

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO THE COURT OF APPEALS

Appeal from Lexington County

G. Thomas Cooper, Circuit Court Judge

2010-GS-32-00832

RECEIVED

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S.C. Supreme Court

STATE OF SOUTH CAROLINA,

PETITIONER,

v.

JOE LOUIS BUTLER, JR.,

RESPONDENT.

APPENDIX

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

The Honorable G. Thomas Cooper, Circuit Court Judge

2010-GS-32-00832

The State of South Carolina

Appellant,

v.

Joe Louis Butler,
Jr.,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the Trial Court err in granting a new trial on the basis of Juror Misconduct when there is no evidence in the record that the misconduct caused actual prejudice to the defendant?

STATEMENT OF THE CASE

Defendant was tried and convicted before the Eleventh Circuit Court in Lexington County during the General Sessions term beginning on March 8, 2010. (ROA, pp. 1-357.) The State was represented by Assistant Solicitors David M. Stumbo and Rhonda W. Patterson. (ROA, p. 1). Defendant was represented by Robert T. Williams, Esq. and Benjamin A. Stitely, Esq. *Id.* After a three day trial¹, Defendant was convicted of Lewd Act on a Minor and acquitted of Criminal Sexual Conduct with a Minor, 1st Degree, on Friday, March 12, 2010. (ROA, p. 344, lines 15-24). Immediately thereafter, the trial court sentenced Defendant Joe Louis Butler, Jr. to twelve years incarceration. (ROA, p. 356, lines 7-9). Subsequently, Defendant filed a Motion for A New Trial on March 19, 2010, based on information involving potential juror misconduct that was revealed after the sentencing.²

According to Chief Oswald of the Batesburg-Leesville Police Department, the investigating agency in this case, Ms. Broome (Juror #27) made a statement to him in the parking lot in front of the Lexington County Courthouse on Friday March 12,

¹ The State moved *in limine* to introduce evidence of a prior similar incident in Aiken County where the Defendant was acquitted, under State v. Lyle and SCRE Rule 404(b). The motion was denied, and the State did not offer evidence of the Aiken incident during the trial.

² This information was relayed to the Solicitor's Office by Chief Wallace Oswald of the Batesburg-Leesville Police Department the week after the trial concluded. This information was immediately disclosed to the Court and Defense Counsel in a letter from Assistant Solicitor David Stumbo dated March 19, 2010.

after the trial was over. (ROA, p. 515). Per Chief Oswald, her statements indicated that she had attempted to conduct her own outside research into Defendant during the nighttime recess on Thursday March 11, before closing arguments were delivered and the jury charge on the law was given by the Court. (ROA, p. 515). Ms. Broome stated something to the effect of, "I know, I looked him up on my computer last night," in response to comments made by Chief Oswald. (ROA, p. 373, lines 10-11).

The Trial Court held a Rule to Show Cause hearing on March 29, 2010, on the issue of Contempt of court. (ROA, pp. 363-420). Testimony was taken as to the allegations of juror misconduct from Chief Oswald, Investigator Kevin Wison of the Solicitor's Office, and Ms. Broome. (ROA, p. 364). Ms. Broome, who was represented and advised on the contempt issue by James Snell, Esq., adamantly denied actually conducting any research on Defendant and testified that her statements both to Chief Oswald and in the jury room about "looking him up" were misunderstood. (ROA, p. 386-404, see p. 395-396). In response to questions by the Solicitor, Ms. Broome testified that she believed the victim's testimony about what Defendant did to her, and made her decision as to the verdicts based on the evidence that was presented in the courtroom during the trial of the case. (ROA, p. 403, lines 9-24). The Court held in abeyance rulings on both the contempt question and the Motion for a New Trial until further inquiry could be made into the matter. (ROA, p. 515).

The Trial Court convened another hearing into the matter on April 8, 2010. (ROA, p. 515). Ten of the other members of the jury (the eleventh juror was out of town and not able to come to the hearing) were present and examined individually on

the record as to any outside information that may have been brought into the jury deliberations. (ROA, pp. 515-516). Juror #176, Mr. Roberts, stated that he did not remember any statement about independent research being made during deliberations. (ROA, p. 449, lines 4-10). The consensus of the other nine jurors was that a reference was made by Ms. Broome to "looking him up on the internet" sometime during deliberations on Friday, March 12, 2010, and that there was an immediate negative reaction against her comment by several jurors in the room. (ROA, p. 516). The Court's examination of each of the jurors revealed some discrepancy on how Ms. Broome reacted to being cut off by the other jurors once she brought up outside research during their deliberations. (ROA, p. 438, line 24 - p. 439, line 16). Mr. Amick, Juror #4, indicated that she said, "But it won't affect my decision." (ROA, p. 428, lines 9-11). Mr. Davitte, Juror # 58, indicated that Ms. Broome made a comment but that it did not encourage him to "look [the defendant] up or to take that into account." (ROA, p. 425, lines 20-25). Ms. Olin, Juror # 154, indicated that Ms. Broome stated that she had "looked him up" but could not remember her exact wording. (ROA, p. 451, lines 2-12). Despite the discrepancies as to exact wording, the consensus of the nine jurors that heard Ms. Broome was that nothing was said about this after this brief exchange, and that no substance of any outside information was ever brought up or discussed at any point during the deliberations. (ROA, p. 516). Several jurors, including the foreperson, Ms. Womble, affirmatively testified before the Court that the statement made by Ms. Broome did not influence or affect the deliberations. (ROA, p. 445, lines 14-18). As to timing, Mr.

Davitte and Ms. Olin both indicated that it occurred very early in deliberations. (ROA, p. 436, lines 4-7; p. 424, line 19- p. 425, line 1). At the conclusion of the April 8 hearing, the Trial Court indicated that based on the totality of the evidence, it intended to hold Ms. Broome in contempt for the comments made in regards to outside research. (ROA, p. 516). The matter of Defendant's Motion for a New Trial was continued. Id.

The final hearing in this matter was convened by the Trial Court on April 22, 2010, at the Lexington County Courthouse. (ROA, p. 516). Mr. Stitely presented arguments on behalf of the Defendant. Undersigned counsel presented the State's case in opposition to Defendant's Motion. (ROA, p. 421). Additionally, a Consent Order finding Ms. Broome in Contempt of Court was executed during the hearing. (ROA, p. 516). As part of the agreement on the Consent Order, Ms. Broome continued to deny having actually conducted Internet research on Defendant prior to the conclusion of the case and maintains that her statements were misunderstood. Id. However, she did accept responsibility for the "disturbance and circumstances" her comments created and thus agreed to a \$2,753.00 fine and confinement at the Lexington County Detention Center for a period of six hours. Id.

The Trial Court granted the Defendant's Motion for a New Trial by written Order on May 4, 2010. (ROA, p. 514-519). The Trial Court concluded that "After conducting a thorough examination of this matter on the record with every available juror, the Court finds that Juror # 27's misconduct resulted in prejudice to the Defendant." (ROA, p. 517). The Appellant now seeks review of this finding.

ARGUMENT

THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING A NEW TRIAL ON THE BASIS OF JUROR MISCONDUCT BECAUSE THERE IS NO EVIDENCE IN THE RECORD THAT RESPONDENT SUFFERED ACTUAL PREJUDICE AS A RESULT OF JUROR MISCONDUCT

The grant or denial of a new trial motion rests within the discretion of the trial court; however, the trial court's decision will be disturbed only when there is an abuse of discretion. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 569 (2008) citing S.C. State Highway Dep't v. Clarkson, 267 S.C. 121, 126 (1976) see also Boozer v. Boozer, 300 S.C. 282, 283 (Ct. App. 1988) (Court of Appeals has the power to review the trial court's ruling if it rests on the basis of fact wholly unsupported by evidence.). An abuse of discretion occurs when the trial court makes a decision based on a factual conclusion without evidentiary support or an error of law. Hartfield v. Getaway Lounge & Grill, Inc., 388 S.C. 407, 413 (2010) citing Conner v. City of Forest Acres, 363 S.C. 460, 467 (2005).

The Sixth Amendment to the United States Constitution guarantees criminal defendants the right to trial by jury and in cases involving juror misconduct. U.S. Const. Amend. VI. South Carolina Appellate Courts have incorporated this bedrock constitutional right into a clear and specific analysis. In order to grant a mistrial in cases involving juror misconduct, the Court must find not only that misconduct was committed, but also must find that the jury was improperly influenced by the misconduct to such an extent that the Defendant suffered resulting prejudice. State v. Ziegler, 364 S.C. 94 (Ct. App. 2005). Misconduct that does not affect the jury's

impartiality will not undermine the verdict. State v. Harris, 340 S.C. 59 (2000). The standard most recently laid down by the South Carolina Court of Appeals is that actual prejudice must be evident in order for a new trial to be manifestly necessary, and that a juror's misconduct "does not *ipso facto* justify the grant of a new trial." State v. Bantan, 387 S.C. 412 (2010)citing Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, 682 S.E.2d 489 (2009) see also State v. Wasson, 299 S.C. 508 (1989); State v. Kelly, 331 S.C. 132 (1998).

South Carolina jurisprudence on this issue consistently supports the requirement that both juror misconduct and actual prejudice must be proven. In Wasson, *supra*, the South Carolina Supreme Court denied a motion for a mistrial because no prejudice was found despite the fact that two jurors read a newspaper article referencing similar pending charges against the Defendant and shared that with other jury members. The Supreme Court of South Carolina in The Vestry & Church Wardens of the Church of the Holy Cross, *supra*, also upheld the denial of a motion for a mistrial where a juror was found in contempt after conducting extensive outside research and making improper statements that cast the plaintiff in a negative light during jury deliberations. The Trial Court in that case denied the motion for mistrial, finding that no evidence of actual prejudice was presented and all jurors verified to the court under oath that they were still able to be fair and impartial to both sides in rendering a verdict. *Id.* In Kelly, *supra*, the South Carolina Supreme Court held a motion for mistrial was properly denied because there was no actual prejudice to the Defendant even though a juror passed a pro-death penalty

pamphlet around the jury room during the sentencing phase. Furthermore, in Harris, supra., where a juror conducted outside research, the South Carolina Supreme Court denied the Defendant's motion for a mistrial because the Court found no evidence in the record that the lone juror's misconduct affected the verdict.

For the Trial Court to have properly granted a new trial under South Carolina law, the evidence in the record must reflect first that Ms. Broome committed juror misconduct, and that her specific act of misconduct caused actual prejudice to Defendant in the course of the jury's deliberations and verdicts. As to the juror misconduct prong, the Trial Court found Ms. Broome to be in contempt of court "regarding various comments that she made concerning Internet research of the Defendant." (ROA, p. 521). The Trial Court also stated in its April 22, 2010 Consent Order that "Ms. Broome accepts responsibility for the disturbances and circumstances that her comments have created." (ROA, p. 520). As to the prejudice prong, the Trial Court references the contempt of court and acknowledges the difficulty of finding a connection to actual prejudice in its May 4, 2010 order:

The nine (9) jurors that were interviewed said that their verdict was not influenced by Juror # 27's comments. It is more difficult to assess whether Juror #27 was personally able to be fair and impartial in her part of the jury deliberations. She has been found in contempt of court but does not admit to doing any independent research. However, based on her comments, as testified to by the other jurors and two police officers, this court finds that Juror # 27 was prejudiced against the Defendant as a result of her out of court investigation.

(ROA, p. 518). The Trial Court has not articulated in its May 4, 2010 Order or anywhere else on the record exactly what prejudice has been suffered by Defendant,

nor has the Court drawn a connection between the juror misconduct and the prejudice prongs. The Trial Court's decision to declare a mistrial demonstrates a reliance on speculation and conjecture as to what outside information Ms. Broome was exposed, if any, and what specific impact, if any, the presumed information may have had on her deliberations.

Just as the records in Bantan, Wasson, The Vestry & Church Wardens of the Church of the Holy Cross, Harris, and Kelly failed to demonstrate actual prejudice to the Defendant, which resulted from a finding of juror misconduct, the record in the case a bar fails to demonstrate evidence that Ms. Broome was prejudiced against the Defendant in her part of the deliberations, or that the jury as a whole considered any improper outside information in the course of the deliberations. Ms. Broome testified in the Trial Court that she made her decision based on testimony presented at trial, and that she believed the victim and did not believe the Defendant. (ROA, p. 403, lines 9-24). The testimony of the other jurors shows that any improper statement that may have been made by Ms. Broome was not discussed in detail, and the substance of any external information that was never brought up during the deliberations. Similar to the jurors in Bantan and The Vestry & Church Wardens of the Church of the Holy Cross, jurors in this case testified that their decisions were based on the testimony and evidence heard during the trial. (ROA, p. 445, lines 14-18). Additionally, the fact that the entire jury agreed on a verdict of not guilty on the Criminal Sexual Conduct with a Minor indictment, but also found Defendant guilty of Lewd Act on a Minor, is affirmative proof that the jury diligently conducted

its deliberations and fairly reached its verdicts based on the evidence presented in the Courtroom by both the State and Defendant, not on the basis of any improper, outside influences.

The Court in The Vestry & Church Wardens of the Church of the Holy Cross specifically rejected the notion of a presumption of prejudice in cases involving juror misconduct. 384 S.C. at 447-448, 682 S.E.2d at 439. Likewise, such a presumption of prejudice based solely on a finding of misconduct is not appropriate in the case at bar and constitutes error and an abuse of discretion on the part of the Trial Court.

There is a lack of evidence in the record to demonstrate that Ms. Broome or the remaining jurors were actually prejudiced against the Defendant in making their decision during deliberations. Furthermore, there is a lack of support in the Trial Court's Order as to exactly how the Defendant suffered prejudice as a result of the misconduct. Therefore, the only reasonable conclusion that can be reached is that the Trial Court presumed prejudice towards the Defendant based solely on its finding that Ms. Broome (Juror # 27) violated the instructions of the Court by either conducting outside research or by referencing an attempt to conduct outside research in the jury room. This decision amounts to an abuse of discretion, and violates the time-tested principle in our law that mistrials should be granted an jury verdicts thrown out only in cases of "manifest necessity," when justice demands such an extraordinary remedy.

CONCLUSION

Appellant respectfully requests based on the facts and circumstances of the case at Bar, that this Honorable Court vacate the Trial Court's Order granting a new trial and affirm the conviction and twelve-year sentence of Respondent.

Respectfully submitted,

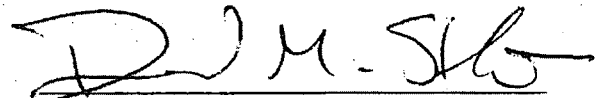
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March 4, 2011.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

The Honorable G. Thomas Cooper, Circuit Court Judge

2010-GS-32-00832

The State of South Carolina,

Appellant,

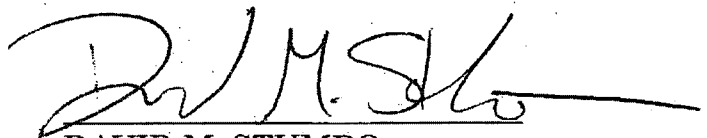
v.

Joe Louis Butler, Jr.,

Respondent,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR. The undersigned also certifies that the Final Brief is in compliance with the South Carolina Supreme Court's Order of August 13, 2007.



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March 4, 2011

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
G. Thomas Cooper, Circuit Court Judge

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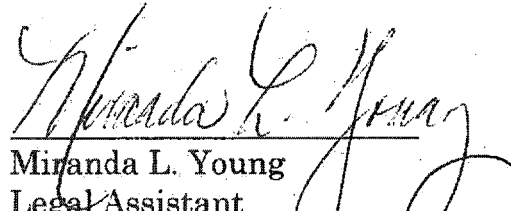
JOE LOUIS BUTLER, JR.

RESPONDENT.

PROOF OF SERVICE

I, Miranda L. Young, certify that I have served the Record on Appeal and two copies of the Final Brief of Appellant by delivering to: Robert T. Williams, Esquire, and Benjamin A. Stitely, Esquire, Williams, Hendrix, Steigner, & Brink, PA, P.O. Box 849, Lexington, SC 29071.

This 4th day of March, 2011.


Miranda L. Young
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March 4, 2011

VIA Hand-Delivery

The Honorable Tanya A. Gee
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: **State of South Carolina v. Joe Louis Butler Jr.**
Appeal from Lexington County (#2010162906)

Dear Ms. Gee:

Enclosed for filing is the Record on Appeal and the Final Brief of the Appellant in the above case. Included are fifteen (15) copies of each required document, one of which is unbound. Also enclosed is the Proof of Service on the Respondent of the Record on Appeal and the Final Brief of the Appellant.

Please do not hesitate to call me if there are any questions or concerns.

Best regards,

David M. Stumbo
Asst. Deputy Attorney General

cc: Robert T. Williams, Esquire
Benjamin A. Stitely, Esquire

STATE OF SOUTH CAROLINA

COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY

COURT OF GENERAL SESSIONS

The Honorable G. Thomas Cooper, Circuit Court Judge

Indictments No.: 2010-GS-32-0832

The State of South Carolina

Appellant,

v.

Joe Lewis Butler, Jr.

Respondent.

FINAL BRIEF OF THE RESPONDENT

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STATEMENT OF ISSUES OF APPEAL

1. The Appellant's appeal is not proper in that it involves questions of both law and fact.
2. There was no abuse of discretion when the Trial Court granted the Respondent a New Trial on the basis of Juror misconduct.

STATEMENT OF THE CASE

The Respondent essentially agrees with the Appellant's Statement of the Case.

Subsequent to the Respondent's trial, the Court conducted a thorough investigation into Juror Misconduct by Ms. Boone, Juror #27. The Court's investigation included, but not was limited to, the recalling Eleven of the Twelve Jurors from the trial for examination before the Court, the review of an affidavit filed by one of the jurors, and the taking of testimony from both Police Chief Oswald of the Town of Batesburg-Leesville and Investigator Wilson from the Solicitor's office.

Following three separate hearings regarding the misconduct of Juror #27, the Court issued a written Order granting the Respondent a new trial. In the Court's Order, the Trial Judge found that Juror #27 did commit juror misconduct in accordance with the standard established in State v. Harris, 530 S.E.2d 626, 340 S.C. 59 (2000). The Court further found actual prejudice was created against the Respondent through both the external research conducted by Juror #27, and the impact that this had on the jury panel as a whole where the case could be viewed as not containing "overwhelming evidence" against the Respondent. Ultimately, the Court found that the Respondent's Sixth Amendment right to an "impartial jury" was unjustly violated and real prejudice existed in accordance with the standard laid out in State v. Kelly 502 S.E.2d 99, 331 S.C. 132 (1998).

ARGUMENT

1. **The Appellant's appeal is not proper in that it involves questions of both law and fact.**

As noted by the Appellant, the Trial Court has full discretion as it relates to motions for a new trial, and those rulings will not be disturbed absent a finding of an abuse of discretion. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008), *citing* SC State Highway Dept. v. Clarkson, 267 S.C. 121, 226 SE 2d 696 (1976)

However, the Appellant is inaccurate in their argument regarding this matter. The Courts have held that it is well settled in this State that an order granting or refusing a new trial when based solely on an error of law is subject to review by this Court, but when the order is based upon questions of fact, or upon both questions of law and fact, it is not appealable. Smith v. Traxler, 228 S.C. 418, 90 SE 2d 482, (1955) *citing* Sellars v. Collins, 212 S.C. 26, 46 S.E.2d 176 (1946). In this matter, the Appellant has asked this Court to revisit factual questions and not simply errors in law which is improper. This same standard that questions of mixed law and fact are not appealable has been relied upon by the Courts in the matters of: Robinson v. Fuller, 249 S.C. 342, 154 S.E.2d 431 (1967); Donkle v. Foster, 238 S.C. 90, 119 S.E.2d 231, (1961); and Turner v. Carey, 223 S.C. 477, 76 S.E.2d 671 (1953) *citing* Daughy v. Northwestern R. Co., 92 S.C. 361, 75 S.E.2d 553 (1912); Snipes v. Davis, Director General, 131 S.C. 298, 127 S.E.2d 447 (1925); Walker v. Quinn, 134 S.C. 510, 133 S.E.2d 444 (1926); King v. Western Union Tel. Co. et al., 167 S.C. 500, 166 S.E.2d 629 (1932); and O'Barr v. Pioneer Life Ins. Co., 172 S.C. 72, 172 S. E.2d 769 (1934).

Any question regarding an abuse of discretion as a matter of law would look to if there was any support for the Trial Court's decision to grant a new trial. The Appellant acknowledges the existence of some factual basis for the Court's granting of a new trial; however, they argue as such it was insufficient. This is not the proper basis for an appeal; absent a showing by the Appellant that the Court had no basis whatsoever to grant a new trial as a matter of law, not fact, the Appellant's Appeal is improper must be dismissed.

2. There was no abuse of discretion when the Trial Court granted the Respondent a New Trial on the basis of Juror misconduct

In making his second argument, the Respondent maintains that the Appellant's appeal is improper in that it asks the Court of Appeals to substitute its judgement regarding factual matters not as to matters of law. When making a determination regarding abuse of discretion generally, the Court has held to the standard that the rulings of the Trial Court are to remain in place absent a finding that those rulings are **wholly unsupported** by evidence. Boozer v. Boozer, 300 S.C. 282, 387 S.E. 674 (1988) *emphasis added*.

"The general test for evaluating alleged juror misconduct is whether or not there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence." State v. Zeigler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005) In the present matter, the Trial Court followed the two step process of first conducting an investigation of whether there was juror misconduct and second to make a determination as to if the Court was satisfied that there was a harmful result to the Defendant. For the Appellant to be successful, they must show unto this Court that the Trial Judge did neither, and that his Order granting a new trial was

wholly unsupported by any evidence.

As acknowledged by the Appellant, the Trial Court was presented evidence that a Juror conducted external independent research prior to deliberating on the merits of the case. This matter was brought to the Court's attention only after the jury had been discharged following their rendering of a verdict in the case. (R. p. 372 l. 10-25, p. 373, l. 1-11)

In regards to the question of Juror misconduct in the present matter, the Court looked to the case of State v. Harris, where the Supreme Court states, "The juror's action in conducting independent legal research was unquestionably misconduct." State v. Harris, 530 S.E.2d. 626, 340 S.C. 59 (2000). While the Harris case deals with *legal* research, this case remained very comparable because the juror in this case conducted independent research despite a specific charge from the Trial Judge prohibiting such action. During the hearing, the Defendant argued that under Harris, the juror's extraneous research is clear misconduct to which the Court agreed following a thorough evaluation of the evidence. The Court thoroughly outlined its decision making process and the law it found relevant in its Order later filed.

The Second prong required when evaluating cases where juror misconduct as cited in Zeigler, Id., is if some actual damage to the parties exists. In their brief the Appellant relies heavily on several civil case law while ignoring the considerations taken by the Trial Court in this matter. The Trial Court recognized that the standard that must be observed in the present matter is of a high standard directly established in The Constitution. The Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right to...an impartial jury." U.S. Const. Amend. VI. In making a Constitutional evaluation South Carolina's standard can be found in State v. Kelly, where South Carolina Supreme Court states, "Relevant factors to be

considered in determining whether outside influences have affected the jury are (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice.” [Numbering added] State v. Kelly, 502 S.E.2d. 99, 331 S.C. 132 (1998).

In making its Kelly analysis the Court, as previously noted, recalled Eleven of the Twelve Juror’s who served in the Trial of the Defendant to independently question each regarding the misconduct of Juror #27. From those inquiries the Court made the determination that there was a taint present in the jury panel because at least Ten of the Twelve jurors were exposed to outside influences, not evidence in the trial.

Next, the Court made the determination that the evidence as a whole in the matter was “not overwhelming.” The fact that the evidence against the Defendant was not overwhelming and that the improper information regarding the Defendant and possible inadmissible matters were brought to the jury; the Court determined that the juror misconduct was significant

Finally, the Court noted that there was no way to provide any form of curative measure. Immediately, this situation can be differentiated from the matter of State v. Bantan, which is cited by the Appellant, because there was no opportunity for the Court to give the Jury a curative instruction or to investigate the possible misconduct prior to the rendering of a verdict. In Bantan, the Court was able to investigate by questioning jurors, making a factual determination, utilize a corrective instruction, and through the totality of those circumstances was able to use its discretion when it chose to deny the Defendant’s motion for a new trial. This matter was not disturbed on Appeal because there was some evidence to support the Court’s findings. State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (2010). The Trial Judge even noted that he considered this

matter and found a factual disconnect from Bantan within the Order for a New Trial issued on May 4, 2010.

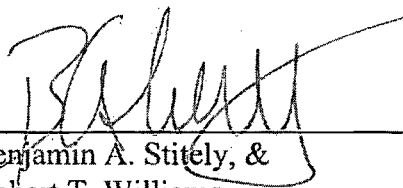
Ultimately, the Court conducted a thorough analysis of all elements involved in whether juror misconduct took place. After doing so and considering the law and arguments by counsel the Court determined that there was a potential bias in the Jury and the Defendant's Sixth Amendment Rights were violated. Without any means of providing a cure, the Court used its discretion and ordered a new trial.

CONCLUSION

The matter being sought on appeal by the Appellant is not properly appealable. The long standing judicial precedence in the South Carolina states that an appeal of a Trial Court's granting of a new trial must rest solely on issues of law and not issues of fact or issues of mixed facts and law. The Appellant within his own brief acknowledges his position is based on a factual disagreement with the Trial Courts findings, not an absence of basis for the Trial Court's findings and as such this Court should dismiss the appeal.

The Trial Court's Order granting the Defendant a new trial was not an abuse of discretion. The Court spent significant time evaluating the Defendant's motion; as well as conducting a thorough independent examination of the matter. The Court properly determined there existed juror misconduct as established in State v. Harris, *Id.* made a determination that said misconduct was detrimental to the Defendant in accordance with State v. Zeigler, *Id.*, and looked at possible remedies in accordance with State v. Bantan, *Id.* After completing the aforementioned steps the Court determined that it would be proper to grant the Defendant a new trial. The Courts position was defended by both law and facts and absent a showing that the Court abused its discretion that Order should not be disturbed on appeal.

Respectfully submitted,



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Lexington, South Carolina

March 23, 2011

STATE OF SOUTH CAROLINA
COURT OF APPEALS
APPEAL FROM LEXINGTON COUNTY
COURT OF GENERAL SESSIONS

The Honorable G. Thomas Cooper, Circuit Court Judge

Indictments No.: 2010-GS-32-0832

The State of South Carolina Appellant,

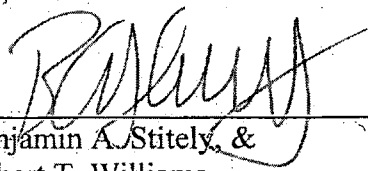
v.

Joe Lewis Butler, Jr. Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211 (b)
and the Supreme Court's Order dated August 13, 2007.

March 23, 2011



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The South Carolina Court of Appeals

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March 14, 2012

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Re: The State v. Butler, Joe Louis

Dear Counsel:

Enclosed is the opinion of the Court of Appeals in this case. Pursuant to Rule 221(b) of the South Carolina Appellate Court Rules, the remittitur in this case will be sent to the Clerk of Court for Lexington County after fifteen (15) days, exclusive of the date of filing of this opinion.

No extension for a Petition for Rehearing will be granted except in the most extraordinary circumstances and, except in the rarest cases, with seven days' notice.

Sincerely,

Tonisha E. Fuller
Administrative Assistant

SC Attorney General
RECEIVED

MAR 16 2012

Referred to Waters

Answered 3/14

RECEIVED

MAR 19 2012

STATE GRAND JURY-
PROS SECTION

TAG/tf

cc: The Honorable G. Thomas Cooper, Jr.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Appellant,

v.

Joe Louis Butler, Jr.,

Respondent.

Appeal From Lexington County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-187
 Heard February 15, 2012 – Filed March 14, 2012

AFFIRMED

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General S. Creighton Waters, all of Columbia; and Solicitor Donald V. Myers, of Lexington, for Appellant.

Benjamin Allen Stitely and Robert T. Williams, Sr.,
both of Lexington, for Respondent.

PER CURIAM: The State appeals the ruling of the trial court granting Joe Louis Butler, Jr. a new trial following his conviction for lewd act on a minor. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Bantan, 387 S.C. 412, 417, 692 S.E.2d 201, 203 (Ct. App. 2010) ("The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law."); id. at 423, 692 S.E.2d at 206 (holding that when determining whether any juror misconduct has improperly influenced the jury, the trial court is in the best position to determine the credibility of the jurors and should be granted broad deference on the issue); State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998) (holding that "[g]enerally, the determination of whether extraneous material received by a juror during the course of the trial is prejudicial is a matter for determination by the trial court").

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal From Lexington County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

STATE,

Appellant,

vs.

JOE LOUIS BUTLER, JR.,

Respondent.

Unpublished Opinion 2012-UP-187, filed March 14, 2012

PETITION FOR REHEARING

On March 14, 2012, this Court issued an opinion in which it affirmed the decision of the trial court granting Joe Louis Butler, Jr., a new trial due to juror misconduct. State v. Butler, Unpub Op. No 2012-UP-187 (S.C. Ct. App. March 14th, 2012). The State respectfully petitions for rehearing.

This Court ultimately affirmed by citing cases to the undisputable point that the trial court is in the best position to determine credibility and assess prejudice in claims of juror misconduct. However, it is respectfully submitted that reliance on this valid point misses the State's main contention that the trial court in its order committed an error of law in mechanically considering only the three specific factors specifically enumerated for consideration of juror misconduct claims in State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998) – when in fact a myriad of other factors can be relevant to the prejudice decision, and some of which are applicable here.

Kelly holds that in assessing prejudice from juror misconduct, "[r]elevant factors to be considered in determining whether outside influences have affected the jury are the number of jurors exposed, the weight of the evidence properly before the jury, and the likelihood that curative measures were effective in reducing the prejudice." However, these factors are not meant to be exhaustive and alone determinative of the issue, but the trial court applied them as such in its order granting a new trial. {R. 518}. Later cases state that the factors to be considered only "include" the three factors set forth in Kelly. See, e.g., Vestry and Church Wardens of the Church of Holy Cross v. Orkin Exterminating Co., Inc., 384 S.C. 441, 682 S.E.2d 489, 492 (2009); State v. Harris, 340 S.C. 59, 530 S.E.2d 626, 627 (2000). Indeed, in State v. Wasson, 299 S.C. 508, 386 S.E.2d 255 (1989), the Court noted that "each case must turn on its special facts".

Accordingly, cases addressing this issue have turned on a number of different points that are not encompassed by the Kelly factors. See Vestry, *supra* (juror's outside information was similar to that from trial, and jurors laughed off her comments); Harris, *supra* (Black's Law Dictionary not prejudicial where only one juror looked up a term and it was substantially the same as the charge, and the jury deliberated for an extensive time); State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (2004) (no prejudice from overhearing threat from defendant's table in restaurant, where any prejudice is lessened because it came from someone other than defendant, and there was a general charge on impartiality); State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010) (finding no prejudice in part because overheard comment was generally negative to law enforcement); Aakjer v. Spagnoli, 291 S.C. 165, 171-72, 352 S.E.2d 503, 507-08 (Ct. App. 1987) (no showing of

prejudice, even if jurors realized case had been tried before, they had no way of knowing who prevailed).

Thus, the Kelly factors do not completely answer the question posed to the trial court in assessing prejudice, which is ultimately whether the jury's verdict as a whole was "actually influence[d]" by the misconduct. See Vestry, 682 S.E.2d at 493. As will be seen, the trial court here mechanically considered only the Kelly factors and thus committed an error of law in failing to also consider all of the relevant factors and the "special facts" of this case. Obviously, an error of law as to the appropriate legal framework to be applied to an issue would amount to a reversible abuse of discretion. Kelly.

The first and perhaps best example of an error of law from the trial court's mechanical consideration of just the enumerated Kelly factors occurred when the court concluded it needed some caselaw on point before it could consider the fact that the juror at issue acquitted Butler on the more serious charge. The solicitor had argued the fact that the juror acquitted on the more severe charge showed she was not prejudiced {R. 493}; however, the trial court flatly stated that no one had been able to find him a case on point with regard to whether that fact alone could indicate that she was not prejudiced by the information she "googled". {R. 507}.

However, the law is clear that such a factor can and should be considered in assessing prejudice. See State v. Galbreath, 359 S.C. 398, 597 S.E.2d 845 (Ct. App. 2004) (there was no prejudice from a claim that a juror withheld during voir dire a connection with the victim, given that the defendant was acquitted on one charge); U.S. v. de Cruz, 82 F.3d 856 (9th Cir. 1996) ("A verdict acquitting the defendant of some of the

charges against her is indicative of the jury's ability to weigh the evidence without prejudice.").

Second, the fact that the jury here deliberated for five hours and asked three questions is also a similar factor the judge should have considered in favor of a denial of a mistrial. {R. 340-44}. See State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000) (jury's long deliberations and questions as to the court show the jury was grappling with the issue of malice, and there is no suggestion the lone juror's use of dictionary affected the verdict).

Third, the trial court also was apparently under the mistaken opinion that since it found the juror to be in contempt of court regarding the internet research, it would be difficult for the court to then find that the verdict was not affected by the misconduct. {R. 497; 518}. However, the South Carolina Supreme Court has been clear that the mere finding of egregious behavior by a juror resulting in a finding of contempt does not then necessarily mean it is an abuse of discretion to fail to grant a new trial. See Vestry and Church Wardens of the Church of Holy Cross v. Orkin Exterminating Co., Inc., 384 S.C. 441, 682 S.E.2d 489 (2009) (reversing Court of Appeals which found it an abuse of discretion not to order a new trial when the trial court held the juror in contempt, and noting that the Court of Appeals had placed too much emphasis on the juror's improper conduct and not enough on whether this misconduct actually influenced the jury's verdict). The focus is not on the nature of the misconduct but whether the misconduct actually influenced the verdict reached by the jury. Id.

Fourth, the trial court mechanically considered the Kelly factor that there was no opportunity to give a curative instruction since the misconduct was discovered after trial –

which is, of course, an appropriate consideration. However, the court erred by not considering the related point that the jury self-corrected and self-cured any misconduct by the juror at issue. A number of jurors testified that when the juror at issue mentioned she had done some internet research, other jurors quickly told her they could not consider anything she might have discovered as it was not evidence admitted as trial. {R. 426; 438-39; 441; 453-54; 460}. No one stated she actually told them anything substantive or that it was discussed in deliberations. This sort of self-correction and honoring of the judge's instructions by the jury as a whole has been considered in assessing the ultimate decision – whether the misconduct actually influenced the verdict that was rendered by the jury. See Vestry, 682 S.E.2d at 492 (affirming trial court's finding of no effect on the verdict, where the trial court in part found the other jurors laughed off the biased juror's comments and admonished her).

Fifth, the cases are clear that the burden is on the defendant to show error and resulting prejudice from alleged juror misconduct. State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000). Here, the defense did not put in any evidence as to what exactly was available online when the juror "googled" the defendant. All we have was the testimony from Chief Oswald and Investigator Wilson, that the juror said she had looked the defendant up on the computer, and was aware there was a case in Aiken where he was acquitted even though there were semen samples. {R. 373; 380; 382-83; 406}. This information is about an acquittal is arguably beneficial to the defendant, as it is generally consistent with his defense at trial that these people were out to get him and frame him. See generally State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010) (finding no prejudice in part

because overheard comment was generally negative to law enforcement); Aakjer v. Spagnoli, 291 S.C. 165, 171-72, 352 S.E.2d 503, 507-08 (Ct. App. 1987) (no showing of prejudice, even if jurors realized case had been tried before, they had no way of knowing who prevailed).

In Vestry, the juror's conduct was far more egregious and overtly biased than the conduct here, but the Supreme Court noted the determination ultimately depends not on the nature of the misconduct but whether the misconduct "actually influence[d] the jury's verdict". Here: (1) the only information we have is that the juror was aware of a prior acquittal, which arguably benefits the defendant; (2) the jury (including the juror at issue herself) self-corrected and refused to consider the information, but instead based their verdict on the credibility of the victim; (3) the jury obviously deliberated for a long time and carefully considered the case before deciding; and (4) the jury ultimately acquitted on the more serious charge. These factors all show that the trial court committed an abuse of discretion in finding the outside research actually influenced the jury's verdict, and therefore the decision should be reversed. At a minimum, the case should be remanded to correct the error of law in the mechanical consideration of the Kelly factors, with instructions to consider all relevant factors as set forth above.

CONCLUSION

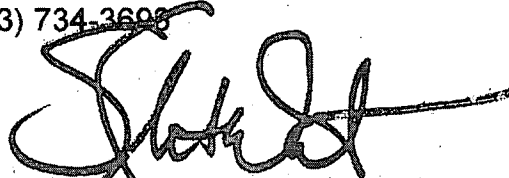
For the foregoing reasons, it is respectfully submitted that this Court should grant rehearing, withdraw the prior opinion, and reverse and/or remand.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General
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Columbia, South Carolina 29211
(803) 734-3698

A handwritten signature in dark ink, appearing to read 'S. Creighton Waters', written over a horizontal line.

S. CREIGHTON WATERS

ATTORNEYS FOR RESPONDENT.

March 22, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Lexington County
Honorable G. Thomas Cooper, Jr., Circuit Court Judge

STATE,

Appellant,

vs.

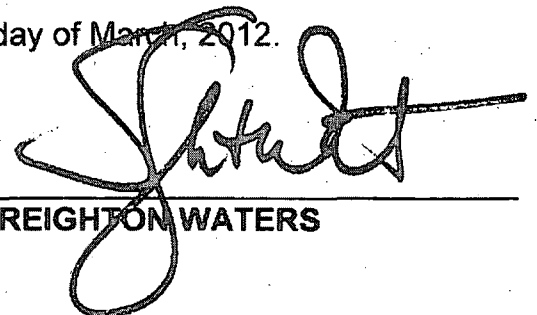
JOE LOUIS BUTLER, JR.,

Respondent.

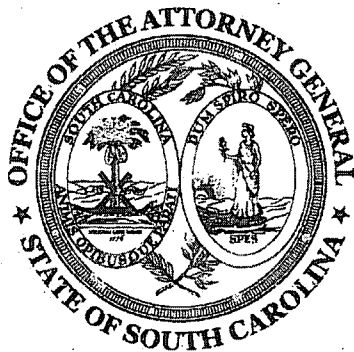
Unpublished Opinion 2012-UP-187, filed March 14, 2012

CERTIFICATE OF SERVICE

I, **S. Creighton Waters**, hereby certify that I have served the **Petition for Rehearing**, on Robert T. Williams, Esq and Benjamin Stitely, Esquire, Williams, Hendrix, Steigner and Brink, PA, PO Box 849, Lexington, SC 29071, by depositing two (2) copies in the United States Mail, postage prepaid this 23rd day of March, 2012.



S. CREIGHTON WATERS



ALAN WILSON
ATTORNEY GENERAL

March 23, 2012

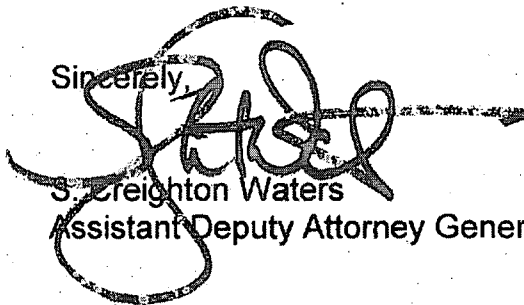
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
VIA HAND DELIVERY

Re: The State v. Joe Lewis Butler, Jr.
Appeal from Lexington County

Dear Ms. Kitchings:

Please find enclosed for filing an original and six (6) copies of the State's **Petition for Rehearing and Certificate of Service** in the above reference cased. Thank you for your attention to this matter, and of course please feel free to contact me with any questions or concerns.

Sincerely,



S. Creighton Waters
Assistant Deputy Attorney General

cc: Robert T. Williams, Esquire
Benjamin Stitely, Esquire



The South Carolina Court of Appeals

JENNY ABBOTT
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CLERK

V. CLAIRE ALLEN
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May 04, 2012

Mr. S. Creighton Waters
PO Box 11549
Columbia SC 29211

Re: The State v. Butler, Joe Louis
Appellate Case No. 2010-162906

RECEIVED

MAY 07 2012

STATE GRAND JURY-
PROS SECTION

Enclosed is a copy of an Order of the Court denying your Petition for Rehearing in the above case. The Remittitur in this case will be held in this Court only so long as required by Appellate Court Rule 221 (b).

Please notify this office, in writing, within ten (10) days from the date of this letter, whether or not you want any of the remaining Records on Appeal and briefs we may have in this case. Also enclose a check payable to the S. C. Court of Appeals, in the amount of \$7.50, to cover mailing costs. If we have not heard from you within ten (10) days, the Record on Appeal and briefs will be disposed of.

Very truly yours,

Jenny A. Kitchings

CLERK

cc: Donald V. Myers
Benjamin Allen Stitely
Robert T. Williams, Sr.

The South Carolina Court of Appeals

The State,

Appellant,

v.

Joe Louis Butler, Jr.,

Respondent.

The Honorable G. Thomas Cooper, Jr.
Lexington County
Trial Court Case No. 2010-GS-32-00083

ORDER DENYING PETITION FOR REHEARING

PER CURIAM: After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.

H. B. We J.

Paula M. Thomas J.

James E. ...

Columbia, South Carolina

cc: Attorney General Alan Wilson
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General S. Creighton Waters
Donald V. Myers, Esquire
Benjamin Allen Stitely, Esquire
Robert T. Williams, Sr., Esquire

FILED
May 4, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

G. Thomas Cooper, Circuit Court Judge

2010-GS-32-00832

STATE OF SOUTH CAROLINA,

APPELLANT,

v.

JOE LOUIS BUTLER, JR,

RESPONDENT.

REDACTED
RECORD ON APPEAL
VOLUME I of II

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ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF LEXINGTON

CIRCUIT COURT
2010-GS-32-832, 844

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 JOE LEWIS BUTLER, JR.
7 Defendant.

8
9 Heard on Wednesday, March 10, 2010

10 Thursday, March 11, 2010

11 & Friday, March 12, 2010

12 Lexington, South Carolina

13
14 BEFORE:

15 THE HONORABLE G. THOMAS COOPER

16 AND A JURY

17 APPEARANCES:

18 Counsel on Behalf of the State:

19 David M. Stumbo, Esq.

20 Rhonda patterson, Esq.

21 Counsel on Behalf of the Defendant:

22 Theo Williams, Esq.

23 Benjamin Stitely, Esq.

24 Cheri L. Young, RPR
Circuit Court Reporter
P O Box 1154
25 Aiken, SC 29802-1154

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PRETRIAL MOTIONS

1 ON WEDNESDAY, MARCH 10, 2010 AT 1:41 P.M.:

2 THE COURT: All right. This is the case of State
3 versus Joe Lewis Butler, indictments for criminal sexual
4 conduct with a minor in the first degree and lewd act upon
5 a child.

6 State ready to proceed?

7 MR. STUMBO: State is ready to proceed, Your
8 Honor.

9 THE COURT: Defense ready to proceed?

10 MR. WILLIAMS: Defense is ready to proceed, Your
11 Honor.

12 THE COURT: All right. I've been advised by the
13 State that there is at least one or more pretrial matters
14 the Court needs to consider. Mr. Stumbo, you may proceed.

15 MR. STUMBO: Thank you, Your Honor. The State's
16 first pretrial motion is in regards to a relatively new
17 statute, Section 17-23-175 South Carolina Code of Laws.

18 THE COURT: I left it on my desk so.

19 MR. STUMBO: Okay. I do have a copy of it, Your
20 Honor.

21 THE COURT: No, I don't need it. I've got it.
22 That's why I got a clerk.

23 MR. STUMBO: This statute was actually passed
24 back in 2006 as part of the sex offender accountability
25 protection.

PRETRIAL MOTIONS

1 THE COURT: Is there any objection to it?

2 MR. WILLIAMS: No, sir. It's my understanding
3 they're going to put the victim up for Cross-Examination.
4 I don't know that we have a problem with that. And he's
5 redacted the date. There was some problems on the tape
6 and I think I've seen the redactment tape.

7 MR. STUMBO: That's correct. Your Honor, the
8 only reason I was going forward, I did have my forensic
9 interviewer Mr. Olszewski, he's on my witness list. He's
10 the one that conducted the interview. I have him here.
11 If Mr. Williams is consenting to that tape being offered
12 under 17-23 --

13 THE COURT: 175.

14 MR. STUMBO: -- 175.

15 MR. WILLIAMS: Yes, sir. I think we're okay. We
16 talked about that earlier. I think we're fine with that,
17 Your Honor.

18 MR. STUMBO: I apologize. I thought I heard
19 Mr. Stitely say they object.

20 THE COURT: I think they object to something
21 else.

22 MR. STUMBO: Okay. Yes, sir. Your Honor, the
23 second motion that we'll take up and just for the record,
24 Your Honor, as to the last motion, we will be offering a
25 DVD to the jury and we plan to publish it via the media

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1 center here in the courtroom, here on the screen.

2 THE COURT: All right.

3 MR. STUMBO: Your Honor, our second motion is in
4 regards to State V. Lyle. There is an incident that
5 occurred down in North Augusta's jurisdiction in Aiken
6 County involving the Defendant, Mr. Butler.

7 And a victim who at the time was six years old,
8 her name was minorB [redacted] This case was actually tried
9 Your Honor, in Aiken about a year ago. And Mr. Butler --
10 the jury returned verdicts of not guilty in that trial.

11 THE COURT: Plural? You said verdicts, plural?

12 MR. STUMBO: Yes, sir. I believe they had called
13 him for CSC and a lewd act. And Mr. Williams can correct
14 me.

15 MR. WILLIAMS: That's correct.

16 MR. STUMBO: That was my understanding. And the
17 jury did come back with verdicts of not guilty as to the
18 offenses.

19 Your Honor, the State did send some case law to
20 your law clerk, Your Honor, about an hour ago. The State
21 would rely on State V. Wallace which is, I didn't have the
22 West law cite, Your Honor, but it was in the advance
23 sheets as opinion number 26-706. It was decided in August
24 of 2009.

25 And also State V Hubner or Hubener which is a

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Richland County case. The opinion number on that is 26-704. That was also decided August 17th, 2009.

And, Your Honor, we would also rely on State V. Mathis, 359 SC 450. That's a Court of Appeals case from 2004.

Your Honor, it's my intention to proffer the testimony of minorB and her mother, Tameka Bussey, as well as the sexual assault nurse that examined her, Ms. Sylvia Scott, who did the sexual assault kit in this case. I will proffer those witnesses as part of our hearing under 404-B and then we would like to make our argument after we proffer the testimony, Your Honor.

THE COURT: What are the names again?

MR. STUMBO: The names are minorB [redacted] [redacted]
[redacted] [redacted] [redacted] [redacted] [redacted] Tameka Bussey,
E. K. A. Bussey, B. U. S. S. E. Y. and Sylvia
S. Y. L. V. I A., last name Scott.

THE COURT: Why don't you flesh that out a little bit. Give me the facts of that case.

MR. STUMBO: Okay, Your Honor. Basically in the North Augusta --

THE COURT: What makes it --

MR. STUMBO: The North Augusta case, Your Honor, involves a six-year-old girl. Her name's minorB | The incident occurs at a cookout with family and friends at

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1 where the Busseys lived. Ms. Tameka Bussey, was her
2 residence down on Warmouth Road is the name of the road
3 down in North Augusta.

4 Your Honor, minorB is out in the yard playing
5 with a young boy who's about her age. She was six at the
6 time. And Mr. Butler is there with some other friends. I
7 don't believe they're good friends with the Busseys but
8 he's there with some common friends. They're there for
9 this cookout.

10 Mr. Butler's Suburban, he had a Suburban and it
11 was parked outside of the house. He, according to
12 minorB she says that Joe asked her to hide behind his
13 truck. She goes there and when he comes around to meet
14 her, he opens up the doors of the back of Suburban. It's
15 one that has the double doors on the back. And places her
16 inside the Suburban and sexually assaults her at that
17 time, Your Honor.

18 minorB alleges that he puts her up there, lifts
19 up her skirt and he ultimately sticks his pee-pee inside
20 of her is the way she describes it, Judge. At some point
21 another individual comes around to the side of the truck
22 and sees -- and Mr. Butler meets him and this witness sees
23 minorB come around the opposite side of the truck crying.

24 Ultimately Mr. Butler follows her inside the
25 house with minorB in tears. And the females, adult

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1 females who are there, Ms. Bussey, her mother, was gone to
2 the store at the time, grocery store, and her cousin who's
3 another Bussey was there at the time and asked,
4 essentially asks minorB what happened. She discloses to
5 her mother's cousin. When her mother gets home, she
6 disclosed to her. Mr. Butler leaves very quickly once
7 this begins to happen. He gets in his car and leaves.

8 Ultimately, Your Honor, when the mother returns
9 the child minorB discloses to her mother, Tameka. They
10 take her to the police station in North Augusta pretty
11 much right away. They get to the police station, Judge,
12 and the police officers take a report and then suggest
13 that she go straight to the hospital.

14 So she goes to the emergency room in Aiken
15 Regional Medical Center. There she is seen by Ms. Sylvia
16 Scott who is, who's retired now, Your Honor, but at the
17 time was the same nurse there at Aiken, the sexual assault
18 nurse.

19 Ms. Scott exams [REDACTED] (sic), takes -- does a
20 complete sexual assault kit.

21 THE COURT: I don't care so much about -- that's
22 not 404 evidence, I don't believe, in terms of what
23 happened afterwards. The question is what is, what gives
24 you a basis for claiming this is a common scheme or plan
25 under 404-B?

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1 MR. STUMBO: Okay. Your Honor, well I'll move to
2 the incident at hand. I indicated Ms. Scott will testify
3 as a proffer just to get past the clear and convincing
4 standard, Your Honor. That's why we would call her to
5 meet that threshold.

6 But as far as the similarities, Your Honor, we
7 have several things that are at issue here. And we would
8 cite State V. Wallace which is a recent case that was
9 decided by the State Supreme Court which gave some
10 guidance to this area of common scheme or plan.

11 Those factors are laid out in the Wallace case,
12 Your Honor. I believe we had several factors here that
13 are cited in Wallace. And, Your Honor, just to clarify
14 that. I believe there is five factors that they are say
15 are not -- that they're set out merely for guidance for
16 Your Honor. Obviously it's in Your Honor's discretion
17 whether something comes, a prior bad act comes in or a
18 subsequent bad act comes in under State V. Lyle but it's
19 guidance for the Court as to whether there's a sufficient
20 similarity to make that evidence probative in this
21 particular case and admissible under State V. Lyle.

22 Your Honor, the five factors that are laid out in
23 the Wallace are the following: The age of the victim when
24 the abuse occurred is number one; number two, the
25 relationship between the victim and the perpetrator;

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1 number three, the location where the abuse occurred;
2 number four, the use of coercion or threats; and five, the
3 manner of the occurrence. For example, the type of sexual
4 battery.

5 Your Honor, the circumstances surrounding the two
6 cases are very similar. [REDACTED] the victim in our case here
7 in Lexington alleges that Mr. Butler molested her in his
8 Suburban which is outside the house at a gathering --

9 THE COURT: How old is [REDACTED]

10 MR. STUMBO: [REDACTED] is nine years old, Your Honor.
11 And we would argue, Your Honor --

12 THE COURT: How do you spell that?

13 MR. STUMBO: [REDACTED] Her name is [REDACTED]

14 [REDACTED]
15 [REDACTED] was nine years old, Your Honor, at the time
16 the incident. She's 13 today. She will testify here at
17 this trial. What [REDACTED] alleges, Judge, is that the
18 incident is this: They're at a birthday party at her
19 cousin's house.

20 THE COURT: This is five years ago; right?

21 MR. STUMBO: About four years ago, Your Honor.
22 It's in 2005. About four and a half years ago. October
23 of '05.

24 THE COURT: Okay. When was the arrest warrant?

25 MR. STUMBO: It was March or, excuse me, April of

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1 2006. She actually discloses this incident, Your Honor,
2 after Mr. Butler's arrested for the North Augusta
3 incident. She doesn't disclose --

4 THE COURT: How does she know that?

5 MR. STUMBO: Her mother. She didn't know about
6 it, Judge. Her mother asks her when she found out that
7 Joe had been arrested.

8 THE COURT: How does he mother know Joe was
9 arrested?

10 MR. STUMBO: Through connection of family and
11 friends, Your Honor. She finds out Joe had been arrested
12 in Aiken for a sexual abuse. When she finds this out,
13 realizing that Joe had been with [REDACTED] you know, in family
14 gatherings on previous occasions, she asks [REDACTED] did Joe
15 ever do anything to you. That's when she discloses this
16 incident that occurred at her cousin's birthday party back
17 in 2005.

18 THE COURT: Now, what's the mother's name?

19 MR. STUMBO: The mother's name is Monica.

20 THE COURT: Creech?

21 MR. STUMBO: Monica Creech. Yes, sir.

22 THE COURT: Now is Monica -- what's the
23 relationship between Monica and the Defendant?

24 MR. STUMBO: There is no relationship, Your
25 Honor. Monica's married, still married to [REDACTED] father,

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1 Gabreal, I believe even today to my understanding. Joe
2 was over there because his daughter is minorC who's
3 birthday it was. They were there for minorC birthday
4 party. minorC is Monica or excuse me. minorC is [REDACTED]
5 cousin. So [REDACTED] and her mother Monica are not related to
6 Mr. Butler.

7 THE COURT: Well, then how are the children
8 related?

9 MR. STUMBO: By blood, but I believe minorC --
10 this is very confusing, Your Honor, but minorC mother
11 and Joe obviously had her. minorC mother is related to
12 Monica, is their cousin. So, minorC who is Joe's
13 daughter. So they're related by marriage, Your Honor.
14 There's no blood relation between the two. They were
15 closer to minorC They were over there for her birthday
16 party and Joe happened to be there. So it's
17 essentially --

18 THE COURT: He's the father; right?

19 MR. STUMBO: minorC father; correct?

20 THE COURT: Yeah.

21 MR. STUMBO: minorC first cousins with [REDACTED]

22 So they are at this birthday party, Your Honor.

23 [REDACTED] alleges that Joe comes out of the house and she's in
24 the truck with minorC. There are a bunch of presents
25 stacked up in the middle seat. They're in the middle seat

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1 of the Suburban. And in between the two seats there is a
2 bunch of presents stacked up. minorC is on one side.
3 [REDACTED] is on the other.

4 Joe's at the time listening to loud music in the
5 vehicle. What [REDACTED] says happens, Joe comes around her
6 side of the car. She's on the passenger side in the
7 middle seat. Joe opens the door, and he puts his hand up
8 her shorts and digitally penetrates her at the time.

9 THE COURT: With his own daughter sitting in the
10 car right next to her?

11 MR. STUMBO: That's correct, Your Honor. She's
12 sitting on the other side of these presents. What [REDACTED]
13 says is she says stop Joe.

14 THE COURT: How old was [REDACTED] I mean, how old
15 was minorC

16 MR. STUMBO: I'm not sure her exact age.

17 THE COURT: I mean, are they both young girls?

18 MR. STUMBO: They are, Your Honor. [REDACTED] was nine
19 at the time and I believe they were close to the same age.

20 Judge, [REDACTED] says that minorC puts or excuse me
21 that Joe puts his hands up her shorts and digitally
22 penetrates her. She says stop Joe --

23 THE COURT: minorC

24 MR. STUMBO: At that time minorC says, why did
25 you say that. And at that time Joe stops what he's doing

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1 and the incident ends.

2 She walks into the house. She says she goes to
3 the bathroom and ultimately comes out and sits in her
4 father's lap. He's inside the house and she doesn't
5 disclose the incident at the time.

6 Her mother asks her later why didn't you disclose
7 this, [REDACTED] She says because I was scared nobody would
8 believe me.

9 Judge, she carries this around with her until
10 March, later on in 2006 which is about, by my count, about
11 five to six months later. And her mother asks her, did
12 Joe ever do anything, did he ever touch you or do
13 anything. And she breaks down crying and says, yes, yes,
14 he did and describes this incident for her mother.

15 Judge, we believe, the State's position here is
16 the similarities are strong particularly in light of the
17 factors that Wallace lays out. The ages are six in North
18 Augusta and nine for [REDACTED] here in Lexington.

19 Your Honor, it's not the exact same age but we
20 would submit that's a very close age range. They're
21 pre-pubescent girls but they're not babies, they're not
22 toddlers. They're within this range where they're not yet
23 teenagers they still are pre-puberty and so the ages we
24 believe under the factors here in Wallace are very
25 similar.

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1 The relationship between both victims and Joe
2 Butler is similar. I believe [REDACTED] relationship was
3 somewhat closer because she's cousins with minorC whose
4 father is Joe. So there is some family connection there
5 between the two.

6 The other case, Joe comes to the party. There's
7 some family connections at this cookout in North Augusta.
8 But Joe is really the posture in that case of a family
9 friend.

10 But there's really a distant relationship with
11 both. There's no custodial relationship. Both victims
12 will testify that they really had not been around Joe plus
13 minorB I don't believe had ever been around Joe before
14 this incident. And I believe [REDACTED] will testify, Your
15 Honor, in this court she was around Joe very little.

16 There's no relationship necessarily between
17 minorB in Aiken and [REDACTED] here. The only relation I can
18 see, the only reason they know each other, Judge, is
19 minorB mother went to high school with [REDACTED] father.
20 And so, these folks know each other through somewhat
21 distant relationships.

22 Ms. Creech finds out that Joe had been, obviously
23 through their family connection because he was minorC
24 father, finds out that he's charged with this offense in
25 Aiken. When she finds that out, her knowing that [REDACTED] at

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1 times had been around Joe at these family events, goes and
2 asks her if he had ever done anything to her. And
3 immediately, Your Honor, the testimony is going to be that
4 immediately she breaks down and cries and tells this story
5 to her mother.

6 Judge, I believe that ages are similar. I
7 believe the one real similarity here which I think is more
8 important than any is the way in which he carried this
9 out. He uses his Suburban.

10 Judge, I would cite the State V. Cheeseborough
11 case which I believe Judge McMahon when he was a
12 prosecutor tried over in Richland County. That was an old
13 murder case. That was a cold case that he tried. There
14 the court held that there was a prior incident involving
15 the same gun. And they indicated that that was a -- that
16 demonstrated identity as to -- the fact that the
17 instrumentality of both crimes was the same weapon.

18 THE COURT: Plus they didn't have the weapon.

19 MR. STUMBO: What's that, Your Honor?

20 THE COURT: Of course they didn't have the
21 weapon. They lost it.

22 MR. STUMBO: That's correct, Your Honor.

23 There's another case that was just decided last
24 year which cites State V. Cheeseborough as the same point,
25 Your Honor. And that's State V. Stokes. I can give that

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1 you cite. It's 381 SC 390. That's a 2009 case. It's a
2 similar case to Cheeseborough in that you have violent
3 crimes involving a firearm in both cases.

4 The case that was offered under State V. Lyle was
5 a case that involved the same gun as was used in the
6 principal offense and the court there found that that was
7 admissible under State V. Lyle to show identity.

8 Your Honor, I think the same is true in this case
9 because the Suburban is really, if you use the analogy
10 here to Stokes and Cheeseborough is like the gun in those
11 cases. Here it's the instrumentality by which Mr. Butler
12 was able to pull off his crime. He gets these little
13 girls isolated in his vehicle where he can essentially do
14 what he wants to in his vehicle. And there's less
15 interference from any adults that might be around at these
16 family gatherings and he can do what he's going to do.

17 Your Honor, I believe the fact that we have the
18 same vehicle in both is very important, if we follow the
19 logic of Cheeseborough and of Stokes.

20 Judge, I think another similarity here is what
21 we're going to hear from both victims is that Joe is
22 essentially coming around and standing outside the car to
23 get them into the car and carry out the sexual assaults.

24 In the case of minorB he picks her -- she's
25 going to describe that he picks her up and puts her in the

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1 back of Suburban and sexually assaults her essentially
2 outside of the car with her sitting on the back of the
3 car.

4 THE COURT: That was penile penetration --

5 MR. STUMBO: That's correct, Your Honor.

6 THE COURT: -- is what you told me? Go ahead.

7 MR. STUMBO: And in this case what [REDACTED] describes
8 is him coming around to the open car door where she's in
9 the car and puts his hand up her shorts in order to put
10 his fingers in her vagina. And he's standing outside the
11 car door when he does that, Your Honor.

12 And I believe the crimes look very similar in
13 nature as to specifics, Your Honor. The case law seems to
14 say that, and this is from State V. Timmons, that there
15 has to be more than just a generalized similarity. So in
16 other words, we can't bring something in on Joe just
17 because it's a lewd act or it's some kind of sexual
18 assault on a child.

19 Here we have very specific instances that
20 corroborate or will corroborate [REDACTED] testimony, Your
21 Honor. And they will strongly corroborate her testimony
22 that this occurred in Joe's Suburban which both witnesses
23 will be able to identify via pictures. And that he
24 essentially isolated them on -- in [REDACTED] case "minorC" on
25 the other side of the car with a wall of presents

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1 separating them. And in the other case minorB isolated
2 by herself, Judge.

3 And he's able to commit these crimes, Your Honor,
4 using the same vehicle, using the same mode of operation.
5 And ultimately it was on girls that are very similar in
6 age and appearance. We have a nine year old and a six
7 year old.

8 I believe under the Wallace factors, Your Honor,
9 it says in factor five, the manner of occurrence. It
10 says, for example, the type of sexual battery. Here
11 there's penile penetration and digital penetration.
12 There's a difference between those two, Your Honor, but I
13 would submit that the charge under the law is the exact
14 same, whether he penetrates with his penis or with his
15 hands it's still criminal sexual conduct with a minor in
16 the first degree.

17 The circumstances surrounding the penetration,
18 Your Honor, is what we believe to be similar. Under State
19 V. Wallace, Your Honor, we would stand on those. Wallace,
20 Huber, that line of cases to have the Aiken incident
21 admitted under State V. Lyle.

22 THE COURT: What's the effect of the acquittal in
23 Aiken County?

24 MR. STUMBO: Your Honor, I believe the standard
25 here under State V. Wilson is that we prove to the Court

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1 by clear and convincing evidence. We believe we have the
2 witnesses to do that for Your Honor's -- to be able to
3 review their testimony. And we believe we can prove that
4 this occurred to minorB by clear and convincing evidence.

5 THE COURT: That doesn't answer my question.
6 What is the effect of an acquittal in the prior case? Is
7 that not of some significance?

8 MR. STUMBO: I think it is, Your Honor. And I
9 have no problem with the jury being told by Mr. Williams
10 via argument or via cross-examination that there was an
11 acquittal. But I think legally the standard is different
12 and just because he was acquitted by a jury under a
13 reasonable doubt standard in Aiken doesn't mean that we
14 can't offer that.

15 Because, really, what the case law says it's
16 not -- what Wilson would say it's prior bad acts not
17 resulting in a conviction. And that's what we have here.
18 The fact that he was tried and acquitted, Your Honor,
19 doesn't necessarily under the law mean that we can't bring
20 it up later under clear and convincing.

21 THE COURT: You're right. I've never seen such a
22 case, but most of the time that language refers to
23 uncharged prior bad acts.

24 MR. STUMBO: It does, Your Honor. And I think
25 this is probably a novel case. I don't know -- I've never

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1 tried one like it and I don't know of any case law out
2 there that addresses this type of situation.

3 But we believe it's fair for the jury to hear
4 that there was an acquittal on the case. We also believe
5 it's fair for them because this evidence is so probative
6 to be able to hear [minorB] story when they're
7 considering whether [REDACTED] is telling the truth or not.

8 THE COURT: Give me a 403 analysis.

9 MR. STUMBO: Judge, I would say that it is
10 extremely -- the reason why it's so prejudicial is because
11 it's so probative in this case, Your Honor.

12 [REDACTED] testimony is going to concern a sexual
13 assault in Joe's truck at a family gathering when she was
14 nine years old. The jury's going to have to decide is she
15 telling the truth about what happened that day.

16 And the fact that all of these things occurred
17 which involve Joe's truck at a family gathering to a girl
18 of this age, I believe, Your Honor, that's very important
19 for the jury to evaluate her creditability in terms of
20 whether Joe had done this kind of stuff, whether that's a
21 pattern.

22 And that's what I think the common scheme
23 exception is for, is that this evidence is so probative
24 because it goes directly to whether [REDACTED] -- and that's
25 going to be this case, Your Honor. Our case is based on

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1 [REDACTED] word and so her creditability --

2 THE COURT: Not necessarily. Your case is based
3 on what he did in the past, what you allege he did in the
4 past.

5 MR. STUMBO: That's correct, Your Honor, but --

6 THE COURT: It's extremely prejudicial.

7 MR. STUMBO: I believe it is, but I believe it's
8 also extremely probative. I think under 403 the prejudice
9 has to substantially outweigh -- if they're the same, then
10 it could be admissible but if the prejudice outweighs the
11 probative, I believe it's just as probative as prejudicial
12 in this case, Your Honor.

13 THE COURT: Tell me what it's probative of.

14 MR. STUMBO: It would be probative of [REDACTED] --

15 THE COURT: In this case.

16 MR. STUMBO: The creditability of [REDACTED] story,
17 that this occurred in Joe's truck, that it happened at a
18 family gathering. The jury is going to have to decide
19 well how likely is it that [REDACTED] is telling the truth about
20 what Joe did to her considering these instances.

21 THE COURT: Shouldn't that be determined based on
22 the facts in this case?

23 MR. STUMBO: Your Honor, primarily yes, but I
24 believe that's what common scheme and plan, that's why we
25 have that exception in Lyle basically when it's necessary

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1 to corroborate --

2 THE COURT: You think this is a signature crime
3 that this defendant engages in?

4 MR. STUMBO: Your Honor, I do. I believe that he
5 used this car two times within about six months of each
6 other to pull off this crime at these family gatherings
7 where there's kids around.

8 THE COURT: Let me hear from Mr. Williams and
9 Mr. Stitely.

10 MR. WILLIAMS: Your Honor, let's start with one
11 basic premise and that is, what the solicitor has said
12 about penile or digital penetration was never reported
13 until he was indicted this past Monday.

14 THE COURT: Wait a minute.

15 MR. WILLIAMS: Let's start with that.

16 THE COURT: Tell me what you mean by that. What
17 are you talking about?

18 MR. WILLIAMS: When the allegation first arose
19 and even when this child went to the Dickerson Center,
20 that she was asked seven times whether or not he
21 penetrated her with fingers or anything, she denies it.
22 She denies it. She denies it.

23 So you start off and I know we just heard a lot
24 about digital penetrations, but I want the Court to
25 understand this is only in the solicitor's mind as of

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1 Monday of this year (sic). It's never been reported
2 before. If you look at the warrant, Your Honor, they're
3 saying the similarities are the parties. They're saying
4 the fact that this happened at some sort of party or
5 gathering. This was never reported, never came out, was
6 never developed until Monday of this week when he was
7 indicted and the date was inserted as being --

8 THE COURT: When were the warrants?

9 MR. WILLIAMS: The warrant was issued in April of
10 2006.

11 And in the prior indictments, none of the prior
12 indictments refer to a date of August the 1st of 2005 as
13 being the date that it occurred. On the warrant which was
14 issued it says simply in the summer of 2005, between the
15 dates of May the 20th of 2005, and August the 4th of 2005.

16 THE COURT: Well, that doesn't surprise me but --

17 MR. WILLIAMS: Well --

18 THE COURT: -- what do you mean the prior
19 indictment?

20 MR. WILLIAMS: She -- he was indicted before this
21 date with an indictment which says between the dates of
22 May 20th and August 4th, 2005.

23 THE COURT: Okay. And this new indictment,
24 that's the only thing that's changed is the date?

25 MR. WILLIAMS: They picked the date.

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1 THE COURT: October 1st.

2 MR. WILLIAMS: Yes, sir. Now, Your Honor, in
3 addition besides those factors, there is a difference in
4 regards to what the evidence was in the Aiken trial and
5 the evidence that is supposed to be presented in this
6 trial. And the reason I know that is because I tried this
7 case. The case was tried on August 11th, 12th and 13th of
8 the year 2008.

9 In that particular case, the allegations were
10 that this young child was molested, sexually assaulted at
11 a vehicle. It was immediately reported to some sort of
12 adults there. She came in and said something had
13 happened. There was physical evidence that she had
14 actually been in the truck. There was a cleaning fluid
15 which was supposedly like you clean up your car or
16 something like that. And the child came in, there was the
17 aroma of this cleaning fluid. So there was immediate
18 evidence to substantiate possibly that she had been in the
19 truck.

20 Now, obviously in this particular case you're
21 waiting a year after something supposedly happens after
22 these children purportedly talked -- the families at least
23 have purportedly talked to each other and come up with
24 this story about what may have happened.

25 The thing that really bothers me is more of a due

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1 process argument, Your Honor. He's having to try that
2 case again for which he has been found not guilty. I
3 mean, that's what -- he's having to try that again. I
4 don't know if the jury --

5 THE COURT: The State said that you can tell the
6 jury that there was a non conviction in that case.

7 MR. WILLIAMS: And they're operating underneath
8 the theory of where there's smoke there's fire. And
9 that's exactly what they're trying to do. They're trying
10 to convict my client not based on a set of facts but
11 something based on the character of a person.

12 Your Honor, the case which --

13 THE COURT: Well, isn't that what 404 is?

14 MR. WILLIAMS: Well, I guess it is character.

15 THE COURT: Sure.

16 MR. WILLIAMS: But if you check out the case of
17 Consako which was Judge McMahon's case which was heard and
18 decided in May of last year. I think Mr. Stitely gave you
19 a cite on that. That actually goes through, it goes
20 through an examination of those five elements that they
21 talked about.

22 And what's interesting that the Court of Appeals
23 determined about that because when they talk about motive
24 and they talk about -- they go through it and they say,
25 well, since motive cannot be deemed to be a material issue

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1 in the trial, then it wasn't admissible to prove intent
2 because they say, well, in any sexual case gratification
3 is always a motive.

4 So it was an interesting analysis as to how they
5 looked at 403 and looked at sex cases to say that in any
6 type of sexual allegations that you would have, if it
7 included motive, if it included intent, then those two
8 factors would always be in those case. I'm sure Your
9 Honor has got that copy up there.

10 It just shouldn't apply in these types of cases.
11 You know, it would be nice if we could go back and ask the
12 jury that heard this case in Aiken whether or not they
13 made a finding as to whether or not there was a
14 preponderance of the evidence, or if they found that there
15 was not even a preponderance of the evidence. And we
16 can't do that.

17 So he's asking us really to be -- what if he had
18 been found not guilty of four times. Does that mean that
19 each and every one of these elements could -- each and
20 every one of these occasions could be introduced?

21 There's a distinction in regards to the agents as
22 he admitted. There's a distinction in regards to where
23 they occurred, meaning that -- different counties,
24 obviously. There's a distinction in regards to how it
25 occurred because supposedly one was penile penetration and

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1 up until recently there was no penetration whatsoever in
2 this particular case.

3 Your Honor, I simply would ask the Court to read
4 that Consako case that Judge McMahon was overturned on
5 because it does indeed, it appears to me it goes step by
6 step in regards to how those elements would apply in a
7 sexual offense case and whether or not they would apply in
8 this particular situation but the biggest problem is the
9 due process argument because again, he's having to try
10 himself twice.

11 And in this case, if Mr. Stumbo's case is strong
12 enough it should be able to stand based on the merits of
13 that evidence that occurred and those witnesses that are
14 available on that particular date, whatever date is chosen
15 as to whether or not there's sufficient evidence to
16 convict my client.

17 THE COURT: All right. Let me ask. Mr. Stumbo,
18 how many witnesses do you plan to call in the case in
19 chief regardless of, just leave 404 aside for a minute?

20 MR. STUMBO: Okay. The 404 issue aside, we're
21 looking at five witnesses, Your Honor.

22 THE COURT: And if I allow the Lyle evidence in,
23 how would you plan to present that?

24 MR. STUMBO: I would present it probably after
25 our victim testifies, Your Honor, in the middle of our

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1 case. There would be three witnesses that we would call,
2 possibly four.

3 THE COURT: You're talking about calling the
4 Aiken witnesses?

5 MR. STUMBO: Yes, sir. If you allow the -- allow
6 this incident in we would call those witnesses separately.

7 THE COURT: How many of those are there?

8 MR. STUMBO: Three definite, maybe four. The
9 fourth might be the detective, Detective Thornton from
10 North Augusta Public Safety. He's not here today. That's
11 a possible witness.

12 THE COURT: All right.

13 MR. STUMBO: But I'd say certainly minorB
14 Tameka, her mother and Ms. Scott, the same nurse.

15 THE COURT: Mr. Williams, what is your -- I'm
16 just trying to get a handle on time here.

17 MR. WILLIAMS: Six witnesses.

18 THE COURT: Six witnesses?

19 MR. WILLIAMS: Six witnesses.

20 THE COURT: Okay. Well, it's 2:30 now. We got a
21 jury standing outside there. I guess they're out there.
22 Can we go ahead -- let's do this. Let's draw this jury.
23 And I'll let you present, do your in-camera presentation
24 this afternoon.

