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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK ANTHONY BROWN,

APPELLANT

APPELLATE CASE NO. 2022-001548

RECORD ON APPEAL

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State of South Carolina)	
)	Court of General Sessions
County of Dorchester)	2019-GS-18-01979

State of South Carolina)	
)	
vs.)	Transcript of Record
)	
Mark Anthony Brown)	

October 24, 2022
 St. George, South Carolina

B E F O R E:

The Honorable Thomas W. Cooper, Jr., Judge.

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

Kelly LaPlante, Esq.
 Attorney for the State

Juliana B. Stewart, Esq.
 Pierce Wehman, Esq.
 Attorneys for the Defendant

Colin Richilano
 Transcriber



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E X H I B I T S

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NO EXHIBITS INTRODUCED



1 THE DEPUTY CLERK: Mark Anthony Brown.

2 THE COURT: Hello, Mr. Brown.

3 THE DEPUTY CLERK: Mr. Brown, could you please raise your
4 right hand and state your full name for the record.

5 MR. BROWN: Mark Anthony Brown.

6 MARK BROWN, after being duly sworn, testified as
7 follows:

8 THE DEPUTY CLERK: Thank you, sir.

9 THE DEFENDANT: You're welcome, ma'am.

10 THE COURT: All right. Ms. LaPlante, what do we have?

11 MS. LAPLANTE: Thank you, Your Honor. Before you is Mark
12 Anthony Brown, who's represented by Julie Stewart. He's
13 currently charged with one count of criminal sexual conduct
14 with a minor, third degree. He is second up on the current
15 trial docket. His current exposure is 0 to 15 years. He was
16 offered to plead guilty to that charge for a state
17 recommendation of five years. He does wish to reject that
18 offer today.

19 THE COURT: All right. Thank you.

20 Ms. Stewart, have you explained to Mr. Brown the nature
21 of the charges against him and the charge -- the CSC third?
22 Is that it? Is that right?

23 MS. LAPLANTE: Judge, I think there's some confusion
24 because there was some last-minute discussion regarding
25 whether or not he could potentially plead to an assault and



1 battery first which would have taken his exposure to ten.

2 THE COURT: Right.

3 MS. LAPLANTE: I think he -- I mean, I'm happy for him to
4 reject both those offers here today.

5 THE COURT: All right. Good enough.

6 What is your understanding, Ms. Stewart, of the charges
7 against him and how have you explained it to him?

8 MS. STEWART: Your Honor, I explained the original offer
9 to him. Obviously the current offer, the charge did not
10 change and it was just a time offer. He has rejected that in
11 March. And since then, it was reiterated and he indicated he
12 wanted to turn that down. We also spoke to him at length
13 after the concession today about the new charge, with A and B
14 first, and he indicated that he wishes to turn that down as
15 well.

16 THE COURT: All right. So when he goes to trial tomorrow
17 morning, Ms. LaPlante, what will he be going in trial on?

18 MS. LAPLANTE: We will move forward with the criminal
19 sexual conduct with a minor third degree, Your Honor.

20 THE COURT: Okay. Thank you. All right. Good.

21 Mr. Brown, do you understand the charges that are
22 currently against you, criminal sexual conduct with a minor in
23 the third degree which carries up to 15 years in jail?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And you understand that the State is willing



1 to reduce those charges to assault and battery first degree
2 which would normally carry up to ten years in jail, but in
3 return for a five-year sentence? Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Do you have any questions that
6 you want to ask me about either the charges that are pending
7 against you or about the offer, before assault and battery
8 first with a recommendation of five years?

9 THE DEFENDANT: I didn't hear you.

10 THE COURT: Do you need to ask me any questions about the
11 choices you are facing or do you understand?

12 THE DEFENDANT: (Indiscernible)?

13 MS. LAPLANTE: (Indiscernible).

14 THE DEFENDANT: I can't hear him.

15 THE COURT: Okay. Can you hear me now all right, Mr.
16 Brown?

17 THE DEFENDANT: Yeah, um-hum.

18 THE COURT: You can? All right. Let's take this in
19 little pieces. Do you understand that you are charged with
20 criminal sexual conduct in the third degree? Do you
21 understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that that carries up to
24 15 years in jail?

25 THE DEFENDANT: Yes, sir.



1 THE COURT: Do you understand that the state has offered
2 to let you plead guilty to assault and battery in the first
3 degree? Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Assault and battery in the first degree
6 normally carries up to ten years in jail as a maximum
7 sentence. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The state would recommend a sentence of five
10 years in jail if you were to plead to that charge. Do you
11 understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that if you reject that
14 offer that you will go to trial tomorrow morning for criminal
15 sexual conduct with a minor in the third degree, facing up to
16 15 years in jail?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you had enough time to talk with Ms.
21 Stewart about the offer and about the charges against you?

22 THE DEFENDANT: No, sir.

23 THE COURT: You have not?

24 THE DEFENDANT: No, sir.

25 THE COURT: You need some more time to talk with her?



1 THE DEFENDANT: Yes, ma'am. Yes, sir.

2 THE COURT: Okay. What parts of this -- now you
3 understand what I've just told you. You told me that. Right?

4 THE DEFENDANT: Yes, um-hum.

5 THE COURT: I'm sorry?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. You won't have to make a final charge
8 in this a little bit later this afternoon, but you're going to
9 have to fish or cut bait before too much longer today. Do you
10 understand that?

11 THE DEFENDANT: Repeat that, sir, if you don't mind.

12 THE COURT: Well, you're right. I said it kind of
13 flippantly. Let me tell you that we're going to pick a jury
14 this afternoon for the trial of your case.

15 THE DEFENDANT: Uh-huh.

16 THE COURT: All right?

17 THE DEFENDANT: Um-hum.

18 THE COURT: I tell you what, Mr. Brown.

19 THE BAILIFF: Yes, sir; no, sir.

20 THE COURT: I will call you -- I will refer to you as sir
21 and Mr.

22 THE DEFENDANT: Um-hum. Yes, sir.

23 THE COURT: Good. That's all right.

24 THE DEFENDANT: Sorry about that, sir.

25 THE COURT: That's okay. I just want to make sure you



1 understand. We're going to pick a jury to try your case where
2 the jury's going to be picked this afternoon. Do you
3 understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. So you and Ms. Stewart are going
6 to have to talk among yourselves and decide some time before
7 we leave here today as to whether or not you wish to accept
8 that offer. Do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right.

11 MS. STEWART: Your Honor, not to interject, but I want to
12 clarify a little bit about -- I think what he is saying as far
13 as feeling like he has not had enough to time to speak with
14 me -- I do not think it has anything to do with the offer
15 itself. He made a comment that he wanted to ask for a
16 continuance because he believes he has not spoken to me
17 enough. But over the course of my representation as his
18 lawyer, I can list every time I have spoken with him and met
19 with him if that would be helpful for the Court. But I do not
20 believe he is saying he wants to speak with me further about
21 the offer itself.

22 THE COURT: All right. Well, I'll let you all discuss
23 that. At this time, Ms. Stewart, I really don't need to know
24 about what you've done and what you have not done. I doubt
25 that that's going to be an issue. But if it does, I'll let



1 you explain all of your activities at that time. Okay?

2 MS. STEWART: Yes.

3 THE COURT: All right. All right. Ms. LaPlante, do you
4 want me to put anything else to Mr. Brown at this time?

5 MS. LAPLANTE: I mean, I don't think so. I just want to
6 make sure we're having clarity. He has officially rejected
7 this offer. The offer will not be re-extended at this point.
8 And I think the only room for any sort of motion at this point
9 is he's asking for a continuance based on his inability to
10 meet with his lawyer.

11 THE COURT: Well, I haven't formally heard the motion for
12 continuance, but I understand from Ms. Stewart that that's
13 what he wants. I'm going to give him enough time for me to go
14 up the stairs and qualify the jury venire generally, and then
15 we're going to pick a jury to try his case. At that point in
16 time, the offer is going to be off the table at that point in
17 time.

18 MS. LAPLANTE: Yes, sir.

19 MS. STEWART: Yes, sir.

20 THE COURT: All right.

21 THE DEFENDANT: Thank you, Judge.

22 THE COURT: All right. Thank you.

23 (Recess.)

24 THE COURT: (Audio begins midsentence) -- Anthony Brown.
25 All right. Ladies, gentlemen, what do we have?



1 MS. LAPLANTE: I think it's -- I mean --

2 MS. STEWART: Well --

3 MS. LAPLANTE: -- I think it's defense's show here.

4 MS. STEWART: -- Your Honor, I will let Mr. Brown discuss
5 what he wants to discuss with you, but I want it to be clear
6 for the record purposes this has nothing to do with the offers
7 themselves. He is very clear about that. He intends to turn
8 the first and the second one down. So this is not related to
9 those offers.

10 THE COURT: All right. Mr. Brown, I'll be glad to hear
11 from you.

12 MR. WEHMAN: He'll hear from your motion.

13 THE DEFENDANT: Oh. Hi, sir.

14 THE COURT: I'll be glad to hear from you, Mr. Brown.

15 THE DEFENDANT: Um-hum.

16 MR. WEHMAN: Yes, sir.

17 MS. STEWART: Yes, Your Honor.

18 THE DEFENDANT: Yes, sir.

19 MR. WEHMAN: You can say your motion, your continuance
20 motion.

21 THE DEFENDANT: Yes. I would like to pose for a
22 continuance within my trial because my -- I mean, she's a
23 wonderful lawyer, but I know Mr. Pierce longer than her, and I
24 would like to let her know my case more in fact.

25 THE COURT: Ms. Stewart, how long have you been



1 representing Mr. Brown?

2 MS. STEWART: Your Honor, I was appointed to represent
3 him in March of this year. On March 15th, I communicated with
4 Mr. Brown. Reiterated the offer that Mr. Wehman had already
5 given him. He indicated to me that he wished to turn it down,
6 so I emailed the solicitor on March 15th to turn that offer
7 down and to put him on a trial roster. I let him know that I
8 would be in touch as soon as I had information. My records
9 indicate that I tried to call him at the end of July. I did
10 not get a response, and Mr. Brown normally always responds.

11 So I'm not sure he got that call or not, but I did try
12 and reach out to let him know that he was on a -- we had our
13 conference to discuss cases over within a certain amount of
14 time, and that will determine when he would go on a trial
15 roster. The minute I found out he was on a trial roster, I
16 reached out to him. We met in person three times last week
17 and by phone also one time last week. And that brings us to
18 today.

19 THE COURT: And who represented Mr. Brown before?

20 MR. WEHMAN: I did, Your Honor.

21 THE COURT: You did?

22 MR. WEHMAN: Pierce Wehman.

23 THE COURT: Okay. Mr. Wehman, can you tell me why you're
24 no longer representing? Do you mind sharing that?

25 MR. WEHMAN: Absolutely, Judge. Mr. Brown's case was



1 transferred to Ms. Stewart. I am the supervisor of the trial
2 team that she is a member of. And we, when she started and
3 also in March, did reshuffling of cases based on conflicts as
4 well as charges that might not have been appropriate for Ms.
5 Stewart to handle. At that point, she was new in our office.

6 And Mr. Brown's case was transferred over to her. She is
7 my trial partner, so it was always with the understanding that
8 when this case went to trial, I'd be able to assist her to get
9 her up to speed on things that had happened before and be
10 available to work with her and Mr. Brown here this week.

11 But that is why. It was purely administrative.

12 THE COURT: No, I understand. Will you be assisting her
13 in the trial of this case?

14 MR. WEHMAN: Judge, I will be. I met with Mr. Brown when
15 he came into our office last week, and I am second chair for
16 her this week.

17 THE COURT: Okay. Thank you.

18 Well, Mr. Brown, what do you say to that?

19 THE DEFENDANT: I have nothing to say to that.

20 THE COURT: All right. Good. It appears, Mr. Brown,
21 that now you have two capable lawyers. You have Mr. Wehman,
22 and you also have Ms. Stewart.

23 So the motion for continuance is respectfully denied.

24 And we will move forward to the jury selection after we
25 have qualified the jury venire generally. Okay. Everybody



1 understand that?

2 MS. LAPLANTE: Yes, Your Honor.

3 MS. STEWART: Thank you, Judge.

4 THE COURT: Okay.

5 MS. STEWART: Your Honor, would it be okay if Mr. Brown
6 went out and smoked a cigarette and came right back?

7 THE COURT: That's fine. Yeah. If he doesn't need to
8 look at the jury, we've got to go through the jury
9 qualification before we're going to get around to his case.
10 And if he doesn't need to be here with -- to look at the jury,
11 that's fine. All right.

12 MS. STEWART: Judge, may I approach the law clerk?

13 THE COURT: Surely.

14 (Recess.)

15 JURY SELECTION

16 (Jury sworn)

17 IN UNISON: I do.

18 THE DEPUTY CLERK: Okay. At this time, (indiscernible)
19 is going to call the roll, and we need you to give us the
20 information from the board, and if you could speak in a loud
21 or clear voice.

22 Jurors number 1, Bonni Agnew.

23 PROSPECTIVE JUROR BONNI AGNEW: I'm Bonni Agnew. I'm
24 employed by Stone Central. I'm the owner. My husband is a
25 licensed contractor and owns his own business.



1 THE DEPUTY CLERK: Juror number 3, Cheryl Akers.

2 PROSPECTIVE JUROR CHERYL AKERS: Cheryl Akers. I'm
3 employed at Legare Bailey Hinkske CPA. Job is an
4 administrative assistant. My spouse is employed at South
5 Carolina Ports Authority. He is a cyber security analyst.

6 THE DEPUTY CLERK: Thank you.

7 Juror number 11, Jennifer Bell.

8 PROSPECTIVE JUROR JENNIFER BELL: I'm Jennifer Bell. I
9 am not employed. I stay home. And my husband is a branch
10 manager at United Rentals.

11 THE DEPUTY CLERK: Thank you.

12 Juror number 13, Michael Benner, Jr.

13 PROSPECTIVE JUROR MICHAEL BENNER: Mike Benner. I am
14 employed by Coosaw Creek Country Club. I'm a general manager.
15 My spouse is unemployed.

16 THE DEPUTY CLERK: Juror 14, Jessica Bennett.

17 PROSPECTIVE JUROR JESSICA BENNETT: I'm Jessica Bennett.
18 I am employed by Crescent Child Development Services as their
19 behavior technician. And my spouse is employed at Boeing as
20 an aircraft assembler.

21 THE DEPUTY CLERK: Thank you.

22 Juror number 16, Wayne Berry.

23 PROSPECTIVE JUROR WAYNE BERRY: I'm employed by Ferguson
24 HVAC. I'm a warehouse manager. And I do not have a spouse.

25 THE DEPUTY CLERK: Thank you.



1 Juror number 20, Ashley Brenneman.

2 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Ashley Brenneman.

3 My job's Parle's Jeweler's as a jeweler. Second job is
4 Hyman's Seafood as a waiter. My significant other is -- works
5 for John Price Law Firm.

6 THE DEPUTY CLERK: Thank you.

7 Juror number 22, Timothy Brett.

8 PROSPECTIVE JUROR TIMOTHY BRETT: I'm Timothy Brett. I'm
9 self-employed in residential construction. My spouse works
10 for the Berkeley County School District as an educator.

11 THE DEPUTY CLERK: Thank you.

12 Juror 25, Gregory Bryant.

13 PROSPECTIVE JUROR GREGORY BRYANT: I'm Gregory Bryant.
14 I'm employed at Xavier (indiscernible). My spouse works at
15 East Cooper Community Outreach.

16 THE DEPUTY CLERK: Thank you.

17 Juror 29, Kristi Butts.

18 PROSPECTIVE JUROR KRISTI BUTTS: My name is Kristi Butts.
19 I work at Sweetgrass Pediatrics. I'm the practice
20 administrator for six locations. My husband works at KBR, and
21 he is cyber security for the government.

22 THE DEPUTY CLERK: Juror number 35, Cecelia Chandarana.

23 PROSPECTIVE JUROR CECELIA CHANDARANA: I'm Cecelia
24 Chandarana. I own English Garden Florist. And my husband's
25 retired, and he helps me.



1 THE DEPUTY CLERK: Thank you.

2 Juror 37, Cherita Cochran.

3 PROSPECTIVE JUROR CHERITA COCHRAN: I work for Zia Blacko
4 (phonetic), and I do assembly. And I don't have a spouse.

5 THE DEPUTY CLERK: Thank you.

6 Juror 45, Kimberly Dalrymple.

7 PROSPECTIVE JUROR KIMBERLY DALRYMPLE: I'm Kimberly
8 Dalrymple, and I work for the Medical University of South
9 Carolina as a grants administrator. My husband works for the
10 City of North Charleston as the director of engineering.

11 THE DEPUTY CLERK: Juror 47, Hillary Desaussure.

12 PROSPECTIVE JUROR HILLARY DESAUSSURE: I'm Hillary
13 Desaussure. I'm employed by Charleston County. I'm in
14 collections. My job is auditor. And I'm divorced.

15 THE DEPUTY CLERK: Thank you.

16 Juror 49, James Dixon.

17 PROSPECTIVE JUROR JAMES DIXON: I'm James Dixon. I'm
18 unemployed as of last week or so. And no spouse.

19 THE DEPUTY CLERK: All right. Thank you.

20 Juror 52, Samantha Dozal.

21 PROSPECTIVE JUROR SAMANTHA DOZAL: I am employed by
22 PepperJack Pottery. I'm the owner, and I don't have a spouse.

23 THE DEPUTY CLERK: Thank you.

24 Juror number 60, Sierra Ferrara.

25 PROSPECTIVE JUROR SIERRA FERRARA: I'm Sierra Ferrara.



1 I'm employed by Dorchester District 2. I'm an educator. I do
2 not have a spouse.

3 THE DEPUTY CLERK: Juror 61, Jennifer Ferris.

4 PROSPECTIVE JUROR JENNIFER FERRIS: I work for Absolute
5 ITN (phonetic). My spouse works at CarMax as an automotive
6 technician.

7 THE DEPUTY CLERK: Thank you.

8 Juror number 62, Tanisha Fielding-Jenkins.

9 PROSPECTIVE JUROR TANISHA FIELDING-JENKINS: I am
10 employed by Medical University. I'm director of perioperative
11 IT, pre-op clinic, and centralized scheduling. My spouse is
12 employed by Southern Imports & Collision, and he's the owner-
13 operator.

14 THE DEPUTY CLERK: Juror 63, Sarina Fox.

15 PROSPECTIVE JUROR SARINA FOX: I'm employed by Walgreens
16 Pharmacy. I'm a senior -- senior pharmacy technician. No
17 spouse.

18 THE DEPUTY CLERK: Thank you.

19 Juror 67, Jeffrey Gann.

20 PROSPECTIVE JUROR JEFFREY GANN: I work for Cummins Inc.
21 I direct a team that does cost analytics for the purchasing
22 organization. My wife, Michelle, she is retired from managing
23 a credit union.

24 THE DEPUTY CLERK: Thank you.

25 Juror 68, Maura Gantz.



1 PROSPECTIVE JUROR MAURA GANTZ: I'm Maura Gantz. I'm
2 employed by HHM Hospitality. I'm an enterprise sales and
3 marketing manager. Currently separated. Not sure what my
4 husband -- who he is currently employed by.

5 THE DEPUTY CLERK: Thank you.

6 Juror 71, Janae Gates.

7 PROSPECTIVE JUROR JANAE GATES: I'm employed by Leaping
8 Forward Academy as a teacher. And I have no spouse.

9 THE DEPUTY CLERK: Thank you.

10 Juror 72, Rashard Geddis.

11 PROSPECTIVE JUROR RASHARD GEDDIS: I work at Charles
12 River Laboratories as an (indiscernible). And no spouse.

13 THE DEPUTY CLERK: Juror 76, Kiera Glessner.

14 PROSPECTIVE JUROR KIERA GLESSNER: I work at Charlestown
15 Animal Hospital as a receptionist, and my second job is
16 Candlewood Suites Mount Pleasant as a receptionist. And no
17 spouse.

18 THE DEPUTY CLERK: Juror 79, Ercelia Green.

19 PROSPECTIVE JUROR ERCELIA GREEN: Hi. My name is Ercelia
20 Green. I'm unemployed. And my husband is a retired man --
21 policeman.

22 THE DEPUTY CLERK: Thank you.

23 Juror 84, Jessie Harrington.

24 PROSPECTIVE JUROR JESSIE HARRINGTON: I'm Jessie
25 Harrington. I work for (Indiscernible) as a mobile mechanic.



1 My wife works for (Indiscernible) as a -- as a medic
2 assistant.

3 THE DEPUTY CLERK: Thank you.

4 Juror 87, Stephen Hayes.

5 PROSPECTIVE JUROR STEPHEN HAYES: I work for Ila 1771 as
6 a checker. And my spouse is disabled and unemployed.

7 THE DEPUTY CLERK: Thank you.

8 Juror 91, Danielle Hill.

9 PROSPECTIVE JUROR DANIELLE HILL: I'm employed by the
10 Boeing Company as an engineering manager. My spouse is
11 unemployed. He is daddy daycare for our daughter.

12 THE DEPUTY CLERK: Thank you.

13 Juror 93, Justin Hunt.

14 PROSPECTIVE JUROR JUSTIN HUNT: I'm Justin Hunt. I'm
15 self-employed. My job is electrical contractor and engineer.
16 And I have no spouse.

17 THE DEPUTY CLERK: Thank you.

18 Juror 96, Michael Jackson.

19 PROSPECTIVE JUROR MICHAEL JACKSON: I'm employed by
20 Boeing as a team leader. And my wife is a office manager for
21 Carolina Women's Care (phonetic).

22 THE DEPUTY CLERK: Juror 97, Caryn Jahn.

23 PROSPECTIVE JUROR CARYN JAHN: I am employed by Clean
24 Sweep. I'm a housekeeper. And my husband is employed by
25 Carolina Elevator as a service field technician.



1 THE DEPUTY CLERK: Okay. Thank you.

2 Juror 106, Kirstin Kyzar.

3 PROSPECTIVE JUROR KIRSTIN KYZAR: Hi. I'm Kirstin Kyzar.
4 I'm employed by Dorchester 2 District. I'm a educator. My
5 spouse works for the United Army Corps of Engineers, and he's
6 a lead project engineer.

7 THE DEPUTY CLERK: Thank you.

8 Juror 121, Darryl Middleton.

9 PROSPECTIVE JUROR DARRYL MIDDLETON: I'm employed by U.S.
10 Xpress Transport as a truck driver. And my spouse works at
11 Grand Bars (phonetic) as a (indiscernible).

12 THE DEPUTY CLERK: 124, Robin Moretti.

13 PROSPECTIVE JUROR ROBIN MORETTI: I work for Amerino
14 Caryn's House (phonetic) as a data analysis and Lowes Foods as
15 a grocery stocker. And my husband works for National Karate
16 and MMA as a daycare assistant and coach at the school.

17 THE DEPUTY CLERK: Juror 126, Donald Morgan.

18 PROSPECTIVE JUROR DONALD MORGAN: Okay. I work for JW
19 Aluminum plant. I'm a lab technician. And my wife's self-
20 employed. She does employee benefits.

21 THE DEPUTY CLERK: Okay. Thank you.

22 Juror 129, Theodore Nesbitt.

23 PROSPECTIVE JUROR THEODORE NESBITT: I work for JSC
24 Systems as a low-voltage technician. And my wife is employed
25 by Roper Hospital as a software engineer.



1 THE DEPUTY CLERK: Thank you.

2 Juror 131, Ruslan Olbrych.

3 PROSPECTIVE JUROR RUSLAN OLBRYCH: Hi. My name's Ruslan
4 Olbrych. I'm employed by Hendrick BMW as a automotive
5 technician. And my wife is a insider threat analyst for
6 Target.

7 THE COURT: Thank you.

8 Juror 132, Jon Olmstead.

9 PROSPECTIVE JUROR JON OLMSTEAD: I'm Jon Olmstead. I'm a
10 self-employed home inspector. And my wife works for Coyote
11 Analytics out of Nashville. She does accounting for them.

12 THE DEPUTY CLERK: Thank you.

13 Juror 133, Paul Orozco.

14 PROSPECTIVE JUROR PAUL OROZCO: I'm employed by Blich
15 Plumbing as a plumbing service technician. My spouse is
16 employed by Progressive Family Dentistry as a dental
17 hygienist.

18 THE DEPUTY CLERK: Thank you.

19 Juror 136, Scott Parrish.

20 PROSPECTIVE JUROR SCOTT PARRISH: I'm employed by VTL
21 Precision. I'm a junior manufacturing engineer. My spouse
22 works for Department of the Air Force. She's a HR and flight
23 orders clerk.

24 THE DEPUTY CLERK: Thank you.

25 Juror 137, Shobhana Patel.



1 PROSPECTIVE JUROR SHOBHANA PATEL: I'm employed at CVS
2 Pharmacy. And my spouse works at Kia.

3 THE DEPUTY CLERK: Okay. Thank you.

4 Juror 138, Caleb Patrick.

5 PROSPECTIVE JUROR CALEB PATRICK: I'm employed by Super-
6 Sod. A farm supervisor. And my spouse is employed by the
7 Regional Medical Center as a physician assistant.

8 THE DEPUTY CLERK: Thank you.

9 Juror 139, Ronald Patrick.

10 PROSPECTIVE JUROR RONALD PATRICK: I'm retired, and I'm
11 very single.

12 THE DEPUTY CLERK: Juror 143, David Perkins.

13 PROSPECTIVE JUROR DAVID PERKINS: I'm employed by Lucas
14 Electrical. I'm just an electrician helper. And I have no
15 spouse.

16 THE DEPUTY CLERK: Thank you.

17 Juror 145, Emil Popelka.

18 PROSPECTIVE JUROR EMIL POPELKA: I'm employed by Crutell
19 (phonetic) as a logistician. And my wife works for Charleston
20 County School District as a teacher.

21 THE DEPUTY CLERK: Okay. Thank you.

22 Juror 157, Vernatta Ricks.

23 PROSPECTIVE JUROR VERNATTA RICKS: I am employed at the
24 United States Postal Service as a RCA. And my spouse works at
25 the Saver Sheets (phonetic) as a front-end manager.



1 THE DEPUTY CLERK: Thank you.

2 Juror 161, Kelly Robinson.

3 PROSPECTIVE JUROR KELLY ROBINSON: Kelly Robinson. I'm a
4 construction superintendent for DPR Construction. My wife
5 works for Port City Plastic Surgery. She's a surgical
6 technologist.

7 THE DEPUTY CLERK: Okay. Thank you.

8 Juror 172, Zachary Sheppard.

9 PROSPECTIVE JUROR ZACHARY SHEPPARD: I'm Zachary
10 Sheppard. I work for Rolls-Royce as a generator field
11 serviced technician. My wife is a store manager for Freedom
12 Enterprises, LLC.

13 THE DEPUTY CLERK: Okay. Thank you.

14 Juror 178, Matthew Spivey.

15 PROSPECTIVE JUROR MATTHEW SPIVEY: I work at Lowes Food
16 as a deli host. And I have no spouse.

17 THE DEPUTY CLERK: Okay. Thank you.

18 Juror 180, Joe Stokes.

19 PROSPECTIVE JUROR JOE STOKES: I'm retired, and wife also
20 retired.

21 THE DEPUTY CLERK: Okay. Thank you.

22 Juror 184, Barbara Thomas.

23 PROSPECTIVE JUROR BARBARA THOMAS: I'm employed by CVS
24 Pharmacy as a certified pharmacy technician. And I'm
25 divorced.



1 THE DEPUTY CLERK: Juror 186, Stephanie Thomas.

2 PROSPECTIVE JUROR STEPHANIE THOMAS: I'm Stephanie
3 Thomas. I work at GRSi. I'm a facilities security officer.
4 And my husband works at GRSi also. He's a program manager.

5 THE DEPUTY CLERK: Thank you.

6 Juror 187, Kimberly Thomason.

7 PROSPECTIVE JUROR KIMBERLY THOMASON: I'm employed by
8 Trident Medical Center. I'm a nurse case manager. And I'm
9 divorced.

10 THE DEPUTY CLERK: Juror 190, Katherine Unsinger.

11 PROSPECTIVE JUROR KATHERINE UNSINGER: I'm employed by a
12 bakery coffee in the Hotel Bennett. I'm a barista. And I
13 have no spouse.

14 THE DEPUTY CLERK: Okay. Thank you.

15 Juror 191, Jessica Urick.

16 PROSPECTIVE JUROR JESSICA URICK: I'm employed by Port
17 Center Tours and SpiritLine Cruises. My jobs are first mate
18 and (indiscernible). I have no spouse.

19 THE DEPUTY CLERK: Thank you.

20 Juror 196, Brandon Weiters.

21 PROSPECTIVE JUROR BRANDON WEITERS: I work for Walmart
22 Distribution Center shipping and receiving.

23 THE DEPUTY CLERK: Do you have a spouse?

24 PROSPECTIVE JUROR BRANDON WEITERS: No spouse.

25 THE DEPUTY CLERK: Thank you.



1 Juror 199, Nakia Whack.

2 PROSPECTIVE JUROR NAKIA WHACK: I work for MUSC
3 Physicians, the revenue cycle. I'm a credit processor and
4 processing supervisor. And my -- my -- my spouse doesn't have
5 a job.

6 THE DEPUTY CLERK: Juror 201, Rita Williams.

7 PROSPECTIVE JUROR RITA WILLIAMS: I'm employed by
8 Exclusively Bimmers. I'm an office manager. And my spouse is
9 a general contractor for the State of South Carolina.

10 THE DEPUTY CLERK: Thank you.

11 Juror 207, Joyce Weimer. Ziemer, I'm sorry.

12 PROSPECTIVE JUROR JOYCE ZIEMER: Ziemer, yep.

13 THE DEPUTY CLERK: Ziemer.

14 PROSPECTIVE JUROR JOYCE ZIEMER: I'm Joyce Ziemer. I'm a
15 retired educator. And my husband's a retired financial data
16 analyst.

17 THE DEPUTY CLERK: Okay. Are there any names I did not
18 call?

19 Okay. Thank you.

20 (Pause.)

21 THE DEPUTY CLERK: All rise.

22 THE COURT: Thank you, ladies and gentlemen. Please be
23 seated. Good afternoon.

24 IN UNISON: Good afternoon.

25 THE COURT: Ladies and gentlemen, good afternoon, again.



1 My name is Tommy Cooper. I'm a retired active circuit judge.
2 My home is in Clarendon County, up the road a little ways
3 about 45 minutes. I retired about 16 years ago after 15 years
4 of full-time service. And now for the last 16 years, have
5 continued to serve in retirement on a part-time basis, holding
6 court one week a month. This happens to be my week to work in
7 October.

8 During my time as a full-time judge and in the years
9 since I've retired, I've had the pleasure to come here on many
10 occasions to hold court in your county, and only recently in
11 the new courthouse here, which if I say is quite an
12 improvement over the other one. I'm always delighted to come
13 here and work with the fine people who make up the court
14 system, and to work with folks like you that I otherwise would
15 not have had a chance to meet except for the fact that I've
16 been assigned here to work this week.

17 As you all know, you have been summoned here to serve
18 potentially as jurors in the court of general sessions. We
19 normally refer to that as criminal court. And this week,
20 beginning tomorrow morning, we will start the trial of a case
21 that some of you will be involved in, not all of you, but some
22 of you. All of you will be involved, however, in the jury
23 selection process. And so your presence here is important to
24 that process, and I'll explain that to you without trying to
25 waste your time as we go along today.



1 You have already been put under oath, and that oath that
2 you have taken assures that you will give a truthful answer to
3 the questions that we will put to you throughout this process.
4 I'm going to ask you some questions that bear on your
5 qualifications to serve as jurors. I tell you that because I
6 don't want you to think we're just nosy or trying to pry into
7 your business or your private lives. That's not the purpose
8 behind the questions at all. We're required by law to ask
9 these questions because they bear on your qualifications to
10 serve as jurors. And so you therefore are required by law to
11 answer them candidly and completely, and that's the reason
12 you've been put under oath.

13 If you don't understand a question that I might put to
14 you, if you'll get my attention in some way, raise your hand,
15 stand up where you are, and let me know that you don't
16 understand the question, I'll be glad to put the question
17 another way that might make it easier for you to understand.

18 If it might cause you some measure of embarrassment to
19 have to answer one of these questions in front of a room full
20 of strangers, if you'll get my attention in the same way, I'll
21 bring you forward here and in the relative privacy of the
22 court reporter and myself and the lawyers, try to enquire
23 further about your situation.

24 Ladies and gentlemen, is any member of the jury panel a
25 person who has not yet reached your 18th birthday? If so,



1 please stand.

2 Is any member of the jury panel a clerk or a deputy clerk
3 of court, a constable, a sheriff, a probate judge, county
4 commissioner, magistrate, or the county officer or any person
5 who works within the four walls of this courthouse? If so,
6 please stand.

7 Do any of you fall on the law enforcement commission,
8 either with or without pay, such as a constable, conservation
9 officer, game warden, deputy sheriff, highway patrolmen, or
10 some similar position? If so, please stand.

11 Have any of you been convicted or plead guilty in either
12 a state court or a federal court of a crime that carried a
13 possible penalty of more than a year in jail and you haven't
14 had your civil rights restored to you yet by pardon or by
15 amnesty? Now, this does not mean that you spent more than a
16 year in jail. You may have never spent a single night in
17 jail. This question could still apply to you. If the crime
18 that you were involved with carried a possible penalty of more
19 than a year in jail, this question applies to you. And if
20 does, I want to talk with you up here side-bar to see if, in
21 fact, it does apply to you, and then we will decide what to do
22 at that point.

23 If you're not sure whether this question applies to you
24 or not, you know that you had a brush with the law but it's
25 been a long time ago and you frankly don't remember all the



1 details, I want to talk with you as well. And so if there's
2 anybody out there that thinks this question applies to them or
3 knows that this question applies to them, I want you to form a
4 line please in the center aisle at this time, and I will bring
5 you forward one at a time to properly talk about your
6 situation with you.

7 THE DEPUTY CLERK: Juror 133, 133.

8 THE COURT: Just speak into that microphone please so
9 (indiscernible). Mr. Orozco.

10 PROSPECTIVE JUROR PAUL OROZCO: Yes, sir.

11 THE COURT: Yes, sir. What is your situation, Mr.
12 Orozco?

13 PROSPECTIVE JUROR PAUL OROZCO: In my youth, I vandalized
14 some property and was taken in and spent the night in jail.
15 And then after I was released from jail, I was asked to appear
16 before the court. And when I was in court, they had ruled
17 that my night in jail was enough to constitute my -- my crimes
18 or my commitment to paying penalties, and they dismissed it at
19 that time.

20 THE COURT: Okay. I'll see if they've got you. Got him?

21 UNIDENTIFIED SPEAKER: We do, Your Honor. I don't think
22 that he would be disqualified. If anything, I see it is out
23 of state.

24 PROSPECTIVE JUROR PAUL OROZCO: It was in California at
25 the time, back in 2004 or '05, I believe.



1 THE COURT: Okay. We appreciate that. Whatever they
2 charged you with does not (indiscernible) of a year in jail?

3 PROSPECTIVE JUROR PAUL OROZCO: No, sir.

4 THE COURT: You got that? Okay. But you did the right
5 thing coming forward. Thank you so much for that.

6 PROSPECTIVE JUROR PAUL OROZCO: Yes, sir. Thank you.

7 THE COURT: Okay. You can go back and have a seat.
8 You're going to stay with us.

9 Okay. Anybody else?

10 UNIDENTIFIED SPEAKER: I don't think so.

11 UNIDENTIFIED SPEAKER: No, Your Honor.

12 THE COURT: Good. Ma'am, you're staying.

13 Is any member of the jury panel unable to read, write,
14 speak, or understand the English language? If so, please
15 stand.

16 Is any member of the jury panel unable because of a
17 physical or mental condition to render efficient jury service?
18 If so, please stand.

19 Does any member of the jury panel have less than a sixth-
20 grade education or the equivalent of a sixth-grade education?
21 If so, please stand.

22 Is any member of the jury panel not now a resident of
23 Dorchester County? If so, please stand.

24 Is any member of the jury panel not now a citizen of the
25 United States? If so, please stand.



1 Have any of you actually served as a circuit court juror
2 in Dorchester County -- that would be right here in this
3 courtroom -- in the last calendar year? If so, please stand.

4 Thank you.

5 Now, ladies and gentlemen, those questions that I Just
6 asked you are disqualifying questions. That means if any of
7 those things apply to you, you may not serve as juror. You're
8 not allowed to serve as a juror because you've been
9 disqualified as a matter of law.

10 There are other classes of people, however, who have
11 exemptions that did not require them to serve as jurors. The
12 exemptions work differently from disqualifications. Here's
13 how exemptions work. I'm going to go over the list of
14 exemptions with you right now. And if one of these exemptions
15 applies to you, all you've got to do is to satisfy me that the
16 exemption does, in fact, apply to you and that you want to go,
17 and I'll let you go because you're entitled to go as a matter
18 of law.

19 But on the other hand, if one of these exemptions should
20 apply to you and you would like to stay and serve, you can
21 serve in spite of the exemption. And so it's a personal
22 choice. And it's up to you to decide whether or not you wish
23 to be exempt, that is go on back where you were or to work or
24 home or wherever, or stay and serve.

25 For example, if any of you out there are 65 years of age



1 or older, you have an exemption that does not require you to
2 serve as a juror. And all you've got to do is let me know
3 that you're 65 or older, and I got your birthday written down
4 this sheet of paper, and I'll just make sure you and I are
5 both doing the math right. And if you are -- and if you're 65
6 or older and would like to go, I'll let you go.

7 I would like to ask you to consider staying with us,
8 though.

9 UNIDENTIFIED SPEAKER: (Indiscernible) can't just have
10 one, Your Honor, so what is it?

11 THE COURT: Okay. Well, I'd like to ask you to consider
12 staying with us, however, because you've gained a lot of
13 experience in those 65 years that would be helpful to you as a
14 juror. But you don't have to stay. And so if you're 65 or
15 older and would like to claim your exemption, please stand at
16 this time.

17 I have a hand raised.

18 Yes, sir. Your name please, sir.

19 PROSPECTIVE JUROR JOE STOKES: Joe Stokes. Joe Stokes.

20 THE COURT: Mr. Stokes. Juror number 180.

21 PROSPECTIVE JUROR JOE STOKES: Yes.

22 THE COURT: All right, Mr. Stokes. Thank you, sir.

23 You're free to go.

24 (Pause.)

25 THE COURT: Thank you, folks. I recognize that there



1 might be others of you who have -- entitled to that exemption.
2 Thank you for your willingness to serve in spite of it.

3 Is any member of the jury panel an officer or an employee
4 of the State Department of Corrections and would like to claim
5 your exemption? If so, please stand.

6 Does any member of the jury panel have a child at home
7 under the age of seven and it is your child or a child that
8 you have the legal custody of or the duty of care for and you
9 don't work outside the home, you stay home and take care of
10 that child. If all of those things apply to you and you'd
11 like to go home and take care of that child -- it has to be
12 your child, or you've got the legal custody, duty of care for,
13 under the age of seven, and you don't work outside the home --
14 if all of those things apply to your situation and you would
15 like to be exempt, please stand.

16 Thank you.

17 Is any member of the jury panel a student, in high
18 school, technical school, college, any institution of higher
19 learning, who is having to miss class to be with us this week?
20 If so, we can transfer you to another term of court if that
21 applies to anybody.

22 Yes, sir. Your name please, sir?

23 PROSPECTIVE JUROR DAVID PERKINS: David Perkins.

24 THE COURT: Mr. Perkins is --

25 PROSPECTIVE JUROR DAVID PERKINS: 143.



1 THE COURT: Yes, sir, Mr. Perkins. 143. Where do you go
2 to school?

3 PROSPECTIVE JUROR DAVID PERKINS: Trident Tech.

4 THE COURT: And what's your class schedule like?

5 PROSPECTIVE JUROR DAVID PERKINS: Right now, I'm taking
6 one class online, and the other one, I take in person.

7 THE COURT: And when's your in-person class meet?

8 PROSPECTIVE JUROR DAVID PERKINS: It's at Trident on
9 Tuesdays and Thursdays from 11 to 2.

10 THE COURT: Okay. All right. That would interfere,
11 obviously, with your jury service, or perhaps more correctly,
12 your jury service would interfere with that. And do you go to
13 school year round?

14 PROSPECTIVE JUROR DAVID PERKINS: No.

15 THE COURT: Are you out during the summer?

16 PROSPECTIVE JUROR DAVID PERKINS: I'll be out during
17 December. And then I'm going to try to take classes in the
18 summer, but I haven't signed up yet.

19 THE COURT: Okay. Well, Mr. Perkins, we might be having
20 some court during those periods of time, but I think that it'd
21 be difficult for us to gauge a time when you're not going to
22 be in school. So rather than exempt you, I'm going to excuse
23 you and let you get back and complete that education and good
24 luck to you. Okay. Thank you.

25 Jury number 143 is excused.



1 Is any member of the jury panel a school employee, such
2 as a school teacher, school bus driver, school principal,
3 assistant principal, guidance counselor, media specialist?
4 Anybody the law says who has a building certificate at the
5 building level qualifies as a school employee. Now, if that
6 applies to anybody, we'll be glad to transfer you to another
7 term of court that does not interfere with your
8 responsibilities as a school employee. That's a polite way of
9 saying we don't take you out of work, but we just take a part
10 of your vacation. All right.

11 Yes, ma'am. Your name and number please, ma'am.

12 PROSPECTIVE JUROR KIRSTIN KYZAR: Kirstin Kyzar. I'm
13 106.

14 THE COURT: All right. Ms. Kyzar, and where are you
15 employed and what's your job?

16 PROSPECTIVE JUROR KIRSTIN KYZAR: Dorchester 2 Flowertown
17 Elementary, Dorchester District 2.

18 THE COURT: Okay. Elementary school?

19 PROSPECTIVE JUROR KIRSTIN KYZAR: Yes, sir.

20 THE COURT: What grade is that?

21 PROSPECTIVE JUROR KIRSTIN KYZAR: First grade.

22 THE COURT: First grade? Oh, well, you need to be with
23 them. I was going to say that if it was a third or fourth or
24 fifth or junior high, I would keep you here just as a favor to
25 you, but --



1 PROSPECTIVE JUROR KIRSTIN KYZAR: I told them I was
2 coming to court, and they're like, oh, my gosh, are you okay?
3 And I'll be there tomorrow. And if I wasn't coming back
4 tomorrow, (indiscernible) are upset.

5 THE COURT: We'd love to have you stay, Ms. Kyzar, but we
6 understand that there's a higher duty to be served there. Are
7 you off in the summer?

8 PROSPECTIVE JUROR KIRSTIN KYZAR: Yes, sir.

9 THE COURT: We'll try to get you in the summer.

10 PROSPECTIVE JUROR KIRSTIN KYZAR: Yes, sir.

11 THE COURT: Thank you. We'll transfer you to another
12 term.

13 Number 106 is transferred.

14 A few moments ago, I asked you if any of you has served
15 as a circuit court juror in the last calendar year because
16 that would exempt -- that would give you disqualifications.
17 If you have served as a circuit court juror in the last three
18 calendar years, you have an exemption that does not require
19 you to serve again. We don't want you to have to serve any
20 more than every three years at the most. And so if any of you
21 have served in the last three calendar years as a circuit
22 court juror -- and once again, here in Dorchester County, that
23 would be in this courtroom -- and would like to claim your
24 exemption, if so, please stand.

25 Thank you.



1 Is any member of the jury panel an owner or an operator
2 of a business and you are so essential to the operation of
3 that business that when you are not there, it does not
4 operate, nobody else can do it except you, and so you have to
5 run the business. And if that applies to you and the business
6 has to shut down because you are here, please stand and let me
7 see if I can give you some relief.

8 Yes, sir, at the very back on the aisle on the outside.
9 Your name and number please, ma'am?

10 PROSPECTIVE JUROR SAMANTHA DOZAL: Samantha Dozal, 52.

11 THE COURT: 52, Ms. Dozal, what's your position, please?

12 PROSPECTIVE JUROR SAMANTHA DOZAL: I'm the owner.

13 THE COURT: Of what?

14 PROSPECTIVE JUROR SAMANTHA DOZAL: Of Pepperjack Pottery.

15 It's a paint-your-own-pottery studio.

16 THE COURT: And is that open on regular business hours
17 all the time?

18 PROSPECTIVE JUROR SAMANTHA DOZAL: Yes.

19 THE COURT: Okay. And so you've had to shut it down to
20 come here today?

21 PROSPECTIVE JUROR SAMANTHA DOZAL: Actually, we are
22 closed today, but we're open the rest of the week, so.

23 THE COURT: Oh, my goodness. All right. Well, that
24 would disqualify you for the exemption. That's the reason
25 it's here, for small-business people like you who can't



1 operate a business, or business can't operate without you.

2 And so I'll let you get back to the pottery center.

3 Juror number 52 is exempt. Thank you, ma'am.

4 PROSPECTIVE JUROR SAMANTHA DOZAL: Thank you.

5 THE COURT: Yes, sir. Your name and number please, sir.

6 PROSPECTIVE JUROR JON OLMSTEAD: Jon Olmstead, number

7 132.

8 THE COURT: Mr. Olmstead, what's your situation?

9 PROSPECTIVE JUROR JON OLMSTEAD: I am the owner and sole
10 employee of SC Property Inspections, and not knowing the
11 procedure here, I booked inspections all this week.

12 THE COURT: Right. You've already booked them?

13 PROSPECTIVE JUROR JON OLMSTEAD: Yes, sir, and they've --

14 THE COURT: Yes.

15 PROSPECTIVE JUROR JON OLMSTEAD: -- paid for them.

16 THE COURT: All right. Mr. Olmstead, that's the sort of
17 thing you can set for schedule; is that right? You can book
18 those things according to appointments; is that fair to say?

19 PROSPECTIVE JUROR JON OLMSTEAD: Yes, sir.

20 THE COURT: So if we were to give you enough advanced
21 notice next time that you're going to be serving, would you be
22 able to leave those slots open, not book them up, so you could
23 come and serve with us?

24 PROSPECTIVE JUROR JON OLMSTEAD: I could do that, Your
25 Honor; however, it would be financially taxing because I am



1 the only employee.

2 THE COURT: All right. So traditionally, you're fully
3 booked, is what you're saying?

4 PROSPECTIVE JUROR JON OLMSTEAD: Yes, sir. I mean --

5 THE COURT: Okay.

6 PROSPECTIVE JUROR JON OLMSTEAD: -- there are slow
7 periods, obviously December-January.

8 THE COURT: Right. If we were to send -- if we were to
9 get you back here in December or January, do you think you
10 might be able to serve? I want to -- I want to do what's fair
11 to you.

12 PROSPECTIVE JUROR JON OLMSTEAD: I'm -- I would be able
13 to. Yes, sir.

14 THE COURT: All right, sir. We'll transfer you to a
15 December or January term, Mr. Olmstead, and we appreciate your
16 willingness to serve if your schedule will allow us then.
17 Okay.

18 PROSPECTIVE JUROR JON OLMSTEAD: Thank you, Your Honor.

19 THE COURT: But for now, you're free to go.

20 Transfer Mr. Olmstead accordingly, please, Madam Clerk.
21 Thank you.

22 Yes, ma'am. At the back. Your name and number, please.

23 PROSPECTIVE JUROR CECELIA CHANDARANA: I'm number 35. I
24 have English Garden Florist. I just opened in August.

25 THE COURT: Ms. Chandarana, I'm sorry. I couldn't hear



1 all that.

2 PROSPECTIVE JUROR CECELIA CHANDARANA: I just opened in
3 August. I moved here a year ago from Greenville, South
4 Carolina --

5 THE COURT: Right.

6 PROSPECTIVE JUROR CECELIA CHANDARANA: -- to retire.
7 Retirement didn't work for me.

8 THE COURT: All right.

9 PROSPECTIVE JUROR CECELIA CHANDARANA: So I opened
10 another florist.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR CECELIA CHANDARANA: It's just me and
13 my husband.

14 THE COURT: So you run the florist shop?

15 PROSPECTIVE JUROR CECELIA CHANDARANA: Yeah, I do
16 everything.

17 THE COURT: Okay. I'm sure. All right. Yeah. Well, I
18 can appreciate that, Ms. Chandarana. Am I even saying your
19 name -- can you even understand it when I say it --

20 PROSPECTIVE JUROR CECELIA CHANDARANA: Yeah.

21 THE COURT: -- the way I pronounce your name?

22 PROSPECTIVE JUROR CECELIA CHANDARANA: It's [Shan-der-ah-
23 na].

24 THE COURT: Hey, I was close.

25 PROSPECTIVE JUROR CECELIA CHANDARANA: Yeah.



1 THE COURT: I'm right there. All right. Well, we'll let
2 you go back to the flower shop, and I can appreciate that.
3 Retirement didn't work for me either, so I know how that goes.

4 PROSPECTIVE JUROR CECELIA CHANDARANA: Yeah. It's
5 just morning.

6 THE COURT: Good luck to you.

7 She is exempt.

8 PROSPECTIVE JUROR CECELIA CHANDARANA: Thank you.

9 THE COURT: Number 35. Thank you.

10 Is any member of the jury panel a caretaker, care keeper
11 or taker, of a disabled person or someone who is over the age
12 of 65, and that person is dependent upon you to take care of
13 him or her, and if you're not there, then either they are ill
14 taken care of or somebody else has to leave what they're doing
15 and come in on a part-time basis till you get back. Is
16 anybody out there a caretaker of a disabled person of that
17 nature? If so, please stand.

18 Thank you.

19 UNIDENTIFIED SPEAKER: Judge. Judge.

20 THE COURT: Okay. I finally talked somebody into -- all
21 right.

22 Yes, sir. Your name and number please.

23 PROSPECTIVE JUROR KELLY ROBINSON: Name's Kelly Robinson,
24 and number is 161.

25 THE COURT: All right. Mr. Robinson, what's your



1 situation?

2 PROSPECTIVE JUROR KELLY ROBINSON: Just a one-off
3 situation. My brother normally takes care of my mother, but
4 this Thursday, he has a work engagement that he can't miss, so
5 I'm supposed to be taking care of her this Thursday.

6 THE COURT: It's supposed to be that Thursday?

7 PROSPECTIVE JUROR KELLY ROBINSON: Yeah.

8 THE COURT: All right, sir. Mr. Robinson, we may be
9 involved in the trial of a case on Thursday, and so we don't
10 want to take a chance on interrupting your mother's care
11 during that period of time. But since that is a, as you say,
12 not the normal situation, we're going to transfer you to
13 another term of court, and hopefully that conflict won't exist
14 during that time. Okay.

15 PROSPECTIVE JUROR KELLY ROBINSON: All right.

16 THE COURT: But we can let you go now. Even though you
17 might not be needed until Thursday, it might interfere with
18 your schedule or with ours if we kept you. We'll transfer you
19 to another term of court. Okay. Thank you.

20 Have any of you previously served as a member of a grand
21 jury, state, local, or federal grand jury, in the last five
22 calendar years? If so, please stand.

23 Do any of you know of any reason of any kind whatsoever
24 as to why you might not be qualified, that is qualified under
25 the law, to serve as a juror? If you know of any such reason,



1 please stand.

2 Thank you.

3 Now, ladies and gentlemen, I cannot excuse a qualified
4 juror from jury service, and right now, it appears to me that
5 all of you are qualified to serve as jurors. But we recognize
6 that some of you might be serving here this week at a great
7 inconvenience, more so than the normal inconvenience that
8 always attaches itself to jury service.

9 We recognize at the outset that any time you are asked to
10 serve as a juror is going to create an inconvenience for you.
11 You're going to have to shift your schedule around and move
12 some things around and postpone some things in order to be
13 here with us. And we understand that and we appreciate that
14 inconvenience and we do all that we can to minimize it. But
15 there is no way that we can eliminate it entirely. We have to
16 ask good folks like you to do what you have done today, that
17 is to put aside temporarily those things that you had planned
18 and come into court to serve as a juror and to help us do the
19 things that we have to do, because without you, the system
20 does not operate.

21 You today without knowing it are part of a system of jury
22 service that began over 800 years ago in England. I don't
23 need to bore you with the history of that, but until 1215 in
24 England, there was no such thing as a jury trial. The king
25 made all the decisions. He decided who was going to be tried



1 and who was going to be convicted and who was going to be let
2 go. All power rested with the king until 1215, and then
3 things turned around.

4 And since that time, jurors like yourselves have been
5 responding to the call that you did to get you here today,
6 preparing yourself to sit in judgment of your fellow human
7 beings, and to decide whether or not someone should be
8 punished or not or someone should be let go or not on the
9 actions that they are accused of doing. It is a time-honored
10 system, and you are all beneficiaries of it, as am I.

11 Whether or not we have any cases pending on this docket
12 or not, you and I, as citizens of this county and citizens of
13 this state, benefit from the jury service that you are a part
14 of today. And we thank you for that. And that system that
15 you are a part of today will continue, hopefully for another
16 800 years as long as folks like you are willing to do what you
17 did today to put aside what you had to do and show up here
18 this afternoon to find out if we need you as a juror to try
19 the case that we're going to try tomorrow.

20 People like you in courts across this state today on a
21 Monday are doing exactly what you have done, listening to
22 judges just like me ask the same questions that I've asked of
23 you and telling them pretty much the same thing that I'm
24 telling you here. If ever us judges on a Monday morning look
25 out into the courtroom like you are in today, and all we see



1 are the empty pews and nobody is there because the folks that
2 we had asked to come that day said I've got better things to
3 do. I'm not going. It's a waste of time. I'm going to go up
4 there and sit around all day, and the judge or the lawyers'
5 going to be back in the courtroom back there, either talking
6 or in the judge's chamber smoking cigarettes and drinking
7 coffee, and come out at the bottom of the hour and say we
8 ain't got nothing there for you to do. Just come back. We'll
9 call you back tomorrow. It's a grand waste of time, and I
10 don't want to waste my time. I've got better, important
11 things to do. So I'm not going.

12 And so we look out there, and there's nobody there to
13 help us do the work we have to do. Then, ladies and
14 gentlemen, the 815-year tradition that you are a part of will
15 stop dead in its tracks because people like you have refused
16 to serve. So we thank you for the fact that you are willing
17 to serve. Not knowing whether you're going to be asked to
18 serve or not, you have showed up, and you're willing to submit
19 yourself to service. And I thank you for that.

20 Having said all of that, I recognize, however, that this
21 week, there are certain folks out there who may, because of
22 business commitments or personal commitments that you have
23 made, find that it's impossible for you to serve this
24 particular week because the inconvenience that normally
25 attaches itself to jury service is much greater for you this



1 week because you've got something that you have to do. It has
2 got to be done this week, and nobody else can do it but you.
3 And so this is about the worst possible week we could have
4 asked you to serve as a juror.

5 Now, if that's your situation, I'll listen to you in a
6 minute to see if I can't give you some relief. I cannot
7 excuse you. I've already told you that. The best that I can
8 do is to transfer you to another term of court, like some of
9 these folks that I've already transferred here today. In
10 another term of court, hopefully the hardship that is yours
11 this week might not be quite as great.

12 My ability to do that depends on two things. It depends
13 on, first of all, how many of you are asking for some relief.
14 We need most of you to go through the selection process that
15 we have to go through in order to get a jury. And secondly,
16 it depends on how great is your hardship. Is it a really
17 hardship at all, or is it just an inconvenience?

18 Now, before you decide that you need to come talk with
19 me, let me just tell you briefly what our schedule will be
20 like. First of all, we're not going to start the trial until
21 tomorrow. In our normal hours of operation, we'll start in
22 the morning at 9:30. We'll work through the day, taking about
23 an hour and 15 minutes or so for lunch. And then we come back
24 at the end of the day and stop sometime around 5 o'clock. At
25 the end of the day, we try to find a convenience stopping



1 place then, wherever we are in the trial of the case.

2 If you're not selected as a juror, you don't have to be
3 here while the case is being tried. But if you are selected
4 as a juror, you have to be here during those times. It might
5 be, depending upon what your conflict is, that you can do what
6 you have to do outside of those hours and satisfy your jury
7 obligation this week and not have another week messed up
8 somewhere down in the future and still do what you had planned
9 to do. But I recognize that that might not be good enough to
10 help you get through your conflict for this week.

11 So if any of you out there have a conflict that you have
12 to take care of for the reasons that I've just explained, if
13 you will form a line in that center aisle, I'll bring you
14 forward one at a time to see if I can't transfer you to
15 another term of court. So if you will form a line in that
16 center aisle right now, and let me see.

17 All right. If you'll just stay right there for a minute
18 please, sir. Thank you.

19 All right. Just got one.

20 Oh, well, I knew it. Here we go.

21 UNIDENTIFIED SPEAKER: Got another one coming up.

22 THE COURT: Okay.

23 UNIDENTIFIED SPEAKER: Got another one coming up.

24 THE COURT: Oh, well, there'll be more.

25 All right. Here's the way this works, folks. In a



1 minute, I'm going to start talking to these folks to see if I
2 can't give them some relief. We've only got two. I might be
3 generous with those two and send them home. You're sitting
4 back there, and you say, gosh, that looked kind of easy, I
5 think I'll give it a shot myself. And then after a while, I
6 look back there, and there's nobody else left.

7 So it's last call. If you want to talk with me about
8 being transferred, right now is your time to get in line
9 because you can't get in line once I start talking. Okay.

10 All right. Good. Thank you.

11 THE DEPUTY CLERK: Yes, sir. Juror number 20, go ahead.
12 Number 20 (indiscernible).

13 THE COURT: Mr. Brenneman.

14 UNIDENTIFIED SPEAKER: (Indiscernible) on Friday
15 (indiscernible) till Thursday.

16 THE COURT: Okay.

17 THE DEPUTY CLERK: Judge, can he just (indiscernible) --
18 yeah.

19 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Oh, my bad.

20 THE COURT: Okay. Did you hear that, Ms. --

21 THE DEPUTY CLERK: No.

22 THE COURT: Okay. He's got a conflict on Friday.

23 PROSPECTIVE JUROR ASHLEY BRENNEMAN: I have a vacation
24 scheduled on Friday.

25 THE COURT: Yeah. So how long is it going to take to try



1 your case?

2 MS. LAPLANTE: I think at most we'll be here till
3 Wednesday afternoon, Your Honor. Thursday morning to be the
4 safest, but I anticipate Friday.

5 THE COURT: Okay. You will not be here on Friday.

6 PROSPECTIVE JUROR ASHLEY BRENNEMAN: That's all I wanted
7 to make sure of.

8 THE COURT: That's good. Okay. That's good. All right.
9 Thank you, sir. And we'll make a note that I will let you go.
10 Even if we're still here, you won't be here on Friday, Mr.
11 Brenneman. Thank you.

12 THE DEPUTY CLERK: 137.

13 THE COURT: Ms. Patel, you'll speak right here into this
14 microphone --

15 THE DEPUTY CLERK: Just speak right here, ma'am.

16 THE COURT: -- so this lady can hear you. Right here.
17 Okay.

18 PROSPECTIVE JUROR SHOBHANA PATEL: Okay.

19 THE COURT: That microphone. What's your situation?

20 PROSPECTIVE JUROR SHOBHANA PATEL: Like, I'm new hire, so
21 I have to be on my training every day.

22 THE COURT: Okay. So you've got training on Thursday; is
23 that right?

24 PROSPECTIVE JUROR SHOBHANA PATEL: Um-hum.

25 THE COURT: You're a new hire? And you're still on



1 probation working? Okay. We're going to transfer you to
2 another term of court several months out to give you a chance
3 to work through your probation so that you won't have to deal
4 with that. We don't want you to -- we don't want to
5 jeopardize your job.

6 PROSPECTIVE JUROR SHOBHANA PATEL: Um-hum.

7 THE COURT: And so we're going to send you back. And you
8 will get transferred. It will be several months down the
9 road. Okay.

10 PROSPECTIVE JUROR SHOBHANA PATEL: Okay.

11 THE COURT: You can handle that?

12 PROSPECTIVE JUROR SHOBHANA PATEL: Yeah.

13 THE COURT: All right. Thank you. You're free to go.
14 Transfer her to a late term.

15 (Pause.)

16 THE COURT: Ladies and gentlemen, thank you for your
17 cooperation with us throughout that part of the process. I
18 find that now all of you who have not been excused or
19 transferred are qualified to serve as jurors for this term of
20 court. And once again, I welcome you here to your service as
21 jurors in this court of general sessions.

22 I have already explained to you the importance of what
23 you are about and how critical you are. I will not continue
24 to belabor that point. You are all intelligent people, and
25 you understand how important you are to this process. And I



1 have an absolutely brilliant speech up here that I have
2 scripted out. I'm going to spare you that. First of all, you
3 don't need it. And secondly, now that I've told you that, if
4 I were to give it to you, you'd understand it's not all that
5 brilliant after all. So we'll just leave that alone.

6 We are preparing now to move to the qualifications of
7 jurors to try the first case that we have to try that we will
8 start tomorrow. We have one juror who had to step out
9 momentarily. I'm going to wait for just a moment for that
10 juror to get back into the courtroom. And we'll begin with
11 the jury selection process in that case as soon as everybody
12 is in place.

13 Counsel for both sides in this case, I have reviewed your
14 requests for voir dire if you've got your copies in front of
15 you, if you want to refer to those.

16 First of all, for the State's requested voir dire, I will
17 decline to give questions 2, 3, and 5. I will give the
18 remaining questions.

19 For the defendant's requested voir dire, I will modify
20 slightly question number 6, leaving out the words "similar
21 case". I will decline to give questions 13 and 14. I will
22 give the other questions in some fashion that will accompany
23 the -- maybe not verbatim, but will encompass the thoughts
24 contained in those.

25 Do I have a witness list, please?



1 MS. LAPLANTE: Yes, Your Honor. Can we briefly approach?

2 THE COURT: Ma'am. Okay.

3 Let me turn this off.

4 (Whereupon, a bench conference was held off the record in
5 the presence of the jury, but out of the hearing of the
6 jury.)

7 (Thereupon, counsel returned to counsel tables and the
8 following ensued:)

9 (Open court.)

10 UNIDENTIFIED SPEAKER: On the way, Your Honor.

11 THE COURT: Thank you.

12 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

13 THE COURT: All right. Thank you, Mr. Smith.

14 All right. Madam Solicitor, we have everyone in place.
15 You can call your case.

16 MS. LAPLANTE: Thank you, Your Honor.

17 This is the case of State v. Mark Anthony Brown, Your
18 Honor. He is here before you on a true billed indictment 2019
19 GS 18-1979, charged with criminal sexual conduct with a minor
20 in the third degree.

21 THE COURT: Thank you.

22 Ladies and gentlemen, as you have heard, the State has
23 called the case of the State v. Mark Anthony Brown. Mr. Brown
24 has been indicted by the grand jury of Dorchester County and
25 charge in the indictment here in Dorchester County on or about



1 May the 26th of 2019, being over the age at of 14 at the time,
2 willfully and lewdly committing or attempting to commit a lewd
3 or lascivious action upon or with a body or the parts of a
4 body of a child under the age of 16 with the intent of
5 arousing or feeling or gratifying the lust and passions of
6 that child in violation of the law.

7 The indictment that I've just read to you, ladies and
8 gentlemen, is neither evidence, nor is it proof of the charges
9 that it contains. It is simply a charging document that tells
10 you or me or anybody else who reads it what this case is all
11 about. So the charges contained in the indictment, Mr. Brown
12 has entered a plea of not guilty and has requested a jury
13 trial at your hands.

14 Mr. Brown, will you please stand and face the jury out
15 there in front of you?

16 Thank you, sir. You can be seated.

17 Ladies and gentlemen, I need to know if any of you all
18 are related by blood or connected by marriage to Mr. Mark
19 Anthony Brown. In other words, are you kin to him? Are you a
20 friend of his or a business associate of his, a casual
21 acquaintance of his, or a person who has any direct or
22 indirect contact with Mr. Mark Anthony Brown? If so, will you
23 please stand.

24 Thank you.

25 Potential witnesses who will be testifying in the trial



1 of this case are Res. Det. Yxsumi Simmons from the Dorchester
2 County Sheriff's Office and Det. Kreig, K-R-E-I-G, Griffin,
3 also from the Sheriff's Office, and from the Dorchester County
4 Consolidated Dispatch, Dir. Cora Tanton, it's T-A-N-T-O-N, and
5 Dep. Dir. Portia Pryor. In addition, potential witnesses who
6 will be testifying in the trial are Dr. Kathy Quinones,
7 Z.T.G. , Angela Smalls.

8 I need to know if any of you all are related by blood or
9 connected by marriage to any of those particular witnesses, or
10 are people who have any direct or indirect contact, business
11 associates, casual acquaintances, or otherwise. If so, please
12 stand.

13 Yes, sir. Your name and number please, sir.

14 PROSPECTIVE JUROR STEPHEN HAYES: Stephen Hayes, number
15 87.

16 THE COURT: Mr. Hayes, who is the association with,
17 please, sir?

18 PROSPECTIVE JUROR STEPHEN HAYES: The dispatchers. I
19 used to work with them.

20 THE COURT: Okay. Did you work as a dispatcher, or when
21 you were both working somewhere else?

22 PROSPECTIVE JUROR STEPHEN HAYES: Back when they were
23 under the sheriff's office.

24 THE COURT: I gotcha.

25 PROSPECTIVE JUROR STEPHEN HAYES: I -- I retired --



1 THE COURT: I see.

2 PROSPECTIVE JUROR STEPHEN HAYES: -- in 2019.

3 THE COURT: Good, Mr. Hayes. That explains it. Would
4 the association that you have just described make it difficult
5 for you to serve fairly and impartially as a juror in the
6 trial of this case in which that person may testify?

7 PROSPECTIVE JUROR STEPHEN HAYES: No, Your Honor.

8 THE COURT: Could you set aside that prior association
9 then and decide this case based on the evidence that you will
10 hear in court without regard to that association?

11 PROSPECTIVE JUROR STEPHEN HAYES: Yes, Your Honor.

12 THE COURT: And would you do that please, sir?

13 PROSPECTIVE JUROR STEPHEN HAYES: Yes, Your Honor.

14 THE COURT: Thank you, Mr. Hayes.

15 Ladies and gentlemen, the lawyers who will be involved in
16 the trial of this case, on behalf of the State, the case will
17 be presented by Ms. LaPlante, deputy solicitor for the
18 Dorchester County in this circuit, and for the defense, the
19 defendant is represented by Ms. Julie Stewart and Mr. Wehman
20 from the Public Defender's office.

21 I need to know if any of you have any connection with
22 these lawyers, if you are kin to them by blood or by marriage,
23 or if you're friends of theirs or social acquaintances of
24 theirs or if you've ever been represented by any of them or if
25 you've ever been sued by any of them. If so, please stand.



1 THE DEPUTY CLERK: One, Your Honor.

2 THE COURT: Okay. Thank you.

3 Yes, sir. Your name and number please?

4 PROSPECTIVE JUROR CALEB PATRICK: Caleb Patrick, 138.

5 THE COURT: Mr. Patrick, tell me who the association is
6 with?

7 PROSPECTIVE JUROR CALEB PATRICK: Julie. Julie.

8 THE COURT: Ms. Stewart?

9 PROSPECTIVE JUROR CALEB PATRICK: Yeah, Ms. Stewart.

10 THE COURT: And tell me what the -- tell me the nature of
11 the association, please.

12 PROSPECTIVE JUROR CALEB PATRICK: High school friends.

13 THE COURT: Okay. Thank you. Have you maintained your
14 friendship since high school?

15 PROSPECTIVE JUROR CALEB PATRICK: No, sir.

16 THE COURT: Would the association that you have just
17 described, Mr. Patrick, make it difficult for you to be fair
18 and impartial as a juror in the trial of a case in which she
19 represents one of the sides?

20 PROSPECTIVE JUROR CALEB PATRICK: No, sir.

21 THE COURT: Would you be able to set aside that prior
22 association and decide this case based on the evidence that
23 you hear in court without regard to that association?

24 PROSPECTIVE JUROR CALEB PATRICK: Yes, sir.

25 THE COURT: And would you do that please, sir?



1 PROSPECTIVE JUROR CALEB PATRICK: Yes, sir.

2 THE COURT: Thank you, Mr. Patrick.

3 Ladies and gentlemen, have any of you seen or heard or
4 read anything about this case, or do you have any knowledge
5 about this case from any source at all, news, media, Facebook,
6 whatever, of any source at all? Anybody know anything about
7 this case?

8 Okay. You said you don't know anything about the case,
9 and I'm sure that you don't. I now need to know if any of you
10 have ever had any involvement, direct or otherwise, in a
11 similar case. By that, I mean I need to know if any of you or
12 any members of your immediate family have ever been involved
13 in a crime of personal violence. This is a crime of personal
14 violence, criminal sexual conduct with a minor in the third
15 degree is a crime of personal violence.

16 There are other crimes of personal violence. Criminal
17 domestic violence, armed robbery, assault and battery, murder,
18 manslaughter, all of those are extreme examples of crimes of
19 personal violence. So the question does not only apply to
20 you. It applies to any members of your immediate family, and
21 it applies to a wide range of possible involvement in the
22 crime.

23 You or your family member could have been the victim of a
24 crime, that is a person against whom the crime was inflicted.
25 Or you or your family member could have been the defendant,



1 that is the person charged with the crime. Or you or your
2 family member could have been a witness, that is someone who
3 is involved actively in the prosecution of the defense of the
4 crime itself.

5 .If that applies to you in any of those respects, I'm
6 going to ask you to identify yourselves at this point in time.
7 And then I'm going to bring you down individually here at the
8 sidebar with the lawyers and myself to enquire further about
9 your involvement to see if that has any impact on your ability
10 to serve as a juror in this case.

11 So first of all, I want to know if this question applies
12 to anybody. Let's start on this side over here, the courtroom
13 over here. If this question applies to anybody on this side,
14 my right, your left side of the courtroom, would you please
15 stand?

16 Okay. Yes. Well, the front row, your name and number
17 please, ma'am.

18 PROSPECTIVE JUROR KIERA GLESSNER: Kiera Glessner. I am
19 76.

20 THE COURT: Juror number 76. All right. Ms. Glessner,
21 if you will form a line in the center aisle right now just
22 behind those doors there if you don't mind. Thank you.

23 Then, next against the wall, your name and number please,
24 ma'am?

25 PROSPECTIVE JUROR ERCELIA GREEN: Ercelia Green, 79.



1 THE COURT: Number 79, Ms. Green.

2 Yes. Your name and number please, ma'am?

3 PROSPECTIVE JUROR CHERYL AKERS: Cheryl Akers, 3.

4 THE COURT: Number 3, Ms. Akers. Okay.

5 All right. Ms. Glessner, you can approach please.

6 THE DEPUTY CLERK: Juror number 76.

7 (Whereupon, a bench conference was held in the presence
8 of the jury, but out of the hearing of the jury.)

9 THE COURT: All right. Ms. Glessner, if you will speak
10 into this microphone right here, and she will be able to hear
11 you.

12 Was it you or a family member that was involved?

13 PROSPECTIVE JUROR KIERA GLESSNER: Family member.

14 THE COURT: Okay. And what was her relation to you?

15 PROSPECTIVE JUROR KIERA GLESSNER: It's my cousin.

16 THE COURT: Your cousin? And what was your cousin's
17 involvement in the crime?

18 PROSPECTIVE JUROR KIERA GLESSNER: He's in prison right
19 now for being with a minor.

20 THE COURT: Okay.

21 PROSPECTIVE JUROR KIERA GLESSNER: And it was also -- I
22 was also a minor whenever he did it to me so --

23 THE COURT: And tell me again, what is your cousin
24 accused of? What is he serving time for?

25 PROSPECTIVE JUROR KIERA GLESSNER: Serving time for



1 lawful -- with a minor. What does that mean? Basically the
2 same thing as (indiscernible) --

3 THE COURT: Was it sexual abuse of a minor?

4 PROSPECTIVE JUROR KIERA GLESSNER: Like, he was in one of
5 those sting operations where they caught him.

6 THE COURT: Oh, okay.

7 PROSPECTIVE JUROR KIERA GLESSNER: Yeah.

8 THE COURT: Was that prosecuted here in Dorchester
9 County?

10 PROSPECTIVE JUROR KIERA GLESSNER: I'm not 100 percent
11 sure.

12 THE COURT: Okay. Was he a first cousin, a second
13 cousin, a third cousin?

14 PROSPECTIVE JUROR KIERA GLESSNER: First cousin.

15 THE COURT: First cousin? Okay. Did y'all live close to
16 each other, maintain contact with each other? Okay. Do you
17 know who prosecuted that case?

18 PROSPECTIVE JUROR KIERA GLESSNER: I don't. He's still
19 in prison right now though.

20 THE COURT: I understand. Okay. Would you tell us your
21 cousin's name so that they can --

22 PROSPECTIVE JUROR KIERA GLESSNER: Charles Brandon Hayek
23 (phonetic).

24 THE COURT: Okay. All right. Thank you.

25 PROSPECTIVE JUROR KIERA GLESSNER: Yeah.



1 THE COURT: All right. Thank you.

2 PROSPECTIVE JUROR KIERA GLESSNER: I'm good?

3 THE COURT: Now, ma'am, just one minute, one moment, and
4 the most important question. Would the fact that you have a
5 cousin who has been accused of and convicted and serving time
6 for a crime make it difficult for you to serve fairly and
7 impartially as a juror in this trial?

8 PROSPECTIVE JUROR KIERA GLESSNER: Yeah --

9 THE COURT: Okay.

10 PROSPECTIVE JUROR KIERA GLESSNER: -- because he did it
11 to me too. So I --

12 THE COURT: Okay. All right. We appreciate that. We'll
13 stand you aside as a juror on this case. Thank you. We'd
14 appreciate if you wouldn't mention your cousin's involvement
15 to anybody else on the jury panel while we're doing this
16 process. Okay. Thank you. I'm sorry we had to ask you about
17 it.

18 PROSPECTIVE JUROR KIERA GLESSNER: Do I sit back down?

19 THE COURT: You go back and have a seat.

20 PROSPECTIVE JUROR KIERA GLESSNER: Okay.

21 (Thereupon, counsel returned to counsel tables and the
22 following ensued:)

23 (Open court.)

24 THE DEPUTY CLERK: Juror number 79.

25 (Whereupon, a bench conference was held in the presence



1 of the jury, but out of the hearing of the jury.)

2 THE COURT: Yes. Ms. Green.

3 Oh, Lord. Thank you. One of us would have fallen --

4 UNIDENTIFIED SPEAKER: Yes, Your Honor.

5 THE COURT: -- me or the microphone. Okay. I appreciate
6 it. I was counting on you.

7 Ms. Green, was it you or a family member?

8 PROSPECTIVE JUROR ERCELIA GREEN: It was me.

9 THE COURT: It was you? And what was your involvement
10 please, ma'am?

11 PROSPECTIVE JUROR ERCELIA GREEN: I was the victim.

12 THE COURT: You were the victim? And what was the crime?

13 PROSPECTIVE JUROR ERCELIA GREEN: I have a quick
14 question. It wasn't in this country.

15 THE COURT: I'm sorry?

16 PROSPECTIVE JUROR ERCELIA GREEN: It was not in this
17 country. It was in the islands in Central America.

18 THE COURT: In the islands --

19 PROSPECTIVE JUROR ERCELIA GREEN: Um-hum.

20 THE COURT: -- you were the victim of a crime?

21 PROSPECTIVE JUROR ERCELIA GREEN: Yes.

22 THE COURT: A crime of personal violence, somebody hurt
23 you, harmed you?

24 PROSPECTIVE JUROR ERCELIA GREEN: (Indiscernible).

25 THE COURT: All right. Was anybody ever caught and



1 convicted for that? They were not? And how long ago did that
2 happen, Ms. Green?

3 PROSPECTIVE JUROR ERCELIA GREEN: 15 years ago.

4 THE COURT: 15 years ago. Okay. Well, I'm sorry to have
5 to ask you to relive that. Would your experience as a victim
6 in that particular case, wherever it happened, make it
7 difficult for you to serve fairly and impartially as a juror
8 in this trial?

9 PROSPECTIVE JUROR ERCELIA GREEN: Yes.

10 THE COURT: I understand that, and I apologize for asking
11 you to have to go back and relive that part in your life. I'm
12 going to ask you to go back and have a seat. Please don't
13 discuss your own situation with anybody else on the jury,
14 okay?

15 PROSPECTIVE JUROR ERCELIA GREEN: Okay.

16 (Thereupon, counsel returned to counsel tables and the
17 following ensued:)

18 (Open court.)

19 THE COURT: Okay. Juror number 79 will be stood aside as
20 a juror in this trial.

21 THE DEPUTY CLERK: Juror number 3.

22 (Whereupon, a bench conference was held in the presence
23 of the jury, but out of the hearing of the jury.)

24 THE COURT: Ms. Akers, if you will speak into that
25 microphone so she can hear you.



1 PROSPECTIVE JUROR CHERYL AKERS: Okay.

2 THE COURT: Was it you or a family member that was
3 involved?

4 PROSPECTIVE JUROR CHERYL AKERS: It was me.

5 THE COURT: And what was your involvement?

6 PROSPECTIVE JUROR CHERYL AKERS: I was sexually assaulted
7 by a family member.

8 THE COURT: I'm sorry. How long ago did that happen?

9 PROSPECTIVE JUROR CHERYL AKERS: I was ten, so --

10 THE COURT: Was the family member prosecuted as a result?

11 PROSPECTIVE JUROR CHERYL AKERS: No.

12 THE COURT: No? I don't need to ask you the impact that
13 that had on you at the time. That is self-evident. But I
14 need to know if your involvement in that capacity would make
15 it difficult for you to serve as a juror in this case?

16 PROSPECTIVE JUROR CHERYL AKERS: Yes, it would.

17 THE COURT: I'm sorry.

18 PROSPECTIVE JUROR CHERYL AKERS: It's okay.

19 THE COURT: I'm sorry we had to ask you to relieve that.
20 I'm going to let you go back, and we'll stand you aside as a
21 juror in this case. Please don't discuss your situation with
22 anybody else on the jury while we're going through this
23 process.

24 PROSPECTIVE JUROR CHERYL AKERS: Yeah.

25 THE COURT: Thank you, ma'am.



1 (Thereupon, counsel returned to counsel tables and the
2 following ensued:)

3 (Open court.)

4 THE COURT: Juror number 3 will be set aside.

5 All right. Now, we'll go to this side of the courtroom
6 and ask those of you that the question applies to if you will
7 stand where you are and let me get you identified by name and
8 by number. Okay.

9 Yes, on the outside, and I'll work my way across.

10 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Number 20, Ashley
11 Brenneman.

12 THE COURT: Mr. Brenneman. Okay. Mr. Brenneman, if you
13 will -- there you go.

14 Yes, sir. Your name and number please?

15 PROSPECTIVE JUROR EMIL POPELKA: Number 145, Emil
16 Popelka.

17 THE COURT: Mr. Popelka, if you will get right there in
18 line please, sir.

19 Yes, sir. Your name and number please?

20 PROSPECTIVE JUROR JEFFREY GANN: Jeffrey Gann, 67.

21 THE COURT: Thank you, and likewise, if you will get in
22 line please, Mr. Gann.

23 Mr. Brenneman.

24 THE DEPUTY CLERK: Number 20.

25 (Whereupon, a bench conference was held in the presence



1 of the jury, but out of the hearing of the jury.)

2 THE COURT: If you'll speak into that microphone, she
3 will be able to hear you.

4 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Okay.

5 THE COURT: Mr. Brenneman, was it you or a family member
6 that was involved?

7 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Family member. My
8 brother is a convicted pedophile.

9 THE COURT: All right, sir. Is he serving any time?

10 PROSPECTIVE JUROR ASHLEY BRENNEMAN: He's -- did his
11 time. He's out.

12 THE COURT: Was he prosecuted here locally, or was that
13 somewhere else?

14 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Charleston County.

15 THE COURT: Charleston County?

16 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Yeah.

17 THE COURT: Would that involvement as the brother, as you
18 have said, of someone who has been convicted of a crime like
19 this make it difficult for you to serve fairly and
20 impartially?

21 PROSPECTIVE JUROR ASHLEY BRENNEMAN: No.

22 THE COURT: You could set aside that experience --

23 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Um-hum.

24 THE COURT: -- and decide just based on your own -- what
25 you hear in the courtroom?



1 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Um-hum.

2 THE COURT: I'll ask you to do that.

3 PROSPECTIVE JUROR ASHLEY BRENNEMAN: Um-hum.

4 THE COURT: Thank you, sir. Mr. Brenneman, you can go
5 back and have a seat. Thank you.

6 (Thereupon, counsel returned to counsel tables and the
7 following ensued:)

8 (Open court.)

9 He's fine.

10 THE DEPUTY CLERK: Fine.

11 THE COURT: Yes, ma'am.

12 THE DEPUTY CLERK: Number 145.

13 (Whereupon, a bench conference was held in the presence
14 of the jury, but out of the hearing of the jury.)

15 THE COURT: Thank you. Mr. Popelka.

16 PROSPECTIVE JUROR EMIL POPELKA: Yes.

17 THE COURT: Did I say that right?

18 PROSPECTIVE JUROR EMIL POPELKA: Yes, Your Honor.

19 THE COURT: Good. Was it you or a family member that was
20 involved?

21 PROSPECTIVE JUROR EMIL POPELKA: Family member.

22 THE COURT: And what was the relation to you?

23 PROSPECTIVE JUROR EMIL POPELKA: Daughter.

24 THE COURT: And what was her involvement?

25 PROSPECTIVE JUROR EMIL POPELKA: It was something



1 similar -- similar charge. My knowledge, I don't believe
2 they -- the accused was actually convicted, but it was a
3 similar charge --

4 THE COURT: Right.

5 PROSPECTIVE JUROR EMIL POPELKA: -- and it was about
6 eight -- about eight years ago, nine.

7 THE COURT: How old was your daughter at the time?

8 PROSPECTIVE JUROR EMIL POPELKA: 16 or 17. I can't
9 remember. I thought it was 16.

10 THE COURT: Okay. How's she doing now?

11 PROSPECTIVE JUROR EMIL POPELKA: Much better. Got twins.
12 Twin grandkids.

13 THE COURT: Okay. All right.

14 PROSPECTIVE JUROR EMIL POPELKA: But she's doing --

15 THE COURT: Would your experience as a victim, obviously,
16 because your daughter was a victim, that made you a victim,
17 would that make it difficult for you to serve fairly and
18 impartially as a juror in this trial?

19 PROSPECTIVE JUROR EMIL POPELKA: I don't think so. I
20 hear lines of evidence and (indiscernible) --

21 THE COURT: Okay. I'm going to ask it a different way.
22 Would you be able to make your decision in this case based on
23 the evidence that you will hear in court without --

24 PROSPECTIVE JUROR EMIL POPELKA: Yes, Your Honor.

25 THE COURT: -- regard to your daughter's situation?



1 PROSPECTIVE JUROR EMIL POPELKA: Yes, Your Honor.

2 THE COURT: And would you do that please, sir?

3 PROSPECTIVE JUROR EMIL POPELKA: Yes, Your Honor.

4 THE COURT: Thank you, sir. You can go back and have a
5 seat.

6 (Thereupon, counsel returned to counsel tables and the
7 following ensued:)

8 (Open court.)

9 Okay. He's fine.

10 THE DEPUTY CLERK: Number 67.

11 (Whereupon, a bench conference was held in the presence
12 of the jury, but out of the hearing of the jury.)

13 THE COURT: Mr. Gann, how are you?

14 PROSPECTIVE JUROR JEFFREY GANN: Good. Thank you.

15 THE COURT: Could you speak into that microphone so she
16 can hear you.

17 PROSPECTIVE JUROR JEFFREY GANN: Yes.

18 THE COURT: Was it you or a family member that was
19 involved?

20 PROSPECTIVE JUROR JEFFREY GANN: It was my wife before we
21 were married.

22 THE COURT: Okay. And what was her involvement?

23 PROSPECTIVE JUROR JEFFREY GANN: It was an armed robbery
24 at Taco Bell when -- like, she was still in high school, only
25 around -- she was probably 16, 17. She's 55 now so --



1 THE COURT: Okay. Gotcha. Was anybody caught from that?

2 PROSPECTIVE JUROR JEFFREY GANN: Yes, and prosecuted and
3 went to jail.

4 THE COURT: Oh, well, good. Okay. Did that happen here
5 in Dorchester County or somewhere else?

6 PROSPECTIVE JUROR JEFFREY GANN: Yes, sir, in
7 Summerville.

8 THE COURT: Okay. That was a long time ago, obviously,
9 so Ms. Stewart would have been too young to either defend or
10 prosecute that --

11 PROSPECTIVE JUROR JEFFREY GANN: Yeah, it was probably in
12 the '80s -- '80s, maybe.

13 THE COURT: Okay. Would your involvement as a victim,
14 through your wife's involvement as a victim --

15 PROSPECTIVE JUROR JEFFREY GANN: No, it was just hearing
16 the stories, or I was not involved in any way.

17 THE COURT: I understand that. What I meant was is the
18 spousal of a victim is by law -- you're counted as a victim
19 because --

20 PROSPECTIVE JUROR JEFFREY GANN: Oh, okay.

21 THE COURT: But I appreciate that you didn't have any
22 direct involvement in it. I understand that. I appreciate
23 that. I should have cleared that up.

24 Well, whatever it was, whatever your involvement was,
25 would that make it difficult for you to be fair and impartial



1 as a juror in this trial?

2 PROSPECTIVE JUROR JEFFREY GANN: No, sir.

3 THE COURT: Could you set aside your wife's experience
4 and your experience and decide this case based on what you
5 would hear in court without regard to that?

6 PROSPECTIVE JUROR JEFFREY GANN: Yes, sir.

7 THE COURT: Would you do that, please, sir?

8 PROSPECTIVE JUROR JEFFREY GANN: Yes, sir.

9 THE COURT: Thank you, sir.

10 PROSPECTIVE JUROR JEFFREY GANN: Thank you.

11 THE COURT: You may have a seat.

12 (Thereupon, counsel returned to counsel tables and the
13 following ensued:)

14 (Open court.)

15 UNIDENTIFIED SPEAKER: (Indiscernible).

16 THE COURT: Okay.

17 THE DEPUTY CLERK: Number 157.

18 (Whereupon, a bench conference was held in the presence
19 of the jury, but out of the hearing of the jury.)

20 THE COURT: Okay. Ms. Ricks.

21 PROSPECTIVE JUROR VERNATTA RICKS: Yes.

22 THE COURT: If you'll speak into that microphone so that
23 she can hear you all right.

24 Was it you or a family member that was involved?

25 PROSPECTIVE JUROR VERNATTA RICKS: Me.



1 THE COURT: I missed the whole trashcan.

2 THE DEPUTY CLERK: (Indiscernible) started.

3 THE COURT: Never funny. Okay. Thank you.

4 I'm sorry. Was it you or a family member that was
5 involved?

6 PROSPECTIVE JUROR VERNATTA RICKS: Me.

7 THE COURT: It was you? And what was your involvement?

8 PROSPECTIVE JUROR VERNATTA RICKS: It was domestic
9 violence.

10 THE COURT: You were?

11 PROSPECTIVE JUROR VERNATTA RICKS: The victim.

12 THE COURT: A defendant -- you were a victim, domestic
13 violence?

14 PROSPECTIVE JUROR VERNATTA RICKS: Uh-huh.

15 THE COURT: Was somebody caught and punished for that?

16 PROSPECTIVE JUROR VERNATTA RICKS: Yeah.

17 THE COURT: Ma'am?

18 PROSPECTIVE JUROR VERNATTA RICKS: Yes.

19 THE COURT: Okay. Was that here in Dorchester County?

20 PROSPECTIVE JUROR VERNATTA RICKS: Yes.

21 THE COURT: Was it prosecuted in this courtroom, or do
22 you know?

23 PROSPECTIVE JUROR VERNATTA RICKS: I don't think it was
24 in the court -- this one. I think it was --

25 THE COURT: In magistrate court somewhere?



1 PROSPECTIVE JUROR VERNATTA RICKS: The one where you --
2 like, in Summerville, where you pay your taxes
3 (indiscernible).

4 THE COURT: Okay. How long ago was that?

5 PROSPECTIVE JUROR VERNATTA RICKS: Like, three or four
6 years, I think.

7 THE COURT: Okay. All right. Are you and the person who
8 abused you, y'all back together or are you separate?

9 You're back together?

10 PROSPECTIVE JUROR VERNATTA RICKS: Um-hum.

11 THE COURT: All right. Would your involvement in that
12 regard, Ms. Ricks, as a victim make it difficult for you to be
13 fair and impartial in this case as a juror?

14 PROSPECTIVE JUROR VERNATTA RICKS: No.

15 THE COURT: Could you set aside your own experience and
16 decide this case based on what you would hear in court?

17 PROSPECTIVE JUROR VERNATTA RICKS: Yes.

18 THE COURT: And would you do that please, ma'am?

19 PROSPECTIVE JUROR VERNATTA RICKS: Yes, sir.

20 THE COURT: Thank you, ma'am, Ms. Ricks.

21 PROSPECTIVE JUROR VERNATTA RICKS: Okay.

22 (Thereupon, counsel returned to counsel tables and the
23 following ensued:)

24 (Open court.)

25 THE COURT: (Indiscernible) she's okay. Okay. Thank



1 you.

2 (Pause.)

3 THE COURT: Ladies and gentlemen, Ms. LaPlante just told
4 me that it's a custom here to list all of the lawyers in the
5 solicitor's office so that you will know who makes up that
6 group and can answer more fully whether or not you have any
7 connection with anybody in the solicitor's office as the time.

8 Ms. LaPlante, you want to share that with us now?

9 MS. LAPLANTE: Yes. Thank you, Your Honor.

10 So my office works for Elected Solicitor David Pascoe,
11 who is the elected solicitor for Orangeburg County, Calhoun
12 County, and Dorchester County. I am the first assistant
13 solicitor. My name is Kelly LaPlante. I'm joined by
14 Assistant Solicitor Shannon Elliot. Also seated at our table
15 are two of the paralegals from our office, Stacey Cook and
16 Carrie Hop (phonetic). Other lawyers in my office are John
17 Rivers, Jillian Frederick, David Osborne, William Baker Allen,
18 Emily Gates, and Mike Spears.

19 THE COURT: Thank you, Ms. LaPlante.

20 I'll extend the questions that I earlier asked about any
21 connection with any of the lawyers who are involved, including
22 the rest of the lawyers in the solicitor's office, to find out
23 of any of you are a kin to any of those folks or if you're
24 friends of theirs or business associates of theirs or have any
25 direct or indirect contact with any of those other lawyers.



1 If so, please stand.

2 Thank you.

3 UNIDENTIFIED SPEAKER: (Indiscernible).

4 THE COURT: I'm sorry.

5 THE DEPUTY CLERK: Judge, do you want me to turn this on?

6 THE COURT: Yeah, either that, or we're just full
7 disclosure. Surely somebody's going to know somebody before
8 we're through.

9 UNIDENTIFIED SPEAKER: Oh, sure.

10 THE COURT: All right. Go ahead.

11 MS. STEWART: Good afternoon. I work for Mark
12 Leiendecker. He is the First Circuit public defender for
13 Dorchester, Calhoun, and Orangeburg County. And I will go
14 ahead and list all of the attorneys in our office as well.
15 Ash Chisholm, Jim Adams, Marianella Namlick. My paralegal is
16 Leann Rash (phonetic). And there is Mary Lamadie, Marilyn
17 Moore, Josh Porter, Troy McCants (phonetic), John Tisdale
18 (phonetic), Emily Pearson (phonetic), John Loy, and Gina
19 McAlhany.

20 THE COURT: Thank you, ma'am.

21 MS. STEWART: As well as my cocounsel, Pierce Wehman.

22 THE COURT: All right. Thank you.

23 Any of you connected to any of those lawyers by blood or
24 by marriage or friendship or kinship or have any association,
25 business, personal, or otherwise, with any of those potential



1 lawyers? If so, please stand.

2 Thank you.

3 Ladies and gentlemen, have any of you or any members or
4 your family ever had any criminal charges handled by the First
5 Circuit Solicitor's office? Ms. LaPlante just identified to
6 you all the members of the First Circuit Solicitor's office.
7 Do any of you or any members of your family ever have any
8 criminal charges handled by that office? If so, please stand.

9 Do any of you or any of you members of or supports of or
10 contributors to any law enforcement or victims' rights
11 organization, such as MADD, SADD, CAVE (phonetic), Conjury
12 (phonetic), or the like? If so, please stand.

13 Do any of you serve or have you previously served any
14 organizations that are anti-law enforcement? If so, please
15 stand.

16 Are any of you related by blood or by marriage to any
17 officer or a member of any law enforcement agency or any
18 prosecuting agency, such as the attorney general or the
19 solicitor's office, or even a civilian or military law
20 enforcement agency? If you have any connection with law
21 enforcement in that regard, if so, please stand.

22 PROSPECTIVE JUROR SCOTT PARRISH: Does -- Your Honor,
23 does retired law enforcement -- does the military count as
24 well?

25 THE COURT: Yes, sir, it would.



1 PROSPECTIVE JUROR SCOTT PARRISH: I --

2 THE COURT: Your name and number please, sir?

3 PROSPECTIVE JUROR SCOTT PARRISH: 136, Scott Parrish.

4 THE COURT: And what was your involvement, Mr. Parrish?

5 PROSPECTIVE JUROR SCOTT PARRISH: 20 years in the army.

6 Retired as a military police officer.

7 THE COURT: All right. Thank you, Mr. Parrish, and thank
8 you for your service. You can be seated.

9 Yes, sir, at the back again.

10 PROSPECTIVE JUROR STEPHEN HAYES: Stephen Hayes, number
11 87.

12 THE COURT: All right.

13 PROSPECTIVE JUROR STEPHEN HAYES: I'm retired from
14 Dorchester County Sheriff's office.

15 THE COURT: Thank you, sir. And thank you for your
16 service, Mr. Hayes.

17 Yes. Your name and number, please?

18 PROSPECTIVE JUROR JENNIFER BELL: Jennifer Bell, number
19 11.

20 THE COURT: Yes, ma'am. And your involvement?

21 PROSPECTIVE JUROR JENNIFER BELL: And just to make sure I
22 heard correctly, you just said related to? Brother-in-law is
23 a Gaston County police officer North Carolina.

24 THE COURT: All right. Thank you.

25 All right. Yes, ma'am. I think we've already -- is it



1 Ms. Green?

2 PROSPECTIVE JUROR ERCELIA GREEN: Yes.

3 THE COURT: Ms. Green, I think we've already stood you
4 aside, so you're fine. Okay. You can have a seat. Thank
5 you.

6 Yes. At the back, your name and number, please.

7 PROSPECTIVE JUROR ROBIN MORETTI: Robin Moretti, number
8 124. I'm a former corrections officer.

9 THE COURT: Thank you, Ms. Moretti.

10 Yes, ma'am.

11 PROSPECTIVE JUROR KIMBERLY THOMASON: Kimberly --

12 THE COURT: Your name and number.

13 PROSPECTIVE JUROR KIMBERLY THOMASON: Kimberly Thomason,
14 187. My uncle is a corrections officer in Georgia.

15 THE COURT: Number 187, Ms. Thomason. And tell me again,
16 I couldn't hear you at all, but I'm sorry.

17 PROSPECTIVE JUROR KIMBERLY THOMASON: My uncle is a
18 corrections officer.

19 THE COURT: Okay. All right. Thank you, ma'am.

20 THE DEPUTY CLERK: (Indiscernible).

21 PROSPECTIVE JUROR VERNATTA RICKS: Oh, sorry. Vernatta
22 Ricks, 157.

23 THE COURT: Yes, ma'am, Ms. Ricks.

24 PROSPECTIVE JUROR VERNATTA RICKS: My brother is a
25 corrections officer in New York.



1 THE COURT: All right.

2 THE DEPUTY CLERK: Judge, I got one more standing there.

3 THE COURT: Yes, I got it.

4 Yes, sir.

5 PROSPECTIVE JUROR JEFFREY GANN: All right. And it's my
6 brother-in-law, so -- Jeff Gann, 67.

7 THE COURT: Yes, sir.

8 PROSPECTIVE JUROR JEFFREY GANN: And my brother-in-law is
9 the director of operations at the state ports authority police
10 office down in Charleston.

11 THE COURT: Thank you, Mr. Gann.

12 Ladies and gentlemen, if any of you formed any opinion as
13 to the guilt or the innocence of the defendant Mr. Brown, if
14 so, please stand.

15 Are any of you conscious, that is to say aware, of any
16 bias or prejudice that you might have for or against the State
17 or for or against the defendant? If you know of any such
18 reason, would you please stand.

19 Do any of you that know of any reason of any kind
20 whatsoever that would keep you from serving fairly or
21 impartially as a juror in the trial of this case, if you know
22 of any such reason, would you please stand?

23 PROSPECTIVE JUROR DARRYL MIDDLETON: I have a question.

24 THE COURT: All right, sir. If you will come forward,
25 please.



1 THE DEPUTY CLERK: Juror 121.

2 (Whereupon, a bench conference was held in the presence
3 of the jury, but out of the hearing of the jury.)

4 THE COURT: Mr. Middleton, what's your situation?

5 PROSPECTIVE JUROR DARRYL MIDDLETON: Religiously, I
6 guess --

7 THE COURT: If you'll come speak right here so she can
8 hear -- yes, right here.

9 PROSPECTIVE JUROR DARRYL MIDDLETON: Oh, so religiously,
10 I guess being over there is something that does bother my
11 spirit. It would tax my religious beliefs, so.

12 THE COURT: I see. And we honor that, and we respect
13 that. We don't want you to do anything that's going to do
14 harm to your religious beliefs. And we recognize there are
15 certain denominations who just cannot sit in judgment of their
16 fellow human beings. And is that what you're talking about
17 right now?

18 PROSPECTIVE JUROR DARRYL MIDDLETON: Yes, sir.

19 THE COURT: Okay. We appreciate that. We're going to
20 transfer you to another civil term, another term of court that
21 doesn't deal with crimes and trying to decide somebody's guilt
22 or innocence, not sitting in judgment of your fellow citizens.
23 It deals with business disputes and things of that nature. So
24 we'll transfer you to a term of common pleas court that will
25 not require you to do violence (indiscernible). Okay.



1 PROSPECTIVE JUROR DARRYL MIDDLETON: Yes, sir.

2 (Thereupon, counsel returned to counsel tables and the
3 following ensued:)

4 (Open court.)

5 THE COURT: If you'll transfer him to a civil term.

6 THE DEPUTY CLERK: Okay.

7 THE COURT: Thank you.

8 Yes, sir.

9 Other than previously noted, are there any additional
10 questions from the State, Ms. LaPlante?

11 MS. LAPLANTE: No, Your Honor.

12 THE COURT: Thank you.

13 Other than previously noted, any additional questions
14 from the defense, Ms. Stewart?

15 MS. STEWART: No, Your Honor.

16 THE COURT: Thank you.

17 Madam Clerk, you can give us a jury. The strikes will be
18 five for the State, ten for the Defense. We will select two
19 alternates. As to each alternate, the strikes will be one for
20 the State, two for the defense.

21 (Pause.)

22 THE COURT: Ladies and gentlemen, thank you very much for
23 your patience through this involved process. I'm sure you
24 understand, having sat through it, the importance of the
25 questions which we have asked and the answers which you have



1 given us and the need that this system demands to make sure
2 that those questions are honestly answered and that we have
3 jurors with nothing about their background or their beliefs
4 that would affect their ability to be fair and impartial to
5 both sides. Thank you for your understanding and your
6 patience as we work through that process.

7 (Pause.)

8 (Court and clerk confer.)

9 THE COURT: Ladies and gentlemen, the computer is being
10 somewhat insubordinate, and we're trying to whip it into line
11 as best we can but --

12 (Pause.)

13 THE COURT: Years ago, we used to draw your names on
14 slips of paper out of a cigar box. The cigar box never talked
15 back to us. Computer's a little different.

16 THE DEPUTY CLERK: (Indiscernible) a cigar box and a
17 (indiscernible).

18 THE COURT: Yeah.

19 THE DEPUTY CLERK: So it is karma.

20 THE COURT: That's right.

21 (Pause.)

22 (Court and clerk confer.)

23 THE COURT: Ladies and gentlemen, the problem we have is
24 with the computer refusing to give us the number that we need,
25 and it's not just a simple matter of getting them to add



1 two or three to the list. The computer is responsible for
2 making random selections and this program to make random
3 selections, much like the random selection used to be out of
4 the cigar box.

5 We have a list of all of you here in alphabetical order,
6 but that's not a random list as such. And so we're trying to
7 work to get that together without having to resort to an old-
8 fashioned way of doing things, but we haven't had a whole lot
9 of success. But I'm not going to make you sit out there
10 looking at us for the next few minutes while we do this. I'm
11 going to declare a break for the time being.

12 THE DEPUTY CLERK: We might have it.

13 THE COURT: Wait a minute.

14 UNIDENTIFIED SPEAKER: Oh, okay.

15 UNIDENTIFIED SPEAKER: Oh, God.

16 THE COURT: Oh, man. Taking the break back already. I
17 shouldn't have even said it.

18 (Pause.)

19 THE COURT: You got it?

20 UNIDENTIFIED SPEAKER: (Indiscernible) yes.

21 (Pause.)

22 THE COURT: Ladies and gentlemen, the computer has given
23 us a list with a note telling us how sorry it is that it has
24 delayed this process. And so I'm sure it is grievously
25 saddened by this delay it's caused. But the list is now



1 ready. It's a random list, more or less. And the clerk will
2 call the names please. If you will follow the instructions of
3 the clerk if your name is called.

4 THE DEPUTY CLERK: Okay. If I call your name, if you
5 would please come forward and come through the gates and come
6 here and turn around and face the attorneys.

7 Juror number 1, Bonni Agnew.

8 THE DEPUTY CLERK: Ms. Bonni, come on down
9 (indiscernible).

10 UNIDENTIFIED SPEAKER: (Indiscernible).

11 THE DEPUTY CLERK: Turn around and smile at everybody and
12 Mrs. (indiscernible).

13 THE DEPUTY CLERK: What sayeth the State?

14 MS. LAPLANTE: Please seat the juror.

15 THE DEPUTY CLERK: The defense?

16 MS. STEWART: Please seat the juror.

17 THE DEPUTY CLERK: Have a seat, Ms. Bonni.

18 THE DEPUTY CLERK: And you can have a seat in the jury
19 box.

20 Juror number 45, Kimberly Dalrymple.

21 What sayeth the State?

22 MS. LAPLANTE: Please seat the juror.

23 THE DEPUTY CLERK: The defense?

24 MS. STEWART: Please excuse this juror.

25 THE DEPUTY CLERK: Go can have a seat back in the



1 audience.

2 Juror 47, Hillary Desaussure.

3 What sayeth the State?

4 MS. LAPLANTE: Please seat the juror.

5 THE DEPUTY CLERK: The defense?

6 MS. STEWART: Please seat the juror.

7 THE DEPUTY CLERK: Go have a seat in the jury box.

8 Juror 196, Brandon Weiters.

9 What sayeth the State?

10 MS. LAPLANTE: Please excuse the juror.

11 THE DEPUTY CLERK: Okay, Mr. Brandon.

12 THE DEPUTY CLERK: Have a seat back in the audience.

13 Juror 207, Joyce Ziemer.

14 UNIDENTIFIED SPEAKER: [Zee-mer].

15 THE DEPUTY CLERK: Ziemer.

16 What sayeth the State?

17 MS. LAPLANTE: Please seat the juror.

18 THE DEPUTY CLERK: The defense?

19 MS. STEWART: Please excuse this juror.

20 THE DEPUTY CLERK: Go back in the audience.

21 Juror 62, Tanisha Fielding-Jenkins.

22 What sayeth the State?

23 MS. LAPLANTE: Please seat the juror.

24 THE DEPUTY CLERK: The defense?

25 MS. STEWART: Please seat the juror.



1 THE DEPUTY CLERK: You can have a seat in the jury box.
2 Juror number 11, Jennifer Bell.
3 What sayeth the State?
4 MS. LAPLANTE: Please seat the juror.
5 THE DEPUTY CLERK: The defense?
6 MS. STEWART: Please excuse this juror.
7 THE DEPUTY CLERK: Have a seat back in the audience.
8 Juror 13, Michael Benner.
9 What sayeth the State?
10 MS. LAPLANTE: Please seat the juror.
11 THE DEPUTY CLERK: The defense?
12 MS. STEWART: Please seat the juror.
13 THE DEPUTY CLERK: Okay. Have a seat in the jury box.
14 Juror 14, Jessica Bennett.
15 What sayeth the State?
16 MS. LAPLANTE: Please seat the juror.
17 THE DEPUTY CLERK: The defense?
18 MS. STEWART: Please seat the juror.
19 THE DEPUTY CLERK: Have a seat in the jury box.
20 Juror 16, Wayne Berry.
21 What sayeth the State?
22 MS. LAPLANTE: Please seat the juror.
23 THE DEPUTY CLERK: The defense?
24 MS. STEWART: Seat the juror.
25 THE DEPUTY CLERK: Have a seat in the jury box.



1 Juror 20, Ashley Brenneman.

2 What sayeth the State?

3 MS. LAPLANTE: Please seat the juror.

4 THE DEPUTY CLERK: The defense?

5 MS. STEWART: Please excuse this juror.

6 THE DEPUTY CLERK: Have a seat back in the audience.

7 Juror 22, Timothy Brett.

8 What sayeth the State?

9 MS. LAPLANTE: Please seat the juror.

10 THE DEPUTY CLERK: The defense?

11 MS. STEWART: Please seat the juror.

12 THE DEPUTY CLERK: Have a seat in the jury box.

13 Juror 25, Gregory Bryant.

14 What sayeth the State?

15 MS. LAPLANTE: Please seat the juror.

16 THE DEPUTY CLERK: The defense?

17 MS. STEWART: Please seat the juror.

18 THE DEPUTY CLERK: Have a seat in the jury box.

19 Juror 29, Kristi Butts.

20 What sayeth the State?

21 MS. LAPLANTE: Please seat the juror.

22 THE DEPUTY CLERK: The defense?

23 MS. STEWART: Please excuse this juror.

24 THE DEPUTY CLERK: Okay. Have a seat back in the

25 audience.



1 Juror 37, Cherita Cochran.
2 What sayeth the State?
3 MS. LAPLANTE: Please seat the juror.
4 THE DEPUTY CLERK: The defense?
5 MS. STEWART: Please seat the juror.
6 THE DEPUTY CLERK: Have a seat in the jury box.
7 Juror 49, James Dixon.
8 What sayeth the State?
9 MS. LAPLANTE: Please excuse the juror.
10 THE DEPUTY CLERK: Have a seat back in the audience.
11 Juror 60, Sierra Ferrara.
12 What sayeth the State?
13 MS. LAPLANTE: Please seat the juror.
14 THE DEPUTY CLERK: The defense?
15 MS. STEWART: Please excuse the juror.
16 THE DEPUTY CLERK: Seat back in the audience.
17 Juror 61, Jennifer Ferris.
18 What sayeth the State?
19 MS. LAPLANTE: Please seat the juror.
20 THE DEPUTY CLERK: The defense?
21 MS. STEWART: Please excuse the juror.
22 THE DEPUTY CLERK: Have a seat back in the audience.
23 Juror 63, Sarina Fox.
24 What sayeth the State?
25 MS. LAPLANTE: Please seat the juror.



1 THE DEPUTY CLERK: The defense?

2 MS. STEWART: Please seat the juror.

3 THE DEPUTY CLERK: Have a seat in the jury box.

4 Juror 67, Jeffrey Gann.

5 What sayeth the State?

6 MS. LAPLANTE: Please seat the juror.

7 THE DEPUTY CLERK: The defense?

8 MS. STEWART: Please excuse the juror.

9 THE DEPUTY CLERK: Have a seat back in the --

10 Juror 68, Maura Gantz.

11 What sayeth the State?

12 MS. LAPLANTE: Please seat the juror.

13 THE DEPUTY CLERK: The defense?

14 MS. STEWART: Please seat the juror.

15 THE DEPUTY CLERK: Juror 71, Janae Gates.

16 What sayeth the State?

17 MS. LAPLANTE: Please seat the juror.

18 THE DEPUTY CLERK: The defense?

19 MS. STEWART: Please excuse the juror.

20 THE DEPUTY CLERK: Seat back in the audience.

21 THE COURT: The State has exercised two strikes. The

22 defense has exercised nine strikes.

23 THE DEPUTY CLERK: Juror 72, Rashard Geddis.

24 What sayeth the State?

25 MS. LAPLANTE: Please excuse the juror.



1 THE DEPUTY CLERK: Have a seat back in the audience
2 please.

3 Juror 84, Jessie Harrington.

4 What sayeth the State?

5 MS. LAPLANTE: Please seat the juror.

6 THE DEPUTY CLERK: The defense?

7 MS. STEWART: Please seat the juror.

8 THE DEPUTY CLERK: Have a seat in the jury box.

9 Next one, that's twelve.

10 THE COURT: We may move to alternates, Madam Clerk. So
11 strikes will be one for the State, two for the defense as to
12 each of the two alternates.

13 THE DEPUTY CLERK: Juror 87, Stephen Hayes.

14 MS. LAPLANTE: Judge, can we approach?

15 THE COURT: Yes, ma'am.

16 (Whereupon, a bench conference was held in the presence
17 of the jury, but out of the hearing of the jury.)

18 MS. LAPLANTE: (Indiscernible).

19 THE COURT: I'm sorry.

20 MS. LAPLANTE: It's not randomized. It goes straight
21 down the list (indiscernible).

22 THE COURT: Well --

23 MS. LAPLANTE: (Indiscernible).

24 THE COURT: And it's not going straight down the list,
25 but there's enough straight down the list that you can -- you



1 can see it's attempted randoms up here at the top, and the
2 other is --

3 MS. LAPLANTE: (Indiscernible) --

4 THE COURT: Right. Well, I mean, it shows what it shows,
5 and it's not strictly a random list like we were expecting off
6 this thing because it's only list we could get, quite frankly.
7 And so the choice was to stop and cut these things up into
8 slips and put it in a box and draw --

9 UNIDENTIFIED SPEAKER: (Indiscernible).

10 THE COURT: Okay.

11 UNIDENTIFIED SPEAKER: As long as you (indiscernible) --

12 THE COURT: Okay.

13 UNIDENTIFIED SPEAKER: -- the witness.

14 THE COURT: Okay. All right.

15 (Thereupon, counsel returned to counsel tables and the
16 following ensued:)

17 (Open court.)

18 THE COURT: Madam Reporter, if you will note a sidebar
19 conference, we will memorialize that outside of the presence
20 of the jury. Thank you.

21 All right. We are back now to Mr. Hayes, I believe; is
22 that right?

23 THE DEPUTY CLERK: Yes.

24 THE COURT: Yeah.

25 THE DEPUTY CLERK: Juror Hayes for alternate.



1 THE DEPUTY CLERK: You can just come on down.

2 PROSPECTIVE JUROR STEPHEN HAYES: Okay.

3 THE DEPUTY CLERK: Juror 87, Mr. Hayes.

4 What sayeth the State?

5 MS. LAPLANTE: Please seat the juror.

6 THE DEPUTY CLERK: The defense?

7 MS. STEWART: Please excuse the juror.

8 THE DEPUTY CLERK: Back out in the audience, please.

9 Juror 91, Danielle Hill.

10 What sayeth the State?

11 MS. LAPLANTE: Please seat the juror.

12 THE DEPUTY CLERK: The --

13 MS. STEWART: Please seat the juror.

14 THE DEPUTY CLERK: Okay. Thank you.

15 Juror 93, Justin Hunt.

16 What sayeth the State?

17 MS. LAPLANTE: Please excuse this juror.

18 THE DEPUTY CLERK: Have a seat back in the audience.

19 Juror 96, Michael Jackson.

20 What sayeth the State?

21 MS. LAPLANTE: Please seat this juror.

22 THE DEPUTY CLERK: The defense?

23 MS. STEWART: Please excuse this juror.

24 THE DEPUTY CLERK: Back out in the audience.

25 Juror 97, Caryn Jahn.



1 What sayeth the State?

2 MS. LAPLANTE: Please seat this juror.

3 THE DEPUTY CLERK: The defense?

4 MS. STEWART: Please seat this juror.

5 THE DEPUTY CLERK: Have a seat in the jury box.

6 THE COURT: Are there any matters of law regarding the
7 jury selection process, Ms. LaPlante, from the State?

8 MS. LAPLANTE: There are none, Your Honor.

9 THE COURT: Ms. Stewart, for the defense?

10 MS. STEWART: None from the defense, Your Honor.

11 THE COURT: Thank you.

12 Ladies and gentlemen, those of you who are not selected
13 as jurors for the trial of this case, thank you very much for
14 your patience through this long day or long afternoon for
15 y'all. I'm going to let you go now and ask that you please
16 call the number that is on that card that you received earlier
17 in the day. Call that number after 6 o'clock tonight just to
18 test it and make sure it's working, and it'll give you
19 instructions either to call back or to come back or whatever
20 the instructions happen to be.

21 But thank you for your cooperation throughout the day.
22 Have a safe trip home. Call that number after 6 o'clock
23 today. Thank you.

24 Counsel, if you all approach just for a minute for a
25 scheduling conference over here while I --



1 (Recess.)

2 THE COURT: Thank you, folks, for your patience. We were
3 over there planning your immediate future. I'll tell you
4 about it in just a minute.

5 (Court and clerk confer.)

6 THE COURT: Folks, thank you very much, or again, for
7 your patience; and in a moment, I'm going let you go for the
8 day. I want you to remain in the jury room for just a minute.
9 They've got to get your name and number. There's obviously a
10 problem with the computer getting these things in order. I
11 need to make sure that they've got everything like it should
12 be. So it'll take just a minute of your time in the jury
13 room, which you will go to just momentarily.

14 You've been selected as jurors as you would know in this
15 case, and we will start the trial of the case tomorrow. I
16 want you back in the jury room tomorrow at 11 o'clock. You
17 will be at 11. We're going to be here a lot earlier because
18 we've got some matters that we need to do before you get here
19 so we will be in a position to put this case -- start
20 presenting this case to you. And it's going to take us at
21 least an hour and a half to get that done. So we don't want
22 you here waiting back there while we're out here. So 11
23 o'clock tomorrow in the jury room.

24 Now, when you get back into the jury room tomorrow, you
25 won't go back into the courtroom. You will go directly to the



1 jury room. We will bring you out at 11 o'clock to start the
2 trial of this case.

3 Before we start the trial tomorrow, I'm going to give you
4 some preliminary instructions about things that you may do and
5 that you may not do as jurors during the trial of this case.
6 But to keep you from innocently and mistakenly doing some of
7 those things you're not supposed to do between now and then,
8 let me tell you just preliminarily this. You're not allowed
9 to talk about this case among yourselves at any time during
10 the trial. And when the trial is over, you start your
11 deliberations, you can take as much time as you want to to
12 talk about it then, but not until then. I'll explain that to
13 you a little bit more in detail tomorrow before we start the
14 trial.

15 You can't let anybody else talk with you about this case.
16 You can't try to find out anything on your own about this
17 case. We all, as we know, we've got telephones that will tell
18 us anything we want to know in the world, and it's right there
19 for us at our fingertips. Well, I don't think you'll find
20 anything on there about this case, but you might find
21 something on there about the charges in this case. If it
22 doesn't have anything to do with this particular case, I can't
23 tell what you find because I don't have enough sense to work
24 mine like some folks do.

25 But whatever it is, don't you try, and don't you let



1 anybody else tell you about this case. Everything that we've
2 been doing today since you got here -- at 1 o'clock today, I
3 believe, you got here -- until right this minute, every
4 question that I've asked and every answer that you have given
5 has been designed to assure that we have finally got 14 people
6 like you in that jury box.

7 We're going to have people just like you, people who
8 don't know anything about this case, who don't know the people
9 involved in this case, who don't have any connections with the
10 witnesses or the lawyers or the principals involved in this
11 case, who don't have anything in your own personal or family
12 background that would keep you from being fair and impartial
13 as a juror in this trial. Now, if you let somebody else start
14 talking to you about this case, or if you try to find out
15 anything on your own about this case outside of this
16 courtroom, you will undo all that you all have been working so
17 hard to do so far.

18 Everything that you need to know about this case in order
19 to render a verdict, indeed, everything that you're allowed to
20 know about this case in order to render a verdict you must
21 learn from this courtroom right here, from this witness chair
22 right here, and from the items or the documents or the
23 photographs that might come into evidence during the course of
24 this trial.

25 That's what your decision has to be based on, and that's



1 the reason you can't try to find out anything on your own
2 about this case outside of this courtroom, where the rules of
3 law don't apply, where the rules of evidence don't apply,
4 where the rules of fairness don't apply, where the rules of
5 strict proof don't apply. That's the reason you make a
6 decision based on what happens in this courtroom, where all of
7 those rules are in place.

8 I'm sure that you'll abide by that. You're conscientious
9 people. You've been good throughout this process, and you've
10 been patient throughout the process. And you're going to
11 become vested in this process as a part of it. It's not going
12 to take a long time. We'll start case tomorrow. We should
13 finish it on Wednesday.

14 But you're going to have a lot of yourself invested in it
15 before it's over. So go home, and when your significant other
16 asks you about this case, tell them, I don't know a thing
17 about this case right now. And that'll be the truth because
18 you don't. And tomorrow, when you go home and they ask you
19 what, tell me about that case, then you can tell them, I can't
20 tell you about the case. I'll tell you later, when it's all
21 over.

22 Thank you for your patience, folks. Have a safe trip
23 home. Please wait just a moment in the jury room and let the
24 clerk recall your names and your numbers before you go. See
25 you tomorrow, at what time?



1 IN UNISON: 11 o'clock.

2 THE COURT: 11 o'clock. Thank you.

3 (Whereupon, the jury exited the courtroom at 4:40 p.m.)

4 THE COURT: Madam Reporter, please, let's memorialize the
5 sidebar conference that we had out of the presence of the jury
6 during the jury selection process itself.

7 It was just as we were beginning to call the alternate
8 jurors. The State asked for a sidebar conference, and they
9 made an appropriate and a valid motion. They said it doesn't
10 appear that the random strikethrough is really all that random
11 after all, and she was exactly right. It was the only list
12 that we could get out of the computer, and it's random nature
13 ended after the first six jurors were selected.

14 On the numerical list of jurors as they were called,
15 jurors 1 through 6 were, in fact, really random selections.
16 But from that point on, from number 7 all the way throughout
17 the rest of them, they were not random. They were called in
18 the order in which they appeared alphabetically on the list.

19 Counsel was all aware of that, and we approached the
20 sidebar. And everybody decided that since, as it turned out,
21 quite frankly, of all of the numbers that were there, they
22 were all used except the last three on the jury list that we
23 got, whatever you call it, random or otherwise. So the
24 process itself involved all of the jurors except three, but
25 not in the order that they would have been had they been



1 random, undeniably.

2 We were struck with trying to decide how do we go about
3 this, do we cut these things up in little slips, and we were
4 well into the process because when it started, everybody
5 thought that this was a random process.

6 I don't think that the fairness of the process itself was
7 impacted by the fact that it's not truly a random strike
8 sheet. When you look at it and you look at the division as it
9 is between male and female and the racial division, I think
10 you can see that there is nothing in that particular division
11 that seems to weigh in one direction or another to the extent
12 that that might be relevant.

13 And so if the supreme court has a chance to look at this
14 and decide whether it's going to blame its court reporter's --
15 I mean, court administration's computer for this glitch or
16 decide that it's not a problem after all, we'll have to let
17 them decide. We've done all that we could do under the
18 circumstances. And counsel, I think, have recognized that,
19 and I appreciate your forbearance in that regard.

20 Ms. LaPlante, I'll be glad to hear anything that you
21 might want to memorialize on the record, and Ms. Stewart, you
22 as well.

23 MS. LAPLANTE: Judge, we'd just ask that that list be a
24 Court's exhibit.

25 THE COURT: It would be.



1 MS. LAPLANTE: Thank you, Judge.

2 THE COURT: All right. Okay.

3 MS. STEWART: We don't have anything besides that either,
4 Your Honor.

5 THE COURT: All right. Thank you very much.

6 All right. Folks, we will start back in the morning at
7 9:30. And however you can get that -- of course, if I get
8 here at 9:30, I'll have plenty of time to look at the 30
9 minutes that you'll have for me then on the Jackson v. Denno
10 issues.

11 MS. LAPLANTE: Thank you, Judge.

12 THE COURT: And then we will deal with the expert issue,
13 whatever that happens to be. And I take it you all will
14 present me some law on either side of that, whatever it
15 happens to be, at that time. Okay.

16 MS. STEWART: Thank you.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Yes, sir. Yes, sir. Thank you. I
19 appreciate that.

20 Ms. Stewart, I understand the custom here is of course
21 when the case is called, the bond is called, and the defendant
22 is retained into custody. It's my custom that if a person is
23 out on bond and is behaving himself and reporting where he is
24 supposed to, if his bondsman is still with him to be on his
25 bond, then I'll let him go home. Or I have to have the



1 assurance right now before we go any further or before he
2 leaves that his bondsman is willing to remain on his bond.

3 Ms. Stewart.

4 MS. STEWART: Your Honor, first, on my client's behalf, I
5 will say he has never had a problem while on bond. No issues
6 on that end. In full disclosure, I did call his bonds company
7 today, and they say that is not their policy. They will not
8 allow him to stay out on bond.

9 THE COURT: All right. Then, the effect of that, of
10 course, he doesn't have a bond.

11 MS. STEWART: He understands, Your Honor.

12 THE COURT: All right. All right. Thank you for
13 checking. I appreciate your counter. Appreciate what you
14 tried to do. So Mr. Brown will remain in custody during the
15 course of the trial unless a bond is made. Thank you, all.

16 MS. LAPLANTE: Thank you, Judge.

17 THE COURT: All right. I'll be here at 9:30 in the
18 morning, folks. Might be here a few minutes early. Thank you
19 all.

20 MS. LAPLANTE: Thank you, Judge.

21 MR. WEHMAN: Thank you, Judge.

22 (End of Transcript of Record)

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24

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State of South Carolina)
) Court of General Sessions
County of Dorchester) 2019-GS-18-01979

State of South Carolina)
)
 vs.) Transcript of Record
)
 Mark Anthony Brown)

October 25, 2022
 St. George, South Carolina

B E F O R E:

The Honorable Thomas Cooper, Judge.

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

Kelly LaPlante, Esq.
 Attorney for the State

Pierce Wehman, Esq.
 Julie Stewart, Esq.
 Attorneys for the Defendant

Colin Richilano
 Transcriber



	<u>I N D E X</u>			
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Cora Tanton				
Ms. LePlante	39			
Mr. Wehman		43		
Z.T.G.				
Ms. LePlante	47			
Ms. Stewart		60		
Kreig Griffin				
Ms. LePlante	63		71	
Ms. Stewart		68		
Angela Smalls				
Ms. LePlante	72			
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Yxsumi Simmons				
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E X H I B I T S

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1 THE COURT: Madam Reporter, you have the caption, of
2 course?

3 THE COURT REPORTER: Yes, Your Honor.

4 THE COURT: We're prepared to deal with some pre-trial --
5 either motions or issues prior to the jury reporting at 11
6 o'clock and to further memorialize an in-chambers conference
7 between Mr. Wehman and Ms. Elliott (phonetic) and myself. Mr.
8 Wehman?

9 MR. WEHMAN: Thank you, Judge. May it please the Court.

10 THE COURT: Yes, sir.

11 MR. WEHMAN: In this case, the defense has filed a
12 pre-trial motion to exclude the expert testimony of a proposed
13 child sexual expert, in sexual dynamics; child sexual
14 dynamics.

15 THE COURT: All right.

16 MR. WEHMAN: The purpose of the motion was more of a
17 notice motion to let the Court and the state know that we
18 would take exception generally with this expert testifying.
19 I'm sure there will be specific questions we would have for
20 the expert at the time that the state goes through the
21 colloquy of getting her deemed an expert. However, I think it
22 would be appropriate at this point to put our objection on the
23 record to -- for judicial economy, so that when the time
24 comes, we can deal with the expert questions to get her
25 qualified if the Court deems fit.

1 THE COURT: Yeah.

2 MR. WEHMAN: So the objections as to her testifying just
3 in a general sense in this field, our first objection would be
4 that no matter what her qualifications are that the proposed
5 testimony would be that of bolstering. Experts who are
6 qualified in this field speak in generalities, what in general
7 someone who is a victim of child sexual abuse could react as
8 or could not react as. They I believe -- no matter what the
9 reaction of a child sexual abuse victim, an expert would be
10 prepared to say, while maybe not knowing the specifics of the
11 case, that that reaction is not outside the lines of a proper
12 disclosure.

13 THE COURT: Right.

14 MR. WEHMAN: And that that could be how a child would
15 react.

16 THE COURT: Um-hum.

17 MR. WEHMAN: While that is not directly bolstering and
18 that I do not believe that this expert and I don't believe the
19 state would intend to have this expert say that whatever
20 behavior they are trying to mitigate with their jury, I don't
21 think that they would say this is the behavior that is
22 consistent. I do think the inverse can be inferred by the
23 jury that with this expert saying that any behavior could be
24 consistent therefore gives credibility to whatever the
25 behavior is they're trying to mitigate, and therefore is

1 bolstering. So that is our bolstering argument, Judge. We
2 would also have a reliability argument.

3 Judge, this is -- for based on the caselaw and just the
4 general nature of it, a nonscientific type of expert
5 testimony. I do not anticipate -- and the expert might prove
6 me wrong. I do not anticipate there will be any empirical
7 data, studies, statistics that dives into the specific
8 behavior that is trying to be mitigated, to show a percentage
9 that this is the percentage of amount of time that this would
10 be consistent with a valid disclosure.

11 Certainly, I don't know that they track exonerations, so
12 convictions that are overturned based on evidence that turns
13 out to make the conviction or the disclosure unfounded. So
14 based on that, we would have a motion to exclude her testimony
15 and that it is unreliable, not based on scientific published
16 data or opinion.

17 Judge, third, we would say that the subject matter that
18 this expert is intending to testify to is not outside the
19 ordinary knowledge of the jury. My anticipation of this case
20 is that there would be a disclosure that is going to be
21 offered that was the same day as the alleged conduct. I do
22 not -- I know that the forensic interview is not being
23 published, so there is nothing in that interview that would be
24 attempted to be mitigated, as far as odd behavior or
25 outlandish behavior or something that a jury might read into

1 that the state would not be okay with. And so what it's going
2 to come down to, my opinion, and I think the facts will bear
3 out, is they're either going to believe the allegations and
4 the testimony of the child or the inverse, they will not
5 believe them.

6 THE COURT: Um-hum.

7 MR. WEHMAN: These things that might come out in her
8 testimony are things that the jury is capable as a competent,
9 impartial juror to weigh themselves. I think, as I said, this
10 testimony of an expert doesn't really add anything that would
11 assist them in making their decision. Again, that might be
12 more appropriate once we find out what the testimony is and
13 what the blind expert would testify to. But just in general,
14 I don't know that they can really offer anything helpful.

15 Fourth, Judge, we have a 403 argument and that this
16 testimony, as it's not scientific, would simply be cumulative.
17 These things are known to them that people behave different
18 under stressful situations. While these jurors have been
19 asked and have identified themselves as not being victims of
20 child sexual abuse or a violent crime, certainly they have
21 been engaged and have been involved in other stressful,
22 traumatic situations in their lives. They can use their own
23 life experience to determine that people react differently
24 under stress and in stressful situations. So I believe that
25 because this is not assisting the trier of fact that it would

1 be cumulative.

2 And finally, Judge, I have a legal argument that we would
3 like to put on the record. And that is based on statute
4 17-23-175, and this is the bulk of what we discussed in
5 chambers. Judge, this is a statute that deals with the
6 admissibility of out-of-court statements of a child under 12
7 for the determination of trustworthiness and notice to the
8 adverse party, is the caption of the statute. And Judge, this
9 is the statute that limits the introduction of forensic
10 interviews of children 12 or over. It says that based on
11 their age that they cannot have those statements admitted.

12 The reason that they allow statements of children under
13 12 to be admitted, as long as the proper foundation is laid by
14 the child testifying in trial, is based on, one, the stressful
15 nature of trial, and all of these things that the expert, the
16 blind expert, would be called to testify to. The odd
17 behaviors. The sporadicness. Delayed disclosure. All of
18 these things. That's why we allow those things, these
19 interviews to come in for children that young.

20 The statute specifically states that a person who is
21 under the age of 12 at the time of making the statement or who
22 functions cognitively, adaptively, or developmentally under
23 the age of 12 is a child. So this is the one place in the law
24 that I can find child defined and distinguished from minor.

25 The charge is not criminal sexual conduct with a child, it's

1 criminal sexual conduct with a minor. It is the defense's
2 position that this is the place in the law where child is
3 defined and therefore, a expert that is being qualified in
4 child sexual dynamics would be exclude.

5 While the field may range up to 18 years of age, our laws
6 are in place to give additional protections. The law, then,
7 would step in and say while the field is up to 18, child as
8 defined in things of this nature, forensic interviews, and I
9 would argue this applies to blind experts as well, that we're
10 not going to allow that for children that are 12 or over.
11 Because their ability to explain these things and deal with
12 things more as someone that you would establish as an adult,
13 we hit that point where this expert might not be as useful
14 talking in generalities.

15 Judge, I've pulled a number of cases, provided some to
16 the Court, provided them to the solicitor as well. And I
17 think the solicitor's cases and mine are generally the same,
18 and I will briefly put them on the record.

19 THE COURT: Yeah.

20 MR. WEHMAN: The first case, I don't believe I pulled or
21 I provided to the Court, it is State v. Anderson, it's a 2015
22 case. It is 413 South Carolina 212. This is a case when --
23 that there was a blind expert used and the child was 7 to 11
24 during the time of the abuse.

25 State v. Acker is a case I provided to the Court; that's

1 435 South Carolina 716 2022, it's a brand new case, Judge.
2 The disclosure came after the child was 12. But the alleged
3 conduct all came while the child was under 12 years old, which
4 is the definition of child in the statute. The abuse started
5 when that child was 7 years old.

6 State v. Jones, which I believe the state referenced as
7 the leading case in this field; that case is 423 South
8 Carolina 631, from 2018. This case, the abuse occurred when
9 one of the victims was ten years old. I believe this case had
10 two victims. One would have been over 12 during part of that
11 conduct. However, there was one child who was under ten, so I
12 believe in that case, this would apply, this would be allowed.
13 In that case, footnote 1 does say that they caution this
14 holding does not create a categorical rule establishing this
15 ruling, as to the child's expert is a recognized expert or is
16 a recognized area of expertise in every case. Certainly we
17 have to go through 702, which we will do in the future.

18 State v. Weiverling, 337 South Carolina 460, 1999 case.
19 The abuse started when the child victim was seven to eight
20 years old.

21 State v. Galloway 436 South Carolina 453 2022, another
22 new case. This case, the victim was 39 at the time of trial,
23 but the conduct occurred when she was 9 years old. This was a
24 delayed disclosure case. This was why this expert was called,
25 to address the delayed disclosure.

1 State v. Brown, 411 South Carolina 332, 2015 case.

2 Again, three victims, I believe, in this -- well, there are
3 two. The victims were ten years old and eight years old
4 during the period of abuse.

5 And then State v. Cartwright, 425 South Carolina 81, 2018
6 case. Three victims in this case, Judge. One was 13 when the
7 abuse started. The other two were ten and nine.

8 So Judge, I believe -- I have not found a case where the
9 only alleged victim testifying at trial and an expert in this
10 manner was called to testify would fit that statutory range
11 that is defined in the forensic interview statute. I don't
12 see any one where the only victim is 12 or over. And so for
13 that reason, we believe that this definition of child would
14 also apply to this. And therefore, it would be inappropriate
15 to qualify this expert as an expert in child sexual dynamics,
16 whatever the caption would be.

17 THE COURT: Mr. Wehman, on the -- you had given me copies
18 of the cases that you said that you had handed up, of course.
19 I have a copy of State v. Anderson in my notebook here, so I'm
20 familiar with that.

21 In regard to the narrow point about the statute applying
22 or not applying, based on the age of the child being more than
23 12 years old at the time -- let me get that section back up.
24 Excuse me.

25 Section 17-23-175 which is where, as you said, the only

1 place that you can find child defined within the statute
2 there. That specific narrow statute deals, of course, with
3 the admissibility of out-of-court statements of a child under
4 the age of 12, and that's where, for the reasons that you have
5 mentioned, it applies. And it goes on to define child. And
6 all of this, of course, is a part of the larger legal
7 authority dealing with child abuse cases.

8 It would appear that if the statute is narrowly read that
9 the portion of the statute defining child says "for the
10 purposes of this section". A narrow reading of that would be
11 Section 17-23-175 which has to do with the admissibility of
12 the out-of-court statement of a child. And I understand that
13 that factual scenario does not apply in this particular case
14 because the out-of-court statement is not going to be
15 introduced, certainly not through this witness in any event.

16 Do I understand you to say, and I think you explained it
17 very well, that in spite of the fact that that seems to be
18 narrowly pointing toward this subsection of the statute that
19 your research of all of those other cases that you have just
20 described doesn't show that the expert has been involved in
21 any case where the child is over the age of 12 at the time of
22 the occurrence? Is that a fair statement, assessment?

23 MR. WEHMAN: It is, Judge. Not only to just further say
24 the cases in which I have seen this expert or this type of
25 expert be used, all would also have something to do with the

1 forensic interview as well, right, that they would want to
2 use, potentially.

3 THE COURT: Okay.

4 MR. WEHMAN: And I have not found a case, as you said,
5 where a child 12 or older has had this expert, in what I've
6 been able to research in the past couple of days.

7 THE COURT: I just wanted to -- since you've done the
8 research, and I'll accept it, I wanted to make sure that there
9 was not somewhere else in the statute that defined child?

10 MR. WEHMAN: No, sir.

11 THE COURT: Okay. Thank you very much.

12 MR. WEHMAN: Thank you.

13 THE COURT: All right. Ms. Elliot?

14 MS. ELLIOTT: Thank you, Judge. I'll start with
15 17-23-175. I mean, I think the statute is -- that statute
16 itself on its face is quite clear. It applies only to
17 instances where under that statute the state is seeking to
18 introduce the victim's forensic interview. And it's
19 explicitly to that point. The testimony related to the
20 forensic interview is limited literally to I'm the forensic
21 interviewer, I did an interview, here's the video. I mean,
22 they can't make any other commentary as to it. And so it is
23 purely as to introduction of those out-of-court statements
24 either of the victim or, interestingly enough, to a witness to
25 a criminal sexual conduct case, Your Honor.

1 We wouldn't put up an expert in this case if this was a
2 witness situation. They're just completely different
3 situations. This purely needs to be viewed in light of the
4 South Carolina Rule of Evidence 702 which deals with experts
5 and when experts are necessary. And the caselaw which Mr.
6 Wehman has already cited in great detail, is clear. The
7 courts in South Carolina have recognized that the area of
8 child abuse dynamics is an area which a jury can benefit from
9 the insight of an expert.

10 We have put in fail safes and protections to avoid
11 bolstering by now offering blind experts. In her testimony
12 and in qualifications, you will hear that Dr. Quinones has
13 never met the victim, has never reviewed a file related to the
14 victim. Truthfully, as far as I know, at this point she
15 doesn't even know that this is a criminal sexual conduct case.
16 This could just as easily be a physical abuse case. What she
17 knows about is child abuse, the impact and trauma that
18 children suffer, and how they then express that trauma, and
19 that's what she's going to speak to you in testimony today and
20 which the courts have said are appropriate.

21 Because jurors had preconceived notions as to what a
22 victim is going to look like, how they are going to behave.
23 And as Mr. Wehman was talking about, jurors have experienced
24 traumas. But we know that these jurors haven't experienced
25 sexual abuse. We've asked that question. They're not the

1 same thing. They're not apples to apples; they're not oranges
2 to oranges. And they could have a preconceived notion that if
3 this happened to me, then this is how I would react. And if
4 that child doesn't act that way, well, then they're not a
5 victim. And that's not -- and that is something that the
6 Court's have recognized we need an expert to shed some light
7 on, and that it's not bolstering.

8 It's also not cumulative either, Your Honor. Just in the
9 fact that she doesn't know how the victim is going to present
10 or how the victim is presented in the past. She will be
11 talking in generalities, and also listing some things that are
12 applicable and some things that are -- I expect some things
13 that are potentially applicable to the victim and some things
14 that are potentially not applicable to her.

15 You talked about the reliability argument. Judge, when
16 we look at counsel, what it's asking for, you know, one, is
17 this an area in which a trier of fact can benefit from this
18 information. Then we look to qualifications. And then we
19 look, is this the generally accepted practice? Is it peer
20 reviewed? Is it reliable within that field? And Your Honor,
21 the expert I expect will testify that she is going to use peer
22 reviewed articles as the basis for her opinion and her
23 statements. The Court has said that this is a specialized
24 area again and again, and I think it is based in science.
25 When we think about, I think, a corollary, we've researched

1 PTSD in veterans. And that's observational. But
2 observational science is still science.

3 He spoke as to the reliability prong and said he didn't
4 expect there to be empirical data or statistics. The Court
5 doesn't allow us to go into statistics, Your Honor. I would
6 love to ask her about statistics and reliability of a victim's
7 statement. The Court says we can't do it because, well, in my
8 opinion, it's too good for the state and could be overly
9 prejudicial to the defendant, and that's why we don't go into
10 that. It's not that that research doesn't exist, it's that
11 it's not admissible.

12 Your Honor, I believe that I touched on all of Mr.
13 Wehman's arguments. I mean, he talked about how this is
14 bolstering, in saying that, you know, because the victim
15 looks -- because generally victims of child abuse look this
16 way, then this victim is going to look this way and so you
17 should believe them. Your Honor, since she is going to be
18 give lots of different examples and what I think the general
19 takeaway is going to be, there is no one way that a child
20 abuse victim reacts to the trauma of sexual assault; that is
21 going to be the gist and the argument of the state and of the
22 testimony of our witness. That's not bolstering. That's
23 simply explaining a fact to them. And a juror could draw an
24 inference on either side.

25 Anything could be evidence. Any kind of emotional

1 response could be evidence. And on the inverse, anything
2 could not be evidence. And we're just trying to dissuade
3 preconceived notions that many jurors have that a victim is
4 going to cry, that a victim is going to not be able to speak
5 about this trauma in their life. And for that reason, under
6 the cases that Mr. Wehman has cited, namely I would say State
7 v. Jones and State v. Galloway, this is admissible, it is
8 helpful to the jury, and it is appropriate for that testimony
9 to be offered, Your Honor.

10 THE COURT: Okay. Thank you.

11 Mr. Wehman, it's your motion, so I'll give you the last
12 word.

13 MR. WEHMAN: And Judge, I would just say, in reviewing
14 the cases, my objections still stand. And I believe the
15 objections I've had have been argued by many counsel before me
16 and these experts have been allowed to testify. Doesn't mean
17 I'm not making them; I understand that those have been the
18 rulings of the court when they review these cases.

19 However, I would just say the main crux that is
20 different, that is distinct from this case and those cases
21 would be the age that this testimony would be offered for of
22 the victim. The expert would be coming in to talking about a
23 13-year-old versus someone under 12; that would be the main
24 distinct factor from all the cases that were cited and argued
25 by the state.

1 THE COURT: All right. Thank you.

2 And the age, the factor of age of course depends upon
3 whether a higher court, if necessary, should review this and
4 determine that the statute and the definition of a child being
5 under the age of 12 should be broadly applied toward the whole
6 of the statute dealing with expert testimony and things of
7 that nature in child abuse cases or whether it should be
8 limited to an application to the section dealing with the
9 publication of an out-of-court statement for those purposes.

10 I decline for the purposes of this trial to limit that
11 definition. Or to expand that definition, I should say, to
12 the whole of the law dealing with the admissibility of expert
13 testimony in child abuse cases.

14 Mr. Wehman's point is well-made that testimony of experts
15 of this sort, if not directly then by implication, tends to
16 bolster the testimony of a victim or complaining witness. And
17 that sort of puts another face on the 403 argument about
18 whether something is prejudicial or probative.

19 Of course all evidence is prejudicial or it wouldn't be
20 offered in the first place. But the question is whether it's
21 unfairly prejudicial, of course. And I think that that's the
22 same in this particular case. The nuances of the evidence are
23 important. Everybody knows the rules in this case. We've
24 established that in a pre-trial conference. Certainly the
25 expert does, and we know that all the lawyers do. And if I

1 don't know the rules, you all will explain it to me during the
2 course of the trial. But the conclusion that the jury might
3 choose to draw from the testimony that is heard could be one
4 way or the other, depending upon its view of the evidence as a
5 whole, and that's the way these things obviously work.

6 And of course that's not just my idea or yours or anybody
7 else's. The Supreme Court has addressed that similar type of
8 situation when it has decided that this type of evidence, the
9 behavior, in other words, of victims. And in the Jones case,
10 the behavior not of a victim at all, but of a nonoffending, as
11 it's called, a nonoffending caregiver, who happened to be the
12 mother of child, the mother of the victim in that case, who
13 didn't testify about her younger child being abused because
14 she was afraid that the courts would take her child, so she
15 stayed silent on that. And in that particular case, the court
16 allowed testimony of a nonoffending caregiver.

17 And if it would allow the testimony of a nonoffending
18 caregiver that is not a victim, not a defendant obviously, but
19 a caregiver to a child, if it would allow the conduct of
20 somebody like that who is at least one step removed from the
21 offense itself as relevant to the jury's inquiry as beyond the
22 scope of a jury to determine on its own that it would appear
23 to me that the testimony of a victim directly related -- the
24 conduct of a victim directly related to the event itself would
25 be that much more probative and relevant to admissibility.

1 And that type of testimony of course -- specifically in the
2 Jones case, and there are other cases that support the same
3 theory -- have been allowed.

4 So for that reason, at least in limine, Mr. Wehman, the
5 motion to exclude the testimony of the expert witness along
6 those lines is respectfully denied. We will deal with more
7 specific objections during the course of the testimony itself,
8 depending on its scope. And in regard to those matters, of
9 course this ruling has no probative value. All right?

10 MR. WEHMAN: Thank you, Judge. Understood.

11 THE COURT: Thank you.

12 MS. ELLIOTT: Thank you, Judge.

13 THE COURT: All right. Good.

14 Okay, folks. I think that we are waiting now on the jury
15 to come back. And most of the time, we are dealing with stuff
16 out here and the jury is back there waiting, and this is just
17 the opposite of that. Quite frankly, except for the fact that
18 we've got half an hour that we're not going to use in the
19 trial of this case, I would prefer for us to wait than for a
20 jury to wait, as long as we've got time to finish the trial,
21 so I'm not upset about this extra time that we have.

22 Is there anything further before we wait on the jury's
23 arrival at 11 o'clock? From the state first of all? Ms.
24 LaPlante?

25 MS. LEPLANTE: Well, we may have an issue with the jurors

1 getting here on time. There was a fatal accident that
2 occurred on 78, near Kings gas station, which is right in the
3 route to us. So I know at least one of our witnesses is going
4 to -- has turned around and is taking a different route, but
5 we may have some folks who can't get here quite on time, but
6 we'll do our best, Your Honor.

7 THE COURT: Okay. Is that an early witness? That is one
8 of your first witnesses of the --

9 MS. LEPLANTE: No. No, no, no. They're further down the
10 list. So I think it should be fine. I just worry about the
11 jurors.

12 THE COURT: Oh, yeah.

13 MS. LEPLANTE: They only other thing was I know they had
14 a number of motions that they did file, so I didn't know if we
15 wanted to go ahead and just discuss them on the record, so
16 there was record of them. even though I don't think they're
17 going to be applicable.

18 THE COURT: Okay. That's fine. They have been filed,
19 but if they're not argued, obviously I'm not going to consider
20 them. But I would be glad for us at least to clear that up
21 one way or the other.

22 The motion to suppress the identification of the
23 defendant. Ms. Stewart, let me hear from you in regard to
24 that motion.

25 MS. STEWART: Your Honor, as far as I'm aware, that has

1 been agreed upon by me and opposing counsel. They are not
2 going to admit the photo lineup for that, so that motion I
3 guess would be moot at this point.

4 THE COURT: Okay. Is that correct, Ms. LaPlante?

5 MS. LEPLANTE: That is correct, Your Honor.

6 THE COURT: All right. Thank you.

7 MS. LEPLANTE: We have no intention of admitting it.

8 THE COURT: The Jackson v. Denno issue?

9 MS. STEWART: In a similar situation, Your Honor, the
10 state has indicated that they do not intend to produce the
11 recorded statement of my client. And so that -- or the
12 written statement. So that would -- those would also be moot.

13 THE COURT: Okay.

14 MS. STEWART: And of course, Judge, that may change if
15 Mr. Brown were to testify, but I think we would address it at
16 that point.

17 THE COURT: All right. So the statement, oral or
18 written, will not be offered by the state in its
19 case-in-chief. You reserve the right to offer it in rebuttal
20 if it should be appropriate. Okay. Is that your
21 understanding, Ms. Stewart?

22 MS. STEWART: Yes, Your Honor.

23 THE COURT: All right. Thank you.

24 And then finally, to allow other evidence of other
25 crimes? Anything like that?

1 MS. STEWART: Your Honor, I don't think that they are
2 going to introduce that; that's what I have been told, but --

3 MS. LEPLANTE: The main concern here, Your Honor, is that
4 Mr. Brown is already on the sex offender registry and it was
5 referenced many times in the investigation of this case. And
6 so the only place where I could see that it was going to be a
7 problem is in the 911 call, which we do intend to admit in our
8 case-in-chief. We have worked with the defense counsel. We
9 have removed that. We have muted it on that portion of the
10 911 call. We will have them briefly review it before we
11 actually get going this morning.

12 Oh, yeah. When I say muted, it is actually redacted from
13 the copy that would be submitted to the Court.

14 THE COURT: Okay. Good.

15 MS. LEPLANTE: But it just -- it's shown as just, like, a
16 blank area. We'll have them review it beforehand. But that's
17 the only time that I could see -- the witnesses in this case
18 have been told by our office that they should not bring that
19 up when they are testifying, so we should not have any issues.

20 THE COURT: Thank you.

21 MS. STEWART: That's my understanding as well, Your
22 Honor.

23 THE COURT: Okay. Good.

24 MS. STEWART: The only other motion I had, I did not
25 provide a written copy of it, but it was just the standard

1 motion to sequester all of the witnesses.

2 THE COURT: All right. Who would you need to have with
3 you in the court in the sequestration arrangement, Ms.
4 LaPlante?

5 MS. LEPLANTE: My only concern would be our -- we would
6 like to have our investigating detective sit with us at all
7 times. And then of course I think the victim has a right to
8 be present in the courtroom.

9 THE COURT: Right.

10 MS. LEPLANTE: Everybody else, we don't have any problem
11 with them being sequestered.

12 THE COURT: Okay. That's good. The motion to sequester
13 will be reciprocal, of course. And that is to say any defense
14 witnesses will likewise be sequestered. The sequestration
15 order will go into effect at the conclusion of the opening
16 statements.

17 Okay. All right. Thank you, folks. I think that when
18 the jury gets here, we will bring them into the courtroom. I
19 will appoint a foreperson. The jury will be sworn. I will
20 make brief introductory comments and then will allow opening
21 statements by both sides. Ms. LaPlante, you will open?

22 MS. LEPLANTE: Yes, Your Honor.

23 THE COURT: All right. And Ms. Stewart?

24 MS. STEWART: Yes, Your Honor.

25 THE COURT: Okay. And then I will start to take the

1 testimony.

2 One matter that I did misstate yesterday when I was
3 dealing with the random or the lack of random nature of the
4 jury strikes. I referred to the fact that we had exhausted
5 almost all of the strikes, all of the available list in
6 selecting the jury. And of course what I put on the record
7 there dealt with the reality that the first six names on that
8 list were random selection and everybody else was in
9 alphabetical order.

10 There was a second page that had several other, maybe a
11 dozen or so, additional jurors also in alphabetical order.
12 And I had not referred to that because, frankly, I didn't have
13 it in front of me. And I do want to correct the record in
14 that regard; that there was a second sheet that has been made
15 a court's exhibit that was not in random order, so that the
16 appellate court, if necessary, will have the full of the
17 record before it when it decides on that issue if it has to do
18 that.

19 All right. Anything further before we recess with Ms.
20 LaPlante from the state?

21 MS. LEPLANTE: Nothing from the state, Your Honor.

22 THE COURT: Ms. Stewart?

23 MS. STEWART: Nothing from the defense.

24 THE COURT: We stand in recess until 11 o'clock. Thank
25 you.

1 (Recess.)

2 THE COURT: (Audio begins midsentence) -- is all
3 assembled. Are both the state and the defense ready for the
4 jury?

5 MS. ELLIOTT: We are, Your Honor.

6 THE COURT: LaPlante?

7 MS. LEPLANTE: Yes, Your Honor.

8 THE COURT: Okay. You can bring us a jury.

9 (Whereupon, the jury came into open court at
10 approximately 1:32 p.m)

11 THE COURT: Ms. Fielding-Jenkins, would you sit in that
12 first chair on the first row, please, ma'am? Thank you.

13 Is that the foreperson's seat, Mr. Bailiff?

14 THE BAILIFF: No, sir. (Indiscernible).

15 THE COURT: Ladies and gentlemen, thank you for your
16 prompt return. We apologize for having to move our schedule
17 around today, but you're all aware of that and you've
18 cooperated with us in that inconvenience to you all, and thank
19 you so much.

20 Ms. Fielding-Jenkins, I've asked you to occupy that -- am
21 I saying your name right?

22 MS. FIELDING-JENKINS: Yes, Your Honor.

23 THE COURT: I've asked you to sit in that chair, please,
24 ma'am, because I want you to serve as the forelady of the
25 jury. I'll tell you more about your responsibilities at the

1 conclusion of the trial, but you will be responsible for
2 writing the verdict of the jury when that has been reached.
3 All you need to remember now is that you've got a reserved
4 seat. You will occupy that chair throughout the trial of this
5 case. Okay?

6 Ms. Hill, Ms. Jahn. As the alternate jurors, ladies, you
7 will occupy those two chairs throughout the trial of this case
8 unless sometime during the trial, I ask you to sit somewhere
9 else. Okay?

10 The rest of you folks don't have reserved seats. You've
11 just got general admission tickets. You've got to do the best
12 you can when you come in from time to time. It's always a
13 good idea to do just what you did this time; that is move all
14 the way down before you sit down. Because if you leave an
15 open chair beyond you, somebody's going to step on your feet
16 to get to it, so it's just common sense if you'll do that.

17 You're going to be sworn in now as jurors, folks. And I
18 want you to pay particular attention to the oath that you're
19 about to take. It's a time-honored oath. It's very concise,
20 but at the same time, it's very complete in its obligations
21 that it imposes upon you as jurors. And I'm going to be
22 reminding you during the trial and indeed after the trial as
23 to exactly what you've sworn to do as jurors in this case. So
24 please now give your attention to the clerk as she administers
25 the oath.

1 Madam Clerk?

2 THE DEPUTY CLERK: Ladies and gentlemen of the jury, if
3 you would please stand and raise your right hand.

4 (Jury sworn)

5 THE DEPUTY CLERK: Thank you.

6 THE COURT: Thank you. Let me take just a few minutes to
7 tell you of the process that we will follow during the trial
8 of this case and explain to you in greater detail what your
9 responsibilities are as jurors.

10 In just a minute, when I finish talking to you, Ms.
11 LaPlante on behalf of the state is going to stand before you
12 and make a brief opening statement. And in that opening
13 statement, she is going to outline for you in something of a
14 preview fashion what this case is all about from the state's
15 point of view. And she may tell you some of what the state
16 intends to offer by way of proof in support of the charges
17 that it has brought in the indictment.

18 And when she has finished making her opening statement on
19 behalf of the state, then Ms. Stewart on behalf of the
20 defendant Mr. Brown has a right to make an opening statement,
21 but she doesn't have any obligation to do so for reasons that
22 I'll tell you in just a moment. After the opening statements
23 have been made, then you will actually begin to see and hear
24 the presentation of evidence.

25 The state will offer its evidence first. Evidence for

1 the most part will take the form of testimony of witnesses who
2 will take an oath and sit right here in this chair between you
3 and me and answer questions that the lawyers from both sides
4 will put to them. Evidence might also take the form of
5 photographs or documents or diagrams or things like that that
6 would normally be offered into evidence in a trial. I don't
7 know what the evidence is because I haven't seen it yet, but
8 that's the sort of thing that we can expect normally to come
9 in to a trial of this nature.

10 After the state has offered its evidence and testimony,
11 then Mr. Brown has a right to offer evidence and testimony,
12 but he doesn't have any obligation to do so. And I'll tell
13 you once again in just a minute why not.

14 But after all the evidence and testimony has been
15 offered, then the lawyers will come back before you and they
16 will make their closing arguments or closing statements. And
17 in those closing statements, they're allowed to submit to you
18 conclusions that they claim you should draw from the evidence
19 that has been presented in the trial of this case. And after
20 the closing statements have been made, then I will instruct
21 you as to what the law is. And then, and only then, you will
22 be able to go to your jury room and finally start talking
23 about this case among yourselves and deliberate and reach a
24 verdict.

25 I remind you again that you cannot talk about this case

1 at any time during the trial itself. And the reasons for that
2 is you've got to keep an open mind throughout the trial of
3 this case. You might hear somebody talk about something out
4 here, and you go back there for a break or you come back
5 tomorrow morning after you've listened to a half a day's
6 testimony and you've got some questions in your mind, you
7 might want to talk about it then, but you can't do it; not
8 then. Because once you start to talk about this case among
9 yourselves, you're going to start to draw conclusions about
10 it. You're going to start to make up your mind about it.

11 It could be that later in the trial of the case somebody
12 else testifies and it's decidedly different from what you've
13 heard earlier. But you're not going to receive that different
14 testimony with an open mind if you've already started to make
15 up your mind based on that earlier testimony. So that's the
16 reason that you cannot talk about the case during the trial
17 because you're required to keep an open mind throughout the
18 trial. And when the trial is over, you can take as long as
19 you want to to talk about it, but please not until then.

20 Somebody has asked if you can take notes during the
21 trial. And you can take notes if you feel that you need to.
22 This is not going to be a lengthy trial and I don't think your
23 memory is going to be tested by the trial itself. But if you
24 feel that you're a notetaker and you need to take notes in
25 order to make sure that you have an accurate recollection of

1 things that are going on, you can do that. I'll tell you that
2 the notes, however, that you take should be only of the
3 testimony offered from this witness stand. Not of the opening
4 statements, not of the closing statements, and not of the
5 questions that are asked. Because the opening statements and
6 the closing statements and the questions are not evidence.
7 They're not evidence.

8 Now, they're obviously a part of the process and we
9 couldn't have an orderly trial without those things, but they
10 in themselves are not evidence. The evidence is not the
11 question, it's the answer to the question because the answer
12 comes from somebody who's under oath, who's telling you
13 something that he or she purports to know something about. Or
14 a diagram or a document or an item of evidence of that sort;
15 that's what the evidence happens to be.

16 So if you can take notes, make sure that that's what
17 you're taking notes about, the answers to the question. Don't
18 get so consumed in writing down the question that you forget
19 what the answer is. And frankly, if you take notes and your
20 notes say one thing and the collective memory of the jury says
21 something else, then it's the collective memory of the jury
22 that controls in the deliberations.

23 Now, the reason it's important, folks, that you
24 understand the distinction between what is evidence and what
25 is not evidence is this. When it comes to the matter of

1 evidence, you are actually jurors, but you're also judges.
2 You are the judges of the evidence. You have to decide what
3 happened when a matter is in dispute or when a matter has to
4 be decided. You're the ones who have to make the decision.
5 You determine the facts of the case, in other words; that's
6 your role.

7 Now, I've got the easy job. I'm the judge of the law.
8 All I've got to do is to decide whether you can hear somebody
9 testify from this witness stand about something or whether you
10 can look at an item or a photograph or a document. But once I
11 decide that you can hear the testimony or look at the
12 photograph or the diagram or whatever it is, then what you do
13 with it from that point on is entirely up to you. You go to
14 believe -- the right to believe or not believe. You've got
15 the obligation to assign weight to it, importance to it that
16 you think it should receive. And that means, of course,
17 you've got to pay attention throughout the trial of this case.
18 Keep that open mind that I told you about earlier, and also
19 keep an open ear, so that you'll be able to remember what the
20 important things are in the trial of this case.

21 A few moments ago, I told you that the defendant doesn't
22 have to make an opening statement and that he doesn't have to
23 offer evidence and testimony in this case. Because as you
24 were told earlier, the defendant has pled not guilty to the
25 charges contained in the indictment. And that means as a

1 matter of law, he is presumed to be not guilty of the charges
2 contained in the indictment. That means he doesn't have to
3 prove that he's not guilty. He doesn't have to testify and
4 try to convince you that he did not do the things that he's
5 accused of doing. He doesn't have to bring in evidence and
6 other witnesses to testify to try to convince you that he's
7 not guilty. He is presumed to be not guilty. And that means
8 that the burden is not on the defendant, but the burden is on
9 the state -- not just in this case, but in every case of this
10 sort -- to prove the guilt of the defendant beyond a
11 reasonable doubt, before you can find him guilty.

12 Now, when the trial is over and when I instruct you as to
13 what the law is in this case, I'll tell you in a little bit
14 greater detail what we mean by proof beyond a reasonable
15 doubt. But for right now, for these very early remarks, let
16 me tell you that proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the defendant's guilt.

18 So after listening to all the evidence and testimony in
19 this case and going back there and talking about it among
20 yourselves, if you are firmly convinced that the defendant's
21 guilty, the state has met its burden of proof and would be
22 entitled to a verdict of guilty at your hands. But after
23 you've heard everything, you think there's a real possibility
24 that the defendant is not guilty, the state has not met its
25 burden of proof. The defendant in that instance would be

1. babysitting for her family. And she was in the living room
2 because it was the coolest room in the house. She dozed off
3 when all the lights were still on in the home. But when she
4 awoke, the lights were off and what she was awoken to was
5 unimaginable.

6 A man, who she would later call an adoptive uncle, a
7 close family friend, was fondling her vagina and pressing his
8 erect penis against her back. Now, a 13-year-old should feel
9 safe. But on that date, she was anything but, and that's why
10 you're here today.

11 Now, over the next day and a half, the evidence that's
12 going to be put before you, it's not going to be fun to listen
13 to, but it is important. And it's not important to all of us
14 the way that it is important to 13-year-old Z.T.G.

15 . Now, Z.T.G. 's 17 now, it's been some time since
16 this happened. But your role here today is so important to
17 her.

18 Now, the case before you is a criminal sexual conduct
19 with a minor, third degree. I'm not going to go into all the
20 details of the law. Not yet. We'll talk about it more at the
21 end of the case. But I will tell you exactly what you're
22 looking for.

23 So first of all, the statute requires that we show that
24 the defendant is more than 14 years old. And then we'll also
25 have to show that the victim at the time of the incident was

1 less than 16 years old, and you will hear that she was 13.
2 But what you're looking for with the law is, is that you
3 cannot unlawfully touch someone for your own gratification,
4 and that's just the basics of it. We'll get more into it
5 later.

6 Now, over the next couple of days, you're going to hear
7 from a number of witnesses. You're going to hear from the
8 first officer on scene. And he's going to tell you about how
9 he met Mr. Brown at the door right before Mr. Brown took off
10 out the back door. You're going to hear from the lead
11 investigator in the case, the investigative detective who
12 investigated this case for a couple of months before she
13 obtained arrest warrants.

14 You're going to hear from Angela Smalls. Now, Angela is
15 Z.T.G. 's aunt. She was the owner of the apartment. And
16 she's going to tell you that she let Mr. Brown stay with her
17 because she was doing him a favor, not knowing what he was
18 capable of.

19 You'll also hear from dispatch. And you'll be able to
20 hear in her own words Z.T.G. calling 911 to report what
21 had happened to her.

22 And last, but most importantly, you're going to hear from
23 Z.T.G.]. And I keep saying Z.T.G. . It's Z.T.G.
24]. Who will tell you exactly what happened to her that
25 night when she woke up to the unimaginable.

1 Now, ladies and gentlemen, I realize this isn't where
2 anybody would like to be on any given Tuesday. But I am
3 thankful for your time and Z.T.G. is thankful for your time.
4 Your role here is so important and we're certainly grateful
5 that you're here. But at the end of this, once you hear all
6 the evidence that is presented to you, I submit to you that
7 you will find Mark Anthony Brown guilty of criminal sexual
8 conduct with a minor, third degree.

9 THE COURT: Thank you, Ms. LaPlante.

10 Ms. Stewart?

11 MS. STEWART: Thank you, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, ma'am.

14 OPENING

15 MS. STEWART: 1,147 days; that's how long my client, Mr.
16 Brown, has been waiting for his case to come before you. Good
17 afternoon, ladies and gentlemen. My name is Julie Stewart.
18 And I along with my cocounsel Pierce Wehman are here to tell
19 you -- to show you how a story full of inconsistencies has led
20 to a runaway train of doubt.

21 The state has accused, as you heard, my client of an
22 incredibly serious crime of sexual misconduct with a minor.
23 It's not a light matter and it's certainly not one that there
24 should be any doubts about. My client sits before you an
25 innocent man. In our country, you are innocent until proven

1 guilty. But in our society, it can often feel like the exact
2 opposite of that. Our justice system and my client's
3 Constitutional rights depend on you.

4 I want to talk to y'all a little bit about what we are
5 asking you to do this week. As you heard the judge briefly go
6 over, the state has the burden of proof. What I mean by that
7 is that if during your deliberations any fact or anything
8 causes you to hesitate to act, you must find my client not
9 guilty. And that is because the state must prove their case
10 beyond a reasonable doubt.

11 My client is under no obligation to produce any
12 witnesses. The state must produce all witnesses that they
13 feel necessary to try and eliminate reasonable doubt. If they
14 fail to do this, they have not met their burden of proof and
15 as a result, you must find my client not guilty.

16 Throughout this trial, you're going to hear some
17 inconsistencies. This runaway train. The government has
18 brought a case powered by doubt that threatens to strip my
19 client of not only his Constitutional rights, but his freedom.
20 It is up to you to get this train back on its tracks by
21 providing a verdict of not guilty and showing that Dorchester
22 County is not the wild west. Thank you.

23 THE COURT: Thank you, Ms. Stewart.

24 Ms. LaPlante, you can call your first witness.

25 MS. LEPLANTE: Thank you, Your Honor. The state calls

1 Cora Tanton.

2 THE COURT: Ms. Tanton, come forward please, ma'am, and
3 be sworn.

4 THE DEPUTY CLERK: If you'll please place your left hand
5 on the bible and raise your right hand.

6 CORA TANTON, after being duly sworn, testified as
7 follows:

8 THE DEPUTY CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MS. LEPLANTE:

11 Q Good afternoon.

12 A Ma'am.

13 Q Can you please state your name on the record for me,
14 please?

15 A Cora Tanton.

16 Q And can you tell me what your current title is?

17 A I am the director of Dorchester County emergency 911
18 services Consolidated Dispatch Center.

19 Q And how long have you been with the dispatch center?

20 A I've been with the discount -- sorry -- the dispatch
21 center for 23 years, acting as the director for 2 1/2.

22 Q Okay. And during that time, have you received any sort
23 of certifications or training in order to be a dispatcher and
24 also the director?

25 A I am emergency 911 certified through the South Carolina

1 Criminal Justice Academy. I am certified through the National
2 Crime Information Center. Also the National -- I'm sorry --
3 Emergency -- the National Emergency Dispatchers
4 Telecommunicator Center (phonetic) for police dispatching,
5 fire dispatching, and medical dispatching. I hold a CJIS
6 certification, which is security through SLED and the FBI. I
7 have incident commanding system certifications for 100, 200,
8 700, and 800. Several crisis communications, call handlings,
9 and supervisory training certifications over my 23 years. Too
10 many to count.

11 Q Okay. So all the trainings, yes. We got it.

12 And back in May of 2019, what was your position with the
13 Dorchester County dispatch center?

14 A I was the assistant supervisor to the communications
15 center.

16 Q Okay. And just to be clear, at that time, would you have
17 been taking 911 calls? Would you have been a dispatcher that
18 would respond?

19 A Sometimes. It depended on availability. If we were
20 short in the center, I would go in, fill in. My role mostly
21 was dealing with National Crime Information Center and
22 four-year requests and pulling tapes.

23 Q Okay. And I think most of us know how 911 works, but
24 just to -- so we can put it on the record.

25 A Um-hum.

1 Q When someone calls 911, is a recording made?

2 A Yes.

3 Q And is that recording made at the time that the call is
4 made?

5 A Yes.

6 Q Okay. And then is that recording retained by your
7 agency?

8 A It is retained for two years.

9 Q Okay. And those records or the recordings that you guys
10 keep, is that part of your regularly conducted business
11 practices?

12 A Yes, on a daily basis.

13 Q Okay. And would you be a record keeper for the dispatch
14 center?

15 A I am.

16 Q Okay. So when requests are made to the dispatch center,
17 you would provide those records?

18 A Yes, ma'am.

19 MS. LEPLANTE: Okay. And Your Honor, I do have a disk
20 that I've already shown to defense counsel. May I approach
21 the witness?

22 (WHEREUPON, State's Exhibit No. 1 was marked for
23 identification only.)

24 THE COURT: Yes.

25 MS. LEPLANTE: Okay.

1 THE COURT: Any objection, Ms. Stewart?

2 MS. STEWART: Your Honor, my objection is conditional on
3 the alleged victim being produced as a witness, and the state
4 has assured me that she will be.

5 THE COURT: All right. I will allow it subject to that
6 condition, and we will deal with it after the fact if we have
7 to. Thank you.

8 (WHEREUPON, State's Exhibit No. 1 was received into
9 evidence.)

10 MS. LEPLANTE: Thank you, Your Honor.

11 Q Ms. Tanton, I'm showing what's been marked as State's
12 Exhibit 1. Do you recognize this?

13 A Yes, I do.

14 Q Okay. And why do you recognize it?

15 A It was provide -- it was a disk that was provided years
16 ago to the solicitor's office. And I reviewed it earlier this
17 morning, and those are my initials on it.

18 Q Okay. And can you confirm that this was the recording
19 that was made by your agency back in 2019?

20 A I can. I can.

21 MS. LEPLANTE: Okay. Your Honor, at this time, we would
22 ask to move it into evidence and publish it to the jury.

23 THE COURT: You can publish it.

24 MS. LEPLANTE: Thank you, Your Honor.

25 Q And Ms. Tanton, before we start that playing, can you

1 confirm that the voice on this recording is not your voice; is
2 that correct?

3 A It is not.

4 Q Okay. And who would the voice be?

5 A It belongs to one of our ex-telecommunicator, Ms. Jasmine
6 Cuttino (phonetic).

7 Q Okay. And are you aware of who the caller is in this
8 call?

9 A I'm aware by the -- my research of it, yes, but --

10 Q Okay.

11 (Thereupon, the audio recording was played but not
12 transcribed herein.)

13 MS. LEPLANTE: Nothing further from the state, Your
14 Honor.

15 THE COURT: Thank you.

16 Cross-examine?

17 MR. WEHMAN: Okay, judge. May it please the Court.

18 THE COURT: Mr. Wehman.

19 CROSS-EXAMINATION

20 BY MR. WEHMAN:

21 Q Director Tanton.

22 A Um-hum.

23 Q So you are an employee of the Dorchester County Sheriff's
24 Office; is that right?

25 A No.

1 Q No? Where --

2 A I no longer work for the Sheriff's Office. I work for
3 the county.

4 Q At the time were you an employee?

5 A Yes.

6 Q Okay. And in your role at that time, you were in your
7 department. Obviously you were not the person on the call,
8 but you are responsible for filling in some of this
9 information on the CAD report, correct?

10 A No. I'm not. That is actually done by the
11 telecommunicator taking the call.

12 Q That would have been Ms. Cuttino --

13 A Cuttino, um-hum.

14 Q -- who we heard on the call?

15 A Um-hum, yes.

16 Q Okay. But you are familiar with how that process works?

17 A Yes.

18 MR. WEHMAN: Okay. And Judge, may I approach?

19 THE COURT: Yes, sir.

20 Q I'm going to show you a document.

21 A Um-hum.

22 Q Why don't you take a second and look at that.

23 A Um-hum.

24 Q Would that be the CAD report? Does that appear to be a
25 CAD report from that night?

1 A Yes.

2 Q Okay. And on that report, there is an entry that has --

3 MR. WEHMAN: And if I may approach again, Your Honor?

4 THE COURT: Yes, sir.

5 Q Right there. There is a bit of information that appears

6 to be put in by Ms. Cuttino; is that correct?

7 A Um-hum.

8 Q Would that information have been available to the

9 responding officer as he was arriving on scene?

10 A Um-hum, it should have been, yes.

11 Q Okay. So in that document, it contains the name Mark

12 Brown, correct?

13 A It does.

14 Q As was reported in the 911 call?

15 A Yes.

16 Q So the deputy arriving on scene would have had that

17 information when he got there, or should have had that

18 information?

19 A He should have had that information.

20 Q And you can tell on that report when he would have

21 arrived on the scene; is that correct?

22 A Um-hum.

23 Q What time would that have been?

24 A The first responding deputy arrived at 1:20:58.

25 Q And the entry was made that has the name of the suspect

1 at?

2 A 1:09:34.

3 Q Okay. Just briefly, as a policy, would it have been
4 consistent with policy in a matter like this to have gotten
5 off the phone with a alleged victim as law enforcement were
6 arriving?

7 A Policy is if the victim does not want to stay on the
8 phone and there is not an active assault going on, if there
9 are other lines ringing, we will get off the phone.

10 Q So in this case, you had an opportunity to secure the
11 call?

12 A Um-hum.

13 Q Based on your experience, would you say that getting off
14 the phone with that victim was appropriate?

15 A I -- on my experience, it depends on what was going on in
16 the room at the time.

17 Q But she didn't ask to get off the phone?

18 A No. She -- she did -- was advised that if anything
19 changes to call us back, but she didn't ask to get off the
20 phone. No.

21 MR. WEHMAN: (Indiscernible). Judge, I have no further
22 questions.

23 THE COURT: All right. Thank you.

24 Redirect, Ms. LaPlante?

25 MS. LEPLANTE: Nothing further from the state, Your

1 Honor.

2 THE COURT: Thank you.

3 Ms. Tanton, you can step down.

4 THE WITNESS: Thank you.

5 THE COURT: Ms. LaPlante?

6 MS. LEPLANTE: Your Honor, the state calls Z.T.G.

7

8 THE COURT: Ms. Z.T.G. , come forward, please, ma'am. Be
9 sworn.

10 THE DEPUTY CLERK: Place your left hand (indiscernible)
11 and raise your right hand, please. And state your full name
12 for the record.

13 MS. Z.T.G. : Z.T.G.

14 Z.T.G. , after being duly sworn, testified as
15 follows:

16 THE DEPUTY CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MS. LEPLANTE:

19 Q All right. Go ahead and put your name on the record for
20 me.

21 A I'm Z.T.G.

22 Q Oh, girl, you're going to have to talk louder than that.

23 A It's Z.T.G. --

24 Q Pull that microphone down.

25 A Z.T.G.

1 Q Is that microphone on?

2 A I don't think so.

3 MS. LEPLANTE: Can you all hear that coming through the
4 speakers? Yes?

5 THE DEPUTY CLERK: It's coming through to me.

6 MS. LEPLANTE: It's coming through to you?

7 THE WITNESS: I'm talking too low?

8 THE COURT: You're doing what you need to do. We just --

9 MS. LEPLANTE: There you go; that's the one.

10 THE WITNESS: Oh, okay.

11 Q Okay. Give us your name one more time.

12 A Z.T.G.

13 Q Much better. All right, Z.T.G. How old are you?

14 A 17.

15 Q Okay. Are you in school?

16 A Yes.

17 Q Okay. Where are you in school?

18 A Acceleration Academy.

19 Q Great. And where are you currently living? Don't give
20 me an address, just tell me where.

21 A In Summerville.

22 Q Okay. And let me ask you, Z.T.G., how do you know Mark
23 Anthony Brown?

24 A He's my great grandma's adopted son.

25 Q Okay. And how long have you known him?

1 A Basically my whole entire life.

2 Q Okay. All right. I'm going to take you back to May 26th
3 of 2019. Okay? Tell me, what was going on that day?

4 A My -- it was my auntie's 50 years birthday and it was
5 graduation day, so my cousin needed me to babysit for her.

6 Q Okay. And how old were you back then?

7 A 13.

8 Q Okay. And do you remember the address that your cousin
9 needed you to babysit at?

10 A Yes.

11 Q Okay. What was the address there?

12 A ■ James Street.

13 Q Okay. And what city is that in?

14 A In Summerville.

15 Q Is that in Dorchester County?

16 A Yes.

17 Q Okay. All right. So they needed you to babysit. And
18 where -- tell me about the place that you were going to
19 babysit. Whose house was that?

20 A My aunt's house.

21 Q Okay. And can you tell me a little bit about the layout
22 of the home?

23 A When you -- okay. So when you walk into the front door,
24 it's the living room. To the right of the living room is the
25 kitchen. If you continue going through the living room, the

1 hallway is on the right, too. And then on the left is my
2 cousin's room. And then if you continue going on the right,
3 it's the bathroom. Beside the bathroom, it's my aunt's
4 bathroom, and then across from her room is -- I mean, it's my
5 aunt's room. And across from her room, it's my cousin's room.
6 My other cousin.

7 Q So you're saying the living room was up at the front?

8 A Yeah.

9 Q Okay. And the bedrooms were in the back?

10 A Yes.

11 Q Okay. And you're mentioning some people, some cousins,
12 some aunts. Who lived in that apartment?

13 A It was my Aunt Angie (phonetic), my cousin Aikira
14 (phonetic), and my other cousin Richar.

15 Q Okay. And Richar and Aikira, are they Angie or -- okay.
16 And who were you babysitting for?

17 A I was babysitting Aikira's daughter.

18 Q Okay. And how old was that baby?

19 A She was going on 3.

20 Q Okay. Do you normally babysit for her?

21 A Um-hum.

22 Q Yeah? Pretty regularly?

23 A Yeah.

24 Q Okay. Now, the three of them -- the four -- I guess the
25 four of them lived in that apartment. Was anybody else

1 staying in the apartment at the time?

2 A Just Mark.

3 Q Just --

4 A He was currently living there.

5 Q Okay. And where was he living?

6 A He was sleeping in the living room.

7 Q Okay. What was he sleeping on?

8 A On a pallet.

9 Q Okay. On the floor?

10 A Um-hum.

11 Q Okay. And tell me, on that night -- so what was kind
12 of -- what was going on when you started babysitting?

13 A Everybody was -- well, my cousin already had left. My
14 aunty was getting ready for her birthday party. And that was
15 about it. I mean, can you ask me again?

16 Q No. I mean, that's --

17 A Okay.

18 Q That's okay. Let me ask you this. Was Mark Anthony
19 Brown in the apartment that night?

20 A Yeah, but he was in and out.

21 Q Okay. What does that mean, "in and out"?

22 A He was going outside and coming back inside.

23 Q Okay. And let me ask you this. Is Mark Anthony Brown in
24 this courtroom today?

25 A Yes.

1 Q Okay. Can you identify him for me?

2 A He's right there.

3 Q Okay. Can you tell me what color his shirt is?

4 A I think black. Blue. Navy blue, whatever.

5 Q Okay. But what you're saying is he's seated at the table
6 over there?

7 A Yeah.

8 Q Okay. Okay. You said he was in and out that night. So
9 what were you doing during all of this?

10 A I was laying on the floor in the living room because it
11 was hot and that was the coolest part of the house.

12 Q Okay. Why was that the coolest part of the house?

13 A The A/C was broken around the time.

14 Q Okay.

15 A And my auntie had an A/C unit in the living room, through
16 the window.

17 Q Through the window?

18 A Um-hum.

19 Q Okay. And where was the baby during all of this?

20 A She was on the bed in her mom's room, watching TV.

21 Q Okay. When you were in the apartment, were the lights
22 on, were the lights off?

23 A They were on.

24 Q Okay. And you said you were laying on the floor?

25 A Um-hum.

1 Q Okay. And what happened next?

2 A I was laying on the floor, and then I started getting
3 tired and I end up dozing off. And then I felt something
4 touch me one time, but I thought I was dreaming or the baby
5 was touching me. And then I felt something touch me at --
6 like, more than once, again, but it was on my vagina and I
7 felt something brush up on my back and I got up then. I turn
8 around, and it was Mark. And I asked him what he was doing,
9 and he said, oh, I didn't know that was you.

10 Q Okay. Let's go back. So you said you were laying on the
11 floor and you fell asleep?

12 A Um-hum.

13 Q How was your body on the floor?

14 A One of my legs was -- my left leg was pointing down. My
15 right leg was up.

16 Q Pulled up?

17 A Pulled up to my side, basically.

18 Q Okay. Um-hum. And then but what about the rest of your
19 body?

20 A I was laying on my stomach and my arms were -- my head
21 was on my arms, basically.

22 Q Okay. And you said you fell asleep?

23 A Um-hum.

24 Q And then you said you felt it once?

25 A Yeah, I felt it once.

1 Q Okay. And at that point, I didn't catch. What did you
2 say you thought it might be?

3 A I thought I was dreaming or the baby had touched me.

4 Q Okay. Well, let me ask you. Were you dreaming?

5 A No.

6 Q Was it the baby?

7 A No.

8 Q Okay. And when did you realize that?

9 A After I felt it more than once and I felt something brush
10 against my back.

11 Q Okay. How many times do you think you felt it?

12 A About five times.

13 Q Okay. And you said you felt something brush against your
14 back. Tell me what that was.

15 A Well, when I got up and I turn around, it was Mark. So
16 basically I guess it was his penis.

17 Q Okay. And what did it feel like?

18 A Something hard rub against my back.

19 Q Okay. And you said he was touching your vagina. Where
20 was his hand coming from, I guess is the question?

21 A Like, I was laying on my stomach, so basically under me.

22 Q Okay. Like, from the side? From one of your sides?
23 Underneath?

24 A Underneath me.

25 Q Okay. And that would be under which leg?

1 A My right leg because my right leg was up.

2 Q Okay. Were the lights on at that point?

3 A No. The lights were off.

4 Q Would that have been weird?

5 A Yes. Well, technically not really the living room light,
6 but the kitchen light was off, too.

7 Q Okay. And I mean, what's --

8 A That light is never off.

9 Q Okay. All right. So you -- you said you jumped up.
10 What's the first thing you said to him?

11 A I asked him what he was doing.

12 Q Is that what you really said?

13 A I said what the fuck are you doing?

14 Q Um-hum. And what did he say back to you?

15 A I didn't know that was you.

16 Q Okay. How long have you known Mr. Brown?

17 A All my life.

18 Q Okay. And had you seen him earlier in the night?

19 A Yes.

20 Q Okay. Multiple times?

21 A Um-hum.

22 Q Okay.

23 A He was in and out the house.

24 Q Was anybody else in the house?

25 A It was the baby and my other cousin. But my other cousin

1 was in the room, playing a game.

2 Q Okay. And which bedroom was he in?

3 A The last room, to the left.

4 Q Okay. So could it have been anybody else in the house

5 with you?

6 A No.

7 Q Okay. So should he have had that mistake?

8 A No.

9 Q Okay. And what's the next thing he says to you?

10 A He told me to go make a pallet on the floor.

11 Q All right. And what did you do next?

12 A I went -- I ran in the room and got my phone.

13 Q Which room?

14 A I ran in the first room, my cousin's room.

15 Q Okay.

16 A And I grabbed my phone. And I texted my cousin first

17 because I didn't know what to do.

18 Q All right. Which cousin did you text?

19 A I text -- I text my cousin, Aikira first because I was

20 watching her kid.

21 Q So you were in Aikira's bedroom?

22 A Yes.

23 Q Okay. And what did you do after that?

24 A I texted my cousin Danessa (phonetic) because she was,

25 like, two houses down from me --

1 Q Okay.

2 A -- at the time.

3 Q And then what did you do?

4 A They told me -- they basically -- call the police, so

5 that's what I did. I went in the closet and I called the

6 police.

7 Q Okay. Why did you go in the closet?

8 A Because I didn't want him to hear me.

9 Q Okay. Did Mr. Brown ever talk to you?

10 A I remember him bringing me the baby. I think she left

11 out the room, but I don't really remember. He asked me where

12 did I go, but I don't really remember where I went.

13 Q Okay. Did you lock the bedroom door at some point?

14 A Yeah. Felt like he was trying to come inside. Somebody

15 was trying to come inside.

16 Q Why do you think that?

17 A Because the door rattled. But the door was locked, so.

18 Q All right. So you're really quiet on the call. Why are

19 you whispering?

20 A I didn't want him to basically hear me calling the

21 police.

22 Q Okay. What's the next thing you remember doing?

23 A I remember waiting for the police, but my auntie ended up

24 getting home before the police got there.

25 Q Okay. And what did you do?

1 A As soon as I heard her go in her room, I ran in her room
2 and I told her what happened. But right after I told her what
3 happened, the police was already inside the house.

4 Q Okay. And what happened once law enforcement arrived?

5 A They asked where did Mark go at. Basically we --
6 basically I stayed in the room and they were already about to
7 come down the hall, and they asked where did Mark go. And
8 we -- we thought that he had -- that he had opened the door
9 for them, which he actually did. And I guess they said they
10 asked him who was the owner of the house, and he told them
11 that he was going to go get them.

12 Q Okay. And so where did you think Mr. Brown was?

13 A I thought he was hiding in the closet.

14 Q Okay. Was he in the house?

15 A No.

16 Q You didn't see him again?

17 A No.

18 Q Okay. All right. What did law enforcement do while they
19 met with you on that night?

20 A They walked down the hall. They checked the house. And
21 when they went to the last room on the left, the back door was
22 wide open.

23 Q Okay.

24 A And they said he ran out the back door.

25 Q So there's a back door to the apartment?

1 A Um-hum.

2 Q Or it's a townhome, I think is what you said?

3 A Yes, it's a duplex apartment.

4 Q Okay. And so there's a front entrance, you said?

5 A Yes.

6 Q Okay And then whose room is the back door in?

7 A My cousin, Richar.

8 Q Okay. All right. So after law enforcement went with you

9 that day, did you ever meet with law enforcement again?

10 A Would you ask me one more time?

11 Q After police left that day, did you meet with any police

12 officers after that day?

13 A No.

14 Q Okay. Did you do -- go ahead.

15 A I met with children's advocate --

16 Q Okay.

17 A -- I think it was called. That's it.

18 Q Sure. And since then, have you seen Mr. Brown?

19 A Yes.

20 Q Okay. All right, Z.T.G. . How did it make you feel

21 whenever you had to see him?

22 A Every time I see him, my anxiety get real bad.

23 Q Okay. Z.T.G. , you said you had seen Mr. Brown since

24 this incident. Why? Why have you seen him?

25 A I seen him in the same area that my aunt stayed at. I

1 saw him once walking from somebody's house, and then came to
2 my aunt's front door. But I slammed the door in his face.

3 MS. LEPLANTE: Okay. Nothing further from the state,
4 Your Honor.

5 THE COURT: Thank you.

6 Ms. Stewart?

7 MS. STEWART: Thank you, Your Honor. May it please the
8 Court.

9 CROSS-EXAMINATION

10 BY MS. STEWART:

11 Q Good afternoon, Z.T.G. . I'll be pretty quick today. I
12 just want to ask you a few questions.

13 Just so I'm clear, you said that you were laying on your
14 stomach and he touched you from underneath; is that correct?

15 A Yes.

16 Q Okay. And you told the 911 dispatcher that your cousin
17 didn't believe you, correct?

18 A I did.

19 Q Okay. And that was your cousin Richar?

20 A Yes.

21 Q Okay. You told the 911 dispatcher that he touched you a
22 couple of times, correct?

23 A Yes.

24 Q But then today in your testimony, you said it was five
25 times; is that right?

1 A Well, in my definition, a couple times, I might be
2 talking about more than twice, more than three times, more
3 than four times; that's how I use it.

4 Q Okay. So you don't quite know exactly how many times he
5 touched you, just --

6 A I know it was about five times.

7 Q Okay. And you said you might have been dreaming and he
8 hadn't touched you at all, correct?

9 A No. I said the first time I got touched I thought I was
10 dreaming. But once I got touched multiple times, that's when
11 I knew I wasn't dreaming.

12 Q Okay. Z.T.G. , you said you remember talking to the
13 children's center, correct?

14 A Yes.

15 Q And isn't it true that you said you heard him try to take
16 his pants off?

17 A No. I did not say that.

18 Q Excuse me. I was incorrect. In your children's
19 interview, you said that he tried to take your pants off; is
20 that correct?

21 A I said that he almost put his -- it felt like he almost
22 was trying to put his hand in my pants. I never said anything
23 about taking clothes off.

24 Q In the prior -- in a prior statement you gave to police
25 where you alleged that you heard my client taking pictures of

1 you; is that right?

2 A When I saw what I said, I did say that, but it's been a
3 long time.

4 Q Okay.

5 A But I know that he touched me.

6 MS. STEWART: Thank you.

7 THE WITNESS: Um-hum.

8 MS. STEWART: I don't have any further questions.

9 THE COURT: Thank you.

10 Redirect, Ms. LaPlante?

11 MS. LEPLANTE: Nothing further, Your Honor.

12 THE COURT: Thank you.

13 Z.T.G. , you can step down.

14 THE WITNESS: Thank you.

15 THE COURT: Ms. LaPlante?

16 MS. LEPLANTE: Thank you, Your Honor. The state calls
17 Det. Cpl. Kreig Griffin.

18 THE COURT: Det. Griffin, come forward, please, sir, and
19 be sworn.

20 THE DEPUTY CLERK: (Indiscernible) and raise your right
21 hand. Please state your name for the record.

22 DET. GRIFFIN: Det. Kreig Griffin.

23 KREIG GRIFFIN, after being duly sworn, testified as
24 follows:

25 THE DEPUTY CLERK: Thank you.

DIRECT EXAMINATION

1
2 BY MS. LEPLANTE:

3 Q All right. Good afternoon. Can you go ahead and put
4 your name on the record for me?

5 A I am Det. Cpl. Kreig Griffin.

6 Q And what's your current -- I got Det. Cpl., but are there
7 any other titles that you currently hold with the sheriff's
8 office?

9 A Right now, I'm tasked on the FBI violent crimes task
10 force as a task force officer.

11 Q Okay. And have you received any specialized training to
12 become a Det. Cpl. or the FBI task force contact?

13 A I have completed basic detective, through the South
14 Carolina Criminal Justice Academy.

15 Q And how long have you been in law enforcement?

16 A I have been in law enforcement since 2014. Started off
17 in the jail. Graduate the South Carolina Criminal Justice
18 Academy as a basic law enforcement officer in 2018.

19 Q Okay. And back in May of 2019, what was your title?

20 A I was a patrol PFC.

21 Q And what area did you patrol?

22 A I patrolled zones 2 and 3.

23 Q And what does that mean, for those of us who don't work
24 in law enforcement?

25 A It's -- it's a wide range, it covers majority of the

1 Summerville area. It stretches as far as Ridgeville at the
2 fork for 178 and 78. And it covers back Dorchester Road,
3 Bacons Bridge, that area.

4 Q Okay. Back on May 26th of 2019, did you respond to [REDACTED]
5 James Street, Apartment [REDACTED]?

6 A I did.

7 Q And what town is that in?

8 A That is in Summerville.

9 Q And what county is that in?

10 A It's in Dorchester County

11 Q Okay. And what were you responding to on that date?

12 A Sexual assault call for service.

13 Q Okay. And what did you observe when you first arrived on
14 scene?

15 A When I arrived on scene, I knocked on the door. Mr.
16 Brown, Mark Brown, answered the door initially, is the first
17 initial on scene arrival.

18 Q Okay. And the man that answered the door that day,
19 you're identifying him as Mr. Brown, is he seated in this
20 courtroom here today?

21 A Yes, Your Honor.

22 Q You don't have to call me Your Honor, but --

23 A Yes, I'm sorry.

24 Q And can you tell me where he's seated?

25 A He is sitting directly over here. Appears to black from

1 here, I can't see, but a black jacket.

2 Q And did he originally identify himself?

3 A He did.

4 Q Okay. And just tell me what happened once you arrived on
5 scene.

6 A The initial knock on the door, Mr. Brown answered the
7 door. I asked if the complainant, Z.T.G. , was in the
8 residence. He initially was going to get the -- Z.T.G. .

9 He clearly walked to the back of the residence and I
10 observed him go in a room to the left. After, you know,
11 several minutes standing at the door, there was no response
12 coming back to the door. Calling into the residence, no one
13 come -- no one's coming to the door, so I complete a
14 walkaround of the residence. Like, I start walking around the
15 back side of the residence.

16 And when I come back to the front of the residence, I,
17 you know, announce myself again, hey, sheriff's office. And
18 that's when I was met by Ms. Smalls.

19 Q Okay. And who is Ms. Smalls?

20 A Ms. Smalls is the aunt of Z.T.G. (sic).

21 Q Okay. And at that point, did you take statements from
22 everyone in the home?

23 A Verbal statements from -- initially speaking to Ms.
24 Smalls. And later, I took a verbal statement from Z.T.G.
25 (sic).

1 Q Okay. Now, on May 26th of 2019, Det. Griffin, were you
2 wearing a bodycam?

3 A I was.

4 Q Okay. And did you believe that that bodycam was
5 activated?

6 A To my knowledge, I believe it should have been activated,
7 it's our policy for it to be activated on any contact with
8 pub -- anyone in public.

9 Q And in preparation for this trial, were we able to obtain
10 that bodycam?

11 A No. We were not.

12 Q Okay. And why is that?

13 A It could be multiple. We were on a previous body camera
14 system in 2000 -- in at that time. We were using Digital
15 Ally, which was a square battery pack. It -- one -- multiple
16 things. The battery could have died by the time -- that time
17 in the morning or easily I didn't activate it. I mean,
18 there's multiple.

19 Q Okay. And when you arrived on scene, did you speak to
20 Z.T.G. .?

21 A I did.

22 Q Okay. Did you take photographs of Z.T.G. .?

23 A I did.

24 Q Okay. Did you collect Z.T.G. 's clothing?

25 A I did not.

1 Q Why not?

2 A The statement that I got from her was he was touching on
3 the outside of her clothes. I just didn't take them.

4 Q Okay. Would it have been policy for your agency to take
5 clothing in a case like that?

6 A Not policy. No.

7 Q Where there has been no penetration and no ejaculation?

8 A Correct.

9 Q Okay. Would it have been appropriate for you to ask that
10 child to take off her clothes and give them to you?

11 A I don't -- I don't believe it -- it would be appropriate.
12 I just didn't feel it was appropriate with it being outside of
13 the clothes. Him already acknowledging being in the house.

14 Q Okay. And after you spoke with everyone in the home,
15 what did you do next?

16 A I completed a incident report and I left the scene of the
17 call.

18 Q Okay. And what then would happen with the case?

19 A The case would get assigned to a detective in the
20 investigation unit.

21 Q Okay. Det. Griffin, can you describe what Z.T.G. 's
22 demeanor was on scene?

23 A She was -- she seemed afraid. Just the body demeanor was
24 not -- not normal.

25 MS. LEPLANTE: Okay. Nothing further, Your Honor.

1 THE COURT: Thank you.

2 Ms. Stewart?

3 MS. STEWART: Thank you, Your Honor. May it please the
4 Court.

5 THE COURT: Yes, ma'am.

6 CROSS-EXAMINATION

7 BY MS. STEWART:

8 Q Good afternoon, Ofc. Griffin.

9 A Good afternoon.

10 Q When you spoke with Mark, he wasn't detained, correct?

11 A Correct.

12 Q And he told you he was going to go get her?

13 A Correct.

14 Q And you stayed at the door?

15 A Correct.

16 Q You never tried to follow him, though?

17 A Correct.

18 Q You told the solicitor that you normally wear a body
19 camera and you had it on that night?

20 A Correct.

21 Q But it wasn't turned on?

22 A Right.

23 Q For whatever reason.

24 A Correct.

25 Q So we don't get to hear the statements from any of the

1 people on the scene?

2 A That is correct.

3 Q There was another officer there with you that night,
4 correct?

5 A Correct.

6 Q Was that Ofc. Buck (phonetic)?

7 A Yeah, but he was the sergeant of the shift; yes, ma'am.

8 Q Okay. Sergeant. Did he wear a body camera?

9 A I'm not sure. I do not recall if he was wearing one.
10 It's policy that we all wear them.

11 Q Okay. So it's fair to say you didn't collect any
12 evidence at the scene, then?

13 A I collected the photographs on -- on scene, which could
14 be considered --

15 Q Photographs, but that was it?

16 A Correct. Oh, statement. A verbal state -- well, yeah,
17 correct.

18 Q Okay. Verbal statements that we don't have at this
19 point, correct?

20 A Right.

21 Q Okay. So Ofc. Griffin, when you responded to the door,
22 you knew you were looking for that defendant?

23 A Yes.

24 Q You knew his name?

25 A We knew Mark Brown was attached to the call.

1 Q Okay. And he identified himself, right?

2 A Correct.

3 Q When he said he would go get Z.T.G. , you allowed him to
4 go retrieve her, correct?

5 A Correct.

6 Q You didn't try and keep him at the door with you?

7 A No.

8 Q And Angela Smalls, she was in the house the whole time
9 this happened, correct?

10 A Nobody call -- nobody came to -- initially, when I first,
11 initial contact calling in the house.

12 Q Right.

13 A No one came out. It wasn't until I come back from the
14 walkaround that I announce myself, just said sheriff's office
15 again, that she did come out of -- out of the residence.

16 Q So she wasn't waiting for you to get there; is that
17 correct?

18 A That -- I can -- I can't answer that. I can only -- she
19 was not there at initial call, when I was there, calling out.
20 She was there when I came back around and gave the
21 announcement for sheriff's office.

22 Q Right. So when you came back to the front door?

23 A Correct.

24 Q Okay. So she responded at that point?

25 A Correct.

1 Q Okay. Did you speak with -- are you -- did you speak
2 with Richar on the scene?

3 A Richar?

4 Q Richar. I think maybe I mispronounced it. The cousin
5 who also lived there and (indiscernible)?

6 A The juvenile? There was a juvenile in the back bedroom.
7 I did speak with him.

8 Q You spoke with him. And I assume that would have been on
9 your body camera as well?

10 A Yes.

11 MS. LEPLANTE: Okay. No further questions.

12 THE COURT: Thank you.

13 Redirect, Ms. LaPlante?

14 REDIRECT EXAMINATION

15 BY MS. LEPLANTE:

16 Q Det. Griffin, and do you know whether or not the bodycam
17 was actually turned off?

18 A I -- I -- I cannot recall if it was off or if the battery
19 was dead and not active at the time. I cannot recall.

20 Q So it could be a whole range of reasons why we don't have
21 that body camera?

22 A It could be.

23 Q Okay.

24 A Correct.

25 MS. LEPLANTE: Nothing further from the state, Your

1 Honor.

2 THE COURT: Thank you. You can step down, Detective.

3 THE WITNESS: Thank you.

4 THE COURT: Yes, ma'am?

5 MS. LEPLANTE: Your Honor, the state calls Angela Smalls.

6 THE COURT: Ms. Smalls, come forward, please, ma'am, and
7 be sworn.

8 THE DEPUTY CLERK: Place your left hand on the bible and
9 raise your right hand. State your full name for the record.

10 MS. SMALLS: Angela Dee (phonetic) Smalls.

11 ANGELA SMALLS, after being duly sworn, testified as
12 follows:

13 THE DEPUTY CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MS. LEPLANTE:

16 Q All right. Good afternoon.

17 A Good afternoon.

18 Q Can you go ahead and put your name on the record for me?

19 A It's Angela Dee Smalls.

20 Q And Ms. Smalls, where do you currently live?

21 A [REDACTED] James Street in Summerville.

22 Q And is that the same incident or location that you
23 resided in back in May of 2019?

24 A Yes, ma'am.

25 Q Okay. So you're living in the same duplex apartment?

- 1 A Yes.
- 2 Q Okay. And what is your relationship to Z.T.G. ?
- 3 A I'm her auntie.
- 4 Q Okay. And what is your relationship to Mark Anthony
- 5 Brown?
- 6 A Me and Mark were childhood friends. We grew up together.
- 7 His mother and my mother were best friends, so.
- 8 Q Okay.
- 9 A Childhood friends.
- 10 Q And back in May of 2019, was Mr. Brown staying with you?
- 11 A Yes.
- 12 Q Okay. Why was he staying with you?
- 13 A He needed a place to stay.
- 14 Q Okay. And in your home, can you kind of describe the
- 15 layout of the duplex?
- 16 A Once you walk in the front door, it's the living room.
- 17 To your right is the kitchen. And down the hall is the
- 18 bedrooms and bathrooms.
- 19 Q Okay. And out of those bedrooms in the back rooms, who
- 20 stays in each one of those rooms?
- 21 A Okay. The first one on the left is my daughter. Then
- 22 it's a full bathroom on the right. And then on the right is
- 23 my bedroom which is -- which is the master. And then the
- 24 third bedroom is on the left, which is my son.
- 25 Q Okay. And is there only one entrance and exit to your

1 home?

2 A No, ma'am.

3 Q Okay. How many are there?

4 A It's two.

5 Q Okay. And where are they?

6 A You have the front door, then you have a back door which

7 leads out my son's bedroom.

8 Q Okay. And you said your daughter stays in the first

9 bedroom?

10 A In the first.

11 Q Anybody else sleep I there with her?

12 A Her daughter.

13 Q Okay. And how old is that grandbaby?

14 A Now Nala (phonetic) is six.

15 Q Okay. But back in May, how old was she?

16 A Let's see.

17 Q Quick math.

18 A Nala might have been -- she might have been one or two.

19 I don't know.

20 Q Okay. And but young enough to need a babysitter; is that

21 correct?

22 A Right. Correct.

23 Q Okay. And would Z.T.G. regularly babysit for your

24 daughter?

25 A Yes.

1 Q Okay. And during that time, on May 2019, what was going
2 on that weekend?

3 A That was my birthday weekend. So with family and
4 friends, I had a gathering elsewhere.

5 Q Okay. And so you were not in the home the entire night;
6 is that correct?

7 A No, ma'am.

8 MS. STEWART: Leading.

9 THE COURT: Yes, ma'am?

10 MS. STEWART: Leading.

11 THE COURT: Well, it is, but I think it's trying to set a
12 stage.

13 MS. LEPLANTE: I can rephrase it, Your Honor.

14 THE COURT: Okay.

15 Q Were you in the home the entire night?

16 A No.

17 Q Okay. Tell me what was happening in the home before you
18 went to the birthday celebration.

19 A The kids were there and I was getting ready to leave;
20 that's basically it. Um-hum.

21 Q Okay. The kids were there. Was anybody else in the
22 house?

23 A My son. Well, I left the kids there. I left Z.T.G. ,
24 Ree (phonetic), Nai (phonetic) there, and -- and Nala there.
25 My grandbaby.

1 Q Okay. Was Mr. Brown in the home?

2 A At the time, I don't think so.

3 Q Okay.

4 A I don't think so.

5 Q And how long he had been -- had he been staying with you
6 at that point?

7 A It's been -- it's been a minute. A couple of months or
8 so. It's been a minute.

9 Q Okay. What time did you arrive home?

10 A Give or take, it was a little after 1 in the morning.

11 Q Okay. And when you got home, what did you observe?

12 A When I walked in, Mark was laying on the living room
13 floor. And as I was going to my bedroom, Z.T.G. and my
14 grandbaby was in my bedroom.

15 Q Okay. And what happened next?

16 A She proceeded to tell me, but by then -- when she -- when
17 she was trying to tell me what happened, that's when the
18 police was coming in the home, was in my house.

19 Q Okay. And what did she tell you had happened?

20 A That Mark touched her.

21 Q Okay. And you said law enforcement was already in your
22 home at that point?

23 A Yeah.

24 Q Did you hear them calling into your apartment?

25 A They identified theirselves when they were walking in.

1 Q Okay. And where did you meet them in the home?

2 A I was coming down the hallway.

3 Q Okay. But while you were in your bedroom, could you hear
4 them knock on the front door?

5 A No, ma'am.

6 Q Okay. And where was Remy (phonetic) during all of this,
7 or Richar? By he goes by Remy, right?

8 A Remy.

9 Q Yeah.

10 A At one point, he was in his bed. And then as the -- when
11 I was meeting the police, I think Ree was using the restroom
12 at that time.

13 Q Okay. But when you arrived, Mr. Brown wasn't in the
14 apartment, correct?

15 A Yes.

16 Q And where was Mr. Brown when you entered the apartment?

17 A Laying on the living room floor.

18 Q Okay. Did he say anything to you?

19 A No. Not that I recall.

20 MS. LEPLANTE: Okay. Nothing further at this time, Your
21 Honor.

22 THE COURT: All right. Ms. Stewart?

23 MR. WEHMAN: Thank you, Judge.

24 THE COURT: Oh, excuse me. I'm sorry. Mr. Wehman.

25 MR. WEHMAN: That's all right, Judge. We're switching it

1 up on you.

2 THE COURT: That's okay.

3 CROSS-EXAMINATION

4 BY MR. WEHMAN:

5 Q Ms. Smalls, how are you today?

6 A I'm good. And you?

7 Q I'm doing well. Just briefly, you said that you arrived
8 home around 1 a.m.; is that correct? Somewhere in there?

9 A Somewhere in there, yes.

10 Q Okay. And is it correct that you testified the first
11 time you were made aware of any of this is when you were able
12 to get into the home and speak to her?

13 A Once I entered the home, I went to my room, yes.

14 Q So you had not received a text message or a phone call
15 before that, informing you of what had happened?

16 A No.

17 Q Okay. And you said that when you came into the
18 residence, Mr. Brown was laying on the floor?

19 A Living room floor, yeah.

20 Q In his bed, so to speak?

21 A Yes.

22 Q As he would? Nothing seems out of normal to you at the
23 time?

24 A Right.

25 Q And you said that while you were talking, at some point

1 law enforcement made their way in and announced themselves and
2 that's when you proceeded to speak with them, correct?

3 A Correct.

4 Q Did you ever give a statement other than that night when
5 you spoke to law enforcement? Did anyone ever ask to speak to
6 you?

7 A No.

8 Q No interview after that night?

9 A No.

10 MR. WEHMAN: Court's indulgence, Your Honor?

11 THE COURT: Thank you.

12 Q And no one asked you to write a statement, correct?

13 A No.

14 MR. WEHMAN: Thank you, Judge. No further questions.

15 THE COURT: Thank you.

16 Ms. LaPlante, redirect?

17 MS. LEPLANTE: Nothing further, Your Honor.

18 THE COURT: Thank you.

19 Ms. Smalls, you can step down.

20 Ms. LaPlante?

21 MS. LEPLANTE: Thank you, Your Honor. The state calls
22 reserve deputy Yxsumi Simmons.

23 THE DEPUTY CLERK: (Indiscernible).

24 YXSUMI SIMMONS, after being duly sworn, testified as
25 follows:

1 THE DEPUTY CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MS. LEPLANTE:

4 Q All right. Go ahead and put your full name on the record
5 for me.

6 A Yxsumi Simmons.

7 Q And I'm going to call you Det. Simmons because I know you
8 as, but what's your current title?

9 A I'm Reserve Deputy Simmons.

10 Q Okay. And how long have you worked for the sheriff's
11 office?

12 A Almost eight years.

13 Q Okay. Back in May of 2019, what was your position at the
14 sheriff's office?

15 A Detective Corporal. And I was assigned to the criminal
16 investigations division.

17 Q Okay. And now there's been some sort of title change.
18 Can you kind of explain that for us?

19 A I am completing my master's degree and I just -- I cannot
20 do both. I'm tired. So I only have about a semester left,
21 and then I'll probably go back full time, after I'm finished.

22 Q And prior to working for the sheriff's office, did you
23 work for any other law enforcement agencies?

24 A Yes, South Carolina Department of Probation, Parole and
25 Pardon Services and Charleston County Sheriff's Office.

1 Q And so in total, how many years of law enforcement
2 service do you have?

3 A Total, almost 15 years.

4 Q Okay. Do you have any specialized training or
5 certifications?

6 A I have forensic interview. I have child deaths
7 investigation. Physical and sexual abuse. Child
8 investigations. Homicide certification. Violent crimes.
9 Interview and interrogation techniques. And I have a victim
10 and witness interviewing certification as well.

11 Q Okay. So when you were employed as a detective corporal
12 with the sheriff's office --

13 A Um-hum.

14 Q -- was your caseload in any way specialized?

15 A It was. I investigated about 90 percent of the sexual
16 abuse cases that took place in Dorchester County. And
17 probably about 50-ish percent of violent crimes.

18 Q Okay. And so prior to Z.T.G. 's case, how many cases
19 would you say that you investigated that were special victims
20 cases?

21 A A majority of them.

22 Q Okay.

23 A A lot.

24 Q Okay. Do you want to give me an approximate number?

25 A Probably over 100. And I'm probably giving you a low

1 number. It's -- I was the only one that did all of those
2 cases.

3 Q Okay. And how did you become involved in this case, Det.
4 Simmons?

5 A I was assigned the case by my supervisor at the time,
6 what -- who would have been a sergeant. And it would have
7 changed who would do it, the assigning of cases, but I was
8 assigned the case on the 28th. So days after May 28th, I was
9 assigned the case.

10 Q And would that be normal procedure that you would be
11 assigned the case two days after an incident?

12 A Yes, depending on -- on the amount of cases, because they
13 have to read through all of the cases, and then they assign
14 them accordingly, so. I remember 2019 was -- it was very
15 busy, yeah.

16 Q And once the case was assigned to you, what did you do
17 first?

18 A I contacted who I believed to be Z.T.G. 's guardian, so I
19 think that was her aunt.

20 Q Okay.

21 A I contacted her first and talked her through the steps
22 because I was going to refer Z.T.G. to the Dorchester
23 Children's Advocacy Center to have a forensic interview
24 completed.

25 Q Okay. And what did you do next?

1 A I emailed a copy of the report which is part of our
2 policy. We email them a copy of the report and then they
3 reach out to the family to schedule the interview at that
4 time.

5 Q And what is a forensic interview?

6 A A forensic interview is conducted by a certified forensic
7 interviewer, and they ask a basic set of questions. Those
8 questions do not deviate like they would during a regular
9 interview. So they can't -- they don't go into very, very
10 specified, specific questions. They ask a specific line of
11 questions and they usually do not deviate from that, unless
12 the child provides some information that they are trying to
13 get out. But they stick to a line of question because it's an
14 impartial interview.

15 Q And so those impartial interviews, are they done on
16 adults as well or just children?

17 A Just children.

18 Q Okay. And so after you scheduled that forensic
19 interview, what did you do next?

20 A Waited for them to notify me that the interview had been
21 scheduled.

22 Q And did that happen right away?

23 A No. It did not.

24 Q Okay. Why not?

25 A Because they are -- Dorchester County Children's Advocacy

1 Center doesn't just interview for Dorchester County Sheriff's
2 Office. So you have my caseload. You've got North Charleston
3 Police Department. You've got Summerville Police Department.
4 You have Berkeley County cases. They're working the entire
5 tri-county area, so they're also -- I mean, they're also
6 backed up as well, yeah.

7 Q How much time was it before the forensic interview was
8 scheduled?

9 A I believe it was almost a month. At least three to four
10 weeks before they could get her in for an interview.

11 Q Okay. So once that was scheduled, what did you do next?

12 A Waited for a copy of the forensic interview.

13 Q Did you attend the forensic interview?

14 A I act -- I can't recall. I don't remember. But I always
15 provided a copy of the forensic interview, and I will review
16 it at that time.

17 Q Okay. And once you received a copy of that interview,
18 what did you do next?

19 A I think I waited probably for a couple weeks, just to
20 make sure I had everything that I needed and read through her
21 disclosure and made sure I had all the elements that I would
22 need to obtain the warrant. And I also contacted I think Ms.
23 Dolores, which is Z.T.G. 's grandmother and told her, you
24 know, a little bit about what was going on and what our next
25 step would be?

1 Q And was Ms. Dolores Z.T.G. 's guardian?

2 A Yes.

3 Q Okay. And do you -- so about how much time went by
4 before you obtained an arrest warrant?

5 A I don't believe I obtained an arrest warrant until July,
6 I think. Either the end of June, beginning of July.

7 Q And why do you allow that much time to go by before you
8 obtain an arrest warrant?

9 A Just to make sure I have everything that I need. And
10 also, that's not the only case that I'm working on at the
11 time, which you know, we all hate that, but I'm also working
12 20-ish cases all at the same time, so. Honestly, if we had a
13 shooting of some sort like that at the time, that would take
14 precedence over this case, yeah.

15 Q Was Mr. Brown arrested right away?

16 A He was not.

17 Q Okay. How much time went by before he was arrested?

18 A I believe it was two -- it might have been two or three
19 weeks. We had to -- we actually reached out to Summerville
20 Police Department. We were trying to locate him. We could --
21 we could not find him, so it did take us a little bit of time
22 to locate him.

23 Q Okay. And did you find him yourself?

24 A Oh, no. No. No.

25 Q Okay.

1 A Our warrants division actually tracked him down and took
2 him into custody.

3 Q And once he was in custody, what happened next?

4 A He was transported to my office, the CID office. And he
5 was in custody. And he did agree to speak with me at that
6 time. He was mirandized and agreed to speak with me.

7 Q Okay. And when you interviewed Mr. Brown, based on that
8 interview, did you believe that you had enough information to
9 continue with his arrest?

10 A I did.

11 Q Okay. And so on that date that you did that interview,
12 was he served with those arrest warrants?

13 A He was.

14 Q Okay. And did your investigation end there?

15 A It did not.

16 Q Okay. What else did you do?

17 A I reached out to Richar, or AKA Remy, the other juvenile
18 that was in the house, and set up an appointment to speak with
19 him.

20 Q Okay. And did you speak with him?

21 A I did.

22 Q Okay. And in the course of that interview, were you
23 able to gather any additional information regarding the
24 incident on that night?

25 A I did not.

1 Q Okay. Why interview Remy or Richar? Or I think it's
2 actually Reemee (phonetic) --

3 A Is it Reemee?

4 Q -- or Richar, even though Mr. Brown had already been
5 arrested?

6 A Well, the investigation isn't over just because a warrant
7 has been obtained. It's really -- it's common practice to go
8 back through your case file and just make sure, hey, do I need
9 to speak to this person, and just reach out to who may have
10 hopefully heard something, but that wasn't the case.

11 Q Okay. And just for the Court's record, how old was the
12 victim?

13 A At the time of the incident, she was 13 years old.

14 Q And how old was Mr. Brown?

15 A He was born in '64. He would have been 55, I believe.

16 Q Okay. Det. Simmons, did you respond to the incident
17 location?

18 A I did not.

19 Q Okay. Were you aware that law enforcement did not
20 collect her clothing on that night?

21 A I was.

22 Q Okay. Did you attempt to obtain her clothing from that
23 night?

24 A No.

25 Q Okay. And why not?

1 A It's not policy. The -- in the incident report that I
2 read, it stated that everything was above the clothes. There
3 was no penetration. So we -- our policy is we don't collect
4 clothes when there's no penetration.

5 Q Det. Simmons, in your experience in investigating all of
6 these cases, is it typical for you to be able to collect touch
7 DNA in cases where there is no ejaculation, no penetration?

8 A It is not. The forcible fondling cases that I've had or
9 these sexual battery cases when there's no penetration, the --
10 I mean, there's not -- I mean, stat -- do you want statistics?
11 Or I don't --

12 Q No.

13 A Okay.

14 Q Just in general if that's just --

15 A Yeah, no.

16 Q -- against your policy.

17 A Yeah, it's --

18 Q Or if you would normally collect it.

19 A We would not.

20 Q Okay. So even if you had been on scene that night, would
21 you have collected the clothing?

22 A I would not have.

23 MS. LEPLANTE: Okay. Nothing further, Your Honor.

24 THE COURT: Mr. Wehman?

25 MR. WEHMAN: Thank you, Judge.

CROSS-EXAMINATION

1
2 BY MR. WEHMAN:

3 Q Det. Simmons, how are you?

4 A Good. How are you?

5 Q (Indiscernible).

6 A Yeah.

7 Q So you testified May 26th --

8 A Um-hum.

9 Q -- you did not respond (indiscernible)?

10 A I did not.

11 Q But as the chief investigating officer in this case, you
12 would have had the opportunity to view the report of the
13 responding officer, correct?

14 A Correct.

15 Q And you've had a number of titles at the sheriff's office
16 during your tenure there, correct?

17 A I have.

18 Q At any point, have you ever supervised road deputies or
19 been in a position to advise them?

20 A Advisory in a detective capacity, but not -- not as a
21 patrol supervisor.

22 Q Let me ask you this. As a detective --

23 A Um-hum.

24 Q -- when you were reading the report and realized that
25 your responding officer had made contact with the alleged

1 perpetrator of this --

2 A Um-hum.

3 Q -- would that have been standard for that deputy to allow
4 him to go and try to find your victim?

5 A I wasn't there, so I can't testify about what, you know,
6 that patrol deputy did. So I don't know -- I don't know what
7 was said at the door, so I can't testify to something I wasn't
8 there for.

9 Q Okay.

10 A Yeah.

11 Q But you received the case, you said, on May 28th, right?

12 A Correct.

13 Q And you testified about a long delay in things
14 happening --

15 A Um-hum.

16 Q -- based on schedule, correct?

17 A Yes.

18 Q But you did attend or review the forensic interview?

19 A I did.

20 Q And you did meet with Mr. Brown?

21 A When he was taken into custody, yes.

22 Q And you said as a result of that interview, you felt
23 comfortable generating an arrest warrant, correct?

24 A The arrest warrant was already generated.

25 Q You felt comfortable with your investigations?

1 A Correct.

2 Q But during that interview, at no point did he admit any
3 of the allegations in this?

4 A He did not.

5 Q In fact, he agreed to talk to you?

6 A He did.

7 Q And he also agreed to let you search his cell phone?

8 A He did.

9 Q He signed a consent to search his cell phone?

10 A He did.

11 Q At that point, you had already reviewed the forensic
12 interview?

13 A Um-hum.

14 Q And you would have been aware that there was some mention
15 of potential pictures being taken?

16 A Um-hum.

17 Q And is that what -- as far as your interest in wanting to
18 look into his phone?

19 A You are correct.

20 Q And as a result of his consent, you generated -- or
21 someone in your office did a report and looked into his cell
22 phone, dealt - downloaded the contents of the phone?

23 A Correct.

24 Q And when you are able to download phones, isn't it also
25 true that you can see not only things that are present on the

1 phone, but things that have been deleted?

2 A Correct.

3 Q And during your review of what was generated from that
4 download --

5 A Um-hum.

6 Q -- you weren't able to find any photographs from that
7 dump?

8 A I did not.

9 Q Either present or that had been deleted?

10 A Correct.

11 Q And there was nothing on the phone, whether it be text
12 messages, phone calls that would in any way benefit your
13 investigation?

14 A Correct.

15 Q So was that a dead lead for you?

16 A It was.

17 Q Let me also ask you this. You've been in the courtroom
18 during the testimony today. You heard from the alleged victim
19 in this case, testified to the people that she texted and also
20 called, correct?

21 A Correct.

22 Q Is that the first time you had heard that she had texted
23 individuals?

24 A I don't -- I honestly -- I don't remember because it
25 happened so long ago. So I -- I don't remember. I don't

1 remember.

2 Q Was it an active decision on your part not to ask to
3 download that cell phone just to see what you might have
4 found?

5 A I did not, unh-uh.

6 Q You did not ask

7 A I did not ask to, unh-uh.

8 Q Had you had known that she had said that she was having
9 text conversations before calling law enforcement, would you
10 have thought you needed to do that?

11 A We would, yes, um-hum.

12 MR. WEHMAN: Court's indulgence.

13 Q Briefly, did you ever interview Ms. Smalls? Angela
14 Smalls.

15 A I spoke to her on the phone, but that was when we were
16 trying to get an interview. But I -- I set up an interview
17 for Z.T.G. , but I never interviewed her or took a statement
18 from her.

19 Q Okay.

20 A Um-hum.

21 Q Were you aware at the time that she would have come in
22 the house and had to interact with Mr. Brown on her way?

23 A Not -- not at the time.

24 Q Okay.

25 A Not at the time.

1 Q Later you became aware of that?

2 A Yes, um-hum.

3 Q But decided not to conduct a formal interview?

4 A Correct.

5 Q And you also said you met with Remy at the school?

6 A Yes.

7 Q To say that that was a brief interaction would be
8 accurate?

9 A Yes.

10 Q And again, he didn't say anything different than the 911
11 call?

12 A Correct.

13 Q You heard Z.T.G. say that he didn't believe her.
14 Nothing different from that?

15 A Nothing different from that, um-hum.

16 MR. WEHMAN: No further questions, Your Honor. Thank
17 you.

18 THE COURT: Thank you.

19 Redirect, Ms. LaPlante?

20 REDIRECT EXAMINATION

21 BY MS. LEPLANTE:

22 Q Det. Simmons, when you are -- not specifically you. When
23 your agency downloads phones, you said that they can sometimes
24 see the things that are deleted?

25 A Sometimes, yes.

1 Q Okay Tell me -- tell me about that. Why is it just
2 sometimes?

3 A It just depends on when the phone was activated.
4 Unfortunately, I'm not -- that's not where my certification
5 is, so I'm hesitant to testify on that, but there are a lot of
6 intricacies on when people delete things off of their phone --

7 Q Okay.

8 A -- and what programs they have used. Different browsing
9 histories. And there's ways to mask and screen and different
10 things like that, but --

11 Q But is it safe to say you always get everything?

12 A No. Yes, that's very safe to say. We do not always get
13 everything.

14 Q All right. And going back to that interview with Reemee,
15 Richar.

16 A Um-hum.

17 Q How old was Richar at the time of this?

18 A I think he was about 15, approximate.

19 Q Okay.

20 A Yeah.

21 Q And when you interviewed him, what did he say?

22 A I don't know. I -- I didn't hear anything if I -- I'm
23 trying to recall this from 2019. He didn't see anything and
24 he didn't hear anything.

25 Q Okay.

1 A And it was literally one of the shortest interviews I've
2 ever conducted.

3 Q And do you recall specifically that he said anything
4 about Z.T.G. telling the truth?

5 A No. I don't.

6 MS. LEPLANTE: (Indiscernible).

7 THE COURT: Any follow-up on those narrow points, Mr.
8 Wehman?

9 MR. WEHMAN: No, Your Honor. Thank you.

10 THE COURT: (Indiscernible). You can step down, Ms.
11 Simmons.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 Ms. LaPlante?

15 MS. LEPLANTE: Judge, could we have a brief recess?

16 THE COURT: Okay.

17 MS. LEPLANTE: Just for scheduling.

18 THE COURT: It's about that time anyway. Ladies and
19 gentlemen, let's take about 20 minutes. We'll start back at
20 20 after the hour, 3:20. Please do not discuss this case
21 among yourselves while you are in the jury room. Thank you.

22 (Whereupon, the jury exited the courtroom at 3:07 p.m.)

23 THE COURT: Folks, we'll stand down until 3:20. You all
24 can let me know about how --

25 How are we doing with scheduling, Ms. LaPlante?

1 MS. LEPLANTE: Well, Judge, that may be the fastest case
2 I've ever tried in my life.

3 MS. ELLIOTT: We're breaking a record.

4 MS. LEPLANTE: I think we are likely to rest. We need to
5 have one more conversation regarding the need for the expert.
6 She couldn't be here until 4 o'clock. I think we may be
7 comfortable moving on without her, but I think we intend to
8 rest. I would just like a few minutes, just to make sure that
9 I'm --

10 THE COURT: Okay.

11 MS. LEPLANTE: -- making the right decision.

12 THE COURT: All right. That will be fine; thank you.

13 (Recess.)

14 THE COURT: All right. Madam Reporter, we'll go back on
15 the record now.

16 Mr. Brown, I need to ask you some questions about your
17 understanding of your right to testify or not to testify.
18 Would you please raise your right hand?

19 (Defendant sworn)

20 THE COURT: Can you hear me okay?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Mr. Brown, we've come to that stage of the
23 trial now where the state will shortly rest its case-in-chief.
24 You can put your hand down. Thank you. The state will
25 shortly rest its case-in-chief. And that means that you have

1 the opportunity to offer evidence and testimony. You have the
2 right to testify yourself, but you're under no obligation to
3 do that. So you have a right to testify, but you do not have
4 to testify. You cannot be compelled to testify. In other
5 words, you have a right to remain silent. That's a right that
6 belongs to you only. You are the only person who can give up
7 that right. You are the only person who can exercise that
8 right to remain silent.

9 If you chose to exercise that right and remain silent and
10 not testify in this case, I will instruct the jury that they
11 cannot take that into account in their deliberations and in
12 their consideration of whether you're guilty or not guilty of
13 these charges. I'll tell them that they cannot even discuss
14 that or consider that in their decision in this case, as to
15 whether you're guilty or not guilty.

16 But now, if you chose to testify and give up your right
17 to remain silent, then you will be just like every other
18 witness that's testified so far. Your lawyers will ask you
19 questions, but you will also be asked questions by the state's
20 lawyers. And you can be cross-examined. You can be
21 impeached. Your credibility can be brought into question on
22 any issue that's relevant on this case. Do you understand
23 what your right to testify and not to testify is or are?

24 THE DEFENDANT: Yes, sir, um-hum.

25 THE COURT: Okay. And you've had a chance to discuss

1 that with your lawyers?

2 THE DEFENDANT: Yes, sir, um-hum.

3 THE COURT: Okay. Have you made up your mind yet, or do
4 you need more time to talk with them about that?

5 THE DEFENDANT: No, sir.

6 THE COURT: Okay. And so whatever your decision is, your
7 decision to testify or not testify is made with a full
8 understanding of your rights; is that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you have any questions that you want to
11 ask me about your right to testify or not testify?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you choose to testify in this case?

14 THE DEFENDANT: No, sir.

15 THE COURT: Okay. Thank you very much.

16 All right. Folks, I've got a verdict form and I've got
17 the charges and I'm ready to go ahead. But do you y'all need
18 some more time to get things in order from --

19 MS. LEPLANTE: I would not be opposed to five more
20 minutes.

21 THE COURT: Okay.

22 MS. LEPLANTE: Did we already do --

23 MS. ELLIOTT: Judge, one thing that I would like to do
24 before we rest and before we take over directed verdict
25 motions -- which I'll answer for.

1 THE COURT: Yes.

2 MS. ELLIOTT: -- is I would like to make a court's
3 exhibit the unredacted 911 calls, just in case there is any
4 question as to what we actually took out.

5 THE COURT: Okay.

6 MS. ELLIOTT: Just for the record. The only thing it
7 was -- the language within there was the fact that the
8 defendant had --

9 THE COURT: Right.

10 MS. ELLIOTT: -- I believe been --

11 THE COURT: Okay.

12 MS. ELLIOTT: -- convicted or charged with a rape in the
13 past. But if I could pass this up, this is the unredacted
14 copy.

15 THE COURT: That will be obviously a court's exhibit, so.

16 MS. ELLIOTT: Thank you, Judge.

17 THE COURT: It won't go to the jury.

18 All right. Ms. Stewart, what say you? Obviously, we've
19 got to deal with your motions, but do you -- other than
20 that --

21 Thank you. Right.

22 Other than that, do you need some more time as well?

23 MS. STEWART: Judge, I'm okay if the state needs five
24 minutes. I'm happy to take those five minutes also. But yes,
25 you're correct. The only thing I have is the motion for the

1 directed verdict.

2 THE COURT: Okay. All right. I'll be glad now to hear
3 from you.

4 MS. STEWART: You know, Your Honor, at this point, the
5 defense would make a motion for directed verdict. As the
6 Court knows, the state has the burden of presenting that
7 evidence to support every element of the charged offense.
8 When the state fails to produce such evidence that could
9 support a verdict of guilty, the remedy is a verdict in favor
10 of the defendant. The state has failed in this burden in this
11 case, and as a result, we ask the Court to direct a verdict in
12 favor of Mr. Brown.

13 THE COURT: Thank you. The rule that directs us judges
14 and you as lawyers when we argue for that motion or against
15 that motion or when I decide on that motion, obviously it's
16 Rule 19 of the Rules of Criminal Procedure. And the cases
17 that are cited thereunder lay out a pretty clear standard for
18 us to follow.

19 First of all, as we know, I have to make the motion for a
20 directed verdict in the light most favorable to the nonmoving
21 party; that is, to the state itself. And if I find that there
22 is any direct evidence or any circumstantial evidence that
23 tends to prove the guilt of the accused -- that is from which
24 the guilt of the accused could be determined by the jury if
25 they chose to believe it -- then I must deny the motion for a

1 directed verdict.

2 I usually take advantage of this time to go on to a
3 diatribe about the word, the adjective -- or the adverb
4 substantial defining the adjective circumstantial evidence.
5 Before I was a lawyer, I was an English teacher. And
6 circumstantial is an adverb that describes -- excuse me -- is
7 an adjective that describes evidence. But then substantial is
8 an adverb that describes that adjective. And what that does
9 is it assigns weight or value to the circumstantial evidence
10 itself. It says it has to be substantial circumstantial
11 evidence. And yet, we go on to say we're not concerned with
12 the weight of the evidence, certainly with its existence. But
13 the appellate court continue to insist on putting that word
14 substantial before circumstantial in it, and I clutter up
15 every record in every trial I've done now for the last 30
16 years trying to get them to leave it out, and they won't do
17 it. But anyway, it is a semantic anomaly, it doesn't belong
18 there. And it doesn't serve any useful purpose except to
19 clutter it up.

20 So having said all of that, I find that there is
21 circumstantial and direct evidence, primarily the testimony of
22 the victim herself, from which the guilt of the accused could
23 be concluded if the jury chose to believe it. And so for that
24 reason, the motion for a directed verdict is respectfully
25 denied. All right.

1 MS. STEWART: Thank you, Your Honor.

2 THE COURT: Thank you.

3 Okay. Ms. LaPlante, will you do the argument for the
4 state?

5 MS. ELLIOTT: She will, Your Honor.

6 THE COURT: She will. Okay. She's writing it right now,
7 as a matter of fact.

8 MS. ELLIOTT: Yes, Your Honor.

9 THE COURT: So good. Okay. And of course, under the
10 status of this case, we all know that you're required to go
11 first.

12 Ms. Stewart, you will do the argument for the defense; is
13 that right?

14 MS. STEWART: Yes, I will, Your Honor.

15 THE COURT: Okay. All right. And then I will instruct
16 the jury accordingly, and put this into capable hands with the
17 verdict form that I've been given. I'll be glad to stand down
18 and give you a few more moments, if you need that, to put
19 everything together. And if you all will send somebody back
20 into chambers and let me know when you're ready to go, I won't
21 sit here and cause you to hurry in your writing and leave out
22 something that you admit to include. Okay.

23 MS. ELLIOTT: Thank you, Your Honor.

24 THE COURT: All right. Okay. I will wait anxiously on
25 the word. Okay.

1 (Recess.)

2 THE COURT: Folks, we'll bring the jury in.

3 Ms. Stewart, I will allow you to rest in the presence of
4 the jury. And then I'll explain the order of the arguments,
5 and we'll go straight to the jury.

6 MS. LEPLANTE: Judge, I think we need to rest as well.

7 THE COURT: Well, good idea. Thank you. Thank you.
8 That's right, you had not rested before we sent the jury out.
9 Thank you. So you'll rest first.

10 All right. Is everybody ready?

11 IN UNISON: Yes, Your Honor.

12 THE COURT: Thank you.

13 You can bring us the jury.

14 (Whereupon, the jury came into open court at
15 approximately 4:03 p.m.)

16 THE COURT: I imagine if I had my ear up to your door for
17 the last 20 or 30 minutes, y'all would have been taking up a
18 collection to buy me a new watch. I told you I would get you
19 out here at 3:20, and here it is. But I'll take you up on it,
20 except for I got a whole drawer full of new watches that
21 jurors have been buying for me over the last 30 years. I'll
22 think you'll find in just a moment that the time that you
23 spent back there has been well-spent, as we continue with
24 where we left off before you went back there.

25 The state, you'll recall, had offered evidence and

1 testimony in this case and the case is still in the posture to
2 put its case up, but they had to make some decisions, and
3 asked for a recess at that time. And so now we turn to the
4 state, whose case is still open and has the right to offer
5 additional evidence and testimony.

6 Yes, ma'am.

7 MS. LEPLANTE: Thank you, Your Honor.

8 THE COURT: Ms. LaPlante?

9 MS. LEPLANTE: Thank you, Your Honor. The state at this
10 time will rest.

11 THE COURT: Thank you.

12 That means that the state will not offer any additional
13 evidence and testimony in this trial. The defense courses,
14 I've told you from the outset, has a right to offer evidence
15 and testimony at this juncture, and so we now return to the
16 defense.

17 Ms. Stewart?

18 MS. STEWART: Your Honor, I would just like to renew my
19 previous motion made outside of the presence of the jury, as
20 well as any motions and objections prior to that.

21 THE COURT: Thank you. And I renew my rulings on all of
22 those earlier motions, and without rearguing or restating
23 them. Anything further?

24 MS. STEWART: Yes, Your Honor. The defense rests.

25 THE COURT: Thank you.

1 That means that the defense rests. That means that you
2 have now heard all of the evidence and testimony that you will
3 hear in the trial of this case. And that's the process that
4 we've been working through when you had been back there, so
5 the time has been well-spent from our perspective, and from
6 yours as well because now we're ready to go into the final
7 phases of the trial of this case: the arguments that will be
8 presented by the lawyers and the instructions that I will give
9 you. And then you will go back to your jury rooms to start to
10 deliberate and reach a verdict in this case.

11 Ms. LaPlante on behalf of the state will offer the first
12 of these arguments, and then Ms. Stewart on behalf of the
13 defendant will present that argument. And then I will
14 instruct you as to the law. Thank you for your attention
15 throughout this brief trial. I told you at the outset -- I
16 didn't know it was going to be this brief, but it has been.
17 But you understand that the importance of a trial is never
18 determined by the length of time that it takes to try it, it's
19 determined by the issues that are involved. And so you have
20 given this the attention that these issues deserve, and I'm
21 sure you'll continue to do that as you go back and deliberate
22 and reach a verdict in this case. Thank you, folks.

23 Ms. LaPlante?

24 MS. LEPLANTE: Thank you, Your Honor. May it please the
25 Court.

1 THE COURT: Yes, ma'am.

2 CLOSING

3 MS. LEPLANTE: Ladies and gentlemen, a 13-year-old girl
4 should feel safe in the home of her family. Z.T.G. ,
5 13 years old, should have felt safe on the night of May 26th
6 of 2019, but the defendant changed that. This man seated at
7 the table behind me created nothing but fear.

8 You know, the defense talked about in their opening that
9 this was the wild, wild west. And you know what? The wild,
10 wild west was a place of lawlessness, and that's exactly what
11 Mr. Brown thought this was. He knew what he wanted, and he
12 tried to take it. Now I'm going to talk to you a little bit
13 about the law.

14 If you want to go ahead and put it up.

15 So what is criminal sexual conduct with a minor in the
16 third degree? What is more commonly known as, for people who
17 are not lawyers, is child molestation. Okay. Plain and
18 simple.

19 Now, the law requires that we show that Mr. Brown
20 willfully and Lewdly committed or attempted to commit a lewd
21 or lascivious act on or with the body or its parts of a
22 child -- that would be the unlawful touching of her vagina --
23 with the intent to arouse, appeal to, or gratify the lust,
24 passions, or sexual desires of the defendant or child. So it
25 wasn't just a touch on the shoulder. This was the touching of

1 a sexual organ, of somebody's vagina. And that the defendant
2 was over the age of 14, we showed you. Mr. Brown was 55 at
3 the time of the incident. And that the child was under the
4 age of 16. She was 13 at the time of the incident.

5 Now, what does willfully mean? It means he voluntarily,
6 intentionally did this with specific intent to do something
7 that the law forbids. This wasn't by accident. He didn't
8 fall on her. He had to reach underneath her body and touch
9 her vagina.

10 Lewd means obscene, lustful, indecent, lecherous. It
11 means that he did something that was -- obscene is probably
12 the most commonly used out of those words. Something that was
13 of a sexual nature.

14 And lascivious means tending to incite lust, lewd,
15 indecent, obscene, or tending to deprave the morals in respect
16 to sexual relations, so all of that comes down to this was a
17 sexual act.

18 Now, the state does carry the burden. We welcome that
19 burden. And the judge is going to go into that with you all
20 at the close of Ms. Stewart's close. And he's going to talk
21 to you a little bit about reasonable doubt.

22 Now, reasonable doubt, he'll tell you, means that you are
23 firmly convinced that this happened. It doesn't mean without
24 any doubt. It means that you have proof that leaves you
25 firmly convinced of Mr. Brown's guilt. Okay. And there's few

1 things in life that we know with certainty, unless we see them
2 with our own eyes. So don't let that catch you off guard. It
3 doesn't have to be beyond all doubt. In fact, I don't want
4 you to confuse hesitation with deliberation. Just because you
5 go back there and you deliberate and you're discussing what
6 has been before you, that doesn't mean that it isn't beyond
7 reasonable doubt. You should deliberate. You should talk
8 about what has been put before you. You should think about
9 what your decision is. But at the end of all of it, if you
10 feel firmly convinced, that means that it's beyond reasonable
11 doubt.

12 Now, I want to talk to you about what was put before you.
13 We're going to review each of the witnesses. They were fast.
14 And we will talk about each of them.

15 So the first person you saw was the dispatcher. Now, I'm
16 sure you care less about what her qualifications were and more
17 about that actual call that you heard. And the disk that has
18 that 911 call is going back with you. I encourage you to
19 listen to it again. Because what you hear on that disk is a
20 13-year-old girl whispering in a closet out of fear. Not
21 knowing what to do, where to go. They ask her to leave the
22 closet and she says no, I'm too scared. And she makes that
23 call almost immediately after the assault occurs.

24 The next folks that you heard from today was law
25 enforcement. And you heard from the -- he's now a detective,

1 but at the time, he was the patrolman that arrived on scene
2 first. And if you'll recall, he met Mr. Brown at the door.
3 But it wasn't long after -- he didn't tell him why he was
4 there -- asked for Z.T.G. , Mr. Brown hightailed it to the
5 back of the room, the back of the duplex. We called it a
6 number of things today. Went out the back door.

7 The other person you heard from was Det. Simmons. She
8 told you all the steps she took, the time that she took to
9 investigate this case to make sure that she was getting it
10 right, to gather all of the evidence, to talk to everyone
11 involved before she got those warrants and before she spoke
12 with Mr. Brown.

13 You heard from Angela, who was Z.T.G. 's auntie, who
14 owned the place that Mr. Brown was staying as a favor because
15 he needed somewhere to live. She was letting him sleep on the
16 floor of the duplex living room, not knowing what he would do
17 to her family. Leaving three children in a home with him on
18 an evening, trusting that he would do nothing, and this is
19 what happened.

20 Now, I know you heard Angela say when she walked in the
21 door, Mr. Brown was laying in his bedding and he said nothing
22 to her, nothing seemed unusual. Because you see at that time,
23 Mr. Brown didn't think he was in trouble. But as soon as law
24 enforcement showed up, he realized he wasn't getting away with
25 it. So what did he do? He hightailed it out the back.

1 You also heard from Angela that as soon as she came
2 inside, she saw Z.T.G. . She immediately told her what had
3 happened to her. Told her auntie, someone she could trust.

4 Now, the last person that you heard from today, arguably
5 the most important, certainly the most important, was Z.T.G. .
6 You could tell it was difficult for her to testify here today.
7 She gets no gain from coming before you and talking about
8 being sexually assaulted. It's been a long three years. Ms.
9 Stewart harped on how many days her client had been waiting
10 for his day in court. But I argue for a 17-year-old girl,
11 those days feel a lot longer.

12 Now, she told you exactly what happened. She even told
13 you that after the assault, he came back, asking where she had
14 been. Tried to grab the door of the bedroom that she was
15 locked in. And she told you that when she confronted him
16 about why he was touching her, he said oh, I didn't know it
17 was you. I didn't know it was you, the only other female in
18 the apartment.

19 The other thing Z.T.G. said that I thought was
20 interesting was she talked about how the lights were suddenly
21 turned off and it would have been weird for that to happen.
22 When she went to sleep, the lights were on. She got back up,
23 and even the kitchen light was off. Setting sort of this
24 scene for where he would do this assault.

25 Now, the defense tried to trip Z.T.G. up. They tried to

1 ask her some questions. Tried to create inconsistencies for
2 Z.T.G. . She was pretty firm. I think she said exactly, I
3 don't know about that, but I know he touched me. There was no
4 doubt when she told you that. In fact, they asked her, oh,
5 you said it was a couple times originally; that must have been
6 two. And what she said to you today was that could be two,
7 that could be three, but I'm telling you it was five. They
8 weren't going to trip her up on that.

9 They also asked her about whether or not he was trying to
10 take his pants off; she said, no, no. He was trying to put
11 his hands in my pants that night.

12 They asked her if she could have been dreaming. She told
13 me and she told them the same thing. I thought, but then I
14 knew it wasn't a dream. I was awake. And at the end of the
15 day, having to trip up a kid on inconsistencies three years
16 later -- there's bound to be some questions, but she knew.

17 Now, this is where I get to start to guess what the
18 defense might come up here and argue to you. This is the
19 hardest part of our job. We guess what they're going to say
20 to you, what they might try to tell you is an inconsistency to
21 try and distract you from the case at hand. So let's talk
22 about some of those things I think they might bring up.

23 They're going to harp on the fact, maybe, that they
24 didn't collect her clothing that night. And both Det. Griffin
25 and Det. Simmons both told you that in cases when there is no

1 ejaculation, they do not collect the clothing.

2 They might talk about how they didn't download Z.T.G. 's
3 phone because she said she was texting some family after all
4 of this. But her phone wasn't important. What it would give
5 you is maybe a few more witnesses, but how many more witnesses
6 would make this more truthful? Is it three? Is it four? You
7 need five people to tell you that this child texted them?

8 They might talk about the fact that the body cam didn't
9 get downloaded, so they don't have access to the videos. Now,
10 have we always had body cams? No. In fact, we've probably
11 only had them the last ten years. Don't get caught up in the
12 idea that these interviews were not done on a camera where you
13 could see them today. The officer, who's trained to
14 investigate these cases, took those statements on scene and
15 put them in a report. And he told you he doesn't know why
16 that didn't get downloaded. They use different systems now.
17 There's no reason for him to know why it didn't make it here
18 today, but it wasn't on purpose.

19 They might talk about the fact that there were no written
20 statements done. Well, Det. Griffin told you, he thought his
21 bodycam was on. He thought he was videoing them. And even
22 without the bodycam, think about what you did see here today.
23 Without seeing it on video, you got corroboration. You had
24 these things confirmed for you by the reactions of the
25 witnesses, by Z.T.G. 's testimony here today, by her demeanor

1 both today and on the 911 call. And this child immediately
2 called after this happened, at least a short time after. She
3 immediately told her aunt, as soon as she came in the door.

4 Law enforcement told you that when they arrived on the
5 scene, she seemed fearful. And if you think about it, her
6 accuser was still, she thought, in the same home as her when
7 she was speaking to all of them.

8 Ladies and gentlemen, this has been a short trial, but
9 it's an important one. The defense talked a lot about this
10 train. This train of inconsistencies that are coming off the
11 track. You know what keeps the train on the track? The
12 truth. You know who gave you the truth? Z.T.G. . That
13 13-year-old girl, fearful because when she woke up, she was
14 the victim of the unimaginable by a person that she trusted.

15 Ladies and gentlemen, thank you for your attention today.
16 I appreciate your time. And I ask that at the end of this,
17 when you go back into your room and you're deliberating, you
18 find that man guilty of criminal sexual conduct of a minor in
19 the third degree.

20 THE COURT: Thank you, Ms. LaPlante.

21 MS. LEPLANTE: Thank you, Judge.

22 THE COURT: Ms. Stewart?

23 MS. STEWART: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes, ma'am.

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CLOSING

MS. STEWART: First, I want to echo the solicitor in thanking you for your time. I know it's not been a short day, especially with how it started, so I do want to thank you and let you know we appreciate you. This trial is not possible without all of you.

In Scotland, they have three verdict options: guilty, not guilty, and not proven. Here, we don't have that. Not proven is a subpart of not guilty. If at the end of all of this, you find that the state failed to prove the allegations made by the alleged victim, you must find the defendant not guilty.

The state talked about how -- just now about how ten years ago, we didn't have body cameras. I would submit to you that body cameras are a good thing. And that's been proven through the news, it's been proven through recent case. They provide insight that we would not normally have in cases. And it is concerning that we don't have body camera footage in this because that is something that would help eliminate reasonable doubt. It had the present impressions of the witnesses and of the family members, as well as the victim. We don't have that for whatever reason; whether it was a technical issue or not.

The body camera would also provide some insight into the detectives' interaction with my client. And you have heard

1 testimony that he left that night; that he ran. We're not
2 debating that he ran. I think that is well-established.
3 However, there are many reasons people run from police
4 officers; whether it's a warrant, whether it's a family court
5 issue, or whether they're just scared of police because of
6 past interactions or things they've seen on TV. So it is not
7 unusual for someone to run from police, but that certainly
8 does not mean that they have committed a crime; especially at
9 that time.

10 The state could have produced Richar S. -- believe
11 he's also known as Remy -- as a witness today. He was in the
12 home at the time of the incident. They didn't do that. Ask
13 yourselves why. They could have used him to help eliminate
14 reasonable doubt. You heard Z.T.G. testify that she told
15 Remy what happened and that he didn't believe her. And you
16 heard Det. Simmons also say that when she asked him, his story
17 did not change; he said that he did not believe her.

18 MS. LEPLANTE: Your Honor, objection.

19 THE COURT: I'll sustain that objection as to the
20 conclusion that she's asked to draw.

21 You can argue that, but a different way to -- I'll
22 sustain the objection as to the way it was actually phrased.
23 Thank you.

24 MS. STEWART: That's okay, Your Honor; I'll just move on.

25 THE COURT: Okay.

1 MS. STEWART: You heard Z.T.G. testify today that she
2 told the 911 operator that she was touched a couple of times.
3 But you also heard her say that he actually touched her five
4 times. So which is it?

5 According to her, she was asleep in the living room
6 because it was too hot in the other room; that same living
7 room that had been Mark Brown's bedroom for almost two months.
8 The story being given to you is that Mark was somehow able to
9 touch Z.T.G. in the front five separate times while she was
10 asleep on her stomach. I want you to think about this. A
11 55-year-old grown man allegedly was behind her and was able to
12 touch the front of her body five times before she was fully
13 aware of what was going on, but at first, she thought that it
14 was a baby doing it.

15 In a prior statement, Z.T.G. testified that Mark was
16 taking pictures of her. Something that could be easily
17 substantiated. My client willingly turned over his phone to
18 officers. And after a forensic search, nothing was found.
19 That claim was incorrect, and it's reason for doubt.

20 We've talked about reasonable doubt and that if anything
21 or any of these inconsistencies causes you hesitation, then
22 it's your sworn duty as a juror to find my client not guilty.
23 After I sit down, the judge is going to instruct you on the
24 law. This includes reasonable doubt. It will also include a
25 charge of credibility of witnesses. You as jurors get to

1 decide what, if any, testimony you want to believe from the
2 witnesses in this trial.

3 Another instruction that will be given to you is that you
4 cannot hold my client's decision not to testify against him.
5 Earlier, I talked about the burden of proof with you and how
6 that has always remained with the state. It is their job and
7 their job alone to prove their case. They have not met their
8 burden. The inconsistencies that I have discussed with you,
9 the biases that we have witnessed, and the lack of physical
10 evidence have created the runaway train that I referenced in
11 my opening. Just like how something as small as a penny
12 placed on a railroad track can derail a train, a story can set
13 into motion a series of events that can derail a man's entire
14 life. The only thing scarier than a child being sexually
15 assaulted is being wrongly accused of sexually assaulting a
16 child.

17 The only people who can stop this train at this point and
18 right the wrong are you as jurors; that's why the verdict that
19 justice demands is not guilty. Thank you.

20 THE COURT: Thank you, Ms. Stewart.

21 JURY CHARGE

22 Now, ladies and gentlemen, give me your attention for a
23 few more moments now because it is my responsibility under the
24 law to instruct you as to what the law is in this case. And
25 it is your duty as jurors to accept and apply the law as I

1 state it to you now to be the correct law.

2 As jurors, it is your exclusive duty to decide all of the
3 issues of fact in this case. And for that purpose, you have
4 to determine the effect, the value, the weight, and the
5 importance of the evidence which you have seen and heard.
6 Both the state and the defendant have the right to expect that
7 you will conscientiously consider and deliberate the evidence
8 and you will evaluate the evidence and then you will apply the
9 law of the case to that evidence, to the end that both the
10 state and the defendant receive a fair and impartial trial at
11 your hands.

12 Throughout the course of this charge, ladies and
13 gentlemen, when I use the word defendant, I am referring to
14 Mr. Mark Anthony Brown. Mr. Brown, as you know, has been
15 indicted by the grand jury of Dorchester County and charged
16 here in Dorchester County on or about May the 26th of 2019,
17 being over the age of 14 at the time willfully and lewdly
18 committing or attempting to commit a lewd or lascivious act
19 upon the body or its parts of a child under the age of 16 with
20 the intent of arousing or appealing to or gratifying the lust,
21 the passions, or the sexual desires of the defendant himself
22 or of the child, in violation of the law. I remind you again
23 that the indictment is not evidence nor proof of the charges,
24 (indiscernible) a legal paper that tells us what the charges
25 are. And as you know, Mr. Brown has entered a plea of not

1 guilty to the charge and has asked for a jury trial which he
2 has received at your hands.

3 The effect of a plea of not guilty by a defendant to a
4 criminal charge places the burden of proof on the state to
5 prove by evidence the guilt of the accused beyond a reason
6 doubt before you can convict him and find him guilty. He is
7 presumed in law to be innocent of the charge contained in this
8 indictment.

9 It is a fundamental rule of our law of evidence that a
10 defendant, regardless of the type of charge, the seriousness
11 of the charge, the nature of the charge against him will
12 always be presumed innocent of the charges for which he has
13 been indicted unless and until his guilt has been proven by
14 evidence; evidence that satisfies you of his guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is not a mere legal theory,
17 it is not an empty legal phrase. The presumption of innocence
18 has been likened to a robe of righteousness which is placed
19 about the shoulders of a defendant. And it remains with him
20 and it assigns to him the class known as the innocent. And it
21 remains about his shoulders until it has been stripped from
22 his person by evidence that satisfies you as a jury of his
23 guilt beyond a reasonable doubt.

24 The presumption of innocence continues to exist to the
25 benefit of the defendant unless and until you reach the

1 conclusion that the state has proven that guilt beyond a
2 reasonable doubt. So that, then is the burden of the state.
3 Not just in this case, but in every case of this sort. Proof
4 beyond a reasonable doubt.

5 Now, some of you may have served as jurors on a civil
6 case before. And if you've served as a juror in a civil case,
7 the judge told you that it's just necessary for the party that
8 has the burden of proof in that case to give evidence to you
9 that's more convincing on that party's side than the evidence
10 is on the other party's side. But in criminal cases, the
11 state's proof has to be more powerful than that. Here, it has
12 to be proof beyond a reasonable doubt. So what, then do we
13 mean by proof beyond a reasonable doubt?

14 Proof beyond a reasonable doubt is proof that leaves you
15 firmly convinced of the defendant's guilt. Now, there are
16 very few things that you and I know in this world with
17 absolute certainty. And in criminal cases, the law does not
18 require proof that overcomes every possible doubt. And so if
19 based on your consideration of the evidence you are firmly
20 convinced that the defendant is guilty of the crime charged,
21 you must find him guilty. On the other hand, if you think
22 there's a real possibility that he is not guilty, then you
23 must give him the benefit of the doubt and find him not
24 guilty.

25 Reasonable doubt can arise from evidence in the case or

1 it might arise from the lack of evidence in the case. But
2 you, ladies and gentlemen, have to decide whether or not
3 reasonable doubt exists as to the guilt of this defendant.

4 I tell you now, and I emphasize to you, that the fact
5 that the defendant in this case did not testify in his own
6 behalf is not a factor to be considered by you in any way in
7 your deliberation and in your consideration on the question of
8 his guilt or innocence. It must not be considered by you in
9 any way whatsoever. It must not militate against him or weigh
10 against him in any respect whatsoever because the defendant
11 has a constitutional right to remain silent. And if he
12 chooses to assert that Constitutional right, that fact cannot
13 and must not be considered by you in your deliberations.

14 And so under your oath, then, you are to reach no
15 inference and draw no conclusion whatsoever from the fact that
16 the defendant in this case did not himself testify. You
17 should not even discuss that in the jury room. Because the
18 burden, as I have said, is upon the state. The defendant has
19 no obligation to prove his innocence. And the burden remains
20 upon the state to prove guilt beyond a reasonable doubt. And
21 the fact that the defendant did not testify is not a factor
22 for you to consider in determining his guilt or his innocence.

23 So now, I charge you that the defendant is entitled to
24 every reasonable doubt which arises in the case. And so if on
25 any issue of fact which is essential to a conviction and a

1 verdict of guilty you have a reasonable doubt as to how that
2 issue should be resolved, it is your duty to resolve that
3 reasonable doubt in favor of the defendant. A defendant is
4 never required to prove his innocence, but the state is
5 required in law to prove every essential element of the
6 offense charged against him beyond a reasonable doubt before
7 you can find him guilty.

8 And so then, if upon the whole case you have a reasonable
9 doubt as to his guilt or innocence, he's entitled to that
10 reasonable doubt and would be entitled to an acquittal and a
11 verdict of not guilty. But on the other hand, if upon the
12 whole case you find that the state has proven by evidence that
13 satisfied you as a jury of his guilt beyond a reasonable
14 doubt, then in such circumstances, it is equally your duty to
15 convict the defendant and to find him guilty.

16 During this trial, each of us, you and I, have our
17 separate duties to perform. As the trial judge, as I've told
18 you, I have the responsibility of presiding over the trial of
19 this case and I also have the responsibility of ruling upon or
20 passing upon the admissibility of the evidence which has been
21 offered and the testimony which has been offered here. And so
22 you are to consider only the competent evidence before; that
23 is, the testimony which has been presented from this witness
24 stand and the items and the documents that have been offered
25 into the record of this case during the trial.

1 I have the additional responsibility to do what I'm doing
2 now; that is to instruct you as to what the law is in this
3 case because I am the sole judge of the law and you're the
4 sole judge of the facts. And so it's your duty to accept and
5 apply the law as I tell it to you now to be the correct law.

6 You may have come in to your service as jurors for this
7 trial with some ideas about what you would like for the law to
8 be or what you think the law should be. But I tell you, if
9 your preconceived ideas about the law or your preferences
10 about what you want the law to be disagree with what I'm
11 telling you now the law actually is, under your oath, you're
12 bound to forget what you would like for the law to be or what
13 you think it is because you're bound by your oath to accept
14 the law as I charge it to you now to be the correct law.

15 You are the sole and exclusive judge of the facts. I'm
16 the judge of the law. Our Constitution has said I can't
17 comment upon the facts of the case. I can't suggest to you
18 how I might feel about the facts of the case and how you
19 should decide on an issue or a fact in the case, and so you
20 are not to gather from anything that I have said during this
21 trial or anything that I'm saying to you now that I have an
22 opinion about the facts of the case. The law doesn't allow me
23 to have an opinion about the facts of the case. That is
24 solely a matter for you, ladies and gentlemen, to determine.

25 And so then, as jurors, you have the duty to decide the

1 effect and the value and the weight and the importance of the
2 evidence that has been offered during the course of this
3 trial. Now, as you make that decision about what the facts in
4 the case are, you necessarily have to pass upon the
5 credibility, that means believability, of the witnesses who
6 have testified and you have to decide the importance of the
7 testimony that they have given, the weight that you choose to
8 give to the testimony that you have seen and heard. You and
9 you alone have to decide the issue of the believability of the
10 testimony itself.

11 Now, there are a lot of things that you can take into
12 account as you decide who you believe in this case and what
13 you believe. You can take into account the appearance, the
14 manner of the witness as he or she testified from the witness
15 stand. In other words, we call it the demeanor of the
16 witness. How did the witness appear to you on the witness
17 stand? Was the witness forthright or was the witness
18 hesitant? Was the witness's testimony consistent or did it
19 contain discrepancies? What was the ability of the witness to
20 know the things that he or she was telling you about? Did the
21 witness have a cause or a reason to be biased in favor of the
22 testimony that he or she was giving? Was the testimony of a
23 witness made stronger by other evidence? Was it made weaker
24 by other evidence?

25 As jurors, folks, you've got the right to believe the

1 small portion of the testimony of a single witness and
2 disbelieve the larger portion of the testimony of that same
3 witness or you can believe all of what a witness tells you or
4 none of what a witness tells you. But you don't exercise
5 those considerations arbitrarily, folks. Because what we ask
6 you to do as jurors in making decisions like we're asking you
7 to make is to use your good common sense, your mental
8 processes, your experiences in life, your good judgment, your
9 sense of logic and reason; all of those things that you use
10 every day outside of this courtroom in making decisions in
11 your business and raising your family and just getting about
12 life, we ask you to use that same sense of logic and reason
13 and good, sound common sense to decide the issues that we ask
14 you to decide and you determine using that good common sense.

15 What you consider to be the truthful evidence in this
16 case, the probative evidence in this case, and then to the
17 facts that you find to exist, the actual facts that you find
18 to exist, you apply the law, which I have just given you, and
19 thus arrive at a verdict in this particular case.

20 The defendant, as you know, is charged in the indictment
21 with criminal sexual conduct with a minor in the third degree.
22 I've read to you the charge from the indictment itself. The
23 elements of that charge say that a person is guilty of
24 criminal sexual conduct with a minor in the third degree if
25 the actor, that is the defendant, is over the age of 14 and

1 the actor willfully and lewdly commits or attempts to commit a
2 lewd or lascivious act upon or with a body or the parts of a
3 child under the age of 16 with the intent of appealing,
4 arousing to, or gratifying the lust, the passions, or the
5 sexual desires of the actor or the child himself or herself.
6 So let's break that up into little pieces and talk about the
7 elements.

8 First of all, the state has to prove beyond a reasonable
9 doubt that the defendant was over the age of 14 at the time
10 and also must prove beyond a reasonable doubt that the victim
11 was under the age of 16 at the time. And next, the state has
12 to prove that the defendant willfully and lewdly committed or
13 attempted to commit a lewd or lascivious act on the body or
14 the parts of a body of a child who is under the age of 16 with
15 the intent to arouse or to appeal to or to gratify lust or
16 passions or sexual desires of the defendant himself or the
17 child herself.

18 Willfully means to do something voluntarily, to do
19 something intentionally. In other words, with the specific
20 intent to do something that the law says you can't do. Lewd
21 means something that is obscene or indecent or lustful.
22 Lascivious means something that tends to incite lust that is
23 also indecent or obscene or tends to deprave the morals in
24 respect to sexual relations.

25 Now, the state has to prove the intent to do those things

1 with the intent to appeal to or arouse or gratify those lusts
2 or passions. So criminal intent, then, is a necessary element
3 of the charge and it has to be proven by the state beyond a
4 reasonable doubt. Criminal intent is always a matter that a
5 jury has to determine, based on the circumstances which are
6 surrounding an event or a circumstance. There is no way to
7 prove intent to a mathematical certainty. There is no way
8 that science will cut out a person's head and go and look into
9 his brain to see what he or she decided or had in mind at the
10 time. And so the law says that criminal intent can be
11 inferred from the circumstances which are shown to have
12 existed. And that's how you make a determination as to
13 whether or not the element of intent was present.

14 Because criminal intent is a state of mind and it
15 operates jointly with an act in the commission of a crime.
16 It's a mental state. It's a conscious wrongdoing. And so
17 it's up to you to decide what the defendant intended to do
18 based on the circumstances which are shown to have existed.

19 I tell you that the state must prove criminal intent
20 beyond a reasonable doubt just as it has to prove every other
21 element beyond a reasonable doubt. And the statute says the
22 defendant commits or attempts to commit a lewd or lascivious
23 act. So the law of attempt says that an attempt is an act
24 which is done in partial execution of a crime or a design or a
25 plan to commit a crime. There has to be an intent that the

1 act will be committed, just as I told you a moment ago, and
2 some act is done in furtherance of the crime, but it hasn't
3 been carried through to its full execution. It stops short of
4 that. It simply comes to be an attempt.

5 And so an attempt is different from getting ready or
6 preparing to commit something and is also is different from
7 the intent to commit something. Because the law doesn't
8 punish the mere entertainment of a criminal intent. To bring
9 the law into action, it's necessary that some act should be
10 done in furtherance of that intent which immediately and
11 directly tends to the commission of the crime itself and an
12 act which if the crime is perpetrated that act would be a part
13 of it. And but it doesn't reach the accomplishment of it
14 because as I've said, it's prevented or it's voluntarily
15 abandoned, but not carried through; that's the law of intent.
16 Of attempt, I should say.

17 Now, ladies and gentlemen, let me tell you that finally,
18 you don't serve as jurors in this or any case as partisans or
19 advocates for the state or for this defendant. You don't
20 serve as jurors to punish enemies nor to reward friends.
21 Obviously that wouldn't be a system of justice at all. You
22 have been selected by both the state and the defendant to be
23 fair and impartial jurors.

24 It's your duty, then, by your joint deliberations, to
25 determine the facts of this case, giving to the defendant the

1 benefit of every reasonable doubt on each and every issue.
2 And then to the facts which you determine to exist, you take
3 and apply the law which has been given you and thus arrive at
4 a verdict which determines the actual facts of what happened
5 in this particular case. And once you have done that, you
6 will accomplish the responsibilities and you will have
7 satisfied the oath that you took before this trial began and
8 you will have discharged that oath responsibly.

9 Now, I'm going to instruct you as to forms of verdict in
10 this particular case. There are only two possible verdict
11 forms in this case, and they're written on this verdict sheet
12 that I will give to you.

13 Ladies, could one of you all give this to the forelady
14 who sits right there, in the front?

15 I give the verdict form to the forelady because she's the
16 one who has to fill it out. But it obviously will not be her
17 verdict alone, it has to be unanimous verdict that Madam
18 Forelady and all 12 of you members have to agree as to what
19 the verdict shall be before you can fill it out and sign it.

20 There are two possible verdict forms. The verdict form
21 reads: We, the jury, by unanimous consent find the defendant
22 as to the charge of criminal sexual conduct with a minor in
23 the third degree -- and the first possible verdict form is
24 guilty; that's a verdict form you will arrive at if you find
25 that the state has met its burden of proof. And if that's a

1 verdict form that you arrive at, Madam Forelady, you will
2 indicate that by circling that possible verdict form, where
3 you see it is on the sheet, and signing the verdict form
4 below.

5 The other possible verdict form is we, the jury, by
6 unanimous consent as to the charge find the defendant not
7 guilty; that's the verdict form that you will arrive at if you
8 find that the state has failed to meet its burden of proof.
9 And Madam Forelady, likewise you will indicate that by
10 circling the verdict form not guilty and signing it.

11 I remind you again that the verdicts have to be
12 unanimous. All 12 have to agree as to what the verdict is,
13 Madam Forelady, before you can sign that and fill out the
14 verdict form itself.

15 I'm going to send you to your jury room right now and I
16 have to ask you to wait just a minute or two before you start
17 talking about this case among yourselves. I've got to talk
18 with the lawyers to see if I have misstated anything to you or
19 if I have to bring you back out to correct anything or add
20 anything to what I've told you. And if I do that, I'll do
21 that; I'm going to bring you back out. If I don't have to
22 bring you back out, we will send in whatever items of evidence
23 there are, and that will be your signal to start your
24 deliberations in this case. There is a disk that has the 911
25 call on it. If you need to hear that, if you'll let us know,

1 we'll either send in the appliance for you to play that on or
2 we'll bring you out here to play it if you need to hear that
3 again.

4 Once you get the items of evidence, Madam Forelady, you
5 will start your deliberations at that time; please not until
6 then. You will begin your deliberations then and you will
7 deliberate until you have reached a verdict. At that time,
8 Madam Forelady, you will fill out the verdict form and sign
9 it. You will knock on the door, let the bailiff know, and we
10 will bring you out to receive the verdict.

11 I can't think of another thing that I haven't told you
12 that I need to tell you. The lawyers might tell me that I've
13 left out something. And if they have, they'll be correct and
14 I'll bring you back out.

15 As you retire to your jury room, I ask you one last time,
16 please do not yet start your discussions.

17 And ladies, alternate jurors, if you will stay right
18 where you are, please, for the time being.

19 Okay. The rest of you, if you will retire to your jury
20 room. And wait just a moment before you begin your
21 deliberations, please.

22 I'm going to leave them right there, for the time being.

23 (Whereupon, the jury exited the courtroom at 4:47 p.m.)

24 THE COURT: Ladies and gentlemen, as alternate jurors,
25 you've obviously figured out long before now what your role as

1 jurors is going to be in this case, and that is you would have
2 taken the place of any of these 12 principal jurors if they
3 had not been able to complete their service. So most of the
4 time these cases last overnight, and so the risk of losing
5 somebody during the trial is a lot more real than it is when
6 we start a trial in the morning and finish it in the
7 afternoon, like we did. But you paid just as good of
8 attention as they have. You're just as capable of reaching a
9 verdict as any of them are.

10 Did you all have a separate place to keep these folks for
11 just a few moments?

12 THE BAILIFF: Yes, sir.

13 THE COURT: You do?

14 Okay. We're going to put you in a separate room by
15 yourselves, and they will bring snacks in there to you and let
16 you just unwind. You can talk about this case among
17 yourselves if you want to then; that's fine. I want to make
18 sure that they are off on the right foot in the other room and
19 that things are going well in there. I'm not going to keep
20 you back there indefinitely. And I doubt that I'll have to
21 bring you out any at all, and so I'm taking advantage at this
22 time to thank you for your service as jurors.

23 You will get a check in the mail some time. It's not
24 going to begin to pay you for the time you've spent with us.
25 You'll get a juror slip to tell where you've been during this

1 time if you need that. But I hope you've gained a better
2 appreciation -- even though you don't get to go back in and
3 deliberate, that you've gained a better appreciation of how
4 important what jurors do is to this process, and I thank you
5 for your involvement in that.

6 If you will just retire to the other jury room, wherever
7 they will put you, for a few moments, and we'll -- I won't
8 keep you there indefinitely, I promise you.

9 UNIDENTIFIED JUROR: Okay.

10 THE COURT: Thank you.

11 Any exceptions or requests for additional charge from the
12 state, Ms. LaPlante?

13 MS. LEPLANTE: No, Your Honor.

14 THE COURT: From the defense, Ms. Stewart?

15 MS. STEWART: No, Your Honor.

16 THE COURT: Thank you.

17 All right, folks. You all can get the exhibits such as
18 they are. I can't remember anything else other than the disk,
19 but there might be something else.

20 This is a Court's exhibit, Madam Reporter, to be kept
21 separate from the one you have up there, being marked as the
22 Court's exhibits.

23 Okay. All right, folks. We will stand at ease until we
24 hear from the jury. Thank you.

25 MS. ELLIOTT: Thank you, Judge.

1 MS. LEPLANTE: Thank you, Judge.

2 THE COURT: All right.

3 (Recess.)

4 (Whereupon, the jury begins to deliberate at 4:50 p.m.)

5 THE COURT: Folks, I've got a response to my question, to
6 their question. I said what part or parts of the charge do
7 you need to hear, and they said all parts included with the
8 charge and a definition of reasonable doubt, bulleted points
9 from the state's closing remarks. I'm not exactly sure what
10 they're talking about there.

11 From the charge, apparently they've expressed this
12 themselves to the bailiff as she went in, and I think the
13 criminal charge itself. In other words, the charges against
14 the defendant. And I'm prepared to recharge them on the
15 elements of the charge and also the definition of reasonable
16 doubt. I'll let you all look at this note and see if you get
17 any other meaning from it that you think is not complete
18 there.

19 And if I could get the indictment back, Madam Clerk, I
20 will need that again.

21 THE DEPUTY CLERK: (Indiscernible) access. Well, I can
22 get it. (Indiscernible).

23 THE COURT: Thank you.

24 THE BAILIFF: (Indiscernible).

25 THE COURT: Okay.

1 (Counsel confer.)

2 MS. STEWART: But I think my client should be out here.

3 THE COURT: You want him out?

4 MS. STEWART: Yeah, I think he should be out here. I
5 think he deserves to be out here.

6 THE COURT: Folks, can you all offer any additional
7 interpretation to the requests from the jury, other than what
8 I've said?

9 MS. LEPLANTE: Yeah, I think the bulleted points, I think
10 they're just asking -- they want my PowerPoint from the
11 closing, but --

12 THE COURT: Oh. I'm afraid I can't share that. I'm not
13 sure what -- I think your -- if that was what was on my screen
14 here, it was a reasonable doubt definition, right?

15 MS. LEPLANTE: Yeah, yeah, and it aligns with your
16 reasonable doubt, firmly convinced. So I think to me, my
17 reading of it is just that they want the elements of the crime
18 and the reasonable doubt charge.

19 THE COURT: I'll give them that. Is that okay?

20 MS. STEWART: Agree with that, Your Honor.

21 THE COURT: All right. Good.

22 All right. Bring us the jury.

23 (Whereupon, the jury came into open court at
24 approximately 5:48 p.m.)

25 THE COURT: Ladies and gentlemen, I have your question.

1 And I understand it now, thankfully. I didn't understand it
2 at the beginning, but you've cleared it up for us. And I will
3 reinstruct you as to what the elements of the charge are, and
4 then I will reinstruct you as to the definition of reasonable
5 doubt under the law.

6 So I remind you again that the charge is contained in the
7 indictment and it accuses the defendant, Mark Anthony Brown,
8 who was over the age of 14, willfully and lewdly committing or
9 attempting to commit a lewd or lascivious act upon the body or
10 the parts of the body of a child under the age of 16 with the
11 intent of arousing or appealing to or gratifying the lust or
12 passions or sexual desires of the defendant or of the child.

13 So the law says that a person is guilty of a violation of
14 that statute that I just read to you, is guilty of a criminal
15 sexual conduct with a minor in the third degree if the actor,
16 that is the defendant, is over 14 years of age and the actor
17 willfully and lewdly commits or attempts to commit -- either
18 lewdly commits or attempts, not necessarily both, but either
19 or -- lewdly commits or attempts to commit a lewd or
20 lascivious act upon or with the body or its parts of a child
21 under 16 years of age with the intent of arousing or appealing
22 to or gratifying the lust or passions or sexual desires of the
23 actor, that is the defendant, or the child.

24 And so the state has to prove beyond a reasonable doubt,
25 first of all, that the defendant was over the age of 14. And

1 then it has to prove that the victim at the time was under the
2 age of 16. And then next, the state has to prove that the
3 defendant willfully and lewdly committed or attempted a lewd
4 or lascivious act on or with the body or the parts of the body
5 of a child under the age of 16 with the intent to arouse and
6 appealing to or gratifying the lust or passions or sexual
7 desires of the defendant or of the child.

8 Now, willfully means to do something voluntarily,
9 intentionally. In other words, not accidentally. But it's
10 done voluntarily and intentionally with the specific intent to
11 do something that the law forbids.

12 Lewd or lewdly means something that is done obscenely or
13 lustfully or indecent or lecherous.

14 And lascivious means that it is intended to incite lust
15 or indecent or obscene or depraving the morals of someone in
16 respect to sexual relations.

17 And so obviously, the thing done, the conduct, whatever
18 it is, has to be done with the intent of arousing or appealing
19 to those lustful, obscene, sexual sorts of things.

20 So criminal intent, then, is a necessary element and it
21 has to be proven by the state beyond a reasonable doubt.
22 Criminal intent is a matter that has to be determined by you
23 from the circumstances which surrounded the occasion that's
24 described. There is no way that you can prove intent to a
25 mathematical certainty. You can't do it by test tube. You

1 can't do it with an adding machine. There is no way that
2 medical science can look into a person's brain and figure out
3 what he had in mind. So the law says that criminal intent can
4 be inferred from the circumstances which actually existed, and
5 that's how you make a decision about whether criminal intent
6 was present in this case.

7 Criminal intent, then, is a state of mind and it operates
8 jointly with an act in the commission of a crime. It's a
9 mental state. It's a conscious wrongdoing. And so it's up to
10 you as a jury to determine what the defendant intended to do
11 based on the circumstances which were shown to have existed at
12 the time. I remind you that the state has to prove criminal
13 intent beyond a reasonable doubt just as it has to prove every
14 element beyond a reasonable doubt, as I have previously
15 explained that to you.

16 And the instructions are that the state has to prove
17 either that the defendant committed or attempted to commit.
18 Doesn't have to prove that he committed and attempted;
19 committed or attempted to commit. So an attempt to commit is
20 something that's done in partial execution of a design to
21 commit a crime. There has to be an intent -- of course, as
22 we've already just described that to you -- that the act will
23 be committed. And some act is done, but not all the way
24 through, in full execution of the act, but in pursuing the
25 act; in pursing the intent, in other words.

1 An attempt is different from preparing to do something
2 and it's also different from the intent to commit something.
3 The law doesn't punish somebody from just thinking about a
4 criminal act or a criminal intent. To bring the law into
5 action, you have to have some act which is done in furtherance
6 of the intent which tends to the commission of the crime
7 itself which would, if the crime was actually carried out,
8 would be a part and parcel of the crime itself, but it doesn't
9 reach the accomplishment of the original intent because it is
10 prevented or it's stopped for some reason.

11 Now, the state has a burden of proving those things that
12 I've just described to you beyond a reasonable doubt. I
13 remind you that in civil cases, if you've ever served in that
14 capacity, a judge said all you've got to do is to determine
15 that the party in this case who has a burden of proof presents
16 evidence to you that's more likely true than not true; that's
17 a civil case. But in criminal cases, the state's proof has to
18 be more powerful than that. Here, it has to be proof beyond a
19 reasonable doubt.

20 So proof beyond a reasonable doubt is proof that leaves
21 you firmly convinced of the defendant's guilt. There are very
22 few things in this world that we know with absolute certainty.
23 And in criminal cases, the law does not require proof that
24 overcomes every possible doubt. And so, if based on your
25 consideration of the evidence, you are firmly convinced that

1 the defendant is guilty of the crime charged, you must find
2 him guilty. If on the other hand you think there is a real
3 possibility that he is not guilty, you must give him the
4 benefit of the doubt and find him not guilty. Reasonable
5 doubt can arise from evidence in the case or it might arise
6 from the lack of evidence in the case. But you, ladies and
7 gentlemen, have to decide whether or not reasonable doubt
8 exists as to the guilt of this defendant.

9 Ladies and gentlemen, that's the repetition of the charge
10 on the elements of the offense and on the definition of
11 reasonable doubt. If there are additional questions that you
12 want us to try to answer, if you'll put them down as
13 specifically as we can.

14 The charge that I gave you is -- I think my notes reflect
15 that it took about 20 minutes. We've got a recorder. We can
16 play the whole thing back to you if you want to and listen to
17 it all over again, but I'm sure that you were listening and
18 that you don't need the whole thing played to you. So but if
19 there are any parts that you want played that you have some
20 serious doubt in your mind about, you don't understand, you
21 let us know because we want you to understand what the law is
22 before you have to make a decision. Any questions about that?

23 Okay. All right. Let us know if we can help any more.
24 Thank you.

25 (Whereupon, the jury exited the courtroom at 5:57 p.m.)

1 THE COURT: Any exceptions or requests for additional
2 remarks from the state, Ms. LaPlante?

3 MS. LEPLANTE: No, Your Honor.

4 THE COURT: Okay. Defense?

5 MS. STEWART: No, Your Honor.

6 THE COURT: Okay. All right. Let's stand down and --

7 MR. WEHMAN: All right. Back to the waiting game.

8 THE COURT: Waiting on the next note.

9 (Recess.)

10 THE COURT: We offered them food and explained that it
11 would be an hour or so before it would get here. And I think
12 some of the unofficial language back and forth from the
13 jurors, they'll say, yeah, we'll be here at least an hour and
14 a half because we are hung up. I sent word back in that if
15 they would like some help from the Court to try to deal with
16 handling a deadlock, if they would ask for it I would be glad
17 to give it to them. I won't unless they ask. And so they've
18 asked for it.

19 And here's the message. We are deadlocked and would like
20 help with this matter. And then it says jurors would like to
21 make contact with their family. Can someone call, please.

22 I don't know whether they're willing to spend the night
23 here or not, but I'm going to give them the hung jury charge,
24 the Allen charge, that I traditionally give. And I'll note
25 that the Allen charge that I give is not an Allen charge that

1 was recently found on by the Supreme Court, so we'll try to
2 avoid that problem. And then we will renew our offer of
3 supper after they've had the Allen charge and see what happens
4 with that.

5 Okay. Bring us the jury, please.

6 (Whereupon, the jury came into open court at
7 approximately 3:54 p.m.)

8 THE COURT: Madam Forelady and members of the jury, I've
9 got the message that you are deadlocked and would like some
10 help with the matter and also that some of you would like,
11 obviously, to contact your families because when you left
12 home, or whatever time you left today, you weren't expecting
13 to be here at quarter of 7 at night, still working. So we'll
14 be glad if that's what you want us to do to make some calls.
15 The clerk's staff will help you with that.

16 And also, the offer of ordering supper for you, with the
17 length of time that we've told you it will take to get that
18 here, is an open offer if that's what you decide you want to
19 do, if you want to continue to deliberate that long; that's
20 entirely up to you.

21 I want to give you, however -- before you consider all
22 those things -- an additional instruct. And it has to do with
23 the problem of trying to reach a verdict. Because hopefully
24 you can make another effort to reach a verdict in this case.

25 I've already told you that you are the sole judges of the

1 facts and the evidence in this case and I'm the judge and I
2 can't -- I'm not permitted to give you, as you know, even a
3 hint about how I feel about any factual matter. And certainly
4 I cannot give you any hint about what verdict you should reach
5 in this case, and certainly I don't do that. It is my duty to
6 state the law which applies to the case, as I've done, and
7 it's your duty to bring in a verdict.

8 But I can say this. When a matter is in dispute, it is
9 not always easy for even two persons to agree. And when 12
10 people have to agree, it certainly becomes even that much more
11 difficult. But it is important that litigation be ended, and
12 this is litigation, if it can be ended without a single one of
13 you doing violence to your own conscience. No juror is
14 expected to give up an opinion based on reasoning satisfactory
15 to himself or herself merely for the purpose of being in
16 agreement. I want to make sure that each of you understand
17 that.

18 You're not often called upon to try cases. Perhaps
19 you've never done it before. In the last 30 years as a judge
20 and 20 years as a lawyer before that, I've had the opportunity
21 to take part in a good many cases. And I think that you
22 should know that it is unusual, very unusual, for a jury to go
23 out and to promptly return a verdict because that's what would
24 happen if you were in agreement at the very beginning of your
25 deliberations, and that hardly ever happens. But at the same

1 time, almost every jury eventually is able to return a
2 verdict. And what that means is this. It is normal for jurors
3 to disagree at first. But the fact that we normally get a
4 verdict also means that after reasonable persons lay aside all
5 extraneous matters and determine to reach a verdict on the
6 basis of the law and the evidence that they nearly always come
7 to a common understanding and arrive at a verdict.

8 It has never been intended that the verdict of a jury
9 should be the verdict of any one person. On the other hand,
10 the verdict of the jury is the collective reasoning of all
11 persons put together; that's why we have a jury, so that we
12 may have the benefit of your collective thought and your
13 collective reasoning.

14 It is the duty of each of you to tell the other jurors
15 how you feel about the case and why you think as you do. And
16 I'm sure, hope that you've been doing just that for the couple
17 of hours you've been back there deliberating. And on the
18 other hand, it becomes the other jurors' duty to exchange
19 their views with you. And you should listen to each other and
20 give to the others' thoughts such meaning as you think it
21 should have. So to some degree, it can be said that jury
22 service is a matter of give and take.

23 A mistrial of a case is an unfortunate thing. If you all
24 don't agree on a verdict, it doesn't mean that neither side
25 wins. It just means that at some other term of court, before

1 some other judge perhaps, 12 more people will sit right where
2 you're sitting right now. And the same participants will
3 come. The lawyers will -- same lawyers will probably come.
4 And they'll ask basically the same questions that were asked
5 in this trial, and presumably, they'll get the same answers.
6 And so we'll go through the entire process once again.

7 I got no reason to believe that there are any other 12
8 citizens of Dorchester County who are any more capable of
9 reaching a verdict in a case like this than you all are. And
10 so I'm going to ask you to go back and deliberate further and
11 see if you can't reach a verdict in this case.

12 Now, I want to remind you, and I close this part of these
13 instructions by saying again what I said a while ago. While
14 it is important that litigation be ended, it should be ended
15 in the form of a verdict which does no violence to any juror's
16 conscience. None of you is expected to give up an opinion
17 based on reasoning satisfactory to yourself merely for the
18 purpose of being in agreement with others. With that added
19 instruction, I ask that you retire to your jury room, please,
20 and deliberate further.

21 And Madam Forelady, if it appears that you're making
22 progress, you can continue. If it appears that you are still
23 hopelessly deadlocked, if you will let us know that as well.
24 You will have an opportunity to send messages to your family
25 if you still need to do that. And we will take your lunch

1 orders. I want to give you a few minutes to consider these
2 remarks, and then we will ask you about your lunch -- or your
3 dinner order, I should say. Understand that?

4 UNIDENTIFIED SPEAKER: Yes, Your Honor.

5 THE COURT: All right. Thank you very much. Keep us
6 posted.

7 (Whereupon, the jury exited the courtroom at 6:52 p.m.)

8 THE COURT: Any exceptions to those remarks or requests
9 for additional charge from the state, Ms. LaPlante?

10 MS. LEPLANTE: No. None from the state, Your Honor.

11 THE COURT: Very good.

12 Ms. -- excuse me. Senior moment. Ms. Stewart. I'm
13 sorry.

14 MS. STEWART: No, Your Honor.

15 THE COURT: Thank you.

16 All right, then. We'll stand down. Keep on working.

17 (Recess.)

18 THE COURT: Ladies and gentlemen, we are advised that the
19 jury has reached a verdict. Are both the state and the
20 defense ready to receive the verdict?

21 MS. LEPLANTE: Yes, Your Honor.

22 MS. STEWART: Yes, Your Honor.

23 THE COURT: Thank you. Of course, I always have learned
24 that even when I don't think I need to say this, I say it
25 anyway. And I just would say you have obviously conducted

1 yourselves -- those of you who are spectators and have some
2 interest in this case, clearly you have given this courtroom
3 and these proceedings the respect and decorum that they're
4 entitled to receive. That means you have not displayed any
5 outward emotion during the course of the trial. And now, as
6 the verdict is announced, I would expect you, of course, to
7 continue to use that same restraint. If you feel like you
8 might not be able to do so, I'll give you a chance to leave
9 the courtroom now. But otherwise, if you stay, we'll expect
10 you to behave yourself just as you have throughout the trial.
11 Thank you.

12 Bring us the jury.

13 (Whereupon, the jury came into open court at
14 approximately 7:44 p.m.)

15 THE COURT: Ms. Loraine, would you address the jury.

16 (Indiscernible).

17 THE DEPUTY CLERK: Madam Foreperson, has the jury reached
18 a unanimous decision on a verdict?

19 UNIDENTIFIED SPEAKER: Yes, they have.

20 THE COURT: Okay. Thank you.

21 Madam Clerk, you can publish the verdict.

22 JURY VERDICT

23 THE DEPUTY CLERK: The State of South Carolina, County of
24 Dorchester, indictment 2019-GS-18-1979 in the case versus Mark
25 Anthony Brown. As to charge of criminal sexual conduct with a

1 minor in the third degree, indictment number 2019-GS-18-1979,
2 we the jury unanimously find the defendant guilty.

3 THE COURT: Thank you. The verdict is --

4 THE DEPUTY CLERK: Okay.

5 THE COURT: -- (indiscernible) the form and is
6 appropriate in all respect.

7 Does the defense desire polling the jury?

8 MS. STEWART: Your Honor, we would like for you to poll
9 the jurors.

10 THE COURT: All right. Thank you.

11 Ladies and gentlemen, you are going to be polled now.
12 That is, the clerk is going to ask you individually by number
13 was this your verdict and is it still your verdict. And as
14 your number is called, if you'll stand in place and just give
15 her the appropriate answer, whatever it is, to the question
16 that she puts to you.

17 Madam Clerk?

18 THE DEPUTY CLERK: When I call your name, would you
19 please stand. Juror number 1, Bonni Agnew.

20 THE COURT: Just the number, please, ma'am.

21 THE DEPUTY CLERK: I'm sorry.

22 What is your -- was this your verdict in the jury room?

23 MS. AGNEW: Yes.

24 THE DEPUTY CLERK: Is this still your verdict?

25 MS. AGNEW: It is.

1 THE DEPUTY CLERK: Juror number 47. Was this your
2 verdict in the jury room?

3 MS. DESAUSSURE: Yes.

4 THE DEPUTY CLERK: Is it still your verdict?

5 MS. DESAUSSURE: Yes.

6 THE DEPUTY CLERK: Juror number 62. Was this your
7 verdict in the jury room?

8 MS. FIELDING-JENKINS: Yes.

9 THE DEPUTY CLERK: Is it still your verdict?

10 MS. FIELDING-JENKINS: Yes.

11 THE DEPUTY CLERK: Juror number 13. Was this your
12 verdict in the jury room?

13 MR. BENNER: Yes.

14 THE DEPUTY CLERK: Is it still your verdict?

15 MR. BENNER: Yes.

16 THE DEPUTY CLERK: Thank you.

17 Juror number 14. Was this your verdict in the jury room?

18 MS. BENNETT: Yes.

19 THE DEPUTY CLERK: Is it still your verdict?

20 MS. BENNETT: Yes.

21 THE DEPUTY CLERK: Juror number 16. Was this your
22 verdict in the jury room?

23 MR. BERRY: Yes.

24 THE DEPUTY CLERK: Is it still your verdict?

25 MR. BERRY: Yes.

1 THE DEPUTY CLERK: Okay. Juror number 22. Was this your
2 verdict in the jury room?

3 MR. BRETT: Yes.

4 THE DEPUTY CLERK: Is it still your verdict?

5 MR. BRETT: Yes.

6 THE DEPUTY CLERK: Thank you.

7 Juror number 25. Was this your verdict in the jury room?

8 MR. BRYANT: Yes.

9 THE DEPUTY CLERK: Is it still your verdict?

10 MR. BRYANT: Yes.

11 THE DEPUTY CLERK: Thank you.

12 Juror number 37. Was this your verdict in the jury room?

13 MS. COCHRAN: Yes.

14 THE DEPUTY CLERK: Is it still your verdict?

15 MS. COCHRAN: Yes.

16 THE DEPUTY CLERK: Thank you.

17 And juror number 63. Was this your verdict in the jury
18 room?

19 MS. FOX: Yes.

20 THE DEPUTY CLERK: Is it still your verdict?

21 MS. FOX: Yes.

22 THE DEPUTY CLERK: Thank you.

23 And juror number 68. Was this your verdict in the jury
24 room?

25 MS. GANTZ: Yes.

1 THE DEPUTY CLERK: Is it still your verdict?

2 MS. GANTZ: Yes.

3 THE DEPUTY CLERK: Thank you.

4 THE COURT: Juror number 84. Was this your verdict in
5 the jury room?

6 MR. HARRINGTON: Yes.

7 THE COURT: Is it still your verdict?

8 MR. HARRINGTON: Yes.

9 THE COURT: Thank you, sir.

10 Thank you, ladies and gentlemen.

11 Is there anything further before the jury is dismissed
12 from either the state or the defense?

13 MS. LEPLANTE: Nothing from the state, Your Honor.

14 THE COURT: Thank you.

15 MS. STEWART: Nothing from the defense, Your Honor.

16 THE COURT: Okay. Thank you.

17 Ladies and gentlemen, I want to thank you now for your
18 involvement throughout the trial of this case and for your
19 thoughtful deliberations especially. You did not rush to
20 judgment, obviously. You deliberated as long as it took to
21 try this case. You obviously gave it thoughtful
22 consideration. And you talked about it among yourselves. You
23 exchanged your ideas. You did exactly what I said in my
24 charge to you on the hung jury charge; that you did exactly
25 what jurors are sometimes required to do. Obviously it was a

1 decision that you did not reach without a lot of thought and
2 consideration into it and it may have been a difficult
3 decision for some of you to reach, and we understand that.

4 I never comment upon the verdict that a jury reaches. I
5 commend you for your quality of your service and for your
6 thoughtfulness, for your courtesy, your promptness, and all of
7 those things that you have done that are important to jury
8 service. And while I don't condemn or commend jurors for the
9 verdicts that they reach, I can tell you this. I've listened
10 to everything that you've listened to in the trial of this
11 case. And you only need to answer to yourself for the verdict
12 which you have reached in this case. You don't have to
13 explain it to anybody else. You only have to answer to
14 yourself. And I can tell you that you don't have any need in
15 the world to fear your conscience for the decision that you
16 all have reached in this particular case.

17 You are free to talk about this case with anybody you
18 want to now, if you want to. And if somebody should ask you
19 about this case and you want to discuss it with them, you've
20 had a lot invested in it. In the brief time that you've been
21 a part of it, you've invested a lot in it. And so it's
22 appropriate if you want to discuss it with somebody else, to
23 do that. But at the same time, you don't have to. And if
24 somebody should ask you about it and you don't care to discuss
25 it, just say, listen. You spent a day and a half and a lot of

1 thought and worry on this case and you don't want to talk
2 about it or think about it anymore. You can do that as well,
3 it's up to you.

4 I hope that you have gained through your service in this
5 particular case a greater appreciation of how important jurors
6 like yourselves are in helping us dispose of cases like this.
7 Large and small, serious more than others sometimes, but
8 all-important to the people who are involved in them. And I
9 hope you understand, when you consider the people involved in
10 this, the issues involved in this, you understand how
11 important it is for you to do the things you've done and to
12 give it the thought that you've given it. I thank you for all
13 of that.

14 You are free to go now. You can get -- I still have to
15 deal with the matters of post-trial motions and the matter of
16 sentencing; that is still with me. If you want to hang around
17 and listen to that part of it, you can. You can just come
18 back and sit in the back of the courtroom, but you don't have
19 to. You can get out of here if you want to. It's after dark
20 and you're going to have to -- you probably need to get home.
21 And we tried to buy you supper. You wouldn't even let us do
22 that.

23 But you will get a check in the mail some time in the
24 next week or so. It's not going to begin to pay you, even for
25 the brief time that you've paid -- that you've spent here, I

1 should say. But if you will add the gratitude of all of us
2 who make up this system to the small amount of that check, I
3 hope you will be in some way compensated for what you've done.

4 I tell jurors somewhat in gest when I kept you here this
5 late that when you left home this morning looking to be here
6 at 11 o'clock and you couldn't make it because you had a wreck
7 on the way you had to avoid. And you certainly weren't
8 expecting to be here at quarter to 8 tonight, when you left.
9 And some of you made calls to your homes already, so you've
10 explained that to them. I always say it's an open invitation
11 that if any of you need for me to write a note to your
12 significant other where you have been or -- until a quarter of
13 8 tonight, I will do that.

14 And along with that, I tell the true story about an offer
15 just like that that I made years ago in Berkely County, when I
16 was dismissing a jury just like you who had worked hard and
17 worked past the time. It was 7:30 at night. And I said
18 ladies and gentlemen, if you want me to send a note home to
19 your significant other that you were with me until 7:30
20 tonight, I will be glad to do it. This young kid on the back
21 row said Judge, would you mind putting 11:30 on my note? I
22 said no. No. Can't do that. But I'll put quarter to 8 on
23 yours.

24 Thank you, folks. I appreciate the privilege of serving
25 with you, and thank you for what you've brought to this

1 process. You're free to go.

2 (Whereupon, the jury exited the courtroom at 7:54 p.m.)

3 THE COURT: All right. I'll be glad now to hear motions
4 from the defense. Ms. Stewart? Or Mr. Wehman.

5 MS. STEWART: Your Honor, I would just make a motion
6 notwithstanding the verdict.

7 THE COURT: Okay. Thank you. I note that motion. I
8 note the renewal of all other motions made by defense counsel
9 at the conclusion of the state's case and at the conclusion of
10 the trial itself. And I note the renewal of those motions at
11 this juncture and I renew my earlier rulings on each of those
12 motions, and without restating them any further.

13 Is the state ready to proceed to the matter of
14 sentencing?

15 MS. LEPLANTE: We are, Your Honor.

16 THE COURT: All right. Thank you. Ms. LaPlante?

17 MS. LEPLANTE: Thank you, Your Honor. Well, actually,
18 let me (indiscernible) this.

19 (Counsel confer.)

20 MS. LEPLANTE: Judge, I think we told you in pre-trials,
21 Mr. Brown is currently on the sex offender registry. He does
22 have a record. And I apologize, it's kind of a thick file. I
23 don't know that there are that many convictions.

24 Looks like a 1982 carrying a weapon on school property.
25 Petty larceny. 1983 assault and battery third.

1 THE COURT: When was that?

2 MS. LEPLANTE: 1983.

3 THE COURT: Okay. Thank you.

4 MS. LEPLANTE: In 1986, he was convicted of criminal
5 sexual conduct. There's no degree attached to that. And at
6 that time was given a 20-year sentence.

7 Just have a 2000 fraudulent check under 500 dollars. And
8 then began violating the sex offender registry there. I think
9 there are two convictions for violating sex offender registry
10 on his record, one in 2004.

11 2005, fraudulent check.

12 2006, looks like there's some miscellaneous traffic
13 offenses that occurred and a reckless driving. Driving under
14 suspension. Hit and run with property damage.

15 And then in 2007, he was convicted of an assault and
16 battery of a high and aggravated nature. A purse snatching in
17 that same year. It looks like it is attached to that , Your
18 Honor.

19 In 2018, he was convicted of domestic violence third
20 degree. This is where his second conviction for a violation
21 of the registry occurred in 2019. So that would complete his
22 record, Your Honor.

23 In preparation for this trial, Mr. Brown was offered to
24 plead guilty and to be given five years. I think that was a
25 gracious offer.

1 The victim does have a statement that she's written that
2 she would like me to read for the Court.

3 THE COURT: Okay.

4 MS. LEPLANTE: "Mark should be held accountable for his
5 actions. The situation has put me in a deep hole for the
6 longest with trusting my friends and even my own family. I
7 just want justice served. He doesn't need to touch another
8 female ever again. And this isn't his first sexual attempt,
9 it's his second. Who knows if it's more.

10 Now that he's been found guilty, I'll still feel better
11 in myself that I stood up for what is right and I told my
12 story; something I've been keeping inside for the longest.
13 Sincerely, Z.T.G. ".

14 Judge, I mean, his record is terrible, and I think the
15 maximum sentence is appropriate.

16 THE COURT: All right. Does the victim wish to be heard
17 any further?

18 MS. LEPLANTE: No, Your Honor. And the only other thing,
19 I wanted, not to take this with me, with us, is that you make
20 a finding that he be evaluated for the sexually violent
21 predator program. We have been advised that it needs to be
22 written on the sentencing sheets.

23 THE COURT: All right. I note that I think that's done
24 in cases like this almost as a matter of course, but I will
25 deem it a motion.

1 MS. LEPLANTE: Thank you, Your Honor.

2 THE COURT: All right. Thank you.

3 All right. Ms. Stewart. Mr. Wehman.

4 MS. STEWART: Thank you.

5 THE COURT: We may hear from either of you all, from Mr.
6 Brown, or anybody on his behalf.

7 MS. STEWART: Thank you, judge. You know, I want to
8 start by saying Mr. Brown obviously still maintains his
9 innocence in all of this. I can't argue with the record. But
10 what I can do is clarify that first charge that landed him on
11 the registry.

12 I think there is a couple -- one very important
13 distinction, and then another one. He did not know the person
14 that he was convicted of that charge against. I think it
15 bears saying that it's a different situation than this one.
16 It also bears saying that that was not a minor. I think it's
17 a completely different type of charge as far as the victim in
18 it and the relationship between my client and the victim.

19 He spent 200 days in bail on this charge and I would ask
20 for credit on that. He has been supported throughout the
21 trial this week by his sister and his niece, who are both
22 present. And I do not know if they wish to address you. I
23 have not had a chance to speak with them. So if they do, I'm
24 sure they would be happy to (indiscernible) point.

25 Mr. Brown has worked construction his entire life. He's

1 a very hard worker. He's been at his current job for about
2 seven months. And Your Honor, I think he does want me to
3 explain to you, and of course this was not a part of the
4 trial, but the reason he ran from the police that night. It
5 had nothing to do with the underlying charge. He had not
6 updated his address on the registry. He thought that's why
7 they were there for him, and that's why he ran. And we would
8 just ask for whatever leniency the Court can provide.

9 THE COURT: All right. Thank you.

10 Do any of his relatives wish to be heard?

11 MR. WEHMAN: No, sir. They have indicated no, Your
12 Honor.

13 THE COURT: Okay. Thank you.

14 All right. Does Mr. Brown wish to be heard, Ms. --

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: All right.

17 THE DEFENDANT: I would like to speak on the matter of
18 the case that I'm before you with. And it's like I --

19 THE COURT: The jury has spoken on this case, Mr. Brown.

20 THE DEFENDANT: Um-hum.

21 THE COURT: I'll be glad to take anything into account
22 that you want me to take into account on the matter of the
23 sentence that I should impose. The jury has found you guilty.
24 And I'm bound by that, as are you.

25 THE DEFENDANT: Uh-huh.

1 THE COURT: Whether you agree or not. If there's
2 anything that you want me to take into account in deciding
3 what sentence I should impose of the 15 years that you're
4 facing, I'll be glad to take that into account. I just didn't
5 want you to waste a whole lot of your time rearguing the case
6 because I'm not going to be able to respond to that and I'm
7 not inclined to respond to that. But it's your time. You go
8 ahead.

9 THE DEFENDANT: Okay. Because I didn't know the jury
10 found me guilty.

11 THE COURT: I'm sorry?

12 THE DEFENDANT: I said I didn't know the jury found me
13 guilty.

14 THE COURT: Oh. Well, I can tell you they did. And
15 that's why you're up there now.

16 THE DEFENDANT: Um-hum.

17 THE COURT: Yeah. Anything else?

18 THE DEFENDANT: Yes, sir. You said a recommendation of a
19 sentencing. I do have 200 and something-odd days that I
20 served on this. And I don't know if I can ask for a four-year
21 sentence.

22 THE COURT: No, sir. You were offered a five-year
23 sentence.

24 THE DEFENDANT: Well, I'll take the five.

25 THE COURT: Now, that's no longer out there, of course.

1 You know that. You have been down this road before and you
2 understand how the system works from certain respects. And so
3 all right. Thank you, Mr. Brown.

4 You will get credit, for whatever it's worth, for the 200
5 days that you have served, of course.

6 THE DEFENDANT: Um-hum.

7 THE COURT: You're entitled to that.

8 (Pause.)

9 THE COURT: Ms. LaPlante, you're correct. The record, of
10 course, speaks for itself. And of course, Ms. Stewart, as you
11 said. And there's not a whole lot you can do about it at this
12 juncture. And obviously that has to be taken into account as
13 a major component in the sentencing in this particular case.

14 There are other things, however, that the Court can take
15 into account, I think, on the other side, to the extent that
16 there are things that the Court can consider in mitigation, if
17 it chooses to do so, against the maximum sentence. And one of
18 them is the age of Mr. Brown, at 58. And the other is, as
19 you've said, I'm recommending that he be evaluated for
20 sexually violent predator treatment. And that means that in
21 all likelihood, whatever sentence he gets is going to be
22 prolonged in order to comply with the sexually violent
23 predator situation.

24 And I take into account the circumstances of this crime.
25 Obviously, there are degrees. There are nuances in these

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MS. LEPLANTE: (Indiscernible).

THE COURT: Thank you.

(End of Transcript of Record)

DOCKET NO. 2019GS18-1979

The State of South Carolina
County of DORCHESTER

Defendant

July 13, 2020 TERM

COURT OF GENERAL SESSIONS

THE STATE
vs.

Mark Anthony Brown

Witness:

C.C.C. PLS. AND G.S.

Indictment for

Criminal sexual conduct with minor, 3rd
Degree - Commit/Attempt Lewd Act
(victim under 16 years & actor over 14
years)

SC Code: 16-03-0655 (C)

WITNESSES

Yxsumi N Mckinnon-Simmons

Dorchester County Sheriff

19-005612

ARREST WARRANT NUMBER

2019A1810300697

Arrested: August 27, 2019

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: July 9, 2020

VERDICT

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

2020 JUL 10 AM 9:57

CHERYL GRAYLIM
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2019GS18-1979

As a Court of General Sessions, convened on July 9, 2020 the Grand Jurors of DORCHESTER County present upon their oath:

**CRIMINAL SEXUAL CONDUCT WITH MINOR, 3RD DEGREE - COMMIT/ATTEMPT
LEWD ACT (VICTIM UNDER 16 YEARS & ACTOR OVER 14 YEARS)**

That in Dorchester County, South Carolina, on or about, May 26, 2019, the Defendant, Mark Anthony Brown, who was over fourteen (14) years of age, did willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the defendant or the child. This offense in violation of Section 16-3-655(C) 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.



Kelly LaPlante, Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

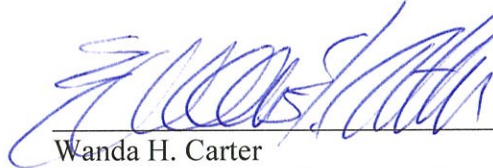
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Jun 16 2023

SC Court of Appeals



Wanda H. Carter

Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of June, 2023.

RECEIVED

Jun 16 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Honorable Thomas W. Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

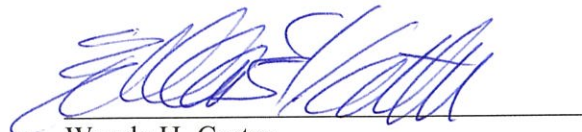
V.

MARK ANTHONY BROWN,

APPELLANT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon William M. Blich, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and on Mark Anthony Brown, 137021, at MacDougall Correctional Center, 1516 Old Gilliard Road, Ridgeville, SC, 29472, this 16th day of June, 2023.



Wanda H. Carter
Deputy Chief Appellate Defender