- 8 A: No.
- 9 Q: And when you say it went on, what kind of things went on?
- 10 A: Just everything.
- 11 Q: Could you -- I know this is difficult, but we need to get
- 12 you to explain what you mean by everything. And just explain
- 13 it in your terms what -- what you remember. Because you've
- 14 stated you touched his boy part; correct?
- 15 A: Mm-hmm.
- 16 Q: Did he touch you?
- 17 A: Yes.
- 18 Q: Where did he touch you?
- 19 A: He touched me in both of my girl parts.
- 20 Q: Okay. What did he touch you with?
- 21 A: His hands.
- 22 Q: Were your clothes on, off or something else?
- 23 A: I was both. Half of my clothes were on and half of the
- 24 part that -- half of my clothes were off of the other part.
- 25 Q: Okay. And when he touched you on your girl parts, did he

Victim 2 - DIRECT BY MR. JUSTIS

1 touch you on top of your girl parts, in your girl parts, or
2 something else?

3 A: Both.

4 Q: What was -- did he say anything while he was doing this?

5 A: I don't remember.

6 Q: Where was Victim 1 when this was happening?

7 A: She -- half of the time she was sleeping and the other
8 half she was awake watching the movie, but I don't really
9 remember.

10 Q: Okay. Did Victim 1 do anything?

11 A: I think so, but I'm not sure.

12 Q: Okay. When you say you think so but not sure, what do
13 you mean by that?

14 A: Like he made her demonstrate things that I wouldn't do.

15 Q: Okay. What -- what did she demonstrate? Could you --
16 could you describe it for us?

17 A: Not really.

18 Q: What -- what kinds of things -- let me rephrase that.

19 You said he had her demonstrate things that you wouldn't do.

20 A: Yes.

21 Q: Did he ask you to do some things?

22 A: Yes.

23 Q: What did he ask you to do?

24 A: He asked me to put his boy part in my mouth, but I
25 wouldn't do it.

Victim 2 - DIRECT BY MR. JUSTIS

- 1 Q: Okay. Did Victim 1 do that?
- 2 A: Yeah.
- 3 Q: Where was Grandma and your aunt at this time?
- 4 A: Rachel was in the bedroom sleeping and Grandma was
- 5 sleeping in her room.
- 6 Q: Okay. And did either your aunt or grandma come in the
- 7 room at any time?
- 8 A: My grandma did to use the restroom, but he sneaked out
- 9 already. She asked me what happened and I'm like, "I can't
- 10 tell you. I can't tell you. I'll tell you later." She just
- 11 assumed that I was sleeping on the couch.
- 12 Q: Okay. Did anything happen after Grandma came out and
- 13 went back to bed?
- 14 A: I can't remember exactly some parts of which order it was
- 15 in, but I'm pretty sure.
- 16 Q: Now, did you ever go to sleep that night?
- 17 A: I did at like four o'clock in the morning. I was curled.
- 18 He said, "Go to bed. Don't go to your grandma's room. Don't
- 19 move." And I went up to the fresh bunk bed and curled up in a
- 20 little ball in the corner really tight so I tried -- because I
- 21 was really scared.
- 22 Q: And what happened when you woke up in the morning?
- 23 A: I got -- I went into my grandma's room to get my clothes
- 24 to get dressed, and on the way to church, Grandma asked me
- 25 what it was that I couldn't tell her last night and I told

Victim 2 - DIRECT BY MR. JUSTIS

1 her. She went to the house to get the bags and she called
2 Rachel on the way there and she was like, "We need to get to
3 the hospital immediately." And that's when we went to the
4 hospital and everything.

5 Q: Okay. And when you got to the hospital, what happened at
6 the hospital?

7 A: A few -- they took tests and stuff and they had some cops
8 there. We had to tell them the story and everything and some
9 details on where he was and what he looks like and try to
10 catch him.

11 Q: Okay. So you talked to people at the hospital?

12 A: And the police officers, yes.

13 Q: And police officers? Were you able to talk to any
14 doctors? Did any doctors see you?

15 A: Yes.

16 Q: What kind of things did they do when you got to the
17 hospital? What kind of things did they do with you?

18 A: They took tests. They asked me things to figure out what
19 they had to do, and they asked me the story, and they asked
20 Grandma to write a story for the police officers. And then we
21 had to go up to a children's hospital and get more tests done,
22 and then we went -- my mom came in from out of town the next
23 day and we stayed at the hospital so I could finish all my
24 interviews with everybody, and then we went home.

25 Q: Okay. **Victim 2** I'm going to show you what's been marked as

Victim 2 - DIRECT BY MR. JUSTIS

1 State's Exhibit 17.

2 MR. JUSTIS: May I approach the witness, Your Honor?

3 THE COURT: You may.

4 (Whereupon, State's Exhibit Number 17, a color
5 photograph, is shown to the witness for identification.)

6 Q: Can you take a look at this and tell me if you recognize
7 it?

8 A: Yes. I do recognize this.

9 Q: Okay. What is that a picture of?

10 A: It's a picture of the house that the -- the scene
11 happened in.

12 Q: At this time, Victim 2 I'm going to show you what's been
13 marked as State's 19.

14 MR. JUSTIS: May I approach, Your Honor.

15 THE COURT: You may.

16 (Whereupon, State's Exhibit Number 19, a color photograph
17 is shown to the witness for identification.)

18 Q: Can you take a look at that picture and tell me what that
19 is a picture of?

20 A: That is a picture of the place where most of it happened.

21 Q: Okay. What do you see in that picture?

22 A: A couch and a carpet and the living room, the dining
23 room, and the kitchen.

24 Q: Okay. And that's a picture of the inside of the house I
25 just showed you?

Victim 2 - DIRECT BY MR. JUSTIS

1 A: Yes.

2 Q: Now, you said that this happened there in the living
3 room?

4 A: Yes.

5 Q: Do you remember if it happened on the couch, on the rug,
6 on the -- in the chair?

7 A: It happened in all three of those places.

8 Q: All right. Victim 2, I'm going to show you what's marked --
9 been marked as State's Exhibit Number 1. It's in this
10 envelope here. I'll get you to kind of look in there and tell
11 me if you recognize what's in that envelope.

12 (Whereupon, State's Exhibit Number 1, an envelope
13 containing a pair of shorts, is shown to the witness for
14 identification.)

15 A: Yes.

16 Q: Okay. What's in that envelope?

17 A: The shorts that I was wearing that night.

18 Q: And how do you know they're your shorts?

19 A: Because in the pictures and I remember wearing those.

20 MR. JUSTIS: At this time, the State would offer State's
21 1 into evidence.

22 THE COURT: Any objection?

23 MR. LOY: None, Your Honor.

24 THE COURT: Okay. It's in.

25 (Whereupon, State's Exhibit Number 1, a pair of pink

Victim 2 - DIRECT BY MR. JUSTIS

1 shorts, is admitted into evidence.)

2 Q: **Victim 2** you said these were your shorts?

3 A: Yes.

4 Q: And you had these when you were in South Carolina?

5 A: Yes.

6 Q: **victim**, did the defendant say anything to you about not
7 telling anybody?

8 MR. LOY: Object to leading --

9 A: Yes.

10 MR. LOY: -- Your Honor.

11 THE COURT: Sustained.

12 Q: Now, **Victim 2** let's go back to that night -- okay? --
13 briefly. You said that the defendant touched both of your
14 girl parts?

15 A: Yes.

16 Q: And what do you mean by both of your girl parts?

17 A: The upper girl part and the lower girl part.

18 MR. JUSTIS: I beg the Court's indulgence.

19 Q: **Victim 2** you stated that you were with Jon and **Victim 1** in
20 the room that night?

21 A: Yes.

22 Q: Do you see Jon in the courtroom today?

23 A: No.

24 MR. JUSTIS: No further questions.

25 THE COURT: Cross examination?

Victim 2 - CROSS BY MR. LOY

CROSS EXAMINATION

1
2 BY MR. LOY:

3 Q: Good morning. I heard when Mr. Justis was talking with
4 you and he called you Victim 2 Is your name Victim 2?

5 A: Yes.

6 Q: Do you prefer to be called Victim 2 or Victim 2?

7 A: Victim 2.

8 Q: Victim 2? So I'm going to call you Victim 2 when I ask you
9 some questions. My name is John Loy and, you know, sometimes
10 people tell me I talk fast and, because I'm from South
11 Carolina, they have a hard time understanding me. If I don't
12 understand something you say, I'm going to ask you to explain
13 it, and I'm not messing with you or anything. I'm just trying
14 to understand. Is that fair?

15 A: Mm-hmm. Yes.

16 Q: The same rule applies. If I ask you a question and you
17 don't understand it or I talk too fast or something like that,
18 you can either call me John, you can call me Mr. Loy, or down
19 here you can call me Mr. John. Either one of those. Hold it,
20 John. I don't understand.

21 A: Okay.

22 Q: You won't get in trouble or anything like that because
23 everybody really wants you to understand the questions and
24 just give the answers. All right?

25 A: Okay.

Victim 2 - CROSS BY MR. LOY

- 1 Q: Does that sound fair?
- 2 A: Yes.
- 3 Q: Okay. Now, you said you were in South Carolina visiting
- 4 your cousin; is that right?
- 5 A: Yes.
- 6 Q: And y'all had done some stuff, gone to the beach, and had
- 7 some good times and had a pretty good visit. Is that fair to
- 8 say?
- 9 A: Yes.
- 10 Q: Okay. And then the last night before you were going
- 11 back, you were still staying at your cousins' home; is that
- 12 right?
- 13 A: Yes.
- 14 Q: Okay. And is it -- do you live in a big house?
- 15 A: Yes.
- 16 Q: Was this a big house? The one that you were staying at
- 17 down here I mean.
- 18 A: Right now or back then?
- 19 Q: Your -- your Aunt Rachel's house that you were staying in
- 20 back when you came down here. Would you call it a big house
- 21 or a little house?
- 22 A: A little house.
- 23 Q: And you were staying there that night and your -- I'm
- 24 sorry. I didn't mean to cut you off, but you and both of your
- 25 cousins and your grandma. You aunt was staying there too?

Victim 2 - CROSS BY MR. LOY

1 A: Yes.

2 Q: Okay. And all y'all were there in the house that night,
3 and y'all had been to the beach that day or not?

4 A: No.

5 Q: Do you recall what y'all had done that day?

6 A: We had their birthday party that day and that's all I
7 remember.

8 Q: Okay. And I'm going to talk with somebody at my table
9 for just a minute. It hasn't got anything to do with anything
10 you're doing. You're doing fine. I'll be right back. All
11 right. You got water?

12 A: Huh?

13 Q: You got water?

14 A: Yeah.

15 Q: I'll be right back.

16 (Whereupon, there is a pause in the proceedings.)

17 MR. LOY: Thank you, Your Honor.

18 Q: The birthday party that y'all had -- did y'all have that
19 in the afternoon or in the evening?

20 A: It was the afternoon and the evening, but I don't really
21 remember.

22 Q: Okay. And whose birthday was it?

23 A: It was **Victim 1** and Nicole's because their birthday is
24 really close together.

25 Q: So you just had one party for the both of them?

Victim 2 - CROSS BY MR. LOY

- 1 A: Yes.
- 2 Q: Okay. And do you generally stay up pretty late or do you
- 3 go to bed early at night?
- 4 A: It depends what night it is.
- 5 Q: Excuse me?
- 6 A: It depends what kind of day I've had or what time I woke
- 7 up.
- 8 Q: How old are you?
- 9 A: Nine years old.
- 10 Q: All right. So you were eight back when you were visiting
- 11 then?
- 12 A: Yes.
- 13 Q: Okay. Because I know some people who are eight years old
- 14 who, like, 8:30 at night -- nine o'clock, they go to bed. I
- 15 know other people eight years old they basically -- ten --
- 16 eleven. Stay up and go to bed when they get tired. Are you
- 17 in one of those -- do you understand? -- categories?
- 18 A: Well, sometimes I am, but sometimes I'm not.
- 19 Q: Okay. Well, this was summer vacation?
- 20 A: Right.
- 21 Q: Okay. You stay up a little later during the summer?
- 22 A: Sometimes.
- 23 Q: Okay. So on this occasion, you -- did you stay up late?
- 24 A: I had to. He made me.
- 25 Q: I'm sorry?

Victim 2 - CROSS BY MR. LOY

- 1 A: I had to. He made me.
- 2 Q: Okay. Well, I'm talking about before you went to bed.
- 3 Had you gone to bed at some point in time before four o'clock
- 4 in the morning?
- 5 A: Yes.
- 6 Q: Did you go to bed and get back up?
- 7 A: Only to go to the bathroom.
- 8 Q: Okay. So did your mom go to bed before you?
- 9 A: My mom wasn't there.
- 10 Q: Did your grandmother go to bed before you?
- 11 A: Yes.
- 12 Q: Do you recall what time she went to bed?
- 13 A: Well, I don't really know if she went to bed early before
- 14 me. I usually went to bed at the same time she did.
- 15 Q: You and your granny? Oh, I don't know. What do you call
- 16 her? What? Grandma? Granny?
- 17 A: Gram Cracker.
- 18 Q: Your Gram Cracker and you usually went to bed about the
- 19 same time?
- 20 A: Yes.
- 21 Q: Okay. On this night, do you recall whether or not y'all
- 22 went to bed at the same time or if she went to bed before you?
- 23 A: She went to bed before me.
- 24 Q: Okay. And your aunt was there at the house too; is that
- 25 right?

Victim 2 - CROSS BY MR. LOY

- 1 A: Yes.
- 2 Q: And does she usually go to bed before you or -- when
- 3 you're there, is she a night owl? Do you know anything about
- 4 a night owl?
- 5 A: No. I don't really know her.
- 6 Q: Well, while you were down there staying with her, did you
- 7 used to stay up later than her?
- 8 A: No.
- 9 Q: Did you sometimes stay up later than her?
- 10 A: No. She went to bed before me.
- 11 Q: Okay. Do you know what I just did? I broke a rule. I
- 12 didn't do it on purpose, but I asked you what we call a
- 13 compound question. I asked two questions at once. I said,
- 14 "Did she go to bed before you?" and then I said, "Does she
- 15 usually go to bed before you?" That's two questions. That's
- 16 not fair. So I'll break it down and I'll try not to do it
- 17 again. Did she usually go to bed before you?
- 18 A: No.
- 19 Q: Okay. On that night, did she go to bed before you?
- 20 A: Yes.
- 21 Q: And you and **victim 1** were still up?
- 22 A: Yes.
- 23 Q: And where were you and **Victim 1**?
- 24 A: In the living room.
- 25 Q: Okay. And is that because there's two bedrooms in the

Victim 2 [REDACTED] - CROSS BY MR. LOY

- 1 house?
- 2 A: There's three bedrooms in the house.
- 3 Q: Okay. And who was in the third bedroom?
- 4 A: The guest bedroom was my grandma.
- 5 Q: Okay. So Grandma was in one bedroom?
- 6 A: Yes.
- 7 Q: Rachel was in another bedroom?
- 8 A: Yes.
- 9 Q: Okay. And you said there's three bedrooms?
- 10 A: Yes.
- 11 Q: The other bedroom was the one the bunk beds were in that
- 12 you went to later?
- 13 A: Yeah.
- 14 Q: So you were going there. You just hadn't gone yet. You
- 15 and Victim 1 were still up?
- 16 A: Well, Nicole was sleeping there, and then I slept on the
- 17 top bunk bed and Victim 1 fell asleep when I was still getting
- 18 done.
- 19 Q: But before you went to bed when you were up and you were
- 20 in the living room, you and Victim 1 were still up in the
- 21 living room?
- 22 A: Yes.
- 23 Q: Okay. If I get it wrong, just say wrong. It's okay.
- 24 You can call me out on it.
- 25 A: Okay.

Victim 2 - CROSS BY MR. LOY

1 Q: I wasn't there. And is it that the two of y'all were
2 still up?

3 A: I think so. Yeah.

4 Q: Okay. Now, after all this evening once you talked with
5 your grandma and you said I got a secret or I can't tell you
6 or I'll tell you, whatever, then you talked to a lot of
7 people. Is that fair to say?

8 A: What do you mean by that?

9 Q: Well, I mean that you went to a medical facility like a
10 hospital or something.

11 A: Yes.

12 Q: And you talked to a nurse or somebody like that. Yes?

13 A: Yes.

14 Q: And you talked to a doctor at some point in time?

15 A: Yes.

16 Q: Certainly, you talked with police?

17 A: Mm-hmm.

18 Q: There's a rule you broke. All right? Nobody told you,
19 but it's a rule. You've got to say yes or no. You can't say
20 uh-huh and uh-uh.

21 A: Yes.

22 Q: Because she takes it all down. Okay. So you talked with
23 the police?

24 (Whereupon, there is no verbal response.)

25 Q: Yes?

Victim 2 - CROSS BY MR. LOY

- 1 A: Yes.
- 2 Q: And you went and talked to -- and I don't know what you
- 3 call her, but some lady where you sat down in a room and had a
- 4 chart and a board and drew pictures and talked for a long
- 5 time?
- 6 A: Yes.
- 7 Q: Is that right?
- 8 A: Yes.
- 9 Q: And that was pretty -- pretty soon after you reported to
- 10 your grandma that things had gone wrong; is that right?
- 11 A: Yes.
- 12 Q: Okay. Do you recall sitting in a room with that person?
- 13 A: Yes.
- 14 Q: Okay. And did you try to talk with them about things you
- 15 said had happened?
- 16 A: I think I know what you're talking about, but I'm not
- 17 sure.
- 18 Q: I'm talking about where you went in and you sat down and
- 19 there was a lady you talked to and she told you, well, you can
- 20 talk with me about anything, and you talked about private
- 21 parts and what you call them and what they call them.
- 22 A: The --
- 23 Q: Drew them on a board.
- 24 A: The forensic interview or something like that?
- 25 Q: Excuse me?

Victim 2 - CROSS BY MR. LOY

- 1 A: The --
- 2 Q: Say it?
- 3 A: -- forensic interview.
- 4 Q: Very, very good. The forensic interview?
- 5 A: Yes.
- 6 Q: Yes. Exactly. And you recall that; right?
- 7 A: Yes.
- 8 Q: And it went on for a while?
- 9 A: Yes.
- 10 Q: And you answered a lot of questions there, didn't you?
- 11 A: Yes.
- 12 Q: Okay. Do you recall those?
- 13 A: I don't remember any of those questions.
- 14 Q: Do you -- is there a reason you don't remember any of the
- 15 questions?
- 16 A: It's been a long time ago.
- 17 Q: Had -- prior to you talking to your grandmother, had you
- 18 -- had your cousin, Victim 1, talked with you about any of this
- 19 sort of stuff that you're talking about today?
- 20 A: I think she might have, but I'm not sure.
- 21 Q: She might have mentioned some of those things that had
- 22 happened in the past?
- 23 A: Yes.
- 24 Q: Okay. That sort of planted that seed? Do you understand
- 25 what -- she mentioned it to you some of these things ahead of

Victim 2 - CROSS BY MR. LOY

- 1 time?
- 2 A: Yes.
- 3 Q: Okay. And those are things that you thought about
- 4 naturally? Yes? If your cousin told you some -- some bad
- 5 things had happened?
- 6 A: Like what kind of things?
- 7 Q: The things you're here talking about today are the things
- 8 you don't want to talk about your interview at the forensic
- 9 interview? That was a terribly phrased question.
- 10 A: Can you repeat that again?
- 11 Q: No, but I can try to make it better. Okay? You're
- 12 telling me that you don't recall some of the things you talked
- 13 about at what you called your forensic interview; is that
- 14 right?
- 15 A: Well, probably like a few, but not all of them.
- 16 Q: Okay. Some of those were things that your cousin had
- 17 talked to you about ahead of time. That's what I'm asking.
- 18 A: I don't think so.
- 19 Q: You don't? A moment ago you did think so. If you don't
- 20 know, you don't know.
- 21 A: I --
- 22 Q: If you can say yes or no, that's a good thing, and if you
- 23 don't know, you just don't know.
- 24 A: I don't know.
- 25 Q: Okay. Now, Victim 2 -- Victim 2, everybody in the courtroom

Victim 2 - CROSS BY MR. LOY

- 1 is a grown-up. Okay? Nobody is --
- 2 A: Yes.
- 3 Q: Nobody is trying to make you uncomfortable or anything
- 4 like that. I'm going to ask you a couple more questions about
- 5 things that may be uncomfortable. Okay?
- 6 A: Okay.
- 7 Q: Everybody here is -- everybody is grown. Nobody is mad
- 8 at you. All right?
- 9 A: Okay.
- 10 Q: Do you recall at your forensic interview when you were
- 11 talking with that lady telling her that at one point you had
- 12 your clothes off and another person that you called Jon had
- 13 his clothes off and that your grandmother came into the room?
- 14 A: I don't know.
- 15 Q: You don't remember if you said that or not?
- 16 A: I don't remember.
- 17 Q: Do you recall if you said that then people were chasing
- 18 around trying to get dressed before Grandma or Gram Cracker
- 19 saw him; is that right?
- 20 A: Well, he took his clothes and ran into the bedroom and
- 21 she didn't see him.
- 22 Q: Okay. And do you recall telling the interviewer before
- 23 that that he had -- and I'm sorry. You said you're nine years
- 24 old now?
- 25 A: Yes.

Victim 2 - CROSS BY MR. LOY

1 Q: Okay. And I know the interviewer talks with you about
2 different words and what people call different stuff and all
3 that, but I mean do you recall telling the interviewer that
4 prior to that this person had basically held you down and
5 pushed his -- did you know -- do you know what the word penis
6 means?

7 A: Yes.

8 Q: Okay. That he pushed his penis into your behind, that he
9 had been doing that earlier?

10 A: Yes.

11 Q: Is that something you now recall or do not recall?

12 A: I do recall.

13 ~~Q: Okay. Is there a reason other than just because it was~~
14 ~~uncomfortable to say it to the solicitor you said then you~~
15 ~~didn't recall?~~

16 A: Yes, I think so.

17 Q: You think there is a different reason or you think it's
18 just that it was uncomfortable?

19 A: It was uncomfortable.

20 Q: I understand. Did it -- and I'm going to ask you some
21 questions about that and I know it's uncomfortable. **Victim 2**?

22 **Victim 2** It's uncomfortable for everybody in the room. All
23 right? Not just you. Okay? And we'll be done pretty soon.
24 All right?

25 A: Okay.

Victim 2 - CROSS BY MR. LOY

1 Q: I promise. Did it hurt when that happened?

2 A: Most of the time.

3 Q: Did -- do you recall either that evening or in the
4 morning after did you bleed?

5 A: I did not bleed, but it hurt --

6 Q: Okay.

7 A: -- to go to the bathroom.

8 Q: And when your grandmother came in and all this was going
9 on, were you crying or did you run to your Gram Cracker?

10 A: No, I did not.

11 Q: Okay. Were you crying and visibly upset?

12 A: No.

13 Q: Because a moment ago I thought you said to the solicitor
14 you had told her, "I can't tell you. I can't tell you. I'll
15 tell you later," as she was saying, "What's going on?"

16 A: I -- I did say that.

17 Q: Okay. So your grandmother came in and you were or you
18 were not crying?

19 A: I was --

20 Q: If you recall.

21 A: -- not crying.

22 Q: Okay. Okay. And again, just because you're older now,
23 I'm just going to use adult language. Okay?

24 A: Okay.

25 Q: Do you know -- and I'm sorry. Do you know what vagina

Victim 2 - CROSS BY MR. LOY

1 means?

2 A: Yes.

3 Q: Do you recall telling the interviewer whether or not
4 anybody had put their penis in your vagina that evening?

5 A: Yes.

6 Q: And you described that as having happened?

7 A: Yes.

8 Q: And was it painful when it happened?

9 A: Yes.

10 Q: And did that happen before or after your grandmother came
11 into the room?

12 A: Before.

13 ~~Q: Before?~~

14 A: Yes.

15 Q: So even after that had happened, your grandmother came
16 into the room and you just pretended to be watching the movie
17 or that everything was okay or something like that?

18 A: Well, the movie was off and the TV was off and there was
19 really no lights.

20 Q: So --

21 A: I was just laying on the couch and I was trying to give a
22 signal to her, but she couldn't see me.

23 Q: Okay. And you stated that earlier you had been chased
24 around in this area?

25 A: Well, I wasn't chased, but I tried to -- I tried to go

Victim 2 - CROSS BY MR. LOY

- 1 out, but he caught me.
- 2 Q: You didn't say that he had chased you around and he
- 3 caught you and brought you back?
- 4 A: I don't think I said that.
- 5 Q: And you told the solicitor that you were sexually
- 6 assaulted that is on the floor?
- 7 A: Yes.
- 8 Q: On a chair?
- 9 A: Yes.
- 10 Q: On a couch?
- 11 A: Yes.
- 12 Q: And you used the word rape. I mean we don't really use
- 13 it so much, but it's not because it's a bad word. We just
- 14 have a legal term. But that you were raped vaginally, anally,
- 15 on all of those places?
- 16 A: What does that mean?
- 17 Q: What you said a moment ago that a penis was in your
- 18 behind.
- 19 A: Yes.
- 20 Q: Okay. But you didn't bleed from those things and you
- 21 didn't --
- 22 A: No.
- 23 Q: --- report those things?
- 24 A: I did after it was done.
- 25 Q: The next morning?

Victim 2 - CROSS BY MR. LOY

1 A: In the morning, yes.

2 Q: But when your grandma came in I said?

3 A: No. Because I couldn't.

4 Q: And you didn't wake your aunt up or anything like that?

5 A: I couldn't. He was in the room.

6 Q: Okay. Just one moment. Okay? I promise. We might be
7 through.

8 (Whereupon, there is a pause in the proceedings.)

9 Q: You thought I was coming back to ask you more questions,
10 didn't you?

11 A: Who?

12 Q: You thought I was coming back to ask you more questions,
13 ~~didn't you?~~

14 A: Yes.

15 Q: I didn't. I'm done. Thank you.

16 THE COURT: Any redirect?

17 MR. JUSTIS: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. JUSTIS:

20 Q: **Victim 2**, this Jon that you talked about --

21 A: Yes.

22 Q: Could you tell me what he looked like?

23 A: He was kind of bigger and he had really long, curly hair
24 and a long, curly beard.

25 MR. JUSTIS: Thank you. No further questions.

Victim 1 - DIRECT BY MR. JUSTIS

1 MR. LOY: None, Your Honor. Thank you.

2 THE COURT: You may step down, Victim 2. Thank you. You
3 may call your next witness.

4 MR. JUSTIS: At this time, Your Honor, the State calls
5 Victim 1.

6 (Whereupon, there is a pause in the proceedings until the
7 witness enters the courtroom.)

8 THE CLERK: Can you place your left hand on the Bible and
9 raise your right hand? State your full name for the record.
10 Just say your full name.

11 THE WITNESS: Victim 1

12 THE CLERK: What's your last name?

13 THE WITNESS: Victim 1

14 THE CLERK: Do you solemnly swear or affirm to tell the
15 truth, the whole truth, and nothing but the truth, so help you
16 God?

17 THE WITNESS: Yes.

18 THE CLERK: Thank you. You can sit down.

19 Victim 1, being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. JUSTIS:

23 Q: Good morning, Victim 1

24 A: Good morning.

25 Q: That's excellent. I need you to talk real loud like

Victim 1 - DIRECT BY MR. JUSTIS

- 1 that. In fact, I'm going to talk loud too. All right?
- 2 Because the court reporter here -- she has to hear everything
- 3 you say. Okay? And I'm getting old and I can't hear too
- 4 good; so you have to be -- you can be as loud as you want in
- 5 that microphone. Okay? Can you tell me, Victim 1, how old you
- 6 are?
- 7 A: Six.
- 8 Q: Six years old? Where -- where do you live right now?
- 9 A: In a hotel.
- 10 Q: Okay. And what grade are you going into?
- 11 A: Second.
- 12 Q: Second grade? What is your favorite subject in school?
- 13 A: Math.
- 14 Q: Math? Okay. If I asked you what the difference between
- 15 the truth and a lie is, do you think you could tell me?
- 16 A: No.
- 17 Q: It's kind of a tough question, isn't it? If I told you
- 18 my shirt was green, would that be a truth or a lie?
- 19 A: A lie.
- 20 Q: Okay. What if I said your dress was green? Would that
- 21 be a truth or a lie?
- 22 A: Truth.
- 23 Q: Okay. Is it better to tell the truth or to tell a lie?
- 24 A: Tell the truth.
- 25 Q: Okay. And how often should you tell the truth?

Victim 1 - DIRECT BY MR. JUSTIS

- 1 A: All the time.
- 2 Q: Okay. All right. When is your birthday?
- 3 A: [REDACTED].
- 4 Q: Okay. And so how old are you going to be on [REDACTED]?
- 5 A: Seven.
- 6 Q: Okay. That was a trick question. You did good. All
- 7 right. So you're going to be seven on [REDACTED]. Do you
- 8 remember your last birthday?
- 9 A: No.
- 10 Q: You don't remember your last birthday? Do you remember
- 11 if you had a party?
- 12 A: No.
- 13 Q: No? Do you remember if anybody came to see you on your
- 14 birthday?
- 15 A: No.
- 16 Q: No, you don't? Do you remember -- do you remember having
- 17 to talk to any police officers?
- 18 A: Yes.
- 19 Q: Okay. And what did you talk to those police officers
- 20 about? Do you remember?
- 21 A: No.
- 22 Q: Okay. Do you remember talking to any other people with
- 23 the police officers?
- 24 A: No.
- 25 Q: What about any doctors or nurses? Did you talk to any

Victim 1 - DIRECT BY MR. JUSTIS

- 1 doctors or nurses?
- 2 A: Yes.
- 3 Q: Okay. And what did you tell those doctors and nurses?
- 4 A: I don't remember.
- 5 Q: Okay. Do you remember going to the hospital?
- 6 A: Yes.
- 7 Q: And what happened at the hospital?
- 8 A: We had to stay in separate rooms.
- 9 Q: Who had to stay in separate rooms?
- 10 A: Me and my cousin.
- 11 Q: Who is your cousin? What's your cousin's name?
- 12 A: **Victim 2**
- 13 Q: Okay. And where does your cousin **Victim 2** live?
- 14 A: In Indiana.
- 15 Q: Okay. Were you in Indiana when this happened?
- 16 A: No.
- 17 Q: Okay. Was **Victim 1** here? I'm sorry. Was **Victim 1** here
- 18 when you went --
- 19 A: Yes.
- 20 Q: -- to the hospital? Okay. Was she visiting you?
- 21 A: Yes.
- 22 Q: Okay. And you said that you were in separate rooms.
- 23 What about -- you said you talked to police; is that true?
- 24 A: Yes.
- 25 Q: Okay. Was anybody with you when you talked to police?

Victim 1 - DIRECT BY MR. JUSTIS

- 1 A: My mom was.
- 2 Q: Okay. Was your dad there?
- 3 A: No.
- 4 Q: Where was he?
- 5 MR. LOY: Objection, Your Honor. Can we approach?
- 6 THE COURT: State your -- you may approach.
- 7 A: I don't know.
- 8 (Whereupon, a bench conference is held off the record.)
- 9 Q: You said Victim 2 was there; right?
- 10 A: Yes.
- 11 Q: What kind of things did you and Victim 2 do when Victim 2
- 12 was there?
- 13 A: Play outside in our back yard.
- 14 Q: Okay. And is that the only thing you did was play in
- 15 your back yard?
- 16 A: No.
- 17 Q: What else did you do?
- 18 A: We played with our toys and we went on walks.
- 19 Q: Okay. Anything else that you remember?
- 20 A: No, sir.
- 21 Q: And I'm going to show you a picture.
- 22 MR. JUSTIS: It's State's 17.
- 23 Q: Can you tell me if you recognize anything in that
- 24 picture? What is that a picture of? Maybe that's a better
- 25 way to --

Victim 1 - DIRECT BY MR. JUSTIS

- 1 A: My house.
- 2 Q: Okay. And do you know the address of your house?
- 3 A: [REDACTED].
- 4 Q: Do you know the street?
- 5 A: No.
- 6 Q: Okay. Do you know the town it's in?
- 7 A: Charleston.
- 8 Q: All right. I'm also showing you another picture.
- 9 MR. JUSTIS: This is State's 19.
- 10 Q: Do you recognize anything in that picture?
- 11 A: Yes.
- 12 Q: What's in that picture?
- 13 A: My kitchen, the couch, and the blanket, and also the fish
- 14 tank.
- 15 Q: Okay. And is that the inside of the house of that
- 16 picture I just showed you? That other picture that -- let me
- 17 show you again State's 17.
- 18 A: Okay.
- 19 Q: Is this all the same house?
- 20 A: This is the inside and that's the outside.
- 21 Q: Okay. Okay. Now, the inside of the house -- tell me
- 22 some of the things that you recognize in that picture?
- 23 A: The rocking thing from the rocking chair.
- 24 Q: Okay.
- 25 MR. JUSTIS: I beg the Court's indulgence.

Victim 1 - DIRECT BY MR. JUSTIS

1 Q: Victim 1 when you talked to the doctors and nurses, what
2 were you talking to them about? Do you know why you were
3 talking to them?

4 A: No.

5 Q: Okay.

6 MR. JUSTIS: No further questions. Please answer any
7 questions Mr. -- Mr. Loy might have for you.

8 THE COURT: Cross examination?

9 MR. LOY: One moment if I could, Your Honor?

10 CROSS EXAMINATION

11 BY MR. LOY:

12 Q: Good morning.

13 A: Good morning.

14 Q: My name is John. I heard the solicitor call you Victim 1.
15 Is that your name? The solicitor is Mr. Justis, that guy who
16 is not near as tall as me. Victim 1, I've just got one or two
17 questions for you. Okay? He asked you stuff about when your
18 cousin came down and visited and your last birthday and all,
19 and you said you don't remember any of that. You don't
20 remember any of that; right?

21 (Whereupon, there is no verbal response.)

22 Q: Does that mean I don't remember?

23 A: I don't remember.

24 Q: Thank you.

25 MR. LOY: I don't have any more questions for her.

AUDREY HAGENOW - DIRECT BY MR. WARD

1 THE COURT: Anything further, Solicitor?

2 MR. JUSTIS: Nothing further, Your Honor.

3 THE COURT: You may step down, **Victim 1** Thank you.

4 MS. LYNN: **Victim 1**? **Victim 1**?

5 THE COURT: You can go with Ms. Lynn over there. Okay?

6 THE WITNESS: Okay.

7 (Whereupon, the witness exits the stand after adjusting

8 the microphone.)

9 MR. JUSTIS: Thank you for fixing that.

10 THE COURT: You may call your next witness.

11 MR. WARD: The State calls Audrey Hagenow.

12 THE CLERK: Place your left hand on the Bible and raise

13 your right hand and state your full name for the record.

14 THE WITNESS: Audrey Hagenow.

15 THE CLERK: Do you solemnly swear or affirm to tell the

16 truth, the whole truth, and nothing but the truth, so help you

17 God?

18 THE WITNESS: I do.

19 THE CLERK: Thank you. You can have a seat.

20 MR. WARD: May it please the Court, Your Honor?

21 THE COURT: Yes, it may. Your witness.

22 AUDREY HAGENOW, being first duly

23 sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. WARD:

AUDREY HAGENOW - DIRECT BY MR. WARD

1 Q: Good morning, Ms. Hagenow.

2 A: Good morning.

3 Q: How are you related to **Victim 2**?

4 A: I'm her maternal grandmother.

5 Q: And how are you related to **Victim 1**?

6 A: I'm her maternal grandmother.

7 Q: Okay. So you're --

8 A: Rachel's mother.

9 Q: Where do you currently live?

10 A: In La Porte, Indiana.

11 Q: And how long have you lived there?

12 A: Let's see. I got married in '77; so almost 37 years.

13 Q: And how often do you get to see **Victim**?

14 A: Weekly, if not, you know, two or three times a week.

15 Q: So you guys live --

16 A: Or --

17 Q: -- pretty close to each other?

18 A: Oh, yes. We're, like, seven miles away; so depending on

19 she's with her dad or with her mom, you know, I'm with her,

20 and I'm her primary caregiver in the summers when she's out of

21 school.

22 Q: Okay. How often do you get to see **Victim 1** and her other

23 sister, Nicole?

24 A: Generally, it's about every two months that I would try

25 to come visit them here. And when they were in Alaska, I

AUDREY HAGENOW - DIRECT BY MR. WARD

1 would try to make a trip every -- every couple months to see
2 them so I could stay in contact with them. This summer,
3 they're living with me until -- because their mother is in
4 transition; so they came to live with me in June and, you
5 know, will be there until August. The -- last summer, they
6 were going to come with me. They didn't. Two years ago, they
7 stayed with me for a considerable amount of time while their
8 mom was out. She was working and their dad was on a boat. I
9 mean their dad was -- went up to Alaska and wanted to go
10 Alaska fishing. And the year before that is when they moved
11 from Alaska to South Carolina, and they came and stayed with
12 me for the summer then too.

13 Q: Let's turn your attention back to July of last year. Do
14 you remember -- did you come down to visit at all?

15 A: We came down for their birthdays.

16 Q: And when you say they or their birthdays?

17 A: **Victim 1** birthday was **██████████** and Nicole's was **██████████**
18 **██████████**, and so Rachel was having a party on -- I think it was
19 July 27th, that Saturday. So I was coming down --

20 Q: Okay. And --

21 A: -- and then I was going to take them back with me was the
22 plan.

23 Q: And who came down with you?

24 A: **Victim 2**

25 Q: Okay. What do you remember doing that week or few days

AUDREY HAGENOW - DIRECT BY MR. WARD

1 you were down here?

2 A: Well, when we first got here -- we got here in the
3 morning. We stopped to get doughnuts before we arrived and
4 woke the girls up. I can't so much remember that -- that
5 first day except that we had Chinese food for supper, and Jon
6 was out fishing. So that night they were -- they went to the
7 neighbors to swim and he brought back some shark that he
8 caught at the beach and had butchered it or, you know, cut it
9 up.

10 Q: Did y'all go --

11 A: That night --

12 Q: -- anywhere when you were down here?

13 A: And then on the next day on -- what's that? The
14 birthdays? Yeah. We went -- Monday we went to Folly Beach.
15 It was Jon, **Victim 1**, Nicole, and I, and **Victim**. Okay. We all
16 -- we went to the beach because Rachel was working, you know.
17 When I first got there, she said, "Well, Jon wants to take you
18 to the -- the beach one day," which I thought was unusual
19 because we don't usually do stuff with him, but, you know, so
20 I said, "Okay." We went.

21 Q: Okay.

22 A: And we went out to a farm where he would hunt. I went
23 with -- I think it was the girls and **Victim 2**. You know, he was
24 checking his trail cam. And, you know, the party was on
25 Saturday.

AUDREY HAGENOW - DIRECT BY MR. WARD

1 Q: So on that Saturday you mentioned, how late -- who was in
2 the house Saturday night?

3 A: When I went to bed, it was **Victim 2** Nicole, **Victim 1**, and
4 Rachel. I go to bed, you know, around eight o'clock or so. I
5 go pretty early. So then Nicole, if I'm not mistaken, was in
6 bed already, if I -- if I remember correctly, and it was
7 **Victim 1** turn to be able to sleep with me. And so her and
8 **Victim 2** were in bed, but they kept running in and out and, you
9 know, Rachel was still up watching, you know, TV and they ran
10 -- they were in the living room and I -- I fell asleep.

11 Q: And do you -- did you get up or anything in the middle of
12 the night?

13 A: Yes. I usually wake up between, you know, 2:30 -- three,
14 whatever. Sometime in there, I usually get up to go to the
15 bathroom. So I did wake up to go to the bathroom and then I
16 realized the girls weren't with me. So I checked their bunk
17 bed and they weren't in the bunk bed in **Victim 1** room. So
18 then after I went to the bathroom, I went and looked in the
19 living room and they were on the couch in the living room.
20 **Victim 1** was on one end of the couch and **Victim 2** was on the other
21 -- the opposite end of the couch, and **Victim 2**, you know, moved
22 the covers a little bit that she was up like trying to cover
23 herself, you know.

24 You know, I didn't -- I didn't know, you know, what was
25 said except that as it was dark because there was only, like,

AUDREY HAGENOW - DIRECT BY MR. WARD

1 the aquarium light on and whatever. And as I was going back
2 to the bed, I looked and I saw in the middle of the floor,
3 like, a lump. It's all I can describe it as is a lump. And I
4 -- you know, I didn't know if it was their rug that they had
5 that was, you know, crumpled up or whatever. I don't have any
6 clue. I just said, "Victim 2, what's that?"

7 Q: Okay. And did -- pardon me. I'm showing you what's been
8 marked as State's Exhibits 19 and 20.

9 MR. WARD: May I approach, Your Honor?

10 THE COURT: You may.

11 Q: If you look at State's 19, do you recognize that?

12 A: Yes.

13 Q: And what is it?

14 A: Their living room. The living room and the rug that was
15 on the living room floor and the couch.

16 Q: Okay. Is that the couch that you saw --

17 A: Yes.

18 Q: -- Victim 1 and Victim 2?

19 A: Yes.

20 Q: Okay. And is that the rug that you said was crumpled or
21 whatever you thought you saw?

22 A: Yes. I can't say for sure it was the rug. You know, I
23 know that the rug is always on the floor, but it was a big
24 lump. So I didn't know what it was.

25 Q: Okay.

AUDREY HAGENOW - DIRECT BY MR. WARD

1 A: You know, because it was dark and I just, like, thought
2 it was strange.

3 Q: So after you saw **Victim 1** -- or you saw **Victim 2** and **Victim 1**,
4 what did you do after that?

5 A: I went back to bed.

6 Q: Okay.

7 A: You know, she wasn't -- I just went back to bed and I
8 wasn't fully awake and it was dark and I'm like, okay; so I
9 went back to bed.

10 Q: And then the next morning, what time did you get up in
11 the morning?

12 A: It was around quarter to six. Nicole came in. I usually
13 wake up with the light when Nicole came in and said, you know,
14 "It's wakey time." And so we go to get up to go to church
15 because we were going to go to the 7:30 mass at St. John the
16 Beloved.

17 Q: And who was going to go with you to church?

18 A: Well, **Victim 2** definitely was and I didn't know if both
19 girls were, but Nicole -- she wanted to go to church. **Victim 1**
20 did not. So **Victim 2** and Nicole --

21 Q: Okay.

22 A: -- went with me to church.

23 Q: And what do you remember happening, if anything, on the
24 way to church?

25 A: Well, before we left I asked **Victim 2** -- I said -- you know,

AUDREY HAGENOW - DIRECT BY MR. WARD

1 she didn't -- you know, I said, "Aren't you going to put on
2 your dress?" And she didn't want to put on this dress that I
3 thought she would wear for church. But I was like, "Okay.
4 That's fine, you know." And so then we got in the car and --
5 and because of the response she had given me when I asked her
6 about that lump in the thing, I said, "Victim 1, what's -- what's
7 not -- what aren't you supposed to tell me?" You know -- and
8 she said -- you know, she told -- gave me a response, and I
9 said, "You know, Victim 2, you have no secrets with Jon, you
10 know. You need to -- you tell me." And then she gave me a
11 response and as I'm driving to church, I think wait a minute,
12 what's wrong with me? I can't -- you know. So I immediately
13 called Rachel and said, "Rachel, Jon molested Victim 2."

14 MR. LOY: Objection, Your Honor.

15 THE COURT: Sustained.

16 Q: Don't say anything that Victim 2 told you.

17 A: No. I'm just saying to what I told Rachel.

18 Q: Right, but that --

19 A: Okay. I said --

20 THE COURT: You need to answer the question that was
21 asked.

22 THE WITNESS: Okay.

23 A: That Jon -- I mean -- okay. I said, you know, I need to
24 get to the hospital. And so based on her response, I returned
25 to the home, grabbed my suitcases because I figured I wasn't

AUDREY HAGENOW - DIRECT BY MR. WARD

1 going back there. We were supposed to go home. I mean we
2 were supposed to leave for Indiana after church, but I thought
3 I'll get my suitcases, you know, and I left the girls'
4 suitcases there. And Rachel grabbed **Victim 1** and drove her car
5 and I followed her. You know, I followed her to Trident.
6 Q: Okay. And then what happened while you were at
7 Summerville Hospital or Trident?
8 A: I went up to the desk and I said my granddaughter has
9 been molested. I need her to be seen.
10 Q: Okay. And did you speak with anyone else?
11 A: Once they took her back.
12 Q: And were -- who were you with when they took her back?
13 Who --
14 A: Just me and her.
15 Q: And her is?
16 A: **Victim 2**.
17 Q: Okay. And who -- and then --
18 A: And Nicole. Well, when they -- when Nicole -- as soon as
19 Rachel go there then Nicole went and sat with her mom.
20 Q: Okay. And after being at Summerville, did you go
21 anywhere else? After Summerville Hospital, did you go
22 anywhere else?
23 A: Yes. They sent us to MUSC.
24 Q: Okay. And then did you --
25 A: They gave us a, you know, escort there.

AUDREY HAGENOW - DIRECT BY MR. WARD

1 Q: Okay. And then after that, did you talk to anyone else?
2 Did you call anyone?

3 A: I called **Victim 2**'s mom --

4 Q: Okay. And then --

5 A: -- to tell her. I didn't call right away because I
6 thought, well, let me, you know, see what happens. So after
7 we were at Trident, I think that's when I called **Victim 2**'s mom.

8 Q: Okay. And then after -- did -- who did you speak with
9 from law enforcement?

10 A: Detective Mosher and there might have been another one
11 too. I don't recall, but Detective Mosher.

12 Q: Okay. And then how long -- what did you do after MUSC?

13 A: Okay. We were there all day. Then we checked into --
14 then we checked into a hotel over by the airport. **Victim 2** --
15 just **Victim** and I, and then went -- her mom flew in that night;
16 so we went and picked her up at the airport around midnight.
17 And then we did make one trip back to the house to get **Victim 2**
18 pillow because she had forgotten her pillow and she wanted her
19 pillow to sleep with; so we made a quick trip back to Rachel's
20 house just to pick up the pillow.

21 MR. WARD: I beg the Court's indulgence.

22 Q: Thank you. No further questions. Please answer any the
23 defense may have.

24 A: Okay.

25 THE COURT: Cross examination?

AUDREY HAGENOW - CROSS BY MR. LOY

1 MR. LOY: Just very briefly, Your Honor.

2 CROSS EXAMINATION

3 BY MR. LOY:

4 Q: When you got up that night at whatever time it was and
5 went out to the bathroom and spoke with the girls and saw
6 them, you noticed nothing amiss or nothing that aroused your
7 suspicion?

8 A: The rug or whatever the lump was.

9 Q: When it -- was it something that caused you concern?

10 A: It was unusual for me. I -- it bothered me some because
11 I asked the question in the morning.

12 Q: Okay. You saw nothing -- if you had seen something that
13 night or heard something that night that had caused you
14 concern for either of your granddaughters' safety, you
15 wouldn't have just gone back to bed; correct?

16 A: Correct.

17 Q: Okay. So whatever it was, a lump in the rug or floor or
18 whatever, you didn't see or hear anything that made you think
19 either of your granddaughters were in trouble or any danger
20 and so you went back to bed? Yes?

21 A: Yes.

22 Q: And prior to getting up, no such bells or whistles or
23 alarms had gone off?

24 A: No. But let me tell you that between that living room
25 and that bedroom -- because I'm like why didn't I hear

AUDREY HAGENOW - CROSS BY MR. LOY

1 anything? There is, like, two sets of closets and a
2 fireplace. The room sits back and I am a heavy sleeper.

3 Q: And after you went back to bed before you got up in the
4 morning to go to church, again, nothing awakened you to cause
5 you concern that anybody was in trouble or in need of your aid
6 or assistance?

7 A: No.

8 MR. LOY: Thank you. No more questions.

9 THE COURT: Any further redirect?

10 MR. WARD: Nothing further, Your Honor.

11 THE COURT: You may step down, ma'am. Thank you. You
12 may call your next witness.

13 MR. WARD: The State calls Rachel Brown.

14 THE CLERK: Please place your left hand on the Bible and
15 raise your right hand. State your full name for the record.

16 THE WITNESS: Rachel Michelle Brown.

17 THE CLERK: Do you solemnly swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth, so help you
19 God?

20 THE WITNESS: Yes.

21 THE CLERK: Thank you. You can have a seat.

22 MR. WARD: May it please the Court, Your Honor?

23 THE COURT: Yes. Your witness.

24 RACHEL BROWN, being first duly sworn,
25 testifies as follows:

RACHEL BROWN - DIRECT BY MR. WARD

DIRECT EXAMINATION

- 1
2 BY MR. WARD:
3 Q: Good morning, Ms. Brown.
4 A: Good morning.
5 Q: Where do you currently live?
6 A: Currently, we're in the middle of transferring; so right
7 now the girls live with my mother.
8 Q: And your girls are?
9 A: **Victim 1** and Nicole Elizabeth Brown.
10 Q: Okay. Do you have -- are you currently married?
11 A: Yes.
12 Q: Who are you married to?
13 A: Jonathan Michael Brown.
14 Q: Are you employed?
15 A: I am.
16 Q: And where do you work?
17 A: I work with the United States Coast Guard.
18 Q: And has that job made you live in numerous -- have you
19 lived in other places?
20 A: Yes.
21 Q: Where else have you lived?
22 A: While I was married -- I got married in Staten Island,
23 New York, and then we moved to Kodiak, Alaska, and then we
24 came here to Summerville, South Carolina.
25 Q: And do you remember -- what was the address you lived at

RACHEL BROWN - DIRECT BY MR. WARD

1 here in South Carolina?

2 A: [REDACTED].

3 Q: And do you know what county that's in?

4 A: Dorchester.

5 Q: Did Mr. Brown have a job while you were living here?

6 A: No, he did not.

7 Q: So what did -- what would -- what would he do during the
8 day?

9 A: He would -- because I got deployed, we were usually out
10 three months and back in for two months; so we decided he
11 would be an at-home father for our two girls.

12 Q: So you would be gone for three months at a time?

13 A: Approximately three months at a time and then back home
14 for two months and another three months out.

15 Q: Okay. I'm showing you what's been marked as State's
16 Exhibit 17.

17 MR. WARD: May I approach, Your Honor?

18 THE COURT: You may.

19 Q: Do you recognize that?

20 A: Yes.

21 Q: And what is -- what is it a picture of?

22 A: It's of our -- our last rental home at [REDACTED]

23 [REDACTED].

24 Q: Okay. And is that a fair and accurate representation of
25 what the house looks like?

RACHEL BROWN - DIRECT BY MR. WARD

1 A: Yes.

2 MR. WARD: At this time, we'd ask for State's 17 to be
3 admitted into evidence, Your Honor.

4 THE COURT: Any objection?

5 MR. LOY: No objection, Your Honor.

6 THE COURT: It's in.

7 (Whereupon, State's Exhibit Number 17, a color
8 photograph, is admitted into evidence.)

9 Q: Let's turn your attention back to July of last year.
10 Were you still living here in South Carolina?

11 A: Yes.

12 Q: And who was all in the house at that time living with
13 you?

14 A: Jonathan Brown, Victim 1, and Nicole Elizabeth
15 Brown, and myself.

16 Q: Okay. And did anyone come to visit?

17 A: My -- my mother and my niece, Victim 2 came up to visit
18 for the girls' birthday.

19 Q: Do you remember around when that was?

20 A: It was the -- around July 28th, and they had been there
21 for about four or five days.

22 Q: And what were they coming -- what were Victim 2 and your mom
23 or Victim 2 grandma coming down for?

24 A: They were coming down to celebrate the girls' birthday on
25 [REDACTED] and [REDACTED].

RACHEL BROWN - DIRECT BY MR. WARD

- 1 Q: And what -- what did y'all do while they were down here?
- 2 A: I was -- I was still working. I had -- I had work to do;
- 3 so during the weekdays, I know one day they went to the beach.
- 4 And I think they went to a -- one of the plantations and --
- 5 and then we had a party on Saturday --
- 6 Q: Okay.
- 7 A: -- for the girls.
- 8 Q: And that Saturday after the party, who was -- how late
- 9 were you up that night?
- 10 A: I don't recall.
- 11 Q: Was anyone else up with you or where was everyone else
- 12 Saturday night?
- 13 A: Saturday night -- my mom goes to bed early; so she was
- 14 already in bed. And I believe the girls were already in bed
- 15 as well. When I went to bed, the only person up was Jonathan
- 16 Brown. He normally stayed up late.
- 17 Q: Okay. I'm showing you what's been marked as State's
- 18 Exhibits 19, 20, and 26. If you look on the back, they have
- 19 the numbers. State's 19 -- do you recognize that?
- 20 A: Yes. It's our living room.
- 21 Q: All right. And is that a fair and accurate
- 22 representation of what your living room looked like --
- 23 A: Yes.
- 24 Q: -- at the time? And what about State's Exhibit 20, if
- 25 you look on the back? Do you recognize that?

RACHEL BROWN - DIRECT BY MR. WARD

1 A: Yes. It's the living room floor.

2 Q: Okay. Is that a fair and accurate representation of what
3 the living room floor looks like?

4 A: Yes.

5 Q: And then the last one, State's Exhibit 26?

6 A: Yes.

7 Q: And what is that a picture of?

8 A: That is the picture of the master bedroom where I was
9 sleeping.

10 Q: Okay. Is that a fair and accurate representation of what
11 your master bedroom looks like?

12 A: Yes.

13 MR. WARD: At this time, Your Honor, we'd ask State's
14 Exhibits 19, 20, and 26 be entered.

15 THE COURT: Any objection?

16 MR. LOY: None, Your Honor. Thank you.

17 THE COURT: They're in.

18 (Whereupon, State's Exhibits 19, 20, 26, all color
19 photographs, are admitted into evidence.)

20 MR. WARD: May I publish, Your Honor?

21 THE COURT: You may.

22 Q: I'm showing you what's been marked as State's 17. Can
23 you tell the jury what this is a picture of?

24 A: This is a picture of [REDACTED], the house
25 that we were renting.

RACHEL BROWN - DIRECT BY MR. WARD

- 1 Q: Okay. And I'm showing you State's 19. Can you kind of
2 describe what that is?
- 3 A: That is the living room.
- 4 Q: All right. And State's 20?
- 5 A: That is the living room floor.
- 6 Q: And State's 26?
- 7 A: That's the master bedroom.
- 8 Q: Okay. And you stated you were sleeping in there that
9 Saturday night?
- 10 A: That's correct.
- 11 Q: Was Mr. -- was the defendant in that room with you as
12 well?
- 13 A: He came to bed late that morning or -- I don't know what
14 time, but he did come in later.
- 15 Q: Okay. That Saturday night, did you wake up at all in the
16 middle of the night or anything?
- 17 A: I -- I was in and out of sleep. There is a time that I
18 do remember kind of being awake because I heard the girls
19 crying and -- and I was just -- I was just like, oh, do I get
20 up? At the time, I was taking a sleep medication; so most of
21 the time I was drowsy. And so I just -- I just went back to
22 sleep. I was, like, John's up. He'll take -- he'll take care
23 of it.
- 24 Q: Okay.
- 25 A: And I couldn't tell you how long I heard the crying for,

RACHEL BROWN - DIRECT BY MR. WARD

1 but then I heard it stop and I heard the girls go to bed. I
2 figured it was -- Victim 1 was -- Victim 1 had done something to
3 Victim 2 or something and Victim 2 got mad and was crying. So --
4 Q: And from where -- if you can, kind of describe for the
5 jury in your house where your bedroom is compared to the
6 living room? Is it close together?
7 A: I'll just say I can point in the picture. I think 26 it
8 was.
9 Q: I'm showing you State's 26.
10 A: Right over there is where the living room is.
11 Q: Okay.
12 A: You can kind of see where the TV and computer are.
13 Q: I'm going to show you what's been marked as State's
14 Exhibit 27.
15 MR. WARD: May I approach, Your Honor?
16 THE COURT: You may.
17 Q: Do you recognize that photo?
18 A: That is the hallway. So if you were standing right
19 outside the master bedroom door, that's what you would be
20 looking at.
21 Q: Okay.
22 A: It's the hallway to the other bedrooms and to the garage.
23 Q: And is that a fair and accurate representation of the
24 hallway?
25 A: Yes.

RACHEL BROWN - DIRECT BY MR. WARD

1 MR. WARD: At this time, we'd ask for State's 27 to be
2 admitted into evidence, Your Honor.

3 THE COURT: Any objection?

4 MR. LOY: No, Your Honor.

5 THE COURT: It's in.

6 Whereupon, State's Exhibit Number 27, a color photograph,
7 is admitted into evidence.)

8 MR. WARD: May I publish, Your Honor?

9 THE COURT: You may.

10 Q: I'm showing you what's been marked as State's 27. Can
11 you describe what this photo is?

12 A: This is the hallway looking out of the master bedroom.

13 Q: Okay. And then where is the living room kind of off from
14 this picture?

15 A: Off from the picture, it's to the right.

16 Q: Okay. So that Saturday night after you heard some crying
17 or whatever and you said you figured Mr. -- the defendant
18 would take care of it?

19 A: Would handle it. That the girls were up late and it was
20 time for them to go to bed.

21 Q: Okay. The next morning, what -- what did you do in the
22 morning when you woke up?

23 A: In the morning, my mother and **Victim 2** and Nicole were going
24 to church. **victim 1** was -- had fell asleep on the couch.

25 That's where I found her in the morning, and she didn't want

RACHEL BROWN - DIRECT BY MR. WARD

1 to go; so I wasn't going to force her to go to church because
2 I really didn't want to go either. So we stayed home and
3 Jonathan Brown -- he -- he had woken up sometime in-between
4 there before -- when -- pretty much after they left.

5 Q: Okay. And what do you remember happening next?

6 A: Not even -- it didn't seem not even like five minutes
7 after they had left that my mother called me on the phone. I
8 was on the -- getting on the computer and she had told me that
9 Jonathan had --

10 Q: Don't say anything.

11 THE COURT: You can't say what anybody told you, just
12 what you did.

13 A: And so -- but my mother had said that and we -- I grabbed
14 **Victim 1**, got -- she had a nightgown on; so I went and I
15 grabbed pants for her. I grabbed her and we went into the car
16 and I said, "We're going to get doughnuts."

17 Q: Who did you say that to?

18 A: Jonathan.

19 Q: Okay. And where did you go when you left?

20 A: After we -- my mom had come back because I don't even
21 think she had left the neighborhood yet after -- or when she
22 had called. But she came back and I waited for her because
23 she went inside to grab her bags or whatever she could grab in
24 her hands in one trip, and then she followed me to Summerville
25 Trident --

RACHEL BROWN - DIRECT BY MR. WARD

1 Q: Okay.

2 A: -- Hospital.

3 Q: And what did you do while you were at Summerville
4 Hospital?

5 A: At first, **Victim 2** and my mom were in back, and then Nicole,
6 **Victim 1** and I were just in the waiting room. We were
7 waiting. And then eventually they called us back and we went
8 into a separate room.

9 Q: Okay. And who did you speak with, if you can remember?

10 A: I don't -- I don't remember the officers' names, but they
11 --

12 Q: But it was law enforcement?

13 A: Correct.

14 Q: Okay. And then after you spoke with law enforcement,
15 what did you do?

16 A: We had talked -- talked to -- we had one group of law
17 enforcement officers come -- come in and then -- then we had
18 another one come in after a little bit, and then after we had
19 talked to the second group of officers, we were told that we
20 were going to go to MUSC. So I got the girls together and we
21 got in the car and followed another officer down to MUSC.

22 Q: And what happened at MUSC?

23 A: They did regular -- you know, admitted you and we were
24 put in a separate room, and the girls had to go through
25 examinations, both of them.

RACHEL BROWN - DIRECT BY MR. WARD

1 Q: And when you say separate rooms, who was separated?

2 A: My -- my mom and Victim 2.

3 Q: Okay. From you and Victim 1?

4 A: Yes.

5 Q: Okay. And then after MUSC, after that got done, what --
6 what did you do?

7 A: At this point, I was in total -- total shock. I didn't
8 know what to do. So -- but we went home. My mom and Victim 2
9 went to a hotel. I debated if I wanted to because I wasn't
10 sure if I wanted to go back home, but -- but we did and then
11 the next couple of days was kind of hectic because the -- we
12 had to see more -- more people. So it was just -- it was a
13 nightmare, you know.

14 Q: Okay.

15 A: You don't know what -- you don't know what to do.

16 Q: And then after all that, did you ever speak with
17 Detective Mosher or anyone else from law enforcement after
18 kind of the initial few days after all this?

19 A: Yes. They had -- they were there when the girls were
20 getting their forensic interviews, and then they would -- they
21 also came to search the -- the house for evidence and stuff.

22 Q: I'm showing you what's been marked as State's Exhibit 11.

23 MR. WARD: May I approach, Your Honor?

24 THE COURT: You may.

25 Q: Look in there and -- I'm sorry. Do you recognize what's

RACHEL BROWN - DIRECT BY MR. WARD

1 in there?

2 A: It's a tie-dyed shirt of Jonathan's.

3 Q: And how do you know it's the defendant's shirt?

4 A: It's probably one of his most favorite shirts. He
5 frequently wore it.

6 Q: Okay.

7 MR. WARD: At this time, Your Honor, we'd ask for State's
8 11 to be admitted into evidence.

9 THE COURT: Any objection?

10 MR. LOY: Relevance, Your Honor. It's not been
11 established.

12 THE COURT: Pardon?

13 MR. LOY: I said relevance has not been established as to
14 this. It's a shirt. There's no -- no relevance.

15 MR. WARD: That's fine. We'll hold off. I beg the
16 Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 Q: Can you please tell us what the defendant looked like --
19 his appearance last July?

20 A: Last July, he had -- he had longer hair. He also had a
21 full beard, and he was -- he weighed more.

22 Q: Okay. I'm showing you what's been marked as State's
23 Exhibit 31. Do you recognize the people in that picture?

24 A: I recognize Jonathan Brown. I do not recognize the other
25 person.

RACHEL BROWN - DIRECT BY MR. WARD

1 Q: Okay. Is that a fair and accurate picture of what the
2 defendant looked like last July?

3 A: Yes.

4 MR. WARD: At this time, Your Honor, we'd ask for State's
5 31 to be admitted into evidence.

6 THE COURT: Any objection?

7 MR. LOY: No, Your Honor.

8 THE COURT: It's in.

9 (Whereupon, State's Exhibit Number 31, a color
10 photograph, is admitted into evidence.)

11 MR. WARD: May I publish for the jury, Your Honor?

12 THE COURT: You may.

13 Q: Can you point out who you recognize in this photo?

14 A: (Gesturing)

15 Q: And who is that?

16 A: That is my husband, Jonathan Brown.

17 Q: Okay. And do you recognize -- do you see Mr. Brown in
18 the courtroom today?

19 A: I do. He doesn't look the same though.

20 Q: Could you please point him out for the jury?

21 A: He's the gentleman in the plaid shirt.

22 Q: Thank you.

23 MR. WARD: Please let the record reflect Ms. Brown
24 identified the defendant.

25 THE COURT: The record will so reflect.

RACHEL BROWN - DIRECT BY MR. WARD

1 Q: And do you recognize the shirt he is wearing in that
2 photograph?

3 A: Yes.

4 Q: All right. And what shirt is that?

5 A: It's a tie-dyed shirt that he wore frequently.

6 Q: Thank you.

7 MR. WARD: I beg the Court's indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 Q: State's 11 that I showed you a moment ago -- is that the
10 same shirt you see in the photograph?

11 A: Yes.

12 Q: I'm showing you what's been marked as State's Exhibit 12.
13 Please look in there and tell me what you see?

14 A: That is a shirt of **Victim I**

15 Q: And could you describe the shirt briefly, please?

16 A: It's -- it's been a while, but it is -- it's blue with a
17 little bit of ruffle on top and I believe a glitter butterfly
18 on the front.

19 Q: Okay. And you said whose shirt is that?

20 A: **Victim I**, my daughter.

21 Q: Okay.

22 MR. WARD: No further questions. Please answer any the
23 defense may have.

24 THE COURT: Cross examination?

25 MR. LOY: No. I don't have any questions. Thank you.

RHONDA CUMBEE - DIRECT BY MR. WARD

1 THE COURT: You may step down, ma'am. Thank you. You
2 may call your next witness.

3 MR. WARD: Rhonda Cumbee.

4 THE CLERK: Place your left hand on the Bible and raise
5 your right hand. State your full name for the record.

6 THE WITNESS: Rhonda Lynn Cumbee.

7 THE CLERK: Do you solemnly swear or affirm to tell the
8 truth, the whole truth, and nothing but the truth, so help you
9 God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you. You can have a seat.

12 MR. WARD: May it please the Court, Your Honor?

13 THE COURT: You may proceed.

14 RHONDA CUMBEE, being first duly
15 sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. WARD:

18 Q: Ms. Cumbee, where do you work?

19 A: I work at Select Health and also Summerville Medical
20 Center.

21 Q: How long have you worked at Summerville Medical Center?

22 A: I returned there back in 2008 full-time.

23 Q: And what -- what is your job title there?

24 A: Registered nurse.

25 Q: And what are some of your duties there as a registered

RHONDA CUMBEE - DIRECT BY MR. WARD

1 nurse?

2 A: I triage, assess patients, medicate patients, take a
3 history, discharge patients, admit them.

4 Q: Okay. And do you remember -- how did you -- do you
5 remember becoming involved in this case?

6 A: I do.

7 Q: What -- what do you remember? How did you first become
8 involved?

9 A: I actually triaged **Victim 2**

10 Q: And when you say triaged, what does that mean?

11 A: I repected [sic.] her into the computer with her name,
12 basic information like date of birth, and got her primary
13 physician's name from the grandmother. Also, the chief
14 complaint. I took a brief medical history for the chief
15 complaint, her medications, and allergies.

16 Q: Okay. And after you took all that information, what did
17 you do?

18 A: I notified my physician and also Summerville police.

19 Q: Okay. And after you notified Summerville police, what
20 was -- what did you do next?

21 A: I went in actually to go ahead and complete my assessment
22 of her, which is just a brief physical assessment, listening
23 to breath sounds, heart rate, and then to let them know that
24 we would have the police come in and actually speak with them,
25 and that our policy for a chief complaint like that that we

RHONDA CUMBEE - DIRECT BY MR. WARD

1 have to legally report it.

2 Q: And who was -- who was in the room with you?

3 A: **Victim 2** and her grandmother.

4 Q: And were -- was anyone else there for this?

5 A: Yes. When I triaged them, they informed me then that the
6 aunt and two cousins were in the lobby.

7 Q: Okay. And did you ever speak with them?

8 A: I did speak with **Victim 1** and her mom. I actually had
9 them -- that particular day, I was the charge nurse as well,
10 and so I had them bring them back to a room in a separate
11 room.

12 Q: Okay. And after you spoke with them, what happened?
13 What did you do?

14 A: The police were actually there and so I basically just
15 went in as an escort for the police so that there was a female
16 present. Plus, I had been the initial person with **Victim 2** and
17 so for her comfort level for her to speak with an officer, I
18 remained in the room.

19 Q: Okay. And did you make any other phone calls or call
20 anyone to speak with anyone else?

21 A: Yes. The physician also had notified the pediatric
22 MUSC's ER for a SANE exam to be completed. We don't do those
23 at Summerville and so we would -- we knew we were going to
24 transfer **Victim 2** there, and I gave a report to Dr. Busch.

25 Q: Okay. And what is a SANE exam?

RHONDA CUMBEE - DIRECT BY MR. WARD

1 A: It's a sexual assault nurse examination.

2 Q: Okay. So while they were in your care, you didn't
3 perform any tests on them?

4 A: Correct. What I did was just listen to her lung sounds,
5 just did a brief physical assessment like skin color. I did
6 not notice any bruises at the time.

7 Q: Okay. And you stated you called 9-1-1 and do you
8 remember who arrived from --

9 A: Officer Jourdan was the first one to arrive.

10 Q: Okay. And after they left for MUSC, were you -- did you
11 have any other involvement?

12 A: No.

13 MR. WARD: I beg the Court's indulgence, Your Honor.
14 Nothing further, Ms. Cumbee. Please answer any questions the
15 defense may have.

16 THE COURT: Cross examination?

17 MR. LOY: Briefly.

18 CROSS EXAMINATION

19 BY MR. LOY:

20 Q: The physical examination you performed would be described
21 as cursory at best. Is that fair to say?

22 A: Yes. I -- we do not do -- we did not do a genital exam
23 or the -- with the physician, I would normally be the one
24 assisting her. All I did was listen to breath sounds, her
25 heart sounds, and just check pulses and stuff.

RHONDA CUMBEE - CROSS BY MR. LOY

1 Q: Just a cursory examination?

2 A: Correct.

3 Q: And there was nothing out of the ordinary that your
4 cursory examination revealed?

5 A: Correct.

6 Q: Thank you.

7 MR. LOY: Nothing more.

8 THE COURT: Any -- any redirect?

9 MR. WARD: No redirect, Your Honor.

10 THE COURT: You may step down, ma'am. Thank you. You
11 may call your next witness.

12 MR. JUSTIS: Thank you, Your Honor. At this time, the
13 State calls Officer Jourdan.

14 (Whereupon, there is a pause in the proceedings until the
15 witness enters the courtroom.)

16 THE CLERK: Please place your left hand on the Bible and
17 raise your right hand. State your full name for the record.

18 THE WITNESS: Jonathan Jourdan.

19 THE CLERK: Do you solemnly swear or affirm to tell the
20 truth, the whole truth, and nothing but the truth, so help you
21 God?

22 THE WITNESS: Yes.

23 THE CLERK: Thank you. Have a seat.

24 THE COURT: Your witness.

25 MR. JUSTIS: Thank you, Your Honor.

1 OFFICER JONATHAN JOURDAN, being first
2 duly sworn, testifies as follows:

4 BY MR. JUSTIS:

6 A: Summerville Police Department.

8 A: About two years.

10 A: Patrolman First Class.

13 A: Basic patrol, respond to calls, take reports.

16 | A: Yes.

18 A: I was dispatched there for a report of a sexual assault
19 to a juvenile.

22 A: When I arrived, I initially spoke to Nurse Cumbee. After
23 I spoke to her, I spoke to Victim 2 and also to Victim 1.

OFFICER JONATHAN JOURDAN - DIRECT BY MR. JUSTIS

1 A: After I spoke to everybody, I notified my supervisors and
2 then we in turn notified Detective Mosher.

3 Q: Okay. And did Detective Mosher respond to the scene?

4 A: Yes.

5 Q: After Detective Mosher responded to the scene, what was
6 your involvement after that point?

7 A: Initially, I took a couple statements from the nurse.
8 After that, I was instructed to give an escort to the
9 grandmother and to **Victim 2** to MUSC.

10 Q: Okay. And when you say you took statements, were they
11 oral or written?

12 A: Written.

13 Q: And was that the extent of your involvement in this case?

14 A: Yes, sir.

15 MR. JUSTIS: No further questions. Please answer any
16 questions Mr. Loy might have for you.

17 THE COURT: Any cross?

18 MR. LOY: None, Your Honor. Thank you.

19 THE COURT: You may step down, Officer. Thank you. You
20 may call your next witness.

21 MR. JUSTIS: Your Honor, at this time, I believe our next
22 witnesses will be here at one. I think this would probably be
23 an appropriate time to take our lunch break at this time.

24 THE COURT: All right. Ladies and gentlemen of the jury,
25 we'll go ahead and take our lunch break at this time. It's

1 about 11:30 and they'll be ready to proceed at one o'clock.
2 So if you would, please be in your jury room several minutes
3 before one o'clock so that we can get started on time. I
4 certainly would appreciate that.

5 Again, please don't talk about the case with anyone or
6 don't allow anyone to talk about the case with you, but have a
7 nice lunch. Thank you.

8 (Whereupon, the jury exits the courtroom at 11:29 a.m.)

9 THE COURT: Anything further at this time from either the
10 State or the defense?

11 MR. JUSTIS: Not from the State, Your Honor.

12 MR. LOY: Yes, Your Honor. At this time, I would renew
13 my earlier motion to suppress the forensic interview of the
14 child, **Victim I**. I know the Court has ruled earlier, but we've
15 received evidence since then. I take it it's a motion in
16 limine up until that -- or an order in limine up until it
17 comes in.

18 It was admitted under a code section which says -- and I
19 know the Court recalls, but that the statement -- out-of-court
20 statement under those circumstances is admissible if it's
21 given in response to questioning conducted during an
22 investigative interview of the child, if an audio and visual
23 recording of the statement is preserved on film, videotape or
24 other electronic means, three, the child testifies at the
25 proceeding and is subject to cross examination on the elements

1 of the defense -- offense -- excuse me -- and the making of
2 the out-of-court statement, and the Court finds particularized
3 guarantees of trustworthiness.

4 Your Honor, it's the defense position the child is not
5 competent to testify as to the elements of the offense, and
6 that's part of the groundwork that has to be laid before the
7 -- the forensic interview itself can be interviewed [sic].

8 **Victim I** came in and specifically told the solicitor she
9 doesn't recall anything that happened that night and she
10 doesn't recall speaking with the person doing a forensic
11 interview.

12 My questioning of the child was quite limited, but I
13 specifically asked about those things either, and she said she
14 doesn't recall that evening, she doesn't recall what happened,
15 and she doesn't recall having given the -- the interview is my
16 recollection of her testimony.

17 I would note that in South Carolina Department of Social
18 Services versus Doe, 292 S.C. 211, the Supreme Court -- the
19 Supreme Court ruled on a similar question is my understanding.
20 I don't have the entire case in front of me, but I think it's
21 a similar question. That, one, if the child is mature enough
22 to, one, understand questions and narrate answers, two, to
23 perceive facts accurately through the medium of the senses,
24 three, to recall them correctly, four, to relate a true
25 version of the facts perceived, five, to know the different

1 between right and wrong, good or bad, to understand it is
2 right to tell the truth and wrong to lie, to be willing to
3 tell the truth and to fear punishment, then he is competent to
4 testify.

5 And while this child may in some instances be competent
6 to testify as to some things, to be competent to testify as to
7 what she has to be willing to testify or able to testify to
8 lay the foundation for the introduction of that forensic
9 interview, she has to be subject to meaningful cross
10 examination on the elements of the offense that have been
11 alleged, as well as the -- the making of the interview, and
12 she's simply not.

13 So when it comes down to number three -- and this is the
14 Court's ruling. I won't reiterate it, but one, two and three,
15 and number three is she is competent if she can -- as to those
16 facts if she can recall them correctly. And what we've got is
17 a blank slate here, a child who has not testified to any of
18 the offense -- to my recollection subject to correction, any
19 of what is alleged within the indictments themselves.

20 And absent the opportunity -- the ability to cross
21 examine her on the making of the statement, on the things that
22 are in the statement, on the allegations made therein, the
23 State just wants to piggyback it in and say, well, she was
24 there. She was available for it, and physically she was
25 present, but she wasn't available for meaningful cross

1 examination. She is not able to recall the facts alleged
2 correctly, and she is not competent to testify as perceived --
3 or as anticipated under the statute itself. So I'm asking --
4 I'm renewing my motion to suppress **Victim 1**'s forensic
5 interview.

6 THE COURT: Thank you, Mr. Loy. Mr. Justis?

7 MR. JUSTIS: Again, I would just say real briefly the
8 statute actually reads that the child is expected to testify
9 at trial and is subject to cross examination. It doesn't say
10 anything about meaningful cross examination, but that she's
11 subject to cross examination. So I would say that's -- that's
12 our kind of sticking point there.

13 THE COURT: I'll take the matter under advisement during
14 the lunch break. If you could, be back into the courtroom at
15 quarter 'til so that we could get started on time at one
16 o'clock, I'll issue my ruling then.

17 MR. LOY: Thank you, Your Honor.

18 MR. WARD: Thank you, Your Honor.

19 (Whereupon, there is a break in the proceedings from
20 11:34 a.m. until 1:09 p.m.)

21 THE COURT: Thank you everyone. You may have a seat.
22 Let me get situated here.

23 All right. Before we bring our jury out, I have had an
24 opportunity to consider your motion, Mr. Loy, regarding the
25 forensic interview of **Victim 1**. And in accordance to South

1 Carolina versus Doe and the Court's consideration of the
2 competency of the child, although the child was able to
3 differentiate the difference between telling the truth and a
4 lie, the child was not able to recall the facts sufficiently.
5 She said she did not recall.

6 And so, therefore, pursuant to 17-23-175, the defense --
7 then under subsection (3) -- (a)(3), the requirement is that
8 the child testifies at the proceeding and is subject to cross
9 examination on the elements of the offense. Clearly, since
10 she did not testify as to the elements of the offense, the
11 defense is not able to cross examine her on those elements; so
12 the videotape of the forensic interview will be excluded.

13 MR. JUSTIS: And, Your Honor, that's for **Victim 1**
14 correct?

15 THE COURT: Correct. Anything further before we bring
16 the jury out?

17 MR. JUSTIS: Nothing further. The State is ready to
18 proceed.

19 MR. LOY: No, Your Honor. Thank you.

20 THE COURT: All right. Let's have our jury, please.

21 (Whereupon, the jury enters the courtroom at 1:11 p.m.)

22 THE COURT: Welcome back, ladies and gentlemen of the
23 jury. We will now proceed with the trial of the case.
24 Solicitor, you may call your next witness.

25 MR. JUSTIS: Thank you, Your Honor. May it please the

JODI SMOOT - DIRECT BY MR. JUSTIS

1 Court. At this time, the State calls Jodi Smoot.

2 THE CLERK: Please place your left hand on the Bible and
3 raise your right hand. State your full name for the record.

4 THE WITNESS: Jodi Smoot.

5 THE CLERK: Do you solemnly swear or affirm to tell the
6 truth, the whole truth, and nothing but the truth, so help you
7 God?

8 THE WITNESS: Yes, ma'am.

9 THE CLERK: Thank you. Have a seat.

10 THE COURT: Your witness.

11 MR. JUSTIS: Thank you, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 JODI SMOOT, being first duly
15 sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. JUSTIS:

18 Q: Ms. Smoot, could you tell us where you work?

19 A: MUSC Pediatric Emergency Department.

20 Q: And what is your -- how long have you worked there?

21 A: Four years.

22 Q: And what's your job title there?

23 A: Registered nurse.

24 Q: And were you a registered nurse at MUSC in July of 2013?

25 A: Yes, sir.

JODI SMOOT - DIRECT BY MR. JUSTIS

1 Q: And as a registered nurse in the pediatric ER, what are
2 some of your daily responsibilities you would have?

3 A: Taking care of different patients that come in, traumas,
4 abuse cases, colds.

5 Q: Okay. Did you have an opportunity to -- to evaluate any
6 individuals from this case?

7 A: Yes, sir.

8 Q: And who did you get to examine in this case?

9 A: **Victim 2**, Nicole, and **Victim 1**

10 Q: Okay. And could you tell the jury how that came about,
11 what you were doing when they arrived at the ER that day?

12 A: During that period, I was a SANE examiner. I was in
13 training to become a SANE nurse, which is a sexual assault
14 nurse examiner, and I was called in on that day to assist Dr.
15 Carrie Busch in the exam.

16 Q: Okay. And you talk about a SANE nurse. What are --
17 what's the difference between a SANE nurse and a non-SANE?

18 A: A SANE nurse has additional qualifications. For
19 training, we have to go through 40 hours of intense online
20 training to do with -- deal with forensics, and also we have
21 to observe so many examinations for training.

22 Q: So you were in training as a SANE nurse at this time?

23 A: Yes.

24 Q: And you mentioned that you assisted a Dr. Carrie Busch.
25 When the children arrived, what did you do?

JODI SMOOT - DIRECT BY MR. JUSTIS

1 A: I was right there during the entire examination and
2 questioning with Dr. Busch.

3 Q: Okay. And after the children were questioned, what did
4 -- what did you do as a result of -- of those conversations
5 with the children?

6 A: We proceeded with the examinations.

7 Q: Okay. Now, when you do these examinations, could you
8 tell us kind of what the examination consists of?

9 A: First of all, we have to have a police report to follow
10 through with the exam. There has to be an allegation of
11 sexual assault. And then when the patients come in, we ask
12 them if they would allow us to examine them. We just cannot
13 go ahead with the exam without them allowing us to. And then
14 we question them a few questions, and then we do the exam.

15 We have a kit -- a SLED kit that we have to follow.
16 Everything stays with you. Nobody is allowed to touch it. We
17 swab their mouths, swab anywhere that the perpetrator might
18 have touched, look over their body head to toe, and those
19 swabs go in a dryer and then it all gets sealed into a kit and
20 that is released to MUSC Public Safety.

21 Q: I'm showing you what's been marked as State's Exhibit 3.
22 Do you recognize that?

23 A: Yes. That's a sexual assault kit.

24 Q: Okay. Is this -- and you can touch it. Is that the type
25 of kit you were -- you were talking about?

JODI SMOOT - DIRECT BY MR. JUSTIS

1 A: Yes, sir.

2 Q: And where do you get those kits from?

3 A: SLED actually gives them to us. When they come to us,
4 they're sealed. We have to unseal it and then we seal it
5 back.

6 Q: So is this the -- I guess the container that you put any
7 kind of samples that you collect in?

8 A: Yes, sir.

9 Q: And you mentioned that there were -- there were three
10 individuals that came to the hospital that day?

11 A: Yes, sir.

12 Q: Do you -- is there a separate kit for each individual?

13 A: Yes, sir.

14 Q: And if -- if I can show you State's 3 again, how can you
15 identify which kit is which?

16 A: Because it's got **Victim 2** name on here. We put the name
17 and the case number, and we fill this out before we even start
18 so that we don't mess it up, and the patients were in separate
19 rooms.

20 Q: And if you can -- this is State's Exhibit 3. If you can,
21 could you open that up?

22 (Whereupon, the witness complies.)

23 Q: And could you kind of tell us what's -- what's inside
24 that?

25 A: Well, there's debris. If there's any debris on a

JODI SMOOT - DIRECT BY MR. JUSTIS

1 patient, we'll put it in this bag. We'll actually lay a
2 blanket out, get the debris off them, because sometimes
3 patients come in with debris on their clothing if it happened
4 outside or something. We'll put all the debris in here. We
5 also have a clothing bag. We'll put underwear and whatever
6 they were wearing in a clothing bag.

7 Q: Okay. And what if you -- where do you get those bags
8 from?

9 A: They're in the kit. They come in the kit.

10 Q: Okay. So when you get the kit, you have these empty
11 bags?

12 A: Bags, envelopes, everything that we need, Q-tips for the
13 examination.

14 Q: Okay. What if you don't collect something? Like you
15 have a bag for something you don't collect?

16 A: Then we just send the bag empty.

17 Q: Okay. And is that what appears to be --

18 A: Yes.

19 Q: -- in that box?

20 A: Yeah. And we write on here nothing -- none noted.

21 Q: And -- I'm sorry?

22 A: I was just going to say if the patient changes their
23 clothes, then there's no reason to send it.

24 Q: Okay. When you say if they change their clothes, kind of
25 elaborate on that a little bit more?

JODI SMOOT - DIRECT BY MR. JUSTIS

1 A: Sometimes patients will change their clothes before they
2 come for the exam or it might have been the night before and
3 they've changed from whatever they were wearing.

4 Q: Okay. And -- and you would do one of these kits on each
5 individual?

6 A: Yes, sir.

7 Q: Okay. Who actually collects the samples and puts the kit
8 together?

9 A: Dr. Carrie Busch and I did.

10 Q: Okay. Do you specifically remember those individuals
11 coming in that day? Do you remember --

12 A: Yes, sir.

13 Q: -- anything specific about those girls?

14 A: Just **Victim 2** being scared, and **Victim 1** and Nicole being a
15 little rambunctious. That's about it.

16 Q: Okay.

17 MR. JUSTIS: I beg the Court's indulgence. No further
18 questions. Please answer any questions Mr. Loy might have for
19 you.

20 THE COURT: Cross examination?

21 MR. LOY: Thank you. No, Your Honor, I have no
22 questions.

23 THE COURT: You may step down, ma'am. Thank you. You
24 may call your next witness.

25 MR. JUSTIS: At this time, the State calls Dr. Carrie

DR. CARRIE BUSCH - DIRECT BY MR. JUSTIS

1 Busch.

2 THE CLERK: Please place your left hand on the Bible and
3 raise your right hand. State your full name for the record.

4 THE WITNESS: Dr. Carrie Busch.

5 THE CLERK: Do you solemnly swear or affirm to tell the
6 truth, the whole truth, and nothing but the truth, so help you
7 God?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. You can have a seat.

10 THE WITNESS: Thank you.

11 THE COURT: Your witness.

12 MR. JUSTIS: Thank you, Your Honor.

13 DR. CARRIE BUSCH, being first duly
14 sworn, testifies as follows:

15 DIRECT EXAMINATION

16 BY MR. JUSTIS:

17 Q: Dr. Busch, where do you work?

18 A: At the Medical University of South Carolina in
19 Charleston.

20 Q: And how long have you worked there?

21 A: I've been there for a little over six years now.

22 Q: And could you tell us what your -- what's your job title
23 there at the Medical University?

24 A: I am a clinical instructor in general pediatrics and I am
25 also a clinical fellow in pediatric emergency medicine and

DR. CARRIE BUSCH - DIRECT BY MR. JUSTIS

1 child abuse pediatrics.

2 Q: And what are some of your duties?

3 A: So in addition to teaching medical students and residents
4 and other physicians, I see patients in the pediatric
5 emergency department, and then I also see patients at my
6 clinic when there is concern for child abuse in any form, and
7 then in that capacity again for child abuse evaluations. I
8 see patients both in the emergency room and in-patient and who
9 are admitted.

10 Q: And could you tell us -- before we get into the facts of
11 this case, could you tell us a little bit about your
12 educational background?

13 A: So after completing my undergraduate degree, I completed
14 four years of medical school at Texas A&M, and then after
15 completion of medical school, I did three years of residency
16 at MUSC in pediatrics. And then after my pediatrics
17 residency, I chose to do additional sub-specialty training; so
18 that's when I started my dual fellowship. So it's training in
19 both pediatric emergency medicine and child abuse pediatrics
20 at the same time, and that's a four-year fellowship in which I
21 am in my fourth of four years.

22 Q: And you said dual fellowship. Is that a common thing?

23 A: It is not common in these two fields. So there are
24 people in the country who do both pediatric emergency medicine
25 and child abuse pediatrics who are trained in both, but we are

DR. CARRIE BUSCH - DIRECT BY MR. JUSTIS

1 the first to do that training in a combined fashion. So we're
2 the first truly dual fellowship.

3 Q: Okay. And are you the first truly dual fellow?

4 A: I am.

5 Q: And that's in the country?

6 A: Correct.

7 Q: And when you said -- I mean where -- what did you get
8 your undergrad degree in?

9 A: It was in biology and chemistry. I was a double major.

10 Q: And tell me is there any other training or experience you
11 have besides being a dual fellow?

12 A: During my fellowship, I also completed a master's program
13 in clinical research.

14 MR. JUSTIS: At this time, Your Honor, the State would
15 like to offer Dr. Busch as an expert in emergency pediatrics.

16 THE COURT: Any voir dire?

17 MR. LOY: Just briefly.

18 VOIR DIRE

19 BY MR. LOY:

20 Q: For clarification's sake, I don't know what a dual fellow
21 means, but I take it you got your double major in undergrad?

22 A: Mm-hmm.

23 Q: And then you went to med school and that was four years?

24 A: It was.

25 Q: And then you did residency and, at that point -- correct

DR. CARRIE BUSCH - VOIR DIRE BY MR. LOY

1 me if I'm wrong -- but you're what the rest of us would
2 consider a full-blown doctor?

3 A: Correct.

4 Q: And somewhere along the line you picked up a master's
5 degree?

6 A: Mm-hmm.

7 Q: And then you went into the dual fellowship program?

8 A: Correct. So after completing my pediatric residency, at
9 that point I could become a board-certified pediatrician, but
10 at that point I could be done and do general pediatrics. But
11 I chose to sub-specialize and do additional training, and that
12 sub-specialized -- sub-specialized training is called a
13 fellowship.

14 Q: The training that you've got is adequate for you to teach
15 at MUSC or to help, et cetera?

16 A: Correct.

17 Q: And the fellowship work -- is that -- again, I'm just not
18 familiar with it. Do you get a degree for this? A
19 certificate that says you're a dual fellow or what?

20 A: It's a certificate of completion in both fields of
21 training. So upon -- so at this time next year, I will have
22 that certificate in both pediatric emergency medicine and
23 child abuse pediatrics, and at that point I sit for both
24 boards. And they are separate tests and will be separate
25 board certifications.

DR. CARRIE BUSCH - VOIR DIRE BY MR. LOY

1 Q: Okay. Thank you.

2 MR. LOY: And you've offered her as an expert in what?

3 MR. JUSTIS: In emergency pediatrics and then I was also
4 going to do it in child -- child abuse.

5 MR. LOY: As a physical -- as a doctor? A physician?

6 MR. JUSTIS: Correct.

7 MR. LOY: I think she's an expert on both those counts,
8 Your Honor.

9 THE COURT: All right. She's so qualified. Ladies and
10 gentlemen of the jury, normally a person cannot give opinion
11 testimony. Normally when a person testifies, they must
12 testify as to what they either saw, heard, sensed, or by smell
13 or something of that nature.

14 However, there is an exception. When someone is
15 qualified because of education or experience, they are
16 permitted to give their opinion in certain areas if the Court
17 qualifies them in that way.

18 Dr. Busch will now be qualified in the area of emergency
19 pediatrics, as well as in the field of child abuse pediatrics.
20 You may proceed.

21 MR. JUSTIS: Thank you, Your Honor.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. JUSTIS:

24 Q: Dr. Busch, how did you become involved in this case?

25 A: I received a phone call from an outlying hospital. I

DR. CARRIE BUSCH - DIRECT BY MR. JUSTIS

1 believe it was Summerville Medical Center. So they called me
2 because I was on call that day for child abuse pediatrics, and
3 they had a child come in where there was concern about sexual
4 abuse. So they called for my consultation and
5 recommendations.

6 Q: And what did you recommend to that hospital?

7 A: So at the time when they contacted me, they had already
8 involved law enforcement, which is always the first step. And
9 at that point I, you know, told them that, you know, once law
10 enforcement has done their assessment, if a kit is deemed
11 necessary and it sounded like it would be in this case, to
12 transfer the child to my hospital so a medical assessment and
13 evidence collection could be completed.

14 Q: And was that done?

15 A: That was done.

16 Q: And who did you make contact with? Who were the
17 individuals that were transported to your hospital?

18 A: So initially **Victim 2** came. So during the course
19 of my conversation with -- with Summerville Medical Center, it
20 became clear that it wasn't just one child where there were
21 concerns. There were three. So as that was being worked out,
22 I asked them to go ahead and transfer **Victim 2** so we could get
23 her assessment done as quickly as possible. So **Victim 2**
24 arrived first. I have about noon. And then a little bit
25 after that, **Victim 1** and Nicole Brown arrived.

DR. CARRIE BUSCH - DIRECT BY MR. JUSTIS

1 Q: And when **Victim 2** arrived, what did you do?

2 A: So when I come in to do these assessments, there is a
3 very protocolized way in which they are done. So first I walk
4 into the room and introduce myself and give them kind of a
5 mini version of how the day is going to go and what to expect.
6 And then I pull the caregiver out of the room, whoever that
7 may be, and bring them to a separate part of the emergency
8 room.

9 And then with that caregiver, I do a more detailed kind
10 of explanation of what's going to happen. I have multiple
11 consent forms that I go over with them about doing the exam,
12 the testing, the follow-up care, all of that. And then I get
13 a history from the caregiver. So both just a basic medical
14 history, medical problems, medications, all of that to, you
15 know, is the child complaining of pain? And then from their
16 perspective, why are you here today?

17 After that, I go and talk to the child, depending on age.
18 Very young children I won't talk to, but older children and
19 adolescents I do. And then with them, it's a, you know, tell
20 me why you came to see the doctor today. Are you hurting
21 anywhere? Those kinds of general questions, and then we
22 proceed with the exam and the evidence collection.

23 Q: And did you ask any of those questions of **Victim 2**?

24 A: I did.

25 Q: As a result of -- and was anyone in the room with you

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1 when you asked those questions?

2 A: Jodi Smoot.

3 Q: Okay. And after asking those questions and receiving
4 responses, what did you do next?

5 A: So after talking with her, we did her general exam. So I
6 describe it to kids as -- you know, it's the same check-up
7 your regular doctor gives you. I just pay more attention to
8 skin than the average doctor. So we looked at her from her
9 head to toe, you know, noting anything, bruising, birthmarks,
10 freckles, you know, anything of significance or that will make
11 the child a little more comfortable.

12 And then we do the genital portion of the exam, which is
13 very similar. It's just a general kind of skin check is how I
14 word it. It's essentially just looking to see how everything
15 looks. Do we see any sign of injury? Is the child tender
16 anywhere? And then swabs are collected.

17 Q: And is this -- when you do this exam, do you document
18 your results?

19 A: We do.

20 Q: And in this particular case with **Victim 2** did you document
21 your results?

22 A: I did.

23 Q: Okay. And could you tell us when you performed this exam
24 what your general observations were?

25 A: So I mean just in general, she -- she was very quiet.

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1 She seemed kind of hesitant to -- to talk, but you could
2 certainly kind of engage her and get her to relax a little
3 bit. She was particularly hesitant when talking about the
4 events that had brought her to see me, but again, she was very
5 bright. She did very well with -- with her exam. I consider
6 her very mature for her age.

7 She had a few -- a couple -- like a birthmark and a
8 bruise that -- that were un concerning. You know, on her
9 general -- on her genital exam we noted some general redness.
10 So erythema, and she was quite tender in that area.

11 Q: Okay. At this time, Doctor, I'm going to show you what's
12 been marked as State's Exhibit 5-A and 5-B. Could you -- I'll
13 kind of hold them up for you. Can you tell me what these
14 appear to be?

15 A: So those are diagrams that are on our -- on our paperwork
16 where we can document our exam findings. So those are two
17 diagrams from that paperwork that then we write on.

18 Q: Okay. And using -- using these diagrams -- and I think
19 we have an easel there -- could you kind of explain to the
20 jury what you --

21 MR. JUSTIS: May the witness --

22 THE COURT: Yes, sir.

23 MR. JUSTIS: -- rise?

24 Q: And I'll stick them here and I'll let you pick which
25 diagram you want to use first, and I've got a pointer.

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1 A: Thank you.

2 Q: And if you will, just kind of explain to the jury, you
3 know, what we're looking at, what you're looking for, and what
4 you found as it pertains to Victim 2

5 A: Sure. So the reason I chose this one first is it's a
6 little bit further out than the initial photo just so we can
7 go through the anatomy. So what you see here are the thighs
8 -- are the inner thighs, and then this portion of skin here,
9 that's the labia majora. That looks like normal skin. When
10 the legs are closed, that skin touches and it's protective to
11 the tissues underneath.

12 So underneath here, this tissue here, that's the labia
13 minora. So it's a smaller, a bit thinner-skinned section of
14 tissue that's just underneath that top layer that again
15 provides protection. Just underneath that, this hole right
16 here is the urethra. That's where you pee from.

17 And this right here is the hymen. It is -- a lot of
18 people think the hymen is a continuous sheath of tissue that
19 does not have a hole in it, but this is a very accurate
20 depiction of what is normal anatomy. The normal anatomy --
21 the normal hymen has a hole. It either looks like a doughnut
22 or like a crescent shape. So to have a hole is normal. So
23 that's what this looks like and then, as we travel down, the
24 anus is down here.

25 So just kind of a general anatomy picture. The picture

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1 makes it look flat. In reality, it's more like a -- like a
2 cone. There's a potential space in the middle. So it's --
3 the inner portion where the hymen is itself is at the base of
4 that cone, and then the tissues all progress outward, again to
5 be protective.

6 So I'm going to switch to this one. This is that same
7 diagram just a little bit kind of closer up, again to that
8 more inner portion. So here is again our labia. You've got
9 majora on the outside leading too the minora on the inside.

10 So what I was pointing out here, these squiggly lines are
11 my drawing, and that's just an area of general redness that
12 was -- that involved the majora where I have depicted and the
13 labia minora as well. So those kind of protective folds of
14 tissue were red, were inflamed, and they were also very
15 tender. They were very painful for her. The hymen itself,
16 that rim of tissue, didn't have any -- any injuries on that
17 piece of tissue itself.

18 Q: Okay. Thank you. You can -- you can -- if you want,
19 leave that up there. We can actually leave it up there for
20 now. Please sit back down.

21 (Whereupon, the witness complies.)

22 Q: So I think you mentioned there was no trauma?

23 A: To the hymenal tissue.

24 Q: Okay. Now, based on your experience, is that normal not
25 to have trauma?

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1 A: It's exceedingly normal not to have trauma. Most of the
2 time when we see children where there has been an assault or a
3 concern for assault or sexual abuse, the large majority of the
4 time -- so, you know, 75 percent or greater of the time, there
5 is no visual evidence of trauma. They have normal exams.

6 Q: And why would that be?

7 A: So there are multiple reasons. So like we talked about
8 with that anatomy, there's kind of multiple different layers.
9 You know, in reality that's a tunnel so there are -- there is
10 a bit of a distance to get to before you reach the hymenal
11 tissue itself. So what we see is there are forms of -- of
12 sexual abuse or, you know, inappropriate touching that do not
13 get to to damage the hymenal tissue itself.

14 So touching with fingers, you know, oral touching, all of
15 those things are certainly inappropriate touching, but are not
16 going to, you know, go to the base of that tunnel. We do also
17 see in young children where there has been genital to genital
18 contact, but where the other person's genitals just kind of
19 stays within those outside layers of skin. It does not
20 actually get to or penetrate the hymen itself.

21 Now, that being said, hymenal tissue even in -- in young
22 females is very forgiving. It is stretchy. So it is -- one
23 of the things that we also see is where there's more
24 stretching, but the tissue itself doesn't cross the threshold
25 of actually having an injury or a break.

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1 Q: Okay. And in a case where there's allegations of someone
2 messing with a child as opposed to a stranger dragging someone
3 into the woods, would you expect to see different types of
4 injuries between those two types of situations?

5 A: I would. So the difference there is in addition to kind
6 of what is happening, it's the force with which that's
7 happening. So for example, if it's kind of the typical
8 assault people think about, you know, the drag in the woods
9 type, it is rapid force within a short period of time. That
10 is more likely to cause an injury.

11 In the situation of a young child, if the -- the offender
12 is a family member, it is to that person's benefit to not
13 cause physical harm to the child. That would cause the child
14 distress. It wouldn't happen again because the child was so
15 distressed. So -- so it is to that person's benefit for,
16 instead of kind of rapid, high velocity force, it to be more
17 of a slow, coercive type of process. So it is less common in
18 that type situation. Where the offender is a family member
19 where it's been occurring over an extended period of time, it
20 is less likely to see evidence of injury.

21 Q: Okay. And now, in -- in **Victim 2** you performed this
22 exam. Did you collect any samples during your exam of
23 **Victim 2**?

24 A: We did. Multiple.

25 Q: Okay. And I'm going to show you, before we get into

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1 that, State's Exhibit 3, and could you tell me if you
2 recognize that?

3 A: I do. This is the evidence collection kit that was
4 completed on **Victim 2**

5 Q: Okay. And could you tell us -- and I'll take that back.
6 Could you tell us based on your report what items of evidence
7 you collected from **Victim 2** that day?

8 A: So we did multiple -- multiple swabs on **Victim 2** that day.
9 They are -- they are two-fold. So we did -- we did some for
10 purposes of the kit for evidence collection, and there were
11 also some done just for kind of general medical screening and
12 to look for infectious processes, diseases that can be
13 transferred from person -- from one person to another. So
14 those were both completed.

15 From a kit standpoint, we did a swab in her mouth. We
16 did a swab in her vaginal area and, on young kids, I swab the
17 whole kind of peri-vaginal region. So all those folds, you
18 know, for the same reason we talked about. A lot of time that
19 contact is within all of those folds. So that whole area was
20 swabbed. We also did one rectally. So in her -- in her anus.

21 And then as part of again my kind of questioning like we
22 talked about, one of the things I ask children is were any
23 parts of your body wet when this happened. And I use kind of
24 a general terminology like that. Was anything moist?
25 Anything feel wet? And then I swab those areas as well for

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1 there to be potential transfer of body fluids. So on **Victim 2**,
2 she had mentioned her lower back; so that was swabbed as well.

3 Q: Okay. And what did you do after you took these swabs?
4 What did you do with them?

5 A: So as they're being collected, they are put in a stand.
6 That puts them -- so these are like long Q-tips. They're put
7 Q-tip end up in a stand so they are not touching anything, and
8 then that whole stand goes into a dryer that once a sample is
9 in it, it gets turned on and is locked and I keep the key on
10 my person. Once the samples are dry, they are then put in the
11 kit.

12 Q: Okay. And after you put all the samples in the kit, what
13 do you do with it?

14 A: Once the -- when all the samples are in and the paperwork
15 is completed, we seal the kit and then we pass it off to -- to
16 our MUSC Public Safety and they hold onto it until the
17 appropriate jurisdiction picks it up.

18 Q: Okay. And referring back to State's Exhibit 3, which I
19 think you identified as **Victim 2** --

20 A: Mm-hmm.

21 Q: -- kit --

22 A: I did.

23 Q: How do you know you did that in this particular case?

24 A: So I know it's her kit because it's my handwriting on the
25 top that has her name on it, but also when it is sealed, there

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1 are these red evidence stickers that you initial and date.

2 This is my -- these are my initials in my handwriting with the
3 date on the sticker, and the sticker is used to seal the kit.

4 And the stickers are not very user friendly. So with minimal
5 manipulation, they break, but that's how they know if the kit
6 has been tampered with or if it's intact from when I sealed
7 it.

8 Q: And what date did you seal that?

9 A: On -- it looks like July 28th of 2013.

10 Q: Okay. Thank you. Now, was that the extent of your
11 involvement with **Victim 2**

12 A: Correct. After -- after her exam was completed and all
13 her testing was completed, then she received discharge
14 paperwork from me in the emergency room and then she was
15 referred for both a forensic interview and a follow-up medical
16 exam. So yes, at that point she was discharged from my care.

17 Q: Okay. And did you see any of the other children that
18 day?

19 A: So after we had completed our assessment for **Victim 2** by
20 that time both **Victim 1** and Nicole had arrived, and the same
21 process was repeated with both girls.

22 Q: Okay. Did you notice anything unusual about those girls
23 compared to **Victim 2**?

24 A: So again, **Victim 2** was very quiet. She seemed afraid,
25 hesitant to talk about certain things. Both **Victim 1** and

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1 Nicole were very busy. They were very active, and Victim 1 was
2 very talkative. So I -- because of Nicole's age, I did not
3 talk to Nicole by herself. Victim 1 -- you know, because of
4 her age, I asked her limited questions, but I wanted to just
5 kind of ask, you know, why are you here to see me today, are
6 you hurting anywhere, again those kinds of typical so I can
7 medically take care of her questions. So -- so those
8 questions were asked of Victim 1 and then both girls had the
9 same head to toe exam and genital exam and kit collection.

10 Q: Okay. And what were the results of the exam on Victim 1?
11 What did you find?

12 A: So for Victim 1 -- so for her, the exam itself was -- was
13 fairly unremarkable. I really didn't notice any kind of more
14 than normal redness. Her hymen itself looked unremarkable.
15 Her anus as well had good tone and didn't have any obvious
16 scarring or -- or active cuts, nothing bleeding, nothing that
17 looked like active trauma.

18 Q: Now, you mentioned -- you mentioned her rectum.

19 A: Mm-hmm.

20 Q: What type of trauma would you normally see to someone's
21 rectum if there was sexual activity?

22 A: So you certainly can see trauma. However, it is -- again
23 like all situations of sexual abuse, it is more common to not
24 see trauma, and it is actually less common in the anal region
25 to see trauma than it is in the vaginal region. That tissue

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1 is a little more adept at -- at dilating, at getting bigger
2 when asked to allow things like stool to pass through on a
3 regular basis. So that tissue is used to kind of changing its
4 diameter and changing its size, you know, to accommodate
5 whatever needs -- needs to pass. So again, for that reason we
6 can see injuries there, but it is far less common.

7 Q: So in your opinion, would it be unusual to not find any
8 -- any signs of trauma in an individual even if they were
9 having anal intercourse for two years?

10 A: Absolutely not. It is not uncommon. Again, it is more
11 expected. It is more than norm to not see visual signs of
12 trauma.

13 Q: Okay. And did you collect any items during your exam
14 with **Victim 1**?

15 A: So **Victim 1** had a similar kind of swab collection to
16 **Victim 2**. So she had again swabs of her mouth, of her
17 vaginal region, of her anus, and on both girls I collected
18 underwear as well. That's standard.

19 Q: And let me show you what's been marked as State's Exhibit
20 4. Do you recognize this?

21 A: I do.

22 Q: And what is that?

23 A: This is **Victim 1** collection kit.

24 Q: And how can you identify it?

25 A: Because again it is labelled on the top as -- as

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1 **Victim 1** with my name as the -- as the collector and with her
2 case number and the day she was seen.

3 Q: And was it sealed by you?

4 A: It was sealed by me. I see my initials.

5 Q: And would you have turned that over sealed to Public
6 Safety?

7 A: Correct.

8 Q: Okay.

9 MR. JUSTIS: I beg the Court's indulgence.

10 Q: Dr. Busch, did you -- what did you find when you examined
11 **Victim 2**'s rectum?

12 A: So -- let me refresh my memory. I believe that when we
13 looked at -- at **Victim 2**, there were no -- no signs of trauma.
14 She didn't have any cuts or bruising, but there was a lot of
15 debris noticed. I commented on pieces of grass and pieces of
16 cotton.

17 Q: Okay. And did you also collect underwear from **Victim 2**?

18 A: We did.

19 Q: Okay.

20 MR. JUSTIS: Thank you. No further questions. Please
21 answer any questions Mr. Loy might have for you.

22 THE COURT: Cross examination?

23 MR. LOY: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. LOY:

DR. CARRIE BUSCH - CROSS BY MR. LOY

1 Q: Good afternoon again, Dr. Busch.

2 A: Good afternoon.

3 Q: You've testified in Court of General Sessions before,
4 have you not?

5 A: I have not.

6 Q: You have not? This will be your first time to have
7 testified in a Court of General Sessions?

8 A: There's always a first time.

9 Q: I understand. You have been involved in evaluation of
10 children in other situations in other allegations of sexual
11 abuse, have you not?

12 A: I have.

13 Q: Approximately how many of those examinations would you
14 say you've performed?

15 A: I have performed probably upwards of 40. I have
16 supervised -- again, either done or directly supervised about
17 70.

18 Q: Okay. And perhaps reviewed or been involved peripherally
19 in other cases?

20 A: In more than that.

21 Q: Excuse me?

22 A: Many more than 70, yes.

23 Q: And often times, you'll see a report or prepare a report
24 -- do you not? -- where you'll sort of have a clock around
25 here and detail injuries and say there's an injury or a tear

DR. CARRIE BUSCH - CROSS BY MR. LOY

1 at two o'clock or there seems to be bruising or whatever at
2 four or five o'clock; is that correct?

3 A: That's correct.

4 Q: Okay. And that's just sort of a standard protocol or way
5 of marking the places where bruises or injuries or tearing
6 have occurred. It's sort of common across the folks who do
7 the things that you do; is that right?

8 A: Correct.

9 Q: And the reason for that is because part of the reason
10 that you're doing the evaluation or the physical examination
11 of the child is to look and see if there are injuries?

12 A: Correct.

13 Q: Not merely because there may be injuries that require
14 some sort of medical intervention, that is treatment, for the
15 child?

16 A: Mm-hmm.

17 Q: But also if there is forensic evidence or evidence that
18 violence or sexual improprieties have been taken, it may be
19 present and ready to be documented medically and fast fading
20 if someone doesn't act on it fairly soon. Is all that
21 correct?

22 A: That is correct.

23 Q: And a lot of times, we'll use terms like injuries to
24 introitus or various areas --

25 A: Mm-hmm.

DR. CARRIE BUSCH - CROSS BY MR. LOY

- 1 Q: -- and say that these are consistent with blunt force
2 trauma. Is that language that you see and use or have used?
- 3 A: That language is used by some, yes.
- 4 Q: Okay. So you've seen it used?
- 5 A: I have seen it.
- 6 Q: And typically that's describing a -- some sort of
7 intrusion, whether it's blunt force trauma. It doesn't mean
8 somebody whacked a person -- excuse me, but I mean hit a
9 person on the anus with a stick or something like that. It
10 means more there has been some sort of intrusion where
11 somebody has pushed something in and caused an injury; is that
12 correct?
- 13 A: So what you're referring to is called penetrative trauma
14 versus blunt trauma. So blunt trauma would be a smack.
15 Penetrative trauma with something would be more intrusive.
- 16 Q: Okay. And you look for those things because if you find
17 them -- excuse me. I'm sorry. But you look for those because
18 those things may be fading. I mean people heal --
- 19 A: Mm-hmm.
- 20 Q: -- and you want to document them if they're there?
- 21 A: Mm-hmm.
- 22 Q: And because if they are there, they're important to know
23 because they need to be explained and they're certainly
24 consistent with -- particularly if they're present in a child,
25 with some sort of assault or sexual misconduct having taken

DR. CARRIE BUSCH - CROSS BY MR. LOY

1 place; is that right?

2 A: It can be supportive, yes.

3 Q: Oh, I understand that's not the only case that you would
4 -- that you would say that's consistent, but if you found
5 those things, you would note them and you would tell the
6 solicitor, "Why, yes, I did find evidence of penetrative
7 trauma or blunt force trauma to these areas and this is
8 consistent with child abuse." Is that correct?

9 A: Anything we saw would have been -- yes, it would have
10 been documented as this is what I saw at this time with my
11 assessment.

12 Q: And if you had noticed those penetrative traumas or blunt
13 force traumas or the minor fissure or tear at eleven o'clock
14 or the bruising over there at three o'clock or whatever, you
15 would testify now that, "Why, yes, those are consistent with
16 sexual abuse of a child." Yes?

17 A: If those are my findings at the time, then yes.

18 Q: Then your testimony would be that that would be
19 consistent?

20 A: Yes.

21 Q: And if you had only found one or two of those things or a
22 little minor tear that you wouldn't necessarily classify as
23 trauma but still indicative of some sort of force being
24 applied, et cetera, you would say that that was consistent
25 with sexual abuse of a child. Yes?

DR. CARRIE BUSCH - CROSS BY MR. LOY

1 A: I would.

2 Q: And if you found no evidence whatsoever, a child came in
3 and presented -- a female child came into the extent you do
4 the gynecological examination presented normally, you would
5 testify this is still consistent with a child that's been
6 abused?

7 A: Yes. Based on the studies, again because most children
8 don't have outward signs of trauma, then yes, a normal exam is
9 consistent.

10 Q: Okay.

11 A: It does not refute any disclosure that was made.

12 Q: No, I understand. That's -- that's not my question as
13 far as refuting anything. I'm just asking you about your
14 findings and what your testimony would be. So basically no
15 matter what you found when a child came in and was examined at
16 the hospital, your findings are going to be consistent with
17 some sort of sexual abuse?

18 A: So our findings essentially sometimes based on what we
19 see, we can say yes, I think X, Y, and Z occurred, but outside
20 of that, our findings cannot -- you know, more often times
21 cannot say yes or no. They can say my findings are normal at
22 this time.

23 Q: Okay. So my understanding when the solicitor asked you
24 would these be consistent with some sort of sexual abuse was
25 that your answer was yes, and I believe then no matter what

DR. CARRIE BUSCH - CROSS BY MR. LOY

1 you found, it would be consistent. Whether it's indicative of
2 sexual abuse or not, your testimony would be yes, this is
3 consistent. Seventy-five percent of the children we examine,
4 there's no indication whatsoever of physical harm; so this is
5 consistent with sexual abuse. Am I correct?

6 A: That is a correct statement.

7 Q: Okay. Now -- and I suspect this is something that you
8 don't actually do. I don't know, but let me ask you. So say
9 suppose you had a friend or a relative -- okay? -- a sister or
10 somebody --

11 A: Mm-hmm.

12 Q: -- who came to you and said my -- my eight-year-old girl
13 -- it's the weekend, whatever, but she's digging at herself.
14 She says it hurts when she -- when she pees and stuff.

15 A: Mm-hmm.

16 Q: Would you mind just taking a look at her? And again,
17 whether you do that stuff or not and whether you're allowed to
18 do that stuff or not, say in this case you did.

19 A: Mm-hmm.

20 Q: Okay? And she gave you a history and said she's eight
21 years old, she's been at the beach, they were playing in the
22 sand, they were in the ocean, they were out there for that
23 day, and came home, wore the bathing suit home, out there, et
24 cetera, and now she's got some degree of redness or something
25 such as you saw in this case.

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- 1 A: Mm-hmm.
- 2 Q: Would you then look at that child and say we need to get
3 law enforcement involved because this is a child that's been
4 sexually abused?
- 5 A: So in order to come to that conclusion, the exam does not
6 stand alone. So as medical providers, we are always taught
7 that in order to come to a medical conclusion, a medical
8 diagnosis, we need both the history and the physical exam. So
9 what you're describing is just that the physical exam
10 component and that is never in isolation. So we take both the
11 history and the physical together and then come with the most
12 logical educated conclusion about the ideology of what you're
13 seeing on your exam.
- 14 Q: Then let me try to flesh out my hypothetical because I
15 meant to give you a history. They had been at the beach all
16 day long.
- 17 A: Mm-hmm.
- 18 Q: She wore the bathing suit to the beach. They played in
19 the sun and the sand, built sand castles, buried each other,
20 did whatever it was they did, wore that thing home, sitting on
21 the hot seat of the car.
- 22 A: Mm-hmm.
- 23 Q: Got home that evening and said she seems uncomfortable
24 now.
- 25 A: Mm-hmm.

DR. CARRIE BUSCH - CROSS BY MR. LOY

1 Q: This is the history that we're giving you. It wasn't
2 like that yesterday or --

3 A: Right.

4 Q: -- the day before, but now she seems uncomfortable. Is
5 this going to set off a lot of bells and whistles with you or
6 are you just going to -- I don't know -- say put some salve on
7 it or something along those lines?

8 A: If that's the history in isolation, then no.

9 Q: Okay. And the redness or irritation that you saw on
10 **Victim #1** --

11 A: Mm-hmm.

12 Q: -- would that be consistent with the history that I just
13 gave you?

14 A: If that was the history that I was provided, then yes, it
15 would be history -- it would be consistent with the history.

16 Q: Okay.

17 MR. LOY: Thank you. Just one moment, please.

18 THE COURT: Mm-hmm.

19 MR. LOY: Thank you. I have no more questions.

20 THE COURT: Any redirect?

21 MR. JUSTIS: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. JUSTIS:

24 Q: Dr. Busch, Mr. Loy's hypothetical -- thinking to that.
25 Was that the history you were provided that day?

DR. CARRIE BUSCH - REDIRECT BY MR. JUSTIS

1 A: That is not the history I was provided that day.

2 MR. JUSTIS: Thank you. No further questions.

3 THE COURT: You may step down, Doctor. Thank you.

4 THE WITNESS: Thank you.

5 THE COURT: You may call your next witness.

6 MR. WARD: The State calls --

7 MR. LOY: Your Honor, may we approach for one moment?

8 THE COURT: You may.

9 (Whereupon, a bench conference is held off the record.)

10 THE COURT: Ladies and gentlemen of the jury, let's take

11 a quick five-minute recess and we'll bring you right back in.

12 Again, don't discuss the case with anyone or allow anyone to

13 discuss the case with you. Thank you.

14 (Whereupon, the jury exits the courtroom at 1:57 p.m.)

15 THE COURT: All right. At this time, the defense has

16 moved for an order of sequestration of witnesses that have not

17 already testified or are not subject to being recalled unless

18 they are properly in the court pursuant to either the victim

19 rights statute or as the investigative case officer or the

20 actual victims if they care to be in.

21 So if there's any witnesses in the courtroom that have

22 not testified yet that are not otherwise properly to be in the

23 courtroom, you please need to leave the courtroom now.

24 MR. JUSTIS: And I'll -- I'll get up with my witnesses

25 and --

1 (Whereupon, there is a pause in the proceedings.)

2 MR. JUSTIS: Do you need a break?

3 MR. LOY: I thought we were on a break.

4 MR. JUSTIS: For five minutes. That would be fine.

5 THE COURT: All right.

6 MR. JUSTIS: That would be great if we could -- five
7 minutes. That would be great. He can get some coffee and I
8 can --

9 THE COURT: Okay. Let me ask you this as far as timing
10 is concerned before we move on. How many other witnesses do
11 you have scheduled for today?

12 MR. JUSTIS: We have -- we have two witnesses that will
13 be quick, Your Honor, and then the third witness would be
14 Helen Usher, which is the forensic interviewer. That should
15 finish today for us.

16 THE COURT: Well, I mean timing-wise, I don't want to
17 keep this jury here past 4:45 at the latest.

18 MR. JUSTIS: They won't be because the forensic interview
19 is one hour, seven minutes, and I don't foresee the direct and
20 cross being that extensive on her. It's two o'clock now. So
21 you're talking two -- the next two witnesses are probably
22 going to be like 15 minutes.

23 THE COURT: Okay.

24 MR. JUSTIS: Twenty tops.

25 THE COURT: All right.

1 MR. LOY: Two thirty and then three thirty, four.

2 THE COURT: Just so you have a heads up I mean.

3 MR. JUSTIS: And then everyone else I have is scheduled
4 for tomorrow. So I wouldn't be able to go further anyway.

5 MR. LOY: And they shortened it with the exclusion of the
6 other video.

7 MR. JUSTIS: Right. We don't have the other video so --
8 so we'll be out of here before five o'clock.

9 MR. LOY: And this other tape has already been ruled
10 admissible; so we're not going to argue that.

11 MR. JUSTIS: Correct. And it's one hour -- we just
12 checked. One hour and seven minutes I think.

13 THE COURT: So we'll be on a quick five-minute recess.
14 Y'all let me know when you're ready to start.

15 MR. JUSTIS: Yes, Your Honor.

16 (Whereupon, there is a break in the proceedings from 2:01
17 p.m. until 2:20 p.m.)

18 THE COURT: Thank you. Everyone may have a seat. Are
19 the parties ready to proceed?

20 MR. JUSTIS: The State is ready, Your Honor.

21 MR. LOY: Yes, Your Honor.

22 THE COURT: All right. Let's have our jury, please.

23 (Whereupon, the jury enters the courtroom at 2:21 p.m.)

24 THE COURT: Welcome back, ladies and gentlemen of the
25 jury. We will now proceed with the testimony in this case.

PFC CHRIS TIPTON - DIRECT BY MR. WARD

1 You may call your next witness.

2 MR. WARD: Officer Chris Tipton.

3 (Whereupon, there is a pause in the proceedings until the
4 witness enters the courtroom.)

5 THE CLERK: Place your left hand on the Bible and raise
6 your right hand and state your full name for the record.

7 THE WITNESS: Chris Tipton.

8 THE CLERK: Do you solemnly swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth, so help you
10 God?

11 THE WITNESS: I do.

12 THE CLERK: Thank you. You can have a seat.

13 THE COURT: Your witness.

14 MR. WARD: Thank you, Your Honor.

15 OFFICER CHRIS TIPTON, being first
16 duly sworn, testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. WARD:

19 Q: Officer Tipton, where do you work?

20 A: Town of Summerville police officer.

21 Q: All right. And what is your job title there?

22 A: I'm on Team One patrol.

23 Q: And what are some of your duties as a patrol officer?

24 A: We're first responders, respond to the crime or any kind
25 of calls of service.

PFC CHRIS TIPTON - DIRECT BY MR. WARD

1 Q: And how long have you worked in law enforcement?

2 A: Almost three years.

3 Q: Okay. How did you become involved in this case?

4 A: I was coming on to shift. I work the night shift. I was

5 told there was some evidence to pick up at MUSC.

6 Q: Okay. And did you go down to MUSC?

7 A: I did. I met with the MUSC Public Safety and picked up

8 some evidence and brought it back to the station.

9 Q: Okay. Did they tell you what needed to be picked up?

10 A: They said it was some sexual assault kits.

11 Q: Okay. I'm showing you what's been marked as State's 3

12 and 4. Do you recognize those?

13 A: Yes.

14 Q: And how do you recognize them?

15 A: These are the sexual assault kits I picked up from MUSC

16 Public Safety.

17 Q: Okay. And when you picked them up, did they appear to be

18 tampered with?

19 A: No.

20 Q: Was there a way to tell whether or not it would have been

21 tampered with?

22 A: These -- this tape here was sealed.

23 Q: Okay. And when you picked them up from MUSC, did you

24 have to sign them out or anything?

25 A: I did. I did. I signed the -- Public Safety had a form.

PFC CHRIS TIPTON - DIRECT BY MR. WARD

1 We got a carbon copy of it that was given -- submitted with
2 the report.

3 Q: And then how are they transported back?

4 A: I placed them and secured them in the trunk of my vehicle
5 until I got back, at which time I took them out of my trunk
6 and secured them in a biohazard cooler.

7 Q: Okay. So you get back to the police department. And
8 what is this cooler you referred to?

9 A: It's a refrigerator for any kind of DNA that we collect.
10 We place it in this -- in this cooler that has a lock that it
11 would be secured in it.

12 Q: It's secured? And do you have a key for this
13 refrigerator?

14 A: There's -- there's a key that's in dispatch that we would
15 go and sign out to have access to it.

16 Q: Does anyone else have access?

17 A: The police department.

18 Q: The police department? Did the kits ever leave your
19 control from the time you picked them up to the time you
20 placed them into the refrigerator?

21 A: No, they did not.

22 Q: Did anyone -- did you witness anyone else open these kits
23 while they were under your control?

24 A: No, they did not.

25 MR. WARD: Thank you. No further questions. Please

PFC CHRIS TIPTON - CROSS BY MR. LOY

1 answer any Mr. Loy may have.

2 THE COURT: Cross examination?

3 MR. LOY: Just one moment, Your Honor.

4 CROSS EXAMINATION

5 BY MR. LOY:

6 Q: I see on the back of this box it's got a sheet -- I'm

7 sorry. Can you see that? Probably not.

8 A: No.

9 Q: It's got a sheet that's marked chain of custody. Do you
10 see what I'm talking about?

11 A: Yes, sir.

12 Q: And it goes apparently from C. Busch to A. Cook; is that
13 right?

14 A: Yes.

15 Q: Did -- I don't see your signature. You didn't sign on
16 this at any time?

17 A: I didn't sign on that. No, sir. We -- I signed the form
18 that was given to me by Public Safety and then we have our own
19 evidence entry that I did.

20 Q: So you went to MUSC --

21 MR. LOY: And I don't mean to hover over the witness.

22 Q: But you went to MUSC to pick this up, asked for it, and
23 someone from Public Safety -- is that a uniformed officer?

24 A: Yes, sir.

25 Q: At MUSC produced this and he had a sheet that he asked

PFC CHRIS TIPTON - CROSS BY MR. LOY

1 you to sign?

2 A: Yes, sir.

3 Q: Do you have that sheet?

4 A: It was submitted with my report.

5 Q: That's not my question. You don't have a copy of it?

6 A: I don't personally.

7 Q: And then you took the boxes back and you went -- you

8 personally went to dispatch and -- dispatch at the Summerville

9 Police Department and requested -- I need the key to the

10 biohazard cooler?

11 A: Correct.

12 Q: And then you went to the cooler, you unlocked it, you

13 placed the boxes within?

14 A: Correct.

15 Q: Did -- is there someone who signs for them at that point

16 or do you just sign them in to the cooler so to speak? Do you

17 understand my question?

18 A: To be honest, from that point I couldn't tell you what --

19 where it goes from there.

20 Q: Okay. Did you fill some documentation or something to

21 show that you had taken these out of your hands? You signed

22 to get them. Did you sign to pass them over?

23 A: Yes. We have an evidence system that we log it into

24 stating that at this date and time it was logged into that

25 cooler and locked and secured.

PFC CHRIS TIPTON - CROSS BY MR. LOY

1 Q: And is that a -- I'm sorry. Is that a computer system or
2 a hard copy you wrote and signed your name and checked your
3 watch for the date or whatever?

4 A: It's on -- it's a computer system.

5 Q: Okay.

6 MR. LOY: Thank you. I have no more questions.

7 THE COURT: Any further redirect?

8 MR. WARD: Nothing from the State, Your Honor.

9 THE COURT: You may step down, sir. Thank you. You may
10 call your next witness.

11 MR. WARD: Officer Tim Jones.

12 (Whereupon, there is a pause in the proceedings until the
13 witness enters the courtroom.)

14 THE CLERK: Please place your left hand on the Bible and
15 raise your right hand and state your full name for the record.

16 THE WITNESS: Timothy Asa Jones.

17 THE CLERK: Do you solemnly swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth, so help you
19 God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. You can have a seat.

22 THE WITNESS: I'll see if I can squeeze in here.

23 THE COURT: Your witness.

24 MR. WARD: Thank you, Your Honor.

25 OFFICER TIM JONES, being first duly

SGT. TIM JONES - DIRECT BY MR. WARD

1 sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. WARD:

4 Q: Officer Jones, where are you employed?

5 A: Town of Summerville Police Department.

6 Q: And what is your title there?

7 A: I'm a sergeant over a patrol team.

8 Q: How long have you been in law enforcement?

9 A: Since 1999.

10 Q: And what are some of your duties as sergeant at the
11 police department?

12 A: With being a sergeant, I'm a patrol supervisor, meaning I
13 delegate the day-to-day operations of the patrol team to
14 respond to calls.

15 Q: Okay. And how did you become involved in this case?

16 A: First, the Summerville Police Department dispatch
17 contacted me to advise me that the Summerville Medical Center
18 was reporting a possible sexual assault on an eight-year-old
19 female. They informed me that the assault took place at [REDACTED]
20 -- I think [REDACTED], which is in Scottsville subdivision
21 which is in the Town of Summerville, Dorchester County.

22 Q: Okay. And where -- did you have any involvement besides
23 --

24 A: Yes. I -- I told them to go ahead and assigned an
25 officer to go and speak with the victims. I also responded to

SGT. TIM JONES - DIRECT BY MR. WARD

1 the hospital. After speaking with the officer that originally
2 spoke to the victim, I didn't feel like it was necessary that
3 I walk in there and subject them to further questions because
4 at that time I learned that it was an eight-year-old female
5 that was assaulted.

6 MR. LOY: Objection. That's hearsay, Your Honor.

7 THE COURT: Sustained.

8 THE WITNESS: Okay.

9 A: At that point, once I got the information from the
10 officer that was there, I contacted Sergeant Mosher.

11 Q: Okay. And then after speaking with Detective Mosher,
12 what did you do?

13 A: I spoke to Detective Mosher. After that point, he came
14 to Summerville Medical Center. I met with them. I left the
15 scene at that point of the hospital. I continued on with my
16 patrol duties. Sergeant Mosher contacted me and advised me
17 that they were going to get a warrant for Jonathan Brown for
18 his arrest. He advised me that -- he gave me a description of
19 Mr. Brown, a physical description, and advised me that he
20 should be the only one at home. At that point, I went over to
21 the subdivision and sat down the street from the residence.

22 Q: Okay. And you were sitting down the street from the
23 residence. What was the purpose of doing so?

24 A: In case Mr. Brown decided to leave the area.

25 Q: All right. And while you were observing his house, did

SGT. TIM JONES - DIRECT BY MR. WARD

1 you see anything?

2 A: Yes, sir. I observed an individual come out who was
3 later identified as Mr. Brown. He came out to his vehicle,
4 which is a large, white pick-up truck. He got inside the
5 vehicle several times, fooled with some things inside the
6 vehicle. He was constantly on his -- or messing with what
7 appeared to be a cell phone. He would go back into the house.

8 He came out of the house once or twice with boxes and
9 went around to the other side of the house. One time I could
10 observe the boxes appeared to have bottles of some sort in
11 them. And then once he went back into the house later on, I
12 was contacted by Sergeant Mosher that they had secured an
13 arrest warrant for Mr. Brown and they were on their way.

14 Q: Okay. And then -- is this the house that you were -- I'm
15 showing you -- I'm sorry -- State's Exhibit 17. Is this the
16 house that you were observing?

17 A: Yes, sir.

18 Q: And can you -- the defendant was coming from the door out
19 to the driveway?

20 A: Yes, sir. In fact, to the right side of that car --
21 obviously, that car wasn't there. There was a white pick-up
22 truck. And then he would also go to the other side of the
23 house which I couldn't see. I was actually to the left of
24 this down the street at an abandoned house.

25 Q: Okay. And there was -- you had a clear view of all this?

SGT. TIM JONES - DIRECT BY MR. WARD

1 A: Yes, sir, I did.

2 Q: Okay. Once you learned arrest warrants were obtained,
3 then what did you do?

4 A: I contacted Officer Terranova to respond and meet with
5 Officer Mosher -- Sergeant Mosher and to respond to the area
6 with them when they were coming to serve the warrant. Once
7 the -- they got into the neighborhood, they informed me that
8 they were in the neighborhood, and I pulled up pretty much
9 parallel with the house on the street. Once I got out of my
10 vehicle, I took two to three steps out of my vehicle, and Mr.
11 Brown came outside of the house. He came almost partially
12 from the sidewalk to the grass area and I informed -- I told
13 him who I was.

14 I asked him if he was Jonathan Brown and he said, "Yes, I
15 am. Can we do this inside?" And he was on the phone and he
16 said, "I'll have to call you back," and he hung up with
17 somebody. So he said, "Can we do this inside? I don't want
18 my neighbors to see." So I said, "Okay. Yes, sir." And I
19 continued -- I followed Mr. Brown.

20 At that point, Sergeant Mosher followed in behind me. I
21 came over the radio, told the other officers that were on the
22 other side of the house that contact was made. I followed Mr.
23 Brown into the foyer area and then immediately to the right is
24 like a living room. It kind of fans out I believe. I
25 informed Mr. Brown that Sergeant Mosher had a warrant for his

SGT. TIM JONES - DIRECT BY MR. WARD

1 arrest and to place his hands behind his back.

2 At that point, he set down his cell phone onto like a
3 little computer table that was on the right-hand side. I
4 placed him in handcuffs and we started getting everything
5 together, locking the handcuffs, and we started walking out
6 and Mr. Brown requested that his cell phone be taken. No
7 problem.

8 We exited the house. We secured the house while Mr.
9 Brown was in our presence, and then we left the scene. Mr.
10 Brown was transported by Officer Terranova to the Summerville
11 Police Department.

12 Q: Okay. So when you made first contact with the defendant,
13 you said he did have his cell phone on him?

14 A: Yes. In fact, he -- when I first came up to him, he was
15 on his cell phone. He was talking to somebody.

16 Q: Okay.

17 MR. WARD: I beg the Court's indulgence. No further
18 questions. Please answer any the defense may have.

19 THE COURT: Cross examination?

20 MR. LOY: Thank you.

21 CROSS EXAMINATION

22 BY MR. LOY:

23 Q: Approximately how long did you sit up the --
24 approximately how long did you sit up the road?

25 A: I would imagine close to an hour I would think.

SGT. TIM JONES - CROSS BY MR. LOY

- 1 Q: Okay. And this was on a Sunday? Do you recall?
- 2 A: Sunday. Yes, sir.
- 3 Q: Okay. In the afternoon?
- 4 A: Yes, sir.
- 5 Q: And during this time, Mr. Brown came out and went to his
- 6 truck and did something or whatever and went back in a couple
- 7 of times?
- 8 A: Yes, sir.
- 9 Q: He came out carrying what looks like bottles or --
- 10 A: The one was a box and then the other one was a -- looked
- 11 like a box with bottles in it. Yes, sir.
- 12 Q: Recycling or something?
- 13 A: Sir?
- 14 Q: He could be recycling something?
- 15 A: Yes, sir.
- 16 Q: Carried around to the side of the house, went back in the
- 17 house. I mean nothing terribly nefarious that just jumped out
- 18 at you that you felt like you needed to intervene at that
- 19 point?
- 20 A: No, sir.
- 21 Q: Okay. And when you pulled up in the yard, you said you
- 22 pulled up directly pretty much in front of the house?
- 23 A: Yes, sir.
- 24 Q: In front of the bay window there or whatever?
- 25 A: Yes, sir.

SGT. TIM JONES - CROSS BY MR. LOY

- 1 Q: And Mr. Brown came out essentially like what's going on?
2 Can I help you? Is that --
- 3 A: I just told him who I was and I asked him if he was
4 Jonathan Brown and he said, "I'll have to call you back." He
5 said, "Yes, I am. Can we do this inside? I don't want my
6 neighbors to see."
- 7 Q: All right. But he came out and said, you know, can I
8 help you or what's going on or something, you know, why are
9 you here, something to that effect?
- 10 A: No, he didn't ask why I was there.
- 11 Q: Okay. But said can we go inside then?
- 12 A: Yeah, because he didn't want his neighbors to see.
- 13 Q: So then y'all went inside?
- 14 A: Yes, sir.
- 15 Q: And he was cooperative?
- 16 A: Yes, sir.
- 17 Q: He walked in. You walked in with him. You said put your
18 hands behind your back or whatever. He did the things you
19 asked of him?
- 20 A: Yes, sir.
- 21 Q: And you left peacefully?
- 22 A: Yes, sir.
- 23 MR. LOY: Thank you. I don't have any more questions.
- 24 THE COURT: Any further redirect?
- 25 MR. WARD: Nothing, Your Honor.

HELEN USHER BOYLE - DIRECT BY MR. JUSTIS

1 THE COURT: You may step down, sir. Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: You may call your next witness.

4 MR. JUSTIS: The State calls Helen Usher.

5 (Whereupon, there is a pause in the proceedings until the
6 witness enters the courtroom.)

7 THE CLERK: Would you please place your left hand on the
8 Bible and raise your right hand. State your full name for the
9 record.

10 THE WITNESS: Helen Usher Boyle.

11 THE CLERK: Do you solemnly swear or affirm to tell the
12 truth, the whole truth, and nothing but the truth, so help you
13 God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Thank you. You can have a seat.

16 THE COURT: Your witness.

17 MR. JUSTIS: Thank you, Your Honor. May it please the
18 Court.

19 THE COURT: Yes, sir.

20 HELEN USHER BOYLE, being first
21 duly sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. JUSTIS:

24 Q: Ms. Usher, where do you work?

25 A: I work at Dorchester Children's Center in Summerville,

HELEN USHER BOYLE - DIRECT BY MR. JUSTIS

1 South Carolina.

2 Q: And what do you do there?

3 A: I am the director of Forensic Services. I'm a forensic
4 interviewer and a child and family therapist.

5 Q: Okay. What are some of your duties as a forensic
6 interviewer?

7 A: As a forensic interviewer, when there are allegations of
8 abuse or neglect of a child, we get a referral from the
9 outside community agencies, and I do a forensic interview on
10 the child.

11 Q: Okay. You say you get a referral from an outside agency.
12 What are some of those agencies you -- you might get referrals
13 from?

14 A: It can be law enforcement or DSS. It can be the medical.
15 It can be MUSC. It could be a school, a parent. We get
16 referrals from all different kinds of places.

17 Q: Okay. And could you tell us a little bit about your
18 education?

19 A: Yes. I got my undergraduate degree in psychology and I
20 got my master's in psychology clinical counseling at the
21 Citadel. Since then, training at least for a forensic
22 interviewer, I've done 40 hours of extensive training through
23 Child First, and what that is is lectures, mock interviews,
24 and then an examination at the end. Since then --

25 MR. LOY: Your Honor, I have a matter of law I'd like to

1 take up with the Court.

2 THE COURT: Certainly. If you'd like to approach.

3 (Whereupon, a bench conference is held off the record.)

4 THE COURT: Ladies and gentlemen of the jury, we're going
5 to take a brief recess for one minute. We will bring you
6 right back in. Please, again, do not discuss the case with
7 anyone or allow anyone to discuss the case with you. We'll be
8 right back with you. Thank you.

9 (Whereupon, the jury exits the courtroom at 2:39 p.m.)

10 THE COURT: Mr. Loy, you have an objection?

11 MR. LOY: I do, Your Honor. My objection is based on a
12 case that I've got being ferried up here that I don't have
13 before me, but it's the case -- it's the Komara case, State
14 versus Komara. I think it's Komara, K-o-m-a-r-a, and it's
15 addressing the testimony of forensic interviews and they're
16 being qualified -- interviewers and they're being qualified in
17 court as an expert in the art or field or whatever of forensic
18 interviews.

19 And what my understanding of the -- and my recollection
20 of the opinion was that it's -- it's inappropriate to qualify
21 them as an expert, and they said -- basically, the Court said
22 it should never happen. There's no reason for them ever to be
23 qualified as a forensic expert. That the sole purpose of
24 doing that is to bolster the testimony of what's been
25 presented. That is I extracted a statement from a witness or

1 I have this video-recorded statement. I did it in accordance
2 with various protocol in which I was trained, et cetera, and
3 I've got these degrees and I've completed these classes.
4 Therefore, what I have obtained is somehow more -- more
5 reliable than what's simply presented from the witness stand.

6 The earlier hearing we had was to address the
7 admissibility -- and by the earlier I mean the admissibility
8 of the tape that the State is attempting to --

9 THE COURT: Correct.

10 MR. LOY: -- to put in. The admissibility of that tape,
11 and at that point certainly had the opportunity to contest the
12 qualifications of the interview, to say that the interviewer
13 was not qualified or was not trained or was not in a position
14 to do the things -- the one, two, three, four, five that are
15 required before the introduction of that interview being
16 played here in court, et cetera.

17 But I think that those are a finding that the Court
18 makes, and the Court has made those. That there was an
19 investigation going on, that this person was trained to do
20 that investigation, that the -- or the interview, that the
21 interview was done in accordance with those principles. The
22 Court found there were particularized guarantees of
23 trustworthiness, et cetera. And so the groundwork has been
24 laid.

25 I think at this point what the witness can do is say I

1 work at the Children's Center. I interviewed the child. I
2 tried to do it the best way I know or something along those
3 lines, and play the tape and let the tape itself -- the tape
4 speaks for itself. The credibility of the child is either
5 there or it's not there. She's consistent or she's
6 inconsistent. But that they don't need the testimony of this
7 witness to then say, well, the inconsistencies are for this
8 reason or the consistencies are that. She's just a -- the
9 mechanism whereby this tape comes in.

10 You've ruled on the admissibility of the tape. The
11 Supreme Court -- or I think it's the Supreme Court has said
12 it's inappropriate to qualify her as an expert. I think,
13 therefore, to run through her curriculum vitae, do everything
14 that runs up to the edge to tell the jury she is an expert at
15 this, and then not quite cross the line compromises the
16 principles that are espoused in that -- in that case.

17 So I -- you've ruled it comes in. I think if she lays
18 the foundation and says I interviewed the child and that's the
19 tape, it comes in.

20 THE COURT: Mr. Justis?

21 MR. JUSTIS: It sounds like Mr. Loy is stipulating to the
22 introduction of the tape. If he wants to stipulate to it, we
23 can take her off the stand right now and just play the tape I
24 mean if that's the case. We weren't going to offer her as an
25 expert, but I think the reason why we're asking these

1 questions is so that the jury understands why police don't
2 just take a statement that they get from a child and just take
3 it as gospel and go ahead and make a case. They send them to
4 people that deal with these types of accusations all the time.
5 As you heard, she receives referrals from all different kinds
6 of agencies.

7 So I think they need to understand he's been -- in his
8 opening statement he just referred to these forensic
9 interviews, forensic interviews, forensic interviews. The
10 crux of his entire opening argument was dealing with these
11 forensic interviews; so I think the jury has a right to know
12 who these people are that are doing the forensic interviews,
13 that they're not just some Tom Smith that we pulled off the
14 street and had sit down with these children.

15 MR. LOY: Because that will in some way bolster what is
16 presented on the tape and that's what they're attempting to
17 do.

18 THE COURT: And --

19 MR. LOY: I'm sorry.

20 THE COURT: The problem I see though, Mr. Loy, is part of
21 your cross examination, especially of the child, was how many
22 times did you tell the story, how -- how often were you
23 interviewed, and so somehow we need to cross that bridge to
24 make it I think fair to the jury in that, yes, the child was
25 interviewed for a purpose and -- certainly, but I want to take

1 a look at that Komara decision if you're having it placed up
2 here.

3 And his intent was not to qualify her as an expert, which
4 I certainly agree with. However, the purpose of the interview
5 and the methodology of the interview to some extent, unless
6 this decision tells me otherwise, I think is relevant.

7 MR. LOY: Your Honor, I do have a copy that -- and I'm
8 sorry. It's Kroma, apparently K-r-o-m-a. And for some reason
9 --

10 THE COURT: Do you need a second to review it? And did
11 you read it, Mr. Justis? Are you familiar with the case?

12 MR. JUSTIS: I previously read it.

13 THE COURT: Do y'all need a few minutes?

14 MR. LOY: If we could have a moment, I can run a copy now
15 for the Court. I do have a copy here.

16 THE COURT: Sure. If you have an extra copy, we'll just
17 take a brief recess and review it real quick.

18 MR. LOY: Thank you, Your Honor.

19 THE COURT: While we're dealing with that, I just
20 received a note from the jury that Juror Number 270, Timothy
21 Wright, was the mail carrier for this defendant. So we'll
22 need to deal with that as well.

23 Why don't we take a look at the case and then we'll bring
24 the juror in. Y'all come back in chambers and we'll discuss
25 that.

1 MR. LOY: We're going to discuss that before bringing the
2 juror in?

3 THE COURT: Yeah. We'll look at the case and discuss
4 that at the same time.

5 MR. LOY: Okay.

6 THE COURT: So y'all want to come on back?

7 MR. JUSTIS: Sure.

8 (Whereupon, there is a break in the proceedings from 2:46
9 p.m. to 2:59 p.m.)

10 THE COURT: Thank you. Everyone may have a seat. All
11 right. We discussed the matter of the juror in chambers. My
12 understanding is from the defense -- and, Mr. Loy, if you
13 would, just place on the record your position regarding your
14 client's knowledge of this potential juror.

15 MR. LOY: Your Honor, we're not jeopardized. When the
16 gentleman came forward, we knew that was the mailman. There's
17 no personal relationship. We didn't feel like there was
18 anything we needed to disclose. It was a matter of by sight
19 and we just -- we seated him. We're not in a position to
20 complain. We seated him with full knowledge.

21 THE COURT: All right. So thank you. Anything from the
22 State on that? I do want to bring the juror out just to
23 confirm that issue just to protect the record in that regard,
24 but anything further from the State in that regard?

25 MR. JUSTIS: Nothing from the State, Your Honor.

1 THE COURT: All right. So could we have Juror Number
2 270, Mr. Wright, out, please?

3 THE BAILIFF: 270?

4 THE COURT: Yes, ma'am.

5 (Whereupon, Juror Number 270 enters the courtroom.)

6 THE CLERK: Can you place your left hand on the Bible and
7 raise your right hand? State your full name for the record.

8 THE JUROR: My name is Timothy Michael Wright.

9 THE CLERK: Do you solemnly swear or affirm to tell the
10 truth, the whole truth, and nothing but the truth, so help you
11 God?

12 THE JUROR: I do.

13 THE CLERK: Thank you.

14 THE COURT: Mr. Wright, I received a note and thank you
15 for bringing that to my attention. I just want to ask you a
16 few questions just to -- just to clarify the nature of your
17 relationship. I understand that you're the defendant's mail
18 carrier; is that correct?

19 THE JUROR: I was, yes.

20 THE COURT: You were? You're not currently in that
21 location?

22 THE JUROR: I am currently delivering mail to that
23 location. They have moved from that location.

24 THE COURT: Okay. And during your time when you were his
25 mail carrier, did you have any kind of personal relationship

1 with him where you would socially interact other than just by
2 sight like, hi, I'm your mailman, here's your mail type of
3 situation?

4 THE JUROR: No, Your Honor.

5 THE COURT: So can you set that whatever little
6 relationship that is aside as previously asked during jury
7 selection and listen to the testimony as it comes from the
8 witness stand and render a fair and impartial verdict both for
9 the State and to the defense?

10 THE JUROR: Yes, I can.

11 THE COURT: All right, sir. Thank you for bringing that
12 to my attention.

13 THE JUROR: Yes, ma'am.

14 THE COURT: Thank you. We'll bring the -- we'll bring
15 the rest of the -- everybody else ready for the rest of the
16 jury?

17 MR. LOY: Ready, Your Honor.

18 MR. JUSTIS: Yes, Your Honor.

19 THE COURT: All right. Let's have the rest of our jury.
20 We'll mark this as a Court's exhibit.

21 (Whereupon, the juror note is marked and entered as
22 Court's Exhibit Number 2.)

23 (Whereupon, the jury enters the courtroom at 3:02 p.m.)

24 THE COURT: Welcome back, ladies and gentlemen of the
25 jury. Thank you so much for your patience this afternoon. We

26

HELEN USHER BOYLE - DIRECT BY MR. JUSTIS

1 are now ready to proceed with the testimony of this witness.
2 Solicitor?

3 MR. JUSTIS: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, sir.

6 CONTINUED DIRECT EXAMINATION

7 BY MR. JUSTIS:

8 Q: Ms. Usher --

9 A: Yes. Actually, it's Mrs. Boyle.

10 Q: Ms. Boyle, you -- did you receive a referral in this
11 case?

12 A: Yes.

13 Q: And who did you receive the referral from?

14 A: From Dr. Carrie Busch.

15 Q: Okay.

16 A: At MUSC.

17 Q: Okay. And as a result of that, did you conduct a
18 forensic interview?

19 A: Yes, I did.

20 Q: And who did you conduct a forensic interview on?

21 A: On **Victim 2**.

22 Q: Do you know the date of that forensic interview?

23 A: Yes. July 29th, 2013.

24 Q: And when you conducted that forensic interview, was it
25 recorded in any fashion?

HELEN USHER BOYLE - DIRECT BY MR. JUSTIS

1 A: Yes. It was audio and video recorded to a DVD.

2 Q: I'm showing you what's been marked as State's Exhibit
3 Number 6. Do you recognize this?

4 A: Yes.

5 Q: And what does that appear to be?

6 A: It appears to be a DVD of the forensic interview that I
7 conducted on **Victim 2**.

8 Q: And have you had an opportunity to view this DVD?

9 A: Yes, I have.

10 Q: And is it a fair and accurate representation of the
11 forensic interview you conducted with **Victim 2** on -- on that
12 date?

13 A: Yes, it is.

14 MR. JUSTIS: At this time, the State would offer State's
15 6 into evidence.

16 THE COURT: Any objections?

17 MR. LOY: Only my earlier objections, Your Honor.

18 THE COURT: Those are noted. Thank you. It's in.

19 (Whereupon, State's Exhibit Number 6, a DVD of the
20 forensic interview of **Victim 2**, is admitted into
21 evidence. NOT TRANSCRIBED HEREIN.)

22 MR. JUSTIS: And at this time, the State would like to
23 publish for the jury.

24 THE COURT: Yes, sir.

25 (Whereupon, State's Exhibit Number 6 is played in open

HELEN USHER BOYLE - DIRECT BY MR. JUSTIS

1 court. NOT TRANSCRIBED HEREIN. Video runs from 3:05
2 p.m. until 4:12 p.m.)

3 MR. JUSTIS: No further questions, Your Honor.

4 THE COURT: Cross examination?

5 MR. JUSTIS: Please answer any questions --

6 MR. LOY: None. Thank you.

7 THE COURT: You may step down, ma'am. Thank you. Ladies
8 and gentlemen of the jury, it's about 4:15. It's been
9 certainly a long day. I think it's probably a good time to
10 call it -- call it a day for today.

11 Again, please remember not to discuss the case with
12 anyone or allow anyone to discuss the case with you. We will
13 resume testimony again at 9:30 in the morning. So if you
14 could, please be in your jury room a few minutes beforehand.
15 That way, we can insure that we have everyone present. All
16 right? Thank you. Have a good evening.

17 (Whereupon, the jury exits the courtroom at 4:13 p.m.)

18 THE COURT: Anything further from either party before we
19 recess for the day?

20 MR. JUSTIS: Nothing from the State, Your Honor.

21 MR. LOY: No, Your Honor. Thank you.

22 THE COURT: All right. We'll resume testimony at 9:30.
23 So if everybody could be here a few minutes ahead of time, we
24 can get started on time. Thank you.

25 (Whereupon, the proceedings adjourn at 4:14 p.m.)

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 JULY 16, 2014

2 (Whereupon, the proceedings resume at 9:52 a.m.)

3 THE COURT: Good morning, everyone. Thank you. You may
4 have a seat. Are the parties ready to proceed?

5 MR. JUSTIS: The State is ready, Your Honor.

6 MR. LOY: Ready, Your Honor.

7 THE COURT: Let's have our jury, please.

8 (Whereupon, the jury enters the courtroom at 9:53 a.m.)

9 THE COURT: Good morning, ladies and gentlemen of the
10 jury. I hope you had a nice evening last night. We're now
11 ready to resume with the trial of this case. Solicitor, you
12 may call your next witness.

13 MR. WARD: The State calls Sergeant Randy Olsen.

14 THE CLERK: Please place your left hand on the Bible and
15 raise your right hand and state your full name for the record.

16 THE WITNESS: Randall George Olsen, O-l-s-e-n.

17 THE CLERK: Do you solemnly swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth, so help you
19 God?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Please have a seat.

22 THE COURT: Your witness.

23 MR. WARD: Thank you, Your Honor.

24 SGT. RANDY OLSEN, being first
25 duly sworn, testifies as follows:

SGT. RANDY OLSEN - DIRECT BY MR. WARD

DIRECT EXAMINATION

1
2 BY MR. WARD:

3 Q: Sgt. Olsen, where -- where do you work?

4 A: I work at the Summerville Police Department.

5 Q: And what is your job title there?

6 A: I'm the crime scene investigator and evidence custodian.

7 Q: And what are some of your duties in that respect?

8 A: I'm in charge of the -- as evidence custodian, I'm in
9 charge of all the evidence that comes in to the police
10 department. I make sure it stays secured and transported for
11 any testing that has to be done. And as the crime scene
12 investigator, on major crime scenes I get called out to do
13 whatever is necessary to try to investigate that incident and
14 what happened.

15 Q: Okay. And how long have you been working in law
16 enforcement?

17 A: I've been in law enforcement for 23 years.

18 Q: Okay. How did you become involved in this case?

19 A: I was contacted by Sergeant Mosher in reference to
20 assisting in doing the search of the residence.

21 Q: Okay. And what was -- what did you do when you arrived
22 at the residence?

23 A: When we arrived at the residence, I went and took my
24 camera out and I took photographs coming in to the residence
25 and the front of the residence I believe. I usually take a

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 picture of the front and then I come in and take pictures of
2 the living room area where we were going to be searching at.

3 Q: Okay. I'm showing you what's been marked as State's
4 Exhibit 19.

5 MR. WARD: May I approach, Your Honor?

6 THE COURT: You may.

7 A: That would be the couch in the -- in the living room.

8 Q: Okay. And did you have an opportunity to search or look
9 for anything in that area of the house?

10 A: Yes. What we did was I used the -- an omnichrome ultra
11 light source to -- which helps illuminate any type of body
12 fluids, and items like that have different frequencies of
13 light that you use and you have goggles that you put on so you
14 can see that. And what I do is --

15 MR. LOY: Objection, Your Honor. I don't think this
16 witness has been qualified or foundation has been laid for
17 this introduction of this information.

18 THE COURT: Sustained. If you'd just further --

19 MR. WARD: Yes, Your Honor.

20 THE COURT: -- lay that foundation.

21 Q: Sergeant Olsen, what type of extra training do you have
22 for crime scene investigation?

23 A: I've had over -- almost -- over 900 hours of advanced
24 training in crime scene investigation.

25 Q: Okay.

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 A: I am also certified by the International Association of
2 Identification as a crime scene investigator.

3 Q: All right. And then what about for investigating for
4 bodily fluids or things of that nature?

5 A: I have been through several classes put on by the IAI and
6 the South Carolina IAI, which is the International Association
7 division and the South Carolina division, and also several of
8 the companies that produced and manufacture these pieces of
9 equipment have come around to do demonstrations and training
10 on how to operate the equipment.

11 Q: All right. And this omnichrome device you spoke of, how
12 many times have you used that?

13 A: I've used it -- I couldn't even tell you. Several dozen
14 times. It just depends. A lot of times we just use it to
15 play with stuff to practice.

16 Q: All right. And have you had any formal training with
17 that device?

18 A: With that device by that manufacturer, no, but with the
19 ones that operate the same as that one does, I have had
20 training on.

21 Q: Okay.

22 MR. WARD: At this time, Your Honor, we'd ask that
23 Sergeant Olsen be offered as an expert in crime scene
24 investigation.

25 THE COURT: Any objections or voir dire?

SGT. RANDY OLSEN - VOIR DIRE BY MR. LOY

VOIR DIRE

1
2 BY MR. LOY:

3 Q: So you've taken classes in crime scene investigation;
4 right?

5 A: Yes.

6 Q: And completed a lot of hours from what you said?

7 A: Yes.

8 Q: And crime scene investigation is a relatively broad term.
9 Would that be fair to say?

10 A: Not really. It's investigating crime scenes.

11 Q: Okay. Well, do you -- does it include things like the
12 collection of physical evidence?

13 A: Yes.

14 Q: Such as marking where shell casings are found?

15 A: Tool marks, shell casings, firearms, anything that you
16 might have encountered at a crime scene is what you would
17 collect and what you investigate to identify as possible
18 evidence in a crime.

19 Q: Okay. And would it include things like say spatter
20 patterns? Do you know what I'm talking about?

21 A: Yes.

22 Q: Okay. And by that we mean if some fluid has been flung
23 or splashed on the wall trying to calculate the angle or range
24 in which they came and distance?

25 A: Yes.

SGT. RANDY OLSEN - VOIR DIRE BY MR. LOY

1 Q: Up and down, things of that ilk?

2 A: Yes.

3 Q: And glass breakage as far as patterns when say bullets
4 come through a windshield from two different directions trying
5 to determine which came first based on the patterns of
6 breaking glass?

7 A: Yes. It all includes that.

8 Q: Okay. So you've had a lot of classes basically all-
9 encompassing these things and that's what you do because every
10 crime scene is different to some extent or another; is that
11 right?

12 A: Yes, it is.

13 Q: Okay. But as far as the -- I'm sorry. What's your
14 education as far as a formal education?

15 A: I have an associate's degree in criminal justice.

16 Q: Okay. So you don't have a -- the chemistry of things, et
17 cetera -- I mean you understand how to show up, do the things
18 that you've been trained to do, et cetera, but as far as the
19 actual manner in which the lights work, the mechanisms by
20 which the scientific results are obtained, even if you know
21 how to do the test, you're not really prepared to -- to tell
22 us about how the test was produced or why it's reliable, et
23 cetera, merely that you did it as you were instructed to do;
24 is that right?

25 A: I don't do -- I didn't do -- I don't do tests on

SGT. RANDY OLSEN - VOIR DIRE BY MR. LOY

1 equipment or what evidence I recover. I'm not a scientist
2 that does the chemical. That's what the state lab has.

3 Q: Okay.

4 A: I collect the evidence to let them process it at the --
5 the evidence for any other materials like that.

6 Q: Okay.

7 A: But they can't come down and do all of it.

8 Q: Okay.

9 MR. LOY: Your Honor, I think he's an expert in the
10 investigation of crimes. I think he has the training and I
11 think he's qualified to do that.

12 My objection was when he launched into his scientific
13 testimony about here's what the lights do and here's how they
14 operate and here's what they're -- why they do those things.
15 I don't think he's qualified to do that. If he wants to say,
16 "I investigated the crime scene, I collected this evidence,
17 and here's what I did," I think he is entitled to do that. I
18 don't think he's a scientist and I don't think he's entitled
19 to give us scientific evidence.

20 THE COURT: Solicitor?

21 MR. WARD: That's fine, Your Honor. We'll move on.

22 THE COURT: The Court will then qualify him in the field
23 of evidence collection. Pursuant to Rule 702, anything else
24 goes to the weight of the evidence, not the admissibility.

25 MR. WARD: Thank you, Your Honor.

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 THE COURT: You may proceed.

2 CONTINUED DIRECT EXAMINATION

3 BY MR. WARD:

4 Q: Sergeant Olsen, through your investigation and search of
5 the house, were you able to -- did you collect any evidence?

6 A: Yes. I collected two swatches of cloth from a couch --
7 one from the couch and one from the loveseat --

8 Q: All right.

9 A: -- in the residence.

10 Q: I'm showing you what's been marked as State's Exhibits 21
11 and 22. If you look on the back, you have the numbers. For
12 State's 21, do you recognize that?

13 A: 21 is the loveseat and 22 is the couch.

14 Q: And for State's Exhibit 21, is that a fair and accurate
15 representation of the couch that you collected evidence from?

16 A: 21 is the loveseat. That was the -- you can see the spot
17 where I cut the swatch out, the white spot there on the blue
18 couch.

19 Q: And for State's Exhibit 22, is that a fair and accurate
20 representation as well?

21 A: Yes, it is.

22 MR. WARD: At this time, Your Honor, we'd ask for State's
23 Exhibits 21 and 22 to be admitted into evidence.

24 THE COURT: Any objection?

25 MR. LOY: I don't think so, Your Honor.

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 THE COURT: Do you need to review them?

2 MR. WARD: I'm sorry.

3 MR. LOY: No, Your Honor, I have no objection.

4 THE COURT: Thank you. They're in.

5 (Whereupon, State's Exhibits 21 and 22, both color
6 photographs, are admitted into evidence.)

7 MR. WARD: May I publish, Your Honor?

8 THE COURT: You may.

9 Q: I'm showing you State's 21. Can you explain what you --
10 what the jury is looking at here?

11 A: The -- on the left side, that's the omnichrome light
12 source, and the white spot you see there -- the color is kind
13 of off on it. It's a bluish couch and it's -- that's the
14 white spot where I cut the swatch out where I had
15 illumination.

16 Q: And State's 22?

17 A: And that would be the couch with also where I cut the
18 swatch or the cloth out where there was illumination from the
19 omnichrome.

20 Q: And after you cut these swatches out, what did you do
21 with those cuttings?

22 A: Each swatch was put in a separate paper bag and I
23 returned to the police station with them. After I got back to
24 the police station, I took the swatches out of the bag and put
25 them in a smaller envelope so I could put our evidence label

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 on that envelope. They were placed into the evidence room and
2 later on another -- at a later date, along with other
3 evidence, I took it to SLED for processing.

4 Q: And is that evidence room secured?

5 A: Yes, it is.

6 Q: Who has access to that?

7 A: I have access to it and Detective Sloan, who is the other
8 crime scene investigator and evidence person, has access to
9 it.

10 Q: Okay.

11 A: There's actually two doors to it, one inner door that you
12 have which is locked and the outer door has double locks.

13 Q: I'm showing you what's been marked as State's Exhibit 8.

14 MR. WARD: May I approach, Your Honor?

15 THE COURT: You may.

16 Q: Do you recognize that?

17 A: That would be the envelopes I put the cloth swatches in.

18 Q: And how are you able to recognize it?

19 A: When I take it to SLED, they put it in their evidence bag
20 for processing and they seal the top and then I initial and
21 date it, and then I put my name and date it again on the
22 envelope.

23 MR. WARD: I beg the Court's indulgence, Your Honor.

24 Q: And when you took -- I'm sorry. I'm going to hand this
25 back to you -- State's Exhibit 8. When it was in your

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 control, did it appear to be tampered with at all?

2 A: The envelopes inside or --

3 Q: Yeah. The envelopes before you had taken them to SLED?

4 A: Oh, no. Before I take them to SLED, what I do is --
5 there's a -- you can see the piece of clear tape that seals
6 the top and the bottom of the envelopes. When I put it -- the
7 items in, I put the clear tape on it just to seal it, and I
8 put the label on it. You can see through the yellow -- the
9 white part that there's a label that I put on it. But I -- I
10 seal them up that way before I take them to SLED so that I
11 know nobody has handled them since I put them in the
12 packaging.

13 Q: And then when they're -- when you drop them off at SLED,
14 how is it secured after it leaves -- or right as you're
15 dropping them off?

16 A: They keep it in the evidence intake downstairs and then
17 exactly how they do it --

18 MR. LOY: Your Honor, I think this would be hearsay.
19 He's testifying to some process that occurs after he's out of
20 the scene.

21 THE COURT: If he knows the process and witnessed what he
22 particularly did, he's allowed to testify to that.

23 Q: When you drop it off, how does SLED secure it in front of
24 you or while you're still there?

25 A: They'll take it and they put it in baskets that has for

SGT. RANDY OLSEN - DIRECT BY MR. WARD

1 each department if it's going to trace or DNA first. It
2 depends on what items you're bringing down. If it's going to
3 trace to find out if there's anything on it, they put it in
4 their package. At times when I have been there, when they get
5 a basket full, they'll call and somebody from that room will
6 come down and pick it up and they transfer it to them. They
7 all have their ID badge that has a bar code on it that they
8 scan and that's how they take control of the item.

9 Q: And you said you initialed or signed that big clear
10 package when you saw them -- when it's sealed up --

11 A: Yes.

12 Q: -- at that point? Did you have an opportunity during
13 this case to handle any other evidence collection or take any
14 other evidence up to SLED?

15 A: The only evidence I collected were the two swatches, and
16 any other evidence that went to SLED I took -- transported to
17 SLED and recovered from SLED when they were done and brought
18 it back to the police department.

19 Q: Okay. I'm showing you what's been marked as State's
20 Exhibit 3. Do you recognize that?

21 A: It's the SLED rape kit for **Victim 2** -- **Victim 2**.

22 Q: And --

23 A: Which is usually -- it's done at -- I believe it was done
24 at MUSC.

25 Q: When would you have -- when was the first time you came

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1 in contact with that?

2 A: When the officer picks it up from MUSC and brings it into
3 the police department and puts it into evidence.

4 Q: Okay. And then what would you have done -- what -- what
5 did you do with it next?

6 A: What I do is we'll -- we'll log -- we'll log it in from
7 wherever they put it. They have a refrigerator that's locked
8 in the patrol office to store the DNA-type of evidence in.
9 They have to get that key from the dispatcher. Once I see
10 that there's evidence in the computer that there is something
11 in that locker, we'll go -- we have a key for it in our
12 evidence room, a second key. We'll open up the refrigerator,
13 take it out of there, bring it in the evidence room. We'll
14 place our bar code label on it and from there it goes into the
15 refrigerator in the back of the evidence room until it's
16 transported to SLED.

17 Q: And when you transport it to SLED, did it appear to be
18 tampered with or was it still sealed?

19 A: The original seal was still on it. We did not open it.
20 We usually don't open it unless we have to get paperwork out.

21 Q: Okay. And then when you take it to SLED, what happens
22 when you actually hand it off to SLED while you're there?

23 A: When I take it to SLED, the intake lady that's downstairs
24 -- she will open the kit up. She'll break the initial seal on
25 the kit and take items out of it. A lot of times there's

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1 extra bags in the kit that they may not use for hair pluckings
2 or different items like that, fingernail clippings and stuff.
3 They -- the items that don't have anything in it, they take
4 and put back into the box. The items that are going to be
5 processed they will take and put it into the envelopes like
6 you saw before to go to the different labs, and I'll initial
7 those envelopes and they process it and then put it in the
8 boxes for further transfer.

9 Q: I'm showing you what's been marked as State's Exhibit 29.
10 Do you recognize that?

11 A: That's going to be the bag for Stimley and inside is the
12 main part of the DNA sexual evidence, the stuff that SLED
13 does, and I've signed the front.

14 Q: And was it -- I'm sorry.

15 A: And then there's whatever returns they have with it, the
16 extra stuff that they add in.

17 Q: Okay. So was that taken out of State's Exhibit 3?

18 A: Yes. That was taken out of the -- the rape kit box.

19 Q: And did you see it sealed and secured before you signed
20 it?

21 A: Yes.

22 Q: All right. Now I'm showing you State's Exhibit 2. Do
23 you recognize that?

24 A: That's another envelope -- another package for Stimley
25 and this was -- this was the panties that were inside and

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1 they're still in the envelope, and you can see that they've
2 tested it, and it has my initials and date on it when I put it
3 in.

4 Q: Okay. And --

5 A: When they put it in there.

6 Q: Was it sealed and secured when you signed that --

7 A: Yes.

8 Q: -- when you dropped it off?

9 A: Yes, it was. They do -- the seal and everything is done
10 right there in front of me.

11 THE COURT: Solicitor, what was that exhibit number?

12 MR. WARD: That was Exhibit 2, Your Honor.

13 THE COURT: Thank you.

14 Q: I'm now showing you State's Exhibit 4. Do you recognize
15 that?

16 A: This is a rape kit labeled **Victim 1** with our label
17 on it, and it's one of the kits that I had taken up to SLED
18 for processing.

19 Q: Okay. And when you first received that into evidence,
20 did it appear to be tampered with?

21 A: No. It was still sealed and placed into the refrigerator
22 in the evidence room.

23 Q: And how were you able to tell it was still sealed?

24 A: They have seals that come with the package. These little
25 seals come inside the package as the kit is all put together,

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1 and if you try to break -- do anything with that, it tears.
2 It's very flimsy tape, but it's enough to keep it sealed so
3 that way if anybody has tampered with it, you can tell that's
4 been tampered with. And then they date and initial it also,
5 whoever puts the seal on it.

6 Q: And then what would you have done with that kit?

7 A: I -- after we put the label on it and placed it in the
8 refrigerator and then took it up to SLED --

9 Q: Okay.

10 A: -- when we took the rest of the evidence up.

11 Q: I'm showing you what's been marked as State's Exhibit 30.
12 Do you recognize that?

13 A: That's the contents again of the kit for **Victim 1**.
14 It's got my initials, the name on it with the date that I took
15 it up there.

16 Q: And was that sealed and secured when you signed that bag?

17 A: Yes, it was.

18 Q: Now I'm showing you what's been marked as State's Exhibit
19 16. Do you recognize that?

20 A: That's the rest of the kit for **Victim 1**, and this
21 would be the panties or the underwear again for **Victim 1**.

22 Q: And was that sealed and secured when you signed that?

23 A: Yes, it was.

24 Q: And then did you ever receive this evidence again?

25 A: Yes. What SLED does is they -- they send you a letter

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1 when they get done with the processing of it. You get an
2 email saying that the report is ready and also they transfer
3 it back down to the lower evidence room, whichever lab has it,
4 and the next time I run to SLED, they will return the items to
5 me.

6 Q: Okay. And then what do you do with them when you pick
7 them back up from SLED after they're finished?

8 A: I sign for them at SLED and I return them back to the
9 police station and I log them right back into the evidence
10 room in whatever location they need to go into.

11 Q: I'm showing you what's been marked as State's Exhibit 10.
12 Do you recognize that?

13 A: That would be buccal swabs collected by Detective Mosher
14 for Jonathan Brown.

15 Q: And what would -- where would those have been placed?

16 A: They would have been placed into the evidence room and
17 placed in the refrigerator again and then transported to SLED
18 when they -- when the evidence went back up.

19 Q: But on the -- did they ever appear to be tampered with
20 before you took them to SLED?

21 A: No. They still have the -- my tape on both ends of it,
22 and so nobody else had messed with it.

23 Q: Okay. And then when you dropped it off at SLED, did you
24 sign for it when it was sealed and secured?

25 A: Yes. It was -- they sealed it and I signed it and dated

VERONA GIBSON - DIRECT BY MR. WARD

1 it.

2 MR. WARD: No further questions. Please answer any the
3 defense may have.

4 MR. LOY: I don't have any questions. Thank you.

5 THE COURT: You may step down. Thank you. You may call
6 your next witness.

7 MR. WARD: The State calls Verona Gibson.

8 (Whereupon, there is a pause in the proceedings until the
9 witness enters the courtroom.)

10 THE CLERK: Please place your left hand on the Bible and
11 raise your right hand and state your full name for the record.

12 THE WITNESS: Verona Gibson.

13 THE CLERK: Do you solemnly swear or affirm to tell the
14 truth, the whole truth, and nothing but the truth, so help you
15 God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please have a seat.

18 MR. WARD: May it please the Court, Your Honor?

19 THE COURT: Your witness.

20 MR. WARD: Thank you.

21 VERONA GIBSON, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. WARD:

25 Q: Ms. Gibson, where do you work?

VERONA GIBSON - DIRECT BY MR. WARD

1 A: South Carolina Law Enforcement Division, which we refer
2 to as SLED.

3 Q: And what is your job title there?

4 A: I'm a forensic technician in the DNA case work department
5 in the evidence processing section.

6 Q: Okay. And how long have you worked -- worked there?

7 A: Approximately six years.

8 Q: And what are some of your job duties?

9 A: We get larger pieces of evidence, such as clothing, car
10 parts, guns, and we process them for blood, semen, saliva,
11 touch DNA, and ownership.

12 Q: And what type of education is required for your job?

13 A: I have an associate's degree in science from Tri-County
14 Technical College, an associate's in public service from
15 Greenville Technical College, and then I went through an in-
16 house training program at SLED.

17 Q: And do you have any other training or certifications that
18 you have obtained?

19 A: I do have a certification in -- or a certificate in
20 forensics from Greenville Tech as well.

21 Q: Okay. And about how many cases would you say you have
22 worked on?

23 A: Tens of thousands probably.

24 Q: And have you ever been qualified as an expert in General
25 Sessions court before?

VERONA GIBSON - DIRECT BY MR. WARD

1 A: I have, yes.

2 Q: And what were you qualified as an expert in?

3 A: Forensic evidence processing.

4 MR. WARD: Your Honor, at this time, the State would move
5 to have Ms. Gibson declared as an expert in forensic evidence
6 processing.

7 THE COURT: Any objection?

8 MR. LOY: Without objection, Your Honor.

9 THE COURT: She is so qualified.

10 MR. WARD: Thank you, Your Honor.

11 Q: Ms. Gibson, could you please explain to the jury what
12 types of evidence you analyze?

13 A: Usually, it's for body fluids. It could be anywhere from
14 bed linens, clothing, car parts, guns, knives, just anything
15 that's larger than a basic sheet of notebook paper.

16 Q: And what's the significance of the information that you
17 obtain as a result of the analysis you do?

18 A: I do presumptive testing. So it kind of narrows down the
19 -- the spots that need to be set up for further testing. So
20 if I test a spot for what possibly could be semen, I'm not
21 saying that is semen, I'm saying it's a possibility as semen.
22 It narrows down the number of samples that need to be
23 forwarded.

24 Q: And did you have an occasion to examine any evidence in
25 this case?

VERONA GIBSON - DIRECT BY MR. WARD

1 A: I did, yes.

2 Q: I'm showing you what's been marked as State's Exhibit 16.
3 Do you recognize that?

4 A: I do. Yes, sir.

5 Q: And how are you able to recognize it?

6 A: There are several different ways. This is our lab number
7 at SLED. It's a unique lab number for the case. When it came
8 in the door, it was assigned this -- this lab number. Every
9 item in this case is assigned a unique item number within the
10 case. My initials and the date that I sealed the package are
11 down here. But the item number, my initials, the lab number,
12 and the date I processed it are on the back on the inside.

13 Q: Okay. And when you received it, did it appear to be
14 tampered with?

15 A: No, sir, it did not.

16 Q: Okay. And then what would you have done with -- first --
17 I'm sorry. What is that piece of evidence that you actually
18 worked on?

19 A: It is the underwear from the CSC kit of **Victim 1**.

20 Q: Okay. And what would -- what did you do with that?

21 A: The request in this case was for semen on the -- and
22 saliva on the CSC kit. So since the underwear came out of the
23 CSC kit, they have the same request. I looked at the
24 underwear for areas that fluoresced. Those were tested with
25 our chemical test for semen -- possible semen, and then any

VERONA GIBSON - DIRECT BY MR. WARD

1 areas that possibly could be saliva were also taken and cut.

2 Q: Could you kind of explain how that process works? You
3 said -- just kind of how it would show if there were semen
4 present in that?

5 A: We use what's called an alternate light source. It's a
6 UV light source. Areas that are possibly semen, saliva, urine
7 fluoresce. So they kind of glow under the light. We circle
8 those and then once the light has been removed from the item,
9 we test those with a chemical test. It's basically a cotton
10 swab. We add -- we swab the area of -- of interest. Excuse
11 me. One drop of a solution. We wait a minute. If there's a
12 color change, there's a possibility that's semen.

13 Q: Okay. And from the tests you ran on that, what were the
14 results?

15 A: There was no areas that tested positive for semen, but
16 the crotch was cut and forwarded to the serology department
17 for further testing.

18 Q: I'm showing you what's been marked as State's Exhibit 2.
19 Do you recognize that?

20 A: I do. Yes, sir, in the same ways. It has the same lab
21 number. It's a different item number because it's a different
22 item in the case. My initials, the date, and then the same
23 information on the back.

24 Q: Okay. And when you received it, did it appear to be
25 tampered with?

VERONA GIBSON - DIRECT BY MR. WARD

1 A: No, sir, it was not.

2 Q: Okay. And what is that piece of evidence?

3 A: That is the underwear from the CSC kit of Gab -- of

4 **Victim 2**. Sorry.

5 Q: Okay. And were you able to perform tests on that?

6 A: Yes, sir. It was tested in the same manner as the other
7 pair of underwear.

8 Q: And what were the results of that test?

9 A: The same. There were no areas that were positive for the
10 presence of semen, but the crotch was cut and forwarded for
11 further testing.

12 Q: And if you said there was no identification of semen, why
13 would it have been sent on for further testing?

14 A: There was a possibility of saliva and a request for
15 saliva.

16 Q: Okay. And when you're finished testing it, what do you
17 do with the evidence?

18 A: The item itself is -- is wrapped up in the white paper we
19 cover the table with, sealed up, returned to its container,
20 returned to the heat-sealed pouch, and then that pouch is
21 taken back to our evidence control department to be returned
22 to the agency.

23 Q: And the cutting -- you said there was a cutting taken
24 out?

25 A: There was. That cutting is sealed and it's like a little

VERONA GIBSON - DIRECT BY MR. WARD

1 manila envelope, a small one. It's called a coin envelope.
2 It's sealed, initialed, placed in one of the heat-sealed
3 pouches, sealed, and then sent for further testing.

4 MR. WARD: I beg the Court's indulgence.

5 Q: Did you have any other further involvement in this case?

6 A: No, sir.

7 MR. WARD: Thank you. Please answer any other questions
8 the defense may have.

9 THE COURT: Cross examination?

10 MR. LOY: None. Thank you.

11 THE COURT: You may step down. Thank you. You may call
12 your next witness.

13 MR. WARD: The State calls Jessica Herron.

14 (Whereupon, there is a pause in the proceedings until the
15 witness enters the courtroom.)

16 THE CLERK: Please place your left hand on the Bible and
17 raise your right hand. State your full name for the record.

18 THE WITNESS: Jessica Leann Herron.

19 THE CLERK: Do you solemnly swear or affirm to tell the
20 truth, the whole truth, and nothing but the truth, so help you
21 God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you. You may have a seat.

24 THE WITNESS: Thank you.

25 THE COURT: Your witness.

JESSICA HERRON - DIRECT BY MR. WARD

1 MR. WARD: Thank you, Your Honor.

2 JESSICA HERRON, being first duly
3 sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. WARD:

6 Q: Ms. Herron, where do you work?

7 A: The South Carolina Law Enforcement Division.

8 Q: And what is your job title there?

9 A: I'm a forensic serologist.

10 Q: All right. And how long have you worked -- worked
11 there?

12 A: Approximately two years.

13 Q: And what are some of your job duties?

14 A: I look for -- I screen items of evidence for blood,
15 semen, saliva. I make small cuttings, forward it. I also do
16 confirmatory testing. I also write reports based on my
17 findings. I also participate in reviews for other
18 serologists.

19 Q: Okay. And what type of education do you have?

20 A: I have a bachelor's of science in biological science from
21 the University of South Carolina with a minor in chemistry. I
22 also took a graduate level course through the University of
23 Florida in biological evidence and serology. I've also taken
24 numerous courses in related to -- in relation to the
25 laboratory, evidence handling, serology, ethics, hair, expert

JESSICA HERRON - DIRECT BY MR. WARD

1 testimony, through places such as West Virginia University,
2 the National Institute of Justice, and the Department of
3 Justice for example.

4 Q: And besides those, do you have any other certifications
5 or training that you've obtained?

6 A: I participated in SLED's in-house training program where
7 I was deemed competent in evidence processing and serology.

8 Q: Okay. And about how many cases have you been able to
9 work on since you've been employed there?

10 A: I'd say at least 300.

11 Q: Have you ever been qualified as an expert in General
12 Sessions court before?

13 A: I have not.

14 MR. WARD: Your Honor, at this time, the State would move
15 to have Ms. Herron declared an expert in the field of forensic
16 serology.

17 THE COURT: Any voir dire?

18 MR. LOY: No. I think she's qualified, Your Honor.

19 THE COURT: She's so qualified.

20 MR. WARD: Thank you, Your Honor.

21 Q: So as a forensic serologist -- is that correct?

22 A: Yes.

23 Q: What types of fluids do you analyze?

24 A: We look for biological fluids such as blood, semen,
25 saliva.

JESSICA HERRON - DIRECT BY MR. WARD

1 Q: Okay. And what is the significance of the information
2 you get from these tests when you analyze it?

3 A: The information that we get from this test -- we're
4 basically -- serology is like a stopping point. If we don't
5 find anything, we know that we can stop there and generate
6 reports. If we do find something, we can forward it for DNA
7 analysis where they will then hopefully generate a DNA
8 profile.

9 Q: Okay. And did you have occasion to examine evidence in
10 this case?

11 A: I did.

12 Q: I'm showing you what's been marked as State's Exhibit 30.
13 Do you recognize that?

14 A: I do.

15 Q: And how are you able to recognize that?

16 A: The -- our SLED -- our specific lab number. This is Item
17 2, for example, I did -- our Item 2. And also my initials and
18 the lab number and the date.

19 Q: And what is -- what is that?

20 A: This is a sexual assault kit from **Victim 1**.

21 Q: Okay. And when you received it, did it appear to be
22 tampered with?

23 A: No, it did not.

24 Q: And then what would you have done next when you received
25 that?

JESSICA HERRON - DIRECT BY MR. WARD

1 A: I would have -- after I made sure that it was not
2 tampered with, everything looked good, I opened it up and
3 inventoried it.

4 Q: All right. I'm sorry. Go ahead.

5 A: All right. And then I proceeded to test what was in the
6 kit for semen and saliva.

7 Q: And what were you able to test from that kit?

8 A: Can I refer to my report?

9 Q: Yes.

10 A: For Item 2, I tested vaginal swabs, oral swabs, rectal
11 swabs, and I also looked at vaginal, oral, and rectal smears.

12 Q: And when you look at that, how does the test work -- the
13 process for testing to identify whether there was any fluids
14 present?

15 A: Okay. What we do is we take a sample, for example of the
16 vaginal swabs just to use as an example. We would take a
17 small cutting and I would put water and then extract it. This
18 is in a dry state when we get it; so whenever you extract it,
19 you're releasing that biological material from the swab if it
20 is present.

21 We then just do more little procedures and then at the
22 end we put our sample onto a small card. It doesn't act like
23 a birth control -- like a pregnancy test. It doesn't act --
24 the chemistry is nothing like that, but it's read very
25 similarly. If there is two lines, it's positive. One line,

JESSICA HERRON - DIRECT BY MR. WARD

1 it's negative. So that's how we determine -- okay -- this is
2 here or it is not.

3 Q: Okay. And from **Victim I** sexual assault kit, what was
4 the first thing that you tested from that?

5 A: The first thing I have listed is the vaginal swabs.

6 Q: Okay. And from the testing were you able to come up with
7 a result?

8 A: No, I was not. For the actual kit, I did not identify
9 anything, no semen, no saliva.

10 Q: Okay.

11 A: And for the smears, I did not identify sperm on those
12 either.

13 Q: Okay. And then what would you have done after you
14 finished testing everything from that kit?

15 A: From this kit, I did four cuttings to the DNA department.
16 A buccal swab was included in the kit and that's just her
17 normal standard. That's what they swab on the inside of the
18 cheek just to collect her DNA. I cut a small portion and send
19 that to DNA. And the vaginal swab and the rectal swab was
20 also forwarded to DNA for -- out of protocol purposes.

21 Q: Okay. And why is it sent? Why is it forwarded to DNA?

22 A: Why the --

23 Q: You said there's a couple cuttings that you took even
24 though nothing was identified.

25 A: Mm-hmm. In regards to our saliva testing, if it's

JESSICA HERRON - DIRECT BY MR. WARD

1 positive or if it's negative, we're going to send it anyways
2 just so the DNA analyst can take a look at it. The victim
3 buccal swab contains her profile; so it is necessary. That's
4 why we do it.

5 Q: Okay. I'm showing you what's been marked as State's 16.
6 Do you recognize that?

7 A: No, I do not.

8 Q: Okay.

9 A: This appears to be the Item 8 from Verona Gibson.

10 Q: Okay.

11 A: It's her initials.

12 Q: I'm showing you what's been marked as State's Exhibit 29.
13 Do you recognize that?

14 A: I do.

15 Q: And how are you able to recognize that?

16 A: It has our SLED lab number as well as my initials on the
17 outer packaging and on the kit itself.

18 Q: Okay. And what is that? What is that item?

19 A: This is the sexual assault kit from **Victim 2**

20 Q: Okay. And were you able to perform tests on that?

21 A: I was.

22 Q: And what items were -- did you test that were in that
23 kit?

24 A: Included in this kit was vaginal swabs, oral swabs,
25 rectal swabs, victim buccal swabs, and suspected saliva swabs.

JESSICA HERRON - DIRECT BY MR. WARD

1 Q: Okay.

2 A: And smears, vaginal, oral, and rectal smears.

3 Q: And from the testing of all of those, were you able to
4 come up with a result?

5 A: I was.

6 Q: All right. And if you could, just kind of go one by one
7 and let the jury know what the results were?

8 A: On the vaginal swabs, semen identified, saliva indicated.
9 Item forwarded to the DNA section. Oral swabs -- no semen
10 identified. Rectal swabs -- semen indicated, saliva
11 indicated. Item forwarded to the DNA section. The victim
12 buccal swabs -- I forwarded those to the DNA section. And the
13 suspected saliva swabs -- saliva was indicated and the item
14 was forwarded to the DNA section. As far as my vaginal, oral,
15 and rectal smears, since I had positive results, I did not
16 look at those under the microscope.

17 Q: Okay. And you stated for the vaginal swab that semen was
18 identified, but what does that mean?

19 A: Okay. Just to compare it for semen indicated or to semen
20 identified, what that means is the testing that we do, like I
21 explained earlier, if we have the correct amount of lines,
22 it's positive. In the case with the rectal swabs, it was; so
23 I was able to say semen was indicated. I forwarded that to
24 the DNA section.

25 With the vaginal swabs, semen was not indicated. The

JESSICA HERRON - DIRECT BY MR. WARD

1 test was negative. So what we do is we take the test a step
2 further to confirm the absence of semen. In this case, I
3 visualized a sperm. Sperm cannot get there without semen. So
4 in this case, I'm able to say semen was identified.

5 Q: Okay. And after you were done testing all that, what
6 would you have done with all the items?

7 A: I took small cuttings like I did in the previous kit of
8 the vaginal swabs, the rectal swabs, the buccal, and the
9 suspected saliva swabs, and forwarded those to the DNA
10 section.

11 Q: And did you have an opportunity to test any other items
12 in this case?

13 A: I did. I tested two swatches -- cuttings from couches,
14 and I tested the cuttings from underwear from Verona Gibson
15 that she forwarded for further analysis.

16 Q: I'm showing you what's been marked as Exhibit 8. Do you
17 recognize that?

18 A: I do.

19 Q: And what is that?

20 A: These appear to be the cuttings from a cloth swatch from
21 a loveseat and a cloth swatch from a couch.

22 Q: And when you received those items, did it appear to be
23 tampered with?

24 A: No, it did not.

25 Q: Were you able to conduct any tests on those?

JESSICA HERRON - DIRECT BY MR. WARD

1 A: I did.

2 Q: And what were the results?

3 A: On both of these, semen was indicated. I took small
4 cuttings and forwarded those to the DNA section.

5 Q: Okay. I'm showing you what's been marked as State's
6 Exhibit 2. Do you recognize that?

7 A: I do not. No, sir.

8 MR. WARD: I beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 MR. WARD: One moment, Your Honor.

11 THE COURT: Yes, sir.

12 Q: Ms. Herron, from the kits that you received for the
13 sexual assault kit from **Victim** do you know what all items were
14 in that when you received the kit?

15 A: From **Victim 2**?

16 Q: Yes.

17 A: Mm-hmm. The vaginal swabs, oral, rectal swabs, victim
18 buccal swabs, smears, as well as suspected saliva swabs.

19 Q: Okay. And were -- did you receive anything else in this
20 case?

21 A: I did. I also received cutting from underwear for
22 **Victim 1**, and Nicole.

23 Q: And when you received the cutting of underwear from
24 **Victim 2** how would you have identified it? Or when
25 you received it, what would you have done?

JESSICA HERRON - DIRECT BY MR. WARD

1 A: I would make sure that our outer packaging, like you saw
2 earlier, the lab number matches, the item number matches. In
3 this case, it was a container because it contained three
4 separate items. I made sure everything looked intact.
5 Everything was labeled. Then I would have inventoried and
6 began my testing.

7 Q: I'm going to show you again State's Exhibit 2. Do you
8 see your initials anywhere on that package?

9 A: I do not.

10 Q: The underwear you received for [REDACTED] Victim 2, what were
11 the results of those?

12 A: For [REDACTED] Victim 2

13 Q: Yes.

14 A: Saliva was indicated. I took a small cutting and
15 forwarded those to the DNA section.

16 Q: Okay. And you said you received underwear for [REDACTED] Victim 1
17 [REDACTED] as well?

18 A: Mm-hmm. And Nicole.

19 Q: For -- I'm sorry. Go ahead.

20 A: For the results for those?

21 Q: Yes, please.

22 A: No saliva was indicated, but I did also take a small
23 cutting and forward it to the DNA section.

24 MR. WARD: Thank you very much. Please answer any
25 questions the defense may have.

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 MR. LOY: Just one moment, Your Honor.

2 THE COURT: Cross examination?

3 MR. LOY: I don't have any questions. Thank you.

4 THE COURT: You may step down. Thank you. You may call
5 your next witness.

6 MR. JUSTIS: At this time, the State calls Amanda Webb.

7 (Whereupon, there is a pause in the proceedings until the
8 witness enters the courtroom.)

9 THE CLERK: Place your left hand on the Bible and raise
10 your right hand and state your full name for the record.

11 THE WITNESS: Amanda Webb.

12 THE CLERK: Do you solemnly swear or affirm to tell the
13 truth, the whole truth, and nothing but the truth, so help you
14 God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you. You can have a seat.

17 THE WITNESS: Thank you.

18 THE COURT: Your witness.

19 MR. JUSTIS: Thank you, Your Honor. May it -- may it
20 please the Court.

21 THE COURT: Yes, sir.

22 AMANDA WEBB, being first duly sworn,
23 testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. JUSTIS:

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 Q: Ms. Webb, where do you work?

2 A: I work at the South Carolina Law Enforcement Division in
3 forensics in the DNA case work department.

4 Q: Okay. And what's your job title there?

5 A: I'm a forensic DNA analyst.

6 Q: And how long have you worked at SLED?

7 A: About six and a half years.

8 Q: And as a DNA analyst, what do you do?

9 A: Criminal cases throughout the state of South Carolina,
10 anything that could have DNA evidence. Biological evidence,
11 blood, semen, saliva, skin cells has DNA. Anything that might
12 have DNA on an evidentiary item is sent to the lab, and I
13 analyze and try to develop a DNA profile from an evidence
14 item, and I compare that to any known standards from
15 individuals that are submitted. Known standards is DNA that
16 is collected from a person so we know whose DNA it is and I
17 can develop a profile and compare it to any evidence item and
18 say whether it matches or they've been excluded.

19 Q: And what's your educational background?

20 A: I have a bachelor's of science in forensic chemistry from
21 Marshall University, and I also have a master's of science in
22 forensic science also from Marshall University.

23 Q: And what other type of training have you had in DNA and
24 forensics?

25 A: After acquiring my degrees, I was hired on at SLED and I

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 trained for approximately a year and a half under another
2 qualified DNA analyst, and it was a lot of observation at
3 first and then I slowly started performing some of the
4 procedures, and then I had training samples and tests I had to
5 take and pass, and I was deemed competent to be an independent
6 analyst and work my own cases. And then I also get tested bi-
7 annually by an outside company to make sure that I can still
8 get the correct results with my testing.

9 Q: And have you ever testified in court before?

10 A: Yes, I have.

11 Q: And have you ever been qualified as an expert in DNA
12 analysis?

13 A: Yes, I have.

14 Q: And how many times?

15 A: About 30 times.

16 MR. JUSTIS: At this time, Your Honor, the State would
17 offer Ms. Webb as an expert in DNA analysis.

18 THE COURT: Any voir dire?

19 MR. LOY: No, Your Honor. Thank you.

20 THE COURT: I find that she's so qualified.

21 MR. JUSTIS: Thank you, Your Honor.

22 Q: Before we get to the evidence in this case, Ms. Webb,
23 could you just briefly explain to the jury and to myself what
24 DNA is?

25 A: Sure. DNA is a molecule found in the cells of the body.

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 So it's found in body fluids, semen, saliva, blood. It's
2 found in skin cells, and it can be found in hair as well. The
3 type of testing that SLED does, you need a root on the end of
4 the hair, some cellular material to get a DNA profile from.

5 And the DNA that's tested in forensics is unique to an
6 individual except for identical twins, but it is unique to
7 that person. And so you can use it to identify someone or
8 exclude someone. You get half of your DNA from your mother
9 and half from your father, and so that's why it becomes unique
10 to that person. And again, it's just used to compare evidence
11 to known standards.

12 Q: Okay. And did you have an opportunity to look at any
13 evidence in this case?

14 A: Yes, I did.

15 Q: Okay. What I'm showing you has been marked as State's
16 Exhibit 30. Do you recognize this?

17 A: Yes. State's Exhibit 30 is a sexual assault evidence
18 collection kit from **Victim 1**.

19 Q: Okay. And could you tell us -- could you tell us what
20 you did with this kit when you received it?

21 A: Sure. After it was screened in serology and some body
22 fluids were indicated, then I tried to develop a DNA profile,
23 and I tested DNA on the vaginal swabs and rectal swabs from
24 this kit, and I wasn't able to develop a DNA profile foreign
25 to the victim. So I got a DNA profile, but it belonged to

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 **Victim 1**, which is expected because the swabs are
2 collected from her body; so I expect to find her DNA on swabs
3 collected from her.

4 Now, SLED has the capability of performing another DNA
5 test. I previously mentioned the test that identifies an
6 individual. Well, there's a second test that we can do that
7 is commonly used in sexual assault cases, and this second test
8 is specific to male DNA. So any -- any boy -- any male DNA is
9 the only DNA that shows up from this test. So we use it
10 because a lot of times in sexual assault cases, since the swab
11 is being collected from the victim, usually a female,
12 sometimes there's so much female DNA that it can overwhelm
13 what -- what male DNA is present and so I don't see the male
14 DNA sometimes because there's so much female DNA. And the
15 second test I can perform only focuses on that male DNA and
16 helps to -- helps the process to circumvent that overwhelming
17 female DNA.

18 I also did that second test for male-specific DNA on
19 those items, and I didn't develop any -- it's called a YSTR
20 profile. It's because it comes from the chromosomes -- the Y
21 chromosome. Males only have -- males have an XY chromosome.
22 Females don't have that Y chromosome and that's how our test
23 can kind of focus in on the male DNA. We only search for DNA
24 on that Y chromosome.

25 So I did the Y testing, and no DNA profile was developed

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 from the vaginal and rectal swabs. So no male DNA was found
2 from those.

3 Q: Okay. And what would you have done with that evidence --
4 **Victim 1** sexual assault kit, which I think I showed you was
5 State's Exhibit 30. What would you have done with those items
6 after you -- after you tested them?

7 A: Sure. What I do is I have DNA in small tubes and what I
8 do is I dry down that DNA in the tube so there's still DNA in
9 there. So I put that back in the pouch in case there's ever a
10 question. If anything needs to be retested, the defense has
11 an opportunity to test things if they want to. So I put those
12 back in the pouch and then I seal the pouch with heat and I
13 date and initial the pouch. And then I put it in a return bin
14 and it goes to the evidence control department and it's
15 returned to the agency and they are the ones who store it.

16 Q: Thank you. At this time, I'm showing you what's been
17 marked as State's Exhibit 8. Do you recognize that item?

18 A: Yes. State's Exhibit 8 has two items contained in it,
19 and it has a cutting from a loveseat and a cutting from a
20 couch, and the cutting is just sort of a swatch of the cloth
21 from a couch and a loveseat.

22 Q: And when you tested those items, what were the results
23 that you obtained?

24 A: From the cutting from the loveseat, a DNA profile was
25 developed and it was a mixture of at least three individuals.

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 And what a mixture means is that I found more than one
2 person's DNA on this item. In this case, there were at least
3 three people. I would say that's not uncommon on a couch. A
4 lot of people, you know, probably had contact with that couch;
5 so I would say that that's probably a common event.

6 And comparing the mixture of three people to the
7 standards that I received from individuals, I could not
8 exclude **victim 1** Nicole Brown, and Jonathan Brown as
9 possible contributors to the mixture. And anytime I say that
10 someone can't be excluded or there's a match, I always have to
11 calculate a statistic and that just sort of helps put weight
12 to the -- to the evidence.

13 So the probability of randomly selecting an unrelated
14 individual who could have contributed to this mixture is
15 approximately one in twelve. It's just sort of how frequent
16 the DNA is -- the mixture of DNA is in the population. So if
17 you were to pick someone at random out of the population, one
18 in twelve people could potentially also have their DNA
19 included in that mixture.

20 And then I compared it with **Victim 2**, and **Victim 2** was
21 excluded as a contributor to this mixture. So her DNA was not
22 found on this item.

23 And then the cutting from the couch was also a mixture of
24 at least three individuals. **Victim 1**, Nicole Brown, and
25 Jonathan Brown could not be excluded as contributors, and the

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 statistic for that was one in 20. And **Victim 2** is excluded as
2 a contributor to this mixture. So her DNA was not found on
3 the couch as well.

4 I also performed the YSTR, the male-specific testing, on
5 those items. I got a mixture on Item 5 and 6, and it wasn't
6 suitable for interpretation, meaning that the mixture was such
7 that I couldn't differentiate one person's DNA from another.
8 So there were two males at least on the couch and the
9 loveseat, but I couldn't differentiate one person's DNA from
10 another and so I couldn't make a comparison to any standards.
11 So I didn't make a comparison. That's why it says it's not
12 suitable for interpretation. And that's all I -- all I have
13 from the male testing for those items.

14 Q: And then after you did the testing on those items, which
15 were the cloth swatches --

16 A: Yes.

17 Q: -- what did you do with that evidence?

18 A: The same situation. I dried down any evidence that --
19 any DNA in my tubes that I used and repackaged them. And I
20 also used heat to seal the pouch and put the date that I
21 sealed it back and my initials on the pouch. I submitted it
22 for return to the agency.

23 Q: Okay.

24 MR. JUSTIS: At this time, Your Honor, the State would
25 offer State's 8 into evidence.

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 THE COURT: Any objection?

2 MR. LOY: No, Your Honor.

3 THE COURT: All right. It's in.

4 (Whereupon, State's Exhibit Number 8, the cloth swatches
5 from the loveseat and couch, are admitted into evidence.)

6 MR. LOY: If I could approach counsel, Your Honor?

7 (Whereupon, counsel confer.)

8 Q: At this time, I'm showing you State's Exhibit 10. Could
9 you tell us what that item is, Ms. Webb?

10 A: State's Exhibit 10 is a buccal swab from Jonathan Brown.
11 What a buccal swab is -- it's just a -- you take a cotton Q-
12 tip swab and swab the inside of someone's cheek, and the cells
13 on the inside of your cheek are called buccal cells; so that's
14 why they call it a buccal swab. But that's that known
15 standard I keep referring to. So this is DNA collected from
16 Jonathan Brown; so I know it's from him and I know what his
17 DNA profile is, and so I analyzed it to use in comparisons to
18 the evidence samples.

19 MR. JUSTIS: At this time, Your Honor, the State would
20 offer State's 10 into evidence pending further foundation as
21 far as the collection of it when it was actually collected.
22 That witness will actually testify later.

23 THE COURT: Any objections to that process?

24 MR. LOY: Your Honor, introducing it as the solicitor has
25 indicated, that is subject to completion of the chain and the

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 manner of collection, et cetera, I don't have any objection to
2 it.

3 THE COURT: Yes, sir.

4 MR. JUSTIS: And we will re-introduce it at that point
5 with that witness.

6 THE COURT: All right. Thank you. You may proceed.

7 Q: And when you -- let me just ask this on State's Exhibit
8 10, Ms. Webb. When you received that item, was it sealed?

9 A: Yes, it was.

10 Q: Did it appear to have been tampered with?

11 A: No, it did not.

12 Q: And after you performed your tests on it or developed
13 your profile as you had mentioned, what did you do with it
14 then?

15 A: Yes. I -- I sealed it back. I repackaged it and heat-
16 sealed the pouch and dated and initialed the date that I
17 repackaged the item to be returned to the agency.

18 Q: Thank you.

19 A: Thank you.

20 Q: At this time, I'm showing you what's been marked as
21 State's Exhibit 29. Do you recognize this item?

22 A: Yes. State's Exhibit 29 is a sexual assault evidence
23 collection kit from **Victim 2** -- forgive me if I'm pronouncing
24 this wrong -- Stimley or Stimley.

25 Q: And when you received that package, was it secured?

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 A: Yes, it was.

2 Q: Did it appear to have been tampered with?

3 A: No, it did not.

4 Q: And what did you do when you received that -- that item
5 of evidence?

6 A: When I received it, I did DNA testing on the vaginal
7 swabs, rectal swabs, and there was suspected saliva swabs
8 taken from the back of the victim. And my DNA testing on
9 those items -- I only found **Victim 2** DNA on those
10 items. So then I also tried the male-specific DNA testing on
11 those items.

12 Q: And when you did the male-specific DNA testing on those
13 items, what were the results of your tests?

14 A: I was able to develop a male YSTR DNA profile from --
15 let's see -- the vaginal swabs and it matches the YSTR profile
16 of Jonathan Brown. Now, let me also state -- before I stated
17 that the first round of testing for DNA that we normally
18 perform is unique to an individual.

19 This male-specific DNA testing is not unique to an
20 individual in the fact that it's a paternal lineage DNA, and
21 what that means is that anyone in a male line, a family line,
22 would have that same YSTR DNA profile. So a son and the
23 father would share the same YSTR profile. Also, a paternal
24 brother would, you know, a paternal uncle would, cousins, you
25 know. So anyone in that paternal line would have that same

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 YSTR DNA profile.

2 So I did find one and it matched Jonathan Brown. So
3 paternal male relatives of Jonathan Brown also cannot be
4 excluded. And then since I'm saying it matches, I had to do a
5 statistic and when searched in a database that has a
6 collection of YSTR profiles, it was found zero times in a
7 population of 23,169 individuals, and statistically it just
8 means that it's 1,700 times more likely that Jonathan Brown is
9 the contributor of the evidence instead of a randomly selected
10 individual from the population. So it was 1,700 times more
11 likely Jonathan Brown or a paternal relative is the
12 contributor of this profile than a random person out of the
13 population.

14 Q: So that was on the vaginal swab; correct?

15 A: Yes. That was on the vaginal swab and let's see what I
16 have on the rectal swab. I got a partial profile -- a YSTR
17 male profile off of the rectal swab, and a partial means that
18 -- I tested 16 different locations and a full profile in
19 forensics is a DNA found in all 16 of those locations. I
20 didn't find DNA in all 16 locations. I found it at fewer
21 locations and it was so few that I -- I couldn't make an
22 interpretation about those, but I did find a partial Y profile
23 off of the rectal swab as well.

24 Q: What about the -- I think you had testified you looked at
25 the underwear of **Victim 2**; is that right?

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 A: Yes. Yes, I did.

2 Q: What were the results from that test?

3 A: So with the first test that I -- that is unique to
4 individuals, also I had no profile foreign to **Victim 2** was
5 found. So it was just her DNA on her underwear. Again,
6 expected. You know, she's wearing it. I would expect to find
7 her DNA. And when doing the male-specific DNA testing, I
8 found a male DNA profile that matched the male profile of
9 Jonathan Brown. So again, paternal relatives of Jonathan
10 Brown and Jonathan Brown cannot be excluded as being potential
11 contributors of DNA to the underwear.

12 Q: And after you did those tests, what did you do with those
13 items?

14 A: I repackaged my tubes with the DNA and I heat-sealed the
15 pouch, dated it, initialed it, and sent it for return to the
16 submitting agency.

17 MR. JUSTIS: At this time, Your Honor, the State would
18 offer State's 29 into evidence pending the same prove up on
19 the buccal swab.

20 THE COURT: On the collection? Yes, sir.

21 MR. LOY: Without objection, Your Honor.

22 THE COURT: Thank you.

23 MR. JUSTIS: I beg the Court's indulgence.

24 Q: Ms. Webb, when we're talking about forensic evidence such
25 as semen, saliva, and we're getting them from places such as

AMANDA WEBB - DIRECT BY MR. JUSTIS

1 vagina, rectum, how long in the case of -- and I don't know if
2 you'd know or not and, if you do not know, just -- just say
3 you don't know. With sperm, how long can sperm or semen
4 exist, if you will, in the human vagina or rectum?

5 A: Well, in deceased individuals, it can last longer, but,
6 you know, we're talking about live individuals here; so in
7 most of the numerous research articles and publications I've
8 read, usually the longest expectation is 72 hours. There's a
9 few outliers where you can still find it longer than that, but
10 it's rare. So I would say anywhere from the time of the
11 incident up to 72 hours, you're probably -- your chances
12 decrease vastly after 72 hours. I mean, in fact, it's not
13 common. That after 24 or 48 hours, your chances just decrease
14 the longer the time goes just because of, you know, you're
15 moving and DNA can be displaced onto other things like
16 clothing or just using the restroom and things can -- can
17 remove DNA from those areas. So the longer the time period,
18 the less chance of finding anything, but up to 72 hours.

19 MR. JUSTIS: Thank you. No further questions. Please
20 answer any questions Mr. Loy might have for you.

21 THE COURT: Cross examination?

22 MR. LOY: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. LOY:

25 Q: Is it Doctor?

AMANDA WEBB - CROSS BY MR. LOY

1 A: No, it's not.

2 Q: Ms. Webb?

3 A: Sure. That's fine.

4 Q: Okay. Good morning, Ms. Webb. My name is John -- John

5 Loy, and I represent the defendant in this case. I just have

6 a few questions for you.

7 A: Sure. Good morning.

8 Q: The DNA certainly has, you know, blossomed as far as its

9 use in the courts over the past great number of years. Would

10 you agree with that?

11 A: Yes. That's correct.

12 Q: And in criminal cases as well as I suppose in some civil

13 cases, though you may not be involved in those, I imagine it

14 comes up. Would you agree with that?

15 A: Yes. Correct.

16 Q: And part of the reason is because it -- in crimes, people

17 look for clues, and DNA is something that gets left behind

18 fairly easily; is that correct?

19 A: Yes. That's correct.

20 Q: Okay. So the shirt that I'm wearing, if I were to take

21 it off now and you were to test it, you could probably find my

22 DNA on it; is that right?

23 A: I would imagine so, yes. It's -- it's common, especially

24 since he's wearing it. It's rubbing against you and you're

25 getting skin cells on your own shirt.

AMANDA WEBB - CROSS BY MR. LOY

1 Q: And if we waited until the end of the day, say five at
2 the end of the day and I drove back to Summerville and then
3 took it off, it would be even more likely you would find it;
4 is that right?

5 A: Sure. It's hot outside. You're probably sweating; so
6 it's -- it's probably going to get even more DNA on it.

7 Q: Okay. So when you talk about the -- the loveseat in the
8 house and you say this is a mixture of three or more
9 individuals, I mean on a cutting from a couch where people
10 routinely sit and visitors come and people are in and out,
11 maybe wearing shorts or less, you're not at all surprised to
12 find in a family residence a mixture of DNA; is that right?

13 A: No, not at all. I would expect that situation. Someone
14 who lives in the house and is consistently and frequently
15 sitting on the couch, maybe taking a nap on the couch, maybe
16 taking a good nap and drooling on the couch, you know, I would
17 -- I would expect to find the inhabitants' DNA on their own
18 couch.

19 Q: Okay. And perhaps visitors and otherwise. So there's
20 nothing terribly nefarious about that -- the fact that there's
21 this mixture of DNA?

22 A: It's -- it's a common thing for me to find, yes.

23 Q: Okay. And as I said, DNA is something that -- that
24 people leave behind. It leaves clues, whether it's by their
25 -- their skin cells or their blood or sweat. Does sweat have

AMANDA WEBB - CROSS BY MR. LOY

1 DNA in it?

2 A: Yes, it can. It takes a bit more sweat than like blood
3 or semen, but yes, it has DNA.

4 Q: Pretty much anything that comes from us or off of us has
5 DNA; is that correct?

6 A: Yes.

7 Q: Now, you don't -- when you come to court, you don't
8 typically testify as to how DNA got on a particular item or a
9 person or a piece of clothing, et cetera, do you?

10 A: No, I don't. The only thing that can give us a clue is
11 body fluid testing, but I can't be certain how or when
12 something has been deposited on that item.

13 Q: If -- if I had visited in the home where this couch
14 cutting was taken prior to the couch cutting having been taken
15 and sat on this couch and watched a movie and gone back and
16 forth, et cetera, and subsequently my clothing was tested, is
17 it possible you would find these mixtures of DNA upon my
18 clothing?

19 A: It's possible. It's a little less likely within a time
20 frame of maybe a movie or just over visiting for a day. You
21 know, especially from a cloth to cloth transfer, I would
22 expect maybe more contact would allow for -- for more
23 transfer. So -- but it's definitely a possibility that you
24 could transfer some of that DNA from the couch onto your
25 clothing.

AMANDA WEBB - CROSS BY MR. LOY

1 Q: Okay. And whether it's my clothing or otherwise, what
2 I'm asking about is something I would call an indirect
3 transfer. Are you -- you're familiar with that term?

4 A: Yes, I am. Indirect transfer sometimes is called a
5 secondary transfer. So say, for instance, the same instance
6 we're talking about. Someone sits on a couch and deposits
7 their DNA and then a second person comes and sits on their
8 couch and gets that first person's DNA on them from just
9 sitting in the same area that the first person was. You know,
10 those secondary transfers are much less common in my
11 experience and what I've seen in my case work, and also
12 through some research that's been performed, but I mean it's
13 known to happen. It's just a less common scenario.

14 Q: So the -- if the -- by way of example, if there's ketchup
15 on the table, it looks like it may have been spilled from a
16 ketchup bottle, but it may have also just been on my hand and
17 ended up there later or something else along those lines; is
18 that right?

19 A: Yes. That's -- that's definitely a possibility.

20 Q: Okay. You can pick it up?

21 A: Mm-hmm.

22 Q: It gets moved around. It's not always a direct transfer
23 and you don't testify as to whether it is or is not. You
24 simply testify as to what you found when you looked; is that
25 right?

AMANDA WEBB - CROSS BY MR. LOY

1 A: Yes. That's correct.

2 Q: Okay. Now, in this case you looked at vaginal -- a swab
3 from **Victim 2**; is that right?

4 A: Yes, I did.

5 Q: Now, the first test that you performed is this full-range
6 -- let's look at -- let's try to isolate a foreign DNA to the
7 person whose swab this is. Is that fair to -- I'm saying it
8 wrong. Help me. What is it?

9 A: No. That's exactly it.

10 Q: Okay. So you -- you go in and the more DNA of a foreign
11 person that's present, the more likely it is you'll be able to
12 develop that profile. Is that -- is that fair to say?

13 A: Yes. That's correct.

14 Q: Okay. So if you'd brushed on something, it's unlikely it
15 would be there, and if you had bled on something, it's much
16 more likely you'd be able to develop that. Is that fair to
17 say also?

18 A: Yes. That is correct.

19 Q: Okay. And in this case, you went in and -- excuse me --
20 and you looked and you tried to develop that full-blown DNA
21 profile and you were unable to do that; is that right?

22 A: Yes. That is right.

23 Q: Okay. And if this -- if this test were taken within --
24 excuse me. If this swab were taken within twelve hours or six
25 hours or so of -- of an incident having occurred or having

AMANDA WEBB - CROSS BY MR. LOY

1 alleged to have been occurred, you wouldn't have expected to
2 see a large amount of DNA denigration, if that's the right
3 word -- degradation over that period of time, would you?
4 A: No, I wouldn't. And degradation as he's referring to is,
5 you know, DNA over time will just sort of degrade. What
6 happens is it breaks down and you don't find as much of it.
7 That's -- over a time period, also things like sunlight --
8 dirt has bacteria and stuff in it that can degrade or break
9 down the DNA. So over -- over time, yes, it will degrade.
10 Q: But in a matter of hours, you wouldn't expect --
11 A: No.
12 Q: -- to see that significantly?
13 A: No, not degradation --
14 Q: Okay.
15 A: -- within a couple of hours.
16 Q: And whatever it was you found, it wasn't sufficient for
17 you. Volume-wise, if that's correct, it wasn't enough for you
18 to develop this full profile; is that right?
19 A: Right.
20 Q: Is there a reason you start with the full profile and
21 that that's the test that you run first?
22 A: Yes, absolutely. The reason I do that is because that
23 first test is unique to an individual. So if I can get
24 something that is unique to a person, it's -- it's better
25 evidence than doing the Y testing. The Y testing is helpful,

AMANDA WEBB - CROSS BY MR. LOY

1 but again, it's not unique to that individual because it can
2 be within that paternal male line.

3 Q: Okay. And the -- that full-blown one is the one -- the
4 test of the full profile. That's where -- you don't really --
5 if I'm correct, you don't really match up the entire DNA
6 profile point for point. You take a number of specific
7 points, match those up, and then sort of extrapolate back that
8 it must be the same one. Is that fair to put it?

9 A: Right. That's correct. 99.99 percent of DNA is the same
10 with every individual. It's the .01 percent that is unique to
11 each individual, and that's what we focus on in forensic
12 testing is that .01 percent and that is unique and so that's
13 the part of the DNA that we test.

14 Q: So you pick out certain ones of those and not even that
15 full .01 percent, but points that statistically y'all have
16 decided are adequate to establish the identification of a
17 person or another person; is that right?

18 A: Yes. That's correct.

19 Q: Okay. And that's where we get those numbers in reports
20 that y'all generate at times about one in 22 quadrillion and
21 stuff like that. Are my numbers roughly correct? Y'all do
22 deal in quadrillions; right?

23 A: Yes, we do. Yes. And then yes, that's where the numbers
24 come from as compared to those points of DNA that we look at.

25 Q: And certainly there's nothing like that you developed in

AMANDA WEBB - CROSS BY MR. LOY

1 this case for whatever reason?

2 A: That's correct.

3 Q: Okay. So when you were unable to develop that, then you
4 tried to do this YST -- is it YSTR?

5 A: Yes. YSTR testing.

6 Q: Okay. Now, the YSTR -- YSTR DNA profile -- and I'm
7 looking at -- I think this is your report.

8 MR. LOY: May I approach the witness for a moment?

9 THE COURT: You may.

10 Q: This is your report, is it not?

11 A: Yes. Mm-hmm.

12 Q: So you've got -- and I'm just looking at the last
13 paragraph on the second page. The YSTR DNA profile developed
14 from the non-sperm fraction of Item 1, 2, and 71 matches the
15 YSTR profile of Jonathan Brown; is that right?

16 A: Yes. That's correct.

17 Q: And that pretty much means what it says, if I'm not
18 misinterpreting it anywhere. This is something you developed
19 from a non-sperm fraction, a partial strain of DNA that you've
20 tested and you believe or you've testified it's your belief
21 belongs to him; is that right?

22 A: Yes. That's correct.

23 MR. LOY: Thank you. Just one moment, if I could, Your
24 Honor? No more questions. Thank you.

25 THE COURT: Any redirect?

1 MR. JUSTIS: None, Your Honor.

2 THE COURT: Counsel, please approach.

3 (Whereupon, a bench conference is held off the record.)

4 THE COURT: Ladies and gentlemen, this is a good
5 opportunity for us to take a brief morning recess. We'll take
6 about a 15-minute break and then resume the testimony this
7 morning. Again, please do not talk about the case or allow
8 anyone to talk about the case with you, and we'll get you back
9 in here in about 15 minutes. Thank you.

10 (Whereupon, the jury exits the courtroom at 11:18 a.m.)

11 THE COURT: Mr. Justis, I understand you have a motion at
12 this time.

13 MR. JUSTIS: Yes, Your Honor. Our next witness is
14 Detective Rick Gebhardt of the Summerville Police Department.
15 He was the individual that secured the cell phone from the
16 defendant. He performed some forensic analysis using a
17 program, essentially a computer program to recover deleted
18 files off the phone. The State is -- is planning to introduce
19 some of those files that were recovered from the phone. They
20 include photographs and videos.

21 And at this time, we just request that only essential
22 personnel that need to be in the courtroom during that
23 testimony be in the courtroom. It's highly sensitive in
24 nature and in order to protect the privacy and the rights of
25 the -- of the potential victims in this case, we would just

1 ask that that be done.

2 And we would need probably ten -- fifteen minutes just to
3 kind of get set up for that testimony. So as soon as we're
4 set up and we'd be ready to bring the jury back out, have
5 Detective Gebhardt give his testimony, go through that, and
6 then after that when we call the next witness, depending what
7 time it is, at that point, you know, then we have no problem
8 with allowing people back in the courtroom, but we feel, you
9 know, in order to protect the privacy of the children, we need
10 to do this.

11 THE COURT: Mr. Loy?

12 MR. LOY: We agree.

13 THE COURT: All right. Well, that -- that will be the
14 ruling of the Court. So any non-essential personnel in the
15 courtroom will need to exit the courtroom prior to Mr. -- or
16 to Officer Gebhardt's testimony to protect the potential
17 sensitive nature of the proposed evidence.

18 So, Smitty, if you would, please also be posted at the
19 door so that nobody enters during that testimony. I certainly
20 would appreciate that.

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: All right. So we'll be at recess at this
23 time and we'll notify the other parties or anybody else that
24 wishes to re-enter the courtroom after his testimony that they
25 can come back in.

1 MR. JUSTIS: Thank you.

2 THE COURT: All right. So we'll be at recess for about
3 15 minutes. Let me know when y'all are ready to go.

4 MR. LOY: Thank you, Your Honor.

5 (Whereupon, there is a break in the proceedings from
6 11:21 a.m. until 11:48 a.m., during which time the
7 courtroom is cleared of all non-essential personnel.)

8 THE COURT: Are you ready to proceed?

9 MR. JUSTIS: We are, Your Honor. I think just a couple
10 housekeeping items as far as it relates to this. I expect to
11 with my witness introduce two things into evidence. One is
12 the actual phone.

13 THE COURT: Right.

14 MR. JUSTIS: Now, assuming we lay the proper foundation,
15 that gets admitted. We've agreed that prior to it going back
16 to the jury, the battery is going to be taken out. There's no
17 need for them to search the contents of the phone.

18 THE COURT: Right.

19 MR. JUSTIS: So that's one thing. The second thing is
20 the actual contents, these videos, these pictures, they were
21 actually burned to a disk. So we have a disk that has those
22 on it. We've looked at the videos and the pictures and we've
23 agreed which ones are going to be published to the jury,
24 assuming we lay the proper foundation.

25 And what we will do is we will put the disk in, it will

1 be pulled up, and Detective Gebhardt will actually walk us
2 through the folders to go to. He has a list of those
3 pictures, the identifying --

4 THE COURT: Right.

5 MR. JUSTIS: -- information. You know, pull up Picture
6 Number 11. We'll show those. This disk will go back with
7 them. However, obviously no computer will go back with them.
8 If for some reason they want to view that again, we can just
9 bring them out here and show them only those pictures that
10 were published. Everything else on the disk, you know, is not
11 for their view because there is -- I mean the entire contents
12 of the phone is on the disk. Text messages, phone calls, you
13 know, anything that was on there is on here. And the only
14 thing we're going to deem as relevant and evidence is the
15 things that are actually published to the jury here in this
16 courtroom.

17 THE COURT: Any problem with that, Mr. Loy?

18 MR. LOY: No. And just for clarification, it's kind of a
19 dichotomous position because the disk itself will go in, but
20 we want it clear on the record that the -- although the disk
21 itself is marked, what is actually in evidence I assume and
22 our intention is to have what's in evidence is what is
23 presented to the jury, and that is during the State's case
24 prior to closing argument what goes in and what they see and
25 that's for their consideration.

1 And that's why I don't mind if the disk goes back just
2 because he wants it protected. He wants the videos and the
3 photos in the record and I think he's entitled to do that.
4 And if they haven't been redacted or put on one separate DV --
5 disk, I don't know how to do it, but again, I think that's
6 clear and is that something we can do, Your Honor? I mean --

7 THE COURT: Sure. I mean I'm obviously the
8 technologically challenged one; so I'm not sure if there's a
9 way that you can just extract what you're going to publish to
10 the jury, but I'm happy to do it however you want to. If you
11 want to put the whole disk in with a sticker on the evidence
12 or number that states only pictures so-and-so are actually
13 admitted into evidence.

14 MR. LOY: Thank you, Your Honor.

15 THE COURT: Then, you know, that might clear it up a
16 little.

17 MR. LOY: Then we're good with that. And I would also
18 just ask then without -- I understand the videos that are
19 going to be shown and I just ask for the list. There's so
20 much stuff on there and we have agreed. I'd ask --

21 (Whereupon, counsel confer off the record.)

22 MR. LOY: -- to put on the record that there are four
23 videos from my understanding the State intends to show.

24 MR. JUSTIS: That's correct.

25 MR. LOY: One purports to show oral sex, one to show what

1 appears to be a prepubescent person rubbing a vagina, one
2 which shows -- appears to show some degree of anal
3 penetration, and one which also appears to show an adult male
4 ejaculating. Those four videos are relevant to what they've
5 heard I believe and I don't have an objection or manner to
6 keep those out.

7 There's also one -- two -- three -- four photos that I
8 understand that they intend to show, and those are photos that
9 are marked I assume on their calendar as 227, which is a
10 picture of shorts that have been introduced into evidence.

11 MR. JUSTIS: Correct.

12 MR. LOY: Then were sent to SLED. They're the purple and
13 white multi-colored shorts that I believe **Victim 2** was wearing.
14 Another picture that shows a hand on those shorts. It appears
15 to be that of someone else. That's 262. 330 -- Picture
16 Number 330, which is -- it's a sort of a dark picture and all,
17 but it appears to be a vagina. And then 429, which is a
18 picture of a tie-dyed t-shirt. So my understanding is there
19 are four videos, 17, 18, 19, and 20, four photos, 227, 262,
20 330, and 429, and nothing else which will be introduced from
21 the contents of the cell phone.

22 THE COURT: Solicitor, the best way to handle that I
23 think would be if you could get somebody from your staff --
24 I'm sure you have a printer with some stickers -- envelope
25 stickers and just detail those out so we can stick that on the

1 outside of the disk itself so that when it goes back into
2 evidence, it's clear that only those images are admitted into
3 evidence.

4 MR. JUSTIS: We can do that. And one other thing, and
5 I've talked with Mr. Loy about it. We do have one screen shot
6 from one of the videos that is being used to identify a shirt.

7 MR. LOY: Yes.

8 MR. JUSTIS: That's the purpose of it. And --

9 MR. LOY: Is that his --

10 MR. JUSTIS: No. It's actually from the videos.

11 MR. LOY: Oh, yeah, the other one. Okay.

12 MR. JUSTIS: It would be the State's contention that this
13 shirt is seen in the videos.

14 MR. LOY: Your Honor, Mr. Justis is -- is right, but so
15 am I. These were the pictures that I understood would be
16 produced via the computer technology upon the screen. He's
17 presented me with a hard copy of another. Are you doing that
18 on the screen also or via the hard copy?

19 MR. JUSTIS: Well, it's -- it's on the -- I will put it
20 -- my plan is to use it in the closing because they will see
21 this video, but obviously when you're watching this video
22 where this shirt exists, the camera is moving so you catch
23 glimpses of this shirt. A screen shot was done. The video
24 was frozen, a screen shot was done so that you can make out
25 the pattern in the shirt. We have that picture of that screen

1 shot. I've showed it to Mr. Loy. So that's the only other
2 what I would call photo that we -- that we plan on using as
3 evidence.

4 THE COURT: Why don't we do this? Do that as a
5 subsection of the video, Subsection A or something, and just
6 mark that as Subsection A to that video.

7 MR. LOY: My question is are you -- I'm sorry. I didn't
8 mean to interrupt, Your Honor.

9 THE COURT: That's okay. I was through.

10 MR. LOY: Are you introducing it on the screen from the
11 disk or --

12 MR. JUSTIS: No.

13 MR. LOY: -- here's the hard copy?

14 MR. JUSTIS: No. Here's a hard copy and --

15 MR. LOY: I'm familiar with that photo and that hard
16 copy, but my understanding was these were the ones coming in
17 from the disk itself.

18 THE COURT: Okay. So --

19 MR. LOY: Right.

20 THE COURT: All right.

21 MR. JUSTIS: That's the only disk. This will be
22 introduced probably by the investigative officer, who after
23 viewing all this stuff --

24 MR. LOY: Slowed it down, froze it, got it.

25 MR. JUSTIS: That kind of thing.

1 MR. LOY: Lay the foundation.

2 MR. JUSTIS: Right.

3 THE COURT: All right. Well, easy enough. So we're good
4 to go on that?

5 MR. LOY: I think we are.

6 THE COURT: Okay. Are we ready for our jury?

7 MR. JUSTIS: Did they make you a copy?

8 MR. LOY: No.

9 MR. JUSTIS: Tanya, can you just burn a copy of that?

10 TANYA: Mm-hmm.

11 MR. JUSTIS: This way you'll have it.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: Are we ready for our jury?

14 MR. JUSTIS: The State is ready, Your Honor.

15 THE COURT: Let's have our jury, please.

16 (Whereupon, the jury enters the courtroom at 11:56 a.m.)

17 THE COURT: Welcome back, ladies and gentlemen of the
18 jury. We'll now proceed with the trial of this case. You may
19 call your next witness.

20 MR. JUSTIS: The State calls Detective Rick Gebhardt.

21 THE CLERK: Please place your left hand on the Bible and
22 raise your right hand. State your full name for the record.

23 THE WITNESS: Richard H. Gebhardt, Jr.

24 THE CLERK: Do you solemnly swear or affirm to tell the
25 truth, the whole truth, and nothing but the truth, so help you
26

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you. You can take a seat.

4 THE WITNESS: Thank you.

5 THE COURT: Your witness.

6 MR. JUSTIS: Thank you, Your Honor. May it please the
7 Court.

8 THE COURT: Yes, sir.

9 DETECTIVE RICK GEBHARDT, being first
10 duly sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. JUSTIS:

13 Q: Detective Gebhardt, where do you work?

14 A: I work for the Summerville Police Department, sir.

15 Q: And what is your job title?

16 A: I am a detective corporal.

17 Q: And what are some of your responsibilities as a detective
18 corporal?

19 A: Some of my responsibilities are gathering evidence,
20 interviewing witnesses, subjects, victims, and obtaining
21 evidence, investigating cases.

22 Q: Did you have an opportunity to become involved in this
23 case?

24 A: Yes, sir, I did.

25 Q: Let me turn your attention back to Sunday, July 28th of

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 2013. Do you remember that day?

2 A: Yes, sir.

3 Q: How did you become involved in this case on that day?

4 A: Sergeant Mosher called me out to assist him in this
5 investigation for this incident.

6 Q: And what did you do that day?

7 A: I first met with Sergeant Mosher at the Summerville
8 Police Department, where he advised me of the -- I was made
9 aware of the incident. He advised -- I was advised that he
10 was obtaining arrest warrants for the defendant, at which time
11 myself, him, and two other officers responded to Mr. Brown's
12 residence to affect the arrest warrants.

13 Upon arrival there, Sergeant Mosher and Sergeant Jones
14 went to the front door, while myself and another police
15 officer went into the back yard behind a fence to insure the
16 defendant did not leave. It was advised over the radio that
17 the defendant was taken into custody, at which time I walked
18 around the front of the residence and Mr. Brown was already
19 being escorted to a police car to be transported to the
20 Summerville Police Department.

21 Q: And after that, after he was transported to the
22 Summerville Police Department, what did you do next?

23 A: He was -- while he was in the booking room, he was
24 transported in possession of a Casio G'zOne cell phone, and I
25 don't have the exact model number, but due to the

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 investigation it was determined that it was used in the
2 commission of the crime; so I seized the cell phone from him
3 as evidence and provided him with a receipt for the phone.
4 Q: I'm showing you what's been marked as State's Exhibit 14.
5 Do you recognize this? You can open it up.
6 A: (Coughs.) Excuse me. Yes, sir, I do.
7 Q: And what is that?
8 A: This is the Casio G'zOne cell phone that was in Mr.
9 Brown's possession at the time he was arrested and the one
10 that I seized from him and provided him with a receipt for it.
11 Q: Okay. And how do you know that's the phone?
12 A: Well, because it was very unique with the damage on the
13 back of it, how it was kind of raised and it's red and black
14 like I put in my report, and this is the one that was in his
15 possession. I can pop it open and verify the MEID, which is
16 unique to each and every cellular device, and that would --
17 Q: Sure.
18 A: This one's good. This one is made to withstand the
19 elements; so it's sometimes difficult to open.
20 (Whereupon, the phone is opened by the witness.)
21 A: In verifying the MEID hex, that is the same exact phone
22 that was on Mr. Brown's person when he was arrested or
23 transported with him to the police department.
24 Q: Thank you.
25 MR. JUSTIS: At this time, the State would offer State's

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 14 into evidence.

2 THE COURT: Any objection?

3 MR. LOY: Subject only to our earlier stipulation, Your
4 Honor.

5 THE COURT: Yes, sir. It's in.

6 (Whereupon, State's Exhibit Number 14, a Casio G'zOne
7 cell phone, is admitted into evidence.)

8 Q: Now, after seizing that phone, what did you do next?

9 A: What I did is I accessed a quick menu on the phone, which
10 can be accessed by touching the top of the screen and swiping
11 your finger down, and I clicked on the logo of an airplane to
12 place the phone into airplane mode. And what that does is it
13 disables all the antennas inside the phone to prohibit any
14 signal from going to or coming from the device; therefore,
15 preserving all the information on that phone so nothing could
16 be added and nothing could be taken away wirelessly.

17 Q: Well, if the phone was in evidence, who -- how could it
18 be tampered with?

19 A: There are -- since it's an android device, there are
20 third party apps that you can install on the device where if
21 you have access to a computer or the internet by another phone
22 or any way to access the internet, you can remotely wipe data
23 on a device without even having that phone in your hand.

24 Q: So is that why you put the phone on airplane mode?

25 A: Yes, sir.

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 Q: And after securing -- and where did you secure the phone?

2 A: I secured the phone in my desk in my office to which only
3 I have the key for.

4 Q: And what did you do after that?

5 A: The next day, I obtained a search warrant for the phone
6 signed by Judge Tucker, one of our judges, asking for the
7 State's permission to search the device for evidence pertinent
8 to this investigation.

9 Q: And did you receive that search warrant?

10 A: I did.

11 Q: After receiving that search warrant, what did you do?

12 A: I proceeded -- I left the original with the Court and
13 made copies for the case file and to be left with the phone.
14 I went back to the Summerville Police Department where I have
15 my forensic software to process cell phones and attempted to
16 process the cell phone utilizing my department-issued laptop
17 computer. The laptop was running Windows 8 and was
18 incompatible with this phone because it was older. So what I
19 did is I -- while I was sitting at my desk, I charged it and
20 then I secured it again that evening, and on July 30th, I
21 processed it again using my department-issued desktop computer
22 that had the same software on it.

23 Q: And kind of explain how you do that?

24 A: What I have to do is I plug the phone into the computer
25 and with android phones there is subfolders stored to the

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 phone that allow you to access the operating system, pictures,
2 videos, and so forth to the device. What I do is I create a
3 folder on the desktop of my computer and I label it according
4 to the device normally with the case number and the make and
5 model of the phone, and I copy all the contents of that phone
6 and label it mass storage for that device. That way, it has
7 all the information stored to that memory card.

8 After that, I have a couple different forensic programs
9 that I can utilize. They are very user-friendly where you
10 plug it into the computer with the appropriate cable. You
11 have to access the phone to enable what they call USB
12 debugging mode for an android phone, and what that is -- it
13 allows you to do developer options on the phone where you're
14 able to extract this information from it.

15 I also have to allow installation of non-market
16 applications on the phone, which allows the software to
17 install the extractor program on it because android phones are
18 set up stock to not allow any other applications other than
19 what can be installed from the Google Play Store. It's kind
20 of like a safety thing for Google where they can't get in
21 trouble for rogue apps ruining your phone.

22 But after that, what you do is you click on the -- on the
23 program and the first one I used was Device Seizure by
24 Parabin. And you select the type of examination that you
25 wanted to complete, which this one was the android logical

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 image, and it runs its examination.

2 Q: And when you ran that program, what were the results of
3 that examination?

4 A: It advised me that it could -- it could recover the
5 contacts, the SMS history, which is short messaging service or
6 text messages, the MMS history, which is multimedia messaging
7 service history, call history, the media store, the browser
8 history, and the calendar. It said it recovered all that; so
9 I generated reports. I did it in Excel and I did one in --
10 I'm sorry -- PDF format.

11 And after that examination, I determined that the
12 forensic software did not recover any type of media from the
13 device. So I proceeded to the Secure View 3 by Susteen, which
14 is another forensic program, and conducted an examination with
15 that one.

16 Q: And what was the results of that examination?

17 A: That one stated it could recover contacts, calendar,
18 files, call history, messages, and other data, and I requested
19 it recover deleted data. With android devices, this program
20 can do what they call rooting a phone, which allows you
21 developer access to the file system and recover the deleted
22 images. This file was -- this program was not able to root
23 this device; so the deleted items were not able to be
24 recovered. So what I did is I generate a report in PDF format
25 and I took the raw data and saved that to a folder as well for

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 this device and saved all the information.

2 Q: Okay. And what did you do after you ran that test?

3 A: After that test, I removed -- I opened up the phone and
4 removed the 8 gigabyte Sandisk microSD card from the device
5 that was inside there inside the holder. I plugged it into a
6 card reader and plugged it into the L drive of my department-
7 issued desktop computer, and I used the program Rescue Pro
8 Deluxe by Sandisk. It's a commercial program that can recover
9 items marked for deletion on any type of memory storage
10 device.

11 I plugged that into the -- the computer. I ran the
12 device requesting that it recover all deleted photos, and it
13 came up with several hundred photos. Some of them appeared to
14 be -- some of them were pertinent to this investigation; so I
15 ran another examination with it requesting it recover all
16 deleted files, and it recovered several hundred more,
17 including some videos. All of these were again saved to a
18 folder labelled Rescue Pro Deluxe, and that folder was saved
19 to the folder for the phone to keep everything organized.

20 Q: So did you find any videos or photos that were relevant
21 to this case?

22 A: Yes, sir, I did.

23 Q: And what did you do after you recovered all this stuff?
24 What did you do with all this information?

25 A: I burned them on two disks. I gave one to Sergeant

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 Mosher for the case file and the other one I logged into
2 evidence.

3 Q: I'm showing you what's been marked as State's 15. Please
4 take a look at that --

5 A: Yes, sir.

6 Q: -- and tell me if you can identify that?

7 A: Yes, sir, I can.

8 Q: And what does that appear to be?

9 A: This appears to be the CD that I burned all the
10 information to recovered from the phone with my handwriting on
11 it labelling it as such.

12 MR. JUSTIS: At this time, the State would offer State's
13 15 into evidence.

14 THE COURT: Any objection?

15 MR. LOY: Again, Your Honor, subject to our earlier
16 stipulations and agreements.

17 THE COURT: Yes, sir. It's in.

18 (Whereupon, State's Exhibit Number 15, a computer disk
19 labelled as phone contents, is admitted into evidence.)

20 MR. JUSTIS: And at this time, Your Honor, the State
21 would like to publish State's 15.

22 THE COURT: Yes, sir.

23 (Whereupon, there is a pause in the proceedings while the
24 publication of the videos and photos is made ready.)

25 MR. JUSTIS: May I approach the witness, Your Honor?

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 THE COURT: Yes, sir.

2 (Whereupon, witness is provided a pointer and there is a
3 pause in the proceedings until a computer screen is
4 displayed on a large screen in the courtroom to the
5 jury.)

6 Q: Okay. Detective Gebhardt, what are we looking at here
7 when we start this disk?

8 A: What you're looking at here is the folder. It's not
9 quite --

10 Q: It probably won't show all of it.

11 A: Okay. It's labelled with the case number and the type of
12 phone that it is. That's the folder that I saved all the
13 information to when it was transferred to the disks.

14 MR. JUSTIS: Your Honor, may the witness stand and then
15 you --

16 THE COURT: Sure.

17 Q: You're tall enough. You can probably --

18 A: It's a folder I created on my desktop and what I did is I
19 labelled it with the case number for the incident we're
20 investigating and the make and model of the phone. It's a
21 Casio G'zOne, and all the information that I gathered from the
22 examinations was saved to the folder and then I just dragged
23 and dropped it to a disk to burn it to a disk when it was
24 ready.

25 (Whereupon, the computer screen shot is changed.)

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 A: This is where -- when I run my examinations, the memory
2 card copy -- that's all the information stored to just the
3 memory card that's visible to normal examinations. Everything
4 saved in the Device Seizure folder is everything that I
5 recovered with the Device Seizure by Parabin forensic utility.
6 Secure View 3 is the one that I got from the Secure View
7 program. And then Rescue Pro is the one I got from the Rescue
8 Pro Deluxe examination. So if you double-click on the Rescue
9 Pro Deluxe --

10 (Whereupon, the computer screen shot is changed.)

11 A: -- it's broken into two folders. The first one I did was
12 a recovery of photos and the second one is recovered all
13 files. So if you click -- double-click on the recovered all
14 files --

15 (Whereupon, the computer screen shot is changed.)

16 A: -- and if you scroll down to Video 17 --

17 Q: Now, one question, Detective Gebhardt.

18 A: Yes, sir.

19 Q: Did you view all these various files?

20 A: Not all of them. I viewed -- I viewed some of them.

21 Q: Okay. And the majority of files that you recovered,
22 would you describe them as pretty innocuous?

23 A: Yes.

24 Q: Okay.

25 MR. JUSTIS: Video 17. Please click on Item 17.

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 (Whereupon, Video 17 is played in court.)

2 Q: And what other items of evidence concerned you?

3 A: You want me to describe what I saw in that one first or

4 --

5 Q: Sure.

6 A: I observed the victim in this case, [REDACTED], and
7 that environment I recognize as being the defendant's living
8 room on [REDACTED].

9 Q: And what -- what's the next item of evidence?

10 A: It would be Video 18, sir.

11 (Whereupon, Video 18 is played in court.)

12 Q: And could you describe what we were seeing there?

13 A: A juvenile vagina being penetrated by a finger, and it
14 appeared to be the same shirt that was worn in the previous
15 video by the victim.

16 Q: And what's next?

17 A: Video 19.

18 (Whereupon, Video 19 is played in court.)

19 Q: And what were we seeing on that video, Detective?

20 A: You were seeing a juvenile -- it appeared to be a
21 juvenile private area, anus and vagina, with the anus being
22 penetrated by what appeared to be an adult penis with -- the
23 victim was wearing what appeared to be the same shirt as in
24 the previous two videos.

25 Q: And what's the next item of evidence?

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 A: Number 20, please.

2 (Whereupon, Video 20 is played in court.)

3 Q: And, Detective, while this is playing, what are we kind
4 of seeing here?

5 A: What you're seeing here is since the file was marked for
6 deletion, what that does is it just frees up the memory that
7 that video used to be written over. So this area that's all
8 pixilated, part of that memory appeared to be written over by
9 another -- by another device or another image or something,
10 making it unviewable for a short period of time.

11 Q: And what did we see in that video, Detective?

12 A: We saw a -- the juvenile victim engaged in sexual battery
13 with an adult with a -- it appeared to be some anal
14 penetration.

15 Q: What else did you find on this -- on this phone?

16 A: There were -- you want me to have a seat again or stand?

17 Q: Sure. You can have a seat.

18 (Whereupon, the witness complies.)

19 A: Okay. There's several photographs as well on the phone
20 and -- that were of the defendant, as well as the other
21 alleged victim in this incident and other things.

22 Q: Can you give -- what's the first photo that sparked your
23 interest?

24 A: Photo 227.

25 (Whereupon, Photograph 227 is displayed on the screen.)

DETECTIVE RICK GEBHARDT - DIRECT BY MR. JUSTIS

1 A: These are --

2 Q: What --

3 A: Oh, I'm sorry.

4 Q: Go ahead.

5 A: Shorts that -- that **Victim 2** was wearing during the

6 incident. And then 262. It appears to be the anus or the

7 groin region.

8 (Whereupon, Photograph 262 is displayed on the screen.)

9 A: This appears to be legs with the same shorts with a hand

10 pulling the shorts aside to get a view of the crotch area

11 exposing the panties. Picture 330, please.

12 (Whereupon, Photograph 330 is displayed on the screen.)

13 A: It appears to be a juvenile vagina. And then Picture

14 429, please.

15 (Whereupon, Photograph 429 is displayed on the screen.)

16 A: This is the defendant. This is what his -- I can't

17 testify -- I don't -- that's not the shirt he was wearing when

18 he was arrested, but this is his appearance at the time of his

19 arrest. But it's a picture of him on the memory card that was

20 in his phone at the time of his arrest.

21 Q: And were there other pictures of the victim -- of the

22 defendant on that memory card?

23 A: Several. Several. Yes.

24 Q: Thank you.

25 A: You're welcome.

1 MR. JUSTIS: No further questions. Please answer any
2 questions Mr. Loy might have.

3 MR. LOY: I have no questions, Your Honor.

4 THE COURT: You may step down, Detective. Thank you.

5 THE WITNESS: Thank you, ma'am. Thank you.

6 THE COURT: Ladies and gentlemen, it's about 12:30 right
7 now. It's a good opportunity for us to take our afternoon
8 break. I believe about an hour and 15 minutes hopefully will
9 give you enough time to get in and get back out if you wish
10 to. Come back to your jury room about 1:45. I'd certainly
11 appreciate that. We will then resume with the trial of this
12 case.

13 Again, please remember do not discuss this case with
14 anyone or allow anyone to discuss this case with you. Have a
15 nice lunch.

16 (Whereupon, the jury exits the courtroom at 12:24 p.m.)

17 THE COURT: Anything further at this time before we break
18 for lunch?

19 MR. JUSTIS: Nothing, Your Honor.

20 MR. LOY: No, Your Honor. I just -- and this is just me
21 and you. Maybe over the break we can get a sticker and put it
22 on the sleeve of the CD.

23 MR. JUSTIS: Yes. We'll get -- we'll get that done.

24 MR. LOY: And just send the CD back in the sleeve.

25 MR. JUSTIS: We'll get that done over lunch.

1 THE COURT: Okay.

2 MR. LOY: Thank you, Your Honor.

3 THE COURT: All right. We'll be in recess until 1:45.

4 (Whereupon, there is a break in the proceedings from
5 12:25 p.m. until 1:51 p.m.)

6 THE COURT: Are the parties ready to proceed?

7 MR. LOY: Ready, Your Honor.

8 MR. JUSTIS: The State is ready, Your Honor.

9 THE COURT: All right. You may call your next -- or
10 let's have our jury in first.

11 (Whereupon, the jury enters the courtroom at 1:52 p.m.)

12 THE COURT: Welcome back, ladies and gentlemen of the
13 jury. We'll now proceed with the trial of this case.
14 Solicitor, you may call your next witness.

15 MR. JUSTIS: Thank you, Your Honor. At this time, the
16 State calls Detective Jason Mosher.

17 THE CLERK: Please place your left hand on the Bible and
18 raise your right hand and state your full name for the record.

19 THE WITNESS: Jason Richard Mosher.

20 THE CLERK: Do you solemnly swear or affirm to tell the
21 truth, the whole truth, and nothing but the truth, so help you
22 God?

23 THE WITNESS: I do.

24 THE CLERK: Thank you. You can have a seat.

25 THE COURT: Your witness.

DETECTIVE JASON MOSHER - DIRECT BY MR. JUSTIS

1 MR. JUSTIS: Thank you, Your Honor.

2 DETECTIVE JASON MOSHER, being first
3 duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. JUSTIS:

6 Q: Detective Mosher, where do you work?

7 A: Summerville Police Department.

8 Q: And how long have you worked there?

9 A: Approximately ten years.

10 Q: And what's your position there at the Summerville Police
11 Department?

12 A: I am the sergeant over the criminal investigation
13 division.

14 Q: And as a sergeant over criminal investigations, what are
15 briefly a few of your job details?

16 A: I do investigate crimes, you know, to the fullest. I
17 would be assigned a case. I also supervise personnel within
18 my unit.

19 Q: And did you have an opportunity back in July of 2013 to
20 become involved in a case involving Jonathan Brown?

21 A: Yes, I did.

22 Q: And how did you become involved in that case?

23 A: That particular week, I was the on-call detective. I
24 received a call from patrol shift advising of a possible
25 sexual assault that occurred earlier that morning. Therefore,

DETECTIVE JASON MOSHER - DIRECT BY MR. JUSTIS

1 based on that, I responded at their request.

2 Q: And where did you respond to?

3 A: Summerville Medical Center.

4 Q: And when you responded there, briefly what did you do?

5 A: I met with Sergeant Tim Jones where he gave me a brief,
6 you know, synopsis of the allegations and he gave me an
7 outline of what the victims were claiming, and at that point
8 in time, I interviewed the victims in this case.

9 Q: And after interviewing the victims, what did you do next?

10 A: Based on that -- those interviews, I was able to
11 corroborate several elements and felt that there was enough
12 for arrest warrants for Mr. Brown.

13 Q: And what arrest warrants did you obtain?

14 A: I obtained two arrest warrants, which were criminal
15 sexual conduct with a minor under the age of eleven, one for
16 each victim based on the allegations that had occurred earlier
17 that morning.

18 Q: And did you get those arrest warrants issued?

19 A: I did.

20 Q: After getting those arrest warrants issued, what did you
21 do next?

22 A: I contacted Detective Gebhardt and advised Sergeant Jones
23 that I had obtained these arrest warrants and advised them I
24 wanted to go to the residence to effect the arrest.

25 Q: Okay. And approximately what time was this?

DETECTIVE JASON MOSHER - DIRECT BY MR. JUSTIS

1 A: It was approximately 1:45 a.m. -- or I'm sorry -- p.m.,
2 1:45 in the afternoon.

3 Q: And what date was that?

4 A: That was Sunday, July 29th, 2013.

5 Q: And when you arrived at the residence, what happened?

6 A: Myself and Sergeant Jones approached the Brown residence.
7 Officer Terranova and Detective Gebhardt went to the rear of
8 the residence. As we approached the residence, we were met by
9 Mr. Brown, who was exiting the front door.

10 Q: And were you able to execute an arrest on Mr. Brown?

11 A: Yes, we were.

12 Q: And what -- what items, if anything, did Mr. Brown take
13 with him when you arrested him?

14 A: At that time, he was -- he was asked what he wanted to
15 take with him. His keys, his wallet, and phone were
16 requested.

17 Q: Okay. And were those items taken with him?

18 A: They were.

19 Q: After -- after he was arrested, where did he go from
20 there?

21 A: We transported him to the Summerville Police Department.

22 Q: What did you do after -- after Mr. Brown was arrested,
23 what did you do next in the case?

24 A: We conducted an interview and, at that point, Detective
25 Gebhardt seized the phone, but we conducted an interview. He

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1 was booked and served with the warrants and lodged at the
2 Dorchester County facility.

3 Q: Did you obtain any search warrants in this case?

4 A: The following day, I did.

5 Q: Okay. What -- what search warrants did you obtain or for
6 what?

7 A: Well, I obtained multiple search warrants in this case.
8 The following day, I obtained a search warrant based on my
9 investigation for certain bodily fluids within the residence,
10 which would include saliva, semen, hair follicles, things of
11 that nature.

12 Q: Okay. And was that -- and this was inside the residence
13 to be --

14 A: That was at the residence, yes.

15 Q: For the residence? And was that search warrant executed?

16 A: It was.

17 Q: Did you have an opportunity to execute a search warrant
18 for any evidence from the defendant?

19 A: Yes. I did obtain a search warrant for his DNA.

20 Q: Okay. And was that search warrant executed?

21 A: Yes, it was.

22 Q: And tell us about how that happened?

23 A: There again based on my investigation, I learned that --
24 that there was a need for his DNA. So, therefore, I obtained
25 a search warrant on August 1st and had him brought down to the

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1 Summerville Police Department where I was able to get a buccal
2 swab and collect his DNA.

3 Q: And please explain for the jury what that entails
4 collecting a buccal swab?

5 A: All right. I had gone to our evidence custodian where I
6 received a new buccal swab and after servicing service of the
7 warrant, I read Mr. Brown the warrant and advised him that I
8 had a valid warrant -- search warrant obtained by a judge --
9 or signed by the judge. I advised him that I was able to
10 obtain this buccal swab.

11 So once I got the new swab from the evidence custodian, I
12 had Mr. Brown open his mouth and I swabbed the inside of his
13 cheeks with this buccal swab. Then I placed that into a new
14 container. It was like a little box. I placed it in there
15 and then placed it in a brand new manila envelope. During
16 this entire time, I used rubber gloves. Everything was new
17 when I used it to make sure nothing was contaminated at the
18 time.

19 Q: Okay. And what did you do -- when you stuck it in that
20 envelope, what did you do at that point with it?

21 A: After placing it in the envelope, I logged that into
22 evidence then through the computer system and then stuck it in
23 the -- our evidence lockers, which is keyed. You know, you
24 put it in the locker, lock it up, and drop the key so the
25 evidence custodian can pick it up at a later time.

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1 Q: Up to that point when you just deposited this envelope
2 into evidence, had anyone else touched this evidence?

3 A: No, sir.

4 Q: I'm showing you what's been marked as State's Exhibit 10.
5 Do you recognize that?

6 A: Yes, I do.

7 Q: And what is that?

8 A: That is the envelope that I had placed the buccal swab
9 in.

10 Q: Thank you.

11 MR. JUSTIS: At this time, the State would offer State's
12 10 into evidence.

13 THE COURT: Any objections?

14 MR. LOY: None, Your Honor.

15 THE COURT: It's in.

16 (Whereupon, State's Exhibit Number 10, the buccal swab
17 obtained from the defendant, is admitted into evidence.)

18 MR. JUSTIS: And as a result of this being offered into
19 evidence, Your Honor, we would also ask that those other items
20 of evidence -- I believe it was 8 and 29, State's 8 and
21 State's 29. I think they were admitted conditionally.

22 THE COURT: Any objections?

23 MR. LOY: I think the condition is met, Your Honor.

24 THE COURT: They're both in.

25 (Whereupon, State's Exhibit Number 8, the swatches, and

DETECTIVE JASON MOSHER - DIRECT BY MR. JUSTIS

1 State's Exhibit Number 29, the SLED CSC kit on **Victim 2**
2 Stimley, are admitted into evidence.)

3 MR. JUSTIS: Thank you, Your Honor.

4 Q: Did you conduct any other -- did you collect any other
5 evidence in this case?

6 A: Yes, I have.

7 Q: What are some of the items of evidence that you collected
8 in this case?

9 A: I collected several pieces of clothing.

10 Q: And -- and tell us about that. What pieces of clothing
11 did you collect?

12 A: I collected a -- during one of the search warrants, I
13 collected a blue shirt, a child's shirt that had a butterfly
14 insignia on the front. I collected that from the residence
15 during one of the search warrants.

16 Q: I'm showing you what's been marked as State's Exhibit 12.
17 Please take a look at that and tell me if you recognize that?

18 A: Yes. That's the shirt I collected.

19 MR. JUSTIS: At this time, the State would offer State's
20 12 into evidence.

21 THE COURT: Any objections?

22 MR. LOY: No, Your Honor.

23 THE COURT: It's in.

24 (Whereupon, State's Exhibit Number 12, a blue child's
25 shirt with a butterfly insignia, is admitted into

DETECTIVE JASON MOSHER - DIRECT BY MR. JUSTIS

1 evidence.)

2 Q: And, Detective, could you explain why you -- why this
3 shirt piqued your interest?

4 A: After reviewing other evidence I obtained from the phone,
5 that particular shirt I could -- it was almost identical to
6 the shirt that was used -- or that the child was wearing --

7 **Victim 1** was wearing during several videos and
8 photographs that was obtained from Mr. Brown's phone.

9 Q: Okay. And what other -- any other items of evidence that
10 you collected?

11 A: I was able to collect a tie-dyed shirt at a later time
12 from the defendant's wife, Rachel Brown.

13 Q: And why did you collect that shirt?

14 A: That particular shirt -- I had spoke with Ms. Brown
15 inquiring if Mr. Brown had owned any multi-colored shirts and
16 she had advised that --

17 MR. LOY: Objection, Your Honor, as to hearsay.

18 THE COURT: Sustained.

19 Q: And why were you interested in a multi-colored shirt?

20 A: At that particular -- I was looking for a multi-colored
21 shirt based on what evidence I was able to obtain from the
22 data that was collected from his cell phone. I observed him
23 wearing a tie-dyed shirt in that particular phone or the data
24 in that phone, and that shirt was very similar to the one that
25 was being worn while **Victim 1** was performing oral sex.

DETECTIVE JASON MOSHER - DIRECT BY MR. JUSTIS

1 Q: I'm showing you what's been marked as State's 31. Can
2 you tell us -- do you recognize that photo?

3 A: Yes, sir. That was a photograph that was on Mr. Brown's
4 phone with him wearing a tie-dyed shirt.

5 Q: Now, I'm going to show you State's 11. Can you take a
6 look at State's 11 and tell me if you recognize that?

7 A: Yes, sir. That's the shirt I collected. That's the
8 shirt that I collected. It was similar to the one that's in
9 the photograph.

10 MR. JUSTIS: At this time, the State would offer State's
11 11 into evidence.

12 THE COURT: Any objections?

13 MR. LOY: No, Your Honor.

14 THE COURT: It's in.

15 (Whereupon, State's Exhibit Number 11, a tie-dyed t-
16 shirt, is admitted into evidence.)

17 Q: At any time during your investigation, did you ever seek
18 additional warrants against Mr. Brown?

19 A: Yes, I have.

20 Q: And what -- what additional warrants did you seek?

21 A: I seeked a third arrest warrant for criminal sexual
22 conduct with a minor under the age of eleven on August 5th,
23 2013.

24 Q: And who was the alleged victim in that warrant?

25 A: The alleged victim on that was **Victim 1**.

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1 Q: And why did you seek that warrant?

2 A: Based on -- based on me viewing the video from the phone,
3 I was able to determine that the allegations made occurred on
4 multiple days and, based on one particular video and some
5 photographs, sexual acts were being committed during the
6 daytime hours, which would show that this occurred prior to
7 the alleged date of July 28th. So based on that, I was able to
8 obtain -- I obtained a second -- I'm sorry -- a third arrest
9 warrant for other acts committed.

10 Q: Thank you.

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

12 Q: Detective, I'm showing you what's been marked as State's
13 Exhibit 32. Can you take a look at that?

14 A: Yes, sir.

15 Q: And tell me what that appears to be?

16 A: That's **Victim I** performing oral sex on an adult male
17 wearing a tie-dyed shirt very similar to the one I collected.

18 Q: Thank you.

19 MR. JUSTIS: At this time, the State would offer State's
20 32 into evidence.

21 THE COURT: Any objections?

22 MR. LOY: No objection, Your Honor.

23 THE COURT: It's in.

24 (Whereupon, State's Exhibit Number 32, a color photograph
25 still from video, is admitted into evidence.)

DETECTIVE JASON MOSHER - CROSS BY MR. LOY

1 MR. JUSTIS: No further questions. Please answer any
2 questions Mr. Loy might have for you.

3 THE COURT: Your witness.

4 MR. LOY: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. LOY:

7 Q: You didn't do the forensic examination of the telephone
8 or the contents of the telephone that was seized, did you,
9 Detective Mosher?

10 A: No, sir. As far as the collection of the data, I did
11 not.

12 Q: Okay. And you didn't plug in any of those programs to
13 recover lost data, et cetera, or do any of that, did you?

14 A: No, sir.

15 Q: After that data was collected, you reviewed it though?

16 A: That's correct.

17 Q: Okay. You stated a moment ago that you were able to
18 determine that these videos were made on different dates; is
19 that right?

20 A: Yes.

21 Q: The first video that was shown, what date was it made on?

22 A: I do not know the exact dates that they were made, but
23 based on one video that was shown, the time frame -- it was
24 daylight out. You could see within the residence that light
25 is illuminating, natural light, compared to other things

DETECTIVE JASON MOSHER - CROSS BY MR. LOY

1 within that phone or the pictures within that phone were dark
2 at nighttime or in a dark room, which would support a separate
3 day from when the children had made the allegations of the
4 initial sexual assault.

5 Q: And the second video, what was the date it was made?

6 A: I do not know the exact dates.

7 Q: You don't know the dates any of them were made?

8 A: No, sir.

9 Q: You don't know the dates any of the photos were taken?

10 A: No, sir.

11 Q: And it appeared to you as though one or more of them were
12 in daylight hours because with you watching it, it seemed like
13 there was natural light?

14 A: That's correct.

15 Q: And by that you're able to determine it was a different
16 day than any other day? Days are generally 24 hours, part
17 light and part dark; right?

18 A: Yes, sir.

19 Q: You don't really know if these were taken on different
20 days or the same day. You just know they were there and you
21 saw them when they were on the phone as part of your
22 investigation; isn't that correct?

23 A: Well, based on the allegations from the girls --

24 Q: No, no, no. I don't want to know what they told you.

25 You said you were able to look at these things and determine.

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1 You made the determination. You watched them, you looked at
2 them, and you determined they were made on different dates,
3 and the simple fact is it may have been a hunch of yours, but
4 you don't know that, do you? You have no scientific -- I'm
5 sorry. I'm rattling on. You don't know that, do you?

6 A: Well, based on what was retrieved from the phone, I can
7 say that when their allegations were made, it was at
8 nighttime, and what I saw in the video was not nighttime.

9 Q: So how do you know it was a different date? How do you
10 know it wasn't daytime the same date?

11 A: Because based on the time of the allegations, it was
12 morning of the 28th and the girls were out of the residence
13 that morning. So, therefore, it couldn't have occurred at
14 daytime hours because of the time frame that was associated
15 with the initial incident.

16 Q: So this is you connecting the dots?

17 A: That's correct.

18 Q: This is what you've surmised rather than you looking at a
19 picture and saying I can determine that this picture was made
20 differently on a different date from this picture; is that
21 right?

22 A: Yes.

23 Q: Okay.

24 A: I just don't know the exact date that that --

25 Q: They don't have a time stamp on them?

DETECTIVE JASON MOSHER - CROSS BY MR. LOY

1 A: No. On those particular videos, they do not.

2 Q: Okay. And the pictures don't?

3 A: No, sir.

4 Q: You can't say when they were made or not made?

5 A: That's correct.

6 Q: So it's your opinion that they may be on different dates?

7 A: Based on my investigations, I can --

8 Q: Based on your --

9 A: -- conclude that they are on different dates from the

10 time that the allegation was made.

11 Q: I understand. That's your conclusion. Yes?

12 A: Yes.

13 Q: Thank you.

14 MR. LOY: I don't have any more questions.

15 THE COURT: Any further redirect?

16 MR. JUSTIS: Nothing further, Your Honor.

17 THE COURT: You may step down, Detective. Thank you.

18 You may call your next witness.

19 MR. JUSTIS: At this time, the State rests, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury, at this

21 point of the trial, it's necessary for us to take a brief

22 recess. If you would, please go to your jury room for a few

23 minutes. We will have you back in here momentarily.

24 Again, please do not discuss the case or allow anyone to

25 discuss the case with you. Thank you.

1 (Whereupon, the jury exits the courtroom at 2:11 p.m.)

2 THE COURT: Mr. Loy?

3 MR. LOY: Thank you, Your Honor. First, I make a motion
4 for a directed verdict. We have three indictments and my
5 motion will initially address just one of the indictments and
6 that's the indictment as relates to **Victim 1** and which
7 alleges that she was the victim of some sexual battery during
8 the couple of years prior to the allegations -- the primary
9 allegations, that is those that occurred supposedly subsequent
10 to the family visiting and having been to the beach, et
11 cetera, and coming home that night.

12 As to that allegation that sometime within that two-year
13 span, **Victim 1** obviously did not testify to any abuse
14 whatsoever. She didn't indicate that any of that had occurred
15 or, if it had occurred, when it had occurred. **Victim 2** was
16 certainly not a witness to it. Neither were any of the other
17 parties that were called to say that we saw evidence this had
18 occurred, we saw it happened, this is the date it happened, et
19 cetera. There simply was no evidence to support that.

20 Subsequently, these other charges were made. And I
21 understand there probably is enough for that to go to a jury.
22 I'll address those in a moment, but there is nothing to
23 suggest that in the two years prior other than Detective
24 Mosher's conclusion -- and he says it's his conclusion. "It
25 looks to me from watching these videotapes like they must have

1 just been on different days." And it's not supported by
2 anything other than that's his opinion. He says I can't tell
3 you it was on a Thursday. I can't tell you it was July the
4 5th, September the 23rd, January the 9th, or any other thing.
5 He simply says it appears to me that there is natural light in
6 the room and so it appears to me that this must have been made
7 on a different date and so I think this child must have been
8 violated some date other than the time that -- that has been
9 presented to the -- to the Court.

10 I don't think that is adequate to support proof beyond a
11 reasonable doubt within that time frame. There's no direct
12 testimony to support it. Certainly, Detective Mosher is not
13 there to offer testimony to support it. What he's done is
14 offer his conclusion and that's simply not appropriate and
15 it's not grounds for a -- to support a verdict.

16 THE COURT: Mr. Justis?

17 MR. JUSTIS: Thank you, Your Honor. As you know, the
18 standard for directed verdict is in the light most favorable
19 to the prosecution. If there's any evidence, that if you
20 believed everything that the evidence showed that the
21 prosecution presented, if there's any evidence of the crime,
22 then it's enough to survive a directed verdict.

23 . Obviously, we have the videotape, and in the videotape
24 it's clear it's daylight hours. The victim, **Victim 2**,
25 testified that this happened in the middle of the night on the

1 28th. They woke up that next morning according to grandma and
2 mom around 6:30 -- 6:45 in the morning. So from 6:45 when
3 it's sunup, they are with either mom or grandma. They're not
4 alone with Mr. Brown. They go to church. From there -- or
5 they attempt to go to church. From there, they're with mom
6 and grandma and they end up at the hospital. They never see
7 Mr. Brown again.

8 Okay? So the only way daylight photos of **Victim 1** could
9 have gotten on that phone if they happened prior to the 28th.
10 So I believe that supports that.

11 **Victim**, in her forensic interview, refers to **Victim 1**
12 telling her that, you know, she does this. Or he says he's
13 done it with **Victim 1** he hasn't done it with Nicole yet.
14 That's what -- that's what **Victim 2** told the forensic
15 interviewer and that was played yesterday on the forensic
16 interview. So we feel that does connect it.

17 While there might not be direct evidence, if you don't
18 want to consider a videotape direct evidence, you know, we do
19 have circumstantial evidence, and there's no requirement that
20 there has to be direct evidence. There's plenty of cases that
21 rely solely on direct evidence. So we think on the very low
22 burden that we need to meet for a directed verdict -- winning
23 on a directed verdict, we believe that there's enough evidence
24 there for the jury to infer that those videos that they saw
25 occurred prior to the 28th. Thank you.

1 MR. LOY: There's simply not any evidence, despite how
2 much Mr. Justis or Detective Mosher may say, that these videos
3 were taken during the daylight hours. Your Honor has reviewed
4 them. We saw them. I mean they were -- they were played in
5 here. Certainly, someone could have come in -- I don't know
6 -- some photographic expert and said this light is daylight
7 hours and here's how I can tell and here's how I know, as
8 opposed to simply having all the lights on in the house or it
9 being reflected from glass, et cetera.

10 I mean there's no evidence whatsoever other than
11 Detective Mosher to say, well, that's his belief, and that's
12 unsupported and uncorroborated, that these were taken on any
13 other occasion. It's not there.

14 THE COURT: Mr. Loy, as you know, the Court's
15 responsibility at this point is to consider the existence or
16 non-existence of evidence, not the weight of the evidence.
17 There certainly has been some evidence, both direct and
18 circumstantial, as to each of the elements of the offense. I
19 respectfully deny your directed verdict motion.

20 MR. LOY: Thank you, Your Honor.

21 THE COURT: Anything further at this time for the
22 defendant? Are you -- is your -- have you discussed with your
23 client whether or not he's going to testify?

24 MR. LOY: I have, Your Honor.

25 THE COURT: All right. And what is his position as to

1 whether or not he's going to testify?

2 MR. LOY: He does not want to testify, Your Honor.

3 THE COURT: All right. Mr. Brown, if you would, please
4 rise to be sworn.

5 THE CLERK: Please raise your right hand. State your
6 full name for the record.

7 THE DEFENDANT: Jonathan Michael Brown.

8 THE CLERK: Do you solemnly swear or affirm to tell the
9 truth, the whole truth, and nothing but the truth, so help you
10 God?

11 THE DEFENDANT: Yes, ma'am, I do.

12 THE CLERK: Thank you.

13 THE COURT: All right. Mr. Brown, at this time, I'm
14 going to explain to you certain of your rights. If you do not
15 understand anything I say, please let me know. If you want me
16 to explain anything in more detail, also please let me know.
17 Do you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: We have now reached the stage of the trial
20 where you may present your defense. You have the right to
21 claim the protections given to you by the Fifth Amendment of
22 the Constitution of the United States.

23 This amendment states in part that no person shall be
24 compelled in any criminal case to be a witness against
25 himself. This means that you cannot be required to testify in

1 this case. You have the right to testify on your own behalf.
2 However, no one can make you testify. This is a personal
3 right and no one can waive this right except for you.

4 If you decide to testify, you will be subject to the same
5 rules that govern the other witnesses and you may be examined
6 and cross examined on any relevant issue in this case. In
7 addition, if you have any convictions involving dishonesty or
8 false statement or for crimes punishable by imprisonment for
9 more than one year and this Court determines that the
10 probative value of admitting this evidence outweighs its
11 prejudicial effect to you, the solicitor will be able to
12 introduce your record and attract -- and attack your
13 credibility.

14 If you decide to testify, the decision on your part must
15 be freely, voluntarily, and intelligently made with the
16 knowledge of the protections given to you by the Fifth
17 Amendment and the consequences of your decision to testify.
18 If you decide not to testify, I will instruct the jurors that
19 they cannot give that fact that you did not testify any
20 consideration whatsoever, and that there is to be absolutely
21 no prejudice to you because you did not testify.

22 It is left entirely up to you whether or not you testify.
23 You may talk with your attorney. You may talk with your
24 family, your friends, or anyone else, but the final decision
25 will be left entirely up to you. Do you understand what I've

1 explained to you?

2 THE DEFENDANT: Yes, Your Honor, I do.

3 THE COURT: Do you have any questions about what I have
4 explained to you?

5 THE DEFENDANT: No, ma'am.

6 THE COURT: And have you discussed with your lawyer
7 whether or not you should testify?

8 THE DEFENDANT: Yes, ma'am, we have.

9 THE COURT: Do you wish to talk to your lawyer anymore at
10 this time?

11 THE DEFENDANT: No, ma'am, not regarding that.

12 THE COURT: Do you need any time to talk to your lawyer
13 regarding anything right now?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: Do you wish to testify?

16 THE DEFENDANT: Not at this time. No, ma'am.

17 THE COURT: All right. Thank you, Mr. Brown. Mr. Loy,
18 you've discussed this matter with your client?

19 MR. LOY: I have.

20 THE COURT: And in your opinion, does he understand the
21 protections given to him by the Fifth Amendment of the
22 Constitution?

23 MR. LOY: I believe that he does.

24 THE COURT: And in your opinion, he understands his --
25 his position as to whether or not he wishes to testify?

1 MR. LOY: I believe he does. However, I'd like for
2 clarification sake just the answer that he gave to Your Honor
3 was do you want to testify and it was no, not at this time.
4 I'd like, if I may --

5 THE COURT: Yes, sir.

6 MR. LOY: -- emphasize for his behalf that at this time
7 is the time. We are about to rest our case without actually
8 opening, simply to rest in the presence of the jury and
9 commence to closing argument. So if he were going to testify
10 or not going to, it's not "not at this time." It's just "no."

11 THE COURT: Yes, sir. Mr. Brown, do you understand that?

12 THE DEFENDANT: Yes, Your Honor, I do.

13 THE COURT: This is -- this is your only opportunity. If
14 you wish to testify, you may do so. If you need time to talk
15 to your attorney, I'm happy to give you that time, but you
16 need to make a decision. Just let me know if you need more
17 time to talk to your attorney or do you wish to testify at
18 this time?

19 THE DEFENDANT: No, ma'am, I do not.

20 THE COURT: Do you need more time to talk to your
21 attorney?

22 THE DEFENDANT: No, ma'am, I do not.

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

24 THE DEFENDANT: Thank you, Your Honor.

25 THE COURT: Anything further before we bring the jury

1 back out?

2 MR. JUSTIS: Nothing from the State, Your Honor.

3 MR. LOY: No, Your Honor. Thank you.

4 THE COURT: All right. Let's have our jury back, please.

5 MR. LOY: Your Honor?

6 THE COURT: Hold on one second.

7 MR. LOY: Will we just go straight to close, Your Honor?

8 THE COURT: That -- that's what I need to discuss with
9 you. Do y'all need a quick break to prepare for closing or
10 are you ready to proceed?

11 MR. JUSTIS: Ten minutes would be fine, if we could do
12 that. It's 2:20 now. If we do 2:30?

13 THE COURT: Okay. We'll bring the jury back in and I'll
14 let you rest in front of the -- the jury, and then we'll
15 proceed to closing at -- you know, we'll give you ten minutes
16 to prepare. You've reviewed the -- all the jury instructions
17 and the verdict forms; is that correct?

18 MR. JUSTIS: That's correct, Your Honor.

19 MR. LOY: Yes, Your Honor.

20 MR. JUSTIS: The State has no objections.

21 THE COURT: Is that correct, Mr. Loy?

22 MR. LOY: I assume that's correct they have no
23 objections, but we don't have any objections. I've reviewed
24 them also, Your Honor.

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

1 Let's have our jury, please.

2 (Whereupon, the jury enters the courtroom at 2:21 p.m.)

3 THE COURT: Welcome back, ladies and gentlemen of the
4 jury. Thank you for your patience this afternoon. The State
5 has rested their case at this point, and now it's the
6 opportunity of the defense. Although they're not required
7 under any circumstances to present a defense, if they wish to
8 proceed at this time, they will have the opportunity. Mr.
9 Loy?

10 MR. LOY: Your Honor, we rest.

11 THE COURT: All right. Thank you, Mr. Loy. Ladies and
12 gentlemen of the jury, again I hate to do this to you. I know
13 you're getting your exercise this afternoon, but we'll just
14 take a very brief recess for about ten minutes to get
15 everything ready to present closing arguments for you, and
16 then we'll proceed at that time. So we'll take about a ten-
17 minute recess and then we'll reconvene. Again, please do not
18 discuss the case or allow anyone to discuss the case with you.

19 (Whereupon, the jury exits the courtroom at 2:22 p.m.)

20 THE COURT: All right. So we'll be at ease for ten
21 minutes. Let me know when you're ready.

22 MR. LOY: Thank you, Your Honor.

23 (Whereupon, there is a break in the proceedings from 2:23
24 p.m. until 2:37 p.m.)

25 THE COURT: Thank you, everyone. You may have a seat.

1 Are the parties ready to proceed with the closing arguments?

2 MR. JUSTIS: The State is ready, Your Honor.

3 MR. LOY: Ready, Your Honor.

4 THE COURT: All right. Let's have our jury, please.

5 Solicitor, are you going to open on the law?

6 MR. LOY: Your Honor, we introduced no evidence.

7 THE COURT: Right. I didn't know if he was going to --
8 okay. You go -- you go first.

9 MR. JUSTIS: He goes last.

10 THE COURT: Right.

11 MR. JUSTIS: I'll do all mine together.

12 THE COURT: You have no exhibits; right?

13 MR. LOY: That's correct.

14 THE COURT: All right.

15 MR. JUSTIS: Correct.

16 (Whereupon, the jury enters the courtroom at 2:38 p.m.)

17 THE COURT: Welcome back, ladies and gentlemen -- ladies
18 and gentlemen of the jury. At this point, it's time for
19 closing arguments; so please pay close attention to both
20 parties. Solicitor, you may proceed.

21 MR. JUSTIS: Thank you, Your Honor. May it please the
22 Court.

23 THE COURT: Yes, sir.

24 CLOSING ARGUMENT ON BEHALF OF THE STATE

25 MR. JUSTIS: Ladies and gentlemen, no truer words were

1 ever spoken than when Kyle Ward stood before you -- it seems
2 like weeks ago, but it was merely two days ago -- and told you
3 nothing he could say was going to prepare you for what you
4 would see and hear in this courtroom this week.

5 Now, ladies and gentlemen, let's talk about the evidence
6 in this case, and we're going to jump right into the evidence.
7 The evidence in this case is really broken down into three
8 categories. Let's make it simple.

9 Number one, the testimony. Number two, the forensic
10 evidence, DNA, things of that nature. And number three, what
11 I call the photographic evidence, basically the phone and the
12 evidence that was acquired from Jonathan Brown's phone, the
13 phone that he was holding in his hand when law enforcement
14 arrived at his house that afternoon.

15 Now, let's talk about the testimony. Let's talk about
16 **Victim 2**. What did **Victim 2** tell us? Well, first of all,
17 **Victim 2** came in here. She's nine years old. She came in here
18 in a room of -- I don't know -- 40 people that were in the
19 room that day and she took that witness stand and sat there in
20 front of a roomful of strangers and had to answer questions
21 about the most personal, intimate things a person could be
22 asked about, and she answered those questions the best she
23 could.

24 And what did she tell us? Well, she confirmed that, yes,
25 that night or the early morning hours of July 28th, 2013, in

1 that man's home, in his living room, on this couch, he raped
2 her, vaginally and anally. And who was there with her? His
3 barely six-year-old daughter. Remember her? **Victim 1**
4 Remember her testimony. When did she turn six? July 25th.
5 Literally, barely three days before. **Victim 1** is sitting there
6 watching, sleeping, and then eventually participating,
7 demonstrating, performing oral sex on her own father. That's
8 what **Victim 2** told us.

9 Now, the defense would want you to believe that because
10 it happened in the living room and grandma and mom are just a
11 few doors down in the bedrooms asleep that it couldn't have
12 happened. It couldn't have happened because they were just in
13 the next room. Is that reasonable? Is that reasonable?

14 What about **Victim 1**? Well, **Victim 1** comes in here and she
15 basically didn't tell us anything. She don't remember, but
16 she did remember some things. What did she remember? She
17 remembered talking to police. She remembered talking to
18 doctors and nurses. She just didn't remember what they talked
19 about. She's also had to live with that man her entire life
20 and she's six. She's still not seven. She doesn't turn seven
21 until next week. And she came in here, again a courtroom full
22 of people, with her dad sitting right at that table and was
23 asked those same personal questions.

24 Now, one thing I'll clear up right now. At the end of
25 **Victim**'s testimony when I was asking her questions, I asked

1 her, "Do you see the person in the courtroom that did this to
2 you?" She sat there and she leaned over and she was looking
3 in that direction and she was looking and she said, "No."

4 (Whereupon, counsel displays a photograph to the jury.)

5 MR. JUSTIS: Because as we later found out, that's what
6 he looked like in July of 2013, a lot different than he looks
7 like now. Now, this is **Victim 2**, who lives in Indiana. This
8 is her uncle. This is not somebody she lives with all the
9 time. I submit to you that's why she didn't recognize him
10 because this -- because I asked her on redirect what did the
11 person look like and what did she say? Long hair, beard.

12 We saw -- and this is part of her testimony. It was a
13 forensic interview, but when you watched the forensic
14 interview, she was a lot more forthcoming. I submit to you,
15 number one, because it happened the day before. People have a
16 tendency to remember things the closer they are to the event.
17 The day before.

18 It's a much different environment, if you saw the video.
19 You're in a room, a couple couches. Everybody is nice.
20 There's -- you know, you can draw pictures and all that stuff.
21 It's all, you know, basically how it happened. It's not in a
22 room of strangers sitting in a chair, you know, having a judge
23 on one side of you, security, all these people, not knowing
24 anyone.

25 And what did she tell us in the forensic interview?

1 There's a few things. You know, I'm not going to go through
2 it all. You heard it, all one hour and seven minutes of it,
3 but I'll just mention a couple things that she mentioned.

4 And she talks about -- she describes the positions they
5 were in. Now, this is an eight-year-old girl being able to
6 describe positions. The defense would have you believe that
7 this story is just made up either in her own imagination or
8 someone, you know, told her to say this. But she can tell you
9 positions that they were in.

10 She tells you that something wet ran down her leg and
11 onto the couch. And the funny thing about that is what do
12 police find when they go to the house? They find a stain on
13 the couch, and it's semen. We know that because it was
14 tested. It's semen. It just so happens. And maybe it was
15 left there at some other point, but it's a coincidence that
16 exactly where she says there would be semen, there's semen.

17 And if you look in this picture, you can see it from
18 across the room before they cut the couch. You don't need no
19 ultraviolet light to see that. That's called corroboration.
20 She makes a statement and it's corroborated by independent
21 evidence.

22 She also talked about how she had to put her hand on the
23 Bible and swear to Jesus not to tell anyone. It's an eight-
24 year-old girl. And she says **victim 1** demonstrated licking his
25 penis.

1 Now, Dr. Busch -- let's talk about Dr. Busch briefly.
2 She came in. She was the doctor that performed the sexual
3 assault exams on all three children. As a precaution, they
4 did all three children. And what did she find?

5 On **Victim 2**, she talks about the redness on her vagina,
6 and we had the pictures and she essentially gave an anatomy
7 class to everyone on -- on how all that works and everything
8 like that. And she bases her exam -- she says it's a physical
9 exam based on what the patient complains of. It's like when
10 we go to the doctor, this hurts, they check this out,
11 whatever. She performs that exam. She finds the redness.
12 It's sore.

13 So I -- I asked her about the fact that there was no
14 trauma because surely if you have a grown man -- a grown man
15 having sex with an eight-year-old girl, there is going to be
16 damage. Surely there is. What did the doctor tell us? No.
17 Seventy-five percent of the time, there isn't.

18 And, of course, that -- that doesn't seem reasonable, but
19 we have a doctor who, as she testified, she's a dual fellow,
20 the first in the country. Okay? Dual fellow in emergency
21 pediatrics and child abuse, and she tells us that's actually
22 -- I would expect to see no trauma.

23 And why? Why does she say she would expect to see no
24 trauma? Because in a case where you have an eight-year-old
25 girl in a living room at night with grandma and mom two doors

1 away, you're not going to be making a whole lot of noise.
2 You're going to be taking your time. You've got to be quiet.

3 And she says the same thing about **Victim 1**. **Victim 1** --
4 she doesn't find any damage, any redness, or anything like
5 that, but remember what the allegation is that day with
6 **Victim 1**. She had oral sex with him. That was it. There was
7 no allegation that she had been anally or vaginally raped that
8 night or that morning. So I submit to you it's not unusual
9 that nothing showed on her vagina. There's no accusations of
10 that that night.

11 That was basically it. That was the crux of the -- of
12 the -- what I would call the testimony at least. Now, let's
13 move on to the forensic evidence and what we learned. And, of
14 course, we had agents here from -- from SLED, scientists that
15 do this kind of stuff all the time, and it basically boils
16 down to your serologist who testified and then your DNA
17 person.

18 And as you learned, it goes through several different
19 processes where they weed out. If there's nothing here, then
20 they just don't test that further, or maybe they have another
21 test that they do because they try to narrow it down.

22 And what we learned from the serologist was this. On
23 **Victim 2** the vaginal swab that was collected at MUSC -- and
24 you heard how that was collected -- semen was identified. And
25 remember what she said was identified. That means she looked

1 at it under a microscope and saw sperm. So out of **Victim 2**
2 vagina came sperm. And she also testified how long it could
3 last. You know, up to 72 hours would probably be the max you
4 would expect, but as time goes on it degrades. You know,
5 people go to the bathroom, they shower, they do different
6 things.

7 The rectal swab -- oh. The vaginal swab, semen
8 identified. Vaginal swab, saliva identified. Rectal swab,
9 semen indicated. She said if it just passed the little -- the
10 one little test that they did and it -- and it showed for
11 semen, then they didn't look at it under a microscope. They
12 just sent it to DNA. So on the rectal swab it passed that
13 initial test for semen. Same thing for saliva. So she had
14 semen in her vagina, in her rectum, and saliva in her vagina
15 and rectum. This is **Victim 2**

16 Then she has a suspected saliva swab because remember she
17 said she asked them if any parts of their body feel wet. Dr.
18 Busch testified to that. So what they do is they swab those
19 areas. So there was another part of her body and I think she
20 said lower back or on her back. They swabbed that. That swab
21 showed saliva. Saliva indicated. And then finally her
22 underwear -- saliva indicated.

23 Okay? So that's what we know. The question is how did
24 it get there? Who put it there? Who put the semen there?
25 **Victim 1**, nothing. Why? I told you. There's no allegation

1 that that night or that morning she was raped other than oral
2 sex. And they also -- she also looked at -- the serologist
3 looked at the love seat and the couch, and she said semen
4 indicated and we talked about that. You can see before and
5 after the couch and you can clearly see the stain there, and
6 you'll have this back there in the jury room with you.

7 And then after they cut the swatch out, which she
8 testified in her forensic interview that she was on the couch,
9 having said sometimes on the couch, sometimes on that rug in
10 front of the couch, which would line up. You know, she talks
11 about it running down her leg and then getting on the couch.

12 And then it moved to DNA. Amanda Webb with SLED, who has
13 testified as an expert over 30 times and been qualified as an
14 expert over 30 times, evaluated this and she explained that
15 they go through this DNA process. They do the autosomal DNA,
16 which is essentially this test where they can -- you know, if
17 they have a sample, they test it to try to identify all the
18 different profiles, which was a fancy word for saying people
19 that contributed to that sample.

20 And she also testified that it's common when you take a
21 sample from someone, let's say **Victim 2** that her DNA can
22 overwhelm the other DNA, for example whoever left that semen.
23 And that's what happened in this case. When they did the
24 autosomal testing, you know, they got **Victim 2** but they didn't
25 get anybody else. But they know there's semen there because

1 the previous test showed that there was semen.

2 So they take it the next step and they -- where does
3 semen come from? Men. So they have a test, the YSTR, where
4 they can isolate the male DNA. The problem with it is they're
5 not going to be able to say absolutely that is the person. It
6 -- as you -- as she mentioned, that Y chromosome runs in the
7 family. So she was -- she was able to narrow it down to
8 matching Jonathan Brown and any male member on his dad's side
9 on his side.

10 So if you were to take a DNA sample from his father, he
11 could be a contributor -- his dad. If his dad had a brother,
12 you know, any male member of that lineage. But unless any of
13 his relatives were running around in his house at one o'clock
14 in the morning, the only male member of the Brown family was
15 Jonathan.

16 And the same thing with the underwear. They were able to
17 do the Y -- YSTR and they said the same thing -- Jonathan
18 Brown. That's **Victim 2's** underwear. And, of course, **Victim 1**
19 again, no DNA for the same reasons.

20 And then third and finally, we talk about what I call the
21 photographic evidence. The phone. You heard Detective
22 Gebhardt. You know, this phone was collected. It's his
23 phone. He was using it when they arrested him. And they
24 collect that and they find, you know, tons of pictures on it,
25 as most people have on their phone, pictures and things like

1 that. Everybody has that.

2 And they go through those to try to find any that would
3 be relevant and they find several that they feel are relevant
4 to this case. And you got to see not only some pictures, but
5 also video. And you think back to **Victim 1** -- **Victim 2**
6 testimony. In the forensic interview, she talks about him
7 taking pictures of her pee-pee. What did we find on his
8 phone? A prepubescent what appears to be vagina, and the
9 surrounding area is dark.

10 Now, can I say that is her? That was taken that night?
11 Absolutely not. It's not time date stamped. I can't say
12 that. But again, it's kind of like that semen stain on the
13 couch. It just so happens **Victim 2** makes a claim and we look at
14 the phone and bingo, there it is.

15 The other thing we saw that **Victim 2** talked about -- let's
16 see here. Think back to the pictures from the phone. There
17 were several pictures. Remember seeing these in the pictures?
18 These are **Victim 2** shorts. She -- she testified these are her
19 shorts and these are the ones she was wearing that night. She
20 testified to that.

21 And what do we see? Lo and behold, there's a picture of
22 essentially a crotch shot. It's dark all around and you see
23 this. Someone taking a picture of someone wearing these
24 shorts. And then you see another picture where there is a
25 hand moving the shorts away exposing the underwear underneath

1 the shorts. I submit to you that's **Victim 2** and that hand is
2 his. Again, corroboration because she said he's taking
3 pictures.

4 Remember, this is his cell phone these pictures are on.
5 This isn't grandma's cell phone. It isn't mom's cell phone.
6 It's his cell phone.

7 Now, the videos. You can clearly see in the one video is
8 **Victim 1** You met her. You can -- I mean she's on the video.
9 You can see her face and everything. And you can see her
10 performing oral sex on a man, and I think the detective
11 testified that that was their living room. And, of course,
12 you've got pictures of their living room. They'll be in
13 evidence. You can look at them and it matches up with the
14 pictures on that video.

15 You can hear cartoons playing in the background. And you
16 hear the person when she stops and stands up say, "Do it
17 again." And then she gets back down and does it again. But
18 there's something else you can see in that video. You can't
19 see the person's face, but you can see the shirt he's wearing.

20 I submit to you, ladies and gentlemen, it's this shirt.
21 This will be back in evidence. You can look at it because
22 when you take this shirt and it's the same one that he was
23 wearing here because remember, the detective -- Detective
24 Mosher, the last person that testified, when he sees this
25 picture on the phone, that kind of -- he realizes it matches

1 up to that video. So then he makes a call to mom. Hey, did
2 he own any multi-colored shirts? Yeah. And we get this
3 shirt.

4 And the interesting thing about it is when you take this
5 picture, this still shot from the video, look at down here.
6 Look at that shirt. You can match the pattern. Let's do
7 that. Let's see. Green, orange, yellow. Green, orange,
8 yellow. There's the little black. There's the little black.
9 Rachel testified that's her husband's shirt. The person in
10 this picture is wearing that shirt. That's called
11 corroboration.

12 Yeah, **victim I** didn't take the stand and say he did this
13 to me, he did this to me, he did this to me. We physically
14 saw him do it to her. I think we all would have wished she'd
15 just told us.

16 Now, this is my only time to address -- address you and,
17 when I'm done, Mr. Loy will make the closing for the defense.
18 So I don't know what Mr. Loy is going to say. I can only make
19 reasonable inferences based on the evidence and the arguments
20 that he might make.

21 And as I mentioned and the judge mentioned to you, what
22 we as lawyers say is not evidence. The evidence is what you
23 heard from this witness stand. They're the exhibits that were
24 introduced in the trial. That's the evidence. What we say
25 are just our opinions of the evidence. So when you make your

1 decision, base it on the evidence, not on what I say and not
2 on what Mr. Loy says. Do it on what the evidence says.

3 But I would contend that, you know, from a defense
4 perspective, the argument of there's no physical evidence -- I
5 believe in opening Mr. Loy talked about, you know, they go and
6 have a medical exam and they found no trauma. Well, there was
7 redness. The doctor addressed that and I think the doctor
8 addressed that concern of why wasn't there no trauma because
9 it doesn't make sense that there wouldn't be trauma, but I
10 think after you listen to Dr. Busch, she explained that
11 clearly on why there wouldn't be trauma both in **Victim 2** and
12 **Victim 1**

13 As I mentioned, the DNA evidence -- there's no physical
14 evidence? There's semen in **Victim 2**. She's eight. It's not
15 supposed to be there. But there's no physical evidence?

16 And then the phone. There's no physical evidence?
17 That's -- there's no physical evidence, even though there's a
18 video of this happening to the child and photographs, but
19 there's no physical evidence.

20 Everybody is lying. You know, they just made this story
21 up. You know, **Victim 2** is lying. She just made the whole
22 story up. She's a great actress. She knows how to cry on
23 command. She, you know, just got lucky with the -- there's
24 going to be semen on the couch. There's going to be semen in
25 the -- there's going to be -- she just got lucky with that

1 because everybody is lying. They just made it up.

2 And my favorite, it isn't me. That video, those
3 photographs you see, it just isn't me on there. You know, we
4 talked about -- as I mentioned, there's no other males in the
5 house, but there's semen all over the place.

6 Mr. Loy talked to Amanda Webb about indirect transfer of
7 DNA. You know, if I sat on the couch and then someone else
8 sat, could their DNA get on me? You know, that's all fine and
9 good, but could their DNA get in me?

10 Unless you believe that some stranger in broad daylight
11 -- because you watched the videos. It looks like daylight.
12 Now, I can't tell you what -- you know, I can't tell you one
13 hundred percent it was daylight. I would argue it was
14 daylight during some of those videos as opposed to nighttime.
15 That's how we know they're different.

16 If you believe that some stranger came in their house,
17 put on his favorite shirt, grabbed his phone, wherever it is
18 in here, grabbed his phone, got his daughter in his living
19 room, had her perform oral sex on him, videotaped the whole
20 thing and then deleted it, and then either the same day or
21 another time, you know, had anal intercourse with her, if you
22 believe that, then find him not guilty. It isn't reasonable,
23 ladies and gentlemen.

24 Now, the State is required to prove each element of the
25 crime beyond a reasonable doubt, and he's charged with three

1 crimes, all of them the same crime -- the same -- same charge
2 so they have the same definition, which is really a pretty
3 simple definition: when you commit a sexual battery upon a
4 minor under the age of eleven.

5 You heard the girls testify to their age. Unless you
6 don't believe them beyond a reasonable doubt that they're that
7 age, that they're under eleven, if you think they're older
8 than eleven, then I guess you can acquit based on that.

9 But the second thing is the sexual battery. And remember
10 what Mr. Ward told you a sexual battery was and the judge will
11 tell you. It's vaginal intercourse -- check for that. Anal
12 intercourse -- check. Fellatio -- we have evidence of this in
13 this case with **Victim 1** -- check. Cunnilingus -- I think on
14 her forensic interview **Victim 2** talks about that. Or any
15 intrusion -- we saw some. We saw a hand with a finger.
16 Remember, that's the video where you hear the child and you
17 don't see the face saying, "Ow, ow, ow, ow, ow," as he's
18 sticking his finger in her.

19 Those are sexual batteries. And if you believe that that
20 man committed those sexual batteries against those children
21 beyond a reasonable doubt, then it's your duty to find him
22 guilty because reasonable doubt is not doubt beyond any and
23 all doubt. It's a reasonable doubt. If you're firmly
24 convinced as Mr. Ward told you -- firmly convinced of the
25 defendant's guilt, then you must find him guilty.

1 Ladies and gentlemen, Victim 2 and Victim 1 will always
2 have to live with what happened.

3 MR. LOY: Objection, Your Honor. That's an improper
4 argument. It's inflammatory. It has nothing to do with the
5 evidence that's been presented here. It's a statement as to
6 the future.

7 MR. JUSTIS: Withdrawn, Your Honor.

8 THE COURT: Sustained. You may move on.

9 MR. JUSTIS: You know, there's an old saying, ladies and
10 gentlemen, and it talks about a picture is worth a thousand
11 words. And I think the original saying is a picture is worth
12 ten thousand words. It's been kind of chopped down over the
13 years.

14 I submit to you that those pictures, more specifically
15 these pictures, these videos, these photographs, are worth but
16 one word, and that's guilty. Find Jonathan Brown guilty of
17 criminal sexual conduct with a person -- with a minor. Thank
18 you.

19 THE COURT: Mr. Loy?

20 MR. LOY: Thank you, Your Honor.

21 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

22 MR. LOY: Good afternoon, ladies and gentlemen. I don't
23 know if a picture is worth a thousand words or not. I can
24 assure you I don't have nearly the thousands of words that Mr.
25 Justis had and I won't be as long in closing argument. It is

1 my opportunity, however, to walk through the evidence on
2 behalf of Mr. Brown with you that was presented here in this
3 courtroom from a slightly different perspective.

4 The judge will inform you shortly that anybody charged
5 with a crime in the Court of General Sessions is presumed
6 innocent at the outset of the trial. That the presumption of
7 innocence follows that person throughout the trial. The
8 presumption of innocence continues with that person even at
9 this point in the trial right up until she finishes her
10 instructions and says now go out and when the exhibits are
11 brought to you, commence your deliberations.

12 It's an absolutely fundamental principle. That's one of
13 the principles our country and our justice system is founded
14 upon. And although it is at times difficult -- because I
15 understand that quite often despite what we call the
16 presumption of innocence, what we really have in the United
17 States and perhaps in the world, but as a knee-jerk reaction
18 is a presumption of guilt.

19 I've done -- been a lawyer for a long time and I believe
20 in our justice system as I'm sure most of the people here in
21 this courtroom do. I'm a participant in it. I'm a believer
22 and I can sit down and read the paper in the morning and look
23 across the table at my friends or family and say, oh, they
24 caught those two guys who were robbing that bank. Or oh, they
25 caught the guy who shot that fellow outside of the nightclub.

1 So even though in an academic sense I understand probably
2 better than a lot of people that the presumption of innocence
3 is real, active, and important, without actually invoking it,
4 thinking about it, and putting it in place, my initial
5 reaction is what a lot of folks are. The cops got it right.
6 They caught the guy. Let's move on. Justice is served.

7 Y'all can't do that today. For today, y'all took an oath
8 presumed innocent. And what that does is put the burden of
9 proof on the State, that is require them to come forward and
10 show enough evidence to convince each and every one of you
11 that the defendant is guilty of the offenses that he's charged
12 with beyond any and every reasonable doubt. Because the judge
13 is going to instruct you shortly it's your sworn duty as
14 jurors to give the defendant the benefit of any and every
15 reasonable doubt.

16 Now, having said that, I'd like to just look at the
17 evidence in the case briefly. The State called several
18 witnesses. They called young Ms. **Victim 2** to the witness
19 stand. And while she was a little vague or evasive and
20 perhaps understandably so with the solicitor, eventually upon
21 cross examination and upon viewing the forensic interview that
22 she gave, she comes out and makes the accusations that I was
23 in the home, my aunt was in the home, my grandmother was in
24 the home, adults were there.

25 While they were there and on this night, I was chased. I

1 ran, and she says he chased me down and caught me. I was
2 raped vaginally. She said "the man who raped me." Well, he
3 raped me. She described that. He put it in my pee-pee, et
4 cetera. And then we hear some more adult language and she
5 said, yes, he had vaginal sex with me. And yes, he had anal
6 sex with me. And while these things were going on, my
7 grandmother walked into the room. Excuse me. My grandmother
8 walked into the room.

9 And at that point, somehow Mr. Brown, unclothed as he
10 was, was able to gather his clothes and scurry from the room
11 and hide in the corner or something like that. The
12 grandmother then sees the child, who in that circumstance I
13 submit to you would be undeniably distraught. If it were a
14 grown woman who had been chased by someone in the house,
15 physically assaulted and raped, anybody who walked into the
16 middle of it would not miss the fact that there was a problem
17 here.

18 The grandmother certainly presented as a concerned adult.
19 I think she would have dealt with that situation if it had
20 been arisen. If her child had -- grandchild had seemed upset
21 or crying or distraught, she wouldn't have walked out of that
22 room and gone back to bed, and that's what she did. So the
23 idea that -- that this occurred and that no one was awoken
24 when the chase went on, that even when grandma went back to
25 bed that they didn't go with grandma or didn't say help me or

1 anything else has perhaps been implausible.

2 Now, the solicitor -- the State later called Dr. -- I
3 think it was Dr. Busch from MUSC, who said I examined -- I
4 examined these children. The judge is going to tell you in
5 her instruction that Dr. Busch is what we call an expert.
6 She's qualified as an expert, labelled as an expert in court.
7 She's an expert. It means one thing. She's allowed to give
8 an opinion.

9 Other witnesses sometimes during the course of the trial
10 we may have objected to something and it got struck or they
11 said no, you can't say that, that's your opinion. Most
12 witnesses are limited to say I saw this, I heard this, I did
13 that. An expert, not so much. An expert can say within my
14 field of expertise, this is my opinion.

15 What you cannot do and what you're not allowed to do is
16 to substitute the opinion or to delegate your duty as jurors
17 to someone else. Her opinion is there and you can consider
18 it, reject it, factor it in, take it for what it's worth,
19 disregard it. You're not required to accept it on face value
20 and Her Honor is going to tell you that or something akin to
21 that shortly.

22 Now, a lot of time when experts come to court, they have
23 their own agenda. They have their own side that they're
24 pushing, and I would just ask each of you to consider. Take
25 her opinion into consideration and consider if a child -- an

1 eight-year-old child were chased through the house, raped
2 vaginally and anally, and examined within a few hours, would
3 there not be evidence that that had occurred? If an adult
4 person had that experience, would there not be evidence that
5 that had occurred?

6 If you believe everything that the expert Dr. Busch had
7 to say, then she could have just dialed her testimony in
8 because it was, as it eventually came out, no matter what I
9 found, it was consistent with sexual abuse. I found bruising;
10 that's consistent. I found no bruising; that's consistent. I
11 found injuries and tears and fissures; that's consistent. I
12 found none of them; that's consistent.

13 It's totally useless. It means absolutely nothing. She
14 did say there was some redness around this child's vaginal
15 area. She said if I saw this redness in another child who had
16 been to the beach, who had worn her bathing suit home, who had
17 been sandy and irritated, et cetera, I'd attach no great
18 significance to it. So I would suggest to you her testimony
19 adds absolutely nothing to the case other than to say that
20 perhaps she's got an agenda aside and is never ever going to
21 come to court and say my physical examination was not
22 consistent with sexual abuse.

23 **Victim 1**, of course, was called to the witness stand. She
24 -- she had nothing to say. She doesn't remember. I don't
25 know what happened. I don't want to be here. And she left

1 and left you with **Victim 2** story. Implausible, which is why
2 it took so long up here because there's concern about that
3 implausibility. Unsubstantiated by the doctor who does the
4 examination because you can bet your boots if there had been
5 bruising, if there had been a vaginal tear, if there had been
6 an anal rupture, she'd have been right there saying, oh, yes,
7 this is consistent with blunt force trauma, penetrative
8 trauma, et cetera. And certainly it would be a lot stronger
9 than to say because I found nothing, something may have
10 happened.

11 Then they introduced some DNA evidence. Okay? And I
12 admit we understood some of it somewhat differently. I
13 understood that it went up there and a couple of these folks
14 who were forensic screeners -- they shined lights on the
15 cloth, so they looked at the swabs and they either said, well,
16 this is indicated or this is not. This may be present or in
17 this case it looks like it's not.

18 Regardless, they're sort of perfunctory. They're on the
19 introductory level. They screen these things that go to SLED
20 and then they send it to the lab -- the DNA for the actual DNA
21 analysis. And that lady came in here and testified as to her
22 results also. One thing -- because I think it was the last
23 thing I asked her. I looked at her report with her and she's
24 talking about this Y strain DNA, which seems to be some sort
25 of trace amount or something like that, certainly not enough

1 so that she can get enough DNA to capture a full profile and
2 she says that.

3 And she says it wouldn't have begun to degrade or to fall
4 apart or go away or whatever within six or twelve hours, which
5 is certainly a window within which this is alleged to have
6 been collected. And she said, well, I couldn't get a full
7 profile. I couldn't put it together. What I did get was a Y
8 strain, this partial thing, after I filtered it out and took
9 the piece I wanted to look at, developed from a non-sperm
10 faction of Item 1, 2, and 7.1. And I asked her about that and
11 she said yes, that's -- that's where that came from.

12 She also talked about transfer of DNA. Now, I can't tell
13 you this DNA or this Y strain DNA or what she interpreted to
14 be this Y strain DNA was there because of this or that or the
15 other. I can tell you the physical examination of the child,
16 **Victim 2**, the doctor testified that upon a visual examination,
17 she had some debris around her anus or in her anus which was
18 cotton and apparently grass also, and I don't know where this
19 came from, but if these folks are using the same towels, if
20 they're coming back from the beach, if one's in the shower and
21 the next in behind it, it's certainly not implausible to think
22 that some small amount of this -- this partial DNA that she's
23 describing is an indirect transfer that could have taken
24 place.

25 So at that point, I think you are required by law to give

1 Mr. Brown the benefit of every reasonable doubt, and there's
2 reasonable doubts there. You've been confronted with some
3 videos that you watched and I wish for y'all's sake as well as
4 my own you could unwatch it and you wouldn't carry that with
5 you because they're shocking. They're hard. I suspect and I
6 hope it's nothing any of y'all ever wanted to see.

7 You've got to kind of put your prejudice and your knee-
8 jerk reaction aside though and consider that as one more piece
9 of evidence. And there's not anybody's face on there.
10 There's not a fingerprint on there. There's not DNA on there.
11 Nobody can be identified on that video except perhaps **Victim 1**
12 **██████**.

13 And for those reasons, I would submit to you that, in
14 fact, reasonable doubt does exist in this case and ask you to
15 return a verdict reflecting that. Thank you.

16 CHARGE ON THE LAW BY THE COURT

17 THE COURT: Ladies and gentlemen of the jury, it's now
18 time for me to charge you on the law in this case.

19 The indictments charge the defendant with three counts of
20 first degree criminal sexual conduct with a minor. I remind
21 you that the fact the defendant was arrested, charged, and
22 indicted in this case is not evidence in this case. It cannot
23 be considered by you as evidence of guilt in this case. Nor
24 does it create any presumption or inference of guilt.

25 These indictments are simply the formal written

1 instruments which contain the charges against the defendant.
2 The indictments are the formal documents from which the case
3 is brought into this court.

4 Each indictment charges a separate, distinct offense.
5 You must decide each indictment separately on the evidence and
6 the law applicable to it uninfluenced by your decision as to
7 any other indictment. The defendant may be convicted or
8 acquitted on any or all of the offenses charged. You will be
9 asked to write a separate verdict of guilty or not guilty for
10 each indictment.

11 The defendant has pled not guilty to these indictments,
12 and that plea puts the burden on the State to prove the
13 defendant guilty. A person charged with committing a criminal
14 offense in South Carolina is never required to prove himself
15 innocent. I charge you that it is an important rule of law
16 that the defendant in a criminal trial, no matter what the
17 seriousness of the charge may be, will always be presumed
18 innocent of the crime for which the indictment was issued
19 unless guilt has been proven by evidence satisfying you of
20 that guilt beyond a reasonable doubt.

21 This presumption of innocence does not end when you begin
22 your deliberations, but it accompanies the defendant
23 throughout the trial until you reach a verdict of guilt based
24 on the evidence satisfying you of that guilt beyond a
25 reasonable doubt. The presumption of innocence is like a robe

1 of righteousness placed about the shoulders of the defendant
2 which remains with the defendant until it has been stripped
3 from the defendant by the evidence satisfying you of the
4 defendant's guilt beyond a reasonable doubt.

5 The presumption of innocence is not a mere legal theory.
6 It is not just a legal phrase. It is a substantial right to
7 which every defendant is entitled unless you, the jury, are
8 satisfied from the evidence of the defendant's guilt beyond a
9 reasonable doubt.

10 What is a reasonable doubt in the law? A reasonable
11 doubt is the kind of doubt that would cause a reasonable
12 person to hesitate to act.

13 The State has the burden of proving the defendant guilty
14 beyond a reasonable doubt. Some of you may have served as
15 jurors in civil cases where you were told that it is only
16 necessary to prove that a fact is more likely true than not
17 true, such as by the greater weight or preponderance of the
18 evidence.

19 In criminal cases, the State's proof must be more
20 powerful than that. It must be beyond a reasonable doubt.
21 Proof beyond a reasonable doubt is proof that leaves you
22 firmly convinced of the defendant's guilt.

23 There are very few things in this world that we know with
24 absolute certainty. In criminal cases, that does not require
25 proof that overcomes every possible doubt. If based upon your

1 consideration of the evidence you are firmly convinced that
2 the defendant is guilty of the crimes charged, you must find
3 the defendant guilty. If on the other hand you think there's
4 a real possibility the defendant is not guilty, you must give
5 the defendant the benefit of the doubt and find him not
6 guilty.

7 I remind you that during this trial you and I have
8 certain duties to perform. As the trial judge, it is my
9 responsibility to preside over the trial of this case and I
10 also have the duty to rule on the admissibility of the
11 evidence offered during this trial.

12 You are to consider only the competent evidence before
13 you. If there was any testimony stricken from the record in
14 this case during this trial, you must disregard that
15 testimony. You are to consider only the testimony which has
16 been presented from the witness stand, any exhibits which have
17 been made part of the record in this case, and any
18 stipulations of counsel.

19 I have the additional duty to charge you the law
20 applicable to this case. As the presiding judge, I am the
21 sole judge of the law of this case and it is your duty as
22 jurors to accept and apply the law as I now state it to you.
23 If you already have any idea as to what the law is or what the
24 law ought to be and it does not agree with what I now tell you
25 the law is, you must abandon this idea because you are sworn

1 to accept the law and apply the law exactly as I state it to
2 you.

3 In every case tried in this court before a jury, the jury
4 becomes the sole and exclusive judge of the facts in a case.
5 A trial judge cannot intimate, state, comment on, or make any
6 statement to the trial jury about the facts in a case.

7 Since you, the jury, are the sole judge of the facts in
8 the case, you are not to infer from what I have said during
9 the process of this trial in ruling upon the admissibility of
10 evidence or otherwise or anything that I say now during the
11 course of this instruction to you that I have any opinion
12 about the facts in this case. The law does not allow me to
13 have an opinion about the facts in this case.

14 This is a matter solely for you, the jury, to determine.
15 As jurors, it is your duty to determine the effect, value,
16 weight, and truth of the evidence presented during this trial.

17 There are two types of evidence which are generally
18 presented during a trial: direct evidence and circumstantial
19 evidence. Direct evidence is the testimony of a person who
20 claims to have actual knowledge of a fact, such as an
21 eyewitness. It is evidence which immediately establishes the
22 main fact to be proved.

23 Circumstantial evidence is proof of a chain of facts and
24 circumstances indicating the existence of a fact. It is
25 evidence which immediately establishes collateral facts from

1 which the main fact may be inferred. Circumstantial evidence.
2 is based on inference and not personal knowledge or
3 observation.

4 The law makes absolutely no distinction between the
5 weight or value given to either direct or circumstantial
6 evidence. Nor is a greater degree of certainty required of
7 circumstantial evidence than of direct evidence. You should
8 weigh all of the evidence in the case. After weighing all of
9 the evidence, if you are not convinced of the guilt of the
10 defendant beyond a reasonable doubt, you must find the
11 defendant not guilty.

12 Necessarily, you must determine the credibility of
13 witnesses who have testified in this case. Credibility simply
14 means believability. It becomes your duty as jurors to
15 analyze and to evaluate the evidence and determine which
16 evidence convinces you of its truth.

17 In determining the believability of witnesses who have
18 testified in this case, you may believe one witness over
19 several witnesses or several witnesses over one witness. You
20 may believe a part of the testimony of a witness and reject
21 the remaining part of the testimony of that same witness. You
22 may believe the testimony of a witness in its entirety or
23 reject the testimony of a witness in its entirety.

24 You may consider whether any witness has exhibited to you
25 any interest, bias, prejudice, or other motive in this case.

1 You may also consider the appearance and the manner of a
2 witness while on the witness stand.

3 Normally, a person cannot give opinion testimony.
4 Normally when a person testifies, they must testify as to what
5 they either saw, heard, or sensed by smell or something of
6 that nature. However, there is an exception when someone is
7 qualified because of education or experience. They are
8 permitted to give their opinion in certain areas if the Court
9 qualifies them that way.

10 In this case, you've heard testimony from witnesses who
11 were qualified in the areas of child abuse and emergency
12 pediatrics, evidence collection, and forensic serology to give
13 opinion testimony in that area. That does not mean that you
14 must accept the opinion, but it is evidence for you to use in
15 any way you see fit and give it the weight and credibility
16 that you believe is appropriate.

17 I instruct you and I emphasize that the fact that the
18 defendant did not testify is not a factor to be considered by
19 you in any way in your deliberation and in your consideration
20 of the question of guilt or the innocence of the defendant.
21 It must not be considered by you in any manner whatsoever. A
22 defendant has the constitutional right to remain silent, and
23 the assertion of this right must not be considered by you in
24 your deliberations.

25 I repeat, under your oath, you are to draw no conclusion

1 whatsoever from the fact that the defendant in this case did
2 not testify. The fact that this defendant did not testify
3 should not even be discussed in the jury room.

4 The burden of proof, as I have stated to you, is on the
5 State. The defendant is not required to prove his innocence.
6 The burden of proof remains on the State to prove guilt beyond
7 a reasonable doubt.

8 An issue in this case is the identification of the
9 defendant as the person who committed the crimes charged. The
10 State has the burden of proving identify beyond a reasonable
11 doubt. You must be satisfied beyond a reasonable doubt of the
12 accuracy of the identification of the defendant before you may
13 convict the defendant.

14 Identification testimony is an expression of belief or
15 impression by a witness. You must determine the accuracy of
16 the identification of the defendant. You must consider the
17 believability of each identification witness in the same way
18 as any other witness. You may consider whether the witness
19 has had an adequate opportunity to observe the offender at the
20 time of the offense. This will be affected by things like how
21 long or short a time was available, how far or close the
22 witness was, the lighting conditions, and whether the witness
23 has had the chance to see or know the person in the past.

24 Once again, I instruct you the burden of proof on the
25 State extends to every element of the crime charged, and this

1 specifically includes the burden of proving beyond a
2 reasonable doubt the identity of the defendant as the person
3 who committed the crimes. If after -- if after examining the
4 testimony you have a reasonable doubt as to the accuracy of
5 the identification, you must find the defendant not guilty.

6 In order to establish criminal liability, criminal intent
7 is required. The mental state required to be proven by the
8 State for a particular crime might be purpose, intent,
9 knowledge, recklessness, or criminal negligence. Criminal
10 intent must be proven by the State beyond a reasonable doubt.

11 Criminal intent is always a matter that must be
12 determined by the jury from the circumstances surrounding the
13 situation. There is no way to prove intent to a mathematical
14 certainty. There is no way medical science can dissect a
15 person's brain and determine what the person had in mind; so
16 the law states that criminal intent may be inferred from the
17 circumstances shown to have existed. This is how you make a
18 determination of whether or not the element requiring intent
19 was present. It is not necessary to establish intent by
20 direct and positive evidence, but intent may be established by
21 inference in the same way as any other fact by taking into
22 consideration the acts of the parties and all of the facts and
23 circumstances of the case.

24 Criminal intent is a mental state, a conscious
25 wrongdoing. It is up to you to determine what the defendant

1 intended to do based upon the circumstances shown to have
2 existed. Criminal intent can arise from action or a failure
3 to act. It may arise from negligence, recklessness, or an
4 indifference to duty or consequences that is considered by the
5 law to be equivalent to the criminal intent.

6 The defendant is charged with three counts of first
7 degree criminal sexual conduct with a minor. For each
8 indictment, the State must prove beyond a reasonable doubt
9 that the defendant engaged in a sexual battery with a victim.

10 A sexual battery is sexual intercourse, cunnilingus,
11 fellatio, anal intercourse, or any intrusion, however slight,
12 of any part of a person's body or for any object into the
13 genital or anal openings of another person's body except when
14 the intrusion is accomplished for medically recognized
15 treatment or diagnostic purposes.

16 The State must then prove beyond a reasonable doubt that
17 the victim was less than eleven years old at the time of the
18 sexual battery. Consent, willingness, indifference or
19 ignorance on the part of the minor, if any, as to what was
20 taking place does not in any way affect the charge of criminal
21 sexual conduct with a minor because an unmarried woman under
22 the age of fourteen cannot legally consent to sexual
23 intercourse. The testimony of the victim need not be
24 corroborated in prosecutions pursuant to the South Carolina
25 Code of Laws.

1 There are two possible verdicts which you may find in
2 this case: guilty or not guilty. There is no significance
3 whatsoever in the order in which I state these possible --
4 possible verdicts. It's simply that one must be stated first.

5 Ladies and gentlemen, your verdict must be a unanimous
6 one. Mr. Foreman, Mr. Lee, when the jury agrees on the
7 verdict, you will write the verdict on the back of the
8 indictment and sign your name as the foreperson, and then
9 knock on the jury room door to let the bailiff know that you
10 have reached a verdict. At that time, we will receive you
11 back into the courtroom.

12 I ask now in one second that you return back to your jury
13 room, but again do not begin your deliberations yet until you
14 are told by the bailiff. I'm going to give the attorneys an
15 opportunity to insure that I have given you the complete and
16 accurate jury instructions.

17 And you will have, Mr. Foreman, the verdict form. It's
18 very easy to follow. It has each of the indictment numbers
19 for you as the jury to determine individually, as well as each
20 of the possible verdicts. Once you reach a verdict, you sign
21 as the presiding juror and date it.

22 And also you will have with you in the jury room each of
23 the indictments for which the defendant is charged. As you
24 see on this -- this front part of the indictment, there is a
25 section that says "Verdict." If you would, write your verdict

1 on each indictment and then sign and date that as well, Mr.
2 Foreman. That would be your added responsibility.

3 Again, do not begin your deliberations until you have
4 received all of the exhibits back in the jury room and that
5 should be here shortly. Thank you.

6 (Whereupon, the jury exits the courtroom at 3:39 p.m.)

7 THE COURT: Any exceptions or objections to the jury
8 instructions from the State?

9 MR. JUSTIS: None from the State.

10 THE COURT: From the defense?

11 MR. LOY: No, Your Honor. Thank you.

12 THE COURT: All right. If you would, gather up the
13 exhibits. I have a list of exhibits that were admitted. I
14 just want to make sure. There are some things that were
15 identified but not introduced. I just want to make sure that
16 we don't have anything out there that goes back that wasn't
17 introduced.

18 (Whereupon, there is a pause in the proceedings as the
19 exhibits are checked and agreed upon by counsel.)

20 THE COURT: All right. We'll be at ease. Just let me
21 know if you have any problems with --

22 MR. JUSTIS: Thank you, Your Honor.

23 THE COURT: -- the verdict forms.

24 MR. WARD: Your Honor?

25 THE COURT: Yes?

1 MR. WARD: One alternate?

2 THE COURT: I'm getting ready to release them real quick.

3 (Whereupon, the exhibits and verdict forms are delivered
4 to the jury and jury deliberations begin at 3:41 p.m.)

5 (Whereupon, the alternate juror is released off the
6 record.)

7 (Whereupon, there is a break in the proceedings from 3:41
8 p.m. until 4:22 p.m.)

9 THE COURT: Thank you, everyone. You may have a seat.

10 Ladies and gentlemen, it's my understanding that we have a
11 verdict in this case, which we will call the jury in to
12 receive. I want to warn everyone not to have any outbursts of
13 emotion. If you think you can't control any kind of emotional
14 response, I would ask you to leave the courtroom now.

15 Anything further before I bring the jury out?

16 MR. JUSTIS: Nothing from the State, Your Honor.

17 MR. LOY: No, Your Honor.

18 THE COURT: All right. Let's have our jury, please.

19 (Whereupon, the jury enters the courtroom at 4:23 p.m.)

20 THE COURT: Mr. Foreman, has the jury reached a verdict?

21 THE FOREPERSON: Yes, Your Honor, we have.

22 THE COURT: If you would, please hand it to the bailiff.

23 (Whereupon, the foreperson complies.)

24 THE COURT: It appears in order. Madam Clerk, if you
25 would, publish the --

1 THE CLERK: Yes, ma'am.

2 THE COURT: -- verdict.

3 VERDICT OF THE JURY

4 THE CLERK: In regards to State of South Carolina versus
5 Jonathan Brown, as to the Indictment Number 2013-GS-18-1408
6 for the charge of criminal sexual conduct with a minor in the
7 first degree, we, the jury, unanimously find the defendant
8 guilty.

9 As to Indictment 2013-GS-18-1409 for the charge of
10 criminal sexual conduct with a minor in the first degree, we,
11 the jury, unanimously find the defendant guilty.

12 As to Indictment 2013-GS-18-1410 for the charge of
13 criminal sexual conduct with a minor in the first degree, we,
14 the jury, unanimously find the defendant guilty.

15 Signed by jury foreperson, Nathan Lee. Dated July 16th,
16 2014.

17 THE COURT: Madam Clerk, if you would, also please poll
18 the jury.

19 THE CLERK: Yes, ma'am.

20 (Whereupon, the Court and the clerk confer off the
21 record.)

22 THE CLERK: When I call your name, if you will, please
23 stand. Juror 236, Laura Sweat.

24 (Whereupon, the juror stands.)

25 THE CLERK: Was this your verdict in the jury room?

1 THE JUROR: Yes.

2 THE CLERK: Is this still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Thank you. Number 270, Timothy Wright.

5 (Whereupon, the juror stands.)

6 THE CLERK: Was this your verdict in the jury room?

7 THE JUROR: Yes.

8 THE CLERK: Is this still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Thank you. Number 192, Craig Pursley.

11 (Whereupon, the juror stands.)

12 THE CLERK: Was this your verdict in the jury room?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Is this still your verdict?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Thank you. Number 71, Charles Gable.

17 (Whereupon, the juror stands.)

18 THE CLERK: Was this your verdict in the jury room?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Is this still your verdict?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Thank you. Number 44, Christopher Devera.

23 (Whereupon, the juror stands.)

24 THE CLERK: Was this your verdict in the jury room?

25 THE JUROR: Yes, ma'am.

1 THE CLERK: Is this still your verdict?
2 THE JUROR: Yes, ma'am.
3 THE CLERK: Thank you. 269, Christopher Woolridge.
4 (Whereupon, the juror stands.)
5 THE CLERK: Was this your verdict in the jury room?
6 THE JUROR: Yes, ma'am.
7 THE CLERK: Is this still your verdict?
8 THE JUROR: Yes, ma'am.
9 THE CLERK: Thank you. 130, Jack Kirlin.
10 (Whereupon, the juror stands.)
11 THE CLERK: Was this your verdict in the jury room?
12 THE JUROR: Yes, ma'am.
13 THE CLERK: Is this still your verdict?
14 THE JUROR: Yes, ma'am.
15 THE CLERK: Thank you. 197, Adair Roark.
16 (Whereupon, the juror stands.)
17 THE CLERK: Was this your verdict in the jury room?
18 THE JUROR: Yes, ma'am.
19 THE CLERK: Is this still your verdict?
20 THE JUROR: Yes, ma'am.
21 THE CLERK: Thank you. 226, Branden Stalvey.
22 (Whereupon, the juror stands.)
23 THE CLERK: Was this your verdict in the jury room?
24 THE JUROR: Yes, ma'am.
25 THE CLERK: Is this still your verdict?

1 THE JUROR: Yes, ma'am.

2 THE CLERK: Thank you. 135, Nathan Lee.

3 (Whereupon, the juror stands.)

4 THE CLERK: Was this your verdict in the jury room?

5 THE JUROR: Yes, ma'am.

6 THE CLERK: Is this still your verdict?

7 THE JUROR: Yes, it is.

8 THE CLERK: Thank you. 246, Mark Troeder.

9 (Whereupon, the juror stands.)

10 THE CLERK: Was this your verdict in the jury room?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Is this still your verdict?

13 THE JUROR: Yes, ma'am.

14 THE CLERK: Thank you. And 251, Donald Wagner.

15 (Whereupon, the juror stands.)

16 THE CLERK: Was this your verdict in the jury room?

17 THE JUROR: Yes, ma'am.

18 THE CLERK: Is this still your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Thank you.

21 THE COURT: Ladies and gentlemen of the jury, you've
22 concluded your jury service. What I'm going to do now is
23 excuse you to your jury room. Before I excuse y'all, I will
24 come in there to formally release you, but thank you very much
25 for your service. If you would, please return to your jury

1 room.

2 (Whereupon, the jury exits the courtroom at 4:26 p.m.)

3 THE COURT: Solicitor, if you would, prepare the
4 sentencing sheets. We'll be at ease for a few minutes while I
5 release the jury unless there's anything further from either
6 party.

7 MR. JUSTIS: None from the State, Your Honor. We'll get
8 those sheets prepared.

9 MR. LOY: No, Your Honor. Thank you.

10 THE COURT: All right. We'll be at ease for just a few
11 minutes.

12 (Whereupon, there is a break in the proceedings from 4:27
13 p.m. until 4:32 p.m.)

14 THE COURT: Thank you. You may have a seat. I've
15 released the jurors from their service. However, some of them
16 wanted to come in and watch the sentencing. So I've allowed
17 them the opportunity to do that. Some of them just needed to
18 take a quick restroom break. So I'm just giving them a chance
19 to do that. So once they enter the courtroom, then we will
20 proceed accordingly.

21 MR. JUSTIS: May I approach, Your Honor?

22 THE COURT: You may.

23 (Whereupon, there is a pause in the proceedings.)

24 (Whereupon, several jurors enter the courtroom at 4:34
25 p.m.)

SENTENCING

THE COURT: Are you ready to proceed with sentencing?

MR. JUSTIS: The State is ready, Your Honor.

MR. LOY: Yes, Your Honor.

THE COURT: All right. Solicitor, did the victims wish to be heard?

MR. JUSTIS: We do have -- the victims are here. The victims' family is here. We do have seated in the front row of the courtroom, the second person in, obviously Victim 1 mom, Rachel. And then we have Victim 2's mother and then Victim 2's dad and Victim 2's stepmom. I do have a statement on the behalf of Victim 2 and her family and that they asked me to read to the Court, and I will read that at this time. It states:

"As parents, nothing can prepare you for such a deliberate, personal crime. As Victim 2's parents, because of this crime, we realize her innocence and childhood have been taken. Research proves an offender of sexual abuse on an adolescent is not able to be rehabilitated. For the sake of Victim 2, Victim 1, and Nicole, and all unknown children that have been spared future abuse because of this jury's guilty verdict, we beg the Court to assign the maximum penalty available by law for this guilty verdict of this heinous crime."

MR. JUSTIS: And I also believe that Victim 1 mother,

1 Rachel, would like to speak.

2 THE COURT: Ms. Brown, I'll be happy to hear from you.
3 If you would, just stand and come forward. Yes, ma'am?

4 MRS. RACHEL BROWN: Good afternoon. This is only one
5 step towards -- towards my nightmare for almost a year. It's
6 something that we will never forget and it -- the children
7 will never see their father again. To me -- to me, they don't
8 have a father anymore. But for the simple fact that he has
9 not shown any kind of remorse and has put the children through
10 this, I -- I would give him the maximum penalty.

11 THE COURT: Thank you, Ms. Brown. Anything further from
12 the State?

13 MR. JUSTIS: No, Your Honor. The State would just ask
14 that the maximum penalty be imposed.

15 THE COURT: Does the defendant have a prior record?

16 MR. JUSTIS: He has no prior record, Your Honor.

17 THE COURT: Mr. Loy?

18 MR. LOY: Well, thank you, Your Honor. I would note and
19 Mr. Wehman was going to have some comments on his behalf. I
20 would ask the Court -- first of all, despite the pleas from
21 the gallery, I'm sure the Court is not going to penalize Mr.
22 Brown and I've told Mr. Brown he wouldn't be penalized by the
23 Court for his exercise of his constitutional right to a -- to
24 have a trial.

25 And secondly, I'd simply note that he doesn't have a

1 criminal history and that whatever the Court sentences -- and
2 I understand the parameters and so does Mr. Brown, but there
3 are other barriers in place as far as in the event that the
4 public needs protecting. The Sexually Violent Predator Act is
5 in place and if, in fact, that were appropriate, of course,
6 that would kick in and would certainly trigger scrutiny under
7 the Sexually Violent Predator Act.

8 So I don't think -- if you sentence both the -- the
9 person as well as sentence for the crime that was committed,
10 the fact that he has no prior criminal history, the fact that
11 he doesn't have a history of violence, and the fact that were
12 he ever to be eligible for release, he would first undergrow
13 -- undergo -- I'm sorry -- undergo scrutiny under the Sexually
14 Violent Predator Act. I'd ask you to take these things into
15 consideration of Mr. Brown. I think Mr. Wehman would have
16 some comments on his behalf.

17 MR. WEHMAN: Yes, Your Honor. May it please the Court.

18 THE COURT: Yes, sir.

19 MR. WEHMAN: Mr. Brown is 32 years old. He was born in
20 Maryland. He graduated from high school here in South
21 Carolina at Rock Hill. He went to Shield of Faith Christian
22 Academy. He served four years in the Coast Guard. He was
23 honorably discharged. That's actually where he met his wife.
24 They met in the Coast Guard.

25 After he discharged, he had odd jobs and traveled around

1 the country. He lived in Virginia, South Carolina, Maryland,
2 New York, Alaska, and then came back here. It was in-between
3 his stop in South Carolina and Maryland that he reconnected
4 with his wife. They had a child together and ended up having
5 two children together, as the Court is well aware.

6 Mr. Brown was the victim of abuse as a child. He's
7 disclosed that to us. We don't mention that to -- to try to
8 limit the harshness of the allegations and what this jury has
9 brought back in a guilty verdict, Your Honor. It's just for
10 information purposes. He was abused. It was a behavior that
11 he learned and he wanted the Court to be aware of it -- that
12 -- that this happened to him.

13 He stood before you at trial asserting his innocence. A
14 jury of twelve people came back with this guilty verdict. We
15 would reiterate his -- his clean record. He is supported in
16 court today by his stepmother, Rebecca Brown. She is seated
17 in the first row. She did not wish to address the Court, but
18 Mr. Brown, if the Court is willing, would like to address Your
19 Honor.

20 THE COURT: I'd be happy to hear from you, Mr. Brown.

21 THE DEFENDANT: Thank you, Your Honor. As we sit, Mr.
22 Pierce said I was victimized as a child pretty -- pretty bad.
23 It doesn't excuse anything that I've been accused of or that I
24 may be guilty of. As far as to -- to my wife and my children,
25 I'm sorry that they had to go through this. It was not my

1 wish to come to a trial. The -- the State was unwilling to --
2 to work a deal and with that I figured the outcome was going
3 to be the same one way or the other.

4 For the past year, to hear my wife, who is supposed to
5 know me better than anybody else, say that I haven't shown any
6 remorse is absolutely ridiculous. As Mr. Loy can tell you,
7 that normally when I speak to him, I am a crying, blubbing
8 idiot, and I'm quickly approaching that now.

9 My children are my world. I have sacrificed endlessly to
10 provide for them, to stay home with them to take care of them
11 with my wife's deployment and support her fully despite
12 problems in our relationship. You know, my daughter, **Victim 1**
13 got up here the other day and, you know, didn't say anything,
14 you know, but since I've been incarcerated since this, you
15 know, incident happened, **VICTIM 1** has been having emotional
16 problems, crying uncontrollably and this and that. And when
17 her mother asks or when the doctors ask, it's because she
18 misses her daddy. It's because she misses me.

19 Two years in school and in dance class with family
20 members who are teachers, with friends, contact, people coming
21 over all the time, nobody ever thought for one second that
22 there was any problem. I love my kids and I want nothing more
23 than what's best for them, and if this jury decides that
24 what's best for my children is for me to go to prison, then so
25 be it. I just ask for the Court's mercy and possibly for your

1 understanding, Your Honor. I reckon that's about it.

2 MR. LOY: Thank you, Your Honor.

3 THE COURT: Anything further from the defense?

4 MR. LOY: No, Your Honor.

5 THE COURT: Mr. Brown, let me tell you something.

6 Despite the fact that you were allegedly abused as a child, it
7 is no excuse for what you did to those children. The fact
8 that you stand here and tell me that you love your daughter
9 and she misses you is something really uncomprehendable
10 [sic.]. What you did to those kids is despicable. And yes,
11 they are going to have to live with that for the rest of their
12 lives. I hope that they find the courage and the strength to
13 get past what you did to them. But being a victim of sexual
14 abuse yourself, you should have understood how difficult and
15 how horrible that would be.

16 SENTENCE

17 THE COURT: On Indictment 2013-GS-18-1410, criminal
18 sexual conduct with a minor and the victim under eleven first
19 degree, you are hereby committed to the State Department of
20 Corrections for life in prison.

21 On Indictment 2013-GS-18-1409, criminal sexual conduct
22 with a minor in the first degree, likewise you're hereby
23 committed to the State Department of Corrections for a period
24 of life.

25 On Indictment 2013-GS-18-1408, criminal sexual conduct

1 with a minor in the first degree, you're likewise committed to
2 life in prison.

3 MR. WARD: Thank you, Your Honor.

4 MR. LOY: Thank you, Your Honor.

5 MR. JUSTIS: Your Honor, are those consecutive or
6 concurrent?

7 THE COURT: Concurrent.

8 MR. LOY: Thank you, Your Honor.

9 MR. JUSTIS: Thank you, Your Honor.

10 MR. WARD: Thank you, Your Honor.

11 (Whereupon, the proceedings end at 4:43 p.m.)

12

13 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 301 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Dorchester County, South Carolina, on the
13 15th and 16th days of July, 2014.

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

16
17 s/ Krystal J. Smith

18 Court Reporter

19
20 Florence, South Carolina

21 October 26, 2014
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

FILED - RECORDED
IN THE COURT OF COMMON PLEASCounty of Dorchester 2016 OCT 17 PM 4:53Jonathon M Brown
Full name and prison number (if any) of ApplicantCHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY2016-CP-18-2007

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correction
430 Oaklawn Rd Pelzer SC 29669
2. Name and location of Court which imposed sentence Dorchester County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2013 GS-18-1408
(b) 2013 GS-18-1409

(c) 2013-GS-18-1416

5. The date upon which sentence was imposed and the terms of the sentence:

(a) July 16, 2014 LIFE IN PRISON

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty Found guilty at trial

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals

ii. Supreme Court attempted to appeal Court of Appeals

iii. _____

(b) the result in each such Court to which you appealed:

i. Court of Appeals Dismissed

ii. Supreme Court Dismissed

iii. _____

(c) the date of each such result:

i. June 1 2016

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Anders brief by Lara Caudy

ii. Pro Se brief by APPLICANT

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Attachment A Pg 1
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment B Pg 1-5 Front only
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes John Loy
 (c) your sentencing? Yes John Loy
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Direct Appeal Lara Caudy
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. John Loy Dot Chester County Public defender
107 West 6th North Street Suite 100 Summerville SC 29403
 ii. Lara Caudy
1330 Lady Street Columbia, SC 29201
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. John Loy represented me at trial
 ii. Lara Caudy represented me for Direct Appeal
 iii. _____

19. State clearly the relief you seek in filing this application:

I respectfully request the Court reverse my sentence
and release me from prison. Due to the lack of evidence
to support the conviction

20. Are you now under sentence from any other court that you have not challenged?

N/O

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

FILED - RECORDED
 2016 OCT 17 PM 4:58
 CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

I, JONATHAN BROWN, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 12th
 day of October, 2016.

Nancy C. Murchant (L.S.)
 Notary Public

My Commission Expires: 1-23-2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

CERTIFIED COPY
2016 OCT 18 PM 4:30

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

I, JONATHAN BROWN, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Jonathan Brown
Applicant

SWORN or affirmed to and subscribed before me this

12th day of October, 2016.

Nancy C. Munk
Notary Public

My Commission Expires: 1-23-2027

FILED - RECORDED
2016 OCT 17 PM 4:58
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

352
2016

CERTIFIED COPY

2016 OCT 18 PM 4:27

Mrs Graham

Please find enclosed my *Cheryl Graham*
APPLICATION As well as ATTACHMENT
A Pg 1 & B Pg 1-5 the backs of these pages
are blank intentionally

I thank you very much

Jonathan M Brown
Jonathan M Brown 360660

PCI Q2-B-222

430 Oak Lawn Rd

Pelzer SC 29669

RECEIVED

OCT 17 2016

Cheryl Graham, Clerk of Court
Dorchester County, SC

Attachment A

Pg 1

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2016-CP-18-2007

2016 OCT 17 PM 4:59

- A Applicants Appointed Counsel for Direct Appeal
 LARA DORCHESTER COUNTY WAS INEFFECTIVE IN IMPROPERLY ARGUING
 APPLICANTS ISSUES AND IGNORING OTHERS
- B Applicants Appointed Counsel For Trial JOHN LOY
 WAS INEFFECTIVE For the Following REASONS

1. For Failing to raise and persevere All issues involving the Phone Seized during the Arrest of MR. BROWN
2. LOY Failed to object to Perjurious and inconsistent Statements made by the OFFICERS and the Solicitor AT the Pre Trial JUNE 3-4 2014 and AT the Trial JULY 14-16 2014.
3. LOY did NOT request the Judge to instruct the Jury to the Lesser included OFFENCE
 LOY also did NOT request THAT evidence narrowed to the charge it was Alledged to support. LOY also made poor Argument to support A Directed Verdict motion And Abandoned his Argument For the other charge 1409
4. LOY Failed to Argue the Admissability of Evidence #11 a Tie-dye shirt Alledged to belong to BROWN due to illegal seizure. He Also did NOT request certain evidence be with held due to its POTENTIAL to CONFUSE and draw Sympathy From the JURY.

ATTACHMENT B

Pg 1

A Ms Caudy filed an Anders brief claiming Mr Brown's case is without merit. Brown's argument being that officers seized a cell phone during an arrest that took place inside of his residence. The officers then transported the phone to the station where they claim they seized it. Mosher's claims that "Brown opened the door with his phone in one hand and a sandwich in the other" and that Brown requested the phone "do nothing to explain the warrantless seizure that they admitted"

B. I. During Pretrial Loy did argue the phone was illegally seized. As the officers testified to. However Loy neglected to raise other issues that rendered the phone inadmissible

I. The phone the victim claimed Brown used during the alleged crime. She described as "multi color" The phone the officers seized during Brown's arrest was black

II. Officer Gerhardt who swore the Affidavit for the search warrant to search the phone. Claimed the phone was in Brown's possession at the arrest. When Gerhardt was not present at the arrest He swore the Affidavit to things he did not know not being present at the arrest and never speaking to the victim

III After seizing the phone Gerhardt simply placed it in a desk drawer not properly in to evidence. This is improper handling of evidence

ATTACHMENT B

Pg 2

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B. I. (CONTINUED)

IV In Gerhardt's ^{Cheryl Gerhardt} ~~work~~ reports, As well as testified To At the Trial. ^{CLERK OF COURT} ~~Before~~ ^{DORCHESTER COUNTY} searching he Allowed "APPs" to down load to the Phone. This Altered the evidence From the condition it was in when it was Seized From Brown. There is no telling what else came in with those down loads As the Solicitor claimed these devices Are very easily MANIPULATED.

2 LoY did not object to officers testimony that varied greatly From Pre trial to Trial. Regarding FACTS & events Associated with the Arrest. At Pre Trial Mosher testified that he and Jones Knocked on the door Brown opened the Door and let them in At the Trial Jones testified that Brown met him half way across the Yard and they Followed Brown in to the residence. After Jones testimony Mosher took the STAND and claimed They met Brown on the way to the door.

At the opening of Pre trial the Solicitor claimed that Brown had been At that time indicted on 3 True Billed indictments when he had NOT.

At the trial during his Closing Arguments the Solicitor claimed that Semon was Found on the Couch site where the victim said it would be.

ATTACHMENT B

Pg 3

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2016 OCT 18 PM 4:27

B-2 (CONTINUED)

When she SAID something ran down and ONTO the Floor. The Solicitor also claimed that when he on redirect ASKED minor 2 what "Jon" looked like she said long hair, beard FITTING BROWN'S APPEARANCE AT the time of the Alleged incident. The victim ACTUALLY claimed "He (Jon) had long curly hair and a curly beard". Minor 2 never gave A PROPER PHYSICAL description of BROWN claiming him covered in body hair AND Failing to mention MARKS/SCARS that would have been revealed during the Alleged incident.

3. On the charge 1408 involving minor 1 on JULY 28, 2013 there is NO PROOF OF the Sexual battery AND the Alleged victim did NOT TESTIFY. The charge should have been dropped. LOY never Argued this. The Judge should have instructed the Jury to the lesser included charge of Assault & Battery For charge 1409 & 1408 because evidence Failed To Prove the Alleged Sexual battery. LOY did NOT request this, NOR did Argue the Directed Verdict For 1409 though he SAID He would come back to it. LOY did Argue For the Directed verdict on 1410 claiming that images Alleged to be Found on the Phone while they did show A Sexual battery being Committed they in NO WAY prove A date or time

ATTACHMENT B

Pg 4

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Kerl Graham
CLERK OF COURT
DORCHESTER COUNTY

B-3 (CONTINUED)

And it was only the officers that occurred prior to July 20, 2013. While the images do show the battery the only connection to Brown is a tie-dye shirt "similar" to one that is alleged to belong to Brown. A photo of Brown wearing a tie-dye shirt shown at trial was not disclosed to Brown prior to the trial and was not in the motion of discovery given to Brown prior to the trial. To say that this is Brown in this image because this shirt is "similar" to his is an assumption of guilt. Though any evidence is enough to survive a directed verdict motion. If the evidence only creates an assumption of guilt the motion should be granted this would have been a much stronger argument.

4. Officers entered Brown's residence several times looking for evidence connected to the alleged crime including clothing. They never made any mention of a tie-dye shirt till May 20, 2014 when Mosher called Brown's wife and asked for it. Semen stains from the couch could not be ID'd as Brown's and that area of couch did not include minor 2's DNA allowing this evidence unfairly bolstered her credibility and she said floor not couch. The location of this stain does not coincide with the allegations. As minor 2 claimed

Attachment B

Pg 5

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B-4 (continued)

She was on her back on the couch ^{Clerk of Court} Brown was on top of her. That would have put the semen on top of the couch cushion not on the front edge (face) of it. The DNA results saying that it was semen but not being able to say it's Brown but a mix of DNA including several other males to allow this evidence and to claim it's where the victim said it'd be undoubtly prejudices the defendant. I made none of these arguments.

With physical exams showing no trauma to either minor. Minor 2 in ability to ever give a proper description of Brown. Minor 1 failure to testify to anything. DNA only possibly belong to Brown or someone related to him. There is simply no proof that these crimes 1408 & 1409 were even committed or that the images alleged to support 1410 prove Brown guilty. It is unfair to continue to hold Brown guilty of these crimes.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	
	)	
Jonathan M. Brown, #360660,	)	Case No.: 2016-CP-18-2007
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED - RECORDED
2017 MAY -8 AM 9:04
CHERYL GRADHAM
CLERK OF COURT
DORCHESTER COUNTY

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on October 17, 2016, would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. Applicant was indicted at the May 2014 term of the Dorchester County Grand Jury for two counts of criminal sexual conduct with a minor under eleven years of age—first degree (2013-GS-18-1408, 2013-GS-18-1409). Applicant was subsequently indicted in the July 2015, term on an additional count of criminal sexual conduct with a minor under eleven years of age—first degree (2013-GS-18-1410). Applicant was represented on the charges by John Loy and Pierce Wehman, Esquires. Assistant Solicitors Glenn Justis and Kyle Ward, Esquires, prosecuted the case on behalf of the state. Applicant proceeded to trial on all three charges on July 15, 2014, before the Honorable Maite Murphy. A jury found Applicant guilty on all charges on July 16, 2014, and he was sentenced by Judge Murphy to life in prison for each count.

Thereafter, Applicant filed a timely Notice of Appeal. An *Anders* brief was submitted by Lara Caudy, Esquire, on behalf of Applicant on May 19, 2015. The South Carolina Court of

Appeals affirmed Applicant's conviction on June 1, 2016. State v. Jonathan Brown, Op. No. 2016-UP-244 (S.C. Ct. App. 2016). The Remittitur was returned on June 17, 2016. Applicant, then, submitted a writ of certiorari to the South Carolina Supreme Court, which was denied on June 22, 2016.

II. ALLEGATIONS

In his application for post-conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Trial Counsel:
 - a. failure to raise and preserve all issues involving the phone seized during the arrest of Mr. Brown;
 - b. failure to object to perjury and inconsistent statements made by the officer and the solicitor at the pre-trial hearing held June 3-4, 2014, and at trial July 14-16, 2014;
 - c. failure to request jury instruction regarding the lesser included offense;
 - d. failure to request that evidence be narrowed to the charge it was alleged to support;
 - e. argued ineffectively to support a directed verdict motion and abandoned argument for the 1409 charge
 - f. failure to argue the admissibility of evidence #11 as constituting an illegal seizure; and
 - g. failure to request that evidence be excluded for its potential to confuse and draw sympathy from the jury.
2. Ineffective Assistance of Appellate Counsel:
 - a. failure to address warrantless seizure.

Attached herewith and incorporated herein by reference are the records of the Dorchester County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend its Return upon the receipt of other relevant records.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent submits Applicant's allegations of ineffective assistance of trial counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged

errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

The Applicant also alleges ineffective assistance of appellate counsel. While Applicant is entitled to effective assistance of appellate counsel, see Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999), appellate counsel is *not* required to raise every non-frivolous issue presented by the record. See Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983)) (“For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy...”).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether the applicant was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the

Applicant cannot satisfy either requirement of the Strickland test in regards to Appellate Counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue as well. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V. AMENDMENTS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

{Conclusion and signature block on following page}

VI. CONCLUSION

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied. WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claim of ineffective assistance of counsel.

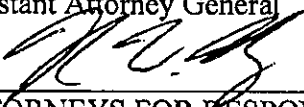
Respectfully submitted,

ALAN WILSON
Attorney General

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By: 
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 1st, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

JONATHAN M. BROWN, #360660,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2016-CP-18-2007

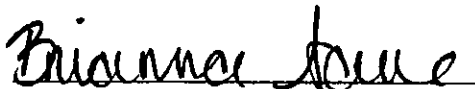
AFFIDAVIT OF SERVICE BY MAIL

FILED - RECORDED
 2017 MAY -8 AM 9:04
 CHERYL BRANNAN
 CLERK OF COURT
 DORCHESTER COUNTY

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Leslie T. Sarji, Esquire
PO Box 20248
Charleston, SC 29413

DATED this 1st day of May, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF DORCHESTER) TRANSCRIPT OF RECORD
3 -----x
4 JONATHAN M. BROWN,)
5 Plaintiff,)
6 vs.) Case No. 2016-CP-18-02007
7 STATE OF SOUTH CAROLINA,)
8 Defendant.)
9 -----x

October 1, 2018

10 B E F O R E:

11 The Honorable D. Craig Brown, Presiding Judge

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

13 Leslie Sarji, Esq.
14 Attorney for the Applicant

15 Christian Saville, Esq.
16 Attorney for the Defendant

17

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19

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23

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25

Court Reporter: Bonnie Kelly (retired)

Transcribed by: Bobbi Fisher
SC Official Court Reporter III

I N D E XWITNESS/DESCRIPTIONPAGE

Jonathan Brown

Direct Examination By Ms. Sarji

7

John Loy

Direct Examination By Mr. Saville

39

Cross-Examination By Ms. Sarji

59

Redirect Examination By Mr. Saville

65

Lara Caudy

Direct Examination by Mr. Saville

69

E X H I B I T S

(No exhibits.)

COURT REPORTER LEGEND

Dash (--) Indicates an interruption in speech

Ellipses (...) Indicates trailing off in speech

(ph) Indicates phonetic word

[Verbatim] Indicates the word is said as written

(Indiscernible) [Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(Whereupon, the following proceeding commenced:)

MR. SAVILLE: Your Honor, the State would call the case of Jonathan M. Brown versus the State of South Carolina. This is Docket No. 2016 Common Pleas 18-2007. Mr. Brown was indicted in May 2014 in Dorchester County for two counts of criminal sexual conduct with a minor under 11 years of age, first degree. He was subsequently indicted in the July 2015 term for an additional count of CSC with the minor under 11 years of age, first degree.

Mr. Brown was represented on the charges by John Loy and Pierce Wehman, Esquire. Assistant Solicitors Glenn Justis and Kyle Ward prosecuted the case. Applicant proceeded to trial on all three charges on July 15th, 2014, before the Honorable Maite Murphy. A jury found Applicant guilty on all charges on July 16th, 2014, and he was sentenced to life in prison for each count.

Applicant subsequently filed a notice of appeal. An Anders brief was filed by Lara Caudy, Esquire, on behalf of Applicant. On May 19th, 2015, the South Carolina Court of Appeals affirmed the conviction. The remittitur was returned on June 17th, 2016. Applicant then submitted a writ of -- a petition for writ of certiorari to the South Carolina Supreme Court, which was denied on June 22nd, 2016.

Now, Mr. Brown filed an application for post-conviction

1 relief on October 17th, 2016. He is present today and
2 represented by Leslie T. Sarji, Esquire, and the State would
3 request that Applicant give us an idea of which grounds on
4 which he wishes to proceed.

5 THE COURT: Ms. Sarji?

6 MS. SARJI: Thank you, Judge.

7 In terms of what we would be proceeding on with regard to
8 appellate counsel, Applicant alleges that appellate counsel
9 did not argue the issues that she should have; specifically
10 that she failed to raise the issue of whether the directed
11 verdict motion on Indictment No. 1408 should have been granted
12 in that the victim did not testify, and, therefore, Mr. Brown
13 believes there's no direct or circumstantial evidence from
14 which he could have been convicted.

15 He also alleges that appellate counsel failed to
16 adequately argue the improper seizure of the cell phone. That
17 was a piece of evidence in the case and that she should
18 have -- appellate counsel should have argued that the seizure
19 of the cell phone and the subsequent search amounted to a
20 warrantless search.

21 With regard to trial counsel, Applicant alleges that
22 trial counsel was ineffective for failing to raise and
23 preserve all of the issues regarding the seizure of the
24 telephone as well with regard to the telephone itself. The
25 applicant alleges issues regarding the chain of custody. He

1 alleges there was no receipt of a proper chain of custody
2 between the date of seizure of the phone and August 2nd.
3 There was about a three-day window, Judge, between his arrest
4 date and when the cell phone was taken into property and
5 August 2nd, which I believe is when it was actually entered
6 into the evidence locker at the law enforcement agency.

7 Mr. Brown alleges issues regarding the fungible nature of
8 the cell phone and that trial counsel failed to object to the
9 State's use of an application that was downloaded to the cell
10 phone in order to extract previously deleted photographs and
11 videos and that Mr. Brown alleges that, because there was an
12 application downloaded to the phone, that that changed the
13 nature of the evidence itself and that trial counsel should
14 have objected to it coming in on those grounds.

15 Applicant alleges failure of trial counsel to object or
16 to challenge the search warrant of the contents of the cell
17 phone because he alleges that there is hearsay information
18 present in the affidavit that supported the search warrant,
19 such that search warrant should have been challenged, and he
20 believes that it would subsequently have been found to be
21 invalidly issued.

22 He believes that trial counsel failed to properly argue
23 issues related to the lack of identification of the applicant
24 because there was no testimony of the victim on Charge 1408;
25 that trial counsel -- I'm sorry?

1 THE COURT: 1408 (indiscernible).

2 MS. SARJI: 1408 and 1410, Judge. I'm sorry. Both of
3 the indictments, I believe, are related to the one -- same
4 minor victim.

5 He alleges that he failed to argue for a directed verdict
6 on Charge 1409 altogether, and that that was ineffective.

7 His remaining allegations, he alleges that the trial
8 counsel failed to conduct a thorough cross-examination of
9 members of law enforcement, specifically Sergeant Gebhardt.
10 He alleges that trial counsel failed to conduct a thorough
11 cross-examination of the testifying minor child, and that
12 would have been on Indictment 1409.

13 He also alleges that trial counsel failed to object to
14 the solicitor's mischaracterization of evidence during the
15 solicitor's closing argument. He believes that trial counsel
16 was ineffective in failing to object to perjured testimony
17 made by officers and that trial counsel should have requested
18 a lesser-included jury charge and that trial counsel failed to
19 challenge the admissibility of a tie-dyed T-shirt, which my
20 understanding is that Applicant's wife consensually gave to
21 law enforcement.

22 And I think that is a pretty thorough recitation of
23 Mr. Brown's issues with his representation.

24 THE COURT: Anything further from the State at this time?

25 MR. SAVILLE: Thank you, Your Honor and Ms. Sarji. Thank

1 you.

2 THE COURT: Ms. Sarji, call your witness.

3 MS. SARJI: Thank you, Judge. I'll call Jonathan Brown
4 to the stand.

5 THE COURT: Sir, if you'd come around and be sworn,
6 please.

7 JONATHAN BROWN,
8 after having been duly sworn, was examined and testified
9 to as follows:

10 THE COURT: Mr. Brown, are you ready?

11 THE WITNESS: Yes, sir, I am. Thank you very much.

12 THE COURT: Ms. Sarji?

13 MS. SARJI: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. SARJI:

16 Q Mr. Brown, how old are you now?

17 A Thirty-six.

18 Q And you went to trial on the charges for which you were
19 convicted in July 2014; is that correct?

20 A Yes, ma'am.

21 Q And who represented you as trial counsel?

22 A Mr. Loy represented me.

23 Q And Pierce Wehman is also noted on the transcript. Are
24 you alleging any inadequacy in Mr. Wehman's representation?

25 A No, sir. Excuse me. No, ma'am. Mr. Pierce there, he

1 really wasn't involved that much. He didn't -- I mean, except
2 for, at the sentencing phase, he made a statement to the judge
3 on my behalf, I guess. And I have no -- no faults, no
4 allegations against him, so, no.

5 Q And with regard to appellate counsel, were you appointed
6 an attorney to represent you in your appeal?

7 A Say again, please.

8 Q Were you appointed an attorney to represent you in your
9 appeal?

10 A Yes, ma'am.

11 Q And do you remember what her name was?

12 A Lara Caudy.

13 Q And are you -- do you take issue with her representation
14 as well?

15 A Yes, ma'am, I do.

16 Q And after this trial, in July of 2014, you were found
17 guilty; is that right?

18 A Yes, ma'am.

19 Q And sentenced to life without parole; is that correct?

20 A Yes, ma'am.

21 Q And, at that point, were you aware of the potential
22 penalties that you faced by going to trial?

23 A I was aware that the charge did carry a life sentence. I
24 really wasn't aware that I was going to get it, but I was
25 aware that it did carry a life sentence, yes.

1 **Q** And with regard to the events leading up to trial, do you
2 believe that Mr. Loy did anything wrong in failing to go
3 through evidence with you or failing to investigate or
4 anything like that?

5 **A** Yeah. There were several things that I do feel that
6 Mr. Loy kind of abandoned or abandoned me on, some of the
7 pretrial motion stuff and failure to contact witnesses and
8 stuff on my behalf. I do feel that Mr. Loy did kind of fall
9 short on that.

10 **Q** Okay. So were there witnesses that you asked them to
11 contact that he failed to contact?

12 **A** My dad, at one point in time, had given Mr. Loy a stack
13 of letters, kind of character references from family members
14 and stuff that, I guess, never materialized. I've had family
15 members that we had seen regularly more as a character witness
16 and as a -- an aunt and uncle in particular who were teachers
17 and have been educators in South Carolina for a very long
18 time. And they had -- you know, as far as the allegations
19 against my daughter, that there was no -- no hint, no nothing.
20 These people are kind of trained to see that, and I feel --

21 MR. SAVILLE: Objection, Your Honor. Hearsay.

22 THE COURT: I'll allow it at this point.

23 Go ahead.

24 THE WITNESS: Thank you, Your Honor.

25 **A** That these -- these people go through, you know, training

1 and stuff, and they had no -- you know, no idea -- no idea
2 that anything like that was going on, that there was no --

3 Q Are you upset that Mr. Loy didn't contact those people,
4 or are you upset that those letters didn't get submitted at
5 your sentencing?

6 A Both, because those people would have been available --
7 potentially available to testify on my behalf and that those
8 letters were never read.

9 Q I'm sorry, because this isn't something that you and I --

10 A Yeah, there's a lot of stuff that we just didn't have
11 time to cover. I'm sorry. I'm winging it.

12 Q No, no, that's okay. I want to ask you, just to be
13 really clear.

14 A Yeah.

15 Q Are you telling the judge that these witnesses had
16 specific knowledge of the events that you were accused of at
17 trial or just --

18 A No.

19 Q -- that they were -- they were general character
20 references?

21 A That they were -- they were general character references,
22 that there was no suspicion of the allegations that there
23 was -- these, you know, are people who we spent time with and
24 stuff like that. And, basically, they, you know, saw that I
25 was a good father, that I loved my kids, and that I did not

1 abuse them or hurt them in any way.

2 Q Okay. With regard to your appeal --

3 A Yes, ma'am.

4 Q -- do you feel that Ms. Caudy did anything wrong in her
5 representation of you on your appeal?

6 A Specifically, I feel that Ms. Caudy, in the end of her
7 brief, stating that my -- my argument was without legal merit,
8 I feel that that was wrong; that she argued a warrantless
9 seizure. The officers had testified to a warrantless seizure.
10 The judge had allowed it -- the evidence to go in, and that
11 when Ms. Caudy said that my -- my argument was without legal
12 merit, I feel that that was really wrong. I feel that that
13 hurt me and just, in general, was wrong. It was undoubtedly a
14 warrantless seizure, and it should have been -- the evidence
15 should not have been allowed.

16 Q Okay. Please explain what it is that you believe was a
17 warrantless seizure so the judge has some context of what
18 you're saying.

19 A Okay. During the arrest, the officers had seized my cell
20 phone, claiming that the victim had claimed -- the minor to
21 my niece, **Minor 2**, had claimed that the phone was used during
22 the crime.

23 And, excuse me, this is more than I talk in a week.

24 The officers came into my house and made the arrest and
25 took the phone at that time.

1 Q Now, did you consent or ask the officers to take your
2 phone?

3 A No, ma'am, I did not.

4 Q And did you testify at trial that you had not consented
5 to them taking your phone and that you had not asked for them
6 to take your phone?

7 A Yes, ma'am. We had a pretrial evidentiary hearing to
8 this, and I believe that was around the 1st of June. And I
9 was -- I testified at that time that the officers never gave
10 me a chance. They came in, they looked around, had me in
11 cuffs, took the phone, said, "Is this your phone?" I was
12 never even given a chance to answer when the officer said,
13 "Well, this is the phone in question. We're taking it."

14 Q Now, was there -- there was some conflicting testimony by
15 the officers at your trial, though, too; is that correct?

16 A Yes, ma'am, particularly Officer Mosher. There's quite a
17 good deal of conflict between his written statement, what he
18 testified to at pretrial and then what he, again, testified to
19 at trial, all regarding the same incident of the arrest and
20 stuff like that.

21 Q Okay. But with regard to specifically to the seizure of
22 the cell phone and whether it was a consensual thing for the
23 police to have taken or whether, as you are saying, it was a
24 warrantless seizure --

25 A Right.

1 Q -- was there testimony at your trial by any members of
2 law enforcement that contradicted what you're saying, that you
3 did not tell them to take it and that it was a consensual
4 thing? Was there some testimony by law enforcement that said,
5 "Yes, Mr. Brown asked us to bring the cell phone with him"?

6 A Yeah. Yes, they did testify that I did ask for the phone
7 or that I did consent to them taking the phone. The issue
8 that I'm raising as far as that is that the officer, Mosher,
9 he testified that I consented to him bringing the phone, but I
10 can disprove other testimonies of his. And I'm basically --
11 to put it out there bluntly, he lied, and I can show where he
12 lied other times and that the choice for the judge, while it's
13 understandable for the judge to believe the officer, that the
14 officer has a certain degree of believability over a defendant
15 is understandable. But when the defendant can show,
16 particularly in the transcripts, where this officer has told
17 conflicting stories, that the officer's integrity at that
18 point is brought into question, and that's what I'm raising is
19 or was wrong of Ms. Caudy; that she should have raised that on
20 the direct appeal, because the officers did admit to taking
21 the phone without a warrant, and they tried to cover it up by
22 saying, "Well, Mr. Brown said he wanted the phone brought with
23 him."

24 And, I mean, it's understandable even for me -- from my
25 point of view, it's understandable for the judge to believe

1 that, but when I can show you where this lawyer or, excuse me,
2 this officer has lied at that point, especially for the
3 purpose of appeal, that should have been brought into light
4 for the purpose of appeal and said, "Well, it's understandable
5 for the judge to side with law enforcement under this
6 circumstance, it is not because this officer is
7 untrustworthy."

8 Q And did you point out to Ms. Caudy references in the
9 record --

10 A Yes.

11 Q -- that would support that?

12 A Yeah.

13 Q So did you discuss with her specifically your desire that
14 that be raised as an issue at the appellate level?

15 A It's been a while, and I did not -- at that time, I did
16 not make copies of letters that I had sent to her. I don't
17 understand how this works, but I do remember telling her
18 specifically about that, about the differences in his
19 statements and Mosher's statements and in Jones's statements
20 conflicting with what Mosher said, and those being the two
21 arresting officers that there's -- you know, at that point, to
22 me, it should raise a giant question mark over everything that
23 these officers are bringing forward to the court.

24 When they can't tell the same story, they can't tell the
25 truth, you know, what makes anything else they say believable?

1 **Q** And so other than Ms. Caudy not bringing up in her appeal
2 this issue that you're talking about with regard to the cell
3 phone, that it was a warrantless seizure and whatnot, is there
4 anything else that you believe Ms. Caudy should have argued or
5 done that she did not do?

6 **A** Yes, ma'am. I feel that Ms. Caudy should have argued the
7 directed verdict motion made by Mr. Loy for the charge of -- I
8 believe that was 1408 at that time. If I can have a second
9 flip through my stuff that I can't find.

10 **Q** I think it was 1408.

11 **A** Yeah, I think it was too, because I remember --

12 THE COURT: Hold on a minute.

13 THE WITNESS: Say again, sir.

14 THE COURT: Hold on a second.

15 THE WITNESS: Oh.

16 THE COURT: When your lawyer is talking, you need to let
17 her finish.

18 THE WITNESS: Oh.

19 THE COURT: For my court reporter, it's kind of hard for
20 her to take both of you. You're okay. Just make sure you do
21 that. Okay?

22 THE WITNESS: Yes, sir. I'm sorry.

23 Can you speak up? I'm actually completely deaf in my
24 right ear.

25 MS. SARJI: Can I just come forward a little bit?

1 THE COURT: Yes, ma'am.

2 MS. SARJI: That might make it a little bit easier.

3 BY MS. SARJI:

4 Q So, Mr. Brown, it was, actually, I think -- in our
5 conversation that you referenced, it was in charge 1408.

6 A Right. Yeah. I believe --

7 Q You were telling us about what you wanted her --
8 Ms. Caudy to have done with regard to the directed verdict.

9 A Right. I believe that the basis of Mr. Loy's motion on
10 that was the date and time; that there was no -- there was no
11 -- you know, there was no proof as towards the date and time
12 alleged or something like that. And the judge ruled that the
13 Court is worried or concerned at that point with the existence
14 rather than the weight of the evidence. And that is true, but
15 it's the existence of evidence that generally tends to prove
16 the guilt of the accused.

17 And certainly, in that evidence -- because the only thing
18 they had were these images that were alleged, it was a simple
19 assumption on the State's half -- on the State's part that it
20 was me, that I was the guilty party. There was no victim to
21 testify to -- to that charge to say it was him. There was no
22 witness to testify to that charge to say it was him. And
23 that, for the purpose of the direct -- direct appeal, I feel
24 that Ms. Caudy should have raised that issue as well.

25 Q Okay. Is that all that you want to raise as far as

1 Ms. Caudy's performance as your appellate attorney?

2 **A** Yes, ma'am. That's all that I feel has any -- any
3 weight, any...

4 **Q** Okay. Now, with regard to Mr. Loy and his performance as
5 trial counsel, you heard me tell the judge when we started you
6 have a number of issues, so I'm just going to start at the
7 beginning of that --

8 **A** Okay.

9 **Q** -- if that's okay with you, Mr. Brown.

10 Do you believe that Mr. Loy should have raised issues
11 about the seizure of the telephone that he did not raise?

12 **A** Yes, ma'am. Mr. Loy did raise the issue of the
13 warrantless seizure. He did motion for suppression of the
14 evidence due to the warrantless seizure. And as I -- you
15 know, as I've reiterated here, I've said that I feel that that
16 was a correct -- in a very good, you know, motion that it
17 should have been granted.

18 Mr. Loy did not raise other issues pertaining to the
19 phone -- pertaining to the seizure of the phone. If you'd
20 like, I could go over those.

21 **Q** Sure. Please do.

22 **A** Okay. Mr. Loy did raise -- again, he did raise the
23 issues of the warrantless seizure, as the officers took the
24 phone from my residence without a warrant. And then even as
25 they claim seizing it at the police station, they still seized

1 it without a warrant.

2 Q So you're good with what he did as far as that?

3 A As far as that, yeah. Yes, that's fine. Where I feel we
4 left off, the officers -- when the victim alleged that the
5 phone was used in the crime to take pictures, the officers and
6 a member of the hospital staff asked the victim to describe
7 the phone. She told both of them that the phone was
8 multicolored, that it was a multicolored phone. She
9 identified a multicolored phone in a dark room. And the phone
10 that the officers took was a black phone. I feel that that is
11 a wrongful seizure. The -- what was seized does not match the
12 description given by the victim, and, therefore, it was a
13 wrongful seizure. Mr. Loy did not mention that, did not raise
14 that.

15 Then, continuing on, with the overall just, you know,
16 everything in the phone, Officer Gerbhart [verbatim], who
17 swore the affidavit for the search warrant to search the
18 phone, he swore that the phone was in Brown's possession when
19 Brown was arrested. He swore that the victim claimed that the
20 phone was used during the arrest -- or, excuse me, during the
21 incident.

22 Officer Gerbhart was not present when the arrest was
23 made. He was not present when I was taken into custody. He
24 was not present when the phone was seized in my residence nor
25 did Officer Gerbhart ever at any time speak to the victims.

1 So I feel that him claiming this on his affidavit is, in fact,
2 him testifying to hearsay information, and I believe that that
3 negates the affidavit.

4 Q And did Mr. Loy argue that issue to the Court?

5 A No, ma'am, he did not.

6 Q And do you believe that he should have argued that?

7 A Yes, ma'am, I certainly do.

8 Q Do you think that if he had argued that issue to the
9 Court, that anything would have been different in your case?

10 A Yes, ma'am. I feel that, under that -- I mean,
11 undoubtedly, the phone would have fallen under -- or the
12 evidence alleged to have come from the phone would have fallen
13 under fruit of the poisonous tree and been inadmissible.

14 Q And -- sorry, I didn't mean to interrupt.

15 A No, we're good. We're good.

16 After seizing the phone, Officer Gerbhart and he -- this
17 was in his report and he testified to this as well. Officer
18 Gerbhart simply placed the phone in his desk drawer. He did
19 not place it properly into an evidence locker or anything like
20 that. He placed the phone into his -- into his desk drawer.
21 And I feel that this is improper handling of the evidence.

22 Q Did Mr. Loy raise any issues regarding the chain of
23 custody?

24 A No, ma'am, he did not.

25 As you mentioned in the beginning here, I believe in your

1 opening statement, that it is -- I believe it is August 2nd
2 before there's an official record of the phone being in the
3 chain of custody.

4 Q And what was the date that the phone would have been
5 taken from you?

6 A The phone was taken on the date of the arrest of July
7 28th.

8 Q Did Officer Gebhardt testify about -- you said he
9 testified that he put the phone in his desk drawer.

10 A I believe so, yes, ma'am.

11 Q Did he testify that it was locked or anything like that?

12 A He said it was locked, but, I mean, that's -- of course,
13 obviously, at that point, he's going to try to cover his back
14 trail, you know, because it's improper handling of the
15 evidence, in my opinion.

16 If this was a blood sample or a drug case or something
17 like that, from what little bit of research I've been able to
18 do, that's a break in the chain of custody. There's no proof.
19 There's no -- there's no backup to it. That's -- I think, in
20 my understanding, that is the purpose of the evidence locker
21 is so that these things are kept secure and that there's a
22 record of them, there is two-person integrity to them, and
23 there simply is not that in this case.

24 And given the ability of the phone to be manipulated as
25 they claimed, you know, that I think this is a serious issue.

1 The other thing is that Gerbhart's written report, as
2 well as I believe he testified that he searched the phone
3 on -- when he got the search warrant to search the phone on
4 Monday, which would have been July 29th, and he -- he searched
5 the phone or attempted to search the phone. That search was
6 unsuccessful. He then placed the phone again back into his
7 desk drawer and came back in on Tuesday and searched the phone
8 again.

9 And this is kind of kind of two part, I feel. All right.
10 Maybe I'm splitting hairs, but I feel that that may have been
11 a violation of search warrant protocol, as a search warrant
12 may only be executed one time. He did search the phone on
13 Monday. He did not find what he was looking for. He then
14 secured the phone. He came back in Tuesday morning and
15 allowed apps by his -- you know, his testimony, apps to
16 download to this phone, which changed the content of the
17 phone, and there's no telling what -- you know, what else he
18 downloaded.

19 And then he claims that he searched the phone again, and
20 that's when he found this evidence.

21 **Q** Is it your position that Mr. Loy should have objected to
22 the law enforcement being allowed to look at the phone more
23 than once?

24 **A** No, it -- I mean, to my understanding, a search warrant
25 may only be executed one time. Is that correct?

1 Q My question to you, sir, is --

2 A Right.

3 Q -- whether or not you believe that Mr. Loy -- we're
4 talking about what Mr. Loy did and didn't do for you. And so,
5 I'm just asking you whether you believe that Mr. Loy should
6 have objected on that basis during your trial.

7 A Honestly, I think that he should have objected to that
8 due to violation of search warrant and due to tampering with
9 the evidence by allowing the apps to download to it, because
10 that altered the evidence. He can't say I only allowed these
11 apps to download.

12 Q Did Mr. Loy discuss with you what the apps were that were
13 downloaded to your phone?

14 A No, not at any time.

15 Q Were you aware that law enforcement had had to download
16 these apps to retrieve information from your phone prior to
17 trial?

18 A It was in the written report. It was in Gebhart's
19 written report, which I had read. That was in the Rule 5.
20 But I'm not really computer savvy, so I don't really
21 understand all of that stuff. I don't understand why he had
22 to let stuff download to essentially a computer to retrieve
23 something. I don't -- I'm not --

24 Q Did you discuss those questions that you had with Mr. Loy
25 on that issue prior to trial?

1 **A** I think that I did mention it to him at some point. We
2 did see each other fairly regularly throughout the time that I
3 was in county. And, I mean, I can't say yes, on August 3rd, I
4 said...

5 You know, I can't give an exact date, but, I mean, it was
6 in the Rule 5, and certainly through him reading through the
7 evidence and stuff like that to prepare for trial, he should
8 have seen -- in my opinion, he should have seen it on his own.
9 And I did bring it to his attention about the downloading. I
10 mean, it was testified to in court. I just -- I don't -- you
11 know, he knew about it.

12 **Q** Okay. Did you have any other issues with regard to the
13 cell phone?

14 **A** Other than -- other than that, no. The general
15 questioning of what exactly was Gebhart's qualifications to --
16 to perform these searches to manipulate the phone in the way
17 that he did --

18 **Q** And did Mr. Loy raise any issues on that to the trial
19 judge?

20 **A** No, ma'am. Not none of these issues I brought up,
21 Mr. Loy did not raise any of them at all.

22 **Q** Okay. So would it be fair to say that, if you're
23 bringing up these issues now, that you believe Mr. Loy should
24 have addressed them at the trial?

25 **A** Yes, ma'am. Or, actually, prior -- you know, prior to

1 the evidence being admitted. So, yeah, at the trial or at
2 pretrial. Somewhere in there.

3 Q Okay. But was that it as far as the issues regarding the
4 cell phone that you had?

5 A Yes, ma'am.

6 Q Okay. And then I think that you -- did you also have
7 issues related to the no testimony by the alleged victim on
8 Charge 1408?

9 A Yes, ma'am.

10 Q Do you recall any of those issues?

11 A Oh, let me -- give me just one second. I can --

12 Q Did you have an issue regarding the lack of
13 identification --

14 A Yes.

15 Q -- of yourself specific to (indiscernible) not testifies?

16 A Yes. The victim referred to throughout the transcripts
17 as "Minor 1," that would have been my daughter, **Minor 1**.
18 I can call her Minor 1; I can't call her by her name.

19 She didn't testify. She got up here and said that she
20 don't remember what happened, that nothing happened. She
21 didn't remember what happened.

22 As far as the two charges pertaining to her, I feel that
23 those charges should have been either dismissed or at least
24 that's a serious argument for a directed verdict on those
25 charges.

1 Q Did Mr. Loy raise that issue as far as her not testifying
2 during a directed verdict issue on Charge 1408 or 1410?

3 A No, ma'am, he did not.

4 Q Was there anything else regarding the lack of identifying
5 you by Minor 1 in 1408 that you wanted to raise to the judge?

6 A No, other than the fact that she didn't do it.

7 Q Okay. Did you -- do you need a second?

8 A Please.

9 All right. Let's roll.

10 Q Do you -- did Mr. Loy argue for a directed verdict on the
11 other charge, Indictment 1409?

12 A Now that I've cleared my head, I believe it was 1408 that
13 he motioned for a directed verdict on due to the questions of
14 the date.

15 If I can have one second...

16 No, this was -- you think you know this stuff until --

17 Q That's okay.

18 But so you were saying that you thought he should have
19 raised issues on the directed verdict motion because she did
20 not identify you?

21 A Exactly. Minor 2, my then-niece, **Minor 2**, was unable to
22 identify me in the courtroom. She was asked several times if
23 I was present in the courtroom, if she could identify me in
24 the courtroom. She said no.

25 They -- she was asked hours after the alleged incident to

1 give a description of me, and the physical description of me
2 that she gave does not -- did not -- does not match me.

3 She was asked again in the courtroom, after she was
4 unable to identify me, what I looked like, and she identified
5 John Brown as, you know, me, as someone having long, curly
6 hair and a long, curly beard. At the time of the trial, my
7 hair was similar to what it is now, but at the time of the
8 alleged incident, I had long hair and a long beard, and it
9 wasn't curly. My hair is straight.

10 And, again, I feel that that's -- I mean, if you send law
11 enforcement out to arrest a guy with long, curly hair and they
12 arrest the guy with straight hair, you know, it's -- it's
13 wrong; that the identification she gave of me -- she was
14 unable to identify me in the courtroom, and she did not give a
15 proper description of me at any time.

16 Q And did Mr. Loy move a directed verdict motion on that
17 charge based on these things that you're raising here today?

18 A Negative. Mr. Loy did not make any directed verdict
19 motion for 1409 or for 1410. He only motioned for 1408 as
20 regards to the elements of the crime: the date and time of
21 the crime. The elements of the crime wasn't -- wasn't met.
22 It was just simply an assumption by Officer Mosher that this
23 crime occurred between such and such a time; that there was no
24 evidence whatsoever to back that, to say there's no date and
25 timestamps on the alleged images.

1 The victim didn't get up here and say, "Oh, yeah, on the
2 second Wednesday of last week that, you know, there was
3 nothing to support that." But Loy did not motion for a
4 directed verdict motion for the other two charges, though he
5 did say -- and I believe -- I'd have to look exactly in the
6 transcripts, but I believe he said something along the lines
7 of -- he indicated that he would return to those charges in a
8 minute. He said initially, I want to address Charge 1408;
9 I'll get to the other charges momentarily or in a minute or
10 something like that. And he never returned to them. He
11 basically abandoned that -- what certainly should have been an
12 argument for directed verdict, in my opinion, for 1409 against
13 Minor 2, for, if anything, the lack of identification, not to
14 mention the lack of proof of the sexual battery.

15 Q Is it your belief that, if Mr. Loy had made a motion for
16 directed verdict on those, that the judge would likely have
17 granted those?

18 A It -- it certainly is likely that a judge would have
19 granted them. And we can't go back and say, what would -- you
20 know, what would that person have done, what would that judge
21 have done. You know, we don't know for sure. But, if
22 anything, it would have put them on the record for my direct
23 appeal, and it would have given me another shot at, you know,
24 on the direct appeal to give me one more issue that I could
25 have raised on the direct appeal.

1 And the fact is is that the Charge 1410 regarding --
2 regarding Minor 1, there was no evidence to support that
3 charge whatsoever. There was -- the victim didn't testify.
4 There was no physical evidence. There was no nothing. There
5 was no evidence whatsoever to support that charge.

6 And if the State fails to present evidence to prove the
7 charge, I mean, the directed verdict -- I mean, the charge
8 should have been -- a directed verdict should have been given
9 on that charge anyways.

10 **Q** Do you have any issue with how Mr. Loy cross-examined the
11 witnesses who testified against you?

12 **A** There was some differences in the description of the room
13 as to the grandmother of the minor children where she had said
14 or was alleged that she had came into the room during the
15 incident and did not -- did not see me but saw the children on
16 the -- laying on the couch and it was nighttime/early morning
17 and that everything appeared fine.

18 She said that the fish tank light was on and that would
19 have put a certain amount of light in the room. That didn't
20 line up with what the solicitor was trying to say the images
21 were because it had to be these images because it was dark --
22 or this image because it was dark around it. And with that
23 fish tank light on, the room would not have been dark. And I
24 feel that Mr. Loy could have kind of brought that more to
25 light for the jury -- for the judge and for the jury because

1 there was a lot of inconsistencies in what everybody was
2 saying.

3 Q Do you think that he conducted a thorough
4 cross-examination of the girl that did testify at trial?

5 A No, because she -- she said certain things. Like, she
6 alleged -- initially alleged that she ran through the house
7 from me with her aunt and my wife -- her aunt and her
8 grandmother asleep in the house. She alleged that she ran
9 through the house and that I chased her and caught her and
10 drug her back to the couch and forced her onto the couch.

11 And then, when she got up on the stand, you know, she
12 said, "Oh, I didn't say that." You know, "I didn't say he
13 chased me. I didn't say that."

14 She also alleged at the time of the trial that she had
15 worn a certain pair of shorts that were alleged to have been
16 found on -- a picture of it was alleged to be found on my --
17 on my cell phone. But when she was initially interviewed, she
18 said that all she had on was a pair -- a long shirt and a pair
19 of underwear.

20 And I feel that they -- that -- that either one way or
21 another, either she got it wrong or she was coerced into
22 saying that, "Oh, I had those shorts on that night" to fit the
23 evidence that was, again, alleged to have been found on my
24 phone. And I feel that Mr. Loy should have brought that to
25 light; that he should have -- he should have said, "Well, wait

1 a minute. You know, you did say..."

2 "No, I didn't say I was chased." "Yes, you did." You
3 know, "Why are you changing your story now?" You know, "Why
4 the difference in the story now?"

5 Q How old was she at the time that she testified at trial?

6 A Nine.

7 Q He did cross-examine her?

8 A He did cross-examine her, yes.

9 Q Is there anything else regarding his questioning of the
10 witness known as either **Minor 2** or Gebhardt that you
11 specifically wanted to let the Court know you feel that he did
12 or did not do?

13 A Give me one just one second, please.

14 Q Did Mr. Loy point out inconsistencies in Gebhardt's
15 reports and what he later testified to?

16 A No. And that was more -- that was more Mosher than
17 Gebhardt on that. And, no, Mr. Loy did not point out any --
18 any inconsistencies in anybody's testimony or anything.

19 I mentioned...

20 Q With regard to your phone and what Mosher testified to in
21 terms of your consent to the phone and the fact that you had
22 your wallet and your keys on you as well --

23 A Right.

24 Q -- Mr. Loy point out anything about that?

25 A No. No, ma'am, he did not. And that was -- we haven't

1 really jumped on that. The point of my saying that -- for the
2 direct appeal -- and, again, it kind of does tie into -- to
3 Mr. Loy about Mosher in general -- is the inconsistencies in
4 his testimony should go to kind of -- I don't really know the
5 right word, but should definitely count against his
6 believability for a lot of reasons, but mainly, you know, for
7 the phone and for what the victims, you know, initially
8 allegedly told him.

9 Q Told Mr. Loy?

10 A No, for what the victims initially told Officer Mosher.

11 You know, Officer Mosher claimed that they took my wallet
12 and my keys, you know, and that I consented to taking my
13 phone, yet my wallet and my keys are not on my property form.
14 You know, my wallet and my keys were never taken from my
15 house.

16 Q So did you believe that Mr. Loy should have picked up on
17 that and --

18 A Yes.

19 Q -- brought that to the judge for his attention?

20 A Yeah. I think that that should have been brought to the
21 judge's attention for the purpose of -- if anything, for the
22 purpose of the --

23 Q Impeachment?

24 A Yeah, impeachment for the phone, you know.

25 Q What about the closing argument? You have raised some

1 issues about Mr. Loy not objecting to --

2 **A** Right.

3 **Q** Can you tell us what it was that you think that he could
4 have objected to.

5 **A** I can. I actually can, if there's one thing I can do.

6 Mr. Loy, I said that he failed to object to inconsistent
7 statements made by the officer and, particularly, the
8 solicitor. Going back to the beginning of the pretrial, which
9 was June 1st through 3rd or something like that, around that
10 time, and -- June 3rd through 4th, 2014, for the pretrial.
11 Excuse me.

12 The solicitor opened the pretrial with telling the judge
13 that I'd been indicted on three true-billed indictments when,
14 at that time, I'd only been indicted on two. Whether that
15 makes a difference or not, you know what? I really don't
16 know. But I think that if you're going to be a solicitor or a
17 police officer, that you should be held to a higher standard.
18 And then if there's anybody who shouldn't be allowed to lie in
19 a courtroom, it should be those two people. Beyond a doubt.
20 That's just my personal opinion, for what it's worth.

21 But, you know, the solicitor just began the pretrial with
22 telling the judge that I'd been indicted on three true-billed
23 indictments at that time when I had not. I feel that Mr. Loy
24 should have objected to that. Whether it really bears any
25 seriousness or not, I don't know.

1 At the closing arguments -- and there's a couple of
2 things in the closing arguments and in general regarding the
3 solicitor, is that Minor 2, which would have been **Minor 2**, she
4 was asked several times if she could identify me. She
5 couldn't.

6 And on page -- Mr. Justis asked her during -- you know,
7 he stated during his closing argument that he asked her on
8 redirect what John looked like, and she said -- she described
9 him as having really long, curly hair and a long, curly beard.
10 That's what she said. That's on page 190, line 20 through 24
11 of the transcript, where she turns around afterwards --
12 afterwards, the solicitor says, during his closing arguments
13 the next day, he says that she said he had long hair and a
14 beard, a description that fit me more proper.

15 **Q** And you believe that Mr. Loy should have objected to
16 that?

17 **A** Yes.

18 **Q** Is that the only thing that he should have objected to?

19 **A** Negative. He said, in referencing to Minor 2's video
20 interview, that something ran down her leg and onto the couch.
21 And that is not what she said. She claimed that something ran
22 down her leg and onto the floor, and they were trying to
23 insinuate, I guess, that that was semen that ran down her leg
24 and onto the floor. There was no semen found on the floor. I
25 feel that that should have been objected to.

1 There was semen found on the couch; however, the location
2 of it doesn't really line up with the description of the --
3 you know, the account of the charge or of the accusations.

4 I feel that Loy should have objected to the victim saying
5 that she wore the striped shorts because she did not say that.

6 And, again, the solicitor said, you know, semen on the
7 couch exactly where she said it would be. She never said that
8 it would be there. I feel that that kind of threw a monkey
9 wrench into me because they're just basically, at that point,
10 making stuff up. That's not what she said.

11 **Q** Is there any other issue that you believe that trial
12 counsel rendered ineffective assistance of counsel to you?
13 Any other issue you want to bring up to the judge?

14 **A** Particularly, the qualification and the testimony by
15 Dr. Bush. Dr. Bush was qualified as an expert at the trial.
16 And I -- she herself testified that next --

17 **Q** Was she the forensic examiner?

18 **A** A medical --

19 **Q** Did she examine the girls?

20 **A** Yeah. She's the doctor who performed the exams on the
21 children that day.

22 And while, basically, she didn't find any physical -- any
23 physical proof, any physical sign of intrusion. No scratches,
24 no marks, no bruises, no bludgeons, no nothing. But then she
25 gets up there and says that, you know, in the majority of

1 cases, you know, there isn't this. And I think that we should
2 have questioned her. You know, where does that statistic come
3 from? Where does that statistic come from? How can you have
4 a full-grown man, I mean, alleged to have raped an
5 eight-year-old child for hours, repeatedly, you know, to the
6 point where her grandmother comes into the room, but he sneaks
7 out and comes back and continues to do this and the child
8 doesn't have so much as a scratch on her. You know, I think
9 that that should have just -- I don't know, it raises a
10 question in my head.

11 But her being qualified as an expert -- and I understand
12 to be qualified as an expert in court is kind of a -- it's
13 more up to the judge's discretion, but Dr. Bush actually said
14 that, this time next year, I will sit for the boards on -- in
15 these -- what do you call it?

16 Q Specialities?

17 A Yeah, in these -- in these specialties that I'm being
18 qualified an expert here. This time next year, I will sit for
19 the boards, and those are separate tests. So she really
20 hadn't been qualified in those.

21 Q And did Mr. Loy challenge her qualifications?

22 A No, not at all. Not at all.

23 Q What about did Mr. Loy fail to preserve any other issues
24 for your appeal?

25 A None that I can really think of at this point. I think

1 that's it.

2 Q You indicated -- and as we told the judge earlier -- that
3 you believe that he failed to object to perjured testimony
4 made by officers and inconsistent testimony.

5 A Right.

6 Q Did you cover -- were you talking about Mosher and --

7 A Yeah, I was talking about where Mosher testified at the
8 pretrial; that him and Officer Jones knocked on the door and
9 that I answered the door with a piece of pizza or something in
10 my hand and my phone in the other hand. Again, I feel that
11 was just Mosher trying to place the phone into the position
12 that he needed it so he could arrest me, trying to say it was
13 incident to arrest or whatever, how could I open the door.

14 I feel that Mr. Loy should have kind of questioned that a
15 little bit more. But then, at trial, he turns around and
16 testifies that him and Jones met me as I was -- I was coming
17 across the yard. Or Jones testified that I was coming across
18 the yard. And then Mosher gets on the stand right behind him
19 and testifies that he met me as I was coming out of the house.

20 Again, maybe it's splitting hairs, but there's definite
21 inconsistencies to these statements and they raise doubt
22 towards the believability of the officers in other places.

23 Q What about the jury charge? What jury charge is it that
24 you think that Mr. Loy should have asked for?

25 A Under the statutes for criminal sexual conduct first

1 degree, I believe that, basically, if the evidence shows --
2 doesn't really prove that -- of the sexual battery, that the
3 defendant is entitled to instruction of the jury,
4 lesser-included offense of assault and battery, high and
5 aggravated nature.

6 And I feel that, in this case, certainly in 1409, the
7 charge against Minor 2, that the -- there's no proof
8 whatsoever of the sexual battery and that the lesser charge of
9 assault and battery, high and aggravated, should have been
10 given.

11 And then, again, the charges for Minor 1, there's no
12 evidence whatsoever to support 1410. And 1409 is kind of iffy
13 because she doesn't in any way identify me.

14 Q What about with regard to the tie-dyed T-shirt?

15 A The tie-dyed T-shirt?

16 Q What issues are related to that T-shirt?

17 A Officers came into my residence two or maybe three times
18 with search warrants to search for clothing, anything
19 connected, body fluids, anything like that. They made no
20 mention of this tie-dyed T-shirt until, like, I think it's
21 March, months afterwards, when Officer Mosher contacts my now
22 ex-wife, Rachel, and says, "Oh, we need this -- we need this
23 T-shirt." May. Excuse me. May 20th.

24 And several days later, sometime later, my wife provides
25 that T-shirt to them, and I feel that that was seized -- that

1 T-shirt was seized outside of the warrant. While she has my
2 property, she can do whatever she feels fit with it, yes, but
3 Mosher specifically called her up and asked her for this
4 specific item. And they were --

5 Q Did she give it voluntarily?

6 A Yeah, as far as I know.

7 Q So what is it that you're saying that Mr. Loy should have
8 done then?

9 A That that was a seizure outside of a search warrant; that
10 they were in the residence -- they alleged they should have
11 had knowledge of this shirt because it came from the images.
12 But there was no mention, there was no need, there was nothing
13 about this shirt until May 20th, until, what, eight months
14 later, or something like that. And I feel that that shirt
15 should not have been allowed because of the -- they were
16 there. They could have had it. Why didn't they make mention
17 of it back in July and August when they were in there
18 illegally?

19 You know, how is it that, all of a sudden, this shirt
20 became an issue now when we have the victim, you know, in
21 these images? But she's also made allegations towards other
22 people doing this stuff and other people taking these
23 pictures, and now, eight months later, boom, "Oh, we need this
24 shirt." It's suspicious to me. It's suspect to me.

25 Q So is there anything else that you think that Mr. Loy

1 should have done on your behalf that he didn't do?

2 **A** Probably. I don't know, Ms. Sarji. I think that's it.

3 That's all. That's all I'm capable of right now.

4 MS. SARJI: Okay. I don't have anything further.

5 THE COURT: Cross-examination.

6 MR. SAVILLE: No questions for this witness. Thank you.

7 THE COURT: Sir, you may step down.

8 THE WITNESS: Thank you, Your Honor.

9 MS. SARJI: No further witnesses, Judge. Thank you. We
10 would rest.

11 MR. SAVILLE: Your Honor, the State would call to the
12 stand Mr. John Loy.

13 THE CLERK: Please raise your right hand. State your
14 full name for the record.

15 THE WITNESS: John Matthew Loy.

16 JOHN LOY,

17 after having been duly sworn, was examined and testified
18 to as follows:

19 DIRECT EXAMINATION

20 BY MR. SAVILLE:

21 **Q** Good morning, Mr. Loy. It's good to finally see you up
22 there.

23 **A** Good morning.

24 **Q** Mr. Loy, how long have you been practicing law?

25 **A** I have been practicing law for 30 years. I was admitted

1 to the bar in 1988.

2 Q Yes, sir. And were you appointed or retained in this
3 case?

4 A I was appointed.

5 Q And do you recall about how many times you met with
6 Mr. Brown prior to the trial?

7 A I don't have a number. I would agree with his assessment
8 where he said we were in touch quite often during the time
9 that he was in county jail.

10 Q Sure. How did those meetings go?

11 A Well, we had a line of communication. He communicated
12 with me. He wasn't obstinate. He wasn't terribly
13 belligerent. I'm not sure what it is you're asking me. He
14 was cooperative when trying to prepare a defense. If there's
15 something more specific, I don't know what it is.

16 Q Sure. Now, I understand Mr. Brown did argue that there
17 were multiple indictments for which there was no evidence
18 whatsoever presented to support. How do you recall the
19 evidence in this case?

20 A The evidence -- the evidence in this case was
21 overwhelming. The evidence of guilt was overwhelming. I
22 mean, I can give it to you in three or four sentences if you
23 want, but I mean, does that answer your question?

24 Q Sure. And were there -- were there forensic interviews?

25 A There were forensic interviews. Only one of them, as I

1 recall, was actually relevant in this proceeding. Mr. Brown
2 was accused of having sexually assaulted his daughter and his
3 niece. I made pretrial motions to keep the forensic
4 interviews out so that they would not be presented. In the
5 pretrial motions -- I was moving to suppress those --
6 Mr. Brown's daughter came in to testify and essentially
7 clammed up. I mean, she wasn't -- she was -- for practical
8 purposes, she was not present for cross-examination. So, I
9 moved to exclude her forensic evidence based on those grounds,
10 as my recollection of the statute requires that she be present
11 for cross-examination about the matters alleged within the
12 forensic interview. And I took the position that she was not
13 present for meaningful cross-examination. Judge Murphy ruled
14 in my favor that that was correct, so, as I recall, that
15 interview was excluded and not presented to the jury.

16 The other child came in and did present and did testify
17 in the jury's presence, and I believe her forensic interview
18 was, in fact, played.

19 Q Yes, sir. And do you remember the general substance of
20 what she alleged happened?

21 A She alleged that they had -- she was spending the night
22 with Mr. Brown and his family, her grandmother; that they had
23 been to the beach earlier that day; that they came home; and
24 that, during the evening hours while the rest of the house was
25 asleep, they were watching TV or something. I don't recall

1 it. And then Mr. Brown was sexually assaultive of both her as
2 well as her cousin, or -- I guess would be your cousin, Mr.
3 Brown's daughter.

4 Q Now, were there any plea offers extended in this case?

5 A None.

6 Q Why not?

7 A Again, the evidence of the case was overwhelming. What
8 was actually on the video, on Mr. Brown's phone that he talked
9 about, was -- and what was recovered was video of his daughter
10 at about, looked like about four or five years of age, holding
11 a stuffed animal under one arm, performing oral sex on an
12 obviously grown man. She stops at one point and that person
13 then says something like, "I'm not finished" or "Do it some
14 more" or something like that. She then recommences the act of
15 performing oral sex on this grown man, which is being filmed,
16 it looks like from the person's -- the perspective of the
17 person who is receiving this attention.

18 There's also a video that was recovered, which was the
19 grounds for the other indictment against Mr. Brown as it
20 relates to his daughter, where, again, his daughter looks like
21 about four or five years of age, is clearly being sodomized on
22 camera, at which point during the video, the adult doing that
23 ceases the penetration and actually ejaculates on the child,
24 and that's on the video itself. This is on his video and on
25 his phone in his home with his daughter.

1 I don't think the solicitor -- I think the solicitor
2 wanted to try the case. He certainly had no motivation
3 whatsoever to think he couldn't win the case. There was
4 the -- and I don't know if it's a YFST, the male chain of DNA
5 was, as I recall, recovered from the vaginal swabs of Mr.
6 Brown's niece. Coupled with this, as well as the T-shirt that
7 he addressed earlier -- and I'd be happy to put that in
8 context, if necessary -- I think the solicitor said he can
9 plead -- he gets nothing from me.

10 Q Yes, sir. Now, why did the T-shirt become an issue in
11 this case?

12 A Law enforcement had conducted their investigation, and
13 they were essentially complete. Again, the solicitor took a
14 particular interest in this case, and I believe -- and I know
15 the guy; I mean, we've worked with him for many years, and
16 he's a diligent attorney. But I believe he sat in his office
17 and he watched this video looking for anything else he could
18 come up to strengthen his case, and he noticed that, if he did
19 it frame by frame at one frame -- and this is, I believe, the
20 one where the gentlemen is receiving oral sex, in Mr. Brown's
21 home, according to the testimony and filmed on his phone --
22 you freeze it, there's a spot where it looks like -- I don't
23 know, there's three inches or so of a tie-dye T-shirt. Very
24 distinctive stripes on it, you know? And he freezes that and
25 he says that's -- to himself, and I talked to him about it.

1 He says that's distinctive. This is really something. And he
2 asked law enforcement, call his wife and ask her if Mr. Brown
3 has a tie-dye T-shirt. They said they did that, and they
4 said, yeah. And he said, "Can we have it?" They gave it to
5 him. They obtained the tie-dye T-shirt. They claim -- and it
6 certainly is my recollection also -- it matched up pretty much
7 perfectly, which was with what was on the video. If you
8 review Mr. Justis's closing argument, he's making notes,
9 "Freeze it right here." And he's comparing the two,
10 essentially, saying, "Right here, this one's got a purple
11 stripe, a green stripe, and a red stripe," or something like
12 that, matching it up to the video -- the shirt of the
13 perpetrator on video.

14 So this was actually, I think, something that was a
15 result of the solicitor's own investigation in prompting to
16 law enforcement to go and ask about.

17 Q Mr. Brown's now ex-wife actually identified the shirt as
18 his at trial; correct?

19 A I think she identified it as his favorite shirt at trial.

20 Q That would be accurate.

21 Did you see any reason to challenge the admissibility of
22 the T-shirt?

23 A I don't recall challenging it. And I'm -- you know, I
24 pause only because I'm reflecting now to think if there was --
25 I don't think -- no, I did not see a reason then.

1 Q And I believe the record may reflect that you objected
2 under relevance, but you were overruled.

3 A I'm sure the record is correct.

4 Q Now, because the -- just to hit a couple of high notes
5 from Mr. Brown's testimony real quick before we jump into some
6 more substantive testimony, he had noted that there was no
7 physical evidence of sexual battery in this case. Do you
8 recall that Dr. Bush actually did testify that there was
9 redness and inflammation on the victim's vaginal area?

10 A I do. And I also felt like -- I refuted that fairly
11 well, as I recall, because testimony from the children was
12 that they had spent the day at the beach, and this wasn't so
13 much blunt force trauma as just irritation and redness. And I
14 asked whether or not what she observed on the perianal area, I
15 believe, was -- would be consistent with a kid having played
16 in the salt and the sand, sitting in a sandy bathing suit,
17 coming home after a day at the beach, riding all the back to
18 Summerville, etc. I recall that she said there was some
19 irritation.

20 I also know that Mr. Brown's daughter has been sodomized.
21 The idea of the argument that there's no way this could have
22 happened -- if she didn't -- if the doctor did not find
23 evidence that it had occurred, then it just means it can occur
24 without leaving that evidence, because everybody in the
25 courtroom -- the courtroom was cleared but at least 14 or 15

1 of us know this child was sodomized.

2 Q Yes, sir. And going to the actual seizure of the phone
3 that contained these images and videos, you did -- there was a
4 pretrial hearing that you did attempt to keep the phone from
5 coming in. Do you remember how you challenged the
6 admissibility of the phone?

7 A Can I refer back to the transcript?

8 Q Absolutely. And I believe your challenge begins on page
9 66 of the transcript, line 16.

10 A I'm sorry. My -- one moment, please. That would be of
11 the in-camera transcript. Right. I challenged it. And I'm
12 looking at page 66, line 16. My motion to suppress certain
13 evidence, video and photograph evidence, which was obtained or
14 is alleged to have been obtained, taking off Mr. Brown's cell
15 phone, the grounds for the motion to suppress or that the
16 original seizure of his personal property -- that is, the
17 seizure of the cell phone itself -- was done without a search
18 warrant, without any sort of court order allowing it to be
19 done, and that it was from his home; that it was an
20 unreasonable and warrantless search and seizure; that it was
21 illegal in its nature; and therefore, the pictures or videos
22 which are alleged to have later been obtained for the phone
23 are the fruit of the poisonous tree, if you will. And, in
24 fact, they are the result of that original illegal seizure of
25 his property.

1 And then I say, I don't know if the Court would prefer
2 for Mr. Brown to go forward -- he will testify and present
3 evidence -- or if the State would prefer to go forward first.

4 **Q** Yes, sir. And when Mr. Brown did testify subsequent to
5 your challenge, do you recall that he testified that he asked
6 the police to come inside to his home?

7 **A** I don't recall that, but if the record reflects that,
8 then I'm sure that's correct.

9 **Q** Yes, sir. That would be page 72 of the transcript,
10 starting on line 11 for the Court's reference.

11 **A** Okay.

12 **Q** Now, do you recall Mr. Brown's version of events was --
13 as to how the phone was actually seized?

14 **A** Mr. Brown talked about it on -- we talked about it on
15 several different occasions, and I'd have to look back at the
16 file to say specifically what he said then. I think, at one
17 point, he said it had been in his car or his truck and someone
18 had taken it --

19 MS. CAUDY: Objection, Your Honor. Mr. Brown was not
20 given the opportunity to endorse or deny the statements that
21 the attorney general is attempting to elicit, so I believe it
22 is an improper way to elicit hearsay testimony.

23 THE COURT: State your question again.

24 MR. SAVILLE: Yes, sir. I was asking Mr. Loy if he could
25 recall Applicant's version of how the phone was seized. I

1 think it's relevant to how Mr. Lloyd may have chosen to
2 challenge the admissibility.

3 THE COURT: I'm going to overrule it at this time.

4 You may answer the question.

5 BY MR. SAVILLE:

6 Q And do you recall that --

7 A I recall -- I'm looking. I don't specifically recall. I
8 can look at the transcript, and I found a line where he says,
9 "One of the officers began to ask me where my cell phone was."
10 And that's on 73, line 21. And it looks like he's going to
11 present at that point.

12 As I recall, he basically says they came through the
13 door, they jacked me up, grabbed me, spun me around,
14 handcuffed me. One of them said, "There's his phone by the
15 aquarium, grab it" or something to that effect.

16 Q Yes, sir. And do you recall that there was testimony at
17 trial that the phone was actually taken at Mr. Brown's
18 request?

19 A Yes.

20 Q Do you think there was a legitimate Fourth Amendment
21 issue to raise regarding the phone (ph)?

22 A I mean, I tried to raise one. I mean, I didn't feel
23 embarrassed arguing it or anything. I mean, I think, yeah,
24 there was a legitimate argument to be made.

25 Q And do you recall on what bases the trial judge denied

1 your motion to suppress this evidence?

2 **A** I think the trial judge, as I recall, basically just
3 bought law enforcement's version of what had transpired as
4 opposed to Mr. Brown's; that is, that Mr. Brown, rather than
5 wanting to leave the phone there at the house, for whatever
6 reason, said, "Grab my stuff, my keys, grab my phone, and you
7 know, we'll go straighten this out" as opposed to "they jacked
8 me up and grabbed my phone." That's my recollection.

9 **Q** Yes, sir. And do you also recall the solicitor arguing
10 that, had there not been consent in this case, it would have
11 been the Fourth Amendment violation where they cured by
12 inevitable discovery?

13 **A** I don't recall that, but I wouldn't be surprised if he
14 argued that. I don't know that I would have bought that
15 argument.

16 **Q** Now, Mr. Brown challenged the fact that the phone was
17 kept in a drawer at the police station. Do you recall
18 discussions with him about how the phone was stored once it
19 was seized from him?

20 **A** Mr. Brown was very involved in the defense of his case
21 from the outset. He's a fairly intelligent person. I mean,
22 by that I mean he's not disadvantaged to the extent that he
23 can't meaningfully cooperate in his defense. He had full
24 discovery. He's literate and reviewed it. We talked about
25 everything in there at length. I mean, we -- I didn't cut the

1 conversations off. We talked about everything until we were
2 done talking during our conversations.

3 Q Yes, sir. And do you recall that the -- that Jason
4 Mosher actually explained why it was kept in a drawer rather
5 than an evidence locker?

6 A No.

7 Q I understand -- I'll just note for the Court's reference
8 that, on page 93, line 20 of the transcript, Mr. Loy is
9 cross-examining Mr. Mosher about the fact that it was kept in
10 a drawer. And Jason Moser, on line 25, page 93, says, "Yes,
11 sir. At that point in time, it was the weekend. So, as far
12 as securing it in a locker or obtaining an evidence tag, that
13 was not possible. Our Crime Scene Unit is not working all
14 weekend, but at that point, the best of my knowledge, he
15 secured it."

16 A For purposes of my defense, whether it was secured or
17 locked in Detective Gebhardt's dresser drawer or locked in a
18 locker, I -- it's not something I merited as far as building
19 our defense around it or really building into our defense.

20 Q Right. Right.

21 Did you have any concerns about the phone app that was
22 used to get the media off of Mr. Brown's phone?

23 A No. The presentation and discussions I had with
24 Mr. Brown was sometimes bordered on the inane, which seemed to
25 be hinting that perhaps the detective had downloaded the video

1 of his child being sexually assaulted in his home from the
2 internet while downloading the apps or something of that ilk.
3 You know? And it just would sort of petulantly say, "Let them
4 prove it's me."

5 No, I didn't think that there was any way the app that
6 they had downloaded had created the images, had altered those
7 images and somehow done something that would compromise --
8 certainly incriminate it, but I don't think it created any
9 evidence that compromised Mr. Brown or destroyed any that --
10 that would have tended to clear him. And I didn't see any way
11 to argue that. Or, I did not have issues with that.

12 Q Right. In fact, what was the purpose -- what was the
13 purpose of the application?

14 A It was on the iPhones. And, obviously, I'm just giving
15 you what I've gotten in court when you -- nothing ever really
16 goes away. I mean, you can delete it. It's sort of like on
17 your computer, I think, on the hard drive. You delete it; it
18 means the area is available to be written over, but the image
19 is actually still there. This was an effort to recover videos
20 and/or still photos which had been deleted or were missing
21 from the iPhone itself.

22 Q Anything else you wish you would have done to prevent the
23 evidence from Mr. Brown's phone from coming in?

24 A No. I think the evidence from the phone was -- was
25 coming in. And I don't -- I don't -- there's no other

1 argument that stands out in my mind that a diligent attorney
2 should have made.

3 Q Yes, sir.

4 About the lack of an in-court identification of Mr. Brown
5 by the victim, his niece, do you recall that Mr. Brown had
6 changed his appearance from the time of the incident at the
7 time of trial?

8 A Mr. Brown had changed his appearance dramatically.
9 Pretrial -- or appeared to. I saw the photos of him earlier,
10 and I saw the photos that -- and I saw him live at trial.

11 His daughter came in pretrial at the point where she
12 clammed up and was asked essentially, "Do you recognize your
13 dad" or something to that effect, "Do you see him?" and looked
14 around the courtroom and looked at our table and said, "No, I
15 don't."

16 And this was the person who had been the stay-at-home dad
17 and the primary caregiver up to this point. He'd been in
18 jail, you know, conceivably for a good bit of time, but she
19 looked around the courtroom and could not identify him.

20 Q Now, did you see any reason to request a charge on a
21 lesser included offense in this case?

22 A No. I mean, there were -- there were -- I'm sorry; are
23 you asking me was there any reason I didn't? There were two
24 videos -- separate videos as relates to Mr. Brown's daughter,
25 which showed her being forcibly anally penetrated as well as

1 performing oral sex upon a grown man -- a grown man in both
2 cases. It was alleged to have been him. I think that clearly
3 qualifies.

4 As I recall, the DNA strands I described were found on
5 the vaginal swabs of Mr. Brown's niece, who had spent the
6 night in Mr. Brown's home that night and who had described
7 having been assaulted by her uncle that same evening.

8 At that point, I felt like the evidence was not -- no, I
9 didn't ask for a lesser included. I think those were CSC
10 first.

11 Q I understand.

12 We may have hit on this just a little bit, Mr. Loy, and
13 if so, I apologize. Was there a DNA test done in this case?

14 A There was.

15 Q Did it match Mr. Brown?

16 A Yes and no. It wasn't the 1 in 92 quadrillion or the
17 ridiculous number that they've got out there forever. I could
18 pull it up. And it seemed a little ambiguous, the way she
19 presented it. It was the partial strain, again, that I -- as
20 I recall, was found within -- on the vaginal swabs of the
21 young niece, as well as, I believe, on the swabs which were
22 cut from the couch where she described the assaults -- at
23 least some of the assaults having taking place.

24 In both cases, it wasn't a complete chain. And I've
25 examined people, and I still don't really understand DNA

1 perhaps as well as I should. But there was a piece of it,
2 which is the male side or the male strain, as I recall. So
3 they can't get the 1-in-a-hundred zeroes. I think this was --
4 initially the odds were one -- if you tested 29,000 people,
5 you wouldn't find a match. It would either be Mr. Brown or
6 somebody -- a paternal relative of his: a brother, father,
7 etc. And I believe that that was the case in both the
8 positive tests. I think one was from the couch and one was
9 from the child's vaginal swab.

10 So -- and then she later said -- because it seems
11 somewhat ambiguous to me, so that means it was 1,700 times
12 more likely it was him than a random stranger. So they found
13 DNA. It was pretty compelling, but in their world, in the
14 world of the DNA folks, it wasn't the strongest they get.

15 Q I'm not going to try to figure that out.

16 And it was the niece's allegation that this conduct took
17 place on the couch; correct?

18 A I believe that is correct. That's why they were cutting
19 swabs from the couch. At least some of it. She described on
20 the evening of ongoing activity, as I recall.

21 MR. SAVILLE: Beg the Court's indulgence. I'm nearing
22 the end. I just want to make sure --

23 THE COURT: All right.

24 BY MR. SAVILLE:

25 Q Mr. Loy, do you recall receiving letters from Mr. Brown's

1 father before the trial?

2 **A** Excuse me. No, I don't recall. I mean, if they were
3 basically character evidence, I know Mr. Brown might think
4 that -- I would not have attempted to call people to say,
5 "I've seen him with his children. He's not the kind of guy
6 who would do this sort of thing." We weren't going to offer
7 character evidence. Mr. Brown specifically declined to
8 testify, said he's incapable of testifying, although,
9 apparently, that's been cured at this point.

10 But no, he -- I don't doubt that his dad may have given
11 me some letters. I met with his dad on several occasions.

12 **Q** Yes, sir.

13 Did he give you any specific witnesses other than his
14 father to investigate?

15 **A** His father wasn't a witness. His father was supportive.
16 His father was there on Mr. Brown's behalf. His father was
17 interested and invested in the case. He wasn't at the home
18 the night this is alleged to have occurred, and he was not a
19 potential witness. He may have been in the courtroom during
20 the proceeding and not even subject to sequestration. I don't
21 recall.

22 **Q** Did Mr. Brown provide you with any other or any potential
23 witnesses to look into?

24 **A** My recollection is that he did not.

25 **Q** If you did, would you have looked into them?

1 **A** I certainly would, yes.

2 **Q** Now, there may have been some testimony earlier that --
3 forgive my pronunciation -- that Detective Gebhardt's was not
4 there at the time of arrest. But, Mr. Loy, do you recall
5 Mr. Gebhardt's testifying that he actually was there at the
6 time of the arrest?

7 **A** Yes. I think he said he was at the back door; that they
8 basically surrounded the place; that he was at -- yes. I
9 recall Detective Gebhardt's testimony, that he was present
10 on-scene at the arrest.

11 **Q** Yes, sir.

12 MR. SAVILLE: And for the Court's record, that's at
13 page 381, line 6, of the transcript.

14 BY MR. SAVILLE:

15 **Q** Did anything stand out to you from the testimony of law
16 enforcement as perjured testimony?

17 **A** Well, no. No. I mean, I wasn't present for the
18 investigation, etc. No one told me they intended to lie. If
19 I detected credibility issues and things that they presented,
20 I would have argued them to the jury, but I don't -- I mean,
21 I'm sure I've been subjected to perjured testimony at some
22 point during my career, but I don't -- can't always just
23 detect it when it occurs.

24 **Q** Yes, sir.

25 THE COURT: Hold on a minute. Mr. Saville, you said page

1 381?

2 MR. SAVILLE: Yes, sir.

3 THE COURT: I don't have a page 381.

4 MR. SAVILLE: I apologize, Your Honor. Is there another
5 transcript in your --

6 THE COURT: Page (indiscernible).

7 MR. SAVILLE: I apologize, Your Honor. I have the record
8 of appeal here, so I may have been on a different track. I
9 apologize. I will withdraw that, Your Honor, and I'll be sure
10 that you -- do you have the transcripts from the pre-trial?
11 It's a 40-or-so-page transcript.

12 THE COURT: I'm assuming that's the 107-page transcript.

13 MR. SAVILLE: Yes, sir.

14 THE COURT: And I have a second transcript, with day two
15 and three of three. It's a 302-page transcript. I have two
16 separate transcripts, neither one of which reach page 381.

17 MR. SAVILLE: I apologize for that confusion, Your Honor.
18 That was my mistake, reading off of the record. I should have
19 been on the same transcript as you. I can -- I'll actually
20 just withdraw that question.

21 THE COURT: You withdraw the question? I'd just like to
22 know where you're referring to.

23 MR. SAVILLE: Sure. I can --

24 THE WITNESS: Is that Detective Gebhardt's testimony?

25 MR. SAVILLE: It is.

1 THE WITNESS: It's on mine, Judge. I have the smaller
2 one also. It looks like page 95. 94 through 95 is where that
3 starts.

4 MS. SARJI: Your Honor, for the record, Mr. Brown has
5 clarified, there is a transcript that he has that's got both
6 of them together. He says it's actually (indiscernible)
7 Detective Mosher, which looks to begin on the actual
8 transcript, the ones that we have.

9 THE COURT: They're talking about Gebhardt, not Mosher.

10 THE WITNESS: It begins on 95, line 20.

11 THE COURT: I have that.

12 MR. SAVILLE: I think I may have been mistaken that it
13 was Mosher who testified.

14 THE COURT: Say that again, Mr. Saville.

15 MR. SAVILLE: Yes, Your Honor. I think I may have been
16 mistaken, and it was Mosher that testified that Gebhardt was
17 present at the time.

18 THE WITNESS: Gebhardt testified he was present also.

19 MR. SAVILLE: My apologies to everyone for that
20 confusion. I appreciate everyone's assistance there.

21 THE WITNESS: On line 90 -- page 95/23, "Once they were
22 obtained, myself, Sergeant Mosher, Sergeant Jones, and
23 PFC Terranova responded to Mr. Brown's residence." And that's
24 line (verbatim) 95, line 23.

25 MR. SAVILLE: Thank you, Mr. Loy.

1 THE COURT: All right. You may continue, sir.

2 MR. SAVILLE: Yes, sir. I apologize. Thank you.

3 BY MR. SAVILLE:

4 Q Mr. Loy, is there anything else you'd like to tell the
5 Court regarding your representation of Mr. Brown?

6 A No, other than I'm happy to answer any questions, but I
7 felt like I -- actually, I felt like I gave Mr. Brown a good
8 trial. There were just -- there were points we could defend
9 all along the way, but, at the end, the accumulation of
10 evidence was overwhelming. I don't -- I don't know what I
11 could have done better.

12 Q Yes, sir. Thank you very much for coming today. Please
13 answer any questions that Ms. Sarji may have. Thank you.

14 THE COURT: Ms. Sarji, cross-examination?

15 MS. SARJI: Thank you, Judge.

16 CROSS-EXAMINATION

17 BY MS. SARJI:

18 Q Mr. Loy, you testified that the evidence was overwhelming
19 in this case. Do you recall that testimony?

20 A I do.

21 Q And I believe Mr. Brown's question to you would be what
22 makes it overwhelming that it is him?

23 A Well, the DNA recovered from his niece's vagina would
24 be -- I don't want to be flippant. I think that's very strong
25 evidence of a sexual assault. The DNA that was recovered from

1 the couch where she said she was assaulted, the fact that the
2 State could establish pretty well that someone wearing
3 Mr. Brown's favorite T-shirt was receiving oral sex from his
4 daughter in a home identified as his own home, as well as
5 sodomizing his child while wearing his shirt, and that someone
6 had used his phone to film these activities pretty well
7 cemented his fate.

8 Yes, I know, he would sit back and petulantly tell me,
9 "That doesn't prove it's me," and I would tell him, "I think,
10 to the rest of the world, that proves it's you." I think
11 that's overwhelming evidence. Yes.

12 THE DEFENDANT: Could I ask something?

13 THE COURT: No, sir. You may not ask questions. That's
14 what your lawyer is for.

15 BY MS. SARJI:

16 Q Was the DNA a positive match to Mr. Brown?

17 A I've tried to -- I can look back at it. I have tried to
18 sum it up, as best my recollection; that is, it was not the
19 complete match, but it was that partial strain.

20 Q Let me ask you a couple questions. You're a public
21 defender; right?

22 A I am.

23 Q And so you've handled probably countless cases that deal
24 with DNA; is that right?

25 A Countless would be a stretch, but a lot.

1 Q A lot of cases that deal with DNA?

2 A Yes.

3 Q And you frequently read reports from experts that have
4 done the DNA testing thing and that sort of thing?

5 A I do.

6 Q And you have probably been presented as well with reports
7 where there is someone that can be ruled out in a DNA report;
8 is that correct?

9 A Yes.

10 Q And, in this particular case, was Mr. Brown ruled out as
11 one of the contributors of the DNA?

12 A No.

13 Q And have you seen other reports in other cases where
14 there might be even lower numbers of a match than what you saw
15 here in Mr. Brown's case?

16 A I don't recollect. 1 in 29,000 is pretty much low for
17 DNA, in my experience.

18 Q Have you seen one that's in the hundreds?

19 A If I have, I don't recall.

20 Q Have you ever challenged the results of a DNA test that
21 has been done in one instance?

22 A I have done it outside of the -- I've had a case where it
23 was -- the sample was alleged to have been corrupted, and they
24 said resubmit another one or something along these lines.
25 And, at that point, I had an independent test done by

1 different a lab in Houston. I mean, I challenged it outside
2 of the courtroom. That way, the ultimate results of SLED were
3 confirmed, and I didn't go forward with suppressing it.

4 Q And so you are aware, in your practice as a criminal
5 defense attorney, when it's necessary to consult with outside
6 experts? Would that be fair to say?

7 A I -- I certainly do sometimes consult with outside
8 experts. I'm slower to do it than some folks. I think it's
9 overdone some of the time. I have access to that. I have
10 access to the ability to do that, Department of Indigent
11 Defense funds as well as far as those sort of things go. I'm
12 aware of the process and the policy. You asked me my --

13 Q And, in this particular case, were the results that you
14 got, did they cause any question in your mind about whether or
15 not you needed to consult with an outside expert?

16 A I don't -- no, they didn't cause concerns for me.

17 Q Was there a date and time stamp on the videos that were
18 recovered from Mr. Brown's phone?

19 A No. As I recall, there were not.

20 MS. SARJI: I apologize, Judge. Court's indulgence.

21 THE COURT: No, you're fine.

22 MS. SARJI: But I believe I would like to cover all
23 Mr. Brown's bases.

24 BY MS. SARJI:

25 Q Is there any proof that the videos were taken by

1 Mr. Brown's phone or could they have been put there or
2 downloaded from somewhere else?

3 **A** I think the technology exists to download videos from
4 various sources to transport them, to email them, and all that
5 sort of stuff. Can I say that this was -- this video was
6 originally taken on his phone unequivocally? I don't know. I
7 mean, no. I can't say that.

8 The ability certainly exists to transfer digital images
9 and -- from one platform to another.

10 **Q** Did you consult with any experts who would have been able
11 to tell you whether or not the phone unequivocally took that
12 video?

13 **A** No. I find that line of reasoning, which Mr. Brown
14 presented to me over and over, absolutely ludicrous that
15 someone else filmed his daughter performing oral sex in his
16 house, wearing his shirt, and then transferred it to his phone
17 and then deleted it so it could sometime later be discovered
18 by law enforcement. I didn't explore that on his behalf.

19 **Q** Were there allegations of other people?

20 **A** Allegations of assault against other people?

21 THE COURT: Hold on -- Mr. Brown. Hold on a minute.
22 Hold on a minute.

23 MS. SARJI: I'm sorry, Judge.

24 THE COURT: Mr. Brown, (indiscernible) manner, but she is
25 your lawyer. She's representing you and asking questions in

1 this process.

2 Now, I'm not going to allow you to speak out and disrupt
3 court. Okay? If you need some time to talk with your lawyer
4 some more about the questions that you may want -- I've seen
5 you writing over there during this process. If you want some
6 time, you want to stand down and write out some other
7 questions, I'll give you an opportunity to do that. Okay?

8 But she's going to ask the questions here today, and
9 that's how we're going to proceed. That's how we operate
10 here. Okay?

11 THE DEFENDANT: I apologize, Your Honor. It's an
12 emotional thing. I think -- I think that we've got it handled
13 with the basics.

14 THE COURT: Well, I want to make sure that any and all
15 questions or concerns that you have are addressed, but I want
16 them addressed through your lawyer asking those questions.
17 Okay?

18 THE DEFENDANT: Sorry, Your Honor.

19 THE COURT: That's okay.

20 Sergeant, you may continue.

21 MS. SARJI: Thank you, Your Honor. I'm sorry.

22 BY MS. SARJI:

23 Q I think that I'm understanding the question correctly,
24 which is, were there allegations that other people had
25 assaulted Mr. Brown's daughter?

1 **A** Can you refer me to something in the transcript? I don't
2 recall that. Or -- no, I don't recollect that.

3 **Q** Did you review the forensic interview of Mr. Brown's
4 daughter?

5 **A** Yes.

6 **Q** And, in the forensic interview of Mr. Brown's daughter,
7 does his daughter indicate that there were other individuals
8 who perpetrated assaults upon her?

9 **A** His daughter's interview was all over the board, as I
10 recall. She was in the chair, out of the chair. Essentially
11 too young or ADD perhaps -- I mean, seriously -- to
12 meaningfully participate. She may well have said that. I
13 honestly don't recall.

14 Her forensic interview was suppressed at trial, and I
15 don't really recall other than that I kept it out, what was on
16 it.

17 MS. SARJI: Nothing further, Judge. Thank you.

18 THE COURT: Any redirect?

19 MR. SAVILLE: Very briefly, Your Honor.

20 THE COURT: Yes, sir.

21 REDIRECT EXAMINATION

22 BY MR. SAVILLE:

23 **Q** This is just a very minor point, Mr. Loy, since we came
24 all this way. There was just some testimony about the remote
25 possibility that something could have been downloaded onto

1 Mr. Brown's phone at some point. Do you recall testimony at
2 trial that, once the phone was seized, it was put into
3 airplane mode to disable the antennas of the telephone?

4 **A** Yes. I recall that Detective Gebhardt said all they did
5 was he swiped down on it. He hit airplane mode, because it
6 was his understanding that various phones could do a remote
7 wipe or something like that, and he didn't want that done.
8 Then he turned it off, and he didn't mess with it again until
9 he had the search warrant for it, is my recollection. I think
10 his argument was that it was turned back on to download or to
11 load apps on it or something like that.

12 **Q** Sure.

13 **MR. SAVILLE:** And for the Court's record, on the trial
14 transcript, I think everyone received the 302-page
15 transcripts. That is page 260, line 18.

16 And that's all I have, Mr. Loy. Thank you.

17 **THE COURT:** Anything else, Ms. Sarji?

18 **MS. SARJI:** Nothing further, Judge. Thank you.

19 **THE COURT:** Sir, you may step down. Thank you.

20 **MR. LOY:** Thank you, Your Honor.

21 **MR. SAVILLE:** Your Honor, the State would now call
22 Ms. Lara Caudy. And we had the discussion, we're actually
23 going to have to call her on the telephone, however you would
24 prefer to set up this technologically. I'm more than happy to
25 use my cell phone with the speakerphone or if there's a

1 preferable way to do it in the courthouse.

2 THE COURT: Y'all had, I guess, inquired last week about
3 whether or not I would allow that. It's my understanding that
4 neither one of you had any objection to it; is that right,
5 Ms. Sarji?

6 MS. SARJI: No objection, Judge.

7 THE COURT: So, I don't mind doing that. What I would
8 suggest doing is you can call her on your cell phone, put her
9 on speakerphone right up here, and we can go from there.

10 MR. SAVILL: Yes, Your Honor.

11 THE COURT: There's an issue concerning the ability of my
12 court reporter or the parties involved to understand. We may
13 have to regroup.

14 MS. SAVILLE: I understand, Your Honor.

15 THE COURT: Ms. Sarji, release the witness?

16 MS. SARJI: No objection.

17 THE COURT: Have a nice day, sir. You're released.

18 THE WITNESS: Thank you, Your Honor.

19 MR. SAVILLE: I'll make sure the speakerphone is turned
20 up as loudly as possible here.

21 [Phone ringing.]

22 MS. CAUDY: Hi, this is Lara Caudy.

23 MR. SAVILLE: Good afternoon, Ms. Caudy. This is
24 Christian Saville calling from the Dorchester County
25 Courthouse. We are on the record in the PCR hearing for

1 Mr. Jonathan Brown. How are you doing today?

2 MS. CAUDY: I'm doing well. Thank you.

3 MR. SAVILLE: Great. Great.

4 Well, we have you on speakerphone so that the court
5 reporter can hear you, and if there seems to be any issue with
6 hearing what's going on, I'll stop you and let you know. I
7 appreciate you talking with us today.

8 MS. CAUDY: Okay. Will you hold on one second so I can
9 just closed my door?

10 MR. SAVILLE: Oh, absolutely. Thank you.

11 (Pause in the proceedings.)

12 MS. CAUDY: Thank you. I just didn't want to be
13 interrupted.

14 THE COURT: Ms. Caudy? Ms. Caudy?

15 MS. CAUDY: Yes, sir.

16 THE COURT: This is Judge Brown. How are you today?

17 MS. CAUDY: I'm doing well. Thank you.

18 THE COURT: Can you hear me okay?

19 MS. CAUDY: I can, yes.

20 THE COURT: All right. I'm going to have my clerk swear
21 you in. Okay?

22 MS. CAUDY: Yes, sir.

23 THE COURT: Madam Clerk.

24 THE CLERK: Please raise your right hand. State your
25 full name for the record.

1 THE WITNESS: Lara Mary Caudy.

2 LARA MARY CAUDY,

3 after having been duly sworn, was examined and testified
4 to as follows:

5 THE CLERK: Thank you.

6 THE COURT: All right, Mr. Saville. You may begin.

7 DIRECT EXAMINATION

8 BY MR. SAVILLE:

9 Q Good afternoon, Ms. Caudy. How did you become involved
10 in this case?

11 A I was assigned to represent Mr. Brown on appeal by Robert
12 Dudek, our chief appellate defender.

13 Q Okay. And did you file an Anders brief in this case?

14 A I did, yes, sir.

15 Q And what led you to file an Anders brief rather than a
16 regular appellate brief?

17 A As opposed to a merits brief? I reviewed the whole
18 record. I read the transcript. My usual course of action is
19 to summarize the transcript as I go and make a separate list
20 of all motions and objections that were raised during the
21 course of the trial. And of course, in this case, there was a
22 separate pre-trial hearing.

23 And then, of course, I do my research and evaluate the
24 issues and determine whether there are any issues of merit to
25 raise in the brief.

1 Q And what the issue that you did raise in your Anders
2 brief?

3 A The issue I ended up raising had to do with the search
4 and seizure of Mr. Brown's cell phone. There were several
5 other issues that were raised, but to me, that was the best
6 issue of all of them.

7 Q Sure.

8 A I still determined that it didn't have any merit, but
9 that was the best of all the ones that were preserved.

10 Q Sure. And what led you to conclude that it was not a
11 meritorious ground?

12 A Ultimately, it came through the law enforcement officers'
13 testimony. Their testimony -- I think two officers testified
14 during the pretrial hearing, during the motion to suppress.
15 Their testimony differed greatly from Mr. Brown's testimony,
16 and the trial judge found the officers' testimony to be
17 credible. And they testified, essentially, that Mr. Brown
18 consented to bringing his cell phone along with him after he
19 was arrested and that they ended up seizing that cell phone
20 before he was booked into the detention center.

21 So in my -- under the judge's ruling, it was a consent
22 issue that was the exception to the warrant requirement. And
23 based on the judge's finding that the testimony was credible,
24 there wasn't much I could do on appeal with that, given the
25 standard of review.

1 Q Sure. And there has been -- I'm sorry; you were not here
2 to hear it earlier. There has been some testimony that the
3 denial of a directed verdict should have been raised on appeal
4 in this case. Did you consider raising that issue as to any
5 of the charges?

6 A I did not consider it. It was one of the preserved
7 issues that I noted. The standard for a directed verdict is
8 whether there's any direct or substantial circumstantial
9 evidence. And, in this case, there was direct evidence as to
10 all three charges. So, I ultimately decided not to raise that
11 issue.

12 Q Sure. And is there anything else you would like to tell
13 the Court about your representation of Mr. Brown?

14 A I don't believe so. Like I said, I went through the
15 record thoroughly. I noted all the motions and objections. I
16 evaluated them and ultimately decided that there were no
17 issues of merit to raise on appeal.

18 Q Thank you very much, Ms. Caudy. That's all the questions
19 I have for you. Please answer any questions that Ms. Sarji
20 may have. And if you could just bear with us for a moment,
21 we'll pass the phone back and forth.

22 A Okay. Thank you.

23 Q Thank you.

24 MS. SARJI: I'm sorry; Court's indulgence, Your Honor.

25 (Pause in the proceedings.)

1 MS. SARJI: No questions, Judge.

2 THE COURT: Ms. Caudy?

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Ms. Sarji has indicated that she does not
5 have any questions of you, so you are done for the day with
6 regards to this case. Thank you very much.

7 THE WITNESS: Thank you. Have a good day.

8 THE COURT: You as well.

9 MR. SAVILLE: Thank you, Ms. Caudy.

10 THE WITNESS: Bye.

11 MR. SAVILLE: Thank you, Your Honor.

12 And at this point --

13 THE COURT: I would note for the record that Ms. Caudy's
14 testimony was given via telephone with all parties present and
15 the consent -- and with the consent of the State as well as
16 Applicant's counsel.

17 Anything further from the State at this time?

18 MR. SAVILLE: At this point, the State would rest, Your
19 Honor.

20 THE COURT: Anything by way of argument, Ms. Sarji?

21 MS. SARJI: Nothing, Judge.

22 THE COURT: From the State?

23 MR. SAVILLE: No, Your Honor.

24 THE COURT: All right. That will conclude this matter.
25 I'm going to take a look at all the material that I have

1 concerning Applicant's Post-Conviction Relief action, and I
2 will let you all know.

3 MS. SARJI: Thank you, Your Honor.

4 MR. SAVILLE: Thank you, Your Honor.

5 (The hearing was adjourned.)
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1 CERTIFICATE OF TRANSCRIBER

2 CASE NAME/NUMBER: Jonathan M. Brown v. State of SC

3 2016-CP-18-02007

4 DATE OF HEARING: 10/01/2018

5 COURT REPORTER/MONITOR: Bonnie Kelly (retired)

6
7 I, Bobbi Fisher, do hereby certify that the foregoing
8 transcript is a true and correct record of the recorded
9 proceedings; that said proceedings were transcribed to the
10 best of my ability from the audio recording and supporting
11 information, and that I am neither counsel for, related to,
12 nor employed by any of the parties to this case, and I have no
13 interest, financial or otherwise, in its outcome.

14
15 16
17 /s/ Bobbi Fisher

18 Bobbi Fisher, Certified Transcriber

19 Date Prepared: January 18, 2023

20
21
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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Jonathan M. Brown, #360660,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

2016-CP-18-2007

ORDER OF DISMISSAL

CLERK OF COURT
DORCHESTER COUNTY

2018 NOV 21 PM 3:02

FILED-RECORDED

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 17, 2016. An evidentiary hearing into the matter was convened on October 1, 2018, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Leslie T. Sarji, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application. Based on these records and the testimony presented, the Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Dorchester County. In May 2014, the Dorchester County Grand Jury for two counts of criminal sexual conduct with a minor under eleven years of age—first degree (2013-GS-18-1408, 2013-GS-18-1409). Applicant was subsequently indicted in the July 2014 term for an additional count of criminal sexual conduct with a minor under eleven years of age—first degree (2013-GS-18-1410). John M. Loy, Esquire,

and Pierce L. Wehman, Esquire, represented Applicant at trial. Mr. Loy ("Trial Counsel") served as lead counsel. Assistant Solicitors Glenn P. Justis and Kyle L. Ward prosecuted the case. Applicant proceed to a jury trial before the Honorable Maite Murphy. The jury found Applicant guilty as indicted of all three charges. On July 16, 2014, Judge Murphy sentenced Applicant to life imprisonment for each charge, to be served concurrently.

Thereafter, Applicant filed a timely notice of appeal. Appellate Defender Lara M. Caudy ("Appellate Counsel") perfected the appeal pursuant to Anders v. California, 386 U.S. 738 (1967). Appellate Counsel briefed the issue of whether the trial court erred in denying Applicant's motion to suppress the photographs and videos found on his cellular telephone where law enforcement seized the telephone from his residence without a warrant and without consent in violation of the Fourth Amendment. The South Carolina Court of Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved on June 1, 2016. State v. Jonathan Brown, Op. No. 2016-UP-244 (Ct. App. 2016). The remittitur was returned on June 17, 2016. Applicant subsequently filed a second notice of appeal with the Supreme Court of South Carolina. The Court construed the notice of appeal as a petition for writ of certiorari and dismissed the petition on procedural grounds on June 22, 2016.

II. ALLEGATIONS

Applicant raises the following allegations in his PCR application:

1. Ineffective Assistance of Trial Counsel

- a. "Failure to raise and preserve all issues involving the phone seized during the arrest of Applicant."
- b. "Failure to object to perjury and inconsistent statements made by the officer and the Solicitor at the pretrial hearing held June 3-4, 2014, and at trial July 14-16, 2014."
- c. "Failure to request jury instruction regarding the lesser-included offense."
- d. "Failure to request that evidence be narrowed to the charge it was alleged to support."

- e. "[Trial Counsel] argued ineffectively to support a directed verdict motion and abandoned argument for the -1409 charge."
- f. "Failure to argue the admissibility of evidence #11 as constituting an illegal seizure."
- g. "Failure to request that evidence be excluded for its potential to confuse and draw sympathy from the jury."

2. Ineffective Assistance of Appellate Counsel

- a. "Failure to address warrantless seizure."

However, at the PCR hearing, Applicant enumerated the following as the allegations on which he was proceeding:

1. Ineffective Assistance of Trial Counsel

- a. "Failure to object to State's use of phone application to extract previously deleted videos."
- b. "Failure of Trial Counsel to challenge the search warrant of the phone because of hearsay in affidavit supporting the search warrant."
- c. "Trial Counsel failed to properly argue issues related to identification."
- d. "Failure to conduct thorough cross-examination on Gebhart and minor child."
- e. "Solicitor mischaracterized evidence."
- f. "Failure to object to law enforcement perjury."
- g. "Trial Counsel should have requested lesser-included offense."
- h. "Failure to challenge the admission of the tie-dye shirt."

2. Ineffective Assistance of Appellate Counsel

- a. "Should have argued seizure of phone and directed verdict issue."

III. SUMMARY OF TESTIMONY PRESENTED

Applicant testified on his own behalf at the PCR hearing. Trial Counsel was present and testified. Appellate Counsel testified by telephone with the consent of both parties.

Applicant

Applicant testified he was aware his charges carried a possible sentence of life imprisonment. Applicant testified there were several failings on the part of Trial Counsel to include pretrial motions and failure to contact witnesses including character witnesses. Applicant alleged there were differing descriptions of the room where the incidents were alleged to have

occurred. Applicant did not feel Trial Counsel thoroughly-cross examined the witnesses and should have objected to inconsistent statements by the Solicitor in closing arguments.

Applicant testified he did not consent to the officers taking his cell phone and asserted the testimony by the officers was contradictory. Applicant recalled Trial Counsel did raise the issue of the warrantless seizure when attempting to suppress evidence, but alleged Trial Counsel did not raise other issues pertaining to the cell phone including the issue that one victim alleged the phone used to take pictures of Applicant raping her was multicolored while the phone seized was not.

Applicant alleged Victim Minor 1, his daughter, did not testify and therefore the two charges pertaining to her should have been dismissed. According to Applicant, there was no evidence at all for indictments -1409 and -1410.

Applicant also asserted he should have received a charge for the lesser-included offense of assault and battery of a high and aggravated nature ("ABHAN") especially on indictment -1409, as Applicant alleged there was no proof of sexual battery.

As to his tie-dye shirt seen in the video-recorded of the sexual battery, Applicant testified police came into his house two or three times with search warrants after he was apprehended, and Detective Mosher contacted Applicant's now-ex-wife who gave him the shirt.

Applicant testified Appellate Counsel stated in her brief that the argument was without legal merit but should not have done that because it was undoubtedly a warrantless seizure. Applicant also recalled he told Appellate Counsel she raise an issue about the contradictory testimony by law enforcement. Applicant also opined Appellate Counsel should have raised an issue regarding the denied directed verdict motion for indictment -1408.

Trial Counsel

Trial Counsel explained this was a case of overwhelming evidence against Applicant. Unsurprisingly, there were no plea offers. This evidence included video and photographs pulled from Applicant's cell phone which showed someone in Applicant's living room wearing Applicant's tie-dye shirt committing various sexual batteries on his daughter, ("Minor 1"), and his niece ("Minor 2"). One video showed what appeared to be Applicant digitally penetrating Minor 1's vagina in Applicant's living room. Another video showed what appeared to be Applicant penetrating his daughter Minor 1's anus with his penis. There were various other incriminating photographs and videos found on the phone. This includes pictures of what appears to be Applicant pulling down his niece Minor 2's underwear to display her vagina as well as Minor 1 performing fellatio on what appears to be Applicant in the same aforementioned tie-dye shirt. Trial Counsel recalled Applicant's now-ex-wife volunteered the tie-dye shirt to law enforcement.

Trial Counsel recalled there were forensic interviews conducted with each of the two victims, and he was actually successful in suppressing the forensic interview of Applicant's daughter Minor 1 as she was unable to be cross-examined when she became nonresponsive on the witness stand. However, despite his efforts, he was unable to suppress the forensic interview of Applicant's niece Minor 2. Minor 2 also testified however that Applicant digitally violated her and made Minor 1 demonstrate acts such as fellatio which Minor 2 refused to do.

Trial Counsel testified he challenged the seizure of Applicant's cell phone but was unsuccessful as the trial judge ruled Applicant consented to the seizure of his phone, which was supported by the testimony of law enforcement officers. Trial Counsel recalled Applicant's version of events was he did not consent to the seizure of his phone but law enforcement's testimony was he consented to them taking the phone to the station when they were securing the

home. Trial Counsel recalled the Solicitor also argued inevitable discovery in support of the seizure, notwithstanding, but Trial Counsel was not sure if that would have been successful without the consent. Trial Counsel also recalled that after the seizure, law enforcement did obtain a search warrant for the contents of the phone before they searched the phone. Trial Counsel recalled the phone was initially set to airplane mode and secured in a locked drawer since the evidence room was not open during the weekend.

Trial Counsel testified he met with Applicant numerous times prior to trial and Applicant had a very fantastical theory that law enforcement used a phone app to place the video and photographs of Applicant sodomizing and committing other sexual batteries on his niece and daughter on his phone while it was in law enforcement custody. Of course, this footage from Applicant's cell phone also showed the crimes were committed by someone in Applicant's living room and wearing Applicant's distinctive tie-dye shirt. In actuality, law enforcement used an app that recovers deleted files.

Trial Counsel testified Applicant had changed his appearance dramatically from the time of the incident to the time of trial.

As to lesser-included offenses, Trial Counsel testified there was no doubt in anyone's mind that Victim's daughter was sodomized and, of course, he characterized the evidence against Applicant as overwhelming.

Appellate Counsel

Appellate Counsel testified by telephone she filed an Anders brief in this case. She testified her procedure was to look through the record for appealable errors and she found no valid issues. She testified she chose the issue of the seizure of Applicant's cell phone because she felt it was the best issue, but she qualified, it still was not a meritorious issue.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). However, it is incumbent upon Applicant to likewise show performance by appellate counsel was deficient and he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005).

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

First, this Court finds the testimony of both Trial Counsel and Appellate Counsel to be credible and persuasive. By contrast, this Court finds the testimony of Applicant to be self-serving and lack credibility.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

This Court finds Applicant has failed to prove he is entitled to post-conviction relief on any of his allegations of ineffective assistance of trial counsel. This Court finds Trial Counsel rendered competent and calculated representation against a remarkably strong case for the State and a difficult case to try before a jury, and Applicant has furthermore failed to satisfy his burden of proving prejudice from any alleged deficiencies in Trial Counsel's performance.

The trial record and testimony reflects Trial Counsel thoroughly challenged the seizure of Applicant's cell phone from which the incriminating videos and photographs of various sexual batteries were extracted. ROA p. 66, l. 19; p. 100, l. 23. Trial Counsel moved to suppress these materials as fruit of the poisonous tree as the phone was seized without a warrant and argued the facts did not give rise to an exception of the warrant requirement because Applicant did not consent. However, as Trial Counsel testified, the trial judge believed law enforcement who testified Applicant did consent to them taking possession of his phone and found the State met its burden of proving proper consent. ROA p. 106, l. 12. This Court finds Trial Counsel acted well within the standard of reasonable professional norms in moving to suppress the evidence based

on a warrantless seizure and lack of consent. Therefore, Applicant has failed to meet his burden of proving Trial Counsel was deficient as to this allegation. Moreover, Applicant has failed to demonstrate that but for Trial Counsel's alleged deficiencies, the evidence would have been suppressed or the outcome would have been any different, as the trial judge simply and properly found Applicant consented to the seizure of his phone based on testimony from law enforcement.

Failure to object to State's use of phone application to extract previously deleted videos

Applicant alleges Trial Counsel was ineffective for failing to object to the State's use of a phone application to extract previously deleted videos. This Court finds this allegation to be meritless. Trial Counsel testified that during his representation Applicant was preoccupied with a theory the State somehow implanted the incriminating materials onto his cell phone. Now, Applicant appears to concede they were previously deleted videos but argues Trial Counsel should have objected to their extraction.

As the record reflects and Trial Counsel testified, law enforcement did use a forensic program known as Secure View 3 by Susteen to recover the deleted videos and photographs appearing to show various instances of Applicant sexually penetrating his daughter and niece in various manners. ROA p. 369, l. 11. Furthermore, the record reveals and Trial Counsel testified the phone was seized then securely stored in a locked drawer and placed on airplane mode, which prevents signal from leaving the device or being received by the device, over the weekend following Applicant's arrest. ROA p. 97, l. 6. To the extent Applicant claims law enforcement fabricated these materials or transmitted them from another device to Applicant's phone, this claim is, as Trial Counsel testified, fantastical. This Court observes a warrant is generally required before a search of information stored on a cell phone, even when the cell phone is seized incident to arrest. Riley v. California, 134 S.Ct. 2473, 2493 (2014). Here however, the

phone was seized at Applicant's home pursuant to Applicant's consent. ROA p. 81, l. 12. Later, *after* obtaining a search warrant for the contents of the phone, and only then, law enforcement used the forensic program to retrieve the deleted incriminating materials. ROA p. 367. There was nothing illegal about law enforcement's retrieval of the incriminating materials on Applicant's cell phone by way of the forensic program. Accordingly, there was nothing objectionable about this issue and Trial Counsel cannot be held deficient for failing to object. Furthermore, Applicant has failed to prove prejudice from the alleged deficiency because even if Trial Counsel had objected, there was no legal basis on which to object, and therefore there is no reasonable probability the outcome of the proceedings would have been different had Trial Counsel objected. This allegation is accordingly dismissed with prejudice.

Failure of Trial Counsel to challenge the search warrant of the phone because of hearsay in affidavit supporting the search warrant."

Applicant also alleges Trial Counsel was ineffective for failing to challenge the search warrant of the phone due to hearsay in the affidavit supporting the search warrant. Applicant presented no probative evidence to support this allegation other than this bare allegation. Nevertheless, this Court finds the record reveals ample basis for probable cause to support a search warrant of Applicant's phone. Testimony from trial revealed the seized phone belonging to Applicant was red and black, which does coincide with the victim's description of Applicant's phone as multicolored, which she described as being involved in the crime as Applicant used the phone to film the sexual acts. ROA p. 365, l. 12. This Court also observes both victims had incriminated Applicant in this crime at that time as the latest of incidents occurred on July 28, 2013, and the victims' forensic interviews were conducted July 29, 30, and 31, of 2013. Law enforcement already had probable cause to support an arrest warrant of Applicant before even

seizing the phone. ROA p. 80, l. 1. Notwithstanding Applicant's failure to present any evidence as to how the search warrant was unsupported by probable cause and objectionable, this Court finds the search warrant was comfortably supported by probable cause in consideration of disclosures by both Minor 1 and Minor 2 as well as findings of vaginal irritation by a doctor who examined Minor 2. ROA p. 252, l. 10. As there is nothing in the record to suggest the search warrant supporting the search of Applicant's phone was objectionable, this Court finds Trial Counsel was not ineffective for not objecting to this search warrant. Furthermore, this Court finds Applicant was not prejudiced by Trial Counsel's lack of objection because there is no reasonable probability an objection to this constitutional search would have changed the outcome of the proceedings. This allegation is therefore dismissed with prejudice.

Trial Counsel failed to properly argue issues related to identification.

Applicant alleges Trial Counsel failed to properly argue issues related to identification. This Court finds this allegation to be meritless. Again, Applicant failed to provide any probative evidence to support his establishment of deficiency or prejudice regarding this allegation. This Court observes the obvious point that the two victims in this case were Applicant's daughter and niece and therefore possessed independent ability to identify Applicant as the perpetrator. This Court does note Applicant's niece Minor 2 was unable to identify Applicant in the courtroom during trial, though she was able to identify the man who sexually violated her as her uncle Jon. ROA p. 173, l. 19. This is explained by the fact Applicant had dramatically changed his appearance from the time of the incident to the time of trial, as Trial Counsel credibly testified. Applicant had a long, curly beard and long, curly hair at the time of the incident but not at trial. ROA p. 190, l. 22. After reviewing the record in its entirety and passing upon the testimony of witnesses at the PCR hearing, this Court finds no meritorious issues which Trial Counsel could

have successfully raised at trial and therefore finds Applicant has failed to satisfy his burden of proving deficiency of Trial Counsel regarding this allegation. Moreover, Applicant has offered no testimony or probative evidence of how he was conceivably prejudiced by Trial Counsel's performance in this regard. Accordingly, this allegation is dismissed with prejudice.

Failure to conduct thorough cross-examination on Gebhart and minor child.

Applicant alleges Trial Counsel failed to conduct thorough cross-examination of Detective Gebhart and Minor 2. This Court finds these allegations to be meritless.

This Court observes Trial Counsel asked no questions of Detective Gebhart on cross-examination at trial. ROA p. 377, l. 3. First, this Court recognizes the difficult position of Trial Counsel following Detective Gebhart's direct examination which included the presentation of substantial video and photographic evidence of Applicant sodomizing and otherwise sexually assaulting his niece and daughter. During Detective Gebhart's testimony, he was able to point out articles of clothing found on the victims and Applicant which were recovered during the investigation of this case. Detective Gebhart also testified about the legitimate and legal means by which he extracted the deleted videos and photographs from Applicant's cell phone with a forensic program. This Court finds nothing in the record from which to infer there was anything beneficial to the defense to be gained by further questioning Detective Gebhart regarding his involvement in the case. Trial Counsel's opportunity for cross-examination occurred after the jury had witnessed disturbing footage of explicit sexual acts being committed upon Applicant's niece and daughter. This Court finds Trial Counsel's decision not to cross-examine Detective Gebhart at that time reasonable as not only would it have been ill-advisable to reference the photographs and videos any longer, but also Detective Gebhart had already thoroughly explained

the means by which the evidence was obtained. Accordingly, this Court finds Applicant has failed to prove Trial Counsel was deficient as to this allegation.

Furthermore, the nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). At the PCR hearing, Applicant failed to present any questions Trial Counsel allegedly failed to ask, and failed to present any testimony showing the answers at trial would have benefited Applicant. The likely result would have been keeping the disturbing materials in the forefront of the jury's minds for even longer than necessary while allowing Detective Gebhart to go into further detail about the materials or the legitimate means by which he recovered them. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. This Court finds there is no reasonable probability the outcome of the proceeding would have been any different had Trial Counsel cross-examined Detective Gebhart differently, and this allegation is dismissed with prejudice.

Applicant also alleges Trial Counsel failed to thoroughly cross-examine the minor victim in this case. This Court finds this allegation to be meritless. While Applicant presented no testimony as to what should have been asked of the minor victim in this case, this Court interprets this allegation to relate to Minor 2, as Minor 1 was unable to be cross-examined because she was nonresponsive and Trial Counsel cannot conceivably held ineffective for failing to cross-examine a witness who was unresponsive.

During direct-examination, Minor 2 testified to watching a movie with Minor 1 and Applicant but when she tried to leave to go to bed, Applicant stopped her and made him touch his "boy part," and eventually touching her in "both girl parts," to include "in" her "girl parts." ROA p. 166, l. 19 – p. 168, l. 3. Minor 2 also identified the shorts she was wearing during the assault which were of course later displayed in photographs found on Applicant's cell phone. ROA p. 172, l. 17. On cross-examination, Trial Counsel was able to question Minor 2 as to how such an assault could occur in a "little house" without someone else hearing or finding out what was happening. ROA p. 175, l. 19. Trial Counsel was also able to raise the issue of the possibility that Minor 2's conversations with Minor 1 had "planted the seed" of these allegations against Applicant prior to her forensic interview. ROA p. 183, l. 24. Trial Counsel also questioned Minor 2 regarding possible inconsistencies in her recollection recited to the Solicitor and her statements in the forensic interview. ROA p. 186, l. 13.

This Court finds Trial Counsel thoroughly cross-examined Minor 2 despite the inherently delicate situation of cross-examining a nine year-old criminal sexual conduct accuser in front of a jury. This Court finds Trial Counsel asked questions reasonably calculated to aid Applicant's defense. Accordingly, Applicant has failed to satisfy his burden of proving Trial Counsel was deficient in his cross-examination of Minor 2. Moreover, as noted above, Applicant has failed to present any probative evidence as to how further cross-examination or different questions of Minor 2 would have benefited him at trial. Accordingly, this allegation is dismissed with prejudice.

Mischaracterization of evidence by the Solicitor.

Applicant alleges Trial Counsel should have objected to mischaracterization of evidence by the Solicitor in this case. This Court finds this allegation to be meritless. This Court finds

nothing in the Solicitor's statement problematically mischaracterized evidence or was otherwise objectionable. Furthermore, the Solicitor's arguments were based upon reasonable inferences from the record and did not represent the statements and testimony by the victims or the physical evidence in this case. Moreover, Trial Counsel thoroughly challenged the State's evidence in his own closing argument by raising the issue of how the conduct could have occurred while others were in the home and challenged the physical evidence in this case such as Applicant's DNA sample. ROA p. 425. Trial Counsel also effectively challenged the redness in Minor 2's vaginal area which the Solicitor referenced in his closing argument by suggesting the irritation was caused by sand from the beach where they had been playing earlier. ROA p. 426. Therefore, Applicant has failed to prove Trial Counsel was deficient for challenging the alleged mischaracterization of evidence by the solicitor as this Court finds there was no instance of such mischaracterization and Trial Counsel thoroughly attacked the State's evidence against Applicant in his closing argument. Furthermore, Applicant has also failed to establish prejudice by this alleged deficiency as there was ample evidence upon which to convict Applicant regardless, including video footage and photographs of what appears to be him sodomizing and violating his daughter and niece in various instances, semen found in Minor 2's vaginal area, and testimony from both victims. Accordingly, this allegation is dismissed with prejudice.

Failure to object to law enforcement perjury.

Applicant alleges Trial Counsel was ineffective for failing to object to law enforcement perjury. Specifically, Applicant theorized law enforcement witnesses lied as to who was present at the time of his arrest and whether Applicant gave consent for law enforcement to take his phone at that time. This Court finds the allegation to be meritless. First, this Court finds Applicant has presented no evidence of perjury by law enforcement other than his own

testimony, which this Court finds not credible. There is no documented record of the testimony by law enforcement at the preliminary hearing, where it is the norm for court reporters not to be present. As Trial Counsel testified, law enforcement's version of events and Applicant's version of events differed as to how his phone was seized. Officers present at Applicant's house testified Applicant consented to them taking the phone while they were securing the residence. ROA p. Applicant's version of events was law enforcement were looking were the phone, he motioned towards the phone, and law enforcement took the phone without asking permission, noting, "That's the phone in question, we're taking it." ROA pp. 74-75. All parties agreed Applicant asked law enforcement into his home when they arrived on his front porch. ROA p. 71, l. 11; p. 80, l. 16.

Detective Mosher, who went to Applicant's home with numerous other officers with the arrest warrant, testified pretrial Applicant asked if they could all step inside so as not to "air his business" where neighbors could see. ROA p. 80, l. 16. Prior to leaving the residence to go to the station, law enforcement was securing Applicant's residence and ensuring he had the property he wanted with him to take to jail and asked if he wanted them to take his cell phone and keys, to which Applicant affirmed he did. ROA p. 81, ll. 6-10. In fact, Detective Mosher testified pretrial the reason he did not prepare a search warrant for the phone before responding to the home was because the apprehension of Applicant was more important than recovering the phone at that point anyway, evidencing the fact Detective Mosher had no plan to take the phone absent Applicant's consent. ROA p. 86, ll. 11-22. Detective Mosher's testimony at trial was consistent with his pretrial testimony, reiterating the fact Applicant asked law enforcement to bring some of his belongings including his cell phone. ROA p. 381, l. 14. As Trial Counsel summarized, it was law enforcements'

This Court finds Applicant has failed to satisfy his burden of proving Trial Counsel was deficient regarding this allegation as Applicant has presented no credible evidence of perjury on the part of law enforcement and there was nothing to give rise to a valid objection. Furthermore, Applicant has failed to prove prejudice from this allegation as there is no reasonable probability that if Trial Counsel objected on the basis of perjury, the outcome would have been any different. This Court also notes Trial Counsel nevertheless adequately cross-examined law enforcement and argued at length against the validity of the search and seizure Applicant alleges law enforcement lied about. Accordingly, this allegation is dismissed with prejudice.

Trial Counsel should have requested the lesser included offense.

At the PCR hearing, Applicant alleged Trial Counsel should have requested the lesser-included offense of ABHAN, "especially as to -1409." This Court finds this allegation to be meritless. First, Trial Counsel was not deficient for failing to request a lesser included offense because it would have been frivolous to do so. For a defendant to be entitled to a jury instruction on a lesser-included offense, there must be some evidence in the record that would tend to show that the defendant is guilty of the lesser rather than the greater offense. State v. Fields, 356 S.C. 517, 589 S.E.2d 792 (Ct. App. 2003); State v. Funchess, 267 S.C. 427, 229 S.E.2d 331 (1976). The possibility that the jury might believe some of the State's case and not the rest is an insufficient argument for a lesser-included offense instruction. Id. However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. State v. Smith, 315 S.C. 547, 549, 446 S.E.2d 411, 413 (1994).

In this case, all evidence indicated Applicant was, barring any imaginable possibility misidentification, guilty of criminal sexual conduct with a minor, first-degree. Applicant was

charged with criminal sexual conduct with a minor under S.C. Code § 16-3-655:

A person is guilty of criminal sexual conduct with a minor in the first degree if (1) the actor engages in sexual battery with a victim who is less than eleven years of age...

"Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, *however slight*, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes. S.C. Code § 16-3-651(h) (emphasis added).

Applicant was indicted for three counts of criminal sexual conduct with a minor, first-degree. Indictment -1408 alleged Applicant made his daughter Minor 1, who was under eleven years of age, perform fellatio on him. Minor 1 did not testify substantively about the abuse at trial. However, Minor 2 testified at trial and stated in her forensic interview that Applicant made Minor 1 perform fellatio on him as a demonstration to Minor 2 who refused. ROA p. 168, l. 12 – p. 169, l. 2. This was the evidence at trial presented as to this indictment, and there was no testimony that Minor 1 was violated any less than by way of sexual battery, specifically as to this indictment, fellatio. Therefore, there was no reason to request a lesser included offense for ABHAN as to this indictment, and there is no reasonable probability Applicant would have been found guilty of ABHAN rather than CSC with a minor, first-degree as to this indictment. It follows Applicant has failed to prove both deficiency and prejudice regarding this allegation. Accordingly, this allegation is dismissed with prejudice.

As to Indictment -1409, there was likewise no reason to request the lesser included offense of ABHAN and again no reasonable probability such a strategy would have changed the outcome of the proceedings. Indictment -1409 alleged Applicant digitally penetrated his niece Minor 2, who was under eleven years of age at the time, in her vagina. This is precisely what the evidence and testimony at trial indicated. Minor 2 testified at trial and disclosed in her forensic

interview that Applicant touched her in "both girl parts" with his hands. ROA p. 167, l. 19. When asked whether Applicant touched her "on" or "in" her "girl parts," Minor 2 clarified "both." ROA p. 167, l. 25 – p. 168, l. 3. Minor 2's testimony was corroborated by Dr. Busch's medical examination of Minor 2. Dr. Busch observed Minor 2 to have inflammation and redness on the labia majora and labia minora. ROA p. 252, ll. 10-17. Minor 2 was also very tender in that area. ROA p. 250, l. 10. All this, in conjunction with photographic evidence of Applicant pulling down Minor 2's underpants to expose her vaginal area for the camera, provided more than ample basis for the jury to convict Applicant of CSC with a minor, first-degree as to this indictment. Trial Counsel was not deficient for failing to frivolously and pointlessly request this charge. Moreover, Applicant was not prejudiced by Trial Counsel's failure to do so because there is no reasonable probability the charge would have been granted or Applicant would have been convicted of ABHAN rather than CSC with a minor, first-degree. Accordingly, this allegation is dismissed with prejudice.

As to Indictment -1410, this Court also finds there was no basis to request the lesser-included offense of ABHAN and likewise no probability such an avenue would have been successful. Indictment -1410 alleged Applicant anally penetrated his daughter Minor 1, who was less than eleven years of age at the time. Trial Counsel credibly testified there was "no doubt" to anyone in the courtroom that Minor 1 had been sodomized. This charge was evidenced by multiple items of explicit video and photographic evidence extracted from Applicant's cell phone and presented at trial of what appeared to be Applicant anally penetrating his daughter Minor 1 with his penis in Applicant's living room. ROA p. 374, l. 20; p. 375, l. 12. Clearly, this evidence supported only the charge of CSC with a minor, first-degree. Trial Counsel was therefore not deficient for failing to request the charge, and Applicant has failed to prove he was prejudiced by

Trial Counsel's to request a charge which would not have been granted or successful. Accordingly, this allegation is dismissed with prejudice.

This Court also notes it is apparent a theory of Applicant's defense was this was a case of misidentification, as evidenced by the closing argument. ROA p. 427, ll. 7-12. Notwithstanding the fact the evidence in this case in no way called for a lesser-included offense, the inclusion of a lesser-included offense would not have been consistent with such a trial strategy.

Failure to challenge the admission of the tie-dye shirt (State's #11).

Applicant alleges Trial Counsel was ineffective for failing to challenge the admission of the tie-dye shirt. This Court finds this allegation to be meritless. First, this Court observes Trial Counsel did object to the admission of the tie-dye shirt on the basis of relevance when the State first moved to introduce it during testimony from Applicant's now-ex-wife that it was one of Applicant's "most favorite shirts." ROA p. 221, l. 10. The State agreed to hold off on introducing the shirt. ROA p. 221, l. 15. Later, of course, the relevance of the shirt was apparent as it appeared to be the shirt worn by the perpetrator of the sexual batteries recorded on Applicant's cell phone.

This Court finds no legal basis to challenge the admissibility of the shirt, and therefore Trial Counsel was not deficient regarding this allegation. Applicant's then-wife voluntarily offered the shirt to investigators in this case. There were no legitimate Fourth Amendment issues regarding this evidence, nor any other reason to challenge its admissibility.

Furthermore, this court notes that regardless of the admission of the actual shirt, a photograph of Applicant wearing the shirt was also admitted. ROA p. 223, ll. 1-5. Therefore, even if the shirt was kept out of evidence successfully, the jury would have been well aware Applicant had worn such a shirt. Furthermore, the shirt was a relatively minor point considering

the explicit materials depicting the sexual batteries of both *Applicant's* niece and daughter in *Applicant's* living room were found on *Applicant's* phone. There is no reasonable probability, absent Trial Counsel's alleged deficiencies regarding this allegation, the outcome of the proceeding would have been different. Accordingly, this allegation is dismissed with prejudice.

Failure to request that evidence be narrowed to the charge it was alleged to support.

While the allegation "failure to request that evidence be narrowed to the charge it was alleged to support" was not one of the allegations enumerated by Applicant as an allegation upon which he was proceeding, this Court nevertheless address the allegation as it was raised in his original PCR application. This Court finds this allegation to be meritless. Applicant has failed to establish his burden of proving Trial Counsel was deficient regarding this allegation or how Trial Counsel should have performed as to this allegation. This Court observes Trial Counsel was able to keep one forensic interview from being presented in court and argued vigorously against the admission of all forensic interviews as well as the incriminating materials from Applicant's cell phone. This Court finds no deficiency in Trial Counsel's performance regarding the framing of the evidence in this case. Moreover, Applicant has failed to present any evidence as to how he was prejudiced by Trial Counsel in this regard. As previously noted in this Order, the State presented ample evidence upon which to base a conviction for each charge of CSC with a minor, first-degree, to include testimony, videos, photographs, forensic interviews, and physical evidence. This Court finds Applicant has failed to satisfy his burden of proving both deficiency and prejudice as to this allegation. Accordingly, this allegation is dismissed with prejudice.

Trial Counsel argued ineffectively to support a directed verdict motion and abandoned argument for the -1409 charge.

While the allegation "Trial Counsel argued ineffectively to support a directed verdict motion and abandoned argument for the -1409 charge" was not one of the allegations

enumerated by Applicant as an allegation upon which he was proceeding, this Court nevertheless address the allegation as it was raised in his original PCR application. This Court finds the allegation to be meritless. A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). At the PCR hearing, Trial Counsel reasonably described this as a case of overwhelming evidence. This is a reasonable conclusion considering the conclusiveness of the photo and video evidence, Minor 2's testimony and forensic interview, and other physical evidence.

Indictment -1408 was supported by Minor 2's testimony as well as forensic interview detailing Applicant forcing his daughter Minor 1 to perform fellatio on him as a demonstration to Minor 2. Indictment -1409 was supported by Minor 2's forensic interview and statement that Applicant used his hand to touch both "on" and "in" her "girl parts." This was corroborated by the physical evidence of inflammation and tenderness in Minor 2's vaginal area as well as the picture from Applicant's phone showing what appears to be Applicant pulling down Minor 2's underwear to display her vaginal area. Indictment -1410 was supported by the video and photographic evidence from Applicant's cell phone showing what appears to be Applicant sodomizing Minor 1 in his living room.

Clearly, the State presented ample evidence to support a conviction on each of the three counts of CSC with a minor, first-degree. Therefore, Trial Counsel was not deficient as Trial Counsel is not ineffective for failing to raise a frivolous argument. Notwithstanding, in light of the evidence, there is no reasonable likelihood the court would have granted the motion for directed verdict had Trial Counsel argued differently. Accordingly, this allegation is dismissed with prejudice.

Failure to request that evidence be excluded for its potential to confuse and draw sympathy

from the jury.

Again, this allegation was not one of the allegations enumerated by Applicant as an allegation upon which he was proceeding. Nevertheless, this Court will address the allegation as it was raised in his original PCR application. This Court finds the allegation to be meritless. While Applicant provided no probative evidence or testimony to support this allegation, this Court notes Trial Counsel exercised reasonable professional judgment and effectively represented Applicant in this regard. The record reveals Trial Counsel did argue against the admissibility of irrelevant and prejudicial comments made by the victims in their forensic interviews. ROA p. 38, l. 21. Trial Counsel took issue with comments such as "My uncle's in jail now," "He's kind of a mean person," and "I wish there was a machine to take away bad memories." ROA pp. 40-42. Pursuant to Trial Counsel's argument, various portions were redacted. ROA p. 44. The trial judge ruled the second and third forensic interviews met the statutory requirements for admissibility but would have to be redacted to show only the material pertinent to the charged conduct of Applicant. ROA p. 64, l. 24.

This Court finds no evidence in the record or from the PCR hearing that Trial Counsel's conduct was deficient regarding evidence with potential to mislead or confuse the jury. Applicant has therefore failed to satisfy his burden of proving deficiency. Moreover, this Court finds Applicant has failed to prove prejudice from this allegation in light of the tremendous amount of evidence against Applicant, the lack of evidence with potential to mislead or confuse the jury in this case, as well as the redactions to the forensic interviews successfully obtained by Trial Counsel. Accordingly, this allegation is dismissed with prejudice.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant alleges Appellate Counsel was ineffective for failing to argue regarding the

warrantless seizure of Applicant's cell phone as well as the directed verdict issue. This Court finds this allegation to be meritless.

Appellate Counsel did brief the issue regarding the warrantless seizure of Applicant's cell phone, albeit in an Anders brief. During the PCR hearing, Appellate Counsel testified she reviewed the record and believed this to be the best issue, although still not a meritorious one. The South Carolina Court of Appeals agreed after review of the record and Applicant's pro se brief. Both were correct that Applicant did not have a meritorious issue regarding the seizure of his cell phone. "Warrantless searches and seizures are unreasonable absent a recognized exception to the warrant requirement." State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (1990) (citing Mincey v. Arizona, 437 U.S. 385, 390 (1978)). Recognized exceptions to the warrant requirement include plain view, exigent circumstances, and *consent*. Wright, 391 S.C. at 442 (emphasis added). Following a lengthy suppression hearing a trial, the trial judge found the State met its burden in proving proper consent based on the officer testimony Applicant consented to bringing the phone with him to the police department, and the Fourth Amendment does not require the police to inform him he can refuse the consent. Moreover, the trial judge ruled it was certainly reasonable to seize the phone at the police department in order to preserve evidence as it could be wiped remotely. ROA p. 106, l. 12 – p. 107, l. 9. There is nothing in the record to suggest the trial judge abused her discretion regarding this issue, rather the testimony of law enforcement and the nature of evidence on cell phones supports her determination of both consent and reasonableness of law enforcement's conduct regarding Applicant's cell phone. As this was not a meritorious issue, Appellate Counsel was not deficient for failing to raise these arguments in a merits brief. Furthermore, as also evidenced by the Court of Appeals' review of the record and dismissal pursuant to Anders, there is no reasonable probability these arguments

would have been successful if raised in a merits brief. Accordingly, Applicant has failed to establish both deficiency and prejudice and this allegation is dismissed with prejudice.

Likewise, Appellate Counsel was not ineffective for challenging the denial of a directed verdict. On appeal from the denial of a directed verdict, an appellate court must review the evidence in the light most favorable to the State. State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001). A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Id. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find the case was properly submitted to the jury. Id. In this case, there was substantial evidence of Applicant's guilt as to every indictment, and therefore, Appellate Counsel was not deficient for failing to challenge the denial of directed verdict on appeal. As this Court has already observed, Indictment -1408 was supported by Minor 2's testimony as well as forensic interview detailing Applicant forcing his daughter Minor 1 to perform fellatio on him as a demonstration to Minor 2. Indictment -1409 was supported by Minor 2's forensic interview and statement that Applicant used his hand to touch both "on" and "in" her "girl parts." This was corroborated by the physical evidence of inflammation and tenderness in Minor 2's vaginal area as well as the picture from Applicant's phone showing what appears to be Applicant pulling down Minor 2's underwear to display her vaginal area. Indictment -1410 was supported by the video and photographic evidence from Applicant's cell phone showing what appears to be Applicant sodomizing Minor 1 in his living room. As Trial Counsel testified, there was no doubt Minor 1 was sodomized.

Clearly, the State presented ample evidence to support a conviction on each charge of CSC with a minor, first-degree. Appellate Counsel was not deficient for failing to raise this frivolous issue. Moreover, Applicant has failed to prove prejudice from Appellate Counsel's

failure to raise this issue because this argument would not have been successful on appeal. Accordingly, Applicant's allegation of ineffective assistance of appellate counsel is dismissed with prejudice.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice in regard to all allegations; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 16 day of Nov, 2018. *DCB*


D. CRAIG BROWN
Presiding Judge
First Judicial Circuit

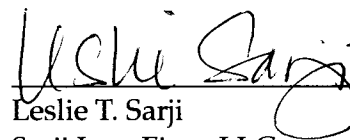
Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case Number: 2016-CP-18-02007
JONATHAN BROWN,	)	
	)	
Applicant,	)	MOTION TO ALTER OR AMEND JUDGMENT
-versus-	)	PURSUANT TO RULE 59(e)
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	

Applicant, Jonathan Brown, hereby moves this honorable Court for an Order to Alter or Amend the Judgment Filed on November 21, 2018 in the above referenced case, for the grounds listed in 'Exhibit A'.

Undersigned counsel has filed this Motion upon the instruction of Applicant and offers no certification of the merits contained herein.

Respectfully submitted,



Leslie T. Sarji
 Sarji Law Firm, LLC
 P.O. Box 20248
 Charleston, South Carolina 29413
 (843)722-5354

Charleston, South Carolina
 November 28, 2018

FILED-RECORDED
 2018 NOV -4 AM 8:39
 CLERK OF COURT
 DORCHESTER COUNTY

2018 DEC - 11 PM 8:00

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A. My claim against Ms Caudy improperly arguing my issues and ignoring others. She claimed that an admitted warrantless seizure was without merit. Mosher testified at Pretrial 3-4 June 2014 that he understands the process and reasons for them Pg 85 L 19 - Pg 86 L 10. He also says that he knew the phone was important but he chose not to get a warrant for it. On Pg 89 L 13 - 20 that my property was collected and went back to the station with me. "It just so happened to be the phone that we were interested in". The officers took possession of my phone at my residence. As they claim to have seized it at the station. They did not have a warrant to do so. Judge Murphy ruled Pg 106 L 14 - 18 - "... The state has met its burden in proving there was proper consent. The officer testified that the phone was in his hand. The defendant consented to bringing the telephone with him ...". The Judge based this ruling on believing the officer over me. For the purposes of Ms Caudy's appeal she should have raised the fact that Mosher committed perjury. Mosher testified Pg 80 L 13-14 "Myself and Sgt Jones knocked on the front door Mr Brown answered the door ...". At the trial Mosher testified Pg 381 L 6-9 "Myself and Jones approached the residence ... As we approached we were met by Brown who was exiting the front door." While it may be understandable for a judge to believe

Search
warrants

an OFFICER'S TESTIMONY over a defendant. For the purposes of AN APPEAL when that OFFICER is shown to lie. That ruling should come in to question.

Ms CAUDY did not Argue the denial of the Directed Verdict MOTION LoY made at Trial Pg 293 L 3- Pg 394 L 13 LoY motioned for charge 1410 Against Minor 1 Alleged to take place between July 20 11 and July 27 2013 The victim did not testify the only evidence Alleged by the State to support this charge. Was evidence said to come off of Browns Phone. As date and Time ARE elements of the charge they too must be proven they were not. This DV MOTION should have been granted. and should have been Argued by Ms CAUDY.

I. LoY
LoY neglected to raise the issue of wrongful seizure of phone. The phone seized during the arrest of Brown did not match the Description Minor 2 gave Mosher And the nurse at Summerville Hospital. She told them it was multi-color The Phone the officers seized at the Arrest was Black

II Gebhardt swore the phone was in the defendant's possession at the time of the arrest and the victim claimed the phone used during the incident. Gebhardt was not present when the arrest was made Pg 99 L 22 - Pg 100 L 1 And he never spoke to the victim. As a warrant can't be sworn to hearsay this makes the warrant invalid

III After seizing the phone Gebhardt placed it in a desk draw not properly into evidence Pg 97 L14-18. There is no record of the phone until 8/2/2013 as per Sunnysville chain of custody

IV In Gebhardt's written report as well as in his testimony at trial he allowed "apps" to download to the phone prior to searching it on July 30 2013 Pg 368 L15-19 this altered the content of the evidence. You had to remove the phone from airplane mode to allow this at that point the phone is open to receive anything. ^{4B} What were Gebhardt's training / qualifications to perform these actions. He searched phone twice 29 July and 30 July

V On Pg 371 L3-17 The CD said to contain information from the phone this is a copy not the original there is no way to prove that this information actually came from the phone. This is a violation of the Best Evidence Clause

All of these points render the evidence inadmissible and should have been argued by LoY.

VI The evidence alleged to come from the phone particularly the videos. LoY should have argued their subduction due to rule 403. The victim Minor did not testify to this evidence or to any crime at all. To show this evidence and let the jury assume it is the defendant is wrong there is no proof to the identity nor when or by whom the images are of. Rule 403 allows the exclusion of relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice, a tendency

ON AN IMPROPER basis. Such as emotion alone.

2. Loy Failed to object to Perjurious and inconsistent STATEMENT made by officers and the Solicitor AT Pretrial and Trial

I Starting with the Solicitor Mr Justis AT Pre Trial 3-4 June 2014. He tells the Judge, Brown has been indicted on 3 True billed indictments Pg 3 L 3-7 AT ~~Pre~~ - that time Brown had been indicted on 1408 and 1409 on MAY 1, 2014. The third did not come until June 26, 2014 Pg 453-458. He knew this and lied to help sway the Judge into allowing evidence to be Admitted

II Justis referring to Minor 2 Identification of me AT Trial Pg 406 L10-11 "... because I asked her on redirect what did this person look like and what did she SAY. Long hair, beard." When Minor 2 ACTUALLY said Pg 190 L20-24 "Long, curly hair and a long, curly beard"

III Pg 407 L10-16 "She [minor 2] Tells You something ran down her leg and on to the couch AND the FUNNY thing about that is what do Police Find when they go into the house. They Find A STAIN on the couch AND its Semen... its A coincidence that EXACTLY where she SAYS there would be Semen there's semen" He is referring to Minor 2 Forensic interview, where she said something RAN down her leg AND on to the Floor. She never on the couch. She never said ANY EXACT spot on the couch. The location of the STAIN does not match

the description of the event given by Minor 2 And it was not identified as being Brown's Semen Pg 338 L23-Pg 339 L8 Pg 339 L1-3 The DNA expert says that the area of the "stain" is a mix of DNA ²⁺ and that Minor 2 DNA was excluded

IV Pg 413 Justis is discussing the images alleged to come from the phone L5-9 "Minor 2 Testimony in the Forensic interview she talks about him taking pictures..." She said "A picture" one Justis explains L8-9 "... what appears to be a vagina and the surrounding area is dark" he is doing this to lead the Just to assume the photo was taken at night therefore was taken as alleged by the victim. It is an assumption that it is a "Prepubescent vagina" Audrey the victim Grandmother testified to coming into the room during the time of the alleged incident Pg 202 L25 - Pg 203 L1 "... there was only like the light from the Aquarium" There was a 55 gal Aquarium right next to the couch where the photo was alleged to take place. This is a 4 FT fluorescent light but refracted through water any photo taken near that would not be dark around the edges. Cell phone cameras have a flash.

V Pg 413 L16-20 Justis says "Think back to the pictures ... these are minor 2 shorts. she testified to wearing those that night" She did testify to that Pg 172 L16-20. Originally in her forensic interview she said she had on a T-shirt and underwear only

VI Pg 418 L13-14 Justis says Connollys I think on her forensic interview Minor 2 talks about that" She did NOT.

VII Justis while discussing DNA Pg 410 L 4-6 "but as time goes on it degrades ... People go to the bathroom, they shower" He knew that Minors went straight from the house to the hospital she did not shower he was offering known false explanations to explain to the jury why DNA was not enough for a positive match. When the small amount found was from secondary transfer because Minors was sitting on my couch all night in just her underwear and a t-shirt not in shorts as the state tried to falsely convince the jury Pg 349 L 4-13 Ms Webb testifies to indirect transfer "Indirect transfer sometimes called secondary transfer. Someone sits on a couch and deposits their DNA and a second sits ... And gets the first person DNA on them ... It's known to happen" She continues on Pg 351 L 10-15 talking about degradation of DNA she would not expect to see significant degradation in a few hours "the time frame from the alleged incident until swabs were taken"

Mr. Justis knew all these statements were not true but he lied to convince the jury to convict someone who he knew did not commit the crimes

The statements of officers & witnesses
 I At Pre trial 3-4 June 2014. Mosher testified Pg 80 L 13-14 That he and Jones knocked on the front door Mr. Brown answered At the trial 14-16 July 2014 Mosher testified Pg 381 L 6-9 "My self and Sgt Jones approached the residence ... As we approached we were met by Brown who was exiting the front door"

He changed his story to fit Sgt Jones Pg 281 L9-22
 "Mr. Brown came out side the house he came PARTIALLY From the side walk to grass ..." This is A difference in the OFFICER'S ACCOUNT OF the Arrest. Mosher changed his story His willingness to lie impacts his creditability to his ACCOUNT OF Mr. Brown requested the Phone that Just happened to be the Phone in question. This undermines every claim Mosher has he simply CAN NOT be trusted

II A Minor 2 claimed AT Trial Pg 172 L16-20 that she wore shorts the night of the Alledged incident. During her Forensic interview she said she only had on a T-shirt and underwear

B She also said she did not SAY she was chased Pg 188 L25 when she said she was

C Minor 2 INABILITY TO IDENTIFY me AT the TRIAL or to give A FITTING discription OF me AT TRIAL or in the Forensic interview go A long way to discredit her Allegations.

3. a. LOY did not request the instruction to the lesser included offense OF Assault and Battery high and Aggravated The state submitted no evidence to support the Alledged Sexual battery For charges 1408 and 1409 AT least the instruction to the lesser included offence was due
 B With Minor 1 being the Alledged victim OF charges 1408 and 1410 The Fact that she did not testify those charges AND evidence should have been dropped. She never once corroborated Minor 2 Account

The images From the Phone support charge 1410

As Mosher Testified Pg 388 L2-9 "based on viewing the video from the phone I was able to determine ... Acts were being committed during day time hours which would show that this occurred prior to the Alledged date of 28 JULY. These images do not support 1408

C With no evidence to support 1408 the defendant is entitled to a directed verdict LoY never motioned for this

While the images Alledged to come from the phone do show the crime being committed. They in no way prove by who or when for the state to say this shirt is similar to one Alledged to belong to Brown is in no way PROFF that it is his or that he is the one wearing it. It is only an assumption of guilt. A defendant is entitled to a Directed Verdict when the evidence only creates an assumption of guilt.

Charge 1409 Against minor J there is no PROFF of the sexual battery. The DNA was not a positive match to the defendant and the DNA expert testified that she would expect to find more of the defendant's DNA with these allegations. If the state fails to prove the identity of the accused as the one who committed the crime the defendant is entitled to a Direct verdict motion.

D LoY did motion for a Directed Verdict on charge 1410 Pg 393 L3-6 MY motion will initially Address just one indictment Pg 393 L20-22 "... I'll Address those [others]

in a moment" he never did. He motioned that the date of indictment 1410 was never proven that it was the assumption of the officer from viewing evidence alleged to come from my phone. That is true as the victim did not testify and there is no proof that it was Brown who committed the crime. LoY should have made a better argument with this information to support. He abandoned the other motions that could have the earlier mentioned no proof, no physical evidence, no DNA, no proper identity made.

- 3 LoY made no motion to suppress the tye-dye shirt alleged to belong to Brown. A "similar" shirt was seen in a image alleged to come from Brown's phone. Mosher described these images in his written report where he described a "butter-fly" shirt worn by Minor but he made no mention of this tye-dye shirt. Then on May 20, 2014, he contacted Brown's wife and asked for this shirt which she produced. This shirt was seized outside a warrant as officers entered Brown's residence with a warrant to search for clothing including the "butter-fly" shirt. But made no mention of this tye-dye shirt.

Dr. Busch was qualified as medical expert in Child Abuse Pediatrics and Emergency Pediatrics. Since she was the doctor who examined Minor 1 and Minor 2, I feel that she should not have been a qualified expert at the trial. She explained how she was a dual

Fellow in the Fields of emergency Pediatrics and child Abuse Pediatrics. "The First in the Country" Pg 244 L1-6 Pg 245 L17-23 She explains that "It is a certificate of completion in both Fields of Training... So at this Time Next Year I will have that Certificate in both Pediatric emergency medicine and child Abuse Pediatric and at that Point I sit for both boards. And they are separate test..." She was not actually qualified in these Fields at that Time She was actually 1 Year away from even taking the test. That she had to pass before she would be qualified.

On Pg 253 L13-20 she describes taking swabs for DNA testing "We did a swab in her vaginal area and on young kids I swab the whole kind of Peri-vaginal region. So all these folds... So that whole area was swabbed" She testifies to taking a swab and swabbing the entire vaginal area outside and inside. Peri means around - in excess, all around, near surrounding!

So for the Solicitor to say that DNA from that swab came from inside of Minor 2. So for the Solicitor to say on Pg 416 L14 "there is semen in Minor 2" for him to allow the Jury to think it was my DNA my semen as Ms Webb testified it was not an exact match for Mr Justice to say "in me" is wrong there was cross contamination from the way Dr Bosch collected the swab. Joy never should have let this go

This in no way Proves the crime nor does it Prove Mr Brown Committed it LoY should have At the very least objected to it

Dr Busch Admits that her Expert opinion that her Findings confirm that a sexual battery happened is based on the Patient history not on her Findings Pg 267 L1 - Pg 268 L15 This greatly bolsters the witness Account Dr Busch expert ~~opinion~~ opinion is based on her believing the victim NOT on her Findings LoY should have brought this to the Attention of the Court in his DV motion At the very least Pointed this out to the Jury

There is No Proff that ANY of these charges were committed 1408 and 1409 and No Proff that 1410 was committed by Brown AT All and especially in the dates of 25 JULY 2011 - 27 JULY 2013

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER)
JUL 27 2018) PM 1:50

Jonathan M. Brown, SCDC #360660,) Case No.: 2016-CP-18-02007

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RECEIVED
ORDER DENYING APPLICANT'S
MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NOV 03 2022
RULE 59(E), SCRCP

S.C. SUPREME COURT

This matter comes before the Court by way of an application for post-conviction relief filed October 17, 2016. An evidentiary hearing into the matter was convened on October 1, 2018, at the Dorchester County Courthouse before the undersigned. Applicant was present at the hearing and was represented by Leslie T. Sarji, Esquire. Respondent was represented by Assistant Attorney General Christian Saville of the South Carolina Attorney General's Office.

Before this Court were the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the record on appeal, Applicant's appellate records, the State's return, and Applicant's PCR application.

By order signed November 16, 2018, and filed November 21, 2018, the undersigned denied Applicant's application for post-conviction relief and dismissed the matter with prejudice. Thereafter, Applicant, through counsel, filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) on December 4, 2018.¹

¹ This Court notes Applicant's Motion to Alter or Amend references an attachment, "Exhibit A." This Court finds Applicant's counsel explicitly states in the Motion to Alter or Amend that she has filed the eleven-page handwritten attachment "upon the instruction of Applicant and offers no certification of the merits contained [within]."

DCB
p. 10/3

On the same date, December 4, 2018, PCR counsel, Leslie T. Sarji, moved to be relieved as counsel. In support of her motion to be relieved as counsel, Ms. Sarji states that she and Applicant have a "fundamental disagreement regarding the merit of post-judgment motions." On November 10, 2021, without a request from the State, the Dorchester County Clerk of Court appointed Michael H. Lifsey, as counsel in this matter. Mr. Lifsey was appointed prior to the filing of any order granting or denying Ms. Sarji's motion to be relieved as counsel. Subsequently, on December 3, 2021, in her capacity as Chief Administrative Judge, the Honorable Diane S. Goodstein, filed a Form 4 appointing Mr. Lifsey and relieving Ms. Sarji as counsel of record.

After consideration of the record and review of all relevant materials in this matter, this Court finds Applicant's Motion to Alter or Amend must be dismissed due to Applicant's failure to comply with the procedures and time limits set forth in Rule 59 of the South Carolina Rules of Civil Procedure.

"A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRPC. Further, "[a] party filing a written motion under this rule shall provide a copy of the motion to the judge within ten (10) days after the filing of the motion." Rule 59(g), SCRPC. *See Smith v. Fedor*, 809 S.E.2d 612, 616 (Ct. App. 2017) (holding "the trial court properly denied Smith's motion for reconsideration because he failed to provide the motion to the trial judge within ten days of filing. Rule 59(g) would lack any purpose if trial courts committed error by denying the motion for failure to comply with the rule.")

The South Carolina Supreme Court has held "the ten-day deadline in Rule 59(e) is an absolute deadline. A trial court does not have the power to alter or amend a final order if more than ten days passes and no Rule 59(e) motion has been served." *Overland, Inc. v. Nance*, 815 S.E.2d 431, 433 (2018). Further, "the failure to serve a Rule 59(e) motion within 10 days of receipt of

DCB
p. 2 of 3

notice of entry of the order converts the order into a final judgment, and the aggrieved party's only recourse is to file a notice of intent to appeal." *Id.*

This Court finds Applicant failed to provide undersigned with a copy of his motion as required by Rule 59(g) of the South Carolina Rules of Civil Procedure. The filed Motion to Alter or Amend contains no certificate of service, nor does this Court have record of receiving the Motion prior to February 16, 2022, when Respondent reached out via email inquiring about the pending Motion. Accordingly, this Court finds Applicant's Motion to Alter or Amend Judgment Pursuant to Rule 59(e) must be dismissed due to Applicant's failure to comply with the procedures and time limits set forth in Rule 59 of the South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED that Applicant's motion to reconsider, alter, or amend, pursuant to Rule 59(e), SCRCP, is **DENIED**.

AND IT IS SO ORDERED this 21 day of October, 2022.


 THE HONORABLE D. CRAIG BROWN
 Presiding Judge
 First Judicial Circuit

Florence, South Carolina

DCB
 1-3-23

WITNESSES

J Mosher

Summerville Police Department

13-056168

ARREST WARRANT NUMBER
K203640

Arrested: July 28, 2013

ACTION OF GRAND JURY

TRUE BILL

Richard Chen
Foreperson of Grand Jury
Date: May 1, 2014

VERDICT

Guilty

Walter A. A.
Foreperson of Petit Jury
Date: 7/16/2014

DOCKET NO. 2013GS18-1408

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

May 5, 2014 TERM

**THE STATE
vs.**

Jonathan Michael Brown

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

SC Code: 16-3-655(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2014 MAY - 1 PM 12:53
CHERYL L. MAH
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

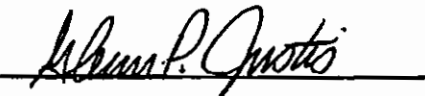
INDICTMENT
2013GS18-1408

At a Court of General Sessions, convened on May 5, 2014 the Grand Jurors of
Dorchester County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

That in Dorchester County, South Carolina, on or about July 28, 2013, the
Defendant, Jonathan Michael Brown, did engage in sexual battery upon a minor
who was less than eleven (11) years of age in that the defendant had [REDACTED]
[REDACTED] perform fellatio upon the defendant. This offense in violation of Section
16-3-655 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Glenn P. Justis, Solicitor

WITNESSES

J Mosher

Summerville Police Department

13-056168

ARREST WARRANT NUMBER

K203641

Arrested: July 28, 2013

ACTION OF GRAND JURY

TRUE BILL

Sachal H...
Foreperson of Grand Jury

Date: May 1, 2014

VERDICT

Guilty

Nathan A. ...
Foreperson of Petit Jury

Date: 7/16/2014

DOCKET NO. 2013GS18-1409

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

May 5, 2014 TERM

**THE STATE
vs.**

Jonathan Michael Brown

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

SC Code: 16-3-655(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment
or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2014 MAY -1 PM 12:53
CHERYL STANHAM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-1409

At a Court of General Sessions, convened on May 5, 2014 the Grand Jurors of
Dorchester County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

That in Dorchester County, South Carolina, on or about July 28, 2013, the
Defendant, Jonathan Michael Brown, did engage in sexual battery upon a minor
who was less than eleven (11) years of age in that the defendant did penetrate
the victim's, [REDACTED], vagina with his finger.. This offense in violation of
Section 16-3-655 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Glenn P. Justis, Solicitor

WITNESSES

J Mosher

Summerville Police Department

13-056168

ARREST WARRANT NUMBER

2013A1820500535

Arrested: August 6, 2013

ACTION OF GRAND JURY

TRUE BILL

Rachael Houlton

Foreperson of Grand Jury

Date: June 26, 2014

VERDICT

Guilty

Nathan A. L.

Foreperson of Petit Jury

Date: 7/16/2014

DOCKET NO. 2013GS18-1410

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

July 7, 2014 TERM

THE STATE

vs.

Jonathan Michael Brown

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH
MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

SC Code: 16-3-655(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2014 JUN 26 PM 2:43
CHERYL SWANSON
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2013GS18-1410

At a Court of General Sessions, convened on July 7, 2014 the Grand Jurors of
Dorchester County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR - VICTIM UNDER 11 YRS OF
AGE - FIRST DEGREE**

That in Dorchester County, South Carolina, between the dates of July 25, 2011
and July 27, 2013, the Defendant, Jonathan Michael Brown, did engage in sexual
battery upon a minor who was less than eleven (11) years of age in that the
defendant did anally penetrate the victim, [REDACTED], and have the victim
perform fellatio on him. This offense in violation of Section 16-3-655 of the South
Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Glenn P. Justis, Solicitor