25 MR. STUMBO: Okay.

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1 THE COURT: And I'll let you know in the morning
2 whether we are going to allow that testimony or not. All
3 right. Is that satisfactory?

4 MR. STUMBO: That will be fine with us.

5 MR. WILLIAMS: You're the Judge, Your Honor.
6 Anything you say is satisfactory.

7 THE COURT: Well, it's not always true.

8 MR. STUMBO: Judge, I did have that guilty plea
9 we had discussed with Ms. Fullwood.

10 Scratch that. Ms. Fullwood says her client is
11 not yet here.

12 MS. FULLWOOD: That I've yet seen.

13 MR. STUMBO: I don't want to hold this jury up
14 for that, Your Honor.

15 THE COURT: All right.

16 THE CLERK: Can we let them in now?

17 THE COURT: You got to check them in?

18 THE CLERK: Yes, sir. I need to make sure
19 they're all here before we can draw. Do you want me to go
20 out in hall and do it?

21 THE COURT: No, ma'am. I'm just trying to figure
22 out whether you need me in here.

23 THE CLERK: I'm just going to call the roll.

24 THE COURT: I'll stay in here.

25 (Jury enters courtroom at 2:20 p.m. Roll was

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1 called by the clerk and the following ensued:)

2 THE COURT: All right. Ladies and gentlemen.
3 Good afternoon. We're going into the second case of the
4 week, we're going to start this afternoon and we're going
5 to draw another criminal jury after which -- what's the
6 juror's number?

7 THE BAILIFF: 219.

8 THE CLERK: Thank you.

9 THE COURT: 219. After which we're going to draw
10 a jury for a civil case which will start tomorrow. So,
11 I'm going to go through the same basic process. You'll
12 probably hear the same questions or similar questions that
13 I asked you on Monday with regard to that case because we
14 have different lawyers and obviously different facts in
15 this case.

16 So, let me get started. As you know, in any
17 criminal case prosecuted or handled in court by our state
18 solicitor's office, and I introduced to you Solicitor
19 Myers on Monday and nobody, I will tell the attorneys that
20 nobody indicated that they knew or had any direct
21 connection with Mr. Myers or any members of the
22 solicitor's staff here in Lexington. So I'll pass over
23 that question. However, today, the trial will be
24 conducted by two assistant solicitors. They are Mr. David
25 Stumbo and Ms. Rhonda Patterson. If you'd stand and face

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1 the jury, please.

2 MR. STUMBO & MS. PATTERSON: (Complying.)

3 THE COURT: Any member of the jury panel
4 connected by marriage or employment or a close personal
5 acquaintance of either Mr. David Stumbo or Ms. Rhonda
6 Patterson? If so, please stand. Anybody know either of
7 these two attorneys?

8 And let me remind you again, ladies and
9 gentlemen, that when -- if you do answer, answer with your
10 juror number and not your juror name.

11 All right. Now, as I've said Monday, the state
12 solicitor's office works closely with law enforcement.
13 And because of that I need to ask if any member of the
14 jury panel or any member of your family is involved in law
15 enforcement. That can mean anything from the Lexington
16 City Police Department, the Lexington County Sheriff's
17 Department, the State Law Enforcement Division, Drug
18 Enforcement Agency, any military law enforcement agency,
19 any -- it could be any law enforcement agency. Any member
20 of the jury panel, please stand and we'll identify you by
21 number starting on the front row with the lady with the
22 blue dress. I mean, blue uniform. And you are juror?

23 THE JUROR: 205.

24 THE COURT: 205.

25 THE JUROR: My husband is still military police.

SELECTION OF THE JURY

1 THE COURT: All right. Ms. 205, would that fact
2 in any interfere with your ability to give both the State
3 and the Defendant a fair and impartial trial?

4 THE JUROR: No, sir.

5 THE COURT: Thank you very much. Yes, ma'am, on
6 the front row?

7 THE JUROR: 147.

8 THE COURT: 147.

9 THE JUROR: My brother is a corporal in the
10 Springdale Police Department.

11 THE COURT: Springdale?

12 THE JUROR: Yes, sir.

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

16 THE JUROR: No, sir.

17 THE COURT: Lady with the brown -- blue dress
18 on?

19 THE JUROR: 180. Retired police chief, Town of
20 Springdale.

21 THE COURT: You are?

22 THE JUROR: My father was.

23 THE COURT: Your father is. That's right. Would
24 that fact in any way interfere with your ability to give
25 both the State and the Defendant a fair and impartial

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1 trial?

2 THE JUROR: No, sir.

3 THE COURT: Gentleman with the blue shirt on?

4 THE JUROR: Number nine.

5 THE COURT: Yes, sir.

6 THE JUROR: My son-in-law is a detective with the
7 City of Lexington.

8 THE COURT: He is now?

9 THE JUROR: Yes, sir.

10 THE COURT: All right. Would that fact in any
11 way interfere with your ability to give both the State and
12 the Defendant a fair and impartial trial?

13 THE JUROR: No, sir.

14 THE COURT: Thank you very much, sir.

15 I'll take the fellow with the crutches next
16 because I don't want him standing up too long.

17 THE JUROR: 196, retired Columbia Police
18 Department.

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

22 THE JUROR: No, sir.

23 THE COURT: Blue shirt. Yes, sir?

24 THE JUROR: 179. Retired, Columbia Police
25 Department.

SELECTION OF THE JURY

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

4 THE JUROR: No, sir.

5 THE COURT: Stripe shirt?

6 THE JUROR: My brother-in-law is retired from
7 West Columbia, detective, and my sister-in-law still works
8 for West Columbia.

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

12 THE JUROR: No, Your Honor.

13 THE COURT: The lady with the black shirt on,
14 blouse?

15 THE JUROR: Juror 81. Both family and friends,
16 sheriff's, county sheriff's department.

17 THE COURT: With the Lexington County Sheriff's
18 Department?

19 THE JUROR: Yes.

20 THE COURT: Ma'am, would that fact in any way
21 interfere with your ability to give both the State and the
22 Defendant a fair and impartial trial?

23 THE JUROR: (Shakes head.)

24 THE COURT: Thank you, ma'am. Yellow shirt?

25 THE JUROR: 140.

SELECTION OF THE JURY

1 THE COURT: Yes, sir?

2 THE JUROR: My brother-in-law is DEA.

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

6 THE JUROR: No, sir.

7 THE COURT: The lady standing on the aisle.

8 THE JUROR: Juror 85.

9 THE COURT: Yes, ma'am?

10 THE JUROR: My husband is a City of Columbia
11 Police Officer. My own father was a Columbia Police
12 Officer.

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

16 THE JUROR: No, sir.

17 THE COURT: Yes, ma'am, with the black jacket.

18 THE JUROR: Number 190. My husband retired from
19 the Secret Service a/k/a Bureau of Protective Service.

20 THE COURT: Would that fact in any way interfere
21 with your ability to give both the State and the Defendant
22 a fair and impartial trial?

23 THE JUROR: No, sir.

24 THE COURT: The lady with the blue shirt on.

25 THE JUROR: Juror number 54. My father's retired

SELECTION OF THE JURY

1 Police Chief from Cayce Public Safety.

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

5 THE JUROR: No, sir.

6 THE COURT: The lady with the black sweater on.

7 THE JUROR: Juror 219, brother-in-law's a federal
8 probation officer.

9 THE COURT: Would that fact in any way interfere
10 with your ability to give both the State and the Defendant
11 a fair and impartial trial?

12 THE JUROR: No, sir.

13 THE COURT: Lady with the blue -- aqua sweater.

14 THE JUROR: 127. My son is a lieutenant at Cayce
15 Public Service.

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

19 THE JUROR: No, sir.

20 THE COURT: Yes, sir. In the black --

21 THE JUROR: Juror 42. My nephew currently serves
22 in the New York Police Department.

23 THE COURT: Would that fact in any way interfere
24 with your ability to give both the State and the Defendant
25 a fair and impartial trial?

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1 THE JUROR: No, Your Honor.

2 THE COURT: Thank you very much.

3 All right. As I said Monday -- I take that one
4 step further. Any member of the jury panel a regular
5 supporter of groups which have as their primary purpose
6 the support of law enforcement? And that could mean
7 anything from financial contributions to volunteer efforts
8 on behalf of various groups such as Mothers Against Drunk
9 Driving or Students Against Drunk Driving or Citizens
10 Against Violence, Sister Care. I even include things like
11 the Austin Wilkes Society? Any groups. Troopers
12 Association, the Sheriffs Association, any of these
13 groups that you support either with your financial support
14 or as a volunteer, any member of the jury panel?

15 Number 205. I got it. I got it.

16 THE JUROR: State and National Military Police
17 Association.

18 THE COURT: Thank you very much, ma'am. I know
19 there was a couple more. Yes, ma'am?

20 THE JUROR: 219, Troopers Association.

21 THE COURT: Troopers Association. I'm not going
22 to ask that question again. I know there was somebody
23 else that supported the Troopers Association.

24 THE CLERK: Two of them.

25 THE COURT: Oh, they are on the last jury?

SELECTION OF THE JURY

1 THE CLERK: Yes, sir.

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

3 All right. Ladies and gentlemen, the Defendant
4 in this case today is Mr. Joe Lewis Butler. Mr. Butler,
5 will you stand and face the jury?

6 THE DEFENDANT: (Complying).

7 THE COURT: Any member of the jury panel related
8 by blood, connected by marriage, employment, or close
9 personal acquaintance of Mr. Joe Lewis Butler, Jr.?
10 Anybody know Mr. Butler?

11 All right, sir. Your number, please?

12 THE JUROR: 50.

13 THE COURT: 50?

14 THE JUROR: (Nods head.)

15 THE COURT: And how do you know Mr. Butler?

16 THE JUROR: I think I worked with you at
17 Michelin, didn't I?

18 THE DEFENDANT: (Nods head.)

19 THE COURT: Worked with him where?

20 THE JUROR: Michelin Tire.

21 THE COURT: Michelin.

22 THE JUROR: We worked together for seven years.

23 THE COURT: How long ago was that?

24 THE JUROR: What, Joe, probably 10 years ago?

25 THE COURT: 10 years ago. Have you had any

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1 other -- do you have any other contact with him, either
2 social or religious or business-wise or anything like
3 that?

4 THE JUROR: No, sir.

5 THE COURT: Okay. Mr. 50, would that fact in any
6 way -- do you feel like that would interfere with your
7 ability to give both the State and the Defendant a fair
8 and impartial trial?

9 THE JUROR: I don't know, sir.

10 THE COURT: Do you think you could still be fair
11 to both parties? That's a tough question.

12 THE JUROR: That's tough. It is. I remember
13 Joe. Thought a lot of him, so I -- it could.

14 THE COURT: Okay. Thank you very much. I want
15 you to be truthful. I appreciate your candor.

16 THE JUROR: All right.

17 THE COURT: Anybody else? All right. The
18 defense counsel in this matter today, or defense counsel
19 are Mr. Robert P. Theo Williams. Practices here in
20 Lexington and Mr. Ben Stitely -- well, he stepped out.

21 MR. WILLIAMS: Your Honor, he is at another
22 hearing but he will be joining me sometime.

23 THE COURT: Any member of the jury panel related
24 by blood, connected by marriage or employment or close
25 personal acquaintance with Mr. Robert Theo Williams or

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1 Mr. Benjamin Stitely or perhaps have been represented by
2 him or a member of his firm in the past or at the
3 present? Any member of the jury panel have any connection
4 with -- what's the name of the firm, Mr. Williams?

5 MR. WILLIAMS: Your Honor, it's Williams
6 Hendricks Steigner -- I forgot one. Williams, Hendricks
7 Steigner and Brinker.

8 THE COURT: Any member of the jury panel? Yes,
9 sir. Your number, please?

10 THE JUROR: 184.

11 THE COURT: 184. And how do you know --

12 THE JUROR: Mr. Williams --

13 THE COURT: You don't have to tell me what it
14 was.

15 THE JUROR: Well, I mean, he was on -- he was on
16 the defense.

17 THE COURT: In a case that you were involved in
18 or a member of your family?

19 THE JUROR: Yeah, family. And I was acquitted.

20 THE COURT: Do you think you can be fair and
21 impartial?

22 THE JUROR: I still harbor a lot of hurt.

23 THE COURT: All right. I appreciate you being
24 truthful, sir.

25 THE JUROR: Yeah.

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1 THE COURT: Thank you very much. Yes, ma'am?

2 THE JUROR: Juror 14.

3 THE COURT: Yes, ma'am.

4 THE JUROR: Carol Steigner represented me in my
5 divorce.

6 THE COURT: Do you think you could be fair and
7 impartial and listen to this case?

8 THE JUROR: I believe so.

9 THE COURT: Thank you very much, ma'am. I'm
10 sorry, what was your number again?

11 THE JUROR: 14.

12 THE COURT: 14. All right.

13 Ladies and gentlemen, I'm going to read to you
14 the indictments in this case. As I told you Monday, what
15 I hold in my hand are indictments. These are merely the
16 documents, the formal legal documents by which a case is
17 brought into court. They're not evidence of anything.

18 You're not to assume or presume anything by the
19 fact that I read these to you that the Defendant has any
20 connection with these cases other than the fact that he's
21 charged. As I instructed you on Monday, any individual,
22 any defendant brought before the Court by way of
23 indictment is presumed innocent until proven guilty by a,
24 to a jury of his peers beyond a reasonable doubt.

25 So you're not to assume anything about the

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1 allegations that are contained in this indictment but I
2 need to read them to you because I need to know if you
3 know anything about it or have any preconceived notions
4 about the charges in this case.

5 And we went through that as you know, on Monday
6 that dealt with drugs. A drug case. This is not a drug
7 case.

8 All right. The Defendant in the first indictment
9 is charged with criminal sexual conduct with a minor in
10 the first degree. The indictment reads: Joe Lewis Butler
11 did in Lexington County, South Carolina, on or about
12 October 1st, 2005, October 1st, 2005, commit a sexual
13 battery upon a minor who was less than 11 years old at
14 that time in that the Defendant penetrated the victim's
15 vagina with his fingers while in the Defendant's vehicle
16 in violation of the laws of the State of South Carolina.

17 That's the first indictment.

18 The second indictment is that Joe Lewis Butler
19 did in Lexington County on or about October 5th -- 1st,
20 2005, same date, being a person over the age of 14,
21 willfully and lewdly committed or attempted a lewd or
22 lascivious act upon the body of a child under the age of
23 16 years. To wit, that means -- the child's name was [REDACTED]
24 [REDACTED] [REDACTED] with the intent of arousing, appealing to
25 or gratifying the lusts or passions or sexual desires of

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1 the person or the child. To wit, in other words, the
2 Defendant slid his hand under the victim's shorts and
3 panties and placed his finger on her private parts while
4 in the Defendant's truck.

5 Those are the two charges alleged against this
6 Defendant on the 1st day of October, 2005. And the
7 alleged person that this was done to or against was [REDACTED]

8 [REDACTED].
9 So I guess the first thing I need to ask: Is any
10 member of the jury panel related by blood, connected by
11 marriage or employment or in any way connected with [REDACTED]
12 [REDACTED]? And what's Ms. [REDACTED]'s mother's name?

13 MR. STUMBO: Monica, Your Honor.

14 THE COURT: Monica Creech. And what's the
15 father's name?

16 MR. STUMBO: Gabreal.

17 THE COURT: Gabreal Creech. Monica Creech and
18 Gabreal Creech are the parents of [REDACTED].

19 Anybody know this family, have any connection
20 with this family one way or the other?

21 (No response.)

22 All right. Now, I'm going to ask you a series of
23 three questions. These questions may be hard, in other
24 words, for you to answer.

25 If you would prefer, if you -- and I need for you

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1 to answer if any of these questions apply to you. If you
2 would prefer, I will allow you to come forward and speak
3 to me here at the bench privately so you don't have to
4 stand and talk about this type of activity in front of
5 your fellow jurors because it's sensitive. I know that.
6 We don't want to embarrass anybody but things happen. And
7 I realize that, too.

8 Has any member of the jury panel ever been a
9 victim or had a close personal relationship with a person
10 who had been a victim of sexual abuse or sexual assault?
11 Do you want to come forward? Counsel, you can approach.

12 THE BAILIFF: 205, Your Honor.

13 (Juror conferring with Judge.)

14 THE BAILIFF: 242, Your Honor,

15 (Juror conferring with Judge.)

16 THE BAILIFF: 204, Your Honor,

17 (Juror conferring with Judge.)

18 THE BAILIFF: 54, Your Honor.

19 (Juror conferring with Judge.)

20 THE BAILIFF: 38, Your Honor.

21 (Juror conferring with Judge.)

22 THE BAILIFF: 129, Your Honor,

23 (Juror conferring with Judge.)

24 THE BAILIFF: 167, Your Honor.

25 THE JUROR: About a year ago my daughter was

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1 stalked and somebody got indecent exposure at Food Lion in
2 Lexington, prior sex offender.

3 THE BAILIFF: 145, Your Honor.

4 (Juror conferring with Judge.)

5 THE BAILIFF: 23, Your Honor.

6 (Juror conferring with Judge.)

7 THE BAILIFF: 219 Your Honor.

8 (Juror conferring with Judge.)

9 THE BAILIFF: 72, Your Honor.

10 (Juror conferring with Judge.)

11 THE BAILIFF: 184 Your Honor.

12 (Juror conferring with Judge.)

13 THE BAILIFF: 186 Your Honor.

14 (Juror conferring with Judge.)

15 THE COURT: All right. Ladies and gentlemen,
16 that question I asked about victims. The next question is
17 the opposite of that.

18 Has any member of the jury panel or anyone with
19 whom you have a close personal relationship ever been
20 accused of or charged with or convicted of a sexually-
21 related offense? I don't mean in the sense of accused of,
22 I don't mean just verbal bantering, but any member of the
23 jury panel or any member of your family or a close
24 personal relationship been accused of or charged with or
25 convicted of a sexually-related assault? Come on up.

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1 THE BAILIFF: 204, Your Honor.

2 THE BAILIFF: Number 73, Your Honor.

3 (Juror conferring with Judge.)

4 THE COURT: 43?

5 THE BAILIFF: 73.

6 THE BAILIFF: Number 110, Your Honor.

7 (Juror conferring with Judge.)

8 THE COURT: All right. One more question. I
9 told you I'd give you three. Any member of the jury panel
10 have any background or specialized training in the fields
11 of child psychology or family counseling? Any member of
12 the jury panel have any background or specialized training
13 in the fields of child psychology or family counseling?

14 Now, I think I can just take this one by the
15 numbers. 205, what was your training?

16 THE JUROR: 205. I'm a nurse and I've been
17 trained to do sexual assault exams on adults and children.

18 THE COURT: All right.

19 THE JUROR: And I've conducted several.

20 THE COURT: And you what?

21 THE JUROR: And I've conducted several exams in
22 Lexington County.

23 THE COURT: In Lexington County?

24 THE JUROR: Yes, sir.

25 THE COURT: Once again, do you think you can

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1 still be fair and impartial, ma'am?

2 THE JUROR: Yes, sir.

3 THE COURT: The lady with the green?

4 THE JUROR: 180.

5 THE COURT: 180?

6 THE JUROR: Uh-huh.

7 THE COURT: Yes, ma'am.

8 THE JUROR: I'm secretary for special education
9 in our school system and I work with a psychologist.
10 That's been my position for 18 years.

11 THE COURT: Everybody hear that? Do you still
12 think you can be fair and impartial, ma'am?

13 THE JUROR: Yes, sir.

14 THE COURT: The lady with the gray sweater?

15 THE JUROR: Juror 72. I'm a registered nurse.
16 My field of practice is psychiatric and substance abuse
17 treatment and it has been for the last 14 years.

18 THE COURT: Do you feel you can be fair and
19 impartial, ma'am?

20 THE JUROR: Yes, sir.

21 THE COURT: The lady with the --

22 THE JUROR: 38.

23 THE COURT: 38.

24 THE JUROR: Three Rivers Behavioral (inaudible).

25 THE COURT: Can you be fair and impartial in this

SELECTION OF THE JURY

1 case, ma'am?

2 THE JUROR: Yes.

3 THE COURT: All right. The lady with the green-
4 blue sweater.

5 THE JUROR: 122, sir. Pediatric nurse for the
6 last 12 years. I'm employed -- I have definite pediatric
7 training.

8 THE COURT: Do you feel you can be fair and
9 impartial in this case?

10 THE JUROR: I'll weigh everything before I make a
11 decision.

12 THE COURT: Thank you very much, Ms. 122. Yes,
13 ma'am?

14 THE JUROR: 152. I work with the Department of
15 Social Services. Treatment worker here in Lexington
16 County and we work with sexual abuse cases and we have to
17 work with forensic interviewers and such.

18 THE COURT: Do you feel like you can be fair and
19 impartial, ma'am?

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you very much.

22 All right. Ladies and gentlemen, I'm going to
23 call out a list of potential witnesses in this case. Some
24 may testify. Some may not testify. But I need to know if
25 you know any of these witnesses.

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1 Chief Wallace Oswald. If any of these witnesses
2 are present, please stand so the jury can identify you.
3 Chief Wallace Oswald with Batesburg-Leesville Police
4 Department. Anybody know Chief Oswald? Number please?
5 You're first up.

6 THE JUROR: 179.

7 THE COURT: Yes, sir. How do you know Chief
8 Oswald?

9 THE JUROR: I manage a property complex in
10 Batesburg. He's probably come out there, not socializing
11 but do business with him.

12 THE COURT: All right, sir. Do you still think
13 you can be fair and impartial in this case?

14 THE JUROR: Yes, sir.

15 THE COURT: Yes, sir?

16 THE JUROR: Number 50.

17 THE COURT: 50?

18 THE JUROR: Right.

19 THE COURT: Yes, sir.

20 THE JUROR: I go to church with him at Crossroads
21 Baptist.

22 THE COURT: You know him from?

23 THE JUROR: Church.

24 THE COURT: Is that the only way you know him? I
25 mean, only connection with him?

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1 THE JUROR: No.

2 THE COURT: No other connection?

3 THE JUROR: No. No, sir.

4 THE COURT: All right. Thank you very much,
5 sir. Yes, ma'am?

6 THE JUROR: Juror 101. I'm from Leesville so
7 he's fairly well known and I know him but otherwise, no.

8 THE COURT: Lady with the red.

9 THE JUROR: 87. I know him from my working with
10 Wachovia Bank in Batesburg-Leesville. Banked there for 25
11 years.

12 THE COURT: All right. Thank you, ma'am. Yes,
13 ma'am?

14 THE JUROR: Juror 35. I work for District
15 Three. I clean up. And his wife, they rent a house to
16 one of my co-workers at Batesburg Primary School and I
17 clean up the house for them when they move in.

18 THE COURT: Thank you very much, ma'am.

19 Detective Tim Thornton. Raymond Olszewski with
20 the Dickerson Center for Children. [REDACTED] I
21 mentioned Ms. [REDACTED]'s name a few minutes ago. Monica
22 Creech. **minorB** Tameka Bussey. Sylvia Scott.
23 Patricia Butler. Wanda Reed. I'm sorry. I can't read
24 the next one.

25 MR. WILLIAMS: Not sure how to pronounce it,

SELECTION OF THE JURY

1 Judge. Niterriion.

2 THE COURT: Well, I'm talking about A. V. E. R.
3 C. H.

4 MR. WILLIAMS: Averaon.

5 THE COURT: Averaon Reed. Tyren Reed. Niterriion
6 Simpkins. Is that right?

7 MR. WILLIAMS: Yes, sir.

8 THE COURT: Any member of the jury panel know any
9 of these potential witnesses?

10 MR. STUMBO: Your Honor, Ms. Brackett, was she on
11 our witness list? I don't believe I heard that.

12 THE COURT: I think I skipped over it. Michelle
13 Brackett. All right.

14 Ladies and gentlemen, I've given you the names of
15 witnesses. I've introduced the parties to you, told you a
16 little bit about the nature of the case based on the
17 indictments. I need to ask one final question.

18 That is: Does any member of the jury panel know
19 of any reason why he or she could not listen to this case
20 and sit on this jury? Any member of the jury panel have
21 any reason why he or she feels they could not sit and be a
22 fair and impartial juror in this case? Any other reason
23 than the ones I've already called out?

24 (No response.)

25 Anything further from the State?

SELECTION OF THE JURY

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

2 THE COURT: From the defense?

3 MR. WILLIAMS: Nothing from the defense, Your
4 Honor.

5 THE COURT: Give us a jury please, Madam Clerk.

6 THE CLERK: Yes, sir.

7 Ladies and gentlemen of the jury, while they're
8 drawing it, we're going to follow the same process we did
9 Monday. When I call your number, come to the podium and
10 face back out until I give you the instructions.

11 (Pause.)

12 THE CLERK: Number 179.

13 THE COURT: You may proceed.

14 THE CLERK: (White male). What say for the
15 State?

16 MR. STUMBO: Please present Mr. Rogers.

17 THE CLERK: Number only.

18 MR. STUMBO: Okay.

19 MR. WILLIAMS: Please excuse Juror 179 from the
20 trial of this case.

21 THE CLERK: Thank you. Return to your seat,
22 please, sir.

23 Number 246 (Black female). What say for the
24 State?

25 MR. STUMBO: Please present Juror 246.

SELECTION OF THE JURY

1 THE CLERK: What say for the defense?

2 MR. WILLIAMS: Please swear the juror.

3 THE CLERK: Have a seat in the jury box, ma'am.

4 Number 156. Just a moment, Your Honor. I apologize, Your
5 Honor.

6 THE COURT: Keep going.

7 THE CLERK: Number 58 (White male). What say for
8 the State?

9 MR. STUMBO: Please present Juror 58.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

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

13 Number 154 (White female). What say for the State?

14 MR. STUMBO: Please present Juror 154.

15 THE CLERK: What say for the defense?

16 MR. WILLIAMS: Please swear the juror.

17 THE CLERK: Have a seat in the jury box, ma'am.

18 Number 105 (White female). What say for the State?

19 MR. STUMBO: Please present Juror 105.

20 THE CLERK: What say for the defense?

21 MR. WILLIAMS: Please excuse the juror from the
22 trial of this case.

23 THE CLERK: Please return to your seat, please,
24 ma'am. Number 73 (White female).

25 THE COURT: 73. Glad I didn't have to send the

SELECTION OF THE JURY

1 sheriff after you.

2 THE JUROR: Me, too.

3 THE CLERK: What say you for the State?

4 MR. STUMBO: Please excuse this juror from the
5 trial of this case.

6 THE CLERK: Return to your seat, please, ma'am.
7 Number 14 (White female). What say for the State?

8 MR. STUMBO: Please excuse this juror.

9 THE CLERK: Return to your seat, please, ma'am.
10 Number 66 (White male). What say for the State?

11 MR. STUMBO: Please present Juror 66.

12 THE CLERK: What say for the defense?

13 MR. WILLIAMS: Please swear the juror.

14 THE CLERK: Have a seat in the jury box, sir.

15 238 (White female.)

16 THE COURT: 238.

17 THE CLERK: What say for the State?

18 MR. STUMBO: Please excuse this juror.

19 THE CLERK: Return to your seat, please, ma'am.

20 220 (White male). What say for the State?

21 MR. STUMBO: Please present Juror 220.

22 THE CLERK: What say for the defense?

23 MR. WILLIAMS: Please swear the juror.

24 THE CLERK: Have a seat in the jury box, sir.

25 Number 176 (White male). What say for the State?

SELECTION OF THE JURY

1 MR. STUMBO: Please present Juror 176.

2 THE CLERK: What say for the defense?

3 MR. WILLIAMS: Please swear the juror.

4 THE CLERK: Have a seat in the jury box, sir.

5 143 (White male). What say for the State?

6 MR. STUMBO: Please excuse this juror.

7 THE CLERK: Return to your seat, please, sir.

8 Number 74 (White male). What say for the State?

9 MR. STUMBO: Please present this juror.

10 THE CLERK: What say for the defense?

11 MR. WILLIAMS: Please swear the juror.

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

13 167 (White female). What say for the State?

14 MR. STUMBO: Please present juror 167.

15 THE CLERK: What say for the defense?

16 MR. WILLIAMS: Please excuse the juror from the
17 trial of this case.

18 THE CLERK: Return to your seat, please, ma'am.

19 205 (White female). What say for the State?

20 MR. STUMBO: Please present Juror 205.

21 THE CLERK: What say for the defense?

22 MR. WILLIAMS: Please excuse the juror from the
23 trial of this case.

24 THE CLERK: Return to your seat, please, ma'am.

25 64 (White female). What say for the State?

SELECTION OF THE JURY

1 MR. STUMBO: Please present Juror 64.

2 THE CLERK: What say for the defense?

3 MR. WILLIAMS: Please swear the juror.

4 THE CLERK: Have a seat in the jury box, ma'am.

5 Twenty-seven (White female). What say for the State?

6 MR. STUMBO: Please present Juror 27.

7 THE CLERK: What say for defense?

8 MR. WILLIAMS: Please swear the juror.

9 THE CLERK: Have a seat in the jury box, ma'am.

10 Number four (White male). What say for the State?

11 MR. STUMBO: Please present Juror number four.

12 THE CLERK: What say for the defense?

13 MR. WILLIAMS: Please swear the juror.

14 THE CLERK: Have a seat in the jury box, sir.

15 One twenty-nine (White female). What say for the State?

16 MR. STUMBO: Please present Juror 129.

17 THE CLERK: What say for the defense?

18 MR. WILLIAMS: Please excuse the juror from the
19 trial in this case.

20 THE CLERK: Return to your seat, please, ma'am.

21 Ninety-seven (White male). What say for the State?

22 MR. STUMBO: Please present Juror Number 97.

23 THE CLERK: What say for the defense?

24 MR. WILLIAMS: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, sir.

SELECTION OF THE JURY

1 Number 18 (White female). What say for the State?

2 MR. STUMBO: Please present Juror 18.

3 THE CLERK: What say for the defense?

4 MR. WILLIAMS: Please swear the juror.

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

6 Alternates, Your Honor?

7 THE COURT: Two.

8 THE CLERK: Number 158 (White female). What say
9 for the State?

10 MR. STUMBO: Please present Juror 158.

11 THE CLERK: What say for the defense?

12 MR. WILLIAMS: Please swear the juror.

13 THE CLERK: Have a seat in the jury box, ma'am.

14 Number 42 (White male). What say for the State?

15 MR. STUMBO: Please excuse Juror 42.

16 THE CLERK: Return to your seat, please, sir.

17 Number 81 (Black female). What say for the
18 State?

19 MR. STUMBO: Please present juror 81.

20 THE CLERK: What say for the defense?

21 MR. WILLIAMS: Please excuse the juror from the
22 trial of this case.

23 THE CLERK: Please return to your seat, please,

24 ma'am. Number 147 (White female). What say for the

25 State?

SELECTION OF THE JURY

1 MR. STUMBO: Please present Juror 147.

2 THE CLERK: What say for the defense?

3 MR. WILLIAMS: Please excuse the juror from the
4 trial of this case.

5 THE CLERK: Return to your seat, please, ma'am.
6 Number 216 (White female). What say for the State?

7 MR. STUMBO: Please present Juror 216.

8 THE CLERK: What say for the defense?

9 MR. WILLIAMS: Please swear the juror.

10 THE CLERK: Have a seat in the jury box, please,
11 ma'am. That's alternate number two, Your Honor.

12 THE COURT: Any objection to jury selection
13 process from the State?

14 MR. STUMBO: Not from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. WILLIAMS: None from the defense, Your Honor.

17 THE COURT: All right. Ms. Frick?

18 THE CLERK: Yes, sir.

19 THE COURT: Let me see you.

20 (Off-the-record discussion.)

21 THE COURT: Ladies and gentlemen of the jury. As
22 the clerk may have indicated a few minutes ago, we now
23 have to draw a civil court jury. And that's going to take
24 a few minutes. There are also several matters that I need
25 to take up with these attorneys prior to the start of this

SELECTION OF THE JURY

1 case, and there's a jury in the hall that wants to come
2 back in and ask some questions.

3 So I'm going to excuse you for the day and ask
4 you to be back in the jury room at 9:30 in the morning.
5 The bailiff's going to show you where your jury room is.
6 We may have two juries out in the morning but nevertheless
7 we got plenty of room.

8 So I'm going to ask you to do several things.
9 First, I'm going to ask you not to discuss this case over
10 the evening hours with anyone, including your family.
11 It's just so easy for somebody to offer an opinion to you,
12 one way or the other and say -- I know you think it
13 doesn't happen but it does, somebody's going to say, well,
14 I think you ought to do this or I think you ought to do
15 that. So it's best just not to even bring the subject
16 up. Obviously your spouse is going to want to know where
17 you've been all day and where you're going to be
18 tomorrow. You can certainly tell them you're on a jury
19 but I'm going to ask you not to discuss the case even with
20 your spouse. I know that's hard, but I'm going to ask you
21 to do that.

22 I'm going to ask you not to discuss the case when
23 you return to the jury room in the morning because you
24 haven't heard any evidence. And as I told you, no
25 evidence has been presented in this case. You've only

SELECTION OF THE JURY

1 been read what the charges are.

2 I'm going to ask you another thing. That is,
3 when you meet in the morning, select one of your
4 members -- it cannot be the last two jurors selected
5 because they're going to be our alternates, but it can be
6 any other jurors -- to serve as foreperson of the jury.
7 That, that person will take, I guess, the seat where the
8 lady in the blue jacket is seated at the present time and
9 will maintain that seat throughout the course of the
10 trial.

11 The rest of the seats don't have any numbers on
12 them or names on them, so just sit where you're most
13 comfortable. If you have maybe a slight hearing problem
14 or something, you may want to sit on the front row. The
15 witnesses will be testifying from this witness stand. We
16 have plenty of amplification, but if you feel you'd be
17 more comfortable sitting up closer to the witness stand,
18 please feel free to do that.

19 The last thing I'm going to ask you to do is have
20 a pleasant evening. We'll see you at 9:30 in the
21 morning. Have a pleasant evening. Thank you very much.

22 (Jury exits courtroom at 3:25 p.m. Thereafter,
23 other matters were heard by the Court. The hearing of
24 this cause resumed as follows at 4:12 p.m.):

25 MR. WILLIAMS: Your Honor, we would move for

minorB - DIRECT

1 matters that much in this particular situation, but it
2 might.

3 THE COURT: All right. Well, who are the other
4 witnesses that you plan to call?

5 MR. STUMBO: It would be minorB mother who is
6 here in the courtroom and also Ms. Scott who's our nurse.
7 She's also in the courtroom.

8 THE COURT: Well, what about the victim's
9 rights?

10 MR. WILLIAMS: Your Honor, the victim I think can
11 stay in but the other young lady and her mother certainly
12 would qualify for a victim in this case.

13 THE COURT: No, I understand.

14 MR. STUMBO: We would ask the victim in our case,
15 [REDACTED] who's in the courtroom with her mother Monica, that
16 they be able to stay under the victim's rights.

17 THE COURT: Well, you can't -- I'm not going to
18 allow that. That's just -- this is not -- you can keep
19 them here during the trial of the case, obviously. But to
20 hear testimony that your victim in the case at hand is
21 going to give is just, in my opinion, too prejudicial.

22 MR. STUMBO: Okay. Your Honor,

23 (Witnesses excused from the courtroom.)

24 minorB having been duly sworn, was
25 examined and testified as follows:

minorB - DIRECT

1 THE CLERK: I need you to have a seat right up
2 there. Once you're seated, you're going to need to speak
3 up loud and clear and state your full name and spell your
4 last. Okay?

5 THE WITNESS: minorB [redacted] [redacted] [redacted] [redacted] [redacted]

6 DIRECT EXAMINATION

7 BY MS. PATTERSON:

8 Q. I need you to speak up.

9 THE COURT: Hold on a second. I don't know
10 whether it's a fire alarm or somebody went out the wrong
11 door.

12 (Pause.)

13 THE COURT: Okay. Solicitor?

14 BY MS. PATTERSON:

15 Q. minorB try to speak up just a little bit for me.
16 Okay?

17 A. Uh-huh.

18 Q. How old are you, minorB

19 A. Ten.

20 Q. Ten. And when's your birthday?

21 A. March the 8th.

22 Q. So you just had a birthday; right?

23 A. Yes.

24 Q. What school do you go to?

25 A. Ridge Spring.

minorB - DIRECT

1 Q. Do you like school?

2 A. Yeah.

3 Q. A little bit. Now, minorB do you know why you're
4 here today?

5 A. Yes.

6 Q. And why are you here?

7 THE COURT: Solicitor, approach the bench.

8 THE WITNESS: I'm scared.

9 (Off-the-record discussion.)

10 BY MS. PATTERSON:

11 Q. minorB do you know what the difference is between a
12 truth and a lie?

13 A. Yes.

14 Q. And what does telling the truth means?

15 A. That you might tell what would happen.

16 Q. And what does telling a lie mean?

17 A. That I don't tell what really happened.

18 Q. And what happens when people don't tell the truth?

19 A. They get in trouble.

20 Q. And have you talked to me before?

21 A. Yes.

22 Q. And what you told me, was that the truth?

23 A. Yes.

24 Q. And do you know why you're here today?

25 A. No, not really.

minorB - DIRECT

1 Q. Did you have to talk to the police about something
2 that happened to you?

3 A. Yes.

4 Q. Do you remember when you talked to the police about
5 that?

6 A. No.

7 Q. Was it a couple of days ago?

8 A. No.

9 Q. Was it last year?

10 A. No.

11 Q. Was it a long time ago?

12 A. Yes.

13 Q. And what did you talk to the police about?

14 A. When I got raped.

15 Q. And you say you got raped, what do you mean happened
16 to you or who did that to you?

17 A. Joe.

18 Q. And who is Joe?

19 A. That man over there (pointing.)

20 Q. What does that man look like?

21 A. He is light skin and got a beard and black hair.

22 Q. Is that the black man over there?

23 A. Yes.

24 MS. PATTERSON: Let the record reflect she's
25 referring to Joe Butler, the Defendant.

minorB - DIRECT

- 1 THE COURT: All right.
- 2 BY MS. PATTERSON:
- 3 Q. Now, minorB let's go back to that day when you say
- 4 Joe raped you. Do you remember where you were?
- 5 A. Yes.
- 6 Q. Where were you?
- 7 A. We was at our old house in North Augusta.
- 8 Q. And who lived at that house with you?
- 9 A. Just me and my mom.
- 10 Q. And do you remember what was going on that day?
- 11 A. Yes.
- 12 Q. What was going on?
- 13 A. We was having a cookout.
- 14 Q. Do you remember who was at your house?
- 15 A. Yes.
- 16 Q. Who was at your house?
- 17 A. My cousin Grovett and Troll and this boy named Jack
- 18 and my mama and Nykesha and Donald. I think that's all.
- 19 Q. And you say Grovett's your cousin?
- 20 A. Yes.
- 21 Q. How -- is she an adult or a child?
- 22 A. Adult.
- 23 Q. And was there any other kids there?
- 24 A. Yes.
- 25 Q. Who was the kids there?

minorB - DIRECT

1 A. Nykesha son.

2 Q. And what's his son?

3 A. Dajon.

4 Q. How old is Dajon or was Dajon then?

5 A. Yes.

6 Q. Do you remember? I'm sorry. How old was Dajon?

7 A. I don't know.

8 Q. Is he about your age?

9 A. He's a little older.

10 Q. He is a little older. Do you remember how old you
11 were then?

12 A. Yes.

13 Q. How old were you?

14 A. Six.

15 Q. Is Dajon a lot older than you?

16 A. No.

17 Q. And so what were you doing? Do you remember what you
18 was doing right before this incident happened?

19 A. Yes.

20 Q. What were you doing?

21 A. We was outside playing hide and seek.

22 Q. And who do you mean by we? Who all was playing?

23 A. Just me and Dajon.

24 Q. And did something happen while you were playing hide
25 and seek?

minorB - DIRECT

- 1 A. Yes.
- 2 Q. What happened?
- 3 A. Joe had told me to come behind his truck.
- 4 Q. And do you remember what Joe's truck looked like?
- 5 A. Yes.
- 6 Q. What did it look like?
- 7 A. It was a gold SUV with rims.
- 8 Q. And did you go behind his SUV?
- 9 A. Yes.
- 10 Q. And what happened when you went behind his SUV?
- 11 A. He came back there.
- 12 Q. Did he say anything to you when he came -- got back
- 13 there?
- 14 A. No.
- 15 Q. Did he do anything to you when he got back there?
- 16 A. Yes.
- 17 Q. What did he do?
- 18 A. He opened up his back doors and pulled me in the
- 19 truck.
- 20 Q. Now, how did he open up the doors?
- 21 A. He pulled them open.
- 22 Q. Do you remember how the doors were made?
- 23 A. Yes.
- 24 Q. How were they made?
- 25 A. There was two doors, split.

minorB - DIRECT

- 1 Q. You say he opened it up and put you in?
- 2 A. Yes.
- 3 Q. Did you say anything to him when he did this?
- 4 A. No.
- 5 Q. Did he say anything to you?
- 6 A. No.
- 7 Q. And what happened when he put you in the truck?
- 8 A. He pulled my skirt up and pulled my underclothes to
- 9 the side.
- 10 Q. Did you tell him to stop?
- 11 A. Not, not then.
- 12 Q. Were you afraid?
- 13 A. Yes.
- 14 Q. Did you say anything to him?
- 15 A. No, I just started crying.
- 16 Q. Did he say anything to you?
- 17 A. No.
- 18 Q. And how did he pull your underpants aside?
- 19 A. He took them and then he just pushed them to the side.
- 20 Q. So he -- what did he use? His hands?
- 21 A. Yes.
- 22 Q. Did his hands touch your --
- 23 A. No.
- 24 Q. Did he touch your private area?
- 25 A. No.

minorB

- DIRECT

- 1 Q. What did he do?
- 2 A. He put his private in mine.
- 3 Q. Did you see -- was his clothes -- was his pants down?
- 4 A. No.
- 5 Q. Did you see his private?
- 6 A. No.
- 7 Q. How do you know his private was inside of you?
- 8 A. Because it felt strange.
- 9 Q. I'm sorry. You felt what?
- 10 A. Because it felt strange.
- 11 Q. How did it feel?
- 12 A. Uncomfortable.
- 13 Q. Did it hurt?
- 14 A. Yes.
- 15 Q. Did you tell him to stop?
- 16 A. Yes.
- 17 Q. Did he stop?
- 18 A. No.
- 19 Q. How long was his private inside of your private?
- 20 Could you tell?
- 21 A. No.
- 22 Q. Did you try to get up at all?
- 23 A. No.
- 24 Q. Why not?
- 25 A. I was scared of him hurting me.

minorB - DIRECT

- 1 MS. PATTERSON: Your Honor, may I approach the
2 victim?
- 3 BY MS. PATTERSON:
- 4 Q. minorB I showed you -- are you okay? I showed
5 you -- I gave you five pictures. Will you take a look at
6 those pictures for me?
- 7 A. Yes.
- 8 Q. Do you recognize what's in that picture?
- 9 A. Yes.
- 10 Q. And what's in that picture?
- 11 A. Some cleaning products and some coolers.
- 12 Q. Now what do you see those things inside? What's that
13 a picture of?
- 14 A. His truck.
- 15 Q. Whose truck is it?
- 16 A. Joe's.
- 17 Q. Is that the truck that you -- he put you in that day?
- 18 A. Yes.
- 19 Q. Now after Joe -- where were you -- where was Joe in
20 relation to you? Was he next to you? How was he
21 positioned?
- 22 A. He was standing outside of the truck.
- 23 Q. And how were you laying?
- 24 A. On my back.
- 25 Q. Now when Joe got off you, what did you do?

minorB - DIRECT

- 1 A. That's when I got out the truck and then I went in the
2 house crying.
- 3 Q. Did anybody see you crying?
- 4 A. Yeah. When they got in the house.
- 5 Q. And who was inside the house when you got inside?
- 6 A. My cousin Grovett and Nykesha and Donald.
- 7 Q. And where did -- where did Joe go after he got off
8 you?
- 9 A. He came following behind me.
- 10 Q. And did you tell anybody what had happened?
- 11 A. Yes.
- 12 Q. Who did you tell?
- 13 A. Grovett.
- 14 Q. And did Joe say anything?
- 15 A. Yes.
- 16 Q. What did he say?
- 17 A. He was answering questions that they had asked me, and
18 --
- 19 Q. Do you remember what he said though?
- 20 A. Yes.
- 21 Q. What did he say?
- 22 A. He said that I was crying because I wanted my friend
23 to come over there.
- 24 Q. And was that true at all?
- 25 A. No.

minorB - DIRECT

- 1 Q. And why were you crying?
- 2 A. Because he had hurt me.
- 3 Q. And after you told Grovett, what happened?
- 4 A. She called my mama and told my mama to come home.
- 5 Q. Did your mom come home?
- 6 A. Yes.
- 7 Q. And did you tell your mama what happened?
- 8 A. Yes.
- 9 Q. And what did you do? What did your mom do after you
- 10 told her what happened?
- 11 A. She called the police.
- 12 Q. Did you talk to the police about what happened?
- 13 A. Yes.
- 14 Q. And did you tell them what you're telling us today?
- 15 A. Yes.
- 16 Q. And did you talk to anybody else about what happened?
- 17 A. Other than the officer, Grovett and my mama, no.
- 18 Q. Did you go to the hospital?
- 19 A. Yes.
- 20 Q. Did you talk to anybody there?
- 21 A. Not that I remember.
- 22 Q. And did you know Joe?
- 23 A. No.
- 24 Q. Do you know a little girl named [REDACTED]
- 25 A. Yes.

minorB | - CROSS

- 1 Q. [REDACTED] [REDACTED]
- 2 A. Yes.
- 3 Q. How do you know [REDACTED]
- 4 A. I seen her one time at a family reunion.
- 5 Q. Are you two close friends?
- 6 A. No.
- 7 Q. And when did you see her at that family reunion?
- 8 A. Like, when we got there, a couple minutes after we had
- 9 got there.
- 10 Q. When was the family reunion, do you remember?
- 11 A. No.
- 12 Q. Was it last week?
- 13 A. No.
- 14 Q. Last month?
- 15 A. No.
- 16 Q. From a long time ago?
- 17 A. Yes.
- 18 Q. Beg the Court's indulgence, please.
- 19 (Pause.)
- 20 Had you seen Joe before this day?
- 21 A. No.
- 22 Q. That was the first time he was at your house?
- 23 A. Yes.
- 24 Q. Thank you, minorB | Answer any questions Mr. Stitely
- 25 might have for you. Okay?

minorB - CROSS

1 A. Okay.

2 CROSS-EXAMINATION

3 BY MR. STITELY:

4 Q. Hi, Ms. minorB My name is Ben.

5 A. Hi.

6 Q. We've never met before. I just want to ask you just a
7 couple questions. When you were talking to Ms. Patterson,
8 is this the first time you've ever spoken with
9 Ms. Patterson?

10 A. No.

11 Q. How many times have you talked to her before?

12 A. Once.

13 Q. Have you talked to any of the other people seated at
14 this table right here?

15 A. Yes.

16 Q. Who did you talk to?

17 A. (Pointing). Him.

18 Q. Mr. Stumbo?

19 A. Yes.

20 Q. David is his name. Did you tell him your story pretty
21 much?

22 A. No.

23 Q. What did y'all talk about?

24 A. He just told me, like, asked me some questions.

25 Q. What kind of questions did he ask you?

minorB - CROSS

1 A. Like he asked, like, if I would be comfortable coming
2 back here and telling my side of the story, and some other
3 questions.

4 Q. Okay. But y'all didn't talk about what you just told
5 Ms. Rhonda right now?

6 A. No.

7 Q. You used the word earlier when you were talking about
8 what happened, you said it was when I was raped. Who told
9 you that word? Where did you get that word? Was that one
10 you knew back when you were six or is that one you picked
11 up since?

12 A. I picked up at six.

13 Q. Have you ever -- you talked about this case with your
14 mom, you said?

15 A. Yes.

16 Q. Have you ever heard your mom talk about this case with
17 anyone else?

18 A. Not that I remember.

19 Q. Okay. How are you -- you said you met [REDACTED] at a
20 family reunion. Do you know how y'all are related?

21 A. No.

22 Q. Do you know Monica Creech?

23 A. Yes.

24 Q. Who's Ms. Monica to you?

25 A. She is -- I had came -- I had went to a family reunion

minorB - REDIRECT

1 with my sister.

2 Q. Okay. Do you know if she's related to you somehow?

3 A. No.

4 Q. Have you ever seen her before besides at a family
5 reunion?

6 A. No.

7 Q. Have you ever seen your mom talk to Ms. Creech?

8 A. No.

9 MR. STITELY: I have no other questions, Judge.

10 THE COURT: All right. Anything else?

11 REDIRECT EXAMINATION

12 BY MS. PATTERSON:

13 Q. minorB when did you meet with me?

14 A. On yesterday.

15 Q. And Mr. David was with me?

16 A. Yes.

17 Q. And did you talk to me about what happened?

18 A. Yes.

19 Q. And where was Mr. David?

20 A. He was outside talking on the phone.

21 Q. And what you told me yesterday is what you're telling
22 us today?

23 A. Yes.

24 MS. PATTERSON: Thank you, Your Honor.

25 THE COURT: All right. The witness can come

TAMEKA BUSSEY - DIRECT

1 down.

2 MS. PATTERSON: Yes, sir. Your Honor, the State
3 calls Ms. Tameka Bussey.

4 TAMEKA BUSSEY, having been duly sworn, was
5 examined and testified as follows: clerk have a seat up
6 there, please ma'am. Once you're seated speak up loud and
7 clear. State your name, spelling your last.

8 THE WITNESS: My name Tameka Bussey, B. U. S. S.
9 E. Y.

10 DIRECT EXAMINATION

11 BY MS. PATTERSON:

12 Q. And, Ms. Bussey, do you have any children?

13 A. Yes, ma'am. I do. I have three.

14 Q. And what are their names?

15 A. Demetria, Rashad and minorB

16 Q. And how old is minorB

17 A. She's 10.

18 Q. And when is her birthday?

19 A. March 8, 2000.

20 Q. Do you remember an incident involving minorB and Joe
21 Butler?

22 A. Very well.

23 Q. Do you remember when this occurred?

24 A. Yes, ma'am.

25 Q. And when was it?

TAMEKA BUSSEY - DIRECT

1 A. March 18th.

2 Q. What year?

3 A. 2004. I can't even remember, but I think it was 2004.

4 Q. And where were you living then?

5 A. In North Augusta on Warmouth Street.

6 Q. How long had you been living at that address at that
7 time?

8 A. Probably a little over a year, year and a half.

9 Q. Do you still live there now?

10 A. No, ma'am.

11 Q. Can you describe that neighborhood a little bit for
12 me?

13 A. It was quiet. Wasn't a lot of neighbors around. It
14 was just quiet. Wasn't a lot of neighbors.

15 Q. A lot of children lived around there?

16 A. No, ma'am.

17 Q. And what was going on that day?

18 A. We was fixing to have a cookout. It was at the
19 beginning stages. People hadn't started arriving at the
20 time. I think it was probably right around four or five
21 o'clock in the afternoon. Might have been earlier, give
22 or take.

23 I left with her godfather to go get some more items
24 for the cookout. And I left her in the care of my
25 daughter friend which is Nykesha and Grovett too. Grovett

TAMEKA BUSSEY - DIRECT

1 which is my cousin and Nykesha and a lady Barbara, she
2 said Donna, she didn't know it's Barbara not Donna, she
3 was there. A guy Jack was on the grill and Joe and Dajon.

4 Q. Did you know Joe?

5 A. Yeah, I knew him.

6 Q. How did you know Joe?

7 A. Just, he's well known person. Just, we knew some of
8 the same people and been to the some of the same places.
9 We didn't have contact with each other. I just knew him.

10 Q. To your knowledge, did minorB know him?

11 A. No.

12 Q. And how did you find out about the incident between
13 minorB and Joe?

14 A. After he assaulted her my cousin called me on his
15 cousin's cell phone because I left mine at the house on
16 the charger. And she told me that I needed to come home
17 because she didn't even really know his name, she
18 described the truck he was in, but the guy that was in the
19 truck with the rims just been touching on your daughter.
20 She said, you need to get home.

21 And I was like, we was leaving Wal-Mart. And his
22 cousin then called Joe and asked him what was going on and
23 he told him he was leaving to go pick up his cousin in
24 Lexington. He had got put out. And he then gave me the
25 phone and I talked to Joe myself and I asked him what was

TAMEKA BUSSEY - DIRECT

1 going on.

2 Q. What did he say?

3 A. And, well, I was still telling him, I said, I just got
4 a phone call saying that you've been touching on my
5 daughter. I said, I'll give you the benefit of the doubt
6 because I know you have a child but what I need for you to
7 do is to meet me at my house so that you can talk to me.
8 And if you don't come I'm going to the police.

9 But once I got to the house and I seen, after minorB
10 told me what happened and the state that she was in, I
11 didn't wait for him to get there. I immediately took her
12 to the police station.

13 Q. And when you got to the police station did minorB
14 talk to anybody there?

15 A. She talked to the police, the officers. When we were
16 giving a statement they asked her questions.

17 Q. She told them what happened?

18 A. Yes.

19 Q. And after you talked to the police officer did you
20 take her anywhere else?

21 A. We went to the hospital.

22 Q. And who did you talk to at the hospital?

23 A. The nurse that did -- the nurse that examined her and
24 there was another doctor that examined her.

25 Q. And then she talked to them about what had happened to

TAMEKA BUSSEY - DIRECT

1 her?

2 A. She spoke with the nurse, yeah.

3 Q. Now do you know what Joe was driving that day?

4 A. Yes, ma'am.

5 Q. Okay. And those photos, do you recognize what's in
6 those photos?

7 A. I can only speak for the outside and verify the
8 truck. I can't verify what's on the inside of the truck
9 but these pictures on the outside is definitely his truck.

10 Q. And has minorB had to go to court for this before?

11 A. Yes.

12 Q. How did this whole incident affect her?

13 A. It had a big impact on both of us because he was
14 acquitted of the charges. And it's been hard for us to
15 deal with. We had a little counseling and just been
16 supportive of each other.

17 Q. And do you know [REDACTED] [REDACTED]

18 A. I know her parents. I didn't really, like, know her
19 or their kids but I went to school with her father.

20 Q. Do you talk to him often?

21 A. No.

22 Q. Have you seen him often?

23 A. I can't tell you the last time I seen him.

24 Q. Did you talk to him about this incident?

25 A. No, ma'am.

TAMEKA BUSSEY - CROSS

1 Q. To your knowledge does minorB know [REDACTED]

2 A. No. Well, she was talking about her family. She went
3 to their family reunion with my daughter because she's
4 friends with one of their cousins and maybe they played
5 together or something that day, I don't know. But to my
6 knowledge, today was their first time meeting other than
7 the family reunion when she seen her.

8 Q. Beg the Court's indulgence, please.

9 (Attorneys conferring).

10 MS. PATTERSON: Thank you, Ms. Bussey. Please
11 answer any questions Mr. Stitely may have for you.

12 THE WITNESS: Okay. Cross-Examination.

13 CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q. We've never met before. My name is Ben. How are you
16 today?

17 A. All right.

18 Q. You said this took place at a cookout. Was it at your
19 house?

20 A. Yes.

21 Q. You said March of 2004?

22 A. I'm not for sure about the date but it was four years
23 ago so would be about 2006.

24 Q. And what time was this all happening?

25 A. Roughly around between four, five, three. Somewhere

TAMEKA BUSSEY - CROSS

1 between three and five o'clock. It was daytime, I can
2 tell you that much.

3 Q. And you said you had left?

4 A. Yes.

5 Q. And what did you go to get?

6 A. We went to go get some more items for the cookout.

7 Q. Like what?

8 A. Some more meats and drinks and stuff like that.

9 Q. You said that you knew Joe ahead of time but you
10 didn't really know him. I just didn't follow how that
11 was.

12 A. He's a well-known person. And his cousin and I was
13 friends which was minorB godfather. And we've been to
14 some of the places at some of the same time but we never
15 had any contact.

16 Q. And you're not kin to the Creeches?

17 A. No.

18 Q. So, the family reunion thing that minorB was talking
19 about, she went to with her cousin?

20 A. No, she went with her sister because her sister is
21 friends with someone in their family.

22 Q. Okay. Do you know Monica Creech?

23 A. Through her husband but, I don't know her know her but
24 we've been introduced a few times, yeah.

25 Q. Have y'all ever talked about this case?

SYLVIA SCOTT - DIRECT

1 A. No.

2 Q. Did you talk with about this case with anyone else in
3 the community or anyone?

4 A. Well, it was well-known when it happened. I didn't
5 have to talk about it with anybody. It was newspapers,
6 everything. We was fixing to have a cookout. I mean, a
7 lot of people knew about it.

8 Q. Okay. Did you ever talk to newspapers?

9 A. No, I didn't.

10 MR. STITELY: No other questions. Thank you,
11 ma'am.

12 THE COURT: Anything further?

13 MS. PATTERSON: Nothing further. Your Honor.

14 THE COURT: You may come down. Thank you.

15 MR. STUMBO: Just one more witness for purposes
16 of this hearing, Your Honor.

17 THE COURT: Call your witness.

18 MR. STUMBO: It's Sylvia Scott.

19 THE COURT: Approach the bench a minute before
20 you do that.

21 MR. STUMBO: Yes, sir.

22 (Off-the-record discussion.)

23 THE COURT: Call your next witness, Mr. Stumbo.

24 MR. STUMBO: Ms. Sylvia Scott, Your Honor.

25 SYLVIA SCOTT, having been duly sworn, was

SYLVIA SCOTT - DIRECT

1 examined and testified as follows:

2 THE CLERK: Have a seat, ma'am. Once you're
3 seated, state your full name, spelling your last.

4 THE WITNESS: My name is Sylvia Scott, S. C. O.
5 T. T.

6 DIRECT EXAMINATION

7 BY MR. STUMBO:

8 Q. Thank you, Ms. Scott. You live in Aiken? You live in
9 Aiken?

10 A. Yes. I live in Aiken.

11 Q. And are you retired now, Ms. Scott?

12 A. I'm retired.

13 Q. Before you retired, what was your job?

14 A. I was an emergency room nurse at Aiken Regional for 32
15 years.

16 Q. And as part of your duties as a registered nurse at
17 Aiken Medical, did you do sexual assault examinations?

18 A. Yes. I've done sexual assaults, approximately 29, 30
19 years.

20 Q. Did you receive specialized training to do that?

21 A. Yes, yes, I have. I've been through the SAME course
22 and I've done approximately, I would say, around 500 cases
23 all together.

24 Q. Okay. And did you -- where did you take the SAME
25 course? Did you take that here or somewhere else?

SYLVIA SCOTT - DIRECT

1 A. The SAME course that I took was many years ago. Came
2 to SLED in Columbia when we helped put the first kit
3 together. And we went through the courts at that time.

4 Q. I think you said this before but about, just an
5 estimate, about how many of these sexual assault kits do
6 you think you've done in your career?

7 A. Estimating, I would say around 500. Maybe more or
8 less. I'm just estimating the number.

9 Q. And some of those involve children?

10 A. Oh, yes. Oh, yes.

11 Q. And have you ever testified in court as an expert in
12 sexual assault?

13 A. Yes, I have.

14 Q. And have you been qualified as an expert as a sexual
15 assault nurse --

16 A. Yes.

17 Q. -- examiner?

18 A. Yes.

19 Q. Multiple times or one time?

20 A. Oh, multiple times.

21 MR. STUMBO: Your Honor, the State would offer
22 Ms. Scott as an expert.

23 THE COURT: Any objection?

24 MR. WILLIAMS: No objection, Your Honor.

25 THE COURT: Go ahead.

SYLVIA SCOTT - DIRECT

1 BY MR. STUMBO:

2 Q. Ms. Scott, did you have occasion to do a sexual
3 assault examination on a little girl in Aiken by the name
4 of minorB | _____ |

5 A. Yes, I did.

6 Q. That was the little girl that was up here on the stand
7 a few minutes ago?

8 A. Yes.

9 Q. Did you have a chance to review your records --

10 A. Yes, I have.

11 Q. -- from that day?

12 A. I reviewed them; uh-huh.

13 Q. And have you testified in court before about this
14 particular case?

15 A. Yes, I did.

16 Q. And that was down in Aiken?

17 A. Right.

18 Q. Now, Ms. Scott, what were your findings there? Did
19 you do an exam of minorB | _____ | vaginal region --

20 A. Uh-huh.

21 Q. -- of her body? And did you find anything unusual
22 there?

23 A. Yes, we did. I think it was noted approximately three
24 to four times on the doctor's assessment and my assessment
25 that she did have a hymen tear and that is through

SYLVIA SCOTT - DIRECT

1 penetration. Her urine showed three plus blood and a
2 child six years old doesn't have a menstrual period. She
3 had no previous bleeding according to her.

4 Q. And so you said there was a hymen tear; is that
5 correct?

6 A. Yes.

7 Q. Did you talk to minorB Were you able to talk to her
8 about what had happened that day?

9 A. Oh yes. Uh-huh.

10 Q. Did she tell you what had happened that day?

11 A. Yes, she did.

12 Q. And in your -- based on your training and experience,
13 could you tell the Judge what your opinion is as to what
14 caused that hymen tear or what could have caused it?

15 A. The hymen tear is a -- it's a very thin membrane in
16 the vaginal area, the entrance of the vagina. And
17 penetration will cause this membrane to rupture and it
18 would cause vaginal bleeding. And that was what was noted
19 and was seen by myself and by Dr. Kogel.

20 Q. In your opinion would that be consistent with what she
21 told you had happened to her that day?

22 A. Yes, it would be.

23 Q. And did you collect other specimens as part of your
24 protocol?

25 A. Yes, I did.

SYLVIA SCOTT - CROSS

1 Q. Did you turn all that over to law enforcement?

2 A. All of that goes in the kit to go back to SLED.

3 MR. STUMBO: Okay. No further questions at this
4 time, Your Honor.

5 THE COURT: Anything from this witness?

6 CROSS-EXAMINATION

7 BY MR. WILLIAMS:

8 Q. Good afternoon, Ms. Scott.

9 A. Well, hello there. How are you?

10 Q. Fine. You remember me?

11 A. I do.

12 Q. I remember you. Ms. Scott.

13 A. Uh-huh.

14 Q. You recall in your interview of that child that she
15 was unable to say who the person was that allegedly
16 assaulted her, wasn't she? Do you need to look at your
17 notes?

18 A. Hang on. Let me look at this. She could not give a
19 name.

20 Q. She called him a big boy, didn't she?

21 A. Right.

22 Q. And he was an unknown stranger but he was a big boy.
23 Didn't call him a man or anything like that.

24 A. Uh-huh.

25 Q. And when you did the -- you're familiar about the DNA

SYLVIA SCOTT - CROSS

1 sampling that was done and everything?

2 A. Yes.

3 Q. And the DNA sampling, there was no DNA inside her that
4 matched up to my client, was there?

5 A. I can't answer that. I don't remember that part. I
6 don't have a copy of that.

7 Q. Well, you wouldn't have been involved in the testimony
8 of that anyway, would you? You would have just dealt with
9 the collection?

10 A. Right. Right.

11 Q. And there would have been a DNA expert?

12 A. I just do the collection, correct

13 Q. So essentially you interviewed her and she told you
14 what happened. And there was physical evidence of some
15 sort of trauma?

16 A. Uh-huh.

17 Q. And she couldn't identify who did it other than a big
18 boy who was a stranger?

19 A. Well, she told -- on what I have written it said that
20 the patient states, was a big boy. Says: Was a big boy,
21 told me to go behind the truck.

22 Q. Right. And then the next sentence says that he picked
23 her up, referring to the big boy; isn't that correct?

24 A. Uh-huh.

25 Q. So she's referring to a big boy who actually was

SYLVIA SCOTT - REDIRECT

1 involved in this assault of her?

2 A. This is what she told me, this is --

3 Q. Right. That's what she told you?

4 A. Yeah. Uh-huh. Said he picked me up and put me in the
5 back of the truck, told her to lay down so no one could
6 see me. He grabbed me, made me lay down flat and he put
7 in his pee-pee in me. I tried to make him stop.

8 Q. But she never called the person Joe, did she?

9 A. I can't answer that. It's not documented so I don't
10 know.

11 Q. Further in your report on page -- further in your
12 report you talk about the assailant again. And again she
13 cites that person as an unknown black stranger who is
14 known, who was characterized as being a big boy; isn't
15 that correct? On page two,

16 A. Let me find it. Okay. I got it. Her description, a
17 big boy. Uh-huh.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 THE COURT: Anything further?

20 MR. STUMBO: Just one question.

21 REDIRECT EXAMINATION

22 BY MR. STUMBO:

23 Q. Ms. Scott, when minorB said a big boy did this to
24 her, did you ask her any further specific questions about
25 who that was to your recollection?

1 A. I don't remember asking her who it was. It is -- it
2 will be -- I had it written down that this is, was,
3 evidently she knew him.

4 Q. Typically do you just write down, Ms. Scott, what they
5 --

6 A. I don't remember her saying his name. I mean, I can't
7 remember that far back. I don't have it documented.

8 Q. It's not documented. You would take the information
9 as given by her and document it?

10 A. Correct. Correct.

11 MR. STUMBO: That's all I have, Your Honor.

12 THE COURT: All right. You may come down. Thank
13 you very much.

14 THE WITNESS: Thank you.

15 MR. STUMBO: Your Honor, that's all the witnesses
16 we have as to the Lyle hearing. We're ready to argue at
17 Your Honor's pleasure on that.

18 THE COURT: I've got to talk to this jury. So,
19 stand aside for just a moment.

20 (Thereupon, at 4:55 p.m., another matter was
21 heard by the Court. At 5:06 p.m., the trial resumed:)

22 THE COURT: All right, Mr. Stumbo.

23 MR. STUMBO: Thank you, Your Honor. I know we
24 argued this at length earlier. I'll try to keep it as
25 brief as possible.

1 Just to summarize the cases again that we rely
2 on, State V. Wallis and State V. Hubner, H. U. B. N. E.
3 R. The similarities that we believe exist between the
4 incident that you heard about on the stand, Your Honor,
5 and the charges in this case are as follows.

6 Number one, you have the same instrumentality of
7 the crime which is Joe Butler's Suburban. We believe
8 under State V. Stokes and State V. Cheeseborough cases the
9 same logic applies here, that he used the same instrument,
10 Your Honor, to carry out his crimes. That goes to show
11 not only a common scheme or plan by using his truck and
12 luring these girls into the truck but also goes his
13 identity, Your Honor.

14 So that would be a backup exception under the
15 Lyle, to identify Joe Butler as the perpetrator of the
16 Lexington event which [REDACTED] will identify him as such.

17 THE COURT: Wasn't the testimony that she did not
18 identify him in the Aiken case?

19 MR. STUMBO: No, she did, Your Honor. If she
20 didn't identify him to the nurse but I don't believe the
21 nurse asked her those questions. She said she called him
22 the big boy.

23 THE COURT: I didn't hear the name. I never
24 heard the word Joe.

25 MR. STUMBO: That's correct, Your Honor, but she

1 knows him by face and pointed him out in the courtroom
2 today so I believe she knew who he was. Didn't know him
3 well enough before this incident happened to go in and say
4 it was Joe, it was Joe, it was Joe.

5 THE COURT: We're talking about in Aiken.

6 MR. STUMBO: Correct.

7 THE COURT: Did she identify him in Aiken?

8 MR. STUMBO: That's my understanding, Your
9 Honor. She described him for her mother and for the
10 cousin. She, I think she indicated that on the witness
11 stand and she described who --

12 THE COURT: What's the basis for that? I mean,
13 what --

14 MR. STUMBO: Your Honor, I don't remember every
15 word of her testimony, but I do remember her stating --

16 THE COURT: Were you there? In Aiken.

17 MR. STUMBO: No, sir, Your Honor.

18 THE COURT: Okay. Do we have a transcript of
19 that trial?

20 MR. STUMBO: Sir?

21 THE COURT: The questions is, was she able to
22 identify this Defendant in the Aiken trial?

23 MR. STUMBO: In the Aiken trial, I don't know,
24 Your Honor. I wasn't there at the trial.

25 THE COURT: Don't you think that would be

1 important?

2 MR. STUMBO: I was referring to her
3 identification of him after the incident which is really
4 my concern here, Your Honor. I don't know what questions
5 were asked at that trial in Aiken.

6 THE COURT: Right.

7 MR. STUMBO: I wasn't prosecuting.

8 THE COURT: You know, we got to get to the clear
9 and convincing standard.

10 MR. STUMBO: That's correct, Your Honor. And in
11 court today she pointed this man out and said, that's the
12 man that raped me.

13 THE COURT: Well, then. Okay.

14 MR. STUMBO: And, Your Honor, that would be our
15 position. She's identified him not only in court today
16 but she identified him by description to her mother, to
17 her mother's cousin, Grovett, at the house.

18 THE COURT: Okay.

19 MR. STUMBO: She described him as the big boy to
20 the nurse. So she described him numerous times. She --
21 as a six year old who never met the man, obviously his
22 name was not something that was right there on the tip of
23 her tongue.

24 THE COURT: But she could have identified him in
25 the Aiken trial. That was my only question.

1 MR. STUMBO: And I'm not sure why that did or did
2 not happen, Your Honor. I haven't discussed at length
3 with the solicitor down there why there was no -- I'm not
4 sure if that was why the jury came back with an acquittal
5 either.

6 THE COURT: Who knows. Who knows why a jury
7 comes back with an acquittal.

8 MR. STUMBO: I really don't Judge, but I would
9 say based on the evidence she's presented in court today
10 and the fact that she pointed him out for the record as
11 Joe, and that she's pointed out his truck as the place
12 where he molested her, that's going to be similar to our
13 case for several reasons, Your Honor, because [REDACTED] our
14 victim in the Lexington case, is going to be able to point
15 out Joe as the perpetrator. She's going to do that on the
16 witness stand. She's going to point out this truck as the
17 truck that he molested her in.

18 The fact that that truck was used as the
19 instrumentality of both of these crimes, Your Honor, we
20 think is very important under not only the Wallace case
21 and under common scheme analysis but also under identity.
22 And ultimately here it's -- [REDACTED] identity of Joe Butler
23 as the perpetrator is something we have to prove, Your
24 Honor.

25 And we believe that [REDACTED] minorB [REDACTED] identification of

1 Joe Butler as the perpetrator in this truck of the assault
2 he perpetrated on her is going to be corroborative of her
3 testimony on the intent issue.

4 Judge, number one, would be the same vehicle.
5 Number two would be the circumstance. We have a cookout
6 on one hand where there's some friends, some people that
7 are related. And the birthday party that will be
8 described by [REDACTED] in this case.

9 In this instance we have a birthday party with
10 both friends and family there. So number two would be the
11 circumstances. It's a family gathering, family and
12 friends gathering.

13 Number three, Your Honor, would be the
14 relationship. The relationship between [minorB] and Joe
15 Butler is very similar to the relationship between [REDACTED]
16 [REDACTED] and Joe Butler. He's not a blood relative of
17 either one of them.

18 [REDACTED] is cousins with Joe's daughter. They're not
19 related by marriage and she was -- she's going to testify
20 she wasn't aware of Joe very often. And [minorB]
21 testified already and will testify that she not only met
22 him that day, she didn't know Joe. So he's a family
23 friend that shows up at a family gathering and gets these
24 girls to his truck. So the relationship would be number
25 three, Your Honor.

1 Number four would be our argument of similar
2 ages. One was six. One was nine. Not the same age, Your
3 Honor, we acknowledge that but we would say in our
4 position to the Court, Judge, is that they're both
5 pre-pubescent females. They aren't small children.
6 They're similar ages which is one of the factors that the
7 Court cited in the Wallace case.

8 And number five, Your Honor, would be the fact
9 that in both cases Joe Butler never removed his clothing,
10 that he carried out this sexual assault essentially fully
11 clothed. What minorB will testify to was that he had his
12 pants up, and was able to sexually assault her despite the
13 fact that he didn't remove any of his clothes. [REDACTED] will
14 testify to the same thing. He comes around and stands
15 outside of the car and sexually assaults her fully
16 clothed.

17 So the scenario and the circumstances surrounding
18 both incidents are similar, Your Honor. Not only from the
19 truck but the type of gathering it was, the similar ages
20 of the victims and the fact that Joe Butler kind of
21 carried out both the same way.

22 One was penile penetration. One was digital
23 penetration, Your Honor, which we would submit under the
24 law he is guilty of the same crime for both, even though
25 he used a different part of his body to penetrate each

1 victim. It's essentially the same crime, Your Honor.

2 We would rest on those five similarities, Your
3 Honor. We believe the Wallace case, our position is that
4 the Wallace case laid out these factors for the courts so
5 we have a little more guidance on what constitutes a
6 similarity and what does not and I believe that the
7 Wallace case here is right on point for our situation.
8 The Wallace case there were two different victims. In the
9 Hubner case there were two different victims. So the
10 evidence that was brought into, in front of the Court
11 under Lyle involved a separate victim in a sexual assault
12 case.

13 And that's what we have here, Your Honor. Many
14 of the Lyle cases involving common scheme and plan involve
15 the same victim, just different acts involving the same
16 victim. We think Wallace and Hubner are important here
17 because this most recent clarification by the Supreme
18 Court involves exactly the situation we have here which is
19 two separate victims, Your Honor.

20 In the Wallace case it involved the primary
21 victim's sister. And in the Hubner case it was, to my
22 understanding of the facts of that case, Your Honor,
23 reading the Court of Appeals decision, it was not a lot of
24 detail in the Supreme Court reversal to the Court of
25 Appeals but that victim was brought in under State V.

1 Lyle.

2 I believe it occurred in a completely different
3 state. That's how unconnected those particular victims
4 were but because the modus operandi or common scheme was
5 so similar the Court in that case allowed that evidence in
6 under State V. Lyle in the Hubner case. It was overturned
7 by the Court of Appeals and then the Supreme Court came
8 back and overturned the Court of Appeals and under the
9 reasoning of Wallace reinstated the conviction on
10 Mr. Hubner.

11 Judge, just a comment as to the defense's primary
12 case. I believe they cited this one Judge McMahon tried
13 in McCormick by the name of State V. Consako. Judge, that
14 case primarily turned on the issues of intent and motive.
15 They did discuss the common scheme and plan as well but,
16 Your Honor, I don't believe that case is particularly on
17 point to this one.

18 That involved the same victim. So the Lyle
19 evidence involved prior acts on the same victim in that
20 case and the case -- the State never presented any
21 similarities between the two.

22 And, Your Honor, we believe it's a mistake in
23 this case because we've presented at least five
24 similarities we've presented today between the Aiken
25 assault on Joe Butler on minorB and the Lexington assault

1 by Joe on [REDACTED] [REDACTED]

2 And finally, Your Honor, we believe under 403,
3 you asked me that question earlier, we believe that it's
4 probative precisely because it's prejudicial, Your Honor.
5 And that's what makes this probative because it
6 corroborates [REDACTED] testimony so well, Your Honor, what
7 Joe did to her. And ultimately that's what we believe the
8 exceptions in 404-B are for, Your Honor.

9 It essentially corroborates the testimony of a
10 witness in the primary charged event by showing a common
11 scheme or plan as to events that had happened that are not
12 charged. And we believe that's what we have here, Your
13 Honor. We believe it is very probative. It's certainly
14 prejudicial but it is prejudicial precisely because it's
15 so probative.

16 Judge, this is one back up. Just one final point
17 on this case. We believe that the string of cases that
18 deal with res gestae are applicable here for this reason.
19 [REDACTED] and her mother will testify that the reason her
20 mother approaches [REDACTED] is because she hears about Joe's
21 arrest in Aiken. And that's what leads to [REDACTED] Creech's
22 disclosure is minorB disclosure of the event and Joe's
23 arrest. And when they hear about that she asks her
24 daughter.

25 And I believe for us to be able to tell the story

1 of [REDACTED] [REDACTED] in her disclosure of what Joe did to her
2 intertwined with that is Joe's arrest. So we believe
3 under the theory of res gestae it would be appropriate
4 under that theory as well as under the theory of Rule 404
5 B and State V. Lyle. That's all we have.

6 THE COURT: Mr. Stitely?

7 MR. STITELY: If it please the Court. Your
8 Honor, I guess there's three things within the State's
9 case.

10 The first is his argument on similarities. Your
11 Honor, in the Consako case which was the case that was
12 just decided last year, the whole part of the analysis
13 talks about common scheme or plan. It cites the previous
14 case and says common scheme or plan is generally applied
15 in cases involving sexual crimes where evidence of acts
16 prior or subsequent to the acts charged are held
17 admissible to show it was intercourse between the same
18 parties.

19 That was talking about the same parties.
20 Different parties, it doesn't really make a distinction
21 here. Your Honor, he said they don't talk about -- the
22 very next sentence on page seven of the opinion, the last
23 part of their analysis of common scheme or plan says
24 although the State avers to the fact that both incidents
25 occurred in the marital home which we say is the same

1 thing to say they both occurred in a car at a time when
2 the wife was in the other room, the State made reference
3 that he looked for opportunity when there was no other
4 adults there. The appellant had some scheme or plan to
5 attack the victim when no one else was present.

6 I think it's an exact mirror of the situation
7 that the State's trying to prove and the Court found that
8 was insufficient to develop common scheme or plan.

9 If I may, Your Honor, we heard part of it. The
10 Aiken case, it's a very dissimilar case. The instances
11 are completely different from the very git-go as to how
12 the alleged occurrences happened.

13 If you were to believe what you have just heard
14 about the Aiken case, it was a luring to the vehicle by a
15 singular adult to commit an act. If you look at -- we
16 didn't have an opportunity to put the victim in this case
17 up but even in her statement she said she went to the car
18 with some other kid playing at a party. Joe was already
19 there. It wasn't a matter of him luring her into any kind
20 of deal.

21 Even if you were to believe the State -- the
22 testimony given by the alleged victim in this case, no one
23 did say he asked her to come to the car. He's not the one
24 who lures her. She goes to the car with some other kid.
25 It's not a situation where he's isolating her. That's

1 dissimilar from any kind of scheme or plan the State would
2 try to establish of him picking someone out to prey on
3 them.

4 By the victim's own statement, she goes to the
5 vehicle with some other kid to look at someone's car. Joe
6 was already there playing music. It's not a -- it doesn't
7 even match flow-wise along with their case. There's no ID
8 present in the other one.

9 I don't -- I guess the problem, Your Honor, is
10 how you can use a common scheme or plan where they are so
11 dissimilar. The facts don't line up. The assaults aren't
12 even of the same kind and nature. One of them's alleged,
13 you know, full rape which he's found not guilty of.

14 In this one, the allegations aren't even
15 similar. If I don't know if the State's going to
16 stipulate, in the videos even with the DAC Center, the
17 girl testifies he never went inside of me. Seven times
18 she's asked and denies every time any kind of penetration,
19 anything more than a touching. Your Honor, they're not
20 even similar in nature of the kind of crimes charged.

21 The second prong, Your Honor, going beyond that
22 is, and Mr. Williams brought it up earlier. He was found
23 not guilty. The State's saying the standard is clear and
24 convincing evidence. Without having an opportunity to ask
25 every single juror and ask every single witness in that

1 case what evidence was there to say clear and convincing,
2 I don't think Your Honor is in a position to allow the
3 State to meet their burden.

4 Your Honor, it hasn't been presented but we would
5 have to call the DNA expert who said Mr. Butler's DNA was
6 not present. I mean, there were a number of other factors
7 of course that went to the jury's decision. He was found
8 not guilty, Your Honor, and I think that carries a lot
9 more weight.

10 In a situation where it's never been charged,
11 never been indicted, prior allegations, that's one thing.
12 He has been tried and acquitted by a jury of his peers.
13 What the State is doing is trying to re-try that case.

14 Mr. Stumbo said they'd liked to use it because it
15 bolsters the story of the current victim. The idea of 403
16 -- or 404 Lyle evidence is not to make someone else's case
17 sound more credible. It's to dispel things like
18 identity. If the State can rely on their witness who can
19 identify Mr. Butler, the jury will get to hear that.
20 Identity is not in question.

21 If the State wants to present evidence that would
22 say some vehicle is involved, they will have a witness to
23 say that.

24 That's the burden in this case, Your Honor. All
25 they're doing is muddying the water, bringing a case he's

1 been found not guilty of to try to say look, we don't have
2 a good case here but we'd love you to hear about this
3 other stuff, because maybe then you'll find him guilty.

4 I don't know any other way to say it, Judge.
5 They're trying to use a not guilty by a jury to find him
6 guilty of something today without standing on the facts of
7 this case. That's pretty much it, Judge.

8 THE COURT: All right. Thank you. All right.
9 I'm going to take a few minutes and consider this. In the
10 meantime, my jury wants to come back.

11 (Thereafter at 5:20 p.m., another case was heard
12 by the Court. At 6:20 p.m., the hearing of this cause
13 continued:)

14 THE COURT: All right. Counsel, I have reviewed
15 the submitted cases. And have come to the following
16 conclusions: As to the analysis of a prior bad act
17 evidence, we start off with 401 which is just the
18 definition of relevant evidence. And the rule that says
19 all relevant evidence is admissible. 401 does make this
20 evidence relevant.

21 Just to quote from the Wallace case, such
22 evidence is relevant because proof of one is strong proof
23 of the other. And that's what had me get to 404-B. And
24 according to Gregory and this is somewhat different than
25 the standard, as Judge Pleicones points out in his

1 dissent, it's somewhat of a break from earlier cases that
2 deal with criminal sexual conduct with a minor in the
3 common scheme or plan analysis. It seems to adopt just
4 almost a simple balancing test between similarity and
5 dissimilarity.

6 Now the State has presented evidence that there
7 are substantial similarities between the two acts, namely
8 the Aiken act and the Lexington County act.

9 The State's presented evidence that there was
10 apparently a van or a truck or something like a van that
11 was present in both cases, that young girls were present
12 in both cases, that there is a, some relationship,
13 familial or otherwise between the young girls but not
14 close relationships, not sisters as is so often the case
15 with common scheme or plan cases.

16 But I find that there are also great
17 dissimilarities. There is no close relationship between
18 the victims, the two victims are -- I can't find a
19 relationship. They're at different times, different
20 places. These two acts are not close in time. I can't
21 remember the difference in time between the two. It seems
22 to me like it's at least a year or more.

23 Because the Aiken case was discovered later or
24 the warrant was later, not the warrant but the act itself
25 was later in the Aiken case than it was in the Lexington

1 case which engendered the memory of the child of the
2 Lexington County case, the way I understand it.

3 But they're not close in time, not in my
4 opinion. They're not even in the same community. One's
5 in the Aiken area, one's in the Lexington area. They're
6 separated by whatever, 50, 60 miles.

7 They are dissimilar sexual batteries. One is
8 alleged to have been penile penetration and it was clearly
9 penetration according to the forensic nurse. But the
10 Lexington case is alleged to have been a -- I'm not sure
11 it was even penetration, certainly some sort of digital
12 touching or perhaps penetration. But there's been no
13 proof of that at this point. But that's what I understand
14 based on what I've heard today.

15 The facts are somewhat different. There's, in
16 Aiken there's a big boy lifting the victim into the back
17 of a van and committing the act that he committed there.
18 In Lexington it's allegedly the daughter of the Defendant
19 and the victim playing in a van, some sort of presents,
20 birthday presents, when the Defendant allegedly put his
21 hands inside the victim's underwear.

22 There's no coercion involved in either of these
23 cases as I could tell and -- nor is there a luring in
24 either of these cases. Both of these cases seem to be
25 some random act of whomever was the perpetrator but

1 there's no effort to lure these girls to the van.

2 In Lexington the child was already in the van.

3 So I don't find that the similarities are such as to -- I
4 find the dissimilarities are greater than the

5 similarities. I'm not convinced that the evidence that
6 was presented today is clear and convincing.

7 Although there are different standards involved
8 between the hearing today and the trial in Aiken, I have
9 to give the verdict of the jury some weight in this
10 consideration. And I don't think I can rely solely on
11 that because as the solicitor points out, the burdens are
12 different.

13 One's -- this is clear and convincing and in
14 Aiken it was beyond a reasonable doubt. But I've got to
15 give some weight to the fact that the jury heard the
16 evidence in that case and there was not sufficient
17 evidence to convict.

18 But I think probably my decision rests more on
19 the testimony of the victim in the Aiken case today. I
20 think if the victim in the Aiken case gets on the stand in
21 this case and says, he raped me, I think that is extremely
22 prejudicial. And I don't think the probative value comes
23 close to the prejudicial value.

24 Plus the mother testified he, the Defendant in
25 this case, assaulted my daughter. Those two statements

1 alone create, in my opinion, extreme prejudice to the
2 Defendant that substantially outweighs the probative
3 value. There is probative value, but I think the
4 prejudicial value substantially outweighs the probative
5 value.

6 The point of this whole discussion that we've had
7 this afternoon is to the issue of can you convict somebody
8 based on what they did in the past. I think this case is
9 going to stand or fall on its own merits. And I
10 respectfully rule that the 404-B evidence is not
11 admissible under Lyle, Wallace and the rest of the cases
12 cited.

13 Anything further?

14 MR. STUMBO: Nothing, Your Honor, other than just
15 maybe a clarification on -- I'm not asking Your Honor, to
16 ask me -- what to ask one of my witnesses but Ms. Bussey
17 is going to take the stand -- or, excuse me -- Ms. Creech
18 and her daughter. And I believe we're going to have to
19 ask some questions of them or they're going to talk about
20 why the hearing is closed to her.

21 THE COURT: What?

22 MR. STUMBO: Why [REDACTED] disclosed the abuse to her.

23 THE COURT: Or when.

24 MR. STUMBO: In light of the Court's ruling we
25 can't get into Aiken incident, what kind of language would

1 be acceptable to ask the witness to speak because I need
2 to instruct her on --

3 THE COURT: You can ask her when she told her.

4 MR. STUMBO: Okay.

5 THE COURT: I think if you ask that question why,
6 the other side's going to object.

7 MR. STUMBO: I'm sure he will but, and I guess I
8 just need to know how to instruct her.

9 THE COURT: Why don't you think about it over
10 night? I know this is -- probably --

11 MR. STUMBO: Okay.

12 THE COURT: -- you had been thinking all along
13 that you could use those witnesses. Think about it and if
14 you want to, if we need to do -- if you need to do a
15 proffer --

16 MR. STUMBO: I may need to do that --

17 THE COURT: -- we can do that.

18 MR. STUMBO: -- Your Honor, make sure we don't
19 mis-try the case by something coming out of her mouth
20 that's --

21 THE COURT: I mean, I assume you have -- I better
22 not assume anything about the evidence in this case but
23 you may want to do a proffer.

24 MR. STUMBO: Okay. I think that's probably wise,
25 Judge. We'll do that in the morning.

1 THE COURT: All right. Anything further?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: 9:30. Tell me about his bond.

4 MR. WILLIAMS: Your Honor, the jury has not been
5 sworn yet.

6 THE COURT: No, they haven't.

7 MR. WILLIAMS: Mr. Butler is still on bond to my
8 knowledge.

9 THE COURT: That's correct. As of 9:30.

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: You better get a letter.

12 MR. WILLIAMS: We'll get you a letter, Your
13 Honor.

14 THE COURT: Get me letter from the bonding
15 company.

16 MR. WILLIAMS: All right, sir.

17 THE COURT: That they will remain on the bond
18 throughout the trial.

19 END OF DAY'S PROCEEDINGS: 6:25 P.M.

20 * * * * *

21

22

23 ON THURSDAY, MARCH 11, 2010 AT 9:33 A.M.:

24 THE COURT: State ready to proceed?

25 MR. STUMBO: Yes, sir, we are.

1 THE COURT: Defense ready to proceed?

2 MR. WILLIAMS: Defense is ready, Your Honor.

3 MR. STUMBO: Your Honor, if we could just have a
4 moment. We had to send [REDACTED] mother out. Her father is
5 here. He's going to sit with her.

6 As far as sequestration, Your Honor, I believe
7 we're entitled to have our law enforcement officer here.
8 The officer who initially investigated the case is no
9 longer in law enforcement. Chief Oswald is going to
10 testify on behalf of Batesburg-Leesville Police
11 Department.

12 THE COURT: All right. Just fact witnesses -- we
13 had a motion? Have we had a motion?

14 MR. WILLIAMS: Your Honor, I think we did have a
15 motion yesterday --

16 THE COURT: You did.

17 MR. WILLIAMS: -- dealing with sequestration but
18 I don't know that that applies to Chief Oswald. I think
19 he can be there. He would be the investigating officer on
20 behalf of the Town of Batesburg.

21 THE COURT: All right. Are you ready for the
22 jury?

23 MR. STUMBO: Yes, sir.

24 THE COURT: Bring the jury, please.

25 (Jury enters courtroom at 9:37 a.m.)

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 THE COURT: Good morning, ladies and gentlemen of
2 the jury.

3 THE JUROR: (Collectively). Good morning.

4 THE COURT: We're now ready to commence the
5 trial. Madam clerk, would you swear the jury, please?

6 THE CLERK: Yes, sir, Your Honor,
7 (Jury impaneled.)

8 THE CLERK: Was there anyone who could not take
9 the oath as administered? All jurors sworn, Your Honor.

10 THE COURT: Thank you. All right. Ladies and
11 gentlemen, you have now received your oath as jurors in
12 this case and we're ready to begin the trial as I told
13 you.

14 But just give me a few minutes if you will and
15 let me explain the process of the trial. I think most of
16 you probably know it from watching television but let me
17 be a little more specific.

18 I want to discuss with you what is expected of
19 you, what your role is, what my role is, and what the role
20 of these attorneys is. My purpose in doing so is to put
21 you at ease in what may be an unfamiliar setting to many
22 or most of you.

23 In this court, a criminal law violation is
24 presented in a legal document known as an indictment. As
25 I told you yesterday, there are two indictments in this

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 case. Please remember these indictments are not
2 evidence. The indictments are simply the documents
3 containing the specific charge against a particular
4 individual.

5 The Defendant has pled not guilty to these
6 indictments. And the State therefore has the burden of
7 proving each of the elements of the indictments beyond a
8 reasonable doubt to you. And it will be your duty to
9 decide whether the State has met that burden.

10 Now please do not infer anything from anything
11 that I say or do as to what your verdict should be. You
12 are to determine the innocence or guilt of the Defendant
13 based on the evidence that will be introduced during the
14 course of the trial. I have no opinion about the facts in
15 the case that I may share with you. In fact, the
16 Constitution of the State of South Carolina provides that
17 a trial judge shall make no comment or statement to a jury
18 about the facts of a case.

19 Consequently, do not infer from anything that I
20 may say during the course of these instructions or
21 anything I may do or say during the course of the trial,
22 in ruling upon the admissibility of evidence or anything
23 that I have an opinion about the facts of the case. You and
24 you alone are the sole and exclusive fact-finders in the
25 case.

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 While you will determine the facts in the case
2 from the evidence I am the judge of the law in this case
3 and you are required to accept and apply the law precisely
4 as I state it to you.

5 Now, let me remind you of two legal principles.
6 First is what we call the legal yardstick you will use in
7 judging or measuring the evidence in this case. That
8 legal yardstick is known as the burden of proof. And in
9 this case the burden of proof, that is, the burden of
10 proving the case is on the State to prove guilt beyond a
11 reasonable doubt.

12 Should the State fail to meet that burden, it
13 would be your duty to find the Defendant not guilty.
14 There's absolutely no burden whatsoever on the Defendant
15 to prove or disprove anything. There is no burden on the
16 Defendant to testify or present any evidence because the
17 burden is and remains at all times on the State to prove
18 guilt beyond a reasonable doubt.

19 Second, I ask you to recall my earlier comment to
20 the entire jury panel concerning the presumption of
21 innocence. This is a cardinal and fundamental rule of law
22 that a defendant will always be presumed innocent of the
23 crime or crimes for which he or she is indicted. The
24 presumption of innocence is not just a simple legal theory
25 or a simple legal phrase, it is the substantial right to

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 which any accused including this Defendant is entitled.

2 Now as we begin the trial, your role lies
3 essentially in the oath which you took part of which
4 requires to you well and truly try the case.

5 Your oath requires you to find facts, to find the
6 truth from the evidence presented during the course of the
7 trial. You are not to consider anything you may have read
8 or heard, or seen about this case. I don't know if
9 there's anything that you would have seen but you're not
10 to consider anything of an evidentiary nature outside of
11 the courtroom. You must make a determination of the facts
12 of this case based solely on the evidence presented in
13 this courtroom during the course of the trial.

14 Well, what is evidence. In South Carolina
15 evidence comes from one of three source. The most common
16 example of evidence is testimony of a witness. The
17 witness will testify from this witness stand. You will
18 see and hear and observe the witness including the
19 demeanor of the witness as you determine the creditability
20 of each witness.

21 Second source of evidence known to law is what's
22 called an exhibit. An exhibit may be a photograph or a
23 chart or a diagram. An exhibit is a tangible document
24 with an exhibit label attached to it. And at the end of
25 the trial when you retire to the jury room to begin your

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 deliberations, all of the exhibits received in evidence
2 will go with you to the jury room.

3 The third source of evidence is basically what we
4 call a stipulation. A stipulation is basically an
5 agreement between the parties as to the existence of some
6 certain facts. If there is such a stipulation, you would
7 be required to accept that stipulation as conclusively
8 determined for purposes of this trial.

9 So, ladies and gentlemen, that's what evidence
10 is, it's testimony and exhibits and any stipulation.

11 As the trial judge, I will preside over the trial
12 of the case, rule on the admissibility of evidence and at
13 the end of case explain to you the law applicable to this
14 case.

15 Please understand that what I tell you is not
16 evidence. By the same token what these attorneys tell you
17 is not evidence. The attorneys may make opening
18 statements and closing statements but those statements are
19 not evidence.

20 The attorneys ask questions of the witnesses but
21 the questions are not evidence. It is the responses of
22 the witnesses to those questions which constitute the
23 evidence in the case.

24 Now you and I do not ask questions of witnesses.
25 We do not offer any exhibits. Your duty is to listen

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 openly and honestly to the evidence, keep an open mind, do
2 not form any conclusions or judgments until you've
3 received and considered all of the evidence, the arguments
4 of the attorneys and my final instructions to you on the
5 law.

6 Consistent with your oath I'm going to ask you
7 not to discuss this case with your fellow jurors or anyone
8 else until the case is concluded.

9 The first opportunity you will have to discuss
10 the case is at the end of the trial when I authorize you
11 to begin your deliberations. I trust you will honor my
12 instructions and your oath in that regard.

13 Now let's look briefly at the trial process.
14 Each side may make an opening statement to you. After the
15 opening statements we'll begin with the receipt of
16 evidence. The State goes first and presents evidence.
17 The State goes first because the State brought these
18 charges. And it has, as I said, the burden of proof.

19 After we've heard and received evidence from the
20 State the same opportunity is given to the Defendant
21 bearing in mind, however, there is absolutely no burden on
22 the Defendant to present any evidence in this case at
23 all.

24 Once we have received all the evidence in the
25 case each side's permitted to make a final argument or

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 summation and after which I will instruct you on the law
2 as it applies to this case.

3 It is at that point at the end of the trial when
4 you will be permitted to begin your deliberations. Madam
5 Forelady, it will be your duty to preside in the jury
6 room, be the jury spokesperson here in court and write the
7 verdict if that becomes necessary.

8 Let me close with just a few housekeeping
9 matters. We generally run court for an hour to two hours
10 between breaks. Things frequently happen during a trial
11 which sometimes requires us to deviate from a normal
12 schedule. For example, we'll take a break when you need a
13 break. If you need a break, just raise your hand, get my
14 attention and we'll take a break.

15 Also legal questions come up from time to time
16 which may require me to send you back to the jury room for
17 a few minutes, perhaps more frequently than I would like.

18 Also from time to time you will hear or you may
19 hear one of the attorneys say, I object, for some reason.
20 And the attorneys are not trying to hide anything from
21 you. They're merely following what are known as the
22 rulings of evidence. These are basically the rules of the
23 road that govern all trials. And they're asking the Court
24 to rule on whether one side or the other has violated one
25 of these rules.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 If you cannot hear a particular witness or myself
2 or one of the attorneys, let us know so we can speak up
3 more clearly. Your view of an exhibit is blocked or
4 obstructed for any reason, let us know and we can correct
5 that.

6 If you need to bring anything to my attention
7 during the course of the trial, please notify one of the
8 bailiffs. If you do need to contact me it may be
9 necessary for the bailiff to require you to put a question
10 or a concern in writing so we can have a record of it.
11 I'll respond to you as quickly as I can to the extent the
12 law permits me to do so.

13 I want to thank you very much for your kind
14 attention. I trust you will give the same kind and
15 undivided attention to the attorneys and the parties in
16 this case. We'll now begin with the opening statements.
17 Solicitor?

18 MR. STUMBO: Thank you, Your Honor. If it please
19 the Court.

20 Back in 2005 a nine-year-old girl's life was
21 about to change forever. See little [REDACTED] [REDACTED] went that
22 day to enjoy her cousin's birthday party, to have a good
23 time.

24 Because of what Joe Butler did to her though, she
25 left that day with her innocence completely shattered.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 That little nine-year-old girl [REDACTED] is 13 today. And
2 she's ready to come into this courtroom and tell each and
3 every one of you what happened to her that day.

4 I can assure you, ladies and gentlemen, she's not
5 here because she wants to be. The last thing a 13-year-
6 old girl who's enjoying her middle school years wants to
7 do is come up here on this witness stand and talk about
8 things that happened to her that are embarrassing, that
9 are hurtful, but she's here to do that this week, ladies
10 and gentlemen.

11 Now, as the Judge just told you, Ms. Patterson
12 and I bear the burden of proof. We bear the burden of
13 proof to prove the charges beyond a reasonable doubt.

14 And that's a pretty difficult burden in a case
15 like this. Because none of us want to believe that we
16 live in a world where adults sexually assault children.
17 That's not something we want to acknowledge that happens.

18 So that makes our job pretty tough this week.
19 I'm going to ask you to just set that aside, that feeling
20 that each of us have, that we don't want to believe this
21 kind of stuff happens. And I want you to focus on [REDACTED]

22 Mr. Williams is a fine defense lawyer. And as
23 fine defense lawyers do, he's going to try to get you to
24 go down different roads that are going to take your eyes
25 off the important thing in this case and that's [REDACTED]

OPENING STATEMENTS ON BEHALF OF THE STATE

1 [REDACTED]
2 The question in this case, ladies and gentlemen,
3 is this beyond a reasonable doubt, that standard,
4 sometimes it's hard to understand. It's hard for me to
5 understand. I'm a lawyer and I do this every day.

6 But one phrase that I want you to listen for when
7 the Judge instructs you at the end of this case on what
8 reasonable doubt is, is that it's proof that leaves you
9 firmly convinced. Firmly convinced. I want you to
10 remember that phrase. You're going to hear that from the
11 Judge when he instructs you on the law.

12 All that means, ladies and gentlemen, is that
13 when you go back to the jury room after you've heard all
14 the evidence, you have a firm conviction or a firm belief
15 that what [REDACTED] [REDACTED] told you on this witness stand
16 really happened to her.

17 There's a lot of other things you're going to
18 hear in this case from the State and from the defense.
19 But when it comes down to it, it's about [REDACTED] And it's a
20 question in your minds is she telling us what really
21 happened to her.

22 At the end of this case after you've seen her on
23 the witness stand, if you have a firm conviction that
24 she's come in here despite the embarrassment, and despite
25 the shame and told you what really happened to her, that

OPENING STATEMENTS ON BEHALF OF THE STATE

1 Joe Butler's guilty. If you don't believe what she is
2 telling you is true then he's not.

3 There's nothing magical about the term in this
4 case being able to prove this beyond a reasonable doubt.
5 If you're firmly convinced that she's telling the truth
6 then he's guilty.

7 You're going to hear some other things in this
8 case as well, ladies and gentlemen. You're going to hear
9 from [REDACTED] mother who was the first person [REDACTED] told
10 about what happened to her. She's going to tell you about
11 what [REDACTED] said.

12 You're going to hear from an expert in child
13 sexual abuse cases, his name's Ray Olszewski. He works
14 downtown in a place called the ARC, the Assessment
15 Resource Center. And he also works out here at the
16 Dickerson Center in Lexington County. What he does all
17 day long is talk to children who have been abused,
18 sexually and physically, and he gets them to essentially
19 tell their story without putting words in their mouth.

20 And that's what he did, ladies and gentlemen.
21 You're not only going to get to hear from Mr. Olszewski,
22 you're going to get to see the video of the interview he
23 did with [REDACTED] when she was nine. You're going to get to
24 see what she said at that time, not only today but what
25 she said when she was nine years old.

OPENING STATEMENTS ON BEHALF OF THE STATE

1 You're also going to get to hear from [REDACTED]
2 former guidance counselor at Batesburg-Leesville
3 Elementary School. Her name is Michelle Bracket. She's
4 going to come tell you a little bit about [REDACTED] and about
5 what [REDACTED] told her.

6 At the end of the day, ladies and gentlemen, it's
7 about [REDACTED] [REDACTED]. Is she telling you the true deal about
8 what happened to her back in 2005. If she is, if after
9 you've heard the evidence, if you have a firm conviction
10 that she's telling the truth, Joe Butler is guilty of what
11 he's been charged with.

12 I want to thank you for your time and your
13 attention this week as the Judge has already done. I'll
14 ask you to pay close attention when [REDACTED] is on that
15 witness stand.

16 One thing he told you in his introduction, ladies
17 and gentlemen, is the first source of evidence, the one he
18 listed first is witnesses. We live in a world today with
19 CSI on TV, and Law and order, and a lot of great
20 entertaining shows. It's real easy after watching some of
21 those shows to believe to prove someone guilty you have to
22 have conclusive scientific evidence, something you go take
23 into a lab and prove physically.

24 But as the Judge told you, the most important
25 source of evidence in a criminal case or in any case is

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 the witnesses sitting there on the witness stand.

2 I'm going to tell you, ladies and gentlemen,
3 you're not going to hear a lot of scientific physical
4 evidence in this case. [REDACTED] didn't tell her mother what
5 happened to her until a number of months later because she
6 was scared that nobody would believe her.

7 So there is no physical evidence, ladies and
8 gentlemen. I will submit to you what she has to say on
9 this witness stand is enough. It's enough to firmly
10 convince you that Joe Butler is guilty, guilty of both
11 charges.

12 Thank you.

13 THE COURT: Mr. Williams?

14 MR. WILLIAMS: May it please the Court. Ladies
15 and gentlemen of the jury. I met y'all yesterday. I'm
16 Theo Williams, just across the street.

17 Seated next to me, and you probably didn't get a
18 chance to see because he was running in and out, is Ben
19 Stitely. He is an associate in my office. He may be
20 asking questions of some of the witnesses.

21 You met Joe Butler who obviously is seated next
22 to him. He's the person that's charged.

23 I thought I would say in opening that I want to
24 you remember what the Judge has instructed you. You know,
25 opening arguments are times when the lawyers can talk to

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 juries. And it's a chance for the, I guess, for the
2 lawyer to establish some sort of rapport to try to
3 convince the jurors that perhaps what he is saying is
4 probably true before somebody else says something else.
5 It's a chance to establish a relationship.

6 But the thing you need to remember is that in
7 opening arguments there's no testimony which has been
8 conducted prior to an opening argument. So you're not
9 supposed to develop a case or develop a mind set based on
10 who you like the best, whether or not that person has told
11 you some things that convinces you already, because you
12 haven't heard any evidence yet.

13 And I would tell you this, that this case is not
14 just about [REDACTED] You see, sometimes when you say, let's
15 focus on [REDACTED] it's not about just one piece of evidence
16 because, you see, in the trial of the case you're dealing
17 with testimony. You take those witnesses, and they're
18 subject to cross-examination because, you see, up until
19 today's date no one has had the ability to cross-examine
20 any evidence.

21 A case, a criminal case starts when there's an
22 allegation. And once that allegation is made to a police
23 officer, then some judge issues a warrant. I'm not
24 talking about Judge Cooper. I'm talking about perhaps a
25 magistrate, town judge, whatever. And he simply swears

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 out a warrant. He hasn't tried Joe Butler on those
2 charges. All he's doing is saying that it has been
3 reported that there has been a crime committed.

4 Once that's done then there's steps along the way
5 up until the time in which we get in this courthouse. And
6 there would be an indictment, which is signed, which is
7 not evidence, simply saying that these are the charges
8 that are being tried before you, the 12 jurors that we
9 have today.

10 And I tell you that because I want you to focus
11 in this case on the beginning of these allegations, when
12 they were developed, how they proceeded up until now when
13 we're trying the case.

14 Because I think you'll learn when Batesburg-
15 Leesville, which was the investigating agency, when they
16 first had these allegations several months later, the
17 allegation encompassed some time span saying that it
18 occurred in the summer of 2005.

19 And I think that's important for you to
20 determine, for you to use to determine what the truth is
21 in the case because obviously if a witness is saying
22 something different when it first happens than what
23 they're saying today on the day of trial, then you should
24 question in your minds why did they change that way, how
25 did this develop, how is it now that their memory is so

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 accurate.

2 Because you will learn that besides the warrant
3 which was issued from the Town of Batesburg-Leesville
4 saying that someone reported that something occurred in
5 the summer of such-and-such, 2005, you'll learn that as
6 recently as Monday of this week is when the date has
7 developed in regards to when these allegations occurred in
8 the indictment. And that date, I think, is going to be
9 October the 1st of 2005.

10 Now, if I say something wrong or if I misstate
11 when the occurrence occurs, that's not the important
12 part. I'm not here to play games about dates and stuff
13 like that.

14 It's the concept which I want you to remember.
15 How has it changed. Is there a change from what was
16 originally in the warrant to what we're here trying
17 today. Is there a change about what was initially
18 reported, whether or not there was a report of some sort
19 of lewd act, and now is it some sort of report of lewd act
20 and criminal sexual conduct with a minor.

21 The purpose in this is for you to evaluate what
22 the truth is in the case. Now if you're searching for the
23 truth in the case, you're also looking at what the
24 witnesses said, what witnesses corroborate that
25 testimony.

OPENING STATEMENTS ON BEHALF OF THE DEFENDANT

1 I heard the solicitor tell you at the beginning
2 that we watch CSI. I watch CSI, too. And what scientific
3 evidence there is to sustain or to support that theory and
4 that we don't do that in real life or we won't have that
5 in this case.

6 That doesn't mean that scientific evidence is not
7 appropriate. It doesn't mean that scientific evidence is
8 not a good convincer of what the truth is in the case.
9 But what the solicitor's trying to tell you in the
10 beginning of his case is we're not going to have that, but
11 don't be concerned about that.

12 Well you as a jury, as a fact-finding body,
13 should be concerned with everything and the lack thereof.
14 You should be concerned with the reporting, who the
15 witnesses were, when it happened, who substantiates the
16 claim, which witnesses would have seen it, which witnesses
17 are saying they saw it and could not have seen it, which
18 physical evidence backs that up, and which evidence
19 doesn't back that up.

20 Joe Butler has nothing which he has to present.
21 Because there are situations in life, this is one of them,
22 where someone can say something, like, you did so and so.
23 That's why we have the burden of proof. It's hard to
24 prove a negative, but the burden of proof is always on the
25 State to prove its case beyond a reasonable doubt.

1 So I invite your inquiry, your careful
2 consideration of what the evidence should be in this case,
3 what's missing, why is it missing, and do your job as
4 jurors. Don't be swept away by the allegations. No one
5 says that these allegations are good allegations. I mean,
6 who could possibly say this is something that you should
7 like or even dislike, but you don't have a rush to
8 judgment just because of the allegations.

9 I thank for your attention and hopefully this
10 won't take too long.

11 THE COURT: Counsel, approach the bench, please.

12 (Off-the-record discussion.)

13 THE COURT: Ladies and gentlemen, I think I told
14 you yesterday we have another jury deliberating right
15 now. They have just informed the Court that they have a
16 verdict. They want to deliver the verdict.

17 So I need to do that. I don't want to keep them
18 here since they already finished their work for this
19 week. I'm going to ask that you go to the jury room and
20 just relax for a few minutes while I do that. When we
21 come back we'll start the testimony.

22 Again, don't discuss the case while you're in the
23 jury room. Thank you very much. We'll only be a few
24 minutes. I hope it will only be a few minutes.

25 (The Jury exits courtroom at 10:03 a.m.,

1 following which another matter was heard by the Court.

2 The trial resumed at 10:50 a.m., as follows:)

3 THE COURT: We're going to send menus to the jury
4 for lunch. I think we better keep them here. We're
5 running tight on time.

6 MR. STUMBO: Your Honor, just to let you know for
7 scheduling purposes, we intend to call five witnesses in
8 our case in chief and we'll have the forensic video which
9 lasts about 30 minutes.

10 THE COURT: I'd love to get the testimony in
11 today. Even -- I've talked to the jury about running
12 late.

13 (Pause.)

14 MR. WILLIAMS: Your Honor, while we're in limbo
15 waiting here, I anticipate a problem or an argument in
16 regards to some evidence which may come in. Can we go
17 ahead and argue that now so we won't have to send the jury
18 out and argue about it then?

19 THE COURT: What is it?

20 MR. WILLIAMS: Your Honor, it's my
21 understanding that --

22 THE COURT: Mr. Stumbo.

23 MR. WILLIAMS: It's my understanding that there
24 is a guidance counselor that may testify in regards to a
25 letter and a statement that was made by the alleged victim

1 to her.

2 THE COURT: A letter?

3 MR. WILLIAMS: A letter. And statements that
4 were made to the guidance counselor. It's further my
5 understanding this was not a first report.

6 THE COURT: A not, what?

7 MR. WILLIAMS: Not a first report meaning that
8 she had already talked to -- I'm basing this on what the
9 solicitor's told me, that the solicitor -- I'm sorry.
10 That the victim, alleged victim had already talked to her
11 mother and reported this information.

12 So, Your Honor, we take the position that that
13 would be hearsay, self-serving, any number of things, as
14 to why that should not come in. And that's referring to
15 the letter and the statements that were made to the
16 guidance counselor.

17 THE COURT: Mr. Stumbo?

18 MR. STUMBO: Your Honor, I do have a copy of the
19 letter. Ms. Brackett is here and she is going to
20 testify. She's a guidance counselor at Batesburg-
21 Leesville Elementary School where [REDACTED] attended at the
22 time of this incident and at the time she disclosed.

23 There's a date on the letter, March 27, 2006,
24 which as Mr. Williams knows is after initial report to law
25 enforcement which was on --

1 THE COURT: When was that?

2 MR. STUMBO: It was on March the 20th, Your
3 Honor.

4 THE COURT: Of '06?

5 MR. STUMBO: Of '06. Yes, sir. Or, excuse me,
6 March 22nd. So it's five days before she writes this
7 letter.

8 However, Your Honor, we would -- we're offering
9 this letter and Ms. Brackett's testimony as testimony that
10 typically comes in in CSC-type cases under Rule 801.
11 There's essentially exceptions that defines time and place
12 statements in criminal sexual conduct cases is non
13 hearsay.

14 They tie the victim to another party and that's
15 what [REDACTED] did here, Your Honor. She wrote this letter to
16 Ms. Brackett the day she went to go in for her forensic
17 interview. We've marked it for ID purposes. Mr. Williams
18 has had this in discovery for sometime.

19 So I'd be glad to pass it up to Your Honor at
20 this time.

21 THE COURT: Well, I don't need to see it. I
22 mean, it is what it is --

23 MR. STUMBO: Yes, sir, Your Honor. We would
24 offer it under --

25 THE COURT: -- regardless of what it says.

1 MR. STUMBO: There's another case, Your Honor,
2 and off the top of my head I can't cite it. I know it's
3 cited in the notes, in the rules of evidence book.

4 As to that section, it's 801. Mr. Williams
5 wouldn't mind me looking at his rule book. It's 801,
6 Subsection D-One, and Capital D., so, it says statements
7 consistent with the declarant's testimony in a criminal
8 sexual conduct case or attempted criminal sexual conduct
9 case where the declarant is the alleged victim and the
10 statement is limited to time and place of the incident.

11 And it's Jolly versus State, 314 SC 17 1994
12 Supreme Court case, Your Honor. I would cite that in
13 support of that.

14 MR. WILLIAMS: Does Your Honor have a copy of
15 that statement that he's referring to?

16 THE COURT: No. But I said I didn't know that I
17 needed it.

18 MR. WILLIAMS: Okay.

19 THE COURT: It is a statement.

20 MR. WILLIAMS: Well, the statement --

21 THE COURT: It's an out-of-court statement.

22 MR. WILLIAMS: Right. But it's not limited to
23 time and place is why I was curious.

24 THE COURT: Okay.

25 MR. WILLIAMS: I mean, it's -- and, yeah, it

1 doesn't have time and place in here.

2 MR. STUMBO: It does, Your Honor. It talks about
3 that it happened in Joe's truck. I was in Joe's truck.
4 So it talks about the location. And it said last year is
5 what it talks about in the letter as to when it happened.

6 So therein there's time and place included, Your
7 Honor. And we're offering that under the rules and under
8 Jolly V. State as a statement consistent with her
9 disclosure to both law enforcement, her mother, and to the
10 forensic interviewer.

11 THE COURT: Mr. Williams?

12 MR. WILLIAMS: Your Honor, we would disagree with
13 the solicitor's assessment with regards to time and
14 place. Last year is not a time. Last Year is the name of
15 a movie.

16 It's not precise enough. And, Your Honor, if
17 that becomes a situation in the trial of CSC cases, surely
18 the clear thing that the solicitor or the State should do
19 is just have the alleged victim write letters to various
20 people talking about when something happened and then they
21 can all come in. So we would disagree with that.

22 MR. STUMBO: Your Honor, one of the primary
23 issues in this case is the reliability of our witness.
24 And these statements that are consistent with the
25 testimony she's going to give in court corroborate her

1 testimony.

2 That's what we believe the legislative intent was
3 in passing this rule. Ultimately the children often --
4 it's not limited to children in the rules. It just says
5 criminal sexual conduct. Includes adults too, but victims
6 of sexual assaults are often in positions where they give
7 multiple statements.

8 And this statement essentially corroborates her
9 testimony throughout this process, Your Honor. That's why
10 Mr. Williams doesn't want it in front of the jury.

11 THE COURT: I'm going to allow it. Madam clerk,
12 are you finished with the jury?

13 THE CLERK: Sir?

14 THE COURT: Are they done?

15 THE CLERK: I think so.

16 THE COURT: Make sure. See if they're ready.

17 (Pause.)

18 THE COURT: Ready for the jury?

19 MR. STUMBO: We are, Your Honor.

20 THE COURT: All right. Bring the jury.

21 (Jury enters courtroom at 11 o'clock a.m.)

22 THE COURT: All right. Solicitor, call your
23 first witness.

24 MS. PATTERSON: Thank you, Your Honor. The State
25 calls [REDACTED] [REDACTED]

██████████ - DIRECT

1 ██████████ having been duly sworn, was examined
2 and testified as follows:

3 THE CLERK: Please be seated in the witness stand
4 right here and once you're seated, please state your name,
5 spelling your last name for the record.

6 THE WITNESS: ██████████ ██████████ ██████████ ██████████ ██████████ ██████████ ██████████

7 DIRECT EXAMINATION

8 BY MS. PATTERSON:

9 Q. And, ██████████ I'm standing all the way back here because
10 I need you to talk loudly so the ladies and gentlemen of
11 the jury can hear you. Okay? How old are you, ██████████

12 A. Thirteen.

13 Q. When's your birthday?

14 A. April the 3rd.

15 Q. You got a birthday coming soon?

16 A. Yes, ma'am.

17 Q. And what grade are you in?

18 A. Eighth.

19 Q. And what school do you attend?

20 A. Batesburg-Leesville Middle School.

21 Q. Do you like school?

22 A. Yes, ma'am.

23 Q. What kind of activities do you participate in in
24 school?

25 A. I do cheer leading and basketball and track.

██████████ - DIRECT

1 Q. And who do you live with, ██████████

2 A. My mom and my daddy and my two brothers, Tyrus and
3 Gabreal.

4 Q. How old are your brothers?

5 A. Fifteen and 17.

6 Q. Y'all get along okay?

7 A. Yes, ma'am.

8 Q. And, ██████████ do you know the difference between the
9 truth and a lie?

10 A. Yes, ma'am.

11 Q. Tell the jury what it means to tell the truth.

12 A. The truth is something that's real.

13 Q. And what does it mean to tell a lie?

14 A. You're doing something wrong. A lie is very wrong.

15 Q. And what happens or what usually happens when someone
16 tells a lie?

17 A. They get in trouble for it.

18 Q. And do you know why you're here today, ██████████

19 A. Yes, I am (sic.)

20 Q. And why are you here?

21 A. I'm here to tell when Joe Butler touched me
22 inappropriately.

23 Q. And have you talked to me before about this?

24 A. Yes, ma'am.

25 Q. And what you're telling me, is that the truth?

████ - DIRECT

- 1 A. Yes, ma'am.
- 2 Q. We're going to go back to that day when you say Joe
- 3 touched you. Okay. Do you remember when it was?
- 4 A. I remember, like, all around that time.
- 5 Q. And what was this time? What was going on?
- 6 A. It was around his daughter, minorC birthday.
- 7 Q. And do you know when minorC birthday is?
- 8 A. Yes, ma'am.
- 9 Q. When is it?
- 10 A. October the 1st.
- 11 Q. Now did you know Joe?
- 12 A. Yes.
- 13 Q. How did you know him?
- 14 A. minorC my cousin and that's her daddy.
- 15 Q. Are you and minorC close?
- 16 A. Yes, ma'am.
- 17 Q. Do you know how old she is?
- 18 A. I think she's like 12.
- 19 Q. Now, do you remember how old you were around that time
- 20 that Joe touched you?
- 21 A. No, ma'am.
- 22 Q. Were you younger?
- 23 A. Yes.
- 24 Q. Now, where did it happen?
- 25 A. At my cousin Ray's house.

██████ - DIRECT

1 Q. And who is Ray?

2 A. minorC aunt.

3 Q. And who all went to Ray's house with you?

4 A. My mama and my daddy and my two brothers.

5 Q. And when you got to Ray's house, what did you do?

6 A. I remember looking for a little boy's truck, a little
7 toy truck.

8 Q. Do you remember who that little boy was?

9 A. No, ma'am.

10 Q. And who was helping you look for his truck with him?

11 A. minorC

12 Q. And where did y'all look?

13 A. In Joe's truck.

14 Q. So y'all were outside?

15 A. Yes, ma'am.

16 Q. Were there any other adults outside with you?

17 A. Nobody besides Joe.

18 Q. And where all outside did you look for the truck?

19 A. Just in Joe's truck.

20 Q. And why did you look in Joe's truck?

21 A. I don't remember.

22 Q. Did someone call your attention to his truck?

23 MR. WILLIAMS: Objection to leading.

24 THE COURT: Yes, ma'am. Sustained.

25 BY MS. PATTERSON:

██████ - DIRECT

1 Q. I'm going to show you some pictures, ██████ Do you
2 recognize those pictures?

3 A. Yes, ma'am.

4 Q. And what are those pictures of?

5 A. Of Joe's truck.

6 Q. And is that how his truck looked on this day?

7 A. Yeah. Yes, ma'am.

8 MS. PATTERSON: Your Honor, I move State's
9 Exhibit One through Four be moved into evidence.

10 MR. WILLIAMS: No objection, Your Honor.

11 (Thereupon, State's Exhibits No. 1, 2, 3 and 4,
12 photographs, were received into evidence.)

13 BY MS. PATTERSON:

14 Q. Now, ██████ what part of the truck were you looking for
15 the toy?

16 A. By the passenger side.

17 Q. Was anybody else in the truck with you?

18 A. minorC

19 Q. Was anybody else in the truck?

20 A. Joe.

21 Q. And where was minorC

22 A. She was behind the driver's seat.

23 Q. And where was Joe?

24 A. In the front seat.

25 Q. And did y'all find the toy in the truck?

██████████ - DIRECT

1 A. No, ma'am.

2 Q. Did you get out the truck at that point?

3 A. I got out before they start looking for it.

4 Q. Did you ever get back in the truck?

5 A. No, ma'am.

6 Q. Now where were you when Joe touched you?

7 A. Behind the passenger side.

8 Q. And how were you seated in the passenger side?

9 A. Looking straight forward.

10 Q. And was anybody between you and minorC

11 A. No.

12 Q. Was anything in between you and minorC

13 A. Yes.

14 Q. What was that?

15 A. Like, bags that presents would be in.

16 Q. And how many bags were there?

17 A. I can't remember.

18 Q. Was it a big bag?

19 A. I can't remember.

20 Q. And did Joe ever make contact with you?

21 A. Yes.

22 Q. And how did this happen, ██████████

23 A. (Crying). He was standing on the side of me, standing
24 outside the truck. And he put his hand up my shorts and
25 in my panties. He put his fingers inside me.

██████ - DIRECT

1 Q. Did he say anything to you while he was doing this?

2 A. No, ma'am.

3 Q. Did you say anything to him?

4 A. I told him to stop.

5 Q. Did he stop?

6 A. Yes.

7 Q. I'm going to show you State's Exhibit Number Two. Is
8 that where you were sitting?

9 A. Yes, ma'am.

10 Q. Was the door open or closed?

11 A. Open.

12 Q. And you said Joe was standing where?

13 A. On the right side of me.

14 Q. Was his pants pulled up?

15 A. Yes.

16 Q. And how did he put his hands up your shorts?

17 A. (Crying). Like, up my shorts and my panties.

18 Q. And you felt his fingers?

19 A. Yes, ma'am.

20 Q. You felt them on top of your private?

21 A. Yeah.

22 Q. Did you feel it inside your private?

23 MR. WILLIAMS: Objection to leading.

24 THE COURT: Overruled. Go ahead.

25 THE WITNESS: Yes.

██████ - DIRECT

1 BY MS. PATTERSON:

2 Q. And after he stopped, what did you do?

3 A. I hopped out the truck and went in the house.

4 Q. Did you tell anybody what had happened?

5 A. Not right away.

6 Q. Why not?

7 A. Because I was scared that nobody would believe me.

8 Q. Do you remember when you first told somebody about
9 what had happened?

10 A. Yes.

11 Q. Who did you tell?

12 A. My mama.

13 Q. Do you remember when it was?

14 A. No.

15 Q. Was it the next week?

16 A. No.

17 Q. Was it sometime later?

18 A. Yes, ma'am.

19 Q. And after you told your mom what had happened, did you
20 talk to anybody else about it?

21 A. Yes.

22 Q. Who did you talk to?

23 A. She took me to the police station.

24 Q. Did you tell them what you're telling us today?

25 A. Yes.

████ - DIRECT

1 Q. And did you talk to anybody else?

2 A. Yes.

3 Q. Do you remember who that was?

4 A. I talked to Ms. Brackett about it because I just kept
5 on thinking about it at school. And I went to some place
6 and talked to a man about it.

7 Q. When you talked to that man, do you remember him
8 taping your conversation?

9 A. Yes.

10 Q. █████ that's what's been marked as State's Exhibit
11 Five for identification purposes only. Take a look at
12 that, please.

13 A. (Complying).

14 Q. Do you recognize that?

15 A. Yes.

16 Q. And what is that?

17 A. A note I wrote to Ms. Brackett.

18 Q. And you recognize your handwriting?

19 A. Yes, ma'am.

20 MS. PATTERSON: Your Honor, at this time I would
21 move that State's Exhibit Five be moved into evidence.

22 MR. WILLIAMS: Subject to the prior objection.

23 THE COURT: Overruled. Go ahead. Admitted into
24 evidence.

25 (Thereupon, State's Exhibit No. 5, handwritten

████ - DIRECT

1 note, was received into evidence.)

2 BY MS. PATTERSON:

3 Q. █████ what date is on that letter?

4 A. March 27, 2006.

5 Q. And who is Ms. Brackett?

6 A. The guidance counselor for the school in Batesburg.

7 Q. Did you know Ms. Brackett?

8 A. Yes.

9 Q. Did you like Ms. Brackett?

10 A. Yes.

11 Q. Did you trust her?

12 A. Yes.

13 Q. Why did you write her that letter?

14 A. Because I just kept on thinking about it at school.

15 Q. Are you and minorC still friends?

16 A. Yes.

17 Q. Y'all still hang out?

18 A. Yes.

19 Q. See each other? █████ do you see Joe here today?

20 A. Yes.

21 Q. Can you describe what he's wearing?

22 A. He's wearing a blue shirt, some black shoes.

23 MS. PATTERSON: Your Honor, let the record
24 reflect she's identified the Defendant.

25 THE COURT: Let her point him out. Can you point

██████ - CROSS

1 to him?

2 THE WITNESS: (Complying). He's right there.

3 THE COURT: Let the record reflect the witness
4 has identified the Defendant.

5 MS. PATTERSON: Thank you, Your Honor.

6 BY MS. PATTERSON:

7 Q. ██████ how did what Joe did to you make you feel?

8 A. It made me feel sad and mad, hurt.

9 Q. Is it hard for you to be here today?

10 A. Very.

11 Q. And has everything you've told us today been the
12 truth?

13 A. Yes.

14 MS. PATTERSON: Beg the Court's indulgence.

15 (Pause.)

16 MS. PATTERSON: ██████ thank you so much. Please
17 answer any questions Mr. Williams might have.

18 MR. WILLIAMS: May it please the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. WILLIAMS:

22 Q. Ms. ██████ I'm Theo Williams. I'm the defense lawyer
23 representing Joe Butler.

24 Let me ask you if I can, take you back just a little
25 bit. In reference to your testimony, it's my

██████ - CROSS

1 understanding that you say -- you have just said that this
2 occurred on October the 1st; is that correct?

3 A. Yes.

4 Q. And the reason you have picked the date of October the
5 1st is because, why?

6 A. I don't remember.

7 Q. You don't remember why you picked that date?

8 A. No.

9 Q. Well, there're at least 364 other days in the year
10 which you could have picked. Why would you pick the date
11 of October 1st?

12 A. I don't know.

13 Q. All right. Well, let me ask you some more questions
14 then. You say that this occurred, this event occurred at
15 your cousin's house, Ms. Ray, R. A. Y.; is that right?

16 A. Yes.

17 Q. Now, who would have been present at Ms. Ray's house?

18 A. A lot of people. Ray.

19 Q. Okay.

20 A. Her sons and her daughter.

21 Q. How old are her sons?

22 A. I don't know.

23 Q. Are they older or younger than you?

24 A. Older.

25 Q. And how old is her daughter?

██████ - CROSS

- 1 A. I don't know.
- 2 Q. Is she younger or older than you?
- 3 A. Older.
- 4 Q. All right. How many sons were there?
- 5 A. She has two.
- 6 Q. So, there's two sons, one daughter, all of which is
- 7 older than you, and there's Ms. Ray. And who else?
- 8 A. minorC mother.
- 9 Q. Lilly?
- 10 A. minorC mother.
- 11 Q. minorC mother?
- 12 A. Yes.
- 13 Q. And then minorC would be the daughter of Joe Butler;
- 14 is that right?
- 15 A. Yes.
- 16 Q. And who else?
- 17 A. Her brothers.
- 18 Q. Whose brothers?
- 19 A. minorC
- 20 Q. How many brothers does she have?
- 21 A. Three.
- 22 Q. And how old are they?
- 23 A. I don't know.
- 24 Q. Are they older or younger than you?
- 25 A. Older.

████ - CROSS

1 Q. Okay. Who else?

2 A. Well, my mama and my daddy and my two brothers.

3 Q. Your mama, your daddy and two brothers. How old are
4 your brothers?

5 A. Fifteen and 17.

6 Q. So they're older than you?

7 A. Yes.

8 Q. So essentially what you have -- anybody else?

9 A. Not that I know of.

10 Q. Now, correct me if I'm wrong. You have listed all of
11 these people, every one of the persons which you have
12 listed is older than you?

13 A. Yes.

14 Q. Okay. Now, let me take you again back to that date.
15 Do you remember, since you recall it being at Ms. Ray's
16 house, was it daytime or nighttime?

17 A. Nighttime.

18 Q. And was it dark or light?

19 A. Dark.

20 Q. Okay. Now who all was outside?

21 A. Me, minorC and Joe.

22 Q. You, minorC and Joe? Anybody else?

23 A. Not that I can remember.

24 Q. Okay. Now do you remember the first time that you had
25 a conversation with the police officer at the Batesburg-

████ - CROSS

- 1 Leesville Police Department?
- 2 A. Yes.
- 3 Q. All right. Do you recall what you told the officer at
- 4 the Batesburg-Leesville Police Department?
- 5 A. Yes.
- 6 Q. How many months or years after this supposedly
- 7 happened was it that you gave this first statement to the
- 8 police officer at the Batesburg-Leesville Police
- 9 Department?
- 10 A. I don't remember.
- 11 Q. Could it have been as much as two years?
- 12 A. No.
- 13 Q. Three years?
- 14 A. No.
- 15 Q. One year?
- 16 A. Yes.
- 17 Q. But you just don't remember?
- 18 A. I don't remember.
- 19 Q. All right. Do you recall what you reported to the
- 20 Batesburg-Leesville police officer?
- 21 A. Yes.
- 22 Q. What did you tell him?
- 23 A. Actually I wrote a note but I told him the same thing
- 24 I told here.
- 25 Q. So you told the Batesburg-Leesville police officer the

██████ - CROSS

1 same thing that you have just testified to today in court;
2 is that right?

3 A. Yes.

4 Q. I'm going to ask you, please, to look at a statement.
5 And tell me if you recognize that statement. (Document
6 handed to witness).

7 A. Yes.

8 Q. Now, is that a statement which you signed and gave the
9 Batesburg-Leesville police officer?

10 A. Yes.

11 Q. All right. May I see it back a second? Have you read
12 it carefully?

13 A. Yes.

14 Q. Now, do you remember what you just told the jury?
15 Right?

16 A. Yes.

17 Q. Now, and you just went through the names of the people
18 who were there and the ages of the people there. Right?

19 A. (Nods head.)

20 Q. In your statement you make reference to some little
21 boy, don't you?

22 A. Yes.

23 Q. All right. Now, was the little boy -- because you
24 call him a little boy which I assume that would put him
25 younger than you are; right?

█ - CROSS

1 A. Yes.

2 Q. So, you just went through a list of all of the people
3 who were at the place. Yet in your statement you're
4 telling the police officer that there was a little boy who
5 was there who you haven't told us about, right, as being
6 there; isn't that correct?

7 A. Yes.

8 Q. Well, who is this little boy then which you haven't
9 indicated was even there?

10 A. I don't remember.

11 Q. Was there a little boy there?

12 A. Yes.

13 Q. And who were his parents?

14 A. I don't remember.

15 Q. Who did he look like?

16 A. I don't remember.

17 Q. Okay. Now in your statement that you gave the police
18 officers, you made a statement about looking in one of the
19 bags on the seat; didn't you?

20 A. Yes.

21 Q. Did you tell the jury anything about looking in any
22 bags on the seat?

23 A. No.

24 Q. Now, in your direct testimony you made the comment
25 that Mr. Butler was in the front seat of the driver's car

██████████ - CROSS

1 door -- front door of the vehicle; is that correct?

2 A. Yes.

3 Q. When did he leave that area and what were you doing
4 when he left that area?

5 A. When he left this area, I was looking for the little
6 boy's truck.

7 Q. What truck were you looking for? What does it look
8 like?

9 A. I don't remember. It was a little toy truck.

10 Q. Okay. And where did he go?

11 A. He went to the side of me.

12 Q. Okay. And what did he do when he got beside you? Is
13 that when he put his hands up your skirt?

14 A. My shorts.

15 Q. Your shorts?

16 A. Yes.

17 Q. Okay. Now, on your direct testimony you made the
18 comment that he put his finger inside you; is that
19 correct?

20 A. Yes.

21 Q. In your statement which you gave the Batesburg-
22 Leesville police officer, did you tell him that you, that
23 he put his finger inside you?

24 A. I don't remember.

25 Q. Would you like to look?

██████ - CROSS

1 A. Yes.

2 Q. (Document hand to witness). Okay. Did you tell the
3 Batesburg-Leesville police officer that he put his finger
4 inside of you?

5 A. No.

6 Q. All right. Now, the statement which has been
7 introduced into evidence as State's Exhibit Number Five,
8 this statement was a letter that you wrote to your
9 guidance counselor because these events were worrying you;
10 is that right?

11 A. Yes.

12 Q. Why didn't you write this letter a year earlier or a
13 year and a half earlier?

14 A. Because I didn't think anybody would believe me.

15 Q. All right. Had you tried to tell anyone so that you
16 could -- they could make the call whether or not they
17 believed you or didn't believe you?

18 A. No.

19 Q. But the date of this letter is actually after the time
20 when you went to the police officer and talked to him;
21 right?

22 A. Yes.

23 Q. Now, in this letter, did you say that he put his
24 finger inside you?

25 A. No.

████ - CROSS

1 Q. You did not?

2 A. No.

3 Q. At some point in time, after you talked to your
4 mother, after you talked to the police you went to see a
5 investigator or a child psychologist or something like
6 that, a gentleman, and you talked to him about what
7 occurred to you; is that right?

8 A. Yes.

9 Q. You remember that?

10 A. Yes.

11 Q. And that was after you had talked to your mother,
12 after you had talked to the police, and after you had
13 written that letter; isn't that correct?

14 A. Yes.

15 Q. Now, I think you've already testified that that
16 conversation was recorded?

17 A. Yes.

18 Q. And videotaped. At any point in time during that
19 interview did you ever tell that interviewer that Joe
20 Butler placed his finger inside you?

21 A. No.

22 Q. When is it that you decided to say that Joe Butler put
23 his finger inside of you?

24 A. I don't remember.

25 Q. You don't remember. When is the first time that you

████ - CROSS

1 told anyone that he did that?

2 A. I don't remember.

3 Q. Was it last week?

4 A. I don't remember.

5 Q. Was it after -- was it this week?

6 A. No.

7 Q. Was it before the month of February?

8 A. I don't remember.

9 Q. Was it before the month of January?

10 A. I don't remember.

11 Q. And who did you tell that to?

12 A. I don't remember.

13 Q. Now, according to your letter that you gave the
14 guidance counselor which has been introduced into evidence
15 as State's Exhibit Number Five, Joe's daughter was in, was
16 in the vehicle when it happened; right?

17 A. Yes.

18 Q. But she didn't see it happen?

19 A. No.

20 Q. And that once it happened then you left the vehicle,
21 you went inside. And what did you do?

22 A. I went to the bathroom.

23 Q. Okay. You went to the bathroom. Then what did you
24 do?

25 A. I went and sat either on my mama or my daddy's lap and

██████ - CROSS

1 watched TV.

2 Q. So you simply went inside and you sat on your mama's
3 or your daddy's lap?

4 A. Yes.

5 Q. And watched TV?

6 A. Yes.

7 Q. Well, what did you say in the letter that you gave the
8 guidance counselor?

9 A. I sat on my daddy's lap and watched TV.

10 Q. So in your letter to the guidance counselor you said
11 not your mama or your daddy's lap, but you said you sat on
12 your daddy's lap and watched TV?

13 A. Yes.

14 Q. How many months went by before you decided to talk to
15 your mother and say that something had occurred?

16 A. I don't know.

17 Q. Did you ever go to the hospital to be, to have some
18 sort of sex rape kit done?

19 A. Yes.

20 Q. All right. And when was that?

21 A. I don't remember.

22 Q. And who did you see?

23 A. I don't remember.

24 Q. Did you see more than one person?

25 A. Yes.

████ - CROSS

1 Q. How many people did you see?

2 A. A lot.

3 Q. A lot of people. Was it this year or last year?

4 A. Neither.

5 Q. It wasn't either one?

6 A. No.

7 Q. Was it the year before?

8 A. No.

9 Q. Was it the year before that?

10 A. Yes.

11 Q. So it would be in 2008?

12 A. No.

13 Q. Last year was 2009; right?

14 A. Oh, yes. It was 2006. In the fourth grade.

15 Q. So it was 2006?

16 A. (Nods head.)

17 Q. Which would have been four years ago; right?

18 A. (Nods head.)

19 Q. Do you remember when you talked to the police officer
20 and told him when this happened?

21 A. Yes.

22 Q. You didn't give him any month that it supposedly
23 happened; did you?

24 A. I don't remember.

25 Q. Didn't you simply say it happened in the summer?

██████████ - REDIRECT

1 Is that right?

2 A. I don't remember.

3 Q. Now these pictures which we talked about which are
4 into evidence, are you certain, are you certain that's Joe
5 Butler's vehicle?

6 A. No.

7 MR. WILLIAMS: I beg the Court's indulgence for
8 one minute, Your Honor.

9 (Pause.)

10 MR. WILLIAMS: That's all we have, Your Honor.

11 THE COURT: Cross-examination -- I mean, redirect.

12 REDIRECT EXAMINATION

13 BY MS. PATTERSON:

14 Q. ██████████ does this look like the truck that you were in
15 the day that Joe put his fingers inside of you?

16 A. Yes.

17 Q. It looks like the truck?

18 A. Yes.

19 Q. Do you still have the letter to Ms. Brackett?

20 A. (Document handed to Ms. Patterson.)

21 Q. And, ██████████ in this letter to Ms. Brackett, do you talk
22 about a little boy?

23 A. No. No.

24 Q. Do you talk about presents?

25 A. No.

██████████ - REDIRECT

1 Q. What was the purpose of you writing this letter to
2 Ms. Brackett?

3 A. I just kept on thinking about the thing and the
4 teacher told me to --

5 MR. WILLIAMS: Objection to hearsay, Your Honor.

6 THE COURT: Overruled. Go ahead. You can answer
7 the question, ma'am. Go ahead.

8 THE WITNESS: The teacher told me to write this
9 letter to Ms. Brackett because when I go up to her room
10 she wasn't there.

11 BY MS. PATTERSON:

12 Q. So you wrote her a letter because you didn't get to
13 see her?

14 A. Yes.

15 Q. Do you remember what you had on this day?

16 A. Yes.

17 Q. What did you have on?

18 MR. WILLIAMS: Objection, Your Honor. It's not
19 proper redirect.

20 THE COURT: Overruled. Go ahead.

21 BY MS. PATTERSON:

22 A. I was wearing some blue Jordash shorts and a pink
23 shirt.

24 MR. WILLIAMS: Without objection, Your Honor.

25 BY MS. PATTERSON:

██████████ - REDIRECT

1 Q. I'm going to hand you a copy of your statement that
2 you wrote to the police officers Mr. Williams was
3 referring to it earlier. Is that the statement that you
4 wrote?

5 A. Yes.

6 Q. That's in your writing?

7 A. Yes.

8 MS. PATTERSON: Your Honor, at this time I move
9 that ██████████ statement be moved into evidence.

10 MR. WILLIAMS: Without objection, Your Honor.

11 (Thereupon, State's Exhibit No. 6, ██████████
12 statement, was received into evidence.)

13 BY MS. PATTERSON:

14 Q. ██████████ will you please read that letter to the jury or
15 your statement?

16 A. All of us was at my cousin's house. I stayed outside
17 and played with his daughter Leola and a little boy was
18 out there, too. He say he lost his toy truck. Me and
19 Leola said that we would help him look for it. It was
20 like little bags that presents be in. And I grabbed one
21 and looked for it. First he was in the front seat, then
22 he came around to where I was. Then he went up my shorts
23 and grabbed my private. I told him to stop and he did.
24 Then I went in the house and went in the bathroom. Then I
25 just went in the den and watched TV with them.

████ - REDIRECT

1 Q. Now, █████ do you know why you wrote that statement
2 for the officers?

3 A. No.

4 Q. Did they ask you to write that statement?

5 A. Yes.

6 MR. WILLIAMS: Objection to leading.

7 THE COURT: Overruled. Go ahead.

8 BY MS. PATTERSON:

9 Q. And is that statement the truth?

10 A. Yes.

11 Q. Is that what happened?

12 A. Yes.

13 Q. And in that statement you refer to the little boy?

14 A. (Nods head.)

15 Q. And do you refer to presents?

16 A. Yes.

17 Q. Now you say you remember talking to someone named Ray
18 or a man?

19 A. Yes.

20 Q. And when he was asking you the questions about what
21 Joe did to you, did you fully understand the questions?

22 A. No.

23 Q. How old were you again when that happened?

24 A. I don't remember.

25 Q. Were you younger?

REDCROSS

1 A. Yes.

2 Q. And have you understood my questions today?

3 A. Yes.

4 Q. And, again, have you been truthful?

5 A. Yes.

6 Q. This is what you remember?

7 A. Yes.

8 Q. This is what happened?

9 A. Yes.

10 MS. PATTERSON: Thank you, Your Honor.

11 MR. WILLIAMS: May it please the Court.

12 THE COURT: Yes, sir.

13 RECROSS-EXAMINATION

14 BY MR. WILLIAMS:

15 Q. Now, ma'am, you certainly have understood the
16 questions I've asked you; haven't you?

17 A. Yes.

18 Q. And you haven't had any problems understanding exactly
19 what we're asking you and your responses in regards to
20 what those questions are?

21 A. Yes.

22 Q. Now who is the little boy that you reference in this
23 letter that you wrote for the police officer?

24 A. I don't know.

25 Q. Can you describe what he looked like?

REDCROSS

1 A. No.

2 Q. Now, the statement which you gave the police officer
3 was done five days before the letter which you gave
4 Ms. Brackett; is that correct?

5 A. Yes, sir.

6 Q. And then those two statements which were both
7 handwritten by you are inconsistent; aren't they?

8 A. What inconsistent mean?

9 Q. It means you don't have the same information in both
10 written statements. Isn't that true?

11 A. No.

12 Q. No? All right. Well, let's look at the statement
13 which you gave Ms. Brackett. Do you tell Ms. Brackett
14 anything about a little boy?

15 A. No.

16 Q. Do you tell Ms. Brackett anything about a truck?

17 A. No.

18 Q. In the statement which you gave the police officer, do
19 you tell the police officer anything about sitting on your
20 daddy's lap?

21 A. No.

22 Q. So, those would be inconsistent; wouldn't they?

23 A. Yes.

24 Q. Now the teacher which you just testified to said for
25 you to write a letter to the guidance counselor?

MONICA JOHNSON CREECH - DIRECT

1 A. Yes.

2 Q. Who is that teacher?

3 A. Ms. Shirley.

4 Q. Ms. Shirley?

5 A. Yeah.

6 Q. Did you tell Ms. Shirley about this?

7 A. No.

8 Q. Why didn't you tell Ms. Shirley about this?

9 A. I don't know.

10 Q. Now the outfit which you had on --

11 A. Uh-huh.

12 Q. -- on that occasion, do you reference either, in
13 either one of these written statements what type of outfit
14 you had on?

15 A. No.

16 Q. You made the statement in cross-examination that -- or
17 in -- that you didn't know if this is Joe's truck or not.
18 Then on direct examination you made a statement that this
19 looked like Joe's truck?

20 A. Yes.

21 Q. It could be somebody else's truck or vehicle; couldn't
22 it?

23 A. Yes.

24 MR. WILLIAMS: That's all I have, Your Honor.

25 THE COURT: Thank you very much. You may come

MONICA JOHNSON CREECH - DIRECT

1 down. Next witness.

2 MS. PATTERSON: State call Monica Creech.

3 MONICA JOHNSON CREECH, having been duly sworn,
4 was examined and testified as follows:

5 THE CLERK: Please be seated in the witness stand
6 right over here. Once you are seated, please state your
7 name, spelling your last name for the record.

8 THE WITNESS: Monica Johnson Creech, C. R. E. E.
9 C. H.

10 DIRECT EXAMINATION

11 BY MS. PATTERSON:

12 Q. Ms. Creech, do you have children?

13 A. Yes.

14 Q. How many children?

15 A. Three.

16 Q. And what are your childrens' names?

17 A. Tyrus, Gabreal and [REDACTED]

18 Q. [REDACTED] your daughter?

19 A. Yes.

20 Q. How old is [REDACTED]

21 A. Thirteen.

22 Q. And when is [REDACTED] birthday?

23 A. April 3rd.

24 Q. What year?

25 A. '92, no '96. I got three, so.

MONICA JOHNSON CREECH - DIRECT

1 Q. Do you know the Defendant, Joe Butler?

2 A. Yes.

3 Q. How do you know him?

4 A. Through family.

5 Q. And What's the connection?

6 A. My husband's cousin was his girlfriend.

7 Q. How well do you know Joe?

8 A. Pretty well.

9 Q. Is he close to your family?

10 A. At one point in time.

11 Q. Did you see him often?

12 A. Quite often.

13 Q. Did [REDACTED] know him?

14 A. Yes.

15 Q. Do you remember finding out about an incident between

16 Joe and [REDACTED]

17 A. Yes.

18 Q. Do you remember when you found this out?

19 A. The exact date or?

20 Q. Yes. Or around the time that you found this out.

21 A. I'm not quite sure of the exact date but, 2006.

22 Q. What part of 2006; do you remember?

23 A. No, I don't remember.

24 Q. Without saying what anybody told you, how did you find
25 this out?

MONICA JOHNSON CREECH - DIRECT

- 1 A. I asked her.
- 2 Q. Without saying what she told you, what was her
3 reaction?
- 4 A. She started crying.
- 5 Q. And after you saw her reaction and she told you what
6 she told you, what did you do?
- 7 A. I went to the police station.
- 8 Q. Did you talk to anybody at the police station?
- 9 A. I did.
- 10 Q. Did you give a statement?
- 11 A. Yes.
- 12 Q. Did [REDACTED] talk to anybody at the police station?
- 13 A. Yes.
- 14 Q. Did she give a statement to your knowledge?
- 15 A. Yes.
- 16 Q. And what police department did you go to?
- 17 A. Batesburg.
- 18 Q. Now did [REDACTED] tell you when this happened to her?
- 19 A. Yes.
- 20 Q. And when did she say it happened?
- 21 A. Well, when I found out she said it was a year ago.
- 22 Q. And did she tell you what was going on around the time
23 it happened?
- 24 A. She said we was at a party.
- 25 Q. Did she say whose party?

MONICA JOHNSON CREECH - DIRECT

- 1 A. Yes.
- 2 Q. Whose party was it?
- 3 A. Joe's daughter.
- 4 Q. What's his daughter's name?
- 5 A. Leola.
- 6 Q. Do you know when her birthday is?
- 7 A. October 1st.
- 8 Q. Do you remember going to this party?
- 9 A. Yes. I remember going, you know, to several parties
- 10 she had.
- 11 Q. And where did you go to these parties at?
- 12 A. To Rayletta's house.
- 13 Q. Who is Rayletta?
- 14 A. My cousin and it's Leola's aunt.
- 15 Q. Do you remember Joe being at that party?
- 16 A. Yes.
- 17 Q. Are you close to -- you say her name is Rayletta?
- 18 A. Rayletta.
- 19 Q. Are you close to Rayletta?
- 20 A. Yes.
- 21 Q. Do you remember [REDACTED] talking to anybody else about
- 22 what happened?
- 23 A. She talked to the guidance counselor at school.
- 24 Q. And who else did -- did she talk to anybody else?
- 25 A. Well, I took her to the Dickerson Center.

MONICA JOHNSON CREECH - DIRECT

1 Q. She talked to somebody there?

2 A. Uh-huh.

3 Q. Were you there when she talked to that person?

4 A. I wasn't in the room when she talked to the person.

5 Q. So she talked to that person outside of your presence?

6 A. Yes.

7 Q. Now did you take [REDACTED] to the doctor for a physical
8 exam?

9 A. Yes.

10 Q. Did you do that on your own?

11 A. Well, it was -- it was set up for me to do it.

12 Q. Did they find anything?

13 MR. WILLIAMS: Objection. It's hearsay.

14 THE COURT: Repeat the question.

15 MS. PATTERSON: I asked her did they find
16 anything during the exam.

17 MR. WILLIAMS: I withdraw the objection.

18 THE COURT: Thank you.

19 THE WITNESS: No.

20 BY MS. PATTERSON:

21 Q. This is -- when did it happen?

22 A. I'm not quite sure. It was maybe a month after she
23 had told us about it.

24 Q. So a month after she had told you?

25 A. Uh-huh.

MONICA JOHNSON CREECH - CROSS

1 Q. So some months after she had said this incident
2 happened?

3 A. Yeah.

4 MS. PATTERSON: Beg the Court's indulgence, Your
5 Honor.

6 (Pause.)

7 BY MS. PATTERSON:

8 Q. Ms. Creech, have you and [REDACTED] came up here to talk to
9 me before about this case?

10 A. Yes.

11 Q. And when we talked about it, did I ask you about
12 [REDACTED] birthday?

13 A. Yes.

14 Q. Did I ask you specifically about that date?

15 A. Yes.

16 Q. And did you tell me that date was October 1st?

17 A. Yes.

18 Q. Had anybody else asked you before then about [REDACTED]
19 birth date?

20 A. Can't remember.

21 MS. PATTERSON: Thank you, Ms. Creech. Please
22 answer any questions of Mr. Williams.

23 THE COURT: Mr. Williams?

24 MR. WILLIAMS: Thank you, Your Honor.

25 CROSS-EXAMINATION

MONICA JOHNSON CREECH - CROSS

- 1 BY MR. WILLIAMS:
- 2 Q. Ms. Creech, what is the importance of minorC
- 3 birthday?
- 4 A. What is the importance?
- 5 Q. Right. The solicitor has asked you about minorC
- 6 birthday and you said that you told the solicitor when her
- 7 birthday was. Now, this is Joe Butler's daughter. What
- 8 is the importance of minorC birthday?
- 9 A. Because this is when it happened.
- 10 Q. So you're saying it happened on her birthday; is that
- 11 right?
- 12 A. I'm not saying that it happened on her birthday but it
- 13 was a birthday party for her.
- 14 Q. So it happened at a birthday party for minorC who is
- 15 the daughter of Mr. Butler, and that would have occurred
- 16 in the year 2005 versus the year 2006; is that correct?
- 17 A. Yes.
- 18 Q. Now, at this birthday party was there a cake?
- 19 A. Yes.
- 20 Q. And were there presents?
- 21 A. Yes.
- 22 Q. And was there someone designated as the official
- 23 camera taker or picture taker? Did someone sit around and
- 24 take pictures?
- 25 A. I don't remember.

MONICA JOHNSON CREECH - CROSS

1 Q. Well, when you have these family gatherings, do you
2 normally have someone who takes pictures of the children
3 and pictures unwrapping presents and pictures of the cake?

4 A. Sometimes.

5 Q. Are you saying that they did or did not do it at this
6 point in time?

7 A. I'm saying they did not.

8 Q. You're saying they did not?

9 A. They did not.

10 Q. So you clearly remember that even though there was a
11 birthday party with presents and cake that no one took
12 pictures at this birthday party?

13 A. Yes.

14 Q. Why do you remember that no one took pictures at this
15 birthday party?

16 A. Because I don't remember seeing any pictures.

17 Q. Well, you remember what happened at the birthday party
18 then; don't you?

19 A. I remember the birthday party, yeah.

20 Q. And since you remember the birthday party, tell me
21 something about that birthday cake that they had at the
22 birthday party. What did it look like?

23 A. I don't remember a cake.

24 Q. Let me show you a picture.

25 MR. STUMBO: Judge, just as matter of objection.

MONICA JOHNSON CREECH - CROSS

1 This is the first time I've seen these pictures. I would
2 expect some foundation to be made by Mr. Williams --

3 MR. WILLIAMS: I'm getting ready to lay it, Your
4 Honor.

5 MR. STUMBO: -- before they're put in front of
6 this jury.

7 THE COURT: Any objection?

8 MR. STUMBO: There's an objection. Yes, sir.

9 THE COURT: Foundation?

10 MR. STUMBO: Foundation.

11 THE COURT: Thank you.

12 MR. WILLIAMS: I'm going to attempt to lay the
13 foundation, Your Honor.

14 THE COURT: Go ahead.

15 BY MR. WILLIAMS:

16 Q. Ma'am, looking at this picture, can you tell me who is
17 pictured in that picture?

18 A. Leola.

19 Q. And that would be the child of Joe Butler; is that
20 correct?

21 A. Yes.

22 Q. And besides Leola being pictured in that particular
23 picture, is there anything else reflected in that picture?

24 A. A cake.

25 Q. A cake?

MONICA JOHNSON CREECH - CROSS

- 1 A. (Nods head.)
- 2 Q. And what birthday cake would that be for?
- 3 A. Her eighth birthday.
- 4 Q. Her eighth birthday?
- 5 A. That's how many candles are, eight.
- 6 Q. If it's her eighth birthday, then how old would minorC
- 7 be on her eighth birthday?
- 8 A. Would be eight.
- 9 Q. I mean, what year would that be?
- 10 A. What year? I don't know.
- 11 Q. Well, how old is minorC now?
- 12 A. I don't remember her exact age.
- 13 Q. How old is your daughter?
- 14 A. How old is my daughter?
- 15 Q. Uh-huh.
- 16 A. She's 13.
- 17 Q. And how much younger is minorC than your daughter?
- 18 A. Maybe two years.
- 19 Q. Two years?
- 20 A. Maybe two. I'm not sure.
- 21 Q. When's your daughter's birth date? When was she born?
- 22 A. She was born April 3rd.
- 23 Q. Of what year?
- 24 A. '96.
- 25 Q. '96. Now, you don't know as to whether or not,

MONICA JOHNSON CREECH - CROSS

1 whether or not Joe's daughter was born the following year
2 or not?

3 A. No.

4 MR. WILLIAMS: Your Honor, we would move to mark
5 this only as an exhibit at this point in time, not into
6 evidence yet.

7 THE COURT: All right. You can do that.

8 (Thereupon, Defendant's Exhibit No. 1,
9 photograph, was marked for identification.)

10 BY MR. WILLIAMS:

11 Q. Let me ask you to look at this picture and tell me if
12 you can identify the individuals in that picture.

13 A. That's Leola, Tyren and Averon.

14 Q. And who are the other two individuals you just
15 mentioned besides Leola?

16 A. Her brother.

17 Q. Her brother?

18 A. Uh-huh.

19 Q. And would you say that that picture was taken at the
20 same time as this picture?

21 MR. STUMBO: Your Honor --

22 MR. WILLIAMS: Do you want to compare them?

23 THE WITNESS: I don't -- I don't know.

24 MR. STUMBO: Objection, Your Honor. The witness
25 doesn't have personal knowledge when these pictures were

MONICA JOHNSON CREECH - CROSS

1 taken.

2 THE COURT: Well, she can -- that's all she has
3 to say.

4 BY MR. WILLIAMS:

5 Q. Well then, let me show you a different picture. Let
6 me show you this picture and tell me if that picture
7 doesn't -- in that particular picture who does that, who
8 does that depict on that picture?

9 A. That's Leola.

10 Q. And is she wearing the same outfit as on the other
11 picture which has been marked for identification purposes
12 only?

13 A. Yes.

14 MR. WILLIAMS: Your Honor, we would move to mark
15 this as an exhibit only, not into evidence yet.

16 THE COURT: Go ahead.

17 (Thereupon, Defendant's Exhibit No. 2,
18 photograph, was marked for identification.)

19 BY MR. WILLIAMS:

20 Q. How about these other two pictures. Can you identify
21 the persons in these other two pictures?

22 A. That's Leola.

23 Q. And is she wearing the same outfit as she is in the
24 two pictures that have been marked as an exhibit?

25 A. It is.

MONICA JOHNSON CREECH - CROSS

1 MR. WILLIAMS: We would move to mark these other
2 two pictures as an exhibit only at this time.

3 THE COURT: Go ahead.

4 (Thereupon, Defendant's Exhibit No. 3 and 4,
5 photographs, were marked for identification.)

6 BY MR. WILLIAMS:

7 Q. Let me ask you to look at this picture and tell me who
8 is depicted in that picture.

9 A. Leola and Joe.

10 Q. Leola and Joe Butler?

11 A. Yes.

12 Q. What else is in that picture?

13 A. A birthday cake.

14 Q. A birthday cake. And is it the same birthday cake
15 which is depicted in this earlier exhibit?

16 MR. STUMBO: Your Honor, I'm going to object.
17 He's basically publishing these pictures to the jury.

18 THE COURT: Overruled. go ahead. If she knows
19 if she can tell you.

20 BY MR. WILLIAMS:

21 Q. Is it?

22 A. Yes.

23 Q. Okay. Thank you.

24 MR. WILLIAMS: We would move to mark that as an
25 exhibit only at this time.

MONICA JOHNSON CREECH - CROSS

1 (Thereupon, Defendant's Exhibit No. 5,
2 photograph, was marked for identification.)

3 BY MR. WILLIAMS:

4 Q. Now, ma'am, let me ask you again about the date of
5 October the 1st, of 2000 and when? When did this occur?

6 A. 2005.

7 Q. All right. On that date, that would have been as
8 you've already remarked would have been Leola's -- did I
9 say her name right?

10 A. Yes.

11 Q. Would have been her birthday and a birthday party; is
12 that right?

13 A. Yes.

14 Q. And you would agree, would you not, that most birthday
15 parties are celebrated around the time of somebody's
16 birthday? Wouldn't you agree?

17 A. Sometimes.

18 Q. Having said that, is it still your testimony that
19 Leola's birthday party was held at Ms. Ray's house on
20 October the 1st of 2005?

21 A. Yes.

22 Q. No other time? Could have been 2000 -- could have
23 been June, could it?

24 A. You mean June of 2005?

25 Q. Yes. Could have been June; right?

MONICA JOHNSON CREECH - CROSS

1 A. Not June 2005, no.

2 Q. Who was present at this birthday party again?

3 A. I don't remember everybody who was present.

4 Q. Well, tell me who you remember being present.

5 A. Myself, [REDACTED] her father, Joe, Leola's mother, her
6 aunt, her sister -- I mean, her brother, Rayletta's
7 children.

8 Q. Whose children?

9 A. Rayletta.

10 Q. How old are her children?

11 A. They're grown. I don't remember their ages.

12 Q. Were there any children younger than your daughter
13 present at this birthday party?

14 A. Yes.

15 Q. And who were they?

16 A. My niece.

17 Q. Your niece?

18 A. My niece was probably there, yeah.

19 Q. Was probably there?

20 A. (Nods head.)

21 Q. Anybody else?

22 A. I can't remember. I mean, it was other children
23 there. I just can't remember.

24 Q. Well, now, obviously since it's your niece it would
25 not be a little boy; would it?

MONICA JOHNSON CREECH - CROSS

1 A. No.

2 Q. From the date of October the 1st, 2005 up until the
3 date on which you took your child to the police station,
4 did she do good in school?

5 A. Yes.

6 Q. Was she healthy?

7 A. Yes.

8 Q. Have any problems with her?

9 A. No.

10 Q. I think you already stated that she had a physical
11 exam and the physical exam indicated that she was healthy
12 and nothing was wrong with her; is that right?

13 A. Yes.

14 Q. When you talked to your daughter sometime about a year
15 later, did she say that anyone ever penetrated her?

16 A. Can you say that again?

17 Q. Did she say that she had been penetrated or not by
18 anything? By a finger, sexual organ or anything?

19 A. Yes.

20 Q. She did. So she told you prior to you going to the
21 police officer that she had been penetrated; is that
22 right?

23 A. That's what made me go to the police.

24 Q. Then did you sit with her when she gave a statement to
25 the police officer?

MONICA JOHNSON CREECH - CROSS

1 A. No.

2 Q. Did you read the statement she gave the police
3 officer?

4 A. Yes.

5 Q. And did she tell the police officer that she had been
6 penetrated?

7 A. No.

8 Q. Then did you correct her? Did you talk to the police
9 officer and tell the police officer, well, she told me
10 that she had been penetrated?

11 A. No.

12 Q. Did you go with her when she went to the Dickerson
13 Center and she had a meeting with the counselor there?

14 A. I did.

15 Q. Did you understand what she told the counselor?

16 A. When she talked to him, I wasn't in the room with her.

17 Q. Did the counselor ever talk to you?

18 A. Yes.

19 Q. Did you tell the counselor that she said she had been
20 penetrated?

21 A. No.

22 Q. Why wouldn't you tell the counselor that? This is
23 your daughter; right?

24 A. Yes.

25 Q. Why wouldn't you tell the counselor that?

MONICA JOHNSON CREECH - CROSS

1 A. (No response.)

2 Q. For what purpose would you take your daughter to the
3 Lexington County Medical Center to have an invasive
4 procedure done without telling someone that she had been
5 penetrated?

6 A. Well, I mean, she had been touched. That's what she
7 said.

8 Q. So you're saying she had been touched meant the same
9 thing as she had been penetrated?

10 A. Yes.

11 Q. And that's what you're basing this on?

12 A. Yes.

13 Q. She also said she had been penetrated?

14 A. Yes.

15 Q. She also said something went inside of her?

16 A. She didn't understand what they were saying.

17 Q. She didn't understand?

18 A. No.

19 Q. Did you help her understand?

20 A. I wasn't in there when she was talking to them.

21 Q. Do you remember giving a statement to the police
22 officer?

23 A. Yes.

24 Q. Would you look at your statement?

25 A. (Complying.)

MONICA JOHNSON CREECH - CROSS

1 Q. Did you tell the police officer that she had been
2 penetrated?

3 A. Said, he put his hands on my private area.

4 Q. Put his hands on her private area; right?

5 A. Yes.

6 Q. In your mind, does that mean the same thing as
7 penetrated?

8 A. (Crying). I know what that means. No.

9 Q. It doesn't mean the same thing. Now, having read your
10 statement, do you want to change your statement about what
11 your daughter told you in regards to whether or not she
12 was penetrated or not?

13 A. No.

14 Q. So it's still your testimony she told you she was
15 penetrated; is that right?

16 A. Yes.

17 Q. Now when was the first time that she told you that it
18 happened on October the 1st of 2005?

19 A. I'm not sure of the exact month.

20 Q. Well, did she tell it to you before the arrest warrant
21 was issued and Joe Butler was arrested?

22 A. Yes.

23 Q. So, neither you nor your daughter would have told the
24 police officer that it only occurred in the summer of
25 2005?

MONICA JOHNSON CREECH - CROSS

1 A. I'm not --

2 Q. It's very simple. Did you tell the police officer the
3 date that this occurred?

4 A. I didn't know.

5 Q. Well, weren't you asked about whether or not this
6 occurred on October the 1st of 2005 which just coincided
7 with minorC birthday? Weren't you asked about when it
8 happened?

9 A. Yes.

10 Q. And when you were asked about it, what did you tell
11 the police officer? Would you like to look at the
12 warrant? Would that refresh your memory? (Document
13 handed to the witness).

14 What did you tell the police officer?

15 MS. PATTERSON: Objection, Your Honor.

16 BY MR. WILLIAMS:

17 Q. Does that refresh your memory?

18 MS. PATTERSON: She has nothing to do with what
19 date is written in a warrant.

20 THE COURT: Ask your question again.

21 BY MR. WILLIAMS:

22 Q. Does that particular warrant refresh your memory in
23 regards to what you told the police officer in regards to
24 when this occurred?

25 A. (No response.)

MONICA JOHNSON CREECH - REDIRECT

1 Q. I'm sorry?

2 A. No. I mean, no.

3 Q. That doesn't refresh your memory?

4 A. (No response.)

5 Q. Okay. So is it your testimony that you told the
6 police officer it occurred on October 1st of 2005? Is
7 that your testimony?

8 A. Yes.

9 Q. Okay.

10 MR. WILLIAMS: That's all the questions I have,
11 Your Honor.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MS. PATTERSON:

15 Q. Ms. Creech, when you went to the police after your
16 daughter told you what happened to her, were you upset?

17 A. Yes.

18 Q. Were you angry?

19 A. Yeah.

20 Q. When they asked you to write that statement, what was
21 your main purpose in writing that statement?

22 A. My main -- to tell them what she had told me.

23 Q. And in your statement that Mr. Williams referred to
24 you told the police that she told you he put his hand on
25 her private?

MONICA JOHNSON CREECH - REDIRECT

1 A. Yes.

2 Q. That's what she told you?

3 A. Yes.

4 Q. And she was how old at the time?

5 A. Nine.

6 Q. And did you grill her about the real specific details?

7 A. No.

8 Q. When she talked to Ray at the Dickerson Center were
9 you present?

10 A. No.

11 Q. And when he talked to you after he had spoken with
12 her, did he grill you about what she had told you?

13 A. No.

14 Q. Did you ask him about what she told you?

15 A. No.

16 Q. So, you don't know what she told him; do you?

17 A. No.

18 Q. Now, Ray -- and I apologize. I can get her name wrong
19 -- Rayletta?

20 A. Yes.

21 Q. Again, who is Rayletta to the Defendant's daughter?

22 A. Her aunt.

23 Q. And do y'all go to her house often for family
24 gatherings?

25 A. Yes.

MONICA JOHNSON CREECH - REDIRECT

1 Q. Are any of these family gatherings ever children's
2 birthday parties?

3 A. Yes.

4 Q. Is it common for her to have minorC party at her
5 house?

6 A. Yes.

7 Q. Is she close to minorC

8 A. Yes.

9 Q. She loves minorC

10 A. Yes.

11 Q. And she likes to have things for minorC at her house?

12 A. Yes.

13 Q. Does Ray keep kids?

14 A. Yes.

15 Q. And this little boy that [REDACTED] referred to helping find
16 her (sic) truck, did you know him?

17 MR. WILLIAMS: Objection, Your Honor. There's no
18 foundation for that question. She hasn't said that she --

19 THE COURT: No, no.

20 MR. WILLIAMS: I'm sorry, Your Honor. Objection
21 to foundation for the question.

22 THE COURT: Rephrase your question.

23 BY MS. PATTERSON:

24 Q. Do you remember a little boy being at Ray's house?

25 A. I remember little boys.

MONICA JOHNSON CREECH - REDIRECT

1 Q. Did you know this little boy?

2 A. No.

3 Q. And you say Ray do keep kids?

4 A. Yes.

5 Q. Now when [REDACTED] told you what happened you said you were
6 upset. Did you grill her about the specific date it
7 happened when she told you?

8 A. No.

9 Q. What were you concerned about?

10 A. I was concerned about her and, you know, going to tell
11 what happened.

12 Q. Did she tell you what she had on?

13 A. Yes.

14 Q. What did she tell you she had on?

15 A. She said she had on some blue jean shorts and a pink
16 shirt.

17 Q. Now is it uncommon for your children to wear shorts in
18 October?

19 A. No. It's kind of still, you know, warm. We still
20 have warm days.

21 MS. PATTERSON: Beg the Court's indulgence.

22 (Pause.)

23 BY MS. PATTERSON:

24 Q. Now, Ms. Creech, that's your statement that the
25 defense counsel was referring to earlier. Do you

MONICA JOHNSON CREECH - REDIRECT

1 recognize that?

2 A. Yes.

3 Q. Is that the statement you gave Batesburg Police?

4 A. Yes.

5 Q. Does it fairly represent the statement that you gave
6 them that day?

7 A. Yes.

8 MS. PATTERSON: Your Honor, at this time I would
9 move that Ms. Creech's statement be moved into evidence as
10 State's Exhibit Seven.

11 MR. WILLIAMS: Without objection, Your Honor.

12 THE COURT: Without objection.

13 (Thereupon, State's Exhibit No. 7, Monica
14 Creech's statement, was received into evidence.)

15 BY MS. PATTERSON:

16 Q. Now, Ms. Creech, in your statement you talk about a
17 little boy being there?

18 A. Yes.

19 Q. Do you talk about [REDACTED] playing with this little boy?

20 A. Yes.

21 Q. And what do you say [REDACTED] told you happened, that Joe
22 did to her?

23 A. That he put his hands on her private area.

24 MS. PATTERSON: Your Honor, that's all I have.

25 MR. WILLIAMS: Just a couple questions on

MONICA JOHNSON CREECH - RECROSS

1 recross, Your Honor.

2 THE COURT: Sure.

3 RECROSS-EXAMINATION

4 BY MR. WILLIAMS:

5 Q. Which little boy? Which little boy in this
6 statement? Who's the little boy?

7 A. I don't know.

8 Q. So, the statement which you gave to the police officer
9 is a regurgitation, if you will, of what supposedly your
10 daughter had told you; right?

11 A. Yeah.

12 Q. You never saw a little boy; did you?

13 A. Little boys at the party.

14 Q. Okay. And are you saying that those little boys at
15 the party were children that Ray kept as a babysitter?

16 A. No.

17 Q. Which little boys were these?

18 A. (Shakes head.)

19 Q. I'm sorry?

20 A. Little boys at the birthday -- I don't know.

21 Q. You never saw any little boys at the party; did you?

22 A. Yes. It was boys at the party.

23 Q. And were the boys younger or older than your daughter?

24 A. It was some younger and it was children that lived in
25 the neighborhood.

1 Q. Oh. So she had neighborhood children there now at the
2 birthday party for minorC is that right?

3 A. I'm saying it was little children that live right, you
4 know, around where she stay at.

5 Q. So she had neighborhood little boys who lived in the
6 neighborhood who were at this birthday party for family;
7 is that right?

8 A. That's what I'm saying.

9 Q. All right. And can you describe any of them?

10 A. No.

11 Q. And, again, there are no photographs that were taken
12 at this party you're talking about?

13 A. No.

14 Q. Were the fathers of the little boys there?

15 A. I don't remember.

16 Q. But you remember -- you don't remember that part?

17 A. I mean, I remember it's children at the birthday
18 party. I don't remember --

19 Q. What did you eat? I don't have any other questions,
20 Your Honor.

21 THE COURT: You may come down, ma'am. Thank you
22 very much.

23 Approach the bench, please.

24 (Off-the-record discussion.)

25 THE COURT: Call your next witness.

RAYMOND OLSZEWSKI - DIRECT

1 MR. STUMBO: Your Honor, the State would call Ray
2 Olszewski to the stand.

3 RAYMOND OLSZEWSKI, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Have a seat right up there, sir.
6 Once you're seated, speak up loud and clear, stating your
7 full name, spelling your last on the record, please.

8 THE WITNESS: First name is Raymond. Last name
9 is Olszewski. That's O. L. S. Z. E. W. S. K. I.

10 DIRECT EXAMINATION

11 BY MR. STUMBO:

12 Q. Good morning, Mr. Olszewski. How are you doing today?

13 A. I'm okay.

14 Q. Tell this jury where you're currently employed.

15 A. I'm currently employed at the Assessment and Resource
16 center, which is an out-patient clinic as part of the
17 Department of Mental Health. We are a child abuse
18 evaluation and treatment clinic.

19 Q. And what's the Assessment and Resource Center commonly
20 referred to?

21 A. The ARC.

22 Q. Okay. Do you do any other contract work anywhere
23 else?

24 A. Yes.

25 Q. Outside of the ARC?

RAYMOND OLSZEWSKI - DIRECT

1 A. Yes, I do. I do some work for a place called the
2 Dickerson Center for Children. That's in Lexington County
3 in West Columbia. It's also a child abuse evaluation and
4 treatment center or what's known nationally as a child
5 advocacy center.

6 Q. And these child advocacy centers that you're talking
7 about, what were they created for? What's the purpose of
8 the child advocacy center?

9 A. The purpose is to provide a place for a child to have
10 what's known as a forensic interview conducted primarily
11 which is an investigative-type interview, a fact-finding
12 interview where most children are referred to a child
13 advocacy center by a law enforcement detective or
14 investigator or by a child protective services worker.
15 And the purpose of those interviews again is to discover
16 whether or not something has happened to the child.

17 Q. So, fair to characterize that as an assisting agency
18 or assisting to law enforcement?

19 A. Correct. We also have a medical component where some
20 of the children who are interviewed also receive a medical
21 exam by a pediatrician who specializes in sexual and
22 physical abuse type cases.

23 Q. About how long have you been doing this type work,
24 Mr. Olszewski?

25 A. A little over 10 years.

RAYMOND OLSZEWSKI - DIRECT

1 Q. And do you have any specialized education and training
2 in this regard in this type, in this field?

3 A. Well, I have a master's degree in social work from the
4 University of South Carolina. I have a diplomate in
5 forensic social work which is a post graduate
6 certification in a specialty area. And then I have lots
7 of hours of training in the area of child interviewing and
8 child abuse in general, child sexual abuse. I attended a
9 40-hour course in August of 2000 called Finding Words
10 which teaches a nationally-recognized interviewing
11 protocol which is the one we use both at the ARC and at
12 the Dickerson Center.

13 I've also taken advanced interviewing course at Corner
14 House in Minnesota. Corner House is a child advocacy
15 center much like the ARC. They developed the protocol
16 that we use when we interview children.

17 I'm also on the faculty for what is now called Child
18 First South Carolina, it used to be called Finding Words
19 South Carolina. It's that very same course that I went
20 through in August of 2000 where we teach other child abuse
21 professionals how to conduct these forensic interviews
22 using that same protocol. We've been teaching that course
23 for about nine years.

24 Q. So you're actually one of the instructors in the
25 Finding Words course?

RAYMOND OLSZEWSKI - DIRECT

1 A. That's correct.

2 Q. In the course of your time in the ARC about -- just
3 give us an estimate of how many kids do you think you
4 forensically interviewed?

5 A. It would be around a thousand or over a thousand, I
6 would think.

7 Q. Over the past 10 years?

8 A. Yes.

9 Q. And have you ever been qualified as an expert in the
10 courts of this state in the field of child sexual abuse
11 assessment?

12 A. Yes, I have.

13 Q. About how many times, just an estimate, have you been
14 qualified as an expert?

15 A. About maybe 20 times, both in family court and in
16 criminal court.

17 MR. STUMBO: Your Honor, at this time the State
18 would offer Ray Olszewski as an expert in the field of
19 child sexual abuse assessment.

20 MR. WILLIAMS: Without objection, Your Honor.

21 THE COURT: Go ahead.

22 BY MR. STUMBO:

23 Q. Thank you, Your Honor.

24 You have explained, Mr. Olszewski, that you teach the
25 Finding Words class. What is the protocol that's taught

RAYMOND OLSZEWSKI - DIRECT

1 in that class for the forensic interviewing of children
2 who have been suspected to be abused?

3 A. All right. The protocol that we teach is known
4 commonly by its acronym RATAC. R. A. T. A. C. and each
5 letter stands for a different stage of the interview
6 protocol.

7 So the R. stands for rapport. There's a rapport-
8 building stage or phase. The first A. stands for anatomy
9 identification where we try to arrive at a common language
10 for parts of the body using anatomically-correct body
11 diagrams or drawings.

12 The T. Stands for touch inquiry where we talk with the
13 children about different kinds of touches. That often
14 leads to a discussion about parts on the body where maybe
15 it's not okay to get touches. And this will be the point
16 in the interview where disclosure, if there is one, might
17 occur which would lead into the second A. of the protocol
18 and that's what we call abuse scenario.

19 So if there is some type of disclosure you would have
20 that second A., abuse scenario. And then the C. In RATAC
21 stands for closure where we wrap up the interview. We
22 thank the child for, you know, speaking with us, maybe
23 review a couple of items and that type of thing.

24 Now the protocol, as I've outlined it, you know,
25 that's how it's done typically. Now, it's -- there's some

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1 flexibility built in based on the age of the child so a
2 RATAC interview is not going to look the same for a four
3 year old as it is with a 14 year old.

4 It also -- you know, things like spontaneous
5 disclosures, the child interrupts the protocol, making
6 spontaneous statements, the protocol might look
7 different.

8 So there's some flexibility that allows for some, you
9 know, judgment on the part of the interviewer.

10 Q. Part of the protocol, is it partly to assist an
11 investigation, is that correct, at times?

12 A. Yes. I mean, in order for a child to be seen at the
13 ARC and I believe the referral criteria is the same at the
14 Dickerson Center, there has to be some type of
15 investigation initiated.

16 That's why I said virtually all our references come
17 from law enforcement or child protective services because
18 there has to -- we require there be some type of
19 investigation initiated. And then the request for the
20 interview, if you will, comes from the investigating
21 agency, whether it be law enforcement or DSS.

22 Q. As a general rule, do you ask the child leading
23 questions or non-leading questions?

24 A. Well, you know, we try to avoid asking leading
25 questions.

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1 Q. And why is that?

2 A. Well, we certainly don't want to suggest any answers
3 to the child or any information. We like to have as much
4 information as possible, you know, provided in the child's
5 own words, the child's mouth.

6 Q. And is this a time-tested protocol? Have you used it
7 in all your forensic interviews?

8 A. When I started at the ARC we didn't use this
9 particular protocol. I've been using it since the end of
10 2000. So nearly my entire time there at the ARC. It's
11 also used in, this is an approximation, about 12 to 14
12 other states at least at this point have a Child First or
13 Finding Words Program where they teach this very same
14 protocol.

15 Q. Did you have an opportunity to forensically interview
16 [REDACTED] in regards to the case we're here for today?

17 A. Yes, I did.

18 Q. And what was the date of that, Mr. Olszewski?

19 A. March 27th of 2006.

20 Q. And where was that interview conducted?

21 A. This interview was conducted at the Dickerson Center
22 for Children.

23 Q. And as part of your interview did you use your RATA
24 C protocol and the non-leading questions in that interview?

25 A. Yes.

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1 Q. And, Mr. Olszewski, did you try to suggest answers to
2 [REDACTED] in this interview?

3 A. No. Again, we tried to avoid suggesting answers.

4 Q. Did [REDACTED] disclose any incidents or any kind of abuse
5 scenario as we had talked about?

6 A. She did.

7 Q. Okay. And did you also do an anatomy identification
8 with her using charts?

9 A. I did in this case.

10 Q. And do you have those charts with you, Mr. Olszewski?

11 A. I do.

12 Q. Okay. May approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 MR. WILLIAMS: Your Honor, I have no objection to
15 this one sheet of paper which appears to be an anatomy
16 picture coming into evidence.

17 THE COURT: All right.

18 MR. STUMBO: If we could have this marked for ID
19 purposes, Your Honor, as State's Exhibit Number Eight.

20 THE COURT: ID only?

21 MR. STUMBO: For ID.

22 THE COURT: No objection to it?

23 MR. STUMBO: We can go ahead and move it into
24 evidence.

25 MR. WILLIAMS: Again, no objection.

RAYMOND OLSZEWSKI - DIRECT

1 (Thereupon, State's Exhibit No. 8, anatomical
2 chart, was received into evidence.)

3 BY MR. STUMBO:

4 Q. Mr. Olszewski, I'm going to show you what's been
5 marked as State's Exhibit Eight. Is that the chart that
6 you used in the anatomy identification portion of your
7 interview with [REDACTED]

8 A. Yes, it is.

9 Q. Okay. And as part of this, is she the one that marked
10 the body parts on the sheet?

11 A. Yes.

12 Q. Or did you mark them?

13 A. I would have -- if I could explain something. The way
14 anatomy identification was done in this particular case,
15 it was actually done, you might say a little bit out of
16 order. Because [REDACTED] was nine years old, I began -- after
17 rapport building I began asking her some questions about
18 why she was at the Dickerson Center, if she knew why she
19 was there and what she was there to talk about which is
20 commonly done.

21 We teach that that's an okay thing to do with a child
22 that age because most children once they get above seven
23 or eight, they know why they're there or what they're
24 there to talk about. Whether or not they will or how much
25 they'll talk about is another issue.

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1 So this anatomy identification was actually introduced
2 after [REDACTED] had begun to disclose. And so it was done
3 primarily for clarification purposes so that we could be
4 clear about which body part she was talking about as she
5 talked about what happened to her. And that's why you'll
6 notice not all of the body parts are identified.

7 In a more typical anatomy identification, maybe with a
8 four, five, or six year old, I would actually go through
9 and label -- excuse me. I'm a little under the weather.
10 I would actually go through and label all the body parts,
11 maybe starting at the top with the eyes, the nose, the
12 mouth and it would be a much more complete
13 identification.

14 So I just wanted to explain that.

15 Q. Okay. In this case did [REDACTED] point out the body parts
16 to you and this is your handwriting?

17 A. That's correct. It's my handwriting; yes, sir.

18 Q. This is after she had disclosed the abuse scenario?

19 A. She had disclosed. Right. Correct. That's correct.

20 Q. Mr. Olszewski, I'm going to also show you and have
21 this marked for ID purposes State's Exhibit Number Nine.

22 MR. WILLIAMS: No objection to that being marked
23 into evidence.

24 MR. STUMBO: We would move State's Nine into
25 evidence.

RAYMOND OLSZEWSKI - DIRECT

1 (Thereupon, State's Exhibit No. 9, CD, was marked
2 and received into evidence.)

3 BY MR. STUMBO:

4 Q. I'm going to hand you what's been marked as State's
5 Nine, Mr. Olszewski. Have you reviewed the contents of
6 that disk?

7 A. Yes. I have initialed it.

8 Q. And those are your initials on the front then?

9 A. Yes.

10 Q. Does this fairly and accurately represent your
11 interview with [REDACTED] [REDACTED] on March 27, 2006?

12 A. Yes, it does.

13 Q. Okay. Now if you could, Mr. Olszewski, I'm going to
14 back up a little bit, as to not necessarily the specifics
15 of [REDACTED] interview. Could you tell us based on your
16 training and experience how do children disclose abuse?

17 A. Well, there's no typical pattern. Generally what we
18 know from our experience and research is that children
19 will delay in reporting abuse. So unlike an adult victim
20 you might think who makes an immediate outcry, that's the
21 exception in cases of child sexual abuse. Most of them
22 delay some period of time before they report.

23 And then what we see in lots of child abuse victims,
24 particularly sexual abuse victims, disclosure is more of a
25 process rather than a singular event. So there may be

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1 some tender steps to disclose, sort of a testing the
2 waters if you will to see what the response is going to be
3 from those around them.

4 And then again, depending on that response, there may
5 be no further disclosures made for quite sometime or the
6 child may go into some other state of disclosure, perhaps
7 a full disclosure of all the details of things that
8 occurred or maybe a more tentative disclosure where
9 they're still not prepared emotionally or mentally to
10 disclose the full extent of what happened but they're
11 disclosing parts of what happened. And full disclosures
12 may take some time before that finally comes out.

13 Q. Children generally if they've had to tell a story of
14 abuse scenario that's happened, will they give the same
15 level of detail every time as a general rule?

16 A. No. You know, again, there's variables here.
17 Certainly that's not the case when you have incidents of
18 chronic abuse where abuse has taken place chronically over
19 a period of time where there's just so many details and so
20 many incidents.

21 But also we know that memories change over time. So
22 depending at what point these statements are given there
23 may be more or less details contained within them, and
24 again, we see that process of disclosure at work so there
25 may be some details offered at first and more details

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1 offered later.

2 Q. So is it more common to go from more information to
3 less information or is it more common to go from less to
4 more?

5 A. In my experience it's more common to go from less to
6 more, but that's not -- again, that's not always the case.

7 Q. When you make -- what kind of conclusions do you come
8 to as a result of your forensic interviews? What are the
9 categories of your conclusions? Describe that.

10 A. Typically we describe an interview either as
11 compelling or problematic.

12 Q. Okay. And compelling would mean what?

13 A. Compelling simply means that it contains, you know,
14 for example, if I were interviewing a nine year old, I
15 would expect a nine year old to be able to give me a
16 certain amount of detail, certain level of details, be
17 able to answer certain kinds of questions like, you know,
18 how things happened, the mechanics of how things happened,
19 to be able to offer a good amount of peripheral details,
20 what was going on around them at the time, and also who
21 else was there, and just the circumstances of the event.

22 So, you know, if all those things are present and
23 there aren't any other problems with the interview, that
24 interview might be called, you know, compelling.

25 On the other side of the coin, is a problematic

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1 interview where, you know, perhaps we have an older child
2 who's not providing a very good, you know, a very detailed
3 account of what happened. They're unable to fill in a lot
4 of blanks, there's a lot of gaps in the story. It's not
5 what we'd expect of a child that age.

6 We may find that interview problematic. It doesn't
7 mean that the incident didn't take place. It just means
8 that that interview at that time, the child's not giving
9 us what we would expect of a child of that age and
10 ability.

11 Q. Have you in your experience made findings that a
12 child's abuse disclosure was problematic in your career?
13 Have you ever made that finding?

14 A. Have I ever made the finding of problematic? Oh,
15 yeah. Probably more often than not.

16 I think the last time I looked at the numbers of the
17 ARC, it's around maybe four out of 10 of our interviews
18 are considered compelling for some type of abuse. So the
19 rest of them are problematic interviews or they're
20 compelling for no abuse, the child denies anything
21 happened to them. So that's a good bit of our interviews.

22 Q. Okay. Did [REDACTED] disclose what had happened to her?

23 A. Yes.

24 Q. Okay. Did you find her disclosure compelling or
25 problematic?

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1 A. I did indicate it to be compelling in my report.

2 Q. Was she able to give you some level of detail as to
3 what happened?

4 A. Yes.

5 Q. One other question. You mentioned earlier that
6 disclosure is more often than not delayed in cases of
7 children. Why is that? Can you explain to the jury why
8 children wait to tell?

9 A. Yeah. Again, there are many reasons. Sometimes you
10 have to look at each individual case, but, you know,
11 reasons commonly given for delayed disclosure are feelings
12 that the victim has about what happened, feelings of
13 shame, embarrassment, guilt, about concerning that they
14 might be in some kind of trouble, you know, fear that
15 nobody's going to believe them. If it's a loved one who's
16 harmed them, they might actually fear for that loved one's
17 safety.

18 What we know about child abuse victims is they often
19 don't -- especially if it's a family member who has abused
20 them, they don't want that person to get in trouble
21 necessarily. It's someone they love. And so that often
22 prevents them from coming forward.

23 And then you have just the natural imbalance of
24 power. The child-adult relationship, having a child be
25 willing to speak out against a grown-up and think that

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1 they will be believed, sometimes it's a tough thing for a
2 child to work up the courage to do.

3 Q. In [REDACTED] disclosure, would you consider it a delayed
4 disclosure, typical delayed disclosure?

5 A. From what I know about the case it was a delayed
6 disclosure.

7 Q. Now did she disclose to you there was penetration in
8 her interview with you?

9 A. She did not.

10 Q. Okay. And how did she describe the sexual abuse of
11 the touching? You can refer to your report.

12 A. Just reviewing my narrative summary. She indicated
13 that they were -- she was inside of his truck and he came
14 over to where she was and, quote, put his hand up my
15 shorts. She said she told him stop, Joe. And that minorC
16 said to her, what did you say that for.

17 When I asked how he put his hand up her shorts, she
18 describes wearing shorts with a belt because her shorts
19 were too loose. She showed how he pulled up the bottom
20 part of her shorts from her leg and then put his hand up
21 in her shorts.

22 I asked her if he was touching her on some part of her
23 body which is a yes or no question. And she nodded yes.
24 At that point I introduced the anatomical drawings to help
25 clarify with [REDACTED] what was she was talking about. I asked

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1 her to point on the part of the picture that he was
2 touching.

3 So at this point it would have been a blank version of
4 that anatomical drawing I showed you. She pointed to her
5 vagina on her private part and then she didn't say that
6 word. I asked her what she called that part, then she
7 points to it and she said private part. I asked what his
8 hand was doing on her private part.

9 I asked what his hand is doing on her private part and
10 I have here in quotes, she said, I can't really explain
11 it. She did clarify that his hand was just on her private
12 part and not in. She further explains that his hand went
13 under her panties and that he touched her private part on
14 skin which is typically a clarification question we ask,
15 did he touch you on your skin or on your clothes.

16 Q. Mr. Olszewski, I'll stop you there. Is it a child's
17 understanding on the private part or in the private part,
18 what's your experience with children's understanding of
19 that distinction?

20 A. Understanding of what?

21 Q. The distinction of whether it's in the private part or
22 on the private part?

23 A. For a child? This can be tricky. The younger the
24 child the trickier it is sometimes, because they don't
25 have a lot of sexual experience or any, hopefully.

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1 This idea of whether or not they understand whether
2 something penetrated them, you know, we don't believe
3 children always fully grasp that concept. So while we're
4 asking the question because we understand it's an
5 important one, you know, the answer may not be completely
6 reliable.

7 Q. Is this something --

8 A. You know, because like from our doctors, for example,
9 and from the way children describe feelings when this
10 takes place, there's not always pain associated with some
11 of these acts like one may assume. So, again, the issue
12 of whether or not there's penetration is sometimes just
13 not clear in a child's mind.

14 Q. Would it be unusual as a child gets older and starts
15 to understand sexual things or penetration that they may
16 understand that concept better than when they're younger?

17 A. Certainly. They'll understand the concept better when
18 they're older, yes.

19 Q. And in this case when you interviewed [REDACTED] she was
20 nine years old; correct?

21 A. Correct.

22 Q. And at that time she says it's on, not in; is that
23 correct?

24 A. That's correct.

25 Q. Okay.

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1 A. And she did -- again she made the statement that, I
2 can't really explain it. So, again, typical of a child I
3 would think having a hard time putting into words because
4 that's a question we like to ask, what was his hand doing
5 on your private part, you know. We're trying to get some
6 detail about the act. And sometimes I think it's a hard
7 thing for kids to put into words, you know, what was
8 happening down there.

9 Q. And she told you at one point, I can't explain it. I
10 can't really explain it. That's what she said?

11 A. Correct.

12 Q. Just a couple more questions, Mr. Olszewski, and we'll
13 be done. You recorded this interview and that's what's on
14 the DVD tape?

15 A. Correct.

16 Q. And you indicated before that your findings were that
17 [REDACTED] disclosure was compelling for abuse?

18 A. That's correct.

19 Q. And did she tell you -- did she give you an indication
20 of when it happened? Did you get into that detail with
21 her?

22 A. Let me look over my notes here. Early in the
23 interview she indicated, last year a family friend touched
24 me inappropriate. And then she said that it had to be
25 over the summer because she was wearing shorts.

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1 Q. Did she go into any more -- did you ask her any more
2 detail about it? She just said it must have been in the
3 summer because she was wearing shorts; is that correct?

4 A. That's correct.

5 Q. Do you have any notes that you went into more detail
6 about asking her more specific dates at that point?

7 A. Not, not that I'm seeing, no.

8 Q. And did she indicate to you where, Mr. Olszewski, that
9 Mr. Butler had touched her inappropriately?

10 A. Yes, she did. She said that she was over at her
11 cousin Ray's house, Ray being a female.

12 Q. Okay. And where at Ray's house? In the house or
13 somewhere else?

14 A. Ray Simpkins' house. She indicated that it was, she
15 was outside in Joe's truck trying to find a toy, a little
16 boy's truck.

17 Q. And did she describe the truck that she was in, Joe's
18 truck?

19 A. Joe's truck, yes. She described it as maybe an SUV
20 maybe something like an Expedition. And she described it
21 as having two doors that open on the back of the truck.

22 Q. I show you what's in evidence as State's Exhibit
23 Four. Did she describe to you something that looks
24 somewhat like that?

25 A. I mean, that's what I would picture from her

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1 description. Two doors on the back of the truck.

2 Q. She said two doors on the back; is that right?

3 A. Correct. Correct.

4 Q. Is the level of detail she gave you about the truck
5 and about the way this played out, was that important in
6 your determination of whether it was compelling or
7 problematic?

8 A. Yeah. Again, that's what we consider a peripheral
9 detail. Anything that's sort of, contextual details about
10 the environment and surroundings things that were taking
11 place at the time. Then it's, certainly all things that
12 in more detail like that the child provides that can be
13 corroborated by those that are actually investigating the
14 allegations.

15 Q. She indicated to you that minorC reacted when she
16 said, stop Joe?

17 A. Yes. That minorC said something like, what did you
18 say that for. That's correct.

19 MR. STUMBO: That's all we have for this witness
20 at this time, Your Honor.

21 THE COURT: Cross-Examination?

22 MR. WILLIAMS: Brief.

23 CROSS-EXAMINATION

24 BY MR. WILLIAMS:

25 Q. Is it Dr. Olszewski?

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1 A. No. Mr. Olszewski.

2 Q. It's mister. All right. Mr. Olszewski, I'm going to
3 be real brief. On all the questions that were asked of
4 you, did you get the feeling that you didn't do a proper
5 interview or that she didn't understand what you were
6 asking her?

7 A. No, I didn't get that feeling.

8 Q. You thought she understood your questions well and was
9 able to articulate her answers appropriately to what you
10 were asking her?

11 A. Yeah, except where I otherwise noted. Like when she
12 said, I can't really explain it.

13 Q. Let's look to your summary for me, please, sir.

14 A. Sure.

15 Q. And you detail in your summary that the child denied
16 penetration; is that correct?

17 A. Yes.

18 Q. You said that was consistent with what?

19 A. With a written statement that I had reviewed that she
20 had made to the police, and her original disclosure to her
21 mother.

22 Q. So the denial of penetration was consistent with
23 everything else that she had told other persons?

24 A. Yes.

25 Q. Are you saying today that there, for some reason you

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1 suspect that maybe there was penetration and she just
2 couldn't tell you about it?

3 A. I don't know. I'm saying that's one possibility.

4 Q. Are you saying there was penetration?

5 A. I'm not saying that.

6 Q. Okay. So you're really not saying there was
7 penetration at all; are you?

8 A. No, she didn't tell me that.

9 Q. And you're sticking by what you said in your report
10 originally; right?

11 A. That's what I'm testifying about, what's in my
12 interview.

13 Q. Right. And that is a denial of penetration?

14 A. Correct.

15 Q. Let me ask you some other questions. You find out
16 about the child. You indicate what the intellectual
17 functioning is of the child is; don't you?

18 A. Yeah. There is a caregiver questionnaire. There's a
19 couple ways we do that. There's a caregiver questionnaire
20 form that's filled out by the individual who brings the
21 child in to the clinic. So it could be a parent or
22 whoever the responsible party is.

23 And also just as we begin the interview we're always
24 assessing where this child is functioning at. I've been
25 doing this a long time so she seemed like a typical nine

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1 year old in her presentation and how she answers questions
2 and that type thing.

3 Q. She's an A-B student; isn't she?

4 A. I'd say that's probably true but let me look and see
5 what Mom indicated.

6 Q. Okay. Should be in the first page.

7 A. Yeah. Her mother indicated she was mostly an A-B
8 student in the fourth grade at the time.

9 Q. When you sit down with a child, you look to find out a
10 history of the child in reference to any behavioral
11 changes which have been noted after the abuse; don't you?

12 A. Again that's contained in the caregiver questionnaire
13 filled out by the parent; correct.

14 Q. And the reason you look for that is it helps
15 substantiate as to whether there was abuse or not abuse;
16 doesn't it?

17 A. Well, I would say that's only -- that's only partially
18 true, in maybe a small part because the behavioral
19 reactions of child abuse victims are so varied. Some
20 children hold up quite well in the face of chronic abuse.
21 Other children have lots of problems from a singular event
22 of fondling.

23 So it's hard to draw conclusions from that but part of
24 what we do with our assessment and after our assessment is
25 make recommendations whether the child might need therapy

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1 or ongoing treatment and so current feelings and behaviors
2 things that we ask a parent to check off, it's a checklist
3 basically, helps to guide us with those issues as well.

4 Q. All right. I'm going to be -- I'm going to try to
5 speed it up and be very brief. In reference to behavioral
6 changes, and I'm going to ask you if you'll look at your
7 report.

8 A. Yeah, I've got it right here.

9 Q. Were there any evidence of anxiety or hyper arousal?
10 Should be the second one on your list.

11 A. You're looking at?

12 Q. Behavioral changes.

13 A. Can you point it out to me?

14 Q. Sure. I'm sorry. Behavioral changes noted during or
15 after the alleged abuse.

16 A. I'm looking at the caregiver form. That's right.
17 None, correct.

18 Q. Traumatic reenactments; any?

19 A. No.

20 Q. Flashbacks, intrusive thoughts; any?

21 A. No.

22 Q. Fearfulness; any?

23 A. No.

24 Q. Nightmares, sleep problems; any?

25 A. No.

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1 Q. Change in eating habits; any?

2 A. No.

3 Q. Separation difficulties; any?

4 A. No.

5 Q. Aggression; any?

6 A. No.

7 Q. Conduct with oppositional problems; any?

8 A. No.

9 Q. Difficulties with peers; any?

10 A. No.

11 Q. Sexualized behavior; any?

12 A. No.

13 Q. Inappropriate sexual knowledge; any?

14 A. No.

15 Q. Pronounced disturbance of mood and affect; any?

16 A. No.

17 Q. Marked distrust in others; any?

18 A. No.

19 Q. In essence, to sum it up, there's no behavioral
20 changes reported; correct?

21 A. That's correct.

22 Q. Okay. Now, in reference to your description of the
23 child's mental status during the interview -- do you want
24 to turn to page three of five?

25 A. Uh-huh.

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1 Q. -- she had a positive attitude?

2 A. Yes.

3 Q. She was oriented to time and place?

4 A. Yes.

5 Q. Her insight was age appropriate; right?

6 A. Yes.

7 Q. And how about her memory?

8 A. Her memory seemed fine.

9 Q. Attention?

10 A. I noted no problems with her mental status.

11 Q. How about her thought content?

12 A. Age appropriate or logical is how we code that.

13 Q. Her mood?

14 A. Her mood was calm.

15 Q. Behaviors was age appropriate?

16 A. Yes.

17 Q. And her energy was what?

18 A. Age appropriate.

19 Q. So when she says there was no penetration, do you have
20 a different feeling whether or not there was penetration
21 or not penetration there?

22 A. I'm not sure I understand the question.

23 Q. Was anything about your interview with her a red flag
24 to indicate that maybe there was penetration but she just
25 couldn't tell you about it?

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1 A. I mean, at the time this seemed like a, you know, a
2 full disclosure understanding that when I asked the
3 question of what his hand was doing down there, she said
4 she couldn't really explain it.

5 I got more direct and focused with her about the in or
6 on question. She indicated on and not in. And that's
7 what I went with. And she is obviously as you just
8 indicated through all these checklists, she's a well-
9 adjusted, smart, nine year old who wasn't, according to
10 her mother and according to her presentation, wasn't
11 really exhibiting any negative symptoms and that type of
12 thing.

13 Q. Okay. When did this supposedly happen?

14 A. Again, she indicated to me the previous summer saying
15 she knew that because she was wearing shorts.

16 Q. Did she say it happened on October 1st of the year
17 2005?

18 A. Not to me she didn't.

19 Q. Did she mention any birthday cake?

20 A. Birthday cake?

21 Q. Uh-huh.

22 A. I don't -- I don't believe she did.

23 Q. Did she mention any presents?

24 A. Yes.

25 Q. And the presents were what kind?

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1 A. I don't know if she indicated what type of presents
2 they were.

3 Q. Where were the presents?

4 A. In the SUV. In Joe's truck.

5 Q. So there were no presents in the house at a birthday
6 party; is that right?

7 A. I don't remember talking about whether or not there
8 were presents inside the house. This was her description
9 of what was in the truck.

10 Q. So when you say you don't remember us talking about
11 it, can that -- will that lead us to say that it wasn't
12 discussed as being in the house?

13 A. I don't think I asked her if there were presents or
14 cake inside the house.

15 Q. Certainly nothing said about a birthday party, was
16 there; right?

17 A. Not that I recall. Not that I recall.

18 Q. Okay. And do you know whether or not there was a
19 physical done on her?

20 A. Well, I may have something in here that would indicate
21 whether or not that was done.

22 Q. And --

23 A. She was scheduled for a medical exam on March 29th of
24 2006 at 10:30. It was two days after the interview.

25 And -- now, this is -- this is just an interview folder so

RAYMOND OLSZEWSKI - REDIRECT

1 I'm not sure I'm going to have any confirmation for you on
2 whether or not that took place, but it was scheduled.

3 Q. And there was no evidence that you determined in your
4 interview to indicate as to why there was some sort of
5 delayed accounting of this event, was there?

6 Meaning -- let me ask the question a different way.
7 She had no mental illness or any problems that would have
8 prevented her from telling someone when it occurred; is
9 that right?

10 A. No mental illness, no.

11 Q. Right. And she understood your questions in regards
12 to the penetration; right?

13 A. Again, she understood my question. I think, you know,
14 what I tried to get across before is I think sometimes
15 young children have a hard time with that concept.

16 Q. And nothing about a birthday party?

17 A. Right. That's correct.

18 MR. WILLIAMS: That's all I have, Your Honor.

19 THE COURT: Redirect?

20 MR. STUMBO: Just very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. STUMBO:

23 Q. Mr. Olszewski, Mr. Williams goes through this
24 checklist, this long checklist of behavioral changes. Are
25 those things that are given to you by the child or by the

RAYMOND OLSZEWSKI - REDIRECT

1 caregiver of the child?

2 A. That's filled out by the caregiver.

3 Q. So it's not observations that you made. It's things
4 that they would give you voluntarily; is that correct?

5 A. Correct. It's whatever the person filling out the
6 form chooses to indicate.

7 Q. So if there were, was anxiety or if there were
8 nightmares of some sort, they have to tell you about it
9 for you to know that; is that correct?

10 A. They'd have to tell me or the child would have to tell
11 me. Somebody would have to tell me.

12 Q. Now, you saw her March 27th, 2006, and she was nine
13 years old at the time; is that correct?

14 A. Yes.

15 Q. And Mr. Williams asked you, were you still sticking to
16 your story in the sense of are you changing. Have you
17 seen minorC (sic) since March 27th, 2006?

18 A. I've never seen minorC

19 Q. Excuse me. [REDACTED]

20 A. Have I seen [REDACTED]

21 Q. Have you seen [REDACTED] for a forensic interview since you
22 interviewed her when she was nine years old?

23 A. Oh, no. This was the only time I interviewed her was
24 on this date right here.

25 Q. So there were no follow-up interviews to clarify the

RAYMOND OLSZEWSKI - REDIRECT

1 penetration question or anything like that?

2 A. Nobody referred her to me for clarification.

3 Q. And a nine-year-old child -- Mr. Williams asked you if
4 she had any mental illnesses that would lead her not to be
5 able to understand the distinctions. Does a typical nine-
6 year-old child have experience with sexual things?

7 A. No. Again, we would hope not.

8 Q. So would you expect a normal nine-year-old child to
9 understand the distinction between inside and outside?

10 A. As -- let me think about how to answer that. As
11 prepositions, yes, they understand the concept of inside
12 or outside. What I'm trying to get across is the concept
13 of whether or not vaginal penetration has taken place.
14 It's sometimes tricky for young children, children [REDACTED]
15 age and younger. That's not to say it's true of all young
16 children. Some are very clear about whether or not there
17 was penetration.

18 Q. Is it typical for a nine-year-old child to recall
19 exact dates, months before? In other words, you often in
20 your experience see nine-year-old children with calendars
21 or dates on them, that sort of thing?

22 A. No, I don't. And when we interview children even
23 children older than [REDACTED] we very rarely ask for a
24 specific date of when an incident took place. If it's
25 volunteered, that's fine. We're looking more for general

1 age ranges which is probably why I stopped at the point
2 where she said last summer and she knew that because she
3 was wearing shorts.

4 As a forensic interviewer, for me that's a -- I
5 consider that a time frame. And asking the child or
6 asking a lot of adults for that matter to narrow something
7 down to a particular day, unless it's a day that has some
8 significance for some reason, can be difficult.

9 MR. STUMBO: That's all I have, Your Honor.

10 MR. WILLIAMS: Only one question on recross.

11 RECROSS-EXAMINATION

12 BY MR. WILLIAMS:

13 Q. That is: You did not see her again for a forensic
14 interview; correct?

15 A. I -- that's correct.

16 Q. So to your knowledge she's never had any type of
17 counseling for this alleged abuse either?

18 A. I don't know that.

19 MR. WILLIAMS: That's all I have, Your Honor.

20 THE COURT: All right, sir. You may come down.
21 Thank you very much. Witness be excused without
22 objection?

23 MR. WILLIAMS: Without objection, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of
25 the jury, it's -- your lunch is here. It's time for

1 lunch.

2 Let me suggest the procedure. You'll take your
3 lunch in the jury room. And let's just allot, say, 30
4 minutes to have your lunch, and an additional 15 minutes
5 to walk around if you arrange it with the bailiffs to take
6 a little walk, get a little exercise, kind of stir the
7 blood a little bit. And we'll try to reconvene between
8 quarter to two and two o'clock. All right.

9 Don't discuss the case among yourselves while
10 you're in the jury room. You may be excused.

11 (Jury exits courtroom at 1:05 p.m.)

12 THE COURT: We'll stand at ease until 1:45.

13 (Thereafter, from 1:07 p.m., until 1:53 p.m., the
14 luncheon recess was taken, then the trial resumed:)

15 THE COURT: State ready to proceed?

16 MR. STUMBO: State's ready, Your Honor.

17 THE COURT: Defense ready?

18 MR. WILLIAMS: Defense ready, Your Honor.

19 THE COURT: All right. Bring the jury please.

20 (Jury enters courtroom at 1:55 p.m.)

21 THE COURT: All right. Thank you, ladies and
22 gentlemen. We're now ready to continue with the trial.
23 Solicitor, call your next witness.

24 MR. STUMBO: Thank you, Your Honor. The State
25 calls Chief Wallace Oswald to the stand.

WILLIAM WALLACE OSWALD - DIRECT

1 WILLIAM WALLACE OSWALD, having been duly sworn,
2 was examined and testified as follows.

3 THE CLERK: Have a seat, please, sir. Once
4 you're seated, state your full name, spelling your last.

5 THE WITNESS: Full name, William Wallace Oswald.
6 Last name O. S. W. A. L. D.

DIRECT EXAMINATION

7
8 BY MR. STUMBO:

9 Q. Good afternoon, Chief. How are you doing today?

10 A. Fine, sir.

11 Q. The patch on your shirt says you're the Batesburg-
12 Leesville Police Department?

13 A. That's correct.

14 Q. And what's your role with the police department?

15 A. I'm chief of police.

16 Q. And as part of your duties as chief of the police
17 department, do you oversee your officers there at the
18 police department?

19 A. That's correct.

20 Q. Now, Chief, during the time that you been chief of
21 police in Batesburg, have you physically been in Batesburg
22 for the last several years? Have you been outside the
23 country? Can you explain that to us?

24 A. We'll I've been with the department 34 years, chief of
25 police 30 years. I've also been to -- if you're meaning

WILLIAM WALLACE OSWALD - DIRECT

1 to being deployed, I've been deployed twice with the South
2 Carolina National Guard; once to Iraq, once to
3 Afghanistan.

4 Q. Your most recent deployment was when?

5 A. Afghanistan.

6 Q. And when were you in Afghanistan?

7 A. I was in Afghanistan '07, '08.

8 Q. You're still active with the National Guard?

9 A. That's correct.

10 Q. Now, Chief, did your department have occasion to
11 investigate the Defendant, Joe Butler?

12 A. That's correct. Ms. [REDACTED] came to our department on
13 the 22nd of March, '06.

14 Q. And which officer was there to take that report?

15 A. Officer Scott Weir.

16 Q. And tell us a little about Officer Weir. Was he a
17 young officer at the time, an older officer?

18 A. He was a younger officer that was hired. He came to
19 us in '04. He had also done a tour in Afghanistan. At
20 that point we hired him and he stayed with us until '06.

21 Q. So he was there about two years?

22 A. That's correct.

23 Q. Two years in Batesburg. And he was the one that took
24 the reports and the statements in this case?

25 A. That's correct.

WILLIAM WALLACE OSWALD - DIRECT

1 Q. What did he do after he took the reports and
2 statements? What was his next --

3 A. He began to follow up on the report to see how, what
4 all -- what needed to be done next on the reports. And
5 that's where he collected the statements of arranging the
6 forensic interview with the Dickerson Center and talking
7 to the mother and the young lady.

8 Q. Okay. And so he set up this interview with the
9 Dickerson Center?

10 A. That's correct.

11 Q. And you said that Officer Weir left your department in
12 2006. Where did he go to from Batesburg?

13 A. He went to another department. It was somewhere on
14 the coast. I don't remember exactly which one.

15 Q. Do you know his whereabouts now? Is he still in law
16 enforcement?

17 A. I do not know. We don't have a network of any kind
18 where we can follow up and I have no clue where he is
19 really now.

20 Q. You haven't had any contact with him since he left
21 your department?

22 A. No, I have not.

23 Q. Did any other officers at Batesburg-Leesville
24 participate in the investigation to your knowledge?

25 A. His supervisor at that time was a sergeant. His

WILLIAM WALLACE OSWALD - DIRECT

1 immediate supervisor was Jay Patel.

2 Q. And where was -- where is Sergeant Patel this week?

3 A. Sergeant Patel took, he quit our department and went
4 to as a private contractor with Dyncorp and he's presently
5 in Afghanistan.

6 Q. So, Officer Weir investigated the case and his
7 immediate superior was Sergeant Patel who is in
8 Afghanistan --

9 A. That's correct.

10 Q. -- is that correct? Now, you said he sent the case to
11 the Dickerson Center. In these types of cases, is that
12 common to send it to the child advocacy center for a
13 forensic interview?

14 A. As a small department we depend on the other agencies
15 to handle higher levels of investigation we need to go and
16 of course we do not have a forensic person to do a
17 forensic interview in our department. Like I say, we went
18 through -- of course our first victim's advocate, then DSS
19 was involved, we get a caseworker and then of course
20 that's where Dickerson Center came in to do an interview
21 for us.

22 Q. Okay. And after the results come back from the
23 Dickerson Center to your department, what decision was
24 made as to Mr. Butler?

25 A. Putting what we have together to see if we have

WILLIAM WALLACE OSWALD - DIRECT

1 probable cause to go before a judge to submit probable
2 cause to, to see if the judge will rule we have enough to
3 obtain a warrant. And that's what we did in this case.

4 Q. And that's based on the forensic interview and the
5 statements that were taken by Officer Weir?

6 A. That's correct.

7 Q. Now the warrant -- do you have a copy of the arrest
8 warrant?

9 A. No, sir; I do not. I -- it's on my desk but I didn't
10 bring it up with me.

11 Q. The time frame, Chief, initially in the warrant, you
12 can use your memory or use the warrant to refresh your
13 memory. What's the date range that you all gave at that
14 time?

15 A. At that time --

16 MR. WILLIAMS: Your Honor, I would object to the
17 witness's testimony unless it's from his knowledge.

18 THE COURT: All right. Sustained.

19 BY MR. STUMBO:

20 Q. All right. Chief, y'all did serve an arrest warrant
21 in this case?

22 A. That's correct; we did.

23 Q. What was the charge?

24 A. The formal charge was sex -- lewd act attempt upon a
25 child under 16 years of age.

WILLIAM WALLACE OSWALD - DIRECT

1 Q. And at that time was Mr. Butler served with that
2 arrest warrant?

3 A. He was served on the 12th of April '06.

4 Q. Okay. So, the report's made March 22nd, 2006;
5 correct?

6 A. That's correct.

7 Q. And do you have -- and March 27th is when the forensic
8 interview is done; is that correct?

9 A. That's correct.

10 Q. And then the arrest warrant is ultimately served on
11 Mr. Butler April the 12th?

12 A. Well the warrant was actually obtained on the 28th of
13 March, and then it was served on the 16th of April.

14 Q. At that point, Chief Oswald, did you all consider your
15 case closed at that point once the arrest warrant is
16 served?

17 A. Well, that's usually the end of the case, yes, sir,
18 unless something else comes up that we need to check into.
19 It is finalized with an arrest, if that's what you're
20 asking; yes, sir.

21 Q. And personally you didn't have any involvement with
22 the investigation of the case other than overseeing the
23 department as chief; is that correct?

24 A. That's correct.

25 Q. And were you in preparation for this trial informed by

WILLIAM WALLACE OSWALD -- CROSS

1 our office that there was a date change as to the
2 incident?

3 A. Yes, sir; I was.

4 Q. And were you informed --

5 A. By the indictment.

6 Q. You were informed of that by me?

7 A. Yes, sir.

8 MR. STUMBO: That's all we have at this time,
9 Your Honor.

10 CROSS-EXAMINATION

11 BY MR. WILLIAMS:

12 Q. Chief Oswald, as I understand you had no contact with
13 this file, it was some officer who is no longer here?

14 A. That's correct. Officer Weir who's no longer with our
15 department.

16 Q. And you indicated he had been in the Service or
17 something like that. Did he go reenlist or was he
18 discharged by your department?

19 A. I don't know if I understand your question.

20 Q. Did he leave on a good basis or did you -- did he move
21 to go to a different job and you had no input in that or?

22 A. For him getting a different job?

23 Q. Right.

24 A. I had nothing to do with him getting a different job;
25 no, sir.

WILLIAM WALLACE OSWALD - REDIRECT

1 Q. So, he just left because he wanted to get a different
2 job?

3 A. No, sir. He, he left our department on the, August of
4 '06, yeah, August of '06.

5 Q. You said no, sir. He left because he wanted to leave
6 and get a new job?

7 A. No. It was a personnel situation. Nothing to do with
8 this case.

9 Q. When you say personnel, you're referring to personnel
10 between the police department and this individual?

11 A. That's correct.

12 Q. And he's certainly not coming back to Batesburg-
13 Leesville Police Department; is he?

14 A. He's never made application to come back.

15 MR. WILLIAMS: May we approach, Your Honor?

16 THE COURT: Certainly.

17 (Off-the-record discussion.)

18 MR. WILLIAMS: That's all the questions I have,
19 Your Honor.

20 THE COURT: Anything further?

21 MR. STUMBO: Oh yes, Your Honor. I do have one
22 in redirect, I failed to ask before.

23 Your Honor, the question have is not specifically
24 in response to cross-Examination but it is a question that
25 I would ask leave of the Court to be able to ask.

MICHELLE BRACKETT - DIRECT

1 THE COURT: I don't know what it is. Ask your
2 question. See if you get an objection.

3 MR. STUMBO: I'm feeling I will, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. STUMBO:

6 Q. Chief Oswald, where did this incident take place?

7 MR. WILLIAMS: Objection. Improper redirect.

8 THE COURT: Overruled.

9 THE WITNESS: This took place at 232 Williams
10 Street which is in the Town of Batesburg-Leesville,
11 Lexington County.

12 BY MR. STUMBO:

13 Q. That's in your jurisdiction?

14 A. That is in our jurisdiction, yes.

15 Q. Is that Lexington County?

16 A. Lexington County, yes.

17 MR. STUMBO: Thank you, Chief. No further
18 questions

19 MR. WILLIAMS: No questions on recross. Thank
20 you, Your Honor.

21 THE COURT: Thank you, Officer.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Next witness.

24 MR. STUMBO: Next witness is Michelle Brackett.

25 MICHELLE BRACKETT, having been duly sworn, was

MICHELLE BRACKETT - DIRECT

1 examined and testified as follows:

2 THE CLERK: Have a seat up there, please, ma'am.
3 Once you're seated speak up loud and clear. State your
4 full name, spelling your last on the record.

5 THE WITNESS: My name is Michelle Knight
6 Brackett, B. R. A. C. K. E. T. T.

7 DIRECT EXAMINATION

8 BY MR. STUMBO:

9 Q. Good afternoon, Ms. Brackett. How are you doing
10 today?

11 A. Fine. A little nervous but fine.

12 Q. This is the first time you've ever testified in court?

13 A. Yes, sir.

14 Q. What's your job, Ms. Brackett?

15 A. I'm a guidance counselor at Batesburg-Leesville
16 Elementary School.

17 Q. How long have you been there at the elementary school?

18 A. Eight and a half years.

19 Q. All right. What's your work history? What did you do
20 before you became a guidance counselor?

21 A. I served in the United States Army as a flight medic
22 on board Unit 60 Blackhawk and then I served as a medic in
23 the Texas Army National Guard. And I married a soldier
24 and had a child. So I got out on a pregnancy chapter. I
25 was able to be fortunate enough to stay home and raise him

MICHELLE BRACKETT - DIRECT

1 until he was in school full-time upon which I took a job
2 as a guidance counselor at Batesburg-Leesville Elementary
3 School.

4 Q. And you've been there for how long, eight years?

5 A. About eight and a half, yeah.

6 Q. What's your educational history?

7 A. I have a bachelor's majoring in psychology through the
8 University of Central Texas, and also have a master's of
9 education majoring in counseling and personal services
10 through the University of Maryland, European Division.

11 Q. And did you do your master's work after you got out of
12 the Army?

13 A. I did my master's -- yes. Uh-huh. Yes, sir.

14 Q. As part of your job at Batesburg-Leesville Elementary,
15 Ms. Brackett, do you know a little girl by the name of

16 [REDACTED]

17 A. Yes, sir.

18 Q. And did you know any of her other siblings? Did they
19 go to school there?

20 A. Yes, sir. Gabreal, her older brother. I think he's
21 one year ahead of her.

22 Q. Did he come through before her, being older?

23 A. Yes, sir.

24 Q. Did you have a chance to personally interact with [REDACTED]
25 and Gabreal?

MICHELLE BRACKETT - DIRECT

1 A. Absolutely. Fortunately our school is small enough we
2 do third, fourth, and fifth and I'm able to get to know
3 all the students and am thankful that I can.

4 Q. Your Honor, if I may approach the witness.

5 Ms. Brackett, I'm going to hand you what's in evidence as
6 State's Exhibit Number Five.

7 A. Yes, sir.

8 Q. Do you recognize State's Five?

9 A. Yes, sir; I do.

10 Q. Okay. And what is State's Five? Tell us about it.

11 A. This is a letter that [REDACTED] wrote to me. This is a
12 process that I will do if children cannot get to me if I'm
13 busy doing something, they can always write a note for me.
14 And that's what this is.

15 Q. Okay.

16 A. She's written a note.

17 Q. Where did she leave the note?

18 A. She left the note with her teacher to give to me. And
19 I will tell kids because I have a mailbox that sits
20 outside my office, a little mailbox, and they can put the
21 notes in there but it's not that confidential. So, I will
22 tell kids if it's very private to either slide it under my
23 locked door or give it to their teachers. They often
24 trust their teachers as well.

25 Q. What's the date that's written on that letter?

MICHELLE BRACKETT - DIRECT

1 A. The date is 3-27-06.

2 Q. And you received that letter that day or the next
3 day? Do you remember when you received it?

4 A. I received it that day but it was after the children
5 had already left.

6 Q. On March 27th?

7 A. On the 27th of March; yes, sir.

8 MR. STUMBO: Your Honor, permission to have the
9 witness publish State's Exhibit Five for the jury?

10 THE COURT: Go ahead.

11 BY MR. STUMBO:

12 Q. You can just read the letter to the jury.

13 A. Yes, sir. Ms. Brackett, don't tell anyone about
14 this. Okay. I'm going to Columbia to talk about this
15 today, not even the police because I already talked to
16 one. A family friend touched me in my private part last
17 year. It bothered me for months. Then my mom asked me,
18 has Joe ever touched improperly -- it's misspelled -- I
19 said yes. Then we started crying. She said why didn't
20 you tell me this before. I said I was scared. Then she
21 said, I'm going to turn Joe in. She called my daddy.
22 Then we told. He said the same thing my mommy said.
23 Anyways one day I was wearing short -- shorts -- I was in
24 Joe's truck with his daughter. He put his hand under my
25 shorts and then touched my private. Then I went into the

MICHELLE BRACKETT - DIRECT

1 house, sat on my daddy's lap and watched TV. Sincerely,
2 [REDACTED] 407, Ms. Shirley's room.

3 Q. After you received this letter from [REDACTED]
4 Ms. Brackett, you gave a talk to her personally?

5 A. I called her in the following day, I believe it was.
6 And she came into my room. She was not her usual self.
7 [REDACTED] as I remember [REDACTED] she was -- she would give you
8 eye contact. She would engage in conversation and she
9 would cut up and smile.

10 But when she came into my office the thing that I
11 remember, because I'm a visual person is I just remember
12 her physical demeanor. And when she came to me she was
13 not her typical self.

14 She was very much -- can I just show you how she was?

15 Q. That's fine.

16 A. She was like this (demonstrating).

17 Q. And during the time that she was talking to you, is
18 that how -- she was facing away from you, looking down?

19 A. Yeah. She wouldn't make contact. I don't remember
20 much about the conversation. I know that I would have
21 been focused just on her emotions. I wouldn't have pushed
22 her or pressed her for anything or even brought this up.

23 Q. I'll stop you there. Is that your purpose to
24 investigate a case?

25 A. No. No, sir. No, sir.

MICHELLE BRACKETT - DIRECT

1 Q. What's your role as the guidance counselor?

2 A. To be there when they need me. Usually to report.

3 This had already been reported, so I just called mom and
4 said, I'm going to send this home through [REDACTED] Just hang
5 onto it because, you know, you might need it.

6 Q. You were talking about the letter?

7 A. Yes. Yes, sir, the letter. And, you know, just to
8 let [REDACTED] know that if you were having trouble focusing or
9 just needed to talk, you could come talk to me.

10 I may have even done a referral, but like I said, I
11 can't remember. I just know what my protocol usually is
12 because it has been a long time ago. I may have done a
13 referral to a sexual abuse clinic downtown or at the
14 Dickerson Center or something.

15 Q. Did you have a lot of interaction with [REDACTED] before
16 this date?

17 A. Yes. [REDACTED] you just -- you can't say enough good
18 things about her. She's not type of kid that wants a
19 whole lot of attention, especially negative attention.
20 I've had a lot of kids come through the school. And I
21 know these kids who will tell outlandish lies or do
22 outlandish things just to get your attention.

23 She was not this type of child. She was not a
24 behavior problem. In fact, she was the opposite. She was
25 well behaved. She was well mannered. So was Gabreal, her

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1 brother, you know. No discipline write-ups and referrals
2 that I can recall. She tried very hard to please her
3 teachers and did very well.

4 She also was well liked by her peers. She would
5 often, without ever having the training of being a peer
6 mediator, take on that role. She didn't like her friends
7 not getting along and so she would try to bring peace
8 among them as best as she could.

9 MR. WILLIAMS: Your Honor, I would object to this
10 line of testimony.

11 MR. STUMBO: We can move on, Your Honor.

12 THE COURT: Move on.

13 MR. STUMBO: Okay. Thank you, Judge.

14 BY MR. STUMBO:

15 Q. Ms. Brackett, you talk a lot about [REDACTED] and your
16 interaction with her. The day that she came to see you
17 after you received this letter, can you describe -- you
18 described how she was turned away from you. Can you
19 describe what you observed in terms of her emotional
20 state?

21 A. I would have to say, almost want to say withdrawn.
22 Just, I know it wasn't the [REDACTED] that I usually see.

23 Q. But she acted like she wanted to be there to talk
24 about this?

25 A. No, she didn't. And, you know, I have no memory of

MICHELLE BRACKETT - CROSS

1 this, even talking about it, but, you know, it was just in
2 the air so.

3 MR. STUMBO: That's all we have at this time.

4 MR. WILLIAMS: May it please the Court.

5 CROSS-EXAMINATION

6 BY MR. WILLIAMS:

7 Q. Ma'am, you say you were the guidance counselor at the
8 school?

9 A. Yes, sir.

10 Q. And your purpose is to assist children who are having
11 emotional or educational problems?

12 A. Yes, sir.

13 Q. And in that line, when was the last time prior to this
14 letter that you had any interaction with [REDACTED]

15 A. It would have been about three years ago.

16 Q. When was the last time before you received this
17 letter --

18 A. Oh.

19 Q. Take your time.

20 A. I'm sorry. You said after?

21 Q. -- that you would have had any interaction with her?

22 A. I really can't remember that, but I can say that I am
23 out there in the school within the classrooms and the
24 hallways available, and for them to approach for anything.

25 Q. But let me word it a different way. Up until the time

MICHELLE BRACKETT - CROSS

1 in which this letter was handed to you by the teacher, had
2 you noticed any change in [REDACTED] whatsoever?

3 A. I don't recall or remember at this time.

4 Q. Is that a yes or a no?

5 A. That is a no. I don't know.

6 Q. Well, if you had noticed any type of change in [REDACTED]
7 prior to this note, you certainly would have contacted her
8 or talked to her to try find out if something was wrong;
9 wouldn't you?

10 A. Possibly, yes.

11 Q. Well, I mean, that's your job; isn't it?

12 A. Yes.

13 Q. So you would have talked to somebody about her, talked
14 to her. And it's your recollection that there was no
15 conversations that involved this child prior to the date
16 of this note which you have?

17 A. That is correct, sir.

18 Q. And then all of a sudden after she wrote this note she
19 is withdrawn?

20 A. Just in my office.

21 Q. You didn't see her withdrawn anywhere else?

22 A. No. Just when it was her and I and in the office
23 together with the letter.

24 Q. And that's your interpretation that she was upset
25 because something happened as opposed to her being upset

MICHELLE BRACKETT - CROSS

1 because she wrote something down and you were talking to
2 her about it?

3 A. Well, I didn't really talk to her about it but the
4 note was there on my desk. I'm not going to bring that up
5 unless she wants to, so it was kind of like, we really
6 didn't talk about it but it was there.

7 Q. Who did you refer her to see? What sexual abuse
8 counselor did you refer her to see?

9 A. I do not recall or remember.

10 Q. But that's again your job as a counselor?

11 A. I -- it is, sir.

12 Q. Can you even say that you did refer her to anyone?

13 A. I can say that that's my protocol. I do not -- I
14 cannot remember back four years to say for sure.

15 Q. Do you keep records on the various pupils and students
16 that go to your school?

17 A. Yes, sir; but I burn them after three years in
18 reference to the American Counselor Association's ethical
19 code.

20 Q. Did you know that there was criminal case pending?

21 A. I did not, sir.

22 Q. So no one from the police department, from the
23 Dickerson Center, from any area contacted you and let you
24 know that there was some criminal charges that were
25 pending?

MICHELLE BRACKETT - CROSS

1 A. That's correct.

2 Q. All right. And this occurred, the letter you have is
3 dated what?

4 A. March 27th, 2006.

5 Q. So had someone gotten to you before March of 2009, you
6 would have had those records that we could have looked at
7 to see what the deal was?

8 A. Yes, sir.

9 Q. But you certainly can't testify that they even existed
10 either; can you?

11 A. No, sir.

12 Q. Now, what grade was she in when you got that note from
13 her?

14 A. She was in the fourth.

15 Q. Did she pass her fourth grade?

16 A. Yes, sir.

17 Q. Did she pass her fifth grade?

18 A. Yes, sir.

19 Q. How did she do in the fifth grades?

20 A. She tries very hard. Academics are very important to
21 her. And she's definitely got a good brain and she uses
22 it wisely.

23 Q. So in answer to my question, how did she do in the
24 fifth grade?

25 A. She did well --

MICHELLE BRACKETT - REDIRECT

1 Q. Now by well --

2 A. -- academically.

3 Q. Okay. Do you know of anything that she did poorly in?

4 A. No, sir. I did not see any negative behaviors or
5 misbehaving or discipline issues.

6 Q. And what type of grades did she have in the fifth
7 grade?

8 A. I can tell you they were passing grades. If I
9 remember correctly, she may have been in the advanced
10 class.

11 Q. Do you know if she had A's or B's?

12 A. I do not know.

13 MR. WILLIAMS: I don't have any other questions,
14 Your Honor.

15 THE COURT: Anything further?

16 MR. STUMBO: Just a couple, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. STUMBO:

19 Q. Ms. Brackett, your experience in dealing with
20 children, has it been your experience when they have
21 something traumatic happen to them that their grades will
22 automatically go down?

23 MR. WILLIAMS: Your Honor, I would object as to
24 her qualification on this question.

25 MR. STUMBO: This would be based on her training

MICHELLE BRACKETT - RECROSS

1 and experience, Judge. Not an opinion, her observations.

2 THE COURT: Well, overruled. Go ahead.

3 BY MR. STUMBO:

4 Q. Do all the children that you see that have experienced
5 some kind of trauma automatically end up having bad grades
6 as a result of that?

7 A. No, sir. No, sir. They usually want normalcy. So
8 they just want things to go back to normal. They can
9 usually go in one of two directions. They can try to be
10 that perfect kid and try to do everything right or they
11 can go down another route that is very bad for them and
12 get in trouble. The grades go down and get into behaviors
13 that are not good.

14 Q. So they sometimes become even over-achievers?

15 A. They can either be like an over-achiever or self
16 destructive, yeah.

17 MR. STUMBO: That's all the questions I have.

RECROSS-EXAMINATION

18
19 BY MR. WILLIAMS:

20 Q. So it's your testimony, even though you haven't been
21 qualified as an expert in this area, that trauma makes no
22 difference in regards to how a child progresses?

23 A. No, sir. I think it is very -- trauma is unique in
24 the way how each child deals with it.

25 Q. And your master's is in guidance counseling?

1 A. It's an education major in counseling.

2 Q. So it's in education?

3 A. Yes, sir.

4 Q. But you certainly didn't get your master's in
5 psychology or psychiatry?

6 A. I have a bachelor's in psychology. We had to -- I had
7 a very rigorous master's program. We had to do family
8 therapy, psychological or pathological diagnoses and
9 DSMR. We also had to get counseling ourself.

10 Q. Have you ever been qualified as an expert?

11 A. Not as an expert.

12 Q. In any field?

13 A. No, sir.

14 MR. WILLIAMS: That's all the questions I have.

15 THE COURT: Thank you very much, ma'am. You may
16 come down, sir.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Thank you very much, ma'am. Next
19 witness.

20 MR. STUMBO: Well, Your Honor, that's all the
21 witnesses we have. We would ask that we be able to
22 publish the DVD of the forensic interview which is State's
23 Nine, I believe.

24 I may need a couple minutes to set that up and
25 play it through our system here. Should be very brief,

1 Your Honor.

2 THE COURT: Well, go ahead.

3 MR. STUMBO: Okay.

4 THE COURT: Anybody need a break? We're going to
5 try to set it up.

6 (Pause.)

7 (Thereafter, the video was played for the jury at
8 2:31 p.m., until 3:00 p.m. The video was State's Exhibit
9 No. 9, in evidence.)

10 MR. STUMBO: Your Honor, at this time the State
11 rests.

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

13 All right, ladies and gentlemen of the jury,
14 that's all the evidence the State will present in this
15 case.

16 As I told you at the beginning of the trial the
17 defense now has an opportunity to present a defense but
18 need not do so, bearing in mind my earlier comment about
19 the burden of proof is on the State.

20 However, at this time I need to take up just a
21 few legal matters with the attorneys so it's probably a
22 good time to take an afternoon break.

23 I'll ask you to go to the jury room. Don't
24 discuss the case among yourselves while you're in the jury
25 room. Just relax for a few minutes. We'll call you when

1 we're ready. Thank you very much.

2 (Jury exits courtroom at three o'clock p.m.)

3 MR. WILLIAMS: Your Honor, I move for a directed
4 verdict of not guilty in reference to the indictment on
5 lewd act on a minor as well as on CSC with a minor on the
6 basis that the evidence in the light most favorable to the
7 State is insufficient as a matter of law, taking the light
8 most favorable to the State for the jury to return a
9 verdict of guilty.

10 I would place particular emphasis on the CSC with
11 a minor. All the allegations presented by the child at
12 least in the interviews, the statements, up until today's
13 date at trial was that there was no penetration. And
14 obviously under the charge of CSC with a minor there must
15 be penetration however slight for there to be a guilty
16 verdict on that charge.

17 THE COURT: State's position?

18 MR. STUMBO: Your Honor, our position as to
19 the -- I'll take up the penetration element first as to
20 the CSC charge. I believe, as was explained by
21 Mr. Olszewski, that oftentimes children are confused when
22 they're asked that question about penetration.

23 I listened in the court this week and she very
24 clearly stated that there was penetration. His fingers
25 were inside of her

1 In the light most favorable to the State, Your
2 Honor, if viewed in that light the statute says
3 penetration however slight. And I believe that based on
4 the victim's testimony in court as well as corroborated by
5 Mr. Olszewski's explanation that often children early on
6 are confused about that. I believe that in the light most
7 favorable to the State Mr. Williams obviously has had a
8 full opportunity to cross-examine that fact, put that in
9 front of the jury. It's an issue of fact for the jury,
10 Your Honor. There is existence of evidence of
11 penetration.

12 And we believe on a direct verdict standard that
13 we've presented plenty of evidence to get past our burden
14 on the directed verdict motion.

15 As to the lewd act, Your Honor, I believe
16 consistently the entire time [REDACTED] has talked about him
17 grabbing her privates and sliding his hand up her
18 underwear and putting it on her privates, Your Honor. We
19 believe we've met the elements as to lewd act as well.

20 And we'd ask the Court to respectfully deny Mr.
21 Williams' motion.

22 THE COURT: All right. Mr. Williams, as to the
23 motion for directed verdict, I feel the evidence goes
24 beyond that of mere conjecture or suspicion, that there is
25 evidence either direct or circumstantial or some

1 combination of both which reasonably tends to prove the
2 guilt of the Defendant or from which that guilt might be
3 logically and reasonably deduced if that evidence is taken
4 in the light most favorable to the State.

5 I feel there is a jury question presented on the
6 criminal sexual conduct with a minor first based on the
7 witness's, the complaining witness's testimony today, even
8 though it may be different from what she said in the
9 past.

10 The question that I must face is: Is there any
11 evidence in which case there, it becomes a jury issue, not
12 an issue for the Court. So I most respectfully deny your
13 motions for a directed verdict.

14 Does the defense -- on both charges.

15 MR. WILLIAMS: Yes, sir.

16 THE COURT: Does the defense plan to present a
17 case?

18 MR. WILLIAMS: We do.

19 THE COURT: All right. Does your client intend
20 to testify? Well, before you answer that question, I'd
21 like the advise him of his fifth amendment rights.

22 Mr. Butler, at this time I'm going to explain to
23 you certain of your rights. If you do not understand
24 anything I say, please let me know.

25 If you want me to explain anything in more

1 detail, please let me know. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: We now reached the stage of the trial
4 where you may present your defense. You have the right to
5 claim the protections given to you by the fifth amendment
6 to the Constitution of the United States. This amendment
7 states, in part, no person shall be compelled in any
8 criminal case to be a witness against himself or herself.

9 This means that you cannot be required to testify
10 in this case. You have the right to testify on your own
11 behalf however no one can make you testify. This is a
12 personal right. And no one can waive this right except
13 you. If you decide to testify you will be subject to the
14 same rules that govern other witnesses and you may be
15 examined and cross-examined on any relevant issue in this
16 case.

17 In addition, if you have any convictions
18 involving dishonesty or false statement or for crimes
19 punishable by imprisonment for more than one year and this
20 Court determines that the probative value of admitting
21 such evidence outweighs its prejudicial effect to you, the
22 solicitor will be able to introduce your record to attack
23 your credibility.

24 If you decide to testify this decision on your
25 part must be freely, voluntarily and intelligently made

1 with knowledge of the protections given to you by the
2 fifth amendment to the constitution and the consequences
3 of your decision to testify.

4 If you decide not to testify, I will instruct the
5 jurors they cannot give the fact that you did not testify
6 any consideration whatsoever and that there's to be
7 absolutely no prejudice to you because you did not
8 testify.

9 It's left entirely up to you whether or not you
10 testify. You may talk with your attorney, your family and
11 friends or anyone else, but the final decision will be
12 left entirely up to you. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you understand what I've explained
15 to you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you have any questions about it,
18 what I have explained to you?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Solicitor, does he have an
21 impeachable record?

22 MR. STUMBO: No, sir, Your Honor.

23 THE COURT: All right. Mr. Butler, have you
24 discussed with your lawyer whether you should or should
25 not testify?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You've discussed it with him?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to talk to your lawyer
5 any more at this time?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: You wish to testify?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Fine.

10 All right. Let's take about 10 minutes. What --

11 MR. WILLIAMS: We can finish testimony today,
12 Your Honor.

13 THE COURT: We can?

14 MR. WILLIAMS: Yes, sir..

15 THE COURT: Good. That's what I was hoping.

16 We'll get it to the jury in the morning and we'll be done
17 with it. All right.

18 Let's take about 10 minutes.

19 (Thereupon at 3:10 p.m., a break was taken until
20 at 3:25 p.m., when the trial resumed as follows:)

21 MR. STUMBO: Your Honor, we do have one matter
22 before the jury comes back.

23 THE COURT: Yes.

24 MR. STUMBO: I mispoke earlier. Ms. Patterson
25 actually reminded me of this. I have not looked at the

PATRICIA ANN BUTLER - DIRECT

1 rap sheet in a while. There are no felony convictions,
2 however, there is 2005 fraudulent check conviction in
3 Newberry County. He was convicted, according to his rap
4 sheet, I do believe, under Rule 6-0.

5 THE COURT: Nine.

6 MR. STUMBO: 609-A., Subsection 2.

7 THE COURT: Comes in.

8 MR. STUMBO: That qualifies.

9 THE COURT: Comes in.

10 MR. STUMBO: Okay. Well, that's all we have,
11 Your Honor.

12 THE COURT: All right. Bring the -- defense
13 ready?

14 MR. WILLIAMS: Defense is ready, Your Honor.

15 THE COURT: Bring the jury, please.

16 (Jury enters courtroom at 3:25 p.m.)

17 THE COURT: Mr. Williams, you may proceed.

18 MR. WILLIAMS: Your Honor, I'd call Patricia Ann
19 Butler to the stand.

20 PATRICIA ANN BUTLER, having been duly sworn, was
21 examined and testified as follows:

22 THE CLERK: Have a seat right up there,
23 Ms. Butler. Once you're seated state your full name,
24 spelling your last on the record, please.

25 THE WITNESS: Patricia A. Butler, B. U. T. L. E.

PATRICIA ANN BUTLER - DIRECT

1 R., Butler.

2 DIRECT EXAMINATION

3 BY MR. WILLIAMS:

4 Q. Ms. Butler, what is your relationship to Joe Butler,
5 Jr.?

6 A. I'm his mother.

7 Q. All right, ma'am. And do you know where you were on
8 October the 1st of the year 2005?

9 A. Yes.

10 Q. Where were you on that day?

11 A. I was at Myrtle Beach. I took my granddaughter Leola
12 Butler birthday.

13 Q. Who is Leola Butler?

14 A. My granddaughter.

15 Q. And what relation is Leola Butler to Joe Butler, Jr.?

16 A. His daughter.

17 Q. How many children -- strike that. How many people
18 were there at the beach?

19 A. Oh, it was myself, Leola, her father, her three
20 brothers and her mother.

21 Q. Now I'm going to show you an exhibit which is marked
22 as -- I'll show you three together. How about that? It's
23 marked as Defendant's Exhibit Number Two, Number Three and
24 Defense Exhibit Number four. And tell me if you can
25 identify those three pictures.

PATRICIA ANN BUTLER - DIRECT

1 A. All three of them is my granddaughter Leola playing in
2 the water.

3 Q. And where were those pictures taken?

4 A. At Myrtle Beach.

5 Q. And when were those pictures taken?

6 A. October the 1st, 2005.

7 MR. WILLIAMS: Your Honor, we would now move to
8 introduce Defense Exhibit Two, Three and Four into
9 evidence as Defendant's One, Two and Three -- or we can
10 move it as Defendant's Two, Three and Four.

11 MR. STUMBO: No objection.

12 THE COURT: Defendant's Two, Three and Four in
13 evidence.

14 (Thereupon, Defendant's Exhibit Nos. 2, 3, and 4,
15 photographs, were received into evidence.)

16 BY MR. WILLIAMS:

17 Q. Now, Ms. Butler, I'm going to ask you to look at
18 Defendant's Exhibit Number One and Defendant's Exhibit --
19 well, let's look at Defendant's Exhibit Number One. What
20 is Defendant's Exhibit Number One?

21 A. It's my granddaughter Leola getting ready to cut her
22 birthday cake.

23 Q. And when was that picture taken?

24 A. October the 1st, 2005.

25 MR. WILLIAMS: Your Honor, we would move to

PATRICIA ANN BUTLER - DIRECT

1 introduce Defendant's Exhibit Number One into evidence.

2 MR. STUMBO: No objection, Your Honor.

3 (Thereupon, Defendant's Exhibit No. 1,
4 photograph, was received into evidence.)

5 BY MR. WILLIAMS:

6 Q. And let me show you what has been marked as
7 Defendant's Exhibit Number Five. And tell me, what is
8 that?

9 A. It's a picture of my granddaughter Leola and my son
10 Joe looking to get ready to cut her birthday cake.

11 Q. And when was that picture taken?

12 A. October the 1st, 2005.

13 MR. WILLIAMS: We would move to introduce
14 Defendant's Exhibit Number Five into evidence.

15 MR. STUMBO: No objection, Your Honor.

16 (Thereupon, Defendant's Exhibit No. 5,
17 photograph, was received into evidence.)

18 BY MR. WILLIAMS:

19 Q. Now on Defendant's Exhibit Number Five, that has a
20 picture of your granddaughter and who in it?

21 A. Her father, Joe Butler.

22 MR. WILLIAMS: Your Honor, we would move to
23 publish this to the jury

24 THE COURT: Go right ahead.

25 BY MR. WILLIAMS:

PATRICIA ANN BUTLER - CROSS

1 Q. Now, Ms. Butler, while they're looking at those
2 pictures, just briefly. The picture with the birthday
3 cake, does it have a number of what birthday it was for
4 Leola?

5 A. Yes.

6 Q. And what number would it have been?

7 A. Number eight.

8 Q. So that would be for her eighth birthday?

9 A. Yes.

10 Q. And her eighth birthday was October the 1st of 2005?

11 A. Yes.

12 Q. Was anybody else present besides her immediate family
13 at Myrtle Beach?

14 A. No.

15 Q. And how long were you at Myrtle Beach?

16 A. We went Friday for the whole weekend. Friday,
17 Saturday, Sunday.

18 Q. All right. To your knowledge, did your granddaughter
19 have another birthday party?

20 A. No.

21 MR. WILLIAMS: That's all the questions I have,
22 Your Honor.

23 THE COURT: Cross-examination?

24 CROSS-EXAMINATION

25 BY MR. STUMBO:

PATRICIA ANN BUTLER - CROSS

1 Q. Good afternoon, Ms. Butler.

2 A. Good afternoon.

3 Q. I'm David Stumbo. We haven't met. I'm the prosecutor
4 in this case.

5 A. Okay.

6 Q. You say October 1st, 2005 is the date these pictures
7 were taken. Do you still have the pictures?

8 THE COURT: The jury has them.

9 MR. STUMBO: Oh. They're passing them around.

10 BY MR. STUMBO:

11 Q. Are you sure about that?

12 A. Yes.

13 Q. Okay. How are you sure?

14 A. Because that was the date we took her birthday
15 pictures on her birthday.

16 Q. And you were in Myrtle Beach?

17 A. Yes.

18 Q. So I'm assuming y'all don't have a house that you own
19 in Myrtle Beach; do you?

20 A. No.

21 Q. Okay. Did you rent a hotel room?

22 A. Yes.

23 Q. Or something like that?

24 A. Yes.

25 Q. Does somebody have some kind of check or something

PATRICIA ANN BUTLER - CROSS

1 that was written to pay for that hotel room on that date?

2 A. We have the check on that, maybe not at the time. The
3 place should have it on their record.

4 Q. Okay. How about y'all's record? Don't you get a
5 record when you pay for a hotel room showing what dates
6 you've been there?

7 A. Sometime.

8 Q. Wouldn't that show that you were there on that date?

9 A. Yes, but still the year, you can check back to the
10 place. They probably have it on their record. They keep
11 theirs.

12 Q. Okay. This is pretty important. We're talking about
13 your son --

14 A. Uh-huh.

15 Q. -- being somewhere on a different date; is that
16 right? It's important to you? That date's important?

17 A. Yes. He's right there on the picture.

18 Q. All right. Is there any notation on the picture of
19 what date that picture was taken?

20 A. It was with the film.

21 Q. Okay. Where's the film? Do you have that?

22 MR. WILLIAMS: (Envelope handed to Mr. Stumbo.)

23 (Pause.)

24 BY MR. STUMBO:

25 Q. And, Ms. Butler, Joe's your son; right?

PATRICIA ANN BUTLER - CROSS

1 A. Yes.

2 Q. Do you love him?

3 A. Yes.

4 Q. And you don't have any notation anywhere, any records
5 of the hotel that y'all stayed in on that date but you're
6 sure that four and a half years ago on October 1st, 2005,
7 that's the date you were in that hotel room?

8 A. Yes.

9 Q. Do you ever keep a calendar or a day timer or anything
10 like that at your house?

11 A. We went on her birthday. We know by her birthday.

12 Q. Is it your experience that you always celebrate a
13 child's birthday on that exact date?

14 A. I do. Yes.

15 Q. You never celebrated anybody's birthday on a day other
16 than their birthday?

17 A. Well, that birthday was celebrated on her birthday.

18 Q. Has she ever had any other celebrations for birthdays
19 not on that day?

20 A. I'm talking about this one.

21 Q. But has she ever had it celebrated on any other day to
22 your knowledge?

23 A. Maybe on the line but this one was on her birthday.

24 Q. You're sure about that today, Ms. Butler?

25 A. I'm sure. Never -- I take my pills and be ready for

PATRICIA ANN BUTLER - CROSS

1 her too. Everybody that knows me knows that.

2 Q. Do you know Rayletta Simpkins?

3 A. Yes.

4 Q. Who's Rayletta?

5 A. Her aunt.

6 Q. And did they ever have any kind of parties or was
7 Leola at Rayletta's house on a regular basis? Did she go
8 over there a lot?

9 A. Yes.

10 Q. So Rayletta knew her well?

11 A. Yes.

12 Q. Did Rayletta ever take care of her?

13 A. Yes.

14 Q. Did Rayletta love her?

15 A. Uh-huh.

16 Q. Was she down there at the beach with you guys?

17 A. No. A lot of people love her but they wasn't down
18 there at the beach with us.

19 Q. That's right.

20 A. That's true.

21 Q. And Rayletta -- would it be unusual for Rayletta to
22 want to have a little celebration for her birthday since
23 she knew y'all were going to the beach?

24 A. She only had one birthday. That year that was the
25 only party she had.

PATRICIA ANN BUTLER - CROSS

1 Q. Never went over to Rayletta's on her birthday before
2 you went to the beach or after you got back from the
3 beach?

4 A. No, she only had that one.

5 Q. So Rayletta never had a party for her?

6 A. She have had one but she didn't have one year that.
7 We took her to the beach and she had her birthday.

8 Q. You're sure of that?

9 A. I'm sure.

10 Q. But you don't have any calendars or hotel receipts to
11 show that y'all were down there on that day?

12 A. We have the pictures.

13 Q. Is it possible that Rayletta could have had a birthday
14 party that you weren't invited to?

15 A. No, I'm always invited if she have a party. That my
16 baby girl. She be looking for grandmama.

17 Q. Even though y'all were going to have another party
18 where you were going to be at the beach?

19 A. She were having her party. She had that one at the
20 beach for her birthday.

21 Q. Never had two birthday celebrations for a child
22 before?

23 A. She had one that year.

24 Q. You love Joe; right?

25 A. Yes.

JOE LEWIS BUTLER, JR. - DIRECT

1 Q. You don't want to see him get in trouble?

2 A. Well, I'm telling the truth. That's where her
3 birthday party was. And that's the day her birthday party
4 was.

5 MR. STUMBO: No further questions, Your Honor.

6 THE WITNESS: Look at your pictures.

7 MR. WILLIAMS: No further questions, Your Honor.

8 THE COURT: Thank you very much. You may come
9 down, please. Thank you very much.

10 MR. WILLIAMS: Your Honor, I call Joe Butler to
11 the stand.

12 JOE LEWIS BUTLER, JR., having been duly sworn,
13 was examined and testified as follows:

14 THE CLERK: Spelling your last.

15 THE DEFENDANT: Joe Lewis Butler, Jr., B. U. L.
16 T. E. R.

17 DIRECT EXAMINATION

18 BY MR. WILLIAMS:

19 Q. Joe, the young lady who just just testified who was
20 she?

21 A. My mother.

22 Q. And where do you work now?

23 A. I work at Newberry at Kraft Foods.

24 Q. All right. Now, you understand that their accusations
25 that something occurred with you and some other child on

JOE LEWIS BUTLER, JR. - DIRECT

1 October 1st of the year 2005?

2 A. Yes.

3 Q. Where were you on October the 1st of 2005?

4 A. At Myrtle Beach.

5 Q. And when did you go to Myrtle Beach?

6 A. It was that Friday, the day before the 1st.

7 Q. And when did you come home?

8 A. That Sunday evening.

9 Q. Now when did you first learn that the accusations were
10 that something happened on October the 1st of 2005?

11 A. It was sometime in 2006.

12 Q. When was the first time that you learned that the
13 accusations were that you had done something to this
14 child?

15 A. Monday.

16 Q. Which Monday?

17 A. November 8th the following -- this Monday, this week.

18 Q. So you found out that the day that you supposedly did
19 this, you found that accusation out Monday of this week?

20 A. Yes.

21 Q. And how did you find out that that was the date that
22 supposedly it happened?

23 A. A new indictment came in and they sprung it on it us
24 and said are you ready to go to trial.

25 Q. And who told you about it?

JOE LEWIS BUTLER, JR. - DIRECT

1 A. You told me when they gave me a new indictment.

2 Q. And that was Monday of this week?

3 A. Yes.

4 Q. Did you have a chance to run down to the beach and get
5 copies of their records that they had at any motels down
6 at the beach?

7 A. No. I had to be here.

8 Q. Did you have a chance to go through all the check
9 registers of your father or yours to see if there was any
10 kind of check that you might have, written a check for
11 that date at the beach?

12 A. No.

13 Q. How is it that you found these pictures which showed
14 the date of October 1st of 2005?

15 A. I had a picture on my mom's refrigerator from when we
16 went. And called and doing -- well she keeps the stacks
17 of pictures in their cases and she happened to find that
18 one luckily and she went and got it for me.

19 Q. There is one picture which has been introduced into
20 evidence and the back of that picture, it looks like it's
21 a little worn on the back of it, doesn't it? Let me show
22 it to you. Let me show you that one there.

23 A. Yes.

24 Q. Is that the picture that you're talking about that was
25 on your mama's refrigerator?

JOE LEWIS BUTLER, JR. - CROSS

1 A. Yes. That's the one on the refrigerator for a year.

2 Q. So you had seen that picture on the refrigerator?

3 A. Yes.

4 Q. And then once you talked to your mama you got that
5 picture and you got her to find these other pictures?

6 A. Yes, because I know she takes pictures for everything
7 so I knew she would have pictures.

8 Q. Joe, do you know this child [REDACTED] [REDACTED]

9 A. By her family. By her family.

10 Q. By her family?

11 A. Yes.

12 Q. Did you go to -- her name is Ray?

13 A. Rayletta.

14 Q. Rayletta. Did you go to Rayletta's house in the year
15 2005 for a party with your daughter and commit any type of
16 sexual assault on this [REDACTED] [REDACTED]

17 A. No.

18 Q. Have you ever committed any kind of sexual assault on

19 [REDACTED] [REDACTED]

20 A. No.

21 Q. How old is your daughter?

22 A. She's 12.

23 Q. And how old is [REDACTED] [REDACTED]

24 A. I think they said 13.

25 Q. Okay. Do you have a conviction for a bad check in the

JOE LEWIS BUTLER, JR. - CROSS

1 year 2005 or fraudulent check in 2005, 2006?

2 A. Yes.

3 MR. WILLIAMS: That's all I have, Your Honor.

4 THE COURT: Cross-Examination?

5 CROSS-EXAMINATION

6 BY MR. STUMBO:

7 Q. Mr. Williams just asked you, Mr. Butler, if you had
8 had a conviction for fraudulent check in 2005. So you
9 have lied about something before; is that right?

10 A. No. I cancelled insurance check for a accident and my
11 vehicle was not repaired. I picked it up at the shop and
12 I drove off it fell apart and I reported that to my
13 insurance agent and found a new mechanic.

14 Q. You pleaded guilty to it; right?

15 A. Well, they told me in order to keep it clear I had to
16 go down and pay the check. I paid the check and then I
17 found out later on that it did count as a conviction. I
18 didn't know that at the time or I would have took it to
19 court.

20 Q. So you admitted in front of the Court under oath --

21 A. I cancelled the check for work that was not done
22 completely. The money was in the bank. The check was
23 actually put on hold.

24 Q. But you were convicted of a fraudulent check; right?

25 A. Yes, sir; but I did not know it was against the law to

JOE LEWIS BUTLER, JR. - CROSS

1 cancel your own check if work was not done properly. I
2 know that now but I did not know at the time.

3 Q. Are you telling us the truth today about the fact that
4 you went to the beach and you never went to any party for
5 minorC --

6 A. Yes.

7 Q. -- at Ray's house?

8 A. Yes.

9 Q. minorC -- were you with minorC at Ray's house at the
10 same time, you and minorC Were you ever at Ray's house
11 at the same time?

12 A. Yes, I guess in the past.

13 Q. Okay.

14 A. Briefly dropping off on my way to work.

15 Q. Does Ray have a close relationship with minorC

16 A. Yes.

17 Q. She's her aunt; right?

18 A. Yes.

19 Q. And she keeps her from time to time?

20 A. From time to time.

21 Q. And she didn't go to the beach with y'all; did she?

22 A. No.

23 Q. So how long were you at the beach, Joe? Tell us
24 that. Was it a weekend or a whole week or two weeks? How
25 long were you there?

JOE LEWIS BUTLER, JR. - CROSS

1 A. It was a weekend because I work rotating shifts so it
2 was the weekend.

3 Q. Do you know what day October 1st was?

4 A. That was on a Saturday.

5 Q. Was it Friday or Saturday?

6 A. It was on a Saturday.

7 Q. And you never went over to Ray's house before that
8 weekend or right after that weekend?

9 A. No.

10 Q. Around that time?

11 A. No. It was late.

12 Q. You can say for sure you never went over there?

13 A. When we got home I had to go to work, so know. I
14 mean, after the trip back you're tired.

15 Q. Has minorC ever had more than one birthday celebration
16 for her birthday?

17 A. No. She was at one just when everyone's together.

18 Q. Is this your Suburban?

19 A. Yes.

20 Q. That's the middle seat there?

21 A. Yes.

22 Q. [REDACTED] [REDACTED] ever get in your Suburban, Joe?

23 A. I'm not sure. Not my knowledge.

24 Q. Did Leola like to play in the back seat of the
25 Suburban?

JOE LEWIS BUTLER, JR. - CROSS

1 A. Well, I mean, if you're outside and I didn't know
2 about it. As far as I could see, no, because usually I'm
3 in the truck, I'm going somewhere.

4 Q. Now Mr. Williams asked you, Joe, if the first time you
5 had any indication that this alleged event happened around
6 the time of Leola's birthday was Monday; is that right?

7 A. Yes.

8 Q. You never had any other information that you discussed
9 with Mr. Williams as part of this case that dealt with
10 minorC birthday being part of this, the allegations
11 here?

12 A. No.

13 Q. Are you sure about that?

14 A. Yes.

15 Q. I'll ask the same question I asked your mother. Who
16 paid for the hotel room when y'all went to the beach?

17 A. I'm not sure. I'm not sure if she paid for her own
18 and I paid for another. It's been years. I'm not sure.
19 I haven't had enough time to actually check and see.

20 Q. Banks keep those kind of records, don't they, when you
21 pay for a hotel room. You don't think you paid for it?

22 A. It was paid for but I don't know which bank I was with
23 at that time, you know, going through this and trying to
24 find jobs and losing jobs.

25 Q. Did you ever keep a calendar?

1 A. I didn't think I had to keep one for my daughter's
2 birthday. I know that by heart; October 1st.

3 Q. You don't keep a calendar for when you're going to
4 take trips and that kind of stuff?

5 A. I mean I can't afford to take trips. I just -- when
6 we can go, we go.

7 Q. Despite the fact that you don't have motel records or
8 a calendar, you can say four and a half years later for
9 sure that you were there on October 1st?

10 A. That's my daughter's eight birthday.

11 Q. You can say for sure that you never had any other kind
12 of party at Rayletta's house?

13 A. I can say for sure I was at the beach October 1st,
14 2005.

15 MR. STUMBO: Okay. No further questions Your
16 Honor.

17 MR. WILLIAMS: No questions on redirect, Your
18 Honor.

19 THE COURT: Thank you. You may come down.

20 MR. WILLIAMS: That's the defense case, Your
21 Honor.

22 THE COURT: All right. All right. Ladies and
23 gentlemen -- any reply from the State?

24 MR. STUMBO: Nothing from the State, Your Honor.

25 THE COURT: All right. Ladies and gentlemen of

1 the jury, that completes the evidence in this case. The
2 remaining portion of the trial will consist of the final
3 arguments of counsel, my instructions on the law to you
4 and then the case will be turned over to you for
5 deliberation.

6 There are also some legal matters I need to take
7 up with the attorneys at this time before the case is
8 finished and the final arguments begin. I think probably
9 the most efficient use of our time would be to go ahead
10 and excuse you for the afternoon. I ask you to be back in
11 the jury room at 9:30 in the morning at which time we will
12 complete this case.

13 Have a pleasant evening. Don't discuss the case
14 among yourselves when you return to the jury room or with
15 anyone else over the evening hours. Hope you have a
16 pleasant evening and we'll see you in the morning.

17 (Jury exits at 3:48 p.m.)

18 MR. WILLIAMS: Your Honor, may I approach the
19 witness stand?

20 THE COURT: I'm sorry?

21 MR. WILLIAMS: May I approach the witness stand?

22 THE COURT: Well if you want to talk to the court
23 reporter.

24 MR. WILLIAMS: Madam court reporter, may I
25 approach the witness stand?

1 (Pause.)

2 MR. WILLIAMS: Thank you, Your Honor.

3 THE COURT: Any motions?

4 MR. WILLIAMS: Your Honor, I'd renew my motion
5 for a directed verdict. The evidence all being in, motion
6 for directed verdict as to the charges of lewd act and
7 criminal sexual conduct with a minor, that the evidence is
8 insufficient for a conviction by this jury on those
9 charges.

10 MR. STUMBO: Our position is the same as before,
11 Your Honor. I believe there's sufficient evidence. It's
12 a fact issue for the jury even after the defense's case on
13 who they believe.

14 THE COURT: All right. I find there's sufficient
15 evidence from which the jury or for which this case should
16 be submitted to the jury. I respectfully deny your motion
17 for directed verdict.

18 Any requests for charge?

19 MR. STUMBO: The only thing I can think of, Your
20 Honor, is just, and I believe this is part of the standard
21 jury charges on criminal sexual conduct cases because it's
22 part of the statute, is that the testimony of a victim
23 need not be corroborated. I believe it's 16-3-656 just
24 that's by memory, Your Honor, but that's the statutory
25 section.

1 THE COURT: Yes. I'm aware of it.

2 MR. STUMBO: I believe that's part of the charge.
3 Thank you, Judge.

4 MR. WILLIAMS: Nothing, Your Honor.

5 THE COURT: Alibi?

6 MR. WILLIAMS: Yes, sir. I'm sorry. I thought
7 based on the fact that I did put up an alibi that you were
8 going to charge that but, yes, we would request an alibi
9 charge.

10 THE COURT: There never was a demand under the
11 rules for an alibi defense, a request?

12 MR. STUMBO: There was, Your Honor. We did
13 file --

14 THE COURT: State knew about it.

15 MR. STUMBO: We did file a reciprocal Rule Five
16 but Mr. Williams and I kind of agreed since we ultimately
17 had to change the dates on the indictment based on our
18 preparation for trial. It was pretty recent, the end of
19 last week, we let them go forward with the alibi. So
20 we're not going to contest that.

21 THE COURT: All right. Thank you very much.
22 We'll see you at 9:30.

23 MR. WILLIAMS: Thank you, Your Honor.

24 END OF DAY: 3:50 P.M.

25 * * * *

1 ON FRIDAY, MARCH 12, 2010 AT 9:39 A.M.:

2 THE COURT: Ready to proceed? We got a jury
3 waiting.

4 MR. STUMBO: We are, Your Honor. I failed to
5 request this last night. I didn't think about it until
6 after we left court. And I'd asked the Court to charge
7 this before in these type of cases. Just one sentence out
8 of State V. Tumbleson. I've provided to Mr. Williams --

9 THE COURT: Any objection?

10 MR. WILLIAMS: Your Honor, when you consider the
11 fact that there's an alibi defense, I would except to that
12 charge.

13 THE COURT: Well, the question is A., is it good
14 law and B., you know, I'm supposed to give requested
15 charges that are clearly applicable. I don't know if the
16 jury's going to understand what it means anyway.

17 MR. WILLIAMS: I don't either.

18 MR. STUMBO: Your Honor, I believe that there's a
19 tendency to believe that there's a date or date range in
20 an indictment in these type of cases that --

21 THE COURT: All right. I'll give it. You don't
22 have to argue. How about the remainder of the charges?

23 MR. STUMBO: You go ahead.

24 MR. WILLIAMS: You go first. You're the State.

25 MR. STUMBO: Your Honor, this is the only request

1 I had. I know Mr. Williams mentioned to me this
2 morning this --

3 MR. WILLIAMS: I would except to the child
4 testimony --

5 THE COURT: Why?

6 MR. WILLIAMS: -- charge.

7 THE COURT: Why?

8 MR. WILLIAMS: Because it appears if you follow
9 what the witnesses have said about the child who
10 testified, that would be Dr. Olszewski or whatever his
11 name was, and he used the word compelling. And the reason
12 he used the word compelling, it didn't mean that her story
13 was compelling but compelling meant that she had the
14 ability to recall facts, to elicit those facts.

15 The charge of child testimony that Your Honor
16 proposes to -- what Your Honor is going to give to the
17 jury is, I would think, more appropriate for, like, a four
18 year old or three year old where there might be some issue
19 as to whether or not they could tell the truth or not but
20 all the testimony in this particular case even by an
21 expert who is Dr. Ray Olszewski has said that her
22 testimony is compelling.

23 So she has the ability to answer questions,
24 remember things. So we would except to it because it may
25 appear that the jury might think that the Court is

1 instructing them that, well, it's okay

2 THE COURT: What's the State's position?

3 MR. STUMBO: Your Honor, I can't say that I
4 disagree with Mr. Williams.

5 THE COURT: All right. We'll just take it out.

6 MR. WILLIAMS: Thank you, Your Honor.

7 THE COURT: Take it out. Let me have my charges
8 back. Somebody has got them.

9 MR. STUMBO: I've got them, Your Honor.

10 THE COURT: We do, you know, we do sort of a
11 broad brush, hope we hit a few of the targets.

12 MR. STUMBO: Yes, sir. Everything else that, the
13 standard charges look fine, sir. That's our requested
14 charge on the top.

15 THE COURT: Ready for the jury?

16 MR. STUMBO: We are, Your Honor. I'm assuming I
17 will start.

18 THE COURT: You'll open.

19 MR. STUMBO: And then Theo will go. I plan to
20 because the way my Power Point is laid out, Your Honor. I
21 have some slides that will be dealing with the law and
22 then there's a blank slide for when Mr. Williams --

23 THE COURT: Have you seen those Power Points?

24 MR. WILLIAMS: Yes. It's basic, Your Honor.
25 There's nothing --

STATE'S CLOSING ON THE LAW

1 THE COURT: Nothing objectionable?

2 MR. WILLIAMS: Nothing I could tell.

3 THE COURT: Defense ready for the jury?

4 MR. WILLIAMS: Defense is ready, Your Honor.

5 THE COURT: Bring the jury.

6 (Jury enters courtroom at 9:46 a.m.)

7 THE COURT: Good morning, ladies and gentlemen.

8 We're now ready to conclude the trial with the final
9 arguments of counsel and my instructions to you on the law
10 as it applies to this case.

11 Mr. Stumbo, you may proceed.

12 MR. STUMBO: Thank you, Your Honor. May it
13 please the Court.

14 Ladies and gentlemen, before I start I just want
15 to thank you. I know the Judge has already done that,
16 probably will do it again.

17 I know each of you has busy lives; you've had a
18 disruption in those busy lives this week. I thank you for
19 that though, because without your being here and doing
20 what you're doing this week we wouldn't be able to do our
21 jobs.

22 I'm going to have a chance right at the beginning
23 to summarize the law. Now, the Judge is the judge of the
24 law in this case, as he told you. If there's anything
25 that I say that contradicts what he says, listen to what

STATE'S CLOSING ON THE LAW

1 the Judge says.

2 But what I have to explain to you is what we have
3 to prove. There's two charges in this case, have two
4 distinct and separate charges. And there's different
5 elements to both.

6 So I'm going to have a chance to talk to you a
7 little bit about the law and Mr. Williams is going to
8 argue his case. And then I'm going to get to come back
9 again and talk to you about the facts of the case as the
10 law applies to it.

11 I put together a few slides. I know I'm a very
12 visual person. If I hear somebody just talking about
13 legal stuff and very technical terms, it goes right over
14 my head. So if you're anything like me, this may help you
15 a little.

16 Reasonable doubt. We talked a little bit about
17 this at the beginning of the trial. There's nothing
18 magical about this term, reasonable doubt. There's a
19 tendency to think that this means that there has to be
20 some proof, conclusive proof, proof beyond all doubt.

21 And the Judge will charge you there's very few
22 things we can know in life beyond all doubt. There are
23 some things, but in a court of law what we do is we test
24 evidence and determine one thing. Beyond a reasonable
25 doubt simply means you are firmly convinced.

STATE'S CLOSING ON THE LAW

1 So at the end of this case if the proof that
2 you've seen from this stand is proof that leaves you
3 firmly convinced of Joe Butler's guilt, then he's guilty.
4 I want you to remember that. You're going to hear the
5 Judge tell you that term, firmly convinced. You're going
6 to hear that several times in his charge.

7 What about the elements? Joe Butler is charged
8 with two separate and distinct offenses. First of all,
9 criminal sexual conduct with a minor in the first
10 degree. The elements are very simple, there are two of
11 them in this case.

12 One is that there's a sexual battery. I'll
13 define that term for you in a second. Secondly, that that
14 sexual battery is committed upon a child that's under the
15 age of 11 years old.

16 There's a different degree when the child is a
17 different age range, the child is older, but if the child
18 is under 11 at the time the offense occurs then it's first
19 degree criminal sexual conduct with a minor.

20 Now what is a sexual battery? Just looking at,
21 the statute defines it as, the legislature has said that
22 sexual battery is a sexual intercourse, cunnilingus,
23 fellatio, two technical terms for oral sex, anal
24 intercourse or any intrusion however slight of any part of
25 a person's body or any object into the genital or anal

STATE'S CLOSING ON THE LAW

1. opening.

2. So, ladies and gentlemen, what this means quite
3. simply is this, it says however slight. In this case we
4. have digital penetration and fondling to [REDACTED] The
5. statute says however slight. If the hand goes in a little
6. bit, then that's a penetration under the law. I know we
7. heard a lot from this witness stand from both Mr. Williams
8. and myself and questions have been asked about
9. penetration, was there penetration, was there not
10. penetration. Well, this is the distinction here. How
11. it's defined in the law it says however slight. I want
12. you to focus in on that.

13. Lewd act on a minor as a separate offense, it's
14. similar. What our law says is that someone could be
15. charged with both of these offenses or essentially one set
16. of facts or circumstances because the elements are
17. different. In this case the Defendant has to be over the
18. age of 14. The victim has to be under 16 years of age.
19. So there's a blanket age range here, a child from infancy
20. up to 16 and that the Defendant willfully commits as lewd
21. or lascivious act. Lewd or lascivious is probably not two
22. words you hear everyday but essentially a lewd act being
23. an indecent act, an obscene act. Something that's
24. preoccupied with a sexual intent.

25. And then in, somewhat -- I guess with that and

STATE'S CLOSING ON THE LAW

1 these two elements really are intertwined here. It's with
2 the intent of arousing, appealing to or gratifying the
3 lusts, passions or sexual desires of the Defendant's self
4 or of the child.

5 Now the important distinction here, ladies and
6 gentlemen, is this; that a lewd act on a minor charge, a
7 sexual battery is not required. So in other words, all
8 the questions you've heard this week about penetration or
9 not penetration, that's really what the distinction is
10 here, ladies and gentlemen. And that's why it's been
11 belabored over many questions.

12 So the question is this: In this case we have
13 digital penetration. So your determination will be, was
14 there penetration or not. If there's not penetration, you
15 believe there was a touching or a lewd act, then he's
16 guilty of lewd act. If there's a penetration and also an
17 intent to arouse himself as is required by the statute,
18 then there's both.

19 There are two separate and distinct offenses. He
20 can be guilty of one and not guilty of the other and vice
21 versa or guilty of both.

22 One other very important thing the Judge is going
23 to instruct is this and I want you to think about this for
24 a second. Our legislature put this specifically into our
25 law, that the testimony of a victim in criminal sexual

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1 conduct cases need not be corroborated in prosecutions
2 under the criminal sexual conduct of a minor statute.

3 I want you to think about that for a second and
4 continue to think about that until we can -- continue
5 again to talk about the facts.

6 [REDACTED] and Joe Butler were the only two right in
7 that immediate area within viewing when this incident
8 occurred. And as Ray Olszewski testified as an expert in
9 child sexual matters that children often delay the
10 disclosure. So more often than not a child may wait a
11 long time before actually feeling it's safe to come
12 forward with the information.

13 I want you to think about that you when think
14 about why our legislature passed this law that it need not
15 be corroborated.

16 I'm going to come back at the end of the case and
17 I'm going to talk about these elements in light of what
18 you heard, ladies and gentlemen. So I'd ask you to give
19 your full attention to Mr. Williams and I look forward to
20 talking to you at the end of the case.

21 THE COURT: Mr. Williams?

22 MR. WILLIAMS: May it please the Court.

23 We're done. I don't know if you thought it was
24 going to take a long time to do but it was, for us it was
25 a short trial. Something which you may have thought it

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1 was too long.

2 You know, I've been doing this a while and I
3 always wonder what you're going to say when you get up
4 here in front of a jury. I normally have my thoughts when
5 I take my shower in the morning. It's true. I've been
6 doing this for a long time. The only time I ever think
7 about closing arguments is when I'm taking my shower.
8 Sometimes I take long showers, but that's exactly when I
9 think about it.

10 And I was thinking this morning about what's
11 important in a case like this. And I decided well, you
12 know, why don't you just talk about what the facts are in
13 this case and reaffirm to the jury what their job is.

14 You know, when you walked in here two here two
15 days ago and you were sworn and the Judge told you that
16 you had to make findings in accordance with the proof that
17 is given to you, I don't know if you realized at that
18 point in time, unless you've ever been on a jury, what you
19 really have to do.

20 Because what you have to do is determine whether
21 or not, what the truth is in this case. It's not like on
22 TV. There's nobody out there in the lobby who's going to
23 help you trying to decide what happened in the case.

24 And you know, in a case like this, I'm not sure
25 how Joe Butler could prove his innocence because, you

DEFENDANT'S CLOSING STATEMENTS

1 know, invariably, invariably people say well he's charged
2 even though the Judge instructs, even though the Judge
3 will tell you that the burden of proof is on the State to
4 prove to you beyond a reasonable doubt the guilt of the
5 person charged, there's always that lingering feeling
6 that, look at him, he's charged.

7 Well, I want you to fight that. Fight that as
8 hard as you can because he doesn't have to prove a thing.
9 You know, anybody in Lexington County could be accused of
10 committing that crime based on one person saying it
11 happened.

12 And I think that was brought out by what the
13 solicitor just said a while ago, that it doesn't have to
14 be any corroborating testimony. And that's exactly how
15 people look at it. So, anybody could be charged based on
16 what one person said.

17 Once you're charged then you go through the
18 process. You have the warrant. You have the warrant
19 served. You're locked up. You're bond out. And your
20 case lingers in the court system until you have an
21 indictment and you go to trial on that indictment.

22 The indictment doesn't mean that you have been
23 convicted of anything. It doesn't mean that you have
24 changed the burden of proof. It's a vehicle by which
25 those charges are brought before you 12 and we have some

DEFENDANT'S CLOSING STATEMENTS

1 alternates, but you jurors determine what the truth is in
2 the case.

3 It's the first time -- a trial is the first time
4 in which that testimony of those allegations can be cross-
5 examined. Up until this point in time no one ever gets to
6 question the witnesses and say, well, what about this, or
7 what about that.

8 All of that is important because when these
9 allegations first developed, the allegation was that of a
10 lewd act, a touching, in the summer of 2005. And these
11 allegations were raised a year after supposedly it
12 happened.

13 Now, you know, probably shouldn't say it this
14 way. I play golf with a deputy, David Bryan, and he will
15 harass me to no extent. And he'll say, you know Theo, you
16 have 10,000,000 reasons not to do the right thing, talking
17 about why I hit the ball left or hit the ball right or not
18 listening to him while I play.

19 There are 10,000,000 reasons that have been given
20 as to why, even though the story looks shaky why you
21 should go a different way. They say, well, you know, even
22 though she didn't report this until a year later that's
23 because she's young. That's because she couldn't tell
24 anybody. That's because she was afraid.

25 The burden of proof is not on the Defendant. The

DEFENDANT'S CLOSING STATEMENTS

1 burden of proof is on the State to prove the allegations.

2 The testimony from [REDACTED] when she finally did
3 report it was that, well, there was penetration. He stuck
4 his fingers inside me. Well, you know, there're
5 10,000,000 reasons why she could have misinterpreted
6 that. She's young. She doesn't really understand what
7 touching means on or whatever. So there are 10,000,000
8 reasons even though we say this, what we really meant to
9 say was this and that's okay.

10 Well, [REDACTED] says it happened in the summer of the
11 year 2005. And it drifts on, from the year 2006 when my
12 client is arrested, it drifts on until March the 8th of
13 2010.

14 And then an indictment is presented which says
15 that Joe Butler in Lexington County on October the 1st,
16 2005 committed a sexual battery, that's CSC, on a minor
17 while in Defendant's vehicle. And then there's another
18 indictment that says, on October the 1st, 2005 he
19 committed a lewd act.

20 So it has taken four years for someone to pick
21 the date of October the 1st of 2005 as the date that it
22 occurred. And I'm sure everybody says, well, why did you
23 pick that day.

24 Do you remember I asked the little girl when she
25 was on the stand why the date of October the 1st of 2005.

DEFENDANT'S CLOSING STATEMENTS

1 She could not tell you why she picked the date of October
2 the 1st, 2005. I asked her on the stand, when did you
3 change, when did your story change about when it happened
4 or what happened. She couldn't tell when it changed to
5 that date.

6 Her mother takes the stand and she says, well,
7 I'm sure it was October of 2005. We were at a party. Not
8 really sure I heard the mother say it was a birthday
9 party.

10 Think about the testimony.

11 Not really sure I heard the mother say it was a
12 birthday party. There was a lot of discussion about the
13 date of October the 1st, 2005. And the reason we picked
14 that date is it just so happens that it's Joe Butler's
15 daughter's birthday.

16 And since his child was supposedly with this
17 other child in the truck, that fits into the scheme. And
18 you know what tripped them up? Pictures. Pictures. What
19 are the odds that Joe Butler would remember that his
20 mother had a picture of his daughter's eighth birthday
21 stuck on the refrigerator at her house.

22 And you'll see. I mean, it is different. It's
23 different from the other pictures because the stuff on the
24 back was the glue which was stuck to the front of the
25 refrigerator.

DEFENDANT'S CLOSING STATEMENTS

1 And the reason why the other pictures were
2 introduced, because if you just looked at this, this
3 doesn't tell you where she was. But if you look at the
4 other pictures which is the same bathing suit, that's not
5 Lake Murray. Lake Murray doesn't have waves like that.
6 She's at the beach.

7 And it just so happens that there's a picture of
8 his daughter along with my client, Joe Butler. She's in
9 the bathing suit. Joe Butler is there. The birthday cake
10 is there. It's got -- it's got a big eight on it.

11 Isn't Joe lucky that his mother takes picture of
12 her grandchild's birthday? It didn't happen on October
13 the 1st, 2005.

14 It didn't happen, period.

15 There was a lot of discussion about, well now,
16 how is it that you don't have a copy of a receipt or a
17 check or something like that. Joe said, well, we just
18 found out about it Monday. We're lucky to have had those
19 pictures. And he said, do you have anything that shows
20 when these pictures were developed. Do you remember when
21 the prosecutor walked over to my table and looked at all
22 the other pictures? And he just turned around and walked
23 back. Because the pictures were taken on October the 1st,
24 2005 at Myrtle Beach. Joe was there. He was with his
25 daughter. He was not in Lexington County on that date.

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1 Now why is this important other than to prove
2 that he was never at a person by the name of Ray's house?
3 Because under the law we've got different things that we
4 talk about under the law. One of the things under the law
5 is called an alibi. And once a defendant says, I have an
6 alibi, I was somewhere else so it's impossible for me to
7 have committed this crime.

8 Remember what we talked about earlier, that you
9 don't have to have corroboration? You don't have to have
10 corroboration in a sex offender-type of case where one
11 person can say whatever they want to. Well, thank God for
12 an alibi defense because an alibi means that the State has
13 the burden of proof to prove that the alibi falls. That's
14 what that means.

15 You watched the testimony from the witnesses that
16 I put up yesterday. They were brief. They were concise.
17 They were to the point. And was any of their testimony
18 unshakeable? How long did the prosecutor question them?
19 It's simple. His mama was there. She took the pictures.
20 Joe was there. And Joe says he's never touched that
21 child.

22 Seems to me that if you're wanting to prove that
23 something like this happened in Lexington County at some
24 cousin's name of Ray, that probably one of the witnesses
25 you would want to bring here to testify would be Mrs. Ray,

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1 the owner of the house, the person who had the party, the
2 person who could tell you, yes, I had a birthday party for
3 Joe Butler's child. And this is what we did.

4 Why in the world did you not bring that person?
5 Because the State cannot prove that there was a party at
6 Ray's house and that anything happened there.

7 Why would you not bring Officer Weir here?

8 Well, what you have seen in some of this
9 testimony is window dressing. And you'll say what, you're
10 probably saying, you know, Theo Williams is probably the
11 meanest lawyer I have ever met. But I'm telling you, it's
12 window dressing.

13 Puts up Chief Wallace Oswald who is the chief of
14 the town where I live. Puts him up there and talks about
15 his prior military history. Talks about the number of
16 years that he's been on the police force. Who could say
17 anything bad about Chief Wallace Oswald? He's a good
18 man. He's an excellent man, but what the heck does that
19 have to do with proving that Joe Butler has committed any
20 crime?

21 What you do is you put up these witnesses that
22 have all these good things about them so maybe you'll say,
23 well, did you see the witness on the State's side, what a
24 great guy he was, has done two tours, has been a police
25 officer for all these years and contributed to the

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1 community. So, I guess we'll have to find for the State.

2 It's got nothing to do with the truth in the
3 case. Chief Oswald has no idea about what happened on
4 October the 1st of 2005. He wasn't the investigating
5 officer on the case. He's the chief. You want to hear
6 what she told somebody, and the chief should check and
7 find out where he's living and bring him back here to
8 testify. Don't you think Chief Oswald could find him?

9 What else is window dressing? What else is
10 window dressing is when you put up a social worker who
11 works at the school. Everybody loves social workers.
12 Everybody loves teachers. My mother was a teacher. I
13 finished Clemson in secondary ed. She's got a history of
14 being in the military. She's done wonderful things for
15 our country. She's a good person. But you know what,
16 that doesn't prove that Joe Butler has committed any type
17 of offense on this child.

18 It's window dressing.

19 I don't want to appear to be too harsh, but the
20 point I'm trying to drive home is you don't make decisions
21 based on the number of witnesses. You don't make
22 decisions based on anything but what the truth is after
23 the testimony has been elicited.

24 And then you take that testimony, determine the
25 facts, apply the facts to the law as His Honor will charge

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1 you and determine the guilt or the innocence of the person
2 charged.

3 One of the things that I think I want you to pay
4 attention to, too, is that for whatever reason we saw [REDACTED]
5 [REDACTED] And I'm sure you make decisions on their
6 witnesses based on their ability to recall, because you
7 make decisions on the truth of the case and the witnesses
8 ability to recall, the consistency of their testimony, how
9 they appeared on the witness stand, whether or not their
10 answer were straight forward, came directly after
11 questions, all the things that you do in everyday life.

12 I guess if you're buying a car from somebody and
13 he's telling you, he looks a little fidgety or you got
14 something you just don't believe to be true then you're
15 probably not going to believe him.

16 Do you remember she sat up there and cried. And
17 what you're to believe is that, well, she must have cried
18 because it was painful, she's telling the truth. It must
19 have happened that way or why else would she have cried.

20 That's not proof in a criminal case. And crying
21 has nothing to do with telling the truth. Do you remember
22 the video which was taken shortly after this happened when
23 she was taken to the counselor? There was no crying
24 there. Do you remember what happened at the end of the
25 tape? She was dancing. Okay.

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1 Well, let's talk about the other physical
2 evidence that you have in the case. You have two
3 statements, written statements from [REDACTED] [REDACTED] and her
4 mother.

5 You know what's interesting about the statement
6 from [REDACTED] [REDACTED]. She does not even reference the name of
7 the person who supposedly was the perpetrator. Yet in the
8 letter which she mailed after she went to the police
9 officer, five days later, and she sends to her counselor,
10 she mentions the name of the alleged perpetrator in her
11 letter.

12 And why did you send a letter. Maybe if she had
13 sent more letters then that would be more convincing to
14 you. Do you remember how the letters were read to you
15 when it was published? Very dramatic. Emphasis on
16 certain words.

17 This is not a game. This is not about who does
18 the best job in window dressing. Your decisions have real
19 life applications.

20 I don't know if you're going to evaluate how
21 Mr. Stumbo performs -- I use the word performs in closing
22 argument or how I perform in closing argument. It's not
23 how we perform up here which is important. There's no
24 academy awards. We're not going to get some kind of
25 little statue to take home.

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1 Your job is to determine the truth. The other
2 witnesses that testified, we've already referenced
3 Monica. And the thing about -- or Ms. Creech I should
4 say. Ms. Creech clearly talked about a birthday party.
5 She would not back off of that date. She's driving the
6 train about when this happened. Happened at a birthday
7 party. October the 1st, 2005.

8 Doctor -- it's not Dr. Olszewski. He corrected
9 me. It's Mr. Olszewski. What do you want to believe in
10 his report? What part of his report makes you feel
11 comfortable? Well, you can believe that every time he
12 asked her about penetration that she understood it.

13 And when she said that there was no penetration
14 there was no penetration. Or you can believe that since
15 she was a little girl she didn't understand what
16 penetration meant. Or you could believe that the use of
17 the word compelling testimony has some other meaning other
18 than what he said it meant.

19 See, that's a catchy little word, isn't it? You
20 know, a lot of what we I do is caught up on words. She
21 gave compelling testimony. Compelling. If you listen to
22 what he said was, she was able to understand my
23 questions. She was able to answer my questions. She was
24 able to provide detail. Yet she gave compelling testimony
- 25 but she might have misunderstood what was meant by use of

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1 the word penetration.

2 And then we asked him about all of the things on
3 his sheet. You remember he had this sheet where he had
4 done all these determinations? Anxiety. Trauma
5 reenactment. Flashbacks. Fearfulness. Nightmares.
6 Change in eating habits. Separation difficulties.
7 Aggression. Difficulty with peers. Sexualized behavior.
8 Inappropriate sexual knowledge. Pronounced disturbance.

9 Why do you think they ask those questions?
10 Because normally if somebody has been abused there might
11 be some evidence of that in one of those categories.

12 But remember the testimony from the social
13 worker. She's making A's and B's. She never had any
14 problems until she was sitting in that office and she
15 turned her head down. How dramatic is that? How dramatic
16 is that? And she sat down and put her head down like this
17 (indicating). Why not just say, she put her head down.
18 She wouldn't look at me and I'd never seen her that way
19 before?

20 I think the solicitor's already told you. It's a
21 vision for you. Window dressing. Then Ms. Brackett would
22 say that even though her grades were okay before and even
23 though her grades were okay after some people deal with
24 trauma in different ways so they actually become better
25 students after they have trauma.

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1 I'm a simple man. When you get to a certain age
2 everything is not that complicated. You know, my mother
3 used to tell me -- she's dead. She used to say, you know,
4 Theo, if you tell the truth the next time somebody asks
5 you a question you don't have to remember what to tell
6 them. You ask me a question today I'll tell you the
7 truth. Tomorrow if you ask me the same question, it
8 should be the same.

9 It's when you want to embellish things, when you
10 want to say that something was not in the summer of 2005,
11 it actually happened on October 1st of 2005. When you
12 start saying things about birthday parties versus it just
13 happened in a truck. That's when you get in trouble, when
14 you make it specific.

15 And, you know, one of the things that came out in
16 the film is that that young lady was getting ready to have
17 a birthday party. And she was going to have Tweetie bird
18 birthday cake. Probably birthdays are important to young
19 people. And she probably would have been able to recall
20 that this happened at somebody's birthday party, don't you
21 think?

22 Now the only other people who testified was --
23 and we know that there was the medical report. We never
24 saw the medical report, but we know the testimony said
25 that there was no evidence of any type of sexual assault.

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1 We know that because the mother said that. We don't know
2 that she ever went to any counseling because no one ever
3 said she went to any counseling. As a matter of fact,
4 they couldn't remember if there was any counseling.

5 And I would suggest to you that if there was
6 counseling somebody would have taken that stand and we
7 would have heard about her counseling sessions, and how it
8 has affected her and the fact that there was counseling.

9 We had two witnesses. Short. Should we have put
10 up more? I don't know. Joe's mama said they were at the
11 beach. Joe said he was at the beach. Joe said he didn't
12 do it. Did you hear the State rock their testimony in any
13 way whatsoever?

14 I didn't bring in slides. I just brought in bad
15 behavior and a request that you jurors seek the truth.

16 I'm getting ready to sit down now. And the solicitor
17 will follow me because, you see, they have the burden of
18 proof. They get to start it in opening, and I give my
19 argument. Then they present their evidence. I presented
20 my evidence. And had they had any other evidence to
21 contradict my evidence, then they would have been afforded
22 the ability to introduce those witnesses yesterday
23 afternoon.

24 Then he argues first. He argues the law. Then I
25 argue. Then he gets another argument to you. He gets the

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1 first bite and the last bite. And I'm just hoping that
2 you're going remember the in-between part. And just
3 remember that whenever, whenever I sit down and he starts
4 saying things and if I'm sitting over there fidgeting, I'm
5 not fidgeting because I feel bad I'm not fidgeting
6 because, oh, he's hit me or he said something that got to
7 me. I will be fidgeting because I don't have the right to
8 come back up here and say anything, even though I want
9 to.

10 I'm sorry if I've talked about a bad subject. It's
11 bad for everybody. Joe's got a daughter the age of that
12 child. If you think he would have assaulted another child
13 sitting next to his child, what kind of a father would he
14 have been?

15 Just remember the indictments and the defense of
16 alibi. Indictments. Things which come to you for you to
17 make a determination as to guilt or innocence. October
18 the 1st, 2005. October the 1st 2005. There's nothing to
19 to it.

20 Thank you four assistance.

21 THE COURT: Mr. Stumbo.

22 MR. STUMBO: If it please the Court, Your Honor.

23 If that act there wasn't window dressing, I don't
24 know what is.

25 I told you yesterday or yesterday when we opened

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1 this case, [REDACTED] innocence was shattered back when she
2 was nine years old.

3 I will submit to you, ladies and gentlemen, that
4 that raw emotion that you saw from her on the stand,
5 Mr. Williams doesn't think it's important, but it's
6 something you can consider when judging her credibility.
7 That raw emotion you saw from her is as real and authentic
8 as it gets.

9 And I'd submit to you, ladies and gentlemen, that
10 is the gold coin at the bottom of the puddle. What do I
11 mean by that? It reminds me of a story of an old man and
12 a young man standing beside a puddle of water. There's a
13 gold coin sitting at the bottom. The old man says to the
14 young man, I bet you \$5 I can make that gold coin at the
15 bottom of the puddle disappear. The young man says, I'll
16 take that bet. You have to be a magician to do that.

17 The old man picks up a stick, walks over and
18 starts scribbling the mud around the coin in the puddle.
19 The coin disappears.

20 That's exactly what Mr. Williams has been doing
21 for the last few minutes, ladies and gentlemen, is to
22 muddy the waters so you won't see that gold coin at the
23 bottom of the puddle which is [REDACTED] [REDACTED] story. [REDACTED]
24 emotions. [REDACTED] credibility.

25 How's Mr. Williams trying to muddy the waters for

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1 you this week, ladies and gentlemen? I got several,
2 several, just examples. I probably could be here all
3 day.

4 The first one would be the little boys. We're
5 hearing all of this stuff about, well there's no little
6 boys at the party. He belabored this time and time again,
7 with [REDACTED] and with Monica about where were the little
8 boys.

9 And remember how he tried to trip [REDACTED] up on
10 that? You said there was a little boy who lost his truck
11 and that's why you were in the car, but you haven't heard
12 the name of a boy younger than you at the party.

13 Well, what Mr. Williams wants you to see, ladies
14 and gentlemen, by spinning is that that [REDACTED] lied to you.
15 Is the fact that she didn't know the names of the little
16 boys who were at her cousin's minorC party at somebody
17 else's house, is that evidence that she lied to you or was
18 inconsistent?

19 No. It's just Mr. Williams' spin on it.

20 How about the statements? You'll have these
21 statements in the jury room, ladies and gentlemen. You'll
22 have the letter she wrote to Ms. Brackett. The purpose of
23 this letter wasn't to lay out every single last detail
24 about that birthday party or whether Joe's fingers went
25 inside of her or just on her. That wasn't the purpose of

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1 her letter to Ms. Brackett.

2 She wanted to tell Ms. Brackett what she had to
3 do that day. She had to go talk to somebody in Columbia
4 about it and it was affecting her. You'll see this in the
5 jury room, ladies and gentlemen. You'll have it. She
6 said, it bothered me for months and then my mommy asked
7 has Joe ever asked inappropriate-- or inappropriately.
8 She misspelled it as a nine year old would. And I said
9 yes. She said, why didn't you tell me this before.

10 You'll have this in the jury room, ladies and
11 gentlemen. Is that inconsistent from any of the other
12 testimony in the case or the statements she gave to
13 Batesburg-Leesville Police Department? Which, you'll have
14 that in the jury room, too. You've seen the video. Is
15 any of that inconsistent? Well, Mr. Williams says it's
16 inconsistent.

17 I want you to remember the testimony of
18 Mr. Olszewski. And you don't even have to have
19 Mr. Olszewski's testimony. It's your common sense.
20 Anybody who spent time around kids. Mr. Williams talked
21 about his mother. I've got kids. I've seen the way my
22 kids tell things that have happened to them. They ask
23 me -- the eight year old may say something happened last
24 week that happened six months ago or vice versa. The
25 reason for that is children don't always understand time

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1 the way we do as adults.

2 So when [REDACTED] said initially I was wearing shorts
3 so it must have the summertime, we have -- obviously if
4 they went to the beach later on that week, they were in
5 the water on October 1st. Right? [REDACTED] had on shorts that
6 day so in her mind it was the summertime.

7 So was it inconsistent for her to later on give
8 more detail? As Mr. Olszewski told you, it's --
9 disclosure of these things is a process. It's not an
10 event, one-time event.

11 So later on she remembers that it's [minorC]
12 party that day and nobody asked her the question until
13 last week, well, when's [minorC] birthday. That would
14 make sense. It's October 1st.

15 Ladies and gentlemen, I would submit to you those
16 indictments that Mr. Williams tore up and threw in the
17 trash, he left out a real important word in that
18 indictment. The Judge has already read you the
19 indictments. It says on or about October 1st.

20 Either [minorC] -- or, excuse me. Neither [REDACTED] or
21 her mother testified to you that [minorC] party at Ray's
22 house was on October 1st. The reason we put that in the
23 indictment, ladies and gentlemen, is not because it's an
24 element of the offense. Mr. Williams would have you
25 believe that if we couldn't prove beyond a reasonable

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1 doubt that it happened on that day, then he's not guilty.

2 That's not true.

3 You're going to hear the Judge instruct you and I
4 didn't talk about this earlier when we talked about the
5 law, that time -- this is part of our law in this state --
6 that time is not a material element of either CSC with a
7 minor or lewd act. It's not an element. The only reason
8 we put a date in the indictment is to give him notice of
9 the time frame we're talking about that this happened.

10 He was initially charged in the summer of 2004.
11 The information that Chief Oswald's officer had at the
12 time. That's what he put in the warrant, because that's
13 what [REDACTED] told Ray in her forensic -- Ray Olszewski at her
14 forensic interview. I was wearing shorts. I think it was
15 the summertime.

16 So are we going to punish [REDACTED] and call her a
17 liar because nobody asked her the right questions and
18 followed up about when minorC birthday was? It's
19 October 1st. Mr. Williams wants you to believe that
20 because these pictures which he brought me yesterday and
21 plopped down on my desk, that show this birthday cake of
22 minorC when she's eight years old down at the beach where
23 they spent the weekend apparently. Let's just assume that
24 they did go down over the weekend of October 1st. We
25 never heard any proof of that. They say that they're

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1 taken from their memory banks of four and a half years ago
2 that it was that specific date they were at the beach.

3 Let's just assume that's true, ladies and
4 gentlemen. Does that make it any less true that Ray, Aunt
5 Ray had a birthday party for minorC and invited her
6 friends and her family members that weren't going to go to
7 the beach with them to have a birthday party for her?

8 My experience with eight-year-old kids' birthdays
9 is that even if the family does something separate, they
10 want to have a party with their friends. I don't know
11 that any friends were down there with minorC at the
12 beach. She was down there with her family. So is it any
13 less true that Aunt Ray had a birthday party for her?

14 Did you notice how Joe Butler and his mother were
15 on this witness stand that when those questions came about
16 that they were very clipped and short? The answer was,
17 no, Ray didn't have party at her house for minorC. I'm
18 sure of it.

19 Well, I didn't hear [REDACTED] or Ms. Creech say
20 anything about Joe's mother being at this other party. It
21 was the other side of the family.

22 It's all smoking mirrors, ladies and gentlemen.
23 It's muddying the waters for you. If he can get you to
24 believe that they took a weekend trip to the beach and had
25 a birthday cake for minorC while they were down there,

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1 that you can't believe there was a party at Ray's house.

2 He said we didn't prove it. Well, we did prove
3 it, ladies and gentlemen. Ms. Creech and [REDACTED] told you
4 about it. And but for you believing that they're
5 completely fabricating the whole thing and lying to you
6 this week, we've proven it. And that's what this case
7 comes down to is credibility of the witnesses.

8 What about these questions Mr. Williams asked
9 back and forth about penetration. He kept asking Monica
10 this, Ms. Creech. She's on the witness stand and Mr.
11 Williams keeps hammering, well, she didn't say anything in
12 this letter to Ms. Brackett about his fingers going inside
13 of her or you didn't say anything about it when you went
14 to the police.

15 Do you think a mother whose child has just been
16 sexually abused cares whether the fingers went inside or
17 not? She didn't care about that legal distinction, ladies
18 and gentlemen. Mr. Williams is trying to trip her up
19 about that. Well, did they go inside or did they not go
20 inside. Do you think that was a concern of hers when [REDACTED]
21 came to her and told her that Joe touched her on her
22 private parts? She wasn't going to grill her or
23 interrogate her on that, ladies and gentlemen.

24 Mr. Williams wants you to believe that because of
25 that they're all making this up. It's all a big lie.

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1 How about when he asked Ms. Creech sarcastically
2 at the end of her testimony when he cross-examined her and
3 said, what did you eat at the party. I hope you caught
4 that. What's the purpose of that question? It's window
5 dressing. What did you eat at a party four and a half
6 years ago.

7 It wouldn't be remarkable until several months
8 later when your daughter told you that she was molested at
9 that party. I don't remember what I ate at a family
10 members' birthday party six months ago. I don't know if
11 you do. That question was for effect, ladies and
12 gentlemen. It's to muddy the waters and to get your mind
13 off of what is important in this case.

14 I would suggest to you that this alibi that
15 they've claimed is so rock solid is nothing but a half-
16 baked story to get your mind off of [REDACTED] Creech's
17 testimony, and off of her sitting on this stand and going
18 through the embarrassment and the shame and the hurt all
19 over again.

20 If it didn't happen, do you think she'd put
21 herself through this this week? All she has to say is
22 no. One word. It didn't happen. I lied. And she avoids
23 all of this. She didn't because it happened, ladies and
24 gentlemen.

25 Now, let's clear the waters up. Not only did

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1 [REDACTED] sit on this witness stand this week and tell you what
2 happened, you were able to observe her. Observe her. Not
3 only her emotions, but the way she answered the
4 questions. Not only did you see that, ladies and
5 gentlemen, you were able to see the video when she was
6 nine, several months after this happened and telling what
7 happened to her.

8 Is there anything about that video when she's
9 talking to the forensic interviewer that makes you think
10 she's not telling the truth? It's consistent, ladies and
11 gentlemen.

12 Mr. Olszewski told you children don't -- even
13 [REDACTED] answered his question, I'm not sure what you mean by
14 that or something to that effect, when he asked her about
15 what Joe's hand was doing in her pants. Well, she was
16 crystal clear with you on this stand this week, ladies and
17 gentlemen. What she felt was his hand inside of her.

18 Are we to punish her because she's a nine-year-old
19 girl and doesn't really understand yet that difference?
20 As Mr. Olszewski told you, thank God at age of nine most
21 kids don't have this kind of experience and know how to
22 define these things.

23 About the letter to Ms. Brackett. You'll get to see
24 that again in the jury room. Nothing inconsistent about
25 this letter, ladies and gentlemen. She said he put his

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1 hands -- I was in Joe's truck with his daughter. He put
2 his hands under my shorts. And then touched my private.
3 Then I went in the house and sat in my daddy's lap and
4 watched TV. That's exactly what she told you on the
5 witness stand this week.

6 But Mr. Williams would have you believe that [REDACTED] is
7 lying to you because she told a story at age nine which is
8 exactly consistent with the way children tell things that
9 have happened to them.

10 I want you to remember, ladies and gentlemen, Michelle
11 Brackett's testimony and for this reason. You know,
12 Mr. Williams says that's window dressing. It's because we
13 like guidance counselors. This was a lady who spent time
14 with [REDACTED] when she was an elementary school student and
15 could give you, the jury, insight into what this little
16 girl's life was like in the fourth grade.

17 Remember her testimony. How she told you about how
18 [REDACTED] was a peacemaker among her peers even. She was
19 pleasant. She wasn't the kind of child to make stuff up
20 for negative attention, to get attention for something.
21 That's not who [REDACTED] was. She told you she's been around
22 some children like that but [REDACTED] not one.

23 [REDACTED] didn't have any motive then to make this story up
24 about Joe. And she doesn't have any motive now to
25 continue to maintain that if it is a lie. It's not.

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1 She's got no motive, ladies and gentlemen.

2 Mr. Williams would have you believe that because [REDACTED]
3 has not had a dramatic anxiety or nightmares or these
4 types of things that were reported by her mother what
5 Ms. Brackett said is not just true because it is, our
6 common sense tells us this about some kids. Some kids
7 over achieve when bad things happen to them. Many times
8 kids don't and have very negative consequences.

9 Are we to punish [REDACTED] and say, well, you must be lying
10 because she's had a strength about her throughout this?
11 Are we to punish her for that?

12 Obviously [REDACTED] has strong family support. You've seen
13 her mother and father sitting here the whole time. She
14 has a strong family network that have supported her
15 throughout this. Are we to punish her for that so it's
16 okay to sexually molest children that have good family
17 support and are strong enough to get through it without
18 having a lot of negative effects in their lives? Does
19 that mean in any way that her innocence wasn't shattered
20 by that man?

21 The last thing I want you to remember. I know you've
22 been very patient listening to me and Mr. Williams. I'm
23 going to wrap this up. Mr. Olszewski testified to you
24 that [REDACTED] disclosure was compelling for sexual abuse.

25 He's interviewed, to his estimation, over a thousand

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1 children in his time that have been suspected of abuse.
2 What did he tell you about -- do you remember the numbers
3 that he gave you there at the ARC where he works, that
4 only about four in 10 children that they see are they able
5 to make that determination that it's compelling for sexual
6 abuse?

7 And Mr. Williams wants you to think, ladies and
8 gentlemen, that just because they see them and there's
9 this story given that, well, automatically it's
10 compelling. Four in 10. So [REDACTED] is in that 40 percent of
11 the time where they find there's a compelling disclosure
12 instead of problematic.

13 I think that's an important piece of evidence, ladies
14 and gentlemen. Mr. Olszewski was a very competent
15 witness. You saw him. He talked about the issues
16 involved with delayed disclosure, with the process with
17 the way kids tell these things.

18 Four in 10 they find compelling and [REDACTED] was one of
19 them. That's circumstantial evidence, ladies and
20 gentlemen. You're going to hear the Judge talk about
21 direct evidence which is [REDACTED] [REDACTED] an eyewitness to
22 this crime. That's direct evidence. Say Mr. Olszewski's
23 finding this was compelling for sexual abuse is a very
24 very strong piece of circumstantial evidence for you to
25 consider.

STATE'S CLOSING STATEMENTS

1 All the circumstantial evidence aside though, ladies
2 and gentlemen, the question is: Did we meet the elements
3 by direct evidence from [REDACTED] testimony from this stand?
4 Very briefly we're going to talk about that. How about
5 the criminal sexual conduct with a minor. Was she under
6 the age of 11. You heard that her birthday was April 3rd,
7 1996 which would have made her nine years old in October
8 of 2005.

9 Was there a sexual battery. [REDACTED] testified that he
10 put his fingers inside of her, ladies and gentlemen.
11 Under the law this is a sexual battery.

12 How about the lewd act on a minor. Was she under the
13 age of 16. Again, yes, nine years old. Defendant over
14 the age of 14. We didn't hear about Mr. Butler's birthday
15 but you can see based on the observation of him the fact
16 that he testified he had a 12-year-old child, that he
17 works a full-time job and drives this vehicle, he's
18 obviously over the age of 14.

19 How about the lewd or lascivious act. Again he used
20 his fingers to reach inside her shorts and fondle her.
21 And the intent of that was sexual, ladies and gentlemen.
22 I would submit to you, you can infer that from the act
23 itself. There's no other reason for him to do that.

24 And then of course after [REDACTED] testified that she says
25 stop Joe, loudly. She's very uncomfortable. Says to

STATE'S CLOSING STATEMENTS

1 stop. Then minorC | attention is drawn and says, why did
2 you say that. And obviously then Joe backs away. So very
3 quietly and discreetly, ladies and gentlemen, is how he
4 accomplishes his crime.

5 I'm going to leave you with this thought, ladies and
6 gentlemen. This is what [REDACTED] told us. She said, I was
7 scared that no one would believe me.

8 We have a chance here this week, ladies and gentlemen,
9 to prove that she was wrong about that. She's been right
10 about a lot of things in this court this week. We have
11 the chance to prove that she's wrong about this.

12 And that's really the question in this case. Do you
13 believe her? That's it. And if you're firmly convinced
14 that [REDACTED] [REDACTED] got on this witness stand this week and
15 told you a thing that really happened to her,
16 Ms. Patterson asked her that, [REDACTED] did this really happen
17 to you, is this the truth. Yes. If you believe that, if
18 you're firmly convinced of that, Joe Butlers guilty.

19 Not withstanding this trip to the beach over the
20 weekend, as I said, doesn't have to be on October 1st as
21 Mr. Williams would have you believe. If [REDACTED] telling
22 you a story that happened around the date, on or about,
23 which is the language in the indictment, October 1st and
24 these things really happened to her, you have a firm
25 conviction of that, then Joe Butler's guilty as charged.

JUDGE'S CHARGE TO THE JURY

1 Today, ladies and gentlemen, is the day that the lies
2 end. The lies that Joe gave you on that witness stand
3 this week end today. And he's held accountable for what
4 he did to [REDACTED] Today's the day that [REDACTED] and her family
5 after four years get some closure and justice on what
6 happened to her.

7 Today's the day, ladies and gentlemen, that you have a
8 chance to go back in that jury room and deliberate, come
9 back with a verdict that speaks with one voice
10 collectively, the 12 of you that will deliberate, and with
11 one voice come out with verdicts of guilty and guilty on
12 Joe Lewis Butler. Thank you.

13 THE COURT: All right. Ladies and gentlemen of
14 the jury, before I instruct you, let's take a short
15 break.

16 During that time, during the break the clerk is
17 going to give you menus. She's going to order some lunch
18 for you. So let's take a short break while she does that,
19 after which I'll give you my final instructions.

20 Thank you. Don't discuss the case among yourself
21 while you're in the jury room.

22 (Jury exits courtroom at 10:49 a.m. The Court
23 stood in recess until 11:04 when the jury returned to the
24 courtroom and the trial proceeded as follows:)

25 JURY CHARGE

JUDGE'S CHARGE TO THE JURY

1 BY THE COURT:

2 All right. Madam foreman, ladies and gentlemen
3 of the jury. You've heard all the testimony in this
4 case. You've heard the arguments of both the State and
5 the Defendant and you will take with you to the jury room
6 all the evidence in this case that's been introduced.

7 Now, from time to time jurors ask me or send out
8 a message and ask me to send them a copy of what I'm about
9 to go over with you. I'm not able to do that. We don't
10 have instant transcripts or printing capability, so I want
11 you to -- I only say that so I want to encourage you to
12 listen closely to what I have to now tell you.

13 I'm going to explain the law as it applies to
14 this case. As you know under our constitution and code of
15 laws only the jury can make findings of fact in this
16 case. I'm not permitted to indicate to you how I might
17 feel about the case. If I have said or done anything
18 during this case which would indicate that I have an
19 opinion regarding the facts of the case, then you should
20 disregard that. You must independently weigh the evidence
21 presented in this trial and render a verdict based solely
22 on that evidence.

23 The same constitution and laws which designate
24 and make you the finders of fact also make me the
25 instructor of the law. If you have some idea as to what

JUDGE'S CHARGE TO THE JURY

1 the law is or what the law ought to be, it does not agree
2 with what I now tell you the law is, you're obligated
3 under the oath which you've taken to abandon this
4 preconception on your part and to accept and apply the law
5 precisely as I now state it to you.

6 The Defendant in this case has been charged with
7 two indictments as you know. First with criminal sexual
8 conduct with a minor, and secondly with lewd act. And I'm
9 going to -- or performing a lewd act upon a child. I'm
10 going to explain a little bit more about that in just a
11 minute.

12 But I remind you again, the fact that the
13 Defendant was arrested, charged and indicted in this case
14 is not evidence in this case. It cannot be considered by
15 you as any evidence of guilt in this case nor does it
16 create any presumption or inference of guilt.

17 These documents are simply the formal written
18 instruments which contains the charges made against the
19 Defendant. They are the formal documents by which the
20 case is brought into court.

21 The indictments charge two separate offenses as I
22 told you. And each indictment charges a separate and
23 distinct offense. You must decide each indictment
24 separately on the evidence and the law applicable to it,
25 uninfluenced by your decision as to the other indictment.

JUDGE'S CHARGE TO THE JURY

1 The Defendant may be convicted or acquitted on
2 any or all of the offenses charged. You'll be asked to
3 write a separate verdict of guilty or not guilty for each
4 indictment.

5 Now Mr. Butler has pled not guilty to both of
6 these indictments. And that plea puts the burden on the
7 State to prove the Defendant guilty.

8 A person charged with committing a criminal
9 offense in South Carolina is never required to prove
10 himself or herself innocent. I charge you this is an
11 important rule of law; that a defendant in a criminal case
12 no matter how serious the charge may be will always be
13 presumed to be innocent of the crime for which the
14 indictment was issued unless guilt has been proven by
15 evidence satisfying you of guilt beyond a reasonable
16 doubt.

17 And this presumption does not end when you begin
18 your deliberations but it accompanies the Defendant
19 throughout the trial until you reach a verdict of guilt
20 based on evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 Presumption of innocence again is not a mere
23 legal theory. It's not just a legal phrase. It is a
24 substantial right to which every defendant is entitled
25 unless you the jury are satisfied from the evidence of the

JUDGE'S CHARGE TO THE JURY

1 Defendant's guilt beyond a reasonable doubt.

2 The State is not required to prove the guilt of
3 the Defendant beyond all doubt or beyond every doubt but
4 beyond a reasonable doubt.

5 Well, what is a reasonable doubt in the law. A
6 reasonable doubt is the kind of doubt that would cause a
7 person to hesitate. Let me just say that again. A
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act.

10 The State has the burden of proving the Defendant
11 guilty beyond a reasonable doubt. Some of you may have
12 served as jurors in civil cases where you were told it's
13 only necessary to prove that a fact is more likely true
14 than not such as by the greater weight or preponderance of
15 the evidence.

16 In criminal cases however, the State's proof must
17 be more powerful than that. It must be beyond a
18 reasonable doubt. To think that the Defendant is probably
19 guilty or the circumstances are suspicious is not enough.

20 Proof beyond a reasonable doubt is proof that
21 leaves you firmly convinced of the Defendant's guilt.
22 Now, there are very few things in this world we know with
23 absolute certainty. In criminal cases the law does not
24 require proof that overcomes every possible doubt. If,
25 based on your consideration of the evidence, you are

JUDGE'S CHARGE TO THE JURY

1 firmly convinced that the Defendant is guilty of the crime
2 charged, you must find the Defendant guilty.

3 If on the other hand you think there's a real
4 possibility that the Defendant is not guilty, then you
5 must give the Defendant the benefit of the doubt and find
6 him not guilty.

7 Now generally there are two types of evidence
8 which are presented during a trial; direct evidence and
9 circumstantial evidence. Direct evidence is the testimony
10 of a person who claims to have actual knowledge of a fact
11 such as an eyewitness. It's evidence which immediately
12 establishes the main fact to be proved.

13 Circumstantial evidence on the other hand is
14 proof of a chain of facts and circumstances indicating the
15 existence of some fact. It's evidence which immediately
16 establishes collateral facts from which the main fact may
17 be inferred.

18 Circumstantial evidence in other words is based
19 on inference and not on personal knowledge or
20 observation. But the law makes absolutely no distinction
21 between the weight or value to be given either direct or
22 circumstantial evidence, nor is a greater degree of
23 certainty required of circumstantial evidence than of
24 direct evidence. You should weigh all of the evidence in
25 this case and after weighing all of the evidence if you're

JUDGE'S CHARGE TO THE JURY

1 not convinced of the guilt of the Defendant beyond a
2 reasonable doubt, you must find the Defendant not guilty.

3 Now necessarily in every case you must determine
4 the credibility of the witnesses who testified.
5 Credibility simply means believability. It becomes your
6 duty as jurors to analyze and evaluate the evidence and
7 determine which evidence convinces you of its truth.

8 In determining the believability of witnesses who
9 have testified in this case, you may believe one witness
10 over several witnesses, or several witnesses over one
11 witness. You may believe a part of the testimony of a
12 witness and reject the remaining part of the testimony of
13 the same witness.

14 You may believe the testimony of a witness in its
15 entirety or reject the witnesses testimony in its
16 entirety.

17 You may consider whether any witness has
18 exhibited to you any interest or bias or prejudice or
19 other motive in the case and you may also consider the
20 appearance and manner of the witness while on the witness
21 stand.

22 These considerations you do not exercise
23 arbitrarily. Your objective, ladies and gentlemen, is to
24 seek the truth regardless of its source. In exercising
25 your mental processes and determining what you consider to

JUDGE'S CHARGE TO THE JURY

1 be true, the law simply requires that you exercise your
2 good judgment, your common sense, your sense of logic and
3 reason and your experiences in life.

4 You then apply these attributes to the evidence
5 and determine what you the jury consider to be the
6 truthful evidence. You will then take and apply the law
7 as it's now stated to you and thus arrive at a true
8 verdict in this case.

9 Now, generally speaking, the rules of evidence,
10 our rules of the road, do not permit witnesses to testify
11 about their opinions. Witnesses generally testify about
12 what they see, hear, or that sort of thing, their
13 observations. An exception to this rule exists for
14 witnesses we call expert witnesses. And we've had one
15 expert witness in this case.

16 A witness who by education and experience has
17 become expert in some art, science, profession or calling
18 may state an opinion as to the relevant and material
19 matter in which the witness claims to be an expert and may
20 also state reasons for that opinion.

21 But you should consider any expert opinion
22 received in evidence in this case like any other evidence
23 and give it the weight you think it deserves.

24 Now, in you've heard evidence in this case that
25 the Defendant in the past was convicted of a crime other

JUDGE'S CHARGE TO THE JURY

1 than that for which he is now on trial. This evidence may
2 be considered by you if you conclude it is true only in
3 deciding whether the Defendant's testimony is believable
4 and for no other purpose. You must not consider the
5 Defendant's prior record as any evidence of the
6 Defendant's guilt of the charge we are trying here today.

7 Now in order to establish criminal liability,
8 criminal intent is required. For example, the mental
9 state required to be proven by the State for some
10 particular crime might be a specific purpose or a specific
11 intent, knowledge of certain facts or recklessness.

12 Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always a
14 matter that must be determined by the jury from
15 circumstances surrounding the situation.

16 There's no way to prove intent to a mathematical
17 certainty. There's no way medical science can dissect a
18 person's brain and determine what the person had in mind.
19 So the law says that criminal intent may be inferred from
20 the circumstances shown to have existed at the time and
21 place.

22 And this is how you make a determination of
23 whether or not the element requiring intent was present.
24 Criminal intent is a mental state, a conscious wrong
25 doing. It's up to you to determine what the Defendant

JUDGE'S CHARGE TO THE JURY

1 intended to do based on the circumstances shown to have
2 existed.

3 Now as you know and as I've said, the Defendant's
4 charged with criminal sexual conduct with a minor in the
5 first degree. The Defendant is charged with first degree
6 criminal sexual conduct with a minor. The State must
7 prove, therefore, beyond a reasonable doubt, that the
8 Defendant engaged in a sexual battery with the victim. A
9 sexual battery is sexual intercourse, cunnilingus,
10 fellatio, anal intercourse or any intrusion however slight
11 of any part of a person's body or of any object into the
12 genital or anal openings of another person's body except
13 when the intrusion is accomplished for medically-
14 recognized treatment or diagnostic purposes.

15 Second, the State must then prove beyond a
16 reasonable doubt that the victim was less than 11 years
17 old at the time of the sexual battery. Consent,
18 willingness, indifference or ignorance on the part of the
19 minor, if any, as to what was taking place does not in
20 anyway affect the charge of criminal sexual conduct with a
21 minor because an unmarried woman under the age of 14 years
22 cannot legally consent to sexual intercourse.

23 And the testimony of the victim need not be
24 corroborated in prosecutions for criminal sexual conduct.

25 The Defendant's also charged with committing a

JUDGE'S CHARGE TO THE JURY

1 lewd act upon a minor. Minor's a person under the age of
2 18. The State must first prove beyond a reasonable doubt
3 that the Defendant was over the age of 14. Is that
4 right.

5 Next the State ...

6 Next the State must prove that the Defendant
7 willfully and lewdly committed or attempted a lewd act or
8 a lascivious act on or with the body or its parts -- next
9 the State must prove that the Defendant willfully and
10 lewdly committed or attempted a lewd or lascivious act on
11 or with the body or its parts of a child under the age of
12 16 years -- that was a mouthful -- with the intent to
13 arouse, appeal to, or gratify the lusts, passions or
14 sexual desires of the Defendant or the child.

15 I'll state that again.

16 The State must -- I'm going to review it again
17 just because I think -- for clarification purposes.

18 The State must first prove beyond a reasonable
19 doubt that the Defendant was over the age of 14. Next the
20 State must prove that the Defendant willfully and lewdly
21 committed or attempted a lewd or lascivious act on or with
22 the body or its parts of a child under the age of 16 years
23 with the intent to arouse, appeal to or gratify the lusts,
24 passions, or sexual desires of the Defendant or of the
25 child.

JUDGE'S CHARGE TO THE JURY

1 Willfully means voluntarily and intentionally
2 with a specific intent to do something the law forbids.
3 Lewd means obscene lustful indecent or lecherous.
4 Lascivious means tending to insight lust. Lewd, indecent,
5 obscene, or tending to deprive the morals in respect to --
6 to deprave the morals in respect to sexual relations.

7 And I charge you further that the time is not a
8 material element of either first degree criminal sexual
9 conduct with a minor or committing a lewd act upon a
10 minor.

11 Now the Defendant has raised the defense of
12 alibi. In order to establish an alibi, it must be shown
13 that the Defendant was at another specified place at the
14 time the crime was committed and that it was therefore
15 impossible for the Defendant to have been at the scene of
16 the crime. Mere denial of presence at the scene of a
17 crime does not constitute an alibi.

18 Now there's no burden on the Defendant to prove
19 an alibi. The burden is on the State to prove beyond a
20 reasonable doubt that the Defendant was actually present
21 at the scene of the crime, actually participated in it and
22 was not somewhere else. In other words, the State has the
23 burden of disproving the Defendant's alibi defense.

24 Well that's about it, ladies and gentlemen. I
25 want to close by further charging you that any punishment

JUDGE'S CHARGE TO THE JURY

1 provided by law to the offenses charged in the indictment
2 is a matter exclusively within the province of the Court
3 and should never be considered by the jury in any way in
4 arriving at a fair and impartial verdict as to the guilt
5 or innocence of the Defendant.

6 I am required to declare the law as I've done
7 through these instructions to help And guide you to a just
8 and lawful verdict. Whether some of these instructions
9 will apply will depend on what you find to be the facts.
10 The facts I've instructed on various subjects in this case
11 must not be taken by you as indicating an opinion of this
12 Court as to what you should find to be the facts or as to
13 which party is entitled to your verdict.

14 Your verdict must represent the considered
15 judgment of each juror. In order to return a verdict,
16 it's necessary that each juror agree. Your verdict must
17 be unanimous. In other words, all 12 of you must agree on
18 the verdict. Your verdict cannot be based on sympathy,
19 passion, prejudice, emotion or any other consideration
20 that's not in evidence in this case.

21 Remember at all times that you're not partisans
22 favoring one party other over another. You are judges.
23 Judges of the facts. Your sole interest is to seek the
24 truth from the evidence that's been presented to you in
25 this case.

JUDGE'S CHARGE TO THE JURY

1 Now, Madam Forelady, all of the evidence that's
2 been presented in this case is going to go to the jury
3 room with you as well as the video presentation which you
4 can watch if you wish to do so.

5 Also, going with you to the jury room will be
6 these two indictments. And on what we call the face of
7 the indictment, on the front of the indictment, the bottom
8 left-hand corner is a block for your verdict.

9 Once you have completed your deliberations, and
10 it doesn't matter which one you do first. On this
11 indictment you will fill in not guilty or guilty, sign
12 your name and date it. Then move onto the second one.

13 Now, as far as your lunch is concerned it
14 probably is not here yet but when it does arrive you can
15 either continue deliberating or stop deliberating. If any
16 of you have to go out for smoke breaks or anything like
17 that, the bailiffs are going to tell that you all
18 deliberations must stop when when there are not 12 people
19 in the room.

20 Our two alternates we've ordered lunch for you.
21 We're going to -- I'll talk to you in just a moment about
22 your lunch and what to do.

23 Now I'm going to ask you to retire to the jury
24 room. Don't begin your deliberations until you've
25 received the indictments and the evidence in this case at

1 which time you may begin your deliberations.

2 When you've completed your deliberations, if
3 you'll knock on the jury room door, let us know, we'll
4 receive your verdict. All right. Thank you very much.

5 (Jury exits courtroom at 11:22 a.m.)

6 THE COURT: Any exceptions to the charge?

7 MR. STUMBO: None from the State, Your Honor.

8 MR. WILLIAMS: None from the Defendant, Your
9 Honor.

10 THE COURT: Any objection to excusing the
11 alternates?

12 MR. WILLIAMS: None from the Defendant.

13 MR. STUMBO: Your Honor, I mean, I guess there's
14 a possibility we could have one fall out during
15 deliberations. As long as we have the contact information
16 and can bring them back if that happens.

17 THE COURT: We've got that.

18 MR. STUMBO: Okay.

19 THE COURT: All right. Bring the alternates.

20 (Alternates enter courtroom.)

21 THE COURT: 158 -- I know your names. I'm just
22 going call your numbers -- and 216, obviously you were
23 chosen as alternates in this case.

24 And I will tell you, it's uncanny how many times
25 we need an alternate because somebody's car doesn't start

1 or you get into the case and somebody knows something
2 about it or knows somebody or somebody does get sick. We
3 had, the last case we had somebody got sick and we had to
4 use one of the alternates. So it's important that we have
5 alternates and it's important that you hear all the
6 evidence because you would need to go and deliberate with
7 the jury.

8 I'm going to excuse you now. I'm going to thank
9 you on behalf of myself and these litigants and the
10 citizens of Lexington County because without your
11 participation in this process it doesn't work. So, your
12 willingness to come sit even as an alternate is sincerely
13 appreciated.

14 Now, I assume you ordered lunch. If you want to
15 wait for it you can. I'm going to tell you you're free to
16 go. And the bailiffs will make arrangements to find a
17 place to eat your lunch. You can't eat with the jury
18 because they may start deliberating.

19 You're also welcome to stay. It's a public
20 courtroom. I don't know if you want to stay and see, stay
21 at least for a while to see what your fellow jurors do.

22 But they may be here until midnight too, so. I
23 have no idea. But, you are dismissed. The clerk has --
24 the clerk was going to tell you that your checks are in
25 the mail, I'm sure, but I do want to thank you.

JUDGE'S RECHARGE TO THE JURY

1 THE JURORS: Thank you, Your Honor.

2 THE COURT: Stand at ease until we hear from the
3 jury.

4 (Deliberations commenced at 11:25 a.m., until
5 1:35 p.m., when there was a question from the jury.)

6 THE COURT: Mr. Williams, Mr. Stumbo. The jury
7 has asked for a recharging on criminal sexual conduct with
8 a minor in the first degree. So, we'll do that.

9 Bring the jury, please.

10 (Jury enters courtroom at 1:42 p.m.)

11 THE COURT: All right. Ladies and gentlemen, I
12 have your note requesting a recharge on the definition of
13 criminal sexual conduct. And I will just -- it's fairly
14 short. I will just read it to you again.

15 The Defendant is charged with criminal sexual
16 conduct with a minor in the first degree. The State must
17 prove beyond a reasonable doubt that the Defendant engaged
18 in a sexual battery with the victim.

19 A sexual battery is sexual intercourse,
20 cunnilingus, fellatio, anal intercourse or any intrusion
21 however slight of any part of a person's body or of any
22 object into the genital or anal openings of another
23 person's body except when the intrusion is accomplished
24 for medically-recognized treatment or diagnostic purposes.

25 The State must then prove beyond a reasonable

1 doubt that the victim was less than 11 years old at the
2 time of the sexual battery. Consent, willingness,
3 indifference or ignorance on the part of the minor, if
4 any, as to what was taking place does not in any way
5 affect the charge of criminal sexual conduct with a minor
6 because an unmarried woman under the age of 14 cannot
7 legally consent to sexual intercourse.

8 The testimony of the victim need not be
9 corroborated in prosecutions for criminal sexual conduct.

10 That's it. You may retire to the jury room. If
11 you have any other questions, let us know.

12 (Jury exits courtroom at 1:45 p.m. Jury note was
13 marked as Court's Exhibit No. 1.)

14 THE COURT: If they ask for it, would there be
15 any objection to sending the charge in there?

16 MR. WILLIAMS: No, Your Honor.

17 MR. STUMBO: That part of it?

18 THE COURT: Just, what I just read.

19 MR. STUMBO: That's fine.

20 MR. WILLIAMS: No.

21 MR. STUMBO: No objection.

22 THE COURT: Madam clerk.

23 THE CLERK: Yes, sir.

24 THE COURT: Ask the jury. If there's no
25 objection, ask the jury if they'd like to have it.

1 THE CLERK: Yes, sir.

2 THE COURT: If they would, they can keep it.

3 THE CLERK: Yes, sir.

4 THE COURT: Stand at ease.

5 (Thereafter, at 2:35 p.m., deliberations
6 continued. A note was sent from the jury. The Foreperson
7 of the jury entered the courtroom at 2:44 p.m., and the
8 trial continued:)

9 THE COURT: Ma'am, we are prepared to show the
10 video again.

11 FOREPERSON OF THE JURY: Okay.

12 THE COURT: The only question I had is whether
13 you wanted to take the computer back there and 12 people
14 look at that little computer.

15 FOREPERSON OF THE JURY: Could we do that? It
16 was hard for us to see. We couldn't figure out if it was
17 because of the lighting, like if it wasn't down enough.
18 It was, you know, shadows and dark. And different people
19 did state it was hard for them to see and kind of hear.

20 THE COURT: You can take the computer and just
21 hit the button. You got to get 12 people to get close to
22 the computer.

23 FOREPERSON OF THE JURY: That's fine, sir.

24 THE COURT: Why don't you return to the jury room
25 and I'll make sure they rig it up so that it works.

JURY VERDICT & SENTENCING

1 FOREPERSON OF THE JURY: All right.

2 THE COURT: And all you got to do is turn it on.

3 FOREPERSON OF THE JURY: Okay. Thank you.

4 MR. STUMBO: If they could get the DVD, I can put
5 it in the computer and they'll be ready to go.

6 THE COURT: Get us the DVD so we can load it for
7 you.

8 FOREPERSON OF THE JURY: Okay. No problem.

9 (Notes from jury marked as Court's Exhibits Nos.
10 2 and 3.)

11 (Foreperson exits courtroom at 2:46 p.m.
12 Deliberations resume until 4:45 p.m., when the trial
13 continued as follows:)

14 THE COURT: All right, counsel. The bailiffs
15 inform the Court the jury has a verdict. Ready to proceed
16 with the verdict?

17 MR. WILLIAMS: The defense is ready, Your Honor.

18 MR. STUMBO: The state's ready, Your Honor.

19 Our victims are on their way up. If I could have
20 maybe just one minute. They're on the way up. I called
21 them.

22 (Pause.)

23 THE COURT: All right. Bring the jury, please.

24 (Jury enters courtroom at 4:47 p.m.)

25 THE COURT: All right. Ladies and gentlemen of

JURY VERDICT & SENTENCING

1 the jury, we lost our clerk. So if you'll just, just wait
2 for a minute we'll -- we've sent for her. We need the
3 clerk to take your verdict.

4 (Pause.)

5 THE COURT: Madam Forelady, has the jury reached
6 a verdict?

7 FOREPERSON OF THE JURY: Yes, Your Honor, we
8 have.

9 THE COURT: Would you hand it to the bailiff,
10 please?

11 FOREPERSON OF THE JURY: (Complying).

12 THE COURT: Madam clerk, will you please publish
13 the verdict?

14 THE CLERK: Yes, sir, Your Honor.

15 In indictment Number 2010-GS-32-0844, the State
16 of South Carolina versus Joe Lewis Butler, indicted for
17 criminal sexual conduct with a minor in the first degree.
18 We the jury unanimously find the Defendant not guilty.
19 The indictment has been signed by the Foreperson of the
20 jury.

21 Indictment number 2010-GS-32-832. The State of
22 South Carolina versus Joe Lewis Butler, indicted for lewd
23 act upon a child. We the jury unanimously find the
24 Defendant guilty. And it has been signed by the
25 Foreperson of the jury.

JURY VERDICT & SENTENCING

1 Madam Forelady, ladies and gentlemen of the jury,
2 if this is your verdict, please indicate so by raising
3 your right hand.

4 THE JURY: (Complies.)

5 THE CLERK: All jury's polled, Your Honor.

6 THE COURT: You desire to poll the jury?

7 MR. WILLIAMS: Yes, Your Honor.

8 THE COURT: All right. Madam clerk, poll the
9 jury, please.

10 THE CLERK: When I call your name, if you would
11 just raise your right hand and I'll ask you two
12 questions. Juror number 246.

13 THE COURT: You can stay seated.

14 THE CLERK: You can stay seated. I'm sorry.
15 Just raise your right hand. Was this your verdict?

16 THE JUROR: What was it?

17 THE CLERK: Was this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes, it is.

21 THE CLERK: Thank you, ma'am. Juror number 58,
22 was this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

JURY VERDICT & SENTENCING

1 THE CLERK: Thank you. Juror number 154, was
2 this your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Thank you. Juror number 66, was this
7 your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Thank you, sir. Juror number 220,
12 was this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Thank you, sir. Juror number six --
17 I am sorry. Juror number 176, was this your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Juror number 74, was this your
22 verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

JURY VERDICT & SENTENCING

1 THE CLERK: And juror number 64, was this your
2 verdict?

3 THE JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 THE JUROR: Yes.

6 THE CLERK: Juror number 27, was this your
7 verdict?

8 THE JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Juror number four, was this your
12 verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Thank you. Juror number 97, was this
17 your verdict?

18 THE JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 THE JUROR: Yes.

21 THE CLERK: Thank you, sir. Juror number 18, was
22 this your verdict?

23 THE JUROR: Yes.

24 THE CLERK: Is it still your verdict?

25 THE JUROR: Yes.

JURY VERDICT & SENTENCING

1 THE CLERK: Thank you. Juror number 158. That
2 was an alternate. Sorry. Okay. Was there anyone whose
3 name I did not call?

4 All jurors polled, Your Honor.

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

6 All right. Thank you very much, ladies and
7 gentlemen. I know you worked hard on this one, based on
8 the number of hours you put in. You reviewed the tape
9 again.

10 I noticed throughout the trial you were very
11 attentive to the testimony in this case, the instructions
12 of the Court. So I think without question you did an
13 excellent job and you're to be commended for your
14 service.

15 I want to take this opportunity at this point to
16 thank you for your service on behalf of the court system
17 here in Lexington County and the citizens of Lexington
18 County. These are matters that need to be resolved in our
19 community and this is the system.

20 As I indicated earlier in the week, the system
21 can do without me. It can do without these attorneys, but
22 it can't do without you. You're such an essential part of
23 the judicial system of this county and this state and this
24 nation, that the framers of the constitution wrote your
25 role into the constitution. That's how important your

JURY VERDICT & SENTENCING

1 service is.

2 Now the remaining portion of the trial consists
3 of the sentencing of the Defendant. And that's a
4 procedure that will probably take 10 or 15 minutes.

5 I'm going to release you now, if you wish to go.
6 Now some jurors like to stay and witness that. It's --
7 you see what time it is.

8 So I'm going to leave it up to you whether you
9 wish to stay or go. But we have such a backlog of cases
10 here in not only Lexington County but in the state as a
11 whole that we just don't have time to put off sentencing
12 until a later date.

13 It's just -- it would be impossible if we had to
14 do that. So we're going to go ahead. I'm going to do the
15 sentencing now. And there will be some colloquy. We'll
16 have to talk with the State's attorney, the solicitor's
17 office and the defense attorney will tell me some things
18 about the Defendant. And I'll have to impose a sentence
19 at this time.

20 Now as I say, I'm going to dismiss you now.
21 Those of you who wish to leave may do so. Those of you
22 who wish to stay may do so. It will take a few minutes to
23 get the paperwork done. How's the paperwork coming?

24 MR. STUMBO: I've got the sentencing sheet.

25 THE COURT: Is it prepared?

JURY VERDICT & SENTENCING

1 MR. STUMBO: It is, Your Honor.

2 (All jurors remain in courtroom.)

3 THE COURT: Give to it Mr. Williams for his
4 signature.

5 MR. STUMBO: Okay. All right.

6 THE COURT: Mr. Williams, bring your client up

7 MR. WILLIAMS: (Complying). Your Honor, prior
8 to. Sentencing --

9 THE COURT: Any motions?

10 MR. WILLIAMS: Yes, sir, Your Honor. We would
11 move for an arrest of judgment, grant the Defendant a new
12 trial on the basis that the evidence as a whole should
13 have resulted in a verdict of not guilty versus guilty in
14 regards to the lewd act.

15 THE COURT: Well, I think the evidence was
16 sufficient upon which a jury to make its determination.
17 And I respectfully deny your motion.

18 MR. WILLIAMS: Thank you, Your Honor.

19 THE COURT: Mr. Stumbo.

20 MR. STUMBO: Your Honor, we do have victim impact
21 here. This is Mr. Gabreal Creech.

22 THE COURT: Mr. Creech, yes, sir. I'll be glad to
23 hear from you.

24 MR. STUMBO: This is [REDACTED] father.

25 MR. CREECH: How are you doing. This really

JURY VERDICT & SENTENCING

1 affected our family for years of going through this. It
2 really put a strain on us, you know, because we knew Joe.
3 And his daughter is my second cousin.

4 And by him doing what he did, you know, it, it
5 made us get stronger and close together as a family. And
6 I would appreciate that you do all you can to get people
7 like that off the street for as long as the law allow.

8 THE COURT: All right, sir.

9 MR. CREECH: Thank you.

10 THE COURT: Thank you very much.

11 MR. STUMBO: Judge, the State's position on this
12 case is we concur with the victim. We believe that if we
13 can't protect our children in this state by what we do
14 through this court system, then what are we here for.

15 And we believe it's one of the most important
16 things we do is to protect the children of this state. We
17 believe there's a pattern with Mr. Butler. Obviously we
18 can't take any prior convictions into account as far as
19 sexual offenses.

20 However Your Honor heard the testimony from
21 earlier in the week. We would ask Your Honor to give him
22 the full 15-year sentence. He's obviously facing the 30,
23 up to 30 years if the criminal sexual conduct did come
24 back guilty. We believe a 15-year sentence here is
25 appropriate under the law.

JURY VERDICT & SENTENCING

1 THE COURT: All right. Mr. Williams?

2 MR. WILLIAMS: Your Honor, he's 38 years of age.

3 He works in Newberry, at I want to say Louis Rich up in
4 Newberry. He has one child which you have learned who is
5 12 years of age.

6 His mother testified this morning -- no,
7 yesterday. His father sat out in the hall during that
8 time span. They're not here right now. That's his
9 brother who's seated back in the rear end or the rear of
10 the courthouse.

11 I hear the solicitor remark about his prior
12 convictions. Your Honor knows that the only prior
13 conviction he has is a 2005 fraudulent check conviction.

14 Your Honor, I would ask the Court in the lack of
15 previous record to consider something appropriate based on
16 what the facts were in this case, based on the age of the
17 Defendant, the fact he has no prior conviction except for
18 forgery and for the fact that whatever happens it will
19 affect, I guess, his family also because he will be
20 incarcerated for a period of time.

21 THE COURT: Yes, sir.

22 THE DEFENDANT: I didn't do these crimes but like
23 I said, but, I mean, I just -- just thinking about my
24 daughter and my mom and everyone and how it's going to
25 affect them. And like I say, I wasn't really expecting

JURY VERDICT & SENTENCING

1 this verdict because like I say I hadn't did anything that
2 I had proven where I was at. I guess I just left it in
3 God hands and pray that you have leniency. It's not for
4 me. It's for my daughter and my mom, my brother, my dad,
5 everyone.

6 Just, just like I say, I wasn't expecting any,
7 never thought it would go this far because, I mean, never,
8 it didn't happen. I just -- this is all unexpected to
9 me. Mostly found out about it Monday. Really I didn't
10 have a chance to get all the evidence I need to get up
11 because for this during the testimony they talking about
12 the summertime, if I'm not mistaken, I'm not sure, I
13 didn't have possession of my automobile during the time
14 due to a automobile accident.

15 My mom only had the one day to get those
16 pictures. It caught me off guard. I mean, I wasn't
17 expecting anything. I mean, I didn't have a chance -- I
18 mean, I worked different jobs, swing shifts. It's not
19 that I can't prove my whereabouts during the whole year if
20 I had more than one day advance before the trial.

21 THE COURT: You were arrested some time ago.

22 THE DEFENDANT: But this new evidence that just
23 came up Monday about my daughter's birthday and parties
24 and stuff like that. I mean, I didn't have a chance
25 except for, when that picture came to prove where I was at

JURY VERDICT & SENTENCING

1 that day. I mean, if I had more -- I understand what
2 you're saying, but if I had more notice I could have had
3 more chance to prove myself but I did not with one day
4 notice.

5 THE COURT: Now, you had a lot more notice than
6 that. I understand what you're telling me. And that that
7 was brought out during the course of the trial but you
8 were arrested on these charges -- when was the warrant
9 served?

10 MR. STUMBO: April of 2006, Your Honor.

11 THE COURT: So, it's been almost four years.

12 MR. STUMBO: Yes, sir.

13 THE COURT: Solicitor, this is -- is this lewd
14 act considered non violent?

15 MR. STUMBO: It is classified as non violent for
16 sentencing purposes, Your Honor. It is under the sexual
17 registry, be required to register as a sex offender.

18 THE COURT: Yes, sir.

19 MR. STUMBO: I don't believe I wrote that in on
20 the sentencing sheet.

21 THE COURT: Well, that's a requirement. That's
22 not anything that I need to even put on the sentencing
23 sheet.

24 MR. STUMBO: That's correct.

25 THE COURT: That's a collateral consequence of

1 the conviction.

2 Ladies and gentlemen of the jury, just -- since
3 you are here. You've heard some of this dialogue. The
4 sentence provided for by law is a sentence of up to 15
5 years. And the law also says that anyone convicted of
6 this offense must register on the sexual offender
7 registry.

8 Now when I was talking about violence or violent
9 or non violent, what I asked the solicitor and the way he
10 explained it, for sentencing purposes it is considered a
11 non violent offense. And that goes to when and if
12 Mr. Butler would be eligible for parole.

13 A non violent sentence -- I mean, a non violent
14 charge or non violent conviction makes him, would make him
15 eligible for parole at a much earlier date than if it had
16 been a violent offense. So, it just may not mean a lot to
17 you, but I have to take those things into consideration in
18 sentencing.

19 All right. Anything further?

20 MR. WILLIAMS: No, Your Honor.

21 MR. STUMBO: Nothing from the State, Your Honor.

22 MR. WILLIAMS: No, Your Honor.

23 MR. STUMBO: Nothing from the State.

24 THE COURT: Did he spend any time in jail?

25 MR. WILLIAMS: I believe -- how long were you in

1 jail?

2 THE DEFENDANT: When I found out about the
3 charges, I went to turn myself in, find out what was going
4 on. I think a night or two days.

5 MR. WILLIAMS: Maybe two days, Judge.

6 THE COURT: Immaterial. All right.

7 Mr. Butler, SENTENCE OF THE COURT IS YOU BE
8 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
9 PERIOD OF 12 YEARS.

10 Good luck to you, sir.

11 Court's adjourned. Thank you very much, ladies
12 and gentlemen. Have a pleasant weekend.

13 MR. STUMBO: Thank you, Judge.

14 END OF PROCEEDINGS: 5:05 P.M.

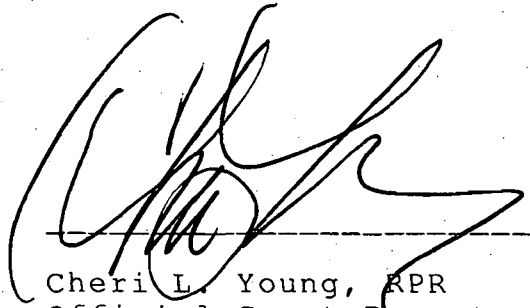
15 * * * *

16 CERTIFICATE OF REPORTER

17 I, Cheri L. Young, Registered Professional Reporter,
18 and Official Court Reporter for the State of South
19 Carolina, do hereby certify that the foregoing transcript
20 of proceedings heard on Wednesday, March 10, Thursday,
21 March 11 and Friday, March 12, 2010, in Lexington, South
22 Carolina, was reported by me using machine shorthand and
23 realtime computer-aided translation and is a true,
24 accurate and complete transcript of the proceedings had
25 and evidence introduced in the hearing of the matter.

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

3 I have hereunto set my hand this Friday, the 23rd day
4 of July, 2010.

5
6
7
8 
9 Cheri L. Young, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Indictment: 2010-GS-32-00832

Plaintiff,

vs.

**NOTICE AND MOTION FOR NEW
TRIAL**

JOE BUTLER,

Defendant.

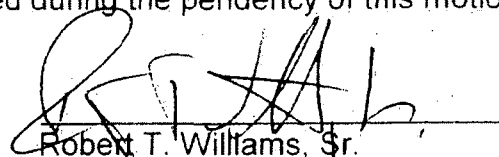
By way of counsel, the Defendant does hereby file a motion for a new trial in accordance with Rules 59 and 60 of the South Carolina rules of Civil Procedure and Rule 29 of the South Carolina Rules of Criminal Procedure. In support of his motion the Defendant avers the following:

That on March 19, 2010, the soonest possible moment the Defendant was made aware that during the course of the trial there was juror misconduct. Specifically, the letter provided Assistant Solicitor David Stumbo (a copy of which is attached hereto) stated that against the specific Order of the Court a member of the Jury did utilize the internet and located information that the Defendant had been previously charged with a like crime.

Prior to trial the Court held an extensive 404 and Lyle hearing and made the determination that said information was not to be admissible in the trial of the case. The Juror's actions in doing independent research of the case outside the Court and bringing that information into the jury room and the deliberation process represented great juror misconduct, creating obvious prejudice to the Defendant. In light of this information, the Defendant moves in accordance with rules 59 and 60 of the South Carolina Rules of Civil Procedure and Rule 29 of the South Carolina Rules of Criminal Procedure for a new trial on the foregoing basis.

The Defendant further contends that due to the filing of this pleading that his time to file a notice of intent to appeal is stayed during the pendency of this motion.

March 19, 2010



Robert T. Williams, Sr.
Williams, Hendrix, Steigner & Brink, P.A.
200 East Main Street
Post Office Box 849
Lexington, South Carolina 29072
(803) 359-1550

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATEINDICTMENT/CASE#: 2010GS3200832

VS.

AM#: 10-STR-00009

Mr. Joe Butler

Date of Offense: 5/20/2005 - 8/20/2005

AKA:

S.C. Code §: 16-15-0140Race: BSex: MAge: 35CDR Code #: 2468DOB: 07-19-1971

SS#: _____

Address: _____

City, State, Zip: _____

DL# _____

SID# _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐SENTENCE SHEET Up 61

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)In violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (SC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: M. S. H. 72105
Solicitor SC Bar # _____

Defendant

Attorney for Defendant

SC Bar # 6145WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered. PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:	\$ _____
\$14-1-206 (Assessments 107.5%)	\$ _____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100
\$14-1-211 (A)(2)(DUI Surcharge)	\$100
\$56-5-2995 (DUI Assessment)	\$12
\$56-1-286 (DUI Breath Test)	\$25
\$47.12 (Public Def/Prob)	\$500
\$14-1-212 (Law Enforce. Funding)	\$25
\$14-1-213 (Drug Court Surcharge)	\$100
\$50-21-114 (BUI Breath Test Fee)	\$50
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea
\$90.7 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ _____
TOTAL	\$130

Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/Deputy Clerk Beth Carrig
Court Reporter: C. YoungPresiding Judge C. Carrig
Judge Code: 2126
Sentence Date: 3-12-10

State of South Carolina
Office of the Solicitor
Eleventh Judicial Circuit

COUNTIES
EDGEFIELD / LEXINGTON
McCORMICK / SALUDA
FAXES: (803) 785-8431 or (803) 785-8255



LEXINGTON COUNTY JUDICIAL CENTER
205 E. MAIN ST. • THIRD FLOOR
LEXINGTON, SOUTH CAROLINA 29058
TELEPHONE: (803) 785-8352

DONALD V. MYERS

Solicitor

March 19, 2010

Robert T. Williams, Esquire
Williams, Hendrix Steigner, and Brink
Post Office Box 849
Lexington, South Carolina 29071-0849

Re: State v. Joe Butler

Theo
Dear Mr. Williams:

Information has come to my attention of a potential issue involving misconduct of one of the jurors sitting on the Joe Butler trial last week. Chief Wallace Oswald of the Batesburg-Leesville Police Department brought this information to the attention of my co-counsel Ms. Patterson while I was out of the office earlier this week. Chief Oswald returned from an out-of-state trip last night, and we had an opportunity to meet with him this morning in our office on the information. The purpose of this letter is to pass along the information, as I am ethically and professionally obligated to do as an officer of the court.

This conversation occurred in front of the Courthouse after the trial had concluded last Friday evening and the jurors had been dismissed. Chief Oswald and one of the investigators in our office, Inv. Kevin Wilson, were outside of the front doors of the courthouse talking to the victim's family in the case before they left for the evening. One of the jurors, a white female, came out of the Courthouse to leave and voluntarily approached Chief Oswald. Chief Oswald describes her as a lady who had positive non-verbal reactions to our case throughout the trial, and was one that we felt like all along was a juror that was positive for the State. They had a short conversation about the jury deliberations, our young victim, the attorneys, and other issues involving the case. In the course of this conversation, Chief Oswald states to her, "Well if it makes you feel any better Mr. Butler had been in trouble for the same kind of thing before." The juror responds, "I know, I looked him up on the Internet last night." At his point, Chief Oswald states that you (Mr. Williams) were walking out the front door of the courthouse. Chief Oswald,

March 19, 2010 Letter to Mr. Williams

Page 2

stating that he really didn't want to hear any more from the juror on that issue, politely ended the conversation and walked away. Inv. Wilson was not directly part of the conversation with the juror, but verifies that he also overheard her saying something to the effect of looking something up on the computer. I do not know for certain of the four white female jurors on the primary jury the identity of the one who talked to Chief Oswald, but based on description and comparison of DMV drivers license photos by Inv. Wilson and Chief Oswald, it appears to be Ms. Betty J. Broome, juror number 27.

I am available at your convenience to discuss this matter with you or Judge Cooper. I am also copying Judge Cooper on this letter so he will be fully informed of the situation. Please let me know what you intend to do with this information, and we will proceed from there.

Sincerely,



David M. Stumbo
Assistant Solicitor

Cc: The Honorable G. Thomas Cooper

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Indictment: 2010-GS-32-00832

Plaintiff,

vs.

PROOF OF SERVICE

JOE BUTLER,

Defendant.

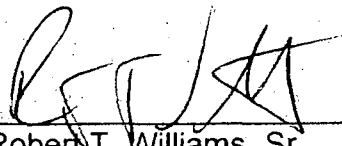
I certify that on March 19, 2010, I have served the within Motion for New Trial upon the individual(s) named below by placing a copy of same in the United States Mail, postage prepaid and return address clearly indicated to the address(es) below:

David M. Stumbo, Assistant Solicitor
Eleventh Judicial Circuit
205 East Main Street
Lexington, South Carolina 29072

Rhonda Patterson, Assistant Solicitor
Eleventh Judicial Circuit
205 East Main Street
Lexington, SC 29072

I further certify that all parties required to be served have been served.

Dated: March 19, 2010



Robert T. Williams, Sr.
Williams, Hendrix, Steigner & Brink, P.A.
200 East Main Street
Post Office 849
Lexington, SC 29072
(803) 359-1550

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

-vs-

JOE BUTLER,

Defendant.

TRANSCRIPT OF RECORD

09-GS-32-832, et al

RULE TO SHOW CAUSE

March 29, 2010
Lexington, South Carolina

B E F O R E:

HONORABLE G. THOMAS COOPER, JR., Judge.

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

DAVID M. STUMBO, Asst. Solicitor
RHONDA W. PATTERSON, Asst. Solicitor
Attorney for the State

ROBERT T. WILLIAMS, SR., Esquire
Attorney for the Defendant

JAMES R. SNELL, JR., Esquire
Attorney for Juror Broome

COPY

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

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INDEX OF EXHIBITS

(Court Reporter's Note: No exhibits were marked or received into evidence).

1
2 (The following proceedings are reported on
3 March 29, 2010).

4 THE COURT: Mr. Snell, you represent
5 Ms. Broome?

6 MR. SNELL: I do, Your Honor.

7 THE COURT: This matter was commenced by a
8 rule to show cause directed to Ms. Broome, a juror in
9 the case of State versus Joe Butler, which was held --
10 trial was held during the week of March 8th.

11 It came to the Court's attention following
12 that trial the following week that there was a report
13 that Ms. Broome had a conversation with law enforcement
14 in the parking lot of the Lexington County courthouse
15 immediately following trial.

16 There were indications from law enforcement
17 that Ms. Broome admitted making certain inquiries over
18 the internet about the Defendant. In this case prior to
19 trial, a Lyle hearing was held, which counsel knows what
20 I'm talking about, about the prior history of
21 Mr. Butler.

22 It was ruled by this Court that any evidence
23 of a prior similar act on the part of Mr. Butler would
24 not be admissible during his trial in this case because
25 defendants are entitled to be tried on the charge which

1 they are faced with in the indictments, not on past
2 history.

3 Lawyers know exactly what this means, that
4 cases are to be tried on the merits of the individual
5 cases and not on something that somebody might have done
6 in the past, the reason being that if jurors are
7 subjected to their past behavior, a defendant's past
8 behavior, it may influence their decision on whether or
9 not he actually or she actually committed the crime that
10 is being under consideration for trial.

11 Prior to and during the trial of Mr. Butler, I
12 reminded the jury, instructed the jury, not to do any
13 independent research. I think I even used the example
14 of a civil case wherein -- at least I usually use this
15 example -- wherein jurors attempted to go by the scene
16 of a particular incident and try to figure out how it
17 happened when they were instructed not to do so and that
18 juror curiosity sometimes lead them to do that.

19 Now, I am not predisposed about this matter.
20 I want to hear testimony today on the issue from law
21 enforcement that apparently or allegedly heard
22 Ms. Broome make this statement. I have also received
23 from the State Solicitor's office an affidavit from
24 another juror, Mr. Davitte (phonetic), juror
25 number 58.

1 MR. STUMBO: I think it's pronounced Davitte.

2 THE COURT: It's spelled the same way.

3 MR. STUMBO: Yes, sir.

4 THE COURT: Who indicated that Ms. Broome also
5 during jury deliberations made a statement to at least
6 one of the other jurors that suggested that other jurors
7 take the opportunity to look the Defendant up on the
8 internet.

9 Now, to begin with, Mr. Snell, because our
10 State statute does not specify a penalty, I understand
11 that -- and I will allow you to make your motion -- you
12 indicated in chambers that you may wish to make a motion
13 for a jury trial.

14 I told you that although this is a serious
15 matter, and that's evident by the fact I'm here and
16 everybody else is here, I don't consider this what the
17 Courts may have referred to as serious contempt.

18 In other words, I have -- I understand from
19 the case law that the Court has the power, in its
20 inherent powers, to sentence for contempt for a period
21 of up to six months without a jury trial.

22 But if I felt that this was so serious a
23 contempt matter that I would subject the Defendant to a
24 sentence of up to one year, then I probably would grant
25 your motion.

1 I will allow you to go ahead and make the
2 motion on the record if you wish to do so, but I do
3 think this is a matter that needs to be addressed. It
4 needs to be addressed for what I consider to be a
5 violation of the Court's order.

6 Solicitor, do you have the witness here who
7 allegedly heard Ms. Broome make the statement?

8 MR. STUMBO: I do, Your Honor. Chief Wallace
9 Oswald, who also testified in the trial of this case, is
10 here in the courtroom.

11 THE COURT: Let me see. Mr. Snell, do you
12 have any motion or any reason why this hearing should
13 not go forward at this time?

14 MR. SNELL: Your Honor, first of all, we would
15 make a formal motion of a request for a jury trial, just
16 the matters that were discussed pretrial based on the
17 concern of the potential sentence range if the contempt
18 sanction was imposed. I make that motion first.

19 I actually filed another motion for kind of a
20 definite statement just to make sure I understood
21 exactly what the allegations were.

22 THE COURT: Can I see that?

23 MR. SNELL: Yes, Your Honor. I will hand up
24 two copies that have previously been provided to
25 Mr. Williams and Mr. Stumbo.

1 (Hands to Court.)

2 THE COURT: Okay.

3 MR. SNELL: Your Honor, just to make sure I'm
4 clear, are we going forward today only on the allegation
5 that she -- based on the evidence presented by Chief
6 Oswald or are we also going into statements that she may
7 or may not have made in the jury room during the course
8 of deliberations?

9 THE COURT: Well, I believe that the affidavit
10 from Mr. Davitte would constitute hearsay at this point,
11 and I don't think I can go into that, although I have
12 been apprised of it. I'm the fact finder. It was
13 brought to my attention by the Solicitor's Office.

14 But I will tell you that I would confine this
15 hearing to whether or not she made a statement to law
16 enforcement. As you know, and everybody that is
17 involved should know, in order to find her in contempt,
18 since it was out of my presence, I would have to find
19 her guilty beyond a reasonable doubt. Do you understand
20 that?

21 MR. SNELL: I do, Your Honor. Is the
22 polygraph result that I filed with the Clerk's Office,
23 can it be deemed admissible? I couldn't get the
24 examiner up here on such short notice today but just
25 want to make sure it's part of the record, and the Court

1 can consider it.

2 THE COURT: What is the State's position?

3 MR. STUMBO: Your Honor, I don't believe they
4 are admissible in criminal trials. Our position is we
5 will leave that up to Your Honor.

6 THE COURT: Well, it's an unusual situation.
7 I have been handed both an affidavit on one hand that I
8 think is probably inadmissible for purposes of this
9 hearing, and I have also been handed a polygraph report
10 that I have also been made aware of the contents of the
11 polygraph report. So we've got one on one hand and one
12 on the other. I will allow her to testify about the
13 polygraph exam if that's what you would like.

14 MR. SNELL: Thank you, Your Honor.

15 MR. STUMBO: Your Honor, Mr. Davitte has made
16 himself completely assessable to us.

17 THE COURT: Is he here today?

18 MR. STUMBO: He couldn't be here today. If
19 Your Honor would like to hear from him, we certainly can
20 arrange that.

21 THE COURT: Solicitor, call your first
22 witness. I say your first witness. I think this is a
23 Court's proceeding.

24 MR. STUMBO: Yes, sir.

25 THE COURT: I want to hear from the officer.

1 MR. STUMBO: Does Your Honor plan to examine
2 and question the witness or would you like for me to do
3 that?

4 THE COURT: Theoretically I guess I am the
5 prosecutor and the fact finder, although this would
6 normally be -- in a direct contempt situation, even
7 though it's out of the presence of the Solicitor's
8 Office, if the matter were turned over to you, you would
9 be the prosecutor. At this point I would be glad to do
10 it.

11 MR. STUMBO: I am glad to do it, too, Your
12 Honor, but I leave that up to Your Honor.

13 THE COURT: All right.

14 MR. STUMBO: Your Honor, Chief Wallace Oswald
15 from the Batesburg Police Department.

16 THE COURT: Come around, Mr. Oswald.

17 WALLACE OSWALD, being
18 first duly sworn, testifies as follows:

19 CLERK: Have a seat and state your name,
20 please.

21 THE WITNESS: Wallace Oswald.

22 THE COURT: Just a minute, Chief.

23 THE WITNESS: Yes, sir.

24 EXAMINATION

25 BY THE COURT:

1 Q Chief Oswald, you sat through the trial of Joe
2 Lewis Butler; did you not?

3 A Yes, sir, that's correct.

4 Q I believe that case ended on Friday the 13th?

5 A Was it the 12th?

6 Q The 12th?

7 A It was Friday, yes, sir, whatever date it was.

8 Q We started on the 8th. It would be the 12th.

9 A Yes, sir.

10 Q Did you see or talk to Ms. Betty Broome following
11 the trial?

12 A Sir, I did not know her name, but it's the lady
13 sitting in the courtroom.

14 Q You didn't know her before that?

15 A No, sir.

16 Q I thought maybe you did. I didn't know. And how
17 did you come to see her following the trial? What
18 took place?

19 A Your Honor, I was leaving out the front door of the
20 courthouse, and I turned around and she was exiting
21 behind me. I jokingly said, Hey, how are you
22 doing? I said, I can talk to you now that the
23 trial is over with.

24 I jokingly said that at her. She began to
25 talk to myself and an investigator with the

1 Solicitor's Office who was beside me, about the
2 trial, the deliberations lasting so long, that the
3 foreperson of the jury was the hangup, that it
4 took a long time to convince her and so forth like
5 that.

6 And into the conversation, which I was just
7 listening, in that conversation I did say to her
8 then, I said, If it makes you feel any better, he
9 has been in trouble like this before. I said that.
10 Then when I said that, she said, Yes, I know. I
11 looked him up on my computer last night.

12 Well, when that statement was made, I turned
13 around and started walking away from her. That's
14 when I saw Mr. Williams come out the door, defense
15 counsel. He came out the door, and I walked along
16 with him away from her, at which time he asked me
17 what she was saying. I told him the part about the
18 foreperson, but I did not tell him any other than
19 that, about her saying that about the computer.

20 Q You did not?

21 A No, sir, I did not. Monday I came -- that was
22 late. Everyone was gone. So Monday morning I came
23 over to the Solicitor's Office. I was going to
24 speak with Mr. Myers. He was out for three days at
25 a convention, so I spoke with the assistant

1 solicitor about what I had heard.

2 Q Who was present when that conversation took place?

3 A The first conversation with the juror you mean,
4 sir?

5 Q Yes.

6 A Just Kevin -- I'm sorry, I don't know his last
7 name -- Kevin, the investigator with the
8 Solicitor's Office.

9 Q Just three people there?

10 A Yes, sir -- well, no, sir. There was someone else.
11 There was -- I can't remember who else that walked
12 out with us. He was the only one I knew, Your
13 Honor. There was someone else there, but I don't
14 remember if they were standing around or not.
15 Someone else walked out with us, let me put it that
16 way, Your Honor. He was the only one that I knew
17 that was with us there.

18 Q Okay. Anything else you can remember about that?

19 A No, sir. Because, as I said, when she said that
20 about the computer, I turned around and started
21 walking away. That's when I met Mr. Williams as he
22 was coming out the door.

23 THE COURT: Mr. Stumbo, do you have anything
24 you want to ask?

25 MR. STUMBO: Nothing further.

1 THE COURT: Mr. Snell?

2 EXAMINATION

3 BY MR. SNELL:

4 Q Chief Oswald, were you present during any of the
5 conversations that occurred on the fourth floor at
6 the conclusion of the case with Ms. Broome and
7 any other representative of the Solicitor's Office?

8 A No.

9 Q And is it your testimony, do I understand
10 correctly, that you were the one that initiated the
11 conversation or discussion with Ms. Broome?

12 A That's correct. I made the statement about, I can
13 talk to you now.

14 Q And how many, I guess, days later approximately was
15 it before you came forward with this story, I
16 guess, of what you thought you heard?

17 A It was Monday.

18 Q Did you take any notes contemporaneously after the
19 conversation? Were you at your car and write
20 anything down or make any kind of report?

21 A No, sir.

22 Q And what other individuals would have been in
23 earshot that would have heard the same thing?

24 A As I stated, sir, there was someone else that
25 walked out with us, but I can't honestly remember

1 who else was standing there, other than the
2 investigator with the Solicitor's Office.

3 Q Other than when you came in and met with the
4 assistant solicitor about the case, did you have
5 any conversation or discussion about this
6 allegation with anyone else?

7 A No, sir.

8 MR. SNELL: May it please the Court, Your
9 Honor.

10 (Pause.)

11 BY MR. SNELL:

12 Q Chief Oswald, can you tell us what other things
13 were included in the conversation you had with
14 Ms. Broome? What other things did y'all discuss?

15 A Like I said, she was discussing the foreperson of
16 the jury was the one that held out so long, and
17 they had to talk with her to convince her,
18 whatever. I can't remember the exact terminology,
19 but that was the main point of the conversation.

20 Q Was there any other part of the conversation
21 regarding any officers that may or may not be
22 currently with your department?

23 A Not with her. I did not have that conversation
24 with her, no, sir.

25 Q So the only -- and approximately how many minutes

1 did the conversation take?

2 A Just a few minutes. Because, like I said, I turned
3 and walked away as I met Mr. Williams coming out
4 the door.

5 Q Would it be fair to say two or three minutes or
6 more or less?

7 A More or less, yes, sir.

8 Q Thank you.

9 MR. SNELL: No other questions.

10 THE COURT: Anything further from the State?

11 MR. STUMBO: Just one follow up.

12 EXAMINATION

13 BY MR. STUMBO:

14 Q Chief Oswald, when you came in to tell us and you
15 couldn't find Solicitor Myers, who did you talk to
16 first?

17 A The assistant solicitor beside you.

18 Q You didn't talk to me until later on?

19 A That's correct.

20 MR. STUMBO: No further questions.

21 THE COURT: Thank you very much.

22 THE WITNESS: Thank you, Your Honor.

23 (Witness leaves the witness stand.)

24 THE COURT: Kevin Wilson.

25 KEVIN D. WILSON, being

1 first duly sworn, testifies as follows:

2 CLERK: State your name for the record,
3 please.

4 THE WITNESS: Kevin D. Wilson, W-I-L-S-O-N.

5 EXAMINATION

6 BY THE COURT:

7 Q Mr. Wilson, where are you employed?

8 A The Lexington County Solicitor's Office.

9 Q What is your position there?

10 A Investigator.

11 Q Mr. Wilson, did you sit in or participate in any
12 way in the trial of the State versus Joe Butler?

13 A Yes, sir.

14 Q You were present during the entire trial?

15 A Yes, sir.

16 Q And following the trial, we now believe it's Friday
17 the 12th, did you have any encounter with a juror,
18 encounter in some way the juror, number 27, Betty
19 J. Broome?

20 A Yes, sir.

21 Q Would you tell us about that, please.

22 A Generally when we finish a trial, we ask the jurors
23 if they would like to talk to us. If they say yes,
24 then we ask them: What is it that we could have
25 done better in our effort to prosecute this case?

1 She went on to say that there was a holdup.
2 It was like eight to four and then ten to two.
3 Then if we would have had the original officer from
4 Batesburg, that would have been better. If we
5 would have had the aunt, I believe who had the
6 party, that would have been better and so on and so
7 forth.

8 Q Talking about witnesses?

9 A Yes, sir.

10 Q And did you overhear any conversation between Chief
11 Oswald and Ms. Broome?

12 A Yes, sir, we were outside. Actually when
13 Ms. Broome came out, I asked her, Would you be
14 willing to talk to me? That was by the elevator.
15 She said, Yes, let's go on down the elevator,
16 because she wanted to take a smoke.

17 We went downstairs. I think the victims went
18 out, along with Ms. Powell, who walked them out.
19 We came out after them. We were all near the flag
20 pole. That's when the conversation began about the
21 eight/four, ten/two and about the holdup. The
22 foreman was a little hesitant on her deliberation.
23 That's what took so long.

24 She went on to say about the witness from
25 Batesburg, about the witness from the family. Then

1 Chief Oswald came up and said, Now I can talk to
2 you and went on to ask about or state that if -- he
3 went on to make the statement, I can talk to you
4 now because the case is over, and that he had been
5 in some trouble.

6 She said, Yes, I knew that because I Googled
7 him. I don't know if it was Google or looked up on
8 the internet. That's where the Chief and I
9 disagree, whether it was Google or internet, but
10 still computer.

11 Q What took place after that?

12 A After that, as soon as she said that, the Chief
13 walked away. Mr. Williams came out. He saw that
14 and then the Chief walked down, along with
15 Mr. Williams. We were still talking, along with
16 Ms. Powell. We thanked her for her service, and I
17 think that was about it that I can remember.

18 Q Did you do anything as a result of that
19 conversation?

20 A No, sir -- I'm sorry, I came back and told David
21 and Rhonda that we talked to her. This is what
22 happened, if we had this witness and that witness,
23 it probably would have been a lot easier.

24 Q Did you talk to them about the internet or Google?

25 A I didn't.

1 Q You didn't?

2 A No.

3 Q All right. Anything else you can recall about that
4 incident?

5 A No, sir.

6 THE COURT: Mr. Stumbo, anything for this
7 witness?

8 MR. STUMBO: Just a couple, Your Honor.

9 EXAMINATION

10 BY MR. STUMBO:

11 Q Investigator Wilson, do you remember Ms. Powell,
12 that she walked the victims out in the process of
13 escorting them to their vehicles at the time?

14 A Yes, sir.

15 Q To your knowledge did she overhear that or did she
16 come up to the conversation after that?

17 A She was in close proximity. I don't know if she
18 heard what took place between Ms. Broome and I and
19 Chief Oswald. She was in close proximity, but I
20 don't know if she heard that.

21 Q Okay.

22 MR. STUMBO: That's all, Your Honor.

23 THE COURT: Mr. Snell.

24 EXAMINATION

25 BY MR. SNELL:

1 Q Investigator Wilson, did Ms. Broome share with you
2 any of the particular information that she -- any
3 particular information that would have come from
4 the internet? Did she tell you anything about the
5 case that she wasn't supposed to know?

6 A I think she said about it, she looked up on the
7 internet about the charges in Aiken.

8 Q Isn't it true that you had told her about the
9 charges in Aiken and the other alleged victims in
10 the case and provided those details to her, kind of
11 the background of the Defendant?

12 A That was all in the conversation right there
13 together, yes, sir.

14 Q So were you present when Chief Oswald provided any
15 details concerning the case to Ms. Broome?

16 A What I remember it was the same information that I
17 gave about that.

18 Q And can you repeat that information for us. Tell
19 us exactly what you told Ms. Broome.

20 A To the best of my recollection, I stated that he
21 had been charged in Aiken with a similar incident,
22 which he was acquitted.

23 Q So you were the one that had to actually tell or
24 share that information with Ms. Broome?

25 A I believe I was, yes, sir.

1 Q And so other than overhearing Ms. Broome -- other
2 than your recollections where you heard her say, I
3 looked him up on the internet or I Googled him, do
4 you have any other information to suggest that she
5 violated any oath as a juror?

6 A Other than her stating that she looked up on the
7 internet, no sir.

8 Q Or Googled?

9 A Or Googled.

10 Q You are not sure what she said, right?

11 A That's correct.

12 MR. SNELL: No other questions.

13 THE COURT: Mr. Stumbo?

14 MR. STUMBO: Nothing further.

15 THE COURT: You may come down. Thank you very
16 much.

17 (Witness leaves the witness stand.)

18 THE COURT: Any other witnesses that you are
19 aware of Mr. Stumbo?

20 MR. STUMBO: Your Honor, Mr. Davitte is not
21 here today. The affidavit that he provided us, Your
22 Honor, we felt was more really appropriate maybe to the
23 mistrial motion rather than this today.

24 He made himself completely available to us and
25 to the Court, and I think he is perfectly willing to

1 come in and testify to what is in the affidavit. But
2 other than that, Your Honor, we don't have any other
3 information.

4 THE COURT: He should be subject to cross
5 examination.

6 MR. STUMBO: Yes, sir.

7 THE COURT: Where does he live? Is he here?

8 MR. STUMBO: He lives in Irmo, Your Honor, I
9 believe the Whitehall area of Irmo. He's an
10 acquaintance of Deputy Solicitor Riddle. That fact and
11 the reason this came to light is they ran into each
12 other at the Sam's club on Harbison Boulevard the
13 weekend after the trial.

14 Mr. Riddle didn't have any idea about the
15 case, and Mr. Davitte kind of filled him in on it and
16 who were the prosecutors. As a result of that, Deputy
17 Solicitor Riddle came to us and said, An acquaintance of
18 mine told me about some of the jury deliberations. We
19 had a very detailed conversation about the case. Deputy
20 Solicitor Riddle actually called him and asked him if he
21 would be willing to come and talk to us.

22 THE COURT: Is the Solicitor's Office aware of
23 any other juror that reported similar behavior on behalf
24 of Ms. Broome?

25 MR. STUMBO: No, sir, Your Honor, none that we

1 are aware of. Based on the affidavit, Mr. Davitte
2 indicated to us that there were several other jurors in
3 the room when this alleged statement was made by
4 Ms. Broome, and he cut her off immediately, and several
5 other jurors did the same thing, essentially threw up
6 their hands and said, We can't talk about that. It's
7 not evidence in the case. That's all I know at this
8 point, Your Honor.

9 THE COURT: Mr. Snell.

10 MR. SNELL: Your Honor, I guess if that
11 concludes -- if I understand correctly, does that
12 conclude the evidence presented in support of, I guess,
13 the contempt allegations?

14 THE COURT: Yes, sir.

15 MR. SNELL: Your Honor, at this time I make a
16 motion for directed verdict as far as all issues of
17 contempt. I don't believe we had any evidence put forth
18 that would actually substantiate or provide a basis for
19 the allegation that she actually did look anything up
20 over the internet, other than the potential conflicting
21 testimony, I think -- I don't think that satisfies the
22 necessary elements.

23 THE COURT: I respectfully deny your motion.
24 I have got sworn statements from two officers, one
25 officer employed in law enforcement and one indirectly

1 employed in law enforcement. I respectfully deny your
2 motion.

3 MR. SNELL: Your Honor, my client has asked
4 for about a three-minute recess, if she can run outside
5 very briefly.

6 THE COURT: Sure, go ahead. Approach the
7 bench, please.

8 (Whereupon there is a bench conference off the
9 record.)

10 MR. WILLIAMS: Your Honor, may I approach
11 also? I don't know if I have standing.

12 THE COURT: You don't have standing for this
13 discussion.

14 (Whereupon there is a bench conference off the
15 record.)

16 THE COURT: Are you ready to proceed?

17 MR. SNELL: We are, Your Honor. Your Honor, I
18 would like to let the Court hear from Ms. Broome.

19 THE COURT: Come around, Ms. Broome.

20 BETTY BROOME, being
21 first duly sworn, testifies as follows:

22 CLERK: State your name for the record.

23 THE WITNESS: My name is Betty Broome.

24 EXAMINATION

25 BY MR. SNELL:

1 Q Ms. Broome, I will stand over here and ask you to
2 make sure you speak up so everyone can hear you and
3 talk slowly enough for the court reporter --

4 A Yes, sir.

5 Q -- to take down your testimony. Ms. Broome, first
6 of all, where do you reside?

7 A I live in Lexington.

8 Q What is your address?

9 A 427 Wise Ferry Road.

10 Q Who do you live with?

11 A My husband.

12 Q Is that the fellow in the courtroom?

13 A Yes, he is.

14 Q Kind of seated over behind me?

15 A Yes, he is.

16 Q How did you come to get involved in this case?

17 A I was picked for jury selection on Monday, and we
18 had to call back on Wednesday, which I actually got
19 picked on Wednesday. We deliberated until Friday,
20 and we stayed in the courtroom for the verdict and
21 the sentencing. And as I was leaving --

22 Q Ms. Broome, how did you find out you were going to
23 be on this jury?

24 A I got mailed documentation.

25 Q And what week did your jury service start?

- 1 A Monday, March 8th.
- 2 Q What happened when you came to court on March 8th?
- 3 A We got sworn in and they picked for the first case,
- 4 and we got released.
- 5 Q So were you selected for the first case?
- 6 A No, sir.
- 7 Q When did you come back?
- 8 A Wednesday.
- 9 Q How did you know to come back?
- 10 A We were told to call in at 12:00 o'clock on
- 11 Wednesday and were told to be here at 2 or 2:30 for
- 12 roll call.
- 13 Q Did you call back?
- 14 A I did.
- 15 Q And what happened? Tell us what happened on
- 16 Wednesday afternoon when you got to court.
- 17 A I got called up for jury selection. I was picked.
- 18 I was standing at the podium. The Solicitor's
- 19 Office was at one table and Theo was at the other
- 20 table. They look at you, and the lady in front
- 21 tells you to go sit in the jury box once you are
- 22 selected.
- 23 Q At that time is that the first time you learned
- 24 what case you would actually be sitting on to be
- 25 tried?

1 A I think we were told the morning when we came back
2 in because everybody had to look at Joe to see if
3 they knew who he was.

4 Q That was Wednesday afternoon?

5 A Yes, sir.

6 Q What time did you leave the courthouse on Wednesday
7 afternoon?

8 A We got released, I think, about 4:30.

9 Q Where did you go when you were released from the
10 courthouse?

11 A Home.

12 Q When you were home, what kind of research or
13 looking up or investigation did you do about the
14 case?

15 A None.

16 Q Why not?

17 A Because the judge told me not to.

18 Q When did you come back to court?

19 A The next morning, Thursday.

20 Q Approximately what time did you come back to court?

21 A I think we had to be here at 9:30.

22 Q What happened during the day on Thursday?

23 A They did opening statements and they started the
24 case.

25 Q What kind of case was it?

1 A It was criminal sexual misconduct, I believe you
2 call it, two charges though, two indictments
3 rather, I'm sorry, lewd act and criminal sexual
4 misconduct.

5 Q What time did the case finish up on Thursday?

6 A We had to leave. I believe they had another
7 verdict coming in. I think it was like 4:30,
8 5:00 o'clock, somewhere around there.

9 Q Where did you go when you left?

10 A Home.

11 Q When you got home Thursday, what kind of research
12 or --

13 A None.

14 Q -- investigation or looking up did you do?

15 A None.

16 Q By Thursday afternoon had you spoken to anyone else
17 that had done any research or investigation?

18 A No.

19 Q You hadn't seen any new reports or news articles or
20 any media account of the case?

21 A No, sir.

22 Q What time did you come back? When was the next
23 time you came back to court after Thursday?

24 A Friday morning. I think it was 9:30.

25 Q What happened Friday morning?

- 1 A Closing arguments started. Both lawyers, the
2 solicitor had the closing arguments, and we went
3 into deliberation.
- 4 Q Approximately what time were deliberations in the
5 case?
- 6 A Ten-thirty or 11, somewhere around there. They had
7 ordered lunch. We were told not to start
8 deliberating until after lunch.
- 9 Q Did anybody on the jury start deliberating prior to
10 that?
- 11 A No.
- 12 Q At the time the deliberations had started, did you
13 know anything about Mr. Butler from research,
14 investigation?
- 15 A I knew what was told to us in the courtroom.
- 16 Q Did you know anything else other than what come to
17 you while you were sitting in the jury chair?
- 18 A No, sir.
- 19 Q How long did the deliberations take?
- 20 A All afternoon. We didn't finish up till about
21 five.
- 22 Q And what was the verdict?
- 23 A We found him not guilty on the criminal sexual
24 misconduct and guilty on the lewd act.
- 25 Q And what happened after the jury -- after you and

1 the other members of the jury returned the verdict?

2 What happened next?

3 A They sentenced him.

4 Q And did you stay for sentencing?

5 A Everybody did.

6 Q What happened after the sentencing?

7 A I had went back to the jury room to get my umbrella
8 and my book. I was going to the ladies rooms and
9 heading to the elevator. The gentleman approached
10 me from the investigator's office and asked if he
11 could speak with me.

12 I told him I didn't know who -- I said, I
13 don't know. Who are you? He said, I'm with the
14 investigator's office -- the Solicitor's Office,
15 I'm sorry.

16 Q Was that Investigator Wilson that has testified
17 here just a few minutes ago?

18 A Yes, sir.

19 Q Where were you when he approached you?

20 A I was heading to the elevator.

21 Q On what floor?

22 A The fourth floor.

23 Q Fourth floor?

24 A Uh-huh. (Indicating affirmative response.)

25 Q Where did y'all go or what happened after he asked

1 you that?

2 A I told him I wanted to go outside and smoke. The
3 young lady sitting with the family -- I don't know
4 her name -- with the black shirt, she actually rode
5 done with us as well, and we started talking about
6 the case.

7 Q Where were you when you were talking about the
8 case?

9 A Right outside the front steps.

10 Q Is that close to the flag pole?

11 A I don't think so. It's right beside the door.

12 Q Who else was present during that conversation?

13 A The Chief of Police, I'm not sure if he was already
14 there or if he walked up. He was in proximity
15 shortly after that. It was just the three of us,
16 and she left to go upstairs. She had to go do
17 something. I'm not sure what she said. She said
18 she had to go upstairs. The Chief of Police was
19 there maybe for five minutes, and then he left as
20 well.

21 Q Tell us what kind of conversation you had with
22 Investigator Wilson and Chief Oswald.

23 A Chief Oswald, I asked him a couple of questions. I
24 told him the juror had a problem with a few things.
25 I explained to him that -- I asked him the question

1 why he did not bring in the officer who took the
2 mother and daughter's statement to give a statement
3 and sit in the witness stand because it would have
4 shed some light as far as the jury was concerned.

5 He said he was no longer with the police
6 department. I said, Well, can't you subpoena him?
7 I don't believe he answered my question. What else
8 did we talk about with the Chief of Police? I
9 believe that's it really. The Chief of Police
10 didn't have a whole lot to do with the case. He
11 just sat at the table.

12 Q What kind of conversation did you have with
13 Investigator Wilson?

14 A Investigator Wilson, we talked about the case a
15 little bit in the elevator. I told him it was a
16 hard case. It was hard to deliberate due to the
17 fact that we didn't have any physical evidence,
18 that we followed the letter of the law of the
19 judge.

20 The judge did explain to us there was no
21 physical evidence, and I'm not sure the exact
22 wording, but he stated that if we believed [REDACTED] in
23 the witness stand, we needed to say Joe was guilty.
24 If we did not believe [REDACTED] was telling the truth,
25 Joe was not guilty.

1 I did tell them -- let me back up first. I
2 wanted to go outside. When I got downstairs, the
3 lady walked off, and the Chief of Police walked
4 off. Me and the investigator -- at that point I
5 thought he was with the Solicitor's Office. He
6 didn't tell me he was an investigator.

7 We were talking about the case, and I told him
8 how hard it was. I said it was almost a hung jury,
9 and I'm not sure on the exact wording, but I did
10 ask the gentleman if Joe Butler had any prior
11 charges in this area, meaning child pedophile
12 stuff.

13 The gentleman looked at me and said, How did
14 you know? I said, I didn't. I had a vibe. That
15 is when he shared with me that there was a case in
16 Aiken that Mr. Butler got on, and there were semen
17 samples and that he --

18 THE COURT: There was what?

19 THE WITNESS: There were semen samples in that
20 case.

21 A That Joe got off on it and the victim was actually
22 in the courtroom to testify, but Judge Cooper would
23 not allow it. ~~(Also, I did make the comment to the~~
24 ~~jury panel and to this gentleman here that I had~~
25 ~~thought about Googling Mr. Butler, but I did not~~

1 ~~want to bias my opinion, and I was instructed not~~
2 ~~to. I never said I got on the computer or I~~
3 ~~[Googled him.]~~

4 Q At any point did Chief Oswald or Investigator
5 Wilson make any statement to you that you didn't
6 like or didn't appreciate?

7 A Yes, there was a statement that the Solicitor's
8 Office was saying. I'm not sure if the young lady
9 was in the elevator with us or not or if we were
10 outside when he said it. I believe we were in
11 front of the elevator when the gentleman said, I
12 knew we had you.

13 That bothered me because he made me feel like
14 I was a bought and paid for juror. I should have
15 shut my mouth right then and there, but I was
16 trying to help them because this was a hard case
17 because of the lack of evidence. I mean, we had to
18 go by testimony. It was a hard case to come up
19 with a verdict.

20 Q And just to be clear, at any point did you ever
21 tell anyone that you had Googled or had done any
22 research on the internet?

23 A No. I said I thought about it. I never said I
24 did. I said I did not Google him.

25 Q Did at any point you try to use any knowledge that

1 you obtained from the internet or any kind of
2 research to try to sway the proceedings in process?

3 A Joe's past was never brought up in the jury room.
4 No one knew anything about Joe other than what we
5 were told in court.

6 Q Ms. Broome, have you -- did you take a polygraph
7 examination regarding this case?

8 A I did.

9 Q About these allegations. Can you tell the Court, I
10 guess, when and where you took that examination.

11 A I took that polygraph yesterday at 4:00 o'clock at
12 your office.

13 Q Was I in the room during the administration of the
14 exam?

15 A No, sir.

16 Q And do you recall the specific questions the
17 examiner asked you?

18 A Yes, sir.

19 Q What were they?

20 A He asked me, I think, nine different ways if I
21 Googled or researched Joe Butler during the trial
22 of his case, and I told him no. He asked me if I
23 have ever lied to an official at a certain age. He
24 asked me how old I was. He asked me those kind of
25 questions.

- 1 Q Are you aware of your results?
- 2 A He told me I passed with flying colors.
- 3 Q And was the polygraph examiner -- do you recall his
- 4 name?
- 5 A Mr. Hadley. Is it Hadley?
- 6 Q Do you recall -- Hartley?
- 7 A Hartley.
- 8 Q Do you recall prior to him giving you -- asking you
- 9 the questions, him being provided a copy of the
- 10 Court's rule to show cause in this case?
- 11 A Yes.
- 12 Q And what kind of contact or communication did you
- 13 have with anyone from the Court, the Solicitor's
- 14 Office or any of the parties concerning this case
- 15 prior to you receiving the rule to show cause?
- 16 A Prior to? None.
- 17 Q From the time you left the courthouse to the time
- 18 the rule to show cause got delivered to you --
- 19 A Nothing.
- 20 Q -- was there any kind of contact or communication?
- 21 A No, sir. Ms. Frick called me Thursday to tell me
- 22 there was no time on the paperwork I received, I
- 23 believe.
- 24 Q Okay. Was there any efforts any time during your
- 25 conversation with either Chief Oswald or

1 Investigator Wilson, did any of them try to clarify
2 your statement or ask you to kind of double verify
3 with you --

4 A No, sir.

5 Q -- what you had done or what you had looked at?

6 A No, sir. When I thought about it later, I felt
7 like I was getting pumped, but, no, sir, they
8 didn't clarify anything. I do want to say
9 something. Chief Oswald did not approach me. The
10 man from the Solicitor's Office approached me out
11 here in the hallway.

12 Chief Oswald was actually outside or he walked
13 in on us. He didn't say, I can talk to you now. I
14 approached him on my conversation. I told him
15 about the jurors had a problem with them not
16 bringing the original investigator in on the case.

17 Q When that conversation with Investigator Wilson
18 concluded and Chief Oswald concluded, did you have
19 any suspicion or impression or understanding from
20 them at all that they could have misunderstood?

21 A No.

22 Q Or thought you had confessed to something serious?

23 A No, sir, because I made a statement that I thought
24 about Googling but I did not because I didn't want
25 to jeopardize the decision, and I wanted to follow

1 the judge's directive. He was very adamant on what
2 we were supposed to do and not supposed to do.

3 Q I have no other questions. Answer any questions
4 that the judge has or Mr. Stumbo has.

5 THE COURT: Mr. Stumbo.

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

8 EXAMINATION

9 BY MR. STUMBO:

10 Q Good afternoon, Ms. Broome.

11 A Hi.

12 Q When Mr. Wilson approached you, did you have any
13 trepidation in talking to him about the case?

14 A I didn't know who he was. I thought he was a
15 reporter at first. He said, Can I talk to you? I
16 said, I don't know. Can you? He said, I'm with
17 the Solicitor's Office.

18 Q When he asked if he could talk to you, did you
19 voluntarily do that?

20 A I did.

21 Q Did Investigator Wilson ever threaten you in any
22 way if you didn't talk to him?

23 A No, sir.

24 Q Did he promise you any rewards if you talked to
25 him?

1 A No, sir.

2 Q When Chief Oswald walked up and said, Now I can
3 talk to you, did you have any feeling like he was
4 pressuring you to talk to him?

5 A I don't recall him saying, I can talk to you now.
6 He was just there. You know what I'm saying? He
7 didn't approach me and didn't approach the
8 gentleman. He was just standing there.

9 I asked him a question. I said, We, the
10 jurors, were curious why you didn't call the
11 original detective or the officer that took the
12 statements.

13 Q Did he in any way threaten you to talk to him?

14 A No, sir.

15 Q Did he promise you anything --

16 A No, sir.

17 Q -- in exchange for that?

18 A No, sir.

19 Q Is there anything -- and I believe you did make a
20 statement on the record that you stated that you
21 thought about looking him up or thought about
22 Googling or something to that effect?

23 A Yes, sir.

24 Q Anything other than that that you said that you
25 feel could have been misconstrued or misunderstood?

1 A That's all I said. Well, when I asked the
2 gentleman if he had -- I don't remember the exact
3 wording. I asked the Solicitor's man, I said, Did
4 Joe Butler have prior charges in this area or maybe
5 I said child pedophile or something, and his exact
6 words to me was, How did you know?

7 I said, I didn't. I had a vibe. He shared
8 with me about the Aiken case, that there was a case
9 in Aiken. I don't know if he said dismissed or
10 whatever word he used. He said, We had semen
11 samples, and the victim was here in the courtroom,
12 but the judge would not allow her to testify in our
13 case.

14 Q And after that conversation with Investigator
15 Wilson, how about Chief Oswald? Did he ask you
16 anything about it?

17 A No, Chief Oswald had already left when this came
18 about. Chief Oswald wasn't there but maybe three
19 or four minutes. He didn't last long. Just a few
20 minutes and he was gone.

21 Q But you did talk to him about the case?

22 A I asked him why the deputy wasn't there that took
23 the statement from the mother and daughter.

24 Q Is there anything that you can remember that you
25 may have said in the jury room that could have been

1 misconstrued?

2 A No, sir. All I asked them, I did make a comment,
3 Did anyone look Joe up? And everybody said no. I
4 said I didn't either because I didn't want to bias
5 my decision. That's my exact words.

6 Q That's what you said in the jury room?

7 A And it's the same thing I said to the investigator,
8 yes, sir.

9 Q Ms. Broome, can you say under oath that the
10 decision you made in this case was based on the
11 evidence in this courtroom?

12 A When we are talking evidence, are we talking
13 testimony?

14 Q Yes, ma'am.

15 A Yes.

16 Q What was presented in the courtroom.

17 A Yes, sir. Between the testimony that was in this
18 courtroom and the letters that [REDACTED] and her mother
19 had wrote to the Chief of Police and the letter to
20 the guidance counselor, yes.

21 Q You believed she was telling the truth?

22 A I did.

23 Q And that's what you based your vote for guilty on?

24 A Uh-huh. (Indicating affirmative response.)

25 MR. STUMBO: I have no further questions, Your

1 Honor.

2 EXAMINATION

3 BY MR. SNELL:

4 Q Finally, Ms. Broome, is there anything you did at
5 any point during the case while you were at home or
6 anywhere else that violated any instructions
7 provided to you by the Court?

8 A No, sir.

9 MR. SNELL: No other questions.

10 THE COURT: You may come down. Thank you.

11 (Witness leaves the witness stand.)

12 THE COURT: Anything from the State? Anything
13 further?

14 MR. STUMBO: Nothing for purposes of the rule
15 to show cause hearing.

16 THE COURT: Mr. Wilson, retake the stand,
17 please.

18 KEVIN D. WILSON, having been
19 previously duly sworn, resumes the witness stand and
20 testifies as follows:

21 THE COURT: You are still under oath.

22 THE WITNESS: Yes, sir.

23 EXAMINATION

24 BY THE COURT:

25 Q Mr. Wilson, Ms. Broome has testified that you had

1 somewhat of an extensive conversation with her
2 about the Aiken case. What is your recollection of
3 that?

4 A After having heard what she said about the semen,
5 yes, I did state that. There was some semen in the
6 previous case in Aiken.

7 Q You told her that?

8 A Yes, sir.

9 Q What else did you tell her about the Aiken case?

10 A That he got acquitted.

11 Q Is that the extent of it?

12 A Yes, sir.

13 Q Do you remember anything else about that?

14 A No, sir, just there was semen samples and he got
15 acquitted.

16 Q Not that she was here in the courtroom?

17 A Oh, I'm sorry, yes.

18 Q Just think a minute. Try to recount for me the
19 discussion you had with Ms. Broome about the Aiken
20 case.

21 A Yes, sir. I told her that the victim in the
22 previous case, the Aiken case, was here to testify
23 and that you ruled that it wasn't going to be
24 admitted. In my opinion since it was already --
25 you ruled on it, I could say something about it.

1 Q What else did you say?

2 A I believe that's it, sir.

3 Q You said something about the semen?

4 A Yes, sir, I said something about the semen.

5 Q Was there anything else? In other words, what did
6 you tell her? The question in my mind is she could
7 have learned all that from the internet, but she
8 says you told her about it.

9 A Yes, sir, I told her that, but she said, I knew
10 that.

11 Q She said she knew that?

12 A Yes. So in my mind the only way --

13 Q The semen samples and that sort of thing?

14 A I don't think the semen samples would have been on
15 the internet. I don't know because I didn't look
16 it up myself.

17 Q When she said she knew that, what did you take that
18 to mean?

19 A That she looked it up.

20 Q Okay.

21 THE COURT: Anything further of this witness?

22 EXAMINATION

23 BY MR. SNELL:

24 Q Investigator Wilson, when Ms. Broome said, I knew
25 that, to your understanding of that phrase was that

1 you took, I knew that, to mean she had conducted
2 computer research that she wasn't supposed to?

3 A Yes, sir.

4 Q So based on your concerns of how you interpreted
5 that statement, you made the report to Mr. Stumbo
6 about your concerns?

7 A We talked about that once the Chief came, yes, sir.

8 Q So other than that -- so were all your concerns
9 based on her statement, your recollection of her
10 statement, I knew that?

11 A Yes, sir.

12 Q Thank you.

13 MR. SNELL: No other questions.

14 THE COURT: All right. You may come down.

15 (Witness leaves the witness stand.)

16 THE COURT: Is there anything further on this
17 issue?

18 MR. STUMBO: Nothing from the State, Your
19 Honor.

20 MR. SNELL: Nothing from Ms. Broome, Your
21 Honor.

22 THE COURT: Well, in the interest of time,
23 Mr. Williams, I need to hear from you on your motion.
24 In other words, whether or not I find that Ms. Broome is
25 guilty of contempt or not, I need to hear your motion

1 and what it's based on.

2 (The following proceedings were reported on
3 [REDACTED]).

4 MR. WILLIAMS: All right, sir. Your Honor, I
5 learned about this by virtue of the Solicitor's Office
6 letter which we received on Friday, and that's why I
7 filed the motion for a new trial.

8 Obviously in the letter from Mr. Stumbo, he
9 referenced the fact that one of the jurors had talked to
10 the investigator, as we heard today, and had talked to,
11 I believe, the Chief of Police.

12 Your Honor, since that time, as we have also
13 learned, there was that affidavit which Your Honor, as I
14 understand, will not consider in that it's hearsay, but
15 it's an affidavit which we would suggest to the Court is
16 proper on a motion for a new trial, in that that is
17 normally, if you will, a civil remedy in nature. If not
18 we would ask the Court to have leave of the Court to
19 have that juror present to testify under oath as to
20 those statements.

21 Even though it doesn't appear to be
22 contradicted that there was a statement made by the
23 juror, I think there has been an admission by the juror
24 that there was a statement made in the presence of the
25 other jurors, depending on how you interpret it: Did

1 y'all look him up on the internet? I didn't either
2 because I didn't want to violate the rules.

3 Your Honor, we would suggest that if Your
4 Honor is not going to refer to that affidavit on the
5 motion for new trial, that the juror be present because
6 there is a distinct difference between what that juror
7 says and what the juror says here. That is, she said,
8 Well, you need to look him up.

9 Clearly those words are ominous and
10 influential in nature. Your Honor, I have prepared a
11 short memorandum of law dealing with the issues which I
12 would ask the Court to review. It's simple. I mean
13 it's basic. I have got copies for everyone.

14 There is nothing magic here. It essentially
15 assumes the facts in evidence as being that there was
16 some independent internet research. The statement of
17 the facts goes through the fact Mr. Butler was tried, he
18 was tried for lewd act.

19 Then it cites two cases which I think are the
20 two cases in South Carolina that deal with this issue.
21 That's State versus Harris and State versus Kelly. Now,
22 as I understand the law in reference to State versus
23 Kelly, they reference relevant factors to be
24 considered -- because simply because someone violates
25 the rules that Your Honor gives them as a juror does not

1 in itself constitute sufficient evidence to give the
2 Defendant a new trial.

3 But the relevant factors that are to be
4 considered by Your Honor in regards to whether or not a
5 jury has been effected are the number of jurors exposed,
6 the weight of the evidence properly before the jury, and
7 the likelihood that curative measures were effective in
8 reducing the prejudice.

9 The number one issue, Your Honor, is the
10 number of jurors exposed. Clearly if the affidavit is
11 in play, then this juror referenced by that statement,
12 You need to look him up, the entire jury was exposed to
13 that type of comment.

14 As to the weight of the evidence properly
15 before the jury, if the judge believes that the juror
16 expressed anything in regards to a prior arrest and
17 trial of any nature, Your Honor ruled on that at the
18 beginning of the case. You talked about how important
19 that evidence was.

20 Some of these cases, as you look at the Kelly
21 case and you look at the Harris case, one of them had to
22 do with the definition, when some of the jurors went out
23 and looked up what the definition was of this word. I
24 think our Supreme Court came back with, Well, all they
25 did was look up what the definition of the word was.

1 But Your Honor took particular care in seeing
2 that the fact that my client was arrested and was found
3 not guilty of the charge would be totally improper for
4 this jury to consider in making its deliberations. So
5 we have already satisfied the second prong of that test,
6 and that is the weight of the evidence before the jury.

7 Then it's the likelihood that curative
8 measures were effective in reducing the prejudice.
9 Well, there was no curative measures that Your Honor
10 could have done. This is not a situation where Your
11 Honor even knew about it. So the only curative measure
12 you can do now, Your Honor, is to grant my client a new
13 trial.

14 Your Honor, where my client has been convicted
15 and got 12 years in jail and was found not guilty on the
16 evidence produced in the Aiken case, surely there should
17 be sufficient evidence here to consider giving my client
18 a new trial where those factors are not in
19 consideration.

20 Because there is just a general smell, Your
21 Honor, in reference to what was testified to and what
22 was presented. It certainly would cause concern as the
23 administrator of justice to consider whether or not my
24 client -- because remember, Your Honor, there was an
25 alibi defense in this case.

1 Your Honor, I have been practicing law for 34
2 years. I've had two alibi defenses in 34 years. I've
3 never been in that position. Clearly this was a case,
4 as we have learned, it was eight to four, if you believe
5 what some of the witnesses have said. So we think, Your
6 Honor, that the Defendant should be granted a new trial
7 on all those bases.

8 THE COURT: Solicitor.

9 MR. STUMBO: Your Honor, we would respectfully
10 disagree with defense counsel. We would rely on five
11 different cases that have been cited by our Courts, Your
12 Honor, on this very issue of juror misconduct, one of
13 which Your Honor was decided this month. It doesn't
14 have a reporter number on it. It's in the advance
15 sheet, State versus Bantan. It was decided March 10th
16 of this month.

17 Your Honor, the very issue in that case was
18 juror misconduct in the sense that there was -- it was a
19 case down in Orangeburg. One of the jurors had
20 overheard a conversation at a gas station about that
21 defendant being investigated for another similar crime.

22 When that issue came up in that trial, the
23 Court voir dired that juror to ask him if that affected
24 his ability to be fair and impartial. The juror stated
25 that it did not, and the judge made a finding on the

1 record that it did not and had not affected the process,
2 and there was no prejudice to the defendant.

3 Your Honor, State versus Wasson is a 1989
4 State Supreme Court case. The citation on that is 291
5 S.C. 508. Your Honor, in that case two of the jurors
6 down at the beach, it was an Horry County case, had read
7 a newspaper article about the trial.

8 There was specific information in the
9 newspaper article about prior similar crimes by the
10 defendant. In that case it was brought to the Court's
11 attention.

12 Your Honor, the judge questioned both jurors
13 again as to their impartiality in the case and
14 ultimately Your Honor asked the entire -- I believe in
15 that case the entire jury panel because that information
16 had gone out in the jury room and asked them if they
17 could be fair and impartial.

18 The entire issue there again, Your Honor,
19 just as in our case was the issue of prior bad acts or
20 other bad acts outside of the indicted charge. So I
21 believe State v. Wasson, Your Honor, is also right on
22 point.

23 Your Honor, there's three other cases that the
24 State believes supports our position that there has been
25 no prejudice to Mr. Butler based on what we know right

1 now. State v. Harris is one that Mr. Williams cited.
2 That was actually a murder case tried here in Lexington
3 County in front of Judge Keesley.

4 That case, Your Honor, again as Mr. Williams
5 noted, there was an issue of where the juror looked up
6 the definition of malice and manslaughter, and actually
7 that juror said under oath to the judge in that case
8 that that confirmed to her that she needed to go with
9 murder instead of the lesser charge.

10 Judge Keesley fully questioned that juror and
11 any other jurors that heard -- her information, I
12 believe, she testified to the judge in that case that it
13 did not impact her decision, that she based her decision
14 on the evidence in the courtroom and the judge's
15 instructions.

16 Judge Keesley in that case, Your Honor, again
17 denied the defense's motion for a mistrial. It was
18 upheld on appeal. State v. Harris, Your Honor, the cite
19 on that is 340 S.C. 59. That's a 2000 State Supreme
20 Court case.

21 Your Honor, State versus Kelly, I believe this
22 one is especially instructive because it was a death
23 penalty case up in Spartanburg back in 1998. In that
24 case, Your Honor, there was a pro death penalty pamphlet
25 that was brought into the jury room by one of the jurors

1 and passed around the jury room.

2 I believe the pamphlet, Your Honor, the title
3 of it was God, Law, and Capital Punishment. This was
4 during the penalty portion of the death penalty case
5 where this juror passed this pamphlet around saying that
6 it's God view that murder deserves death, and that was
7 the very question before the jury, Your Honor.

8 It's not directly on point with our case here,
9 but I would say, Your Honor, just on its face, it was
10 very bad for the defendant in that death penalty case to
11 have that information around the jury room. In that
12 case, Your Honor, Judge Clary, I believe tried that
13 case, and questioned all the jurors.

14 He asked them did it affect their ability to
15 be fair and impartial. They said it did not. Again,
16 Your Honor, the mistrial motion was denied. It was
17 upheld on appeal by the Supreme Court.

18 Your Honor, the last case and I think this one
19 is very instructive basically because of the timing of
20 what we have here. It's actually a civil case that was
21 decided last year by Judge Cooper over in Sumter. This
22 is Judge Cooper from Manning.

23 Your Honor, Judge Cooper in that case was
24 informed by one of the jurors the day after the verdict
25 came back -- it was a verdict for the defense. It was a

1 civil case called The Vestry and Church Wardens of the
2 Church of the Holy Cross versus Orkin Exterminating
3 Company. The cite on that case, Your Honor, is 384
4 S.C.441. Again, it's a 2009 case just decided this past
5 year.

6 Judge Cooper was informed by one of the jurors
7 that there was extensive information that would appear,
8 Your Honor, to be very prejudicial to the plaintiff in
9 that case, the church. It was a lawsuit dealing with
10 termite damage, Your Honor, and it was a suit against
11 Orkin for damages.

12 Well, Your Honor, that juror comes in and
13 according to the juror in the jury room said, That
14 church has plenty of money. She brought in outside
15 information about a contractor she had talked to about
16 the damage that termites can do, about paint on the
17 walls, all sort of things.

18 THE COURT: I am very familiar with the case.

19 MR. STUMBO: It was very prejudicial, Your
20 Honor, to the plaintiff. Judge Cooper in that case
21 after the trial was over was able to, one, have a
22 contempt hearing in which he actually held that juror
23 in contempt but still questioned on the record whether
24 she was fair and impartial and the jury verdict was
25 untainted. Your Honor found that juror in contempt

1 for violating his order but yet found that -- denied
2 the motion for a mistrial by the plaintiff in that
3 case.

4 THE COURT: All right. Let me ask you this.
5 Mr. Williams suggests that in order to be fair to his
6 client that the Court exam Mr. Davitte. What is your
7 position on that?

8 MR. STUMBO: Your Honor, we don't have any
9 problem with that at all. In fact, Mr. Davitte was more
10 than willing to come and talk to Your Honor about it.
11 Your Honor, from what I am hearing from Mr. Williams, it
12 sounds like he doesn't mind Your Honor looking at the
13 affidavit. He doesn't object to the hearsay nature of
14 it.

15 THE COURT: And what about the entire jury
16 panel?

17 MR. STUMBO: Your Honor, if Your Honor -- the
18 State's position is this, Your Honor. These victims,
19 before we grant a mistrial and put this victim back
20 through this, we believe there needs to be a showing of
21 prejudice.

22 We just don't think that has been done yet.
23 So if it takes, Your Honor, bringing the jurors back in
24 and examining them on this issue, then we are more than
25 willing to have that happen.

1 THE COURT: I don't think I can do it
2 piecemeal. I think I have got to do it entirely for
3 both motions' purposes.

4 MR. STUMBO: Yes, sir.

5 THE COURT: I will instruct the Solicitor's
6 Office to get in touch with the entire jury panel and
7 coordinate with my office. We will set a time with
8 Judge McMahon's permission when we can do that, bring
9 them all in, the 12 of them.

10 MR. STUMBO: Your Honor, you want us to send
11 the subpoenas out?

12 THE COURT: I will ask the clerk to do it. I
13 just need the names. I need a time, to figure out a
14 time when it can be done, and the names of the jurors.
15 We will find out one way or the other if there is A.,
16 any verification of Mr. Davitte's statement and if there
17 was any prejudice to the Defendant.

18 MR. STUMBO: Absolutely, Your Honor.

19 THE COURT: By the 12 people. If they say
20 there was not, that's one thing. If his statement bears
21 reliable and other jurors were encouraged to do internet
22 research, then that is a completely different issue.

23 Mr. Snell, I will continue this hearing until
24 I am able to voir dire the entire jury panel.

25 MR. SNELL: Thank you, Your Honor.

1 THE COURT: You will have an opportunity to
2 cross examine. You will be notified. The hearing
3 stands adjourned.

4 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Criminal Court for Lexington County, South Carolina on the 29th day of March, 2010

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

April 3, 2010

COPY
L Coconut Pantsari

Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS
County of Lexington	)	
	)	Juror Inquiry
	)	
IN RE: MATTER OF BETTY J.	)	
	)	
BROOME,	)	
	)	
	)	
JUROR IN TRIAL OF STATE VS.	)	
	)	
JOE BUTLER,	)	

April 8, 2010
Lexington, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JUDGE.

APPEARANCES:

DAVID STUMBO, ASSISTANT SOLICITOR

ROBERT (THEO) WILLIAMS, ESQ.
Attorney for Joe Butler

JAMES SNELL, JR., ESQ.
Attorney for Juror Betty J. Broome

KAREN TRACY
Official Court Reporter

C O N T E N T SINDEX OF EXHIBITS:

(There were no exhibits introduced.)

1 (Steven Davitte).

2 THE COURT: Hey, Mr. Davitte. I'm Tom Cooper.

3 JUROR: I'm Steven Davitte.

4 THE COURT: I was the judge in the case.

5 JUROR: Yes, sir.

6 THE COURT: Not in your case.

7 JUROR: No.

8 THE COURT: In the case that you're here for.

9 I'm just doing a little checking based on the
10 affidavits you gave us.

11 JUROR: Okay.

12 THE COURT: I don't know if you remember
13 Mr. Williams, Mr. Stumbo?

14 JUROR: Yes. Hey, how are you?

15 MR. STUMBO: How are you doing, Steven.

16 THE COURT: And Mr. Snell. These are the lawyers,
17 and I just have to have them present.

18 The affidavit says that one of the jurors made a
19 statement. Was that statement made in plenary session?
20 In other words, when all of the jurors were present?

21 JUROR: Yeah.

22 THE COURT: It's --

23 JUROR: I think everybody was there. I'm not sure
24 everybody was sitting right around the table. You know,
25 some might have been getting something to drink, standing

1 up, this and that. I think everybody was in the room
2 unless somebody was in the bathroom. I'm not sure about
3 that.

4 THE COURT: Would that have been earlier in the case
5 or during deliberations?

6 JUROR: It was --

7 THE COURT: Do you want to look at this? Would that
8 help you?

9 JUROR: Well, I mean, I don't -- it's just been a few
10 weeks. I can probably remember the thing.

11 Timing wise, when we were doing this, it seemed like
12 we had come back from a break or something. As far as
13 when it was earlier in the case -- see, we didn't
14 deliberate that long.

15 THE COURT: Right.

16 JUROR: I mean, if you remember. I mean, it was
17 only --

18 THE COURT: It was Friday afternoon.

19 JUROR: So, you know, being early in the case or late
20 in the case, it's probably a matter of minutes or an hour
21 or something like that. So I don't know exactly when this
22 happened.

23 We initially came in, of course, and tried to see
24 where everybody stood initially, and then we started
25 talking about it, about the case. Then that comment was

1 made.

2 THE COURT: All right. Do you know who made that
3 comment?

4 JUROR: Name wise, certainly not, the young lady that
5 was on the other end of -- I was on one end. She was on
6 the other.

7 THE COURT: Now, is she out in the jury room right
8 now?

9 JUROR: Well, I think I saw her outside. I didn't
10 see her sitting in the jury room.

11 THE COURT: That's the question: Was she sitting in
12 the jury room?

13 JUROR: Not just then, no, sir.

14 THE COURT: Okay.

15 JUROR: She was outside the jury when I --

16 THE COURT: Okay. Then we know --

17 JUROR: -- walked in.

18 THE COURT: -- who it was.

19 JUROR: Okay.

20 THE COURT: Did that encourage you or to your
21 knowledge anybody else to -- what did you say, look him up
22 or something like that?

23 JUROR: Look him up, yeah. Certainly, it didn't me.
24 It didn't encourage me to look him up or to take that into
25 account, because I -- I guess I watch enough T.V. I don't

1 know, you know.

2 THE COURT: Yeah.

3 JUROR: We knew -- or most of us knew, because the --
4 when that statement was made, the young man sitting next
5 to me and two or three others on this side said, "Hey,
6 wait a minute. You can't -- we can't. That's not
7 evidence. We can't."

8 THE COURT: And I had already told you that --

9 JUROR: Yeah.

10 THE COURT: -- to start?

11 JUROR: So that was kind of the end of that as far as
12 that. And to my knowledge, now again, I was on this end.
13 She was on that end. To my knowledge, nothing else, other
14 than what I said here, was said by that young lady about
15 that information. I don't -- I didn't hear it, certainly
16 didn't hear anything anymore.

17 THE COURT: So you would have no knowledge of anybody
18 actually taking that advice, so to speak?

19 JUROR: No, sir. I mean, I -- I wouldn't know, you
20 know, if they were.

21 THE COURT: But nobody said anything?

22 JUROR: No, sir.

23 THE COURT: Okay. Okay. That's all I want to know.

24 JUROR: Okay.

25 THE COURT: Thank you very much --

1 JUROR: All right.

2 THE COURT: -- for coming. Sorry to inconvenience
3 you.

4 JUROR: Okay. All right.

5 THE COURT: You're free to go, by the way.

6 JUROR: Okay.

7 (Pause).

8 THE COURT: The next one will be Randy Amick.

9 (Pause).

10 THE COURT: If you'll come in and have a seat.

11 How are you doing? You're Mr. Amick? I presided
12 over the trial you had a few weeks ago.

13 JUROR: Yeah, I remember you.

14 THE COURT: Come on and have a seat. I just need to
15 ask you a couple questions. It's not going to take long.

16 Mr. Amick, during the jury meeting and deliberations,
17 or actually even before the deliberations started, do you
18 recall any juror mentioning anything about looking up the
19 defendant's record or looking something up about the
20 defendant?

21 (Indicating in the affirmative).

22 THE COURT: You do?

23 JUROR: Yeah.

24 THE COURT: Was it male or female?

25 JUROR: It was a female.

1 THE COURT: All right. And can you tell me what that
2 consisted of?

3 JUROR: I don't know. She just said that she had
4 looked him up on the internet.

5 THE COURT: Okay. Did she encourage other people to
6 do the same thing?

7 JUROR: No. She didn't.

8 THE COURT: All right.

9 JUROR: She just said, "I just looked him up on the
10 internet, but it wouldn't have -- it won't affect my
11 decision." That's what she said, and she said that before
12 we started deliberating.

13 THE COURT: Actually before you started deliberating?

14 JUROR: Uh-huh.

15 THE COURT: Did you hear anybody else say anything
16 similar to that or --

17 JUROR: No.

18 THE COURT: Okay. Just from her?

19 JUROR: Just from her.

20 THE COURT: And did she -- did she convey what she
21 found out on the internet?

22 JUROR: No.

23 THE COURT: Okay.

24 JUROR: She -- she didn't, because I asked her. I
25 said, "Oh, yeah? What did you find out?" She said, "Oh,

1 I'm not going to tell you."

2 THE COURT: Okay. All right. When you were just now
3 sitting in -- in the jury room with your fellow jurors,
4 was she in there?

5 JUROR: Yeah.

6 THE COURT: She is in there?

7 JUROR: Yeah.

8 THE COURT: With y'all?

9 JUROR: Uh-huh.

10 THE COURT: Do you know her name?

11 JUROR: No. I don't know her name. I don't know her
12 number either.

13 THE COURT: Okay. There are 11 -- there were ten,
14 actually, because somebody is out of town, jurors who were
15 called back in out of the 12. One of the jurors, there
16 was -- I held out. That's what I'm wondering if that
17 juror that made that statement was in the jury room with
18 you.

19 JUROR: Yeah, she is out there.

20 THE COURT: Okay. I've got to figure out now -- and
21 you don't know her name or...

22 JUROR: No.

23 THE COURT: Can you tell me what she is wearing? You
24 probably weren't paying that much attention.

25 JUROR: No. I don't pay attention to things like

1 that.

2 THE COURT: Is -- I think your foreman was a black
3 lady, was she not?

4 JUROR: Yes.

5 THE COURT: It wasn't her?

6 JUROR: No. It wasn't her.

7 THE COURT: Well, I need to know who that is. Why
8 don't you -- but I don't want to embarrass you either or
9 put you on any spot.

10 Just have a seat. Let me ask you this: Step out --
11 I've got to figure out how to do this without putting you
12 on any kind of spot.

13 I'm going to try to get you out of here as quick as I
14 can. I hope you understand I do need to find out who this
15 might be because -- well, just believe me, I need to find
16 out who that might be, okay.

17 All right. If you'll just wait a few minutes, the
18 bailiff will show you where to go.

19 JUROR: Okay.

20 THE COURT: And I'm not going to keep you long. This
21 process shouldn't take more than about 30 minutes. So if
22 you'll just go with the bailiff and stick around with him
23 for a minute.

24 JUROR: Okay.

25 THE COURT: If you -- well...

1 JUROR: I mean, I can describe the lady.

2 THE COURT: You can?

3 JUROR: Yeah, she is a brunette.

4 THE COURT: All right. Come on in here. If you can
5 describe her.

6 JUROR: She is a brunette. She has got short hair,
7 and she is heavysset, especially around her waist.

8 THE COURT: Okay.

9 JUROR: It seems like, you know, she has got a real
10 wide waist.

11 THE COURT: Okay.

12 JUROR: She is not proportionate. She's got really
13 narrow shoulders and a really wide waist, you know what
14 I'm saying?

15 THE COURT: All right.

16 (Juror indicating).

17 THE COURT: And how tall would you say she is?

18 JUROR: She is about my height.

19 THE COURT: Okay. And the short brown hair?

20 JUROR: Yeah.

21 THE COURT: Okay. Have a seat over here. If I can
22 identify her without causing you any embarrassment -- I
23 won't do that.

24 MR. SNELL: Judge, there's a one-way mirror.

25 THE COURT: What?

1 MR. SNELL: I think there is a one-way mirror into
2 the courtroom, a family courtroom.

3 MR. STUMBO: You're talking about the media room?

4 MR. SNELL: No, not the media room, the family --
5 this is a family courtroom. No, I'm sorry.

6 MR. WILLIAMS: Family courtroom.

7 MR. STUMBO: Second floor they have -- there's one
8 room, there's one courtroom that does.

9 MR. SNELL: I was thinking okay, I got my floors.
10 I'm sorry.

11 MR. WILLIAMS: Is there any way she could walk by --
12 he could walk by the door --

13 THE BAILIFF: No.

14 MR. WILLIAMS: -- in the main hallway out there?

15 THE COURT: That's... is there any way for him to
16 look in the courtroom?

17 THE BAILIFF: Not without opening, going in -- you
18 know, opening the door and looking in there and...

19 Let me check and let me make sure. There might be --

20 THE COURT: Or else...

21 (Pause).

22 MR. STUMBO: Or where --

23 THE CLERK: Or where --

24 MR. STUMBO: -- he saw her out there.

25 MR. WILLIAMS: But you know, I don't want to put that

1 in his mind.

2 MR. STUMBO: Well, I -- I was just saying, Judge, by
3 description, it sounds like he's describing Ms. Broome.

4 MR. WILLIAMS: Yeah.

5 THE COURT: Yeah.

6 MR. STUMBO: He may have been confused on when he saw
7 her.

8 THE BAILIFF: Judge, in my opinion, the only way he
9 would be able to see her in that courtroom is to open the
10 door and look in.

11 THE COURT: Are they all sitting?

12 THE BAILIFF: They're sitting over on this back side.

13 THE COURT: Do they have their backs to the door?

14 THE BAILIFF: They did.

15 MR. WILLIAMS: It would be bad if he's talking about
16 a different one, Judge.

17 THE COURT: Bad for who?

18 MR. WILLIAMS: I mean, it would be good for me, but
19 we need to know.

20 THE COURT: I know.

21 MR. SNELL: Judge, could someone take a picture with
22 a cell phone?

23 THE COURT: No.

24 (Pause).

25 MR. STUMBO: We had four female jurors on the primary

1 jury, right?

2 THE COURT: All right. We've got it figured out.
3 He's going to leave that door open, and as each one comes
4 by, he'll get a chance to see them.

5 MR. STUMBO: And bring him back in after?

6 THE COURT: And the bailiff is going to.

7 All right. Let's get -- this is Violet. Let me do
8 the foreperson next. Let's -- it's not Andrew. It's not
9 Keith. It's not Gregory. We've got four more waiting.
10 Let's try Violet Olin and maybe I'm just guessing the
11 other name. She may be the foreperson.

12 Valerie, that she talked to -- now, you identified
13 someone known as Valerie.

14 THE COURT: What's her name?

15 MR. SNELL: The only thing I knew -- I thought it was
16 Valerie, but I can...

17 THE COURT: We might as -- well, we've got Violet
18 coming in here.

19 THE BAILIFF: If you'll come in and have a seat,
20 please.

21 THE COURT: Ms. Olin?

22 JUROR: Uh-huh.

23 THE COURT: Hi. How are you doing?

24 JUROR: Pretty good.

25 THE COURT: I'm Tom Cooper. Nice to see you again.

1 Have a seat. We'll only be a minute.

2 JUROR: Hey everybody.

3 THE COURT: Ms. Olin, when the -- you recall this
4 case, I'm sure?

5 JUROR: Definitely.

6 THE COURT: Do you recall -- and these are the
7 lawyers that participated in case, whether you remember
8 them or not -- at any time when the jury was together,
9 whether it was before or after -- I mean -- or before the
10 final discussion or during the final deliberations if
11 anybody in the court -- in the jury room, including
12 yourself, made any statements about doing any independent
13 research on the internet about Mr. Butler? Do you recall
14 any of that?

15 JUROR: Yeah. Janine said that she looked up on the
16 internet and pulled his -- I don't know what her number
17 was or not. I don't know her last name.

18 THE COURT: But her first name is Janine?

19 JUROR: Janine, but she did say she went up, and all
20 she did was smile and move her eyes. That's all she said.

21 THE COURT: Okay. After she -- after she said that,
22 did anybody else indicate that they did the same thing?

23 JUROR: No.

24 THE COURT: Okay. It was just that one person? Do
25 you recall if that was during the deliberations or during

1 the trial, in other words, when we took breaks, that sort
2 of thing?

3 JUROR: It was in the jury room.

4 THE COURT: Okay. You think it was the last day when
5 we were -- when you all were deliberating, not us?

6 JUROR: I do believe it was in the -- in the
7 beginning.

8 THE COURT: Okay. And that's all she said?

9 JUROR: Yeah. She just said she went online, and she
10 just smiled and rolled her eyes up.

11 THE COURT: All right.

12 JUROR: She didn't make any other statement about it.

13 THE COURT: Okay. And nobody else had anything to
14 say about it, or did they, I should ask you?

15 (Indicating in the negative).

16 THE COURT: Nobody else indicated that they did the
17 same thing?

18 JUROR: No.

19 THE COURT: All right. That's all I need to know.
20 Thank you very much. I appreciate your coming. Sorry to
21 inconvenience you.

22 JUROR: Thank you.

23 THE COURT: Yes, ma'am.

24 (Pause).

25 Who is Janine, Betty J?

1 MR. SNELL: Hers is...

2 THE COURT: What is her client's middle name?

3 MR. SNELL: I think it may be Jean.

4 MR. STUMBO: We don't have any other names.

5 THE COURT: What?

6 MR. STUMBO: From what I can tell, I have got their
7 names written down, Judge. I don't see any Janine's on
8 here.

9 (Pause).

10 THE COURT: Her name is Betty Jean.

11 Okay. She is Olin. I thought she was Odom.

12 All right. Joan Douglas.

13 (Pause).

14 THE COURT: I don't know where there's a Valerie
15 either in response to your letter, because the juror who
16 is not here is Danny Hendrix.

17 (Pause).

18 THE BAILIFF: There you go. Go in and have a seat.

19 JUROR: Hi.

20 THE COURT: Hi. How are you?

21 JUROR: Hello.

22 THE COURT: I'm Tommy Cooper.

23 JUROR: Joanne Douglas.

24 THE COURT: Ms. Douglas, we met before.

25 JUROR: Uh-huh.

1 THE COURT: And I hate to inconvenience you, but I
2 had to sort of get to the bottom of something. I hope you
3 understand.

4 JUROR: Sure.

5 THE COURT: During -- and these are the lawyers --

6 JUROR: Right.

7 THE COURT: -- that were participating in the case.

8 At any time during either during -- either during jury
9 breaks or during deliberations --

10 JUROR: Uh-huh.

11 THE COURT: -- did any member of the jury in your --
12 to your knowledge, make any statements about doing any
13 independent research about the defendant --

14 JUROR: Yes.

15 THE COURT: -- Mr. Butler?

16 (Indicating in the affirmative).

17 THE COURT: Okay. Do you know who that was?

18 JUROR: I could -- she is not in the courtroom right
19 now.

20 THE COURT: She's not in the courtroom?

21 JUROR: No.

22 THE COURT: Okay. The -- and do you recall what she
23 said?

24 JUROR: She said, "Did y'all look him up on the
25 internet last night?" And the rest of us, just eyes went

1 like this, like, "Are you crazy? No. We were told not to
2 do anything like that."

3 That was pretty much so -- none of us asked any
4 questions because it was like, "I can't believe you said
5 that, or I can't believe you did that," and that was the
6 end of it.

7 THE COURT: Okay. Do you think that -- or in your
8 opinion, did that encourage anybody else to do the same
9 thing, or did anybody else say that they did anything like
10 that?

11 JUROR: No. No one else said they did, and you know,
12 I know my reaction was, you know, I couldn't believe that
13 after instructions that she even said that she did that.

14 From what I could tell, that was the reaction of
15 everybody else, too, but we didn't discuss it because it
16 was like no, you know, we didn't do that.

17 THE COURT: So even when it --

18 JUROR: It was just --

19 THE COURT: -- came down --

20 JUROR: It was just dropped.

21 THE COURT: -- to making the decision --

22 JUROR: Nothing was mentioned at all.

23 THE COURT: -- she didn't -- didn't follow up and
24 say, "I know this, or I know that" or something like that?

25 JUROR: She didn't.

1 THE COURT: And she was not --

2 JUROR: If we had encouraged her, I believe she would
3 have, but no one did.

4 THE COURT: I understand. And she is not in the
5 courtroom?

6 JUROR: She is not in the courtroom.

7 THE COURT: Okay. Thank you very much. I appreciate
8 your coming.

9 JUROR: Uh-huh.

10 THE COURT: And you're free to go.

11 JUROR: All right.

12 THE COURT: I hate to inconvenience you.

13 JUROR: Not a problem. I understand.

14 MR. WILLIAMS: Well, it's like they all know, Judge,
15 before they come in.

16 THE COURT: I'm doing the best I can.

17 MR. WILLIAMS: No. I'm not blaming you, Judge. I'm
18 just making an observation.

19 (Pause).

20 THE COURT: I only have two more women.

21 Elizabeth Berry.

22 THE BAILIFF: If you will go in and have a seat,
23 please.

24 THE COURT: I'm Tom Cooper.

25 JUROR: Hello.

1 THE COURT: Nice to see you.

2 JUROR: You, too.

3 THE COURT: I was the judge. People sometimes don't
4 recognize me when I don't have my dress on.

5 JUROR: I thought the robe would be on.

6 THE COURT: Ms. Berry, I only want to take a moment
7 of your time. These are the lawyers that were involved in
8 the case. I'm sure you remember them. It wasn't that
9 long ago.

10 I need know if at any time either before -- while the
11 case was going on before you started deliberating, or
12 actually when you started deliberating, or any time
13 thereafter, did any member of the jury panel make any
14 comment about doing independent research with -- as to Joe
15 Lewis Butler, anything that you remember that took place?

16 JUROR: One of women said that she had done some --
17 he had like looked him up on the internet, but she didn't
18 say what she had found.

19 THE COURT: Okay. She didn't disclose what she
20 found?

21 JUROR: She said it wasn't relevant because --

22 THE COURT: All right.

23 JUROR: It wasn't in the court.

24 THE COURT: Did she encourage others to do it?

25 JUROR: Huh-uh.

1 THE COURT: Okay. Other than that one, do you
2 remember if that was during deliberations?

3 JUROR: It was during deliberations.

4 THE COURT: Okay. And nobody else either followed up
5 on that or made any other comment about it?

6 JUROR: No because we ended that day. So I mean, we
7 couldn't do it anyway.

8 THE COURT: All right. Is she in the courtroom --

9 JUROR: Huh-uh.

10 THE COURT: -- now?

11 JUROR: No.

12 THE COURT: Has she been in the courtroom with you
13 today?

14 JUROR: No.

15 THE COURT: Okay. All right. I think that's all.

16 JUROR: Okay.

17 THE COURT: And I appreciate your coming, and I hate
18 to have inconvenienced you, if I did.

19 JUROR: Okay.

20 THE COURT: You're free to go, ma'am.

21 JUROR: Thank you.

22 THE COURT: Thank you. All right.

23 THE BAILIFF: Right this way. Ma'am, if you will go
24 in and just have a seat there.

25 (Juror Myra Womble).

1 JUROR: Hello.

2 THE COURT: Hello. I'm Tom Cooper. Good to see you
3 again.

4 JUROR: Good to see you.

5 THE COURT: Have a seat. I hate to inconvenience you
6 this afternoon. I have to sort of get to the bottom of
7 something. You remember these guys?

8 JUROR: Those two.

9 THE COURT: The lawyers in the courtroom.

10 JUROR: I don't remember nobody else --

11 THE COURT: All right.

12 JUROR: -- but those two right there.

13 THE COURT: Okay. Mr. Snell is here sitting in on
14 behalf of another juror.

15 Do you recall at any time before the deliberations
16 began, or after the deliberations began, did any member of
17 the jury panel indicate that they had done any research --

18 (Indicating in the affirmative).

19 THE COURT: -- on the internet perhaps --

20 (Indicating in the affirmative).

21 THE COURT: -- regarding Mr. Butler?

22 JUROR: Yes.

23 THE COURT: Okay. Did that person disclose anything
24 that they found out on the internet?

25 JUROR: No.

1 THE COURT: Okay.

2 JUROR: Did not.

3 THE COURT: Did that person encourage other jurors to
4 do the same thing?

5 JUROR: It was insinuated.

6 THE COURT: Okay. Like, "You might like to do
7 this" --

8 JUROR: Uh-huh.

9 THE COURT: -- or something like that, but not, "Go
10 look him up. You need to do this," that sort of thing?

11 JUROR: No. It was more of a you need -- not you
12 need. It was insinuated that it should be, or maybe you
13 should have done it prior to type thing.

14 THE COURT: Okay. As a result of that comment, did
15 you -- did you get -- and I know you were the foreperson.
16 Did you get the impression that anybody else had done that
17 also?

18 JUROR: There -- in my mind I did kind of question
19 maybe somebody else may have, but I couldn't say --

20 THE COURT: Okay.

21 JUROR: -- yes or no.

22 THE COURT: But nobody said anything about that?

23 JUROR: Huh-uh.

24 THE COURT: All right. Was any other comment made,
25 other than that, about Mr. Butler that could have been

1 learned from the internet? In order, did -- was it a male
2 or female?

3 JUROR: It was a female.

4 THE COURT: All right. Is that female, or has that
5 female been, in the courtroom today?

6 JUROR: No.

7 THE COURT: Okay.

8 JUROR: I saw her out, but I didn't see her in the
9 courtroom.

10 THE COURT: Do you happen to know her name?

11 JUROR: No. I didn't really know anyone's name.

12 THE COURT: Okay. I understand. I didn't expect you
13 would.

14 Did that comment in any way influence your decision
15 in the case?

16 JUROR: No.

17 THE COURT: Okay.

18 JUROR: It didn't.

19 THE COURT: All right. I think that's all I need to
20 know.

21 JUROR: All right.

22 THE COURT: I thank you very much. You're free to
23 go.

24 JUROR: Okay.

25 THE COURT: As I say, I apologize for inconveniencing

1 you --

2 JUROR: No problem.

3 THE COURT: -- in the afternoon like this, but I just
4 have to get to the bottom of things pretty quick.

5 JUROR: Okay. Thank you.

6 THE COURT: Thank you very much. Thank you for your
7 service.

8 JUROR: Uh-huh.

9 THE BAILIFF: Right this way.

10 (Pause).

11 THE COURT: Amick might have seen Ms. Broome in the
12 hall. She was sitting there.

13 THE BAILIFF: No one.

14 THE COURT: Well, that's all the women. So I think
15 Mr. Amick might have seen her sitting in the hall.

16 I've got Gregory, Keith, Andrew, and Frank, and Danny
17 Hendrix is on vacation or something like that. So that's
18 six and five is 11, so that's it. That would be -- let's
19 talk to Mr. Amick. I think I can release him.

20 (Pause).

21 (Juror Randy Amick returned).

22 THE COURT: That's all the women. Now, here is --
23 let me tell you this: Some of these jurors have said they
24 saw the lady that spoke sitting outside the courtroom.

25 JUROR: Yeah, she was outside. I just assumed she

1 came in the courtroom.

2 THE COURT: Oh okay. That solves the problem. She
3 was outside?

4 JUROR: Yeah, I remember seeing her outside.

5 THE COURT: Okay.

6 JUROR: I mean, I was talking to another gentleman.

7 THE COURT: Okay.

8 JUROR: And I just --

9 THE COURT: That's --

10 JUROR: I just assumed she came into the courtroom.

11 THE COURT: She didn't come into the courtroom
12 because -- the reason she didn't, it's pretty obvious, is
13 because she is the one that we thought might have made the
14 comment, and that's -- is that the one you...

15 JUROR: That's the one.

16 THE COURT: Thank you very much.

17 JUROR: I'm sorry.

18 THE COURT: No, no problem. That's the only way I
19 knew to figure it out was to parade all the women by you.

20 JUROR: Okay.

21 THE COURT: And see if that, but she was. She was
22 sitting out. She got here a little earlier and was
23 sitting outside waiting.

24 JUROR: Well, I remember seeing her outside, but I
25 never paid any attention that she wasn't in the courtroom.

1 THE COURT: She didn't come in. You're free to go.
2 Thank you. I appreciate it.

3 JUROR: Thank you.

4 THE COURT: Okay.

5 MR. SNELL: Your Honor, just for certainty's sake, I
6 think we have -- I think we have one female juror who
7 isn't here.

8 THE COURT: No. We have Danny Hendrix who is not.

9 MR. SNELL: Okay. So the -- so the -- okay.

10 THE COURT: The juror who is not here is a male.

11 MR. SNELL: Okay.

12 (Pause).

13 THE COURT: Franklin Roberts.

14 THE BAILIFF: Come in and just have a seat.

15 JUROR: All rightie.

16 THE COURT: Hey, Mr. Roberts, how are you doing?

17 JUROR: Hey, how are you doing?

18 THE COURT: Tom Cooper. Good to see you again.

19 JUROR: Yes, sir. Good to see you.

20 THE COURT: I appreciate your coming.

21 JUROR: Yes, sir.

22 THE COURT: I hate to inconvenience you, but I have
23 to sort of get to the bottom of something here.

24 JUROR: Okay.

25 THE COURT: Mr. Roberts, at any time during the time

1 that the jury was together, either before you started
2 deliberating or after you started deliberating, you -- do
3 you know of anybody -- I say -- let me rephrase that.

4 Did anybody, any member of the jury, say anything
5 about doing independent research with regard to Mr. Butler
6 that you recall?

7 JUROR: No, sir.

8 THE COURT: Okay. There was no comment about that
9 one way or the other?

10 JUROR: No, sir, not that I heard.

11 THE COURT: Sir?

12 JUROR: Not that I heard there was not.

13 THE COURT: Okay. So if -- well, I guess that
14 answers that question. If -- was there any member of the
15 jury that seemed to know more about Mr. Butler than
16 anybody else?

17 (Indicating in the negative).

18 THE COURT: In other words, that would not have
19 learned at the trial?

20 JUROR: Nothing that I know of that we didn't already
21 know then.

22 THE COURT: From the trial?

23 JUROR: From the trial, yes, sir.

24 THE COURT: Okay. All right. That's what I need to
25 know. Thank you very much. I appreciate your coming.

1 JUROR: All right.

2 THE COURT: That's all there is to it.

3 JUROR: Thank you very much.

4 THE COURT: Yes, sir.

5 JUROR: Thank you.

6 THE COURT: Yes, sir. Thank you for your service.

7 JUROR: All right, sir.

8 THE BAILIFF: All right, sir. Right this way.

9 (Pause).

10 THE BAILIFF: Sir, if you go in, have a seat. All
11 right.

12 (Juror Andrew Dunham).

13 THE COURT: How are you doing, sir?

14 JUROR: Hi.

15 THE COURT: Tommy Cooper. Good to see you again.

16 JUROR: Good to see you.

17 THE COURT: Have a seat. I hate to inconvenience you
18 on a -- it may rain anyway but Thursday afternoon.

19 Mr. Dunham, I need to ask you -- and these are the
20 lawyers that were in the courtroom during the Joe Butler
21 trial -- do you recall anybody making any comment either
22 while you were -- before the deliberations started or
23 after the deliberations started about doing any
24 independent research about Mr. Butler, particularly on the
25 internet, that sort of thing?

1 (Pause).

2 JUROR: I did hear a comment.

3 THE COURT: Okay.

4 JUROR: But there was no -- there was no information,
5 just that...

6 THE COURT: Somebody had done it?

7 JUROR: Somebody had done it.

8 THE COURT: Didn't -- that person didn't elaborate on
9 what they found out?

10 JUROR: I think the comment was something like did
11 you -- "Did you go on the internet?" And everybody was
12 like, "No," and the comment was, "Well, I did."

13 THE COURT: Okay. Was it a male or a female?

14 JUROR: It was a female.

15 THE COURT: All right. Do you see her in the
16 courtroom today?

17 JUROR: Yes.

18 THE COURT: She was in the courtroom, or did you see
19 her outside the courtroom?

20 JUROR: Both.

21 THE COURT: Okay, but you --

22 JUROR: Wait a second.

23 (Pause).

24 Yeah. I'm pretty sure she was in the courtroom also.

25 THE COURT: Okay. But you did see her outside?

1 JUROR: Definitely seen her outside.

2 THE COURT: Okay. Did she have a male with her,
3 somebody like her husband or something?

4 JUROR: I...

5 THE COURT: Didn't pay that much attention?

6 JUROR: No, sir.

7 THE COURT: As a result of that, overhearing that,
8 did you or anybody else, to your knowledge, follow up and
9 do any independent research?

10 JUROR: There's no way I could. I don't -- I don't
11 have nothing but regular T.V. at my house. I don't have
12 internet or cable T.V. or anything like that.

13 THE COURT: Well, did you --

14 JUROR: And I wouldn't have even if I did.

15 THE COURT: I know. I know.

16 (Juror laughing).

17 THE COURT: But did anybody else, to your knowledge,
18 indicate they might have done the same thing?

19 JUROR: Not to my knowledge, no. There was -- other
20 than that one particular comment, I never heard anybody
21 else ever mention it again.

22 THE COURT: That's all I need to know. I appreciate
23 your coming. Thank you, sir.

24 JUROR: Not a problem.

25 THE COURT: Thank you very much, and I appreciate

1 your service.

2 JUROR: It's my duty. Thank you, sir.

3 THE COURT: Sorry to inconvenience you.

4 JUROR: You saved me from working. Y'all have a good
5 day.

6 THE COURT: Yes, sir.

7 THE BAILIFF: Judge, the last lady that came in would
8 like to come back in. She said she thought of something.
9 She --

10 THE COURT: The red headed -- I mean, the red dress?

11 THE BAILIFF: Yes.

12 THE COURT: Sure. Bring her back in.

13 (Myra Womble).

14 THE COURT: Yes, Ms. Womble.

15 JUROR: I remember her stating that she knew why he
16 wasn't working at wherever he worked at, Kraft or
17 wherever.

18 THE COURT: Yes.

19 JUROR: And I remember her -- it came to me as I was
20 leaving. I was thinking maybe I better go back and let
21 them know; that she said she knew why he wasn't working
22 and where he was working, and she gave more indication
23 like it had something to do with something else.

24 THE COURT: In the past?

25 JUROR: Right, but didn't -- and we said to her, "We

1 don't know anything about that. That's not even supposed
2 to come into play."

3 We even said something to her about when she said she
4 had looked him up on the internet.

5 THE COURT: Okay. And that's pretty much what you
6 remember she said?

7 JUROR: Yes.

8 THE COURT: All right. Thank you. I appreciate
9 you're doing that.

10 JUROR: Yes.

11 THE COURT: I appreciate your coming back.

12 JUROR: No problem.

13 (Keith Taylor).

14 THE BAILIFF: Just come in, have a seat there,
15 please.

16 THE COURT: Mr. Taylor?

17 JUROR: Hello.

18 THE COURT: How are you? Tom Cooper again. Have a
19 seat. You recall the lawyers that were involved in the
20 case?

21 JUROR: Yes, I do.

22 THE COURT: The other case?

23 JUROR: Uh-huh.

24 THE COURT: I just have got a couple of questions for
25 you. At any time during, either before the jury started

1 deliberating --

2 JUROR: Uh-huh.

3 THE COURT: -- or after the jury started
4 deliberating, do you recall anyone -- or did any member of
5 the jury panel say anything that would indicate that that
6 juror may have done any independent research, for example
7 on the internet, about Mr. Butler?

8 JUROR: You're saying before or after?

9 THE COURT: Anytime.

10 JUROR: During?

11 THE COURT: Anytime when you were together.

12 JUROR: Yes.

13 THE COURT: Okay. Was it a male or a female?

14 JUROR: It was a female.

15 THE COURT: All right. Have you seen that person
16 today?

17 JUROR: No.

18 THE COURT: Okay. Not in the jury room?

19 JUROR: Correct.

20 THE COURT: Did that comment -- do you recall what it
21 was?

22 JUROR: Something to the effect of -- something,
23 "Have you seen any information about him on the internet?
24 Are you aware of what else he may have done," or something
25 like that.

1 THE COURT: Did that comment encourage you, or to
2 your knowledge any other juror, to do the same, to do any
3 independent research on the internet?

4 JUROR: Are you asking did I, or do I think anybody
5 else did?

6 THE COURT: Yeah, either way.

7 JUROR: I did not.

8 THE COURT: Okay.

9 JUROR: Not before the verdict.

10 THE COURT: Okay.

11 JUROR: I did look after but not before the verdict.

12 THE COURT: Okay.

13 JUROR: I didn't find anything. I don't know if
14 anyone else did or not.

15 THE COURT: Okay. But there was no general
16 conversation about -- or a conversation about other people
17 doing the same thing?

18 JUROR: Right. And I believe that comment was made
19 while the deliberations occurred on the same day, so it
20 occurred on that day, so no one would have had time to do
21 any research.

22 THE COURT: Oh, I see. Well, that would make sense.
23 Well, I don't know. These days you could do it with --

24 JUROR: Well, they -- I don't know. No one had any
25 electronic devices with them.

1 THE COURT: All right. And you said you had not seen
2 her in the courtroom today?

3 JUROR: That's correct.

4 THE COURT: Okay. Thank you very much. That's all I
5 need to know.

6 MR. STUMBO: Thank you.

7 THE COURT: I appreciate your coming, and thank you
8 for your service.

9 JUROR: Okay.

10 THE COURT: Sorry to inconvenience you.

11 JUROR: Am I all done?

12 THE COURT: Yes, sir. You're free to go.

13 JUROR: Thank you.

14 (Pause).

15 THE COURT: I don't know who Valerie is, your
16 Valerie.

17 MR. SNELL: Can I ask to get a physical description?
18 Because it's -- I think actually it was going to be some
19 baby clothes or something they talked about exchanging.

20 THE COURT: Well...

21 MR. STUMBO: A Bible?

22 MR. SNELL: Yeah. I can ask my lady if she can
23 describe her. It could have been.

24 THE COURT: It really doesn't matter, I don't think.

25 MR. SNELL: Like I said, my lady will...

1 THE COURT: Deny it.

2 MR. SNELL: No, no, no. She will get -- you know, it
3 will get jumbled up and...

4 THE COURT: Oh, okay.

5 Franklin, Franklin. No, we haven't done him yet.

6 (Pause).

7 MR. STUMBO: Who was that last one, Judge,
8 Mr. Taylor?

9 THE CLERK: Keith.

10 THE COURT REPORTER: Keith Taylor.

11 MR. STUMBO: Keith Taylor.

12 THE COURT: There should be one more left.

13 THE CLERK: No. Just one more.

14 MR. STUMBO: Just one more.

15 THE COURT: So you have got one left in there,
16 Mr. Fitzpatrick.

17 THE BAILIFF: Sir, if you will go in and have a seat,
18 please.

19 THE COURT: Mr. Fitzpatrick, how are you?

20 JUROR: Hello.

21 THE COURT: I'm Tom Cooper --

22 JUROR: Great. Have a seat?

23 THE COURT: -- the judge on the case. Yes, sir, have
24 a seat. Do you remember the lawyers that were involved in
25 the case?

1 JUROR: I do. I don't recognize (indicating) them.

2 THE COURT: You're right. He's representing another
3 member of the juror -- jury.

4 This is Mr. Snell.

5 Mr. Fitzpatrick, just a few questions.

6 JUROR: Uh-huh.

7 THE COURT: At any time during the -- either the
8 deliberations or at any of the breaks where the jurors
9 were together, do you recall any member of the jury panel
10 saying anything about doing any independent research on
11 the defendant, Joe Lewis Butler?

12 JUROR: During the thing, yeah.

13 THE COURT: Okay. And what do you recall?

14 JUROR: She said that she --

15 THE COURT: It was a female, to start with?

16 JUROR: Uh-huh.

17 THE COURT: Okay.

18 JUROR: She said she had just looked up his name on
19 the internet. That's all she said.

20 THE COURT: Okay. She didn't disclose anything?

21 JUROR: No.

22 THE COURT: What she found?

23 JUROR: No.

24 THE COURT: Okay.

25 JUROR: She essentially tried to look up to see if

1 she would find anything out about him, apparently, but
2 nothing else was ever brought up about it.

3 THE COURT: Okay. Did -- did that comment -- now,
4 did she encourage other people to do the same thing?

5 JUROR: Oh no.

6 THE COURT: Okay. Did that comment engender any kind
7 of discussion about doing the same thing, in other words,
8 other jurors?

9 JUROR: We were kind of floored by it, and we just
10 went on.

11 THE COURT: Okay. Have you -- did you see her in the
12 courtroom today?

13 JUROR: No.

14 THE COURT: Okay. But there was no follow-up
15 discussion, in other words, from --

16 JUROR: No.

17 THE COURT: When -- "What did you find out?"

18 JUROR: No.

19 THE COURT: "You ought to go look," or something like
20 that?

21 JUROR: No.

22 THE COURT: That's all I need to know. Thank you
23 very much.

24 JUROR: Thank you.

25 THE COURT: That's easy, and I hate to inconvenience

1 you, but I had to get to the bottom of something.

2 JUROR: Yes, sir.

3 THE COURT: Thank you very much. I appreciate your
4 service on that jury.

5 JUROR: Yeah, take care.

6 THE BAILIFF: That's it.

7 THE COURT: Yeah, you can leave it open.

8 Mr. Snell, I'm glad I did this, because I thought I
9 was in somewhat of a dilemma after our last hearing. I'm
10 not now.

11 I'm pretty thoroughly convinced that your lady did
12 the research, and I'm a little bit concerned that she
13 adamantly denied it.

14 I've got ten out of 11 other jurors -- I'm sorry,
15 nine of the other jurors who say she did, said she did,
16 very similar to the comment she made to law enforcement
17 and the investigator. I think I need to do something on
18 the record probably with the clerk's office, but I'm going
19 to find her in contempt.

20 MR. SNELL: Well, I was going to say, Your Honor, if
21 you would, I know she would very much like to have the
22 opportunity -- you know, I can, you know, bring her in,
23 tell her kind of what the report looks like from the
24 jurors. I know she'd very much like the opportunity to
25 comment or I guess to --

1 THE COURT: I understand. I'm going to give her
2 every opportunity to do so, but it's not only her. Now
3 I've got to deal with him.

4 MR. SNELL: Right.

5 THE COURT: And then him. I'm probably going to have
6 to grant his motion.

7 MR. STUMBO: Can we be heard on that?

8 THE COURT: You can be heard on that. You know, one
9 is as bad as 12, in my opinion. But yeah, so I'm -- I'm
10 trying to figure out how, procedurally, what we do next.

11 You know, we've got a court reporter. If she wants
12 to come in now, but I think you better tell her what just
13 took place before she comes in here.

14 MR. SNELL: Why don't I go give her -- if you would,
15 Your Honor, I can go talk to her for a couple of minutes.
16 I'm sure her husband would want to come sit behind her or
17 something.

18 THE COURT: Well, that's fine.

19 MR. SNELL: There was a comment, I think, in the last
20 hearing where she did say some comment in the jury room
21 about going on the internet, but she has already testified
22 to once. I think she just -- but I'll just -- I'll go
23 give her --

24 THE COURT: You can talk to her. If she wants to say
25 something on the record now, that's fine, and I'll listen

1 to it. Apparently, I'm going to have to come back and
2 hear your -- your two arguments --

3 MR. WILLIAMS: Uh-huh.

4 THE COURT: -- and deal with her, but I think you
5 better tell her what took place in here before.

6 MR. SNELL: I'm going to -- I'm going to go down --
7 if I could have how many -- how many -- it's about 3:50.

8 THE COURT: Ten minutes.

9 (WHEREUPON, a short break was taken.)

10 THE COURT: Come in, Ms. Broome. Have a seat.

11 MR. SNELL: This is Mr. Broome, Mrs. Broome's
12 husband.

13 THE COURT: How are you doing, sir?

14 MR. BROOME: I'm fine. How are you?

15 THE COURT: I'm Tommy Cooper.

16 Yes.

17 MR. SNELL: And, Your Honor, I was going to say kind
18 of during our break, I went kind of quickly but tried to
19 go through, you know, all of the individual comments and,
20 you know, kind of share with her.

21 I know initially she certainly -- and I know she
22 wants to kind of respond to this and tell Your Honor
23 exactly what she thinks she said in the jury room that
24 triggered all -- that started this whole process rolling.

25 She expressed to me again. You know, she took one

1 polygraph. She said she will go anywhere. If you want
2 her to go to S.L.E.D. If you want her to go to the police
3 department, anywhere you tell her to go, she'll go take a
4 polygraph.

5 MRS. BROOME: Based on the juror's statements, I
6 mean, they misunderstood.

7 MR. SNELL: I was going to say, if I -- if it would
8 be okay, Your Honor, I'll just let Mrs. Broome tell you
9 what she said and exactly what her comment was.

10 THE COURT: Let me just say that -- you're on the
11 record.

12 MRS. BROOME: Yes, sir.

13 THE COURT: Okay. You understand that?

14 MRS. BROOME: Uh-huh.

15 THE COURT: So I'll be glad to hear what you have to
16 say.

17 MRS. BROOME: There is one statement that's almost
18 accurate to what I said. I had -- did ask the jury if
19 anybody researched Mr. Butler on the internet, and I said
20 I had thought about it, but I didn't do it because I
21 didn't want to bias myself.

22 One gentleman sat across from me, and he said, "I
23 didn't even think about it," or "I didn't know you could
24 do it," and I said, "Yes. I had to do it" -- I had to get
25 on the internet and do some research for my builder when I

1 had a lawsuit going on. A builder -- a lot of stuff is
2 public information. That's what was said.

3 Nothing was ever said about Joe Butler or anything.
4 I never even said Joe's name. I just said, "Did anybody"
5 -- I didn't even say his name. I said, "Did anybody look
6 him up on the internet?"

7 I said, "I didn't do it. I had thought about it, but
8 I didn't want to bias my verdict." Then I said I had do
9 it -- I had to do it when I was doing some research for a
10 lawsuit with a builder. A lot of stuff is public
11 information.

12 But I did not. I mean, I -- I -- I understand people
13 will have different -- you know, they're going to say
14 different things, but I'd be willing to take a second
15 polygraph with S.L.E.D. off the jurors' comments. I did
16 not say anything like that.

17 THE COURT: Well, there are a lot of people that say
18 you did.

19 MRS. BROOME: Yes, sir. I understand.

20 THE COURT: A lot of people.

21 MRS. BROOME: Uh-huh.

22 THE COURT: Including law enforcement officers and
23 nine of your fellow jurors.

24 MRS. BROOME: The law enforcement officer, he -- I
25 mean, I don't want to sit there and say the gentleman was

1 lying. He misspoke --

2 THE COURT: Okay. I understand.

3 MRS. BROOME: -- to the chief of police and the same
4 with the...

5 THE COURT: Well, here is -- I've got to do
6 something, and I think there is overwhelming evidence that
7 I've heard -- and I understand what you're saying -- that
8 you did go on the internet and that you did look Joe
9 Butler up.

10 (Mrs. Broome indicates in the negative).

11 THE COURT: Now, I will say this: That you -- from
12 all I can tell, you did not tell the jurors what you
13 found. I -- let me finish.

14 MRS. BROOME: Yes.

15 THE COURT: I'm trying to be as dispassionate as I
16 can, but I've got 11 people saying that you said that you
17 did and that -- as I say, that's over -- that's pretty
18 overwhelming evidence.

19 I didn't -- I really did not -- when I came over hear
20 today, I did not think that I would find the reaction that
21 I did, but each one of the -- every one of these lawyers
22 heard what they said.

23 Only one gentleman said he didn't hear anything.
24 Everybody else said that you did say that you went on the
25 internet and that you said if anybody else looked him up

1 or something to that effect.

2 So I'm going to -- I'm afraid I'm going to have to
3 have another hearing, or at least -- because you see, now
4 Mr. Butler is going to move to get a new trial based on
5 your -- the fact that you looked him up. That's the
6 position he's going to take. I know he is, and it's going
7 to cause me to -- depending on what the Solicitor says,
8 we're going to have to have another argument, a statement
9 of their possession. They're not going to want to have to
10 try him again.

11 It cost this county over \$3,000 just for jurors. I
12 had the clerk add it up, and it --

13 MRS. BROOME: Well, can I ask you a question?

14 THE COURT: Let me just finish.

15 MRS. BROOME: Okay.

16 THE COURT: Just for the Clerk of Court's staff and
17 jury pay and meals Thursday and Friday and the deputies
18 that worked the courtroom, this county spent \$2,753.

19 Now, if I grant his motion to give Joe Butler another
20 trial, it's going to cost that much again.

21 This is -- this is a -- you know, we try our best to
22 avoid this kind of thing. I don't want to be here. I
23 know you don't want to be here. I'd just as soon this
24 case be done with because I got another one. I got
25 another one, and I got another one, and I got another one,

1 but -- and this -- I will tell you, this is the first time
2 it's ever happened to me.

3 I've been doing this for ten years, but I think it's
4 serious enough that I'm going to have to do something
5 about it.

6 I would advise you to talk with your lawyer. I'll be
7 in touch with him about where we go next. It's -- it's --
8 I didn't plan to do anything other than talk to the jurors
9 today, but I'm going to have to come back over here again.
10 I'm going to have to hear their arguments.

11 I will tell you, depending on -- I'm going to allow
12 your lawyer to speak for you, but my inclination right now
13 is to find you in contempt of court. I'll just tell you
14 that.

15 MRS. BROOME: Can I say something?

16 THE COURT: Sure.

17 MRS. BROOME: How would I know where to look on the
18 internet for Joe Butler? He didn't have a record in
19 Lexington County.

20 THE COURT: You know how I know. All you have to do
21 is type in Joe Butter.

22 MRS. BROOME: But you have to pay for it.

23 THE COURT: No, ma'am.

24 MRS. BROOME: Yeah. I go to public information when
25 I go to look up somebody.

1 THE COURT: It's --

2 MRS. BROOME: But I'm saying how would I know --
3 because we -- we were told he worked in Newberry, okay.

4 THE COURT: Aiken.

5 MRS. BROOME: No. We were told he worked in
6 Newberry.

7 THE COURT: Oh, he worked there.

8 MRS. BROOME: Yeah. In the courtroom. We were told
9 he worked for Kraft food. That's all I know about Joe.
10 He's 47 or 46 years old, you know.

11 I would not know where to look for Joe without having
12 to pay. I mean, seriously.

13 THE COURT: Well, that's not so.

14 MRS. BROOME: Well, I only know to go to Richland
15 public information and the Lexington sheriff's department
16 to look up people. That's how I do it, but I'm saying, I
17 didn't do --

18 THE COURT: Type in the name Joe Butler --

19 MRS. BROOME: Okay.

20 THE COURT: -- and you'll see Joe Butler.

21 MRS. BROOME: Well, because I wouldn't -- how do you
22 do that?

23 THE COURT: Just type in his name. It's all about
24 the case in Aiken.

25 MRS. BROOME: Well, see, I didn't know anything about

1 that until the Solicitor's Office came and told me.

2 THE COURT: Okay. Well, that's --

3 MRS. BROOME: And I can't take another polygraph to
4 prove my innocence with S.L.E.D. or...

5 THE COURT: I'll let you bring your guy in if you
6 want to do that.

7 MR. SNELL: Polygraph?

8 THE COURT: Yeah.

9 MR. SNELL: I can have him available if we -- if that
10 would help -- if that would help -- if that would help the
11 Court, I can --

12 THE COURT: Well, you know, we don't -- it's not me.

13 MRS. BROOME: I know. I know.

14 THE COURT: Polygraphs -- polygraphs, these lawyers
15 know --

16 MRS. BROOME: I know.

17 THE COURT: -- you can't bring them into court.

18 MRS. BROOME: But it doesn't show innocence, but it
19 doesn't show guilt either, correct? I mean, I don't
20 understand.

21 If y'all wrote the questions and I can pass the
22 polygraph, why wouldn't you -- you know, I'm telling the
23 truth.

24 THE COURT: I'll let you talk about that with your
25 lawyer.

1 MRS. BROOME: Okay.

2 THE COURT: Y'all need to make that decision.

3 All right. That's all I've got today, folks. Thank
4 you very much for coming.

5 MR. BROOME: Judge.

6 THE COURT: Yes, sir.

7 MR. BROOME: Based on what I heard, there's a lot of
8 variation in all of their statements. The statement my
9 wife made, if half of it is taken -- this is the half up
10 here that they have heard would implicate her, the full
11 statement would exonerate her.

12 THE COURT: I didn't -- I'm not -- I didn't follow
13 you.

14 MR. BROOME: The statement they're all basing this
15 accusation on is that she asked them if they had done
16 internet research, if they thought they had -- if they
17 thought about doing internet research, and was she really
18 going to be -- she says, "I did, but I didn't do it
19 because I didn't want to prejudice my decision."

20 All right. The first half of that statement, Your
21 Honor, would implicate her. If that's all the jurors
22 heard and that's all they paid attention to, those are
23 inaccurate statements.

24 If the full statement is taken in the context it was
25 given, it would exonerate her completely. She has proven

1 she didn't do internet research by her polygraph.

2 THE COURT: Okay. I appreciate it.

3 THE HUSBAND: Thank you.

4 THE COURT: Thank you very much folks.

5 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, Karen Tracy, Official Court Reporter for the 5th
Judicial Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Lexington County, South Carolina, on the 8 day of April,
2010.

April 12, 2010

Karen Tracy

Karen Tracy, Court Reporter

My Commission Expires: 04/01/14

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA,

Warrant No(s). I-021626

Plaintiff,

vs.

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
A NEW TRIAL**

JOE BUTLER,

Defendant.

The following Memorandum focuses on issues arising from the State v. Joe Butler,
Criminal Case No. **2010-GS-32-00832**.

ISSUE ADDRESSED

- I. **Does a Juror's independent Internet research of a Defendant's criminal history deprive the Defendant of a fair trial before impartial and indifferent jurors, where the information attained through the juror's research was offered by the prosecution and ruled inadmissible by the Trial Judge?**

STATEMENT OF FACTS

Defendant Joe Butler was convicted and sentenced on March 12, 2010 of Committing a Lewd Act on a Minor. During a Motion *in Limine*, the Trial Judge ruled that evidence of Defendant's prior arrest for Criminal Sexual Conduct with a Minor was inadmissible.

After the conclusion of the trial, a juror told Chief Wallace Oswald of the Batesburg-Leesville Police Department that she had performed independent Internet research of the prior criminal record of the Defendant's prior criminal record during the pendency of the trial.

Assistant Solicitor David Stumbo informed counsel for Defendant about this conversation in a letter dated March 19, 2010. Counsel for Defendant subsequently, and timely, filed a Notice

of Motion and Motion for New Trial on March 19, 2010.

The Court then held a hearing in which nine (9) of the remaining eleven (11) jurors told the Court they heard the juror refer to looking up the Defendant on the Internet. While all jurors denied that they did any independent research of their own, their accounts were very similar in nature when describing the statements made by the researching juror.

DISCUSSION

1. **The juror's independent Internet research conducted during the pendency of the case is clear misconduct.**

In the case of State v. Harris, the South Carolina Supreme Court states, "The juror's action in conducting independent legal research was unquestionably misconduct." State v. Harris, 530 S.E.2d. 626, 340 S.C. 59 (2000). While the Harris case deals with *legal* research, this case remains very comparable because the juror in this case conducted independent research despite a specific charge from the Trial Judge prohibiting such action. Defendant argues that under Harris, the juror's extraneous research is clear misconduct.

2. **The evidence shows that the juror's misconduct affected the impartiality of the jury, and therefore, deprived the Defendant of his Constitutionally guaranteed right to a trial by impartial and independent jurors.**

The Sixth Amendment states, "In all criminal prosecutions, the accused shall enjoy the right to...an impartial jury." U.S. Const. Amend. VI. In State v. Kelly, the South Carolina Supreme Court states, "Relevant factors to be considered in determining whether outside influences have affected the jury are (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that curative measures were effective in reducing the prejudice." [Numbering added] State v. Kelly, 502 S.E.2d. 99, 331 S.C. 132 (1998).

(1) The number of jurors exposed

At least, nine (9) of the remaining eleven (11) jurors stated that they heard a comment about researching the Defendant on the Internet. One juror was out of town during the hearing and it is unknown if he was exposed to the comment. Another juror told the Court he does not remember any comments about researching the Defendant. At best, the vast majority of the jury was made aware of the juror's independent Internet research.

The State argues that the mere exposure to the comment does not indicate that the jurors were prejudiced by hearing it. The Defendant argues that the reason the Court excluded this evidence from the trial in a Lyle hearing was precisely because of its likelihood for prejudice.

(2) The weight of the evidence properly before the jury

The Defendant would leave it in the province of the Trial Judge to determine the weight of evidence properly before the jury. The Defendant would argue, though, that the Trial Judge's refusal to admit evidence of the Defendant's prior criminal charges is indicative of the strong prejudicial effect of the extraneous evidence. This strong prejudice should heighten the weight requirement of the properly-laid evidence.

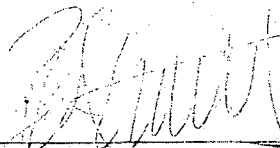
(3) The likelihood that curative measures were effective in reducing the prejudice

Because the prejudice that existed in this case was not discovered until after the conclusion of the case, no curative measures were undertaken.

CONCLUSION

The evidence shows that the Defendant did not receive a trial by an impartial jury in this case. Defendant believes the Court should conclude that Defendant is entitled to a new trial due to the prejudicial misconduct of the juror in question.

Respectfully Submitted



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ATTORNEYS FOR DEFENDANT

Lexington, South Carolina

April 22, 2010

FILED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
 COUNTY OF LEXINGTON)
 STATE OF SOUTH CAROLINA) #2010-GS-32-832; -844
 vs.)
 Joe Lewis Butler, Jr.,) **MEMORANDUM IN**
 DEFENDANT) **OPPOSITION TO DEFENDANT'S**
) **MOTION FOR A NEW TRIAL**

Defendant was tried and convicted before the General Session Court of Lexington County during the term of March 8, 2010. After the jury deliberated for four to five hours on the afternoon of March 12, 2010, Defendant was convicted of Lewd Act on a Minor and acquitted of Criminal Sexual Conduct with a Minor, 1st Degree. He was sentenced by the Honorable G. Thomas Cooper to 12 years incarceration.

Defendant filed Motion for a New Trial with this Honorable Court on March 19, 2010 pursuant to information provided to both the Defendant and the Court by the undersigned counsel for the State. The issue before the Court as to the Defendant's Motion for a New Trial is potential misconduct involving one of the jurors in the case, which came to light the week after the trial concluded. The Court held a Rule to Show Cause hearing into the matter on March 22, 2010 to explore the issue of contempt of court, and testimony was taken on the issue of juror misconduct. The Court held an additional hearing into the matter on April 8, 2010, where the jurors were brought in to be *voir dire*d by the Court as to the juror in question, and the alleged statement made in the jury room. Ten members of the petit jury gave testimony on the issue (the 11th juror was out of town and not able to make it to the hearing). This memorandum of law outlines the position of the State in opposition to the Defendant's motion.

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"A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 615 S.E.2d 455, 460 (Ct.App.2005). In order to grant a mistrial in cases involving juror misconduct, the Court must find not only that misconduct was committed, but additionally must find that the jury was improperly influenced by the misconduct to such an extent that the Defendant suffered prejudice as a result. State v. Ziegler, 364 S.C. 94 Ct. App. 2005).

The State's position is that there has been no showing of prejudice to the Defendant. There is currently no evidence in the record that the verdicts of the jury in this case (not guilty to Criminal Sexual Conduct, guilty of Lewd Act on a Child) were reached improperly or by way of outside influence. Most of the jurors stated that the suggestion made by Juror #27 of looking the Defendant up on the Internet was quickly dismissed by the other jurors in the room and no substance of any outside information was discussed at any time during the deliberations. One of the jurors stated that he did not even remember anything like that being stated in the jury room. None of the jurors questioned have suggested that they decided the case based on anything other than the evidence that was presented in the courtroom during the trial of the case.

The State would rely on an abundance of case law to support its position that the Defendant's motion should be denied. *see* State v. Bantan 2010 WL 915985 (Decided March 10, 2010, by the S.C. Supreme Court) (denial of defendant's motion for a mistrial upheld where juror heard at a local gas station one morning during the case of the Defendant being subject of an investigation for a similar armed robbery incident, and the juror disclosed that information in the jury room during deliberations); State v. Wasson, 299 S.C. 508 (1989) (motion for mistrial denied where the Court found no prejudice despite the fact that two

jurors read a newspaper article referencing similar pending charges against the Defendant and shared that with other jury members); The Vestry and Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Company, Inc., 384 S.C. 441 (2009) (motion for mistrial denied by Court finding no prejudice where juror was found in contempt after conducting extensive outside research and making improper statements during jury deliberations which placed the plaintiff in a negative light, but where all jurors verified to the court under oath that they were still able to be fair and impartial to both sides in rendering a verdict); State v. Kelly, 331 S.C. 132 (1998) (motion for mistrial denied finding no prejudice to the Defendant after one juror passed a pro-death penalty pamphlet around the jury room during the sentencing phase); State v. Harris, 340 S.C. 59 (2000) (Defendant's motion for a mistrial denied where juror conducted outside research on the definition of "malice aforethought").

Two cases from the U.S. Fourth Circuit Court of Appeals also support the State's position in opposition to Defendant's motion. U.S. v. Seeright, 978 F.2d 842 (4th Cir. 1992) (motion for mistrial denied and upheld on appeal where one juror is excused for juror misconduct during deliberations for conducting outside research and the other 11 jurors were found to be untainted by the misconduct of the excused juror); U.S. v. McClung, 188 F.3d 504, (4th Cir. 1999 *Unpublished Op.*) (motion for mistrial denied where Defendant offered "nothing more than speculation that the juror was prejudiced against the Defendants").

Mrs. Broome, Juror #27 may be found in contempt of your Honor for attempting to conduct outside research on the Defendant and making reference to such in the jury room. However, Ms. Broome has not given any indication in her testimony to this Court, either express or implied, that she was influenced by outside information in her decision to find the Defendant not guilty of CSC with a Minor but guilty of Lewd Act upon a Minor. We are left completely to speculation or conjecture as to what information that Ms. Broome was exposed, and what impact, if any, that it may have had on her part of the jury deliberations.

A bare presumption of prejudice in cases where juror misconduct is found to exist was specifically rejected by the Court in Church of the Holy Cross v. Orkin, 682 S.E.2d 489, 493, and a speculative presumption of prejudice should also be rejected as to Defendant's motion for a new trial.

Based on the record before this Honorable Court and the applicable case law, the State would respectfully ask the Court to deny the Defendant's motion for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. M. Stumbo", with a long horizontal flourish extending to the right.

David M. Stumbo
11th Circuit Solicitor's Office

Lexington, South Carolina
April 19, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT OF GENERAL SESSIONS

2010-GS-32-832; 884

State of South Carolina)

vs.)

TRANSCRIPT OF RECORD
(Motions)

Joe Butler,)

Defendant.)

Thursday, April 22, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

DAVID M. STUMBO, ASSISTANT SOLICITOR
Attorney for the State

BENJAMIN STITLEY, ATTORNEY AT LAW
DAVID ALLEN, ATTORNEY AT LAW
Attorneys for the Defendant

JENNY H. WILLIAMS
Official Circuit Court Reporter
(803) 576-1743

1 Thursday, April 22, 2010

2 **THE COURT:** Excuse me just a minute, counsel.
3 Have you seen this, Mr. Stitley?

4 **MR. STITLEY:** No, I haven't, Your Honor. I
5 don't know that we really have anything to do with
6 this end of it.

7 **THE COURT:** No. But it speaks to some of the
8 issues in this case.

9 **MR. STITLEY:** Yes, sir. Thank you, Judge.

10 **THE COURT:** All right. Well, I'll get to that
11 in a minute. Mr. Stitley, do you have a motion?

12 **MR. STITLEY:** Yes, sir, Your Honor. Previously
13 filed here in this matter, before we'd gotten
14 everything else, we filed a motion for a new trial on
15 the grounds of some after-discovered evidence by way
16 of juror misconduct, Your Honor. I guess this would
17 be the actual hearing on behalf of that motion.

18 **THE COURT:** That's correct.

19 **MR. STITLEY:** Your Honor, you've heard
20 throughout this some of the arguments along the way.
21 I put up for Your Honor a copy of a brief delivered.
22 I've given a copy to the solicitor. I know he has
23 submitted one as well.

24 In this case, Your Honor, as you're obviously
25 aware, there were allegations brought to our

1 attention after the jury returned a verdict of guilt
2 that there was some form of communication inside the
3 jury room, at least with one juror having knowledge
4 of prior instances my client had been charged with.

5 Specifically in this case, Your Honor, we had a
6 hearing before the trial for the better part of an
7 afternoon dealing with a possible Lyle or 404
8 evidence dealing with this previous Aiken charge
9 which Mr. Butler was found not guilty of.

10 During that time Your Honor made the ruling that
11 he found, in considering both Lyle, 404 and 403
12 analysis, that you determined it would be overly
13 prejudicial, the facts weren't close enough in this
14 case to warrant it being brought in through some of
15 the circumstances, and at the end of the day you
16 found the prejudice outweighed the probative value of
17 that information. Your Honor ordered that the
18 solicitor could not use that information in its case
19 in chief, which he did not, and none of that was
20 brought up in the trial.

21 Upon conversations with Mr. Oswald and
22 Mr. Johnson. Right? Wilson. Sorry. Mr. Wilson
23 after the trial, it was brought -- and there's been
24 debate obviously with Ms. Broome and what she said to
25 him, but -- and the Court has ruled her in contempt

1 for at least having done something.

2 Your Honor called in the jury pool, as many as
3 we could get. Ten of the other eleven jurors were
4 able to show up. From them, nine of them indicated
5 that there at least was in their knowledge some
6 recollection of conversation by Ms. Broome. They
7 didn't call her that, but at least some female juror
8 regarding looking him up, knowing something about
9 him, looking on the internet.

10 Your Honor, in the proceedings that was held,
11 I'll state a couple of instances. When you were
12 talking to Ms. Womble, she stated -- and these are
13 the ones I think are particularly important because
14 they seem to at least give some weight to a matter of
15 knowledge in the jury pool. And ultimately, Your
16 Honor, at the end I'd like to argue how it is
17 prejudice.

18 She stated that she recalled the juror saying
19 she knew where he had worked or why he wasn't working
20 there and that she had looked something up. And that
21 was on page 33 of the transcript of the previous
22 proceeding when you were speaking to the jurors. On
23 page 35 you were speaking to a Mr. Taylor. And he
24 did hear a comment, as he said, something to the
25 effect: Have you ever seen the information on him on

1 the Internet? Are you aware of what else he may have
2 done? Clearly indicating by the words of Mr. Taylor
3 that there was something said: Are you aware of what
4 he may have already -- or what he has also done?

5 And then on page 45, Your Honor, of the
6 transcript, and that's when you're speaking to Ms.
7 Broome herself, that was, I guess it would be an in
8 camera hearing, I just said: Did anybody -- I didn't
9 even say his name -- did anybody look him up on the
10 Internet? And then she says: I didn't do it. I
11 thought about it, but I didn't want it to bias my
12 verdict. Which is obviously a disagreement with what
13 Mr. Wilson and Chief Oswald had heard and what the
14 other jurors heard. So even her testimony's veracity
15 I think is definitely called into question.

16 Your Honor, in dealing with this, and I think
17 the solicitor admits to it in his brief, there's not
18 a question that there was some level of juror
19 misconduct. I think in asking for a new trial we
20 have to show you that misconduct has in some way
21 prejudiced our client.

22 In our brief I believe, and we talked about this
23 I believe in a previous hearing, Mr. Williams argued
24 it from our office; the key case in looking about
25 Internet research and stuff like that is State v.

1 Harris which is talking about a juror's action in
2 conducting independent legal research is
3 unquestionably misconduct. I think that says that
4 her actions were misconduct.

5 When looking to find out if there is prejudice,
6 the Solicitor's Office relies kind of on a civil
7 setting, and the case they cite to you talks about
8 when someone looked up the value, the worth that
9 money a plaintiff or a defendant had in the case.

10 In Mr. Butler's case you can look at it in three
11 different ways, Judge. First, if you're to assume
12 that Ms. Broome brought information to that jury room
13 and in any way told the jurors: You should look this
14 guy up, you need to know what else he's been charged
15 with; or, I know that he got, you know, fired from
16 his job because of something he did; if we were to
17 assume in the biggest scheme that all of the jurors
18 were influenced, obviously you can't get to a fair
19 and impartial jury.

20 The Sixth Amendment clearly states that in all
21 criminal prosecution the accused shall enjoy a right
22 to an impartial jury. There is a taint there if you
23 assume that everyone is tainted. If you take it back
24 even a step further and say, well, let's not assume
25 everyone is tainted, let's assume that they only

1 heard that someone looked it up and they were
2 disturbed by what they found, not saying that they
3 know what she found, not saying that she told them it
4 was previous bad acts, not saying she told them
5 anything, they still know that someone found
6 something independent of the evidence of the case
7 which caused them to want to bring to the jury room's
8 attention, hey, y'all need to know something.

9 Even if the jury doesn't find out what it is,
10 the jury still has that seed now in their mind that
11 something obviously is out there. I think that's a
12 potential for prejudice that's clearly in the juror's
13 head and doesn't allow you to have an unbiased jury.

14 Stepping all the way back, if we're to assume
15 that the only juror in this case was Ms. Broome who
16 was tainted, Your Honor, in this case, and I think
17 that the testimony from Chief Oswald, Mr. Wilson and
18 the testimony from the jurors I told you clearly
19 shows that she did something and had enough in her
20 mind that she felt some kind of opinion in this case.

21 Your Honor, there was testimony provided by
22 Mr. Wilson and Mr. Oswald, in the initial interchange
23 between the jurors they found out that there was a
24 deadlocked jury at the beginning of guilty and not
25 guilty votes.

1 If you were to assume that you have just one
2 person out of that 12 who has some additional bias
3 brought into the courtroom outside of the evidence;
4 and in this case it would be that independent ten
5 research, that they're now a weighted juror. And any
6 juror that has convictions who are gotten to from
7 some kind of thing outside of evidence brings the
8 weight of that into their deliberations.

9 Even if it wasn't that she said: He committed a
10 crime in Aiken and got found not guilty; or, he got
11 fired from his job because he was charged with
12 something in Aiken; or, I looked this guy up on the
13 Internet, you want to know what else he's done in his
14 life; that person now brings a stronger conviction
15 personally into that jury room, and that can have an
16 influence on the jury.

17 In determining prejudice, Your Honor, you simply
18 have to determine if the jury pool as a whole was
19 fair, unbiased and not prejudiced in any way. Your
20 Honor, from the scheme that we believe that everyone
21 was biased by the information brought into the jury
22 room, even to the smallest argument of the State that
23 it was only one juror's misconduct, there was
24 something in that jury room that didn't belong.
25 There was a bias ingrained into one of the jurors and

1 that tainted the jury pool.

2 We would contest it tainted -- well, nine out of
3 the ten people who testified knew that there was
4 something. But even if Your Honor were to say only
5 the one person was tainted, that's still a taint. He
6 did not receive a fair trial. The deliberations were
7 tainted. He deserves a new trial with a jury panel
8 that does not have prior information that Your Honor
9 ruled should not be in the jury room.

10 **THE COURT:** Mr. Stumbo.

11 **MR. STUMBO:** Thank you, Your Honor. Thank you
12 for hearing us today. Judge, we would rely on the
13 Memorandum in Opposition that was filed earlier this
14 week. I believe I did mail a copy to Your Honor.

15 **THE COURT:** Yes, sir.

16 **MR. STUMBO:** I think the original is probably in
17 the clerk file. Your Honor, there is one common
18 thread to the cases that we cite in our memorandum,
19 including the one that Mr. Stitley brought up just a
20 moment ago, Your Honor, State v. Harris.

21 The common thread in those cases, Your Honor, on
22 juror misconduct cases in South Carolina is that not
23 only -- to grant a new trial, not only does there
24 have to be a finding of misconduct but actual
25 prejudice. Your Honor, we believe that -- my reading

1 of Judge Cooper's decision from Judge Cooper from
2 Manning in the Sumter case, the Church of the Holy
3 Cross case, Your Honor, he determined in that case
4 that there was indeed misconduct. He found the juror
5 that committed that misconduct in contempt of court.
6 After the --

7 **THE COURT:** Was it a civil case?

8 **MR. STUMBO:** Exactly, Your Honor. But after he
9 brings all the jurors back in and questions them, he
10 finds that there's no prejudice, there is no actual
11 prejudice. And I would submit the facts in that
12 case, Your Honor, would indicate some pretty severe
13 bent against the Plaintiff in that case.

14 I believe that juror had actually gone out to
15 the scene of this church. She had talked with a
16 contractor she knew about this type of thing, the
17 damage. I believe she had actually said something in
18 the jury room about that church having all kinds of
19 money, they didn't need any money; things that would
20 appear to be very damaging to the Plaintiff.

21 Judge Cooper after questioning the jurors in
22 that case -- and I believe Your Honor has done that
23 in this case. You brought the jurors back in. All
24 but one we've heard from, Your Honor. All of those
25 jurors have indicated that essentially, from my

1 perspective, Your Honor, what I heard from these
2 jurors that came in the other week was that this
3 incident in the jury room was nothing more really
4 than a blip on the radar.

5 She brings up this statement. A number of other
6 jurors basically say: No, miss, we can't talk about
7 that. That's stuff the judge didn't allow. And then
8 they moved on. And they deliberated a good four to
9 five hours, to my memory in this case, Your Honor. I
10 believe the jurors did their due diligence.

11 But the standard here is actual prejudice. And
12 I don't believe that there is anything in the record
13 at this point that shows actual prejudice to Mr.
14 Butler. We can presume or assume that what Ms.
15 Broome saw, if she saw anything; at this point she
16 still denies that she saw anything, we have to
17 assume, one, what she saw to find prejudice, and we
18 also have to assume what she saw, if anything, had a
19 negative impact on her in terms of her view of Mr.
20 Butler.

21 Your Honor, we believe that you have done your
22 job in this case to bring these jurors back in here
23 and get to the bottom of what happened. We don't
24 dispute Your Honor's finding in this case that Ms.
25 Broome be held in contempt. And obviously she is

1 consenting to that. But she still maintains, from my
2 reading of that Consent Order, Your Honor, that she
3 did not do any Internet research. But she is
4 consenting to pay the fine and do I believe the six
5 hours in jail because of the disruption she's caused.

6 Obviously we're here for a third time on a
7 post-trial motion that's been an inconvenience to
8 everyone involved, particularly our victim who's had
9 to be here for yet a third time, our victim's mother,
10 Ms. Creech.

11 Your Honor, we would submit that the finding of
12 the jury of not guilty on the CSC is affirmative
13 evidence here that there's no actual prejudice. This
14 jury, including Ms. Broome, voted unanimously to find
15 Mr. Butler not guilty on the criminal sexual conduct
16 with a minor.

17 My position on this would be, Your Honor, that
18 if Ms. Broome was so prejudiced towards Mr. Butler,
19 as the defense says she was, that there's no way she
20 would have voted not guilty on the criminal sexual
21 conduct. It's the State's position, Your Honor, that
22 she did her job, just like the other jurors, in
23 deliberating based on the evidence in the courtroom.

24 The first hearing we had on this matter, I was
25 able to ask Ms. Broome: Did you -- I don't have the

1 transcript in front of me, Your Honor. But I did ask
2 her: Did you base your decision and your vote on
3 what you heard in this courtroom? And she said yes.
4 I asked her did she believe that our victim was
5 telling the truth? She said yes.

6 And, Your Honor, that is something solid that we
7 can hang our hat on. That's solid evidence that she
8 deliberated this case based on what she heard from
9 the witness stand and applying the law as Your Honor
10 gave it to her. Anything else is speculation. We're
11 speculating that she was influenced by anything else
12 other than what she heard in the courtroom.

13 At this point, Your Honor, I believe that the
14 case law is clear that absolute prejudice is the
15 standard. Judge, in my reading of the case law on a
16 mistrial here in South Carolina, our appellate courts
17 use the term "manifest necessity" quite regularly,
18 and that to be the standard, that a mistrial should
19 be granted only in cases of manifest necessity.

20 Your Honor, we believe that that term "manifest
21 necessity" in this case takes on special meaning.
22 And what I mean by that is this, Your Honor, that in
23 a case where the allegations are of child sexual
24 abuse, in order to prove somebody guilty we have to
25 put a child on the witness stand. Here, Your Honor,

1 a mistrial would mean us having to put this child,
2 [REDACTED] who is now 13 years old and already had
3 to go through this one time back on the witness
4 stand.

5 We believe that it is not manifestly necessary
6 based on what we've heard in this courtroom from the
7 jurors, based on what the case law says. It's our
8 position, Judge, that it's not manifestly necessary
9 for a mistrial to be granted in this case because
10 prejudice has not been shown.

11 Your Honor, I don't believe I'd have much of an
12 argument in this case if the jurors had come in and
13 testified on the record that they had had discussions
14 in the jury room about prior incidents involving Mr.
15 Butler that involved child sexual abuse. I don't
16 think I'd have any leg to stand on at that point,
17 Your Honor.

18 But we didn't hear that. What we heard is
19 jurors that came in and said: This juror has made
20 some statement about, Did you all look him up? And
21 then essentially after that they move on. One juror
22 doesn't even remember it happening, Your Honor.

23 And we would submit, Your Honor, that that blip
24 on the radar screen in the jury room is not enough to
25 meet the standard of manifest necessity that our

1 courts have articulated in mistrial cases.

2 We would ask Your Honor respectfully to deny the
3 defense's motion. We would ask Your Honor to uphold
4 the verdict of this jury which was done deliberately,
5 which was done the right way. We believe it does a
6 disservice to the work that the jury did do in this
7 case to mis-try this case, Your Honor. They
8 deliberated. They came back not guilty on one of the
9 counts; they came back guilty on the other one.

10 But for a showing of actual prejudice, Your
11 Honor, which we don't believe has been shown in this
12 case, the verdict should stand and the motion for
13 mistrial should be denied. And we would ask Your
14 Honor respectfully to do that here today.

15 **THE COURT:** How can you -- how could the defense
16 show prejudice when the offending juror adamantly
17 denies that she did what everybody else said she did?

18 **MR. STUMBO:** Well, I think that's the point,
19 Your Honor. Mr. Stitley I believe said at least five
20 times just a moment ago: If we were to assume. And
21 he kept proposing hypotheticals to Your Honor: If we
22 were to assume this, if we were to assume that. I
23 believe that makes the State's point here, Your
24 Honor, that we have to assume in order to find
25 prejudice here. And I don't believe that that's good

1 enough under the case law to just assume that there
2 was prejudice. I believe we have to take the jurors
3 when they come back in and testify --

4 **THE COURT:** You'd have to take her word that she
5 was not prejudiced when I find her in contempt for
6 basically falsifying her testimony?

7 **MR. STUMBO:** That's correct, Your Honor. But
8 even if you --

9 **THE COURT:** If I find her in contempt beyond a
10 reasonable doubt, and then I'm supposed to believe
11 her at the same time she says: It did not prejudice
12 me.

13 **MR. STUMBO:** Your Honor, we still have to
14 assume, make assumptions that it did prejudice her,
15 because we don't know what she saw, if anything. And
16 I think that's what our point is in this case, Your
17 Honor.

18 We did cite a federal case in our memo, Your
19 Honor, that I believe does speak -- it's not directly
20 on point as much as the state cases. But it's U.S.
21 v. Seawright. That's 978 F2d 842. That's a Fourth
22 Circuit Court of Appeals case from 1992.

23 Your Honor, in this case, during the
24 deliberations information came to the Court about one
25 juror who was doing some outside research. In that

1 case, Your Honor, after the judge in that case brings
2 the jurors out and questions them, he actually
3 excuses the one juror and upholds -- and the jury
4 goes back and deliberates with 11, and they come back
5 with a guilty verdict. And that was upheld by the
6 Fourth Circuit Court of Appeals.

7 **THE COURT:** Well, wasn't there a curative charge
8 in that case?

9 **MR. STUMBO:** I don't know if there was or not,
10 Your Honor. I don't have the case in front of me. I
11 can certainly look at that.

12 **THE COURT:** Well, isn't that normally the case,
13 when we have an offending juror is to take the juror
14 out, replace the juror and give the jury a curative
15 charge? And I think that is most of the case law in
16 this state, that a mistrial may not be appropriate
17 under those circumstances because then you really do
18 have to assume or presume prejudice even though the
19 judge has already told the jury to disregard what the
20 offending juror said.

21 This is a little bit different. I guess this is
22 why we have appellate courts, I mean. And this is a
23 strange case because of the split decision in the
24 sense that there is guilty on one and not guilty on
25 the other.

1 **MR. STUMBO:** And we do believe, Your Honor, that
2 that's important affirmative evidence that this jury
3 did their job, that Ms. Broome even did her job. I
4 believe if she was truly prejudiced and tainted, she
5 would have a hard time coming back not guilty on
6 anything.

7 And there again, I'm making an assumption, just
8 like the defense is making an assumption, for the
9 flip side of that, that she was prejudiced. And I
10 think that illustrates our point, Your Honor, that
11 the cases here state that we have to find that
12 there's some kind of prejudice. And I don't know
13 that we've found that here.

14 I don't know that we -- ultimately, Your Honor,
15 you have to make essentially, there again, an
16 assumption that because she's not being completely
17 forthright in Your Honor's opinion about whether she
18 did research outside of the jury room, we have to
19 assume that that made a difference in her
20 deliberations. And I don't know that that's good
21 enough under the case law to mis-try the case, Your
22 Honor, particularly in a case like this where the
23 results are so significant.

24 **THE COURT:** You agree -- you would agree it was
25 a fairly close case in terms of a lack of

1 overwhelming evidence which we see in some cases.
2 This case -- I do not believe it was a case of
3 overwhelming evidence. There was certainly evidence,
4 but --

5 **MR. STUMBO:** I would concede that, Your Honor.
6 I believe that this case hinges on: Does this jury
7 believe [REDACTED]

8 **THE COURT:** I agree with you.

9 **MR. STUMBO:** And Ms. Broome very emphatically
10 under oath stated: I believed the victim. I did not
11 make my decision based on outside information. And,
12 Your Honor, at this point, because we don't know what
13 she saw, if anything, we don't know what tainted her
14 view, I --

15 **THE COURT:** Well, you can't, as long as she
16 denies it.

17 **MR. STUMBO:** Correct, Your Honor.

18 **THE COURT:** Never will, as long as she denies
19 it.

20 **MR. STUMBO:** And I think, you know --

21 **THE COURT:** When I find her less than truthful
22 on that issue, it taints her testimony otherwise.

23 **MR. STUMBO:** And that's very well the case, Your
24 Honor. But I don't think affirmatively that we know
25 whether it tainted the verdict ultimately. I think

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

G. Thomas Cooper, Circuit Court Judge

2010-GS-32-00832

STATE OF SOUTH CAROLINA,

APPELLANT,

v.

JOE LOUIS BUTLER, JR.,

RESPONDENT.

RECORD ON APPEAL
VOLUME II of II

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1 we're presuming or assuming it did. And that would
2 be our position, that under the case law, Your Honor,
3 and under the facts that we have here, we believe
4 that a denial of the mistrial motion would be
5 appropriate. And based on my reading of the case
6 law, Your Honor, we believe that would withstand any
7 attack on appeal.

8 **THE COURT:** Mr. Stitley.

9 **MR. STITLEY:** Your Honor, if it please the
10 Court. The biggest distinction here; and y'all have
11 been arguing about it back and forth, this is a
12 criminal proceeding when the Sixth Amendment says
13 clearly something different than what you have in a
14 civil proceeding.

15 It says definitively: In all prosecution they
16 shall enjoy the right to an impartial, unbiased jury.
17 If there is a question -- and obviously there is,
18 because you have nine people calling the juror out
19 for saying something different than what she said in
20 the court. She told us --

21 **THE COURT:** Well, you have 11 people saying
22 that.

23 **MR. STITLEY:** Well, definitively there were nine
24 that showed up at the hearing that at least said: We
25 remember her saying something in the jury room.

1 There is something fishy there. And I don't want to
2 sound like if there's a smoke, there's fire. But
3 there's got to be something. The solicitor argued
4 manifest necessity. And I don't want to sound like
5 the cold person who says, I want to put the victim
6 back on the stand.

7 But, Your Honor, we're here to protect the
8 rights of a defendant charged to be found guilty by a
9 jury of his peers that is completely impartial and
10 not biased. We go through the entire process of voir
11 dire before a trial to make sure the jury can be
12 fair. During the trial of the case Your Honor makes
13 rulings to ensure that only evidence which is
14 admissible can be used against a client to determine
15 his guilt.

16 And when you have a situation where after the
17 fact, when there's no opportunity to do a curative
18 instruction, where there's no opportunity to correct
19 juror misconduct at the time of deliberations, it's
20 brought to our attention that there was some form of
21 misconduct -- and my assumption now is, we say the
22 whole pool was tainted. But even if Your Honor was
23 to back it all the way down to the bare minimum, that
24 just one juror was tainted, that's a tainted jury
25 pool.

1 And if I come into that jury room with some
2 artificial, outside-of-the-court belief that I am
3 right for some reason or another, I have the ability
4 through my arguments, even if I don't mention why I
5 have those convictions, to sway the jurors with
6 information I bring into that room that's not part of
7 the trial. It's not a fair jury.

8 And I apologize to the victim if they have to
9 try it again, Your Honor. But the Constitution
10 protects our client's right to a fair trial. And,
11 Your Honor, I think that's been compromised. I think
12 that is manifest necessity for a new trial.

13 **MR. STUMBO:** Just one fact, Your Honor, that I'd
14 like to bring to the Court's attention and then I'll
15 sit down and shut my mouth. I don't know if Your
16 Honor remembers this during the -- when we were
17 picking the jury, there was a juror in the jury pool
18 that stands up and says that he knew Joe Butler. And
19 Your Honor asked him if he could still be fair and
20 impartial despite the fact that I believe he worked
21 with Joe for four years out at Michelin.

22 And that juror stated in front of the entire
23 jury pool, including the 12 that ended up on our
24 jury, that Joe was a good guy and essentially gave
25 good character evidence in front of all these other

1 jurors that Joe was a good guy, he worked for him for
2 four years. I believe he said he was a stand up guy.

3 Your Honor, this jury did their job. Despite
4 what they heard before on the front end that Joe was
5 a good guy, despite this one statement made by Ms.
6 Broome in the jury room that: Did y'all look him up?
7 This jury took four to five hours. They
8 deliberated --

9 **THE COURT:** I think she said some of the jurors
10 said that she said: I did look him up.

11 **MR. STUMBO:** Well, I believe all of them were
12 consistent in saying she said: Did you all look him
13 up? And several of them said after they said: No,
14 we can't do that, she said something to the effect of
15 rolling her eyes or saying: Well, you ought to. I
16 think that's what Mr. Devett said who did the
17 affidavit prior to the hearing, Your Honor. I
18 believe there was a couple of other jurors that
19 mentioned --

20 **THE COURT:** Do you have the transcript?

21 **MR. STUMBO:** I don't have that transcript in
22 front of me, Your Honor.

23 **THE COURT:** No. She said several of the jurors
24 said that she said she looked him up.

25 **MR. STITLEY:** They say all different things but

1 all are similar.

2 **MR. STUMBO:** Your Honor, I believe they all said
3 something a little bit different, just trying to
4 filter out exactly --

5 **THE COURT:** Several of them -- one woman said
6 that she had done some -- she had looked him up on
7 the Internet but she didn't say what she found. Did
8 you all look him up on the Internet last night and
9 rolled her eyes. She just said she went online and
10 she said she smiled and rolled her eyes.

11 Now, the only -- we all knew that there was a
12 prior bad act because it was the subject of the Lyle
13 hearing. And that was a trial within recent memory
14 in Aiken County.

15 It's parenthetical that my law clerk while we
16 were sitting there talking typed in Joe Butler's name
17 and the article came up about his prior trial. So
18 we -- I hate to do independent research, but it's --
19 I have to recognize the fact that if it's in The
20 State paper the day before or if it's on the Internet
21 the day before that it's accessible by anybody.
22 That's just the world we live in these days.

23 And I'm not saying -- if you'll recall, she said
24 she didn't see the article because she would have had
25 to pay for it, which made absolutely no sense to me

1 or probably to anybody in this room that the only way
2 she could look him up was to pay for it.

3 **MR. STUMBO:** I believe she mentioned something,
4 Your Honor, about some public --

5 **THE COURT:** Public index.

6 **MR. STUMBO:** -- index or something, is what she
7 mentioned. I don't think she mentioned anything
8 specifically about an article or ...

9 **THE COURT:** The cumulative evidence to me, and
10 this results in this Consent Order, is that she did
11 Internet research and she looked him up. That's what
12 she told the other jurors.

13 So I'm back to the basic issue. And I would
14 probably tend to agree with you that most of the
15 jurors indicated in front of this panel that they
16 took their duty, their responsibility very seriously
17 and immediately discounted whatever she had to say.
18 But some of them, if they saw her roll her eyes, they
19 saw her roll her eyes. What do we draw from that? I
20 don't want to speculate.

21 So I'm wrestling with the fact that you probably
22 have no prejudice in 11 jurors, that 11 jurors did
23 not pay attention to what she said. Let's just
24 assume in my mind that's too much of a leap of faith
25 to assume that the mere fact she said something would

1 have swayed those 11 jurors in light of the
2 testimony.

3 I think they carried out their responsibility.
4 They listened to the testimony. They made a
5 decision. They differentiated between the two
6 charges. But it's the 12th juror, if you've got one
7 bad apple, it bothers me from a Constitutional
8 standpoint.

9 Does the fact that she voted -- we have to
10 assume she voted not guilty on the CSC first. Does
11 that fact alone mean that she was not tainted or
12 prejudiced by what she had done on the lesser charge,
13 on the lewd act charge? It seems to me that's where
14 it is.

15 And, unfortunately, neither you nor Mr. Stitley
16 nor I have been able to find a case on point. These
17 cases most often come up obviously, as I said
18 earlier, in the civil cases; or perhaps even in
19 criminal cases, although they're not as widely
20 reported where the Court has an opportunity to cure
21 or at least to attempt to cure the misconduct.

22 **MR. STUMBO:** And, Your Honor, --

23 **THE COURT:** I mean, I think that's where the
24 issue is, and that's what I've got to decide.

25 **MR. STUMBO:** We believe that there's really no

1 way that the Court could have even cured it in this
2 case in the sense of a --

3 **THE COURT:** Not after the fact, no.

4 **MR. STUMBO:** -- instruction if the jurors were
5 tainted by it, even if one juror was tainted by it.
6 But we believe --

7 **THE COURT:** Well, if we had known it, if I had
8 known it at any stage prior to final verdict, then
9 perhaps even -- see, that's another unknown, is when
10 she did it. She could have done it the first night
11 of the trial. She could have done it the night of
12 the deliberations. I don't think there was any clear
13 indication in my questioning of the jurors when it
14 was done.

15 But had it been done early in the trial or
16 before deliberations, if I hadn't already dismissed
17 the alternates, there may have been a way to at least
18 attempt to cure it. And perhaps I would have then,
19 when I brought the jurors in last week, I might have
20 conducted a more thorough examination from them had I
21 had the opportunity to issue a curative instruction.
22 The focus of my bringing them in last week was to try
23 to resolve the issue of the contempt.

24 Anything further?

25 **MR. STITLEY:** The only thing is, in a criminal

1 setting, Judge, I think it's all the more important
2 because you have the question of beyond a reasonable
3 doubt by an impartial, unbiased jury. I think the
4 rules are different in a criminal setting and a civil
5 setting.

6 I don't think -- if you have pause, Judge, and
7 anyone else in the room has pause thinking somebody
8 was tainted in that panel, I think we have to find
9 that there is manifest necessity to give Mr. Butler a
10 jury that's impartial. I think even if you were to
11 call it close to a tie, I think the Constitution
12 protects his rights in this case to have a trial, a
13 new trial.

14 **MR. STUMBO:** We would simply just disagree, Your
15 Honor, with that assessment in that because we have
16 no testimony and no witnesses that have stated that
17 there was anything outside of what was heard in the
18 courtroom that affected their verdict, and that would
19 be what we would rely on.

20 The fact that there is nothing solid or concrete
21 that we can point to to say this juror or all the
22 jurors or a portion of the jurors were affected, we
23 don't believe that there was. And Your Honor has all
24 the ammunition at your disposal to find that there
25 was no prejudice in this case.

1 **THE COURT:** All right. Let me suggest you to do
2 this, counsel. I've read your memorandums. I'm
3 going to ask you each to submit a Proposed Order
4 competent within ten days to my office in Columbia.
5 And I'm going to re-read the cases and I'll let you
6 know.

7 Now, as to the matter of the contempt of Betty
8 J. Broome, I have consented to allow Ms. Broome to in
9 effect acknowledge her culpability in this matter and
10 have -- she has entered into a Consent Order to be
11 sanctioned in the following manner.

12 I had the Clerk of Court estimate the sum,
13 actually pretty well chronicled or set forth the cost
14 of the trial and certainly told her that there was a
15 possibility this case would have to be tried again.
16 The clerk came up with a figure of \$2,753. And I
17 have fined her \$2,753, which she has presented a
18 check to the court made payable to the County of
19 Lexington for \$2,753.

20 I also told Mr. Snell I thought it was
21 appropriate that she serve at least a minimal amount
22 of jail time for her contempt and had agreed that she
23 would report to the Lexington County Detention Center
24 within 15 days to serve a sentence of six hours.

25 Now, you might think that's a little bit -- a

1 pittance of time to serve. I think the lady was very
2 remorseful in her -- although she adamantly denied
3 she'd done it, done the Internet research, I think
4 she was -- she seemed to be remorseful. I didn't
5 feel -- I felt it was important that she serve some
6 time as a result of the contempt.

7 And for perhaps two reasons: One, that she
8 needed to understand the seriousness of what she had
9 done; but also so that the public would know that
10 this type of behavior -- and I will tell you, it's
11 becoming more and more of a problem around the
12 state -- that the public would know that these kind
13 of things will not go unpunished and that we mean
14 business. We're serious and we mean business when we
15 say there shall be no investigation outside the
16 courtroom.

17 I am signing that Order today. And, Madam
18 Clerk, I think I need a sentencing sheet to go to the
19 detention center --

20 **THE CLERK:** Okay.

21 **THE COURT:** -- if you've got one.

22 **THE CLERK:** I've never done this before.

23 **THE COURT:** Well, we just need a sentencing
24 sheet. Do you want to prepare it?

25 **MR. STUMBO:** I guess, Your Honor, we can print

1 one out.

2 **THE COURT:** All we need is her name and contempt
3 of court as the charge.

4 **MR. STUMBO:** Now, of course we wouldn't sign it
5 or put our name to it.

6 **THE COURT:** I'm not asking you to sign it. I
7 understand that. I just want something for the
8 jail --

9 **MR. STUMBO:** Yes, sir.

10 **THE COURT:** -- so they will know when she --
11 what her obligation is to serve, that they'll know
12 that within 15 days she is to be there and that she
13 is to serve six hours. Can we arrange that?

14 **MR. STUMBO:** Yes, sir. I believe one of our
15 assistant solicitors is going to go print you off
16 essentially a blank sentencing sheet, I guess put her
17 name on it for Your Honor to fill out.

18 **THE COURT:** All right. Anything further?

19 **MR. STITLEY:** No, sir.

20 **THE COURT:** All right. Thank you very much,
21 counsel.

22 **MR. STUMBO:** Thank you, Your Honor.

23 **MR. STITLEY:** Thank you, Judge.

24 (Whereupon, the proceedings are concluded)

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the motions of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 22nd day of April, 2010.

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

June 12, 2010

Jenny H. Williams

Jenny H. Williams, Court Reporter

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ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

THE STATE OF SOUTH CAROLINA,

vs.

JOE LOUIS BUTLER, JR.,

Defendant.

IN THE COURT OF GENERAL SESSIONS
ELEVENTH JUDICIAL CIRCUIT

2010-GS-32-832; -844

ORDER GRANTING A NEW TRIAL

I. FINDINGS OF FACT

This matter comes before the Court by Defendant's Motion for a New Trial. Defendant was tried by a jury and convicted before this Court in Lexington County during the General Sessions term beginning on March 8, 2010. The State was represented by Assistant Solicitors David M. Stumbo and Rhonda W. Patterson. Defendant was represented by Robert T. Williams, Esq. and Benjamin A. Stitely, Esq. After a three-day trial,¹ Defendant was convicted of Lewd Act on a Minor and acquitted of Criminal Sexual Conduct with a Minor, 1st Degree. Immediately thereafter, this Court sentenced Defendant Joe Louis Butler, Jr. to twelve (12) years incarceration. Subsequently, Defendant filed a Motion for a New Trial on March 19, 2010, based on information that was revealed after the sentencing involving juror misconduct.

The issue now before the Court pertains to the misconduct of Juror #27. According to Chief Oswald of the Batesburg-Leesville Police Department, the investigating agency in this

¹ The State moved under State v. Lyle and SCRE Rule 404(b) to introduce evidence of a prior similar incident in Aiken County where the Defendant was tried and acquitted. The motion was denied, and the State did not offer evidence of the Aiken incident during the trial. However, press reports of this prior trial were readily available on the Internet by merely entering the Defendant's name on a search engine.

case, Juror #27 made a statement to him in the parking lot of the Lexington County Courthouse on Friday after the trial was over. Per Chief Oswald, her statements indicated that she had attempted to conduct her own outside research into Defendant during the overnight recess on Thursday, March 11. Closing arguments and the jury charge was given by the Court the following morning. In a letter dated March 19, 2010, Assistant Solicitor David Stumbo informed counsel for Defendant and the Court about this conversation. Counsel for Defendant subsequently, and timely, filed a Notice of Motion and Motion for New Trial on March 19, 2010. On March 25, 2010, Juror #58 executed an affidavit saying that at the beginning of deliberations "one of the jurors made a statement to the effect of, 'Did y'all have a chance to look him up on the internet?' With that myself and a number of others told her not (sic) talk about that since it was not evidence. She said, 'Well, you need to look him up.' To my knowledge that was all that was said in the matter." At a later hearing, Juror #58 identified Juror #27 as the person that made these comments.

The Court held a Rule to Show Cause hearing into March 29, 2010, on the issue of contempt of court by Juror #27. Testimony was taken as to the allegations of juror misconduct from Chief Oswald, Investigator Kevin Wilson of the Solicitor's Office, and Juror #27. Juror #27, who was represented by James Snell, Esq., adamantly denied conducting any research on Defendant and testified that her statements both to Chief Oswald and in the jury room were misunderstood. Juror #27 testified that she made her decision as to the verdicts based on the evidence that was presented in court during the trial. This Court held in abeyance rulings on both the contempt question and the Motion for a New Trial until further inquiry could be made into the matter.

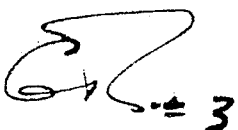
This Court convened another hearing into the matter, April 8, 2010. Ten of the other

members of the jury (the 11th was out of town and not able to come to the hearing) were present and examined individually on the record as to any outside information that may have been brought into the jury deliberations. Although one juror had no recollection of a comment being made, the consensus of the other nine jurors was that a statement was made by Juror #27 sometime during deliberations on Friday, March 12, 2010 that convinced them that she had looked up Defendant on the Internet, and that there was an immediate negative reaction by several jurors. The consensus of the nine jurors that heard Juror #27 was that no outside information was ever disclosed during the deliberations. Several jurors, including the foreperson, testified that the statement made by Juror #27 did not appear to affect the deliberations. At that time, this Court indicated that based on the totality of the evidence, Juror #27 should be held in contempt. The matter of Defendant's Motion for a New Trial was continued.

The final hearing in this matter was convened by this Court on April 22, 2010, at the Lexington County Courthouse. A Consent Order finding Juror #27 in contempt was executed during the hearing. Juror #27 continues to deny having actually conducted Internet research on Defendant prior to the conclusion of the case and maintains that her statements were misunderstood. However, she did accept responsibility for the disturbances and circumstances her comments created and thus agreed to pay a fine of \$2,753.00 in addition to being committed to the Lexington County Detention Center for a period of six hours.

II. CONCLUSIONS OF LAW

The Sixth Amendment states that the accused in a criminal proceeding "shall enjoy the right to...an impartial jury." U.S. Constitution. In order to grant a mistrial in cases involving



juror misconduct, the Court must find not only that misconduct was committed but also find that the jury was improperly influenced by the misconduct to such an extent that the Defendant suffered resulting prejudice. State v. Ziegler, 364 S.C. 94 (Ct. App. 2005). Misconduct that does not affect the jury's impartiality will not undermine the verdict. State v. Harris, 340 S.C. 59 (2000). The standard most recently laid down by the South Carolina Court of Appeals is that prejudice must be evident in order for a new trial to be manifestly necessary, and that a juror's misconduct "does not *ipso facto* justify the grant of a new trial." State v. Bantan, 2010 WL 915985, citing Vestry & Church Wardens of the Church of the Holy Cross v. Orkin Exterminating Co., 682 S.E.2d 489, 493 (2009).

After conducting a thorough examination of this matter on the record with every available juror, the Court finds that Juror #27's misconduct resulted in prejudice to the Defendant.

A. Juror Misconduct

Juror #27's actions amount to juror misconduct under State v. Harris, 530 S.E.2d. 626, 340 S.C. 59 (2000). Although she continues to deny that she actually conducted outside research, the majority of the jury, as well as two law enforcement officers involved with the prosecution of the case, have testified they heard her admit as much.

B. Prejudice

In State v. Kelly, the South Carolina Supreme Court states, "Relevant factors to be considered in determining whether outside influences have affected the jury are (1) the number of jurors exposed, (2) the weight of the evidence properly before the jury, and (3) the likelihood that

curative measures were effective in reducing the prejudice.” [Numbering added] State v. Kelly, 502 S.E.2d. 99, 331 S.C. 132 (1998).

At a minimum, ten (10) of the twelve (12) jurors were exposed to outside influences in this case. In applying this situation to the factors laid out in the Kelly case, the large number of jurors exposed weighs in favor of granting the Defendant a new trial.

The weight of the evidence properly before the jury was sufficient enough to support a conviction in this case. However, I do not find that this is a case of overwhelming evidence.

In the recent case of State v. Bantan, the South Carolina Court of Appeals emphasized the importance of a finding of prejudice or bias before the granting of a mistrial. In Bantan, the trial judge was informed of potential juror misconduct at the beginning of deliberations and was able to interview all of the jurors and give curative instructions. In this Defendant’s trial, however, there was no opportunity for a curative instruction, as the misconduct was not discovered until the completion of the trial and the dismissal of the jury. Therefore, this factor weighs in favor of granting the Defendant a new trial.

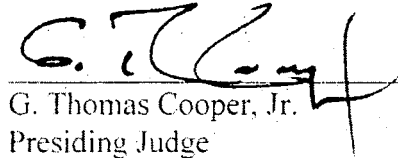
The nine (9) jurors that were interviewed said that their verdict was not influenced by Juror #27’s comments. It is more difficult to assess whether Juror #27 was personally able to be fair and impartial in her part of the jury deliberations. She has been found to be in contempt of court but does not admit to doing any independent research. However, based on her comments, as testified to by the other jurors and two police officers, this Court finds that Juror #27 was prejudiced against the Defendant as a result of her out of court investigation.

Therefore, when applying the facts of this case to the factors laid out in State v. Kelly, it cannot be said that the Defendant was provided his Sixth Amendment right to an "impartial jury."

IT IS THEREFORE ORDERED:

1. That the Defendant's conviction for committing a Lewd Act Upon a Minor is overturned; and
2. That the Defendant is to be granted a new trial.

AND IT IS SO ORDERED this 4 day of May, 2010.


G. Thomas Cooper, Jr.
Presiding Judge

COLUMBIA, South Carolina.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & E.C.

STATE OF SOUTH CAROLINA }
COUNTY OF LEXINGTON }

IN THE COURT OF GENERAL SESSIONS
FOR THE ELEVENTH JUDICIAL CIRCUIT

State of South Carolina,

vs.

**CONSENT ORDER FROM RULE TO SHOW
CAUSE**

Joe Butler,

Defendant,

In re:

Betty J. Broome, Juror No. 27

Respondent.

This matter comes before the Court upon the Court's issuance of a Rule to Show Cause directed to the Respondent, Betty J. Broome, dated March 22, 2010. The Respondent was seated as a trial juror during the trial of Joe Butler held in the Lexington County Court of General Sessions during the term of Court beginning on March 8, 2010.

After the conclusion of this trial the Court was advised that the Respondent had made comments to an employee of the 11th Circuit Solicitor's Office and to the Chief of the Batesburg-Leesville Police Department indicating that prior to the conclusion of her service she had conducted independent Internet research concerning the Defendant. The Court also received an affidavit from another juror, secured by the Solicitor's office, advising that the Respondent had also made comments in the jury room concerning Internet research of the Defendant.

The Respondent appeared at hearings held on March 29th and April 8th, 2010, represented by her attorney, James R. Snell, Jr. According to the Respondent she denied conducting any Internet research prior to the conclusion of the case, however she accepts responsibility for the disturbances and circumstances her comments have created.

BJP *2*

A TRUE COPY

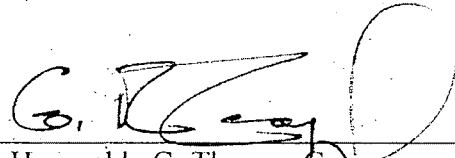
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

After considering the testimony of the Respondent, Solicitor's Office Employee and Police Chief, as well as after making direct inquiry of ten of the eleven other jurors, the Court finds beyond a reasonable doubt that the Defendant should be held in contempt of court regarding the various comments she made concerning Internet research of the Defendant.

The Court finds that based on the serious nature of jury service, as well as the importance of this case to both the State and the Defendant, that the imposition of contempt sanctions are necessary. The Court believes that it would be appropriate for the Defendant to share in the financial burden to the County and the Court that this proceeding has cost and therefore Orders the Respondent to pay to the Lexington County Clerk of Court the sum of \$2,753 within ten days of this Order. Additionally the Court finds that the Respondent should be committed to the Lexington County Detention Center for a period of six hours to be served within fifteen days of this Order.

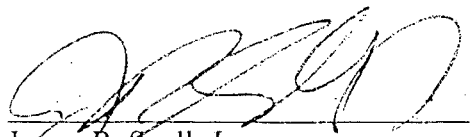
IT IS ORDERED!

LEXINGTON, S.C.
APRIL 22, 2010


The Honorable G. Thomas Cooper

I CONSENT:


Betty J. Broome, Juror No.: 27, Respondent


James R. Snell, Jr.
Attorney for the Respondent
316 South Lake Drive
Lexington, South Carolina 29072
(803) 359-3301
(803) 359-7691 (facsimile)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington

STATE

AKA: Betty J. BroomeRace: Sex: F Age: 0DOB: 00-00-0000 SS#: 000-00-0000Address: [REDACTED]City, State, Zip: [REDACTED]

DL# * SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: CONTENT OF COURT - CRIMINALIn violation of § of the S.C. Code of Laws, bearing CDR Code # 0113☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS☐ \$17-25-45 (CSC w/minor 1st or Lowd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,for a determinate term of 6 mos. days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 2,753.00 provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department

of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____

\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$56-1-286 (DUI Breath Test) \$25 \$ _____

\$47.12 (Public Def/Prob) \$500 \$ _____

\$14-1-212 (Law Enforce. Funding) \$25 \$ _____

\$14-1-213 (Drug Court Surcharge) \$100 \$ _____

\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

\$90.7 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

A TRUE COPY

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

SCCA/217 (11/2009)

INDICTMENT/CASE#:

AW#:

Date of Offense: MARCH 10-12, 2010

S.C. Code §:

CDR Code #:

SENTENCE SHEET

BY THE COURT☒ CONVICTED OF or ☐ PLEADS☐ \$17-25-45 (CSC w/minor 1st or Lowd Act)☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)☐ Negotiated Sentence, ☐ Recommendation by the State.

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,for a determinate term of 6 mos. days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 2,753.00 provided that upon the service of _____ days/months/years and or payment

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months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department

of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

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Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

SCCA/217 (11/2009)

INDICTMENT/CASE#:

AW#:

Date of Offense: MARCH 10-12, 2010

S.C. Code §:

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SENTENCE SHEET

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Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,for a determinate term of 6 mos. days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 2,753.00 provided that upon the service of _____ days/months/years and or payment

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☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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3% to County (if paid in installments) \$ _____

TOTAL \$ _____

A TRUE COPY

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

SCCA/217 (11/2009)

INDICTMENT/CASE#:

AW#:

Date of Offense: MARCH 10-12, 2010

S.C. Code §:

CDR Code #:

SENTENCE SHEET

BY THE COURT☒ CONVICTED OF or ☐ PLEADS☐ \$17-25-45 (CSC w/minor 1st or Lowd Act)☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)☐ Negotiated Sentence, ☐ Recommendation by the State.

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,for a determinate term of 6 mos. days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 2,753.00 provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department

of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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3% to County (if paid in installments) \$ _____

TOTAL \$ _____

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Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

SCCA/217 (11/2009)

INDICTMENT/CASE#:

AW#:

Date of Offense: MARCH 10-12, 2010

S.C. Code §:

CDR Code #:

SENTENCE SHEET

BY THE COURT☒ CONVICTED OF or ☐ PLEADS☐ \$17-25-45 (CSC w/minor 1st or Lowd Act)☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)☐ Negotiated Sentence, ☐ Recommendation by the State.

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☒ County Detention Center,for a determinate term of 6 mos. days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 2,753.00 provided that upon the service of _____ days/months/years and or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department

of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

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\$90.7 (SCCJA Surcharge) \$5 \$ _____

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

A TRUE COPY

Clerk of Court/Deputy Clerk

Court Reporter: [Signature]

Lex. Co. C.C.C.P., G.S. & F.C.

SCCA/217 (11/2009)

INDICTMENT/CASE#:

AW#:

Date of Offense: MARCH 10-12, 2010

S.C. Code §:

CDR Code #:

SENTENCE SHEET

BY THE COURT☒ CONVICTED OF or ☐ PLEADS☐ \$17-25-45 (CSC w/minor 1st or Lowd Act)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATEINDICTMENT/CASE#: 2010GS3200632VS.
Mr Joe ButlerAW#: 10-STR-00009AKA:
Race: B Sex: M Age: 38Date of Offense: 5/20/2005 - 8/20/2005DOB: 07-19-1971 SS#: [REDACTED]S.C. Code §: 16-15-0140Address: [REDACTED]CDR Code #: 2468City, State, Zip: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)In violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(OSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury, (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 72105
Solicitor SC Bar #

Defendant

Attorney for Defendant

SC Bar # 6145WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and or paymentof \$; plus costs and assessments as applicable; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning Substance Abuse Counseling ☐*Fine: \$ Random Drug/Alcohol Testing ☐§14-1-206 (Assessments 107.5%) \$

Fine may be pd. in equal, consecutive weekly/monthly

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00pmts. of \$ Beginning §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ \$ Paid to Public Defender Fund§56-5-2995 (DUI Assessment) \$12 \$ §56-1-286 (DUI Breath Test) \$25 \$ §47.12 (Public Def/Prob) \$500 \$ §14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$100 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ §90.7 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ TOTAL \$ 130.00Other: ☐ Appointed PD or appointed other counsel,

§47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter: [Signature]Presiding Judge [Signature]
Judge Code: 2126
Signature Date: 3-12-10

SCCAV217 (11/2009)

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

WITNESSES

Batesburg Leesville Police Department

Law Enforcement Case #:

DMS

ARREST WARRANT NUMBER

10-STR-00009

(reference warrant #I-021626)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 3/3/10

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS3200832

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2010

THE STATE

vs.

Joe Lewis Butler, Jr.

CDR #: 2468

Indictment for

Lewd Act Upon a Child

§ 16-15-0140

DONALD V. MYERS, SOLICITOR

A TRUE COPY
DOCKETED
10-16-10 10:00 AM
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Lewd Act Upon a Child

§ 16-15-0140

At a Court of General Sessions, convened on MARCH 2010, the Grand Jurors of Lexington County present upon their oath:

That **Joe Lewis Butler, Jr.** did in Lexington County on or about October 1, 2005, being a person over the age of fourteen, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit: [REDACTED], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the person or of the child, to wit:

Defendant slid his hand under the victim's shorts and panties and placed his fingers on her private parts while in Defendant's truck, in violation of § 16-15-140 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR