

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

HAROLD ORR,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-213681

APPENDIX

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1 THAT NIGHT.

2 Q SO, AT THE HOUSE, YOU DIDN'T?

3 A NO. I WAS WITH [Minor]

4 Q WHO ALL WAS IN THE HOUSE WHEN YOU GOT THERE?

5 A I DON'T REMEMBER THE NAME OF THE OFFICER THAT
6 TESTIFIED EARLIER TODAY, SHE WAS THERE. MY MOM WAS THERE,
7 [Minor] AND ANOTHER OFFICER. THERE WAS SOME PEOPLE
8 OUTSIDE.

9 Q ANY OF HAROLD'S RELATIVES THERE?

10 A NO.

11 Q ANY OTHER MALES IN THE HOUSE?

12 A NO ONE OTHER THAN THAT ONE OFFICER, NO RELATIVES
13 OR ANYTHING LIKE THAT.

14 Q AT SOME POINT, DID YOU GO TO THE HOSPITAL?

15 A YES.

16 Q WHAT HAPPENED WHEN YOU GOT THERE?

17 A WE WENT TO THE EMERGENCY ROOM. [Minor] WENT TO
18 THE BACK. I HAD TO WAIT IN THE FRONT, THE WAITING AREA.
19 MY MOM WAS WAITING IN THE WAITING AREA. SHE LEFT TO GO IN
20 THE BACK. BY THE TIME SHE GOT BACK THERE, MY SISTER HAD
21 ARRIVED AND THEN MY SISTER WENT BACK THERE WITH [Minor]

22 Q DID YOU EVER GO BACK WITH [Minor]

23 A NO. I DIDN'T SEE [Minor] UNTIL WE WERE LEAVING TO
24 GO FROM THE HOSPITAL.

25 Q JUST BRIEFLY. DID YOU KNOW THAT -- IF ANY OTHER

1 MALES LIVED IN THE HOUSE WITH YOUR MOTHER AND MR. ORR?

2 A NO, THERE WAS NOBODY ELSE.

3 MR. NEELY: THANK YOU.

4 MR. DAVIS: NO QUESTIONS, YOUR HONOR.

5 THE COURT: ALL RIGHT, MA'AM. YOU CAN COME DOWN.

6 (WITNESS STEPPED DOWN.)

7 MS. HERRING-LASH: YOUR HONOR, AT THIS POINT, THE
8 STATE WOULD REST.

9 THE COURT: MA'AM?

10 MS. HERRING-LASH: THE STATE WOULD REST.

11 THE COURT: OKAY. LADIES AND GENTLEMEN, I HAVE SOME
12 MATTERS OF LAW TO TAKE UP WITH THE ATTORNEYS. AND I'M
13 GOING TO LET YOU GO BACK INTO THE JURY ROOM FOR JUST A FEW
14 MINUTES AND THEN SHORTLY WE'LL BREAK FOR LUNCH. WE SHOULD
15 BE BEGIN -- WELL, LET ME JUST SAY THAT -- I'LL SEND YOU
16 BACK TO THE JURY ROOM FOR JUST A FEW MINUTES.

17 (WHEREUPON, JURY LEFT THE COURTROOM AT 11:56 A.M.)

18 THE COURT: ANY MOTIONS?

19 MR. DAVIS: JUDGE, AT THIS TIME, OF COURSE, I WOULD
20 MAKE A MOTION FOR A DIRECTED VERDICT. I WOULD ARGUE THAT
21 THE EVIDENCE PRESENTED MERELY CREATES A -- CREATES SOME
22 EVIDENCE, BUT NOT SUFFICIENT EVIDENCE THAT -- THAT CAUSES
23 THE NEED FOR A JURY TO DELIBERATE ON THIS MATTER. I WOULD
24 ARGUE THAT, AT THIS POINT, YOUR HONOR COULD DIRECT A
25 VERDICT ON BEHALF OF MR. ORR AND SHOULD DIRECT A VERDICT

1 IN THIS CASE AT THIS POINT.

2 THE COURT: I DENY THE MOTION FOR A DIRECTED VERDICT.

3 MR. DAVIS: JUDGE, I WOULD ALSO AT THIS TIME RENEW
4 ANY PREVIOUS EVIDENTIARY MOTIONS. AND I BELIEVE EARLY ON,
5 THERE WAS A MISTRIAL MOTION. OF COURSE, I RENEW ANY
6 MOTIONS I MADE PREVIOUSLY.

7 THE COURT: OKAY. I DENY THAT MOTION -- THOSE
8 MOTIONS.

9 MR. DAVIS: JUDGE, IF YOU CAN GIVE ME JUST ONE
10 SECOND, WE CAN LET YOU KNOW ABOUT THE DEFENSE'S POSITION,
11 BUT I WILL KNOW IN JUST A COUPLE OF SECONDS, JUDGE.

12 THE COURT: OKAY.

13 (PAUSE.)

14 MR. DAVIS: THANK YOU, YOUR HONOR. I APPRECIATE THE
15 MOMENT TO CONFER WITH MY CLIENT. WE WOULD INTEND NOT TO
16 PRESENT A DEFENSE. MY CLIENT DOES NOT WISH TO TESTIFY.
17 IF NOW IS THE APPROPRIATE TIME TO QUESTION HIM ABOUT THAT,
18 HE IS PREPARED FOR THAT.

19 THE COURT: ALL RIGHT. MR. ORR, PLEASE STAND AND
20 RAISE YOUR RIGHT HAND. DO YOU SWEAR THE TESTIMONY YOU'RE
21 ABOUT TO GIVE WILL BE THE TRUTH SO HELP YOU GOD?

22 MR. ORR: YES, SIR.

23 THE COURT: ALL RIGHT. NOW, YOU CAN PUT YOUR HAND
24 DOWN. MR. ORR, YOU'VE BEEN OUT ON BOND SO LET ME ASK YOU
25 THIS QUESTION: WITHIN THE LAST 24 HOURS, HAVE YOU TAKEN

1 ANY MEDICATION OR DRUGS OR ALCOHOL?

2 MR. ORR: NO, SIR.

3 THE COURT: YOU DIDN'T HAVE ANYTHING TO DRINK LAST
4 NIGHT?

5 MR. ORR: NO, SIR.

6 THE COURT: YOU DIDN'T -- AND I'M NOT SUGGESTING THAT
7 YOU WOULD, BUT I JUST NEEDED TO ASK THIS QUESTION SO I CAN
8 MAKE SURE THAT YOU ARE COMPETENT TO ANSWER THESE
9 QUESTIONS. YOU HAVEN'T DONE ANY DRUGS OR TAKEN ANY
10 MEDICATION? SIR?

11 MR. ORR: NO, SIR.

12 THE COURT: ALL RIGHT. MR. DAVIS, OVER THE LAST
13 SEVERAL DAYS AND BEFORE TODAY, YOU, I THINK, WERE INVOLVED
14 IN THE INITIAL TRIAL, CORRECT?

15 MR. DAVIS: I WAS, YOUR HONOR.

16 THE COURT: AND WERE YOU INVOLVED IN DISCUSSIONS
17 DURING THAT FIRST TRIAL ABOUT HIS RIGHT TO REMAIN SILENT
18 AND HIS RIGHT TO TESTIFY, YOU HAD DISCUSSIONS WITH HIM?

19 MR. DAVIS: I DID, YOUR HONOR.

20 THE COURT: AND WERE YOU SATISFIED DURING THAT TRIAL
21 THAT HE UNDERSTOOD HIS RIGHT TO REMAIN SILENT AND ALSO HIS
22 RIGHT TO TESTIFY?

23 MR. DAVIS: I WAS, YOUR HONOR.

24 THE COURT: DID HE TESTIFY AT THAT TRIAL?

25 MR. DAVIS: HE DID NOT, YOUR HONOR.

1 **THE COURT:** AND AS YOU HAVE PREPARED FOR THIS TRIAL,
2 I SUPPOSE YOU HAVE HAD CONVERSATIONS WITH HIM ABOUT HIS
3 RIGHT TO REMAIN SILENT AND ALSO HIS RIGHT TO TESTIFY?

4 **MR. DAVIS:** WE DISCUSSED IT. YES, YOUR HONOR.

5 **THE COURT:** AND ARE YOU SATISFIED THAT HE, AS HE
6 STANDS HERE NOW, UNDERSTANDS HIS RIGHT TO REMAIN SILENT
7 AND ALSO HIS RIGHT TO TESTIFY?

8 **MR. DAVIS:** I BELIEVE HE DOES, YOUR HONOR.

9 **THE COURT:** OKAY. MR. ORR, NOW YOU'VE HEARD THIS
10 CONVERSATION I HAD WITH MR. DAVIS. I WANT TO TALK
11 DIRECTLY TO YOU ABOUT THIS SO THAT I CAN MAKE SURE YOU
12 UNDERSTAND THESE TWO RIGHTS.

13 YOU HAVE THE RIGHT TO REMAIN SILENT. THAT IS A
14 RIGHT THAT COMES TO YOU BY WAY OF THE 5TH AMENDMENT OF THE
15 UNITED STATES CONSTITUTION. AND WHAT THAT MEANS IS THAT
16 NO ONE CAN MAKE YOU TESTIFY, NO ONE CAN COMPEL YOU TO
17 TESTIFY IN THE TRIAL OF THIS CASE. IF YOU CHOOSE NOT TO
18 TESTIFY, THEN I WILL EXPLAIN TO THE JURY IN VERY CLEAR
19 TERMS, THAT THIS IS A CONSTITUTIONAL RIGHT THAT YOU HAVE
20 AND THAT THE EXERCISE OF THAT RIGHT CANNOT AND MUST NOT BE
21 HELD AGAINST YOU.

22 BUT ON THE OTHER HAND, YOU DO HAVE THE RIGHT TO
23 TESTIFY IF YOU CHOOSE TO DO SO, JUST LIKE ALL THE OTHER
24 WITNESSES WHO HAVE TESTIFIED HERE. IF YOU WANT TO
25 TESTIFY, YOUR LAWYER WILL PUT YOU ON THE STAND. HE'LL ASK

1 YOU QUESTIONS. YOU CAN ANSWER THEM, BUT THEN YOU'LL BE
2 SUBJECT TO CROSS EXAMINATION BY THE SOLICITOR.

3 NOW, DO YOU UNDERSTAND EVERYTHING I'VE JUST
4 EXPLAINED TO YOU?

5 MR. ORR: YES, SIR.

6 THE COURT: AND YOU HAVE TALKED ABOUT THIS WITH MR.
7 DAVIS?

8 MR. ORR: YES, SIR.

9 THE COURT: AND WHEN YOU TALKED ABOUT IT WITH MR.
10 DAVIS, WERE YOU SATISFIED THAT YOU UNDERSTOOD IT THEN?

11 MR. ORR: YES, SIR.

12 THE COURT: DO YOU HAVE ANY QUESTIONS YOU WANT TO ASK
13 ME RIGHT NOW ABOUT YOUR RIGHT TO TESTIFY OR ABOUT YOUR
14 RIGHT TO REMAIN SILENT?

15 MR. ORR: NO, SIR.

16 THE COURT: DO YOU NEED ANY MORE TIME TO TALK TO YOUR
17 LAWYER ABOUT YOUR RIGHT TO TESTIFY OR YOUR RIGHT TO REMAIN
18 SILENT?

19 MR. ORR: NO, SIR.

20 THE COURT: NOW, DO YOU UNDERSTAND THAT EVEN THOUGH
21 YOU SHOULD LISTEN CAREFULLY TO WHAT ADVICE YOUR LAWYERS
22 MAY GIVE YOU ABOUT TESTIFYING OR NOT TESTIFYING, BUT IN
23 THE END, THE DECISION AS TO WHETHER OR NOT YOU ARE GOING
24 TO TESTIFY IS YOUR DECISION. YOU MUST MAKE THE DECISION.
25 THEY CANNOT MAKE THAT DECISION FOR YOU, DO YOU UNDERSTAND

1 THAT?

2 MR. ORR: YES, SIR.

3 THE COURT: ARE YOU READY TO MAKE YOUR DECISION?

4 MR. ORR: YES, SIR.

5 THE COURT: WHAT IS THE DECISION?

6 MR. ORR: I -- I DON'T WANT TO TESTIFY.

7 THE COURT: YOU ARE NOT GOING TO TESTIFY?

8 MR. ORR: NO, SIR.

9 THE COURT: OKAY. THANK YOU. YOU CAN BE SEATED.

10 MR. DAVIS, DO YOU INTEND TO OFFER ANY OTHER EVIDENCE?

11 MR. DAVIS: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. THEN, UM, WE WILL -- WE WILL
13 -- I'M GOING TO BRING THE JURY BACK IN HERE AND SEND THEM
14 TO LUNCH. WE'LL COME BACK AT 1:30 FOR CLOSING ARGUMENTS,
15 DOES THAT SUIT EVERYBODY?

16 MR. DAVIS: JUDGE, THAT'S FINE WITH ME, YOUR HONOR.

17 AND I'LL FORMALLY REST IN FRONT OF THE JURY.

18 THE COURT: ALL RIGHT.

19 MR. DAVIS: FOR ECONOMY, OF COURSE, NOTHING NEW HAS
20 HAPPENED, I WOULD RENEW ANY AND ALL MOTIONS AT THE END --
21 OUT OF AN ABUNDANCE OF CAUTION, OF COURSE, WE HAVE NOT
22 PRESENTED ANYTHING, BUT OUT OF AN ABUNDANCE OF CAUTION, OF
23 COURSE, WE REST NOW. I'LL DO IT FORMALLY AND RENEW ALL
24 MOTIONS.

25 THE COURT: ALL RIGHT. I DENY THE RENEWED MOTIONS.

1 MR. DAVIS: THANK YOU, JUDGE.

2 THE COURT: BRING IN THE JURY, PLEASE.

3 (WHEREUPON, JURY ENTERED THE COURTROOM AT 12:05
4 P.M.)

5 BAILIFF: ALL PRESENT, YOUR HONOR.

6 THE COURT: MR. DAVIS.

7 MR. DAVIS: YOUR HONOR, THE DEFENSE RESTS.

8 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THAT
9 WILL BE ALL THE TESTIMONY AND EVIDENCE THAT YOU WILL HEAR
10 IN THIS CASE. WE ARE GOING TO BREAK NOW FOR LUNCH AND WE
11 WILL RETURN AT 1:30 WHEN WE WILL HEAR THE CLOSING
12 ARGUMENTS OF THE ATTORNEYS. AFTER THAT, I WILL CHARGE YOU
13 ON THE LAW AND YOU SHOULD BE DELIBERATING IN THE CASE
14 SOMETIME AROUND 2:30 OR 3:00, I WOULD GUESS.

15 SO, REMEMBER, THAT YOU STILL MAY NOT DISCUSS THE
16 CASE. HAVE A NICE LUNCH AND WE WILL SEE YOU -- PLEASE BE
17 PROMPT TO BEGIN AT 1:30. SEE YOU AT 1:30.

18 (WHEREUPON, JURY LEFT THE COURTROOM AT 12:06 P.M.)

19 THE COURT: ALL RIGHT. I -- THE ONLY REQUEST FOR
20 CHARGE THAT I GOT WAS THAT I CHARGE THE STATUTE ABOUT
21 CORROBORATION, AND I'M NOT GOING TO CHARGE THAT. ANY
22 OTHER SPECIAL REQUESTS FOR CHARGE?

23 MS. HERRING-LASH: NOT FROM THE STATE, YOUR HONOR.

24 MR. DAVIS: NO SPECIAL REQUEST, JUDGE. I WOULD
25 ASSUME YOU WOULD GIVE ---

1 **THE COURT:** I'M GOING TO GIVE YOU ALL A COPY OF THE
2 CHARGE RIGHT NOW AND YOU ALL CAN REVIEW IT OVER LUNCH.
3 AND WE'LL HAVE A BRIEF CONVERSATION ABOUT IT BEFORE YOU
4 BEGIN YOUR CLOSING ARGUMENTS JUST TO MAKE SURE THAT YOU
5 DON'T HAVE ANY OBJECTIONS, OR TO SEE IF YOU HAVE ANY
6 ADDITIONS. I'VE GOT TO INSERT ONE MORE THING IN THERE AND
7 THEN I'LL HAVE MY LAW CLERK PRINT OUT TWO COPIES AND
8 SHE'LL HAVE THOSE AVAILABLE FOR YOU ALL.

9 **MR. DAVIS:** THANK YOU, JUDGE.

10 **THE COURT:** ALL RIGHT. ANYTHING ELSE NOW REGARDING
11 THE CHARGE OR ANYTHING ELSE?

12 **MR. DAVIS:** NO, SIR.

13 **MS. HERRING-LASH:** NO. NO, SIR.

14 **THE COURT:** NOW, OBVIOUSLY, WE'RE DEALING -- I THINK
15 -- I DON'T THINK THE LAW HAS CHANGED IN THIS RESPECT, BUT
16 WE'RE DEALING WITH THE OLD VERSION OF THE STATUTE THAT
17 EXISTED IN 2003, WHICH IS 16-3-655 SUBPARAGRAPH 1.

18 **MS. HERRING-LASH:** YES, YOUR HONOR.

19 **THE COURT:** OKAY. ALL RIGHT. JUST ONE MOMENT AND
20 YOU'LL HAVE A COPY OF IT. ALL RIGHT. WE'LL BE IN RECESS
21 UNTIL ABOUT 1:20 -- 1:25, I'LL BE BACK. AND IF YOU HAVE
22 ANYTHING TO SAY ABOUT THE CHARGE, I'LL HEAR IT AT THAT
23 TIME.

24 **MR. DAVIS:** THANK YOU, JUDGE.

25 **THE COURT:** SOMETIME DURING THE COURSE OF THE

1 MORNING, SOMEBODY MENTIONED TO ME THAT THERE WAS A LITTLE
2 BIT OF AN ALTERCATION -- I KNOW YOUR CLIENT IS NOT IN HERE
3 -- I'M JUST GOING TO TELL YOU THIS AND Y'ALL CAN DECIDE
4 WHAT TO DO WITH IT.

5 BUT SOMEBODY INFORMED ME THAT THERE WAS SOME TYPE
6 OF CONFRONTATION OR ARGUMENT OF -- I DON'T EVEN KNOW WHAT
7 IT WAS -- BETWEEN THE DEFENDANT AND SOME MEMBERS OF THE
8 VICTIM'S FAMILY. UM, AND I WAS JUST INQUIRING ABOUT IT.
9 AND APPARENTLY, THERE MIGHT HAVE BEEN SOME JURORS WHO SAW
10 IT. I DON'T KNOW. AND I JUST SPOKE WITH ONE OF THE
11 OFFICERS, HE DOESN'T KNOW EITHER. SO, I'M JUST LETTING
12 Y'ALL KNOW THAT THAT PIECE OF INFORMATION CAME TO MY
13 ATTENTION.

14 AND IF YOU WOULD LIKE FOR ME TO ENGAGE IN ANY
15 FURTHER INQUIRY, I'LL BE HAPPY TO DO THAT. BUT UNLESS I'M
16 ASKED TO DO THAT, OR UNLESS I COME ACROSS SOME ADDITIONAL
17 INFORMATION, I'M NOT PLANNING ON DOING ANYTHING.

18 IT'S MY UNDERSTANDING THAT SECURITY NOW FEELS AS
19 THOUGH THEY HAVE GOT THE SITUATION BETWEEN THE DEFENDANT
20 AND THE VICTIM'S FAMILY IN HAND AND I'M NOT WORRIED ABOUT
21 THAT. MY ONLY REASON FOR BRINGING IT UP IS BECAUSE I WANT
22 YOU ALL TO KNOW OF THE POSSIBILITY THAT MEMBERS OF THE
23 JURY MIGHT HAVE SEEN SOME CONFRONTATION BETWEEN THESE
24 FOLKS.

25 MR. DAVIS: THANK YOU, JUDGE.

1 THE COURT: OKAY.

2 (WHEREUPON, COURT RECESSED AT 12:15 P.M.)

3 (WHEREUPON, COURT RESUMED AT 1:30 P.M.)

4 THE COURT: BE SEATED PLEASE. ALL RIGHT, SIR.

5 MR. DAVIS: THANK YOU, YOUR HONOR. JUST BRIEFLY, IN
6 CONFERRING WITH THE SOLICITOR AND LOOKING THROUGH THIS, I
7 DON'T HAVE ANY ISSUES WITH WHAT IS CONTAINED, BUT I DID
8 NOT SEE AN EXPLANATION OF DIRECT OR CIRCUMSTANTIAL
9 EVIDENCE IN YOUR CHARGE. AND I WOULD ASK THAT THAT BE
10 GIVEN, THE EXPLANATION OF DIRECT AND CIRCUMSTANTIAL.

11 THE COURT: WELL, WHAT WOULD BE THE REASON FOR ME
12 INCLUDING THAT IN THE CHARGE?

13 MR. DAVIS: BECAUSE BOTH EXISTS IN THIS TRIAL, AND I
14 THINK THE JURY OUGHT TO UNDERSTAND THE DIFFERENCES BETWEEN
15 THE TWO FACTUALLY. BUT ALSO THE FACT THAT NEITHER ONE IS
16 WEIGHED MORE HEAVILY THAN THE OTHER.

17 CERTAINLY, THE STATE IS RELYING, FIRST OF ALL, ON
18 SOME SUPPOSED EYE WITNESSES, AND I WOULDN'T WANT THE JURY
19 TO ADD EXTRA BENEFIT TO THAT. CERTAINLY, YOU HAVE GOT THE
20 EXPERT CHARGE IN THERE, BUT I WANT THEM TO UNDERSTAND
21 THAT, YOU KNOW, CIRCUMSTANTIAL OR LACK OF CIRCUMSTANTIAL
22 EVIDENCE COULD BE--

23 THE COURT: I DON'T THINK I'M GOING TO CHARGE
24 CIRCUMSTANTIAL EVIDENCE. I'M NOT AWARE THAT THERE REALLY
25 IS ANY CIRCUMSTANTIAL EVIDENCE HERE. THIS IS ALL DIRECT

1 EVIDENCE. AND I DON'T SEE THE NEED TO EXPLAIN -- EXPLAIN
2 IT. ANYTHING FURTHER?

3 MS. HERRING-LASH: NOT FROM THE STATE, YOUR HONOR.

4 THE COURT: IS THE JURY HERE?

5 BAILIFF: ONE MORE. (PAUSE). THEY'RE ALL HERE.

6 THE COURT: ALL RIGHT. BRING THEM IN.

7 (WHEREUPON, JURY ENTERED THE COURTROOM AT 1:35 P.M.)

8 BAILIFF: THE JURORS ARE ALL SEATED, YOUR HONOR.

9 MS. HERRING-LASH: MAY IT PLEASE THE COURT?

10 THE COURT: YES.

11 MS. HERRING-LASH: HAROLD ORR THOUGHT THAT SHEILA WAS
12 ASLEEP FOR THE EVENING. AND IN THE PRIVACY OF HIS HOME,
13 HE TOOK THE OPPORTUNITY TO ASSAULT HIS GRANDDAUGHTER,

14 [REDACTED]

15 THIS KIND OF BEHAVIOR IS DIFFICULT TO UNDERSTAND.
16 IT IS SO DIFFICULT AND PERHAPS SO REPREHENSIBLE, THAT WE
17 JUST WANT TO BELIEVE THAT IT DOESN'T HAPPEN AND THINK THAT
18 IT JUST CAN'T BE. BUT, IN FACT, IT DOES HAPPEN AND IT
19 DID HAPPEN. IT HAPPENED TO [REDACTED] ON THE NIGHT OF
20 THE 25TH OF NOVEMBER IN 2003.

21 THIS IS A VERY IMPORTANT DAY OR WEEK FOR [REDACTED]

22 [REDACTED] IT IS FINALLY HER TIME IN COURT. SHE'S WAITED
23 ALMOST FOUR AND A HALF YEARS. SHE'S STILL, EVEN THOUGH
24 SHE'S 13 NOW AND LARGER, IN SOME WAYS STILL CHILD LIKE.
25 SHE TOLD YOU THAT SHE LIKES TO PLAY OUTSIDE AND TALK ON

1 THE PHONE. FOUR AND A HALF YEARS AGO SHE WAS NINE. YOU
2 CAN TELL BY THE SHORTS THAT SHE HAD ON THAT EVENING, A
3 MUCH TINIER LITTLE GIRL.

4 YOU ARE THE JUDGES OF THE FACTS IN THIS CASE,
5 LADIES AND GENTLEMEN. AND THAT BEING SAID, THAT MAKES YOU
6 THE JUDGES OF THE CREDIBILITY OF THE WITNESSES TO START
7 WITH. YOU DO THAT EVERYDAY IN YOUR LIFE. WHEN YOU MEET
8 SOMEONE AND THEY TELL YOU ABOUT SOMETHING, YOU JUDGE
9 WHETHER YOU THINK THEY'RE AN HONEST PERSON, WHETHER THEY
10 HAVE A MOTIVE TO MAKE UP WHAT THEY'RE SAYING, WHETHER
11 THEY'RE BIASED OR PREJUDICED AGAINST SOMETHING. WHAT
12 THEIR ABILITY IS TO KNOW WHAT THEY SAW, TO HAVE SEEN WHAT
13 THEY ARE TELLING YOU THEY SAW. YOU JUDGE THAT EVERY DAY.
14 AND THAT'S WHAT YOU DO WITH THIS EVIDENCE. YOU REMEMBER
15 IT, YOU GO OVER IT AND YOU JUDGE IT.

16 LET'S START OFF WITH **Minor** TESTIMONY. HER
17 TESTIMONY WAS MONDAY AFTER, BUT I WOULD ASK YOU TO TRY TO
18 REMEMBER **Minor** AS SHE PRESENTED HERSELF ON THE STAND AND
19 AS SHE TESTIFIED TO. AND LET'S LOOK AT THE MOTIVE AND THE
20 DETAILS FROM EACH WITNESS.

21 **Minor** MOTIVE. WHAT POSSIBLE MOTIVE WOULD SHE
22 HAVE TO MAKE THIS UP? WHAT DID SHE HAVE TO GAIN BY THIS?
23 UP UNTIL THIS DAY, YOU HAVE BEEN TOLD BY THE WITNESSES
24 THAT SHE LOVED HER GRANDPA. SHE WANTED IT TO STOP. THAT
25 IS THE ONLY MOTIVE THAT SHE HAD TO TELL THE POLICE WHAT

1 HAPPENED. FOR IT TO STOP. THAT IS WHAT SHE WANTED TO BE
2 OVER. IF YOU REMEMBER, SHE SAID SHE JUST WANTED IT TO BE
3 OVER. AND THAT SHE WAS SAD. THE TIME AND DURING HER
4 TESTIMONY THAT SHE GOT A LITTLE BIT UPSET, WHEN SHE SAID
5 SHE WAS SAD BECAUSE WHY WOULD MY GRANDPA DO THIS TO ME.
6 [REDACTED] DETAILS. SHE BEGAN BY GOING THROUGH THE
7 EVENTS OF THE DAY. SHE WENT TO SCHOOL. SHE WENT BACK
8 OVER -- SHE WAS TAKEN OVER TO HER GRANDMOTHER'S HOUSE.
9 SHE PLAYED OUTSIDE. SHE TOLD YOU ABOUT WATCHING SOME
10 OTHER KIDS SKIP ROPE OUT IN THE BACK. THEY -- THEY
11 BATHED. SHE REMEMBERED THAT BECAUSE GRANDMA HAD THAT BIG
12 TUB THAT THEY LOVED TO PLAY IN, WATCHED TV AND FELL
13 ASLEEP. SHE ACTUALLY FELL ASLEEP ON THE COUCH IN THE
14 LIVING ROOM WITH HER HEAD UP AGAINST THE PART OF THE COUCH
15 THAT WAS NEAR THE DOOR, AND SHE SHOWED YOU -- AS SHE TOLD
16 YOU AND AS YOU SAW IN THE PICTURES.
17 AND SHE WAS AWAKEN -- SHE DOESN'T KNOW HOW MUCH
18 LATER -- YOU DON'T KNOW WHEN YOU'RE ASLEEP. AND AWAKEN
19 FIRST BY HER GRANDFATHER'S -- THE MOTION OF HIM SITTING
20 DOWN ON THE COUCH. SHE SAYS HE THEN TOOK OFF HER
21 UNDERWEAR AND USED HIS HAND TO PULL ASIDE HER -- EXCUSE ME
22 -- TOOK OFF HER GREEN SHORTS AND MOVED HIS HAND TO PUSH
23 ASIDE HER UNDERWEAR. SHE TOLD YOU THE POSITION THAT SHE
24 WAS IN. SHE SAID SHE HAD ONE LEG KIND OF UP OVER THE BACK
25 OF THE COUCH. THE OTHER LEG WAS BENT DOWN, LIKE TOWARD --

1 THE FOOT TOWARD THE SOFA. AND HIS HEAD IS BETWEEN MY LEGS
2 AND HE WAS LICKING MY PRIVATES. A POSITION A NINE YEAR
3 OLD CHILD SHOULD NOT BE ABLE TO EXPLAIN TO YOU UNLESS THIS
4 HAD HAPPENED TO HER.

5 SHE TOLD YOU THAT HE BEGAN TO WAKE HER AND THEN HER
6 GRANDMOTHER -- SHE DIDN'T REALLY KNOW SHE WAS COMING, BUT
7 SHE WAS THERE BESIDE HER, SCREAMING AND HITTING HIM. AT
8 -- AND THEN AFTER HE LEFT, SHE SAYS THE GRANDMOTHER TOOK
9 HER INTO THE BEDROOM -- THEY WENT INTO THE BEDROOM. SHE
10 EXAMINED HER. SHE SAID SHE TOUCHED THE OUTSIDE OF HER
11 UNDERWEAR. IF SHE PULLED THEM ASIDE, Minor WOULD HAVE
12 FELT HER TOUCHING THE OUTSIDE OF HER UNDERWEAR. AND THAT
13 SHE ENCOURAGED HER TO TELL THE TRUTH. SHE ENCOURAGED HER
14 TO TELL WHAT HAPPENED.

15 SHE WAS ABLE TO CORRECT DEFENSE ATTORNEY AND MYSELF
16 WHEN WE MIS -- MIS -- MISSPOKE, I'M SORRY, SOMETHING THAT
17 SHE REMEMBERED DIFFERENTLY. SHE DID REMEMBER A LOT OF
18 THESE DETAILS. JUST THINK BACK ABOUT HER TESTIMONY. SHE
19 WAS ASKED CLEARLY, DID YOUR GRANDMOTHER TELL YOU WHAT TO
20 SAY. AND SHE SAID NO. SHE TOLD ME TO TELL THE TRUTH.
21 SHE TOLD ME TO TELL WHAT HAD HAPPENED TO ME.

22 SHEILA'S MOTIVE. WHAT MOTIVE WOULD SHE HAVE TO GET
23 RID OF HIM. ALL SHE HAD TO DO IS SAY LEAVE. I MEAN, IF
24 YOU DON'T WANT TO BE WITH SOMEBODY ANYMORE, JUST TELL THEM
25 TO LEAVE. YOU DON'T HAVE TO HAVE A REASON. IF, AS THE

1 DEFENSE WOULD PRESENT TO YOU, SHE WAS JUST SO HAPPY TO BE
2 BACK HERE IN CHARLESTON AROUND HER FAMILY, WELL, SHE COULD
3 BE AROUND HER FAMILY. SHE DID NOT HAVE TO MAKE THIS UP TO
4 GET RID OF THIS MAN IF SHE WANTED TO GET RID OF HIM. NO
5 -- OR JUST LEAVE, OR I'M MOVING OUT.

6 AND IF -- AND SHE HAD NOTHING TO GAIN. THEY HAD NO
7 PROPERTY TOGETHER, NO CHILDREN TOGETHER. THEY HAD BEEN
8 LIVING HERE LESS THAN A MONTH.

9 YOU WERE TOLD THEY MOVED HERE HALLOWEEN DAY, WHICH
10 WOULD HAVE BEEN THE 31ST OF OCTOBER. THIS HAPPENED THE
11 25TH OF NOVEMBER. THEY WEREN'T REALLY ESTABLISHED IN THIS
12 PLACE. SHE COULD HAVE LEFT. HE COULD HAVE LEFT.

13 EVEN IF SHE WANTED TO GET RID OF HIM, WHO WOULD BE
14 SO MEAN TO USE A NINE YEAR OLD CHILD TO DO THIS. AND
15 THAT'S PREPOSTEROUS.

16 HER DETAILS. SHE TELLS YOU ABOUT WHAT HAPPENED
17 THAT DAY. THE KIDS CAME. THEY PLAYED. SHE TOLD YOU,
18 TOO, ABOUT, YOU KNOW, WHAT THEY DID WHEN THEY GOT THERE.
19 AND SHE -- WHEN SHE -- THEM TAKING A BATH, WATCHING TV.
20 SHE FALLS ASLEEP. SHE DIDN'T MEAN TO FALL ASLEEP. SHE
21 DIDN'T GO INTO THE ROOM WITH THE INTENT OF FALLING ASLEEP.
22 SHE LAID DOWN WITH THE CHILD AND NODDED OFF.

23 WHEN SHE AWOKE, SHE REALIZED THAT KAILAH WAS THERE
24 BESIDE HER, BUT SHE DIDN'T REALLY KNOW WHERE [REDACTED] AND
25 PARIS WERE. SO, SHE WAS GETTING UP -- WALKING OUT AS WE

1 SHOWED YOU HERE FROM HER ROOM -- GETTING UP, WALKING OUT,
2 GOING TO LOOK TO SEE WHERE, YOU KNOW, [Minor] AND PARIS
3 WERE.

4 SHE SAID HERE THAT -- THAT SHE GOT TO AROUND THE
5 COUCH. IT WAS POINTED OUT PRIOR THINGS SHE HAD SAID, BAR
6 AREA. WELL, IF YOU LOOK AT THOSE PICTURES, THE COUCH AND
7 THE BAR AREA, THEY'RE RIGHT THERE. IT'S -- WHEN YOU'RE
8 STANDING HERE, THE BAR IS HERE AND THE COUCH IS HERE. SHE
9 WAS CLOSE ENOUGH TO THE BAR THAT SHE COULD GRAB THE PHONE
10 OFF OF IT AND HIT HIM.

11 SHE THEN EXPLAINED TO YOU -- SHE WAS STANDING THERE
12 AND SHE SAW IT, SOMETHING THAT SHE DIDN'T WANT TO SEE, SHE
13 NEVER EXPECTED TO SEE, SOMETHING THAT SHOCKED HER. SHE
14 EXPLAINED TO YOU THE POSITION THAT [Minor] LEGS WERE IN.

15 I DEMONSTRATED HERE, IF YOU CAN REMEMBER, ON
16 SOMETHING THAT WAS MUCH SMALLER THAN THE COUCH. BUT JUST
17 AS WITH THE LEG UP OVER THE BACK OF THE COUCH, THE OTHER
18 FOOT DOWN, AND HOW HAROLD WAS KNELLING WITH HIS ONE LEG UP
19 AND DOWN OVER [Minor] NOT OVER HER AS IN COVERING HER
20 BODY UP, BUT -- AND IF YOU THINK ABOUT IT, HIS HEAD
21 COULDN'T HAVE BEEN BETWEEN HIS LEGS -- HIS BODY HAS TO BE
22 BEHIND HIS HEAD. HE WASN'T ON TOP OF HER COVERING HER UP.
23 SHE SAW WHAT HAPPENED.

24 SHE WAS NOT IN THE COURTROOM, WHEN [Minor] TESTIFIED
25 AND EXPLAINED TO YOU WHAT HAD HAPPENED TO HER. SHE --

1 THAT NIGHT, SHEILA WAS ANGRY -- NOW, EXCUSE ME -- SHE'S
2 ANGRY NOW. THAT NIGHT, SHE WAS HYSTERICAL ABOUT WHAT SHE
3 SAW.

4 WHAT SHE SHOWED YOU WAS WHAT SHE HAD SEEN. THEN
5 SHE TOLD YOU ABOUT A STRUGGLE OVER THE PHONE. SHE HIT
6 HIM. WELL, IT'S BEEN MADE LIKE WELL, DID SHE HIT HIM OR
7 DIDN'T SHE HIT HIM, I MEAN, WHY -- WHETHER SHE TOLD PEOPLE
8 SHE DID OR NOT, WHAT DOES IT MATTER? I MEAN, IS IT LIKE,
9 WELL, SHE IS GOING TO BE ARRESTED FOR HITTING HIM. I
10 MEAN, IT HELPS -- I MEAN, SHE SAW SOMETHING, SHE DID IT.

11 SHE CALLED SABRINA RIGHT AWAY. SHE CALLED SABRINA
12 BECAUSE AS SHE WAS HITTING HIM, SHE SAID THAT THE PHONE
13 KIND OF FELL APART. THE BATTERY FELL OUT. SHE HAD TO PUT
14 THE BATTERY BACK IN BECAUSE SHE WAS SPEED DIALING SABRINA.
15 HE WOULDN'T LET HER CALL THE POLICE. THEY WERE
16 STRUGGLING. SHE JUST TELLS SABRINA, CALL THE POLICE. AND
17 SABRINA SAYS WHEN SHE GOT THAT CALL, HAROLD WAS STILL
18 THERE. SHE COULD HEAR HIM IN THE BACKGROUND, HE HAD NOT
19 YET GONE.

20 HAROLD RAN BECAUSE SHE CAUGHT HIM, NOT BECAUSE SHE
21 HIT HIM WITH THE PHONE. I MEAN, HE WAS -- HE STOOD UP ON
22 MONDAY TO SHOW THE SIZE OF -- HIS SIZE, HIT HIM OVER THE
23 HEAD WITH A LITTLE PHONE. SHE WASN'T BEATING HIM. I
24 MEAN, THAT DIDN'T HURT HIM ENOUGH TO MAKE HIM RUN. HE RAN
25 BECAUSE SHE CAUGHT HIM. HE KNEW WHAT HE DID. AND SHE

1 CAUGHT HIM AND HE HEARD HER CALLING THE POLICE.

2 IF YOU GO BACK, SABRINA HAS TESTIFIED TODAY THAT
3 SHE HEARD HIM IN THE BACKGROUND WHEN SHE HAD HER MOTHER ON
4 THE PHONE. SABRINA WAS THE LAST WITNESS THAT TESTIFIED.
5 SHE HEARD HAROLD AND THE MOTHER IN THE BACKGROUND. SO HE
6 WAS STILL THERE THEN.

7 SABRINA CALLS THE POLICE. THE POLICE OFFICER SAID
8 IT TOOK HIM FIVE -- FOUR -- EXCUSE ME -- FOUR MINUTES TO
9 GET THERE. LET'S GIVE A MINUTE TO SABRINA TO GET THE CALL
10 TOGETHER. SO, SHEILA WOULD HAVE HAD FIVE MINUTES, ALONE
11 WITH [Minor] BEFORE THE POLICE GOT THERE. AND DURING
12 THAT TIME, SHE EXAMINED [Minor] FIVE MINUTES TO TALK HER
13 INTO ALL THIS, TO GET HER TO CONSPIRE WITH HER.

14 SHEILA WAS UPSET BECAUSE HAROLD BETRAYED HER TRUST.
15 SHE DID TELL YOU, DURING A PART OF HER TESTIMONY WHEN SHE
16 GOT A BIT UPSET, SHE THOUGHT THIS MAN HAD BEEN A WONDERFUL
17 GRANDFATHER. HE WAS WITH [Minor] ON THE DAY SHE WAS BORN.
18 SHE THOUGHT THAT HE WAS A GOOD GRANDDADDY UNTIL WHAT SHE
19 SAW THAT NIGHT. AND, OF COURSE, SHE'S ANGRY NOW WHEN SHE
20 COMES IN HERE. SHE WANTS HIM PUNISHED. WHO WOULDN'T?

21 THE -- A LOT OF HER CROSS EXAMINATION WAS BASED ON
22 WELL, DID YOU TELL OFFICER A THIS OR OFFICER B THIS, NOT
23 ABOUT WHAT HAPPENED THAT NIGHT. BUT SHE WAS ASKED, YOU
24 NEVER TOLD ANY OFFICER THAT YOU HIT HIM WITH THE PHONE.
25 SHE SAYS, WELL, NO. YOU NEVER TOLD ANY OFFICER YOU

1 EXAMINED -- YOU EXAMINED [Minor] BUT WHEN OFFICER
2 WILLIAMS WAS ON THE STAND WITH HER STATEMENT, HE SAYS YES
3 -- I MEAN, SHE SAYS, IT IS IN THERE. IT -- SHE TOLD HIM
4 THAT SHE EXAMINED [Minor] AND SHE TOLD HIM THAT SHE
5 STRUGGLED OVER THE PHONE.

6 A LOT OF THE CROSS WAS MUCH ADO ABOUT NOTHING.
7 WHETHER SHE CALLED ONE PERSON OR WHETHER SHE -- SHE HIT
8 HIM WITH THE PHONE -- SABRINA, AS I SAID, SHE WAS THE LAST
9 WITNESS TODAY. SHE HEARD THE STRUGGLE AND SHE ONLY WANTED
10 TO COMFORT [Minor] THAT WAS HER MAIN THING. SHE'S LOVED
11 [Minor] HER FAVORITE LITTLE NIECE.

12 HER MOM, WHO TESTIFIED TODAY, LASHANDA, SHE REACTED
13 LIKE ANY MOTHER. SHE WENT STRAIGHT TO THE HOSPITAL FROM
14 PAWLEY'S ISLAND AND [Minor] TOLD HER WHAT HAPPENED. SHE
15 DIDN'T QUESTION HER A LOT ABOUT IT SINCE THEN. THAT NIGHT
16 SHE WAITED, YOU KNOW, TO TALK TO HER.

17 AND GOING BACK TO LASHANDA REACTING LIKE ANY
18 MOTHER, I WOULD SUBMIT TO YOU THAT SHEILA REACTED LIKE ANY
19 GRANDMOTHER SHOULD ACT. THERE ARE A LOT OF PEOPLE THAT
20 WOULD SAY GET OUT, AND NOT CALL THE POLICE; OR YELL AT HIM
21 AND NOT CALL THE POLICE. SHE DID THE RIGHT THING. SHE'S
22 A HERO IN THIS. SHE CALLED THE POLICE.

23 OFFICER ROGERS EXPLAINED TO YOU THE FACT WHEN HE
24 GOT THERE, THE SCENE WAS VERY -- THAT HE COULDN'T REALLY
25 CALM SHEILA DOWN. SHE -- HE COULDN'T WRITE DOWN WHAT SHE

1 WAS SAYING TO HIM. HE TOLD YOU, SHE WAS SAYING ALL KINDS
2 OF STUFF. HE COULDN'T WRITE ANYTHING DOWN. NOT ONLY --
3 BUT HE'S ALSO TRYING TO MAKE SURE THE SCENE WAS SECURE.
4 HE DIDN'T KNOW WHO WAS WHERE, WHAT WAS GOING TO HAPPEN.
5 NOT TELLING WHAT ALL SHE SAID TO HIM WHEN HE WASN'T
6 WRITING IT DOWN.

7 HE TOLD YOU HE STARTED TAKING NOTES WHEN OFFICER
8 LOWER -- LOWERY -- EXCUSE ME -- ARRIVED, SO THAT HE HAD
9 SOME ASSISTANCE AND HE COULD FINALLY WRITE WHAT SHE WAS
10 SAYING.

11 MR. ORR DOES COME BACK. HE KNEW WHAT HE HAD DONE.
12 HE KNEW SHEILA KNEW WHAT HE HAD DONE AND HE KNEW THE
13 POLICE WERE AT HIS HOUSE. THE BEST THING TO DO --
14 SOMETIMES THE BEST DEFENSE IS AN OFFENSE.

15 OFFICER LOWERY INTERVIEWED [REDACTED] WITH OFFICER
16 ROGERS NEARBY. SHE SHOULD HAVE WRITTEN A -- UM, INCIDENT
17 REPORT OR A SUPPLEMENT, SHE DIDN'T. BUT SHE KNEW THAT
18 OFFICER ROGERS WAS TAKING DOWN WHAT [REDACTED] TOLD HER. AND
19 SHE COULDN'T TELL YOU ALL THAT [REDACTED] SAID. OF COURSE,
20 IT'S HEARSAY AND YOU HEARD HEARSAY REFERRED TO DURING THE
21 TRIAL.

22 YOU HEARD FROM MANY WITNESSES THAT YOU PROBABLY
23 WONDERED, WELL, WHAT IN THE WORLD ARE THEY UP THERE FOR.
24 THEY'RE JUST TALKING ABOUT CARRYING SOMETHING FROM SOME
25 PLACE TO ANOTHER. THEY'RE JUST THE CHAIN OF THE EVIDENCE

1 THAT WE GOT FROM SLED AND FROM THE BODE LABORATORY, JUST
2 TO SHOW YOU THAT THERE WAS SAFE KEEPING IN THE EVIDENCE,
3 AND IT WILL -- WE KNOW WHO ALL HAD SOMETHING TO DO WITH IT
4 BEFORE IT WAS PRESENTED TO YOU.

5 SGT. WILLIAMS TOOK THE STATEMENT OF SHEILA AT THE
6 HOSPITAL. A LOT WAS MADE OF, WELL, WHAT'S IN THE
7 STATEMENT. I SUBMIT TO YOU THAT THERE WERE NOT
8 DISCREPANCIES, BUT THINGS LEFT OUT, WHICH IS A DIFFERENCE.
9 THE TACTIC IS TO JUST QUESTION YOU ABOUT -- QUESTION YOU
10 ABOUT WHAT YOU SAID TO THIS ONE AND TO THAT ONE, AND NOT
11 WHAT REALLY HAPPENED.

12 EVERY PERSON KNOWS IF YOU THINK BACK ABOUT SOME
13 EVENT IN YOUR LIFE AND YOU WANT TO EXPLAIN WHAT HAPPENED
14 AND TELL ALL THE DETAILS ABOUT IT, YOU CAN DO THAT MUCH
15 EASIER THAN IF YOU'RE ASKED, WELL, WHAT DID YOU TELL A,
16 AND THEN WHAT DID YOU TELL B, AND WHAT DID YOU TELL C.
17 THAT PART MAY BE DIFFICULT, WHAT YOU TOLD SOMEBODY. BUT
18 IF YOU'RE JUST ASKED TO EXPLAIN WHAT HAPPENED, YOU CAN DO
19 THAT BECAUSE THAT'S THE WAY YOUR MEMORY WORKS.

20 DR. SCHUH TALKED TO [Minor] AND GOT A HISTORY OF
21 WHAT HAD HAPPENED TO HER. SHE MET WITH THE MOM AND
22 [Minor] THE EXAM, AS YOU WOULD EXPECT FROM LICKING, WAS
23 NORMAL AS FAR AS HER INTERNAL EXAM. SHE DID FIND AN
24 ABRASION. SHE CAN'T TELL YOU, OF COURSE, WHAT THAT
25 ABRASION WAS FROM. [Minor] COULD HAVE SCRATCHED HERSELF.

1 HAROLD ORR COULD HAVE SCRATCHED HER WHEN HE MOVED HER
2 PANTIES ASIDE.

3 SHE ALSO COLLECTED THE UNDERWEAR AND PUT THEM IN A
4 SAFE PLACE IN A SEALED CONTAINER. SHE ALSO COLLECTED --
5 GOT SWABS OF [REDACTED] BODY ON THE OUTSIDE AND INSIDE, AND
6 PUT THEM IN CONTAINERS. AND SHE GOT BLOOD FROM [REDACTED]
7 WHICH [REDACTED] SEEMED TO REMEMBER THE MOST, BECAUSE SHE
8 REMEMBERED THE NEEDLE.

9 NEXT YOU HEARD FROM ROBIN TAYLOR. UM, I'M NOT
10 GOING TO TRY AND EXPLAIN TO YOU ANYTHING ABOUT DNA. YOU
11 PROBABLY THINK YOU HAVE HEARD ALL YOU NEED TO KNOW ABOUT
12 IT AND IT'S STILL PRETTY CONFUSING. BUT ROBIN TAYLOR DID
13 AN ANALYSIS ON THE CUTTING FROM THE PANTIES. NOW, SHE
14 DIDN'T GO INTO A LOT OF DETAIL ABOUT THE ANALYSIS THAT SHE
15 DID PRIOR TO THE PANTIES. THEY DO, WHAT IS CALLED, THE
16 MOST -- THE MOST INTIMATE EVIDENCE TESTED FIRST. SHE
17 TESTED THE SWABS AND THE THINGS THAT WERE SWABBED AND
18 TAKEN FROM DESTINY'S BODY FIRST. THERE WAS NOTHING
19 FOREIGN TO [REDACTED] FOUND ON HER BODY.

20 THEN SHE TESTED THE UNDERWEAR, THE CUTTING FROM THE
21 UNDERWEAR. AND, IN FACT, THERE IS WHERE SHE FOUND
22 SOMETHING FOREIGN TO [REDACTED] IT WASN'T ENOUGH TO DEVELOP
23 A -- WHAT WE CALL -- WHAT WE HAVE BEEN CALLING A REGULAR
24 DNA PROFILE, BUT IT WAS ENOUGH TO TELL HER THIS HAS TO BE
25 FOREIGN TO [REDACTED] THIS COULDN'T BE FROM HER BECAUSE IT

1 HAS A Y CHROMOSOME AND GIRLS AND WOMEN DO NOT HAVE Y
2 CHROMOSOMES. SO, SHE KNEW THERE WAS SOMETHING ELSE THERE.

3 SO, SHE DID HER -- HER TESTING THAT SHE COULD DO,
4 FOUND THAT THERE WASN'T ENOUGH THERE -- SHE DID SAY THAT
5 THERE WAS A LINK AT TWO SITES ON THAT PROFILE IN THE
6 PANTIES THAT WASN'T Minor AND IT WAS -- IT DID NOT
7 EXCLUDE HAROLD ORR.. BUT SLED CAN'T -- THAT'S NOT ENOUGH
8 FOR SLED TO USE TO DO ANYTHING. SO, SHE SENT IT ON TO A
9 LAB THAT DID A DIFFERENT KIND OF TESTING.

10 SHE THEN TESTED FOR SALIVA. THAT IS USED -- THAT
11 IS DONE BY TESTING FOR AMYLASE -- AND I HOPE THAT I AM
12 PRONOUNCING THAT CORRECTLY. AMYLASE IS AN ENZYME THAT IS
13 FOUND IN LARGE QUANTITIES IN THE SALIVA, IN LARGER
14 QUANTITIES THAN IN ANY OTHER BODILY FLUID. AND THAT IS
15 THE TEST THAT EVERY LAB DOES USE AND HAS AS LONG AS ROBIN
16 TAYLOR HAS KNOWN, THEY USE THAT TO INDICATE SALIVA. EVERY
17 LAB SHE HAS KNOWN, THAT'S THE STANDARD. THAT'S THE ONLY
18 TEST SHE HAS TO USE, AND THAT'S THE TEST SHE USED.

19 AS MUCH AS SHE WAS CROSS EXAMINED, AND TRIED TO
20 SAY, WELL, REALLY, YOU COULD FIND OTHER -- YOU KNOW,
21 SALIVA ISN'T REALLY, YOU KNOW, WHERE AMYLASE IS -- THAT IS
22 WHERE IT IS FOUND IN SUCH QUANTITIES, THAT THAT IS THE
23 TEST THAT YOU USE TO INDICATE SALIVA. THAT'S THE BEST --
24 THAT'S THE BEST THAT SHE CAN DO WITH THE TECHNOLOGY THAT
25 EXISTS.

1 AND THERE'S ONE THING ABOUT THE Y CHROMOSOME, THERE
2 IS ONE MALE THAT LIVED IN THAT HOUSE. THERE WAS ONE MALE
3 THAT WAS AT THAT HOUSE. NOW, THE DEFENSE MAY, WELL, A
4 MALE POLICE OFFICER CAME. BUT WE CAN TALK ABOUT THAT WHEN
5 WE TALK ABOUT HOW -- TRANSFER. BUT THERE IS ONE MALE
6 THERE, ONE MALE. AND THAT MALE WAS HAROLD ORR.

7 [Minor] TOLD YOU -- I THINK SHEILA TOLD YOU, SHE
8 TOOK A BATH AND PUT ON CLEAN CLOTHES THAT NIGHT. SO, SHE
9 STARTED OFF CLEAN THAT NIGHT, BEFORE THIS ASSAULT.

10 JULIE KOWALEWSKI DEVELOPED THE DNA -- THE Y DNA
11 PROFILE FROM THE PANTIES. AND TOLD YOU THAT SHE GOT 11 OF
12 12 SITES AND THEY ALL MATCHED HAROLD ORR. THAT THAT WOULD
13 PUT THE NUMBERS IN THREE IN 4,004 THAT IT WAS HIS DNA THAT
14 SHE FOUND. THERE WAS ONE SITE THAT DID NOT -- DID NOT
15 EXCLUDE HIM. THERE WAS NOT ENOUGH MATERIAL THERE TO GET A
16 -- A SITING ON. BUT THAT IS NUMBERS THREE IN 4,004 ARE --
17 WITH AFRICAN AMERICAN MALES, I THINK SHE SAID, IT WAS ONE
18 IN 1,108. THOSE NUMBERS CAN'T TELL YOU HE WAS THE ONLY
19 GUY THERE. THEY CAN'T TELL YOU [Minor] SAID HE PUT THAT
20 DNA THERE. THEY CAN'T TELL YOU SHEILA SAID SHE SAW HIM
21 PUTTING THAT DNA THERE.

22 MUCH WAS MADE OF TRANSFERENCE. YES, THAT'S JUST
23 LIKE GETTING SOMEBODY'S DNA ON YOU. SHEILA -- I DON'T
24 KNOW -- I WOULD GUESS SINCE WE -- THE DEFENSE IS STUCK
25 WITH THE DNA -- HAROLD'S DNA BEING THERE, THERE HAS TO BE

1 SOME TRANSFERENCE ARGUED. I DON'T KNOW WHAT IT WOULD BE.
2 I WON'T GET A CHANCE TO COME BACK UP THERE AND SAY TO YOU,
3 WELL, THAT KIND OF TRANSFERENCE IS IMPOSSIBLE -- OR NOT --
4 WELL, THE SCIENTIST SAID NOTHING IN THE WORLD IS
5 IMPOSSIBLE, BUT IT'S IMPROBABLE. IT IS UNREALISTIC. IT
6 WOULDN'T HAPPEN THAT WAY SCIENTIFICALLY. I WON'T GET TO
7 COME BACK UP HERE. BUT REMEMBER WHAT JULIE SAID ABOUT
8 EVERY TIME TRANSFERENCE GOES FROM ONE OBJECT TO ONE PERSON
9 TO ANOTHER OBJECT OR TO ANOTHER PERSON, THE LIKELIHOOD OF
10 IT GOING IS LESS AND LESS.

11 THEY TRIED TO SAY, WELL, SHEILA TOUCHED HAROLD.
12 WELL, NO, SHEILA TOUCHED THE PHONE, BEAT HAROLD OVER THE
13 HEAD WITH IT. THEN SHEILA GOT HIS DNA ON HER HAND FROM
14 THE PHONE. AND THEN SHE TOUCHED THE RAG. AND THEN
15 [Minor] WIPED WITH THE RAG. AND THEN [Minor] -- FROM
16 [Minor] VAGINAL AREA, IT GOT ON THE PANTIES. WELL,
17 THAT'S THE KIND -- I MEAN, JULIE ALMOST LAUGHED WHEN I
18 GAVE HER THAT SCENARIO AS FAR AS TRANSFERENCE. SHE JUST
19 WAS TELLING YOU ABOUT THAT THIS MORNING.

20 NOT ONLY THAT, THERE WAS A LOT OF TALK ABOUT, UM,
21 WET DNA IS WHAT TRANSFERS IF YOU'RE GOING TO GET A
22 TRANSFER. WELL, ALMA LOWERY TOLD YOU THAT THAT RAG WAS
23 CLEAN. SHE WOULD HAVE EXPLAINED TO YOU, WELL, IT WAS ALSO
24 WET IF IT HAD BEEN WET. SHE TOLD YOU IT WAS CLEAN.

25 I ASKED ABOUT IF A RAG HAD BEEN LAUNDERED, WELL,

1 THAT -- THAT WOULD BE A WHOLE OTHER SCENARIO TO LOOK AT.
2 THEY -- AND AS FAR AS, WELL, THERE WERE OTHER MALES THERE,
3 OFFICER ROGERS WAS STANDING THERE. HE HAD NO CONTACT WITH
4 [REDACTED] AND WHERE THIS DNA WAS FOUND WAS IN HER PANTIES,
5 IN THE CROTCH OF HER PANTIES.

6 IF THE RAG WAS THE SOURCE -- LET'S SAY FROM WHAT
7 JULIE SAID, SOMEBODY WOULD HAVE HAD TO RUB THAT RAG ON HER
8 PANTIES. THERE'S A DIFFERENCE IN TRANSFERRABLE AND
9 TESTABLE.

10 THE BIG THING THAT IMPEDES THE TRANSFERENCE
11 ARGUMENT IS IT WAS MALE AND IT WAS SALIVA. NOW, THE
12 DEFENSE WAS -- WAS ASKING ROBIN TAYLOR, DON'T YOU GET
13 AMYLASE FROM FECES. DON'T YOU GET IT FROM VAGINAL FLUID.
14 DON'T YOU GET IT FROM SWEAT. BUT THIS AMYLASE WAS IN
15 [REDACTED] PANTIES.

16 ROBIN SHOWED YOU THE CUTTING. IT WAS DIFFICULT FOR
17 HER TO SHOW YOU. SHE BROUGHT THE CUTTING UP HERE AND
18 EXPLAINED, THIS IS WHERE I CUT THE LITTLE CUTTING THAT I
19 SENT OFF TO BODE AND THEY DID THE Y STR TESTING. AND THEN
20 YOU REALLY COULDN'T SEE THAT BECAUSE SHE HAD ALREADY CUT
21 AROUND THAT AS SHE EXPLAINED TO YOU WHEN SHE WAS HOLDING
22 THE UNDERWEAR RIGHT HERE. SHE HAD ALREADY CUT AROUND
23 THAT. AND WHAT SHE DID WITH THE MATERIAL THAT SHE CUT
24 AROUND THAT LITTLE PART THAT HAD THE Y, IS WHEN SHE DID
25 THE AMYLASE TESTING AND THAT TESTED POSITIVE FOR AMYLASE.

1 THE THING THAT DOESN'T MAKE ANY SENSE IS, IF THAT AMYLASE
2 CAME FROM FECES OR VAGINAL FLUID OR SWEAT, BUT THERE WAS
3 ALSO A Y IN THERE---

4 MR. DAVIS: YOUR HONOR, MAY WE APPROACH?

5 THE COURT: YES.

6 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
7 CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE THE
8 HEARING OF THE JURY, OFF THE RECORD.)

9 (COURT RESUMED)

10 MS. HERRING-LASH: THE TESTING THAT ROBIN DID ON WHAT
11 SHE CUT FROM AROUND THE SAMPLE -- AS I EXPLAINED TO YOU A
12 SECOND AGO -- SHE HAD ALREADY CUT OUT THE MIDDLE OF THIS
13 LITTLE CROTCH. AND THEN SHE CUT AROUND WHERE SHE HAD CUT
14 THAT, AND THAT IS WHAT SHE TESTED FOR AMYLASE. BECAUSE
15 THE OTHER SAMPLE HAD BEEN SENT AND THE OTHER SAMPLE IS
16 WHERE THE Y WAS FOUND. BUT I SUBMIT TO YOU, THEY WERE
17 RIGHT THERE. SHE CUT FROM THE SAME EXACT SPOT. AND SHE
18 CUT, AND YOU SAW IN THE PANTIES, IN ANOTHER SPOT ADJACENT.
19 SO, IF THAT WAS [REDACTED] FECES OR [REDACTED] VAGINAL
20 FLUID, ALL AROUND THAT SPOT, WHERE DID THAT Y COME FROM.

21 USE YOUR COMMON SENSE. I MEAN, HOW UNLUCKY CAN ONE
22 MAN BE? [REDACTED] SAYS IT HAPPEN. SHEILA SAYS SHE SAW IT
23 HAPPEN. THE DNA SHOWS HE DID IT. THE SALIVA SHOWS HE DID
24 IT. I MEAN, WE HAVE ALL THIS EVIDENCE. HOW LUCKY COULD
25 SHE BE IF SHE SET ALL THIS UP. SHE LEARNED (SIC) [REDACTED]

1 ABOUT IT IN FIVE MINUTES. [Minor] TOLD YOU, SHE TOLD THE
2 POLICE, SHE TOLD THE DOCTOR, A NEUTRAL SLED AGENT BACKED
3 HER UP, HOW WOULD THIS WOMAN HAVE EVEN KNOWN THAT THERE
4 WAS GOING TO BE DNA TESTING, OR THAT THE UNDERWEAR WOULD
5 HAVE BEEN TAKEN. IT JUST DOESN'T MAKE ANY SENSE.

6 THE DEFENSE ASKED [Minor] AND SHEILA, TOO, I THINK,
7 BUT DIDN'T THE PROSECUTOR TALK TO Y'ALL. OF COURSE. OF
8 COURSE. ANYBODY WHO HAS EVER HAD A LAWYER KNOWS THAT YOU
9 DON'T GO INTO COURT WITHOUT TALKING TO YOUR LAWYER,
10 BECAUSE THESE PEOPLE HAPPEN TO BE REPRESENTED BY THE
11 STATE, DOESN'T MEAN THEY DESERVE ANY LESS. THE
12 SOLICITOR'S WORK WITH THIS COUNTY -- AND WOULD NOT BE
13 DOING YOU, AS CITIZENS OF CHARLESTON COUNTY, A SERVICE IF
14 WE DIDN'T MEET WITH THESE WITNESSES BEFORE THEY GOT PUT ON
15 THE STAND, ESPECIALLY A CHILD.

16 LADIES AND GENTLEMEN, THE BURDEN OF PROOF IN THIS
17 CASE IS BEYOND A REASONABLE DOUBT, NOT ANY DOUBT, NOT
18 EVERY DOUBT, NOT A SHADOW OF A DOUBT, NOT ABSOLUTE
19 CERTAINLY. IT'S PROOF THAT LEAVES YOU FIRMLY CONVINCED
20 THAT THIS HAPPENED.

21 THERE ARE A FEW THINGS IN THIS WORLD, IF ANY -- IF
22 ANY, THAT YOU WILL EVER KNOW WITH ABSOLUTE CERTAINTY.
23 THAT'S NOT THE STANDARD. IF THAT WERE THE STANDARD, WE
24 COULD NEVER GO FORWARD. IF YOU KNEW THIS WITH ABSOLUTE
25 CERTAINTY, I SUBMIT TO YOU, YOU WOULDN'T BE SITTING THERE,

1 YOU WOULD HAVE BEEN SITTING UP HERE BECAUSE YOU WOULD HAVE
2 BEEN A WITNESS.

3 IF YOU ARE FIRMLY CONVINCED THAT [Minor] WAS
4 ASSAULTED, THE STATE HAS MET THAT BURDEN. THIS CASE WAS
5 PROSECUTABLE IF [Minor] CAME IN HERE AND TOLD YOU
6 THAT THIS HAPPENED. THAT IS VERY OFTEN ALL THAT YOU HAVE
7 OR THAT WE HAVE IN A CHILD SEXUAL ASSAULT CASE, THE VICTIM
8 SAYING IT HAPPENED. IT WAS MADE MORE PROSECUTABLE,
9 STRONGER IF YOU WILL, BY THE FACT THAT THERE WAS AN EYE
10 WITNESS. THE DNA WAS THE ICING ON THE CAKE.

11 I WOULD ASK YOU TO GO OVER THE EVIDENCE AND FIND A
12 VERDICT THAT SPEAKS THE TRUTH ABOUT WHAT HAROLD ORR DID TO
13 [Minor] HIS GRANDDAUGHTER. THANK YOU.

14 **THE COURT:** LET ME SPEAK TO Y'ALL A MINUTE BEFORE YOU
15 BEGIN, MR. DAVIS.

16 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
17 BENCH CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE
18 THE HEARING OF THE JURY, OFF THE RECORD.)

19 **MR. DAVIS:** FOLKS, I'M GOING TO TAKE UP A LITTLE BIT
20 MORE OF YOUR TIME. I APPRECIATE YOUR PATIENCE. UM, I
21 DON'T EXPECT TO BE QUITE AS LENGTHY AS THE STATE'S
22 CLOSING, BUT I NEED TO GO OVER A FEW THINGS ON HAROLD'S
23 BEHALF.

24 IF YOU REMEMBER WHEN WE STARTED THIS CASE, I STOOD
25 RIGHT HERE AND TOLD YOU THIS WAS A CASE ABOUT ASSUMPTIONS

1 AND ABOUT PROOF. I WARNED YOU ABOUT THAT THEN AND I NEED
2 TO GO OVER THAT WITH YOU NOW.

3 THE STATE'S CASE IS BASED ON ASSUMPTIONS. IT'S
4 BASED ON THE ASSUMPTION OF SHEILA, WHEN SHE WALKED OUT OF
5 THE BEDROOM, JUST WAKING UP, INTO THE KITCHEN, INTO THAT
6 DARK LIVING ROOM AND WHAT SHE THOUGHT SHE SAW.

7 YOU KNOW SHE HAS LIED. YOU KNOW SHE HAS
8 CONTRADICTED HERSELF AND YOU KNOW SHE HAS LEFT THINGS OUT
9 WHEN SHE HAS TESTIFIED BEFORE YOU.

10 THE POLICE ALSO MADE SOME ASSUMPTIONS. THEY --
11 THEY ASSUMED HAROLD WAS GUILTY. THEY ARRESTED HIM AS SOON
12 AS HE WALKED IN. THEY REALLY DIDN'T DO MUCH
13 INVESTIGATION. THEY TOOK A STATEMENT FROM SHEILA.

14 NOW, WE'VE GOT SOUTH CAROLINA LAW ENFORCEMENT AGENT
15 TAYLOR ASSUMING THE Y CHROMOSOME WAS HAROLD'S, AND
16 ASSUMING THAT AMYLASE IS SALIVA.

17 YOU'RE GOING TO GET A CHANCE HERE IN A MOMENT TO GO
18 BACK AND TAKE AS LONG AS YOU NEED TO DELIBERATE,
19 AND REHEAR ANY TESTIMONY YOU NEED TO HEAR. YOU'LL HAVE
20 SEVERAL ITEMS TO LOOK AT. LOOK AT THEM AS LONG AS YOU
21 NEED TO LOOK AT THEM. YOU SHOULD NOT ASSUME ANYTHING.

22 ONE THING THE JUDGE HAS TOLD YOU IN THE BEGINNING,
23 AND HE'S GOING TO TELL YOU HERE IN A MOMENT WHEN THE JUDGE
24 SPEAKS TO YOU, IS YOU SHOULD PRESUME THAT HAROLD IS AN
25 INNOCENT MAN. HE IS AN INNOCENT MAN. HE MUST BE PRESUMED

1 THAT WAY THROUGHOUT THIS TRIAL AND AS YOU DELIBERATE UNTIL
2 AND UNLESS THE STATE HAS MET THAT BURDEN -- AND I'LL TALK
3 ABOUT THAT IN JUST A SECOND -- THAT THEY ARE REQUIRED TO
4 MEET.

5 AS THE JUDGE TOLD YOU, HAROLD DENIES IT HAPPENED.
6 IT DIDN'T HAPPEN. THAT'S WHY WE'VE HAD THIS TRIAL. HE IS
7 NOT REQUIRED TO SAY ANY MORE -- THE JUDGE IS GOING TO TALK
8 TO YOU ABOUT THAT IN A LITTLE BIT -- THAT YOU CANNOT
9 CONSIDER THE FACT THAT HE DIDN'T TESTIFY. IN FACT, I'LL
10 TELL YOU AS OUR COURT PROCESS ALLOWS, BECAUSE HE DIDN'T, I
11 GET TO SPEAK TO YOU LESS.

12 THIS CASE HINGES ON EYE WITNESSES, FORENSIC
13 EVIDENCE AND THE POLICE. I TOLD YOU THAT IN THE
14 BEGINNING. AND I WANT TO SUMMARIZE THEM BRIEFLY. BUT
15 THIS IS THE EVIDENCE THAT MUST BE BELIEVED IN ORDER TO
16 CONVICT HAROLD. IT MUST BE BELIEVED. WE'VE GOT TALK
17 ABOUT HAROLD, HE DENIES IT. WHAT MORE CAN HE SAY?

18 THE STATE WANTS YOU TO BELIEVE THIS, THAT HE COMES
19 TO HIS HOME, THAT TRAILER. HE KNOWS HIS WIFE, THREE KIDS
20 THAT RUN AROUND A LOT, ARE IN THERE. AND THERE'S BEEN NO
21 TESTIMONY THAT HE WAS DRUNK OR OUT OF IT OR INCAPACITATED,
22 BUT THEY WANT YOU TO BELIEVE THAT IN THAT LIVING ROOM, HE
23 DID THIS. THAT HE LICKED [REDACTED]

24 THEY ALSO WANT YOU TO BELIEVE THAT HE CONTINUED
25 DOING IT AS SHEILA WALKED OUT OF THERE, AND WALKED RIGHT

1 UP ON HIM. YOU HAVE TO BELIEVE THAT FOR THIS CASE TO BE
2 PROVEN. HE HAS DENIED THAT. WE'RE GOING TO TRIAL ON
3 THAT. IT DIDN'T HAPPEN.

4 SHEILA MADE AN ASSUMPTION. SHE FLIPPED OUT. SHE
5 STARTED YELLING AND SCREAMING, HITTING HIM OVER THE HEAD
6 WITH THE PHONE. AND SHE DID HIT HIM HARD OVER THE HEAD
7 WITH THE PHONE. HOW DO WE KNOW THAT, THE BATTERIES FELL
8 OUT. SHE'S COULDN'T CALL -- SHE TRIED TO CALL THE POLICE
9 SHE SAYS, SHE COULDN'T CALL BECAUSE SHE SMACKED HIM OVER
10 THE HEAD SO HARD THE BATTERIES FELL OUT, FINALLY HIT SPEED
11 DIAL AND GOT A RELATIVE.

12 WHEN HAROLD COMPOSED HIMSELF, COMES BACK TO THE
13 HOUSE, THINK ABOUT THIS: THE STATE -- YOU HAVE TO BELIEVE
14 HE DID IT, LEFT, AND DECIDED YOU KNOW WHAT, THE SMARTEST
15 THING FOR ME TO DO IS GO BACK, WALKING PAST SEVERAL POLICE
16 CARS AND GOING IN THERE. HE WENT BACK BECAUSE HE DIDN'T
17 DO ANYTHING WRONG. I MEAN, HE GOT HIT OVER THE HEAD. HE
18 WAS WONDERING WHAT IN THE HECK IS GOING ON. HE COMPOSED
19 HIMSELF AND WENT BACK. BUT HE WAS IMMEDIATELY ARRESTED
20 BASED ON SHEILA'S STORY.

21 NOW, THE STATE'S EYE WITNESSES PRIMARILY -- OR THE
22 PRESENTATION PRIMARILY WAS SHEILA'S TESTIMONY. THAT WAS
23 A LENGTHY TESTIMONY. SHE'S THE ADULT HERE. SHE'S THE ONE
24 THAT SAYS SHE SAW HIM. SHE'S BIASED. SHE'S STUBBORN.
25 SHE'S CONFUSED. SHE'S SLEEPY. SHE NEEDS GLASSES.

1 AND THE STATE, I WOULD ARGUE, SPENT MOST OF THEIR
2 -- SPENT A GOOD PORTION OF THEIR CLOSING DEFENDING HER. I
3 THINK THEY NEED TO. SHE HAS ADMITTED TO YOU THAT SHE IS A
4 LIAR. I'M NOT REALLY SURE WHAT LAST NAME SHE ACTUALLY
5 USES. THE MAIDEN NAME, THE FIRST MARRIAGE THAT HASN'T
6 BEEN DIVORCED. THE SECOND MARRIAGE THAT IS CURRENTLY
7 GOING ON. ON THE MARRIAGE LICENSE, HOW MANY MARRIAGES
8 WHEN SHE MARRIED HAROLD, THE FIRST. NO, IT'S NOT. NO,
9 IT'S NOT. FLAT OUT ADMITTED TO IT. ADMITTED TO IT. I
10 LIED ABOUT THAT. WELL, IF YOU CAN'T BE BELIEVED ON
11 SOMETHING THAT SIMPLE, HAVE YOU BEEN MARRIED BEFORE OR
12 NOT, THEN YOU GET TO DECIDE HOW CREDIBLE OR NOT THAT MAKES
13 REALLY ANYTHING ELSE SHE SAYS.

14 SHE DOES LEAVE THINGS OUT. AND THAT'S IMPORTANT
15 FOLKS. DON'T LET THE STATE TELL YOU THAT'S NOT IMPORTANT,
16 THAT SHE JUST KIND OF HAPPENS TO LEAVE THINGS OUT. IT'S
17 VERY IMPORTANT. IT'S VERY IMPORTANT AS TO WHAT SHE SAW,
18 COULD HAVE SEEN, COULD NOT HAVE SEEN, AS FAR AS -- WE WILL
19 GET TO IN A SECOND -- FORENSIC EVIDENCE. WHAT HAPPENED IS
20 VERY IMPORTANT. YOU CAN'T JUST GLOSS OVER IT, WELL, SHE
21 LEFT A FEW THINGS OUT. THAT'S VERY IMPORTANT. YOU CAN'T
22 GLOSS OVER THAT.

23 I WOULD ARGUE THAT SHE SELECTIVELY TELLS THE TRUTH
24 WHEN IT'S CONVENIENT FOR HER. I'VE ONLY BEEN MARRIED
25 ONCE. I HAVE TWO KIDS, NOT FOUR. I'M NOT GOING TO TELL

1 THE POLICE EVERYTHING I DID. YOU DON'T NEED TO KNOW ABOUT
2 THAT. AND SHE CONTRADICTS HERSELF. SHE CHANGES HER
3 STORY. DO YOU REMEMBER THIS -- REMEMBER THIS, NEVER
4 BEFORE, TALKS ABOUT HAROLD PULLING HIS PANTS -- OR ZIPPING
5 HIS PANTS UP. NEVER BEFORE TALKED ABOUT [Minor] SAYING
6 THAT IT WAS BURNING WHEN SHE NEEDED TO URINATE.

7 SHE TALKS ABOUT THE LIGHTS WERE ON. BUT, NO, JUST
8 THE STOVE AND THE TV. BUT -- SHE TALKS ABOUT THE POSITION
9 THAT SHE SAW THEM IN, IT VARIES. WHERE SHE WAS STANDING
10 BY THE BAR, ALL THE WAY UP -- HALF WAY UP THE COUCH RIGHT
11 BESIDE HIM. THIS IS IMPORTANT. THE STATE WENT TO GREAT
12 LENGTH TO TALK ABOUT EYE WITNESSES. WELL, WHAT SHE SAYS
13 AND HOW BELIEVABLE SHE IS, IS SO VERY CRUCIAL. AND WHAT
14 SHE DOES IS SO VERY CRUCIAL. SHE IS ALONE WITH [Minor]
15 SHE EXAMINES [Minor] SHE TOUCHES [Minor] PANTIES. SHE
16 USES ONE OF THE WASH CLOTHS FROM HER AND HAROLD'S HOUSE TO
17 WIPE [Minor] AFTER SHE URINATES.

18 NOW, I DON'T THINK IT'S REAL CLEAR FROM OFFICER
19 LOWERY, WHO, WHERE AND HOW THAT RAG GOT PUT IN THIS. USE
20 YOUR MEMORY FROM THE TESTIMONY, BUT I DON'T THINK THAT'S
21 REAL CLEAR. IT'S CERTAINLY NOT CLEAR HOW IT WAS HANDLED,
22 COLLECTED, WHO ALL TOUCHED IT, THAT'S NOT CLEAR. WHAT WE
23 KNOW IS THAT ONE WAS USED, AND WE KNOW IT CAME FROM HAROLD
24 AND SHEILA'S HOUSE. THAT WE KNOW. BEYOND THAT, YOU
25 DON'T. YOU JUST DON'T KNOW. SHEILA DOESN'T MENTION THAT

1 TO MUSC, ALTHOUGH THAT WOULD BE VERY IMPORTANT.

2 ALL THE EXPERTS TESTIFIED THAT CERTAINLY WHO
3 TOUCHED, HOW THEY TOUCHED, WHEN THEY TOUCHED, THAT'S VERY
4 IMPORTANT. I WOULD THINK THE DOCTORS AND POLICE WOULD BE
5 CONCERNED ABOUT THAT. THE ARREST, THE DIRECTION OF THE
6 INVESTIGATION, THE FORENSIC EXAMINATION, THE TESTING, ALL
7 OF THAT IS BASED ON SHEILA'S STORY.

8 NOW, LET'S TALK ABOUT THE ACTUAL SUBSTANCE, THE
9 EVIDENCE, THE PHYSICAL EVIDENCE AND I WANT YOU TO GO AND
10 DELIBERATE. IT'S JUST CRITICAL. IT'S JUST CRITICAL HERE
11 ESPECIALLY WHEN THE EYE WITNESS IS AN ADMITTED LIAR. IT'S
12 SO CRITICAL WHAT THE UNBIASED EVIDENCE SHOWS, WHAT DOES IT
13 SHOW?

14 I'VE GOT TO TALK ABOUT THIS. IT'S KIND OF GLOSSED
15 OVER. I'VE GOT TO TALK ABOUT THIS. WE KNOW FROM THE
16 TESTIMONY, IN GENERAL, IT IS SO CRITICAL WHEN, HOW, AND BY
17 WHOM IT'S COLLECTED, HOW IT'S STORED, HOW IT'S HANDLED.
18 THAT'S VERY IMPORTANT.

19 NOW, IF YOU ARE CONVINCED FROM THESE WITNESSES, THE
20 POLICE, AND THE EXPERTS AND THE LAY WITNESSES, IF YOU'RE
21 CONVINCED THAT IT'S BEEN HANDLED PROPERLY, ALL RIGHT, JUST
22 THINK ABOUT THIS. ANYTIME SOMEONE IN THE COURTROOM
23 TOUCHES ANYTHING THAT'S SEALED UP, THEY HAD THESE GLOVES
24 ON. THEY'LL BE SENT BACK WITH YOU IN CASE YOU WANT TO
25 LOOK AT ANYTHING, THESE GLOVES. OKAY.

1 HOW MANY TIMES WAS THAT NOT TALKED ABOUT BEING
2 DONE. ANY FAMILY MEMBERS, ANY POLICE OFFICERS, SOME OF
3 THE MEDICAL -- IT IS VERY IMPORTANT.

4 NOW, FINE, WE CAN TALK ABOUT THE CHANCES OF
5 CONTAMINATION, THE CHANCES OF -- THE BOTTOM LINE, IS THAT
6 IS SO KEY HERE AND YOU CAN'T JUST GLOSS OVER THAT. YOU
7 CAN'T JUST GLOSS OVER THAT. HOW IT WAS HANDLED AND BY
8 WHOM, AND WHAT OPPORTUNITY TO CONTAMINATE IS IMPORTANT.
9 IT WAS KEPT -- WHAT EVIDENCE WAS KEPT IN THE REFRIGERATOR,
10 WHAT EVIDENCE WAS KEPT IN THE LOCKER. REMEMBER ONE OF THE
11 EVIDENCE CUSTODIANS COULDN'T EVEN TELL YOU. I THINK THAT
12 WAS IN A LOCKER. I DON'T THINK THAT WOULD HAVE BEEN IN A
13 FREEZER -- THEY'RE NOT SURE. THEY'RE NOT SURE.

14 AND, YES, THE STATE IS RIGHT. I'M GOING TO REMIND
15 YOU AT LEAST FIVE MALES -- AT LEAST FIVE MALES IN THE
16 CHAIN, COLLECTING, HANDING OFF, CARRYING THE EVIDENCE. AT
17 LEAST SIX OFFICERS ARE CALLED OUT TO THAT TRAILER. DO
18 THEY COMPARE THE MALE EVIDENCE WITH HAROLD ONLY? HAROLD
19 ONLY.

20 AND ALSO, REMEMBER, THERE WAS -- THERE WAS ONE OF
21 THOSE OFFICERS THAT WASN'T EVEN IN HERE TO TESTIFY FOR
22 YOU. ONE OF THE MALE OFFICERS DIDN'T EVEN COME IN TO
23 TESTIFY FOR YOU.

24 VERY QUICKLY, DR. SCHUH, DO YOU REMEMBER DR. SCHUH
25 FROM MUSC THAT DID THE EXAMINATION OF Whiner A VERY

1 EXPERIENCED EXPERT. BASICALLY HER LIFE HAS BEEN IN THIS
2 FIELD, UNBIASED. SPENT ALMOST THREE HOURS EXAMINING
3 XXXXXX AT MUSC. WHAT'S THE RESULT OF THAT? TOOK SOME
4 PHOTOS WHICH WE DON'T HAVE. IF WE HAD -- DON'T YOU THINK
5 IF THERE WAS SOMETHING BIG IN THOSE PHOTOS, THEY'D BE
6 BLOWN UP ON THAT SCREEN FOR YOU TO LOOK AT. THERE WAS A
7 TWO MILLIMETER SCRATCH, AND WE DON'T KNOW HOW THAT
8 HAPPENED. SHE TALKED ABOUT SEVERAL DIFFERENT WAYS THAT
9 COULD HAPPEN. OTHER THAN THAT, WHAT'S THE FINDING AFTER A
10 THREE HOUR EXAM, A NORMAL EXAM. THAT'S THE FINDING AFTER
11 THREE HOURS.

12 I ASKED HER ABOUT SOME TYPE OF ABILITY TO
13 CONTAMINATE. SHE WAS WORRIED ABOUT THAT. HERE'S THE
14 OTHER THING YOU HAVE TO KEEP IN MIND AND I'LL CONNECT IT
15 HERE IN JUST A SECOND. SHE, WHEN SHE DID THE VERY
16 THOROUGH EXAMINATION, FOUND A SMALL PIECE OF STOOL NEAR
17 THE RECTUM. YOU CAN'T IGNORE THAT. YOU CAN'T ACT LIKE
18 SHE DIDN'T FIND THAT. SHE DID FIND THAT. AND IT BECOMES
19 VERY IMPORTANT IN JUST A SECOND.

20 I'M NOT GOING TO GET THIS RIGHT, MS. KOWALEWSKI,
21 SHE DID THE TESTIFYING ABOUT THE MALE -- THE Y CHROMOSOME.
22 IT'S A PARTIAL CODE. PARTIAL. PARTIAL. REMEMBER, 12
23 SPOTS, CAN ONLY SEE 11 PARTIAL. OF THAT CODE, SHE
24 COULDN'T SEE THE LAST SPOT.

25 NOW, HERE'S WHAT I'M GOING TO ARGUE TO YOU, VERY

1 SIMPLE COMMON SENSE. IF I HANDED Y'ALL LOTTO TICKETS AND
2 WE START PULLING THE BALLS OUT, YOU GET EVERY SINGLE ONE
3 BEFORE WE PULL THE POWER BALL, I STOP IT. I'M NOT GOING
4 TO TELL YOU WHAT IT IS. WELL, YOU'VE ALL GOT A MATCH.
5 YOU HAVE MATCHED TO THIS POINT, HAVE YOU NOT? YES, YOU
6 HAVE. DOES THAT MEAN YOU HAVE A WINNING TICKET IN YOUR
7 HAND, NOT UNLESS YOU SEE THE LAST ONE. NOT UNLESS YOU SEE
8 THE LAST ONE. THEY CAN'T SEE THE LAST ONE. SHE CANNOT
9 TELL YOU THAT IT'S HAROLD. SHE CAN'T. NOW, SHE'S BEEN
10 HONEST ABOUT THAT. SHE'S AN UNBIASED EXPERT. SHE CANNOT
11 TELL YOU IT'S HAROLD'S. YOU HAVE GOT TO MATCH THEM ALL.

12 NOW, COULD IT BE HAROLD'S, YEAH. HE'S NOT EXCLUDED
13 FROM IT. BUT WE HEARD ABOUT ALL KINDS OF DIFFERENT WAYS,
14 TRANSFERENCE OR OTHER NORMAL, INNOCENT WAYS. MS.
15 KOWALEWSKI TALKED ABOUT THE SHIRT RUBBING AGAINST HER
16 NECK. THE STATE TALKED ABOUT RUBBING A CLOTH SEVERAL
17 TIMES. THERE ARE INNOCENT, SIMPLE WAYS FOR THAT TO
18 HAPPEN. THIS WAS A HOUSE THAT HAROLD AND SHEILA LIVED IN.
19 THE BOTTOM LINE, THOUGH, WE DON'T KNOW THAT IT WAS HIS.

20 AND NO ONE, NOT EVEN AN EXPERT QUALIFIED BY THE
21 JUDGE, CAN TELL YOU THAT IT'S HAROLD. DID THEY CHECK TO
22 SEE IF IT WAS ANYBODY ELSE'S? NO. COMPARE IT TO ANY OF
23 THE OFFICERS -- MALE OFFICERS THAT WERE CALLED TO THE
24 TRAILER, TO TEST AGAINST ANY OTHER FAMILY MEMBERS, TO TEST
25 AGAINST ANY FRIENDS, DID THEY MAKE ANY OTHER ATTEMPT AT

1 COMPARISON? NO.

2 NOW, I DISAGREE WITH THE STATE COMPLETELY. WE ARE
3 NOT STUCK WITH IT'S HAROLD'S DNA AND WE'VE GOT TO EXPLAIN
4 IT, BECAUSE NO ONE CAN TELL YOU THAT IT IS. REMEMBER THE
5 LOTTO TICKET. BOY, YOU'RE FEELING REALLY GOOD. BUT UNTIL
6 YOU HIT THAT POWER BALL, YOU DON'T KNOW YOU HAVE A WINNER.

7 IT'S VERY IMPORTANT THAT YOU UNDERSTAND THAT THESE
8 ARE TWO SEPARATE TESTS, AND I DO THINK THE SOLICITOR
9 EXPLAINED THAT TO YOU.

10 THE CUTTING FROM THE CROTCH OF THE PANTIES, THERE
11 ARE TWO TESTS, NOT THE SAME FABRIC IN ONE TEST. OKAY.
12 SOME OF THE FABRIC WENT AND GOT THE Y TESTING. SOME OF
13 THE FABRIC, UM, WENT AND GOT THE AMYLASE TESTING, NOT THE
14 SAME FABRIC. AND THAT'S VERY IMPORTANT. THAT IS SO
15 CRITICAL HERE BECAUSE THERE IS NO WAY THEY CAN SAY -- THE
16 STATE CAN SAY THAT THE Y IS THE SAME SUBSTANCE AS THE
17 AMYLASE. THEY CAN'T DO IT. THEY CANNOT DO IT.

18 ROBIN TAYLOR, THE LAST PERSON WE NEED TO TALK
19 ABOUT, AGENT -- SLED AGENT ROBIN TAYLOR. SHE TOOK A VERY
20 STRONG POSITION IN THIS CASE. UM, SHE IS SUPPOSED TO BE
21 NEUTRAL AND FOLLOW THE SIGNS. SHE RELIED ON THE INCIDENT
22 REPORT AND MEDICAL HISTORY. WE KNOW THOSE ARE FLAWED
23 BECAUSE THEY CAME PRIMARILY FROM SHEILA.

24 SHE TESTED THE CROTCH OF THE PANTIES. SHE CAME OUT
25 HERE AND SHOWED YOU, SHE CUT BASICALLY THE ENTIRETY OF THE

1 CROTCH OF THE PANTIES. I'M JUST GOING TO GO OVER SOME OF
2 THE STUFF SHE DID. SHE TESTED THE SWABS FOR SEMEN EVEN
3 THOUGH THERE IS NO ALLEGATION OF EJACULATION.

4 THE VAGINAL SWAB HAD Minor DNA CODE ONLY. DID
5 NOT TEST THE SWABS FOR AMYLASE. THE ALLEGATION IS LICKING
6 AND SPIT. DIDN'T TEST THE SWABS FOR AMYLASE. TESTED THE
7 PANTIES FOR DNA EVIDENCE, NOT ENOUGH TO COMPARE. ALL THEY
8 GOT WAS A Y.

9 SENT THAT OFF TO THE LAB FOR TESTING. THAT LAB
10 SAYS IT'S MALE. AND FROM WHAT WE CAN SEE, IT LOOKS LIKE
11 HAROLD'S. WE CAN'T TELL YOU IT IS HAROLD'S.

12 AND GUESS WHAT SLED AGENT TAYLOR DOES THEN, I
13 THINK, THE TESTIMONY THE END OF '06, BEGINNING '07, SHE
14 DOES MORE TESTING. WHAT DOES SHE DO, I'LL TELL YOU WHAT
15 I'LL DO, I'LL TEST FOR AMYLASE. SHE CUTS THEM, SHE -- THE
16 CLOTH AND THE PANTIES FOR AMYLASE, NOT FOR DNA EVEN THOUGH
17 SHE TOLD YOU THAT'S THE GOAL. IF YOU GET DNA, YOU CAN GET
18 A REALLY -- AND BOTH PEOPLE TALKED ABOUT THAT, HOW
19 SPECIFIC DNA IS WHEN YOU TEST IT. SHE DIDN'T TEST FOR
20 DNA, SHE TESTED FOR AMYLASE.

21 IT'S A SIMPLE TEST. SHE TOLD YOU IT WASN'T HER
22 FAVORITE BECAUSE YOU HAVE TO SPIT IN A CUP TO DO THE
23 TESTING, REMEMBER THAT. AND YES, AMYLASE WAS FOUND, BUT
24 AMYLASE IS IN SEVERAL THINGS. AND SHE COULD NOT TELL YOU
25 HOW MUCH IN EACH OF THESE BODY SECRETIONS. I ASKED HER

1 DIRECTLY, HOW MUCH AMYLASE IS IN FECES? I REALLY DON'T
2 KNOW. I MAY HAVE KNOWN ONE TIME, I DON'T KNOW.

3 HOW MUCH AMYLASE IN VAGINAL SECRETIONS? YOU KNOW,
4 I'M NOT REALLY SURE. HOW ABOUT IN SALIVA, I'M NOT SURE.
5 BUT THIS IS THE TEST WE'RE USING. THIS IS THE TEST WE
6 USE. NO, I CAN'T TELL YOU HOW MUCH IS IN THE OTHER STUFF.
7 DID YOU TEST FOR THE OTHER STUFF. NO. NO, SHE DIDN'T.

8 DESPITE WHAT THE STATE SAYS, SHE HAD NO IDEA THE
9 CONCENTRATION LEVELS, SO THERE IS NO WAY THAT SHE CAN TELL
10 YOU IT WAS SALIVA RATHER THAN ONE OF THESE OTHER THINGS.
11 AND I'M GOING TO SIMPLY OFFER UP TO YOU, YOU SAW IT, YOU
12 WILL HAVE IT WITH YOU TO LOOK AT IT, IT'S THE CROTCH OF
13 THE PANTIES. WE KNOW FROM DR. SCHUH THERE WAS STOOL ON
14 [REDACTED] RECTUM. THE STATE CANNOT TELL YOU THE SAME
15 CLOTH HAD A Y CHROMOSOME AND AMYLASE, THEY CAN'T. THEY
16 CAN'T. THEY CAN TELL YOU THERE WAS AMYLASE IN HER
17 PANTIES.

18 YES, DIGESTIVE ENZYMES FROM HER. WAS THERE SOME
19 TYPE OF Y CHROMOSOME IN THERE, YES. HOW THAT GOT THERE, I
20 TOLD YOU IN THE BEGINNING, THERE CAN BE SOME LOOSE ENDS
21 THAT WE JUST DON'T KNOW.

22 DID THE DOCTOR -- OR DID THE SLED AGENT, DID SHE DO
23 ANY TYPE OF STOOL SAMPLE COMPARISON. NO. SHE DIDN'T LIKE
24 SPITTING IN THE CUP. I'M SURE I KNOW WHY SHE DIDN'T DO
25 THE OTHER TESTING. BUT THAT'S HER JOB, THAT'S HER JOB.

1 IF THERE'S SOMEONE OR SOMETHING THAT CAN BE EXCLUDED, IT'S
2 HER JOB TO DO THAT. IT'S NOT LIKE THE STATE SAID, WELL,
3 SHE DID HER BEST. NO, SHE DIDN'T. SHE STOPPED. SHE
4 STOPPED WHEN SHE GOT AMYLASE.

5 MS. HERRING-LASH: YOUR HONOR, CAN WE APPROACH?

6 THE COURT: YES.

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 BENCH CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE
9 THE HEARING OF THE JURY, OFF THE RECORD.)

10 MR. DAVIS: I WANT TO BE CLEAR WHEN ASKED, CERTAINLY
11 THE SLED AGENT SAID THERE IS NO SPECIFIC TEST FOR FECES,
12 BUT SHE SAID DIGESTIVE ENZYME AMYLASE IS IN FECES. THAT
13 IS CLEAR.

14 ONE THING THE STATE AND I DO AGREE ON -- A COUPLE
15 OF THINGS. WE CERTAINLY APPRECIATE YOUR TIME AND YOUR
16 ATTENTION. WE CERTAINLY KNOW YOU'RE GOING TO USE YOUR
17 COMMON SENSE AND WE ASK YOU TO DO THAT. WE BOTH AGREE ON
18 THAT.

19 BUT I'M GOING TO ASK YOU TO DO SOMETHING THAT IS,
20 MAYBE NOT COMMON, DON'T MAKE ASSUMPTIONS. AGAIN, PLEASE
21 DON'T MAKE ASSUMPTIONS. LOOK AT ALL THE EVIDENCE AND IT
22 FALLS SHORT. HE'S INNOCENT. HE DIDN'T DO THIS. AND
23 DESPITE HOW MUCH THEY WANT TO TALK ABOUT WHAT SHEILA
24 THINKS SHE SAW AND WHAT THE FORENSIC EVIDENCE MAY SHOW, IT
25 JUST DOESN'T CONNECT. IT JUST DOESN'T CONNECT.

1 NOW, THE JUDGE IS GOING TO EXPLAIN REASONABLE DOUBT
2 TO YOU HERE IN A SECOND. I TOLD YOU I WOULD TALK ABOUT IT
3 BRIEFLY. IT'S SIMPLY THIS: AFTER HEARING EVERYTHING, DO
4 YOU HESITATE TO CONVICT? OR, ON THE OTHER HAND, AFTER
5 HEARING EVERYTHING, ARE YOU FIRMLY CONVINCED? THAT'S WHAT
6 YOU'RE SUPPOSED TO CONSIDER.

7 NOW, NOT SET A CHILD MOLESTER FREE, NO, HOW ABOUT
8 DON'T CONVICT AN INNOCENT MAN. CONSIDER EVERYTHING AND
9 I'M SURE YOU WILL DECIDE THAT YOU CANNOT CONVICT THIS
10 INNOCENT MAN. THANK YOU.

11 **THE COURT:** LADIES AND GENTLEMEN, NOW THAT YOU HAVE
12 HEARD ALL THE EVIDENCE AND THE ARGUMENTS OF THE ATTORNEYS,
13 IT IS MY RESPONSIBILITY TO EXPLAIN TO YOU THE LAW THAT IS
14 APPLICABLE TO THIS CASE.

15 NOW, UNDER OUR CONSTITUTION AND CODE OF LAWS HERE
16 IN SOUTH CAROLINA, ONLY THE JURY CAN MAKE THE FINDINGS OF
17 FACT. AND I AM NOT PERMITTED TO INDICATE TO YOU HOW I
18 MIGHT FEEL ABOUT THE FACTS. SO, IF I HAVE SAID ANYTHING
19 OR DONE ANYTHING DURING THE COURSE OF THIS TRIAL, THAT
20 MIGHT LEAD YOU TO BELIEVE THAT I HAD AN OPINION ABOUT THE
21 FACTS, THEN YOU SHOULD DISREGARD THAT.

22 TO DETERMINE THE FACTS IN THE CASE, YOU WILL HAVE
23 TO EVALUATE THE CREDIBILITY, WHICH OF COURSE, MEANS THE
24 BELIEVABILITY OF THE WITNESSES WHO HAVE BEEN CALLED ON TO
25 TESTIFY. AND SOME OF THE THINGS THAT YOU MIGHT WISH TO

1 CONSIDER, AS YOU DECIDE WHETHER TO BELIEVE A PARTICULAR
2 WITNESS' TESTIMONY, INCLUDE THE FOLLOWING: THE MANOR AND
3 APPEARANCE OF THE WITNESS WHO TESTIFIED, WAS HE OR SHE
4 STRAIGHT FORWARD OR HESITANT IN ANSWERING QUESTIONS.

5 IS THE TESTIMONY OF A WITNESS CONSISTENT OR
6 INCONSISTENT. HOW DID THE WITNESS COME TO KNOW THE FACTS
7 THAT HE OR SHE IS TESTIFYING TO, AND WHAT IS THAT WITNESS'
8 ABILITY TO KNOW THOSE FACTS. IS THERE SOME REASON THAT
9 ONE WITNESS MIGHT WANT TO GIVE TESTIMONY THAT WOULD HELP
10 OR HURT ONE SIDE OR THE OTHER. IN OTHER WORDS, IS A
11 WITNESS BIASED OR PREJUDICED EITHER TOWARDS OR AGAINST THE
12 STATE OR THE DEFENDANT. IS THE TESTIMONY OF A WITNESS
13 STRENGTHENED OR WEAKENED BY OTHER TESTIMONY AND EVIDENCE.

14 AS MEMBERS OF THE JURY, YOU CAN -- YOU CAN BELIEVE
15 AS MUCH OR AS LITTLE OF EACH WITNESS' TESTIMONY IF YOU
16 THINK IT IS APPROPRIATE TO DO. SO, YOU CAN BELIEVE THE
17 TESTIMONY OF ONE WITNESS AGAINST ALL THE REST OF THEM, OR
18 YOU CAN DO JUST THE OPPOSITE. AND YOU ARE NOT REQUIRED TO
19 ACCEPT TESTIMONY AS TRUE EVEN IF IT IS UNCONTRADICTED.

20 NOW, YOU HAVE HEARD THE TESTIMONY OF SEVERAL EXPERT
21 WITNESSES. EXPERT WITNESSES ARE THOSE WITNESSES WHO HAVE
22 SPECIAL KNOWLEDGE, SKILL, EXPERIENCE, TRAINING OR
23 EDUCATION IN A PARTICULAR PROFESSION OR OCCUPATION. AND
24 BECAUSE OF THOSE SPECIAL QUALIFICATIONS, EXPERTS ARE
25 ALLOWED TO GIVE OPINIONS WITHIN THEIR AREAS OF EXPERTISE.

1 IN DETERMINING THE WEIGHT TO BE GIVEN THE OPINIONS
2 OF EXPERTS, YOU SHOULD CONSIDER THE QUALIFICATIONS AND THE
3 CREDIBILITY OF THE EXPERTS AND THE REASONS GIVEN FOR HIS
4 OR HER OPINION. YOU ARE NOT BOUND BY THE OPINION OF AN
5 EXPERT. GIVE IT THE WEIGHT, IF ANY, THAT YOU BELIEVE IT
6 SHOULD RECEIVE.

7 NOW, THERE ARE TWO TYPES OF EVIDENCE WHICH ARE
8 GENERALLY PRESENTED DURING A TRIAL, DIRECT EVIDENCE AND
9 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY
10 OF A PERSON WHO HAS ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN
11 EYE WITNESS. CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN
12 OF FACTS OR CIRCUMSTANCES THAT INDICATE THE EXISTENCE OF
13 ANOTHER FACT. THE LAW MAKES NO DISTINCTION BETWEEN THE
14 WEIGHT TO BE GIVEN EITHER DIRECT OR CIRCUMSTANTIAL
15 EVIDENCE.

16 THERE IS NO GREATER DEGREE OF CERTAINTY REQUIRED
17 FOR CIRCUMSTANTIAL EVIDENCE THAN DIRECT EVIDENCE. YOU
18 SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AND AFTER
19 CONSIDERING ALL OF THE EVIDENCE, IF YOU ARE NOT CONVINCED
20 OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT, THEN
21 YOU MUST FIND THE DEFENDANT NOT GUILTY.

22 NOW, THE SAME CONSTITUTION AND CODE OF LAWS THAT
23 MAKES YOU THE EXCLUSIVE JUDGES OF THE FACTS, ALSO MAKES ME
24 THE EXCLUSIVE JUDGE OF THE LAW. SO, IF YOU HAVE SOME IDEA
25 AS TO WHAT THE LAW IS OR WHAT THE LAW SHOULD BE, AND IF

1 THAT DIFFERS FROM WHAT I NOW TELL YOU THE LAW IS, THEN YOU
2 ARE OBLIGATED UNDER THE OATH THAT YOU HAVE TAKEN AS
3 JURORS, TO SET YOUR NOTION OF THE LAW ASIDE AND TO ACCEPT
4 AND APPLY THE LAW PRECISELY AS I NOW EXPLAIN IT TO YOU.

5 THE FACT THAT THE DEFENDANT WAS ARRESTED AND
6 CHARGED AND INDICTED IN THIS CASE IS NOT EVIDENCE, AND
7 CANNOT BE CONSIDERED BY YOU IN ANY WAY AS EVIDENCE OF THE
8 DEFENDANT'S GUILT, NOR DOES IT CREATE ANY PRESUMPTION OR
9 INFERENCE OF GUILT. THE INDICTMENT IS SIMPLY A FORMAL,
10 WRITTEN INSTRUMENT THAT CONTAINS THE CHARGES THAT HAVE
11 BEEN MADE AGAINST THE DEFENDANT, AND THE INDICTMENT SERVES
12 TO PROCESS THIS CASE AND BRING IT INTO THIS COURT FOR
13 TRIAL.

14 THE DEFENDANT HAS PLED NOT GUILTY TO BOTH OF THESE
15 INDICTMENTS. AND THE PLEA OF NOT GUILTY CASTS THE BURDEN
16 ON THE STATE TO PROVE THE DEFENDANT GUILTY BEYOND A
17 REASONABLE DOUBT. A PERSON CHARGED WITH COMMITTING A
18 CRIME IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE
19 THEMSELVES INNOCENT.

20 NOW, IT IS A VERY IMPORTANT RULE OF LAW IN OUR
21 COUNTRY THAT A DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS
22 BE PRESUMED TO BE INNOCENT OF THE CRIME WITH WHICH HE HAS
23 BEEN CHARGED, UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN
24 BY EVIDENCE THAT SATISFIES YOU OF THAT GUILT BEYOND A
25 REASONABLE DOUBT. THIS IS THE PRESUMPTION OF INNOCENCE,

1 OF COURSE, BUT IT IS NOT MERELY A LEGAL THEORY. IT'S NOT
2 JUST A LEGAL PHRASE THAT WE USE, IT IS A SUBSTANTIAL
3 CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED.

4 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE
5 DEFENDANT FROM THE TIME HE IS CHARGED, THROUGHOUT THE
6 TRIAL, AND INTO THE JURY ROOM, UNTIL THE JURY REACHES A
7 VERDICT OF GUILT THAT IS BASED ON EVIDENCE THAT HAS
8 SATISFIED YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

9 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU NOW AND I
10 EMPHASIZE TO YOU, THAT THE FACT THAT THE DEFENDANT DID NOT
11 TESTIFY IN THIS TRIAL CANNOT BE CONSIDERED BY YOU IN ANY
12 MANNER DURING YOUR DELIBERATIONS. THE DEFENDANT HAS A
13 CONSTITUTIONAL RIGHT TO REMAIN SILENT. AND THE EXERCISE
14 OF THAT RIGHT CANNOT AND MUST NOT BE HELD AGAINST THE
15 DEFENDANT.

16 UNDER THE OATH THAT YOU HAVE TAKEN AS JURORS, YOU
17 ARE TO DRAW NO INFERENCE AND NO CONCLUSION WHATSOEVER FROM
18 THE FACT THAT THE DEFENDANT DID NOT TESTIFY. DO NOT EVEN
19 DISCUSS THIS IN THE JURY ROOM. THE DEFENDANT IS NOT
20 REQUIRED TO PROVE ANYTHING. THE BURDEN OF PROOF REMAINS
21 ON THE STATE.

22 A REASONABLE DOUBT IS A DOUBT WHICH MAKES A
23 CONSCIENTIOUS, SINCERE JUROR IN SEARCH OF THE TRUTH IN THE
24 CASE, TO HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT
25 MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER

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1 THAT A REASONABLE PERSON WOULD NOT HESITATE TO RELY ON IT
2 AND ACT ON IT IN THE MOST IMPORTANT OF HIS OR HER OWN
3 AFFAIRS.

4 PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE
5 DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
6 DEFENDANT'S GUILT.

7 NOW, THERE ARE VERY THINGS IN THIS WORLD THAT WE
8 KNOW WITH ABSOLUTE CERTAINLY. AND IN CRIMINAL CASES, THE
9 LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE
10 DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE,
11 YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
12 THE CRIME CHARGED, THEN YOU MUST FIND HIM GUILTY.

13 BUT ON THE OTHER HAND, IF YOU THINK THERE IS A REAL
14 POSSIBILITY THAT HE IS NOT GUILTY, THEN YOU MUST GIVE HIM
15 THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

16 THE STATE HAS CHARGED THE DEFENDANT WITH CRIMINAL
17 SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE. AND IN
18 ORDER TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE
19 MUST PROVE TWO ESSENTIAL ELEMENTS, EACH BEYOND A
20 REASONABLE DOUBT.

21 THE FIRST ELEMENT WHICH THE STATE MUST PROVE, IS
22 THAT THE DEFENDANT ENGAGED IN SEXUAL BATTERY WITH THE
23 VICTIM. OUR CODE OF LAWS DEFINES SEXUAL BATTERY TO
24 INCLUDE SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL
25 INTERCOURSE OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART

1 OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR
2 ANAL OPENINGS OF ANOTHER PERSON'S BODY EXCEPT WHEN SUCH
3 INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED
4 TREATMENT OR DIAGNOSTIC PURPOSES.

5 THE SECOND ELEMENT WHICH THE STATE MUST PROVE IS
6 THAT THE VICTIM AT THE TIME OF THE SEXUAL BATTERY WAS LESS
7 THAN ELEVEN YEARS OF AGE.

8 THE DEFENDANT IS ALSO CHARGED WITH COMMITTING A
9 LEWD ACT UPON A CHILD. IN ORDER TO CONVICT THE DEFENDANT
10 OF THIS CRIME, THE STATE MUST PROVE FOUR ESSENTIAL
11 ELEMENTS, EACH BEYOND A REASONABLE DOUBT.

12 FIRST, THE STATE MUST PROVE THAT THE DEFENDANT WAS
13 OVER THE AGE OF 14 YEARS.

14 SECOND, THE STATE MUST PROVE THAT THE DEFENDANT
15 COMMITTED OR ATTEMPTED A LEWD OR LASCIVIOUS ACT UPON OR
16 WITH THE BODY OR ITS PARTS OF A CHILD UNDER THE AGE OF 16
17 YEARS.

18 THIRD, THE STATE MUST PROVE THAT THE DEFENDANT DID SO
19 WILFULLY AND LEWDLY.

20 AND, FOURTH, THE STATE MUST PROVE THAT THE
21 DEFENDANT DID SO WITH THE INTENT OF AROUSING, APPEALING TO
22 OR GRATIFYING THE LUST, PASSIONS OR SEXUAL DESIRES OF
23 HIMSELF OR OF THE CHILD.

24 NOW, REGARDING THE SECOND ELEMENT, LEWD MEANS
25 OBSCENE, SEXUALLY INDECENT OR LICENTIOUS. LASCIVIOUS

1 MEANS TENDING TO INSIGHT LUST. - IT MEANS LEWD. IT MEANS
2 INDECENT, OBSCENE OR TENDING TO DEPRAVE THE MORALS AND
3 RESPECT TO SEXUAL RELATIONS.

4 AND REGARDING THE THIRD ELEMENT, THE WORD WILFULLY,
5 OF COURSE, MEANS INTENTIONALLY, NOT ACCIDENTALLY OR
6 INNOCENT.

7 NOW, LADIES AND GENTLEMEN, IN JUST A FEW MINUTES,
8 I'M GOING TO SEND YOU BACK INTO THE JURY ROOM, BUT I'M
9 GOING TO ASK YOU NOT YET TO BEGIN YOUR DELIBERATIONS
10 BECAUSE I WILL HAVE SOME MATTERS OF LAW THAT I NEED TO
11 TAKE UP WITH THE ATTORNEYS. WHILE I DO THAT, I WOULD LIKE
12 FOR YOU ALL TO SELECT A FOREPERSON TO SERVE THE JURY.

13 THE JOB OF THE FOREPERSON IS TO PRESIDE OVER THE
14 DELIBERATIONS. AND THEN WHEN IT BECOMES NECESSARY TO DO
15 SO, TO COMMUNICATE WITH ME AND THOSE COMMUNICATIONS WILL
16 HAVE TO BE IN WRITING.

17 NOW, ONE OF THE TIMES THAT YOU WILL HAVE TO
18 COMMUNICATE WITH ME IS WHEN YOU HAVE REACHED A VERDICT.
19 AND WITH YOU IN THE JURY ROOM, YOU WILL HAVE THE
20 INDICTMENTS. AND ON THE BACK OF THE INDICTMENTS IN THE
21 LOWER LEFT HAND CORNER, YOU WILL SEE THE WORD VERDICT.
22 AND BELOW THAT WORD, THERE ARE FOUR BLANK LINES.

23 WHEN THE JURY HAS UNANIMOUSLY REACHED A VERDICT,
24 THE FOREPERSON WOULD WRITE THE VERDICT ON ONE OF THOSE
25 BLANK LINES, AND THEN SIGN IT AND DATE IT AND NOTIFY THE

1 BAILIFF THAT YOU HAVE REACHED A VERDICT AND WE WILL GET
2 YOU BACK OUT HERE IN THE COURTROOM TO RECEIVE THAT
3 VERDICT.

4 NOW, THE INDICTMENT HAS THE ALLEGATIONS ON IT. I
5 HAVE ALREADY READ TO YOU THE INDICTMENT SEVERAL TIMES. IT
6 HAS A FEW OTHER PIECES OF EXTRANEOUS INFORMATION ON THERE
7 THAT YOU -- THAT REALLY DOESN'T CONCERN YOUR TASK AS
8 JURORS.

9 YOUR VERDICT OPTIONS ARE EITHER GUILTY OR NOT
10 GUILTY. AND SO ONE OF THOSE TWO OPTIONS IS WHAT YOUR
11 VERDICT MUST BE ON EACH INDICTMENT. THE VERDICTS COULD BE
12 DIFFERENT ON EACH INDICTMENT. YOU MUST SEPARATELY
13 DELIBERATE AS TO EACH INDICTMENT AND SEPARATELY AGREE
14 UNANIMOUSLY AS TO WHAT THE VERDICT SHOULD BE.

15 NOW, LADIES AND GENTLEMEN, WHAT GOES ON IN THE JURY
16 ROOM IS PRIVATE AND SHOULD NOT BE DISCLOSED TO ANYONE
17 OUTSIDE OF THE JURY ROOM, AND THAT IS PARTICULARLY TRUE
18 WITH REGARD TO ANY VOTES THAT YOU MAY TAKE. IF THE JURY
19 TAKES A VOTE AND IT IS NOT A UNANIMOUS VOTE AND YOU'RE
20 GOING TO CONTINUE DELIBERATIONS, DO NOT DISCLOSE TO THE
21 BAILIFFS OR TO ANYONE ELSE WHAT THAT VOTE WAS. UNTIL THE
22 JURY'S VOTE IS UNANIMOUS, NOBODY NEEDS TO KNOW WHAT IT IS
23 UNTIL -- UNTIL IT IS UNANIMOUS.

24 I AM GOING TO TAKE A FEW MINUTES AFTER WE HAVE SENT
25 THE EXHIBITS AND THE VERDICT FORM ON THE INDICTMENTS BACK

1 TO YOU AND CLEAN UP A COPY OF THE JURY CHARGE SO THAT YOU
2 WILL HAVE A COPY OF IT IN THERE WITH YOU SO THAT YOU CAN
3 REFER TO IT FOR -- TO REFRESH YOUR RECOLLECTION ABOUT WHAT
4 I HAVE TOLD YOU THE LAW IS.

5 SO, AT THIS TIME, MR. COOPER, IF YOU'D PLEASE
6 REMAIN IN YOUR SEAT. THE REST OF YOU, IF YOU'LL PLEASE GO
7 BACK INTO THE JURY ROOM. AS SOON AS YOU HAVE SELECTED A
8 FOREPERSON, JUST NOTIFY THE BAILIFF AS TO WHO THAT IS, AND
9 WE'LL PUT IT ON THE RECORD. AND THEN AT THAT TIME, WE
10 WILL SEND TO YOU THE EXHIBITS AND THE INDICTMENTS.

11 (WHEREUPON, JURY LEFT THE COURTROOM AT 2:44 P.M.)

12 THE COURT: HOW ABOUT TAKING MR. COOPER BACK THERE
13 AND LET HIM JUST -- JUST PUT HIM IN ONE OF THOSE OTHER
14 ROOMS FOR A FEW MINUTES, AND WE'LL -- I'LL GET BACK TO YOU
15 VERY SHORTLY, MR. COOPER.

16 ANY EXCEPTION TO THE CHARGE?

17 MS. HERRING-LASH: NOT FROM THE STATE, YOUR HONOR.

18 MR. DAVIS: NO, YOUR HONOR.

19 THE COURT: ALL RIGHT. Y'ALL MAKE SURE THAT YOU'VE
20 AGREED ON WHAT THE PROPER SET OF EXHIBITS IS.

21 MR. DAVIS: YES, SIR. JUDGE, I DO HAVE ONE MATTER.
22 RESPECTIVELY, JUDGE, FORGIVE ME, BUT CERTAINLY IN GOING
23 OVER THE CHARGES, I'M -- I'M COMPELLED TO ASK YOUR HONOR
24 TO RECONSIDER A DIRECTED VERDICT. I DON'T BELIEVE THE
25 STATE PROVED THE AGE OF MY CLIENT, WHICH IS THE FIRST

1 ESSENTIAL ELEMENT, THAT HE WAS OVER THE AGE OF 14 YEARS.
2 I DON'T BELIEVE THERE WAS TESTIMONY TO THAT. SO, I RENEW
3 THAT PART.

4 THE COURT: I THINK THERE IS AMPLE EVIDENCE IN THE
5 RECORD FROM WHICH A REASONABLE FACT FINDER COULD CONCLUDE
6 THAT YOUR CLIENT WAS OVER THE AGE OF 14 AT THE TIME THE
7 ALLEGED CRIME OCCURRED, SO I DENY THAT MOTION.

8 MR. DAVIS: THANK YOU, JUDGE.

9 (WHEREUPON, EXHIBITS WERE REVIEWED AND VERIFIED BY
10 ATTORNEYS.)

11 MS. HERRING-LASH: WE'VE GONE OVER IT.

12 THE COURT: OKAY. YOU ALL AGREE THAT WHAT'S IN THAT
13 BOX IS THE PROPER SET OF EXHIBITS THAT HAVE BEEN ADMITTED?

14 MS. HERRING-LASH: WE DO.

15 MR. DAVIS: YES.

16 THE COURT: ALL RIGHT, THEN, YOU ALL CAN TAKE THESE
17 INDICTMENTS AND TAKE THE BOX OF EXHIBITS BACK TO THE JURY
18 -- HAVE THEY -- WELL, WAIT UNTIL THEY TELL YOU WHO THE
19 FOREPERSON IS, THEN YOU CAN DELIVER THAT MATERIAL AND TELL
20 THEM TO BEGIN.

21 BAILIFF: WHAT DO YOU NEED TO KNOW?

22 THE COURT: SIR?

23 BAILIFF: YOU NEED TO KNOW WHO THE FOREPERSON IS?

24 THE COURT: YES, SIR. I WANT TO KNOW WHO THE
25 FOREPERSON IS. HERE ARE THE INDICTMENTS. AND THEN I'M

1 GOING TO GIVE YOU THE JURY CHARGE IN JUST A FEW MINUTES.

2 ALL RIGHT. (PAUSE) THE JURY FOREPERSON IS NUMBER
3 278, KIMBERLY WEINBACH. OKAY. THEY CAN BEGIN. TELL THEM
4 THE JURY CHARGE WILL BE BACK THERE IN A FEW MINUTES.

5 (WHEREUPON, EXHIBITS AND VERDICT FORMS WERE
6 PRESENTED TO THE JURY FOR DELIBERATIONS TO BEGIN AT 2:51
7 P.M.)

8 (WHEREUPON, COURT RECESSED AT 2:51 P.M.)

9 (WHEREUPON, COURT RESUMED AT 3:57 P.M.)

10 THE COURT: ALL RIGHT. IT'S MY UNDERSTANDING THAT
11 THE JURY HAS REACHED A VERDICT. I REALIZE THAT THERE ARE
12 FAMILY MEMBERS IN HERE ON BOTH SIDES. AND THIS IS
13 OBVIOUSLY AN EMOTIONAL MOMENT FOR -- FOR ALL OF YOU. AND
14 IF THERE ARE ANY OF YOU WHO FEEL LIKE YOU CAN'T CONTROL
15 YOURSELF WHEN THE VERDICT IS READ, THEN I WOULD LIKE FOR
16 YOU TO LEAVE THE COURTROOM NOW.

17 IF THERE IS ANYONE WHO DOES NOT CONTROL THEMSELF, I
18 WILL HAVE TO DEAL WITH YOU WITH MY CONTEMPT POWER.
19 EVERYBODY MUST MAINTAIN CONTROL WHEN THE VERDICT IS READ.
20 DOES EVERYBODY UNDERSTAND?

21 MR. DAVIS: YES, YOUR HONOR. THANK YOU.

22 THE COURT: ALL RIGHT. BRING IN THE JURY.

23 (WHEREUPON, JURY ENTERED THE COURTROOM AT 4:01 P.M.)

24 THE COURT: MS. WEINBACH, IS -- HAS THE -- HAS THE
25 JURY REACHED A VERDICT?

1 MS. WEINBACH (FORELADY): YES.

2 THE COURT: PASS THE VERDICT FORM TO THE BAILIFF
3 PLEASE.

4 CLERK: CASE NUMBER 2004 GS 10-2737, IN THE MATTER OF
5 THE STATE VS. ORR, III, INDICTMENT FOR CRIMINAL SEXUAL
6 CONDUCT WITH A MINOR FIRST, THE VERDICT OF THE JURY IS
7 GUILTY. SIGNED KIMBERLY WEINBACH, APRIL 23, 2008.

8 LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR
9 VERDICT, PLEASE RAISE YOUR RIGHT HAND.

10 (WHEREUPON, ALL HANDS WERE RAISED.)

11 CLERK: THANK YOU VERY MUCH. PLEASE LET THE RECORD
12 REFLECT THAT ALL TWELVE JURORS RAISED THEIR RIGHT HAND.

13 CASE NUMBER 2004 GS 10-2739, STATE VS. HAROLD ORR,
14 III, INDICTMENT FOR LEWD ACT UPON A MINOR. THE VERDICT OF
15 THE JURY IS GUILTY. SIGNED KIMBERLY WEINBACH, FOREPERSON
16 OF THE JURY ON APRIL 23, 2008.

17 LADIES AND GENTLEMEN OF THE JURY, IF THIS WAS YOUR
18 VERDICT, PLEASE RAISE YOUR RIGHT HAND.

19 (WHEREUPON, ALL HANDS WERE RAISED.)

20 CLERK: THANK YOU VERY MUCH. PLEASE LET THE RECORD
21 REFLECT THAT ALL TWELVE JURORS RAISED THEIR RIGHT HANDS.

22 THE COURT: MR. DAVIS, IS THERE ANYTHING FURTHER
23 BEFORE MOVING TO SENTENCING?

24 MR. DAVIS: YES, JUDGE. I WOULD ASK THAT THE JURY BE
25 POLLED.

1 THE COURT: POLL THE JURY, PLEASE.

2 MR. DAVIS: AND, JUDGE, MAY I ASK IF THEY COULD --
3 THE HANDCUFFS COULD BE REMOVED WHILE THE PROCESS IS GOING
4 ON SO MY CLIENT CAN HAVE A SEAT.

5 THE COURT: POLL THE JURY AND THEN WE'LL SEE.

6 CLERK: LADIES AND GENTLEMEN OF THE JURY, WHAT WE'RE
7 GOING TO DO NOW IS CALLED POLLING THE JURY. IF -- WHEN I
8 CALL YOUR NAME, PLEASE JUST RAISE YOUR HAND. I'LL THEN
9 ASK YOU TWO QUESTIONS, IF YOU'LL PLEASE RESPOND BACK TO ME
10 VERBALLY ANSWERING THOSE QUESTIONS.

11 JUROR NUMBER 278, KIMBERLY WEINBACH, WERE THOSE YOUR
12 VERDICTS?

13 KIMBERLY WEINBACH: YES.

14 CLERK: ARE THEY STILL YOUR VERDICTS?

15 KIMBERLY WEINBACH: YES.

16 CLERK: OKAY. JUROR 298, DAVID ZIMMERMAN.

17 DAVID ZIMMERMAN: YES.

18 CLERK: WERE THOSE YOUR VERDICTS?

19 DAVID ZIMMERMAN: CORRECT.

20 CLERK: ARE THEY STILL YOUR VERDICTS?

21 DAVID ZIMMERMAN: YES, THEY ARE.

22 CLERK: JUROR NUMBER 31, LEE BROWN, WERE THOSE YOUR
23 VERDICTS?

24 LEE BROWN: YES.

25 MR. DAVIS: ARE THEY STILL YOUR VERDICTS?

1 LEE BROWN: YES.

2 CLERK: JUROR 33, DEAMONTA BRYANT.

3 DEAMONTA BRYANT: YES.

4 CLERK: WERE THOSE YOUR VERDICTS?

5 DEAMONTA BRYANT: YES.

6 CLERK: ARE THEY STILL YOUR VERDICTS?

7 DEAMONTA BRYANT: YES.

8 CLERK: JUROR 38, KATHRYN BUSTOS, WERE THOSE YOUR
9 VERDICTS?

10 KATHRYN BUSTOS: YES.

11 CLERK: ARE THEY STILL YOUR VERDICTS?

12 KATHRYN BUSTOS: YES.

13 CLERK: JUROR 49, JENNIFER CHESNEY, WERE THOSE YOUR
14 VERDICTS?

15 JENNIFER CHESNEY: YES.

16 CLERK: ARE THEY STILL YOUR VERDICTS?

17 JENNIFER CHESNEY: YES.

18 CLERK: OKAY. JUROR 58, GINA CREECH, WERE THOSE YOUR
19 VERDICTS?

20 GINA CREECH: YES.

21 CLERK: ARE THEY STILL YOUR VERDICTS?

22 GINA CREECH: YES.

23 CLERK: THANK YOU. JUROR 167, ALLISON LAROCHE, WERE
24 THOSE YOUR VERDICTS?

25 ALLISON LAROCHE: YES.

1 CLERK: ARE THEY STILL YOUR VERDICTS?

2 ALLISON LAROCHE: YES.

3 CLERK: JUROR 189, JANETTE MIDDLETON, WERE THOSE YOUR
4 VERDICTS? PLEASE RESPOND.

5 JANETTE MIDDLETON: YES.

6 CLERK: ARE THEY STILL YOUR VERDICTS?

7 JANETTE MIDDLETON: YES.

8 CLERK: THANK YOU. JUROR 242, ROSE SHEPPARD, WERE
9 THOSE YOUR VERDICTS?

10 ROSE SHEPPARD: YES.

11 CLERK: ARE THEY STILL YOUR VERDICTS?

12 ROSE SHEPPARD: YES.

13 CLERK: JUROR 245, ERICA SINGLETON, WERE THOSE YOUR
14 VERDICTS?

15 ERICA SINGLETON: YES.

16 CLERK: ARE THEY STILL YOUR VERDICTS?

17 ERICA SINGLETON: YES.

18 CLERK: THANK YOU. JUROR NUMBER 248, RANDAL
19 SINGLETON, WERE THOSE YOUR VERDICTS?

20 RANDAL SINGLETON: YES.

21 CLERK: ARE THEY STILL YOUR VERDICTS?

22 RANDAL SINGLETON: YES.

23 CLERK: WAS THERE ANY -- WAS THERE ANY JUROR WHOSE
24 NAME I DID NOT CALL?

25 (NO RESPONSE.)

1 **CLERK:** YOUR HONOR, THE JURY HAS BEEN POLLED AND THE
2 VERDICTS STAND.

3 **THE COURT:** MR. DAVIS, ANYTHING FURTHER BEFORE WE
4 MOVE INTO SENTENCING?

5 **MR. DAVIS:** JUDGE, I'M NOT SURE IF THIS IS THE
6 APPROPRIATE TIME, OBVIOUSLY, I WOULD RENEW ANY PREVIOUS
7 MOTIONS. IF YOU WOULD LIKE ME TO STATE THAT NOW -- ARGUE
8 THAT NOW, I WILL. I'M NOT SURE WHAT YOUR PROCESS IS,
9 FORGIVE ME, YOUR HONOR, WITH THE JURY.

10 **THE COURT:** ALL RIGHT.

11 **MR. DAVIS:** JUDGE, I WOULD RENEW ANY PREVIOUS MOTIONS
12 I MADE, INCLUDING THE MOTION FOR DIRECTED VERDICT,
13 SPECIFICALLY AS TO THE LEWD ACT CHARGE. I BELIEVE I
14 PREVIOUSLY MADE THAT ARGUMENT. I ARGUED THERE WAS NOT
15 EVIDENCE PRESENTED FROM TESTIMONY OR OTHER EVIDENTIARY
16 MATTERS THAT WOULD PROVE MY CLIENT'S AGE. I THINK THAT
17 ELEMENT IS MISSING.

18 JUDGE, I ASK YOU TO CONSIDER A DIRECTED VERDICT ON
19 BOTH CHARGES. WE RESPECT THE JURY'S DECISION, BUT
20 NOTWITHSTANDING THAT, I'D ASK YOU TO DIRECT A VERDICT ON
21 BOTH THESE CHARGES.

22 **THE COURT:** I DENY THE MOTIONS.

23 **MR. DAVIS:** JUDGE, ADDITIONALLY, I WOULD ASK AT THIS
24 TIME FOR A NEW TRIAL ON THIS MATTER IN CASE THERE WAS ANY
25 INAPPROPRIATE EVIDENCE THAT WAS ADMITTED OR ANY RULINGS

1 THAT WERE IN ERROR, I WOULD ASK YOU TO CONSIDER A NEW
2 TRIAL AT THIS POINT.

3 THE COURT: I DENY THE MOTION.

4 MR. DAVIS: THANK YOU, YOUR HONOR. NO OTHER MOTIONS
5 AT THIS POINT.

6 THE COURT: ALL RIGHT. BRING HIM AROUND. STAY RIGHT
7 UP THERE, SIR. MR. DAVIS, I'M GOING TO GIVE YOU THESE
8 SENTENCING SHEETS AND I'M GOING TO ASK YOU TO REVIEW THE
9 INFORMATION IN THE CAPTION AND OUT TO THE RIGHT FOR ITS --
10 TO MAKE SURE IT'S CORRECT. AND IF IT IS, PLEASE SIGN
11 THOSE SENTENCING SHEETS AND YOU CAN GIVE YOUR CLIENT THE
12 OPTION OF SIGNING THEM AS WELL.

13 (PAUSE.)

14 MR. DAVIS: YOUR HONOR, MAY I APPROACH? JUDGE, I
15 HAVE REVIEWED THEM. THE ONLY THING I WOULD ASK THE
16 SOLICITOR, THE CDR CODE IS THE ONLY THING I'M NOT -- I
17 CAN'T VOUCH FOR, BUT THE OTHER INFORMATION APPEARS TO BE
18 CORRECT ON THAT. AND I -- I HAVE SIGNED THEM.

19 THE COURT: WHAT ARE THE CODES -- WHAT ARE THE CODES
20 THAT ARE ON THERE?

21 MR. DAVIS: ON ONE, JUDGE, IS 0385.

22 THE COURT: ALL RIGHT. THAT'S CSC ON A MINOR?

23 MR. DAVIS: YES, YOUR HONOR. AND THEN THE OTHER IS
24 2468.

25 THE COURT: THAT'S LEWD ACT.

1 MR. DAVIS: OTHER THAN THAT, I HAVE VOUCHER FOR
2 EVERYTHING. I HAVE SIGNED THEM. AND WITH ALL DUE
3 RESPECT, JUDGE, WE HAVE OMITTED MY CLIENT'S SIGNATURE.
4 BUT I HAVE CERTAINLY REVIEWED THEM AND SIGNED THEM.

5 THE COURT: ALL RIGHT. PRIOR RECORD?

6 MS. HERRING-LASH: YES, YOUR HONOR. THERE IS A 1989
7 PETIT LARCENY. A 1990, TWO COUNTS OF SPEEDING. A 1991
8 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE. A 1991
9 ROBBERY. AND A 2001, CRIMINAL DOMESTIC VIOLENCE OF A HIGH
10 AND AGGRAVATED NATURE.

11 THE COURT: ALL RIGHT. ANYTHING ELSE FROM THE STATE?

12 MS. HERRING-LASH: YOUR HONOR, I DON'T THINK -- THERE
13 IS -- I THINK MS. SHEPPARD WOULD LIKE TO ADDRESS THE
14 COURT.

15 MS. SHEPPARD: I JUST WANTED TO SAY THAT I'M THANKFUL
16 FOR EVERYTHING THAT EVERYBODY HAS DONE FOR ME AND MY
17 FAMILY. THIS WAS A TRAGEDY FOR US FOR A VERY LONG TIME.
18 NOW [REDACTED] CAN PUT THIS BEHIND HER NOW AND GO AHEAD ON
19 WITH HER LIFE AS A YOUNG TEENAGER AND GROW UP AS A
20 TEENAGER. AND I JUST WANTED TO THANK EVERYBODY.

21 MS. HERRING-LASH: AND, YOUR HONOR, THAT WAS -- FOR
22 THE RECORD, THAT WAS SHEILA SHEPPARD.

23 THE COURT: ANYTHING ELSE FROM THE STATE?

24 MS. HERRING-LASH: NO, YOUR HONOR. I GUESS I WOULD
25 JUST SAY YOU'VE HEARD THE EVIDENCE OF THIS CASE, AND WE

1 WOULD LIKE YOU TO DO WHATEVER IS APPROPRIATE -- SENTENCE
2 IS APPROPRIATE.

3 THE COURT: MR. DAVIS?

4 MR. DAVIS: THANK YOU VERY MUCH, YOUR HONOR. MAY IT
5 PLEASE THE COURT. JUDGE, UM, I'VE WORKED WITH HAROLD FOR
6 A NUMBER OF YEARS NOW. COINCIDENTALLY BORN ONLY A COUPLE
7 OF DAYS BEFORE ME, \SO HE'S 38 YEARS OLD, JUDGE.

8 YOU'VE HEARD THE RECORD, A VERY -- I WOULD ARGUE
9 VERY MINOR RECORD. JUDGE, HE WENT TO 10TH GRADE IN
10 SCHOOL. HE HAS BEEN GAINFULLY EMPLOYED FOR -- FOR MOST OF
11 HIS ADULT LIFE. MOST RECENTLY, HE'S BEEN WITH R.H. MOORE
12 UP IN -- IN THE PAWLEY'S ISLAND AREA FOR QUITE SOME TIME
13 NOW.

14 UM, JUDGE, WE CERTAINLY RESPECT THE JURY'S VERDICT
15 IN THIS CASE. BUT I CAN TELL YOU THAT -- OBVIOUSLY, WE'VE
16 SPENT THE LAST -- ALMOST THREE FULL DAYS DISPUTING THIS.
17 PERSONALLY, HE HAS APPEARED ANY TIME AND EVERY TIME WE'VE
18 NEEDED TO DISCUSS THIS CASE. UM, THE TRIAL IS DONE NOW.
19 I THINK I CAN FREELY TALK ABOUT PRIOR PROCEEDINGS.

20 THE COURT: YES, SIR.

21 MR. DAVIS: UM, WE HAD TRIED THIS CASE BEFORE. HE
22 WAS HERE DURING THAT TRIAL. VERY HELPFUL. IN FACT, THAT
23 WAS A MISTRIAL, A HUNG JURY. VERY HELPFUL. THAT WAS SOME
24 YEARS AGO. WE TOLD YOU THAT IN A PRETRIAL.

25 JUDGE, ONE THING I CAN TELL YOU, I WAS SECOND CHAIR

1 ON -- NOT LEAD ATTORNEY ON THE PRIOR TRIAL, BUT I WAS VERY
2 MUCH INVOLVED. THE ORIGINAL ATTORNEY, MRS. BARKER, WHO IS
3 ONE OF THE OTHER PUBLIC DEFENDERS SOME TIME AGO --
4 ACTUALLY AUGUST OF 2006, IT WAS JUST -- I CAN'T SPEAK TO
5 HER MOTIVES FOR IT, BUT SHE DID HAVE AN EVALUATION DONE OF
6 MR. ORR BY DR. WILLIAM BURKE. AND I BELIEVE YOU'RE
7 FAMILIAR WITH DR. BURKE---

8 THE COURT: I'M FAMILIAR WITH DR. BURKE.

9 MR. DAVIS: JUDGE, THERE'S -- THERE'S NOTHING OF A
10 MAJOR NOTE IN THIS REPORT THAT HE DID, OTHER THAN TO SAY,
11 JUDGE, THE DOCTOR DID NOT FEEL THAT THERE WERE CONCERNS
12 ABOUT PREDATORY ACTIONS, PEDOPHILIA, THAT TYPE OF THING.
13 THE -- THE REACTIONS IN TESTING WERE -- WERE RATHER NORMAL
14 FOR AN ADULT MALE. I JUST -- AGAIN, WE RESPECT OUR SYSTEM
15 AND THE JURY'S VERDICT, BUT I DON'T BELIEVE THERE'S
16 ANYTHING IN HIS PAST OR IN THE RECORD, UM, THAT -- THAT
17 SPEAKS TO THIS OR -- OR GAVE INDICATIONS TO THIS.

18 JUDGE, YOU'RE WELL AWARE THAT -- WE'VE GOT TWO
19 CHARGES AND WE UNDERSTAND THAT. RESPECTFULLY, I'M GOING
20 TO FOCUS ON THE -- THE -- SENTENCE WISE, THE MORE SERIOUS
21 OF THE TWO, CSC FIRST WITH A MINOR, ZERO TO THIRTY YEARS
22 AS THE STATUTE WAS BACK AT THE DATE OF THIS INCIDENT.

23 AS YOU WELL KNOW, AND IT'S CHECKED THERE, I'VE
24 REVIEWED IT, THE MOST SERIOUS OFFENSE -- A VIOLENT
25 OFFENSE, IT'S A NO PAROLE OFFENSE, YOUR HONOR. IT DOES

1 NOT HAVE A MANDATORY MINIMUM. I DO NOT BELIEVE AS
2 WRITTEN, IT COULD NOT BE SUSPENDED.

3 THIS ALLEGATION WAS FROM NOVEMBER OF 2003. HE HAS
4 BEEN, AFTER 55 DAYS I BELIEVE IT WAS, IN JAIL ON THIS
5 CHARGE -- OF COURSE, WE WOULD ASK FOR CREDIT FOR THAT IF
6 THAT WERE -- EVER BECAME AN ISSUE.

7 HE HAS BEEN OUT OF JAIL SINCE THEN. YOU KNOW THAT
8 AT THE LAST TRIAL, JUDGE CHILDS ALLOWED HIM TO REMAIN OUT
9 ON A PERSONAL RECOGNIZANCE BOND, AS WELL AS YOUR HONOR DID
10 DURING THIS TRIAL. HE HAS BEEN LIVING OUT IN PAWLEY'S
11 ISLAND WITH HIS FAMILY, WHO IS IN THE COURTROOM. I DON'T
12 BELIEVE THEY WANT TO ADDRESS THE COURT, BUT CERTAINLY HE'S
13 HAD FAMILY SUPPORT HERE THROUGHOUT THIS TRIAL. HE IS
14 EXPECTING -- HE AND HIS GIRLFRIEND ARE EXPECTING.

15 I HAVE SPOKEN TO HIM ALSO. I DON'T BELIEVE HE'S
16 GOING TO ADDRESS THE COURT FOR THE APPROPRIATE REASONS,
17 JUDGE. I HOPE YOU'LL UNDERSTAND THAT.

18 WE UNDERSTAND THAT THE JURY HAS CONVICTED HIM, BUT
19 I WOULD ARGUE TO YOU JUDGE, THAT THIS IS NOT THE MAN, NOR
20 THE INCIDENT IN THE LIGHT MOST FAVORABLE TO THE STATE,
21 THAT REQUIRES SIGNIFICANT TIME IN PRISON. I BELIEVE THAT
22 THERE HAVE BEEN NO ALLEGATIONS OF CONTACT BETWEEN THE
23 FAMILIES OVER THESE LAST FEW YEARS IN THE INTERIM BETWEEN
24 THESE TRIALS. I BELIEVE THAT ANY CONCERNS THE STATE, YOUR
25 HONOR, THE COURT MIGHT HAVE AS TO CONTROLLING HIM, IF YOU

1 HAVE CONCERNS ABOUT REHABILITATING HIM -- ALTHOUGH IT
2 DOESN'T SEEM TO BE AN ISSUE THAT DR. BURKE RECOGNIZED,
3 THAT ALL THOSE THINGS COULD BE DEALT WHILE ON SUPERVISION
4 ON PROBATION.

5 I WOULD RESPECTFULLY ASK YOU TO CONSIDER A
6 PROBATIONARY SENTENCE. IF YOU'RE NOT INCLINED TO DO THAT,
7 OF COURSE, I WOULD ASK YOU TO CONSIDER SOME TYPE OF SPLIT
8 SENTENCE AND A MINIMAL AMOUNT OF PRISON TIME.

9 JUDGE, I DON'T BELIEVE THAT -- I BELIEVE JUSTICE
10 COULD BE SERVED WITH A LENIENT SENTENCE. HE HAS SHOWN
11 HIMSELF OVER THE NUMBER OF YEARS, SINCE HIS ARREST, TO
12 HAVE NO -- NO ARRESTS, NO PROBLEMS. AND I THINK THIS
13 COULD BE SERVED THROUGH A PROBATIONARY OR SPLIT SENTENCE.
14 THANK YOU, YOUR HONOR.

15 IF YOU'LL GIVE ME JUST ONE MOMENT, I BELIEVE THAT
16 WOULD BE ALL THAT WE HAVE.

17 (PAUSE.)

18 MR. DAVIS: JUDGE, THE LAST THING, I APPRECIATE YOUR
19 PATIENCE, RESPECTFULLY, IF YOU -- IF YOU ARE INCLINED TO
20 INCARCERATE HIM TODAY, HAROLD HAS ASKED ME RESPECTFULLY --
21 AND I KNOW THAT IT IS NOT NORMAL PROCEDURE FOR THE
22 DEPUTIES HERE -- BUT IF HE COULD BRIEFLY SPEAK WITH,
23 PRIMARILY THE MOTHER OF HIS SOON-TO-BE BORN CHILD, BEFORE
24 HE IS TAKEN INTO FULL CUSTODY. AND WE RESPECTFULLY ASK
25 THAT. THANK YOU, JUDGE.

1 THE COURT: ANYTHING FURTHER?

2 MS. HERRING-LASH: NOT FROM THE STATE.

3 MR. DAVIS: JUDGE, I DON'T -- OUT OF AN ABUNDANCE OF
4 CAUTION, OF COURSE, YOU HAVE GOT TWO INDICTMENTS. OF
5 COURSE, WE WOULD ASK THAT ANYTHING YOU SENTENCE RUN
6 CONCURRENT, AND GET CREDIT FOR TIME SERVED.

7 THE COURT: ALL RIGHT. THE SENTENCE ON THE CRIMINAL
8 SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE IS 25
9 YEARS. THE SENTENCE ON THE LEWD ACT ON A MINOR IS 15
10 YEARS. THEY ARE TO RUN CONCURRENT WITH CREDIT FOR TIME
11 SERVED. GOOD LUCK TO YOU, SIR.

12 MR. DAVIS: MAY HE SPEAK TO---

13 THE COURT: I'LL LET THE JAIL HANDLE THAT. THEY
14 HAVE -- THEY HAVE A MECHANISM TO LET YOU SPEAK WITH THEM.

15 MR. DAVIS: MAY WE APPROACH, JUDGE?

16 THE COURT: YES.

17 MR. DAVIS: THANK YOU.

18 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
19 CONFERENCE IN THE PRESENCE OF THE JURY, BUT OUTSIDE THE
20 HEARING OF THE JURY, OFF THE RECORD.)

21 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, I'M
22 GOING TO ASK YOU TO STEP BACK TO THE JURY ROOM AND I'LL
23 COME BACK THERE AND SPEAK TO YOU BEFORE I DISMISS YOU.

24 (WHEREUPON, JURY LEFT THE COURTROOM AT 4:20 P.M.)

25 THE COURT: ALL RIGHT. WE'LL TAKE A SHORT BREAK.

1. AND I'LL COME BACK TO BEGIN THE HEARING IN THE NEXT CASE.
2. (WHEREUPON, THE THIRD DAY OF TRIAL ADJOURNED.)
3. * * * END OF TRANSCRIPT * * *
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CERTIFICATE OF REPORTERS

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WE, VIVIAN H. CROSS AND SHARON D. JONES, OFFICIAL COURT REPORTERS FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE GENERAL SESSIONS COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 21ST, 22ND AND 23RD DAY OF APRIL, 2008.

I DO FURTHER CERTIFY THAT WE ARE NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

10/25/08

Vivian H. Cross

VIVIAN H. CROSS,
9TH CIRCUIT COURT REPORTER

Sharon D. Jones
SHARON D. JONES,
9TH JUDICIAL COURT REPORTER

HER 2003-12-05565

WITNESSES

JOHN BURNETT AND/OR

KETH HAIR

ROGERS, NCPD

2003041439

DOCKET NO. 2004-GS-10-2737

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2004

ARREST WARRANT NUMBER

H545388

NOVEMBER 25, 2003

HAROLD ORR, III

VS.

THE STATE

ACTION OF GRAND JURY

TRIPLE BILL

[Signature]
Foreperson of Grand Jury

MAY 11 2004

VERDICT

Guilty

Indictment for

CRIMINAL SEXUAL CONDUCT WITH A
MINOR-FIRST

[Signature]
Foreperson of Petit Jury

4-23-04
Date:

2004 APR 28 AM 9:45
BY *[Signature]*
CLERK OF COURT

STATE OF SOUTH CAROLINA)
) INDICTMENT FOR
 COUNTY OF CHARLESTON) CRIMINAL SEXUAL CONDUCT WITH A MINOR-FIRST

At a Court of General Sessions, convened on May 10, 2004 the Grand Jurors of Charleston County present upon their oath:

That Harold Orr, III DOB October 14, 1969 did in Charleston County between November 2003 and November 25, 2003 engage in sexual battery upon one [redacted], date of birth [redacted], to wit: cunnilingus. This is in violation of §16-3-655 of the South Carolina 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.


 ASSISTANT SOLICITOR

HER 2003-12-05565

WITNESSES

JOHN BURNETT AND/OR

KETH HAIR

ROGERS, NCPD

2003041439

DOCKET NO. 2004-GS-10-2739

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

MAY TERM 2004

THE STATE

VS.

HAROLD ORR, III

ARREST WARRANT NUMBER
DIRECT INDICTMENT

ACTION OF GRAND JURY

RETURNED

[Signature]
Foreperson of Grand Jury MAY 11 2004

VERDICT

Guilty

Kim W. Burkhead
Foreperson of Petit Jury Date: 4-23-08

Indictment for

LEWD ACT UPON A MINOR

FILED
2004 APR 28 AM 9:44
CLERK OF COURT
BY *[Signature]*

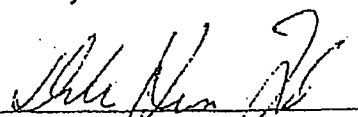
STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT FOR
LEWD ACT UPON A MINOR

At a Court of General Sessions, convened on May 10, 2004 the Grand Jurors of Charleston County present upon their oath:

That Harold Orr, III being over the age of fourteen years did in Charleston County between November 2003 and November 25, 2003 lewdly commit or attempt a lewd and lascivious act upon or with the body of Minor a child under the age of sixteen years, with the intent of arousing, appealing to, and gratifying the lust, passions, and sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina 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.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF Charleston)
 STATE VS.)
Harold Orr)
 AKA: _____)
 Race: B Sex: M Age: _____)
 DOB: _____ SS#: _____)
 Address: _____)
Pawleys Island, SC 29585)
 DL#: _____ SID#: _____)

IN THE COURT OF GENERAL SESSIONS ✓

INDICTMENT/CASE#: 2004GS102737
 A/W#: H545388
 Date of Offense: 11/25/2003
 S.C. Code § : 16-03-0655(A)(1)
 CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Criminal Sexual Conduct w/ Minor 1st Degree

in violation of § 16-03-0655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (Defendant initial)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: _____
Herring-Lash, Deborah Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____	
*Fine: _____	\$ _____
§ 14-1-206 (Assessments 107.5 %)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>3.75</u>
TOTAL	\$ <u>128.75</u>

Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/B beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol testing _____
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel §35.13 TP
 Requires \$500 be paid to Clerk during probation.

 Clerk of Court/ Deputy Clerk
 Court Reporter: V. Cross

PRESIDING JUDGE [Signature]
 Judge Code: 1 2 1 1 2 3
 Sentence Date: 4/23/08
 SCSA/217 (10/2007)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE _____)

INDICTMENT/CASE#: 2004GS102739

VS. Harold Orr

A/W#: DIRECT INDICTMENT

AKA: _____)

Date of Offense: 11/25/2003

Race: B Sex: M Age: -

S.C. Code § : 16-15-0140

DOB: _____ SS#: _____

CDR Code #: 2468

Address: _____)

SENTENCE SHEET

DL#: _____ SID#: _____)

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Lewd Act on a Minor <16

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468.
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Defendant [Signature] Attorney for Defendant
Herring-Lash, Deborah

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 15 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.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 set by SCDPPPS _____

Recipient: _____	
*Fine: _____	\$ _____
§ 14-1-206 (Assessments 107.5%)	\$ _____
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100 \$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100 \$ _____
§ 56-5-2995 (DUI Assessment)	\$12 \$ _____
§ 35.13 (Public Def/Prob)	\$500 \$ _____
§ 73.3, 1B TP (Law Enforce. Funding)	\$25 \$ <u>25.00</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100 \$ _____
§ 50-21-114(BUI Breath Test Fee)	\$50 \$ _____
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea \$ _____
3% to County (if paid in installments)	\$ <u>3.75</u>
TOTAL	\$ <u>128.75</u>

_____ 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 \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Clerk of Court/ Deputy Clerk
Court Reporter: V. Cross

PRESIDING JUDGE [Signature]
Judge Code: 12 213
Sentence Date: 4/23/08
SCCA/217 (10/2007)

me 9

FORM 5

2012-CP-10-937
IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

HAROLD ORR, #180921)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2012 FEB - 8 PM 4:39
JULIE J. ARMSTRONG
CLERK OF COURT

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 Broad River Correctional Facility
4460 Broad River Road, Columbia, SC [29210]
2. Name and location of Court which imposed sentence
Charleston County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 04-GS-10-2737
 - (b) 04-GS-10-2739

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

HAROLD ORR, 180921)

Applicant)

STATE OF SOUTH CAROLINA)

Respondent,)

IN THE COMMON PLEAS COURT

DOCKET NO.: 2012-CP-10-0937

AMENDMENT TO PCR APPLICATION

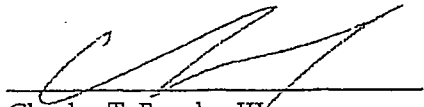
BY JULIO ARMSTRONG
CLERK OF COURT
2012 JUL 23 PM 2:14

FILED

The Applicant, Harold Orr, through undersigned Counsel wishes to add the following to his Application for Post Conviction Relief:

During applicant's trial and during the cross examination of Sheila Shepard, defense counsel asked the Judge for an "in-camera" discussion. Applicant believes that the middle of a cross-examination was an inappropriate time to make such a request. The content of the "in-camera" discussion, as outlined in the INITITAL BRIEF OF APPELLANT, clearly shows conflicting testimony of Ms. Shepard. Applicant believes that had the contents of that discussion been presented in open court, at the very least the prosecution would have objected. An objection in open court would have preserved the issue for direct appeal. Also, the bias which would have been shown by the contents of the "in-camera" discussion may have warranted Ms. Shepard's entire testimony be stricken.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, Harold Orr



Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

July 19, 2012

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Harold Orr, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Harold ORR
Harold ORR Applicant

SWORN or affirmed to and subscribed before me this
17th day of January, 2012.

Donald J. Dinkel
Notary Public

My Commission Expires: August 25, 2015

Please, May I Have Some one
to Be my Lawyer

19. State clearly the relief you seek in filing this application:

Modification of current sentence to the plea offered before
before the first trial: (seven years)

20. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
County of Charleston)

VERIFICATION

I, Harold Orr, 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.

Harold ORR
Harold ORR

SWORN to and subscribed before me this 17th
day of January, 2012.

[Signature] (L.S.)
Notary Public

My Commission Expires August 25, 2015

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- 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. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Counsel failed to advocate for a plea before second trial.

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? N/A

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A

(d) any other petitions, motions or applications in this or any other Court? N/A

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. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) April 23, 2008: CSC 1ST (25 yrs)

(b) April 23, 2008: Lewd Act (15 yrs) [Concurrent]

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty XX

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. COURT OF APPEALS

ii. S.C. SUPREME COURT [PETITION FOR REHEARING]

iii. S.C. SUPREME COURT [PETITION FOR WRIT OF CERTIORARI]

(b) the result in each such Court to which you appealed:

i. APPEAL DENIED

ii. PETITION DENIED

iii. PETITION DENIED

(c) the date of each such result:

i. AUGUST 11, 2010

ii. SEPTEMBER 23, 2010

iii. NOVEMBER 3, 2011

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Opinion 4724 (S.C. Ct.App. filed 8/11/2010)

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2012-CP-10-937

Harold Orr, #180921)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post-conviction relief (PCR) filed February 8, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the May 2004 term of the Charleston County Grand Jury for First-Degree Criminal Sexual Conduct with a Minor (2004-GS-10-2737) and Lewd Act on a Minor under 16 (2004-GS-10-2739). Applicant was represented by S. Boyd Young, Esquire.

The Applicant proceeded to trial and was convicted on all charges. Applicant was sentenced by the Honorable John Few to confinement for a period of twenty-five years for First-Degree Criminal Sexual Conduct and fifteen years for Lewd Act on a Minor under 16. The sentences are to be served concurrently.

The Applicant appealed his convictions and sentences. The Court of Appeals affirmed the Applicant's convictions on August 11, 2010. The Applicant filed a Petition for Rehearing. The

Court of Appeals denied the Applicant's petition on September 23, 2010. The Applicant filed a Petition for Writ of Certiorari. The South Carolina Supreme Court denied the Applicant's petition on November 3, 2011.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to advocate for a plea before second trial.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

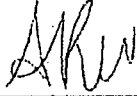
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 19, 2012.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
)
 HAROLD ORR, #180921)
)
 Applicant,)
)
 vs)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS

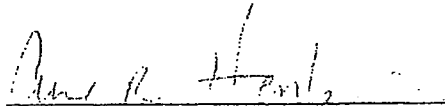
2012-CP-10-937

AFFIDAVIT OF SERVICE BY MAIL

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:

Charles T. Brooks, Esquire
 309 Broad Street
 Sumter, SC 29150

DATED this 19th day of June, 2012



Anne R. Henley, Legal Assistant
 For Respondent

1 MS. WILSON: May it please the Court, Your
2 Honor. The next case is Harold Orr versus the State.
3 Docket number 2012-CP-10-937.

4 Mr. Orr was originally indicted for first degree
5 criminal sexual conduct with a minor, and lewd act on a
6 minor under 16. He proceeded to trial and was
7 convicted of both charges. He was sentenced to 25
8 years on the CSC, and 15 years for the lewd act on a
9 minor. The sentences are to run concurrently.

10 Now, I will hand it over to Mr. Brooks.

11 THE COURT: Okay, thank you.

12 MR. BROOKS: Judge, we are ready to begin. We
13 call Mr. Harold Orr to the stand.

14 THE COURT: Yes, sir.

15 Mr. Orr, if you will come forward and be sworn.

16 HAROLD ORR,

17 after having first been sworn to tell the truth, the
18 whole truth and nothing but the truth testified on his
19 oath as follows:

20 Mr. BROOKS: Ready, Judge?

21 THE COURT: Yes, sir.

22 DIRECT EXAMINATION

23 BY MR. BROOKS:

24 Q Mr. Orr, you have brought this post-conviction
25 relief application seeking a new trial; is that

1 correct?

2 A Yes, sir.

3 Q And who was your trial attorney?

4 A Mr. Davis.

5 Q Okay. He was court-appointed?

6 A Yes, sir.

7 Q Now, you brought this application alleging
8 ineffective assistance of counsel; is that correct?

9 A Yes, sir.

10 Q Now, tell the Court what you felt that your
11 trial attorney made mistakes on?

12 A Well, first of all in the middle of questioning
13 my wife he asked the judge for an in-camera discussion
14 which he shouldn't have did -- he shouldn't have did it
15 at that time because that was the wrong time for him to
16 do it at.

17 Q Okay. What do you think he should have done
18 instead?

19 A He should have went ahead and questioned her and
20 let the -- excuse me.

21 Q Let the jury hear it?

22 A Let the -- excuse me.

23 Q I know you are a little nervous. I know you're
24 nervous. It's your day in court.

25 A Let the prosecution object to it and then that

1 would preserve the issue on direct appeal which might
2 have gotten my case overturned is what I'm trying to
3 say.

4 Q Okay. And the jury may have heard it too; is
5 that right?

6 A Correct.

7 Q And it may have been something that actually
8 helped you in the matter; is that correct?

9 A Correct.

10 Q Now, tell the Court what those actual -- what
11 that topic was that dealt with your wife?

12 A Infidelity in our marriage. They was trying to
13 -- the credibility was, with her testimony against me,
14 trying to derail her testimony against me.

15 Q Now, she actually testified against you in this
16 case?

17 A Yeah, she was my accuser.

18 Q And you felt that infidelity would have been,
19 undermined her credibility?

20 A Yeah, correct.

21 Q In the eyes of the jury?

22 A Yes.

23 Q Now, and that was not allowed; is that correct?

24 A Yeah, that was not allowed, that's right.

25 Q And what else do you feel that your lawyer made

1 mistakes in?

2 A Well, I mean, basically, I mean, he did an all
3 right job for us. But when it was time for me to come
4 back to court I had a lady that was my attorney at
5 first. And she was leading the trial. And the guy
6 that was running my trial for the second time, he was
7 the helper, he was the person that was helping her.

8 And then when I came back for the second trial,
9 I had him running my trial and somebody else was
10 helping him, you know. And I feel that that wasn't
11 helping.

12 When I was coming back and forth to Charleston.
13 My sister bringing me back and forth to Charleston to
14 see this lady. And then when it was time to go to
15 court, she wasn't there. It was the other guy.

16 Q Now, let me ask you this, Mr. Orr. Were you out
17 bond?

18 A Yes, sir.

19 Q Okay. You were out on bond, and how long were
20 you out on bond before you went to trial this time and
21 you were convicted?

22 A A couple, few years.

23 Q Okay. And he was court-appointed to you; is
24 that correct?

25 A Yes, sir.

1 Q Is there anything else you want to tell the
2 Judge about that trial?

3 A Basically, that's it. That's all I have.

4 Q Are you sure now? Listen, now, Mr. Orr, this is
5 your day, okay? You want this new trial. I want you
6 to take a few minutes.

7 A Yeah, I want a new trial. Definitely I want a
8 new trial, definitely that. I'm nervous, you know, I
9 ain't never been through this before.

10 Q I know you haven't. Take a deep breath. Take a
11 deep breath and think, is there anything else you want
12 to tell the Judge why you should get a new trial other
13 than the lawyer and the in-camera about your wife's
14 infidelity?

15 A Yeah, I'm not no child molester. I ain't never
16 messed with no child my whole life. That's what this
17 whole thing is about. And my wife accused me of that
18 and I didn't do that.

19 I mean, I went and took these tests and sat in a
20 chair for hours buck-naked looking at little kids on
21 film to see if I would get aroused. I passed that test
22 with flying colors. I'm pretty sure you all got that
23 in the record somewhere.

24 I didn't mess with this child. I didn't. She
25 was my grandchild. I loved her to death. I didn't do

1 when they say I did. And that's all I got. That's it.
2 That's all I got.

3 Q All right. Anything else, Mr. Orr, before I
4 turn it over to the Attorney General?

5 A No, I don't.

6 MR. BROOKS: Okay. Answer any questions of the
7 Attorney General.

8 CROSS-EXAMINATION

9 BY MS. WILSON:

10 Q Mr. Orr, do you recall at trial when your
11 attorney, Mr. Davis, tried to impeach the credibility
12 of your wife while she was on the stand about the
13 statement that she made to the police?

14 A No, I don't remember that.

15 Q You don't remember that? Well, do you also
16 recall during your second trial discussions between the
17 Court and Mr. Davis about trying to impeach your wife's
18 credibility about some infidelity, some accusations of
19 infidelity? Do you remember that?

20 A I remember something like that. I remember
21 something like that.

22 Q So you recall a discussion about trying to get
23 that in, trying to question your wife on that during
24 your second trial?

25 A Maybe so, I don't remember.

1 Q So your main issue here today is that you are
2 saying that Mr. Davis should have requested in-camera
3 questioning? Am I getting that right?

4 A No. He requested that when he should have went
5 ahead and questioned her. He did that. He ask the
6 Judge for an in-camera discussion. For what reason, I
7 don't know.

8 Q Okay. So but you do recall that she was
9 questioned by Mr. Davis at trial?

10 She was cross-examined by him. Do you recall
11 that?

12 A No, I don't recall that.

13 Ms. WILSON: Thank you, Your Honor.

14 THE COURT: Thank you.

15 Yes, sir.

16 MR. BROOKS: No other questions, Judge.

17 THE COURT: Okay. Sir, you may step down.

18 MR. BROOKS: May I have one minute to talk with
19 my client, Judge?

20 THE COURT: Certainly.

21 MR. BROOKS: That's the applicant's case, Judge.

22 Ms. WILSON: State will call Rodney Davis.

23 THE COURT: Mr. Davis, if you would come forward
24 and be sworn.

25 RODNEY DAVIS,

1 after having first been sworn to tell the truth, the
2 whole truth and nothing but the truth testified on his
3 oath as follows:

4 DIRECT EXAMINATION

5 BY MS. WILSON:

6 Q Mr. Davis, you were appointed to represent Mr.
7 Orr?

8 A Yes.

9 Q Do you recall about what time you were
10 appointed?

11 A I can't tell you exactly. Mr. Orr just
12 mentioned that originally this case was being handled
13 by Karen Werman, which is now Karen Barker from our
14 office.

15 Because of the serious nature of the offenses
16 there was discussions -- I don't know if my boss was
17 involved in that -- there were discussions about me
18 being involved in the trial since it was, on the first
19 trial, going to trial.

20 And I'm not sure how far before the first trial
21 I got involved.

22 Q Were you present at the applicant's first trial?

23 A Yes.

24 Q And when you were present at the first trial,
25 were you sitting first or second trial? were you

1 assisting the main attorney?

2 A I was seated as second chair. But the whole
3 reason that I was brought into the case is the serious
4 nature of the allegations. Ms. Barker was not as
5 experienced, just in sheer years, nor has as many trial
6 experiences as I had, and so I was very involved in the
7 first trial even though technically I was second chair.

8 Q Okay. And so at Mr. Orr's second trial, you
9 were the first chair?

10 A Yes.

11 Q Okay. And did you feel like you were fully
12 prepared and briefed on the issues of the first trial?

13 A Right. I mean I prepared -- helped prepare the
14 first trial.

15 Q Do you recall questioning Sheila Sheppard?

16 A Generally, yes.

17 Q And do you also recall trying to impeach her
18 credibility on the witness stand?

19 A Yes.

20 Q Can you recall specifically what you tried to
21 impeach her credibility about?

22 A The general nature Mr. Orr and I had spoken
23 about this, one of the main issues -- and he mentioned
24 it during his testimony today -- was the fact that of
25 her infidelity as a bias or a motive for making these

1 allegations against him.

2 Q And did you advise Mr. Orr of his constitutional
3 right to go forward on the trial; the elements of the
4 charge against him; and also did you discuss the
5 State's evidence with him?

6 A Yes. That's one of the major reasons I remember
7 this case was the evidentiary nature, the difference
8 between the first trial and the second trial.

9 Q Okay. Could you discuss those differences
10 briefly?

11 A In the first trial it is my opinion, and
12 certainly our main focus, and it's my opinion that the
13 reason we -- the verdict was as it was, which was a
14 hung jury and a mistrial in the first case is that
15 there was forensic testing that was done on the
16 clothing of the alleged victim.

17 which the best testing could show was that it
18 showed up as being male genetic material. The
19 allegation of course all along was that this has been
20 -- that Mr. Orr had licked the vaginal area of alleged
21 victim.

22 And so one of our main focuses on the first
23 trial was the fact that without knowing what that
24 substance was, was it skin cells, was it hair, was it
25 sweet, then the State has not met its burden, that

1 there was just suspicion, just assumptions here.

2 I feel that Ms. Barker and myself and Mr. Orr we
3 prepared on that. I think that was as successful as it
4 could be which resulted in the mistrial.

5 Between that trial and the second trial the
6 State sent some of that evidence, if not all the
7 evidence, I don't recall exactly, but some of that
8 evidence in for retesting to determine what was that
9 substance.

10 And before the second trial we had an analysis
11 back that they had determine it was saliva. So now
12 they had it was male genetic material, and now they had
13 forensic evidence it was saliva. So that took away our
14 major argument.

15 Q Okay. Mr. Orr, one of his allegations here
16 today is that you requested in-camera questioning of
17 Sheila Sheppard at an incorrect time during the trial.

18 Can you speak to that allegation?

19 A Not specifically other than this. I am trying
20 to recall from the transcript about that. And
21 certainly if either side would like to refer me to a
22 specific part of the transcript.

23 Just with the number of years I have done this,
24 I can only assume that it was based on concern of the
25 Court whether they would let the evidence in or not.

1 But I still in that window was able to proffer the
2 testimony.

3 So it certain was in-camera. I didn't ask the
4 first question and invoke an objection. But I was able
5 to make a proffer of the testimony that we were
6 intending to dig into.

7 That's my best assumption, now in hindsight, on
8 why I asked for the in-camera rather than just asking
9 questions.

10 MS. WILSON: Thank you, Mr. Davis. Please
11 answer any questions that Mr. Brooks has for you.

12 CROSS-EXAMINATION

13 BY MR. BROOKS:

14 Q Mr. Davis, how are you.

15 A Doing well.

16 Q Basically you did not ask that question first of
17 her about infidelity in front of the jury, and didn't
18 have it objected to. You just approached the Judge and
19 you all did in-camera, that's how you all handled that
20 infidelity issue?

21 A What would best assist me, forgive me for not
22 recalling it, you certainly got the transcript some
23 time ago, have reviewed it. I don't have it before me
24 here today.

25 For me to ask for the in-camera hearing, I would

1 be very surprised if there wasn't an earlier discussion
2 to where I had some indication from the court that they
3 had concerns about it. That's my best guess as to why.

4 I have been more -- now if I'm incorrect, you
5 all will certainly direct me to the transcript, but
6 that's my best recollection.

7 Q To your best recollection do you remember that
8 being able to come out in the first trial?

9 A I don't recall, I'm not sure. I don't recall.

10 We certainly would have known about that. Mr.
11 Orr would have discussed that with us. But obviously
12 the major focus of the first trial was you don't know
13 whose male genetic material that is. You don't know
14 what it is. That was our major argument, I think our
15 stronger argument.

16 I simply don't recall whether we impeached or
17 attempted to impeach the infidelity in the first trial.
18 I apologize.

19 Q Okay. But you think it might have been the
20 solicitor sort of beating you to the punch and saying,
21 yeah, let's have an in-camera about the infidelity, or
22 you just don't recall?

23 A I'd have to look at the sequence in the exact
24 testimony of the transcript on who asked for it, and
25 what sequence. I'd have to look back at the

1 transcript. I apologize. I don't have it in front of
2 me.

3 Q Okay. Now, is it fair to say the main witness
4 was Ms. Sheppard?

5 A Yes.

6 Q The main witness, star witness, critical
7 witness?

8 A Certainly critical, yes.

9 Q Because she testified that she saw him do it; is
10 that right?

11 A Right.

12 Q Wasn't she the only person that said that?

13 A Other than of course the alleged victim, yes, I
14 think she did.

15 Q Did you all ever employ an investigator to
16 investigate Ms. Sheppard?

17 A On the staff I'd have to check and see who was
18 assigned. My investigator, I had two investigators
19 throughout my career with the public defender's office
20 10 years there.

21 Lee Guinn was the last investigator. And
22 Burdell Young would have been the first couple of
23 years. I don't recall, based on how long this was,
24 which investigator it was.

25 We would have had -- we have and still do,

1 public defender's office, four investigators on the
2 staff to handle such issues.

3 MR. BROOKS: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. BROOKS: No other questions, Judge.

6 THE COURT: Thank you.

7 MS. WILSON: Just a few more, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. WILSON:

10 Q Mr. Davis, do you recall questioning Ms.
11 Sheppard on being married once before and staying
12 married when she married Mr. Orr?

13 Basically being a bigamist; being married to two
14 people at the same time?

15 A I do. Last thing I looked at before I walked in
16 was some notes from my opening in which I had mentioned
17 that in our opening. So that was one of the major
18 issues was if she could not be believed on that,
19 something simple as what name she went by, then the
20 jury should question her other testimony.

21 Q Do you also recall questioning her about lying
22 about the number of kids that she had before she
23 started dating Mr. Orr?

24 A Yes.

25 Q Do you also recall questioning her about whether

1 she told the police that she called the police or her
2 daughter called the police?

3 A I don't recall that specifically.

4 Q Okay.

5 A But I do know obviously, like I said, with the
6 new evidence the State had we were trying to, of
7 course, focus on, as Mr. Brooks said, the critical
8 witness to try to deal with her credibility, or lack
9 thereof, in our opinion.

10 Q So it was your trial strategy to attack the
11 credibility of Ms. Sheppard?

12 A Yes.

13 MS. WILSON: No further questions, Your Honor.

14 MR. BROOKS: No more questions, Judge.

15 THE COURT: Mr. Davis, you may step down.

16 THE WITNESS: Thank you, Your Honor.

17 MS. WILSON: Nothing further from the State,
18 Your Honor.

19 THE COURT: Okay. Anything further from the
20 petitioner?

21 MR. BROOKS: Nothing further from us, Judge.

22 Just argument in regards to the infidelity issues. My
23 client feels if they were brought out and being asked
24 and objected to, this jury would have heard it, perhaps
25 would have undermined her credibility.

1 For those reasons, my client is respectfully
2 asking the Court for a post-conviction relief to be
3 granted and him to be given a new trial.

4 THE COURT: Okay.

5 MS. WILSON: Briefly, Your Honor. The State's
6 position is that the Court should deny Mr. Orr's
7 post-conviction relief application.

8 First, Your Honor, he doesn't put forth any
9 evidence that Mr. Davis was ineffective. And also,
10 Your Honor, no prejudice could have resulted from not
11 going down that line of questioning with the witness,
12 Ms. Sheppard because as Mr. Davis testified on the
13 stand, he made several other attempts to impeach her
14 credibility throughout the trial, Your Honor.

15 So we just ask that you deny this application
16 for post-conviction relief.

17 THE COURT: Thank you.

18 Anything further?

19 MR. BROOKS: That's it, Judge.

20 THE COURT: Okay. I will deny the petitioner's
21 application for post-conviction relief.

22 As you all know, under the Strickland v
23 Washington test, an applicant must first demonstrate
24 that counsel was deficient or ineffective, and then
25 must show that the deficiency resulted in prejudice.

1 I do not find Mr. Davis's performance to have
2 been deficient or ineffective. It did not fall below
3 an objective standard of reasonableness. He clearly did
4 bring out that she was a bigamist and lied about the
5 number of children she had.

6 And quite frankly, I'm not sure that asking an
7 objectionable question, that we don't know whether the
8 judge would have sustained or overruled based on what I
9 have heard from this stand, seen in fact could be
10 ineffective as a trial strategy decision and if it's
11 overruled and the jury is instructed not to listen to
12 it, they are not supposed to consider that anyway.

13 I don't find the representation ineffective at
14 all. And I certainly don't find that any alleged
15 deficiency resulted in prejudice. So the application
16 is denied. Thank you.

17 Ms. WILSON: Thank you.

18 (Whereupon, the proceedings in this matter
19 before the Court were adjourned.)

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C E R T I F I C A T E

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7 I, the undersigned, ANNE BOULEY MEYER,
8 Official Court Reporter for the Ninth Judicial
9 Circuit of the State of South Carolina, do hereby
10 certify that the foregoing is a true, accurate, and
11 complete transcript of record, and of all the
12 proceedings had and evidence introduced in the above
13 captioned case, relative to appeal, in the Circuit
14 Court for South Carolina, on the indicated date.

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

17
18 -----*Anne Bouley Meyer*-----

19 Anne Bouley Meyer, RPR
20 Circuit Court Reporter
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STATE OF SOUTH CAROLINA)
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 COUNTY OF CHARLESTON)
)
 Harold Orr, #180921)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 2012-CP-10-937

ORDER OF DISMISSAL

FILED
 2012 DEC 17 PM 12:26
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed February 8, 2012. The Respondent made its Return on June 19, 2012. An evidentiary hearing into the matter was convened on July 24, 2012, at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Rodney Davis, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the Applicant's Record on Appeal, the PCR application, and Respondent's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the May 2004 term of the Charleston County Grand Jury for First Degree Criminal Sexual Conduct with a Minor (2004-GS-10-2737) and Lewd Act on a Minor under 16 (2004-GS-10-2739). Rodney Davis,

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Esquire, represented the Applicant. The Applicant proceeded to trial and was found guilty on all charges. The Applicant was sentenced by the Honorable John Few to confinement for a period of twenty-five years for First Degree Criminal Sexual Conduct and fifteen years for Lewd Act on a Minor under 16. The sentences are to be served concurrently.

A timely Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. The South Carolina Court of Appeals affirmed the Applicant's convictions and sentences on August 11, 2010. The Applicant filed a Petition for Rehearing. The Court of Appeals denied the Applicant's petition on September 23, 2010. The Applicant filed a Petition for Writ of Certiorari. The South Carolina Supreme Court denied the Applicant's petition on November 3, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Counsel failed to advocate for a plea before second trial.

At the hearing, the Applicant proceeded solely on the allegation of ineffective assistance of counsel.

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. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

At the evidentiary hearing, the Applicant testified that trial counsel was ineffective for requesting in camera questioning of the Applicant's wife, Sheila Sheppard, regarding her infidelity during the

Defendant's cross-examination of the witness. The Applicant testified that this was the wrong time to make the request and that trial counsel should have let the State object to the request so that it could be preserved for appeal. He also testified that he did not remember trial counsel impeaching his wife's credibility based on her prior statements. The Applicant also testified that trial counsel was not always his attorney and that he did not commit the crime he was accused of.

Trial counsel testified he was appointed to represent the Applicant. He testified that originally another attorney in his office was appointed to represent the Applicant, but that he was brought in on the case as second-chair during the Applicant's first trial because he was more experienced. Trial counsel testified that he was present at the Applicant's first trial and that he was very involved in the Applicant's defense. During the Applicant's second trial, counsel recalls questioning the Applicant's wife, Sheila Sheppard, about her infidelity. Trial counsel testified that Sheppard was the State's critical witness because she testified that she saw the Applicant committing the crime. He stated that it was his trial strategy to attack the witness' credibility. He also testified that he likely requested in camera questioning of Sheila Sheppard during the trial because he had a concern about whether or not the trial court would let in her testimony regarding infidelity. Trial counsel testified further that he recalls questioning Sheppard about being married to two men at the same time and about lying to the Applicant about the number of children she had.

Counsel also testified that the Applicant's first trial resulted in a hung jury because the key evidence against the Applicant was forensic testing on the victim's clothing which found genetic material but with an unknown source. He stated that at the Applicant's second trial, the State had forensic evidence showing that the source of the genetic material was saliva. Counsel stated that this evidence killed their major argument from the first trial which was that the genetic material could have come from anywhere.

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Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. Counsel also discussed the Applicant's pending charges, the elements of the charges and what the State was required to prove,

Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds that Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

The Applicant alleged at the evidentiary hearing that trial counsel was ineffective for requesting in camera questioning of Sheila Sheppard at the wrong time and not preserving the issue for appeal. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving trial counsel was deficient for requesting in camera questioning of Sheila Sheppard. Trial counsel's performance was not deficient because he articulated a valid trial strategy for his performance. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689.

Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778

(1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

This Court finds that trial counsel articulated a valid trial strategy for requesting in camera questioning of Sheila Sheppard at trial. At the evidentiary hearing, trial counsel testified that it was his trial strategy to focus on Sheppard's credibility at trial because she was the State's key witness. He also testified that he likely requested the in camera questioning of Sheppard because he was concerned that the trial court would not let in the witness' testimony on infidelity. During the Applicant's second trial, counsel requested that a line of questioning regarding Sheppard's allegations of the Applicant's infidelity be allowed to show the witness' bias for impeachment purposes. (T. 226). After the witness was questioned outside of the presence of the jury, the trial judge denied trial counsel's request stating that the testimony elicited from the witness did not show bias. (T. 231-232). This Court finds that trial counsel's strategic reason for requesting in camera questioning of Sheppard was valid and that his performance was not ineffective.

This Court finds further that despite the trial court's ruling that Sheppard not be questioned regarding allegations of the Applicant's infidelity, trial counsel effectively impeached the credibility of the State's key witness. At the Applicant's second trial, counsel successfully elicited testimony from Sheppard that brought out her being married to two men at the same time, her untruthfulness about the number of children she had, and inconsistencies in her prior statements. This Court finds that trial counsel's performance was not ineffective.

The Applicant also alleged at the evidentiary hearing that trial counsel was not prepared for trial because he had a different attorney during his first trial than he had during his second trial. This Court finds that trial counsel was not ineffective and was adequately prepared to represent the Applicant at his

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second trial.

At the evidentiary hearing, trial counsel testified that the Applicant's first trial was handled by another attorney, but that he was later brought in to assist as second-chair because he was more experienced. He also testified that he was present, fully prepared, and well-briefed in the substance of the Applicant's first trial. This Court finds that counsel was adequately prepared to represent the Applicant at his second trial. As second-chair in the Applicant's first trial, counsel was well-versed on the strategy and substance of the Applicant's first trial. This Court finds further that this allegation is without merit and the Applicant has failed to carry his burden of proving that trial counsel's performance was deficient.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore they are hereby denied and dismissed.

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CONCLUSION

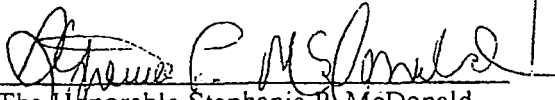
Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violation or deprivation before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 12th day of December, 2012.


The Honorable Stephanie P. McDonald
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina.