

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

Sep 18 2023

S.C. SUPREME COURT

Certiorari to Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

SCOTT RICHARD ROWAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000449

APPENDIX

JESSICA M. SAXON
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

JOSHUA A. EDWARDS
Assistant Attorney General
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-3372

ATTORNEY FOR PETITIONER

JIMMY A. RICHARDSON, II
Solicitor, Fifteenth Circuit
1301 Second Avenue,
Conway, SC 29526
(843) 915-5460

ATTORNEYS FOR RESPONDENT

VOLUME II

PAGES 501-826

INDEX

INDEX i

PRE-TRIAL TRANSCRIPT DATED DECEMBER 11, 2017 1

TRIAL TRANSCRIPT DATED APRIL 9-12, 2018.....55

STATE’S EXHIBITS #1-3 – RUNAWAY LETTERS728

INDICTMENTS AND SENTENCE SHEETS.....734

APPLICATION FOR POST-CONVICTION RELIEF740

RETURN.....747

AMENDED APPLICATION FOR POST-CONVICTION RELIEF755

POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED
NOVEMBER 30, 2022.....756

ORDER OF DISMISSAL.....814

1 Q All right, sir. Vion, V-I-O-N?

2 A Lyon, L-Y-O-N.

3 Q L-Y-O-N.

4 A First name Tom.

5 Q Tom. All right, sir. And so Tom Lyon did a
6 peer-reviewed study?

7 A Yes.

8 Q All right, sir. And that peer-reviewed study,
9 what was the name of that again?

10 A *Scientific Support for the Child Sexual Abuse*
11 *Accommodation Syndrome.*

12 Q All right. And so he used the word child there.
13 He's talking about 18 years old, somebody under the age
14 of 18 years old?

15 A Yes.

16 Q And do you know the -- what is the word -- do you
17 understand the word "norming" to have an application in
18 your work?

19 A Norming?

20 Q Norming.

21 A Say more about what you mean.

22 Q All right, sir. So when somebody does a study,
23 when they do a scientific study and they have a
24 population of people that they want to have the study
25 apply to, then it's called norming, normed for that

1 population. That is, let's say it was 9 to
2 12-year-olds or 12 to 15-year-olds?

3 A Right.

4 Q Is norming the word that you would use in
5 connection with that?

6 A Yes.

7 Q All right, sir. And so the study, the Tom Lyon's
8 study?

9 A Yes.

10 Q Do you know what that study was normed -- what
11 population that was normed for?

12 A So that study was more of a peer review. He was
13 looking at -- he was collecting studies that had been
14 done in all of these different areas. So when we look
15 at the dynamics of child sexual abuse, we are talking
16 about things, for example, like delayed reporting and
17 recantation.

18 So he was looking at studies that had been done in
19 those areas, sort of aggregating them and putting them
20 together into a research paper that looked at all these
21 different aspects of child sex abuse dynamics in an
22 attempt to, you know, support what Dr. Summit had
23 described again was the goal of the article.

24 Q So he knew what the answer was before he went
25 looking for it?

1 A No. I think he was trying to see if there was
2 scientific support for the child sexual abuse
3 accommodation syndrome and just record the results as
4 they were. There was support for it or if there
5 wasn't.

6 Q All right, sir. So in terms of norming for the
7 ages, you can't talk about that?

8 A Right.

9 Q Is it fair to say that the dynamics would be
10 different depending on the ages of the child abuse
11 victims?

12 A Yes. That's possible, yes.

13 Q Possible?

14 A Yeah. I mean, it depends on the --

15 Q Well -- go ahead, I'm sorry.

16 A I mean, there's so many variables. It depends on
17 the age difference, it depends on specific variables we
18 are talking about.

19 Q All right, sir. So, in other words, for -- if
20 you're talking about child abuse dynamics, the age of
21 the children involved in the situation matters?

22 A Again, I would need -- is that a question?

23 Q Yes.

24 A I would need specifics, though, in terms of --

25 Q Well, does it matter?

1 A In terms of what dynamic or what particular issue?
2 All children -- there's dynamics in play with all
3 children, regardless of age.

4 Q Sure.

5 A What those dynamics are, how they play out, sure,
6 they might be different depending on how old the child
7 is.

8 Q Right. So if you don't know whether the child --
9 if you're talking about child abuse dynamics, and you
10 don't know whether the child is nine or sixteen, then
11 those are not the same dynamics?

12 A Yeah. What's nice about studies like Tom Lyon,
13 though, when you do peer-reviewed article, when you get
14 a bunch of other research articles and you do a lit
15 review, literature review, and you collect other
16 research that's been done, you often get a variety.

17 So you'll get some studies where, you know, maybe
18 they looked at younger children or other studies where
19 they looked at older children. So you can compare and
20 contrast the results based on one population versus
21 another.

22 Q All right, sir. So, but we don't -- I mean, when
23 you say compare and contrast, there are differences?

24 A I mean, there could be. But some things -- you
25 know, we know that all children recant, for example.

1 It may be --

2 Q Wait, wait. Say that again.

3 A Recantation is a phenomenon that occurs with
4 children of all different ages. It may be more common
5 among certain ages than others, but it is a phenomenon
6 that occurs in all age victims.

7 Q But you're not saying that all children recant?

8 A No, that's not what I said.

9 Q All right. I thought that's what you said.

10 A No, it's something -- it's, again, a dynamic of
11 child sexual abuse that is common to all age -- all
12 ages of victims. So a four-year-old can recant and a
13 14-year-old can recant, even though there is, you know,
14 a huge age difference in those two victims.

15 Q All right, sir.

16 A I'm not saying that all children recant child
17 sexual abuse allegations.

18 Q Right.

19 A Right.

20 Q So the study that you're -- that you got, the
21 second study, Lyon's study, and Lyon's study was a
22 study of other studies?

23 A Right.

24 Q All right. And that was -- what else do you have
25 that you're basing your --

1 A There was another pretty important article in our
2 field that was published, I think, in 2007 or 2008.
3 There were four researchers. This was a similar-type
4 article to the one that Tom Lyon did wherein they
5 looked at other research that had been done. This was
6 done by Kamala London, Maggie Bruck, Stephen Ceci.
7 There's a fourth person on the study whose name I can't
8 recall off the top of my head.

9 But, again, this article looked at some of these
10 same dynamics and tried to see, again, if the research
11 supported some of these things that we were seeing in
12 the field. And that article is one that we look at
13 because it's a little bit more recent, like I said. I
14 think it was published in 2008, maybe 2007.

15 Q All right, sir. And what you're saying is the
16 research supported what you were seeing in the field;
17 is that --

18 A Correct, that's right.

19 Q And how was the research done, what was that
20 research?

21 A Again, that was looking at other research that had
22 been done and putting it together to see if it
23 supported -- and I can go through the different
24 dynamics if you want me to -- but supported things like
25 delayed reporting, things like recantation.

1 Q What I'm trying to get to is when we started this,
2 it was Dr. Summit's patients. And then the next thing
3 was a study of studies. Were the studies that were --
4 were the studies that the study was done of, were they
5 done of people's patients also?

6 A I mean, you're talking about a lot of studies.
7 And, again, I'm not a researcher, I'm a practitioner by
8 trade. So, I mean, you might need a wheelbarrow, I
9 don't know, to bring all the studies in here and start
10 looking through them all in detail or -- you know.
11 There's a fair number of studies, and again, a wide
12 range of ages of victims.

13 All of these different studies would have
14 different methodologies, different norms. And one of
15 the benefits in doing a lit review and putting all
16 these things together is so that you get a variety of
17 information, different types of methodologies that were
18 used in these studies, different age ranges. And, you
19 know, then you look at the results and see what you
20 have and see if you can support your original
21 hypothesis.

22 Q Trying to support the original hypothesis?

23 A Yeah, whether it does or not.

24 Q All right, sir.

25 A Yeah.

1 Q Is it fair to say that your ability to testify
2 here or your expertise is based more on your experience
3 as a practitioner than it is on these studies?

4 A I would say that, right. I am familiar with some
5 of the literature, but I'm primarily a practitioner.

6 Q And your practitioner is based on interviewing
7 persons who are victims of crime; is that right?

8 A Suspected victims of child abuse, correct.

9 Q All right, sir. So that's all based on
10 individuals who are claiming abuse?

11 A Not everybody we interview was claiming abuse. We
12 get a referral. There has to be an investigation
13 initiated in order for us to get involved. But not
14 every child we interview discloses abuse.

15 Q All right, sir.

16 A Does that make sense?

17 Q Yes, sir.

18 MR. HILLIARD: Excuse me just one second. Thank
19 you, sir.

20 THE COURT: Anything further as to his
21 qualifications?

22 MR. MARTIN: No, Your Honor. At this time, we'd
23 ask that he be qualified as an expert in the dynamics
24 of child sexual assault.

25 THE COURT: All right. Mr. Ropp, would you take

1 the jury out again for just a few minutes.

2 (WHEREUPON, the jury exited the courtroom at
3 3:00 p.m.)

4 THE COURT: All right. Mr. Hilliard, I'll hear
5 from you.

6 MR. HILLIARD: Thank you, judge. In order, judge,
7 for this person to be qualified as an expert in this
8 area, the Court will have to make a finding of
9 reliability on --

10 THE COURT: Well, let me tell what you my
11 understanding is, and you straighten me out. First of
12 all, it's my understanding that the subject matter of
13 an expert's testimony must be beyond the knowledge of a
14 jury, and the testimony must assist the jury in making
15 its determination of the facts in this case.

16 Now, in addition to that, it must be shown that
17 the expert has requisite knowledge and skills in the
18 particular field that he's offered at, and that the
19 substance of the testimony must be reliable.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: Now, there is a two-layered or
22 two-leveled analysis that must be undertaken first by
23 the Court. The Court must address the issues that I
24 just went over with you and make a determination of
25 whether the threshold has been met.

1 However, the jury, as a secondary matter, will
2 determine whether or not the science supports the
3 opinion, whether the opinion is well founded, whether
4 or not the expert has the requisite skill, knowledge,
5 experience. Those are all things for the jury to
6 determine. If the jury determines that he does not or
7 the opinion is not supported, they can reject it
8 totally.

9 Now, in this matter, what do I have? First of
10 all, I have unrefuted, at this point unrefuted
11 testimony that there is a body of information which has
12 been produced by scientific peer-reviewed studies over
13 a period of 40 years. I have an expert who has
14 testified that he has 20-plus years of experience in
15 the field. I don't know if he has been specifically
16 qualified as an expert in the dynamics of child abuse
17 or sexual abuse.

18 I do acknowledge that he has been qualified
19 numerous times as a forensic interviewer. And
20 traditionally that sort of information has been made a
21 part of the forensic interview process, although
22 forensic interviewing has fallen into disfavor but
23 primarily because of its bolstering elements in it.

24 Tell me why the State, in your view -- where has
25 the State failed in meeting the threshold of

1 admissibility of this witness's testimony?

2 MR. HILLIARD: There is no evidence before the
3 Court, I submit, as to reliability. The conversation
4 that we've had was the testimony that the Court has
5 heard is that there was one seminal article, there was
6 a group of --

7 THE COURT: Isn't that always the case? You know,
8 someone comes up with the hypothesis.

9 MR. HILLIARD: True.

10 THE COURT: That's how it has to be, someone comes
11 up with the idea. And this witness has testified that
12 there has been several significant research studies
13 that have been done involving collateral research
14 studies. And that is consistent with his observations
15 in his practice.

16 Was that your testimony, sir?

17 THE WITNESS: Yes.

18 THE COURT: So, I mean, that's what he's telling
19 me. So I think we do have that level of reliability
20 that would be required to be shown by the State. Tell
21 me why not.

22 MR. HILLIARD: All right, sir. His experience,
23 judge, is based on people who are with him because they
24 are either reporting -- or they are reporting that
25 they've been assaulted. So his experience is

1 totally --

2 THE COURT: Or someone else has reported that they
3 were assaulted.

4 MR. HILLIARD: Yes, sir, whoever. But they are
5 assault victims or purported assault victims or
6 something. So there is no scientific study. His whole
7 experience is based on one group of people who all fit
8 the same model. So he's, you know, if he's trying to
9 -- if the information --

10 THE COURT: How do we know that about these prior
11 studies? I mean, how do we know?

12 MR. HILLIARD: That's what he said, he said he
13 didn't know. He said he didn't know how they came
14 about or what they were. They were studies of studies
15 of we don't -- the Court has no information, judge,
16 other than that there was the one study of the
17 patients, and after that, they were looking to see if
18 that were true.

19 THE COURT: But aren't these the studies that are
20 relied upon in the field, Dr. -- I mean, Mr. Olszewski?

21 THE WITNESS: Yes.

22 THE COURT: I mean, they are relied on in the
23 field.

24 MR. HILLIARD: And he also testified that the
25 majority of his ability to testify here today is based

1 on his experience as a practitioner. And his
2 experience as a practitioner is limited solely to
3 persons who are alleged in some form or fashion to have
4 been victims. The whole population of his information
5 is based on people who have been --

6 THE COURT: Well, any child who has been subject
7 to sexual abuse is a victim.

8 MR. HILLIARD: Sure, no question.

9 THE COURT: No matter what study you had --

10 MR. HILLIARD: Sure.

11 THE COURT: -- if there was a child who had been
12 exposed to sexual abuse --

13 MR. HILLIARD: Right.

14 THE COURT: -- that child's a victim.

15 MR. HILLIARD: Yes, sir.

16 THE COURT: So it's like a cancer study of
17 patients who don't have cancer. I mean, yeah, they all
18 have it. That's why the study is done.

19 MR. HILLIARD: Well, if I could jump right in
20 there, judge, if you have a study of people who have a
21 spot on their head, some of them are going to have
22 cancer and some of them aren't. If you have a study of
23 children who cut themselves, some of them are going to
24 be sexual abuse victims, some of them are not. If you
25 have a study of children who are bad in school, some of

1 them are going to be sexual assault victims, and some
2 of them are not.

3 The questions that I'm going to have for him are
4 about, he's going to say, I believe, that sexual
5 assault victims act in a certain way. And there are --
6 but the thing that he doesn't say, or hasn't said so
7 far at least, is, you know, how about children that cut
8 themselves that aren't sexual assault victims? How
9 about people that --

10 THE COURT: You can certainly ask him about that.
11 But I think what he would testify is to whether or not
12 that dynamic is a factor to even be considered or has
13 any part of a discussion of the dynamics of sexual
14 abuse in children. It may or may not.

15 MR. HILLIARD: Right.

16 THE COURT: But if it does and the research
17 supports it, that may, in fact, be something that he
18 would testify to. You know, I agree with you, there
19 are people who may self-mutilate that have never been
20 sexually assaulted.

21 MR. HILLIARD: Yes, sir.

22 THE COURT: There can be a number of reasons why a
23 person may do that. And I'm sure there are. But that
24 may also be a component of sexual abuse. It's like
25 running a fever. You know, just because you got a

1 fever doesn't mean you got the flu. You could have
2 something else, and it could be a component --

3 MR. HILLIARD: Yes, sir.

4 THE COURT: -- of that condition. We'll just see
5 how it does.

6 MR. HILLIARD: Yes, sir.

7 THE COURT: Let me hear from Mr. Martin back
8 there.

9 MR. MARTIN: Thank you, Your Honor. As the
10 Court's aware, we filed your notice of intent to offer
11 expert testimony back on March 9th. I believe the case
12 Your Honor was quoting was Nelson v. Taylor, which is a
13 South Carolina Court of Appeals decision, which
14 basically does kind of, as Your Honor previously stated
15 in another point in the trial, there is a relatively
16 lower bar to qualify someone as an expert. Certainly a
17 lot of it does go to the study or experience or
18 everything else the expert would go through.

19 I believe he's testified to that, judge. He
20 talked about the training he's undergone, the training
21 that he has conducted himself, the over 2,000 clients
22 that he has met with throughout this period of time,
23 also numerous research articles that we just heard from
24 for about 15 minutes and also talked to others in the
25 field.

1 I think with all of that, he can base his opinion
2 off of something in this field of the dynamics of child
3 sexual assault. And that's, in a nutshell, why we
4 would ask --

5 THE COURT: All right. And I think that the
6 threshold has been met, and I would grant your motion
7 to offer him as an expert.

8 Of course, Mr. Hilliard, I will instruct the jury
9 in my charge as to what exactly that means and that
10 they can give it, his testimony, such weight as they
11 determine to be appropriate. And I think I've already
12 done that, but I would certainly do it again. Thank
13 you, sir.

14 MR. HILLIARD: Thank you very much, Your Honor.
15 Thank you, sir. I appreciate your patience, judge.

16 THE COURT: That's all right.

17 (WHEREUPON, the jury came into open court at
18 approximately 3:10 p.m.)

19 THE COURT: All right. We have our jury and our
20 alternates back in. Mr. Martin, you may proceed.

21 Ladies and gentlemen, this witness was offered as
22 an expert in the field of the dynamics of sexual abuse
23 of children. I have made a determination that he does
24 meet the threshold requirements in order to allow him
25 to give an opinion in that field.

1 As I mentioned to you earlier and as I will
2 instruct you at the end of this case, you are not
3 required to accept his opinion. You can give it such
4 weight as you determine to be appropriate in the field
5 that he has sufficient education and training. You can
6 give it any weight you feel is appropriate. You can
7 ignore it, you can totally dismiss it if you find that
8 he doesn't have the expertise or the science behind it
9 is not sound, you can reject all that. Thank you.

10 Mr. Martin.

11 MR. MARTIN: Thank you, judge.

12 DIRECT EXAMINATION

13 BY MR. MARTIN:

14 Q Have you had any contact with the victims or the
15 Defendant in this case?

16 A No, I have not.

17 Q Have you read any of the police reports or
18 listened to any statements from this case?

19 A No, I have not.

20 Q Other than talking to me, have you conducted any
21 investigation?

22 A No, I have not.

23 Q Did I give you a broad overview of the case?

24 A A really broad overview.

25 Q Did you take time off of work to be here today?

1 A I did.

2 Q And is the solicitor's office paying you for that
3 time?

4 A Yes.

5 Q Is that payment dependent upon what you say here
6 today?

7 A No.

8 Q Were you present in the courtroom when either
9 victim testified?

10 A No.

11 Q Are you familiar with the term, blind expert?

12 A Yes.

13 Q Are you what we would call -- please explain that.

14 A A blind expert is someone who is not familiar with
15 the facts of a case but is asked to testify as an
16 expert about some particular issue.

17 Q Here today, are you what we would call a blind
18 expert?

19 A Yes.

20 Q Let's go back to something that was brought up not
21 too long ago. You talked about Child Sexual Abuse
22 Accommodation Syndrome. Can you again describe what
23 this is.

24 A Yes. So this was something that Dr. Roland Summit
25 used to describe behavior he was seeing in his

1 patients, a behavior that might otherwise seem
2 illogical to outsiders. For example, so there's like
3 five elements to his syndrome, for lack of a better
4 word. Secrecy is one of them. He said that most
5 abuse, particularly intrafamilial abuse, happens in
6 secret; that is, the only people that know about it are
7 the victim and the perpetrator.

8 He also talked about helplessness as one issue.
9 In other words, there is this feeling that the victim
10 doesn't have the power to come forward. There is a
11 power differential between the victim and the
12 perpetrator, and the victim doesn't feel like they have
13 any way to remedy the situation.

14 The next thing he talked about was something
15 called entrapment or accommodation. So this
16 helplessness then leads the victim to try to figure out
17 a way to basically survive in the situation they are in
18 because they don't know of an alternative. Or the
19 alternative is too scary or frightening or whatever.
20 So they learn to accommodate, figure out how to get
21 through it, maybe with some end goal in sight. Maybe
22 they are moving out of the house in a couple years or
23 whatever.

24 He also talked about delayed and/or unconvincing
25 disclosure. He talked about the fact that many victims

1 seem to -- child victims seem to not report their abuse
2 right away. There is some delay in reporting. Could
3 be weeks, months, or years before they come forward.
4 Sometimes when they do come forward, it's in a
5 tentative fashion, maybe unconvincing to those who are
6 hearing the initial disclosure or outcries. Maybe the
7 child was testing the waters to see what the reaction
8 was going to be.

9 And then he talked about, he used the word
10 retraction, or recantation we sometimes use as also
11 another dynamic. Recantation is when a child takes
12 back an allegation that they have already made, and
13 they say, well, wait a minute, never mind, it didn't
14 happen. That's what he meant by recantation. And he
15 said that he's seen that also in victims that he worked
16 with.

17 Q Now, you mentioned the term, delayed disclosure.

18 A Yeah.

19 Q Briefly, can you describe that again for the jury.

20 A Yeah. So a delayed disclosure is simply the fact
21 that many -- it's common for child victims to not
22 report what happens to them right away. There is often
23 a delay. And again, that delay could be weeks, it
24 could be months, it could be years, some people don't
25 tell until they are adults. And there are probably

1 some that never tell. Of course, we don't know about
2 those.

3 Q You briefly touched on this, but what are some of
4 the reasons that a child might delay in disclosing
5 abuse?

6 A All right. There could be many reasons. Lack of
7 caregiver support. They don't feel like they have a
8 supportive person that they can turn to. Could be out
9 of fear, fear of not being believed, fear of
10 consequences, either for themselves or for other family
11 members. Sometimes victims are threatened so they are
12 worried that some of those threats may come true,
13 whether it's being taken in foster care or whatever.

14 Intrafamilial situations, it could be that the
15 victim is dependent on the perpetrator for love,
16 emotional support, safety, protection, maybe they feel
17 some kind of loyalty behind it. They can't figure out
18 a way out of that. They may love the perpetrator and
19 be worried that somebody is going to, you know, to get
20 in trouble for this or go to jail. They don't
21 necessarily want that to happen.

22 And, again, you know, oftentimes there is a
23 grooming process involved with offenders and victims.
24 And the physical contact, you know, may be a
25 progression. It may start out slowly and work its way

1 up to other types of sexual activity, at which point
2 the victim may feel guilt or some responsibility for
3 the behavior or for allowing it to continue. And that
4 may factor into a delay in reporting of what's taken
5 place.

6 Q Now, you talked about the abuser being part of the
7 victim's family. When that happens, is the delay
8 typically longer or shorter?

9 A It can be. The studies on that are actually
10 equivocal. Some relate victim-perpetrator relationship
11 to a lengthier delay and others do not. So I would say
12 it's possibly a factor. Lack of caregiver support,
13 non-offending caregiver support in the home, is
14 definitely a factor in delayed reporting.

15 Q If a victim is able to remove herself from the
16 home, will she be more likely -- would she be more or
17 less likely to disclose?

18 A More likely, in my experience.

19 Q Why is that?

20 A Just the feeling of safety and just sort of the
21 burden, that burden of responsibility has been lifted,
22 and they may be more likely to come forward.

23 Q In talking again about disclosure, are you
24 familiar with the term, piecemeal disclosure or partial
25 disclosure of abuse?

1 A Yeah. We when we talk about disclosure of abuse,
2 in the field we think of it as more of a process than
3 an event when we're dealing with children. Oftentimes
4 children will not come forward that very first time and
5 tell everything all at once initially. Again,
6 sometimes there are very tentative steps made to
7 disclose, and then they gauge the reaction from those
8 they are disclosing to. So we call it tentative
9 disclosure.

10 We don't really use the word piecemeal. It's more
11 of a tentative disclosure. Then they may move into
12 more active disclosure if their initial attempts at
13 disclosing are met with support and they feel like they
14 are protected. So it's not uncommon like to see more
15 information come out later on from victims.

16 Q Is that form of disclosure addressed in the
17 literature?

18 A It is.

19 Q Could you explain the process of disclosure. Are
20 there initial denials?

21 A Oftentimes there are initial denials. A child may
22 initially deny being abused when asked and then later
23 disclose. So it can look contradictory, why did this
24 child say no initially and then they, later on,
25 disclosed. And, again, it goes back to some of the

1 same reasons why they would delay in the first place,
2 they're afraid, they're worried, they're concerned.

3 Particularly if they are not the ones that came
4 forward with the allegation, in other words, if
5 somebody else reported them as a victim. Somebody
6 said, hey, I know little Suzy is being abused by her
7 stepfather. And then somebody goes and talks to little
8 Suzy. Well, she may deny that initially because she
9 hasn't come to the point where she's ready to talk
10 about that. But somebody's asking her about it.

11 As opposed to a victim who marches into the
12 guidance counselor's office and says, hey, I'm an abuse
13 victim. You know, they may have gotten to the point
14 where they are ready to talk, if that makes sense.

15 Q Based on the research in this field, your training
16 and your experience, do you always expect a complete
17 disclosure from the child in the beginning, in the
18 initial stages?

19 A I wouldn't say we expect a complete disclosure. I
20 would say we are not surprised if we hear that a child
21 has made additional disclosures or disclosed additional
22 information down the road. Therapy, for example, or
23 subsequent to a forensic interview, children sometimes
24 will disclose additional information, and that would
25 not surprise us given what we know about that process

1 of disclosure.

2 Q And, again, based on the research and your
3 experience in the field, do victims of child sexual
4 abuse often have difficulty remembering things such as
5 dates and details?

6 MR. HILLIARD: Objection to leading.

7 THE COURT: Rephrase your question; okay?

8 MR. MARTIN: Thank you, judge.

9 Q Based on your research and experience in the field
10 we talked about, are there any difficulties, that
11 you're aware of, of victims of child sexual abuse?

12 A Difficulties in what?

13 Q Difficulties in remembering certain things.

14 A That's a big question. Well, for example, younger
15 children, we know, have a harder time with the concept
16 of time. So a preschool-aged child is going to have a
17 harder time remembering dates of events. Anybody who
18 has preschool children knows that. I mean, it's -- you
19 know, sometimes even older people have a hard time with
20 dates of events, especially if a situation is chronic.
21 So if it's something that is occurring on a regular
22 basis, being able to identify all the different dates
23 that this thing happened might be difficult if it's
24 happened a lot. And that just might be common sense.

25 And we know that, you know, traumatic events can

1 have an effect on memory. It can sometimes go both
2 ways. I mean, sometimes traumatic events will diminish
3 a person's ability to remember things clearly and
4 accurately. Sometimes a traumatic event may heighten
5 their sense of awareness of what's going on around
6 them. So you just have to be aware of those things.
7 We are aware of them when we're interviewing children.
8 And we call those, like, expectations.

9 You know, so the expectations you have when you
10 interview a four-year-old are different than the
11 expectations you have when you interview a 14-year-old.
12 You know, you would expect a 14-year-old to be able to
13 give more information, more detail, more narrative
14 response than we would a four-year-old, if that makes
15 sense.

16 Q Previously, you talked about the term, grooming.
17 What's meant by that term?

18 A That's a process in which an offender prepares a
19 child for abuse, lack of a better phrasing. So they
20 may befriend the child and befriend --

21 MR. HILLIARD: Objection to the -- I recognize
22 he's in the middle of the answer, but I want to look
23 back in my notes. I object to the question about
24 grooming.

25 THE COURT: I'll allow it. The term has already

1 been before the jury, and he's asking to explain it,
2 what it means. That's my understanding of the
3 question.

4 MR. HILLIARD: All right, sir.

5 THE COURT: Okay, all right.

6 MR. MARTIN: Thank you, judge.

7 Q You may proceed with your recollection of
8 grooming.

9 A So an offender may have identified the victim,
10 befriend that victim, perhaps befriend family members
11 surrounding that victim so they can gain access to the
12 victim, child in this case. So they are looking for
13 opportunities to be alone with the child. They may pay
14 special attention to the child initially. Maybe --
15 again, these are all things that are characteristics of
16 grooming, not every case is the same -- but provide
17 gifts or money to the child or just extra attention and
18 affection.

19 Initially there may be a lot of -- you know, it
20 could be the initiation of physical contact. They
21 could start up with hugging, kissing, getting the child
22 comfortable with physical contact, then progressing
23 from there to more intimate physical contact. It
24 sometimes involves the showing of pornography to the
25 child to normalize that type of behavior, that type of

1 interaction. It could involve alcohol and drugs to
2 lower a child's inhibitions.

3 Again, the role of the offender is to lower the
4 child's inhibition toward this type of behavior and
5 gain cooperation from the victim.

6 Q What are some of the emotional and/or behavioral
7 characteristics of a child who's been sexually abused?

8 A It's almost an impossible question to answer. Can
9 you be more specific?

10 Q Do you ever see -- are there any behavioral
11 changes that are common in a victim, a child victim of
12 sexual abuse?

13 A So victims' reactions to child sexual abuse, that
14 can be all over the map. Some victims are more
15 resilient than others. And if you know children, just
16 children in general, some are more resilient than
17 others. Some children show very little effects after
18 being sexually abused. I mean, you may have a straight
19 A student, a child who outwardly shows no sign that
20 anything is wrong at all.

21 On the other side of the -- on the other end of
22 the spectrum, you have children that, you know, are
23 sexually abused and they fall apart. Mental illness,
24 promiscuity, substance abuse, poor performance in
25 school. So it really runs the gamut. It's hard to

1 point to one particular set of behaviors or even a
2 particular behavior and say, this is directly related
3 to sexual abuse, if that makes sense.

4 Q Is it uncommon for a victim of child sexual abuse
5 to self-mutilate?

6 MR. HILLIARD: Objection.

7 THE COURT: I will allow it.

8 MR. HILLIARD: All right, sir.

9 THE WITNESS: I would say, if you told me that a
10 victim of child sexual abuse was self-mutilating, I
11 wouldn't be surprised by that. Is that a common
12 behavior of child sex abuse victims, I actually
13 wouldn't know the answer to that question. But it
14 wouldn't surprise me that that behavior would be, you
15 know, apparent in a child sex abuse case, if you told
16 me that a victim is exhibiting that type of behavior.

17 Q How does the availability or support of a
18 non-offending parent affect a child's disclosure?

19 A Yeah. So in our experience, this is particularly
20 important. So a child who does not have a supportive
21 non-offending caregiver to turn to for protection, for
22 support, for safety, those victims we worry about in
23 terms of not coming forward with their disclosure
24 because they don't feel like they have anybody they can
25 tell. And in my experience, children who have parents

1 like that, when they do try to tell, they could be met
2 with apathy, disinterest, outright just, you know,
3 disbelief. And so children will sometimes come forward
4 to a parent like that who's not supportive or
5 unavailable for some reason, and they are in a sense
6 betrayed by that non-offending caregiver. And they may
7 shut down again for some period of time and not try to
8 come forward again because of, you know, their initial
9 attempts are met with such betrayal by the only other
10 person in the home, perhaps, that they can turn to, you
11 know, for protection.

12 MR. MARTIN: Court's indulgence, Your Honor. Your
13 Honor, no further questions for the witness at this
14 time. Please answer any questions Mr. Hilliard may
15 have.

16 THE COURT: Mr. Hilliard?

17 MR. HILLIARD: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. HILLIARD:

20 Q As you testified today about -- as an expert in
21 child abuse dynamics and delayed disclosure, there was
22 a study that you started out with, and there were five
23 things that were part of that study. Who was that
24 study by; do you remember the five?

25 A Dr. Roland Summit.

1 Q So that was Dr. Summit's study with the five
2 things in it?

3 A Right.

4 Q And Dr. Summit's study with the five things in it,
5 that's based on his patients?

6 A Correct.

7 Q From 1980?

8 A 1980 or 1981, I believe, that article was
9 published.

10 Q And we don't really know anything about those
11 patients except they were all -- well, let me ask this
12 question first. The definition of child in your level
13 of expertise is somebody -- child abuse dynamics is
14 someone under the age of 18?

15 A Yes.

16 Q So, but in terms of how -- what age the children
17 were in his study, you don't really know that?

18 A No. I mean, I think they would have to be at
19 least three or four. You need to be verbal in order to
20 be participating in counseling.

21 Q Yes, sir. So verbal, a child that can talk but is
22 under 18?

23 A Right.

24 Q And other than that, that's all you know?

25 A Right.

1 Q And you say that most events happen in secret.

2 And that's just sort of the practical thing, that child
3 abuse happens when nobody is looking?

4 A Right.

5 Q And so that's not really an expertise sort of a
6 thing?

7 A Well, I think it's important that you -- I think
8 it's important for us to recognize that.

9 Q Okay. And then helplessness, the power
10 differential, that's when you're talking about the
11 circumstance where the child is a child, and the person
12 who is doing the abusing is not a child?

13 A Right.

14 Q All right, sir. And then the entrapment and
15 accommodation is sort of part of the helplessness?

16 A Correct.

17 Q And that's connected to the non-offending
18 caregiver. I mean, those two things kind of go hand in
19 hand; is that right?

20 A Right. It could be connected to a lack of
21 support, a perceived lack of support, or whatever, yes.

22 Q So in a situation, hypothetically, where the
23 non-offending caregiver was in a position to be
24 supportive, we could do away with the helplessness and
25 the entrapment and accommodation?

1 A I wouldn't say that necessarily. I mean, a child
2 still may fear or worry about the consequences of
3 coming forward, even if they suspect their
4 non-offending caregiver may be receptive, there are
5 still other factors that come into play as to whether
6 the child may not come forward. So I wouldn't say that
7 just because you have a supportive caregiver, that none
8 of this applies.

9 Q All right, sir. So, but when you say may, I mean,
10 when you use the word it may apply, it may not apply, I
11 mean, that's what you're talking about is victims of
12 child sexual assault and their dynamic. So you're
13 saying that in some circumstances these things may
14 apply, they may not apply?

15 A Well, that's right. I mean, not every child goes
16 through all these different things. These are things
17 that are commonly or sometimes seen in child sex abuse
18 victims, not in all child sex abuse victims.

19 Q Sure. And they are seen in a lot of people that
20 are not child sex abuse victims?

21 A Well, accommodating for abuse, I think --

22 Q Presumes abuse?

23 A Right.

24 Q Right.

25 A But you can't accommodate for abuse if you're not

1 being abused.

2 Q Exactly. I mean, that just works?

3 A Right.

4 Q But in terms, let's say, for example, in the
5 delayed reporting, I mean, that's -- delayed reporting
6 presumes the thing that they are reporting is true; is
7 that right?

8 A The issue of coming forward with a disclosure of
9 abuse has nothing to do with whether or not -- yeah, so
10 if you're talking about like is the disclosure
11 fabricated, I mean, Dr. Summit, I don't think, was
12 looking at whether or not any of these disclosures were
13 fabricated. So we're just talking about a child's
14 ability, willingness to come forward with a disclosure
15 of abuse.

16 Q So they never even thought about the possibility
17 that any of these people were telling anything other
18 than the truth, any of these children, they never
19 thought about that?

20 A Well, I mean, the issue -- the issue of
21 fabrication of abuse has also been studied. We do know
22 that children will fabricate and make up allegations of
23 abuse, but the numbers are pretty small.

24 Q The numbers are small?

25 A The numbers of children that we know have made a

1 fabricated allegation of abuse. Now, I mean, that's...

2 Q So you don't -- I mean, you can't tell the folks
3 on the jury that that's true, right, that the numbers
4 of children who have fabricated stories are small; you
5 can't say that?

6 A There is some research that looks at that, and you
7 can look at cases of -- I mean, the only way to really
8 look at a case and say, is the child -- has this child
9 told the truth about abuse, I mean, there are a few
10 ways. One is some kind of adjudication in a court of
11 law.

12 Q Let's stop there for a second.

13 MR. MARTIN: Objection, Your Honor.

14 THE COURT: Okay. Go ahead, go ahead.

15 THE WITNESS: I'm just saying that it goes back to
16 the idea of, you know, who's the ultimate finder of
17 fact, I guess, in terms of a child coming forward, you
18 know, with an allegation. I mean, that is the child's
19 allegation. And then you look for other evidence to
20 support that child's disclosure.

21 Q What you said was the adjudication; is that right?

22 A Well, I'm saying that one of the things I think
23 that the studies look at.

24 Q Right.

25 A In terms of, you know -- I mean, if you were going

1 to put a study together you wanted to look at whether
2 or not this particular child's allegation is true, you
3 could look at whether or not they had a sexually
4 transmitted disease that was consistent with child sex
5 abuse or pregnancy, or was there an adjudication. You
6 would have to look for a way to -- some way to like
7 quantify that in research terms so that you could feel
8 comfortable about using that data --

9 Q All right, so --

10 A -- to say this is a victim of child sexual abuse.

11 Q So what you're telling me, as I understand it, and
12 correct me if I'm wrong, but you're saying the data is
13 that if you can get a conviction, that counts as a
14 positive indicator of child sexual abuse, a conviction
15 would do that; is that what you're saying?

16 A Well, I'm saying that it's one way that you would
17 try and quantify that in a study, to say that maybe
18 this child is -- you know, if you're looking at how do
19 we decide if a disclosure of child sex abuse is
20 fabricated or not.

21 Q Right.

22 A Other than just what the child says, you would
23 look for other indications that this child's disclosure
24 is valid.

25 Q And one of the things you said was if they had a

1 sexually transmitted disease?

2 A Well, one of the ones that is highly indicative of
3 child sex -- of sexual contact.

4 Q Right. But, I mean, that would be important to
5 study and figure out about that child's --

6 A Right. And Dr. Summit's study, he was working
7 with children that were part of -- that he was treating
8 as part of his practice --

9 Q Right.

10 A -- that were self-reporting as victims.

11 Q And, well, they were self-reporting. And that's
12 the totality of his study is that group of people who
13 were self-reporting as victims?

14 A Right. That he was treating, right.

15 Q And then when you were talking about delay and
16 reasons for delay, those things, was that part of his
17 study, or was that part of your experience, or what is
18 that?

19 A Both. Dr. Summit talked about delayed or
20 unconvincing disclosure. We also see it, it's just
21 really common in practice, in doing forensic
22 interviews, that children just do not come forward
23 right away. There is often some period of delay in
24 their reporting.

25 Q All right, sir. And then the -- you would

1 expect -- one of the things you said, I believe, that
2 you would expect a 14 year old who was giving
3 information would be significantly better at giving
4 information than a four year old?

5 A We would expect, yeah. We're talking about
6 expectations when we're interviewing children. We
7 would expect to get more information from a 14 year old
8 than a four year old.

9 Q All right, sir. And there was one thing that you
10 talked about, and I didn't really write it down in a
11 way that would be helpful to me. But, in any event,
12 one of the questions that they asked you, and the
13 answer was, it kind of goes both ways. Do you remember
14 that, when it goes both ways? It could go this way,
15 could go that way, people who are sexually abused?

16 A I think the question was about how the victims of
17 child sexual abuse respond or what kind of behaviors.

18 Q Right. So it could be any sort of behavior,
19 really?

20 A Yeah. I mean, we see all different types of
21 behavior from child sex abuse victims.

22 Q And then, while you would not be surprised at the
23 self-mutilation, that's not really a -- I mean, that
24 could be under any sort of -- that could be from all
25 sorts of different things?

1 A Yeah, it's indicative of a problem in that child's
2 environment, but what that problem is...

3 Q Sure. And a lot of the things that -- a lot of
4 the things that you're talking about are indicative of
5 problems in the child's environment; is that right?

6 A I don't know about that. Be more specific.

7 Q All right, sir. I'll withdraw the question.

8 A Okay.

9 Q One of the places that you were taught, you were
10 teaching -- tell me where it is that you teach.

11 A We teach physically at our Children's Advocacy
12 Center. We teach a 40-hour forensic interviewing
13 course called ChildFirst South Carolina.

14 Q Right. And as part of ChildFirst South Carolina,
15 you utilize the United States Department of Justice
16 literature? Let me show you this.

17 A Okay. What's your question? This was like a
18 medical article.

19 Q It came off your website. Does that look --
20 you've never seen it before?

21 A Came off our website?

22 Q Well, the website for the place you just
23 described, the teaching child for -- what is it,
24 ChildFirst?

25 A ChildFirst South Carolina?

1 Q Yes.

2 A I don't believe ChildFirst South Carolina has a
3 website. Was it a website from the national -- some
4 national organization, perhaps?

5 Q Well, perhaps I'm mistaken. I thought it was
6 ChildFirst. But whatever it is, you've never seen that
7 before?

8 A I won't say I've never seen this before because
9 I've seen similar articles from the U.S. Department of
10 Justice. But this is not something I've -- sexually
11 transmitted diseases as child abuse, I mean, I haven't
12 read that article. I'm not familiar with it.

13 Q All right, sir. I won't ask you any other
14 questions about it, then. That's fair enough.

15 A All right.

16 MR. HILLIARD: That's all I have. Thank you.

17 THE COURT: Mr. Martin?

18 MR. MARTIN: No, Your Honor.

19 THE COURT: All right, sir. You may step down,
20 thank you.

21 MR. HILLIARD: No objection to this witness being
22 excused, Your Honor.

23 THE COURT: Mr. Martin?

24 MR. MARTIN: No, Your Honor, no objection.

25 THE COURT: You are released from your subpoena,

1 sir. Thank you.

2 (Witness excused.)

3 MS. WALTER: Your Honor, the State rests on its
4 case in chief.

5 THE COURT: Okay. Approach.

6 (WHEREUPON, a bench conference was held off the
7 record in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: All right. Ladies and gentlemen of
10 the jury, as you just heard, the State has now rested
11 in this case. And that means that I have another round
12 of administrative things that must be taken care of
13 before the Defense begins. I will tell you again that
14 the Defense is under no obligation to produce any
15 evidence whatsoever. There is a presumption of
16 innocence.

17 Tomorrow morning we will find out whether the
18 Defense intends to put anyone up. But that's entirely
19 up to Mr. Hilliard and his client. But as I said, I
20 have probably about an hour of work here to do with
21 these attorneys. And it's ten minutes of 4:00, so I'm
22 just going to let you go home, ask you to come back in
23 the morning, again, about the same time. Mr. Ropp will
24 have some refreshments for you in the morning. Be back
25 about 9:15; okay? Thank you.

1 (WHEREUPON, the jury exited the courtroom at
2 3:45 p.m.)

3 THE COURT: All right, Mr. Hilliard, you may make
4 your motions.

5 MR. HILLIARD: Thank you, judge. The State having
6 rested, we would move at this time for a directed
7 verdict of not guilty as to both indictments. There is
8 a dearth of testimony about when anything that is
9 supposed to have happened happened. I have proof,
10 trying to write down when stuff happened, and there is
11 no rhyme nor reason nor dates. There has been
12 contradictory testimony all over the place about when
13 this happened and when that happened.

14 THE COURT: And, of course, you know the rules,
15 it's whether there is any evidence.

16 MR. HILLIARD: Yes, sir. I would like for
17 somebody to say what the evidence was of the day that
18 something -- of what happened and what day it happened.

19 THE COURT: Well --

20 MR. HILLIARD: I don't believe that's before the
21 Court.

22 THE COURT: All right. Mr. Martin, or Ms. Walter,
23 you want to...

24 MS. WALTER: Your Honor, there is certainly more
25 than enough evidence at this point to send this to a

1 jury, and, in fact, for a jury to convict. The State
2 does not have to prove a precise -- I'll agree with one
3 thing that Mr. Hilliard says. He does have a crew.
4 But just because they can't pinpoint a date, that does
5 not mean that the State has failed in carrying its
6 burden certainly past a directed verdict.

7 THE COURT: Well, I don't think any particular
8 date is necessary. We have a range on the indictment,
9 and the testimony, certainly it's the State's position,
10 that the younger child was 12 to 14 and the older child
11 was 14.

12 MS. WALTER: The State's range is actually 14 to
13 16, but I think she just needs to be under 16.

14 THE COURT: Under 16.

15 Mr. Hilliard, I would respectfully deny your
16 motion for directed verdict as to these charges. I
17 think there is certainly evidence to support the
18 State's position, evidence that a reasonable jury could
19 return a verdict of guilty, so I would deny your
20 motion.

21 Now, let's go on to there is an evidentiary issue;
22 is that correct?

23 MS. WALTER: Your Honor, I believe the way we left
24 it with Dr. Bennett was...

25 THE COURT: Go ahead.

1 MS. WALTER: I just want to make sure I wasn't
2 interrupting you. The way it was left with Dr. Bennett
3 was it would depend on the testimony that came in. The
4 testimony from [REDACTED] J.H. was that, yes, she did
5 initially tell Sabrina Houser that she believed the
6 Defendant had given her the chlamydia, but she said and
7 she explained exactly what happened. She said, I later
8 found out that it wasn't true.

9 THE COURT: Well, let me just do this. Are we
10 talking about Ms. Houser now; is that right?

11 MS. WALTER: Who is Ms. Houser?

12 MR. HILLIARD: She's the witness that we can't get
13 to come. They've been trying to serve her with that
14 subpoena for two days.

15 MS. WALTER: No. I'm talking about Dr. Bennett.

16 THE COURT: Okay.

17 MS. WALTER: Because, remember, the whole issue
18 where the State believed and still believes that the
19 issue of chlamydia should not have come in. But then
20 Your Honor pointed out the issue on the credibility.

21 THE COURT: Right.

22 MS. WALTER: And I thought the way it was left was
23 we were going to see how the evidence came in as to
24 whether or not his testimony would even be relevant.
25 And our position at this point is that it's not

1 relevant because the State has actually made clear that
2 we are not saying that the Defendant was the source of
3 that sexually transmitted disease.

4 That along with everything else that occurred at
5 that ex parte hearing, in fact, said even if we were
6 asserting that, which we are not, it is possible for a
7 noninfected person to have sexual intercourse with an
8 infected person and 72 percent of the time not be
9 infected.

10 THE COURT: Okay, and I understand that. But the
11 only purpose in Dr. Bennett's testimony is to confirm
12 that your client does not now and has not in the
13 last -- I think it's in here --

14 MR. HILLIARD: Five years.

15 THE COURT: -- five years had chlamydia; right?

16 MR. HILLIARD: Well, also now, judge, it's the
17 herpes issue.

18 MS. WALTER: We've not been given a test for that.

19 THE COURT: Did he do any testing on that?

20 MR. HILLIARD: Yes, sir. They've got the test,
21 they just didn't look at it.

22 THE COURT: Who has the test?

23 MR. HILLIARD: Well, they said they didn't have
24 the test, and I gave them the test.

25 THE COURT: For what?

1 MR. HILLIARD: For the herpes.

2 THE COURT: Okay. All right.

3 MR. HILLIARD: So I'm sorry if they didn't read
4 it, but they got it.

5 THE COURT: Okay. And so he's tested for herpes
6 and --

7 MS. WALTER: Which is also still not relevant,
8 because that goes to the mother. The mother is not a
9 victim. We have not charged the Defendant with
10 anything related to the mother, so it's irrelevant.

11 THE COURT: Well, the child has testified, the
12 victim has testified that your client did not infect
13 her with chlamydia.

14 MR. HILLIARD: Yes, sir.

15 THE COURT: I mean, that's the State's position.
16 So why do we need -- help me here. Tell me why --

17 MR. HILLIARD: Yes, sir.

18 THE COURT: -- you even want Dr. Bennett to
19 testify.

20 MR. HILLIARD: We have two parts to this, judge.
21 One part is that she has said that he was the one who
22 gave her the chlamydia. I want the jury to know that
23 he doesn't have chlamydia. She -- the mom has said
24 that he gave the mom herpes, that -- her testimony is
25 that -- there is nothing in this case but testimony.

1 The credibility of the witnesses in this case is all
2 there is. And the mother's credibility is important.

3 THE COURT: But you intend to put up your expert
4 to confirm what the State's witnesses have said. It's
5 not to challenge the credibility, it's to support their
6 position?

7 MR. HILLIARD: No, sir. One of the things, it's a
8 bit premature because at this point we haven't
9 established -- we haven't gotten into evidence the
10 letter from the lawyer to me. I believe that I can get
11 that letter into evidence before I call Dr. Bennett.
12 The letter says that the mother told the lawyer that my
13 client gave her and her daughter diseases.

14 THE COURT: Well, first of all, the child was not
15 represented by any lawyer.

16 MS. WALTER: That is correct.

17 THE COURT: Okay. And I would assume that you
18 proceed on the theory that somehow this would be a
19 statement against interest or something of that nature,
20 or a way to perhaps impeach by prior inconsistent
21 statement?

22 MR. HILLIARD: Yes, sir.

23 THE COURT: But that's not her statement; is it?
24 How do you get the lawyer's -- a lawyer's letter to you
25 in a separate proceeding into the record? The mother

1 has denied it; correct?

2 MS. WALTER: Yes.

3 MR. HILLIARD: Has denied that she told the lawyer
4 that.

5 THE COURT: The lawyer to do that, okay. So now,
6 how do you get a letter or an e-mail, whatever it was,
7 to you, tell me -- help me out with the rules of
8 evidence -- tell me how we get there.

9 MR. HILLIARD: All right, sir. What I'm looking
10 to do, judge, and, of course, we could wait until I did
11 it. But in any event, what I'm looking to do is to
12 call a member of my staff to say that they ordinarily
13 and customarily check my e-mails and provide those
14 e-mails to me in connection with all of the cases.
15 They were checking the e-mail, and the e-mail came
16 through the ordinary course of lawyer interaction, that
17 is, it's communicated on a regular basis, and I keep
18 those e-mails, the e-mail came from the lawyer, her
19 lawyer, connected to litigation that she was involved
20 in, to me saying that both of them claim that my client
21 gave them STDs.

22 They've explained that after, I would point out
23 for the purposes of the record. We had to go through
24 the process of saying what we're going to prove, and
25 now they've explained it away. But at the same time,

1 we do have the letter from the lawyer saying that they,
2 the collective they, said that my client gave them
3 STDs. My client's been tested for both of those STDs
4 antibodies --

5 THE COURT: Okay. How do you get past the
6 hearsay, the hearsay, how do you get past the hearsay
7 problem, the 801 problem?

8 MR. HILLIARD: Well, that's what I'm talking about
9 is that they told -- that the mother, under these
10 circumstances, told the lawyer something different than
11 she's saying today. It's not for the truth of whether
12 she has herpes or he gave her herpes, but whether or
13 not she told the lawyer that. So I have a letter from
14 the lawyer saying that that's what got said.

15 THE COURT: Ms. Walter?

16 MS. WALTER: Ms. Herron has already addressed
17 that. And I think in order to introduce extrinsic
18 evidence, there are additional factors that need to be
19 met that certainly aren't going to be met by someone
20 saying, I regularly pull Mr. Hilliard's e-mail off our
21 server. That doesn't get past what needs to be
22 established to offer extrinsic evidence of what he is
23 claiming has occurred.

24 THE COURT: Well, I think where you might be
25 trying to get this in, Mr. Hilliard, is a prior

1 inconsistent statement; is that --

2 MR. HILLIARD: Yes, sir.

3 THE COURT: Is that how you're doing it?

4 MR. HILLIARD: Yes, sir.

5 THE COURT: And you're offering that as an
6 exception to hearsay; is that correct?

7 MR. HILLIARD: Well, I don't think it is.

8 THE COURT: Well, I'm helping you.

9 MR. HILLIARD: I appreciate it, yes, sir.

10 THE COURT: It can be an exception to the hearsay
11 rule if it is a prior inconsistent statement. I want
12 you to look at 801(d)(1).

13 MR. HILLIARD: All right.

14 THE COURT: All right. Do you see it?

15 MR. HILLIARD: Yes, sir, I'm with you.

16 THE COURT: Okay. That takes you out -- if you
17 can get it under 801(d)(1), you get it out of the
18 hearsay problem. You see?

19 MR. HILLIARD: Yes, sir.

20 THE COURT: Okay. There we go. Now, let's work
21 from that point. Tell me why it's a prior inconsistent
22 statement.

23 MR. HILLIARD: Tell you why it's a prior
24 inconsistent statement?

25 THE COURT: Yeah.

1 MR. HILLIARD: Well, because she said in her
2 testimony that she didn't tell her lawyer that when, in
3 fact, the letter says that she did tell her lawyer
4 that, and her lawyer told me that.

5 THE COURT: And that would be as to the witness's
6 mother; right?

7 MR. HILLIARD: Yes, sir.

8 THE COURT: Okay, all right. How about that,
9 Ms. Walter?

10 MS. WALTER: Well, it's not a prior inconsistent
11 statement of the witness, it's an attorney violating
12 attorney/client privilege saying something. And first
13 of all, at trial here today, Ms. Herron, I believe --
14 anyone can correct me if I'm wrong.

15 THE COURT: Why don't we look at Rule 401 where we
16 talk about -- just give me a second. The rule I'm
17 looking for is the rule that allows testimony -- excuse
18 me, I think I should have been still under 801,
19 801(d)(2).

20 But, Mr. Hilliard, doesn't 801(d)(2) refer to a
21 party opponent? And the adoption of the statement by
22 his representative or her representative. Party
23 opponent. That's not a witness.

24 MR. HILLIARD: True. But it is a prior
25 inconsistent statement of a witness, which is (1). And

1 she testified at the trial concerning the statement.

2 THE COURT: But what we have here is a statement
3 by a non-present witness out of court that she made, a
4 statement out of court that should be admissible. Then
5 what we got is a rule on hearsay within hearsay. And
6 what that rule requires is that both, both the hearsay
7 and the hearsay within hearsay meet the rules of an
8 exception to hearsay.

9 MR. HILLIARD: The first part -- yes, sir, I
10 agree. And the first part of that is the business
11 record exception. The first part of it that gets us in
12 there is the business --

13 THE COURT: Well, that's where I want you to go.

14 MR. HILLIARD: Yes, sir. The business records,
15 the records of regularly conducted activity, which is
16 six -- what's the first part of that, 40 --

17 THE COURT: The rule is 805. Look at 805. I tell
18 you what we're going to do. We're going to have a
19 little talk about this first thing in the morning;
20 okay?

21 MR. HILLIARD: Yes, sir.

22 MS. WALTER: That's fine.

23 THE COURT: That will give everybody an
24 opportunity to collect their thoughts. I want you to
25 look at 801(d)(1), and I want you to look at 801(d)(2)

1 and 805; okay?

2 MR. HILLIARD: Yes, sir.

3 THE COURT: I think those are the keys. All
4 right.

5 MR. HILLIARD: Could we get one more try for our
6 witness, judge? I know they have been working hard at
7 it. They go to the door, there is people there, and
8 nothing happens.

9 THE COURT: Well, Jade, if you would, tell them to
10 give it one more run.

11 DEPUTY: Yes, sir.

12 MR. HILLIARD: Thank you, judge.

13 THE COURT: I don't know whether that witness is
14 necessary because -- except from perhaps the standpoint
15 of credibility. But her testimony here was today, yes,
16 I said, I was mistaken. I don't know whether that is
17 inconsistent with her testimony today.

18 MR. HILLIARD: Yes, sir.

19 THE COURT: She did say, I did say it.

20 MR. HILLIARD: Yes, sir.

21 THE COURT: I'm not saying I didn't. So what do
22 you need her for?

23 MR. HILLIARD: Well, the other part of that was
24 that she also said that she apologized to her for being
25 mistaken. I would like to see whether the witness says

1 that happened or didn't. By the time she gets here,
2 that may be what she says.

3 THE COURT: Well --

4 MS. WALTER: I think at this point we are on a
5 waste of time, waiting to get things out.

6 THE COURT: Well, that's something we wouldn't
7 want to do in this trial.

8 MR. HILLIARD: Well, the prosecution thinks we're
9 wasting the time to have a trial.

10 THE COURT: Okay. Mr. Hilliard?

11 MR. HILLIARD: Yes, sir.

12 THE COURT: Make your client familiar with his
13 rights under the Fifth Amendment, and I'll discuss that
14 with him tomorrow.

15 MR. HILLIARD: Yes, sir.

16 THE COURT: Elizabeth has prepared a draft charge.
17 She's going to send it to you. You know, both of you,
18 all three of you know my practice. I'm going to give
19 the jury a transcript. Don't come up after arguments
20 and hand me another charge. We're going to have the
21 charge done first.

22 So Elizabeth is going to send it to you by e-mail.
23 She's been working on it. I haven't had a chance to
24 read it, but I'm sure it's right, or close. And if
25 you've got changes, let's talk about them tomorrow as

1 well. All right.

2 MR. HILLIARD: Yes, sir. Thank you, judge.

3 THE COURT: Thank you very much.

4 (WHEREUPON, the hearing adjourned at approximately
5 4:03 p.m.)

6 (WHEREUPON, the hearing resumed on Thursday, April
7 12, 2018, at approximately 9:39 a.m.)

8 THE COURT: Okay, now, I think on yesterday, as we
9 left the courtroom, we had a couple of evidentiary
10 issues. Let's revisit those; okay? It's my
11 understanding that there are two issues; is that right?

12 MS. WALTER: I believe so, Your Honor.

13 THE COURT: Okay. And the State's motions,
14 restate them for the record, please.

15 MS. WALTER: In the State's mind, the two issues
16 are, number one, whether or not the expert's testimony
17 would be relevant and admissible based on the testimony
18 so far. And then the other issue related to the e-mail
19 from Ms. Herron's former attorney.

20 THE COURT: Okay, all right. First, and wasn't
21 there an issue with another witness, Ms. Houser?

22 MR. HILLIARD: She's here, judge.

23 MS. WALTER: Oh, she's here.

24 THE COURT: Okay. First --

25 MS. WALTER: Although, I'm sorry, Your Honor, I

1 think I did say -- quite frankly, I don't care if she
2 is called, it's fine. So if she is here, that's good.

3 THE COURT: All right, so that's not an issue.
4 All right, let's talk first about your expert.

5 Mr. Hilliard, I would assume that you're calling
6 your expert to say, I tested the Defendant, and he has
7 not had chlamydia in at least five years; right?

8 MR. HILLIARD: Could we bookmark the expert and
9 let's see? Because I'm not certain at this point
10 whether I want to call him or not. So rather than go
11 through the analysis of whether I get to call him --

12 THE COURT: Well, what -- my point is it's very
13 clear at this juncture that no one from the State is
14 saying that your client gave anyone chlamydia or
15 herpes; right, is that right? Where are we?

16 MS. WALTER: Well, I believe that -- yes, as to
17 the chlamydia. J.H. testified clearly that it
18 was someone else. Ana Herron testified that she
19 believed it was from the Defendant because she had only
20 been with him for ten years. But that's not at issue
21 in this case. That's got nothing to do with the
22 charges, so that's certainly irrelevant.

23 THE COURT: Okay, all right, then. We'll look at
24 that since Mr. Hilliard's not sure. Now, let's talk
25 about the letter.

1 MR. HILLIARD: Ms. Brinson is going to take care
2 of that for us.

3 THE COURT: All right. Let me hear from her.

4 MS. BRINSON: As Your Honor noted yesterday, it is
5 hearsay within hearsay. But as Rule 805 states, if you
6 have an exception for both levels --

7 THE COURT: Right.

8 MS. BRINSON: -- then it can come in. And the
9 first level, if you will, of the mother's statement
10 itself is covered by the 801(d)(1) -- sorry -- (A),
11 it's an inconsistent statement. It's inconsistent with
12 the statement she made on the stand. She said that she
13 did not tell her attorney that Scott gave both her and
14 her daughter an STD. She said she told her attorney
15 that he only gave her an STD, so that is an
16 inconsistent statement.

17 And then as to the second level of the e-mail
18 itself from the attorney, it's covered by the 803(6),
19 records of regularly conducted activity.

20 THE COURT: Let's go back. Let's just take a step
21 back.

22 MS. BRINSON: Okay.

23 THE COURT: A prior inconsistent statement, okay.
24 And you're saying that what we're talking about is the
25 fact that she -- if I remember her testimony, she says,

1 essentially, as far as I know, he gave it to me.

2 MS. WALTER: Yes.

3 THE COURT: Essentially.

4 MS. WALTER: Yes.

5 THE COURT: Essentially, as far as I know. And
6 isn't that precisely what the attorney communication
7 with Mr. Hilliard says, it would be a prior consistent,
8 not inconsistent, statement; would it not?

9 MS. BRINSON: No, Your Honor. She specifically
10 denied on the stand that she told her attorney that
11 Scott gave both her and her daughter an STD, which is
12 what the e-mail from the attorney says. It says that
13 he gave them an STD.

14 MS. WALTER: If I may, Your Honor, I think that
15 there actually three things that you need to look for.
16 Because, number one, it's the admissibility of the
17 e-mail itself. Number two, that statement --

18 THE COURT: And we're not even there yet.

19 MS. WALTER: Right, no, I understand. The e-mail
20 itself, the contents of the e-mail, are actually not a
21 statement of Ms. Herron or anyone in this courtroom,
22 they are a statement of the attorney. So, essentially,
23 what Defense is arguing is that the statement of the
24 attorney is inconsistent with the statement of
25 Ms. Herron.

1 If that e-mail had a little insert from Ms. Herron
2 saying, I think Scott gave me and J.H. an STD, then
3 you might get past that one part. But it's a statement
4 by the attorney, not by Ms. Herron.

5 THE COURT: And how about that? You know, you
6 could look at 801(d)(2), which would be an admission by
7 a party opponent, but --

8 MS. WALTER: She's not a party opponent.

9 THE COURT: -- she's not a party opponent;
10 correct?

11 MS. BRINSON: Yes, Your Honor.

12 THE COURT: Okay. And if it was a statement by
13 someone authorized or standing in her place, that's
14 what 801(d)(2) is all about, a statement by a person
15 representing, essentially, representing -- we see it
16 all the time where we have a corporate officer makes a
17 statement, I think possibly or probably -- I'll give
18 you that, probably -- someone's attorney could make
19 that statement.

20 But 801(d)(2) is limited to a party opponent, and
21 I think that's what we have to look at here, a
22 statement by a party opponent, to make it her
23 statement. And unless we can make it her statement
24 rather than the attorney's statement, I think we have a
25 problem there.

1 Tell me about it. I mean, how do I pass that, how
2 do I -- you know, I understand that it can be
3 admissible as an inconsistent statement on its face;
4 okay? But I also have to meet the -- or you have to
5 meet the burden of showing that it is not a hearsay
6 inconsistent statement.

7 Now, what we have here is an attorney of a
8 nonparty opponent, just a witness, saying that she said
9 this at some time to me. Now, how am I to get past
10 that?

11 MS. BRINSON: Well, respectfully --

12 THE COURT: And what relevance does it even have
13 because -- whether or not she said that? I mean, how
14 can she speak for her daughter? I mean, she says that
15 it was her understanding when the statement was made
16 that that was the truth. Isn't that what she said,
17 that she thought that he had given her herpes, he
18 thought that -- or she thought that he had --

19 MS. WALTER: I don't know that we went that far on
20 the stand. She -- as to J.H., Ms. Herron testified
21 that when she found out that she had herpes, she
22 believed that it was the Defendant because she had only
23 been with him for ten years.

24 THE COURT: Right. But -- and she denies making
25 any statement to the -- such a statement to the

1 attorney. And wouldn't we necessarily need the
2 attorney to verify that?

3 MS. BRINSON: Well, respectfully, Your Honor, I
4 would say that the attorney's statements and the e-mail
5 are one and the same. They don't need two separate
6 exceptions. I mean, the e-mail wouldn't be a thing --

7 THE COURT: But there again, we come back to what
8 the -- and therein lies the problem. The attorney
9 says, she said this to me. She denies that she said
10 that. So, I mean, do you take on its face the
11 attorney's e-mail, Mr. Hilliard?

12 MS. WALTER: The State would say no.

13 THE COURT: As her statement?

14 MS. BRINSON: We would argue yes. I mean, she's
15 an officer of the Court, she is an attorney, and she
16 was representing her client at the time. I can't
17 imagine any reason why she would --

18 THE COURT: Well, unfortunately, sometimes in
19 negotiations, attorneys may take a little stronger
20 stance on certain issues than they should or should
21 not, or maybe things have not been fully investigated.
22 I mean, things like that happen. I don't think -- I'm
23 not saying any attorney does it purposely. I'm just
24 telling you it happens.

25 MS. WALTER: And there is not an exception to the

1 hearsay rule for an officer of the Court.

2 MS. BRINSON: Well, Your Honor was asking if we
3 should take it on its face. But, you know, that's
4 really a question for the jury. If we can get it in,
5 whether or not they believe it, whether or not they
6 think that her attorney is mistaken or not, is a
7 question for the trier of fact. The statement itself
8 of the attorney comes in under an exception to hearsay.

9 THE COURT: But let me ask you this, does it
10 really have much relevance? Because I'm sure
11 Mr. Hilliard did ask her about whether she told her
12 attorney that, was that what she told her attorney.
13 And the jury has heard about this letter, this e-mail,
14 this correspondence, this exchange between she and her
15 attorneys. I mean, they have heard about it; have they
16 not?

17 MS. BRINSON: Yes, Your Honor. But they haven't
18 had the opportunity to see the e-mails themselves,
19 which adds an extra level of credibility to
20 Mr. Hilliard's statement. I mean, he can't testify
21 himself and --

22 THE COURT: And it's offered for the purpose of
23 showing that she did tell the attorney that she thought
24 her daughter had contracted an STD; right?

25 MS. BRINSON: Yes, Your Honor.

1 THE COURT: I mean, to attack her credibility.

2 MS. BRINSON: Credibility, yes, Your Honor.

3 THE COURT: What do you say if it's offered for
4 that purpose, Ms. Walter? I mean...

5 MS. WALTER: Well, Your Honor, I go back to the
6 fact that, first of all, it is the State stands by its
7 argument that it is not an inconsistent statement of
8 our witness because it's actually a statement by the
9 attorney. And as Your Honor has noted, we can't use
10 that sort of agency idea because Ms. Herron is not a
11 party opponent to this case.

12 So, essentially, Defense is seeking to introduce
13 extrinsic evidence of a prior inconsistent statement
14 that's not a prior inconsistent statement, and they
15 have not satisfied anything. They haven't satisfied
16 the foundation for the e-mail, they haven't satisfied
17 that it's hearsay within hearsay or the exceptions to
18 hearsay.

19 THE COURT: I don't think that it meets the burden
20 established by 805. I also have a question as to its
21 relevance under 403. I'm going to exclude it. Thank
22 you.

23 MS. WALTER: Thank you, Your Honor.

24 THE COURT: All right. Now, what do we have next?

25 MR. HILLIARD: Let's be sure that -- it's marked,

1 I think, for identification.

2 THE COURT: It's marked, it's in the record.

3 MR. HILLIARD: All right, sir. And one other
4 part, just to -- a tiny part of that. You're making
5 that decision presuming that, in some way, we could
6 authenticate it, so your decision is based on its
7 relevance and its --

8 THE COURT: Right.

9 MR. HILLIARD: -- otherwise, because we haven't --
10 I don't necessarily want to go through the proffer to
11 show that --

12 THE COURT: Well, I would assume that what you
13 were going to do would be to proffer it by putting up
14 someone from your office and say, this is part of the
15 records you keep.

16 MR. HILLIARD: Yes, sir.

17 THE COURT: That's what it is.

18 MR. HILLIARD: And I don't want to go through that
19 and waste the Court's time because you made your
20 decision on a different issue; am I fair with that?

21 THE COURT: Yes.

22 MR. HILLIARD: All right. Thank you.

23 THE COURT: All right. So where are we now?

24 MR. HILLIARD: I think we're at call a witness,
25 judge.

1 MS. WALTER: We're at the Defense case. My
2 understanding is that the Defense is going to call the
3 Defendant's mother, and so I think I am bound to tell
4 him that apparently she pleaded guilty to what we would
5 say is a crime of falsehood, fraudulent alteration of
6 registration, licensing document other than
7 registration or license plate. We have a certified
8 copy of the conviction.

9 THE COURT: And you're saying that that is a crime
10 of moral turpitude; right?

11 MS. WALTER: Yes, it's a crime of falsehood, crime
12 of moral turpitude that can be used for impeachment.

13 THE COURT: Now, explain the offense to me again.

14 MS. WALTER: I can hand this up to Your Honor.
15 Fraudulent alteration of registration, licensing
16 document other than registration card or license plate.

17 THE COURT: Well, that tells me a lot.

18 MS. WALTER: Well, the fraudulent is the key to
19 that.

20 THE COURT: Does it have to do with like an
21 automobile or something?

22 MS. WALTER: Yes.

23 THE COURT: Pardon?

24 MS. WALTER: Yes.

25 THE COURT: Okay, all right. Let me hear you on

1 that, Mr. Hilliard.

2 MR. HILLIARD: Could I look at the paper you have,
3 judge? Looks like it's a magistrate's level case.

4 Judge Blanton, it looks like, judge. I saw that
5 part.

6 (Discussion off the record.)

7 MS. WALTER: Your Honor, I believe it's Rule 608;
8 isn't it?

9 THE COURT: Yes. It's really 403, but it switches
10 over to 608. All right. It is not in excess of one
11 year, obviously, being in the magistrate's court.
12 Shall be admitted if it involved dishonesty or false
13 statement regardless of punishment.

14 Okay. So tell me about it, Mr. Hilliard, what's
15 your position on that?

16 MR. HILLIARD: I'm looking now to see what the
17 code section is. I never heard of this, which doesn't
18 necessarily mean anything. It says fraudulent in the
19 beginning. I'm looking at 609 and --

20 THE COURT: 609 generally has to be read in
21 conjunction with 403.

22 MR. HILLIARD: Yes, sir. And it says "and."
23 Evidence that any witness has been convicted of a crime
24 shall be admitted if it involved dishonesty or false
25 statements regardless of the punishment.

1 We would object to it, judge, on the basis that
2 the prejudicial value or the prejudicial nature of this
3 would outweigh its probative value.

4 THE COURT: Well, it only goes to credibility.
5 You know, can you show me where that is an exception to
6 609, 403 is an exception to -- I mean, obviously, it's
7 prejudicial, but it only goes -- well, it does say that
8 the Court determines that the probative value admitting
9 this -- and that goes to convictions -- that are under
10 subsection one. But even if I provide an analysis,
11 obviously, any time there is a conviction for false
12 statement, it does have prejudicial value. But it goes
13 to credibility. And that is the main concern of the
14 jury.

15 Now, can you point to any specific prejudice,
16 other than the fact that it reflects on her
17 credibility, or can you show me where it in any way
18 unfairly prejudices your client? And that's the
19 question, whether it's unfairly prejudicial and it
20 outweighs. It doesn't have to significantly outweigh
21 or substantially outweigh, it just says outweighs.

22 MR. HILLIARD: I cannot, Your Honor.

23 THE COURT: That the probative value outweigh.
24 All right. I'm going to admit it; okay?

25 MS. WALTER: Thank you, Your Honor.

1 THE COURT: All right. Let's go ahead. Now, are
2 we done as far as pretrial matters other than my
3 instruction to the Defendant concerning his Fifth
4 Amendment right?

5 MR. HILLIARD: They have not told us, judge, if
6 they have anything on the Defendant that they intend to
7 impeach.

8 THE COURT: Do you have a prior conviction on the
9 Defendant?

10 MS. WALTER: As I've said before, no.

11 THE COURT: Okay. No. They have nothing.

12 MR. HILLIARD: All right. Yes, sir, we're ready.

13 THE COURT: Okay, all right. Would you stand,
14 Mr. Rowan.

15 Place him under oath, please, clerk.

16 SCOTT RICHARD ROWAN, after being duly sworn,
17 testified as follows:

18 THE COURT: Mr. Rowan, at this time I'm going to
19 explain to you certain of your rights. And if you
20 don't understand anything that I am saying, as I do so,
21 just let me know, and I'll be happy to take time to
22 explain it for you --

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: -- in a more detailed fashion; do you
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, we've reached the stage in
3 this trial where you may, I made it very clear, I
4 think, during this trial, you may but you are not
5 required to present your defense because you have a
6 presumption of innocence in this trial. And the burden
7 is entirely upon the State to prove your guilt. And
8 I'm sure that you've had conversations in that regard
9 with Mr. Hilliard.

10 Is that right, Mr. Hilliard?

11 MR. HILLIARD: Yes, sir, Your Honor.

12 THE COURT: Okay. You have the right to claim the
13 protections given you by the Fifth Amendment of the
14 Constitution of the United States. That amendment says
15 in part, no person shall be compelled in any criminal
16 case to be a witness against himself. You know, we
17 usually think of the Fifth Amendment as being
18 protections against you. When you are arrested, you
19 don't have to talk to the police. You're probably
20 familiar with that, most people are.

21 However, it does carry over to a trial. It means
22 that, in a trial, no one can compel you to testify.
23 You certainly may if you choose, but no one can make
24 you. Mr. Hilliard can't make you, I can't make you,
25 and the prosecutors cannot call you and require you to

1 testify.

2 This is a decision that you have to make. It is a
3 personal right that you have, and only you can waive
4 it. I think I've made that clear. If you decide to
5 testify in this trial, you'll be subject to the same
6 rules that cover or concern other witnesses, and you
7 may be examined by your attorney and cross-examined on
8 any relevant issue in this case.

9 In addition, if you have any convictions involving
10 dishonesty or false statement or for crimes punishable
11 by imprisonment of more than one year, and this court
12 determines that the probative value of admitting this
13 evidence outweighs its prejudicial effect to you, the
14 solicitor, the prosecutors will be able to introduce
15 your record to attack your credibility. And I will
16 tell you at this time the solicitor has told me, the
17 prosecutors have told me that they know of no such
18 record.

19 And I think that's a consideration for you. I'm
20 not encouraging you to testify, I'm simply telling you
21 that that's my understanding. If you decide to
22 testify, the decision on your part must be freely and
23 voluntarily and intelligently made with knowledge of
24 the protections given you by the Fifth Amendment and
25 the consequences of your decisions.

1 If you decide not to testify, I want you to
2 understand that I will tell this jury that you are
3 exercising your constitutional right, and that they
4 cannot give the fact that you did not testify in this
5 case any consideration whatsoever, and there is to be
6 absolutely no prejudice to you because you did not
7 testify.

8 Now, has Mr. Hilliard explained that to you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you need to ask me any questions
11 about that?

12 THE DEFENDANT: No, Your Honor, I understand.

13 THE COURT: You're clear, okay. It's left
14 entirely up to you whether or not to testify. And you
15 can talk with your attorney, your family, your friends,
16 anyone that might give you good counsel. But the
17 decision, the final decision, is left up to you.

18 Now, do you understand what I told you?

19 THE DEFENDANT: I understand everything, Your
20 Honor.

21 THE COURT: And you've had adequate opportunity to
22 discuss it with your attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. Have you made a decision at
25 this juncture as to whether or not you will testify?

1 THE DEFENDANT: Yes, I have, Your Honor.

2 THE COURT: And what is that?

3 THE DEFENDANT: I will testify.

4 THE COURT: Okay. Let me tell you that if at any
5 time you should change your mind, you are not bound by
6 what you tell me now. I will allow you to change your
7 mind. I'm not encouraging you to do that, please
8 understand that. I'm just -- I want to make sure that
9 you understand the rules.

10 THE DEFENDANT: I understand, Your Honor.

11 THE COURT: You tell me now you want to testify,
12 but at any time, you can change that.

13 THE DEFENDANT: Sure.

14 THE COURT: Once you testify, that becomes part of
15 the record; okay?

16 THE DEFENDANT: I understand, Your Honor.

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

19 MR. HILLIARD: No, sir, Your Honor. Thank you.

20 THE COURT: Are you confident that your client
21 understands his Fifth Amendment right?

22 MR. HILLIARD: Yes, sir.

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

24 MR. HILLIARD: Thank you.

25 THE COURT: Okay. Are we ready now?

1 MS. WALTER: I'm ready, Your Honor.

2 MR. HILLIARD: Ready, yes, sir.

3 THE COURT: Okay.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:08 a.m.)

6 THE COURT: Good morning. Looks like we've got
7 everybody here. I apologize for not bringing you right
8 out on time, but we had some other matters we had to
9 take up in this particular case. But we've resolved
10 all those and we're ready to go forward.

11 Okay. As you heard on yesterday, the State has
12 rested. Now we are here to hear from the Defense. As
13 I told you, the Defense has no obligation to put up any
14 witnesses; however, Mr. Hilliard tells me that they
15 will.

16 Mr. Hilliard?

17 MR. HILLIARD: Thank you, Your Honor.

18 THE COURT: Let me say that that does not shift
19 the burden in any way, the burden still remains upon
20 the State.

21 MR. HILLIARD: Call Sabrina Houser. She was in
22 the restroom, judge. We sent for her to see if
23 she's...

24 THE COURT: All right.

25 SABRINA HOUSER, after being duly sworn, testified

1 as follows:

2 THE CLERK: State your full name and spell your
3 last name.

4 THE WITNESS: My name is Sabrina Renee Houser.
5 That's H-O-U-S-E-R.

6 DIRECT EXAMINATION

7 BY MR. HILLIARD:

8 Q Thank you. Are you nervous to be here today?

9 A Yes.

10 Q This will be fine. What age person are you,
11 please, ma'am?

12 A I'm sorry?

13 Q What age person are you, how old are you?

14 A 21 years old.

15 Q And who do you live with?

16 A I live with my mother.

17 Q Do you know [REDACTED] J. H. [REDACTED] ?

18 A Yes.

19 Q And how do you know [REDACTED] J. H. [REDACTED] ?

20 A We were friends a couple years back.

21 Q Was there an occasion, if you recall, where [REDACTED] J. H. [REDACTED]
22 came and told you that her stepfather, Scott, had given
23 her a sexually transmitted disease?

24 A Yes.

25 Q After that, did she ever come back and tell you

1 that she was mistaken about that?

2 MS. WALTER: Objection, Your Honor. Leading.

3 THE COURT: I'll allow it.

4 MR. HILLIARD: Thank you.

5 Q Did she ever come back and tell you that she was
6 mistaken about that?

7 A She did not.

8 Q Did she ever tell you anything else about that?

9 A No.

10 MR. HILLIARD: Thank you, ma'am. Answer any
11 questions the prosecution has for you, please.

12 CROSS-EXAMINATION

13 BY MS. WALTER:

14 Q Good morning, Ms. Houser. First of all, you
15 indicated that you were friends with J.H. ?

16 A Yes.

17 Q That means that you are no longer friends with
18 her?

19 A Yes.

20 Q And when did you have a falling out with her?

21 A About three years ago.

22 Q So that would be in 2015?

23 A Yes.

24 Q Had you -- okay. And during this initial
25 conversation where J.H. told you that the

1 Defendant had given her a sexually transmitted
2 disease --

3 MS. WALTER: Are you okay, Mr. Hilliard? I just
4 want to make sure you don't need to sit down.

5 MR. HILLIARD: I'm fine, thank you. I appreciate
6 it.

7 Q During this initial conversation where J. H.
8 told you that the Defendant had given her a sexually
9 transmitted disease, did she also tell you that she was
10 being sexually abused?

11 A Yes.

12 Q Did your conversation with her about that indicate
13 that the abuse was taking place in her home?

14 A Yes.

15 Q If you recall, do you know the timeframe of the
16 abuse?

17 A I do not.

18 Q You said that you had had a falling out with
19 J.H. in 2015. Do you recall when in 2015?

20 A I do not.

21 Q Were you aware of the fact that J.H. ran
22 away from home?

23 A Yes.

24 Q Was your falling out before or after that?

25 A After.

1 Q And so this conversation that you had with her
2 where she indicated that she was being sexually abused
3 in her home took place before?

4 A Yes.

5 Q Is it fair to say that, other than having been
6 interviewed by Detective Johnson and being subpoenaed
7 here for trial, you have not thought much about this
8 since that conversation?

9 A No.

10 Q Do you recall specific details of your
11 conversation with [REDACTED] J.H. [REDACTED] that day?

12 A I do not.

13 Q Was that the last time that you talked to
14 [REDACTED] J.H. [REDACTED] ?

15 A No.

16 Q When did you talk to her again?

17 A I talked to her about two years ago.

18 Q And what was that conversation?

19 A I don't really remember much about it.

20 Q So you remember having conversations with
21 [REDACTED] J.H. [REDACTED] , you remember her telling you that she had
22 been sexually abused in her home, but beyond that, you
23 don't really remember any details of anything?

24 A Yes.

25 MS. WALTER: Nothing further.

1 MR. HILLIARD: A couple based on that, judge.

2 THE COURT: Sure.

3 REDIRECT EXAMINATION

4 BY MR. HILLIARD:

5 Q Back in 2015, you talked to the police about the
6 situation; right?

7 A Yes.

8 Q And today you talked to the investigator from the
9 solicitor's office about this situation; is that
10 correct?

11 A Yes.

12 Q And you appear here today on our subpoena. We
13 sent the sheriff's office with a subpoena to get you to
14 come in here today; is that correct?

15 A Yes.

16 Q And when you answered the questions for the
17 prosecutor about not remembering anything else, you can
18 say that you specifically remember that she never came
19 back and told you that Scott did not give her a
20 disease?

21 A Yes.

22 MR. HILLIARD: That's all I have. Thank you,
23 ma'am.

24 THE COURT: You may step down, Ms. Houser.

25 MR. HILLIARD: We would ask that she be excused,

1 Your Honor.

2 THE COURT: Any objection from the State?

3 MS. WALTER: No, Your Honor.

4 THE COURT: You're released from the subpoena now,
5 Ms. Houser. Thank you.

6 (Witness excused.)

7 MR. HILLIARD: We call Rebecca Rowan.

8 REBECCA ANN ROWAN, after being duly sworn,
9 testified as follows:

10 THE CLERK: Please be seated, and please state
11 your full name for the Court.

12 THE WITNESS: Rebecca Ann Rowan, R-O-W-A-N.

13 DIRECT EXAMINATION

14 BY MR. HILLIARD:

15 Q Ms. Rowan, you're nervous about being here today?

16 A Very.

17 Q Okay. This will be fine, all right. You're
18 Scott's mom; is that right?

19 A Yes. And I'm also a grandmother.

20 Q And how many grandchildren do you have?

21 A I have four biological and five
22 step-grandchildren.

23 Q And the grandchildren in this particular case, who
24 are the grandchildren that are connected to this case?

25 A Two of the defendants are my step-grandchildren.

1 They are my step-granddaughters.

2 Q And how many -- when Scott was living in his -- in
3 the house with his wife, do you know who lived in that
4 house?

5 A Yes. Him --

6 Q Who?

7 A -- his wife Anatasya, [REDACTED] A.R. , [REDACTED] J.H. , [REDACTED] O.E. , and
8 [REDACTED] S.R. .

9 Q Do you know what age person [REDACTED] O.E. is at this
10 point?

11 A He's 12.

12 Q 12.

13 A Yes. His birthday is [REDACTED] . He'll be 13.

14 Q And what about [REDACTED] S.R. ?

15 A He's ten. Ten -- he might be 11 because his
16 birthday was [REDACTED] -- I mean [REDACTED] , so I'm not
17 sure. Right now I'm nervous.

18 Q Very good. Very good. When this all happened
19 back when -- let me ask a better question. Did

20 [REDACTED] J.H. -- do you remember when [REDACTED] J.H. ran away from
21 home?

22 A Yes.

23 Q What was your reaction to her running away from
24 home?

25 A Very upset. I was scared. I was scared for her

1 safety. I wanted to know that my granddaughter was
2 okay. It was a grandmother's fear. I felt like my
3 heart was gonna come out of my chest, and I couldn't
4 control the mother and the grandmother in me to not --
5 I love those girls, they are my heart. I've been with
6 them since they were seven and nine, they came into my
7 life. And when they came into my life, they jumped
8 right into my heart.

9 Q On the occasion when -- did you make any attempt
10 to contact --

11 A Yes.

12 Q -- J.H. while she was --

13 A Yes.

14 Q Let me get all the way to the end of my question,
15 please.

16 A Okay.

17 Q When J.H. ran away from home, did you make any
18 attempt to contact her?

19 A Yes.

20 Q And how did you go about that?

21 A I was calling her on her phone. I was texting
22 her. I was Facebook messaging her constantly.

23 Q And did she, at some point, call you back?

24 A It was -- I'm not sure if it was two to three days
25 later, yes, she did.

1 Q Was she still a runaway at that point in time?

2 A Yes.

3 Q And what was that conversation about?

4 A I was at work, and I seen her name come across my
5 caller ID. And I jumped up and ran outside, and I
6 answered the phone. And I asked her if she was okay,
7 and she said yes. And I knew from the letter that was
8 wrote that I had read that she was supposed to have
9 left town.

10 And I told her that I just want to see her, to
11 physically see her, I would be totally by myself, and
12 no one else would know where I was going or anything.
13 She could pick and bring anybody with her or drive by.
14 Because she told me -- I asked her, I said, [REDACTED], I
15 said, I just want to know you're safe. And I said, I
16 don't want to know where you're at. I just want to
17 know if you're local. And she said, yes, Grandma, I'm
18 in Conway.

19 Q Have you seen your granddaughter since that time,
20 your granddaughter [REDACTED] since that time?

21 A No, she hasn't allowed me to see her.

22 Q The days that this was going on, did you and --
23 did you go over to Scott's house?

24 A Yes.

25 Q To meet with him and Anatasya?

1 A Yes.

2 Q What -- tell the folks on the jury what that was
3 about, please.

4 A My son had told me that J.H. had wrote a letter
5 stating things that were done to her allegedly and that
6 she had ran away. She ran away, and she was going to
7 Arizona, and not to try to come find her. And that...

8 Q Let me interrupt you and ask you --

9 A And I'm...

10 Q Take your time.

11 A I have a hard time with my diabetes, and when my
12 sugar goes up, I have a hard time completing sentences.

13 Q It's okay. Let me ask you a different question.
14 Did you have a conversation at Scott and Anatasya's
15 house with Scott and Anatasya?

16 A Yes.

17 Q During that conversation, at any point in time did
18 Scott ever say that he had done anything at all?

19 A No.

20 MS. WALTER: Objection, Your Honor, to the leading
21 nature of these questions.

22 THE COURT: It doesn't suggest the answer. He's
23 asking whether or not she heard that. I'll allow it.

24 MR. HILLIARD: Thank you, Your Honor.

25 THE COURT: Perhaps not the best form, but I'll

1 allow it.

2 Q At any point in time during that conversation, did
3 Scott say that he had done anything of a sexual nature
4 to these -- to his stepdaughters at all?

5 A No.

6 Q And where is Scott living at this point in time?

7 A At my house.

8 Q At any point in time from the day that he turned
9 himself -- or from the day that you learned about this
10 until today, has he ever told you that he has done
11 anything of a sexual nature with his stepdaughters?

12 A No, because if he did --

13 MS. WALTER: Objection, Your Honor. She's
14 answered the question.

15 THE COURT: Move on, Mr. Hilliard.

16 MR. HILLIARD: I didn't ask her another question.
17 She was --

18 THE COURT: I understand.

19 MR. HILLIARD: All right, sir.

20 Q The business that you were in, what kind of
21 business are you in?

22 A It was a tow truck company that we had to close
23 because my husband is now disabled, and I could not run
24 the business on my own. And I have to take care of my
25 husband, he's disabled. He has brain damage, and he

1 died three times in one night because of the business.

2 Q And in connection with your business, did you
3 plead guilty to a charge in magistrate's court of
4 having to do with some sort of title situation?

5 A Yes. That --

6 Q That's fine. You don't have to go any further.

7 MR. HILLIARD: Excuse me just a second, judge.

8 Q Do you remember when [A.R.] moved out?

9 A I don't remember when she had exactly moved out,
10 out. But I know she was not staying at the house. She
11 was staying at her boyfriend's. And the day that Scott
12 and her mother, Anatasya, wanted her to come get all of
13 her stuff, she needed a trailer. And I had a trailer
14 at the time. And I was -- I had talked to her, and I
15 told her that I would go over with her to get it
16 because I wanted to help her in any way I could.

17 Q During that conversation or at any other point in
18 time, has [A.R.] ever said anything to you about Scott
19 having any kind of sexual contact with her, has she
20 ever said that to you?

21 A No.

22 Q During that conversation?

23 A No.

24 Q Or at any other point in time?

25 A No.

1 MR. HILLIARD: Thank you, ma'am, please answer any
2 questions that the prosecutor has for you.

3 MS. WALTER: If I may, Your Honor. May I approach
4 the witness?

5 THE COURT: Certainly.

6 CROSS-EXAMINATION

7 BY MS. WALTER:

8 Q You said that you read some letters that J. H.
9 had left. I'm showing you State's Exhibits 1, 2, and
10 3. Are those the letters that you saw?

11 A Yes.

12 Q And who showed you those letters?

13 A Scott and Anatasya.

14 Q Did you read the letters?

15 A Yes, a few times.

16 Q And so you read J. H. saying that your son had
17 raped her multiple times?

18 A Yes.

19 Q Despite her screaming at him?

20 A Yes.

21 Q You never talked to J. H. about that; right?

22 A No. She was -- she had ran away, and I had not
23 talked to her on the phone yet.

24 Q And you haven't -- despite the fact that you call
25 yourself their grandmother?

1 A Yes.

2 Q You haven't spoken to them since this incident?

3 A They haven't allowed it.

4 Q Right, because they don't consider you their
5 grandmother.

6 MR. HILLIARD: Objection.

7 THE COURT: The jury will disregard the last
8 remark. It wasn't a question. Thank you.

9 Q Would it surprise you that they don't consider you
10 their grandmother anymore?

11 MR. HILLIARD: Objection.

12 THE COURT: I'll allow it.

13 THE WITNESS: Yes, I would. It would surprise me.

14 Q Now you're saying -- just wait until there's a
15 question -- you're saying that **A.R.** never talked to
16 you about Scott touching her inappropriately?

17 A No.

18 Q Conversation never took place?

19 A No.

20 Q Did you know that when she left the home, it was
21 actually because your son kicked her out?

22 A That was --

23 Q That's a yes or no question. Did you know that
24 was because he kicked her out?

25 MR. HILLIARD: Objection.

1 THE COURT: I will let her answer yes or no and
2 then explain it.

3 MR. HILLIARD: Thank you, Your Honor.

4 THE WITNESS: Actually, I heard from both sides,
5 so it was two different versions. And I didn't know
6 which one to believe, but I knew her stuff was still at
7 the house and that she needed to get her stuff. And
8 she didn't want to go there and Scott and her mother be
9 argumentative to her. And I went with her as pretty
10 much somebody to step in and say, hey, that's enough,
11 just let her get her stuff and not to argue.

12 Q Well, if she was moving out with the consent of
13 all parties, why would there be a problem?

14 A Because -- my understanding of why she had to get
15 her stuff --

16 Q Let me just stop you. I'm just asking you why you
17 think there would be a misunderstanding if you believed
18 everyone was okay with this.

19 MR. HILLIARD: Objection.

20 THE COURT: I'll allow it if she has an
21 understanding or --

22 MR. HILLIARD: Thank you.

23 THE WITNESS: Yeah. Her personal items were boxed
24 up in the corner of a bedroom or in a bedroom, and
25 Anatasya wanted to move my step-grandson, my grandson,

1 O.E. , up into one of the -- up into her room and turn
2 his room into her office so that each one of the
3 children that were still in the home had their own
4 bedroom, and that she was not able to do that because
5 Ana -- I mean, A.R. 's stuff was in there.

6 Q I'm going to stop you --

7 MR. HILLIARD: Objection --

8 MS. WALTER: No, this is nonresponsive, Your
9 Honor.

10 Q The question was if -- and I'll repeat it. And if
11 you don't understand a question, feel free to ask me to
12 rephrase it. The question is, if this was all
13 amicable, why would you think that there is a going to
14 be a problem?

15 MR. HILLIARD: And she has answered.

16 MS. WALTER: That's the question. She has not
17 answered.

18 THE COURT: I don't think -- let her continue her
19 answer.

20 Ma'am, do you understand the question?

21 THE WITNESS: I can answer that.

22 THE COURT: The question --

23 THE WITNESS: Yes.

24 THE COURT: -- is simply, why would you think
25 there was a problem?

1 THE WITNESS: Because [REDACTED] A.R. had a strained
2 relationship with her mother and my son because my son
3 was a very strict parent.

4 Q And when you say strict parent, are you aware of
5 the physical abuse that he reaped upon your
6 grandchildren?

7 MR. HILLIARD: Objection.

8 THE COURT: I will allow it. If she knows, she --

9 MR. HILLIARD: But I object to the form of the
10 question. She is phrasing things in a way that makes
11 it sound as if that happened.

12 MS. WALTER: There has been testimony that it
13 happened.

14 MR. HILLIARD: That doesn't mean it happened.

15 THE COURT: Well, I think this witness can
16 certainly understand the question and respond
17 appropriately.

18 MR. HILLIARD: Thank you.

19 THE COURT: Okay, let's go.

20 THE WITNESS: If you can tell me what you consider
21 physical abuse.

22 Q Okay, sure. Smacking one of you grandsons across
23 the face so hard that it left a purple mark.

24 A No.

25 Q You weren't aware of that?

1 A No.

2 Q How about grabbing J.H. by the hair and shoving
3 her head into the wall?

4 A No.

5 Q But you would consider that physical abuse?

6 A Yes.

7 Q And what about knocking J.H. down to the ground
8 and choking her, would you consider that physical
9 abuse?

10 A Yes.

11 Q Okay. But you weren't living in the home;
12 correct?

13 A No.

14 Q Would you agree that your son has a bit of a
15 temper?

16 A Yes.

17 Q And you said that your son is a -- was a strict
18 person?

19 A Yes. He got it from me.

20 Q And he wanted things done a particular way?

21 A Yes.

22 Q And if he didn't get things done his way, his
23 temper would come out; correct?

24 A Not his temper. His parenting skills came out.

25 Q And those parenting skills included smacking an

1 infant across the face to the point of a purple bruise?

2 A No. No.

3 Q Did those parenting skills include making A.R.
4 wash not only the dinner dishes, but then when they
5 weren't done to his satisfaction, every single dish in
6 the house; is that his parenting skills?

7 A I never saw that.

8 Q Right, because you weren't living in the home.

9 A No, I wasn't living in the home --

10 MR. HILLIARD: Objection. That's not a question.

11 Q Were you?

12 A I was not living in the home.

13 Q So you weren't living in the home when not only
14 did he force her to wash every single dish in the
15 house, but he stood there and ate on new dishes to give
16 her more work to do; you weren't there for that, were
17 you?

18 MR. HILLIARD: Objection to the form of the
19 question.

20 THE COURT: I'll allow her to ask the question if
21 she was there when any of that occurred, if it
22 occurred; okay?

23 MR. HILLIARD: She didn't say if it occurred,
24 judge.

25 THE COURT: All right.

1 Q So you were not there for that instance; correct?

2 A No.

3 Q And you were never present when your son backed
4 Anatasya into a corner?

5 A No.

6 Q Let me touch on something else, actually. I'll
7 get off that subject for a moment. Counsel said you
8 pleaded guilty to a, I think he phrased it a title
9 situation?

10 A Yes.

11 Q That actually was an act of fraud; correct?

12 A Yes.

13 MR. HILLIARD: Objection.

14 THE COURT: She can answer the question.

15 MR. HILLIARD: All right, sir.

16 THE COURT: You've asked the question. The
17 witness can answer.

18 THE WITNESS: Yes.

19 MS. WALTER: I'm just waiting for Mr. Hilliard to
20 sit down.

21 MR. HILLIARD: I'm here talking to my co-counsel.

22 THE COURT: He can stand.

23 MR. HILLIARD: Thank you, judge.

24 Q So that was an act of fraud; correct?

25 A Yes.

1 Q So it wasn't just a title situation, it was an act
2 of dishonesty on your part; is that correct?

3 A Yes, with extenuating circumstances.

4 Q An act of dishonesty?

5 MS. WALTER: Your Honor, I would ask --

6 MR. HILLIARD: Objection. That's not a question.

7 MS. WALTER: -- that this be marked, I think we
8 are at State's-4.

9 THE COURT: All right, the jury will disregard the
10 last remark.

11 MR. HILLIARD: And I object to -- well, let's see
12 what she's doing.

13 MS. WALTER: I'm waiting for the court reporter to
14 be able to take a break.

15 (WHEREUPON, State's Exhibit No. 4 was marked for
16 identification only.)

17 MS. WALTER: May I approach the witness, Your
18 Honor?

19 THE COURT: Please.

20 (WHEREUPON, a bench conference was held off the
21 record in the presence of the jury but out of the
22 hearing of the jury.)

23 MS. WALTER: May I, Your Honor?

24 THE COURT: Yes.

25 MS. WALTER: Thank you.

1 Q I'm showing you what's been marked for
2 identification only as State's Exhibit 4. And do you
3 recognize that's you, Rebecca Ann Rowan?

4 A Yes.

5 Q And this was just last year, August of 2017?

6 A Yes.

7 Q And can you just read the charge, please, that you
8 pled guilty to.

9 A Traffic fraudulent alteration of registration,
10 licensing document other than registration card or
11 license plate.

12 Q Thank you.

13 MS. WALTER: Court's indulgence a moment.

14 (Discussion off the record.)

15 Q Before your relationship with your granddaughters
16 ended, how often would you see them?

17 A Whenever I could.

18 Q How often is that?

19 A Sometimes it could be for a school play. I used
20 to pick J.H. up from her show choir. I would go over
21 and see the kids from time to time. They would come to
22 my home.

23 Q How often would you see them? If you don't
24 understand the question, let me know.

25 A I can't give specific times because there might be

1 one time when I seen them a couple times a week. There
2 might be some time that I didn't see them for a month.

3 Q Did you ever see [REDACTED] J.H. with bruises on her body?

4 A Yes.

5 Q Bruises on her legs?

6 A Yes.

7 Q And did she ever tell you what they were from?

8 A No.

9 Q Did you ever see scars on [REDACTED] J.H. indicating that
10 she was cutting herself?

11 A No.

12 Q Did you ever see scars on [REDACTED] A.R. that she got from
13 cutting herself?

14 A No.

15 Q And yet you saw them on a sometimes frequent
16 basis?

17 A Yes.

18 Q And, ma'am, you love your son; don't you?

19 A Yes, with all my heart.

20 MS. WALTER: Nothing further.

21 MR. HILLIARD: Nothing else, judge. Thank you.

22 We'd like for her -- well, let me ask one question
23 based on all those questions.

24 REDIRECT EXAMINATION

25 BY MR. HILLIARD:

1 Q You have been sequestered throughout this whole
2 process; is that right?

3 A Yes.

4 Q You haven't been able to be in the courtroom?

5 A And I haven't been able to even talk to anyone.

6 MR. HILLIARD: Can she stay in the courtroom at
7 this point, judge? She's testified. Come down.

8 THE COURT: I see no problem with that.

9 MR. HILLIARD: Thank you.

10 MS. WALTER: As long as there is no unwanted
11 contact between her and the victims.

12 THE COURT: And any other witnesses. Thank you.

13 (Witness excused.)

14 THE COURT: All right.

15 MR. HILLIARD: I think the next witness will be a
16 little bit lengthy, judge, so I don't know if you want
17 to take a break.

18 THE COURT: Okay. Well, why don't we do this,
19 let's let the jury take a break. I don't know if the
20 jury needs a break, but I do. So let's just take about
21 ten minutes; all right?

22 (WHEREUPON, the jury exited the courtroom at
23 10:44 a.m.)

24 (WHEREUPON, a brief recess was taken at
25 approximately 10:44 a.m.)

1 THE COURT: Are we ready? Please be seated. Is
2 this going to be your last witness, Mr. Hilliard, or
3 not?

4 MR. HILLIARD: I'm sorry, sir?

5 THE COURT: Is this going to be your last witness
6 or not?

7 MR. HILLIARD: I think it is.

8 THE COURT: Okay, all right. I just wondered
9 about your expert, okay. Chris, could you get the jury
10 for me.

11 (WHEREUPON, the jury came into open court at
12 approximately 10:59 a.m.)

13 THE COURT: All right, Mr. Hilliard.

14 MR. HILLIARD: Thank you, Your Honor. Call Scott
15 Rowan.

16 THE COURT: All right, Mr. Rowan.

17 SCOTT RICHARD ROWAN, after being duly sworn,
18 testified as follows:

19 THE CLERK: Please be seated. Please state your
20 name for the Court, and spell your last name.

21 THE DEFENDANT: Scott Rowan, Jr. R-O-W-A-N.

22 DIRECT EXAMINATION

23 BY MR. HILLIARD:

24 Q How old a person are you, Scott?

25 A I am 33 years old.

1 Q And where have you lived throughout your life?

2 A I lived in Baltimore, Maryland and here in Myrtle
3 Beach, South Carolina.

4 Q When did you move to Myrtle Beach, if you
5 recollect?

6 A I think September 2000, if I'm not mistaken.

7 Q And what kind of -- what brought you to Myrtle
8 Beach?

9 A My parents did when I was 15.

10 Q What kind of business did your parents have?

11 A My father was a mechanic.

12 Q And as you got older, did you graduate from high
13 school?

14 A I got a GED.

15 Q After that, did you get work?

16 A Yes.

17 Q What kind of work did you get?

18 A I've been a manager at McAlister's deli. I've
19 worked at Medieval times as the falconer. I've done a
20 lot of construction. I was also a manager at Sticky
21 Fingers in North Myrtle Beach. I've done a lot of
22 different jobs, plumbing, construction, concrete.

23 Q The last job that you had, what job was that?

24 A Actually, the last job I had, I worked as a cook
25 in Brass Tap. But before that, I was a manager at

1 Sticky Fingers in North Myrtle.

2 Q How long were you a manager at Sticky Fingers in
3 North Myrtle Beach?

4 A I was a kitchen manager for, say, about three
5 years, and then I became an assistant manager for a
6 year, and then I went back to kitchen manager. I
7 worked there for a total of six years.

8 Q And do you recall what period of time that was?

9 A Right at the time all of this was brought to my
10 attention of what I'm being charged with.

11 Q And talking about that, when it was brought to
12 your attention that you were being charged with a
13 crime, did you turn yourself in down at the jail?

14 A Yes.

15 Q And then you got out?

16 A Yes.

17 Q And you've been waiting on this day since then; is
18 that right?

19 A Yes. Been almost three years.

20 Q And have you been able to get a job with these
21 charges pending against you since then?

22 MS. WALTER: Objection, Your Honor. Relevance.

23 THE COURT: I'll allow it.

24 THE WITNESS: Just a job at Brass Tap, but as soon
25 as they actually found out I had these charges, because

1 they never asked me on my initial interview, I was
2 fired.

3 Q Going back to the time of your marriage, how did
4 you meet your wife, Anatasya?

5 A I met her through a friend that she had living
6 with her.

7 Q And did you guys ultimately get married, I
8 imagine?

9 A Yes.

10 Q After you got married, where did you first live?

11 A After we got married, we -- when we got married,
12 we lived at [REDACTED] Rockdale.

13 Q And who lived in that home with you?

14 A Me, [REDACTED] J.H. [REDACTED], [REDACTED] A.R. [REDACTED], [REDACTED] O.E. [REDACTED],
15 [REDACTED] S.R. [REDACTED], and Anatasya Herron. And for
16 a brief moment, Anatasya Herron's mother and boyfriend
17 did come and live with us for a little while.

18 Q So moving along to the home where this is alleged
19 to have occurred, do you remember about when you moved
20 into that home?

21 A I couldn't actually tell you exactly, no, Your
22 Honor -- sorry, Mr. Hilliard.

23 Q Are you nervous today?

24 A A little bit.

25 Q All right, sir.

1 A I've been nervous for three years.

2 Q Did you at any point in time have any kind of
3 sexual contact with your stepdaughter, [REDACTED] A. R. ?

4 A No.

5 Q Did you at any point in time have any kind of
6 sexual contact with your stepdaughter, [REDACTED] J. H. ?

7 A No.

8 Q [REDACTED] J. H. . Are you a strict disciplinarian?

9 A I am, yes.

10 Q Have you ever struck either of your sons in the
11 face?

12 A No.

13 Q Have you ever knocked either of your daughters
14 into the wall and pushed their head through a wall?

15 A No. That's going way too far.

16 Q You've been here for the testimony, obviously?

17 A Yes.

18 Q Tell us about the event, if you recollect, of the
19 washing of greasy dishes.

20 A Our dishwasher was broken because the kids
21 overpacked it when they were doing their chores of the
22 dishes. So it wind up breaking, so they had to do it
23 by hand. And by doing it by hand, they never fully
24 cleaned the dishes. Some of them did get greasy
25 because they were just dipping it in cold water, and it

1 was just cold grease in there. It was getting all over
2 them. So I did make [REDACTED] A.R. redo the dishes. Not all
3 of them, but any of that them that I felt had grease on
4 them.

5 Q And did you eat more off of dishes only to make
6 the dishes dirty?

7 A No.

8 Q Did you harm her in any form or fashion?

9 A No. She is a very good student and everything.
10 I've never -- as a matter of fact, I don't even recall
11 ever actually disciplining her by, you know, busting
12 her rear or anything.

13 Q Talking about the event mixing the cleaner, tell
14 the folks on the jury about the mixing of cleaner
15 event; do you recall that happening?

16 A [REDACTED] J.H. was playing around with her mother, you
17 know, trying to be smart and everything. And I just
18 told her to stop getting smart with your mother.

19 Q Did you ever kick the dog?

20 A No.

21 Q Sir?

22 A I actually love my dogs. When I was actually
23 asked to leave, my ex-wife actually sent the dog with
24 me, one of them. I still actually have him to this
25 day.

1 Q Other than this case, have you ever been
2 investigated by the Department of Social Services for
3 any kind of --

4 A No.

5 Q -- child abuse? In the beginning, when you guys
6 were married, did you, in fact, engage in selling some
7 marijuana?

8 A Yes. When I first got with her, before we were
9 married, yes.

10 Q And did you ever stop that?

11 A Yes.

12 Q And when did that happen?

13 A I was charged with possession of cocaine.

14 Q And what happened after that?

15 A I pled guilty to that and did not sell any kind of
16 drug at all.

17 Q All right, sir. Did you smoke pot during the
18 period of time that we're talking about?

19 A Yes.

20 Q Did your wife smoke pot during the time that we're
21 talking about?

22 A Yes.

23 Q Tell us about [REDACTED] A.R. moving out. Tell the folks
24 on the jury about [REDACTED] A.R. moving out.

25 A When [REDACTED] A.R. moved out, she was already not at our

1 house at all most of the time. She was out -- you
2 know, I gave her a 2:30 curfew once she graduated,
3 2:30 in the morning. You know, I gave her a lot of
4 free will. But when she was asked to get her stuff
5 out, it was because her mother wanted her to actually
6 pick either she is going to stay at the house or she is
7 not. Because we had two boys that are in one room, and
8 they were constantly fighting and arguing. She wanted
9 to separate them. And she didn't want to give up her
10 office. So I asked her to get her stuff out.

11 Q And did that happen?

12 A Yes.

13 Q And tell the folks on the jury about the paying
14 rent situation.

15 A Paying the rent is what I suggested to her to tell
16 her if she wants to just keep her stuff -- it was
17 basically either pay rent or storage, but she never
18 paid anything. Never made her pay anything.

19 Q Was there a divorce case involved in this
20 situation as well?

21 A I'm actually -- I believe there was a custody
22 case. I actually am not a hundred percent if I
23 actually am divorced or not.

24 Q All right, sir. There was a custody case; is that
25 right?

1 A Yes.

2 Q And in connection with the family court case, did
3 you learn that you were accused of having given your
4 wife and your daughter an STD, a sexually transmitted
5 disease?

6 A Yes. I actually was talking to my wife at the
7 time on the phone, and she said I cheated on her. I
8 said, no, I didn't. And she said, well, then how did
9 me and my daughter get an STD?

10 Q All right, sir. And did you go immediately and
11 get checked for STDs?

12 A Yes, as soon as she told me, sir.

13 Q Did you have herpes?

14 A No.

15 Q Did you have chlamydia?

16 A No. I'm completely STD-free.

17 Q Let me show you Defendant's Exhibit No. 4 and ask
18 if you can identify that as your home.

19 A Yes, that is my home.

20 Q And if you look on there, when it says the living
21 room, do you see where it says the size of the living
22 room? What is the size of the living room?

23 A Oh, living room, 12 by 9.

24 Q 12 feet by 9 feet?

25 A Yes. And that actually sounds a lot bigger than

1 what it felt like.

2 Q And then the total square feet, the heated square
3 feet of the house is -- how much heated square feet of
4 the house?

5 A Total square feet is 1,700.

6 Q And then the heated square feet is right under
7 that. How much is that?

8 A 1,200.

9 Q And let me show you Defendant's Exhibit No. 10 and
10 ask if that's a fair and accurate representation --

11 A Yes.

12 Q -- of the inside of your house. And so the living
13 room is marked with living room; is that right?

14 A Yes. The couch basically took up the whole living
15 room, the whole length of the living room, almost.

16 Q All right, sir. And the couch is marked on here
17 as well?

18 A Yes.

19 Q The TV would have been?

20 A Straight in front of the couch, right against the
21 wall of the stairs.

22 Q And then there has been a great deal of testimony
23 about Ana's office. Did she, in fact, go and stay in
24 that office a great deal?

25 A Yes. When we first moved into the house, her

1 actual -- she actually had her computer right there
2 against the wall of the stairs and the laundry room.
3 That's where she had her computer. She didn't move
4 into that office until after her mother actually moved
5 out of the house at one point.

6 Q All right, sir. And the boys' bedroom, is that
7 both boys stayed in that bedroom?

8 A Yes.

9 Q And that was the boys' bathroom?

10 A Yes.

11 Q In an ordinary evening when you were there, what
12 would be the sort of thing where you guys would watch
13 TV?

14 A You guys, as in who?

15 Q Well, whoever was watching TV, who would be
16 watching TV?

17 A I mean, I watched TV with all the kids. I play --
18 most of the time I play video games with them for the
19 most part, actually.

20 Q And where were the video games played?

21 A The boys actually had one in their room.

22 Q All right, sir.

23 A And I had one set up in the living room. At
24 certain points I actually had one set up in my bedroom.

25 Q All right, sir. And that would be?

1 A The master bedroom, yes.

2 Q So that the circumstances of living in the home,
3 was there always activity in the home?

4 A Yes, always.

5 MR. HILLIARD: That's good, thank you.

6 Q The idea that you -- well, let me ask a better
7 question. When you were working as the kitchen manager
8 in the Sticky Fingers, did you have to go to work on a
9 regular basis?

10 A Yes.

11 Q Did you smoke pot every day, all day?

12 A Yes, I did.

13 Q Smoke pot every day, all day?

14 A I did smoke pot quite a bit, yes.

15 Q All right, sir. And while you were smoking pot,
16 was that a problem for you at work?

17 A No.

18 Q Did that cause you any difficulties?

19 A No.

20 Q Did you ever get reprimanded or anything for not
21 going to work like you should?

22 A No.

23 Q Did you work and pay all the bills in the
24 household?

25 A I worked and paid bills. I actually just

1 basically put my money in an account, and Anatasya was
2 basically the accountant. She did take care of the
3 bills and everything. She did very well at it.

4 Q When all of this took place, did you voluntarily
5 move out of the house?

6 A Yes.

7 Q And provided enough money for the family to live;
8 is that right?

9 A Yes. We had six months left on our lease. And
10 it's a thousand dollars a month. I had \$5,000 in my
11 bank account in my savings account. I literally went
12 and withdrew it and gave it to her, so that covered
13 five months. And then I was giving her \$300 a month.

14 Q As child support?

15 A Yes. Until the court actually raised it to 466.

16 Q And then you pay the 466?

17 A Yes.

18 Q And do you love your family?

19 A Yes, I did. I absolutely loved my family.

20 Q There has been some testimony about a gun.

21 A About what?

22 Q A gun.

23 A Yes.

24 Q So did you have responsibility connected to your
25 work to carry cash money to the bank?

1 A Yes, I did.

2 Q And did you keep the gun in the car?

3 A Yes, I did.

4 Q Did you keep the gun in the house when it wasn't
5 in the car?

6 A Yes.

7 Q All right, sir. Did you ever strike your wife?

8 A No, I did not. She had struck me, but I've never
9 struck her.

10 Q All right, sir. And if there was an argument or a
11 disagreement, she would, in fact, fight back; is
12 that --

13 A Yes, she would. She's actually a lot tougher than
14 she looks.

15 MR. HILLIARD: Excuse me just one second.

16 Q Did you ever, at any point in time, say to anyone
17 that you touched either one of your stepdaughters
18 inappropriately?

19 A Absolutely not.

20 Q And have you ever touched either of your
21 stepdaughters inappropriately?

22 A Absolutely not. The only woman I've touched the
23 whole time I was married and before I was married until
24 a year ago has been my wife, Anatasya Herron.

25 MR. HILLIARD: That's all I have. Answer any

1 questions the prosecution has for you.

2 MS. WALTER: Court's indulgence just a moment.

3 CROSS-EXAMINATION

4 BY MS. WALTER:

5 Q You said that when you moved in to the Rockdale
6 house -- let me back up. You met Ana through a friend.
7 Was that Allen?

8 A No.

9 Q Okay.

10 A Allen was actually her friend from Tennessee.

11 Q And Allen lived with Ana and the kids for a time
12 at the Plum Court address?

13 A Yes. And so did a Bruce and Angie. I actually
14 did not know them personally, my brother did. I met
15 them.

16 Q You lived at the Plum Court address for a little
17 bit; yes?

18 A Yes.

19 Q And you are denying that you and Allen went up to
20 the girls' room -- let me finish -- the girls' room
21 when **A.R.** was nine and **J.H.** was seven and stood and
22 stared at them while they were naked begging you to
23 leave?

24 A I do not recall that at all.

25 Q You don't recall it, okay. And you are denying

1 striking either of your sons?

2 A Yes, I am.

3 Q You are denying pushing either of your, and it's
4 stepdaughters -- they are not your daughters -- either
5 of your stepdaughters into a wall; correct?

6 A Yes, I am denying that.

7 Q So then I assume you are also denying knocking
8 J.H. to the ground in front of Ana and choking her?

9 A I would never choke one of the children.

10 Q And so your explanation of the, as your attorney
11 said, mixing the cleaner incident was you simply, as a
12 strict disciplinarian, told J.H., stop being smart
13 with your mother?

14 A Yes.

15 Q That was the sum total of the discipline for that
16 incident?

17 A I am very firm with my words, but I am not very
18 physical.

19 Q When A.R. was already out of the house most of
20 the time, how old was she?

21 A When she moved out of the house?

22 Q No. You said she was already out of the house
23 most of the time, you gave her a 2:30 curfew. How old
24 was she?

25 A 17.

1 Q And she was -- had she graduated from high school
2 at that point?

3 A Yes.

4 Q She had graduated early?

5 A Yes.

6 Q She was a good student; yes?

7 A Yes.

8 Q She was working; yes?

9 A Yes.

10 Q And yet you got mad at her for violating a curfew?

11 A No, I did not get mad at her for violating her
12 curfew. I actually did not get mad at her at all. I
13 was -- I was trying to please her mother by getting her
14 to get her stuff out so that the boys could have their
15 own room so they weren't fighting all the time, and it
16 made her day a lot easier. Because I received a lot of
17 phone calls when I was at work at Sticky Fingers from
18 my wife to yell at my sons to get them to behave.

19 Q During the day when the kids were at school?

20 A When I was at work, after the kids got home from
21 school.

22 Q You said that Ana spent a lot of time in her
23 office. How much time would you say she spent in her
24 office?

25 A At least 75 percent.

1 Q But she came out every once in a while to call you
2 to complain about the children?

3 A I was at work.

4 Q Right.

5 A Her room is right next to the kids' room. She did
6 have to deal with them with homework. I had to yell at
7 my son constantly. Because my son, Scott, he is very
8 difficult sometimes. He -- I, honestly, I had to
9 physically tell him all the time to do his homework
10 over the phone. Tell him that I was coming home early.

11 Q You had to physically tell him?

12 A On the phone. She'd put him on the phone.

13 Q Now, you talked about the dishwasher incident
14 also, and you're saying that the kids broke the
15 dishwasher?

16 A The kids, me, Ana, it could have been any of us,
17 but I'm fairly certain it was the kids, yes.

18 Q Well, the reason why I'm asking is on direct, you
19 said that the kids broke the dishwasher.

20 A I'm fairly certain, yes.

21 Q Did you punish them for breaking the dishwasher?

22 A No. I have yelled, yes, but, no, I did not punish
23 anyone because I couldn't confirm exactly who did it.

24 Q Do you know who A.R.'s boyfriend was at the time
25 that she moved out?

1 A Yes. His name was Vega.

2 Q Do you see him in court today?

3 A Yes. He is right there with the green hair.

4 Q Sitting next to her, supporting her; yes?

5 A Yes.

6 MR. HILLIARD: Objection. Calls for a conclusion.

7 THE COURT: Well, let's just leave it that he's
8 here, okay.

9 MR. HILLIARD: Thank you, judge.

10 THE COURT: All right.

11 MS. WALTER: May I approach, Your Honor?

12 THE COURT: Yes.

13 MS. WALTER: Mr. Hilliard.

14 MR. HILLIARD: Oh, sure.

15 Q I'm showing you State's Exhibit -- excuse me,
16 Defense Exhibit 4. You've previously identified that
17 as your house; correct?

18 A Yes.

19 Q How many bedrooms was your home? Do need me to
20 hold these up for you?

21 A No. I had my room, Ana's office, boys' room, and
22 the two rooms upstairs, so five bedrooms.

23 Q How many bedrooms does it say on here that this
24 house has?

25 A It says three.

1 Q That's not accurate; correct?

2 A No.

3 Q It also shows pictures of unfinished rooms; do you
4 agree? See those little ones --

5 A Yes, it does.

6 Q And that's not accurate, either; is it?

7 A No. But you look at that little picture on the
8 wall, that is the house, in the corner.

9 Q But it's not a three-bedroom house, as this says?

10 A No, it's not.

11 Q And you did not have areas under construction?

12 A No, not when we moved in, no. But that picture of
13 the shed in the backyard, that shed is there.

14 MS. WALTER: Court's indulgence for one moment.

15 (Discussion off the record.)

16 Q And, now, you've denied ever being physically
17 abusive to any of your children?

18 A Not abusive. I have busted their rears, yes.

19 Q Well, at what point would you say that physical
20 punishment crosses over to being physically abusive?

21 A Well, like I'm being accused of, of choking,
22 slapping in the face. I figure those are points of
23 being physically abusive.

24 Q And you're denying any type of physical abuse --

25 A Yes.

1 Q -- against [REDACTED] A.R. ?

2 A Yes.

3 Q Denying it against [REDACTED] J.H. ?

4 A Yes.

5 Q Denying it against [REDACTED] O.E. ?

6 A Yes.

7 Q Denying it against [REDACTED] S.R. ?

8 A Yes. And if I'm not mistaken, I even said that I
9 don't even remember correcting [REDACTED] A.R. physically at
10 all.

11 Q And you are denying touching [REDACTED] A.R. 's breasts?

12 A Yes. Absolutely.

13 Q On multiple occasions?

14 A Absolutely.

15 Q And you are denying having [REDACTED] J.H. give you hand
16 jobs?

17 A Absolutely.

18 Q And you are denying having [REDACTED] J.H. give you blow
19 jobs to the point that you ejaculated in a towel that
20 your wife found?

21 A Absolutely denying.

22 Q And you are denying holding [REDACTED] J.H. down on the
23 floor, gagging her, placing your knees on her leg and
24 physically, sexually raping her?

25 A I've never got that physical with my wife. There

1 is no way I would ever do that to anyone.

2 MS. WALTER: Court's indulgence. Nothing further,
3 Your Honor.

4 MR. HILLIARD: Let me just clear up a little bit
5 about the house, judge.

6 REDIRECT EXAMINATION

7 BY MR. HILLIARD:

8 Q Defendant's Exhibit No. 4 with the two unfinished
9 rooms at the time that that was done, can you look at
10 that and see if those are the rooms that got finished
11 as the upstairs, can you look through that window and
12 see that it's an upstairs?

13 A Yes, you can see it through the upstairs, the
14 window, it is an upstairs.

15 Q So when that document was produced, these rooms
16 were unfinished?

17 A Yes, I'm guessing so.

18 Q And then when you moved in, were these rooms
19 finished or unfinished?

20 A They were finished.

21 Q And there's no question that's your house?

22 A Oh, no, not at all.

23 MR. HILLIARD: That's all I have. Thank you, sir.
24 That's all, judge.

25 THE COURT: Ms. Walter?

1 MS. WALTER: Nothing further, Your Honor.

2 THE COURT: All right. You may step down, thank
3 you.

4 THE WITNESS: Thank you, Your Honor.

5 (Witness excused.)

6 MR. HILLIARD: That's the Defense.

7 THE COURT: All right. Defense rests. Will there
8 be rebuttal?

9 MS. WALTER: Yes, Your Honor.

10 THE COURT: All right, very well. Call your
11 rebuttal.

12 MR. HILLIARD: Can we hear about this in...

13 THE COURT: Okay, let's take the jury out a
14 moment; okay? We know the rules of rebuttal.

15 (WHEREUPON, the jury exited the courtroom at
16 11:30 a.m.)

17 THE COURT: All right. All right, Ms. Walter, who
18 have you got and for what purpose?

19 MS. WALTER: Your Honor, we would intend to call
20 at this point Vega Mark Smallin, who is [REDACTED]

21 [REDACTED] A. R. [REDACTED] ' fiance now. He was her boyfriend at the time
22 and was -- sorry, I thought you were shaking your
23 head -- he was present --

24 THE COURT: I was just nodding yes, I understand
25 what you're...

1 MS. WALTER: He was present during two different
2 conversations between [A.R.] and Rebecca Rowan during
3 which [A.R.] told Rebecca Rowan that the Defendant had
4 been molesting her, which is in direct contradiction to
5 Rebecca Rowan's testimony.

6 THE COURT: What do you say about that,
7 Mr. Hilliard? It came up with the Defense witness. I
8 think it's -- he was there, he was present. I think he
9 can testify in rebuttal.

10 MR. HILLIARD: I'm thinking about it for a second.

11 THE COURT: Can you find a reason not to? I mean,
12 what's your position on it?

13 MR. HILLIARD: I'm processing for a second, judge.
14 So Rebecca Rowan testified that [A.R.] had never told
15 her, and [A.R.] testified that she had told her. So
16 they would not have been admissible, or they would have
17 been...

18 THE COURT: The State's witness testified she had
19 this conversation with the grandmother.

20 MR. HILLIARD: And they could have called the --

21 THE COURT: And the grandmother denied it. Now,
22 the State seeks to produce a witness who was present in
23 rebuttal to the grandmother; is that correct?

24 MS. WALTER: Yes, Your Honor.

25 THE COURT: All right.

1 MR. HILLIARD: They could have called that witness
2 in their case in chief.

3 THE COURT: And that would have just been
4 cumulative.

5 MR. HILLIARD: Well, it's cumulative now.

6 THE COURT: Well, not necessarily. There was no
7 conversation -- I mean, no testimony concerning someone
8 else being there or other witnesses to the
9 conversation. And now it's been denied, and I think
10 they have a right to rebut that testimony. I think
11 it's admissible.

12 MR. HILLIARD: That conversation that she
13 testified about was on the phone.

14 THE COURT: Which conversation?

15 MR. HILLIARD: The conversation that, if I'm
16 remembering correctly, and subject to --

17 THE COURT: Well, then it makes it even more
18 important because your witness has testified she never
19 had any conversation, whether it be on the phone or
20 otherwise, is my understanding; right? There was no
21 conversation with her and [REDACTED], never brought to her
22 attention by [REDACTED] or discussed with her by [REDACTED],
23 however you want to say that.

24 And now we have a witness who says, yes, on who
25 I -- the State tells me will say that, yes, on a

1 particular occasion, I was present and witnessed the
2 conversation.

3 MR. HILLIARD: Why wouldn't that have been
4 available to them in the beginning?

5 THE COURT: Because it wasn't denied. I don't
6 even know if we're talking about the same conversation.

7 MS. WALTER: Well, additionally, Your Honor, just
8 because we can call a witness in our case in chief does
9 not mean that we have to, nor does it mean that we are
10 precluded from calling them in rebuttal when it is in
11 direct response to something that came up during the
12 Defense case. And as Your Honor pointed out --

13 THE COURT: I don't think there was a need to call
14 it until it was denied.

15 MS. WALTER: Exactly.

16 THE COURT: I'll allow her to do it.

17 MR. HILLIARD: Thank you.

18 THE COURT: All right. Mr. Palmer, let's bring
19 them in. And this should be rather short. All right.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:36 a.m.)

22 THE COURT: All right. We have everyone back in
23 the courtroom now.

24 MS. WALTER: Thank you, Your Honor. The State
25 calls Vega Mark Smallin.

1 THE COURT: In rebuttal; right?

2 MS. WALTER: Yes, Your Honor, in rebuttal.

3 THE COURT: All right.

4 VEGA MARK SMALLIN, after being duly sworn,
5 testified as follows:

6 THE CLERK: If you would state your full name and
7 spell it for the Court.

8 THE WITNESS: Yes, ma'am. My name is Vega
9 Smallin. That's V-E-G-A, S-M-A-L-L-I-N.

10 DIRECT EXAMINATION

11 BY MS. WALTER:

12 Q Good morning, Vega. How are you today?

13 A Fantastic, ma'am. How about you? You having a
14 good one?

15 Q I am, thank you.

16 A Yes, ma'am.

17 Q Can you give us your date of birth, please.

18 A Yes, ma'am. I was born [REDACTED].

19 Q Thank you. And do you know [REDACTED] A.R. [REDACTED] ?

20 A Yes, ma'am.

21 Q How do you know her?

22 A She is my fiance.

23 Q How long have you been with [REDACTED] A.R. [REDACTED] ?

24 A We're going on to our seventh year now, since
25 2012.

1 Q So do you know how old you guys were when you
2 first started dating?

3 A She was 15, and I was -- it was just after my
4 birthday. I -- actually, it was my birthday wish that
5 she would say yes when I asked her out. It was
6 May 28th. I had just turned 18. Was I 17? I was 17.
7 She was 15. We were -- we had known each other since
8 March. We met at the bus lot at high school. I shook
9 her hand for the first time in March.

10 Q And you've been together since then?

11 A Absolutely.

12 Q And so is it -- were you dating [A.R.] when she
13 left the home on Rockdale?

14 A Yes, ma'am.

15 Q Were you present at any time when [A.R.] had a
16 conversation with -- well, let me back up. Do you know
17 Rebecca Rowan?

18 A Yes, ma'am.

19 Q Have you met her before?

20 A Yes, ma'am.

21 Q Who do you know her to be?

22 A The mother of Scott Rowan.

23 Q And were you present during any conversations
24 around the time that [A.R.] moved out between [A.R.]
25 and Rebecca Rowan?

1 A Yes, ma'am.

2 Q Prior to these conversations, did you have some
3 idea of what the conversations would be about from
4 A.R.'s perspective?

5 A Yes, ma'am, I did.

6 Q And during those conversations, did A.R.
7 disclose to Rebecca Rowan that she had been sexually
8 assaulted?

9 A Yes, ma'am.

10 Q Can you tell us about those conversations.

11 A Yes, ma'am. We had gone to lunch, all of us. She
12 had helped us to get her things out of the home she was
13 living at at Rockdale. So we went to lunch. And we
14 were sitting at El Patio, was the restaurant we went
15 to, it's in Carolina Forest.

16 And she -- we were just talking about normal
17 things, really nothing different, and then the
18 conversation began. And my fiance, A.R.,
19 told her about her experience with Scott Rowan, that he
20 had inappropriately touched her, about his violent
21 outbursts in the house, about his rude behavior, his
22 terrible actions.

23 And Rebecca, you know, she just kind of sat a
24 little bewildered for a moment and then finally spoke
25 and said, and I can't quote directly, but the

1 information was that she herself had similar issues
2 with a member of her family in the past. Her
3 stepfather or her father, I could not recall. And that
4 she still loved that family member to this day and
5 respected them as a father figure, and that [REDACTED] A.R.
6 should be able to do the same because what she had
7 experienced was no big deal and that should have been
8 easily overcome.

9 Q Had you been aware before this of what [REDACTED] A.R. had
10 suffered?

11 A Yes, ma'am.

12 Q [REDACTED] A.R. had spoken with you about that?

13 MR. HILLIARD: Objection.

14 THE COURT: This is limited to rebuttal.

15 MS. WALTER: Very well, Your Honor.

16 THE COURT: The issues that we discussed; all
17 right?

18 MS. WALTER: Yes, sir.

19 Q Was that the only conversation that you were a
20 witness to between [REDACTED] A.R. and Rebecca Rowan regarding
21 the Defendant's inappropriate behavior towards [REDACTED] A.R. ?

22 A That I can recall, yes, ma'am.

23 Q And this was in person?

24 A Yes.

25 Q At lunch. Who paid for lunch?

1 A I did.

2 MS. WALTER: Thank you. Nothing further. Please
3 answer the questions from Mr. Hilliard.

4 THE WITNESS: Yes, ma'am.

5 MR. HILLIARD: At this point, judge, we're waiting
6 on -- let's approach.

7 (WHEREUPON, a bench conference was held off the
8 record in the presence of the jury but out of the
9 hearing of the jury.)

10 CROSS-EXAMINATION

11 BY MR. HILLIARD:

12 Q When did you first learn that Scott had been
13 arrested?

14 A That he had been arrested?

15 Q Yes.

16 A I honestly didn't know he was in custody until we
17 got here.

18 Q Until we got here?

19 A Yes, to the courtroom the first day of the week.

20 Q So your testimony before the jury is the first
21 time that you knew that Scott had been arrested was the
22 day you walked into the courtroom?

23 A The first day, yes, sir.

24 Q So you didn't know he'd been arrested?

25 A Correct.

1 Q Did you know that this case had previously been
2 scheduled for trial months ago?

3 A Yes, sir.

4 Q All right. Well, at the point in time, didn't you
5 figure maybe that he had been arrested if he was going
6 to have a trial?

7 A I'm not entirely aware of how these things
8 proceed. I've never been a part of one before, and I
9 don't really watch any of the television that has been
10 spoken of several times that involves court cases.
11 I've never done this.

12 Q So you don't know anything about arrests?

13 A No, sir. I've never been arrested.

14 Q All right. When was it and -- well, do you
15 remember --

16 THE COURT: Why don't you change the term to
17 charge.

18 MR. HILLIARD: Charge.

19 THE COURT: There you go.

20 Q When did you know that he was charged?

21 A Oh, yes, sir.

22 Q All right, sir. So you don't know what arrest
23 means?

24 A I imagine it's to be detained and constricted to
25 imprisonment by the State or federal law.

1 Q All right. So when did you first learn that he
2 was charged?

3 A Before December. It was when we first learned
4 that this would originally take place, it was in -- it
5 was before December of last year. I wasn't entirely
6 sure of the exact date. But I remember that she, my
7 fiance, had to come here to Myrtle Beach from our
8 current living location to deal with this in court. I
9 stayed behind because at the time we needed to make
10 more money to cover our expenses, and I stayed to take
11 care of those.

12 Q Well, the government paid for her to come here,
13 right, you didn't have to pay for that?

14 A Correct.

15 Q So, but in any event, you didn't know that he was
16 charged up until the time of that court case?

17 A Yes, sir.

18 Q Just to be clear, there was one conversation that
19 you're talking about, not two; is that right?

20 A That I recall, I was present at one conversation
21 between A. R. and Rebecca Rowan.

22 Q One?

23 A Yes, sir.

24 Q And when did that take place?

25 A It was when she was moving out of the Rockdale

1 address.

2 Q When was that?

3 A I cannot recall the exact date, sir.

4 Q What year was it?

5 A 2015.

6 Q 2015?

7 A I believe. '14, '15, my dates aren't always
8 terribly accurate.

9 Q Right. You have never been sexually assaulted,
10 have you?

11 A No, sir.

12 Q But your dates aren't particularly accurate?

13 A Correct.

14 Q So you don't know whether it was 2014 or 2015;
15 right?

16 A Correct.

17 Q And the occasion of this luncheon, what was the
18 occasion of the luncheon?

19 A She, Rebecca, had helped us to remove [REDACTED] A.R.'s
20 things from the Rockdale address and take them to my
21 address at the time that I was living with my father.

22 Q So [REDACTED] A.R. was moving in with you and your father?

23 A Yes, sir.

24 Q And her grandmother was helping you guys move her
25 belongings?

1 A Yes, sir.

2 Q And after that, y'all went and had lunch?

3 A Yes, sir. Actually, I cannot recall if it was
4 after or beforehand, but we did have lunch, yes, sir.

5 Q So you're having lunch?

6 A Yes, sir.

7 Q And at that luncheon, how did the subject come up?

8 A I remember A.R. had wanted to talk about this.
9 She had informed me multiple times prior to the
10 luncheon that she wanted someone else to know and that
11 she felt Rebecca would be a good choice being, you
12 know, a grandmother figure at the time, you know, being
13 someone related to the Defendant, being, you know, a
14 family member, really. She felt comfortable doing so.

15 And she spoke up at several times leading to it,
16 honestly. And when we were having the lunch, it really
17 didn't just like blend into the conversation. The
18 conversation wasn't, you know, anything out of the
19 ordinary. How is your day, how have you been doing,
20 those sorts of things.

21 I remember we even talked about firearms in
22 particular. My grandfather and I have always really
23 shot guns, I'm a hunter, most of my young life. And
24 she was telling me about she had a pistol, a .357
25 Magnum. And we were talking about that. And I just, I

1 remember that part of the conversation in particular.

2 And I think it was sometime after that part of the
3 conversation that it came up that [REDACTED] A.R. directly
4 stated that she had something that she had on her
5 chest, it was something that she needed to talk about,
6 and she went on to tell Rebecca her tale.

7 Q Her tale?

8 A Yes, sir.

9 Q And what was her tale at that time?

10 A That she had been touched inappropriately by the
11 Defendant.

12 Q And?

13 A That it affected her and her life and how she
14 views things, how she does things, how she -- how she
15 wakes up in the morning, how she talks to other people,
16 how she sees other people, how she -- how she lives her
17 life, how she does anything.

18 Q And this was 2014 or 2015?

19 A Yes, sir, I believe so.

20 Q And what else did she tell her grandmother?

21 A She spoke of how he could be violent in the
22 household, his crass language, his physical abuse
23 towards others, how he had struck [REDACTED] O.E. at a younger
24 age, the handprints that has been spoken of. The, you
25 know...

1 Q You want some water?

2 A No, sir. Thank you, though.

3 Q You're welcome. Go ahead.

4 A He had repeatedly been violent to her sister, that
5 she had known of.

6 Q Been violent to the sister?

7 A Yes, J.H. .

8 Q All right, sir. Go ahead.

9 A The multiple instances of verbal abuse were
10 brought up as well. I cannot recall all of the
11 language used, all of the phrases or terms used. But I
12 recall that they were terrible things to be said to
13 your family, in particular.

14 Q Terrible things?

15 A Yes, sir.

16 Q And did she talk about J.H.'s sexual assault?

17 A No, no, sir.

18 Q So she talked about J.H. getting hit and pushed
19 and beat and all that but not about the sexual assault?

20 A Correct, yes, sir.

21 Q And Rebecca's response to that was, that's no big
22 deal?

23 A Yes, sir.

24 Q And that was the end of it?

25 A Yes, sir.

1 Q Did you encourage her, did you encourage A.R. to
2 go to the police?

3 A Yes, sir.

4 Q She just wouldn't do it?

5 A Yes, sir.

6 Q And she talked to her grandmother, and that just
7 sort of shut the whole thing down?

8 A Yes, sir. It was very disheartening for her after
9 approaching Rebecca about these things. She was upset,
10 and she cried on the car ride home. It was her
11 opportunity to speak up on the incident, and it was
12 just ignored, it was unaccepted.

13 She always felt like nobody would care, she told
14 me that, that if she spoke of it with, you know, anyone
15 in the family, what if they didn't believe her, or
16 worse, what if they didn't care. And it wasn't that
17 they didn't believe her, it was that they didn't care.

18 Q Well, they. When you say they, the only person
19 you're talking about is grandma; right?

20 A She. I'm sorry, yes, Rebecca.

21 Q Right. So, but she never told her mother?

22 A Correct, at the time.

23 Q Pardon?

24 A At the time there was never a conversation with
25 her mother about the abuse she had experienced.

1 Q And you didn't go to lunch with her mom to tell
2 her mom about it?

3 A Her mother, Anatasya?

4 Q Yes.

5 A Correct.

6 Q Was there any reason that y'all didn't do that?

7 A The reason why we had the lunch with Rebecca was
8 to sort of say thank you for helping us remove the
9 things from Rockdale and bring them to my address. And
10 she had seen it to be also an opportunity to discuss
11 the accounts.

12 Q Well, okay. But, I mean, she had plenty of
13 opportunity, **A. R.** had plenty of opportunity to tell
14 her mother about this?

15 A Opportunity and availability are two very
16 different things.

17 Q All right. Well, explain for the folks on the
18 jury, if you will, the difference between opportunity
19 and availability, the two different things.

20 A Well, there were obviously many times that any
21 daughter would see their mother, even in a scenario
22 such as the life she's lived, the seclusion, her mother
23 being in her office, her being in her room or not home
24 or any of these events. There is obviously at least
25 some point in time where she could see her mother.

1 That's expected.

2 Any of those times, to be within just talking
3 distance of your mother would be a time to say, oh, you
4 know, I have something to talk about, I have something
5 on my chest, and these things, you know, they bother
6 me, they affect me.

7 That is believed to be an opportunity. But the
8 availability, i.e., his presence, her mother's
9 willingness to listen, her willingness and ability to
10 overcome her fears to speak with her mother, to speak
11 of her abuse, to speak of these things that have
12 happened to her, those are things that are very
13 difficult for some people to overcome. They are things
14 that not everyone can just buck up, buttercup and do
15 it. What could be easy for one person can be
16 incredibly difficult for another.

17 And I've never been in her shoes, so I can't speak
18 for her. But I've seen her evolve as a person over
19 these years, and it has never affected her any less.
20 To see how she goes about her life, I know that she is
21 strong, I know that she is capable. But that doesn't
22 mean that she was strong and capable at the time
23 opportunities arose to speak. And therein lies the
24 lack of availability.

25 Q Did you receive any instruction about your

1 testimony today, how to testify to the Court?

2 A No, sir.

3 Q You know that the witnesses were sequestered in
4 this case; is that correct?

5 A Sequestered?

6 Q Yes, sir. They were kept out of the courtroom
7 until they testified, do you know that?

8 A Yes, sir.

9 Q But you weren't kept out of the courtroom?

10 A No, sir.

11 Q You were here?

12 A Yes, sir.

13 Q When did you first tell the police about this
14 conversation?

15 A Tell the police about this conversation?

16 Q Yes. Have you ever told the police about this
17 conversation?

18 A No, sir.

19 Q And when you talked to A.R., you guys have
20 talked about this conversation?

21 A The conversation that we had with Rebecca?

22 Q Yes.

23 A Yes, sir. We have referred to it once before
24 between us.

25 Q One time?

1 A I can't recall if it was just a single time or if
2 we spoke of it before. But, yes, sir, it has been, I
3 think, several times.

4 Q And on this occasion, this was the first time
5 that -- at this luncheon, this was the first time that

6 **A.R.** had said anything to her grandma about this?

7 A To the best of my knowledge, this was the first
8 time she had spoken to her about it, yes, sir.

9 Q And her grandmother seemed surprised at that
10 point?

11 A Yeah. At the beginning of the conversation, she
12 did seem a bit bewildered. But again, she had informed

13 **A.R.** that it wasn't a big deal and that she should
14 just get over it and treat him like a father.

15 Q Okay. And this happened, in relation to the
16 moving out of the house, this happened either before --
17 on the day that she moved; is that right?

18 A It was the day that we were retrieving her things.
19 She was moving from the Rockdale address to mine.

20 Q All right. **A.R.** was heavily involved in the
21 drama program in high school; is that correct?

22 A The drama program?

23 Q Yes, sir.

24 A No.

25 Q Stage, what's it called?

- 1 A Stage. No, sir, not to my knowledge.
- 2 Q Show choir?
- 3 A Show choir. Perhaps when she was younger, but she
4 never spoke of it much.
- 5 Q You don't know that she was heavily involved in
6 show choir?
- 7 A No, sir.
- 8 Q All right, sir. And you were here?
- 9 A Here is where, sir?
- 10 Q Let me get to the end of my question.
- 11 A Yes, sir.
- 12 Q When **A.R.** testified about talking to her
13 grandmother; correct?
- 14 A In the courtroom?
- 15 Q Yes.
- 16 A Yes, sir.
- 17 Q And she didn't say anything about this
18 conversation; right?
- 19 A What conversation, sir?
- 20 Q The conversation that you're testifying about now.
- 21 A I believe she did speak of the luncheon, yes, sir.
- 22 Q So your testimony is that she's already talked
23 about the luncheon?
- 24 A Yes, sir.
- 25 Q And I apologize --

1 A Yes, sir.

2 Q -- but recollect for me what she said about the
3 luncheon.

4 A You want me to recall what she said?

5 Q What she said on the witness stand about the
6 luncheon.

7 A She said that she spoke to Rebecca about the
8 incidents that have occurred, and Rebecca told her it
9 was no big deal.

10 Q The same thing that you just said?

11 A I was there.

12 Q Are you sure that she didn't say that that was in
13 a phone call?

14 A Correct, it was at lunch.

15 Q So you're not talking about two separate
16 incidents, you're talking about one incident?

17 A I'm speaking of one incident that I was there for
18 with the two of them, Rebecca and A. R..

19 Q And not a phone call?

20 A I was not present for a phone call, no, sir.

21 MR. HILLIARD: That's all I have, subject to the
22 things we talked about at the sidebar.

23 MS. WALTER: And I was correct at sidebar.

24 THE COURT: That is correct, right. Thank you.

25 MS. WALTER: And I have no further questions.

1 THE COURT: Mr. Smallin, you may step down, thank
2 you.

3 (Witness excused.)

4 MS. WALTER: May I have one moment, Your Honor?

5 THE COURT: Um-hum.

6 (Discussion off the record.)

7 MS. WALTER: May we approach, please?

8 THE COURT: Yes.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury but out of the
11 hearing of the jury.)

12 THE COURT: Ladies and gentlemen of the jury,
13 we're going to break for lunch. I'm going to let you
14 go to lunch. Now, Bobby, let's have them back about
15 1:30, okay.

16 (WHEREUPON, the jury exited the courtroom at 12:05
17 p.m.)

18 THE COURT: Ms. Bautz, could you do a search and
19 find where, in the Defendant's testimony, there was --
20 it was near the end. It was after the testimony
21 concerning, did you ever kick a dog. It was after
22 that. Near the end of the Defendant's testimony, can
23 you locate that for me.

24 We're at ease until she does it.

25 (WHEREUPON, a brief recess was taken at

1 approximately 12:05 p.m.)

2 THE COURT: Ms. Bautz, do you have it? You can
3 read it to me or play it, or what can you do?

4 COURT REPORTER: I didn't put it on the digital,
5 but I can read it to you. I got it right here.

6 THE COURT: You can read it to us, okay.

7 All right, let me just say, my recollection is it
8 was visited one time during direct; is that correct?

9 MS. WALTER: I believe so.

10 THE COURT: Okay, I think that was correct. Okay.
11 So we're looking at one place. If you would, Ms.
12 Bautz.

13 (Record read as follows:

14 "Q Other than this case, have you ever been
15 investigated by the Department of Social Services
16 for any kind of --

17 A No.

18 Q -- child abuse?")

19 THE COURT: It was other than this case.

20 MS. WALTER: Right. And this case involves **A.R.**
21 and **J.H.**. There was a finding by DSS --

22 THE COURT: We're not going to get into any
23 findings by DSS. The question is whether or not that
24 was a truthful answer.

25 Now, was it conducted following the time that this

1 case was brought?

2 MR. HILLIARD: Yes. That's the reason I asked the
3 question the way I asked the question.

4 MS. WALTER: But the question -- sorry.

5 MR. HILLIARD: There was a DSS investigation after
6 the case was brought. They brought the whole thing as
7 a big pack at one time and brought it forward. The
8 question was phrased, specifically connected to this.

9 THE COURT: No.

10 MS. WALTER: The State would disagree with that
11 because the way the question is phrased is, was there a
12 DSS investigation other than this case? And this case
13 is the sex abuse --

14 THE COURT: Yeah, but it was all one
15 investigation; was it not?

16 MR. HILLIARD: Yes, sir.

17 THE COURT: All right, I'm not going to allow
18 that. I think the prejudice far outweighs any possible
19 probative value it might have. It's just iffy as I --
20 I would have answered the question the same way, quite
21 frankly. I believe it was a correct answer. And we're
22 not going to get into rebuttal of that. Okay?

23 MR. HILLIARD: Thank you, judge. If I could add
24 for the sidebar so that the record is clear on that,
25 that the last witness that testified, the prosecution,

1 as I understand it, has checked his national criminal
2 information computer -- criminal history.

3 THE COURT: And they tell us he has no prior
4 record.

5 MS. WALTER: That's correct.

6 MR. HILLIARD: Right.

7 THE COURT: Okay. All right. Very well.

8 Okay. Elizabeth has been working further on the
9 charge. She's has added some things, she's going to
10 give it to you. When we get back from lunch, I want to
11 know what we're going to do with the charge because I
12 want to go right into closings, and then I'm going to
13 charge the jury. I will be giving them a copy of the
14 charge. And we are going to give it to them this
15 afternoon; okay?

16 MR. HILLIARD: Thank you, Your Honor.

17 THE COURT: All right.

18 (WHEREUPON, a luncheon recess was taken at
19 approximately 12:10 p.m.)

20 THE COURT: Thank you, please just keep your
21 seats. Before lunch, I think Ms. Smith sent you my
22 proposed charge. I understand the State has no
23 additions, exceptions.

24 MS. WALTER: That's correct, Your Honor.

25 THE COURT: How about the Defense?

1 MS. BRINSON: Your Honor, we would like to request
2 the portion of our reasonable doubt charge that talks
3 about causing a reasonable person to hesitate to act.

4 THE COURT: Well, the charge that I give I think
5 is more complete than the one you submitted, and it has
6 been approved for use many times, and I'm going to
7 charge that. I think it has everything that you have
8 but even a little bit more. Okay?

9 MS. BRINSON: Yes, Your Honor.

10 THE COURT: All right. No request for, and I
11 don't know if it's appropriate, the notebook request
12 for lesser included?

13 MS. WALTER: No, Your Honor.

14 MR. HILLIARD: No, Your Honor.

15 THE COURT: All right. Very well.

16 MS. WALTER: And, Your Honor, if we can just
17 clarify, I just want to make sure we're all on the same
18 page about the order of openings. Because Defense
19 presented evidence, the State goes last.

20 THE COURT: Right.

21 MR. HILLIARD: The State goes first also.

22 THE COURT: First, second, rebuttal. You must
23 open in full.

24 MS. WALTER: Open in full on first, and then the
25 rebuttal is limited to his closing.

1 THE COURT: That's correct. That's how it goes,
2 or at least my understanding.

3 MR. HILLIARD: Thank you, Your Honor.

4 THE COURT: Mr. Palmer, would you bring the jury
5 in. Have you had a chance to look at the verdict form?

6 MR. HILLIARD: Yes, Your Honor.

7 MS. WALTER: Yes, Your Honor. She e-mailed that.
8 It's fine.

9 THE COURT: Any objections? It's straightforward,
10 simple.

11 (WHEREUPON, the jury came into open court at
12 approximately 1:40 p.m.)

13 THE COURT: All right. We have our jurors and our
14 alternates back in. Ladies and gentlemen, as you heard
15 before we broke for lunch, the case has now closed, or
16 the evidence is closed. Both the State and the Defense
17 have rested. And we're at that part of the case where
18 you will hear final arguments or closing arguments by
19 both the State and the Defense. And that will be
20 followed by my charge on the law.

21 Please remember, as I said at the beginning of
22 this trial, what the attorneys may say in the closing
23 arguments is not evidence, they may not supplement the
24 evidence. The evidence you will consider is the
25 evidence you hear from this witness stand.

1 It is appropriate for them not only to comment on
2 the evidence that's been presented but also comment on
3 the law. But as I told you, again, at the outset of
4 the trial, I would be the sole judge of that, and I'm
5 sure these fine lawyers would not deviate from my
6 interpretation of the law. I've provided them with a
7 copy of my charge. They may inadvertently do it. But
8 even if that happens, you must disregard that and
9 follow the law just as I give it to you.

10 As I said, at the end of my charge, I will give
11 you my charge. Our Supreme Court has approved that
12 process, although it's not widely used. I have done it
13 for ten years, and I must charge you exactly as it's
14 set forth in my transcript. So I'll have to read it to
15 you, and I will be doing that.

16 Please understand that a charge should be taken
17 together, you should consider the whole charge and not
18 just focus on a single sentence or a single paragraph,
19 but consider all parts of my charge together because
20 they are equally important.

21 The way a case progresses often determines the
22 order of argument. And that's part of our rules. But
23 in this particular case, the first argument or closing
24 remark will be made by either Mr. Martin or Ms. --
25 going to be by Ms. Walter. She will open in full.

1 That will be followed, of course, by
2 Mr. Hilliard's opportunity to charge. I understand he
3 is going to argue. He doesn't have to, but I
4 understand that he will. And then the State will have
5 a brief rebuttal, and then I will charge you on the
6 law.

7 Now, Ms. Walter, if you would.

8 MS. WALTER: Thank you, Your Honor.

9 CLOSING ARGUMENT BY THE STATE

10 MS. WALTER: What are some things that every child
11 should have? A roof over their head and food on their
12 plate. Well, **A.R.** and **J.H.** had that, but at what
13 price? And more importantly, what didn't they have?
14 They didn't have a home, someplace where they were safe
15 and secure. They didn't have a mother who was present
16 and watching over them and protecting them. And they
17 certainly didn't have a father that they could trust
18 not to abuse them physically, mentally, and sexually.

19 In his opening, my partner said the girls were
20 dealt a bad hand. That's a bit of an understatement,
21 don't you think? They never knew their biological
22 father, and then they did have the good fortune to have
23 Billy Eller come into their life, the only positive
24 father figure that they had ever known.

25 And, yet, a month after they moved to South

1 Carolina, Billy was killed, run over by a motorcycle.
2 And it devastated the girls, it devastated the family.
3 And at that point they probably thought life cannot get
4 worse than this.

5 And then they met the Defendant. And that's when
6 the horrors began. That's when life really started to
7 get bad. Now, at that point, Ana was hooked on
8 cocaine, booze, pills, and by her own admission, she
9 retreated into her office. She would be in there 75 to
10 90 percent of the time, headphones on, just escaping,
11 escaping from the dynamics in that household, escaping
12 from the Defendant's rage.

13 But that also took her out of her role of
14 protecting the girls. And you may not be happy with
15 how she was then, but she is supporting them now
16 because as soon as the truth came out, she has done the
17 right thing. She supported them. She's here with them
18 now. And she got on the stand and told you the truth,
19 the good, the bad, and the ugly, with all of her
20 shortcomings.

21 So what is the truth? Well, the truth is that
22 that Defendant preyed on two young girls. He isolated
23 them from their mother, from their brother -- brothers,
24 excuse me, and from each other. So even though they
25 lived in a home, a house, of other people, they were

1 alone. They had no one that they could count on.

2 Having isolated them, he began to groom them. How
3 did he groom them? Well, and some of this you may
4 remember from when Ray Olszewski talked. You begin by
5 trying to normalize or sexualize the relationship. So
6 when [J.H.] was seven and [A.R.] was nine, changing in
7 a room with a closed door as they should be able to do,
8 the Defendant and Allen walked in and just stared at
9 them as they frantically tried to cover themselves and
10 begged them to leave. And what did the Defendant do?
11 Stood there and stared at them.

12 And when the girls didn't tell what had happened,
13 the Defendant knew he could go farther. And farther he
14 did go. He supplied them with alcohol and marijuana to
15 lower their inhibitions. He made [J.H.] out to be a
16 pathological liar so that if she had the courage to
17 tell, no one would believe her.

18 Having groomed them, having put these pieces in
19 place, the abuse escalated even more. When [A.R.] was
20 14 years old, the Defendant would get her high. And
21 after he got her high, he would reach his hand into her
22 shirt underneath her bra and manipulate her breast. Is
23 that the way a stepfather should act?

24 And that continued on for some time. And [A.R.]
25 at first couldn't say -- couldn't stop it. She

1 couldn't tell her mother. But somehow she was able to
2 get him to stop at one point. And she threw herself
3 into school, and she threw herself into work, and when
4 she wasn't doing one of those two things, she isolated
5 herself in the house as far away from the Defendant as
6 she could get.

7 There were a number of reasons that [A.R.] did not
8 tell what happened at that point. Number one, she
9 didn't know if anyone would believe her. And even if
10 they believed her, she didn't know if they would care.
11 And we know that when she tested the waters down the
12 road and told her loving grandmother what the Defendant
13 had been doing to her, her fears were realized. Her
14 grandmother believed her but said, it's not that bad,
15 get over it, love your father.

16 So her worst fears came true. That was one reason
17 that [A.R.] didn't tell at first. She also didn't know
18 until later that she was not the only victim. And I
19 think she testified on the stand, you know what, it was
20 over and done with, it was just me, I figured let's
21 just move on. She didn't know that when she was able
22 to get the Defendant to stop, life became hell for
23 [J.H.]. Because [J.H.] got it ten times worse, if
24 that's even possible.

25 He started with [J.H.] in much the same ways,

1 rubbing her breasts, rubbing her leg. And then he
2 quickly escalated to, give me a hand job, give me a
3 blow job, again, things that no stepfather should do.
4 And when [J.H.] didn't tell, and when [J.H.], at 14
5 years old, wasn't able to stop him, he took it one step
6 further, and he began to rape her.

7 And I use that word. You know, the title of the
8 crime is criminal sexual conduct. I think that sounds
9 too sterile for what this is. This is rape. [J.H.]
10 told you about the first time that her mother and
11 [A.R.] had gone to Dillon to pick up her brothers. She
12 was in the house alone with the Defendant. She was
13 upstairs in her room, he was downstairs showering.

14 He came up into her room naked. She screamed, get
15 out, get out. He pinned her to the ground, he shoved a
16 gag in her mouth, he used the force of his weight on
17 her legs, and he raped her. And she laid there and she
18 cried and she prayed that it would just be over.

19 And in the background, while she is laying there
20 crying and praying, she could hear the Defendant's
21 phone ringing. He was too busy raping her. He didn't
22 want to stop that to answer his phone.

23 But when he finally finished, he answered the
24 phone, and it was Ana asking, do you want anything to
25 eat? So what does he do? Just to add insult to

1 injury, yep, get me something, but don't get J.H.
2 anything. She's not a good girl. She doesn't want to
3 spend time with me, so she doesn't deserve to eat.

4 And that's criminal sexual conduct with a minor in
5 the second degree. And the judge is absolutely the
6 judge of the law, and he'll explain it, so I'm not even
7 going to go into the legal explanations. But I am
8 telling you that that is what criminal sexual conduct
9 with a minor in the second degree is.

10 And what J.H. told you was corroborated by
11 A.R. . A.R. was on that trip with her mother, and
12 she remembered her mother trying to call the Defendant
13 several times and the Defendant not picking up. And
14 she thought that was odd because the Defendant always
15 had several things with him, his video game controller,
16 his bowl to smoke marijuana, and his phone. He never
17 let that phone leave his side, and he was always quick
18 to answer the phone. And she could hear him say, don't
19 get J.H. any food, she doesn't deserve it. So A.R.
20 corroborates what J.H. said, if you even needed that
21 corroboration.

22 And that rape didn't happen just that one time.
23 By J.H.'s estimation, and Lord knows, she's tried her
24 hardest to forget it, it happened at least 12 times.
25 Now counsel is asking her, well, one time you said it

1 was five, one time you said it was five to ten, now
2 you're saying it's 12. Once you get past one, does it
3 matter? Does she need to have been raped five, ten,
4 twelve, a hundred times? One time is enough, and one
5 time is crime enough.

6 So this continued until A.R. was able to escape.
7 And once she was able to escape, she left the letters.
8 And you all read these letters, and you'll have them
9 back in the jury room with you. And she testified that
10 she had written these letters six months before she
11 left. And this -- she was not able to leave these
12 letters until she was safely away from the home.

13 Again, at first, for a very long time, J.H. and
14 A.R. didn't realize that they were suffering the same
15 abuse from the same man. They both kept that secret.
16 They wanted to keep the peace, and they were trying to
17 keep their family, as fractured as it was, together.

18 But one of the several times that J.H. thought
19 her stepfather had impregnated her when he raped her,
20 it all came out. And yet J.H. still tried to keep
21 the peace and not tell. Look, you know what, I think
22 I'm pregnant and I need your help. But it was just
23 some random guy down at the lake, you know, let me pull
24 a description out of the air.

25 She still wasn't ready to tell. And then A.R. ,

1 trying to comfort her sister, said, I'll tell you
2 what's happening to me. And all of a sudden, they
3 realized that they weren't alone, that it had happened
4 to both of them. And they made a plan to tell their
5 mother.

6 There was a day they had a dentist appointment
7 set, and [A.R.] told you, we knew that we would get the
8 whole day off, we'll go to the dentist, we'd have a
9 nice breakfast. The Defendant was working, so we'd
10 have plenty of time to tell mom. And, lo and behold,
11 the Defendant came home early, and they weren't able to
12 tell her.

13 And so the abuse of [J.H.] continues. Then
14 [A.R.], as she is getting older, she's graduated early
15 from high school, says, okay, I'm in a position where I
16 can -- I'm just going to leave the home. But being the
17 smart girl she is, she's Googling what's going to
18 happen if I leave. She wasn't old enough to leave, and
19 she was afraid that the Defendant, who was a tyrant in
20 that household, would have her friends arrested.

21 And then, because she wasn't old enough to leave
22 the home, she would be dragged back to the home, and
23 Lord knows what would happen at that point. So she
24 didn't leave quite yet. She waited, she worked, she
25 saved her money until she was able to leave. And then

1 she told you, once she was able to leave, she left and
2 she never looked back.

3 And I think you saw the pain that that caused her,
4 that she left her sister in that situation. But she
5 had to survive. And once she was able to leave, that's
6 when she turned to someone that she thought she could
7 trust, someone that would believe in her, someone that
8 would help in this situation. And what does that
9 person say? I've been through worse, get over it. Is
10 that an appropriate response when someone tells you
11 that their stepfather has been molesting them?

12 Now, during his cross-examination of A.R.,
13 counsel seemed to suggest, well, you're just making
14 this up because it was an easy way to get rid of the
15 Defendant. Well, there are a number of problems with
16 that theory. Number one, he was the sole provider, as
17 I said. So if they got rid of him, they would lose the
18 house over their head and also support because,
19 remember, Ana wasn't working. The Defendant was the
20 sole source of support in that family, everything was
21 in his name. So by telling they would have lost
22 everything that they have.

23 Another problem with that, if they wanted so badly
24 to get rid of him, why did they wait until they were
25 away from him? Because at that point they didn't need

1 to get rid of him. They had already escaped.

2 And then, the biggest problem with that theory
3 that this was an easy way to get rid of the Defendant,
4 who thinks that what those girls did, getting up on
5 that stand in front of 14 strangers and telling the
6 most horrific, intimate details of their life, who
7 thinks that was easy? If that's the easy way out, I
8 would hate to see the hard way.

9 Now, let's go back to Ana's testimony for a minute
10 because she also corroborates what J.H. said. You
11 may remember that Ana talked about a time before she
12 knew what was going on, she was cleaning up, and she
13 found a towel and it was covered in semen. And she
14 said something to the Defendant, who said, oh, no, I
15 just masturbated and it went into the towel. Nothing
16 else was said about that until when Ana found out about
17 what was really going on and she confronted the
18 Defendant.

19 And at that point, and at that point only, he told
20 the truth. No, that was actually a blow job from
21 J.H. that went into the towel. He told the truth
22 when he said, I've been touching A.R.'s breasts. He
23 was telling the truth when he said, I went farther with
24 J.H. He was telling the truth when he said,
25 although he nicened it up, he had sex with her. He

1 raped her, numerous times. Sometimes with a condom,
2 sometimes without. That was the first, last, and only
3 time that the Defendant told the truth.

4 And he also claimed, if you recall from Ana's
5 testimony, that it was consensual sex, and it was all
6 J.H.'s idea. And I want you to think back to when
7 she was on the stand and ask yourself, did she have the
8 demeanor of someone who was asking her stepfather to
9 rape her? I would suggest not.

10 Most 14-year-olds, which was the age that she was
11 when she was first raped, are dreaming of their first
12 kiss. Who is it going to be with, where is it going to
13 be, when will it be, how will it make me feel. But by
14 the time that J.H. was 14, she already had her first
15 kiss, and it was by the Defendant, and it wasn't
16 romantic, and it wasn't sweet, and it wasn't what she
17 wanted, and it wasn't what she dreamed of.

18 And to make matters even worse, the Defendant not
19 only was her first kiss, he took her virginity.
20 Something that was hers to give, not his to take.

21 Now, defense counsel said a number of things in
22 his opening. He said, I'm just going to point out one
23 thing that I disagree with, because he said this was a
24 "he said, she said" case. But in reality, it's a "he
25 said, she said, she said, and she said" case. They all

1 told you what went on in that house of horrors. They
2 all told you that the Defendant molested [A.R.] and
3 raped [J.H.]. So that's the one thing I disagree with.

4 But he also said a number of things, surprisingly,
5 that I agreed with. The first one I think I might
6 agree with, it's taken a long time to get here. The
7 other thing that he said is, someone is not telling the
8 truth. Well, the State would submit to you that the
9 someone -- well, besides the grandmother -- the mother,
10 who wasn't telling the truth, the Defendant didn't tell
11 the truth either.

12 And then the last thing that he said that the
13 State agrees with is he said either the Defendant is a
14 monster or he is not. Well, I think [A.R.] and [J.H.]
15 know which part of that is right. I know Ana knows
16 which part of that is right. And after hearing all of
17 the testimony, I'm confident that you know what part of
18 that statement is correct. And you can tell us that
19 all by finding the Defendant guilty of both charges.
20 Thank you.

21 THE COURT: Mr. Hilliard.

22 CLOSING ARGUMENT BY THE DEFENSE

23 MR. HILLIARD: Thank you, judge. Thank you, thank
24 you all for going through this process. It's not been
25 easy. It's not been pleasant, and it is

1 extraordinarily important. It's a burden. It's a
2 difficult thing to do, to be where you are. Certainly
3 that's true. We can't have this process without you.
4 It is a responsibility that you have to make a decision
5 in this case and in your special place. You know, the
6 judge has said to use your common sense in making a
7 decision about what's credible and what's not credible,
8 to use your common sense.

9 At the same time, you apply that common sense to a
10 framework that the judge is going to tell you about,
11 which is the constitutional framework of the criminal
12 justice system. And the same things that I told you in
13 the very beginning is that Scott, the Defendant, is
14 presumed to be not guilty. It is a presumption of
15 innocence.

16 And what that does is that places the entirety of
17 the burden, the responsibility of going forward, on the
18 State. They have the job, if they can, and if they do,
19 to show you beyond a reasonable doubt that, in fact,
20 the Defendant committed these crimes. Not beyond any
21 doubt, but beyond a reasonable doubt.

22 So it's not go back into the jury room and see
23 what you believe or see kind of who you think is
24 telling the truth based on an equal determination.
25 They have to prove beyond a reasonable doubt, which is

1 a higher burden than just which side is more likely to
2 be telling the truth.

3 So how do you -- what is it that you have -- and
4 remember, they have the burden of going forward. They
5 are the ones who have to bring the information to you
6 to prove this case. So what do you have from the State
7 to cause you to find the Defendant guilty?

8 Now, the judge is going to tell you and the
9 indictment is going to charge two separate criminal
10 offenses. One of them is criminal sexual conduct in
11 the second degree, one of them is criminal sexual
12 conduct in the third degree. And in order for you to
13 make a decision beyond a reasonable doubt as to those
14 events, there are two parts of that, that is, one part
15 is was there a criminal sexual conduct in the second
16 degree.

17 And the charge is more specific, that is, if you
18 are going to find that criminal activity occurred,
19 which is criminal sexual conduct in the second degree,
20 you're going to have to find that that activity
21 occurred between April the 15th, 2013, and April
22 the 15, 2015.

23 So you're going to have to search your
24 recollection to go back and decide whether the factual
25 criteria as described by the judge to you occurred

1 between those two dates, April the 15, 2013, and April
2 the 15th, 2015. And if you don't know the answer to
3 that question, then that is the end of your inquiry.
4 Because that's the charge, which is a big 'ol period of
5 time, but that's still the charge. If you believe
6 something happened before then or after then, that's
7 not what's charged.

8 Criminal sexual conduct in the third degree. And
9 the second degree is as to J.H. , J.H. . So J.H.
10 is that charge. As to the third degree, as A.R. , and
11 you're going to have to find that that event occurred
12 between May the 9th, 2010, and May the 9th of 2012. So
13 if you can't answer that question beyond a reasonable
14 doubt, then it's your obligation to find the Defendant
15 not guilty without any further inquiry.

16 Now, you may figure, well, what the heck? How do
17 they come up with those dates? Those are the
18 birthdays, May the 9th and April the 15th. That's how
19 they came up with those. It's an important inquiry,
20 and that's going to be part of your decision-making.

21 I will submit to you that the information that has
22 been provided to you is so distorted and so
23 inconsistent and so vague that it is impossible to make
24 that decision. But that's not for me to say, that's
25 for you. There are going to be 12 of you when this

1 starts in the jury room, so that's a decision that the
2 12 of you are going to need to make.

3 The next case thing is, and the prosecutor in this
4 case has produced information for you and has told a
5 better story than the witnesses did. One of the things
6 that I'll tell you at the outset is that I'm only one
7 person; right? That's easy. There are 12 of you.

8 Your recollection of what the information -- the
9 information comes from the witness stand. Somebody is
10 not telling the truth, that's for you to decide.

11 Information comes from the witness stand. When I say
12 for you what I recollect the testimony was, it's my
13 best recollection.

14 At the same time, if you recollect it differently,
15 let me say I'm not trying to mislead you, I'm not
16 trying to say something that's outside the record or
17 wrong. If I'm mistaken, I'm mistaken. And I will
18 pledge that to you and use your -- the 12 of you have a
19 better recollection between all of you, obviously, than
20 I would. So if my recollection is different than what
21 yours is, then use your recollection. If there is a
22 question about what the testimony was or something like
23 that, then you can hear it again if that's something
24 that you need to do. If I tell you something or
25 somebody else says something, and y'all have a

1 conversation about it and nobody can agree on what got
2 said, then you can certainly listen to the testimony
3 again.

4 One of the things, the very first time I heard the
5 word "prey" was in the prosecutor's remarks, I don't
6 remember anybody but her saying anything about preying.
7 And, you know, one of the things that is a telltale
8 sign in this case is that everything bad that happened,
9 no matter what it was, everything bad that happened is
10 Scott's fault. Everything bad that they could think of
11 to tell you about him, they have told you, even when
12 the things are not consistent with each other.

13 And, you know, not only did he touch and rape and
14 smoke marijuana all day long and give these
15 stepdaughters marijuana and alcohol and do -- not only
16 did he do all those things, but that wasn't enough. He
17 kicked the dog. Now, what in the world does that have
18 to do with this case, he kicked the dog? How is that
19 even a thing? What has that got to do with this?

20 Now, you know, the prosecutor says, well, they
21 wouldn't want to get rid of him because he was the
22 provider. But, you know, yet at the same time, they
23 described a hundred different -- a hundred is maybe an
24 exaggeration -- but they described a lot of things that
25 would be a good reason to get rid of him if those

1 things were true, a lot of those things.

2 But what did he tell you? He provided for his
3 family, he gave them the money, he provided child
4 support, he upped it when he was ordered by the Court
5 to pay the child support.

6 Now, when the prosecutor is talking about
7 isolation, right, the mom is isolated. And she is --
8 the first part of the conversation is, well, she's --
9 but what about this. Before I get off of that, you
10 know, if the burden of going forward is, again, on the
11 prosecution, right, what did they bring you? What
12 evidence, what -- are you satisfied with the
13 inconsistent, vague, contradictory stories that you've
14 heard?

15 There is not a piece of evidence in this case that
16 wasn't brought by the Defense. The letters, six months
17 ago she wrote -- or six months from the time that she
18 ran away from home, she wrote these letters, and then
19 she left them and ran away from home. And everything
20 else is conversation.

21 There is no way to figure out if it's true or not.
22 And it's internally and externally inconsistent. Think
23 about what everybody has said in connection with this
24 case. Who brought you the evidence? You know what,
25 the Defense doesn't have any burden of going forward.

1 The Defense is the one who says, well, let's look at
2 the house. You know, the testimony is, well, it
3 happened in the living room, and Ana was in her office.
4 And it happened in the bedroom.

5 Well, you know, how can a jury have a framework of
6 understanding of what you're really looking at if you
7 don't have any evidence? Why is the Defense bringing
8 you the evidence in the case? Because we want you to
9 see the truth. We don't have any burden going forward,
10 but this is a scary place to be. Just like the Clerk
11 of Court said, being the Defendant is a scary place to
12 be. We've got to bring you the evidence because they
13 didn't. Whose job was it to show you what happened?
14 Their job. Who's showing you? Us; right?

15 Does it make sense? Years, years in this little
16 tiny house, he's having sex with her. Nobody knows.
17 They are -- you know, and back to where I started, Ana,
18 you know, in the beginning, the prosecutor says, well,
19 Ana, cocaine, high on cocaine, and got a cocaine
20 addiction and then she takes the pills.

21 Well, she didn't start taking the pills until she
22 broke her leg. And then she's drinking alcohol. So
23 she's in her office drinking alcohol, taking pills,
24 doing cocaine. She doesn't know what's happening in
25 the case. She doesn't know any of the things that are

1 going on.

2 But then who -- so, okay, so Ana is all that.
3 Now, who does the isolation? Why, that's Scott's
4 fault. It's Scott's fault somehow that his wife is in
5 the office doing pills and drinking alcohol and smoking
6 marijuana and playing on her video games. That becomes
7 his fault. They are just blaming everything that could
8 possibly come up on Scott.

9 And what's another telltale sign of the
10 prosecution in this case? Defendant's Exhibit No. 4 is
11 a photograph. And you guys have seen this, but it's a
12 photograph of the house with the square footage and
13 those types of things on it. So the prosecutor says,
14 well, there is unfinished rooms in there, there were no
15 unfinished rooms in your house.

16 Is that a fair comment? It's the kids' rooms.
17 Are they being genuine with you? Are they being
18 serious, or are they just trying to blow smoke? The
19 whole thing is smoke. You know, look at this and see
20 unfinished rooms and say, oh, well, I can blow some
21 smoke on this, I can try to say there's something wrong
22 with it. I can get the jury not to look at that and
23 think about it, it's inaccurate, those guys are doing
24 the wrong thing.

25 Who brought the pictures? We brought the

1 pictures. Why did we bring the pictures? Because we
2 are scared, right. The story is that the eldest
3 daughter is upstairs in her room and that Scott is
4 downstairs smoking marijuana, drinking liquor, at the
5 TV, and somehow he hears her on her phone. Defense
6 Exhibit No. 6. She's upstairs. You know what, if the
7 story doesn't make sense, maybe it's not true. If it
8 doesn't make sense, it's not true.

9 And how do you decide? Well, you know, look at
10 the stairs, look at the stairs. Does it make any sense
11 to you that somebody on a phone upstairs in a bedroom
12 is going to be heard by somebody downstairs on the sofa
13 who's drinking liquor and smoking marijuana, and they
14 are at the TV? Does that make any sense? Well, folks,
15 that's just part, that is -- I don't even know that
16 that's the tip of the iceberg.

17 But that's -- when you look, the things that are
18 consistent, the things that are consistent, the things
19 that are out there connected to this case, what do they
20 say? He raped me, he raped me. The first time he
21 raped me was the time with Latta and Dillon, right?

22 Well, there was also that time that I got drunk,
23 and I was in the tub -- Scott got me drunk, I was in
24 the tub, and I had semen all inside of me, and that was
25 the first time. So which time was the first time?

1 Again, if I'm misrepresenting, y'all remember because
2 this is a lot. But which time was the first time?

3 The momma says, I never saw her drunk. The
4 youngest daughter says, I was naked in the bathtub,
5 peeing in the bathtub, I was drunk, and my momma and
6 daddy came in there. Inconsistencies, inconsistencies.

7 What's true and what's not true? The Latta story,
8 the Dillon, Latta story. Specifics, the first part of
9 that story, the younger daughter says when they left,
10 Scott was in the tub or in the shower, and he came
11 upstairs and raped me, J.H. . J.H. says, he came
12 upstairs and raped me shortly after they left. Right?

13 He was in the shower when they -- if you remember
14 back, he was in the shower when they left, finished his
15 shower, however long it took, came upstairs, raped me,
16 the phone rang. But then what does the older daughter
17 say? The older daughter says, we were on the way back
18 from Latta. The phone rings.

19 That's the thing; right? The important part of
20 that whole story is that phone ringing, and he's
21 calling or she's calling and he's not answering, that's
22 how they put the rape together. These -- remember when
23 they say they looked up the law or one of them, the
24 elder daughter looked up the law on kidnapping. They
25 put this story together. And you can tell that it's

1 put together by the way that it works and by the way
2 that it fails.

3 The phone call was an important part of that
4 because they want you to believe that that phone call
5 that he didn't answer means that he was doing something
6 else which was raping J.H. . They want you to believe
7 he was raping J.H. , he didn't answer the phone, he
8 always answered the phone, so that's what happened.

9 The problem with that is that one of them said
10 that it happened right after they left, and the other
11 one said that it happened on the way back. Right?
12 Inconsistencies, inconsistencies.

13 The only thing they want you to look at is, he
14 raped me. Now, I will disagree with the prosecutor. I
15 will say one rape is too many. One rape is not enough,
16 one rape is too many. Any rape is too many. Ain't no
17 question about that. It's too many.

18 The thing is that if you're telling the truth, you
19 know -- let the expert say what the expert will; right?
20 He says -- you know, he's got an answer for everything
21 that might be an inconsistency in the statement or
22 anything that might happen. Let him say what he will.

23 If you're getting raped, then I would submit to
24 you that you would remember whether it's five, whether
25 it's ten, or whether it's twelve. I will agree that

1 one -- well, again, I won't go back. The point is, is
2 it the truth? One's too many, but none, and here we
3 are. Here we are.

4 There's a divorce case, right, you heard about
5 there is a divorce case. So everything bad happens
6 because of Scott. J.H. goes to the rape crisis
7 center and says, I've been raped. And they do an
8 examination, and they do a test to see if she has a
9 disease, a sexually transmitted disease, and she has
10 chlamydia. And she calls her friend and says, Scott
11 gave me -- of course it's Scott. He gave me chlamydia;
12 right? He gave me chlamydia. Well, he didn't. He
13 never had chlamydia.

14 And then when that comes in, of course, the next
15 thing that she says is, well, it wasn't Scott, it was
16 somebody else. I thought it was Scott, but it wasn't
17 him. But when I found out that it wasn't Scott, I went
18 and told my friend, I apologize. Not I apologize,
19 Scott, because I told people that you gave me
20 chlamydia, I apologize to my friend for mistakenly --
21 well, does that make any sense? Gee, I'm sorry, I told
22 you the wrong person gave me chlamydia. That's crazy;
23 right?

24 And not only that, but we find the witness, we
25 subpoena the witness, the witness comes in here and

1 says, yes, she told me that Scott gave her chlamydia,
2 and, no, she never came back and said anything else.

3 Now, the government didn't bring you that witness;
4 right? They had a statement from her, they talked to
5 her. They didn't bring you that witness because they
6 don't care whether you hear from that witness or not
7 because it doesn't fit their story; right? They don't
8 want you to hear from that witness. We had to get that
9 witness. She had already talked to police way back.
10 We had to get that.

11 Now, remember, then the judge tells you what we
12 got to do, it's nothing. What have they got to do?
13 They got to bring it to you because they are the
14 government. They have a responsibility to do the right
15 thing; right?

16 But they didn't bring you all of the evidence.
17 They didn't bring you any evidence. The witness that
18 told you something inconsistent with their story, they
19 didn't want you to hear that. They don't want you to
20 have that witness.

21 Now, all right. When you're listening and
22 thinking about all of these things -- and this is the
23 one thing that I want to reiterate, that my
24 recollection and your recollection may be different,
25 but, you know, when we had -- we were finished with the

1 case. Remember that, when the witness had said the
2 elder daughter had said, I had called -- this is my
3 recollection. I had called my grandmother because my
4 father was being mean about me moving. And my
5 grandmother, I knew, had a trailer, and so I call my
6 grandmother and said -- and was talking to her, and I
7 told her about this assault.

8 I told her that I had been touched
9 inappropriately, and she said, well, you know, I don't
10 really care about that. But she did help her move, and
11 she did the next day have lunch; right? So that was on
12 a phone call. And remember, again, if you don't
13 remember it the way I do, please remember it the way
14 that you do. But my recollection of the testimony is
15 that the elder daughter says that conversation was on a
16 phone call.

17 Well, they have another witness here, and he's
18 been sitting here the whole time. And suddenly, after
19 we are finished with our case, they call him up to say,
20 well, I was there at the luncheon. And when the elder
21 daughter told grandma that it happened, I was there at
22 that luncheon.

23 Well, folks, did it happen at the luncheon, or did
24 it happen on the phone call? He wasn't on the phone
25 call. Let's talk about that for a minute while we're

1 at this spot. And I know I'm jumping around, but y'all
2 bear with me, please. I promise, I'm doing the best I
3 can.

4 The witness that came and testified at the very
5 last, he's there. Let me find that. Vega; right?
6 Remember Vega? Vega comes. What I want you to think
7 about in this is the context of the demeanor of the
8 witness, Vega. Vega comes, and he comes up here, and
9 he's going to tell you the story, the tale. That's
10 what he called it. He's going to tell you the tale,
11 Vega. How's he doing? Fantastic. Do you remember
12 that? Fantastic. He's doing great, wonderful. How
13 are you doing?

14 Well, and by the time -- you know, and if I was
15 mean to him, then remember that. By the time he
16 finished testifying, he was about melted; right? Is
17 that real? Was that real? Think about it. Think
18 about the demeanor of the other witnesses. You know,
19 and again, you know, the expert says, well, you can't
20 tell what these people are going to do. They are going
21 to cut their self.

22 Well, what about that? Do people that are not
23 sexually assaulted cut themselves? Sure, they do. All
24 right. Well, what does that mean? Nothing, but there
25 it is. The demeanor of the witnesses changed depending

1 on what was happening.

2 The expert witness said, well, you know, that's
3 sexual assault. People, things happen to them. Vega,
4 he's got no sexual assault. But when the government
5 puts up the witness, they are vouching for him. Do you
6 believe what he said? Do you believe -- think about
7 the way that he said it. He was pleased as punch to be
8 up there talking, having a chance to be here telling
9 that story, to benefit his girlfriend. Happy as a
10 clam. That's for to you decide.

11 But -- and remember, everything that I'm saying is
12 in the context of it's not a balance; right? Beyond a
13 reasonable doubt. Not a question of whether you
14 believe one side a little more than another, because
15 again, we don't have to prove anything, they have the
16 burden of proof.

17 There is a lot, and I apologize for the length of
18 time I'm taking, but I just don't want to leave
19 anything out. And there is a lot because there is just
20 a -- you're probably going to remember more
21 inconsistencies than I can tell you about. I did my
22 best to write them down and keep up with them as best I
23 could. But, anyway, one of the things that I believe
24 is important and I'll ask you to recollect is that
25 Anatasya, the mom, testified that she talked to both

1 [J.H.] and [A.R.] before any of those folks talked to
2 the police.

3 Now, she says that that was so that, you know, she
4 could get the story, right, from [J.H.]. But what did
5 she have? She already had, according to her -- now, of
6 course, what we say is that Scott never said it. What
7 his momma says is, Scott never said it. If he was
8 going to say it then, why not say it now? Anyway, he
9 says he didn't say it. She says he didn't say it.
10 Anatasya says he confessed, she had the letters, but
11 she wanted to talk to [J.H.], and she did talk to
12 [A.R.] before they went to the police.

13 All right. Well, one of the things that we were
14 talking about, because this is going to be in your
15 head, and it's not a part of the proof, but it is a
16 part of human nature, why would these people tell
17 anything other than the truth? You know, why would
18 they do that? Why would they go through this part?

19 Well, one of the things was, as the prosecutor
20 indicated, was that, you know, [J.H.] went from being
21 the daddy's girl to the one that everybody treated like
22 garbage. Remember when she said that, when she said
23 she was the trashy one? She was the daddy's girl with
24 Billy, [J.H.] and Billy were inseparable. [A.R.] says
25 that [J.H.] was a daddy's girl.

1 A telltale sign of one part of this was when
2 J.H. was running away from home, the first person
3 that she talked to was her grandmother. She had a
4 chance to talk to her mom, and she had a chance to talk
5 to her father, she had a chance to talk to anybody that
6 she wanted to, but the first person she talked to was
7 her grandmother. She was jealous.

8 She tried to be like her sister and make good
9 grades. She was envious of her sister's relationship
10 with her parents. She wanted to feel equal in the
11 house. Sometimes -- again, if you recollect this
12 different, let me know. But sometimes A.R. was the
13 favorite, she said, J.H. said, and sometimes the boys
14 were the favorite, but J.H. was never the favorite.

15 Ana says that A.R. was just a great, mature kid
16 who would do the chores and clean without you asking,
17 got good grades. A.R. graduated from high school
18 early. What does everybody say? Everybody says that
19 Scott is a mean -- and I can only say this in the
20 courtroom with quotation marks -- Scott is a mean
21 asshole.

22 All right. Well, and then they also say that each
23 one of them put up with him, remember this testimony,
24 each one of them put up with him because they thought
25 the others were happy. Is that consistent, they

1 thought the others were happy? When everybody is
2 miserable, everybody runs away from Scott, he's there
3 smoking and drinking and kicking the dog, everybody
4 runs away. But there was testimony that they thought
5 everybody else was happy. J.H. said that she
6 thought, for once, her mom was happy. Anatasya said
7 she put up with Scott because she thought the kids were
8 happy. Well, which is it? You know, inconsistent,
9 inconsistent.

10 On the one hand, she put up with Scott because she
11 thought the kids were happy. On the other hand, he's
12 beating them up against the wall, he slapping them,
13 he's knocking them down. You know, he's going through
14 the house, making them wash all the dishes and dirtying
15 dishes for no reason. He is a terrible, monster guy.

16 She thought the kids were happy? Where did that
17 come from? How could they be happy with their brains
18 getting knocked up against the wall and dragged and
19 choked and all those things? How is that possible?

20 They all avoided him. J.H. is a liar; right?
21 She is known as a liar, she is trying to improve her
22 reputation, she is trying to improve her reputation in
23 her family. Remember when she said that. She is known
24 to be a liar. Well, what do they say about that? Of
25 course, what else could it be? The only thing, the

1 major theme in this case, it's Scott's fault. Scott
2 created the notion that J.H. is a liar.

3 Does that make any sense? I mean, how is that
4 even possible? J.H. says that, well, Scott would
5 say, where were you, when he knew that she was with
6 him. The only place he ever was was the living room.
7 If she was in the living room and he was in the living
8 room, how could he ever say, where were you, because
9 they're in the living room? Does that make any sense
10 to you?

11 J.H. is a manipulator. She, under her
12 testimony, and again, I'm not suggesting that any of
13 the things that they said is true because how do you
14 know? Here's the deal, here's the thing is how do you
15 know? How can you tell if they are telling the truth?
16 What indicia of reliability, what thing can you hang
17 your hat on to cause you to believe that anything they
18 say is true? How is that possible?

19 J.H. goes to her sister and says, I was raped by
20 the pond, and I need a pregnancy test. The sister
21 says, trying to get along with her and show her, that
22 she has got some situation, too. And this is the first
23 time this comes up. J.H. was raped by the pond, and
24 she goes and tells her sister, and her sister says,
25 well, you know, I was molested by our father, and

1 J.H. says, well, I was molested by our father, too.
2 In fact, that's why I need this pregnancy test.

3 The things that she says are not true; how can you
4 believe what she says? How is it possible? The
5 business about when we were going to tell, they were
6 waiting for A.R. to turn 17 and run away, and they
7 couldn't figure that out. They couldn't -- you know,
8 there was kidnapping involved, so they couldn't wait.
9 And then, of course, once A.R. got away, then she
10 just forgot about J.H., but, oh, that's so terrible
11 now. She just forgot about her.

12 And then A.R., and this was the conversation,
13 the testimony that we had regarding A.R.. And I know
14 that I'm going through a bunch of this, I just don't
15 have a choice. J.H. says in one part of her
16 testimony, well, I had to do things to get the pot.
17 But then when she realized what she had said, that
18 wasn't what she meant, that she had to do things to get
19 the pot. She wasn't addicted to pot, is what she said.

20 But then on the other hand, instead of having to
21 do things to get the pot, he would give her the pot in
22 order to do things to her. But she didn't say that
23 until she realized how the first thing she said
24 sounded.

25 The stories that you have heard have changed over

1 time and have changed even in this courtroom as how
2 they sounded comes out. She says, Scott never --
3 remember this -- Scott never allowed her to be alone
4 with her mother. But they were always cooking and
5 cleaning when he was gone. I mean, Scott had a job, he
6 worked every day. He had different shifts. He was
7 gone sometimes in the nighttime, sometimes in the
8 daytime. He was gone. But, of course, Scott never
9 allowed her to be alone with her mother. How is that
10 even possible? How is that even possible?

11 She was suspicious about Scott and, in fact, at,
12 you know, depending on which time you're listening to,
13 **A.R.** is suspicious about Scott, and she has heard
14 from her sister the story. And, yet, when she's
15 talking to the police, she says when **J.H.** finally
16 tells the police, she didn't believe her at first
17 because she lies a lot. Do you remember that? I was
18 asking her about the spots in the transcript where she
19 said, yes, she lies a lot. She didn't believe her at
20 first.

21 So when **J.H.** takes the test about sexually
22 transmitted diseases, according to her mom, her mom
23 goes and takes the test. And so **J.H.** says Scott gave
24 her chlamydia, and her mom says Scott gave her herpes.
25 Well, you know about that, Scott doesn't have either

1 one of them. Whatever bad there is, Scott did it.
2 It's his fault.

3 One of the things that A.R. said at the very
4 conclusion of her testimony that was perhaps one of the
5 most compelling things and something that nobody has
6 disagreed with is that the mom, her mother, was strong
7 and would fight back against Scott. She said that.
8 And we disagree with this, but part of what she said
9 was Scott was abusive, but he never laid hands on the
10 mother, and that the mom was the one that would get in
11 Scott's face first.

12 And, perhaps, the most important thing of all that
13 she said, if you will remember, is that all she had to
14 do to get Scott out of the house is to tell her mom to
15 get him out, and she would do it. Do you remember
16 that? She said that, voluntarily. And I asked her
17 again, I said, is that all you had to do to get Scott
18 out of the house is to tell your mom and she would have
19 got him out? All she had to do was to tell her mom,
20 all she had to do.

21 None of this business about, you know, sneaking
22 out and telling a story, running away and telling a
23 story or any of that other stuff. All she had to do
24 was tell her mom. And then she said, well, I would
25 have had to cry and beg and throw a little fit but,

1 yeah, I could have done that. All she had to do was
2 tell her mom.

3 The gun thing, it's kind of an afterthought;
4 right? I mean, talking about burying the lead in the
5 situation. There is a gun. Nobody hears anything
6 about the gun until the very, very end of everything.
7 The gun's not part of this case. The gun's got nothing
8 to do with this case. Scott said, yeah, I had a gun.
9 I had the gun to carry around some money, and I left --
10 you know, I had it in the car, and I'd bring it in the
11 house. But nobody says a word about the gun anytime,
12 anywhere, anything until at the very, very end, oh,
13 yeah, there was a gun.

14 Why? What does that tell you? Everything
15 including the kitchen sink just like the dog. Oh,
16 yeah, he had a gun. Oh, yeah, forgot about the gun.

17 One of the things that A.R. said, and this is
18 back to the Latta, Dillon thing. One of the things --
19 remember it the way you do -- one of the things that
20 A.R. said was that she knew about this sexual
21 activity with J.H. before the Latta event; right?
22 Because that's the reason the phone call was there. So
23 A.R. says that she knew about it beforehand. At the
24 same time, J.H. says that that was the first event.
25 That's just another example of the inconsistencies, one

1 more thing.

2 Ladies and gentlemen, I have used up too much.

3 Well, I'll take that back. It is impossible for me to
4 overemphasize the gravity of this situation,
5 impossible. Where you sit today, you have the -- I've
6 heard people say it's the greatest responsibility that
7 citizens can have for their country absent wartime.

8 You are the gatekeeper to protect all citizens
9 from situations where they've been accused of things,
10 you're the ones who make a decision whether the
11 government has proved it beyond a reasonable doubt or
12 not. That's your job. If the judge makes a mistake,
13 appeal. If I make a mistake, appeal. If you make a
14 mistake, if you get something wrong --

15 MS. WALTER: Objection, Your Honor.

16 THE COURT: Go ahead.

17 MR. HILLIARD: Thank you. Then there is nothing
18 left for them. So I'll ask you to think carefully,
19 think carefully, recognize how important the decision
20 that each of you makes today is. Recognize that.

21 And when you are thinking about that, think if
22 you're satisfied if the State has brought you -- it's
23 like a mud ball. Throw it up in the air and just see
24 if any mud gets on it anyway. It's a mud pile, that's
25 what they brought you. Thank you for your time.

1 THE COURT: Ms. Walter.

2 MS. WALTER: Thank you. Very briefly, Your Honor.

3 REBUTTAL ARGUMENT BY THE STATE

4 MS. WALTER: First of all, the State does not
5 think you will get this wrong because the State has
6 seen you sitting here, listening and watching the
7 evidence. And I was kind of struck by what
8 Mr. Hilliard said, that they are the only ones that
9 brought evidence.

10 And I don't have anyone standing here holding this
11 for me, but does this tell you that someone got raped?
12 Does this tell you that someone had their breasts
13 fondled by their stepfather? What does this tell you?
14 It tells you nothing. What does this tell you?
15 Nothing.

16 You know what our evidence was. Our evidence was
17 A.R. . Our evidence was J.H. and Ana and Vega. And
18 I do want you to look at the demeanor that they had
19 when they testified. Because, you know, it was -- I'm
20 not sure if you laughed, I did, but when Vega was on
21 the stand, and counsel said, well, wasn't A.R. in
22 drama? Wasn't she big in the drama club? I guess that
23 was to plant in your mind that this was all an act.

24 Well, number one, it wasn't, it was choir. And
25 number two, if those two girls acted up there on the

1 stand, if they lied to you on the stand, they deserve
2 an Academy Award. Because from where the State sat,
3 that emotion was real, and it was still raw after all
4 of these years. So do consider their demeanor.

5 And Vega, you know what, I guess, you're polite to
6 me so you must be a liar. A nice young man gets up on
7 the stand and just went, hey, thanks, I'm good, how are
8 you? And then, when he's forced to talk about what
9 happened to the woman that he loves, his fiance,
10 someone he's been with for years, and when he is forced
11 to think about how this affects her to this day, he had
12 the nerve to cry, to start to break down. Wow, that's
13 terrible. I can't believe he did that.

14 That's not the only evidence we brought. See this
15 (indicating), these are evidence. Not inconsistent or
16 vague stories, these are evidence. These are letters
17 that **J. H.** wrote long before she ran away, long before
18 the police came in.

19 Do you want to hear some consistencies and why it
20 took so long for these girls to tell? She talks about
21 the rape with the gag in the mouth. And then she says,
22 since that night, he's raped me 12 times. Each time he
23 said there is no way you'd believe me over him. So
24 here I am, mom, telling you all this shit. Question
25 is, are you going to bother to believe me? Because I'm

1 about 90 percent sure you won't.

2 Think of the position that she was in being raped
3 repeatedly by her stepfather. Her sister, in order to
4 survive, abandoned her. She had to. That's not
5 something that we should blame A.R. for. She had to
6 get out to survive on her own. But that left J.H.
7 with no one. She was 90 percent sure her mother
8 wouldn't believe her. And so she didn't tell until she
9 was safely away.

10 So the State's brought plenty of evidence for you,
11 more than enough, more than beyond a reasonable doubt,
12 I would submit to you. And I just want to go through a
13 couple of the things that Defense said, and then I've
14 taken up more than enough of your time.

15 The dates on the indictment, yes, they are based
16 off of the girls' birthdays because, essentially, we
17 have alleged that the Defendant fondled A.R.'s
18 breasts when she was 14. That fits that date range.
19 And that he raped J.H. when she was 14, from 14 to 16
20 even. And we don't have to prove a specific day. We
21 don't have to say that it happened on -- and I've lost
22 track of my days -- Thursday, April 12th, 2018, at
23 2:55. We do not have to get that precise.

24 The evidence shows that these girls were assaulted
25 when they were 14 years old, and that fits the

1 indictment.

2 We didn't want Sabrina Houser here? Quite
3 frankly, I don't care that she was here. What did she
4 really add? Yeah, you know, she -- and, quite frankly,
5 yeah, I remember that J.H. told me that she was being
6 sexually assaulted. It was in her home, but I don't
7 really remember much else. That would have been a
8 powerful witness for us to call for you, huh, someone
9 who doesn't remember much.

10 Oh, never said anything about the gun. All of a
11 sudden that was just thrown in. Do you remember who
12 asked the question that brought that in? The Defense.
13 We didn't bring it in because it wasn't important.
14 Even A.R. said, I never really worried that he was
15 going to use that on me. So that's not something that
16 we're throwing up there, hoping it will stick. We
17 didn't care. We didn't introduce it.

18 Counsel has said -- we talked about kicking the
19 dog, why was that thrown in there. Because both girls
20 told you on multiple occasions that they were scared to
21 tell. What would happen to them, what would happen to
22 them if they told and no one believed them? And we
23 know that J.H. thought no one would believe her. And
24 we know that when A.R. told her grandmother, her
25 grandmother believed her but didn't care. And had they

1 said something, they ran the very real risk that the
2 Defendant would turn his physical aggression against
3 them as well.

4 And counsel kept saying the telltale sign in this
5 case is that it's all Scott's fault. It is. It is all
6 Scott's fault. It is all his fault because he is the
7 only one that fondled [REDACTED] A.R. 's breasts, he is the only
8 one that raped [REDACTED] J.H. repeatedly. So when you convict
9 him, it's all his fault. Thank you.

10 JURY CHARGE

11 THE COURT: All right. Ladies and gentlemen, I
12 remind you that during this trial, you and I have
13 certain duties to perform. As the trial judge, it's my
14 responsibility to preside over the trial of this case,
15 and I also have the duty to rule on the admissibility
16 of the evidence offered during the trial, and you are
17 to consider only the competent evidence before you.

18 If there was any testimony ordered stricken from
19 the record in this case during this trial, you must
20 disregard that testimony. You are to consider only the
21 testimony which has been presented from this witness
22 stand, any exhibits which have been made a part of the
23 record in this case, and any stipulations, agreements,
24 of counsel. A stipulation is, as I said, an agreement
25 among the parties that a particular fact is true or

1 uncontested.

2 I have the additional duty to charge you the law
3 applicable to this case. As the presiding judge, I am
4 the sole judge of the law of the case, and it is your
5 duty as jurors to accept and apply the law as I now
6 state it to you. If you already have some idea as to
7 what the law is or what the law ought to be, and it
8 does not agree with what I now tell you the law is, you
9 must abandon this idea because you are sworn to accept
10 the law and apply the law exactly as I state it to you.

11 You must assume that I have perfectly explained
12 the law to you. In every case tried in this court
13 before a jury, the jury becomes the sole and exclusive
14 judge of the facts in a case. A trial judge cannot
15 comment on, intimate, state or make any statement to a
16 jury, trial jury, about the facts in a case.

17 Since you, the jury, are the sole judge of the
18 facts in this case, you are not to infer from what I
19 have said during the progress of this trial, in ruling
20 on the admissibility of evidence or otherwise or
21 anything that I say now during the course of these
22 instructions to you that I have any opinion about the
23 facts in this case. The law does not allow me to have
24 an opinion about the facts in this case.

25 This is a matter solely for you, the jury, to

1 determine. As jurors, it is your duty to determine the
2 effect, value, weight, and truth of the evidence
3 presented during this trial.

4 Now, the indictments charge the Defendant with
5 criminal sexual conduct with a minor in the second
6 degree and criminal sexual conduct with a minor in the
7 third degree. I remind you that the fact that the
8 Defendant was arrested, charged, and indicted in this
9 case is not evidence in the case and cannot be
10 considered by you as evidence of guilt in this case,
11 nor does it create any presumption or inference of
12 guilt.

13 The documents are simply the formal written
14 instrument which contain the charges made against the
15 Defendant. It is the formal document by which the case
16 is brought into this court.

17 Now, the Defendant has pled not guilty to the
18 indictments. And that plea puts the burden on the
19 State to prove the Defendant guilty. A person charged
20 with committing a criminal offense in South Carolina is
21 never required to prove himself innocent. I charge you
22 that it is an important rule of the law that the
23 Defendant in a criminal case, no matter what the
24 seriousness of the charge may be, will always be
25 presumed innocent of the crime for which the indictment

1 was issued unless guilt has been proved by evidence
2 satisfying you of that guilt beyond a reasonable doubt.

3 This presumption of innocence does not end when
4 you begin your deliberations, but it accompanies the
5 Defendant throughout the trial until and if you reach a
6 verdict of guilt based on evidence satisfying you of
7 that guilt beyond a reasonable doubt. The presumption
8 of innocence is like a robe of righteousness placed
9 about the shoulders of the Defendant which remains with
10 the Defendant until it has been stripped from the
11 Defendant by evidence satisfying you of the Defendant's
12 guilt beyond a reasonable doubt.

13 The presumption of innocence is not mere legal
14 theory. It is not just a legal phrase. It is a
15 substantial right which every defendant is entitled to
16 unless you, the jury, are satisfied from the evidence
17 of the Defendant's guilt beyond a reasonable doubt.

18 Now, as I said, the State has the burden of
19 proving the Defendant guilty beyond a reasonable doubt.
20 Some of you may have served as jurors in civil cases
21 where you were told that it's only necessary to prove
22 that a fact is more likely true than not true such as
23 by the greater weight or the preponderance of the
24 evidence.

25 In criminal cases, the State's proof must be more

1 powerful than that. It must be beyond a reasonable
2 doubt. Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the Defendant's guilt.
4 There are very few things in this world that we know
5 with absolute certainty. And in criminal cases, the
6 law does not require proof that overcomes every
7 possible doubt. If, based on your consideration of the
8 evidence, you are firmly convinced that the Defendant
9 is guilty of the crime charged, you must find the
10 Defendant guilty.

11 If, on the other hand, you think there is a real
12 possibility that the Defendant is not guilty, you must
13 give the Defendant the benefit of the doubt and find
14 him not guilty.

15 Now, there are two types of evidence which are
16 generally presented during a trial, direct evidence and
17 circumstantial evidence. Direct evidence is the
18 testimony of a person who claims to have actual
19 knowledge of a fact such as an eyewitness. It is
20 evidence which immediately establishes or proves the
21 main fact to be proven.

22 Circumstantial evidence is proof of a chain of
23 facts and circumstances indicating the existence of a
24 fact. It's evidence which immediately establishes
25 collateral facts from which the main fact may be

1 inferred. Circumstantial evidence is based on
2 inference and not on personal knowledge or observation.

3 Crimes maybe proved by circumstantial evidence.
4 The law makes absolutely no distinction between the
5 weight or value to be given either direct or
6 circumstantial evidence, nor is a greater degree of
7 certainty required of circumstantial evidence than of
8 direct evidence.

9 However, to the extent the State relies on
10 circumstantial evidence, all the circumstances must be
11 consistent with each other and when taken together
12 point conclusively to the guilt of the accused beyond a
13 reasonable doubt. If the circumstances merely portray
14 the Defendant's behavior as suspicious, the proof has
15 failed. You should weigh all of the evidence in the
16 case. After weighing all of the evidence, if you are
17 not convinced of the guilt of the Defendant beyond a
18 reasonable doubt, you must find the Defendant not
19 guilty.

20 Now, necessarily, you must determine the
21 credibility of witnesses who have testified in this
22 case. Credibility simply means believability. It
23 becomes your duty as jurors to analyze and evaluate the
24 evidence and determine which evidence convinces you of
25 its truth.

1 In determining the believability of witnesses who
2 have testified in this case, you may believe one
3 witness over several witnesses or several witnesses
4 over one witness. You may believe a part of the
5 testimony of a witness and reject the remaining part of
6 the testimony of that same witness. You may believe
7 the testimony of a witness in its entirety or reject
8 the testimony of a witness in its entirety.

9 You may consider whether any witness has exhibited
10 to you any interest, bias, prejudice, or other motive
11 in this case. You may also consider the appearance and
12 manner of a witness while on the witness stand. This
13 is sometimes referred to as the witness's demeanor on
14 the witness stand.

15 Now, the rules of evidence ordinarily do not
16 permit witnesses to testify to opinions or conclusions.
17 An exception to this rule exists for witnesses that we
18 call expert witnesses. A witness who by education and
19 experience has become expert in some art, science,
20 profession, or calling may state an opinion as to any
21 relevant and material matter in which the witness
22 claims to be an expert and may also state the reasons
23 for the opinion.

24 You should consider any expert opinion received in
25 evidence in this case, and like any other evidence,

1 give it the weight you think it deserves.

2 If you decide that the opinion of the expert
3 witness is not based on sufficient education and
4 experience, or if you conclude that the reasons given
5 in support of the opinion are not sound or that the
6 opinion is outweighed by other evidence, you may
7 disregard the opinion entirely. An expert's testimony
8 is to be given no greater weight than that of other
9 witnesses simply because the witness is an expert.
10 Further, you are not required to accept an expert's
11 opinion even though it is not contradicted.

12 Now, a person who has a past criminal record is
13 competent to testify during a trial. A past record
14 does not affect the ability of that witness to testify.
15 The past record may only be considered by you, if at
16 all, in determining the witness's believability.
17 Remember, you are the sole judges of the facts in the
18 case and the believability of any and all of the
19 witnesses.

20 There has been evidence presented in this case
21 that witnesses have made prior statements which are not
22 consistent with the witness's present testimony. You
23 may use this evidence to decide whether to believe the
24 witness. You may also use evidence of the earlier
25 contradictory statements to determine the truth of

1 those statements. It's up to you to decide whether to
2 believe the earlier statements or the testimony given
3 at trial.

4 If a witness is shown to have knowingly testified
5 untruthfully concerning any material matter, you may
6 consider this in determining whether to trust the
7 witness's testimony as to other matters. You may
8 reject all of the testimony of that witness or give all
9 or part of the testimony the weight you think it
10 deserves.

11 Now, the indictments in this case allege several
12 different offenses against the Defendant. The charges
13 are, indictment number one, criminal sexual conduct
14 with a minor in the second degree; indictment number
15 two, criminal sexual conduct with a minor in the third
16 degree. Each indictment charges a separate and
17 distinct offense.

18 Pardon me. You must decide each indictment
19 separately on the evidence and the law applicable to
20 it, uninfluenced by your decision as to any other
21 indictment. The Defendant may be convicted or
22 acquitted on any or all of the offenses charged, and
23 you will be asked to write a separate verdict of guilty
24 or not guilty for each indictment.

25 Now, the Defendant is charged with criminal sexual

1 conduct with a minor in the second degree. The State
2 must prove beyond a reasonable doubt that the Defendant
3 engaged in a sexual battery with the victim. A sexual
4 battery is sexual intercourse, cunnilingus, fellatio,
5 anal intercourse, or any intrusion, however slight, of
6 any part of a person's body or of any object into the
7 genitalia or anal openings of another person's body
8 except when the intrusion is accomplished for medically
9 recognized treatment or diagnostic purposes.

10 The State must then prove beyond a reasonable
11 doubt the victim was less than 16 years old but at
12 least 14 years old and that the Defendant was either in
13 a position of familial, custodial, or official
14 authority to coerce the victim to submit, or the
15 Defendant was older than the victim.

16 Now, the Defendant is also charged with criminal
17 sexual conduct with a minor in the third degree. In
18 order to prove third-degree criminal sexual conduct,
19 the State must prove beyond a reasonable doubt that the
20 victim was over the age of 14.

21 Next, the State must prove that the Defendant
22 willfully and lewdly committed or attempted a lewd or
23 lascivious act on or with the body or its parts of a
24 child under the age of 16 with the intent to arouse,
25 appeal to, or gratify the lust, passions, or sexual

1 desire of the Defendant or the child. Willful means
2 voluntarily and intentionally with specific intent to
3 do something the law prohibits. Lewd means obscene,
4 lustful, indecent, lecherous. Lascivious means tending
5 to incite lust, lewd, indecent, obscene, or tending to
6 deprave the morals in respect to sexual relations.

7 Now, there are two possible verdicts which you may
8 find in this case as to each indictment or charge: Not
9 guilty or guilty. And there is no significance
10 whatsoever to the order in which I state these possible
11 verdicts. It's just that I've got to say one before
12 the other.

13 Now, ladies and gentlemen, let me emphasize that
14 your verdict in these cases as to each indictment must
15 be unanimous.

16 Now, Mr. Foreperson, I'm going to have you go into
17 your jury room. I do not anticipate having to bring
18 you out for another charge because, as you know, I have
19 a transcript, and I have provided the attorneys in
20 advance with my charge. But I may have to do that. So
21 I'll ask you not to begin your deliberations. If I
22 need to bring you out, I will.

23 If I send Mr. Ropp back or Mr. Palmer -- he's been
24 with you some -- if I have them bring you the exhibits
25 in this case and a copy of my charge -- and I have

1 prepared two verdict forms, one for each charge -- I
2 did have a verdict form. I'm sure I have them here
3 somewhere, but I will -- I will send in the verdict
4 forms for you to use.

5 And the verdict form is very simple. It simply
6 states: As to the charge of criminal sexual conduct
7 with a minor second degree, we, the jury, unanimously
8 find the Defendant -- and you just circle what your
9 verdict is. And the same as to criminal sexual conduct
10 in the third degree. Again, you just circle your
11 verdict, and then the foreperson will sign it.

12 Once you've reached a verdict, if you would just
13 notify Mr. Ropp that you have reached a verdict, he
14 will then bring you back to the courtroom for that
15 purpose.

16 If you have any questions for me during your
17 deliberations, please, again, simply knock on your
18 door. Mr. Ropp will be there or Mr. Palmer will be
19 there, and write out a note to me, and they will bring
20 it to me and I will address it; okay?

21 Thank you, sir.

22 Now, Mr. Ropp, would you take them in and
23 segregate Ms. Mines and Mr. Godfroy [sic].

24 JUROR #128: Godfrey.

25 THE COURT: Godfrey. I'm sorry, Mr. Godfrey.

1 If you would separate them for right now as our
2 alternates, and I will deal with them in just a minute;
3 okay?

4 (WHEREUPON, the jury exited the courtroom at
5 3:14 p.m.)

6 THE COURT: Ms. Bautz, will you mark my charge as
7 Court's Exhibit...

8 COURT REPORTER: Two.

9 THE COURT: Two. And that will go in.

10 (WHEREUPON, Court's Exhibit No. 2 was marked for
11 identification only.)

12 THE COURT: Counsel, would you please come up and
13 make sure -- well, first, any additions, deletions,
14 Mr. Hilliard?

15 MR. HILLIARD: Judge, let me ask one question
16 because I presume this to be true, and perhaps I made
17 too much of that. You're sending the indictment back;
18 is that right?

19 THE COURT: No, I never send the indictments back.

20 MR. HILLIARD: Well, there is the -- again,
21 perhaps I should have said this before -- the criminal
22 sexual conduct in the second degree is connected to one
23 victim and one victim only?

24 THE COURT: That's correct.

25 MR. HILLIARD: Criminal sexual conduct in the

1 third degree is connected to one victim --

2 THE COURT: One victim, one victim only.

3 MR. HILLIARD: And the dates in those.

4 THE COURT: They must -- the dates are irrelevant.

5 They must make a finding that the child was under --
6 between 12 and 14 or 14 and 16 depending on whenever it
7 was. That's what they have to find. And that's what
8 my charge says.

9 MR. HILLIARD: Yes, sir. But they also -- because
10 of the indictment, they also have to find that the
11 offense occurred between the dates as alleged in the
12 indictment. Anything outside the indictment would not
13 be --

14 THE COURT: What do you say about that?

15 MS. WALTER: It's clear that the dates were by
16 their birthdays. The birthdays are in evidence. I
17 think the way Your Honor has handled it is fine.

18 THE COURT: Well, you know, that's the reason I
19 give you the charge in advance. Tell me what you want
20 me to do.

21 MR. HILLIARD: I want you to send the indictment
22 back.

23 THE COURT: You want the indictments to go into
24 the jury room?

25 MR. HILLIARD: Well, the reason that I say that --

1 and again, judge, I apologize, I presumed that that was
2 happening, the thing that -- the charge is fine -- the
3 thing is that in order for him to be convicted, it has
4 to be -- the first victim in between those dates as
5 alleged in the indictment.

6 THE COURT: But wouldn't they have to find it
7 within those dates to make a finding of guilt at all
8 because the statute requires that these alleged victims
9 have to be 12 to 14 on one and 14 to 16 on the other
10 one? And did I recall it right?

11 MR. HILLIARD: I think it's 14 to 16 and under 16.

12 THE COURT: Yeah.

13 MR. MARTIN: Yes, Your Honor.

14 THE COURT: Well, anyway, they, to make that
15 finding, they have to find it within the range.

16 MR. HILLIARD: Well, under 16 would cover a
17 substantially greater portion of the range than just
18 the two years.

19 THE COURT: But it's not just under 16; isn't it
20 between 14 and 16? Over 14 and?

21 MS. WALTER: CSC with a minor second was between
22 14 and 16.

23 THE COURT: CSC second requires sexual battery
24 with a victim of 14 to 15, and to find in the -- that's
25 what it says, criminal sexual conduct with a minor

1 second degree --

2 MS. WALTER: I'm pretty sure it's 14 to 16.

3 THE COURT: 14 to 15, I'm sorry.

4 MS. WALTER: No, 14 to 16.

5 MR. MARTIN: Up until -- it's under the age of 16,
6 so up until that 16th birthday. So 15 years, 364 days,
7 judge.

8 THE COURT: But what I'm saying is, we all agree
9 those are the dates in which it could have occurred.

10 MS. WALTER: Yes.

11 THE COURT: And meet the statute. I mean, both of
12 you argued that those are the birthdays.

13 MS. WALTER: Yes.

14 THE COURT: So if they cannot find -- or if they
15 find that the child fits the range, it has to be --

16 MS. WALTER: Within those dates.

17 THE COURT: -- within those dates. I mean,
18 Mr. Hilliard, I will --

19 MR. HILLIARD: We could send them. Would there be
20 a problem with sending the indictment back?

21 THE COURT: Well, my problem is they are not
22 marked. I guess, Ms. Bautz, let's make them Court's
23 exhibits. I'll send them back for you.

24 MR. HILLIARD: Thank you, judge.

25 THE COURT: I don't know why it makes a bit of

1 difference. It's exactly the same. You all agree as
2 to what the birth dates are.

3 MR. MARTIN: So long as your handwritten amendment
4 will not cause any confusion with the jury.

5 THE COURT: Well, they are on there, and if the
6 jury has a question about it, they will send it back
7 out to me, I'm sure.

8 MR. HILLIARD: Thank you, Your Honor.

9 THE COURT: All right. Get the indictments and
10 let's send them in. Make sure that you have the
11 exhibits.

12 Mr. Palmer, once you get the exhibits, if you
13 would take it back. I am going to go back and release
14 the alternates, I always do that. I'm not going to
15 interject an alternate after an hour or two of
16 deliberation.

17 So let the record reflect that I'm going to do
18 that right now. Anybody object to my doing so without
19 bringing them back in the courtroom?

20 MR. HILLIARD: No objection.

21 MS. WALTER: No objection.

22 THE COURT: None?

23 MR. HILLIARD: None.

24 MS. WALTER: No, Your Honor.

25 THE COURT: Okay, all right.

1 (WHEREUPON, Court's Exhibit Nos. 3 and 4 were
2 marked for identification only.)

3 (WHEREUPON, the jury begins to deliberate at
4 approximately 3:23 p.m.)

5 THE COURT: I have a note from the foreman. The
6 note says: [REDACTED] A.R. 's testimony on when she told her
7 grandmother about her being abused, specifically
8 whether it occurred on the phone or at lunch.

9 I assume she wants -- they want to hear that
10 testimony. I've already asked Ms. Bautz to try to
11 locate it, but I'll hear you each on that.

12 MR. HILLIARD: I agree with you, judge.

13 MS. WALTER: That's fine.

14 THE COURT: All right. Ms. Bautz, when you get an
15 opportunity, would you mark that.

16 COURT REPORTER: Court's exhibit, sure. Can we go
17 off the record, then?

18 THE COURT: Yeah, we're off the record.

19 (Discussion off the record.)

20 (WHEREUPON, the jury came into open court at
21 approximately 4:02 p.m.)

22 THE COURT: All right, all right, we have all our
23 jurors. Mr. Foreman, I have shared your note with
24 counsel from both sides, and it's our understanding
25 that what you want to hear is that portion of [REDACTED] A.R. 's

1 testimony that would indicate whether her disclosure to
2 her grandmother that she described in her testimony was
3 by phone or in person. Is that correct?

4 THE FOREPERSON: Yes, Your Honor.

5 THE COURT: Okay.

6 THE FOREPERSON: And, specifically, at the lunch.

7 THE COURT: Okay. Now, what we have done is I
8 think we have found that. It takes a little bit of
9 time.

10 THE FOREPERSON: Sure.

11 THE COURT: But we have located the recording of
12 what we think is that testimony, and please, we may be
13 entirely wrong. If there was other testimony that you
14 recalled concerning this, let us know, and we will
15 certainly look. But I think we have found the
16 testimony that you are looking for, and Ms. Bautz is
17 prepared to play that.

18 Now, if it's not what you wanted to hear, please
19 let me know. Otherwise, I think it's just a relatively
20 short clip.

21 Ms. Bautz.

22 (WHEREUPON, requested testimony was played back
23 for the jury.)

24 THE COURT: Okay. Was that all you needed?

25 THE FOREPERSON: Yes.

1 THE COURT: Okay, please go with Mr. Ropp.

2 (WHEREUPON, the jury exited the courtroom at
3 4:07 p.m.)

4 THE COURT: Mr. Hilliard?

5 MR. HILLIARD: Nothing other, judge.

6 THE COURT: Ms. Walter?

7 MS. WALTER: Nothing, judge.

8 THE COURT: Okay, we are at ease.

9 (WHEREUPON, the jury continues to deliberate at
10 approximately 4:08 p.m.)

11 (WHEREUPON, Court's Exhibit No. 5 was marked for
12 identification only.)

13 THE COURT: I have received another note from the
14 foreman. I'll ask him, but I think I believe I
15 understand what he wants. Scott Rowan's response
16 during testimony -- I assume that's his testimony --
17 related to Anatasya's and J.H. 's original STD claims
18 blaming Scott for the STDs.

19 Now, I think what they want is Mr. Hilliard's
20 direct examination of Mr. Rowan concerning whether he
21 had any STDs.

22 MR. HILLIARD: Yes, sir.

23 THE COURT: Do you think that's what they want?

24 MR. HILLIARD: Yes, sir.

25 THE COURT: Ms. Walter?

1 MS. WALTER: I honestly can't tell from that note.

2 THE COURT: Well, I'll ask them, then. I'll just
3 ask the -- Ms. Bautz found that. And if that's what
4 they want, we are prepared to do it; otherwise, I'll
5 send them back out and we will find out what to do.

6 Chris, if you would, bring them in.

7 (WHEREUPON, the jury came into open court at
8 approximately 5:07 p.m.)

9 THE COURT: All right, Mr. Foreman, we have a
10 note, and I think we know what you want. The note,
11 obviously: Scott Rowan's response during testimony
12 related to Anatasya and J.H.'s original STD claims
13 blaming Scott for STD.

14 There was a point in his direct examination where
15 Mr. Hilliard asked him, I believe, about whether he had
16 STDs; is that the part that you're --

17 THE FOREPERSON: Yes.

18 THE COURT: -- that you want to hear?

19 THE FOREPERSON: Yes, sir.

20 THE COURT: Okay, all right. I just wanted to
21 make sure. Now, Ms. Bautz already found that.

22 COURT REPORTER: Yeah, I found it in the record.

23 (Discussion off the record.)

24 THE COURT: Well, Ms. Bautz tells me it's like one
25 question. Of course, we could shuffle this around and

1 play it for you. But she has it right there, and she
2 can read the question and response. Would that be
3 okay?

4 THE FOREPERSON: Yeah, that would be fine.

5 THE COURT: All right. Well, let's do that. And
6 if that's not it, if you want more, then we can.
7 But -- and let's make sure this is what you're looking
8 for.

9 Ms. Bautz, if you would, read the question. And
10 this is Mr. Hilliard's question?

11 COURT REPORTER: Yes.

12 THE COURT: Okay.

13 COURT REPORTER: Let me just make sure I have it
14 right.

15 MR. MARTIN: Your honor, will this be the only
16 piece of the testimony that we're covering?

17 THE COURT: I don't know. I know we have that.
18 That's why I want to make sure. When you hear this, if
19 you remember something else, please let us know and
20 give us a little guidance, and we'll try to find it;
21 okay?

22 THE FOREPERSON: Very good.

23 COURT REPORTER: This is in direct examination by
24 Mr. Hilliard:

25 (Record read as follows:

1 "Q And in connection with the family court case,
2 did you learn that you were accused of having
3 given your wife and your daughter an STD, a
4 sexually transmitted disease?

5 A Yes. I actually was talking to my wife at the
6 time on the phone, and she said I cheated on her.
7 I said, no, I didn't. And she said, well, then
8 how did me and my daughter get an STD?

9 Q All right, sir. And did you go immediately
10 and get checked for STDs?

11 A Yes, as soon as she told me, sir.

12 Q Did you have herpes?

13 A No.

14 Q Did you have chlamydia?

15 A No. I'm completely STD-free.")

16 THE COURT: That was what you wanted to hear,
17 everybody satisfied that's what you wanted to hear?

18 THE FOREPERSON: Yes, sir.

19 THE COURT: Okay. Thank you very much.

20 (WHEREUPON, the jury exited the courtroom at 5:10
21 p.m.)

22 THE COURT: Ms. Bautz, mark this as part of the
23 record, please.

24 (WHEREUPON, Court's Exhibit No. 6 was marked for
25 identification only.)

1 THE COURT: Mr. Hilliard?

2 MR. HILLIARD: Nothing other, judge.

3 THE COURT: Ms. Walters?

4 MS. WALTER: Nothing, Your Honor.

5 THE COURT: Very well. We are area at ease.

6 (WHEREUPON, the jury continues to deliberate at
7 approximately 5:11 p.m.)

8 THE COURT: All right. Thank you very much.
9 Please have a seat, I understand we have a verdict.
10 Would you bring the jury in, please, Chris.

11 MR. HILLIARD: The Defendant, Your Honor.

12 THE COURT: Oh, yes, I'm sorry. There he is.

13 MR. HILLIARD: Thank you, judge.

14 THE COURT: We have the Defendant here, all
15 counsel.

16 (WHEREUPON, the jury came into open court at
17 approximately 5:45 p.m.)

18 VERDICT

19 THE COURT: Okay, all right. We have our jurors
20 in the courtroom. Mr. MacNeill, have you reached a
21 verdict?

22 THE FOREPERSON: Yes, we have, Your Honor.

23 THE COURT: And was it a unanimous verdict?

24 THE FOREPERSON: Yes, it was, Your Honor.

25 THE COURT: And were you able to reach a verdict

1 as to each count?

2 THE FOREPERSON: Yes, we were, Your Honor.

3 THE COURT: Would you give the verdict form,
4 please, to Mr. Ropp. Thank you. All right.

5 Madam Clerk, you may read the verdict.

6 THE CLERK: Thank you. Indictment number
7 2016-GS-26-00861 and 2016-GS-26-00862, State of South
8 Carolina, County of Horry, versus Scott Richard Rowan.
9 As to the charge of criminal sexual conduct with a
10 minor second degree, we, the jury, unanimously find the
11 Defendant guilty.

12 As to the charge of criminal sexual conduct with a
13 minor third degree, we, the jury, unanimously find the
14 Defendant guilty. Signed by Foreperson Dale MacNeill,
15 dated April 12, 2018.

16 THE COURT: Will there be a request for individual
17 voir dire?

18 MR. HILLIARD: Yes, sir, Your Honor.

19 THE COURT: Or polling, I'm sorry. Yes, ma'am,
20 would you poll the jury, please.

21 THE CLERK: Yes, Your Honor. Please stand when I
22 call your number. I'll ask you two questions. After
23 you answer them, please be seated. Number 30, is this
24 your verdict?

25 JUROR #30: Yes, ma'am.

1 THE CLERK: Is this still your verdict?

2 JUROR #30: Yes, ma'am.

3 THE CLERK: Thank you. Number 255, is this your
4 verdict?

5 JUROR #255: Yes.

6 THE CLERK: Is it still your verdict?

7 JUROR #255: Yes.

8 THE CLERK: Number 395, is this your verdict?

9 JUROR #395: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR #395: Yes.

12 THE CLERK: Number 284, is this your verdict?

13 JUROR #284: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 JUROR #284: Absolutely.

16 THE CLERK: Number 314, is this your verdict?

17 JUROR #314: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR #314: Yes.

20 THE CLERK: Number 143, is this your verdict?

21 JUROR #143: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR #143: Yes, ma'am.

24 THE CLERK: Number 144, is this your verdict?

25 JUROR #144: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR #144: Yes.

3 THE CLERK: Number 26, is this your verdict?

4 JUROR #26: Yes, ma'am.

5 THE CLERK: Is this still your verdict?

6 JUROR #26: Yes, ma'am.

7 THE COURT: Number 203, is this your verdict?

8 JUROR #203: Yes.

9 THE COURT: Is it still your verdict?

10 JUROR #203: Yes.

11 THE CLERK: Number 250, is this your verdict?

12 JUROR #250: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR #250: Yes.

15 THE CLERK: Number 230 -- I apologize -- 330, I

16 apologize, is this your verdict?

17 JUROR #330: Yes, it is.

18 THE CLERK: Is it still your verdict?

19 JUROR #330: Yes, it is.

20 THE CLERK: Number 216, is this your verdict?

21 JUROR #216: Yes, ma'am.

22 THE CLERK: Is it still your verdict?

23 JUROR #216: Yes, ma'am.

24 THE COURT: All right. Anything further,

25 Mr. Hilliard?

1 MR. HILLIARD: Nothing further for the jury, Your
2 Honor.

3 THE COURT: All right. Is there any reason why
4 sentencing cannot take place at this time?

5 MS. WALTER: No, there's not, Your Honor. I have
6 someone printing out the sentencing sheets.

7 THE COURT: All right. Before I hear from the
8 Defense, will there be any statement from the victim?

9 MS. WALTER: May I have one moment, please?

10 (Discussion off the record.)

11 MS. WALTER: I'll speak on behalf of the victims,
12 Your Honor.

13 THE COURT: You may.

14 MS. WALTER: Your Honor, you sat here, you heard
15 the evidence in this case. And you saw the effect that
16 this Defendant's crimes have had on not just those two
17 young girls but on their entire family. To this day,
18 well more than three years later, it brings them to
19 tears, it makes them shake. It has affected their
20 lives in a way that is unimaginable. And while the
21 State recognizes that the Defendant has no prior
22 convictions --

23 THE COURT: I'm confused about that. Does he have
24 a minor drug offense or not?

25 MS. WALTER: It did not show up on our NCIC, Your

1 Honor.

2 THE COURT: Okay, okay, all right.

3 MR. HILLIARD: He was mistaken as to that result.
4 Judge, we have some motions before we get to the
5 sentencing part.

6 THE COURT: And I will allow you to make those.

7 MR. HILLIARD: Thank you.

8 THE COURT: Yes, sir.

9 MS. WALTER: Your Honor, he was, in the truest
10 sense of the word, a predator. He preyed on these two
11 young girls, just as I said in my closing, by isolating
12 them, isolating them from their mother who also
13 isolated herself, but isolating them from their
14 brothers and each other, and violated them in a way
15 that no child should ever be violated. And certainly
16 not by someone that was supposed to be a parental
17 figure.

18 And the State's asking for the maximum sentence on
19 both charges and to run consecutively because it's two
20 different victims, and it was clear that, although he
21 started with both, when he had to stop for God knows
22 what reason, but thankfully he did stop with [REDACTED] A.R. , he
23 went so much further with [REDACTED] J.H. . And he does deserve
24 the maximum sentence on both charges to run
25 consecutively.

1 THE COURT: Thank you. Mr. Hilliard.

2 MS. WALTER: And, I'm sorry, Your Honor. May I
3 also --

4 THE COURT: Yes.

5 MS. WALTER: We do want all of the statutory --
6 the child abuse registry for DSS, but the sex offender
7 registry and all the other --

8 THE COURT: That would, I believe, be automatic.
9 All right. Mr. Hilliard.

10 MR. HILLIARD: Thank you, judge. At this time we
11 would move for a verdict of not guilty without regard.
12 We would ask you to set aside the jury's verdict and
13 give us a verdict of not guilty based on the fact that
14 the jury could not reach a verdict of guilty based on
15 the information that they had before them.

16 THE COURT: All right, sir. And I would disagree.
17 I think that there was ample evidence believed by the
18 jury to support their verdict. We have heard directly
19 from the victims, and I think that the evidence would
20 support a finding as to each element as to each
21 offense, and I would therefore deny your motion
22 respectfully.

23 MR. HILLIARD: Thank you.

24 THE COURT: All right, sir. I will hear you on
25 sentencing.

1 MR. HILLIARD: Very well, Your Honor. Judge, I
2 would like to -- well, number one, the jury has found
3 him guilty, so that is conclusion or the end of the
4 inquiry as to that. As the record shows, Scott has no
5 criminal history. I acknowledge and respect the
6 prosecutor's remarks regarding the circumstances of the
7 case.

8 At the same time, we would ask you to take into
9 consideration the other things that you've heard about
10 Scott in terms of the manner in which he supported the
11 family up until this time. And also, judge, I would
12 like for you, if you will, to hear from -- I don't
13 know, let me check and see, judge, if his family wants
14 to say anything.

15 Judge, his mom is here. And, of course, you heard
16 her testify, but she would like to say something on his
17 behalf.

18 THE COURT: You may.

19 MR. HILLIARD: You've heard his age and all the
20 other factors about Scott, his -- you know, the amount
21 of time that he's worked and those kinds of things.
22 His mom would like to say something, judge.

23 THE COURT: I'll hear from her.

24 MS. ROWAN: My son is not perfect. My son is a
25 strict parent, just as I am. And I taught him to be.

1 So I beg you to take into account his strict parenting
2 because I know that is what this is about. And that
3 was the way of getting out. So, please, please, he's
4 got a disabled father that he helps take care of, and
5 we need him.

6 All of his alleged victims live out of state and
7 no longer live here. He chose to come to this court,
8 face his accusers because he knew he was innocent. So
9 please, please, take into account that this is a man
10 coming before you, standing before you in his own, and
11 give him as much leniency as possible.

12 THE COURT: Thank you, ma'am.

13 MS. ROWAN: Thank you.

14 THE COURT: Anything further, Mr. Hilliard?

15 MR. HILLIARD: Excuse me just one second.

16 (Discussion off the record.)

17 MR. HILLIARD: Judge, the circumstances being what
18 they are, let me speak on behalf of Scott. I've worked
19 with him. This case has been pending for a
20 considerable period of time. I've known his family for
21 a substantial period of time, longer than that. And
22 Scott has always been cooperative with me. He's always
23 been respectful. He's appeared at every opportunity to
24 talk with me and do those things necessary to come
25 forward to court.

1 And even before these things occurred, judge, like
2 I say, I've known Scott and his family, they have
3 suffered -- the family has suffered the loss of his
4 business, his father is disabled, their home has
5 burned. And so we would ask you to take those things
6 into consideration and to, based on all the factors
7 involved in the case, give him what mercy you can,
8 judge.

9 THE COURT: All right. It's my understanding that
10 the range on third-degree criminal sexual conduct with
11 a minor is zero to 15; is that correct?

12 MS. WALTER: That's correct, Your Honor.

13 THE COURT: It is classified as a violent felony?

14 MS. WALTER: It is, Your Honor.

15 THE COURT: And on second degree, the sentencing
16 range is zero to 20 years?

17 MS. WALTER: Yes, Your Honor.

18 THE COURT: Is that correct?

19 MS. WALTER: Yes.

20 THE COURT: And it, likewise, is classified as a
21 violent crime?

22 MS. WALTER: And most serious, Your Honor.

23 THE COURT: And most serious, thereby making this
24 un-parolable?

25 MS. WALTER: Yes, Your Honor.

1 THE COURT: And, again, you have no indication of
2 a prior offense?

3 MS. WALTER: Correct.

4 THE COURT: Okay. And he's how old, Mr. Hilliard?

5 THE DEFENDANT: 33, sir.

6 SENTENCE OF THE COURT

7 THE COURT: All right. All right. I take into
8 consideration his background, I take into consideration
9 the fact that he does not have a prior criminal record.
10 But I must also consider these are extremely serious
11 offenses. They are offenses in which children were the
12 victims.

13 I would, therefore, impose the following sentence:
14 As to -- do you have copies of the indictment?

15 (Discussion off the record.)

16 THE COURT: Well, Indictment No. 2016-GS-26-00861,
17 that being an indictment for the offense of criminal
18 sexual conduct in the second degree, the sentence of
19 the Court is 15 years.

20 As to the indictment number 2016-GS-26-00862, an
21 indictment for the offense of criminal sexual conduct
22 with a minor in the third degree, I likewise sentence
23 you to 15 years. These are to run concurrently. Good
24 luck to you, Mr. Rowan. And I do understand that these
25 are non-parolable; is that correct?

1 MS. WALTER: The CSC with a minor second is not
2 parolable.

3 THE COURT: Okay, all right. That's all I need to
4 know.

5 MR. HILLIARD: Thank you, Your Honor.

6 THE COURT: Ladies and gentlemen of the jury,
7 thank you so much. These are very difficult cases.
8 They are hard to listen to. They are hard to sort out.
9 As in many cases of this kind, the jury is put really
10 to a greater task, I think, than some of the cases
11 where we just have hard physical evidence of every
12 element.

13 These cases are heard oftentimes where one person
14 is pitted against the other. And that makes it very,
15 very difficult for a jury. And I think you appreciate
16 the seriousness of these offenses during your
17 deliberations. I noticed that you were all very
18 attentive and took your job seriously, as you should
19 have.

20 I want to thank you for your service. You know,
21 we have so many cases that come before this Court,
22 whether it be the civil side or the criminal side.
23 I've been here for ten years, and it never seems to run
24 out. Before that, I practiced for 32 years, and it
25 never seemed to lessen. We have all sorts of things

1 now to try to avoid having to bring a case to you to
2 avoid having to have you sit in judgment on a fellow
3 citizen. But sometimes it is unavoidable, and we
4 certainly appreciate the stress of these trials. We
5 appreciate your willingness to step up and make a
6 decision that can resolve these cases that we have
7 failed in spite of our efforts to resolve it.

8 Thank you again for your attendance. Thank you
9 again for your service. If you hang around the
10 hardware stores or the feed and seed stores, you may
11 run into me. That's kind of what I do on weekends and
12 all. And I hope that if you do recognize me, that you
13 won't hesitate to speak to me. I always like to hear
14 from people who have been on my juries and have them
15 share the experience with them. I'm very approachable.

16 It's hard for me to remember every juror, but if
17 we do come into contact, I hope that you will take the
18 time to speak to me. I would appreciate it. Again, I
19 thank you for your service.

20 Now, Mr. Ropp, if you would take this jury to
21 their jury room, let them collect their things and make
22 sure that they are safely on their way home; okay?

23 BAILIFF: Yes, sir.

24 THE COURT: Thank you. Thank you, Mr. Ropp. I do
25 have the indictments now. Okay. Again, thank you ever

1 so much for your service.

2 (WHEREUPON, the jury exited the courtroom at
3 6:02 p.m.)

4 THE COURT: All right. Counsel, did you have a
5 sentencing sheet for me?

6 MS. WALTER: Your Honor, we're having an issue
7 with printing it up here, so Ms. Solemno (phonetic) ran
8 downstairs to print it.

9 THE COURT: Okay, all right.

10 MS. WALTER: Can I get my copies of the
11 indictments back?

12 THE COURT: Here are the original indictments. I
13 will be in chambers for that purpose; all right? Thank
14 you.

15 (WHEREUPON, the hearing concluded at approximately
16 6:03 p.m.)

17 (End of Transcript of Record)

18

19

20

21

22

23

24

25



Anatasya,

By now you've realized im gone. And to erase all hope you have im NOT coming back. You're always telling me how great of a home we have and how thankful we should be and im honestly sick of it. IF this is such a great home, how have you not noticed the scars all over my body? Because you dont care! You missed it back when [REDACTED] A.R. used to cut herself too.

The difference is though, mine were 5X deeper. You're such a "great" Mom but yet sat there and told me and [REDACTED] A.R. you'd rather die of cancer than have kids like us. You sit there and let scott grab me by the throat and slap me repeatedly, pushing me into walls and on the floor and you didnt do anything about it. You sit in your "office" everynight smoking weed, drinking, and snorting pills to the point where you dont even bother trying to spend time with me anymore. I've tried to take my life and end everything so many times but no matter how hard I tried I still wake up. I knew you wouldn't emancipate me so this was my last option. By the time you read this ill already be in Arizona all the way across the country and its where I plan on staying. Me and my friend found a place to live with her family so I know im in good hands. They know about everything in this letter and are going to do everything to make sure I dont go back. You want to be a good mom and do the right thing? Then let me go. Dont call the cops and tell them I ran away just let me be. And just incase you arnt convinced yet... (we) think this is still a good home, and yall are good parents... YOU married a pedophile. What? Dont believe me? Think im lying? Making it all up? Ask [REDACTED] A.R. because he used to grab and touch on her too. Give us drugs and alcohol to not tell or take advantage of us. But for me it was worse than just touching... it was rape. So thank you mom for completely fucking up my life and the life I could of had. All I can hope is that you do my brothers better. Let me go, let me fix what little bit of a life I have left. And then maybe ill come back to visit one day. But if you do call the cops... anything in this letter will be told to them

along with the ways you've been cheating the government, the pills you'll do, the drugs you'll sell. And even the videos I took of you hitting me and you doing drugs. So mom, make the smart choice so that you don't lose your sons too. Because Rebecca and a few other people got this same letter, so they all know everything now too. Give the boys a life and [redacted] A.R. didn't get.

Be smart Anna,
because even if the police bring me back, I'll just leave it all behind and end everything. Your choice.

Sincerely your daughter,

[redacted]
J. H.

[redacted]
J. H.

P.S. ...I love you mom...



Anatasya,

By now you've realized im gone. And to erase all hope you have im NOT coming back. You're always telling me **A. R.** how great of a home we have and how thankful we should be and im honestly just sick of it. If this is such a great home, how have you not noticed the scars all over my body? Because you dont care! You missed it back when **A. R.** used to cut herself too. The difference between mine and hers is that mine were 10x deeper. You're such a "great" mom but yet stood there and told me and **A. R.** you'd rather die of cancer then have kids like us. You sit there and let scott grab me by the throat and slap me repeatedly, pushing me into walls and on the floor, and you didn't do one thing about it. You sit in your "office" everyday and night smoking weed, drinking, and snorting pills to the point where you don't even bother trying to spend time with your daughter. I've tried to take my life and end everything so many times but no matter how hard I tried I still woke up. I knew you wouldn't emancipate me so this was my last option. By the time you read this ill already be in Arizona. All the way across the country and its where I plan on staying. Me and my friend found a place to live with her family so I know for once im in good hands. They know about everything in this letter and are gonna do everything they can to make sure I dont come back. You want to be a good mom for once and do the right thing? Then let me go. Dont call the cops and tell them I ran away, just let me be. And just incase you arn't convinced yet...and you think this is still a good home and that you are good parents... YOU married a pedophile. What? You dont believe me? Think im lying? Making it all up? Ask **A. R.** he used to grab and touch on her leg. Give us drugs or alcohol so we wouldn't tell or so he could take advantage of us. But for me it was worse then just touching, it was rape. So thank you mom for completely kicking up my life and the life I could of had. All I can hope is that you do my brothers better. Let me go, let me fix what little bit of a life I have left. And then maybe one day ill come back and visit you. But if you do call the cops everything in this letter will be told to them, along with the way you've been cheating the gov. on \$, the pills you do, or the drugs you sell. And even show them the videos I took of wall hitting me and the boys, and the videos

of y'all doing drugs. So Mom, make the smart choice so that you
dont lose your sons too. Because Rebecca and a few other people
got this EXACT same letter, so they all know everything thats
going on now too. Give the boys a life me and [A.R.] didnt get

Be smart Ana,

Because even if the police bring me back, ill just leave
it all behind and leave everything. Your choice.

[REDACTED]
J. H.

[REDACTED]
J. H.

p.s. .. I love you mom...

* tell the boys I love them and that im
sorry all this happened. And that ill
see them again someday *

* Read After other note *



anastasyn,

I figured maybe you deserved a little detail about our "terrific" father

Scotts been touching on me & grabbing on me rd shit since I was nine, and he did the same things to A.R. when it all started I didn't know it was wrong, he would get us high, or drink with us. And we "payed him back" by him touching us. He eventually stopped with A.R.... but when that happened he got even worse with me. When I figured out what was going on I told him to stop but he wouldn't. He refused, so I had tried to avoid him. But he went to you and told you he felt neglected. Then you forced me to spend time with him. He stopped for a few weeks but he started forcing me into doing things I didnt want. He started sticking his hand down my pants even when I fought him off and told him No and to stop. I kept threatening to tell you but he always said "Go ahead and tell, ill tell her you were forcing yourself on me and that you wanted it" He would always say youd believe him more then a liar anyways. And from that point it got worse. He would get mad at me if I didnt talk to him or do what he wanted, and those times are when he used his anger to get mad at me over stupid shit and why he used to hit me a lot. Then one day... it got worse...



last
year

You and [A.R.] had went to Sandys
to pick up the boys...

Scott was in the shower when yall
left and me I was in my room on the
phone.

Scott came up into my room just as I got
off the phone. He... was completely naked.
I started screaming at him to get out but
he wouldn't listen... he grabbed a shirt off
the floor and shoved it in my mouth.. climbed
ontop of me and ripped my pjs off. Then..
he raped me. When he finished all I could do
was lay there... crying.

Since that night he has raped me
2 times. Each time he said there was no
way you'd believe me over him. So... here I
am mom... telling you all this shit question
is... are you gonna bother to believe me...
cause im about 90% sure you want.

This is why im leaving and this is my
final goodbye.

Atleast make the boys have a good life,
God knows me and [A.R.] didnt. You lost
both daughters over him.

Good-Bye Forever!

[J.H.]

WITNESSES

Jack Johnson Horry County Police Department

Jernigan

DOCKET NO. 2016-GS-26-00861

**The State of South Carolina
County of Horry**

Martin D. Spratlin

15H05413

FILED
HORRY COUNTY

2016 FEB 23 AM 9:36

MELANIE S. BOGGS WARD
CLERK OF COURT

DATE RECEIVED FRG.

GRAND JURY

COURT OF GENERAL SESSIONS

FEBRUARY, 2016 TERM

ARREST WARRANT NUMBER

2015A2610202746

CDR: 0397 16-03-0655(C)

DOA: 11/16/2015

THE STATE

vs.

Scott Richard Rowan

W/ M

DOB: [REDACTED]

SSN: [REDACTED]

ATTORNEY: John M. Hilliard, III

ACTION OF GRAND JURY

TRUE BILL

Bob Harris

Foreperson of Grand Jury

Date:

FEB 18 2016

VERDICT

Indictment for

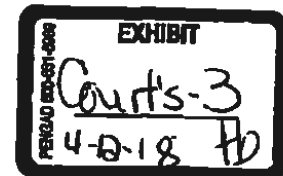
CRIMINAL SEXUAL CONDUCT WITH A MINOR,
SECOND DEGREE

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL



STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

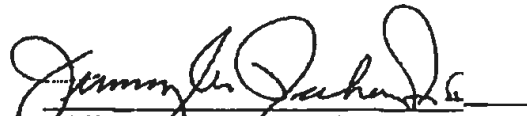
At a Court of General Sessions, convened on February 18, 2016, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE

CDR: 0397 16-03-0655(3)

That Scott Richard Rowan did in Horry County, State of South Carolina, on or about or between the dates of April 15, 2013 and ²⁰¹⁵ ~~September 18, 2015~~, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree by engaging in sexual battery with a minor who was at least fourteen (14) years of age but who was less than sixteen (16) years of age, to wit: **J. H.** whose date of birth is **██████████** and the Defendant was in a position of familial, custodial, or official authority to coerce the victim to submit or was older than the victim, in violation of Section 16-3-655(B)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON II
FIFTEENTH CIRCUIT SOLICITOR

736

WITNESSES

Jack Johnson Horry County Police Department

Signature

ARREST WARRANT NUMBER

2015A2610202747

CDR: 3661 16-03-0655(C)

DOA: 11/16/2015

ACTION OF GRAND JURY

TRUE BILL

Signature

Foreperson of Grand Jury

Date:

FEB 18 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-26- 00862

**The State of South Carolina
County of Horry**

Martin D. Spratlin

15H05413

COURT OF GENERAL SESSIONS

FEBRUARY, 2016 TERM

THE STATE

vs.

**Scott Richard Rowan
W/M**

DOB:
SSN:

ATTORNEY: John M. Hilliard, III

Indictment for

**CRIMINAL SEXUAL CONDUCT WITH A MINOR,
THIRD DEGREE**

Jimmy A. Richardson, II, Solicitor

**FILED
HORRY COUNTY**

2016 FEB 23 AM 9:36

**WELAN WIGGINS WARD
CLERK OF COURT**

DATE RECEIVED FROM

GRAND JURY

EXHIBIT
Court's-4
4-2-18

ORIGINAL

736

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on February 18, 2016, the Grand Jurors of Horry County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR – 3RD DEGREE
CDR: 3661 16-03-0655(C)

That Scott Richard Rowan being approximately thirty years of age, did in Horry County on or about or between the dates of ~~April 15, 2015~~ ^{May 9, 2015} and ~~September 18, 2015~~ ^{May 9, 2015}, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child, less than sixteen (16) years of age, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, in violation of Section 16-03-0655(C), S. S. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

COUNTY OF Horry VS. Scott Richard Rowan

INDICTMENT/CASE#: 2016GS2600861
A/W#: 2015A2610202746
Date of Offense: 9/18/2015
S.C. Code §: 16-03-0655(C)
CDR Code #: 0397

AKA: _____
Race: WHITE Sex: M Age: 33
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Criminal Sexual Conduct w/ Minor 2nd Degree < 16 (up to 20 yrs) CONVICTED OF or PLEADS

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 0397
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS §17-2-45
Mandatory GPS(CSC w/minor 1st or Lewd 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: Walter, Mary-Ellen SC103036 SC Bar# 2515
Walter, Mary-Ellen Defendant Walter, Mary-Ellen Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 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: 2016GS2600861
 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 the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 16-25-20
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 25 beginning 5/12/2033
\$ _____ paid to Public Defender Fund
Other: _____

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
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.75
TOTAL	\$ 128.75

Clerk of Court/ Deputy Clerk Renee Elvis
Court Reporter: Teresa Bautz
SCCA/217 (07/2016)

Presiding Judge Jean Burt
Judge Code: 0152
Sentence Date: 4/12/17

FILED
Horry County
2016 APR 12 PM 6:28
CLERK OF COURT
RENEE ELVIS

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

739

COUNTY OF Horry VS. STATE

Scott Richard Rowan

AKA:

Race: WHITE Sex: M Age: 33

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor, 3rd degree - Commit/Attempt Lewd act (victim under 16 yrs & actor over 14 yrs) 15yrs

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-2-45

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: Walter, Mary-Ellen SC103036 SC Bar# Defendant Attorney for Defendant SC Bar# 25-15

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 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 the 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 (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:

Table with 2 columns: Description and Amount. Includes items like § 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, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/cv, 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Renee Elvis

Court Reporter: Teresa Bautz

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016GS2600862 A/W#: 2015A2610202747 Date of Offense: 10/1/2015 S.C. Code §: 16-03-0655(C) CDR Code #: 3661

SENTENCE SHEET

CONVICTED OF or PLEADS Up to

in violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661

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: Walter, Mary-Ellen SC103036 SC Bar# Defendant Attorney for Defendant SC Bar# 25-15

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 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 the 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 (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:

Table with 2 columns: Description and Amount. Includes items like § 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, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/cv, 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Renee Elvis

Court Reporter: Teresa Bautz

SCCA/217 (07/2016)

days/hours Public Service Employment Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ 25.00 beginning 5/12/2033 \$ paid to Public Defender Fund Other:

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge Judge Code: Sentence Date: 4/12/12

FILED HORRY COUNTY 2016 APR 12 PM 6:28

STATE OF SOUTH CAROLINA

County of Horry County

Scott Richard Rowan

Full name and prison number (if any) of Applicant

SCDC# 375994

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020CP2406198

APPLICATION FOR

POST-CONVICTION RELIEF

2020 OCT 28 PM 5:57

RENEE M. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention SCDC - Broad River Correction

2. Name and location of Court which imposed sentence Horry County
General Sessions

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015 A 2610202 746
 - (b) 2015 A 2610202 747

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 4/12/2018

(b) 15 years concurrent

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty NO

(b) after a plea of not guilty yes

(c) after a plea of nolo contendere NO

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. Court of Appeals - General Sessions

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Submitted 4-1-2020

ii. filed 5-20-2020

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

10: lawyer did not call
all witnesses. dr. who examined
(victim) Detective who investigated
and took statements.

lawyer did not use all
evidence available. text messages
and pictures taken by detective.

11. lawyer did not call expert
after STD information was
entered into record.

NEHEC M. ELYNS
CLERK OF COURT
HORRY COUNTY, SC

OCT 28 PM 11: 57

FILED

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) lawyer did not call expert, detective to state
- (b) lawyer did not call witnesses for rebuttle
- (c) lawyer did not challenge testimony inconsistency

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) lawyer did not call expert to testify about STD
- (b) did not call rebuttle witnesses for testimony
- (c) did not call detective to question about police reports and testimony made

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. SCDC - Court of Appeals
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. SC Court of Appeals - 1220 Senate St.
 - ii. Columbia, SC 29211
 - iii. _____
 - iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes - John Hilliard
- (b) your trial, if any? yes John Hilliard
- (c) your sentencing? yes - John Hilliard
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes - David Alexander
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. John Hilliard
408 Cleland St, Georgetown, SC 29140
 - ii. David Alexander
1330 Lady St., Suite 401, Columbia, SC
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

clear my name, be released or new trial,
clear record.

20. Are you now under sentence from any other court that you have not challenged?

NO

2020CP2606198

STATE OF SOUTH CAROLINA)

VERIFICATION

County of

Horry

Scott Richard Rowan Jr.

I, [Signature], being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 21 day of October, 2020.

[Signature] (L.S.)
Notary Public

My Commission Expires: 7-27-2020

FILED
2020 OCT 28 PM 17:57
KEM... ELVIS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Scott R. Rowan, SCDC No. 375994

Applicant,

v.

State of South Carolina

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

) Case No. 2020-CP-26-06198

) RETURN

FILED
HORRY COUNTY
2021 MAR -4 P 1:30
RENEE N. ELVIS
CLERK OF COURTS
HORRY COUNTY, SC

NOW COMES Respondent, the State of South Carolina, in response to Applicant Scott R. Rowan's October 28, 2020 application for post-conviction relief. Respondent would respectfully show this Court:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for criminal sexual conduct with a minor, second degree and criminal sexual conduct with a minor, third degree by the Horry County Grand Jury at its February, 2016 term. John M. Hilliard, Esq., and Sara Brinson, Esq., represented Applicant and Assistant Solicitors Mary Ellen Water, Esq., and George Henry Martin, Esq., of the Fifteenth Circuit Solicitor's Office prosecuted the case. On April 9, 2018, Applicant proceeded to a jury trial before the Honorable Larry B. Hyman, Jr. The jury found Applicant guilty as indicted and Judge Hyman sentenced him to fifteen years on each charge, to be served concurrently.

Applicant filed a notice of appeal and David Alexander, Esq., perfected the appeal. William M. Blich, represented Respondent. On March 4, 2019, Applicant's counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), and requested to be relieved as counsel. Applicant presented the following issues:

1. Whether the trial judge erred in refusing to admit an email sent by the complainants' mother's divorce attorney that wrongfully accused appellant of giving Complainant 1 and her mother a sexually transmitted disease?

Applicant filed a *pro se* response to the *Anders* brief, stating that his name was improperly stated on the record, that the trial judge continually cut off his lawyer's midsentence, that the judge improperly denied a request to set aside the conviction because the witnesses against him were lying under oath, and that the judge improperly excluded expert testimony regarding Applicant's transmission of sexually transmitted diseases to one of his victims. Applicant's appeal was dismissed without oral arguments via unpublished opinion. Op. No. 2020-UP-142 (S.C. Ct. App. filed May 20, 2020). The remittitur was sent on July 8, 2020.

II. FACTUAL HISTORY

Applicant's stepdaughters testified at trial that he would watch them undress when they were young children. (App. 181, 20 – App. 182, 9; App. 344, 9 – App. 345, 7). Applicant began groping his stepdaughters and giving them drugs. (App. 186, 8-23; App. 187, 15-23; App. 348, 10 – App. 351, 17). Resistance led to punishments, threats, and physical abuse. (App. 187, 5-9; App. 351, 23 – App. 352, 20). The sexual abuse progressed to forced oral sex, masturbation, and vaginal penetration. (App. 188, 3 – App. 188, 18). At times Applicant would withhold food from his stepdaughters after violently raping them. (App. 191, 13 – App. 192, 16). Applicant infected one of his stepdaughters with a sexually transmitted disease. (App. 200, 17-21).

III. CURRENT APPLICATION

In his present application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons (verbatim):

1. Lawyer did not call expert, deetective to stand
 - a. Lawyer did not call expert to testify about STD
2. Lawyer did not call witnesses for rebuttle
 - a. did not call rebuttle witnesses for testimony

3. Lawyer did not challenge testimony inconsistency
 - a. did not call detective to question about police reports and testimony made.
4. Lawyer did not call all witnesses. dr. who examed (victim) Detective who investigate and took statements. Lawyer did not use all evidence available. Text messages and pictures taken by detective.
 - a. Lawyer did not call expert after STD information was entered into record.

In his prayer for relief, Applicant requests the following (verbatim):

1. Clear my name, be released or new trial, clear record.

Attached and incorporated herein are the Horry County Clerk of Court's records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript and records from Applicant's direct appeal, and the current application for post-conviction relief. Respondent reserves the right to alter or amend this return upon receipt of any relevant materials.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Respondent interprets Applicant's claims to consist of four allegations of ineffective assistance of counsel, stemming from his trial counsel's alleged failure to call certain witnesses, properly challenge certain testimony, and effectively utilize certain evidence. Respondent asserts that these allegations are without merit.

In a PCR action, the petitioner bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When a petitioner asserts ineffective assistance of counsel as a ground for relief, the petitioner must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Bulter*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland*.

Pursuant to the first prong of the *Strickland* analysis, the petitioner must prove defense counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the petitioner must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688; see also Rule 71.1(e), SCRCPP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the petitioner so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52 (1985). The "prejudice prong ordinarily requires more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial." *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). "A guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed." *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)). "Indeed, where a thorough colloquy is conducted, courts must exercise caution in setting aside the guilty plea." *Garren v. State*, 423 S.C. 1, 12, 813 S.E.2d 704, 712 (2018); See *Jamison v. State*, 410 S.C. 456, 469-71, 765 S.E.2d 123, 129-30 (2014) (observing that "guilty plea[s] must be treated as final in the vast majority of cases" and instructing that caution must be exercised so as not to "undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea").

These standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Respondent submits that these allegations are without merit. Nevertheless, the allegations may raise a question of fact that which cannot be conclusively refuted by the record. Therefore,

Respondent requests that an evidentiary hearing be held to fully resolve these claims. *Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983); *Delaney v. State*, 269 S.C. 555, 238 S.E.2d 679 (1977).

V. ALL FUTURE AMENDMENTS, INVOCATION OF DISCOVERY

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's court-appointed attorney is the only individual authorized to file amendments to this application, given her representative capacity. Rule 11(a), SCRPC. *Pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not accepted unless submitted by counsel").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. See *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); see also Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant

to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VI. ALL OTHER CLAIMS DENIED

Each and every other allegation in Applicant's PCR application not explicitly admitted, qualified, or explained in this Return is hereby denied by Respondent.

VII. CONCLUSION

WHEREFORE, Respondent respectfully requests that the Court hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

WILLIAM H. RAY
Assistant Attorney General

By: /s/ William H. Ray
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211

March 3, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTEENTH JUDICIAL)
CIRCUIT)

Scott D. Rowan, #375994)

Case No.: 2020-CP-26-06198)

Applicant,)

v.)

Certificate of Service by Mail)

State of South Carolina)

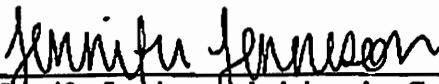
Respondent,)
_____)

FILED
HORRY COUNTY
2021 MAR -4 P 1:30
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher R. Geel, Esquire
Geel Law Firm, LLC
PO Box 21771 (29413)
Charleston, SC 29413

DATED this 3rd day of March, 2021.




Jennifer Jennison, Administrative Coordinator
For Respondent

State of South Carolina Horry County Scott Rowan v. State of South Carolina	In the Court of Common Pleas For the Fifteenth Judicial Circuit Case No(s): 2020-CP-26-06198 AMENDED PCR APPLICATION
---	--

COMES NOW the Applicant, by and through undersigned Counsel, and hereby amends his pending PCR application to include the following grounds for relief. Trial counsel was constitutionally ineffective pursuant to *Strickland v. Washington* as follows:

1. Failure to object to improper "search for truth" jury instructions. (Tr. 151-153).
2. Failure to object to improper "golden rule" argument by the prosecution. (Tr. 168-69).
3. Failure to object to the presentation of Complainant 1's "runaway letters," written statements that Complainant 1 made 6-7 months before running away from home. These letters were admitted as substantive exhibits at trial (State's Ex.'s 1-3) with no objection from trial counsel. (Tr. 199-205).
4. Failure to object to improper vouching/bolstering testimony. (Tr. 260, 314).
5. Failure to object to improper bad-character evidence, and evidence of prior bad acts by defendant that were not admissible under Rule 404(b). (Tr. 408, 412).

On this day, November 23, 2022 it is
 RESPECTFULLY SUBMITTED,


 Christopher R. Geel
 Geel Law Firm, LLC
 P.O. Box 21771
 Charleston, SC 29413
 843-277-5080

CERTIFICATE OF SERVICE: I hereby certify that I have served a copy of this document upon the Attorney General's Office via U.S. Mail, on this day, November 23, 2022.

FILED
 HORRY COUNTY
 2022 NOV 30 P 12:23
 RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
COUNTY OF Horry CASE NO.: 2020-CP-26-06198

CERTIFIED ORIGINAL

November 30, 2022

BEFORE: The Honorable H. Steven DeBerry, IV

SCOTT ROWAN,
Applicant,

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.

APPEARANCES:

Christopher R. Geel, Esq.
Appearing for the Applicant.

Chelsey F Marto, Esq.
Appearing for the Respondent.

Natalie Dahl, RPR
Registered Professional Reporter,
State of South Carolina Official Court Reporter

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESSES:

SARA A. BRINSON, ESQ.
 Direct Examination by Ms. Marto..... 6
 Cross Examination by Mr. Geel..... 14

MARY-ELLEN WALTER, ESQ.
 Direct Examination by Ms. Marto..... 31
 Cross Examination by Mr. Geel..... 37

GEORGE HENRY MARTIN
 Direct Examination by Ms. Marto..... 41
 Cross Examination by Mr. Geel..... 45

EXHIBITS

EXHIBIT NO.	MARKED	ADMITTED
(None admitted)		

NOTE: Pursuant to Rule 607 (h) (1) (B), SCACR "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER

1 **PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED**
2 **TRANSCRIPT." All requests for a copy of the**
3 **enclosed transcript shall be sent to Natalie Dahl,**
4 **P.O. Box 762**
5 **Conway, SC 29526**

6 P-R-O-C-E-E-DI-N-G-S

7 MS. MARTO: Your Honor, this is Scott Rowan
8 versus State of South Carolina, 2020-CP-26-06198.
9 He is presently confined in the South Carolina
10 Department of Corrections. He was indicted for
11 second degree criminal sexual conduct with a minor,
12 and third degree criminal sexual conduct with a
13 minor in February of 2016. He was represented by
14 Mr. John Hilliard and Sara Brinson. Assistant
15 Solicitors Mary-Ellen Walter and George Henry
16 Martin prosecuted the case.

17 On April 9, 2018, it proceeded to trial
18 before Judge Hyman. He was found guilty as
19 indicted and sentenced to 15 years on each charge,
20 sentences running concurrently. He filed a Notice
21 of Appeal, which was perfected by David Alexander.
22 Counsel filed an Anders brief, and then Applicant
23 filed a pro se response. The appeal was dismissed,
24 and the remittitur sent July 8, 2020. The
25 application was filed October 28, 2020. The
State's return made March 3, 2021.

With that, I'll turn it over to Mr. Geel.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 THE COURT: Mr. Geel.

2 MR. GEEL: Thank you, Judge. First things
3 first, I filed an -- I have an amended application
4 in this case as well. Can I approach with a copy?

5 THE COURT: Sure. Thank you.

6 MR. GEEL: Just to outline the issues very
7 briefly, this case stems from an alleged sexual
8 assault by my client, who is the step-father of two
9 alleged female victims, who are sisters. The older
10 alleged victim graduated high school around the
11 time the abuse took place and eventually moved out.
12 The younger alleged victim remained in the house
13 and eventually ended up running away from home.

14 One of the things -- and I'll touch on this
15 briefly -- that we raise in our application is that
16 the younger alleged victim left a series of notes
17 detailing her claims about the alleged abuse when
18 she ran away, and those letters were admitted as
19 substantive exhibits at trial. That is one of the
20 things that we raised as, sort of, a third
21 enumeration of error.

22 The first two are very straightforward, those
23 are simply: A "search for the truth" in the jury
24 instruction, and the Golden Rule argument by
25 prosecution. We'll touch on those with the State's

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 witnesses. They are fairly straightforward, as
2 well as our fourth enumeration, which is vouching
3 and bolstering testimony from the alleged victim's
4 mother and another witness.

5 And then, lastly, the trial counsel's failure
6 to object to bad character evidence. There was a
7 lot of testimony that was inadmissible under
8 404(b), in our view, but in particular the two
9 examples we cited deal with allegations that my
10 client was physically abusive, violent, and other
11 things, which we'll detail.

12 So all of our issues that we've raised here
13 deal with simply failure of trial counsel to
14 object. Since the time of trial, trial counsel is
15 deceased, and I believe we have second chair
16 counsel here today. So as our enumerations of
17 error here are grounds for relief, all deal with
18 failure to object. We don't have any evidentiary
19 presentation, just argument. I believe that the
20 State intends to call the second chair counsel and
21 potentially some of the prosecution team to get
22 testimony about the issues.

23 With that, I'll turn it over to Ms. Marto.

24 MS. MARTO: Yes, Your Honor. The first
25 witness we call is Sara Brinson.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 (SARA BRINSON, having been duly sworn,
2 testified as follows:)

3 THE WITNESS: Sara Brinson.

4 **DIRECT EXAMINATION**

5 **BY MS. MARTO:**

6 **Q** You were involved in the underlying criminal
7 charges, correct?

8 **A** I mean, I worked with John Hilliard, who was
9 the defense attorney, yeah.

10 **Q** So you were second chair?

11 **A** Yes.

12 **Q** And what was the extent of your involvement
13 in that role?

14 **A** Um, I helped John prepare for the trial, and
15 I argued one motion, and that was it.

16 **Q** It was you and Mr. Hilliard that discussed
17 trial strategy?

18 **A** Yes.

19 **Q** Did you have discussions about the trial
20 while it was ongoing?

21 **A** Yes.

22 **Q** And you were present for the whole trial?

23 **A** Yes.

24 **Q** Now, do you have a copy of the transcript up
25 there by chance?

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **A** Not up here with me.

2 **Q** Here. If you could, turn to Page 151,
3 please.

4 **A** Okay.

5 **Q** If you could, briefly review that through
6 Page 153 to yourself.

7 **A** (Witness examines document.)

8 (A brief pause in the proceedings.)

9 **Q** From those jury instructions, did you glean
10 "search for the truth" language?

11 **A** Yes.

12 **Q** Did you discuss that with Mr. Hilliard, the
13 jury charge or anything of that nature, leading up
14 to it or during it?

15 **A** Yes. I don't really remember exactly what we
16 discussed.

17 **Q** Do you think that that language was
18 permissible?

19 **A** Yes.

20 **Q** Did you see a basis for objecting to that
21 language?

22 **A** No.

23 **Q** In your professional opinion, do you think
24 that language impacted the trial result and
25 outcome?

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **A** No.

2 **Q** Taking a step back, can you kind of give us a
3 brief rundown of what the evidence was in this
4 case; do you recall?

5 **A** It has been awhile, so I don't remember a ton
6 of specifics, but the gist is that, basically, it
7 was he said/she said. There wasn't a video or
8 eyewitness or a lot of physical evidence or
9 anything like that. It was mainly the two
10 complainants' witness testimony and supporting
11 testimony from Dr. Rahter and their mother, and
12 that was about it.

13 **Q** Do you recall what narrative was given with
14 people leaving the home or telling other
15 individuals about the abuse, a disclosure?

16 **A** Yes.

17 **Q** Do you recall when that disclosure ultimately
18 came about?

19 **A** Well, from briefly reviewing the transcript,
20 it seemed like -- the crux of our case was that a
21 lot of her testimony was very inconsistent. She
22 said that, you know, that the abuse started when
23 she was relatively young, 12, 13, 14, somewhere in
24 there, and it kind of changed a little bit. Then
25 she did not disclose anything until, I think, she

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 was 16, if I'm not mistaken.

2 Q Was that abuse, do you recall, an isolated
3 incident or ongoing?

4 A She claimed it was ongoing.

5 Q If you could, flip to 168 to 169.

6 A Okay.

7 Q Just briefly, review those pages to yourself.

8 A (Witness examines document.)

9 (A brief pause in the proceedings.)

10 A Okay.

11 Q I guess starting with Line 24 on Page 168, it
12 says: "Now take a step further, imagine you are
13 here today in this setting, in this courtroom, in
14 that chair talking to 14 total strangers who you
15 never met before, who don't know the personal
16 details of your life and having to talk to them
17 about inmate details of your sex life."

18 Do you recall that opening statement?

19 A I do.

20 Q And did you think that, I guess, effectively
21 asking the jury to step in the victim's shoes was
22 permissible at the time?

23 A I thought it was objectionable, and I do
24 remember talking to John about this, about why he
25 did not object. He told me that he thought -- he

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 said if they can do it, then we can do it. He
2 thought the benefit of being able to do it in his
3 opening statement outweighed the benefit of
4 objecting to it in Mr. Martin's opening statement.

5 **Q** So his strategy was, basically, giving the
6 State more leeway so it would be returned?

7 **A** Yes.

8 **Q** Now, if you could, turn the Page 199 to 205
9 with me. This mainly deals with the runaway notes
10 that were entered in that trial; do you recall
11 those?

12 **A** Yes.

13 **Q** Do you remember them being entered at trial?

14 **A** Yeah, vaguely.

15 **Q** Did you think that those were inadmissible at
16 trial?

17 **A** So I think we could have objected to them,
18 and that was kind of part of our strategy, was not
19 objecting to them, letting them come in so John
20 could cross examine the witnesses about them.
21 Because, really, our strategy was trying to show
22 the inconsistencies in the alleged victim's
23 statements. They were kind of all across the
24 board, and the notes were part of that. She said
25 things in the note that John got her to say were

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 not true, that she had lied about on the stand. So
2 that was part of the trial strategy.

3 Q So you thought the notes could have been
4 favorable to you all for impeachment?

5 A Yes.

6 Q Do you recall any alleged, I guess, improper
7 bolstering of the victims by chance?

8 A I don't.

9 Q If you could, turn to Page 260 for me. What
10 this basically talks about is someone engaging in
11 self-mutilation; is that correct?

12 A Yes.

13 Q Do you recall testimony from Ms. Rahter about
14 self-mutilation?

15 A I don't recall it specifically, but I can
16 read the transcript.

17 Q Okay. If you could just review that page.

18 A Okay. (Witness examines document.)

19 (A brief pause in the proceedings.)

20 Q Upon review, do you review that as, I guess,
21 improperly bolstering the victims?

22 A No.

23 Q So you don't see a reason to object on that
24 basis?

25 A I think that's one of those you can argue it

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 either way. I think it was probably strategy on
2 John's part to just let it come in.

3 Q Did you all have any discussions about that?

4 A I can't remember if we did or not.

5 Q And then, again, on Page 314, starting with
6 Line 8, if you could review that to yourself.

7 A Okay.

8 Q Upon review, do you view that as improperly
9 bolstering the victim's --

10 A No.

11 Q So there is no reason to object on that
12 basis, in your opinion?

13 A No. And, I mean, that was kind of part of
14 our argument, was the issue with the sexually
15 transmitted diseases. We were not able to do our
16 testimony and lay out our expert witness the way we
17 wanted to because the judge sort of forced John to
18 lay out our trial strategy in preliminary motions.

19 But the idea that, you know, that the mother
20 and daughter had two sexually transmitted diseases.
21 At one point in time, they alleged that both came
22 from Scott, and Scott had neither of those, and we
23 could prove that he never had one, and that if
24 Scott was sleeping with both of these people at the
25 same time, logically you expect them to have the

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 same STD and for him to also have those, and they
2 didn't. So that was part of our trial strategy.

3 **Q** Do you recall admission of prior bad acts or
4 bad character evidence at trial?

5 **A** No.

6 **Q** Can you flip to Page 408 for me, please,
7 starting with Line 16. If you could, read that
8 until the end of the page.

9 **A** (Witness examines document.)

10 (A brief pause in the proceedings.)

11 **Q** And then it carries over onto Page 409, okay.

12 Do you recall admission of physical violence
13 by Mr. Rowan coming out at trial?

14 **A** Admission by him?

15 **Q** Admission of that evidence by the State.

16 **A** I don't really remember, but it looks like it
17 happened.

18 **Q** Do you think that was objectionable?

19 **A** I guess -- I don't really know. I mean,
20 potentially, yes, but there could be reasons to not
21 object to it.

22 **Q** Do you recall any discussions about that with
23 Mr. Hilliard?

24 **A** I don't recall specifically this portion of
25 the testimony and talking about why he didn't

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 object, but I remember part of our narrative is
2 that Scott had been made out to be, you know, the
3 disciplinarian in the family. They made him out to
4 be this big, bad guy and that that was the real
5 reason she was acting out and making these
6 allegations, because they just didn't like him
7 because he was the authoritarian in the household.

8 So that could have been a factor in why John
9 would not have objected to that.

10 Q And then, again, on Page 412 starting at
11 Line 6, and it carries over to the next page on
12 Line 7.

13 Do you recall more evidence of physical
14 abuse, as you said, being the disciplinarian?

15 A Yes.

16 Q And you think Mr. Hilliard may not have
17 objected for similar reasons as on Page 408?

18 A Yes.

19 MS. MARTO: No further questions.

20 **CROSS EXAMINATION**

21 **BY MR. GEEL:**

22 Q Just let me know if you have trouble hearing
23 me.

24 A Okay.

25 Q Let's go back through some of these in

1 sequence to make sure that I have your testimony
2 correct.

3 As to the initial jury instruction regarding
4 the "search for the truth," is it your testimony
5 that you don't believe there is any basis to object
6 to that instruction?

7 **A** I mean, not that I can recall or think of
8 now, no.

9 **Q** So as you sit here today, you can't identify
10 any strategic reason for not objecting to that
11 instruction? It is not objectionable to begin
12 with; is that fair to say?

13 **A** Yes.

14 **Q** As to the remarks by the prosecution on Page
15 168 that Ms. Marto took you through, Lines 14
16 through 25, the prosecutor was talking to the jury:
17 "I want to ask you something, you all here today.
18 While all of this is going on, your job is going to
19 be watching what takes place here on this witness
20 stand, nothing else. Imagine for a second that
21 you're doing that, how difficult and how
22 embarrassing it would be to talk with a member of
23 your family or your closest friends, people who
24 have known you for a very, very long time, they
25 know all of your dark secrets and to talk to them

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 about your personal intimate details of your sex
2 life.

3 Now take that a step further and imagine that
4 you are here today, in this setting, in this
5 courtroom, in that chair talking to 14 total
6 strangers who you have never met before. We don't
7 know the personal details of your life, and having
8 to talk with them of the intimate details of your
9 sex life.

10 Now take it one step further where you are in
11 here today, in that seat, talking to 14 total
12 strangers about how your step-father
13 inappropriately touched you, kissed you -- pardon
14 me -- your first kiss, fondled you, and raped you.
15 Sure there is going to be some nervous laughter,
16 but there is going to be some uncomfortable moments
17 for all of us. I want you to think about that."

18 So, you testified, I believe, and correct me
19 if I'm wrong, that you considered that maybe that
20 was an objectionable remark by the prosecutor?

21 **A** Yes.

22 **Q** And would you agree that it's the Golden Rule
23 type of argument, asking the jury to put themselves
24 in the shoes of the alleged victim?

25 **A** Yes.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 Q And based on your training and experience,
2 such arguments and remarks are not proper, correct?

3 A Yes.

4 Q Golden Rule arguments?

5 A Yes.

6 Q And you testified that you talked with John
7 about that, and that he indicated that he wanted to
8 do it as well?

9 A Yes.

10 Q What can you elaborate on that? I mean, if
11 you know, what did he mean by that?

12 A Well, he could have objected to Mr. Martin
13 saying to put yourself in the shoes of the victim,
14 but John wanted to be able to say put yourselves in
15 the place of the defendant, and he did do that in
16 his opening statement as well. So it was a
17 if-they-can-do-it-I-can-do-it, and he thought that
18 was more beneficial than objecting when Mr. Martin
19 did it.

20 Q And were those discussions you had at the
21 time, or was that in trial prep; do you remember?

22 A That was after the fact. I mean, we didn't
23 know he was going to do that in his opening
24 statement until he said it, so.

25 Q Were you surprised by this remark?

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **A** Yes.

2 **Q** Was John, as far as you know?

3 **A** Yes. I think he was because I remember us
4 looking at each other like (indicates).

5 **Q** You are making a puzzled face, confused face?

6 **A** Yes. Yes. I'm sorry.

7 **Q** All right. So moving to the runaway letters.
8 Just to make sure that we're completely clear, to
9 your recollection, these are letters written by the
10 younger complaining witness, slash, alleged victim?

11 **A** Yes.

12 **Q** That she left behind when she ran away?

13 **A** Correct.

14 **Q** And the record will speak for itself, but to
15 your recollection, did these detail some of the
16 alleged abuse in this case?

17 **A** Correct.

18 **Q** The charges themselves, the, sort of, facts
19 and circumstances of this case?

20 **A** Yes.

21 **Q** And John elected those to be admitted?

22 **A** I don't remember us discussing that in
23 particular, but from reviewing the transcript and
24 from reviewing John's cross examination, I think I
25 recall us talking about -- our overall narrative

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 was her testimony is very inconsistent in general,
2 and our angle was kind of to impeach her and make
3 it seem like she would say whatever, at whatever
4 time, to get what she wanted. The inconsistencies
5 between those statements she made in the letters
6 and what John was able to get her to say on the
7 stand, that contradicted it, I think that is why he
8 let it in.

9 **Q** But just to be clear, and I know you are not
10 necessarily saying this, but you are speculating a
11 bit as to why John might have done that?

12 **A** Correct.

13 **Q** You didn't specifically discuss this, or you
14 don't recall doing so?

15 **A** I don't recall. We might have. It was a
16 long time ago.

17 **Q** And don't let me put words in your mouth, but
18 you are talking more broadly about the trial
19 strategy of highlighting inconsistencies in her
20 version of events?

21 **A** Yeah. I mean, I remember us discussing that,
22 overall trial strategy. I don't remember us
23 discussing, in particular, as it relates to those.
24 We might have, I just don't recall.

25 **Q** As you sit here today, do you have an opinion

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 as to whether a lawyer trying this case could pose
2 an objection to these letters being admitted?

3 **A** I mean, I think you could, but I can also see
4 the reason not to and to let them in.

5 **Q** Sure. We agree that a lawyer could elect not
6 to object to evidence that is objectionable?

7 **A** Yes. Yes.

8 **Q** But you agree there is a basis to object to
9 the letters; I mean, it's hearsay or something
10 along those lines?

11 **A** Yes.

12 **Q** And the witness is testifying and her own
13 written statement is coming in, so there is several
14 bases you could argue for this not being
15 admissible; would you agree?

16 **A** Yes.

17 **Q** In terms of impeaching her and asking her
18 questions about the case, if you recall discussing
19 with John, can you opine about a way she could have
20 been impeached without having the letters being
21 admitted, like as substantive exhibits?

22 **A** I don't remember. There was so many
23 different things in that case of statements she
24 made to other people. I know we came at it from
25 several different angles. We were not necessarily

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 successful at all of them, but....

2 **Q** Prior to this, and since that time, have you
3 been involved in a lot of criminal trials? What
4 percentage of your practice is criminal, if you had
5 to guess?

6 **A** Like, zero.

7 **Q** What kind of cases do you normally work on,
8 generally?

9 **A** My experience, up to that point, and
10 continuing on for several years, was primarily
11 family law. And then I recently switched to civil
12 practice, and this year I switched to being
13 in-house counsel, so now I do no trials.

14 **Q** Prior to moving in-house, did you have
15 occasion to do a lot of direct and cross
16 examinations of witnesses at trial? Did you have a
17 lot of trial practice, or no?

18 **A** No, I did not have a lot of trial practice.
19 My experience would have been mainly examining
20 witnesses in depositions.

21 **Q** And so John was lead counsel and the one that
22 would have handled the nuts and bolts of
23 cross-examining witnesses?

24 **A** Yes.

25 **Q** Let's turn to the issue of the alleged

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 bolstering. If you could, flip to Page 259 -- I'm
2 sorry, 260. For the purposes of the record, this
3 is the testimony of Carole Ann Rahter, R-A-H-T-E-R.

4 **A** Rahter.

5 **Q** And she's the medical director of the
6 Children's Recovery Center; is that consistent with
7 what you recall?

8 **A** Yes.

9 **Q** And this witness interviewed one of the
10 complaining alleged victims in this case?

11 **A** I believe so.

12 **Q** Or dealt with the investigation, let's put it
13 that way.

14 **A** The interviews I remember watching were, I
15 think, handled by some person at the CRC, but....

16 **Q** And so during Ms. Rahter's testimony, Line 3
17 of Page 260, the question was: "Did the fact that
18 you saw self-mutilation scars have any importance
19 in your mind?"

20 Let me pause there. To be clear, is it
21 consistent with your recollection that seeing
22 self-mutilation scars, that is observing them on
23 the alleged victim?

24 **A** From the transcript, that appears to be the
25 context in which she said it, yeah.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 Q And the answer is: "Yes, it does."

2 Then the question is: "Can you tell us why
3 this is important?"

4 And the answer is: "Self-mutilation is
5 something that adolescents and young adults do when
6 they are trying to alleviate something that's
7 bothering them, because it makes them feel better
8 and release that pain. Children who have been
9 victims of abuse frequently have a pattern of
10 behavior. Self-mutilation is one of them. Sexual
11 promiscuity is one of them. Running away, drugs
12 and alcohol, getting pregnant, trouble with the
13 court, all of those things are things that we see
14 in children and young adults that have experienced
15 sexual trauma; that is why we look at the whole
16 body."

17 So, first of all, let's back up here.
18 Bearing in mind that you haven't tried a lot of
19 criminal cases, do you have an opinion whether a
20 witness like this can offer their opinion as to
21 whether -- let me rephrase.

22 This witness is indicating that she observed
23 self-mutilation scars on the alleged victim, right?

24 A Right.

25 Q Do you have an opinion here as to whether a

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 witness can speculate that that means that they
2 have been abused, for example?

3 **A** I don't.

4 **Q** You have no opinion one way or the other?

5 Did you discuss that issue with John?

6 **A** I can't recall.

7 **Q** As you sit here today, do you recall having
8 any discussions about this testimony at all or
9 trying to keep it out or trying to object; can you
10 recall anything independently here?

11 **A** I know we talked about Dr. Rahter's expected
12 testimony, but I don't remember the content of
13 those conversations.

14 **Q** Do you recall, whether it is "bolstering" or
15 "vouching," ever coming up in your discussions with
16 John, those two specific terms?

17 **A** I don't.

18 **Q** Is it fair to say you all had some pretty
19 lengthy discussions about the trial in this case
20 and trial prep?

21 **A** We did. Dr. Rahter's testimony wasn't really
22 one of them. He hired an outside counsel to help
23 with doing some of the motions.

24 **Q** Some of the what?

25 **A** Motions.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 Q Motions, okay.

2 A I think that was one of the issues that he
3 kind of pow-wowed with outside counsel on, more so
4 than me.

5 Q As you sit here today, and we don't have to
6 go line by line, but you can't identify any
7 strategic basis for not objecting or for John not
8 objecting, as you sit here?

9 A I mean, it would be speculation, but I could
10 see John letting it in just as a way to kind of
11 establish the instability of the witness that she
12 was acting out.

13 Q You mean the alleged victim?

14 A Yeah, alleged victim.

15 Q But just to circle back on it, in your
16 discussions with preparing this case and
17 potentially this witness as well, you don't recall
18 any discussions with John wherein the words
19 "bolstering" or "vouching" came up?

20 A I don't remember that specifically, no.

21 Q And then, lastly, if you wouldn't mind, turn
22 to Page 408, Line 16. Are you on Page 408?

23 A Yes.

24 Q You said you were afraid to talk to her --
25 pardon me. This is the testimony of the -- one of

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 the alleged victims. The question is: "You said
2 you were afraid to talk to her, and I think Counsel
3 also asked about physical abuse, so did you ever
4 see the defendant be physically abusive towards
5 anyone in the home?"

6 And the answer is: "Yes."

7 Let's pause there. The defendant was on
8 trial for alleged sexual assaults, correct?

9 **A** Yes.

10 **Q** So if there is also physical abuse, do you
11 have an opinion as to whether that should be
12 properly admitted at trial if there is separate
13 instances of physical abuse?

14 **A** I don't.

15 **Q** You have no opinion one way or the other?

16 **A** No.

17 **Q** Do you recall discussing that with John?

18 **A** I don't recall that I specifically discussed
19 that testimony. Like I said before, I remember us
20 talking about that overall narrative of them making
21 Scott out like the bad guy, so that could have been
22 why John did not object.

23 **Q** Let me ask you to assume that this was
24 objectionable. Can you identify, based on your
25 conversations with John and your recollection of

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 the trial, any reason for not objecting to this
2 particular piece of testimony about prior abuse?

3 **A** I think what I said before, that would have
4 been it, that they made him out to be this bad guy
5 and had blown up his -- what we could consider in
6 the realm of, like, normal discipline, to be abuse.
7 But that was their characterization of it, and I
8 did not read in depth through the rest of the cross
9 examination of that, so I'm not sure if John
10 circled back to handle it or not.

11 **Q** Go to Line 21 where it says: "Can you
12 describe that for us?" And "that" being physical
13 abuse.

14 Answer: "There was one instance in
15 particular, when I was younger, and he was on drugs,
16 he slapped my baby brother, who was only about one
17 or two years old, so hard in the face that he left a
18 purple hand mark across his face. There were
19 instances where if you got in his face, like what he
20 considered to be getting in his face, which would be
21 either just stating anything -- like if he said the
22 color is blue, and you're like, well, I think it's
23 purple, that was considered being in his face and
24 talking back. He would just slap you in the face.
25 There were instances where he threw things at us.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 He threw objects at us. Remote controls, whatever
2 was next to him, he would inevitably throw it at
3 you. There were instances where I've seen him in
4 the corner and my mom would get in her face, but my
5 mom is pretty tough, so my mom would always push
6 back and fight back. There were instances where he
7 slapped my sister and grabbed her by the hair and
8 thrown us around. There were multiple instances
9 where he was physical with us, yes."

10 Again, I mean, this is a litany of unrelated
11 physical violence, is what she's testifying about;
12 you would agree?

13 **A** I don't know that it is unrelated, but
14 physical violence, yes.

15 **Q** She didn't specify when any of these things
16 took place?

17 **A** Correct.

18 **Q** And there weren't any elements of the charges
19 of the offenses that involved any of the conduct
20 described in the testimony I just read; you would
21 agree?

22 **A** Not that I can recall.

23 **Q** These were sexual assaults that were alleged,
24 correct?

25 **A** Correct.

1 Q And what we are seeing described here is
2 assaults; in particular, one assault against a
3 one-and-a-half-year-old baby?

4 A I don't know how old the little brother was
5 at that point, but....

6 Q Well, according to her, she says: "He
7 slapped my baby brother, who was only one or two
8 years old." That is on Page 408.

9 A Okay. Yes.

10 Q And my client wasn't charged with anything
11 like that, correct?

12 A No.

13 Q I mean, at minimum, there was a relevance
14 objection that could have been made, right? You
15 agree?

16 A I suppose so.

17 Q Now, piggy-backing on the prior line of
18 questioning, in your discussions with John in
19 preparation for the trial, do you recall bringing
20 up these kinds of allegations?

21 A Maybe. I know that we knew that these
22 allegations were out there, I think based on some
23 of the evidence that had been provided by the
24 prosecution, so I just can't remember exactly what
25 we talked about.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **Q** Is it fair to say that as you sit here, you
2 can't point to any strategic reason for John not
3 objecting to this particular testimony? You are
4 just not sure?

5 **A** If I had to guess, I think the strategic
6 reason would have been -- like I said, John flipped
7 what they called "abuse" as him being the
8 disciplinarian in the household and that the mother
9 let them do whatever they wanted. So him being the
10 disciplinarian, they didn't like him, they thought
11 he was mean, et cetera, et cetera. So I think he
12 would have taken this and tried to flip it through
13 that lens.

14 **Q** Fair enough. So you are guessing when you
15 say that? I mean, it is just an educated guess,
16 correct?

17 **A** Yes, because I don't remember talking to John
18 specifically about that.

19 MR. GEEL: Thank you, Judge.

20 MS. MARTO: No further questions, Your Honor.

21 THE COURT: All right. Thank you for being
22 here. You are welcome to go.

23 MS. MARTO: Our next witness is Mary-Ellen
24 Walter.

25

1 (MARY-ELLEN WALTER, having been duly sworn,
2 testified as follows:)

3 **DIRECT EXAMINATION**

4 **BY MS. MARTO:**

5 **Q** Good morning.

6 **A** Good morning.

7 **Q** So you were the prosecutor on this case,
8 correct?

9 **A** Yes.

10 **Q** Do you recall when you became involved in the
11 matter?

12 **A** Not without looking at the red file.

13 **Q** Did you inherit it from another prosecutor?

14 **A** Likely I did, because the indictment is from
15 2016, and I wasn't barred in South Carolina until
16 2017.

17 **Q** And were you first chair for the State at the
18 trial?

19 **A** Yes.

20 **Q** And you were present for the whole trial,
21 correct?

22 **A** Yes.

23 **Q** And what effectively was the State's, I
24 guess, theory of the case at trial?

25 **A** That the defendant raped and molested his two

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 step-daughters.

2 Q And most of the allegations being raised
3 today deal with the transcript, so I'm going to
4 request you to flip to Page 151.

5 Do you recall the "search for the truth"
6 language being given by the Court during the
7 initial jury instructions?

8 A Not specifically.

9 Q If you could, read 151 to 153 to yourself,
10 just skim it over.

11 A I have looked at it before, so I just want to
12 refresh my recollection. (Witness examines the
13 document).

14 Q Do you see "search for the truth" language
15 being used by the Court there?

16 A Not that really jumps out at me in the
17 context of the entire charge.

18 Q Do you think anything in that charge
19 concerning potential "search for the truth" was
20 objectionable at that point?

21 A Again, not in the context of the entire
22 charge.

23 Q And in the context of the entire charge, do
24 you think any potential use of that language made
25 an impact?

1 **A** No.

2 **Q** And you didn't handle opening statements?

3 **A** Correct.

4 **Q** Did you discuss the opening statement with
5 Mr. Martin?

6 **A** I'm sure we did. We tend to discuss every
7 aspect of the case.

8 **Q** Do you recall the Golden Rule argument being
9 presented during opening?

10 **A** Yes.

11 **Q** Did you discuss that together?

12 **A** We don't generally discuss specific language,
13 just what our story line is, so I don't have a
14 recollection of discussing that specific language.

15 **Q** Okay. Fair enough. Did anything jump out to
16 you as being improper?

17 **A** I give very different openings, so I'm not
18 going to say it is improper. It is just language
19 that I might not have used, but I don't think it
20 was anything that swayed the jury at that point.

21 **Q** Do you recall the runaway letters in this
22 case basically being entered?

23 **A** I do.

24 **Q** Do you think that they were, I guess,
25 admissible?

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **A** Yes.

2 **Q** Have you had other, I guess, cases with
3 runaway letters before?

4 **A** It's going to take me a minute to think back.
5 None that jumps out at me. But, I mean, I view it
6 more as this is essentially a statement by the
7 victim. She was on the stand when they were
8 admitted, so she was subject to cross examination.
9 I don't really see that they are inadmissible.

10 **Q** And you can't think of a basis for an
11 objection; is that correct?

12 **A** Correct.

13 **Q** Do you recall questions concerning
14 self-mutilation?

15 **A** I do.

16 **Q** Did you think that those comments were
17 inadmissible?

18 **A** Not at all.

19 **Q** Do you consider them "vouching" or
20 "bolstering"?

21 **A** Not at all. And Dr. Rahter regularly
22 testifies to those, and I think it is important to
23 note that she doesn't say that the only people who
24 self-mutilate are people that have been sexually
25 abused. She gives a laundry list of reasons why a

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 child might self-mutilate, but that is part of her
2 expert medical opinion.

3 **Q** You consider that common testimony for that
4 doctor?

5 **A** Yes.

6 **Q** And then, again, when it comes to -- on Page
7 314, there is a discussion about how the Applicant
8 was having sex with the daughter and the mother at
9 the same time; do you recall that?

10 **A** Yes.

11 **Q** And discussion of STDs; do you recall that?

12 **A** Oh, yes.

13 **Q** Do you think there is anything within that
14 that was -- that can be improperly vouching or
15 bolstering?

16 **A** No. And, actually, the entire issue of the
17 sexually transmitted disease was introduced by the
18 defense. The State objected to it actually,
19 because the victim testified that she contracted
20 the sexually transmitted disease from a boyfriend
21 that she got after she ran away. So we argued
22 quite extensively that it was irrelevant.

23 **Q** Do you recall discussions about physical
24 abuse?

25 **A** Yes.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **Q** Do you remember whether or not that was
2 admissible or objectionable?

3 **A** Given that the entire defense was about
4 attacking the victims and why wouldn't they tell if
5 they are being raped by their step-father, it was,
6 in essence, a fair response.

7 I marked a couple of pages while we were
8 sitting back there. One of the issues is with the
9 older victim questioning why she hadn't told. So,
10 for instance, on Page 386, and this was cross by
11 Mr. Hilliard, he questioned, Line 18: "All right.
12 So, but, I mean, even while you were cleaning and
13 straightening up and doing all of those things, you
14 had a chance to talk to your mother, right?"

15 It goes on and, essentially, he's saying why
16 wouldn't you disclose, and the fair response is,
17 Because we were afraid of him. So, no, I do not
18 think that was inadmissible.

19 The same on Page 390, Line 15, Mr. Hilliard
20 said: "And you've also described him as an
21 asshole."

22 So I think that it is fair to elaborate on
23 why they think he is an asshole other than the fact
24 that he was sexually abusing them.

25 **Q** So is it your testimony that Mr. Hilliard

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 kind of opened the door?

2 **A** Yes.

3 **Q** And that was to create, basically, a defense
4 at trial?

5 **A** Yes.

6 **Q** And so the physical abuse was offered as a
7 direct response to what Mr. Hilliard was bringing
8 up, correct?

9 **A** Yes. Again, Mr. Hilliard was questioning why
10 the girls would not have disclosed being sexually
11 abused.

12 We also called an expert in the dynamics of
13 childhood of sexual abuse, and he testified in his
14 expert opinion of different reasons why children
15 will not necessarily disclose, and fear the abuser
16 is one of those. So I do think it was a fair
17 response to Mr. Hilliard's trial strategy as
18 arguing why they hadn't disclosed, and I thought it
19 was admissible.

20 MS. MARTO: No further questions.

21 THE COURT: Mr. Geel.

22 MR. GEEL: Briefly.

23 **CROSS EXAMINATION**

24 **BY MR. GEEL:**

25 **Q** Very briefly. Sticking on the topic of the

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 character evidence, is it your position or your
2 view of the trial that Mr. Hilliard -- this
3 evidence was admissible because Mr. Hilliard opened
4 the door to it; is that fair to say?

5 **A** I think that is one reason why it is
6 admissible, yes. But I disagree it is character
7 evidence. In my opinion, character evidence would
8 be: I have known Ms. Dahl for 20 years, I know
9 people in the community who know her, she has a
10 reputation for being a truthful, law-abiding
11 citizen. That, to me, is character evidence.

12 **Q** I'm referring to Rule 404, evidence of prior
13 bad acts.

14 **A** Yes.

15 **Q** It is all under the same umbrella by the
16 rules, but he opened -- that was admissible because
17 he opened the door to it?

18 **A** Yes. In part, yes.

19 **Q** What is your position as to whether it is
20 admissible had he not done that?

21 **A** Well, I think it is also admissible to
22 explain why the girls did not report.

23 **Q** Okay. So in the absence -- your view is that
24 in the absence of Mr. Hilliard even raising the
25 issue, you could bring up instances of Mr. Rowan

1 physically abusing these individuals in the home?

2 **A** I think that is all part and parcel of the
3 sexual abuse, yes.

4 **Q** So instances of him punching a one-year-old
5 baby is admissible in your case?

6 **A** It would go to why the girls submitted to
7 him.

8 **Q** So that is a, yes, you think it is
9 admissible?

10 **A** Yes.

11 **Q** I suppose -- we don't have to go through it
12 all, but all the testimony we read on that subject,
13 you think that is all admissible? Is there any of
14 it that jumps out at you as being inadmissible had
15 Mr. Hilliard not raised that particular defense?

16 **A** No. And I'm not trying to be smart, but I
17 try to only admit admissible evidence in my trials.

18 **Q** I guess -- I mean, jumping briefing to the
19 runaway letters. In your view, those also would
20 have been admitted over objection?

21 **A** Yes.

22 **Q** Is it common for you to have witnesses on the
23 stand and also introduce their written statements
24 contemporaneously?

25 **A** It is not common for me to have witnesses who

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 have written statements.

2 Q You don't put police officers on the stand?

3 A Yes, but they don't have written statements.

4 If you are talking about police reports, those are
5 not admissible, but that's different.

6 Q But they are contemporaneous written
7 narratives, and those don't come in when the
8 officer testifies, correct?

9 A Except for the fact that police reports also
10 contain a plethora of inadmissible statements and
11 so, therefore, it is extremely different from a
12 victim who is introducing -- or I use a victim to
13 introduce a statement of that victim. That is
14 different from a police officer introducing a
15 report that says, Well, Ms. Dahl told me that Judge
16 DeBerry insulted her the other day. That clearly
17 would not be admissible. So it doesn't matter
18 whether the police officer is on the stand saying,
19 Yes, this is what I wrote down.

20 Q I understand there are differences between a
21 police narrative and a written statement. What I'm
22 asking is whether there are other instances in
23 cases that you are prosecuting wherein you are
24 putting in a written statement while the witness is
25 on the stand, from that witness?

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 **A** Certainly.

2 **Q** Prior written statement?

3 **A** Yes.

4 **Q** So, in your view, that type of evidence is
5 generally admissible?

6 **A** Depending on the circumstances, yes.

7 MR. GEEL: Thank you. Nothing further.

8 MS. MARTO: Nothing further.

9 THE COURT: Thank you, Ms. Walter.

10 MS. MARTO: We also would call Mr. George
11 Martin.

12 (GEORGE HENRY MARTIN, having been duly
13 sworn, testified as follows:)

14 THE WITNESS: George Henry Martin.

15 **DIRECT EXAMINATION**

16 **BY MS. MARTO:**

17 **Q** Good afternoon, Mr. Martin. You prosecuted
18 this case?

19 **A** Yes.

20 **Q** And were you effectively second chair on this
21 case?

22 **A** Yes.

23 **Q** So you were present throughout the entirety
24 of the trial?

25 **A** Yes.

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 Q Do you recall or have you had a chance to
2 review the jury instructions that have been, I
3 guess, reviewed so far in this hearing?

4 A Yes. I reviewed the jury instructions this
5 morning.

6 Q And did you think that there was anything
7 indicating "search for the truth" language?

8 A I think if you read the jury instructions in
9 its entirety and don't take anything out of
10 context, I don't see anything that was
11 objectionable.

12 Q Do you think any of the potential language
13 would have made a difference at trial in terms of
14 outcome?

15 A No.

16 Q You gave the opening statement for the State,
17 correct?

18 A That's right.

19 Q And do you recall making any Golden Rule
20 arguments?

21 A Yes. So this was probably my third, maybe
22 fourth, trial ever. Yes, I know what you are
23 referring to.

24 Q I guess, in retrospect, do you think that
25 maybe some of those comments were objectionable?

1 **A** I think it may have been objectionable. I
2 don't think anything said was improper. I think
3 looking back on it, certainly based off of my
4 experience now, certain things could have been
5 phrased better and maybe the line was towed, but I
6 don't think anything was improper.

7 **Q** Do you think that your opening statement
8 impacted the outcome of the trial?

9 **A** No.

10 **Q** Do you recall the runaway letters in this?

11 **A** I do.

12 **Q** Did you think they were admissible?

13 **A** Yes.

14 **Q** And do you recall discussions of
15 self-mutilation in this case?

16 **A** Yes.

17 **Q** Did you think that was admissible?

18 **A** Yes.

19 **Q** Do you recall comments about the mother and
20 the daughter sleeping with the Applicant at the
21 same time?

22 **A** Yes.

23 **Q** Did you think that was objectionable on the
24 basis of improper vouching or bolstering?

25 **A** Do you mean when it was brought up by the

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 defense? Because, initially, my recollection was
2 that the State objected to any reference to
3 sexually transmitted infection coming in.

4 **Q** I'm talking about when Mr. Hilliard engaged
5 in cross examination of the mother, when they are
6 talking about the STDs and them both sleeping with
7 the Applicant at the same time; did you have a
8 chance to review that testimony?

9 **A** I did. I guess -- are you asking if
10 Mr. Hilliard should have objected to his own
11 question?

12 **Q** Yes. Do you think that would have been
13 practical at the time?

14 **A** No.

15 **Q** And do you recall evidence of physical abuse,
16 discussions of that, by the Applicant?

17 **A** Yes, ma'am.

18 **Q** And did you think that was admissible?

19 **A** Yes. For a variety of reasons, but certainly
20 Mr. Hilliard had already opened the door to that,
21 yes.

22 MS. MARTO: No further questions.

23 THE COURT: Mr. Geel.

24 MR. GEEL: Briefly, Your Honor.

25

CROSS EXAMINATION

BY MR. GEEL:

Q As to the opening statement, the Golden Rule argument, I don't want to put words in your mouth, but you don't think that there is anything else improper in those remarks that we highlighted?

A I think it's appropriate to say that I probably regret using the word "imagine"; however, I didn't directly ask the jury to put themselves in the shoes of the victim. I do not believe that the comments were improper, but I do believe based on my experience now, I could have phrased that better now, certainly.

Q Okay. You do use the word "imagine," and then -- you say "imagine" and then describe a series of circumstances that the alleged victim would be in during this trial, correct?

A In any witness, yeah.

Q Well, you give specific details about the history of your sexual life, step-father inappropriately kissed you, touched you; this is in reference to the two alleged victims, correct?

A Yes, but I don't think the comments were improper. But I do think I could have phrased it better by not using the word "imagine."

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 Q You are familiar with the Golden Rule, that
2 the concern is when a prosecutor invites the jury
3 to step into the shoes of the victim and imagine
4 what this process is like for them, correct?

5 A Yes.

6 Q And that is what is happening here, correct?

7 A No. I'm not directly saying that. Again,
8 I'll say what I have been saying, I think I could
9 have phrased it better, but I don't think the
10 statements were improper.

11 MR. GEEL: Thank you. Nothing further.

12 MS. MARTO: No further questions.

13 THE COURT: Thank you, Mr. Martin.

14 MS. MARTO: No further witnesses, Your Honor.

15 THE COURT: Mr. Geel.

16 MR. GEEL: I'll be very brief. So the
17 failure to object for the "search for the truth"
18 instruction, I mean, that is again very
19 straightforward here. This is just a bad
20 instruction. There is plenty of case law on why
21 that is not a proper instruction. A jury trial is
22 not a search for the truth, not in general sessions
23 anyway. The jury is tasked in determining whether
24 the prosecution has met their burden of proof, and
25 that is it. They are not tasked with figuring out

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 what actually happened or discerning the truth, and
2 that is what this instruction said.

3 I mean, I could pull the cases, and I'm sure
4 Your Honor is well aware of them, but this is sort
5 of word-for-word from the bad instructions that
6 we've seen that have been criticized by our courts.

7 Again, stepping forward to the Golden Rule
8 argument, the cases concerning themselves with
9 circumstances when a prosecutor invites the jury to
10 step into the shoes of the victim, the concern
11 there is that it is prejudicial, it inflames the
12 passions of the jury. Inviting the jury to imagine
13 what this process is like for the victim is
14 precisely what you are not allowed to do as a
15 prosecutor. And with all due respect to the
16 prosecutor's testimony, we have a difference of
17 opinion there. That is precisely what he is
18 telling the jury to do here.

19 As I highlighted during his testimony, not
20 only did he say imagine what this is like, imagine
21 that your step-father physically abused you,
22 sexually abused you, all of these things, the
23 specific allegations in this case that pertains to
24 these two victims. So the prosecution is saying
25 imagine what this is like for the victims, imagine

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 what this trial will be like for them; that is
2 explicitly a Golden Rule argument, and it is
3 prohibited.

4 As to the runaway letters. I have a
5 difference of opinion with the prosecution, with
6 all due respect, as to whether those would be
7 admissible. I do not believe they were
8 inadmissible. Second chair counsel indicated that
9 the lead counsel wanted to cross examine the
10 witness or kind of highlight some of the
11 inconsistencies there. You know, you can impeach a
12 witness without introducing the actual letters and
13 as substantive exhibits. Even if that was a trial
14 strategy, again, I submit that it was an
15 objectionable trial strategy to allow these
16 statements to come in and to allow the prior
17 written statements to come in.

18 Again, highlighting the prior statement about
19 these allegations in the past, I think it is
20 absolutely clear, to me anyways, that it does a lot
21 more harm than good, getting in a prior statement
22 and attempting to highlight the inconsistencies. I
23 think that is just objectionably unreasonable when
24 that letter could just be prevented from coming in
25 to begin with. The argument does hinge completely

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 on the admissibility of the letters, which we say
2 that they are completely just not admissible.

3 If it was the case that trial counsel had
4 indicated that this was a recent fabrication, they
5 could potentially come in then as a prior
6 consistent statement. But if he doesn't open that
7 door, they don't come in, and that seems clear to
8 me. I'm not sure what the admissibility would be
9 in absence of that.

10 THE COURT: Why wouldn't they come in?

11 MR. GEEL: It is a prior written statement, I
12 mean, if they are testifying.

13 THE COURT: If the author of that statement
14 is on the witness stand --

15 MR. GEEL: It's still hearsay. It's not
16 offered for the truth of the matter asserted. It
17 is relevant that they are available for cross
18 examination, Your Honor. But prior written
19 statement is in the same vein where if an
20 eyewitness gave a written statement to police, so
21 there is a handwritten statement, there are
22 circumstances where that would come in, but they
23 all deal with situations where the attorneys
24 challenge the truth of the statement or accuse them
25 of recent fabrication or highlight the

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 inconsistencies, things like that. It doesn't just
2 come in. The prosecutor couldn't just put an
3 eyewitness on the stand and then contemporaneously
4 introduce their eyewitness statement during their
5 direct examination. That is not how it works, and
6 that is how it happened here.

7 I'm not saying that those letters could not
8 be admissible under any circumstances. There are
9 circumstances, certainly, where trial counsel could
10 open the door to having them come in. Again,
11 accusing the alleged victim of recent fabrication
12 is the clearest example, in my view. If they were
13 accused of making them up, then of course the
14 letters come in, because they were allegedly
15 written six months before. So that is an example
16 how they could become admissible.

17 But, in my view, if the prosecution has a
18 witness who has previously recorded their
19 recollection of events, that doesn't come in during
20 the cross examination. Again, I mean, this
21 argument hinges on that. If the Court has a
22 difference of opinion whether they are admissible,
23 then of course it is different.

24 Again, I want to be clear that we're not
25 saying that there is no circumstances in which

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 those letters could have ever come in. We're
2 saying the circumstances here, where they were
3 admitted without objection, was improper and not
4 strategic.

5 And, again, I think -- this is my opinion,
6 but, you know, Strickland is an objective standard.
7 I submit to the Court it is clear that these
8 letters do more harm than good. Pointing out there
9 is some inconsistencies there, I submit to the
10 Court it doesn't mitigate the fact that they
11 essentially corroborate the main thrust of the
12 case, which is that the allegation that the
13 defendant was sexually abusing her. I don't see
14 how a lawyer could just let that come in without an
15 objection, at least not try to keep it out.

16 As to the failing to object to vouching and
17 bolstering testimony, Your Honor, let me flip to
18 that. I want to be sure we get the exact language
19 we're taking issue with. Your Honor is familiar
20 with Croma (phonetic) and the line of cases that
21 talk about witnesses, especially in criminal sexual
22 conduct cases, commenting on the truth of witness
23 statements. Here what we have is the witness
24 saying -- you know, the question is: "Did the fact
25 that you saw self-mutilation scars have any

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 importance in your mind?"

2 "Yes, it does. Self-mutilation is something
3 that adolescence and young adults do when they are
4 trying to alleviate something that's bothering
5 them, because it makes them feel better to release
6 pain. Children who have been victims of abuse
7 frequently have a pattern of behavior.
8 Self-mutilation is one of them."

9 This is the witness saying that the
10 self-mutilation that she observed was caused by
11 this abuse. I mean, this very clearly implies the
12 witness' belief that the self-mutilation scars are
13 proof that the abuse took place as alleged.

14 Again, I very often revisit Croma and that
15 line of cases, and I would ask the Court to do so
16 as well. This is the type of testimony that is
17 just not admissible under that line of cases and
18 completely improper, because it is vouching and
19 because it is bolstering. It indicates this
20 witness' belief that the physical evidence observed
21 is consistent with the allegations that she's
22 making; in other words, the witness believes the
23 alleged victim. That is the line you can't cross
24 as a witness.

25 Stepping over to the testimony by the mother,

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 what we take issue with on Page 314 is the mother's
2 testimony that: "I know for a fact that he" -- the
3 defendant -- "was having sex with us both."

4 Again, it very clearly is stating her belief
5 that the alleged victim was telling the truth in
6 the case. I mean, offering her personal opinion
7 saying I know for a fact that he was having sex
8 with us both. I mean, that was the issue in this
9 trial, whether he was sexually abusing his
10 step-daughter. So for the mother to offer an
11 opinion -- and not just offering an opinion, but "I
12 know for a fact that he was having sex with both of
13 us," that is clearly vouching and bolstering and
14 inadmissible, and trial counsel did not object.

15 And, lastly, getting to the bad character of
16 evidence. I have a difference of opinion with the
17 prosecution as to whether these acts would have
18 been admissible in the absence of opening the door,
19 but even assuming, without conceding that
20 Mr. Hilliard opened the door to it, I mean, that
21 would be Constitutionally ineffective as well.

22 Our position here is that evidence of
23 completely unrelated physical abuse, especially
24 against a one-year-old or two-year-old child is
25 inadmissible. This is totally inadmissible under

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 404(b). At very least, a bare minimum, it would
2 require a hearing to determine its admissibility.
3 Trial counsel doesn't appear to have made any
4 efforts to keep this evidence out. Again, the
5 testimony goes on and on with no objection. And,
6 again -- I mean, I would be happy to submit further
7 argument along the lines of this was admissible
8 because trial counsel opened the door, but in our
9 view that would be unreasonable under Strickland.
10 So it is a separate argument, but nevertheless we
11 reach the same result: That trial counsel was
12 ineffective for allowing this evidence to come in,
13 whether he invited it or whether he just sat back
14 and failed to object.

15 So, Your Honor, on those bases we would ask
16 the Court to find that we have met our burden and
17 grant the application. Thank you.

18 THE COURT: All right. Ms. Marto.

19 MS. MARTO: Briefly, Your Honor. Concerning
20 the "search for the truth" language, all three
21 witnesses today testified they thought that was
22 admissible when read in the whole. It did not
23 impact the results at trial.

24 Concerning the Golden Rule argument, I
25 believe Mr. Martin testified that he maybe would

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 not have used those same words again now that he
2 has more experience, but Ms. Brinson testified that
3 she and Hilliard did have a reasonable discussion
4 about it, where he was under the understanding if
5 they were going to use that, then he would be
6 granted additional leeway on his opening argument
7 to request them to put themselves in Mr. Rowan's
8 shoes. He thought that outweighed the objection in
9 keeping that argument out. So it's the State's
10 position that that is reasonable. Even then, the
11 argument, in and of itself, didn't impact the
12 outcome at trial.

13 Concerning the runaway letters, I believe
14 both prosecutors testified that they thought they
15 were admissible. Ms. Brinson testified that they
16 used those letters as a way of impeaching the
17 credibility of the victims by pointing out several
18 inconsistencies between her testimony and the
19 letter, and they were actually valuable to the
20 defense. That is a reasonable strategy as well.

21 Concerning improper vouching and bolstering,
22 Ms. Walter testified that self-mutilation is an
23 issue that is commonly brought up on the stand by
24 Ms. Rahter, and she did not think it was
25 inadmissible. Mr. Martin also testified he did not

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 think it was inadmissible.

2 Concerning the STDs, I think Mr. Martin
3 pointed it out well when he said that, in effect,
4 what you are asking Counsel to do in objecting at
5 that point is to object to your own questions,
6 which is impractical. Again, I believe both
7 prosecutors testified that is not improper vouching
8 or bolstering and wouldn't have impacted the
9 outcome at trial.

10 Then, also concerning bad character evidence,
11 I think Ms. Brinson pointed out that their main --
12 the crux of the defense was that he was a jerk to
13 them, and they used that as a way of retaliating
14 against him by coming up with these allegations,
15 that was the reason for opening that door.

16 Ms. Walter and Mr. Martin, I believe, both
17 testified that they thought it was admissible both
18 to show the delay of disclosure and also to respond
19 to Mr. Hilliard's initial questioning. So for
20 those reasons, we request you deny relief in this
21 case. Thank you.

22 THE COURT: Mr. Geel, anything further?

23 MR. GEEL: No, Your Honor. Thank you.

24 THE COURT: Are either of you aware of any
25 PCR applications that have been granted based on

CERTIFIED ORIGINAL FOR THE USE OF SCCID ONLY!!

1 the improper jury charge of "seeking the truth"?

2 MR. GEEL: Not off the top of my head, but I
3 could follow up with you on that.

4 THE COURT: I was just curious.

5 MR. GEEL: I can see where Your Honor is
6 going with this. I believe there were objections
7 in cases where they discussed these
8 contemporaneously, the question being, if there is
9 no objection. But I will research that and let
10 Your Honor know.

11 THE COURT: Okay. All right. Anything
12 further before we adjourn?

13 MR. GEEL: No, sir.

14 THE COURT: I'm going to take this under
15 advisement and read the transcript and consider the
16 issues and let you know.

17 (Whereupon, the proceedings concluded.)

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for 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 hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Horry County, South Carolina, on the 30th day of November, 2022.

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

April 10, 2023

Certified Original by Natalie Dahl, RPR

Natalie Dahl, RPR

Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)
)
)
 Scott Rowan, #375994,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-26-6198

ORDER OF DISMISSAL

HORRY COUNTY
 2023 MAR 14 P 12: 21
 RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed October 28, 2020. Respondent made its return on March 3, 2021, requesting an evidentiary hearing be convened. An evidentiary hearing was held on November 30, 2022, at the Horry County Courthouse. Christopher R. Geel, Esquire, represented Applicant. Assistant Attorney General Chelsey F. Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel Sara Brinson and Prosecutors George Martin and Mary-Ellen Walter, Esquires also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted for criminal sexual conduct with a minor, second degree and criminal sexual conduct with a minor, third degree by the Horry County Grand Jury at its February 2016 term. John M. Hilliard, Esquire, and Sara Brinson, Esquire, represented Applicant and Assistant Solicitors Mary Ellen Water, Esquire, and George Henry Martin, Esquire, of the Fifteenth Circuit Solicitor's Office prosecuted the case. On April 9, 2018, Applicant proceeded to a jury trial

before the Honorable Larry B. Hyman, Jr. The jury found Applicant guilty as indicted and Judge Hyman sentenced him to fifteen years on each charge, to be served concurrently.

Applicant filed a notice of appeal and David Alexander, Esquire, perfected the appeal. William M. Blich, represented Respondent. On March 4, 2019, Applicant's counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967), and requested to be relieved as counsel. Applicant presented the following issues:

1. Whether the trial judge erred in refusing to admit an email sent by the complainants' mother's divorce attorney that wrongfully accused appellant of giving Complainant 1 and her mother a sexually transmitted disease?

Applicant filed a *pro se* response to the *Anders* brief, stating that his name was improperly stated on the record, that the trial judge continually cut off his lawyer's midsentence, that the judge improperly denied a request to set aside the conviction because the witnesses against him were lying under oath, and that the judge improperly excluded expert testimony regarding Applicant's transmission of sexually transmitted diseases to one of his victims.

Applicant's appeal was dismissed without oral arguments via unpublished opinion. Op. No. 2020-UP-142 (S.C. Ct. App. filed May 20, 2020). The remittitur was sent on July 8, 2020.

Summary of Relevant Facts

Applicant's stepdaughters testified at trial that he would watch them undress when they were young children. (App. 181-82, 344-45). Applicant began groping his stepdaughters and giving them drugs. (App. 186-87, 348-51). Resistance led to punishments, threats, and physical abuse. (App. 187, 351-52). The sexual abuse progressed to forced oral sex, masturbation, and vaginal penetration. (App. 188). At times Applicant would withhold food from his stepdaughters after violently raping them. (App. 191-92). Applicant infected one of his stepdaughters with a sexually transmitted disease. (App. 200).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Lawyer did not call expert detective to stand.
 - a. Lawyer did not call expert to testify about STD.
2. Lawyer did not call witnesses for rebuttal.
3. Lawyer did not challenge testimony inconsistencies.
 - a. Did not call detective to question about police report and testimony made.
4. Lawyer did not call all witnesses. dr. who examed (victim) Detective who investigate and took statements. Lawyer did not use all evidence available. Text messages and pictures taken by detective.
 - a. Lawyer did not call expert after STD information was entered into record.

At the PCR hearing, Applicant proceeded forward on the following allegations, as outlined in his amended application filed November 30, 2022:

1. Ineffective assistance of counsel:
 - a. Failure to object to improper “search for truth” jury instructions.
 - b. Failure to object to improper “golden rule” argument by the prosecution.
 - c. Failure to object to the presentation of Complainant 1’s “runaway letters”, written statements that Complainant 1 made 6-7 months before running away from home. These letters were admitted as substantive exhibits at trial (State’s Ex.’s 1-3) with no objection from trial counsel.
 - d. Failure to object to improper vouching/bolstering testimony.
 - e. Failure to object to improper bad-character evidence, and evidence of prior bad acts by defendant that were not admissible under Rule 404(b).

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Brinson Testimony

Counsel Brinson testified that her experience in criminal defense was very limited, and she primarily practiced family law and served as in-house counsel. She testified that she thought the jury instructions using “search for the truth” language was admissible and she could not think of a reason to object. She stated that she and Counsel Hilliard did not object to the golden rule

argument made during the State's opening argument because they thought they would be given greater leeway themselves. She stated that they wanted the letters to be admitted because they were helpful impeachment material because of their inconsistencies. She stated she did not think any improper bolstering occurred at trial. She stated she thought they did not object to bad character evidence because they wanted to paint Applicant as a disciplinarian. She stated they wanted to argue the girls fabricated the allegations because they were upset about him being a disciplinarian. She stated she could not think of a basis for not objecting to self-mutilation testimony, beyond using it to establish her mental instability. She stated she had no opinion on admissibility of physical abuse, and she was unsure if it was related to the allegations. She stated that they could have objected to physical abuse for relevance, but thought it was useful to the defense.

Walter Testimony

Prosecutor Walter stated that she did not think the "search for the truth" language made a difference at trial. She stated she did not do the opening argument but did not think it swayed the jury. She stated that the letters entered were admissible and helpful to the defense. She stated she never entered notes like these before at trial. She stated that she did not think there was any improper bolstering or vouching, but if there was it did not change the result at trial. She stated that Counsel Hilliard opened the door to testimony about physical abuse because it fit in line with his chosen defense. She stated that she did not want the STD evidence entered. She stated that Dr. Rahter testified in line with how she generally testifies.

Martin Testimony

Prosecutor Martin testified that he did not think the search for the truth language, when viewed in the context of the jury instructions as a whole, did not present an issue. He stated that

he would not use the same opening argument today, but that he did not think it impacted the outcome at trial. He stated that the letters were admissible. He stated that there was no improper bolstering or vouching. He stated that some of the questions that were identified by Applicant as bolstering were raised by Counsels. He stated it would be impractical for Counsel to object to his own questions. He stated that Counsel Hilliard opened the door to questions about physical abuse.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v.*

Washington.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011)

(quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Object – Search for the Truth

Applicant claims Counsel was ineffective for failure to object to "search for the truth" language used in the jury instructions. Whether failure to object constitutes deficient performance generally hinges on whether or not a valid trial strategy was utilized. *See Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged. *In re Winship*, 397 U.S. 358, 364 (1970). Our Supreme Court has cautioned trial courts against including language in jury instructions that may have the effect of lessening the State's burden of proof. The Court has discouraged instructions which urge the jury to "seek the truth," *State v. Aleksey*, 343 S.C. 20, 27, 538 S.E.2d 248, 251 (2000), or "return to verdict that is 'just' or 'fair' to all parties." *State v. Daniels*, 401 S.C. 251, 256, 737 S.E.2d 473, 475 (2012). However, the Court has not reversed convictions in any of those cases.

In similar cases dealing with "seek for the truth" language, the Supreme Court has made clear that context matters. In *Aleksey*, the Court emphasized that the trial court's charge that the jury should "seek the truth" occurred during his instructions regarding witness credibility. It noted the charge was "prefaced by a full instruction on reasonable doubt and followed by an additional exhortation to bear in mind the State's heavy burden of proof." *State v. Aleksey*, 343 S.C. 20, 29, 538 S.E.2d 248, 253 (2000). It concluded there was "not a reasonable likelihood the jury applied the judge's instructions to convict appellant on less than proof beyond a reasonable doubt." *Id.*

In *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018), the Court considered a challenge to a trial judge's comments that a trial is "a search for the truth," that the jury took an oath to "reach a fair and just verdict," and to find the "true facts." The Court stated that the trial judge should "refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict." *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. However, the Court did not reverse and, instead, found: "our review of the entirety of the judge's opening comments and the entire trial record convinces us that Appellant has not shown prejudice from this error sufficient to warrant reversal." *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. Again, the Court emphasized that the comments "were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in *Aleksey*." *Beaty*, 423 S.C. at 34, 813 S.E.2d at 506. *See also State v. Patterson*, 425 S.C. 500, 511, 823 S.E.2d 217, 224 (Ct. App. 2019), *reh'g denied* (Feb. 21, 2019), *cert. denied* (June 28, 2019) (finding trial court's remarks that the jury should "search for the truth" did not warrant reversal); *State v. Needs*, 333 S.C. 134, 154, 508 S.E.2d 857, 867 (1998) (affirming conviction despite trial court's erroneous instruction for "jurors to seek a reasonable explanation other than

the guilt of the accused" because other portions of the charge correctly emphasized the State's burden of proof beyond a reasonable doubt); *State v. Pradubsri*, 420 S.C. 629, 641, 803 S.E.2d 724, 730 (Ct. App. 2017) (affirming conviction despite use of phrase "search of the truth" during reasonable doubt instruction because "review of the record and the entire charge reveals no prejudice sufficient to warrant reversal").

Counsel Brinson and the prosecutors all credibly testified that they did not think any language used had an impact at trial. Thus, Applicant has failed to establish prejudice and relief is denied accordingly.

Failure to Object – Golden Rule

Applicant claims Counsel was ineffective for failure to object to the State's opening statement on the grounds that the arguments implicated the golden rule argument. To find whether a prosecutor's comments in closing argument violated a defendant's due process rights, the Court must determine whether the comments were improper, and if so, whether the improper argument so unfairly prejudiced the defendant as to deny him a fair trial. *Fortune v. State*, 428 S.C. 545, 549, 837 S.E.2d 37, 39 (2019).

"It is undisputed that closing argument is not merely a time for recitation of uncontroverted facts, but rather the prosecution may make fair inferences from the evidence." *United States v. Francisco*, 35 F.3d 116, 120 (4th Cir. 1994); *see also State v. New*, 338 S.C. 313, 319, 526 S.E.2d 237, 240 (Ct. App. 1999) ("Undoubtedly, a Solicitor may argue the State's version of the testimony presented, and furthermore may comment on the weight to be accorded such testimony."). A prosecutor should "prosecute with earnestness and vigor" and "may strike hard blows, [but] is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88 (1935). "If a Solicitor's closing argument remains within the record evidence and the reasonable

inferences therefrom, no error occurs.” *New*, 338 S.C. at 319, 526 S.E.2d at 240. “On the other hand, a closing argument may be held improper where it appeals to personal bias or arouses the jury’s passions or prejudice.” *Id.* “[I]mproper suggestions, insinuations, and, especially, assertions of personal knowledge are apt to carry much weight against the accused when they should properly carry none.” *Berger* at 88.

“Improper comments do not automatically require reversal if they are not prejudicial to the defendant.” *Id.*, 428 S.C. at 550, 837 S.E.2d at 40 (quoting *Simmons v. State*, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998)). A PCR court must view the alleged impropriety of the prosecutor’s argument in the context of the entire record, and the applicant has the burden of proving he did not receive a fair trial because of the alleged improper argument. *Id.*

Golden Rule arguments made in closing are generally not permissible because they generally ask the juror to depart from neutrality and to decide based upon personal bias, not the evidence itself. *See e.g. Brown v. State*, 383 S.C. 506, 516-17, 680 S.E.2d 909, 915 (2009)(finding that Counsel was deficient for failure to object to the prosecutor asking the jury to “speak up” for the three-year-old victim).

Applicant has not met his burden of proof concerning this allegation. This Court finds that none of the highlighted portions were so crucial as to undermine the results of the proceedings. Accordingly, relief is denied on this ground.

Failure to Object – Runaway Letters

Applicant claims Counsel was ineffective for failure to object to the victim’s “runaway letters.” Even if these letters were objectionable, this Court concurs with Prosecutor Walter and Counsel Brinson in their assertions that these letters presented inconsistencies that were helpful to the defense in providing impeachment material to use against the victim. Accordingly,

Counsel's decision not to object was reasonable. Additionally, this Court finds that even if Counsels did object and that objection was sustained, the outcome at trial would not have changed. Accordingly, relief is denied.

Failure to Object – Improper Bolstering

Applicant claims Counsel was ineffective for failure to object to improper bolstering.

“Improper bolstering is ‘testimony that indicates the witness believes the victim, but does not serve some other valid purpose.’” *Chappell v. State*, 429 S.C. 68, 75, 837 S.E.2d 496, 499-500 (Ct. App. 2019) (quoting *Briggs v. State*, 421 S.C. 316, 325, 806 S.E.2d 713, 718 (2017)).

“Improper bolstering also occurs when a witness testifies for the purpose of informing the jury that the witness believes the victim, or when there is no other way to interpret the testimony other than to mean the witness believes the victim is telling the truth.” *Id.* “However, an expert’s testimony is not improper bolstering ‘when the expert witness gives no indication about the victim’s veracity[.]’” *Id.* (quoting *State v. Perry*, 420 S.C. 643, 663, 803 S.E.2d 899, 910 (Ct. App. 2017)).

“In an ineffective assistance case, ‘trial counsel’s failure to object to [improper bolstering] testimony does not remove a [] [PCR] applicant’s burden to prove prejudice.’” *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 246, 814 S.E.2d at 492). “The determination of whether a bolstering error is harmless depends on whether the case turns on the credibility of the victim.” *State v. Chavis*, 412 S.C. 101, 110, 771 S.E.2d 336, 341 (2015). “The outcome of a trial turns on the credibility of the victim when the State presents no physical evidence or ‘relie[s] solely upon the victim’s testimony to establish the details of the crime’” *Chappell*, 429 S.C. at 80, 837 S.E.2d at 502 (quoting *Thompson*, 423 S.C. at 248, 814 S.E.2d at 494).

Applicant has not met his burden of proof concerning this allegation. Both Prosecutors credibly testified that they did not think the passages highlighted constituted improper bolstering. Additionally, as Prosecutor Martin highlighted, some of the questions highlighted were asked by Counsel Hilliard. It would be unreasonable for Counsel to object to his own questions. However, even if this was improper bolstering, this Court finds that it would not have impacted the outcome at trial. Accordingly, because Applicant has not met either prong of the *Strickland* analysis, relief is denied on this ground.

Failure to Object – Bad Character Evidence

Applicant claims Counsel was ineffective for failure to object to bad character evidence. However, Counsel Brinson credibly testified that the defense used this testimony to their advantage. Specifically, their chosen defense at trial was to paint Applicant as a disciplinarian that the victims were seeking revenge against by fabricating sexual assault allegations. This was a reasonable trial strategy. Additionally, this Court finds that had this evidence been excluded, it would not have impacted the results of the proceedings. Accordingly, relief is denied.

Conclusion

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry's written notice to secure appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR

counsel must serve and file a notice of appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 7th day of MARCH, 2023.



H. STEVEN DEBERRY, IV

Presiding Judge

Fifteenth Judicial Circuit

Florence, South Carolina.