

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

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S.C. Supreme Court

SHAWN LEONARD GLENNON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-000046

APPENDIX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF BERKELEY	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 10-GS-08-1489
	)	
Shawn L. Glennon,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within jury trial in the above-captioned action was held on June 29th and 30th, 2011, before The Honorable R. Markley Dennis, Jr. in Courtroom E of the Berkeley County Courthouse, 300 California Street, Moncks Corner, South Carolina; attended by Counsel, as follows:

APPEARANCES:

Ashley Cornwell, Assistant Solicitor
 Anne Williams, Assistant Solicitor
 9TH JUDICIAL CIRCUIT SOLICITOR'S OFFICE
 300-B California Avenue
 Moncks Corner, SC 29416
 Appearing for State of South Carolina

Michael O'Neal, Esq.
 2165 Ashley Phosphate Rd., Suite D
 Charleston, SC 29406
 Appearing for Defendant

DEBORAH GARRISON
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Witness	Direct	Cross	Redirect	Recross
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INDEX OF DEFENSE EXHIBITS

(None Entered)

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1 (DEFENDANT PRESENT)

2 THE COURT: You had a Motion, Ms.
3 Cornwell, concerning the video?

4 SOLICITOR CORNWELL: Yes, Your Honor.
5 This is a case where the defendant was taking
6 photographs of the daughter while she was in the
7 bathroom nude. Because of the sensitive nature,
8 we would ask that just the necessary personnel
9 be allowed in and everybody else has to leave
10 the courtroom while we show the video.

11 MICHAEL O'NEAL: Judge, the only
12 thing that I can say is that it's my under-
13 standing that she was eighteen at the time that
14 the video was alleged made. We have no problem
15 at all with having just key personnel in the
16 courtroom and everybody else kept out when the
17 video is shown.

18 THE COURT: We're going to have a
19 hearing, hear the testimony, because otherwise
20 -- why do you'all want to do this? I mean, I
21 understand why. But the bottom line is that
22 this is a public courtroom.

23 SOLICITOR CORNWELL: I understand,
24 Your Honor.

25 THE COURT: We've got to let the

7

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1 paper know. We've got to have -- I believe that
2 we can close it, but I don't believe that I can
3 just close it without -- let's see how many
4 people are in here. I don't -- how old is the
5 victim now?

6 SOLICITOR CORNWELL: The victim now
7 is twenty-eight. At the time that the film was
8 made, it's the State's understanding that she
9 was seventeen years old.

10 SOLICITOR WILLIAMS: Your Honor, we
11 will also try to explore opportunities to maybe
12 turn the screen just towards the jury. Maybe
13 Mr. O'Neal and his client could walk over. I
14 don't know if that would be a viable
15 alternative.

16 THE COURT: That's fine. I mean, no
17 one -- I'll need to see it, certainly the jury
18 will need to see it but other than that -- we
19 could position the screen.

20 MICHAEL O'NEAL: That's agreeable.

21 SOLICITOR CORNWELL: Thank you, Your
22 Honor.

23 THE COURT: All right. As I
24 understand, an offer was made in this case.
25 You're Shawn -- you can be seated. Thank you

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1 very much. You're Shawn Glennon?

2 DEFENDANT: Yes, Your Honor.

3 THE COURT: Mr. Glennon, I've been
4 advised that there was an offer made, I think,
5 of probation, basically pleading to the charge,
6 which you have instructed your attorney to
7 reject. Is that correct?

8 DEFENDANT: That is correct, Your
9 Honor.

10 THE COURT: Very well. You
11 understand now that that offer will be withdrawn
12 and that will have no influence or affect --
13 should the jury convict you -- that the sentence
14 that I can impose will be up to three years.

15 DEFENDANT: I understand, Your Honor.

16 THE COURT: Very well. Thank you,
17 sir.

18 DEFENDANT: You're welcome.

19 THE COURT: And you have so
20 instructed your attorney?

21 DEFENDANT: I have, Your Honor.

22 THE COURT: Was he retained?

23 DEFENDANT: Yes, he was.

24 THE COURT: Not that it makes any
25 difference but I just wanted to put those on the

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1 record.

2 DEFENDANT: Yes, sir.

3 THE COURT: All right, I assume that
4 we have our jury panel ready.

5 (JURY PANEL IN @ 2:35 P.M.)

6 THE COURT: Thank you very much,
7 Ladies and Gentlemen. While we are waiting for
8 the clerks to return from the jury room, my name
9 is Markley Dennis. I have been assigned this
10 week -- as one of the Circuit Court judges in
11 the Ninth Circuit, this is my home county and
12 I've been assigned to conduct a term of General
13 Session court, criminal disputes.

14 You have been selected to help us
15 resolve some of those disputes. This morning
16 we have resolved all but one of those in that --
17 you didn't know that you were working, but
18 really were assisting us in resolving disputes.
19 Thank you very much for your assistance with
20 that.

21 The one dispute remaining that needs
22 yours and my assistance is -- I've been
23 appointed by the Chief Justice to conduct this
24 term. I am confident that none of you called
25 Ms. Brown, our Clerk of Court, and said, 'Would

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1 you let me serve on a jury? It's hot as the
2 dickens and I understand that your courtroom is
3 kinda of comfortable. I'd just as soon come up
4 there on Monday.' I bet nobody did that. I
5 don't blame you that you didn't.

6 We're going to be picking one case.
7 For most of you, this will be it. You won't
8 have to come back after today. The good thing
9 for you in that respect is -- and the one case
10 that we pick, we'll probably finish it tomorrow.
11 That being said, even those of you who are on
12 the jury will certainly be outside maybe
13 Wednesday, that will be it.

14 For most of you this will be your --
15 you will earn an exemption for being subject to
16 being called. You can only be required to serve
17 once every three years in this years, unless you
18 chose to serve more frequently. In Circuit
19 Court, you earn an exemption. That will be
20 probably the most valuable thing that you
21 receive, including the check. When you get it,
22 you'll understand exactly what I mean by that.
23 Obviously you're not paid to be a juror. That's
24 never been the intent or purpose of this process
25 of dispute resolution. Ms. Brown doesn't have a

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1 choice in that. That's set by law, by statute.

2 So what we're going to do now is
3 qualify you, but before qualifying you the clerk
4 needs certain information from you. I think Ms.
5 Tucker is going to be asking you some questions
6 and calling the roll, so I will turn it over to
7 Ms. Tucker.

8 (ROLL CALL)

9 THE COURT: Thank you, Ms. Tucker.
10 Now there are some questions that I need to ask
11 you. Before I ask them, will every member of
12 the jury panel swear or affirm that they will
13 respond truthfully to my questions. If so,
14 please indicate by saying "I will."

15 (AFFIRMATIVE RESPONSES)

16 THE COURT: Is there any member of
17 the jury panel that could not make that
18 commitment for any reason? Is so, please stand.
19 (No response). Thank you very much.

20 The first group of questions deal with
21 exemptions that still remain. When I first
22 started this business in 1973, in this
23 courtroom, a lot of you wouldn't have been here.
24 They have had exemptions sort of evolve over the
25 years. Since 1973, we've included more

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1 occupations and I think that's a better system,
2 to be honest with you. The whole process of
3 jury selection, resolving disputes, involves a
4 cross-section of the community. That's exactly
5 what we have. I thank you for that. I am sure
6 that some of you may not agree with that, but I
7 -- I understand that. Thank you.

8 The first one -- in 1983, it meant
9 something to me then. It doesn't mean as much
10 today since I've joined this club. But if
11 you've reached your sixty-fifth birthday, you've
12 earned an exemption. I notice, only because I
13 have your birth dates, that there are a couple
14 that have. Well, -- not yet, maybe soon. But
15 if you've reached your sixty-fifth birthday and
16 want to claim the exemption, please stand. (No
17 response). Does that apply to anyone? (No
18 response). Thank you, there are none.

19 I heard one of these but I think -- is
20 there anyone that is employed with the
21 Department of Corrections? If so, you earn an
22 exemption. Yours is not with the Department of
23 Corrections? Federal?

24 JUROR NUMBER 66: Yes, sir.

25 THE COURT: That exemption doesn't

1 carry over to the Federal side. Sorry. If
2 there are any persons who are employed with the
3 Department of Corrections and want to claim your
4 exemption, please stand. (No response). Thank
5 you, there are none.

6 If you have the care of and are
7 custodian -- if you have the sole care and
8 custody of a child or children under the age of
9 seven years and you either do not work outside
10 the home, or your working arrangements is such
11 that maybe you swap off with another caregiver
12 so that there is a caregiver present at all
13 times, and you need to claim that exemption,
14 please stand. (No response). Thank you. There
15 appear to be none.

16 If you have the care of a person of any
17 age who is in need of constant care because of
18 some mental or physical condition and you are
19 the caregiver, if you want to claim the
20 exemption, please stand. Yes?

21 JUROR NUMBER 44: I am the caregiver
22 for my dad.

23 THE COURT: Is he -- you are there
24 with him most of the time?

25 JUROR NUMBER 44: Yes, sir, I am not

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1 working anywhere.

2 THE COURT: I understand. Your name
3 and number, please?

4 JUROR NUMBER 44: My name is Nathan
5 Fleck, 44. He can't stay by himself.

6 THE COURT: Do you wish to claim that
7 exemption?

8 JUROR NUMBER 44: Yes, sir.

9 THE COURT: Good luck to you, sir.
10 You're free to leave.

11 (JUROR NUMBER 44 EXCUSED)

12 THE COURT: Are there any others?
13 (No response). Thank you. There appear to be
14 none.

15 Are there any members -- if there are
16 members of the jury panel who are students,
17 teachers, necessary employees with institutions
18 of learning. That would be K through twelve and
19 institutions of higher learning, including
20 technical colleges. And your duties and
21 responsibilities as a teacher, student or
22 necessary employee would conflict with serving
23 on the jury and you wish to claim the exemption,
24 please stand. Yes?

25 JUROR: I am a fulltime student.

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1 THE COURT: We can give you a couple
2 of days off.

3 JUROR: Too hard to catch up.

4 THE COURT: You don't want to do
5 that?

6 JUROR: Better not.

7 THE COURT: I understand. Your name
8 and number?

9 JUROR: Sowerby, 143.

10 THE COURT: You're excused. Good
11 luck to you.

12 JUROR NUMBER 130: Physical
13 education teacher. They would give me a hard
14 time if I miss.

15 THE COURT: I understand. The
16 beginning of the year, you need to be there?

17 JUROR NUMBER 130: Yes.

18 THE COURT: Your number, please?

19 JUROR NUMBER 130: 130.

20 THE COURT: 130 is excused. Have
21 a great day. Thank you. Any others? (No
22 response). Thank you. There appear to be none.

23 As I mentioned to you, each of you will
24 earn an exemption if you're eligible and you're
25 picked on the jury that we select. That

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1 exemption will be for three years. So if there
2 are any members of the jury panel who have
3 previously served in the last three years on a
4 Circuit Court jury and wish to claim the
5 exemption, please stand. Now, if you've served
6 on a magistrate jury, municipal court jury,
7 Federal jury, great experience but you didn't
8 earn the exemption. Does that apply to anyone
9 who wishes to claim that exemption? (No
10 response). Thank you. There appear to be none.

11 Any member of the jury panel who has
12 served on a grand jury for any county in this
13 state within the last five years? If you did
14 and you want to claim that exemption, please
15 stand. (No response). Thank you. There appear
16 to be none.

17 Folks, those are all the exemptions.

18 The next questions, unless the previous
19 questions, it's necessary that you respond to
20 them because these deal with your qualification
21 to serve as a juror. So it's important that you
22 share the information.

23 I have a fairly good idea as to the
24 first one. I practice law for twenty-one years,
25 have been a judge now for a little over

1 seventeen-and-a-half years, and I've never had
2 anybody that didn't have one of these -- guess
3 there is always a first, though it would shock
4 me if it does. But if you don't have a Highway
5 Department identification card, or a voter's
6 registration certificate, or a driver's license
7 -- you don't have to have it with you, you don't
8 have to have all three, -- if that applies to a
9 juror, doesn't have at least one of those,
10 please stand. (No response). Thank you. I
11 didn't think so. That's how we got your name to
12 send you an invitation.

13 The law requires me to ask it, so I --
14 I guess one day I'll have -- I did have one in
15 Charleston. We talked about that last week.
16 Stood and said, 'Well, I don't have one of
17 those.' I said, 'How did you get here?' He
18 said, 'Well, I was picked on a jury and they
19 told me to come.' We found out that he was
20 supposed to be in magistrate's court. I still
21 don't know how they got his name. But, anyway.

22 The next one -- I didn't see any of
23 these, but if any member of the jury panel has
24 not reached his or her eighteenth birthday,
25 would you please stand? (No response). Thank

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1 you. There are none.

2 Are there any members of the jury panel
3 who are clerks of court, deputy clerks of court,
4 constables, sheriffs, probate judges, county
5 commissioners, county officers or any person
6 employed within the walls of any courthouse. If
7 that applies to you, please stand. Thank you.
8 There appear to be none.

9 Are there any member of the jury panel
10 that hold a law enforcement commission? That
11 could be with or without pay. In other words,
12 you're empowered to arrest someone generally.
13 I assume you don't have any type commission
14 outside the prison facility?

15 JUROR NUMBER 66: No, sir.

16 THE COURT: I didn't think you did.
17 Does that apply to anyone? (No response).
18 Thank you. There appear to be none.

19 Are there any members of the jury panel
20 who are not now citizens and residents of
21 Berkeley County? If so, please stand. (No
22 response).

23 Are there any members of the jury panel
24 who is not a citizen of the United States? (No
25 response).

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1 The next group of questions, Ladies and
2 Gentlemen, I will afford you an opportunity to
3 share it with me and with my court reporter, Ms.
4 Garrison. But it will be important that you
5 share your responses if any of these apply to
6 you:

7 The first one is, if any juror has ever
8 been convicted in a court of record, state or
9 federal court, of a crime that carried a
10 potential sentence of more than one year. You
11 wouldn't have actually had to have received a
12 sentence of more than one year, only the
13 potential for that, and you haven't had your
14 rights restored by pardon or amnesty, you will
15 not be able to serve. It does not matter how
16 long ago that may have occurred. If it occurred
17 in your life, it will prevent you from serving.
18 I will need to talk to you about that, if there
19 are any members of the panel who have had that
20 situation.

21 If there are any members of the jury
22 panel who are unable to read, write, speak or
23 understand the English language, I need to talk
24 with you about that in just a moment.

25 If there are members of the panel who

1 have some mental or physical condition which
2 they believe would affect their ability to serve
3 as a juror, I will discuss that with you also?

4 Lastly, if there are any members of the
5 jury panel who do not have the equivalent of a
6 sixth grade education, I will need to talk with
7 you'all about that also.

8 Now, the last catch-all question, if
9 there are members of the panel who have some
10 compelling personal or business reason that
11 would affect their serving on the jury this
12 week, I will be happy to discuss with you
13 postponing that jury service. But let me hasten
14 to add that today is really a pretty good day to
15 be selected, because we are going to identify
16 the jury and you'll know before you leave here
17 this afternoon whether you are going to have to
18 come back. I can't promise you that's the case
19 -- it happens some in Berkeley, but not
20 frequently. If you are transferred, you may
21 have to come every day. So just keep that in
22 mind. This may be a good time to serve if you
23 don't have some reason that would conflict.
24 Those jurors that do have some conflict, I will
25 be happy to discuss those with you also.

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1 Now, if there are jurors that need to
2 discuss matters, just form a line right here
3 please.

4 BAILIFF: Juror Number 158, Bernard
5 Walker.

6 SIDEBAR:

7 THE COURT: Hello, Mr. Walker.
8 How are you, sir?

9 JUROR NUMBER 158: How are you
10 doing? I was -- child support, I think it was
11 in ---

12 SOLICITOR CORNWELL: We have an
13 outstanding bench warrant, Your Honor.

14 THE COURT: Well, I want you to
15 leave him alone right now, please.

16 SOLICITOR CORNWELL: Yes, sir.

17 THE COURT: They have a bench
18 warrant for you but I'm not going to let them
19 execute it right now. For failure to appear in
20 court. So you may want to check on that. It's
21 in Summerville. I am going to ask that law
22 enforcement not arrest you while you're here for
23 jury service. That would not disqualify you.
24 Thank you.

25 (SIDEBAR CONCLUDED)

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1 THE COURT: Thank you, Number 158,
2 Mr. Walker, will remain.

3 BAILIFF: Juror Number 165,
4 Benjamin White.

5 SIDEBAR:

6 THE COURT: Mr. White, good
7 afternoon.

8 JUROR NUMBER 165: I don't
9 read very well and I'm a diabetic.

10 THE COURT: That's all right.
11 We deal with plenty of them all the time. We
12 will just give you a break whenever you need
13 one. That's not a problem. I've worked with
14 plenty of them, all the time.

15 JUROR NUMBER 165: Okay.

16 THE COURT: What type of work
17 have you done?

18 JUROR NUMBER 165: Drive a
19 truck.

20 THE COURT: You -- the most
21 important thing that you have is what you bring,
22 your common sense, your sense of logic and
23 reason, whether you believe somebody or not.
24 You do that every day, so I am not concerned
25 about that. If you have to read something,

1 somebody will help you with that.

2 JUROR NUMBER 165: Well, I
3 have to go to the bathroom pretty frequently.

4 THE COURT: I understand that.
5 You haven't had to go since we've been here.

6 JUROR NUMBER 165: I need to
7 go now.

8 THE COURT: Well, you can go
9 ahead and go, then. We will take a break.
10 Thank you.

11 (SIDEBAR CONCLUDED)

12 THE COURT: Number 165 will remain.

13 BAILIFF: Juror Number 132, James
14 Sager.

15 SIDEBAR:

16 JUROR NUMBER 132: I was
17 convicted of a felony.

18 THE COURT: What was the felony?

19 JUROR NUMBER 132: Distribu-
20 tion and possession with intent to distribute.

21 THE COURT: That would
22 disqualify you.

23 (SIDEBAR CONCLUDED)

24 THE COURT: Juror Number 132 is
25 excused for statutory reasons.

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1 (JUROR NUMBER 132 EXCUSED)

2 BAILIFF: Juror Number 89, Mark
3 Looney.

4 SIDEBAR:

5 JUROR NUMBER 89: I am currently
6 doing sessions of PTI.

7 THE COURT: What was the charge?

8 JUROR NUMBER 89: Th charge was
9 CDV.

10 THE COURT: But you haven't been
11 convicted of it?

12 JUROR NUMBER 89: No, but I just
13 wanted to tell you.

14 THE COURT: No problem. You
15 don't have anything on 89?

16 SOLICITOR CORNWELL: No, sir.

17 THE COURT: That would not
18 disqualify you.

19 (SIDEBAR CONCLUDED)

20 THE COURT: Number 89 will remain.
21 Thank you, sir.

22 BAILIFF: Number 51, Laurie
23 Gilstrap.

24 SIDEBAR:

25 THE COURT: Hi, Miss Gilstrap.

1 JUROR NUMBER 51: How are you? I
2 have just recently been disabled. I have
3 doctor's appointments tomorrow. I have fibro-
4 myalgia. It's difficult to sit or stand for a
5 period of time. I'm in a lot of pain and I just
6 -- it's hard to focus.

7 THE COURT: Okay.

8 (SIDEBAR CONCLUDED)

9 THE COURT: I am going to transfer
10 Number 51. If you will get your doctor to write
11 Ms. Brown a note saying that you're not --
12 because of your condition that he would
13 recommend that you would not serve.

14 JUROR NUMBER 51: (Affirmative nod),
15 he was on vacation last week.

16 THE COURT: I understand. Just do
17 that. If you bring that to her, then you
18 (clerk) can excuse her. We will transfer her to
19 -- what? Give her a couple of months. You will
20 get another notice but, like I say, if your
21 doctor will write you that then you will not
22 have to serve. Just bring that to Ms. Brown's
23 office and they will excuse you. Thank you.

24 BAILIFF: Juror Number 132, Aida
25 Santiago.

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1 SIDEBAR:

2 JUROR NUMBER 132: The only
3 thing that I have is an appointment tomorrow,
4 2:00 o'clock, with my orthodontist.

5 THE COURT: Can you reschedule
6 it if you have to?

7 JUROR NUMBER 132: Yes.

8 THE COURT: Okay.

9 (SIDEBAR CONCLUDED)

10 THE COURT: Number 133, if she is
11 picked on the jury, has a doctor's appointment.
12 Obviously -- she said that she can reschedule,
13 if necessary. So -- but if she is not, then she
14 is free to go to that appointment.

15 Are there any others? (No response).
16 Thank you very much, Ladies and Gentlemen. I'm
17 pleased and privileged to state that you're
18 qualified to serve with me this week, in helping
19 to resolve the remaining case.

20 It is an honor to serve with you. You
21 will become a judge with me. You and I will
22 perform the task assigned to us by law.

23 There are times -- in fact, Judge
24 McDonald was holding court here last week and
25 tried two or three cases, I think. The jury was

1 not present, it was all nonjury. When we have a
2 nonjury trial, it means just that -- there is no
3 jury present. So in that situation, I will -- I
4 have nonjury next week, and I may have a trial.
5 When that occurs, I am the judge of the law and
6 the judge of the facts.

7 But when you're present, you take part
8 of that responsibility from me. So, thank you.

9 Our jobs are well defined. We don't
10 overlap. I have nothing to do with the factual
11 determination. You have nothing to do with the
12 law. There will be nothing -- no cases that you
13 hear this week. There is only one in South
14 Carolina where a jury participates in any
15 sentencing recommendations. That's in a capital
16 murder case. In other states that's not always
17 the case but in South Carolina that is. We have
18 none of those, so you don't have to worry about
19 that. It's a criminal term, with criminal
20 disputes but you're not going to be involved in
21 any sentencing.

22 You will do something that I would
23 suggest and submit to you -- I'd say this
24 without any hesitation, there is no one in the
25 world that is more qualified than you are to

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1 perform the tasks that you will accept. I say
2 that -- I guess that I would have to add this,
3 unless you can convince me that somebody can
4 apply your commonsense, your sense of logic and
5 reasoning better than you can. I just don't
6 think that there is anybody who can do that.

7 Frankly, folks, it's nothing foreign to
8 any of us. If you think about, we do it every
9 single day of our lives. We hear something or
10 we read something and we decide whether or not
11 we believe it. That's exactly what you'll do as
12 a juror, nothing more.

13 You are going to consider the evidence
14 that consists of testimony of the witnesses and
15 exhibits that are introduced through their
16 testimony, and that's it. You make a decision
17 on what you read, see or hear.

18 Once you make that decision, then you
19 have to make a further commitment that you will
20 apply the law as I give it to you. Just as I
21 have nothing to do with the facts, you don't
22 have anything to do with the law. That means
23 even if you hear a principle of law with which
24 you may differ, and I certainly respect your
25 right to feel that way but for purposes of this

1 proceeding we've each promised that we will
2 perform our task. I am confident that you will
3 do that. I doubt very seriously that you will
4 hear anything with which you disagree, but if
5 you do then you have promised to set that aside
6 as well.

7 The real catch to it -- yours and mine,
8 to be honest with you because I've made the same
9 commitment that you're going to have to make to
10 the parties and to the attorneys and to the
11 court. We're human. We all have our human
12 frailties and our human issues, to use that
13 term. We come here with all of our -- certain
14 things that have happened in our lives that
15 influence us. I think that we have to
16 acknowledge those things and then have to make
17 an honest assessment as to whether or not we can
18 perform the tasks which we are assigned.
19 Because what we promise anybody who comes into
20 this court and needs us to help resolve a
21 dispute -- and that is what this whole process
22 of a jury trial is, is a dispute resolution.
23 Is that we can perform our tasks fairly and
24 impartially. That means you promise to be fair
25 and impartial in applying your common sense,

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1 your sense of logic and reason.

2 I will tell you this. As a lawyer for
3 twenty-one years, I just thought that I admired
4 this system. For the last seventeen years, I've
5 come to admire it even more. That's because
6 I've had the pleasure of working with folks like
7 you. It really does -- it's the one thing that
8 I consistently, that absolutely I feel good
9 about when I leave here and that is because of
10 what you do to make this system -- to make this
11 process work.

12 In fact, I told the people in
13 Charleston last week, you look around this room
14 -- there are a lot of people that have something
15 to do with this process. You've met several of
16 them today.

17 Ms. Brown of course is our Clerk of
18 Court and she does a wonderful job. She has
19 great persons working for her. You've worked
20 with Ms. Tucker and Ms. Hill today, and I think
21 you would agree that they couldn't be more
22 efficient, more professional or more pleasant.

23 You also have had the pleasure of
24 working with the gentlemen that are dressed --
25 that have those burgundy coats on. Is Mr.

1 Pontiff in here? (Negative gesture), that
2 rascal. Mr. Pontiff is my Clemson counterpart
3 that I usually -- I'm a South Carolina graduate,
4 so we have a running feud. I always love to see
5 him in that South Carolina coat. But -- they're
6 called bailiffs. Bailiffs are really the
7 friends of the court, frankly. They are here to
8 assist me, to assist any judge in running the
9 court. They may tell you to be quiet, they may
10 tell you to take off your hat, they may tell you
11 to do something else -- or they may answer any
12 question that you have, 'Am I in the right
13 place? Am I supposed to be here?' They are
14 here really to serve as the liaison between you
15 and the court and any other persons that need
16 some information. Please use them. They are
17 very capable and they're wonderful people to
18 work with. I think you'll find that for sure.

19 Some of you spoke with one of my
20 favorite people, and I'm glad to be on her team.
21 I've been on her team for a number of years.
22 Ms. Garrison is my court reporter. She truly is
23 just a joy to work with. I wouldn't want to --
24 have had occasion from time to time to work with
25 others, and they are great, but it sure is nice

1 to work with her. A wonderfully competent
2 professional.

3 My clerk -- you will see my clerk, Ms.
4 Craig, who has just started. In fact, this
5 month, about two weeks ago. She is there to
6 keep me straight on the law. She is the closest
7 thing I have to the law school. She's the
8 newest and, I think, some of the brightest that
9 we have. I love to have that opportunity
10 because it does help one to keep in touch with
11 the new spirits. So you will see her sitting up
12 there, those of you that serve.

13 These wonderful folks sitting here,
14 some of them are parties and some of them are
15 persons that have -- some of them are attorneys.
16 They are professionals, we are members of the
17 same Bar, and it is my privilege to work with
18 them as well. They do a tremendous job. I am
19 proud to be a part of this process.

20 Everybody that we have talked about has
21 something to do with this process. Frankly, I
22 think you're probably one of the most important.
23 It's true that we need lawyers, judges,
24 everybody else but you perform a tremendous
25 function. One thing's for sure. Of all the

1 people that we have just named, that's what we
2 do for a living. We get paid to do what we're
3 doing. You don't. That's -- therein lies what
4 I mentioned about -- there are some countries
5 that I understand that have professional juries.
6 Maybe some of you would say, 'I think that would
7 be a good idea for the US of A.' I agree with
8 you totally but given a choice, I'd take you
9 every single time. I would.

10 Do I think you're perfect? Heavens,
11 no. But you know what? You've already spoken
12 volumes about yourselves. What stopped you from
13 standing up as the gentleman stood up in the
14 back, who was caring for his father? You didn't
15 see me check anything. I didn't say, 'Show me
16 something that proves that.' He took an oath
17 just like you did. I accepted what he said as
18 the truth. You didn't say it, because it wasn't
19 the truth for you. What does that say about
20 you? You're the kind of person that I want to
21 have on a jury, somebody that is honest.

22 Maybe some of you are really glad to be
23 serving. I hope and pray -- and I don't mean
24 this flippantly. I hope and pray that I will
25 get a chance one day to sit where you are

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1 sitting. I really do. I've wanted to for years
2 to serve, even when I was a lawyer. But I think
3 it's -- for a lawyer, I think it's the best
4 opportunity that you have to understand how the
5 -- what's important and what is not. Very
6 helpful in formulating how you try cases. Guess
7 what? When I was a lawyer, lawyers were exempt
8 from serving, as were doctors and nurses. That
9 didn't make any sense. Why would you exempt
10 them?

11 Unfortunately, I'm not qualified now --
12 you heard me ask the question, and I happen to
13 work in a courthouse. So that kicks me out.
14 One day I am not going to have that and I hope
15 and pray that I can sit where you are sitting.
16 It will be a great experience.

17 The key -- and I believe that you do
18 this maybe even better. I confess that I am not
19 perfect. I have something that I have to
20 acknowledge every day -- that most of you'all
21 won't have it. But sometimes I have a short
22 fuse, I get a little upset. I've been called
23 down by lawyers, saying -- they're right. I'm
24 trying to work on that, trying to be better.
25 But I have to acknowledge it. And you have to

1 do the same thing. Because if we deal with it,
2 it doesn't stop us from doing our job. It just
3 means that you have to be aware of those things.
4 I find that jurors do that always.

5 You know, one thing that I know for
6 sure. Last week I was in Charleston trying some
7 cases and made some rulings and -- one thing I
8 know for sure, I'm not uncomfortable with my
9 decision but I can promise you that I won't get
10 a Christmas card from one of those people. I
11 can assure you of that. When he left, he was
12 not a happy camper with what I did. It was a
13 civil trial. You know, do I get pleasure out of
14 that? Absolutely not. But it was the right
15 thing to do. You know, when I said that I don't
16 have any problem it's because I did what I
17 thought was the right thing to do. I applied my
18 common sense, my sense of logic and reason as
19 fairly and impartially as I knew how to do.

20 That's the way that I think that it is.
21 You know, we may not please everybody. But one
22 thing's for sure. If we are honest to that
23 commitment, each to our own -- and the only
24 person that knows that is me and you. If you do
25 that, then they may be upset with us but they

1 have received what they should receive in this
2 process, a fair and impartial determination.
3 That's all that anybody could hope for.

4 So I thank you for your participation.
5 What is going to happen now is that I am going
6 to ask you some additional questions. Unlike
7 the previous questions, these questions don't
8 have any correct answers. They really rest with
9 you. They are really designed to help you to
10 make a decision as to whether or not you can be
11 a fair and impartial judge with me in this case.

12 This is a very trite example, I will
13 confess but it demonstrates what I am about to
14 say. If you happened to see, in the first case,
15 or hear a person testify that is your next door
16 neighbor and that's somebody that you've known
17 for fifteen years and you all spend at least --
18 you dine in each other's home at least three
19 times a month and you've taken vacation trips
20 together, your children have all grown up
21 together, you know, you're probably not going to
22 be able to be fair and impartial.

23 The flip side of that is that if it is
24 your neighbor and is a person that you can't
25 stand, you've lived next door to them for ten

1 years and you haven't said a word to them nor do
2 you care to speak to them, you probably are not
3 going to be able to be fair in that situation
4 either.

5 So it really is, it just helps you make
6 that call as to whether or not you can be --
7 because the ultimate question is, is there
8 anything about the case that would give you any
9 trouble applying your common sense, your sense
10 of logic and reasoning fairly and impartially.
11 If there is, then you just simply say, 'Sorry, I
12 can't deal with that. I'm human and I confess
13 that I can't deal with that.' That's fine.
14 There is nothing wrong with that, nothing
15 whatsoever.

16 Because the persons that remain need to
17 able to raise their hand -- and that is what
18 would happen -- once you are selected, you will
19 raise your hand and, just as I did, become a
20 judge. You will make a commitment to the court,
21 to the attorneys and to the parties involved
22 that you will at the appropriate time apply your
23 common sense, your sense of logic and reasoning
24 fairly and impartially.

25 Once we've gone through the questions,

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1 then what will happen is that they will -- the
2 lady, Ms. Hill, sitting at that computer has the
3 button and it's waiting to be punched. They
4 will do a random jury draw. Then we will call
5 your names.

6 You will be asked to come forward.
7 Typically what they do, I think, is that they
8 stand about where I'm standing here. You face
9 the courtroom. The first person that will speak
10 will be the State. The State is the party that
11 makes the claim in these cases, these dispute
12 cases. They wills say to either seat the juror
13 or excuse the juror, swear the juror or
14 something similar. Then it will pass to the
15 person at this table, who is the person who is
16 accused of the crime. That person will say the
17 same things, to seat the juror or to excuse the
18 juror. We will go through that process until we
19 identify our twelve jurors and one alternate.
20 Once we do that, the rest of you will be excused
21 and we will get started with the trial.

22 I will tell you now that in this first
23 case that there are some matters of law that I
24 will have to take up out of your presence. It's
25 now about 3:30. It's probably going in the

1 neighborhood of a quarter to 4:00, maybe, before
2 we have our jury selected. You're going to be
3 excused, those of you that are serving on the
4 jury, until tomorrow. We won't start the actual
5 testimony until tomorrow. But we will have you
6 identified and then you'll come back tomorrow,
7 about 9:30 and we will start taking testimony.

8 Hopefully we will have everybody out of
9 here by 4:00 o'clock. Thank you so much for
10 your patience. I now will ask you -- if anybody
11 needs to take a break -- why don't we let you --
12 I know you've been sitting for awhile. We will
13 start back -- I will ask you to be back in your
14 seats at 3:30, please, for anybody that needs a
15 break. We will be at-ease.

16 (BRIEF RECESS)

17 THE COURT: Ashley, could I see you
18 and Mike for just a minute?

19 (OFF RECORD SIDEBAR)

20 (DEFENDANT PRESENT)

21 THE COURT: Thank you very much,
22 Ladies and Gentlemen. If I could have your
23 attention now, we'll start with qualification.

24 The first case that we have for trial,
25 the case is captioned the State of South

1 Carolina versus Shawn Glennon.

2 Mr. Glennon is designated as the
3 defendant in this case. That is simply a term
4 used to designate a party. It means nothing
5 more than that. Persons or entities against
6 whom a claim is made are called defendants in
7 this courtroom.

8 Persons who make the claim in a civil
9 setting are called plaintiffs. In this one, the
10 State of South Carolina is identified because in
11 a criminal dispute in this state the only party
12 that can be making a claim is the State of South
13 Carolina.

14 First I would like to introduce to you
15 Mr. Glennon. He's seated at the table to my
16 left. This is Mr. Shawn Glennon.

17 DEFENDANT: (Stands with counsel).

18 THE COURT: Thank you, Mr. Glennon.

19 You may be seated. Are there any members of the
20 jury panel related by blood or marriage, have
21 any business dealings with, socially or casually
22 acquainted with Mr. Shawn Glennon? If so,
23 please stand. (No response). Thank you. There
24 are none.

25 Mr. Glennon is represented by Mr.

1 O'Neal. If you would, identify yourself and
2 your law firm.

3 MICHAEL O'NEAL: My name is Michael
4 O'Neal. I am a sole practitioner. My office is
5 in North Charleston. I practice mainly in
6 Charleston, Berkeley and Dorchester counties.

7 THE COURT: Thank you, Mr. O'Neal.
8 Is there any member of the jury panel related by
9 blood or marriage, have any business dealings
10 with, socially or casually acquainted with, ever
11 been represented by Mr. O'Neal or his law firm?
12 If so, please stand. Yes, sir?

13 JUROR NUMBER 22: My name is Jerry
14 Brogdan. Mr. O'Neal is representing me in a
15 case.

16 THE COURT: Presently?

17 JUROR NUMBER 22: Yes, sir.

18 THE COURT: Your number, please?

19 JUROR NUMBER 22: Number 22.

20 THE COURT: Number 22 will be excused
21 from participation in this dispute. Thank you
22 very much. Good luck to you. Have a great day.
23 You've completed your jury service.

24 (JUROR NUMBER 22 EXCUSED)

25 THE COURT: Anyone else? (No

1 response). Thank you. There appear to be none.

2 Are there any members of the jury panel
3 related by blood or marriage, have any business
4 dealings with, socially or casually acquainted
5 with, ever been represented by, our Solicitor,
6 Scarlett Wilson? If so, please stand. (No
7 response). Thank you. There appear to be none.

8 Are there any member of the jury panel
9 who are related by blood or marriage, have any
10 business dealings with, socially or casually
11 acquainted, anyone employed with the Solicitor's
12 offices? She has offices in Berkeley County and
13 Charleston County. If so, please stand. Yes,
14 sir?

15 JUROR NUMBER 109: My wife works at
16 the Solicitor's office.

17 THE COURT: Your number, please?

18 JUROR NUMBER 109: 109.

19 THE COURT: I am going to excuse you
20 out of an abundance of caution. You're free to
21 leave. Have a great day. Thank you, sir.

22 (JUROR NUMBER 109 EXCUSED)

23 THE COURT: Yes?

24 JUROR NUMBER 97: There is an attorney
25 in their office handling my uncle's case.

1 THE COURT: Would that affect or
2 influence you in any way in this case?

3 JUROR NUMBER 97: No, sir.

4 THE COURT: Will you base your
5 decision on the evidence and the law and would
6 your decision be fair to both sides?

7 JUROR NUMBER 97: Yes.

8 THE COURT: Your number, please?

9 JUROR NUMBER 97: 97.

10 THE COURT: Thank you. You may
11 remain. Are there any others? (No response).
12 Thank you.

13 Ms. Wilson has assistant solicitors who
14 assist her in Charleston County and in Berkeley
15 County in presenting cases. One of the
16 assistant solicitors that will be handling this
17 case is Ms. Ashley Cornwell. If you will,
18 identify yourself and anyone that will be
19 assisting you.

20 SOLICITOR CORNWELL: Thank you, Your
21 Honor. I am Ashley Cornwell. As Your Honor
22 said, I work for the Solicitor's Office in
23 Berkeley County. The Deputy Solicitor is Brian
24 Alfaro. Sitting with me is Anne Williams. She
25 is also an assistant solicitor for Berkeley

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1 County. Also Ms. Brown, our paralegal.

2 THE COURT: Are there any members of
3 the jury panel related by blood or marriage,
4 have any business dealings with, socially or
5 casually acquainted with Ms. Cornwell, Ms.
6 Williams or Ms. Brown, or who have ever been
7 represented by Ms. Cornwell or Ms. Williams?
8 If so, please stand? (No response).

9 Or Mr. Alfaro? (No response).

10 Thank you. There appear to be none.

11 I am going to identify a number of
12 persons, Ladies and Gentlemen. If you are
13 related by blood or marriage or have any
14 business dealings with, or are socially or
15 casually acquainted with any of these persons,
16 you need to stand and share that information,
17 please, with the court:

18 Minor

19 Karen Glennon

20 Sgt. Jimmy Wells

21 Detective Geno Alteri

22 The two officers, the sergeant and
23 the detective, are with the Berkeley County
24 Sheriff's Office.

25 If so, please stand. Yes?

1 JUROR NUMBER 170: I know Geno
2 Alteri. He's been around -- my stepdaughter has
3 been in trouble in the last few years, and I've
4 had a lot of dealings with him.

5 THE COURT: Would that affect or
6 influence you in this case?

7 JUROR NUMBER 170: No, sir.

8 THE COURT: If Detective Alteri
9 testifies, would you consider his testimony the
10 same as any witness?

11 JUROR NUMBER 170: Yes, sir.

12 THE COURT: And will you base your
13 decision on the evidence and the law and will
14 that decision be fair to both sides?

15 JUROR NUMBER 170: Yes, sir.

16 THE COURT: Your name and number,
17 please?

18 JUROR NUMBER 170: Robert Williams,
19 170.

20 THE COURT: Thank you, Mr. Williams.
21 Are there others? Thank you, there appear to
22 be none.

23 The dispute that brings us here today
24 is framed in this document that I am holding in
25 my hand. It is what it appears to be. It's a

1 piece of paper. It's not evidence. It's called
2 an indictment and it just simply is a formal
3 document that brings the parties here. I need
4 to share with you now what's -- some of what's
5 alleged so that I can ask you some questions.
6 But please remember that it is not evidence and
7 therefore it is not to be considered by you in
8 any way to be evidence in this case.

9 It's alleged that Mr. Glennon did, in
10 Berkeley County, on or about July the 27th, 2010,
11 for the purpose of arousing or gratifying sexual
12 desires of any person, knowingly viewed
13 photographs, audio recording, video recording,
14 produced or created a digital or electronic
15 file, or film. He alleged did that of the
16 victim Minor without her knowledge
17 or consent, and while the victim was in a place
18 where she should have had a reasonable
19 expectation of privacy; which would be in
20 violation of Code Section 16-17-470(b) of our
21 Code of Laws that prescribes the conduct known
22 as voyeurism.

23 I share that with you to find out if
24 any member of the jury panel has read anything,
25 heard anything, if you have any prior knowledge

1 of this dispute. If so, please stand. (No
2 response). Thank you. There appears to be
3 none.

4 Is there anything about the nature of
5 the dispute, what is being alleged, that would
6 because of some philosophy that you have, some
7 strong feelings that you have, something that
8 may have happened to you or a close personal
9 friend or family member(s) that would affect or
10 influence in any way your ability to apply your
11 common sense, your sense of logic and reason
12 fairly and impartially in analyzing the evidence
13 and decide from the evidence what you believe to
14 be the true facts. Then once making that
15 decision, taking the law and applying that law
16 fairly and impartially to those facts. If you
17 feel that that would be difficult for you,
18 please stand. All right, I am going to ask
19 those persons to come forward. The attorneys
20 may approach, as well, please.

21 SIDEBAR:

22 THE COURT: May I have your name
23 and number, please?

24 JUROR NUMBER 90: It is 90,
25 Josephine Lopez.

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1 THE COURT: What is your
2 situation?

3 JUROR NUMBER 90: My niece was
4 raped, right here -- while I was out of the
5 store, by a young man from Berkeley County, and
6 I have strong feelings about that.

7 THE COURT: You feel that it
8 would carry over into this situation?

9 JUROR NUMBER 90: It would.

10 THE COURT: Your number, please?

11 JUROR NUMBER 90: My number is 90.

12 (SIDEBAR CONCLUDED)

13 THE COURT: Number 90 will be excused
14 from participation in this dispute. Have a
15 great day. Thank you.

16 (JUROR NUMBER 90 EXCUSED)

17 BAILIFF: Number 56, Tara Griffith.

18 SIDEBAR:

19 THE COURT: Hi, Ms. Griffith.
20 How are you?

21 JUROR NUMBER 56: Fine. Thank
22 you.

23 THE COURT: Your situation,
24 please?

25 JUROR NUMBER 56: I was molested

1 by my uncle and this would bother me. My niece
2 was recently molested and I don't think that I
3 could ---

4 THE COURT: You don't think you
5 could ---

6 JUROR NUMBER 56: No, (negative
7 gesture).

8 THE COURT: Very well. Thank
9 you.

10 (SIDEBAR CONCLUDED)

11 THE COURT: Number 56 will be
12 excused. Have a great day. Thank you so much.

13 (JUROR NUMBER 56 EXCUSED)

14 THE COURT: Are there any others?
15 (No response). Thank you very much.

16 Did you need for her to go into greater
17 detail?

18 MICHAEL O'NEAL: No, sir, I'm good to
19 go.

20 THE COURT: Thank you very much. Any
21 specific questions from the plaintiff, from the
22 State?

23 SOLICITOR CORNWELL: No, Your Honor.

24 THE COURT: Anything from the
25 defendant?

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1 MICHAEL O'NEAL: Nothing from the
2 defense, Your Honor.

3 THE COURT: The last question that I
4 have of you is this: Based on what you've heard
5 having been alleged, based on the persons
6 involved, is there anything that you have heard
7 now that would give you any concern about your
8 ability to raise your hand and make a commitment
9 to the State, to the defendant, to the court, to
10 the attorneys, that you would at the appropriate
11 time be able to apply your common sense, your
12 sense of logic and reason fairly and
13 impartially? That once deciding the facts that
14 you would then make a commitment to take the law
15 and apply it fairly? If you feel that you
16 could not make that commitment for any reason,
17 please stand? (No response). Thank you so
18 much.

19 What is going to happen now is that
20 they are going to create a list. The attorneys
21 and the court will be provided that list. Then
22 -- we will turn it over to Ms. Tucker. Ms.
23 Tucker will be calling your names. If you
24 would, just come forward and do as I said
25 (demonstrating where to stand).

1 Each side in this dispute can excuse
2 five persons. The fact that you are excused, if
3 that occurs, don't read anything into that.
4 That is just the way that the process works.
5 Return to your seat. We will go through until
6 we have selected our twelve jurors and one
7 alternate. Thank you so much for your patience.

8 CLERK: Ladies and Gentlemen of the
9 jury, as I call your name, please come forth and
10 bring your personal belongings with you. If I
11 say 'seat the juror', please have a seat in the
12 jury box. If I say 'excuse the juror', please
13 return to your original seat.

14 Juror Number 180, Brandon Assmann.

15 (JUROR BEFORE COUNSEL)

16 CLERK: What says you for the State?

17 SOLICITOR CORNWELL: Seat the juror.

18 CLERK: What says you for the defense?

19 MICHAEL O'NEAL: Swear the juror.

20 CLERK: Please have a seat in the jury
21 box.

22 (JUROR NUMBER 180 SEATED)

23 CLERK: Juror Number 83, Anna Kozera.

24 (JUROR BEFORE COUNSEL)

25 CLERK: What says the State?

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1 SOLICITOR CORNWELL: Seat Ms. Kozera.

2 CLERK: What says the defense?

3 MICHAEL O'NEAL: Beg the court's
4 indulgence, Judge?

5 THE COURT: Take your time.

6 MICHAEL O'NEAL: Please swear the
7 juror.

8 CLERK: Please have a seat in the jury
9 box.

10 (JUROR NUMBER 83 SEATED)

11 CLERK: Juror Number 101, Barbara
12 McFadden.

13 (JUROR BEFORE COUNSEL)

14 CLERK: What says the State?

15 SOLICITOR CORNWELL: Please seat Ms.
16 McFadden.

17 CLERK: What says the defense?

18 MICHAEL O'NEAL: Swear the juror.

19 CLERK: Seat the juror.

20 (JUROR NUMBER 101 SEATED)

21 CLERK: Juror Number 157, Christina
22 Wakenell.

23 (JUROR BEFORE COUNSEL)

24 CLERK: What says the State?

25 SOLICITOR CORNWELL: Please seat Ms.

1 Wakenell.

2 CLERK: What says the defense?

3 MICHAEL O'NEAL: Beg the court's
4 indulgence just a moment?

5 THE COURT: Yes, sir.

6 MICHAEL O'NEAL: Defense would like
7 to excuse the juror from the trial of this case,
8 Your Honor.

9 CLERK: Excuse the juror.

10 (JUROR NUMBER 157 EXCUSED)

11 CLERK: Juror Number 97, Allison
12 Malphrus.

13 (JUROR BEFORE COUNSEL)

14 CLERK: What says the State?

15 SOLICITOR CORNWELL: Please seat Ms.
16 Malphrus.

17 CLERK: What says the defense?

18 MICHAEL O'NEAL: Swear Ms. Malphrus.

19 CLERK: Seat the juror.

20 (JUROR NUMBER 97 SEATED)

21 CLERK: Juror Number 147, Lynn Stone.

22 (JUROR BEFORE COUNSEL)

23 CLERK: What says the State?

24 SOLICITOR CORNWELL: Please seat Ms.

25 Stone.

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1 CLERK: What says the defense?

2 MICHAEL O'NEAL: Indulgence just a
3 moment, Judge?

4 THE COURT: Yes, sir.

5 MICHAEL O'NEAL: The defense would
6 excuse this jury from the trial in this case.

7 CLERK: Excuse the juror.

8 (JUROR NUMBER 147 EXCUSED)

9 CLERK: Juror Number 15, Randall Barr.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR CORNWELL: Please excuse
13 Mr. Barr.

14 CLERK: Excuse the juror.

15 (JUROR NUMBER 15 EXCUSED)

16 CLERK: Juror Number 175, Christopher
17 Wright.

18 (JUROR BEFORE COUNSEL)

19 CLERK: What says the State?

20 SOLICITOR CORNWELL: Please excuse
21 Mr. Wright.

22 CLERK: Excuse the juror.

23 (JUROR NUMBER 175 EXCUSED)

24 CLERK: Juror Number 116, Patricia
25 Oliveria.

1 (JUROR BEFORE COUNSEL)

2 CLERK: What says the State?

3 SOLICITOR CORNWELL: Please seat Ms.
4 Oliveria.

5 CLERK: What says the defense?

6 MICHAEL O'NEAL: Swear the juror.

7 CLERK: Seat the juror.

8 (JUROR NUMBER 116 SEATED)

9 CLERK: Juror Number 188, Lynn Riccio.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR CORNWELL: Please seat Ms.
13 Riccio.

14 CLERK: What says the defense?

15 MICHAEL O'NEAL: The defense would
16 excuse Ms. Riccio from the trial of this case,
17 Your Honor.

18 CLERK: Excuse the juror.

19 (JUROR NUMBER 188 EXCUSED)

20 CLERK: Juror Number 170, Robert
21 Williams.

22 (JUROR BEFORE COUNSEL)

23 CLERK: What says the State?

24 SOLICITOR CORNWELL: Please excuse
25 Mr. Williams.

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1 CLERK: Excuse the juror.
2 (JUROR NUMBER 170 EXCUSED)
3 CLERK: Juror Number 58, Jeremy
4 Hansford.
5 (JUROR BEFORE COUNSEL)
6 CLERK: What says the State?
7 SOLICITOR CORNWELL: Please seat Mr.
8 Hansford.
9 CLERK: What says the defense?
10 MICHAEL O'NEAL: Swear Mr. Hansford.
11 CLERK: Seat the juror.
12 (JUROR NUMBER 58 SEATED)
13 CLERK: Juror Number 19, Tawana
14 Bradley. What says the State?
15 SOLICITOR CORNWELL: Please seat Ms.
16 Bradley.
17 CLERK: What says the defense?
18 MICHAEL O'NEAL: Swear Ms. Bradley.
19 CLERK: Seat the juror.
20 (JUROR NUMBER 19 SEATED)
21 CLERK: Juror Number 40, Kathryn
22 Engel.
23 (JUROR BEFORE COUNSEL)
24 CLERK: What says the State?
25 SOLICITOR CORNWELL: Please seat Ms.

1 Engel.

2 CLERK: What says the defense?

3 MICHAEL O'NEAL: Excuse Ms. Engel
4 from the trial of this case, Your Honor.

5 CLERK: Excuse the juror. That is
6 four strikes for the defense.

7 THE COURT: Thank you.

8 (JUROR NUMBER 40 EXCUSED)

9 CLERK: Juror Number 137, Kelly Shore.

10 (JUROR BEFORE COUNSEL)

11 CLERK: What says the State?

12 SOLICITOR CORNWELL: Please seat Ms.
13 Shore.

14 CLERK: What says the defense?

15 MICHAEL O'NEAL: Beg the court's
16 indulgence just a moment.

17 THE COURT: Certainly.

18 MICHAEL O'NEAL: Defense would excuse
19 the juror, Your Honor.

20 THE COURT: Okay.

21 CLERK: Excuse the juror.

22 (JUROR NUMBER 137 EXCUSED)

23 CLERK: Juror Number 29, Bonnie Clark.

24 (JUROR BEFORE COUNSEL)

25 CLERK: What says the State?

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1 SOLICITOR CORNWELL: Court's
2 indulgence.
3 THE COURT: Take your time.
4 SOLICITOR CORNWELL: Please excuse
5 Ms. Clark.
6 CLERK: Excuse the juror. Four
7 strikes for the State.
8 SOLICITOR CORNWELL: Thank you.
9 (JUROR NUMBER 29 EXCUSED)
10 CLERK: Juror Number 75, Jodi Jones.
11 (JUROR BEFORE COUNSEL)
12 CLERK: What says the State?
13 SOLICITOR CORNWELL: Please seat Ms.
14 Jones.
15 CLERK: Any cause for challenge from
16 the defense?
17 MICHAEL O'NEAL: None.
18 CLERK: Seat the juror.
19 (JUROR NUMBER 75 SEATED)
20 CLERK: Juror Number 119, Rhonda
21 Perry.
22 (JUROR BEFORE COUNSEL)
23 CLERK: What says the State?
24 SOLICITOR CORNWELL: Please seat Ms.
25 Perry.

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1 CLERK: Any challenge for cause from
2 the defense?

3 MICHAEL O'NEAL: Nothing, Madame
4 Clerk.

5 CLERK: Seat the juror.

6 (JUROR NUMBER 119 SEATED)

7 CLERK: Juror Number 113, Lisa
8 Newkirk.

9 (JUROR BEFORE COUNSEL)

10 CLERK: What says the State?

11 SOLICITOR CORNWELL: Please seat Ms.
12 Newkirk.

13 CLERK: Any cause for challenge from
14 the defense?

15 MICHAEL O'NEAL: None, Madame Clerk.

16 CLERK: Seat the juror.

17 (JUROR NUMBER 113 SEATED)

18 CLERK: Juror Number 73, Ricky
19 Jarrell.

20 (JUROR BEFORE COUNSEL)

21 CLERK: What says the State?

22 SOLICITOR CORNWELL: Court's
23 indulgence, Your Honor.

24 THE COURT: Certainly.

25 SOLICITOR CORNWELL: Please seat Mr.

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1 Jarrell.

2 CLERK: Any cause for challenge from
3 the defense?

4 MICHAEL O'NEAL: None, Madame Clerk.

5 CLERK: Seat the juror.

6 (JUROR NUMBER 73 SEATED)

7 CLERK: Juror Number 117, Larry

8 Osborn.

9 (JUROR BEFORE COUNSEL)

10 CLERK: What says the State?

11 SOLICITOR CORNWELL: Please seat Mr.

12 Osburn.

13 CLERK: Any cause for challenge from
14 the defense?

15 MICHAEL O'NEAL: None, Madame Clerk.

16 CLERK: Seat the juror.

17 (JUROR NUMBER 117 SEATED)

18 THE COURT: Please select our
19 alternative. Strikes will be one and two.

20 SOLICITOR CORNWELL: Thank you, Your
21 Honor.

22 CLERK: Juror Number 177, Robert
23 Zahrn.

24 (JUROR BEFORE COUNSEL)

25 CLERK: What says the State?

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1 SOLICITOR CORNWELL: Please seat Mr.
2 Zahrn.

3 CLERK: What says the defense?

4 MICHAEL O'NEAL: Swear Mr. Zahrn.

5 CLERK: Seat the juror.

6 (JUROR NUMBER 177 SEATED)

7 THE COURT: Any Motions from the
8 State regarding selection?

9 SOLICITOR CORNWELL: None from the
10 State, Your Honor.

11 THE COURT: Any Motions from the
12 defense?

13 MICHAEL O'NEAL: None, Your Honor.

14 (JURY SEATED @ 3:55 P.M.)

15 THE COURT: Ladies and Gentlemen,
16 those of you that were not selected. Thank you
17 very much for your patience. You have now
18 completed your jury service for this week. Have
19 a great rest of the week and a good year. Take
20 care.

21 (JURY PANEL EXCUSED)

22 THE COURT: Ladies and Gentlemen,
23 those of you that were selected, thank you for
24 your patience as well. As I mentioned to you,
25 we will not be going any further today with

1 respect to the things that you have to hear. We
2 are going to hear some matters that I need to
3 take up out of your presence. So I am going to
4 let you go rather than sit back in the jury
5 room.

6 When you retire from the courtroom,
7 exit through the door there to your left. You
8 will need to make sure that you give either Mr.
9 Pontiff or Mrs. Wiggins the information that
10 they need. Once you've done that, you've free
11 to go.

12 Please remember that you have not heard
13 any evidence in this case. So you don't need to
14 speculate about the case. You don't need to,
15 certainly, allow anyone to talk with you about
16 the case or talk about the case in your
17 presence.

18 Don't conduct any independent research.
19 We are -- it's a beautiful time. I say that --
20 sometimes I am not sure that -- my father, when
21 he was still living, I remember coming back
22 having taken him to one of his doctor's
23 appointments, making conversation, and I said,
24 'What do you think about the internet?' It'd
25 just started really getting fulltime, full

1 blown. He said, "Don't like it." I said,
2 "Why?" He said, "Too much information." Well,
3 in some ways I'm not so sure he wasn't just
4 totally on base with some of that.

5 But one of the things that we have had
6 happen -- and I don't think jurors do it
7 intentionally. I think it's just that we are
8 inquisitive, we have it available. But we have
9 to caution you to make sure that you don't
10 conduct any independent research. You know, you
11 can type in words and Google anything and it'll
12 come up and give you all sorts of information.
13 After you finish this trial, if you want to do
14 that please feel free to do so. But if you do
15 it before you've finished your duties as a juror
16 you will have jeopardized the trial.

17 I had one in this very courtroom
18 several years ago, and I use this as an example.
19 Fortunately we worked it out before the jury
20 ultimately had to decide the case. I went back
21 to excuse the jurors and one of the jurors said,
22 'Well, I am glad to hear that they resolved it
23 because I didn't -- I went online last night and
24 I read about a defense that was in that case and
25 I was wondering how in the dickens they were

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1 ever going to be able to present anything about
2 that.' I thought, 'Thank the Lord we worked it
3 out.' Because that would have caused me to have
4 to mistry the case. That's how important that
5 it is that you not do anything until you have
6 completed your duties as a juror. I thank you
7 for your patience in that respect.

8 Please don't talk among yourselves
9 either. Don't -- again, I reiterate, don't
10 speculate. You will decide the case based on
11 what you hear in the courtroom.

12 The seating, you will notice that there
13 are fourteen chairs up there. We are going to
14 be using thirteen of them. Mr. Zahrn, you are
15 the alternate juror. You have the benefit of
16 having two chairs. You can sit in either one of
17 those. Those are for our alternate jurors. I
18 would ask the jury as you come in that you not
19 occupy the two end seats in the jury box. I'll
20 confess that it is pure laziness. It's easier
21 for me to glance and not count, just see when
22 all seats at this end are filled and then I know
23 the jurors are all present. That's the reason
24 for that.

25 Mr. Zahrn, an alternate juror -- other

1 than to give you two chairs, it has no other
2 significance right now. At the end of the case,
3 if the first twelve that were selected are able
4 to continue then you will not participate in the
5 final deliberations. But I will assure you that
6 over my seventeen-and-a-half years we've used
7 alternate jurors on numerous occasions. We
8 never know when that is going to happen, so
9 until you're excused please know that you're
10 very much a part of the jury. I know that you
11 will pay the same attention that everyone is.
12 I thank you in advance for that, sir.

13 The rest of you may sit in any seat
14 that you want, except the two ends, until you
15 have identified your presiding juror. Mr.
16 Osborn is occupying that chair right now. He is
17 -- any of the first twelve of you are eligible
18 to serve as the presiding juror.

19 That is the person -- they're also
20 known as foreman, forelady, foreperson. Someone
21 has to be responsible for signing the verdict
22 form, to report the jury's decision. If there
23 are exhibits that are introduced during the
24 trial, it's your responsibility to receive those
25 from the court and when the jury has completed

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1 its deliberations returning those exhibits to
2 the court. There may be occasions when there
3 is some -- may need to be some written
4 communications necessary and it would be your
5 responsibility, basically, to write that
6 communication on behalf of the other jurors.

7 As I mentioned, any of the first twelve
8 of you are eligible. The only person that is
9 not is Mr. Zahrn.

10 The statute allows me to appoint the
11 person or for you to select the person. I
12 historically have let the jury select their
13 presiding juror. Over the years it's occurred
14 to me that really the person -- that one of the
15 qualities or characteristics that would be
16 consistent with a foreperson -- to me what comes
17 down -- you've all been in meetings or group
18 meetings and someone is a facilitator. That's
19 generally what I think a presiding juror does.
20 Some of you may be better facilitators than
21 others. I will let you all pick that. It
22 doesn't -- as I stated, it doesn't have to be
23 done right away, but once you have identified
24 that person, I would simply ask that that
25 individual occupy that seat.

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1 Thank you very much. Have a great
2 afternoon. I would ask you to return to your
3 jury room, please, -- there is a matter that I
4 think we are going to do in the morning before
5 we get started, so 9:45, I think we'll be
6 finished by then. Please be in your jury room
7 by 9:45 and we will return you to the courtroom.

8 Thank you. You may exit through the
9 door now and give Mr. Pontiff or Mrs. Wiggins
10 your information.

11 (JURY OUT @ 4:00 P.M.)

12 THE COURT: All right. There are
13 some matters of law that we have to take up?
14 One?

15 SOLICITOR CORNWELL: Your Honor, the
16 only matter that I think -- we'd introduce the
17 statement made, and we have to have a hearing
18 for that.

19 THE COURT: All right.

20 MICHAEL O'NEAL: It's my chain,
21 Judge.

22 THE COURT: You may proceed.

23 SOLICITOR CORNWELL: May I tender my
24 ---

25 THE COURT: No, you're not ready to

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1 proceed?

2 SOLICITOR CORNWELL: Oh, God.

3 THE COURT: We will be at-ease until
4 -- for ten minutes, as long as you need.

5 SOLICITOR CORNWELL: Thank you, Your
6 Honor.

7 THE COURT: Is Mr. Glennon on bond?

8 MICHAEL O'NEAL: Yes, he is, Judge.
9 He's been on bond since he was arrested.

10 THE COURT: I will continue him on
11 the bond.

12 MICHAEL O'NEAL: Thank you.

13 DEFENDANT: Thank you.

14 THE COURT: We will be at-ease for
15 about ten minutes. If you need to step out and
16 stretch, that will be fine.

17 (BRIEF RECESS)

18 (DEFENDANT PRESENT)

19 THE COURT: Let the record reflect
20 that Mr. Glennon is present. Are we ready?

21 SOLICITOR CORNWELL: Yes, sir.

22 THE COURT: You may proceed.

23 SOLICITOR CORNWELL: Thank you. The
24 State calls Detective Geno Alteri.

25 (WITNESS TAKES STAND)

1 GENO ALTERI, being duly sworn to tell
2 the truth, the whole truth and nothing but the
3 truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR CORNWELL:

6 Q. Detective Alteri, tell us where you're
7 employed.

8 A. Berkeley County Sheriff's Office.

9 Q. How is your rank and position with the
10 Berkeley County Sheriff's Office?

11 A. I am a sergeant over the persons crime
12 unit.

13 Q. How long have you been an employee there?

14 A. I've been with them sixteen years, give or
15 take.

16 Q. What are your duties as a sergeant?

17 A. I oversee the persons unit. There are two
18 people under me that handle child molestation,
19 rape, homicide, serious assaults.

20 Q. Are you specialized in any particular field
21 of investigation?

22 A. I mostly deal with the assaults. I don't
23 handle hardly any of the property crimes.

24 Q. In July of 2010, in what capacity were you
25 working with at the Berkeley County Sheriff's

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- 1 Office?
- 2 A. I was a sergeant.
- 3 Q. Do you recall coming into contact with the
- 4 defendant on or about July 30th of 2010?
- 5 A. Yes, ma'am.
- 6 Q. Where did you come into contact with the
- 7 defendant?
- 8 A. At the Sheriff's office, in the conference
- 9 room by the detectives bay.
- 10 Q. Is that room equipped with video and audio?
- 11 A. No, ma'am.
- 12 Q. What were you doing when you came into
- 13 contact with the defendant?
- 14 A. Sergeant Wells, who worked with us at the
- 15 time, stated that he had a gentleman that he
- 16 needed to interview and asked if I would set up
- 17 the interview room, which is recorded. I went
- 18 to set that up and when I came back, he advised
- 19 me that he didn't want to talk. So I said,
- 20 'Fine, I'll go in and confirm with him.'
- 21 Q. Sergeant Wells told you that the defendant
- 22 no longer wishes to talk?
- 23 A. Correct.
- 24 Q. At that time did you go in and speak to the
- 25 defendant?

1 A. Yes.

2 Q. What did you say to the defendant?

3 A. I just wanted to confirm that he did not
4 want to speak with us before I tore everything
5 down off of the -- or took all the stuff out of
6 the machine in the other room. He verified that
7 he did not want to talk to us, that he wanted to
8 talk to an attorney.

9 Q. After he stated that he wished to speak
10 with an attorney, did you ask him any further
11 questions?

12 A. No, ma'am.

13 Q. Did the defendant say anything else to you?

14 A. Yes, ma'am.

15 Q. What did he say to you?

16 A. He started -- he wanted to ask me some
17 questions and I told him that I couldn't talk to
18 him due to the fact that he had already asked
19 for an attorney. At that point he decided that
20 he was going to tell me about her blackmailing
21 him, and wanted to know if he could have charges
22 pressed against her for blackmailing him on --
23 apparently she made the comment "if you go to
24 counseling and you get help for making the
25 video" that she wouldn't pursue charges. He

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1 said, "I did all of that and she is still
2 pursuing charges and I want her arrested for
3 that." Something to do with MUSC.

4 Q. Okay. That statement was not made in
5 response to any question that you asked him?

6 A. No, he just blurted that. I assumed that
7 he had another case. He just said what it was
8 in reference to and he blurted that out. I was
9 like, you know, 'that is something that you deal
10 with with MUSC and not Berkeley County.'

11 Q. All right. That statement was made
12 knowingly and voluntarily after he had requested
13 a lawyer?

14 A. That's correct.

15 Q. Was the defendant being threatened or
16 coerced in any way in making a statement in any
17 way to you or any other officer?

18 A. No, ma'am.

19 Q. Did you speak with the defendant any
20 further after that statement was made?

21 A. No, ma'am. Actually I left the room just
22 before -- I believe that it was Sergeant O'Rourke
23 came to pick him up and take him either to their
24 office or to the detention center.

25 Q. So at any time during your interaction with

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1 the defendant, did you ask him any questions
2 regarding the alleged incident?

3 A. No, ma'am.

4 Q. Did you make any statements to him
5 regarding the alleged incident?

6 A. No, ma'am.

7 Q. The only person that made statements was
8 the defendant?

9 A. That's correct.

10 SOLICITOR CORNWELL: Nothing further.
11 Please answer any questions that the defense may
12 have for you.

13 THE WITNESS: Yes, ma'am.

14 THE COURT: You may cross-examine.

15 MICHAEL O'NEAL: Thank you, Judge.

16 CROSS EXAMINATION

17 BY MICHAEL O'NEAL:

18 Q. Detective, the only time that you laid eyes
19 on Shawn, the defendant, was in that room at the
20 Sheriff's Department?

21 A. That's correct.

22 Q. Okay. Did you ever read him his rights?
23 Tell him that he had the right to remain silent,
24 that kind of stuff?

25 A. No, sir.

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1 Q. You did go in there to confirm what the
2 sergeant had told you that he said, that he
3 wanted a lawyer; didn't want to answer any
4 questions, that he wanted a lawyer?

5 A. Correct.

6 Q. You said that you'd set up this recording
7 equipment and you went in there to confirm that
8 before you tore the recording equipment down?

9 A. Correct.

10 Q. Did you record anything that happened in
11 the room?

12 A. No, sir.

13 Q. You didn't record any of these statements
14 that he alleged made?

15 A. That was a totally different room that he
16 was in. We were in the conference room by the
17 detectives bay. I was in the other room, which
18 is in the back of the Sheriff's Office setting
19 up the recorder. When I came back to get him to
20 do the interview, that's when I was advised that
21 he didn't want to talk.

22 Q. Okay. He did ask you, 'Hey, can I ask you
23 some questions? Can I ask you a question?'

24 A. Yes.

25 Q. Okay. Did you tell him, 'I can't answer

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1 any questions. You've asked for a lawyer.'

2 A. I ---

3 Q. 'No matter -- you can ask me whatever you
4 want. I can't answer it.'

5 A. That's correct.

6 MICHAEL O'NEAL: That's all that I
7 have. Thank you.

8 THE COURT: Redirect?

9 SOLICITOR CORNWELL: Nothing further,
10 Your Honor.

11 THE COURT: You may come down.

12 (WITNESS STEPS DOWN)

13 SOLICITOR CORNWELL: The State calls
14 Detective Jimmy Wells.

15 (WITNESS TAKES STAND)

16 JIMMY WELLS, being duly sworn to tell
17 the truth, the whole truth and nothing but the
18 truth, testified, as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR CORNWELL:

21 Q. Are you currently employed?

22 A. No, ma'am.

23 Q. Are you retired or are you on disability?

24 A. Both. Yes, ma'am.

25 Q. Where are you retired from?

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1 A. The Berkeley County Sheriff's Office.

2 Q. How long were you employed with Berkeley
3 County Sheriff's Office?

4 A. Eleven years.

5 Q. What was your last position and rank with
6 the Berkeley County Sheriff's Office?

7 A. My last position was sergeant. I was in
8 investigations.

9 Q. Can you describe what your duties were as a
10 sergeant in investigations?

11 A. I took complaints over the phone. I met
12 with victims when they came to the Sheriff's
13 Office bringing complaints; obtained warrants;
14 write out information reports.

15 Q. Were you working with the Berkeley County
16 Sheriff's Office in July of 2010?

17 A. Yes, ma'am.

18 Q. In what capacity were you working?

19 A. I was a sergeant in investigations.

20 Q. Do you recall coming into contact with this
21 defendant?

22 A. Yes, ma'am, one time.

23 Q. Where did you come into contact with the
24 defendant?

25 A. At the Sheriff's Office.

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1 Q. When you came into contact with the
2 defendant, do you know if he had been read his
3 Miranda rights at the time of his arrest?

4 A. Yes, ma'am, he was.

5 Q. Did you read him his Miranda rights?

6 A. No, ma'am, I did not.

7 Q. Do you know who did?

8 A. Sergeant Bryan O'Rourke from the warrants
9 division read him his rights prior to him
10 bringing him up there.

11 Q. When you first met with the defendant, did
12 he wish to make a statement at that time?

13 A. No, ma'am, he did not.

14 Q. Did he invoke any of his Miranda rights at
15 that time?

16 A. He, uh, -- he wanted to ask questions, and
17 to prosecute his wife for an incident that
18 happened in Charleston County. And he, you
19 know, advised us that when he made the tape that
20 she was already eighteen.

21 Q. Okay. Before making those statements, did
22 he ask for an attorney?

23 A. Yes, he did. He asked for an attorney.

24 Q. After he asked for an attorney, did you ask
25 him any further questions regarding the

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1 incident?

2 A. No, ma'am, I did not.

3 Q. Was there any other officer with you when
4 he requested an attorney?

5 A. Sergeant Alteri.

6 Q. Did Sergeant Alteri ask him any further
7 questions after he requested an attorney?

8 A. No, just advised him that we were no longer
9 able to speak with him due to the fact that he
10 wanted an attorney present.

11 Q. And after Detective Alteri stated that he
12 couldn't speak to him, did the defendant make
13 more statements?

14 A. (Negative gesture), other than the one that
15 he made to us.

16 Q. But that statement was not in response to
17 any questions that were asked of him?

18 A. No, sir, it was not. No, ma'am. Excuse
19 me.

20 Q. That statement was not made as the result
21 of any threat or coercion by you or Detective
22 Alteri?

23 A. No, ma'am.

24 Q. Was it made freely and voluntarily by the
25 defendant?

1 A. Yes, ma'am, it was.

2 Q. At any time during your interaction with
3 the defendant, did you ask him any questions
4 regarding the alleged incident?

5 A. No, ma'am, I didn't. He didn't give me an
6 opportunity to.

7 SOLICITOR CORNWELL: I don't have any
8 further questions. Please answer any questions
9 that the defense has for you.

10 THE COURT: You may cross-examine.

11 MICHAEL O'NEAL: Thank you, Judge.

12 If I could approach the witness, Judge?

13 THE COURT: You may.

14 CROSS EXAMINATION

15 BY MICHAEL O'NEAL:

16 Q. If I could hand you this document, could
17 you identify this for the court?

18 A. Yes, sir, it's the report that I wrote --
19 written.

20 Q. In connection with this case?

21 A. Yes, sir.

22 Q. Now, let me get this straight. You first
23 laid your eyes on Shawn Glennon at the Sheriff's
24 Department?

25 A. Yes, sir, when they brought him in.

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1 Q. Okay. Did you read him his Miranda rights?
2 Ever?

3 A. No, sir, I did not.

4 Q. All right. You were told that somebody
5 else did it?

6 A. Yes, sir.

7 Q. Who told you?

8 A. Sergeant O'Rourke.

9 Q. All right. What did he tell you about
10 reading Miranda?

11 A. He said that he'd read him his Miranda
12 rights and brought him up to us to speak to.

13 Q. Okay. Did O'Rourke tell you whether or not
14 he had made his request for a lawyer or whether
15 he was willing to talk before he there where you
16 were?

17 A. No, sir, he did not.

18 Q. Okay. You -- as you have already
19 indicated, that's the incident report that you
20 prepared in connection with this case?

21 A. Yes, sir.

22 Q. Let me ask you to turn to the third page.
23 It's the page of what he said there in front of
24 you and in front of Alteri.

25 A. Um-humm, (affirmative nod).

1 Q. Did Mr. Glennon ever tell you that he made
2 that videotape?

3 A. Yes, sir, he did.

4 Q. What did he say?

5 A. He said that when he made the tape that she
6 was already eighteen.

7 Q. Okay. Did you put that in the report?

8 A. No, sir, I did not. This report was made
9 prior to me speaking with him, or the statement.

10 Q. Who did he make it to?

11 A. He made it to myself and to Sergeant
12 Alteri.

13 Q. All right. And how long had you been in
14 law enforcement at that time?

15 A. Eleven years.

16 Q. You have to make police reports every day
17 as part of your job. Right?

18 A. Yes, sir.

19 Q. You can't write a book, you can't write a
20 novel about every case, you just write about the
21 most important things dealing with your
22 investigation; is that correct?

23 A. Yes, sir.

24 Q. Especially a confession. Wouldn't that be
25 important to write down?

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1 A. Sure.

2 Q. And from what you're saying, 'I made the
3 tape', that amounts to a confession, don't it?

4 A. Yes, sir.

5 Q. Why didn't you write it down?

6 A. I have no memory, sir.

7 Q. Was he Mirandized in your presence, ever?

8 A. No, sir, not that I can think of. No, sir.

9 Q. Did you tell him -- did you ever say to
10 him, 'You've asked for a lawyer, you can ask all
11 the questions that you want but we can't answer
12 you.'

13 A. Yes, sir, we did tell him that.

14 Q. You did tell him that?

15 A. Yes.

16 Q. Okay.

17 A. Because he wanted to speak to us about the
18 case and we told him that we couldn't talk to
19 him no more because he'd requested an attorney.

20 MICHAEL O'NEAL: That's all the
21 questions that I have of this witness.

22 THE COURT: Redirect?

23 SOLICITOR CORNWELL: Yes, sir, Your
24 Honor, very briefly. May I approach, Your
25 Honor?

1 THE COURT: You may.

2 REDIRECT EXAMINATION

3 BY SOLICITOR CORNWELL:

4 Q. I believe that this is your report. It
5 might be the same thing that Detective -- or
6 that Mr. O'Neal gave you. You have a
7 supplement?

8 A. Yes, ma'am.

9 Q. If you looked at that supplement, would it
10 refresh your memory as to whether or not you
11 wrote down what the statement that Mr. Glennon
12 made to you was?

13 A. (Upon review), -- what was the question
14 again?

15 Q. Did you write down in your report the
16 statement that Mr. Glennon made to you, in that
17 report?

18 A. No, ma'am, I did not.

19 SOLICITOR CORNWELL: May I approach,
20 Your Honor?

21 THE WITNESS: I don't see it if it
22 is.

23 MICHAEL O'NEAL: Judge, I object.
24 He's the one that wrote it. If he can't find
25 it, she sure can't.

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1 THE COURT: I understand. He said
2 that he can't recall, so that's fine. Move on.

3 SOLICITOR CORNWELL: No further
4 questions.

5 THE COURT: Thank you. Any recross?

6 MICHAEL O'NEAL: No, sir.

7 THE COURT: You may come down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Any additional witnesses?

10 SOLICITOR CORNWELL: None, Your
11 Honor.

12 THE COURT: Any witnesses on behalf
13 of the defendant?

14 MICHAEL O'NEAL: None, Your Honor. I
15 do have a Motion, though.

16 THE COURT: I will be happy to hear
17 from you.

18 MICHAEL O'NEAL: A Motion to suppress
19 any and all statements alluded to in this
20 Hearing. They didn't put anybody up there that
21 could swear that he gave Shawn Glennon his
22 Miranda rights, only that some officer said that
23 some officer 'told me that they did.'

24 They had a perfect opportunity to give
25 them to him again when he was right there in the

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1 room, "you've got a right to remain silent."

2 They didn't do it.

3 The most damning statement that you
4 could possibly imagine didn't even make it to
5 the incident report. It is patently un-
6 believable and I move to suppress all the
7 statements.

8 THE COURT: Be happy to hear from
9 you, Ms. Cornwell.

10 SOLICITOR CORNWELL: Your Honor, the
11 State's position that that the defendant
12 initiated communication, that the statement was
13 not in reply or rebuttal to any questions, any
14 questions that the detectives asked. In fact,
15 the detectives both testified that they told him
16 numerous times that they could not speak to him
17 regarding the incident because he had requested
18 an attorney. That statement that he made was
19 knowingly and voluntarily made. He is the one
20 that reinitiated communication after invoking
21 his right to an attorney.

22 THE COURT: Given the setting, that
23 he was in custody, I am going to suppress the
24 statement.

25 MICHAEL O'NEAL: Thank you.

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1 SOLICITOR CORNWELL: Thank you, Your
2 Honor.

3 THE COURT: All right. Anything else
4 before we recess?

5 SOLICITOR CORNWELL: Nothing from the
6 State, Your Honor.

7 MICHAEL O'NEAL: Nothing from the
8 defense, Judge.

9 THE COURT: Okay, we will be at-ease.
10 So 9:45 in the morning.

11 MICHAEL O'NEAL: 9:45?

12 THE COURT: Yes, sir.

13 MICHAEL O'NEAL: And my client is out
14 on bond?

15 THE COURT: Yes, sir.

16 MICHAEL O'NEAL: Thank you, Judge.

17 THE COURT: Please understand, Mr.
18 Glennon, that this case will be going forward.
19 You've started and I assume that you will be
20 here, but if you're not we will continue to go
21 forward.

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: Thank you. You
24 understand?

25 DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: All right, in the
2 morning.

3 MICHAEL O'NEAL: Thank you, Judge.

4 (COURT IN RECESS)

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1 AUGUST 30, 2011 9:45 A.M.

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3 (DEFENDANT PRESENT)

4 THE COURT: Good morning.

5 MICHAEL O'NEAL: Your Honor, I have
6 one matter that I'd like to take up before we
7 start.

8 THE COURT: Okay, I will be happy to
9 hear from you.

10 ★ MICHAEL O'NEAL: Last year, I served
11 a discovery Motion on the State, as I usually
12 do. I got a response, got it in my file,
13 including a copy of the videotape that they want
14 to put in evidence -- and I don't have any
15 objection to that. But I show up here this
16 morning and I find that they've got pictures of
17 the doorway of the bathroom that's concerned.
18 I hadn't hear a thing about it until just this
19 morning. We would move to suppress any
20 photographs.

21 THE COURT: Solicitor?

22 SOLICITOR CORNWELL: Your Honor,
23 after the statement was suppressed, the State
24 went back to the scene and we did take pictures,
25 last night, just so that we could get the

1 officer to give a little more explanation of how
2 he came to the conclusion that the video was
3 made, how the video was made. We took those
4 pictures last night. We've given him an
5 opportunity to look at those photographs. They
6 are demonstrative photographs of just the door,
7 underneath the doorway. We -- like I said, we
8 just took them last night after your ruling on
9 the suppression hearing. We felt that it was
10 necessary to go and get those pictures so that
11 the officer could explain a little bit more
12 about how he came to the conclusions that he
13 made the video.

14 THE COURT: May I see the pictures?

15 MICHAEL O'NEAL: May I approach the
16 bench?

17 THE COURT: Yes.

18 MICHAEL O'NEAL: (Tenders). Judge, I
19 am not sure what that thing is. I'd ask the
20 solicitor what that is?

21 SOLICITOR CORNWELL: That's the
22 mirror that was used to tilt up to film.

23 THE COURT: (Upon review), who lives
24 in this house?

25 SOLICITOR CORNWELL: The victim. It

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1 is actually the victim's mother. The victim is
2 actually in college right now, so she is living
3 in the dorms.

4 THE COURT: And your objection is
5 that you didn't see these photographs until
6 today?

7 MICHAEL O'NEAL: (Affirmative nod),
8 this morning.

9 THE COURT: What is -- what is the
10 prejudice to you other than the fact that you
11 hadn't seen them?

12 MICHAEL O'NEAL: This is the first
13 that I've heard about ---

14 THE COURT: You've got them now.
15 What's the prejudice of these photographs of a
16 room?

17 MICHAEL O'NEAL: Judge, I prepared by
18 case for trial based on the discovery that I
19 got.

20 THE COURT: Well, Mr. O'Neal, how is
21 this -- there was -- this is the room in which
22 everything alleged occurred. So that's not
23 foreign news to you.

24 MICHAEL O'NEAL: Well, I can tell you
25 this, Judge. Looking at the copy that they gave

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1 me of the videotape, it looks like the video
2 tape was shot through something. It might have
3 been a door, it might have been a window. It's
4 hard to ---

5 THE COURT: I am just asking you --
6 the alleged crime took place in this house,
7 alleged in this room?

8 MICHAEL O'NEAL: That's the State's
9 position.

10 THE COURT: And that's what you knew
11 coming in?

12 MICHAEL O'NEAL: Yes, sir.

13 THE COURT: And they never denied you
14 access to the room?

15 MICHAEL O'NEAL: No, sir. My client
16 no longer ---

17 THE COURT: Your Motion is noted and
18 denied.

19 MICHAEL O'NEAL: Thank you.

20 THE COURT: All right. Thank you.

21 THE COURT: But let me just tell you
22 this -- I can't understand what in the world is
23 the possibility -- what is the probative value
24 of some of those pictures? I mean, really is
25 more like 'let me have some evidence to

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1 introduce' than anything else, to be honest with
2 you. I can understand maybe the doorway having
3 some significance. What does the clothes hamper
4 have to do with it?

5 SOLICITOR CORNWELL: Your Honor, this
6 is was just -- when -- I was trying to formulate
7 the arguments and the questions and it occurred
8 to me that it may be confusing for the jury to
9 figure out how the video was made.

10 THE COURT: The problem that I am
11 having, though, is this -- this crime alleged
12 occurred when?

13 SOLICITOR CORNWELL: She discovered
14 the video in May.

15 THE COURT: Of when?

16 SOLICITOR CORNWELL: Of 2010.

17 THE COURT: And it is now August of
18 2011. Somebody is going to establish that that
19 was the way that the room looked on that date?

20 SOLICITOR CORNWELL: Yes, Your Honor.

21 THE COURT: Everything in the
22 pictures?

23 SOLICITOR CORNWELL: That this is the
24 exact room. That this was how the door was and
25 -- we will go through and ---

1 THE COURT: As long as somebody will
2 establish that accurately depicts the room that
3 this allegedly -- where they believed that this
4 occurred, then -- we will deal with each one as
5 to the probative value. Are all the jurors
6 here?

7 BAILIFF: Not yet, Your Honor.

8 COURT REPORTER: Solicitor, while we
9 wait do you want to premark any exhibits?

10 SOLICITOR CORNWELL: If you don't
11 mind.

12 (EXHIBITS PREMARKED FOR STATE)

13 COURT REPORTER: Your Honor, we have
14 premarked State's Exhibits 1 through 7.

15 SOLICITOR CORNWELL: Thank you, Your
16 Honor.

17 THE COURT: Let the record reflect
18 that the defendant is present. Good morning,
19 Mr. Glennon.

20 DEFENDANT: Good morning, Your Honor.

21 SOLICITOR CORNWELL: Thank you, Your
22 Honor.

23 BAILIFF: All the jurors are here,
24 Your Honor.

25 THE COURT: Is the State ready to

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1 proceed?

2 SOLICITOR CORNWELL: Yes, Your Honor.

3 The State would make a Motion to sequester the
4 witnesses?

5 MICHAEL O'NEAL: No objection.

6 THE COURT: Very well, the witnesses
7 will be sequestered. Bring in the jury.

8 THE COURT: Bring in the jury.

9 (JURY IN @ 9:47 A.M.)

10 THE COURT: Good morning, Ladies and
11 Gentlemen. I hope that you had a good evening.
12 We are ready to continue. Ms. Perry, as I
13 understand, the jury has selected you as the
14 presiding juror, is that correct?

15 JUROR NUMBER 119: Yes, Your Honor.

16 THE COURT: Very well. Thank you
17 very much, Ladies and Gentlemen. I appreciate
18 it. Your juror number is 119, is that correct?

19 JUROR NUMBER 119: Yes, sir.

20 THE COURT: Very good. That will be
21 your seat for the balance of the trial. If you
22 would, please give your attention now to the
23 clerk as she administers your oath.

24 (WHEREUPON JURY SWORN)

25 THE COURT: Thank you very much,

1 Ladies and Gentlemen. By virtue of that oath
2 you've now become a judge with me and now we
3 will work together to resolve this dispute.

4 As you will recall yesterday, it is a
5 wonderful system that works extremely well. I
6 credit you and persons that take the position
7 that you've just taken, that is becoming a
8 judge, a judge of the facts.

9 You and you alone have the
10 responsibility of deciding the true facts of
11 this dispute. By that promise, you've said
12 basically that you will view the evidence and
13 then make that ultimately determination.

14 The evidence consists of, as I told you
15 yesterday, the testimony of witnesses and any
16 exhibits that might be introduced through that
17 testimony. Nothing else.

18 You will at the appropriate time apply
19 your sense of logic and reasoning, your common
20 sense, in analyzing that evidence. Frankly, I
21 would suggest that we all probably do that --
22 I'd hate to guess how many times during a day
23 that we do that during the course of our lives.
24 It's nothing foreign to you. In fact, when you
25 walked in you brought everything that you need.

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1 You brought your knowledge and your life's
2 experiences, your common sense.

3 And you brought something else that is
4 equally important to fulfilling that commitment
5 to this case, and that is that you brought an
6 open mind. Each one of you, either by
7 responding or not responding to my questions,
8 indicated that there was nothing about this case
9 that would give you any problem of applying your
10 common sense, your sense of logic and reason
11 fairly and impartially. Meaning, you haven't
12 decided anything. Please, in fairness to the
13 oath and in fairness to this process, you must
14 maintain that open mind until I give you the
15 instruction to begin your deliberation. Quite
16 honestly, Ladies and Gentlemen, it is the last
17 thing that I will tell you before you leave this
18 courtroom to commence that process. So until
19 then maintain that open mind. It's very
20 important.

21 Now, this process consists of four
22 distinct parts. In just a moment the attorneys
23 will speak to you for the first time. We call
24 that opening statement. Basically it is their
25 opportunity to give you an overview of this

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1 dispute. They will tell you a little bit about
2 the charge, they may talk some law, they may
3 talk about some of the evidence that they expect
4 that you will hear during this process. Give
5 them your attention. They're officers of this
6 court, they have a very important responsibility
7 in this process and their remarks deserve your
8 attention -- and they will be helpful to you,
9 both as you go through the process and
10 ultimately when you begin the process of
11 deciding the case. But their remarks, while
12 extremely important, should never be considered
13 evidence, ever.

14 Now, following the opening statements,
15 the State will present its evidence. The reason
16 for that is simply this -- as I mentioned to
17 you, the State is the party who is making this
18 complaint, who alleges that Mr. Glennon
19 committed this offense. The State, and the
20 State alone, -- the State, and the State alone,
21 has the burden of proof in this process.

22 The defendant has absolutely nothing to
23 prove or disprove. If at any point in your
24 process you say, 'Well, he didn't explain this'
25 or 'why didn't he answer this', if you do that

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1 then you've violated that principle of law,
2 because he has no responsibility. The sole
3 responsibility rests on the State of South
4 Carolina, who makes this complaint.

5 And what do they have to do? They have
6 to prove each element of the crime of voyeurism,
7 and we will talk about that, I'll define that
8 for you in my charge portion. You'll simply
9 then analyze the evidence and decide whether or
10 not you're convinced to the requisite standard
11 -- and that standard is beyond a reasonable
12 doubt. I'll define that for you, but I will
13 tell you now that that standard means -- really
14 it's -- a reasonable doubt is that doubt which
15 would make a conscientious juror who is
16 searching for the truth in a case to hesitate to
17 take some action. That's the standard that you
18 will apply.

19 Some of you may have participated in
20 other proceedings where the civil standard
21 typically applies, called the preponderance of
22 the evidence or the greater weight of the
23 evidence. That is a probability standard.
24 Beyond a reasonable doubt is much greater than
25 that. It is not a probability standard that

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1 they have to meet. They have to meet beyond a
2 reasonable doubt.

3 You will analyze the evidence and if,
4 after your analyses, you conclude as to each of
5 those elements that the answer is 'yes, I'm
6 convinced that the State has met its burden of
7 proof as to that element', and that 'yes'
8 applies to each of those elements, then you just
9 return a verdict of Guilty. Why? Because the
10 State met its burden of proof and established
11 each element.

12 If on the other hand in your analyses
13 you collectively agree that the State has failed
14 to meet one or more, then you must return a
15 verdict of not guilty.

16 That's what a verdict in a criminal
17 dispute means. Guilty simply means that the
18 State in that case satisfied the jury beyond a
19 reasonable doubt as to each element of that
20 crime. Not Guilty simply means that in that
21 particular case the State failed to meet its
22 burden of proof as to one or more elements;
23 therefore, they must return a verdict of Not
24 Guilty.

25 So that's what this is about, to

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1 determine whether or not the State can meet its
2 burden of proof.

3 As I mentioned, because the State has
4 that burden, they go first.

5 Now, while the defendant absolutely has
6 nothing to prove or disprove, after the State
7 completes its presentation he still has the
8 right to present testimony for your considera-
9 tion if he chooses to. He doesn't have to, but
10 if he choose to then he has a right to do so.
11 Obviously another very important reason why you
12 shouldn't make any premature decisions, because
13 you need to hear all of the evidence before you
14 even begin that process.

15 Then, furthermore, you have to complete
16 all stages of this process before you ever
17 change that position, as well.

18 Now, after the evidentiary portion, the
19 attorneys will have their second opportunity to
20 speak to you. Unlike the opening statement, you
21 will have heard the evidence. You will have
22 seen some of the exhibits. The exhibits that
23 are introduced through the testimony, they will
24 accompany you to your jury room. Sometimes they
25 may pass the exhibit to you for your review in

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1 the courtroom. If you want to glance at it and
2 take a look, that's fine but know that you will
3 have an opportunity to study that in more depth
4 and detail when you do begin your deliberations.

5 They will discuss that evidence with
6 you, suggest reasonable inferences that you may
7 draw from that evidence and then following the
8 closing arguments, and then I will then give you
9 the instruction on the law. We will talk about
10 the various principles of law that apply. We
11 will talk about the elements of voyeurism. Then
12 we will let you retire -- and I know that you
13 will ultimately resolve this case consistent
14 with the oath that you just took.

15 It's an honor for me to serve with you
16 as a judge. I thank you very much for your
17 attention to my remarks. I ask you now to
18 please give that same attention to the attorneys
19 as they give their opening statements on behalf
20 of their clients. Ms. Cornwell, you may
21 proceed.

22 SOLICITOR CORNWELL: Thank you, Your
23 Honor, may it please the Court?

24 THE COURT: Yes, ma'am.

25 SOLICITOR CORNWELL: Counsel.

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1 Your home is your safe haven. It's the
2 place where you can go to escape all the outside
3 craziness. As a child, it gives you an extra
4 sense of security because that's where your
5 parents are, they are there to protect you.

6 Unfortunately for Minor , that
7 sense of security and that safe haven was taken
8 away by that man (indicating defendant).

9 My name is Ashley Cornwell. We met
10 yesterday. I represent the State and I am here
11 to tell you about a horrible event that happened
12 to a young girl. I am going to apologize to you
13 right now because I am going to show you a video
14 that is disgusting. I hate that you have to see
15 this video, and I hate that this young lady has
16 to go through this and show you that video.
17 It's a video that this man made while the
18 victim, Minor , was in the bathroom
19 grooming herself, doing her personal business.
20 She had no idea that she was being filmed.

21 What person wants to be filmed while
22 they are grooming themselves?

23 Now, the judge is right, you have
24 common sense and that's the best thing that you
25 could have coming in here. Because, I am going

1 to be honest with you that there is not a lot of
2 forensic evidence. This isn't C.S.I., it's not
3 *Law & Order*. I don't have fingerprints or DNA.
4 I have a video that that man made of a young
5 girl who was in the bathroom grooming herself,
6 who had no idea that she was being filmed.

7 You are going to hear from her mother
8 who found the tape in his stuff, in his
9 possession. She viewed the tape, confronted him
10 and she is going to tell you what he told her.

11 You're going to hear from the officer
12 who is going to tell you how he investigated the
13 tape, what he saw on the tape and what he did
14 after viewing the tape.

15 You're going to hear from the victim
16 herself. You are going to hear from her how
17 embarrassed she is, how horrified she was that
18 somebody would film her while she was in the
19 bathroom doing her personal grooming.

20 That's all that you are going to hear.
21 That's all that you need to hear, is those
22 witnesses.

23 The judge is going to tell you the law.
24 Obviously he has a lot more experience than I
25 do, so if I say something that is not exactly

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1 what he says, obviously defer to him because he
2 has the experience and the knowledge.

3 But I think what he is going to tell
4 you is that voyeurism has certain elements to it
5 and that part of those elements are that a
6 person who makes a video, an audio, a digital
7 file, an electronic file, that he knowingly used
8 that file when the person that he made that
9 audio, video, photograph, digital file of has no
10 knowledge that that film, video, audio file,
11 photograph, whatever it may be, was being taken
12 of them. And that while that video, audio,
13 photograph or whatever it may be was being taken
14 that they were in a place where they thought
15 that they had a reasonable expectation of
16 privacy. I don't know how much private you can
17 think that you are than when you're in the
18 bathroom. I don't know of anybody that wants to
19 be filmed while they are in the bathroom.

20 I think at the end of the day when you
21 see this video, when you hear this testimony,
22 that there is not going to be a doubt in your
23 mind that this man made that film of this little
24 girl while she was in the bathroom grooming
25 herself, without her knowledge, without her

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1 consent, and while she had a reasonable
2 expectation of privacy.

3 THE COURT: Thank you. Mr. O'Neal?

4 MICHAEL O'NEAL: May it please the
5 court, Your Honor? Counsel?

6 THE COURT: Yes, sir. I am Michael
7 O'Neal. We met yesterday. I have the pleasure
8 of representing Shawn Glennon. There he sits
9 with me at the defense table.

10 He is thirty-nine years old, originally
11 from Connecticut, his parents are here with him
12 in the courtroom, in support. He's a veteran of
13 the U.S. Army, a veteran of the war in the
14 Middle East, honorably discharged.

15 I will also tell you that this video-
16 tape is disgusting. It is an unreasonable
17 criminal invasion of this young girl's rights to
18 be private in the bathroom.

19 But the fact of the matter is that
20 Shawn did not make this tape. Shawn did not
21 make this tape. You will see when all the
22 evidence is in front of you that the Government
23 is unable to prove that he made this tape.

24 Now, as the Judge told you, you are the
25 judges of the facts. Here is what happens. The

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1 Government has to put up a case to try to prove
2 what happened. You listen very carefully to the
3 Government's case, because your job is to figure
4 out, after their case is over, whether they have
5 proved to you without a doubt, without a
6 reasonable doubt, what happened. The facts of
7 the case.

8 Now, once you've heard the State's case
9 and you've determined, if you can, what
10 happened, then you take the law as the Judge
11 gives it to you. And if it fits, if it points
12 towards guilt -- but if you listen to the
13 State's case and you determine that you can't --
14 that they haven't proven what happened, what
15 exactly happened, what are the facts of the
16 case, that's reasonable doubt.

17 Now, we are going to hear testimony
18 from the police officers in this case. They
19 don't know anything more than what Minor s
20 mother, Karen Glennon, wife of my client, told
21 them.

22 We are going to hear from Minor .
23 You can tell if you look at the videotape that
24 she had no idea that she was being videoed.
25 She doesn't know anything more about the case

1 other than that this videotape was made and that
2 she was told about it well after Karen Glennon
3 found it.

4 The key witness for the State is going
5 to be Karen Glennon, the mother of Minor .
6 She is going to take the stand and testify. She
7 is going to testify for the State first. I'll
8 get to cross-examine her and ask her questions.
9 Hopefully you all will be able to hear the truth
10 about how this came to be.

11 Now, I will go ahead and tell you
12 upfront that Shawn told his wife, Karen, that
13 the tape was his. But you are going to hear how
14 that came about, you are going to hear how she
15 tricked him into telling her that the tape was
16 his. The tape was not his. He did not make the
17 tape. He found it. She found it later, before
18 he had a chance to tell her about finding it.
19 You are going to hear all about that.

20 Now, as the Judge said, apply your
21 common sense, the same thing that you do
22 everyday when people tell you something and you
23 decide whether they are telling the truth or
24 not. Remember that in this case, in every
25 criminal case, Shawn Glennon is not guilty. He

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1 is presumed to be not guilty as he sits here
2 right there. He stays not guilty throughout the
3 trial. When the testimony is over, the case is
4 over, final arguments have been made and the
5 judge has given you the charge on the law --
6 like I said, what you have to do is to try to
7 figure out what happened, figure out whether or
8 not the State can prove to you beyond a
9 reasonable doubt what happened. Then you apply
10 the law as the Judge gives it to you. Once you
11 do that, you will see that Shawn Glennon is not
12 guilty. Thank you.

13 THE COURT: Thank you. You may call
14 your first witness, Solicitor.

15 SOLICITOR CORNWELL: Thank you, Your
16 Honor. The State calls Karen Glennon.

17 (WITNESS TAKES STAND)

18 KAREN GLENNON, being duly sworn to tell
19 the truth, the whole truth and nothing but the
20 truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR CORNWELL:

23 Q. Ms. Glennon, how old are you?

24 A. Fifty-five.

25 Q. Where do you live?

- 1 A. Summerville.
- 2 Q. Are you married?
- 3 A. Yes, I am.
- 4 Q. Who are you married to?
- 5 A. Shawn Glennon.
- 6 Q. Do you have any children?
- 7 A. With him?
- 8 Q. Yes.
- 9 A. No.
- 10 Q. Do you have any other children?
- 11 A. I have five children.
- 12 Q. What are their names and ages?
- 13 A. Jason is 30, Andrew is 28, Abby is 25,
- 14 Minor is 20, and Brian is 17.
- 15 Q. When did you first meet the defendant?
- 16 A. I met him after my son Andrew got home from
- 17 Iraq. I decided to continue sending boxes to
- 18 soldiers. Saw a website, Soldiers Angels, and
- 19 told them that I was interested in adopting a
- 20 soldier. That was the name that they sent me.
- 21 Q. Shawn Glennon was the soldier that you
- 22 adopted?
- 23 A. Yes.
- 24 Q. When did you get married to the defendant?
- 25 A. In September of 2006.

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- 1 Q. And after you and the defendant got
2 married, where did you live?
3 A. In my home in Summerville.
4 Q. Who lived with you there?
5 A. It was Minor and Brian, my youngest two.
6 Q. And the defendant?
7 A. Right.
8 Q. Do you still live in that house today?
9 A. Yes, I do.
10 Q. Does the defendant still live in that
11 house?
12 A. No, he doesn't.
13 Q. Why doesn't he live with you any more?
14 A. Because I found a tape that he admitted to
15 making of my youngest daughter when she was in
16 the bathroom and I -- I kicked him out of the
17 house that day.
18 Q. When did you find the tape?
19 A. May the 27th of 2010.
20 Q. Where did you find the tape?
21 A. In the third drawer down of his nightstand.
22 Q. Was it just laying out in the nightstand?
23 A. No. I had walked in the bedroom, I was
24 going to go into my bathroom to do some laundry
25 and noticed that this third drawer down was not

1 closed; which was unusual because there was
2 nothing but memorabilia-type items. Nothing --
3 you know, not like socks or anything like that.
4 A drawer that you just put stuff in and didn't
5 use. I wondered why would that drawer be open.

6 So when I opened it, I saw his
7 camcorder in there, which we normally kept on
8 the fireplace. So I thought that was odd.

9 When I opened up the camcorder, there
10 wasn't a tape in it. So I just started looking
11 through the drawer and I found, uh, -- he had
12 this blue corduroy bag that had game pieces in
13 it. It had like a bulge on it, so I opened the
14 bag up and there was a tape from the camcorder
15 hidden in this pouch. That's when I put it in
16 the camcorder to see, you know, why would he be
17 hiding a tape.

18 [REDACTED] Why were you so suspicious of that? Why were
19 you looking through his stuff? Stand for begin-
20 [REDACTED]
21 [REDACTED] Well, because three months after we got
22 married I discovered that he had a porn
23 addiction. And it had been, uh, what we
24 fought about for a long time. Getting over
25 marriage was him lying to me about when he was

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]

8 Q. And when you looked at the tape, what was
9 on it?

10 A. Well, initially all I could see were female
11 genitalia, because it was zoomed in on somebody.
12 So at first I really didn't know what it was. I
13 thought maybe that he'd taped something off the
14 computer so that, you know, I couldn't find it
15 on the computer. But after a while he zoomed
16 the camera out and I realized that it was my
17 child in my bathroom that was being taped.

18 Q. That camcorder, it has the zooming
19 capability on it?

20 A. Yes.

21 Q. Does it also -- can you film it via remote
22 control or ---

23 A. It does have a remote too.

24 Q. Could you tell where the tape was filmed?

25 A. In my bathroom.

1 Q. Was it normal for your daughter to use your
2 bathroom?

3 A. No.

4 Q. Why was she using your bathroom then?

5 A. Because she played softball and had gotten
6 injured and tore her ACL and meniscus and had
7 had surgery. At that point in time was unable
8 to bend her knee. Upstairs in her bathroom it's
9 a tub, so that she would have to step over, you
10 know, to get in the tub and she couldn't bend
11 her knee. So she had to shower in my bathroom,
12 which is a regular shower that you don't have
13 to, you know, lift your leg up to get in. You
14 just step in it. So while that part of her
15 healing process was going on, she showered
16 downstairs.

17 Q. Other than the people that lived at your
18 house that you've already told us about, was
19 there anybody else that stayed in your house on
20 a regular basis or had access to your house?

21 A. No.

22 Q. After Minor had her ACL surgery,
23 approximately how long did she use your
24 bathroom?

25 A. I would say somewhere between two and four

1 months, until she got good use of being able to
2 bend her knee again, back.

3 Q. How old was Minor when she had her ACL
4 surgery?

5 A. Seventeen.

6 Q. So what year would that have been?

7 A. I have to think here -- uh, I guess 2008.

8 Q. When you looked at the tape, in your
9 opinion did your daughter know that she was
10 being filmed?

11 A. Oh, no. Minor is extremely modest.
12 She won't even, like, be in her panties and bra
13 around me in the room.

14 Q. How did you feel after watching the tape?

15 A. Well, I am a nurse but I truly didn't know
16 if I was having a heart attack or a stroke. I
17 mean, my heart was pounding in my head and my
18 chest was tight and I was physically nauseous,
19 shaking and -- I just couldn't process what I
20 was seeing, because it was my child, who I
21 loved, and my husband, who at the time I loved
22 and I just -- I absolutely could not process
23 what was happening. All I could think of was,
24 'I've got to get him out of the house.' That's
25 all that I could think of at that time.

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1 Q. After watching the tape, what did you do?

2 A. I pretty much blew up his phone at work.

3 Q. What did ---

4 A. Told him what I had found, that -- you
5 know, 'how could you tape your stepdaughter',
6 you know, 'naked in the bathroom, then keep it
7 in your nightstand.'

8 After a length of time went by, he texted
9 me back and said that he always ruins everything
10 good in his life and that there was nothing that
11 he could say to make this any better.

12 And I continued to blow up his phone. You
13 know, calling him a pervert and all that kind of
14 stuff. He tested me back again and said that he
15 could understand why I didn't want him there and
16 that he would bring boxes home from work and
17 move out that day.

18 Q. This conversation was through text
19 messaging?

20 A. Um-humm.

21 THE COURT: Is that a "yes"?

22 THE WITNESS: Yes.

23 SOLICITOR CORNWELL: If you could,
24 just answer yes or no, so that the court
25 reporter can take it down.

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1 THE WITNESS: Okay. Sorry.

2 SOLICITOR CORNWELL: That's okay.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR CORNWELL:

5 Q. Did your husband ever deny making the tape
6 to you?

7 A. Never.

8 Q. Did he admit that day that he made the
9 tape?

10 A. Uh, -- (pause) -- through the text
11 messages, you know, when he said 'I always ruin
12 everything in my life and that there is nothing
13 that I can say.' He never said, 'I don't know
14 what you're talking about' or 'I didn't do
15 this.' He never -- there were never any text
16 messages to that effect.

17 Q. So he didn't deny making the tape?

18 A. No.

19 Q. Did you confront him in person about the
20 tape?

21 A. When he came to the house after he got off
22 work, I just -- he wanted to get items out of
23 the house and, uh, I probably said things like,
24 'How could you do this?' I can't really
25 remember exactly. I just had him leave his

1 house key so I knew that he couldn't get back in
2 my house.

3 Q. After he told you that he understood why
4 you wouldn't want him to stay at the house, what
5 did you do?

6 A. What -- I'm not sure ---

7 Q. Did you tell your daughter?

8 A. That day?

9 Q. (Affirmative nod).

10 A. No.

11 Q. Why not?

12 A. Well, as an adult that was molested as a
13 child and I know how that changes you, how you
14 carry that for the rest of your life, initially
15 I wanted to protect her from knowing what
16 someone she cared about and trusted had done to
17 her. So those were my initial thoughts, that I
18 would get him out of the house and that she
19 would not find out.

20 Q. Did you call the police that day?

21 A. No.

22 Q. Did you ever have a face to face
23 conversation with the defendant about the tape?

24 A. Yes, I did.

25 Q. Tell me about that. Tell me about one of

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1 the conversations.

2 A. Well, I asked him how could he do something
3 like that. He told me that he couldn't explain
4 it. I said, you know, 'why didn't you throw it
5 away', because he'd said that he'd started to
6 try to be a better man. I said, 'Then, why
7 didn't you - why would you still keep that if
8 you're working on trying to be a better man.'
9 He couldn't explain to me why he hadn't thrown
10 it away.

11 Q. Where did this conversation take place?

12 A. My back porch.

13 Q. Was this after he had moved out?

14 A. Oh, yes.

15 Q. Did you ever tell your daughter about the
16 tape?

17 A. I did eventually tell her.

18 Q. What prompted you to tell your daughter
19 about the tape?

20 A. Actually my therapist is the one who
21 convinced me that I should tell Minor because
22 -- she said, uh, number one, that there is no
23 cure for sexually deviant behavior, that the
24 best that you can hope for ---

25 MICHAEL O'NEAL: I would object to

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1 what someone else said.

2 THE COURT: Sustained as to hearsay.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR CORNWELL:

5 Q. You can't testify as to what other people
6 told you. Just tell me why you decided to tell
7 your daughter.

8 A. Because of the things my therapist told me.

9 Q. Okay. So you were in therapy because of
10 the tape?

11 A. Yes.

12 Q. When did you tell your daughter about the
13 tape?

14 A. About two months later.

15 Q. After telling Minor about the tape, what
16 did you do?

17 A. I gave her the option of what she wanted to
18 do about it.

19 Q. What decision did y'all make?

20 A. She felt like the only right thing to do
21 would be to call the police, so that hopefully
22 this wouldn't happen to anybody else.

23 Q. Did you contact the police at that time?

24 A. Yes, we did.

25 Q. After contacting the police, what happened?

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1 A. Sergeant Wells came to our house.

2 Q. When he came to the house, did you show him
3 the tape?

4 A. I couldn't show him the tape because it was
5 the tape from his camcorder and he took his
6 camcorder when he moved out. So I just gave
7 Sergeant Wells the actual tape that fit in the
8 camera.

9 Q. Did Sergeant Wells see the bathroom and see
10 where it took place?

11 A. Yes.

12 Q. Had you kept the tape in your possession
13 since the time that you found it?

14 A. Yes, I did.

15 Q. It never left your possession at any time?

16 A. It never left the hiding place that I had
17 it in.

18 Q. At this time I am going to show you what
19 has been premarked as State's Exhibit 6 and
20 State's Exhibit 1. Can you tell me what these
21 items are? If you will, tell the court which
22 item you're describing and describe them.

23 A. This (State Exhibit 6) is the tape, the
24 original tape that fit in his camcorder.

25 THE COURT: What ---

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR CORNWELL:

3 Q. What exhibit is that?

4 A. Number six. That I played in his camcorder
5 and this is the tape that I gave Sergeant Wells.

6 Q. Okay. What is that other disk?

7 A. This disk, I watched to see if it was the
8 same as the tape that I had watched. It is.

9 THE COURT: Is that State's Exhibit
10 1?

11 SOLICITOR CORNWELL: Yes, Your Honor.

12 THE COURT: You need to answer,
13 please.

14 THE WITNESS: Yes.

15 THE COURT: The court reporter needs
16 to know what it is that you're looking at.

17 THE WITNESS: I'm sorry. I'm a
18 little nervous here.

19 THE COURT: Don't worry. That's not
20 a problem.

21 THE WITNESS: This is the tape or
22 the CD that I watched in your office to confirm
23 that it was the same thing that I saw on his
24 camcorder.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR CORNWELL:

2 Q. Had there been any changes, deletions or
3 alterations made to that DVD?

4 A. No.

5 Q. Is that DVD the exact same thing that you
6 watched from that tape?

7 A. Yes, it is.

8 Q. Had it been tampered with or modified in
9 any way other than converting it from a cassette
10 to a DVD?

11 A. No modifications.

12 SOLICITOR CORNWELL: Your Honor, at
13 this time the State would like to introduce
14 Exhibits 6 and 1.

15 MICHAEL O'NEAL: Without objection,
16 Your Honor.

17 THE COURT: Without objection, they
18 are admitted.

19 (SO ENTERED AS STATE'S EXHIBIT 1)

20 (SO ENTERED AS STATE'S EXHIBIT 6)

21 SOLICITOR CORNWELL: May we public to
22 the jury, Your Honor.

23 THE COURT: Do you want the -- it
24 appears that persons present are court
25 personnel. Do you want anyone else ---

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1 SOLICITOR CORNWELL: No, not really.

2 THE COURT: --- to leave the
3 courtroom?

4 SOLICITOR CORNWELL: Maybe.

5 THE COURT: Very well. We've had a
6 discussion about that, Ladies and Gentlemen.
7 Sometimes when we view matters that are of this
8 nature we will excuse persons, but it appears
9 that persons here are persons that I think need
10 to be present.

11 SOLICITOR CORNWELL: Yes, Your Honor.
12 Thank you.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR CORNWELL:

15 Q. (Video playing) ---

16 SOLICITOR CORNWELL: Sorry, Your
17 Honor. We've having some technical issue.

18 THE COURT: Do you need the jury to
19 be excused while you resolve the technical
20 problem?

21 SOLICITOR CORNWELL: Yes, that's ---

22 THE COURT: Ladies and Gentlemen, I
23 am going to ask that you go to your jury room.
24 Do not begin your deliberations, don't discuss
25 the case, we will be with you in a few minutes.

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1 (JURY OUT @ 10:25 A.M.)

2 SOLICITOR CORNWELL: Your Honor, I'm
3 sorry. I thought that ---

4 THE COURT: That's okay. We will be
5 at-ease. For the record, you're publishing now
6 State's Exhibit 1, not State's Exhibit 6.

7 SOLICITOR CORNWELL: State's Exhibit
8 1.

9 THE COURT: And one is a copy of six,
10 I understand.

11 SOLICITOR CORNWELL: Yes, Your Honor.

12 THE COURT: But Exhibit 1 is actually
13 the one being published?

14 SOLICITOR CORNWELL: Yes, Your Honor.
15 I apologize for the confusion.

16 THE COURT: We will be at-ease for a
17 few minutes. Thank you.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Let the record reflect
21 that the defendant is present. Is the defendant
22 ready to continue, Mr. O'Neal?

23 MICHAEL O'NEAL: Ready, Your Honor.

24 THE COURT: Is the State ready?

25 SOLICITOR CORNWELL: Yes, Your Honor.

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1 THE COURT: Okay, let's invite the
2 jury to return.

3 (JURY IN @ 10:31 A.M.)

4 THE COURT: Thank you, Ladies and
5 Gentlemen. We are now ready to resume.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR CORNWELL:

8 Q. (Video playing), -- this is the same as you
9 saw on the cassette?

10 A. Yes.

11 SOLICITOR CORNWELL: May I approach,
12 Your Honor?

13 THE COURT: Yes.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR CORNWELL:

16 Q. I am showing you what has been premarked as
17 State's Exhibits 2, 3, 4 and 7. Will you look
18 at those and tell me what those are? If you
19 will, tell the court which exhibit number that
20 you're explaining as you explain them.

21 A. Two is looking into my bathroom with the
22 door open.

23 Three is looking at my bathroom door
24 closed.

25 Four is looking at the bottom of my

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1 bathroom door that is closed.

2 Seven is inside my bathroom with the
3 door closed.

4 Q. Are those pictures an accurate portrayal of
5 what your bathroom looks like?

6 A. Yes.

7 Q. Have there been any construction changes,
8 any additions, deletions, has anything been --
9 has anything change in your bathroom ---

10 A. No.

11 Q. --- from those pictures?

12 A. No.

13 Q. Those show exactly how the door was and
14 exactly how your bathroom is?

15 A. Yes.

16 Q. Today's date and when the film was being
17 made?

18 A. Yes.

19 SOLICITOR CORNWELL: Your Honor, at
20 this time the State would like to introduce
21 State's Exhibits 2, 3, 4 and 7 into evidence.

22 MICHAEL O'NEAL: I would ---

23 THE COURT: Subject to those
24 objections previously placed on the record?

25 MICHAEL O'NEAL: That's true, Your

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1 Honor, and the additional objection that the
2 State just hasn't proven when the tape was made.

3 THE COURT: Thank you. Subject to
4 the objections, it is admitted.

5 SOLICITOR CORNWELL: May we publish
6 to the jury?

7 THE COURT: State's 2, 3, 4 and 7,
8 each being a photograph. You may publish.

9 SOLICITOR CORNWELL: Thank you, Your
10 Honor. This is State's Exhibit 2, (tenders to
11 presiding juror).

12 THE COURT: Solicitor, just pass them
13 around the jurors. They can look at it, pass
14 them down and you can go on with your
15 examination. Please.

16 (SO ENTERED AS STATE'S EXHIBIT 2)

17 (SO ENTERED AS STATE'S EXHIBIT 3)

18 (SO ENTERED AS STATE'S EXHIBIT 4)

19 (SO ENTERED AS STATE'S EXHIBIT 7)

20 SOLICITOR CORNWELL: (Displaying
21 slide of photograph).

22 THE COURT: Are you going to show
23 them up here, too? We don't need to do that.
24 If you are going to show them on the screen,
25 then they don't need to -- they can see the

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1 photos. The photos will accompany you to your
2 jury room. They may show them and publish them
3 by showing them on the screen. I thought that
4 is what you were going to do.

5 SOLICITOR CORNWELL: I apologize,
6 Your Honor.

7 THE COURT: That's okay. That's no
8 problem. I mean, you just don't need to do
9 both.

10 SOLICITOR CORNWELL: Okay.

11 THE COURT: Just do one or the other.
12 I assume that you have them on your ---

13 SOLICITOR CORNWELL: We do, Your
14 Honor.

15 THE COURT: That's fine.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR CORNWELL:

18 Q. This is State's Exhibit 2. Can you look at
19 the screen behind you and explain what that is?

20 A. That's my bathroom.

21 Q. If you are standing in your bedroom, is
22 that an accurate portrayal of how your bathroom
23 looks from that angle?

24 A. Yes.

25 Q. What is that a picture of?

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1 A. There's my bed. Then that's the hallway to
2 the bathroom. The bathroom door is closed.

3 Q. State's Exhibit 4?

4 A. That is the bathroom door closed from my
5 bedroom side.

6 Q. Is that space between the door and the
7 floor, is that approximately -- is that exactly
8 how it is now?

9 A. Yes, it is.

10 Q. Is that how it was when Minor was
11 seventeen, after her ACL surgery?

12 A. Yes, it is.

13 SOLICITOR CORNWELL: Thank you, Ms.
14 Glennon. Please answer any questions defense
15 counsel may have for you.

16 THE WITNESS: Okay.

17 THE COURT: You may ~~cross-examine~~,
18 Mr. O'Neal.

19 MICHAEL O'NEAL: Thank you, Judge.
20 May it please the Court, counsel.

21 CROSS EXAMINATION

22 BY MICHAEL O'NEAL:

23 Q. All right, Ms. Glennon, you testified under
24 direct examination that you met Shawn initially
25 through the computer, over the internet; is that

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1 correct?

2 A. Yes.

3 Q. Not a face to face meeting?

4 A. Right.

5 Q. Your testimony was that your son -- that
6 one of your other sons had come back from Iraq,
7 you were at this website, Soliders Angels, and
8 you sent over care packages and things like
9 that; e-mails, things like that?

10 A. Correct.

11 Q. All right. After he came back, you wanted
12 to keep doing that, is that correct?

13 A. That's correct.

14 Q. All right. And that's how you met, through
15 the internet, Shawn Glennon?

16 A. Right.

17 Q. Now, the way that your testimony went, the
18 way that it sounds like is that this Soliders
19 Angels thing is that you were almost like, I
20 guess, their mother. Like you would send them
21 care packages and things, like you were taking
22 care of them? Not romantic at all, but ---

23 A. Well, I assumed it would be a nineteen,
24 twenty-year-old kid that I would be adopting.
25 I had no idea it would be a thirty-something

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1 year old man.

2 Q. How old was he whenever you first met him
3 on the computer? Do you remember?

4 A. Like thirty-two, I think.

5 Q. How old were you?

6 A. Forty-eight.

7 Q. And I guess it's safe to say that you all
8 communicated back and forth, sent e-mails back
9 and forth in addition to the care packages?

10 A. Yes.

11 Q. All right. Did you ever send photographs
12 back and forth?

13 A. After a while we exchanged photographs.

14 Q. How long did you have a relationship with
15 him on the computer, roughly?

16 A. Let's see -- March, uh, like six months.

17 Q. Am I correct when I say that eventually the
18 relationship on the computer started taking a
19 more romantic turn?

20 A. Yes.

21 Q. You would -- you would exchange romantic
22 and -- indications of affection, e-mails and
23 things like that?

24 A. There seemed to be a mutual liking between
25 the two of us.

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1 Q. A mutual attraction?

2 A. Um-humm, (affirmative nod).

3 Q. What did you tell him about yourself,
4 initially?

5 A. That I was ---

6 Q. Did you tell him your age?

7 A. I told him that I was in my forties.

8 Q. Did you tell him that you had children?

9 A. Yes, I did.

10 Q. How many children did you tell him that you
11 had, initially?

12 A. Five.

13 Q. Did you tell him how many times you'd been
14 married, for example?

15 A. No, I didn't tell him how many times I'd
16 been married.

17 Q. Okay. Tell us what happened when the six
18 months was up. Did he come back to the United
19 States?

20 A. Yes, he did.

21 Q. Did you continue to maintain contact with
22 him?

23 A. Yes, we did.

24 Q. Okay. Where is he from originally?

25 A. Connecticut.

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1 Q. His parents came down here with him, do you
2 know that?

3 A. Yes.

4 Q. When did you all first meet, face to face?

5 A. When he got back in Texas.

6 Q. All right. Now, that's when you first met
7 him and he met you face to face, you could see
8 each other?

9 A. Correct.

10 Q. Isn't it true that he was kinda shocked and
11 surprised to find that you'd been married not
12 just twice but four times, that you really had
13 five kids instead of two kids?

14 A. I always told him that I had five children
15 and described each one of them in the initial
16 letter that I sent him. And, uh, I'd been
17 married three times. He was number four.

18 Q. All right.

19 A. I divulged all of that in our first
20 meeting.

21 Q. Face to face meeting?

22 A. Yeah.

23 Q. Okay. For the first time?

24 A. Yes.

25 Q. What happened next? You came back home

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- 1 here to South Carolina, here in Moncks Corner?
- 2 A. I don't live in Moncks Corner. I grew up
- 3 there. I live in Summerville.
- 4 Q. Sorry, you live in Summerville.
- 5 A. (Affirmative nod).
- 6 Q. What did he do, where did he go?
- 7 A. He decided to get out of the Army and move
- 8 here.
- 9 Q. Did you have anything to do with that
- 10 decision?
- 11 A. I didn't twist his arm.
- 12 Q. Yeah, but you indicated that he would be
- 13 welcome?
- 14 A. Yes.
- 15 Q. Okay. Now, when were y'all married? I
- 16 believe that you testified that that was
- 17 September of 2006?
- 18 A. That's correct.
- 19 Q. How long was that after he first got back
- 20 from the Middle East, from his tour of duty in
- 21 combat?
- 22 A. He got back in March of '05.
- 23 Q. So a little over a year later, y'all got
- 24 married?
- 25 A. A year and a half later.

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1 Q. Where were you married?

2 A. In Azalea Park.

3 Q. Here in the lowcountry?

4 A. Yes.

5 Q. Very well. Now, at that time you said --
6 your testimony was that you were living in your
7 house with your daughter, Courtney, and your son
8 Brian?

9 A. Yes.

10 Q. You married Shawn and he came into the
11 house -- obviously not their father. What was
12 his status, what did y'all decide would be his
13 status or his relationship with your children?
14 Stepfather? Friend? A buddy? How was that set
15 up? Did y'all have a plan?

16 A. Stepfather is what he was.

17 Q. I think your testimony on direct
18 examination is that over time ~~victim~~ your
19 daughter, cared for and trusted Shawn Glennon?

20 A. Yes, she did.

21 Q. Now, I've got a little confusion about
22 that. Let me see if I can get straight. Your
23 testimony is, I think that it was three months
24 after you got married, that you discovered that
25 he was a raging pornography addict. Is that

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1 correct?

2 A. I didn't know to what extent. I just first
3 discovered his interest in porn three months
4 after we were married.

5 Q. He was living with you in the house at that
6 time?

7 A. (Affirmative nod), we were married. Yes.

8 Q. What computer did he use to access all
9 these pornographic websites?

10 A. The one we -- our main computer in the
11 kitchen.

12 Q. Is that the one -- had you caught him there
13 looking at porn?

14 A. (No verbal response).

15 Q. On that computer?

16 A. I have caught him looking at porn when he
17 thought I was asleep and I would get up and ---

18 Q. How many times?

19 A. Oh, my word. More than I can count.

20 Q. Okay. You mentioned that you found slips
21 of paper in his pockets when you did the
22 laundry, had written down names of pornographic
23 websites? Did you save those?

24 A. They're in an evidence box somewhere.

25 Q. So you did give them to the police, right?

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1 A. Um-humm. Yes, I did.

2 Q. Do you know if they are here today? Do you
3 have any idea?

4 A. I don't know if they are or not.

5 Q. Now, when you discovered that your husband
6 liked looking at pornography, did that upset
7 you?

8 A. Yes, it did.

9 Q. A lot?

10 A. The degree that he looked at it. Number
11 one, you can be fired from MUSC if you view
12 pornographic material and people have been fired
13 from there for that. When you come home from
14 work with all these websites on Visitor's passes
15 to get into the Institute of Psychiatry, it
16 worried me that he would get caught and be
17 fired.

18 Q. So he was working at MUSC, the same place
19 that you were working?

20 A. Exactly.

21 Q. Okay.

22 A. In security.

23 Q. Why didn't you kick him out of the house
24 then?

25 A. Because I loved him and thought I could

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1 help him.

2 Q. Okay. You weren't afraid that he might
3 prey on *Victim* or even on *minor*

4 A. To me there was a huge difference in
5 somebody being addicted to porn and somebody
6 actually being a sexual predator. I, you know,
7 there's a big difference, to me.

8 Q. Did you ever catch Shawn looking at
9 *Victim*, trying to look at *Victim* when she
10 was in the bathroom, rooting through
11 underwear drawer or anything like that? At all?

12 A. No.

13 Q. Never did, did you?

14 A. No.

15 Q. All right. Now, let me ask you. When you
16 talked about people with access to your home --
17 first of all, let me ask you about that video
18 camera. Was that Shawn's video camera?

19 A. Yes, it was.

20 Q. Did he have it when y'all got married?

21 A. Yes, he did.

22 Q. Did y'all ever use for videoing like
23 *Victim*'s softball games?

24 A. Yes, we did.

25 Q. Videos of the dog in the yard and all kinds

1 of little home videos like that, right?

2 A. Right.

3 Q. And I think that you testified that you
4 normally kept it on the manual by the fireplace?

5 A. Right.

6 Q. Was that because there was a plug right
7 there, so that you could plug it in and it would
8 recharge?

9 A. Yes.

10 Q. Okay. I guess anybody who would have came
11 into the house would have seen that video
12 camera.

13 A. Yes.

14 Q. All right. Now, you testified on direct
15 examination that nobody else had access to the
16 house. What about your other children, three
17 other children? They're all adults, as you
18 testified, of adult age. Correct?

19 A. Correct.

20 Q. Do they ever come over to your house?

21 A. At that point in time, if they came they
22 had to knock on the door.

23 Q. But they could -- you'd let them in?

24 A. Yeah.

25 Q. Would you have let them stay in your house

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1 even though you might be away, at work or at the
2 store or anything like that?

3 A. Well, of course I would. But I don't ever
4 remember them doing that.

5 Q. Okay. Let me ask you about this, didn't
6 Minor get in trouble some timeframe prior to
7 you discovering this videotape ---

8 SOLICITOR CORNWELL: Objection, Your
9 Honor. May we approach?

10 THE COURT: You may. I don't know
11 what -- I can't rule on that one yet.

12 (OFF RECORD BENCH CONFERENCE)

13 THE COURT: Thank you. I sustain the
14 objection.

15 CROSS EXAMINATION CONTINUED

16 BY MICHAEL O'NEAL:

17 Q. Did any other people besides family members
18 come into the house prior -- shortly prior to
19 you discovering this tape?

20 A. Well, we have had people in our house. I
21 mean, doesn't everybody? I don't understand
22 what you're asking me.

23 Q. Did any people come in the house unknown to
24 you, without your permission?

25 A. (No verbal response).

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1 Q. Friends of Minor friends of Brian, or
2 anybody? Anybody?

3 A. I'm sure they probably brought people over
4 without me knowing about it, because I work
5 twelve-hours shifts.

6 Q. Oh. So, it may have happened more than
7 once?

8 A. It could have.

9 Q. Going back to the computer that you say
10 that Shawn was using to look at all these
11 pornographic websites, did the police take that
12 computer as part of its investigation?

13 A. Yes, they did.

14 Q. Did you ever get it back?

15 A. Yes, I did.

16 Q. Did they ever tell you whether or not they
17 did a forensic search on it to see what
18 pornographic websites that he had been at?

19 A. I think all that did was let a Berkeley
20 County deputy look through it.

21 Q. Did they find anything?

22 A. They said they didn't.

23 Q. Did you ever install any kind of a program
24 on the computer, a keystroke reporter or
25 anything like that, to see what kind of websites

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1 that Shawn might have been visiting using that
2 computer?

3 A. Shortly before I found the tape, yes, I
4 did.

5 Q. All right, let's talk about finding the
6 tape. Your testimony is that you came home, saw
7 that the drawer was open, you went in there to
8 look, to see what was up, you rooted around,
9 found this blue package/blue bag of some kind,
10 found the tape in there, put it in the camera,
11 played it and saw what it was. You were angry.
12 Isn't it true that you then started, as you
13 said, blowing up his phone, accusing him of
14 making the tape, accusing him of hiding the
15 tape, 'How could you do this.' That kind of
16 thing. Is that correct?

17 A. That's correct.

18 Q. Isn't it true that he initially told you
19 that he didn't do it, that he did not make that
20 tape, that it wasn't his?

21 A. No, he never ever denied it. Not one time.

22 Q. All right, now, let's get this straight.
23 You found the tape on May 27th, 2010.

24 A. Yes.

25 Q. You first -- very first went to the police

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1 two months later. Let's see: May, June, July.

2 Yes, July 27th, 2010. Is that correct?

3 A. That's correct.

4 Q. All right. Now, your testimony is that you
5 kicked him, kicked him out of the house as soon
6 as you found that tape. "That's it."

7 A. Absolutely.

8 Q. Why? Why did you kick him out of the
9 house?

10 A. Because I wasn't going to have a sexual
11 predator living in the house with my child.

12 Q. Because of finding -- because up to then,
13 as far as you knew, he had -- your husband and
14 your daughter had a good relationship? There
15 were no previous incidents of him trying to get
16 any kind of sexual gratification from her, to
17 try to look at her, to try to look at her stuff.
18 Nothing like that. This was a shock to you.

19 All of a sudden it looked like he had made a
20 videotape of your daughter. Correct?

21 A. Correct.

22 Q. That's correct. Isn't it true that he came
23 back to the house time and time again during
24 those two months before you went to the police?

25 A. Yes, he did.

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1 Q. Didn't you invite him back to the house,
2 sat down and ate dinner as a family, watched TV
3 as a family. He sat next to her on the couch.

4 A. My initial -- as I said previously, was to
5 get him help.

6 Q. Let me ask you this, when ---

7 A. Because when you love somebody you can't
8 just instantly turn it off. I wasn't going to
9 let him live in the house with my child, but I
10 also -- it took me a while to get over the love
11 part.

12 Q. How long?

13 A. It took a while.

14 Q. Okay. Weren't you afraid, if what you were
15 thinking about him was true, to bring him back
16 into the house, in the presence of Minor

17 A. He was never there without me being there.

18 Q. Did you ever leave the room and left them
19 two in the same room together?

20 A. I don't ever remember leaving him alone
21 with Minor

22 Q. All right, let me ask you this, isn't it
23 true that you told him initially that if he
24 admitted to you that he made the tape, that the
25 tape was his, that you would not call the cops

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- 1 and have his arrested and thrown in jail?
- 2 A. No, that's not what I said.
- 3 Q. You never told him that?
- 4 A. (Negative gesture).
- 5 Q. What did you tell him?
- 6 A. I told him that if he got help that I
- 7 wouldn't do anything with the tape.
- 8 Q. By that, you mean not call the police?
- 9 A. Not do anything with it.
- 10 Q. Not refer to it, not tell Minor about
- 11 it. Would you save it? Would you keep it?
- 12 A. Of course I kept it.
- 13 Q. Your plan at that time, even though you
- 14 might have told him that you wouldn't do
- 15 anything about, was that you were going to keep
- 16 this tape?
- 17 A. Yes, I was going to keep this tape. And it
- 18 -- when this all initially happened, I don't
- 19 know if you can put yourself in my place, but it
- 20 was absolutely something that I could not
- 21 process. I mean, this absolutely blew my life
- 22 out of the water, that you find a sexual tape of
- 23 your daughter and then you realize that your
- 24 husband is the one that made it. To be able to
- 25 process that information and try to figure out

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1 what to do and try to do the right thing, which
2 is why we're here today, we're trying to do the
3 right thing, it -- it takes a little while. You
4 can't just (fingersnap) decide that in an
5 instant.

6 Q. Well, let me ask you this, when you found
7 this tape -- your testimony is that you became
8 afraid, that you had fear for Minor from your
9 husband, Shawn; isn't that correct?

10 A. All I knew was that he could not live in my
11 home anymore after the tape. That, I knew would
12 not happen. He never did again.

13 Q. When you found the tape, you put it in the
14 camera, the camcorder, to be able to view it?

15 A. Yes, I did.

16 Q. All right. Did you keep the camcorder?
17 Did the police seize the camcorder?

18 A. No. When he moved out, he took his
19 camcorder.

20 Q. You didn't hold the camcorder for the
21 police so that they could look at it and
22 determine whether or not the video was made
23 by that camera?

24 A. (No verbal response).

25 Q. See whether or not his fingerprints were on

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1 the camera? See whether or not somebody else's
2 fingerprints were on the camera?

3 A. (No verbal response).

4 Q. Do you know whether they did any
5 fingerprint analysis of your bathroom door, or
6 the floor by your bathroom to see whether or not
7 anything other than family member fingerprints
8 were there?

9 A. I didn't think of that. I am not a
10 forensics specialist.

11 MICHAEL O'NEAL: I beg the court's
12 indulgence just a moment.

13 THE COURT: Certainly.

14 MICHAEL O'NEAL: That's all that I
15 have. Thank you.

16 THE COURT: Redirect?

17 SOLICITOR CORNWELL: Court's
18 indulgence.

19 THE COURT: Yes, ma'am.

20 SOLICITOR CORNWELL: Thank you, Your
21 Honor.

22 REDIRECT EXAMINATION

23 BY SOLICITOR CORNWELL:

24 Q. Ms. Glennon, you admit that you waited two
25 months to call the cops?

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1 A. Yes.

2 Q. Why did you wait that long?

3 A. Because to me it was the hardest moral
4 decision that I ever had to make, to tell my
5 daughter what had happened to her.

6 Q. So your concern was for your daughter?

7 A. My concern was for my daughter. Being a
8 victim myself, I did not want her to carry being
9 a victim around with her for the rest of her
10 life. But by the same token, I felt like if I
11 didn't tell her and he moved on to do something
12 else to some other child that I would feel
13 responsible because I had not acted on what I
14 knew.

15 Q. It took you a little while to come to that
16 decision?

17 A. It was very hard to tell my child what he
18 did to her.

19 Q. But the day that you found the tape, was
20 that the last day that the defendant stayed in
21 your home?

22 A. Yes, it is.

23 Q. And that was your decision?

24 A. That was my decision.

25 SOLICITOR CORNWELL: Nothing further,

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1 Your Honor.

2 THE COURT: Recross?

3 MICHAEL O'NEAL: Nothing, Your Honor.

4 THE COURT: Thank you. You may come
5 down.

6 SOLICITOR CORNWELL: Thank you, Ms.
7 Glennon.

8 (WITNESS STEPS DOWN)

9 THE COURT: Let's take about a ten-
10 minute break. Ladies and Gentlemen, I will let
11 you go to your jury room. Do not begin your
12 deliberations, don't discuss the case, we will
13 be with you in about ten minutes.

14 (JURY OUT @ 11:12 A.M.)

15 THE COURT: Anything from the State
16 before recessing?

17 SOLICITOR CORNWELL: Nothing, Your
18 Honor.

19 THE COURT: Anything from the
20 defendant?

21 MICHAEL O'NEAL: Nothing, Your Honor.

22 THE COURT: Thank you. We will be
23 at-ease for about ten minutes, basically.

24 SOLICITOR CORNWELL: Thank you, Your
25 Honor.

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1 (BRIEF RECESS)

2 (DEFENDANT PRESENT)

3 THE COURT: Please let the record
4 reflect that the defendant is present. Is the
5 State ready?

6 SOLICITOR CORNWELL: Yes, Your Honor.

7 THE COURT: Defendant ready?

8 MICHAEL O'NEAL: Yes, sir.

9 THE COURT: Invite the jury to
10 return.

11 (JURY IN @ 11:23 A.M.)

12 THE COURT: Thank you very much,
13 Ladies and Gentlemen. We are ready to continue.
14 Solicitor, you anything call your next witness.

15 SOLICITOR CORNWELL: Thank you, Your
16 Honor. The State calls Detective Jimmy Wells.

17 (WITNESS TAKES STAND)

18 JIMMY WELLS, being duly sworn to tell
19 the truth, the whole truth and nothing but the
20 truth, testified, as follows:

21 DIRECT EXAMINATION

22 BY SOLICITOR CORNWELL:

23 Q. Are you currently employed?

24 A. No, ma'am, I'm retired.

25 Q. Where are you retired from?

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- 1 A. Berkeley County Sheriff's Office.
- 2 Q. How long were you employed by Berkeley
- 3 County Sheriff's Office?
- 4 A. Eleven years.
- 5 Q. What was your last position and rank?
- 6 A. Sergeant in the detectives office.
- 7 Q. Can you describe your duties as a sergeant
- 8 in the detective's office?
- 9 A. Write reports, obtain warrants,
- 10 investigating crimes.
- 11 Q. Were you working with the Berkeley County
- 12 Sheriff's Office as a sheriff in July of 2010?
- 13 A. Yes, ma'am.
- 14 Q. In what capacity were you working the with
- 15 the Sheriff's Office in 2010?
- 16 A. As a sergeant.
- 17 Q. Did you receive a call complaining about
- 18 this defendant?
- 19 A. Yes, ma'am.
- 20 Q. Who made that complaint?
- 21 A. Ms. Karen Glennon.
- 22 Q. What is her relationship to the defendant?
- 23 A. Is his wife.
- 24 Q. What was her complaint?
- 25 A. Her complaint was that she found a tape

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1 that he'd videoed her daughter in the shower and
2 in the bathroom, nude.

3 Q. Upon receiving the complaint, what did you
4 do?

5 A. I went over to her house, sat down and
6 spoke with her. She had a small cassette tape
7 in her hand, like out of a video camera. She
8 was telling me what was on the tape, which we
9 couldn't play at the time because we didn't have
10 a video recorder. I got a statement from her,
11 asked her where she found it, and -- the chain
12 of custody, I give to her. I then went back to
13 the Sheriff's Office and had them put it on a
14 disk so that we could view it to make sure that
15 what she said was on the tape was on the tape.

16 SOLICITOR CORNWELL: May I approach,
17 Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR CORNWELL:

21 Q. I show you what has been marked as State's
22 Exhibit 6. Is this the video that she gave you?

23 A. Yes, ma'am.

24 Q. Once you were able to convert that to DVD,
25 were you able to watch it?

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1 A. Yes, ma'am.

2 Q. What was on the video?

3 A. The victim in the shower and then in the
4 bathroom, sitting on the commode, grooming,
5 doing female stuff.

6 Q. After looking at the video, were you able
7 to determine how the video was made?

8 A. It appeared -- based on what I've seen so
9 far, it appeared that he used a mirror, angling
10 it to the bottom of the door and then taking a
11 video camera and taping off the mirror itself;
12 to get the right angle to be able to see inside
13 the bathroom, because the crack was so small.

14 Q. And were you able to tell if he was able to
15 zoom in and out and focus?

16 A. At times you could see him zooming in and
17 out, in and out trying to get the right focus
18 and stuff, on the tape.

19 Q. After looking at the video, in your opinion
20 as an officer, did it look like the victim knew
21 that she was being filmed?

22 A. No, ma'am.

23 Q. Did it appear to you that she had given
24 permission for her to be filmed?

25 A. No.

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1 Q. After viewing the tape, what did you do?

2 A. I then obtained a warrant for the
3 defendant.

4 Q. What was the charge?

5 A. Voyeurism.

6 SOLICITOR CORNWELL: Please answer
7 any questions that defense counsel may have for
8 you.

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Cross-examine?

11 MICHAEL O'NEAL: May it please the
12 Court, Counsel.

13 CROSS EXAMINATION

14 BY MICHAEL O'NEAL:

15 Q. Mr. Wells, when you went over -- you got a
16 call from Karen Glennon, said she'd found this
17 tape. You went over to speak to her about it.

18 A. (Affirmative nod).

19 Q. She showed you that little cassette tape?

20 A. Yes, sir.

21 Q. Didn't she tell you that 'I've got a video
22 camera right here. We can plug it in and you
23 can watch it.'

24 A. No.

25 Q. Did she tell you whether or not she knew or

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1 thought that somebody had used a video camera
2 that was in her possession at that time to make
3 this video?

4 A. She didn't say.

5 Q. Did she ever say anything -- did she tell
6 you that she thought that her husband, Shawn
7 Glennon, had made the videotape?

8 A. Yes, sir.

9 Q. Did she say whether or not he'd used a
10 camera to make the videotape?

11 A. She said that he would have had to, because
12 it was in his drawer.

13 Q. Did you ask, 'Where's the camera? Do you
14 have the camera? Is the camera that he used to
15 make this tape here anywhere?'

16 A. When I was there she said that he had moved
17 out and had taken it with him.

18 Q. Okay. Did she tell you where he lived?

19 A. Yes.

20 Q. You were able to find him there to serve
21 the warrant, arrest him and put him in jail?

22 A. The warrants division was; yes, sir.

23 Q. Did you get the camera at that time to
24 determine whether or not it was used to make
25 this tape?

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1 A. No, sir, we did not get it at that time.

2 Q. Why not?

3 A. I wasn't the one who served the warrant.

4 I don't know, sir.

5 Q. Were you in charge of the investigation or
6 at least part of the investigation?

7 A. No, sir.

8 Q. Well, you're a sergeant. What use were
9 you? What did you go over there?

10 THE COURT: No, that's an
11 inappropriate question. Don't answer that
12 question.

13 CROSS EXAMINATION CONTINUED

14 BY MICHAEL O'NEAL:

15 Q. Well, who was in charge?

16 A. Sergeant Alteri was in charge of that case.

17 Q. And do you know if he -- do you know
18 whether or not he ever said, 'get that camera,
19 seize that camera, it's evidence'?

20 A. No, sir, he did not tell me that.

21 Q. All right. Did anybody in connection with
22 the Berkeley County Sheriff's Office go over to
23 the house and look for the mirror that you say
24 was used to make this videotape?

25 A. Not to my knowledge, sir.

1 Q. All right. I think in a couple of these
2 pictures -- I think this mirror right here is
3 what you all held in front of the camera to take
4 a picture of?

5 A. Yes, sir.

6 Q. Do you think that was the mirror that was
7 used?

8 A. It's possible.

9 Q. Did you check that mirror for fingerprints,
10 to see whether or not the defendant's finger-
11 prints were on it or if anybody else's were on
12 it?

13 A. No, sir, I did not.

14 Q. Did anybody ever say, 'Let's check the
15 door, let's check the floor' -- it's hardwood
16 floor in there, isn't it?

17 A. Yes, sir.

18 Q. To see whether or not the defendant's
19 fingerprints are on the floor by the bathroom
20 door, or anybody else's fingerprints?

21 A. No, sir. That wasn't done, that I know of,
22 sir.

23 Q. Did you run a rap sheet on Shawn Glennon?

24 A. Yes, sir.

25 Q. A criminal history on Shawn Glennon?

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1 A. Yes, sir.

2 Q. I'm sorry.

3 A. Yes, sir, one was run.

4 Q. Has he ever been in trouble before?

5 A. No, sir.

6 MICHAEL O'NEAL: That's all that I
7 have of this witness. Thank you.

8 THE COURT: Redirect?

9 SOLICITOR CORNWELL: Briefly, Your
10 Honor.

11 REDIRECT EXAMINATION

12 BY SOLICITOR CORNWELL:

13 Q. Detective Wells, in your experience as an
14 officer, how much time can go by with
15 fingerprints remaining on an object?

16 A. If you use an object or if somebody is
17 living in a residence, like on doors and stuff
18 like that right there, they are not going to
19 stay no more than people use those items. It
20 would be hard to determine, you know, if he used
21 items at all.

22 Q. And if a video was made two years prior to
23 being brought to the victim's attention or to
24 the police's attention, would that two years
25 make a difference in whether or not a

1 Q. That's all. Thank you.

2 THE COURT: You may come down.

3 (WITNESS STEPS DOWN)

4 THE COURT: Call your next witness,
5 please.

6 SOLICITOR CORNWELL: Thank you, Your
7 Honor. The State calls Minor

8 (WITNESS TAKES STAND)

9 Minor , being duly sworn to
10 tell the truth, the whole truth and nothing but
11 the truth, testified, as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR CORNWELL:

14 Q. Minor I am going to put this microphone
15 a little closer. I'm going to ask that you
16 speak as loudly as you can. I know that this is
17 kinda hard, embarrassing. We'll try to get
18 through it as quickly as we can. Minor how
19 old are you?

20 A. Twenty.

21 Q. Are you in school anywhere?

22 A. Yes, ma'am.

23 Q. Where are you in school?

24 A. USC.

25 Q. What are you studying at USC?

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- 1 A. Criminal Justice and Psychology.
- 2 Q. Do you know who Shawn Glennon is?
- 3 A. Yes, ma'am.
- 4 Q. Who is Shawn Glennon to you?
- 5 A. My stepfather.
- 6 Q. Do you see Mr. Glennon in the courtroom
- 7 today?
- 8 A. Yes, ma'am.
- 9 Q. Can you point him out to the jury and
- 10 describe what he is wearing?
- 11 A. He is over there (indicating defense
- 12 table), wearing a navy blue suit.
- 13 SOLICITOR CORNWELL: For the record,
- 14 show that the witness pointed to the defendant.
- 15 THE COURT: It so reflects.
- 16 DIRECT EXAMINATION CONTINUED
- 17 BY SOLICITOR CORNWELL:
- 18 Q. How old were you when your mom married the
- 19 defendant?
- 20 A. Fourteen.
- 21 Q. Do you know why we are here today?
- 22 A. Yes, ma'am.
- 23 Q. Why are we here?
- 24 A. Because my stepfather made a video of me
- 25 while I was in the bathroom.

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- 1 Q. How did you find out that the defendant
2 made a tape of you?
3 A. My mom told me.
4 Q. Have you seen the tape?
5 A. Yes, ma'am.
6 Q. After looking at the tape, were you able to
7 determine where the tape was made?
8 A. Yes, ma'am.
9 Q. Where was it made?
10 A. In my mom's bathroom.
11 Q. Was it normal for you to use your mom's
12 bathroom?
13 A. No, ma'am.
14 Q. Why were you using your mom's bathroom?
15 A. Because I had just finished having ACL
16 surgery and I couldn't get in and out of the
17 bathtub upstairs for me to shower.
18 Q. How old were you when you had your ACL
19 surgery?
20 A. Seventeen.
21 Q. How long after your surgery did you have to
22 use your mom's bathroom?
23 A. About two months.
24 Q. And when you looked at this tape, were you
25 able to determine if this tape was made during

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1 that time?

2 A. Yes, ma'am.

3 Q. How were you able to tell?

4 A. Because I had on my high school ring, which
5 I had just gotten; which I don't wear anymore
6 because I got a new ring when I graduated. And
7 I had an anklet that I put on after surgery.
8 Then the scars from surgery.

9 Q. What year did you have your ACL surgery?

10 A. In 2008.

11 Q. What were you doing in the bathroom when
12 the tape was filmed?

13 A. Grooming myself.

14 Q. Did you -- did you give the defendant
15 permission to film you?

16 A. No, ma'am.

17 Q. Did you know that you were being filmed?

18 A. No, ma'am.

19 Q. Would you ever give anyone permission or
20 let anybody film you in a bathroom?

21 A. No, ma'am.

22 SOLICITOR CORNWELL: I've got nothing
23 further. Please answer any questions that the
24 defense may have for you.

25 THE COURT: You may cross-examine.

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1 MICHAEL O'NEAL: May it please the
2 Court, Counsel.

3 CROSS EXAMINATION

4 BY MICHAEL O'NEAL:

5 Q. Minor I guess this was a shock to you,
6 for your mother to tell you that she thought
7 that Shawn had made a videotape of you in the
8 bathroom. Would that be fair to say, that it
9 was a shock to you?

10 A. Yes, sir.

11 Q. Had you ever had any kind of worry or
12 concern about Shawn up until your mom told you
13 that?

14 A. No. No, sir.

15 Q. Did y'all have a good relationship up until
16 your mom told you about that?

17 A. I mean, it was an average relationship.
18 We didn't really -- it wasn't anything special.

19 Q. Did you ever feel, up to the moment when
20 your mom told you that she thought Shawn made
21 the tape, uncomfortable around Shawn? Sexually?

22 A. No.

23 Q. Not at all?

24 A. No.

25 Q. All right. Did you ever catch Shawn

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1 looking at pornography on the family computer?

2 A. I didn't. No, sir.

3 MICHAEL O'NEAL: That's that I have.

4 THE COURT: Redirect?

5 SOLICITOR CORNWELL: Nothing further,
6 Your Honor.

7 THE COURT: You may come down.

8 (WITNESS STEPS DOWN)

9 THE COURT: Call your next witness.

10 SOLICITOR CORNWELL: Your Honor, that
11 is all the witnesses that the State has.

12 THE COURT: Very well. Ladies and
13 Gentlemen, there are some matters of law that I
14 now need to take up out of your presence. I am
15 going to ask you to go to your jury room. Do
16 not begin your deliberations, do not discuss the
17 case. We will be with you as quickly as we can.
18 Thank you.

19 (JURY OUT @ 11:26 A.M.)

20 THE COURT: Any Motions from the
21 State at this time?

22 SOLICITOR CORNWELL: Nothing from the
23 State, Your Honor.

24 THE COURT: Any Motions from the
25 defendant?

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1 MICHAEL O'NEAL: Judge, I would renew
2 my earlier Motion about the photographs,
3 suppression of the photographs.

4 And I guess this is the point where I
5 am supposed to be making a Motion for a directed
6 verdict. My understanding of the law is that
7 you're supposed to look at the evidence produced
8 by the State in the light most favorable to the
9 State and figure out whether or not a reasonable
10 jury could deduce guilt from that. I think that
11 I am supposed to make a Motion for directed
12 verdict as a matter of form, so I make a Motion
13 for directed verdict at this time.

14 THE COURT: Okay. Insofar as the
15 renewed Motion concerning the photographs, which
16 are photographs verified in testimony given,
17 that it described the scene where this allegedly
18 occurred, and your objection was that under Rule
19 5 they didn't give it to you. According to the
20 statement of the solicitor, it was done
21 yesterday. Rule 5 even contemplates this. It's
22 just the same as interrogatories on the civil
23 side. Rule 5(c) says a "continuing duty to
24 disclose." That was done. The Motion was made
25 -- other than the fact that you didn't know that

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1 they were there, you knew where this allegedly
2 occurred, so the -- so the reasons previously
3 given are reiterated, in addition to the
4 supplement concerning Rule 5(c), which I think
5 the State is in compliance with Rule 5(c).

6 Concerning the Motion to grant a
7 directed verdict, in the light most favorable to
8 the State certainly the reasonable inference is
9 that having that in his possession and -- in an
10 area that it would be easy to infer that it was
11 his obviously indicates that it was -- I think
12 the reasonable conclusion is that he took it,
13 he's retaining it. For those reasons, I think
14 the State has met its burden of proof. So,
15 thank you.

16 MICHAEL O'NEAL: Thank you.

17 SOLICITOR CORNWELL: Thank you, Your
18 Honor.

19 THE COURT: Now, have you discussed
20 with the defendant his right to testify or not
21 to testify?

22 MICHAEL O'NEAL: I have, Your Honor.

23 THE COURT: Has he indicated to you
24 what he wishes to do?

25 MICHAEL O'NEAL: He wants to take the

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1 stand, Judge.

2 THE COURT: Very well. Mr. Glennon,
3 at his point -- you may remain seated. You have
4 had an opportunity to discuss with your attorney
5 your right to testify or not to testify. Is
6 that correct, sir?

7 DEFENDANT: That is correct, Your
8 Honor.

9 THE COURT: And you've heard me
10 explain to the jury the basic principle of law,
11 that is that you absolutely have nothing to
12 prove or disprove. That if you were to maintain
13 that position and not testify, which would be
14 your absolutely right, I would further instruct
15 the jury that they could not consider that in
16 any fashion whatsoever. And I would further
17 reiterate that that's not unusual, because you
18 don't have anything to prove or disprove. But
19 it is certainly your right to testify. And
20 that's -- you understand that?

21 DEFENDANT: Yes, sir, I do.

22 THE COURT: And you've had an
23 opportunity to discuss strategy, discuss all
24 aspects of testimony with your lawyer?

25 DEFENDANT: I have, Your Honor.

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1 THE COURT: And after having had time
2 to reflect upon that, you're now desirous of
3 taking the stand?

4 DEFENDANT: Yes, I do, Your Honor.

5 THE COURT: You understand that you
6 will be, then, thereby relinquishing the right
7 to remain silent?

8 DEFENDANT: I do.

9 THE COURT: You further understand
10 that the State will have the opportunity and the
11 right to cross examine you?

12 DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you know of anything
14 that is influencing you or affecting your
15 ability to reason, to make this decision?

16 DEFENDANT: Absolutely none.

17 THE COURT: Your cognitive abilities
18 are good?

19 DEFENDANT: Yes, sir, they are.

20 THE COURT: You're not under the
21 influence of any alcohol or any medication?

22 DEFENDANT: No, sir.

23 THE COURT: Very well. I find that
24 Mr. Glennon has made a conscious decision, one
25 that he's clearly demonstrated by his responses

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1 that he has given -- has considered the decision
2 that he makes, and that he has elected to take
3 the stand, which is absolutely his right.

4 Are you satisfied with the manner in
5 which your attorney has advised you concerning
6 this issue?

7 DEFENDANT: Absolutely, Your Honor.

8 THE COURT: Very well. It is done
9 fully, with full advice of counsel with whom he
10 is totally satisfied.

11 Mr. Glennon, that's great, that's fine,
12 but if at any point between now and the time
13 that you put your hand on that Bible, you've
14 decided that you wish to exercise your right to
15 remain silent, if you will make that known to
16 your attorney, I will excuse the jury and we
17 will revisit this. But unless I hear from you,
18 I am going to assume that you're comfortable
19 with your decision. Is that fair?

20 DEFENDANT: Yes, sir. Thank you.

21 THE COURT: Very well. Are you ready
22 or do you need a moment ---

23 MICHAEL O'NEAL: No, sir. Ready.

24 THE COURT: Okay, let's invite the
25 jury to return, please.

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1 (JURY IN @ 11:41 A.M.)

2 THE COURT: Ladies and Gentlemen,
3 thank you very much. We are now ready to
4 continue in this matter.

5 As I mentioned to you when we gave our
6 openings -- the State has now concluded its
7 presentation in this matter. I mentioned to you
8 that while Mr. Glennon had absolutely nothing to
9 prove or disprove, that if he wished to present
10 any testimony that it would now be his turn.
11 Mr. O'Neal, as I understand it, you wish to
12 present testimony for the jury's consideration?

13 MICHAEL O'NEAL: That's correct, Your
14 Honor.

15 THE COURT: You may call your first
16 witness.

17 MICHAEL O'NEAL: I call Shawn Glennon
18 to the stand. Stand and be sworn, Mr. Glennon.

19 (WITNESS TAKES STAND)

20 SHAWN GLENNON, being duly sworn to tell
21 the truth, the whole truth and nothing but the
22 truth, testified, as follows:

23 DIRECT EXAMINATION

24 BY MICHAEL O'NEAL:

25 Q. Shawn, I am going to ask you to lean

1 forward to the microphone. Everybody has got to
2 be able to hear you, the jury has got to be able
3 to hear you. The court reporter, the court,
4 everybody. So speak clearly. How old are you,
5 sir?

6 A. Thirty-nine.

7 Q. Where are you from?

8 A. Connecticut.

9 Q. Tell us a little bit about your career,
10 what did you used to do for a living?

11 A. In 2002, I joined the Army.

12 Q. All right.

13 A. Served at Fort Hood, Texas. I was deployed
14 to Iraq in March of 2004.

15 Q. What was your MOS, what was your
16 speciality?

17 A. I was a 19 kilo tank operator.

18 Q. All right.

19 A. M1 Abrams.

20 Q. You went over to Iraq -- you ended up not
21 really serving in a tank, you ended up in some
22 other branch or some other speciality?

23 A. That's correct. Because of our mission in
24 Iraq, my battalion was downsized. I was chosen
25 to serve with military intelligence.

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1 Q. All right. Let me ask you this, up to that
2 point -- up to that point that you joined the
3 Army and went over to fight against our enemies,
4 you'd never been in trouble with the law before?

5 A. Never.

6 Q. Up to today, other than this arrest, have
7 you ever been in trouble with the law before?

8 A. Never.

9 Q. Ever been arrested for anything?

10 A. Never.

11 Q. All right. Now, the jury has already heard
12 a little bit about but tell us about the
13 internet and tell us about Soldiers Angels,
14 those type of organizations.

15 A. I received a letter from Karen Glennon.
16 She stated basically that she had a son that had
17 served and she wanted to keep sending care
18 packages.

19 The first letter that I received stated she
20 was in her forties and she -- what was the word,
21 the terminology that she used? She wanted to
22 almost be like another mom.

23 I responded to her letter and said, 'I
24 appreciate your letter. I am very grateful for
25 you. It's nice to have letters from home,

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1 but...', I said, 'you'll forgive me if I don't
2 think of you as my mother because...' -- she's
3 in her forties -- 'you're not that much older
4 than me.'

5 From then on the correspondence back and
6 forth was pleasant and it was nice, and I
7 received care packages. As time passed, our
8 romantic interest grew. We definitely expressed
9 mutual romantic interest.

10 Q. Let me stop you right there, Shawn. What
11 did she tell you about herself? How did she
12 describe herself?

13 A. Best I recall, she stated that she was in
14 her forties, that she was married and had two
15 kids. It wasn't until later in the romance,
16 after our romance had really started through
17 letters, it wasn't until then that she had
18 disclosed that she had been married previously
19 and that she had five children.

20 Q. Let me stop you right there. Now, when
21 you talk about letters, are we talking about
22 old-fashioned snail mail or are we talking about
23 e-mail?

24 A. Most of the letters written by her were
25 regular letters. Regular snail mail.

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1 Q. Okay.

2 A. There were a few e-mails that were
3 exchanged. I didn't have a whole lot of
4 opportunity to get on the internet over there.
5 Once in a blue moon I had an occasion to make a
6 phone call. That was the extent of our
7 conversation. It was mostly just letters.

8 Q. All right. So I think the testimony from
9 Ms. Glennon was that you mustered out in Texas.

10 A. That's right.

11 Q. What was your plan with regard to her? Did
12 you have one?

13 A. I returned back -- I was redeployed back to
14 the States in March of 2005. I had thirty days
15 leave. I wanted to go home, see my folks. So I
16 took the long way around. I drove from Texas --
17 and at that point in time, before I had returned
18 to the States, Karen and I had discussed about
19 meeting. She flew out to Texas. She met me out
20 there in Texas when I got back.

21 Q. Is that when you first heard about the real
22 status, how many marriages that she'd had, the
23 number of children she had?

24 A. When she got to Texas, obviously we were
25 romantically involved. That's when all the

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1 information came out about not only the two
2 other marriages but a third one that she'd had
3 in college. It was -- (pause) -- it was a bit
4 overwhelming. I'll be honest, it took me a
5 little bit to digest and process it all.

6 Q. But it obviously didn't make that much of a
7 difference because you continued on with her?

8 A. Absolutely. She ---

9 Q. What happened?

10 A. She stayed in Texas, I don't know, maybe a
11 week and then she flew back to South Carolina.
12 By that point in time, my leave papers had come
13 through. I drove across the States, I drove to
14 South Carolina, I stayed there with her for a
15 couple of days, maybe a week. I don't remember
16 exactly what it was. We hit it off. I met her
17 kids, they were great kids. Our relationship
18 continued to grow. The more we met, the more we
19 talked, the more we had in common.

20 Q. Let me stop you right there. Had you been
21 married before?

22 A. Never.

23 Q. This was your first marriage?

24 A. My very first marriage. That's correct.

25 Q. Tell us about how the relationship went on,

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1 how y'all came to be married.

2 A. Well, when I left there, I went -- I
3 continued to Connecticut, visited with my family
4 for the rest of my thirty days leave. I left
5 Connecticut probably a week or so earlier than I
6 should have. I drove back to South Carolina. I
7 originally was intending to go right back to
8 Texas. I drove back to South Carolina simply
9 because by that point in time, after the time
10 we'd spent together, the things we talked about,
11 the things that we had in common, I -- I
12 followed my heart instead of my head. I was
13 convinced that I was madly in love and that was
14 it.

15 Q. When were y'all married?

16 A. September 2006.

17 Q. Here in the lowcountry?

18 A. That's correct.

19 Q. You moved into her house?

20 A. Not right away. She was currently still
21 married. Actually when I was discharged from
22 the Army, my final ETS in June, we had decided
23 that I was going to move to South Carolina.
24 That was a mutual decision.

25 I got here to South Carolina. She at the

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1 time was currently still living with her
2 husband, but she was living in a bedroom
3 upstairs over the garage. She had not had
4 any real relationship with him for some time.
5 It presented a bit of a problem for us.

6 Basically when I first got here in June, I
7 lived in a hotel for a while. I lived in -- one
8 of her friends let me stay in her room for a
9 while. There were multiple places that I
10 bounced around to. Ultimately ---

11 Q. To continue this relationship with her?

12 A. To continue, yes. That relationship
13 continued. As often as we could -- because of
14 her marriage, she was pending a divorce. That
15 divorce limited how often and where we could see
16 each other. The divorce stipulated that her
17 children were not to be around any male company
18 that she might have. So obviously we respected
19 that. That meant that a lot of times that were
20 spent we had hotel rooms, we went to different
21 hotel rooms just to spend time together. When
22 we could, we spent time together with the kids
23 -- you know, just doing activities.

24 Q. How old was Minor when you first met
25 her?

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1 A. Fourteen.

2 Q. How old was Brian?

3 A. I believe eleven or twelve.

4 Q. Okay. You got married?

5 A. (Affirmative nod).

6 Q. Did you move in with her in her house after
7 you were married?

8 A. That's correct. After she -- her divorce
9 was finalized and she purchased the current
10 house that she lives in now. Her and the two
11 kids moved in there. I didn't move in right
12 away because it wasn't until September when we
13 got married.

14 Q. Right.

15 A. I don't remember the exact date when she
16 purchased her home but there was a little bit of
17 gap there, but I moved in with them after we got
18 married.

19 Q. What was your status with regard to the
20 kids? Were you their father, their stepfather,
21 their bud. I mean, how was that set up?

22 A. There was a lot of discussions on that
23 between me and Karen. Basically it boiled down
24 to -- her and I discussed it and we agreed I am
25 not their father. They already had a dad and I

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1 wasn't going to try to replace him. She
2 basically told me that she wanted me to be a
3 stepdad, a father figure. We wanted help to
4 raise them the right way to be good people, and
5 I could not agree more. Now, having never been
6 married, never having had kids of my own, I was
7 a little out of my element but I was definitely
8 up for any challenge, because I would -- I loved
9 her, I was madly in love with her.

10 Q. Tell me how the marriage went. According
11 to her on her direct examination, she said that
12 three months after y'all got married she
13 discovered that you were a hopeless pornograph,
14 uh, pornography addict. Is that true, are you a
15 pornography addict?

16 A. Absolutely not. No.

17 Q. Have you ever looked at porn?

18 A. Yes, I have. Yeah.

19 Q. Have you looked at it for hours on end and
20 -- on a million ---

21 A. No.

22 Q. --- different websites?

23 A. No. Absolutely not.

24 Q. Tell us about how the marriage went.

25 A. As far as I was concerned, from my own

- 1 perspective the first couple of years the
2 marriage was -- the first year, the marriage was
3 great. There were some bumps along the road,
4 getting to know each other. Initially there was
5 some resistance when we got married. Minor
6 wasn't happy with that, you know. There were
7 some bumps, but we worked them out. There was a
8 lot of talking between us. That was the key,
9 communicate/talk.
- 10 Q. Where did you work, did you have a job at
11 that time?
- 12 A. Initially when I got here, I did not have a
13 job. I was job hunting. Eventually I took a
14 job installing cable TV.
- 15 Q. Okay.
- 16 A. That lasted just about a year, maybe a
17 little less. Then she, Karen, made a
18 recommendation at that hospital that I should be
19 interviewed for a security job.
- 20 Q. What hospital?
- 21 A. At the Medical University.
- 22 Q. That's where she worked?
- 23 A. That's correct.
- 24 Q. Okay.
- 25 A. So I went -- I applied, I went for the

1 interview and I got the job. My manager, when
2 he interviewed me told me that it was my merits
3 that got me the job, that it wasn't her
4 recommendation, because of my experience.

5 Q. Let's take it up on to, say, mid-2010, June
6 or July of 2010. How was your relationship with
7 Minor by then?

8 A. I felt it was great. I mean, obviously --
9 like any father, you know, I -- (pause) -- I
10 considered her my daughter. No matter what
11 terminology that you want to put on it, I
12 considered her my daughter.

13 Q. How about Brian, the other son?

14 A. Absolutely, he was my son. As well as the
15 three older children, even though they were
16 adults, the two -- the two older sons were in
17 the Army, so to me they were not only my kids,
18 they were my brothers in arms. I mean, I would
19 do anything for them. They were great. They
20 are awesome people.

21 Q. How was your relationship with Karen,
22 coming up into the summer of 2010?

23 A. By then our relationship had seriously
24 started to degrade.

25 Q. Now, she testified that you were looking at

1 pornography all the time, that she got mad about
2 it, didn't like it. Tell us, what was the
3 nature of your conflict at that time. Was it
4 because you were looking at pornography all the
5 time?

6 A. There was a lot of conflicts.

7 Q. What was it about? Tell us some of the
8 reasons you and she had conflicts.

9 A. She, probably about halfway through our
10 second year of marriage, and that's just a rough
11 guess, started accusing me of being unfaithful;
12 saying that I was going to work and hitting on
13 nurses. That accusation stemmed from the fact
14 that I worked a lot of overtime.

15 Q. Were you? Were you hitting on nurses?

16 A. Absolutely not. I had a professional
17 relationship. I was security. These nurses had
18 to know that if they were ever in danger, from a
19 family, an irate family member, a patient,
20 anything like that, these nurses had to know
21 that they could rely on security to be there to
22 protect them. That's what I did in the Army.
23 That's what I did at the hospital. That was my
24 job, I took it seriously.

25 Q. Did you deny that you were being

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1 unfaithful?

2 A. Absolutely, adamantly.

3 Q. Did she accept that and move on?

4 A. The first few times she accepted it but the
5 more that she accused me of it, the less she
6 started believing me when I told her that it
7 wasn't true.

8 Q. Okay. Did she ever accuse you of any kind
9 of lecherous behavior towards Minor

10 A. Absolutely not.

11 Q. All right. Let's -- let me ask you about
12 the video camera. Did you own a video camera
13 when you got married?

14 A. Yes, I did.

15 Q. Did you have it in Iraq?

16 A. Yes, I did.

17 Q. Did you bring it back to America when you
18 came back to America?

19 A. I did.

20 Q. Is that the video camera that was there in
21 the house?

22 A. It was.

23 Q. All right. We've heard testimony that it
24 was normally kept on the mantel by the
25 fireplace. Is that true?

1 A. That's true. Yes. Because the battery --
2 it was an old camera. I'd ought it in, like,
3 2000. The battery was the original battery. It
4 was old, it didn't hold a charge. So we kept it
5 on the mantel all the time. The plug was right
6 here and we kept it plugged in, so that the
7 battery would stay charged.

8 Q. Did you and Karen and the kids use the
9 camera?

10 A. Yes.

11 Q. What for?

12 A. For everything, from videotaping the dog
13 playing in the house to some of her softball
14 games to -- just whatever struck us as fancy
15 that we wanted to record. Some holidays:
16 Christmas, Easter.

17 Q. All right. Let's talk about the Spring of
18 2010. Tell us about discovering the videotape.

19 A. At this point in time our relationship was
20 severely on the rocks and -- mostly it had
21 started around February of that year, around
22 Valentine's Day. That's when it was -- it was
23 just touch and go. At any moment -- it was just
24 bad.

25 Q. What happened?

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1 A. Valentine's Day. You have to understand
2 that I worked ---

3 Q. I am not asking about Valentine's Day. I
4 want to talk about when you discovered this
5 tape.

6 A. Oh.

7 Q. Tell the jury about how you came to
8 discover this video?

9 A. The tape, (affirmative nod). We had been
10 fighting a lot, we'd accused me of not doing
11 anything around the house, not pulling my share
12 of work. So I decided that I was going to try
13 to clean the house. Well, this video camera had
14 been sitting on the mantel for God know how
15 long, weeks, months. I started cleaning the
16 house, picking stuff up, whatever, whatever.

17 I picked the camera up. I figured that it
18 hasn't been used in for some long that I might
19 as well put it away. But before I did, I looked
20 at the camera to see what was on the tape -- was
21 it Christmas, was it Easter. I wanted to see
22 what was on the tape so that I could label it or
23 get to the end of the tape there.

24 Q. You played it on the ---

25 A. I started playing it and -- (pause). I had

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1 initially the same reaction as Karen. I was
2 dumbfounded, absolutely dumbfounded when I saw
3 that.

4 Q. Did you recognize it for what it was?

5 A. I did, yes.

6 Q. Did you make that tape?

7 A. Absolutely not.

8 Q. Did you know about the tape before you
9 found it in the camera on the mantel?

10 A. No.

11 Q. What did you think?

12 A. Well, when my brain finally started working
13 again and I could think clearly, I just -- I
14 didn't know. I didn't know what had happened,
15 who could have done this to my daughter.

16 Q. What did you do?

17 A. I sat there -- first off, I have a really
18 bad temper. I was diagnosed with PTSD, so I was
19 irate. Absolutely irate, storming around the
20 house and I was just cursing up and down,
21 waiting for Karen to come home so that I could
22 show her that tape; because all through our
23 relationship whenever we had a problem we
24 tackled it together, we talked about it, we put
25 our heads together. That's what I wanted to do.

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1 I wanted to wait for her to come home so that I
2 could show her this tape and ask her, 'What can
3 we do about this? This is a problem that we
4 have to deal with together.'

5 Q. What did you decide to do?

6 A. Well, as time went by obviously my temper
7 cooled and I started thinking, started thinking
8 clearly. Here it's been months when our
9 relationship has been completely on the rocks.
10 At any moment I could walk out, she could walk
11 out. I started getting worried because all
12 these things that she's accusing me of things,
13 I've been denying them and she didn't believe
14 me. And here I am, I started thinking. I
15 started thinking, 'If I show her this tape,
16 she's not going to believe me. This could be
17 the end of my marriage.' This is my marriage.
18 I wanted to save my marriage.

19 Q. What did you decide to do?

20 A. I decided to hide the tape.

21 Q. What was your purpose in doing that?

22 A. Because I wanted her -- our relationships
23 had always been ups and down, serious rocky
24 roads, lots of great spots. I wanted to wait
25 until, you know, -- usually a week or so we're

1 back on a conversational level, we're talking
2 again. I wanted to ---

3 Q. That didn't happen though, did it?

4 A. It didn't. I wanted to wait until that
5 point in time until I could show her this tape,
6 so that she wouldn't automatically think that it
7 was me. So that we could tackle this.

8 Q. What happened with regard to the tape,
9 next?

10 A. What happened was -- I hid the tape in my
11 drawer, because the last thing I wanted was for
12 the kids to find it. I hid the camera because
13 obviously somebody had been in the house,
14 somebody had done this to my daughter. So I hid
15 the camera because, God forbid, I did not want
16 something like that again.

17 Q. Let me ask you, you lived in the house at
18 the time?

19 A. Yes.

20 Q. Did anybody ever come in the house besides
21 family members?

22 A. Brian had friends over repeatedly. Most of
23 the time, like I said, my work schedule, I was
24 at work. So most of the time Karen said -- sent
25 me a text message, 'Brian is having friends

1 over.' Okay.

2 Q. How about Courtney, did she ever have
3 friends over?

4 A. She did have friends over. There was an
5 occasion ---

6 SOLICITOR CORNWELL: Objection, Your
7 Honor.

8 THE COURT: Approach.

9 (OFF RECORD SIDEBAR)

10 THE COURT: Under 404, I sustain the
11 objection.

12 SOLICITOR CORNWELL: Thank you, Your
13 Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY MICHAEL O'NEAL:

16 Q. What happened next with regard to the
17 videotape?

18 A. What happened next is that I was at work
19 one night. She found it. As she stated, she
20 was blowing up my phone with one text after
21 another. They weren't one-page texts. These
22 were two and three pages, you had to scroll
23 through to read them.

24 Q. Give us the gist of what she was saying.

25 A. I would rather not use that kind of

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1 language in court.

2 Q. Well, give us an idea of what she was
3 saying?

4 A. Basically she was calling me -- irate.
5 Calling me a pervert and how could I and I was
6 just a filthy man, just cursing me out left and
7 right.

8 Q. Did you admit that you make the tape at
9 that time?

10 A. At that time, no. I tried to call her
11 because I knew what she was talking about.
12 I tried to call her on the phone. Here I am at
13 work, I'm supposed to be doing my job and I'm
14 outside. I tried calling her repeatedly. She
15 never answered the phone. I could barely get a
16 text message through because she kept sending
17 them. I tried to deny it. I tried to tell her,
18 'let me explain, give me a chance.' She
19 wouldn't have any of it.

20 Q. Did you ever get a chance to talk to her
21 and explain to her how you found it?

22 A. No.

23 Q. What happened next?

24 A. The final conversation on the phone, she
25 sent me a text message, and I will never forget

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1 this. She sent me a text and it said, "If you
2 tell me the truth and admit that you did it, I
3 will not press charges. However, if you lie and
4 you deny it, I am calling the police right now
5 to have you arrested."

6 Q. What happened next?

7 A. What can I do? I ---

8 Q. What did you do?

9 A. I said that I did it. I sent her a text
10 and I said I did it.

11 Q. Was that true?

12 A. No.

13 Q. Why did you do that?

14 A. Because she wouldn't have accepted any
15 other answer otherwise, she would have accused
16 me of lying. And, secondly, I wanted to tell
17 her the truth. She needed to know the truth
18 about what happened to our daughter.

19 Q. Was this -- was this on or about May 27th,
20 2010?

21 A. Yes.

22 Q. What happened next? Did she call the cops
23 and have you arrested?

24 A. No.

25 Q. Did you ever get a chance to speak to her

1 face to face about what was going on?

2 A. Not really, no.

3 Q. I mean, later on?

4 A. Later.

5 Q. Not that night but later on?

6 A. No.

7 Q. Never?

8 A. There were opportunities but nothing that
9 presented itself. No.

10 Q. All right. So did she kick you out of the
11 house?

12 A. She did.

13 Q. Where did you move to?

14 A. She said that I had to leave. I moved to
15 an apartment in Ladson.

16 Q. Did you ever go back to the family home?

17 A. Yes.

18 Q. How many times?

19 A. Many times, a week or more always every
20 day. She called ---

21 Q. Wait a minute. Wasn't there a condition
22 of your bond when you got out of jail on this
23 charge that you weren't supposed to have
24 contact?

25 A. That was before I was arrested.

1 Q. Oh, that's right. This was before you got
2 arrested. This was when ---

3 THE COURT: Mr. O'Neal, let's ask
4 questions and don't make argument to the jury,
5 please.

6 MICHAEL O'NEAL: Thank you, Your
7 Honor.

8 THE COURT: Thank you, sir.

9 DIRECT EXAMINATION CONTINUED

10 BY MICHAEL O'NEAL:

11 Q. Did she invite you back to the house?

12 A. Yes.

13 Q. For what? What did you'all do?

14 A. She wanted me to finish fixing her upstairs
15 bathroom, which was damaged because we'd found
16 the toilet -- the toilet in the bathroom
17 upstairs, for the kids, had been damaged, the
18 floorboards had been saturated. So I had to rip
19 the toilet out, cut the floor out, rip the floor
20 up. I did all of that. And she kept calling me
21 back because she wanted me to finish tiling the
22 floor upstairs in the bathroom.

23 Q. Did you do anything else at the family home
24 during that time besides tile the family
25 bathroom?

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1 A. Yeah. She asked me to stay for dinner, to
2 watch TV with them, and -- you know, so that's
3 what I did. I took every opportunity to spend
4 time with them. They're my family.

5 Q. Ultimately you got arrested?

6 A. I did.

7 Q. Shawn, did you make that tape?

8 A. No, I did not.

9 Q. Did you know anything about that tape
10 before you found it?

11 A. I knew absolutely nothing about it.

12 MICHAEL O'NEAL: That's all the
13 questions that I have. Answer any questions
14 that counsel may have.

15 THE COURT: You may cross-examine.

16 SOLICITOR CORNWELL: Thank you, Your
17 Honor.

18 CROSS EXAMINATION

19 BY SOLICITOR CORNWELL:

20 Q. You admitted to Karen Glennon that you made
21 this tape?

22 A. Yes, I did, as I just stated.

23 Q. Then you just said that you didn't make the
24 tape.

25 A. I admitted to her that I made the tape.

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1 Q. Okay.

2 A. That wasn't the truth.

3 Q. So today you're saying that you didn't make
4 the tape.

5 A. Absolutely not.

6 Q. Were you lying then or are you lying now?

7 A. I was lying then.

8 Q. Why would you admit to making a tape like
9 that, that you -- if you didn't make it?

10 A. As I said, she was irate. I'd been married
11 to her. I knew what her temper was, I knew her
12 personality. If I didn't admit to it, she would
13 have me arrested. And if I was arrested, she
14 would know the truth. I would never be able to
15 tell her the truth about what happened to our
16 daughter.

17 Q. You said that your marriage was rocky at
18 that time?

19 A. Very.

20 Q. That was because you were watching porn?

21 A. No.

22 Q. Did you watch porn?

23 A. As I stated, I saw some. I've looked at
24 here and there; yes, obviously.

25 Q. And you said that when you first move to

1 South Carolina that you were a cable guy, that
2 you installed cable?

3 A. Not right away. It took me probably a
4 month or so but I got a job installing cable TV.

5 Q. Okay. So you have audio and video
6 capabilities. You would have to know how to
7 hook things up, do that type of thing to install
8 cable?

9 A. Well, -- (affirmative nod), limited
10 ability. I mean, all it really is is just
11 screwing the cable into the wall, and that's
12 about it. All I did was hook up cable TV.

13 Q. Was this your camcorder?

14 A. It was.

15 Q. You had used this camcorder before?

16 A. Yeah.

17 Q. You had experience with the camcorder?

18 A. I knew how to turn the On button and push
19 Record and pull the zoom in and out, yeah. I
20 mean, it's all labeled on the camera.

21 Q. You said that you were upset when you found
22 this tape?

23 A. Yes.

24 Q. You were angry that you found this tape,
25 that you couldn't believe that somebody would

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1 make this type of tape?

2 A. I don't think that there is a word to
3 actually describe all of the emotions that I
4 felt.

5 Q. But you decided not to tell the mother ---

6 A. No.

7 Q. --- that you'd found the tape?

8 A. (Affirmative nod), I did.

9 Q. You hit the tape?

10 A. Yes.

11 Q. If you were so irate and so disgusted, why
12 not destroy the tape?

13 A. Because that wouldn't answer the question
14 of who did this to our daughter.

15 Q. Eventually Karen found the tape, correct?

16 A. That's correct.

17 Q. And you told her that you made the tape?

18 A. As I stated, yes.

19 Q. Did she ask you to go to therapy for the
20 tape?

21 A. She did.

22 Q. Did you?

23 A. I did. It wasn't so much as a request as
24 it was a demand.

25 Q. You didn't make the tape, why did you need

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1 to go to therapy for the tape? Why would you
2 agree to go to therapy for a tape that you never
3 made?

4 A. Because that was the ultimatum that she
5 gave me. Those were the stipulations. She
6 won't press charges if I go to therapy with her.
7 She stated, "It will be our dirty little secret,
8 we'll keep this secret and we will go to
9 therapy, we'll get marriage counseling and we
10 will do what we have to do and I won't press
11 charges."

12 Q. If you didn't make the tape, why were you
13 afraid of her pressing charges?

14 A. Because if I'm arrested, there's no way
15 that I could find out who did this to my
16 daughter. Because if I am arrested, I can't be
17 with my family anymore.

18 Q. But you were arrested. Correct?

19 A. That's correct.

20 Q. Did you make any statements to the police
21 when you were arrested?

22 MICHAEL O'NEAL: Judge, I would
23 object.

24 THE COURT: Overruled. He's on the
25 stand. Thank you.

1 CROSS EXAMINATION CONTINUED

2 BY SOLICITOR CORNWELL:

3 Q. Did you make any statements to police after
4 you were arrested?

5 A. Not that I recall.

6 Q. Did you want to press charges against your
7 wife?

8 A. I asked what my legal options were. As a
9 police officer, I asked them as an expert in the
10 law what my options were.

11 Q. Did you tell the police that you wanted to
12 press charges against your wife because you did
13 what she asked for making the tape and she's
14 pressing charges anyway?

15 A. I asked what my legal options were, and
16 they said that I would have to take that up with
17 a different police/county. That was the only
18 answer that they gave me.

19 Q. But you were concerned about pressing
20 charges against her because ---

21 A. Yeah, when I asked what my legal options
22 were they asked me, 'Well, what do you want to
23 press charges for?'

24 Q. And you said, 'because she said if I went
25 to counseling for making the tape that she

1 wouldn't press charges.'

2 A. They asked me the question. I answered it.
3 I said, I feel as if she blackmailed me. At
4 which time they said, 'We can't do anything for
5 you. You have to go to a different police
6 county.'

7 Q. Because after you admitted to her that you
8 made the tape she asked you to go to therapy,
9 you went to therapy for making the tape, and
10 then she still pressed charges?

11 A. She more or less demanded that I go to
12 therapy with her, that I go to church with her,
13 uh, -- yeah. I followed everything that she
14 wanted me to do, to try to -- because that is
15 how we were going to fix our marriage. That's
16 what she said, 'we are going to fix our
17 marriage', by doing this. So I did what she
18 said.

19 Q. In your mind you were going to fix your
20 marriage by admitting to making a tape of her
21 daughter in the bathroom, that that was going to
22 be helpful for your marriage?

23 A. No, that's not what I said. You just asked
24 me a question if going to therapy was going to
25 fix my marriage. Yes, that's what she said.

1 Q. When you admitted to her that you made the
2 tape, what was your thinking on admitting that?

3 A. I'm thinking that I am damned if I do and
4 damned if I don't.

5 Q. So instead of denying making a vulgar and
6 disgusting tape, you decided to admit it?

7 A. Yeah. I did. Because I was faced with an
8 instant decision, and I took the decision -- I
9 made the choice. She threw me a straw, a rope
10 to save my marriage and I took it, because that
11 was the only opportunity I had to be able to
12 confront her, to be able to tell her the truth
13 about what happened. Because if it went any
14 other way, I would lose that chance. She would
15 never know the truth.

16 Q. And the way that you were going to get to
17 that was by admitting to making a tape of her
18 daughter in the bathroom?

19 A. You just said that. Yes.

20 SOLICITOR CORNWELL: Court's
21 indulgence?

22 THE COURT: Certainly.

23 CROSS EXAMINATION CONTINUED

24 BY SOLICITOR CORNWELL:

25 Q. When you found the tape and decided not to

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1 tell your wife, why didn't you just go ahead and
2 give it to the police?

3 A. Because I wanted to talk to my wife. I
4 wanted to know what her thoughts about it were.
5 She is a highly intelligent woman. I wanted her
6 opinion.

7 Q. So you had an opportunity to tell your
8 wife, and you didn't. You had an opportunity
9 to give it to the police, and you didn't. The
10 option that you took was to admit to making the
11 tape.

12 A. (No verbal response).

13 SOLICITOR CORNWELL: Nothing further,
14 Your Honor.

15 THE COURT: Redirect?

16 MICHAEL O'NEAL: No. No
17 redirect.

18 THE COURT: You may come down. Thank
19 you.

20 (WITNESS STEPS DOWN)

21 THE COURT: Any additional witnesses,
22 Mr. O'Neal?

23 MICHAEL O'NEAL: No, Your Honor.
24 That's it.

25 THE COURT: Very well. Any reply

1 testimony from the State?

2 SOLICITOR CORNWELL: Nothing, Your
3 Honor.

4 THE COURT: All right, Ladies and
5 Gentlemen. There are some matters of law that I
6 have to take up out of your presence. Given the
7 hour, we will go ahead and recess for lunch.

8 Please understand that when we return
9 that you will not hear any additional evidence,
10 as that concludes the evidentiary portion of the
11 proceeding. But there still remain two very
12 important parts of this process, the closing
13 remarks of the attorneys as I mentioned to you
14 and then, of course, the charge on the law.

15 So it would still be very inappropriate
16 for you to begin your deliberations,
17 collectively or individually. Don't resolve
18 anything. Maintain that open mind. Certainly
19 do not allow anyone to talk about this case in
20 your presence or talk to you about serving on
21 this jury.

22 I'd ask you to please return to your
23 jury room by 1:45, and we will return you to the
24 courtroom. Thank you. Have a good lunch.

25 (JURY OUT @ 12:13 P.M.)

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1 THE COURT: Any Motions from the
2 State?

3 SOLICITOR CORNWELL: None from the
4 State, Your Honor.

5 THE COURT: Anything from the
6 defendant?

7 MICHAEL O'NEAL: Renew my early
8 Motions, that's all.

9 THE COURT: Thank you. Your Motion
10 to direct a verdict based on the insufficiency
11 of proof is respectfully denied. Thank you,
12 sir.

13 Okay, any requests to charge? I am
14 going to charge the statute, the definitions
15 given in the statute. That will be the charge.

16 MICHAEL O'NEAL: Judge, the only
17 thing that I would have -- I know that there is
18 a charge that I've heard other Circuit judges
19 give, that you can't convict somebody on
20 assumption of suspicion, you have to have proof
21 beyond a reasonable doubt.

22 THE COURT: I do that ---

23 MICHAEL O'NEAL: I think you ---

24 THE COURT: I do have that. I tell
25 them that certainly -- I've taken it out of the

1 context that -- originally that charge
2 originated when we added circumstantial evidence
3 and it said that they had to prove each one, and
4 then it -- it dovetailed into that. I've
5 removed that part because I think the Court, in
6 Grippon and subsequent decisions, has basically
7 eliminated that. I do have that evidence --
8 that whatever the conclusion that it has to be
9 more than mere suspicion, that it has to be --
10 as I basically told them earlier.

11 MICHAEL O'NEAL: Yes, sir.

12 THE COURT: It has to be more than
13 probably guilty, that it has to be proof beyond
14 a reasonable doubt. That language is still in
15 the charge.

16 MICHAEL O'NEAL: Thank you.

17 THE COURT: Thank you.

18 SOLICITOR CORNWELL: Thank you, Your
19 Honor.

20 THE COURT: All right. We will be
21 back, please, -- say at 1:40 and that way if
22 anything comes up, we can take care of that.
23 I will allow Mr. Glenn to remain on bond.

24 MICHAEL O'NEAL: Thank you, Judge.

25 (LUNCH RECESS)

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1 (DEFENDANT PRESENT)

2 THE COURT: Let the record reflect
3 that the defendant is present. Is the defendant
4 ready to proceed?

5 MICHAEL O'NEAL: Yes, Your Honor.

6 THE COURT: Is the State ready?

7 SOLICITOR CORNWELL: State's ready,
8 Your Honor.

9 THE COURT: Bring in the jury,
10 please, Ms. Wiggins (bailiff).

11 (JURY IN @ 1:45 P.M.)

12 THE COURT: Thank you, Ladies and
13 Gentlemen. I hope that you had a good lunch.
14 We are now ready to proceed.

15 You will now hear from the lawyers
16 concerning their closing remarks. Unlike the
17 opening statements, you've heard the evidence
18 and now it is appropriate for them to discuss
19 that evidence with you and suggest reasonable
20 inferences that you may draw from that evidence.
21 Please give them your attention. You will find
22 those remarks helpful when you begin the process
23 of analyzing and deciding this case.

24 Following the closing remarks, I will
25 then give you the charge on the law. Thank you

1 for your attention thus far. Does the State
2 waives its opening or are you going to open on
3 the law?

4 SOLICITOR CORNWELL: Your Honor,
5 the State would like to open the law.

6 THE COURT: Very well, you may
7 proceed.

8 SOLICITOR CORNWELL: Thank you, Your
9 Honor. Ladies and Gentlemen, first of all,
10 thank you for your patience, for sitting here,
11 for watching that awful video. I know that
12 wasn't pleasant for you and I apologize that you
13 had to go through that.

14 I am going to speak you briefly on the
15 law. Again, as I stated in the opening, if what
16 I say differs in any way from what the Judge
17 says, the deference is to the Judge. He is the
18 finder of the law and he will tell you how to
19 rule on the law.

20 Voyeurism in the state of South
21 Carolina is when the person who commits the
22 crime of voyeurism for the purpose of arousing
23 or gratifying sexual desire of any one person,
24 when he knowingly view photographs, audio
25 records, video records, produces or creates a

1 digital or electronic file or films another
2 person without that person's knowledge or
3 consent while the person is in a place where he
4 or she would have a reasonable expectation of
5 privacy.

6 As the Judge told you, it is the
7 State's burden to prove every element of the
8 crime. We have to do that beyond a reasonable
9 doubt.

10 A reasonable doubt is just that, it is
11 a reasonable doubt. It is not beyond all doubt.
12 Nothing in this world is beyond all doubt. But
13 a reasonable doubt is just that, it is a
14 reasonable doubt.

15 The Judge said that you're to use your
16 common sense and I asked you to use your common
17 sense as well when you first came here. That
18 common sense is going to do you well, because
19 when you go back in the jury room and you look
20 at the evidence as it was presented to you and
21 you use your common sense, you're going to go
22 through each element of this case:

23 (Reading): "For the purpose of arousing
24 or gratifying sexual desire."

25 I don't know who would find that video

1 sexually desirable, but why else would you make
2 that video? They obviously weren't doing it for
3 an anatomy lesson.

4 (Reading): "A person who knowingly
5 views, photographs, audio records, video
6 records, produces or creates a digital or
7 electronic file."

8 That's what happened here. You saw the
9 video cassette tape that was used. We viewed
10 the video as it was filmed. It's obvious that
11 the person making that film knew what they were
12 doing.

13 The next that is "without a person's
14 knowledge or consent." That little girl on that
15 tape had no idea that she was being filmed. And
16 who would ever consent to allowing themselves be
17 filmed like that while they're doing their
18 personal grooming. I don't know of anybody that
19 would consent to that.

20 And the last element that we have to
21 prove is that the person "was in a place where
22 they'd have a reasonable expectation of
23 privacy." What is more private than a bathroom?
24 When you shut the door and go into your bathroom
25 to do your personal grooming, what person

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1 doesn't have an expectation of privacy there.

2 The Judge will tell the elements of
3 voyeurism. Keep in mind those four elements.

4 It's got to be arousing or sexually
5 gratifying. Why else would he have made the
6 tape?

7 It's got to be on a video, audio or --
8 well, it was on a video. That element is met.

9 It's got to be without the person's
10 knowledge or consent. You saw the video. Did
11 it look like she knew that she was being filmed.
12 Did she look like she was consenting?

13 And it's in a place of privacy. What
14 is more private than a bathroom?

15 I am going to get back up and speak to
16 you in just a moment, but I -- thank you.

17 THE COURT: Mr. O'Neal.

18 MICHAEL O'NEAL: It is absolutely
19 true that this girl had a reasonable expectation
20 of privacy in her bathroom.

21 It is absolutely true that you can look
22 at the videotape and tell that she had no idea
23 that she was being filmed.

24 But in this case -- you've heard all
25 the testimony, you've heard all the evidence,

1 and let's look at it for just a second. Bear
2 in mind and remember that Ms. Glennon and Mr.
3 Glennon both testified that other people had
4 access to the house besides family members;
5 friends of the children that were there, friends
6 of Minor friends of Brian. Other people
7 had access to the house.

8 Both of those witnesses, Mr. and Mrs.
9 Glennon, testified that this camera had been in
10 the house since he moved in there. Sitting on
11 the mantel. Anybody could have gotten to it.
12 Anybody could have used it.

13 You're allowed to bring back a verdict
14 based on evidence that is not before you, that
15 you think should be before you. Shouldn't the
16 police have seized the camera? Based on the
17 testimony, shouldn't the police have seized the
18 camera? Done a fingerprint check on it? So
19 that they could tell you for sure whether or not
20 the only fingerprints on that camera belonged to
21 Shawn Glennon or whether or not there were other
22 fingerprints on that camera that they couldn't
23 identify, that weren't part of the family's
24 fingerprints.

25 The only evidence that you have that he

1 made that videotape is Mrs. Glennon's testimony
2 that he told her that he made that tape. Now,
3 you heard from him how that came to be. I told
4 you in my opening statement that she tricked him
5 into "confessing." You heard him testify. It's
6 up to you whether you believe him, it's up to
7 you whether you believe her. But you heard him
8 testify that he did not make that tape, that he
9 found it on the mantel just like he said he did.

10 You might say, 'well, why didn't he
11 turn it over to the police right then,' 'why
12 didn't he tell her right then.' You heard him
13 testify about the problems in his marriage. You
14 heard him testify about the fact that she kept
15 accusing him of infidelity, of cheating on her.
16 He kept denying it, 'no, I didn't, I didn't' and
17 she kept bringing it and he knew that the way
18 that their marriage was at that point that if he
19 tried to deny it that she wouldn't believe him.
20 He did. She didn't believe him.

21 But look at her testimony. Think about
22 it. Again, use your common sense. See what is
23 reasonable.

24 Don't you think -- well, first of all,
25 look at this way -- we're talking about a fellow

1 that has no previous criminal record, never been
2 arrested before, honorable service in the United
3 States Army, honorable service in a foreign war.

4 You heard testimony from Mrs. Glennon
5 that she never, ever had any idea that he had
6 any kind of lecherous intent or activity with
7 regard to Minor You heard from Minor
8 you heard from Mrs. Glennon that they had a good
9 relationship -- as good as a stepfather-step-
10 daughter relationship can be.

11 I mean, think about it. Is it
12 reasonable to believe that all of a sudden,
13 after an exemplary life, after a life lived
14 without any kind of problems like this, without
15 any kind of arrests or any kind of activity
16 whatsoever like this, all of a sudden out of
17 nowhere one day this fellow is going to make a
18 convoluted videotape of his daughter in the
19 bathroom? If you think that is hard to believe,
20 if you think that's got doubt in it, that's
21 reasonable doubt.

22 Going to reasonable doubt, what would
23 be reasonable if a mother of a child, married to
24 another man who wasn't the child's father, who
25 became the stepfather, and she finds a videotape

1 that she thinks that he made of her naked in the
2 bathroom, what would a reasonable mother do?
3 Call the police. Call the police right then. A
4 reasonable mother would not allow him back in
5 the house. A reasonable mother would not have
6 him sit at the dinner table with Minor watch
7 TV with Minor A reasonable mother wouldn't
8 say, 'If you admit it, I won't call the cops.'
9 You've got to decide if she is telling the truth
10 or not. You've got to decide if her testimony
11 is reasonable.

12 I'm telling you right now, I'm
13 submitting to you right now that her testimony
14 is not reasonable. If she really believed that
15 her husband, Shawn, made this videotape, she
16 would have called the police right that minute.
17 He wouldn't have stepped foot back in that house
18 no matter how. But she left him come back in
19 the house, she let him sit at the family table
20 and sit in front of the television set with
21 Minor And I don't know what it was, never
22 really heard what it was that -- why she decided
23 to call the cops and have him arrested at the
24 end.

25 But, remember, the Judge is going to

1 tell you that the burden of proof is on the
2 Government at all times. The burden of proof is
3 on the Government to prove Shawn guilty beyond a
4 reasonable doubt, if they can.

5 The Judge is going to tell you what a
6 reasonable doubt is. If it's different than
7 what I tell you, listen to him. But I know what
8 he is going to tell you. I can read the Supreme
9 Court Opinions. A reasonable doubt is the kind
10 of doubt that would cause a reasonable person to
11 hesitate to act.

12 Now, if you're absolutely, positively
13 sure that Shawn Glennon made this videotape,
14 then you've got to vote Guilty.

15 But if you're wondering how -- why
16 would he make such a tape with no previous
17 activity like this whatsoever, then you stop
18 right there -- and let me stop right there and
19 tell you, Mrs. Glennon testified that he was a
20 porn addict, that he was always on the computer
21 going to porn sites. Well, you heard from her
22 that the police seized the family computer. The
23 day that they arrested him, he was out of the
24 house. He hadn't been back in there except
25 when she was there to supervise him. They

1 searched it, they could tell whether or not he'd
2 been to porn websites -- even if he deleted his
3 history, that don't get it. Professionals like
4 the police can tell. It came back nothing,
5 nada. Ten thousand visits to all these weird
6 porn sites, (negative gesture). So that is
7 patently unbelievable, just like her testimony.
8 If she really thought that he made this tape, he
9 wouldn't be back in that house at all.

10 So bring back a verdict that speaks the
11 truth. That's what it means in Latin, to speak
12 the truth. The truth is, Shawn's not guilty.
13 Thank you.

14 THE COURT: Ms. Cornwell.

15 SOLICITOR CORNWELL: May it please
16 the Court.

17 THE COURT: Yes, ma'am.

18 SOLICITOR CORNWELL: Ladies and
19 Gentlemen, we sat here and listened to three
20 witnesses -- four witnesses, I'm sorry.

21 You listened to Karen Glennon, who told
22 you about her husband. They had problems in
23 their marriage. Pornograph was one of those
24 problems. That she loved him, that she loved
25 her daughter.

1 Everything that she said on that stand,
2 when the defendant testified he didn't dispute
3 anything. He agreed with everything that she
4 said. Yeah, he watched porn. Yeah, he admitted
5 to making the tape.

6 What reasonable man admits to making a
7 tape like that if he didn't make it? He wants
8 to tell you now that he found the tape.

9 Well, you heard testimony from Minor
10 and her mother that the tape was made in 2008.
11 The reason that they know that it was made in
12 2008 is because the only time that Minor ever
13 used that bathroom was after she had ACL
14 surgery. She testified that when she was forced
15 to watch that video that she could see the
16 anklet that she put on her ankle after the ACL
17 surgery, she could see the scar on her knee from
18 where she'd just had the ACL surgery, and she
19 was still wearing her high school ring because
20 she was still in high school when he made this
21 video. That was in 2008.

22 Now the defendant wants you to believe
23 that camcorder was sitting on the counter (sic)
24 in the Spring of 2010. He was cleaning the
25 camcorder (sic) and happened to come across it

1 and find it. That doesn't make a lot of sense,
2 because you also heard him testify that they
3 used the camcorder a lot. They filmed softball
4 games and the dog playing, all kinds of stuff.
5 Well, if he just found the video sitting in the
6 camcorder on the fireplace, -- that don't make
7 sense, does it? It would have been sitting in
8 that camcorder for two years, to have just been
9 found.

10 Let's go with his theory. Let's say
11 that he found it. What reasonable man finds a
12 tape like that and holds onto it? Hides it? He
13 wants to say, 'well, it was because I was afraid
14 that my wife was going to accuse me of making
15 it.'

16 Why not destroy it? Oh, because he
17 wanted to find out who filmed this of his
18 stepdaughter.

19 So why not call the police?

20 There were reasonable steps that a
21 reasonable person could have taken.

22 What is not reasonable is to admit that
23 you made the tape in hopes of saving your
24 marriage. How would admitting making a tape
25 like that help a marriage? It doesn't make any

1 sense. It doesn't make any sense because it's
2 not true.

3 The truth of the matter is that that
4 man made that tape of his stepdaughter in 2008.
5 He made it by manipulating a mirror under a door
6 and filming off of the mirror. You saw that
7 tape. He had to know what he was doing to make
8 that type of tape. Who else could figure out
9 how to do that? The zooming in, the zooming
10 out? The focusing on certain parts of the body
11 that he wanted to focus on? He told you that he
12 has the experience. He installed cable, he
13 knows how to do that stuff.

14 He told you that he watches porn. He
15 likes that stuff.

16 He told you that he admitted to making
17 the tape. Why admit to making the tape if you
18 didn't make it? What reasonable man does that?
19 Particularly a reasonable man who served in the
20 military, who took an oath to serve, to protect,
21 to honor. No reasonable man would ever admit to
22 making that tape if he didn't make the tape.

23 The truth of the matter is, that man
24 made that tape. He made that tape of his
25 stepdaughter while she was in the bathroom

1 grooming herself. He made that tape without her
2 knowledge and without her consent. He made that
3 tape for his own sexual desire, his own sexual
4 gratification.

5 And when he got caught, when the tape
6 was found -- and where was the tape found? It
7 was hidden in his drawer, his camcorder, his
8 drawer, hid in a corduroy bag with game pieces.
9 If he wants to say that his wife was a snoop,
10 that his wife accused him of cheating, that they
11 had problems in the marriage, well thank God
12 that she snooped. Thank God she snooped.

13 That man made this tape. It was in his
14 stuff, it was made with his camcorder, he
15 admitted to making the tape. That's all you
16 need to know.

17 The Judge is going to tell you that you
18 are the sole judges of credibility. Your common
19 sense will tell you whether or not you believe
20 the evidence and the testimony that you heard or
21 if you believe that man, who admitted to making
22 the tape a while back and now wants to sit on
23 this stand and tell you that he found it, that
24 he held onto it, that he hid it because he
25 didn't want to ruin his marriage. That he

1 didn't want to call the police because he wanted
2 to find out who did this. What reasonable man
3 does that?

4 THE COURT: Thank you very much.
5 Ladies and Gentlemen, if I could have your
6 attention, now it becomes my responsibility to
7 give you the instruction on the law; which you
8 have, of course, promised to accept and to apply
9 fairly and impartially to those facts that
10 you're to determine very shortly when you begin
11 discussing this case.

12 You and you alone will evaluate the
13 evidence and decide what you find to be credible
14 and believable, then apply the law and report
15 your decision. When you've done that, you will
16 have honored the commitment that you made to the
17 parties when we started this process.

18 During this instruction you may hear me
19 use from time to time the word "defendant". As
20 I mentioned to you, it is a term that is used in
21 our profession to designate or to identify a
22 person or a party. Mr. Glennon is the
23 defendant. He has that attachment because he has
24 been accused of something. That is the sole
25 meaning of that term. It means nothing else.

1 It is just that if you hear it, you know that I
2 am referring to him.

3 To the indictment, which I have shown
4 to you and which is basically a piece of paper,
5 and it is, and it will not accompany you to your
6 jury room because it is not evidence. To that
7 indictment, the defendant has entered a plea of
8 not guilty; which places then upon the State the
9 burden of proving his guilt beyond a reasonable
10 doubt.

11 As I told you when we started, persons
12 accused of committing criminal offenses in this
13 state, and in fact as far as I know every state
14 in the United States, never has the burden of
15 proving or disproving anything because the law
16 says that persons so accused are presumed
17 innocent. Those are not just words, it is an
18 active presumption that you have to maintain at
19 all times during this trial. It can only be
20 removed when and if in your consideration of the
21 evidence that you're convinced beyond a
22 reasonable doubt that the State has established
23 or proven his guilt beyond a reasonable doubt.
24 Certainly Mr. Glennon, being a person accused of
25 a criminal offense, is entitled to that

1 presumption of innocence.

2 What is a reasonable doubt? A
3 reasonable doubt is a doubt which would make an
4 honest, sincere conscientious juror who is
5 searching for the truth in a case to hesitate.

6 Proof beyond a reasonable doubt is
7 proof that leaves you firmly convinced of the
8 defendant's guilt.

9 Now, there are very few things in this
10 life and in this world that we know with
11 absolute certainty. In a criminal dispute such
12 as this, the law does not require proof that
13 overcomes every possible doubt.

14 If based on your consideration of the
15 evidence you're firmly convinced that the
16 defendant is guilty of the crime charged, then
17 you must return a verdict of Guilty.

18 If, on the other hand, you believe that
19 there is a real possibility that he is not
20 guilty, then you must give him the benefit of
21 that doubt and return a verdict of Not Guilty.

22 A reasonable doubt, Ladies and
23 Gentlemen, may arise from the evidence in a case
24 or from the lack or absence of evidence in a
25 case. It's up to you to determine whether or

1 not a reasonable doubt exists in this particular
2 case. I charge you that Mr. Glennon is entitled
3 to every reasonable doubt arising in the whole
4 case. That means simply this, that if upon any
5 issue of fact which would be essential for your
6 returning a verdict of Guilty that you should
7 have a reasonable doubt as to how that issue
8 should be resolved, I would instruct you to
9 resolve that in his favor.

10 Now, the evidence which you are to
11 consider consists of the testimony of the
12 witnesses and the exhibits that were introduced
13 through their testimony.

14 During the trial, from time to time,
15 you heard one or the other say "Objection", and
16 I either sustained the objection or I overruled
17 it. If I sustained the objection, I said that
18 as a matter of law that I was not going to
19 permit the witness to testify to that. You
20 certainly may not speculate about that or think
21 or wonder what the witness would have said, or
22 why they would object. If you do, then you've
23 stepped over into my area of responsibility.

24 Quite honestly, probably the greatest
25 example that I can give a jury of how we work

1 together is that in a situation where I
2 overruled the objection, I've simply said as a
3 matter of law that I am going to permit the
4 question and answer, but it stops there. If you
5 put any greater weight on the answer because I
6 allowed it, then you've let me intrude into your
7 area of responsibility. I've said as a matter
8 of law that I am going to permit the question
9 and answer, but then it shifts to you. You have
10 to decide whether you believe it or not and, if
11 so, how strongly you believe it.

12 Please remember also that the attorneys
13 remarks, while extremely helpful and will be
14 very beneficial when you begin your
15 deliberations, they should never be considered
16 evidence. If their remarks about what a witness
17 said or didn't say differs from your collective
18 recollection, you're instructed to disregard
19 their remarks in their entirety because you are
20 the sole judges of the facts.

21 Likewise, if their remarks about the
22 law differs from the law as I give it to you,
23 you're instructed to disregard those remarks as
24 to the law and take the law as I give it to you,
25 because for the purposes of this proceeding

1 today I am the sole judge of the law.

2 Now, Ladies and Gentlemen, there are
3 two types of evidence that are used in
4 presenting cases. These types of evidence are
5 used in both civil disputes and criminal
6 disputes. We have evidence known as direct
7 evidence and evidence known as circumstantial
8 evidence.

9 Direct evidence, as the name would
10 imply, generally deals with one's sensory
11 perceptions. I saw something, I heard
12 something, I felt something, or the like. If
13 you are firmly convinced as the credibility of
14 that testimony, then it would establish that
15 particular fact or circumstance.

16 Circumstantial evidence is when you
17 take circumstances that have been established to
18 your satisfaction and you're firmly convinced
19 and you link them. Either through inductive or
20 deductive reasoning you reach another conclusion
21 that point to, sometimes, even the commission of
22 a crime. That is also very proper evidence to
23 be used.

24 Quite often both are used in the
25 presentation of a case.

1 Now, the law makes absolutely no
2 distinction between the weight or the value to
3 be given to either direct or circumstantial
4 evidence. Nor is any greater degree of
5 certainty required of circumstantial evidence
6 than of direct evidence. You're instructed to
7 weigh all of the evidence, direct and
8 circumstantial, and there could be either or
9 both in this case.

10 I further instruct you that the mere
11 fact, however, that circumstances brought out in
12 a case are strongly suspicious of guilt or that
13 the circumstances are such that the defendant's
14 guilt is probable, that that would not be enough
15 to sustain a conviction. Remember that I told
16 you that it has to be more than somebody
17 probably being guilty or might be guilty. The
18 proof that is necessary is proof that leaves you
19 firmly convinced; that is, proof beyond a
20 reasonable doubt of his guilt of this crime.

21 Now, how do you decide the facts of a
22 case? It's a common sense exercise. As I said,
23 we do it every day of our lives. We make
24 decisions when we hear something or we read
25 something whether we believe it or not. There

1 are many, many things that we use to assist us
2 in making those types of decisions. I am going
3 to discuss some factors that you may want to
4 consider but if I don't mention a method or a
5 factor that you've found reliable in your life,
6 when you begin to analyze this testimony, please
7 apply it.

8 You may want to consider the appearance
9 of a witness, how did they appear to you on the
10 stand -- hesitant or straightforward in
11 answering questions. Was the testimony of a
12 witness consistent or was it inconsistent. Was
13 it strengthened or weakened by other evidence in
14 the case. How did a witness come to know the
15 facts that he or she came to testify to, and
16 what was the ability of that witness to know
17 those particular facts or circumstances. Was
18 there a reason for a witness to give testimony
19 which may be helpful to one side or the other or
20 which may be detrimental to one side or the
21 other. In other words, did the witness have any
22 bias or prejudice that would affect his or her
23 testimony.

24 In considering the questions of
25 credibility and believability, you have very

1 broad discretion, very wide latitude. You have
2 a right to believe many witnesses against one,
3 one witness against many. You have a right to
4 believe all of a witness' testimony, parts of a
5 witness' testimony or none of a witness'
6 testimony. Now, of course you don't make these
7 decisions arbitrarily, but if you reach that
8 conclusion based on the record of this case you
9 have that prerogative because your objective
10 from the start has been to determine the truth
11 regardless of the source of the evidence.

12 Now, when you -- while you enjoy very
13 broad discretions in determining the facts,
14 please remember that you do not enjoy the same
15 with the law. You've promised that you will
16 accept the law and apply it fairly and
17 impartially. I am confident that you will do
18 that.

19 If during this instruction you hear
20 some principle of law with which you differ or
21 some principle of law that you say, 'you know,
22 that law could be made clearer,' I respect your
23 right to feel that way. After this is over, you
24 can take the steps necessary to accomplish that,
25 if you so desire. But what you've promised is

1 that, notwithstanding your personal feelings
2 about what you thought the law was or should be,
3 you'll set those aside and take this law and
4 apply it fairly and impartially.

5 Please know that the fact that I give
6 you an instruction on a particular aspect of
7 this case is not to suggest or indicate to you,
8 or shouldn't be taken by you as a suggestion as
9 to how you are to resolve a factual issue,
10 because that's your job. Also the order of my
11 instruction means nothing. Consider the charge
12 as a whole, don't put any greater weight on any
13 one aspect of the charge.

14 Let's look now at the charge of
15 voyeurism. Section 16-17-470 of our Code of
16 Laws provides, in part, that a person commits
17 the crime of voyeurism if for the purpose of
18 arousing or gratifying the sexual desire(s)
19 of any persons, he or she knowingly views,
20 photographs, audio records, video records,
21 produces or creates a digital or electronic file
22 or films another person without that person's
23 knowledge and consent and while that person is
24 in a place where he or she would have a
25 reasonable expectation of privacy.

1 A place where a person would have a
2 reasonable expectation of privacy means, as
3 follows:

4 A place where a reasonable person
5 would believe that he or she could disrobe in
6 privacy, without being concerned that his or her
7 undressing was being photographed, filmed or
8 videotaped by another.

9 Or a place where one would reasonably
10 expect to be safe from hostile intrusion of
11 surveillance.

12 Surveillance means secret observation
13 of the activities of another person for the
14 purpose of spying upon and invading the privacy
15 of the person.

16 To "view" means the intentional looking
17 upon another person for more than a brief period
18 of time and in other than a casual or cursory
19 manner with the unaided eye or with a device
20 designed or intended to improve visual acuity.

21 Now, in addition to proving that the
22 defendant was that person that committed this
23 offense, that performed one of those acts that
24 I just described, the State must also prove
25 criminal intent, because criminal intent is a

1 necessary element of the crime. Criminal
2 intent is always a matter that must be
3 determined by the judges of the facts, you the
4 jury, from the circumstances surrounding the
5 situation. So the law states that criminal
6 intent may be inferred from the circumstances
7 shown to have existed. This is how a jury make
8 that determination of whether or not criminal
9 intent is present.

10 Criminal intent is a state of mind that
11 operates jointly with the act in the commission
12 of a crime. Intent includes those consequences
13 which represent the very purpose for which an
14 act is done or are known to be substantially
15 certain to result regardless of one's desire.

16 Criminal intent is a mental state of
17 conscious wrongdoing. The State must prove
18 criminal intent in addition to the other aspects
19 which I've described to be entitled to a verdict
20 of guilty on the crime of voyeurism.

21 Now, Ladies and Gentlemen, you were
22 selected in this case to be a judge with me. As
23 judges, I would suggest and submit to you that
24 we are not partisans or advocates for either
25 side. We don't have any friends to reward, nor

1 do we have any enemies to punish.

2 In fact, I would suggest to your
3 thinking that you and I promised something else,
4 which I think is very important in performing
5 the task of being a judge. That is that --
6 we're human, we have to acknowledge our
7 humanity. But we've promised that we will do
8 something that sometimes is more difficult than
9 others, but we nevertheless owe the obligation
10 -- we owe this commitment to this process, to
11 the parties involved and to their attorneys.
12 We must not be motivated by any human emotion.

13 We have to be very methodical and very
14 direct in how we approach this. You will,
15 without emotion influencing you, analyze this
16 evidence, decide what you find to be the truth.
17 Once you're convinced of that, you take the law
18 and apply it to those facts and report your
19 decision. When you've done that, you will have
20 honored in every respect the commitment that you
21 made to this process, to the court, to the
22 parties and to their attorneys.

23 To assist you, Ms. Perry, in reporting
24 that verdict or that decision, I have prepared a
25 verdict form which I would like to discuss with

1 you now and the other jurors. You will note
2 that it is captioned, and that's simply to
3 facilitate the filing. That doesn't mean
4 anything. Do not put any weight or emphasis on
5 that.

6 There are two choices and the order in
7 which they appear means nothing. I had to put
8 them in some order. It says, "We, the jury, by
9 unanimous consent..." -- well, what does
10 unanimous consent mean? I am sure you
11 understand that. It has to be twelve to zero.
12 All of you must agree. Eleven to one won't
13 work, it has to be a twelve to zero vote.
14 (Reading continued): "...find the defendant,
15 Shawn Glennon, on the charge of voyeurism..."
16 Guilty or Not Guilty. Whichever your choice,
17 I'd ask that you place a check or an X in the
18 blank that precedes it. If you will circle it
19 as well and sign it, you will have completed the
20 verdict form.

21 Let's talk about the two choices. If
22 your decision is Guilty, then what you will be
23 saying is that you've analyzed the evidence and
24 you're firmly convinced by the evidence that the
25 State has met its burden of proof and

1 established that he is the person that did one
2 of those acts to a person who had a right of
3 expectation of privacy, basically, and was not
4 -- didn't have any knowledge that they were
5 being viewed. That's a paraphrase, I've
6 summarized that. Of course you heard the in-
7 depth reading of that. And that they've
8 established the criminal intent.

9 Not Guilty, you've analyzed it and
10 you're not convinced of one or more of those
11 elements. Because if you're not convinced on
12 one, then you must return a verdict of not
13 guilty.

14 Again, whichever your verdict, it has
15 to be unanimous and -- once you've signed it, if
16 you will knock on the door, we will be happy to
17 return you to the courtroom to receive that
18 verdict.

19 Of the first twelve that were selected,
20 any juror believe that they cannot continue? If
21 so, raise your hand. (No response).

22 Mr. Zahrn, at this point it appears
23 that the first twelve are able to continue. I
24 thank you so much for your participation. I am
25 going to excuse you and the other jurors in just

1 a moment, and I -- because I need to discuss the
2 charge with the attorneys.

3 It might be necessary to bring you back
4 or to give you some followup or clarification on
5 the charge and, if so, we will return all of you
6 to the courtroom.

7 But if there aren't any additions that
8 need to be given, then we will gather the
9 exhibits and the verdict form and deliver them
10 to you. When you receive those exhibits, then
11 you may begin your deliberations, but not
12 before.

13 Mr. Zahrn, I would ask that when you
14 exit that you not return to the jury room.
15 They will take you and put you probably in my
16 chambers, which is behind the courtroom here,
17 and I will be in in a moment to discuss with you
18 how much longer you need to remain.

19 Thank you so much for your attention.
20 Please retire to your jury room and await your
21 exhibits -- oh, one other thing. Once you start
22 the deliberations, the only restriction that I
23 place on the deliberations is this, that if any
24 juror has to leave the table for any reason you
25 must stop deliberating until all twelve of you

1 are together. Other than that, you proceed as
2 you deem fit and proper. Thank you so much.

3 (JURY OUT @ 2:28 P.M.)

4 THE COURT: Any exceptions or
5 additions from the State?

6 SOLICITOR CORNWELL: None from the
7 State, Your Honor.

8 THE COURT: Any exceptions or
9 additions from the defense?

10 MICHAEL O'NEAL: None from the
11 defense, Your Honor.

12 THE COURT: Thank you all very much.
13 I appreciate it. It was a pleasure to work with
14 you. We will be at-ease.

15 SOLICITOR CORNWELL: Thank you, Your
16 Honor.

17 (EXHIBITS REVIEWED BY COUNSEL)

18 (JURY IN DELIBERATION)

19 THE COURT: I tell you all what I am
20 going to do. We've been debating this. The
21 Rule is clear. I hope that they will do
22 something in the coming months to clarify this.
23 Years ago Costa Pleconis was the Circuit Court
24 judge and I was in Columbia, serving with him,
25 and he suggested this -- I did it until just

1 recently. I said, you know, I've had it happen
2 where a juror became ill within a reasonable,
3 short period of time after the jury deliberation
4 and I was able to save the case. The general
5 feeling now is, because the Rule is what it is,
6 that once they start deliberating that I don't
7 think that you can -- so everybody else is
8 starting to excuse the alternate right away.

9 I will be curious as to what they are
10 going to do in a death penalty case where we
11 retain the alternates until it is all over. I
12 guess we will address that when we have it.

13 But I am going to go ahead and excuse
14 the alternate. Any objection from the State?

15 SOLICITOR CORNWELL: No, Your Honor.

16 THE COURT: Any objection?

17 MICHAEL O'NEAL: None.

18 THE COURT: Thank you very much.

19 (ALTERNATE EXCUSED)

20 (NOTIFIED OF JURY NOTE @ 5:14 P.M.)

21 (DEFENDANT PRESENT)

22 (SO ENTERED AS COURT'S EXHIBIT 1)

23 THE COURT: Court's Exhibit 1 is an
24 inquiry from the jury. I intend to bring them
25 in and give them additional instruction.

1 (Reading), "What can we do if we cannot come to
2 a unanimous decision?"

3 They don't do anything. We do. I am
4 going to explain -- they started when?

5 COURT REPORTER: 2:28.

6 THE COURT: So roughly three hours.
7 That's not very long by history and my
8 experience, so I am going to give them an Allen
9 charge and we will see where we go.

10 SOLICITOR CORNWELL: Thank you, Your
11 Honor.

12 THE COURT: Thank you. Let's bring
13 them in.

14 (JURY IN @ 5:16 P.M.)

15 THE COURT: Thank you very much,
16 Ladies and Gentlemen. Thank you, Ms. Perry. I
17 have what is now Court's Exhibit 1, an inquiry
18 from the jury, "What do we do if we cannot come
19 to a unanimous decision?"

20 Well, that's -- you don't have to
21 worry. That's not what you do. It's what I
22 have to do. If you can't come to a unanimous
23 decision, then a jury doesn't reach a decision
24 and that becomes a mistrial.

25 Now, let me -- let's talk for a minute.

1 This is not something that I am sure that most f
2 you do every day. It's -- you may think you've
3 been, I'm sure, being in that room you think
4 that you've been there a long, long time. But
5 that's really -- three hours is not that long to
6 deliberate in a case. It just isn't. I've had
7 some twice or three times as long as that. So
8 that's not that long a period of time.

9 I'm convinced, because when I talked to
10 you -- there are -- what will happen if we have
11 to have a mistrial is that this case will be put
12 on another docket, twelve people just like
13 yourselves will be picked, they will hear the
14 same evidence, they'll probably come to a
15 decision. I cannot believe that there are more
16 intelligent people in Berkeley County than what
17 we have assembled here. That is just not --
18 that just isn't the case.

19 The whole process, the deliberate
20 process, and I am sure that you've done this but
21 let me just reiterate something about it. I am
22 not asking anyone to compromise principle. That
23 is not what I am talking about. But what I am
24 asking you to do is to listen to each other,
25 listen to everybody's explanation of why they

1 take that position and analyze your positions to
2 see if -- does that make any sense? Does that
3 give me some reason or pause for concern about a
4 position that I'm taking in this? That is that
5 exchange, the deliberative process that really
6 ends up resolving cases.

7 But, again, I am not suggesting that
8 anyone has to give up any hard and fast
9 principle that they profess or maintain and can
10 give support for.

11 It's just simply a process where it's -
12 - it is the way that the process works, to be
13 candid with you. The fact there are
14 differences, that's fine. But what typically
15 happens and what generally happens is that
16 through this process people begin to say, 'Well,
17 okay, yeah that makes sense. I see where you
18 are in that.' You begin to work together and
19 become to what really is -- when we say the term
20 "collective decision", that is what it is. It's
21 the collective reasoning that we're talking
22 about. I am confident that y'all can do that.
23 I am just as confident as I am that I am sitting
24 here looking at you, that you can accomplish
25 that. So I am going to ask that you return to

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1 your jury room, resume your deliberations,
2 listen to each other and maybe you can come to
3 some agreement on -- someone can explain and
4 clear up questions or concerns that any of you
5 may have. I am not asking anybody to share
6 those now at this time.

7 Thank you very much. You may retire to
8 your jury room and resume your deliberations.

9 (JURY OUT @ 5:20 P.M.)

10 THE COURT: Any exceptions or
11 additions from the State?

12 SOLICITOR CORNWELL: None from the
13 State, Your Honor.

14 THE COURT: Exceptions or additions
15 from the defense?

16 MICHAEL O'NEAL: None from the
17 defense, Your Honor.

18 THE COURT: Thank you. We will be
19 at-ease.

20 (NOTIFIED OF VERDICT @ 6:20 P.M.)

21 (DEFENDANT PRESENT)

22 THE COURT: Let the record reflect
23 that the defendant is present. I understand
24 that the jury has reached a verdict. Is the
25 State ready to receive the verdict?

1 SOLICITOR WILLIAMS: Yes, Your Honor.

2 THE COURT: Is the defendant ready to
3 receive the verdict?

4 MICHAEL O'NEAL: Yes, sir, Your
5 Honor, Defendant is ready.

6 THE COURT: Please bring in the jury.

7 (JURY IN @ 6:40 P.M.)

8 THE COURT: Ms. Perry, as I under-
9 stand, the jury has reached a verdict?

10 PRESIDING JUROR: Yes, sir.

11 THE COURT: If you would, pass the
12 verdict form to Ms. Wiggins (bailiff).

13 PRESIDING JUROR: (Tenders).

14 BAILIFF: (Tenders verdict form to
15 Court).

16 THE COURT: Upon review, the verdict
17 form has been properly completed. I would ask
18 the defendant to please rise.

19 DEFENDANT: (Complies)

20 THE COURT: The State of South
21 Carolina versus Shawn Glennon, Case 10-GS-08-
22 1489, (reading): "We, the jury, by unanimous
23 consent find the Defendant, Shawn Glennon, on
24 the charge of voyeurism Guilty." Signed by
25 Rhonda Perry as the presiding juror.

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1 You may be seated. Thank you.

2 Ladies and Gentlemen, if the court
3 has accurately published your verdict, please
4 indicate that by raising your right hand.
5 (Unanimous response by jurors).

6 Thank you. You may put them down. Let
7 the record reflect that each juror, in response
8 to the court's inquiry, has raised his or her
9 right hand.

10 Anything further from the jury, from
11 the State?

12 SOLICITOR CORNWELL: Nothing further,
13 Your Honor.

14 THE COURT: Anything further from the
15 defendant?

16 MICHAEL O'NEAL: No, Your Honor.

17 THE COURT: Very well. Ladies and
18 Gentlemen, thank you very much for your
19 assistance in resolving this case. I very much
20 appreciate. As I told you when we started, it's
21 truly -- and I mean this, it is a true honor to
22 serve in a capacity as we've served together
23 this week. I told you that it's the one thing
24 that I've come to just respect and admire. You
25 all have been attentive to your responsibilities

1 and I thank you for that.

2 When you receive your check, it does
3 not represent the value that you are to this
4 system, to this county and to this state, really
5 to this United States. I thank you for being a
6 part of it.

7 You are now free. You do not have to
8 call any numbers. You've completed your jury
9 service. I think the bailiff has indicated to
10 you about supper. If any of you wish to stay,
11 that will be fine. If any of you wish to leave,
12 I understand. Have a great evening.

13 I have instructed not to talk about
14 this case, obviously, during the trial. That
15 now is lifted. But if you -- if you want to
16 talk about it, you can. But if you don't want
17 to talk about it, that's your right also. If
18 someone persists in asking you questions and you
19 don't want to answer those questions or you get
20 tired of them asking you, just call Ms. Brown.
21 She can make it known to me and we will try to
22 take care of that for you. Thank you so much.
23 Have a great evening.

24 If anyone has any questions, if you do
25 want to remain, I'll be happy when I finish here.

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1 to step in and answer any -- if not, thank you
2 for the privilege of serving with you.

3 (JURY EXCUSED)

4 THE COURT: No Motions from the
5 State?

6 SOLICITOR CORNWELL: Nothing, Your
7 Honor.

8 THE COURT: Any Motions from the
9 defense?

10 MICHAEL O'NEAL: Judge, I don't think
11 I have any at this point.

12 THE COURT: Thank you, sir. I would
13 say that based on the evidence -- and I
14 understand that the jury could have come back
15 and -- obviously they deliberated and there was
16 consideration for both sides -- with a verdict
17 for the defendant, which would have certainly
18 been consistent with the evidence, a
19 construction of it. But a verdict for the State
20 -- of guilty, then I think the evidence likewise
21 supports that. Thank you.

22 Are you prepared for sentencing.

23 SOLICITOR WILLIAMS: Your Honor, Ms.
24 Williams has gone to get that.

25 THE COURT: All right, we will be at-

1 ease for a moment.

2 (BRIEF RECESS)

3 (DEFENDANT PRESENT, IN CUSTODY)

4 THE COURT: All right. Anything
5 further from the State?

6 SOLICITOR CORNWELL: No, Your Honor.

7 THE COURT: Mr. O'Neal, I will be
8 delighted to hear from you, sir.

9 MICHAEL O'NEAL: Your Honor, you were
10 here for the entire trial. You heard for
11 yourself. No previous criminal record,
12 meritorious service in the United States Army,
13 combat service, an honorable discharge.

14 Your Honor, the jury has spoken. As
15 you indicated, it could have gone either way.
16 The jury went for the State.

17 Judge, of course there is no evidence
18 whatsoever that Shawn attempted to sell, give
19 away, disseminate, publish or anything on this
20 video, on the internet or otherwise.

21 I know the range is zero to three with
22 a fine. Judge, I am asking you to consider a
23 probationary sentence. He's never been in
24 trouble before.

25 His parents are here with him, came all

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1 the way -- his father is eighty-three years old
2 with a pacemaker. They came all the way down
3 from Connecticut to support him today. I have
4 explained to them the possibility is that if you
5 give him probation that it might be transferred
6 to Connecticut. I've further told them that in
7 this economy that we have right now, with
8 everybody short on money, including State
9 agencies, that Connecticut may say 'no, we've
10 got enough people here to keep an eye on, can't
11 take somebody from South Carolina.'

12 Again, Judge, I would respectfully urge
13 you again to consider a probationary sentence.

14 THE COURT: Mr. Glennon, is there
15 anything that you wish to add?

16 DEFENDANT: No, Your Honor, there
17 isn't.

18 THE COURT: Thank you, sir.
19 Certainly I understand that he doesn't have a
20 record but in this case there is no way in the
21 world that I could in good conscience consider a
22 probationary sentence, based on what I've heard.
23 No way. This is a crime that -- frankly, I am
24 delighted that they finally have made it
25 mandatory to be on the sex offender because I

1 think it shows a major problem. The concern
2 that I have is just that, that there is no
3 record.

4 I thank you for your service to this
5 country, I thank you for what you did for me and
6 for everyone in this room. But that doesn't
7 give you *carte blanche*.

8 The jury has spoken and I frankly don't
9 disagree with their decision, at all. That
10 being said, the best thing that I can do for
11 this one -- I am limited -- it is three years.
12 Good luck to you, sir.

13 And I think that he is required by law
14 to register. I don't have to put it on the
15 sentencing sheet.

16 SOLICITOR CORNWELL: Yes, Your Honor,
17 it's per the statute. Thank you.

18 (TRANSCRIPT CONCLUDED)

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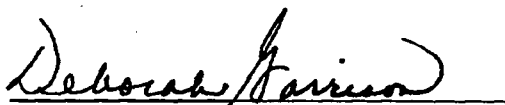
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter 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 the jury
trial held before The Honorable R. Markley
Dennis, Jr., on August 29th and 30th, 2011;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina
February 23, 2012

FORM 5

STATE OF SOUTH CAROLINA)

County of BERKELEY)SHAWN L. GLENNON, 347618)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2011 - CP - 08 - 3504APPLICATION FOR
POST-CONVICTION RELIEFCLERK OF COURT
BERKELEY COUNTY, SC

2011 DEC 19 PM 4:46

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention RIDGELAND CORRECTION INSTITUTION, 6A-29,
P.O. Box 2039, RIDGELAND, SC 29956
2. Name and location of Court which imposed sentence BERKELEY COUNTY COURT
OF GENERAL SESSIONS, MONK'S CORNER, SC 29461
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010GS081489 - SC CODE § 16-17-0470 (B) (1)
(b) _____

msf
2/9/2012
G

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 8/30/2011 - FOR A DETERMINATE TERM OF 3 YEARS
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) COUNSEL FAILED TO ADVISE CLIENT OF HIS RIGHT TO APPEAL
- (b) _____

- (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) COUNSEL FAILED TO ADVISE CLIENT OF HIS RIGHT TO APPEAL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE APPENDAGE TO APPLICATION FOR POST-CONVICTION RELIEF
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) SEE APPENDAGE TO APPLICATION FOR POST-CONVICTION RELIEF
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and ~~plea~~? YES
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. CHAD SHELTON ESQ., BERKLEY COUNTY PUBLIC DEFENDERS OFFICE,
255 N. HWY. 2, HONORS CORNER 29461
 ii. ASHLEY
MICHAEL S. O'NEAL, 2165 PHOSPHATE RD. SUITE D
NORTH CHARLESTON, SC 29406
 (b) the proceedings at which each such attorney represented you:
 i. CHAD SHELTON - ARRAIGNMENT
 ii. MICHAEL S. O'NEAL - TRIAL / SENTENCING
 iii. _____

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

THAT THIS CONVICTION BE VACATED, OR AT A MINIMUM REVERSED
AS A RESULT OF DUE PROCESS VIOLATIONS, BASED ON THE
INEFFECTIVENESS OF COUNSEL.

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

NO

2011 - CP - 08 - 3504

STATE OF SOUTH CAROLINA)

County of THAYER)

VERIFICATION

I, SHAWN LEONARD GLENNON, 347618, 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.

Shawn Glennon

SWORN to and subscribed before me this 13th
 day of Dec., 2011.

Parade K. [Signature] (L.S.)
 Notary Public

My Commission Expires: 2/5/2017

FILED
 2011 DEC 19 PM 4:46
 MARY H. BROWN
 CLERK OF COURT
 BERKELEY COUNTY

20 11 - CP - 08 3504

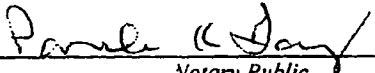
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, SHAWN LEONARD GLENNEN, 347618, 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.


Applicant

SWORN or affirmed to and subscribed before me this
13th day of Dec., 2011.


Notary Public

My Commission Expires: 2/5/2017

FILED
2011 DEC 19 PM 4:46
MATT BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
Shawn L. Glennon,	)	
347618	)	C/A No.: <u>2011 - CP - 08 - 3504</u>
Applicant,	)	
-vs-	)	
State of South Carolina,	)	APPENDAGE TO APPLICANT'S
Respondent.	)	APPLICATION FOR POST-CONVICTION
	)	RELIEF

The Applicant, Shawn L. Glennon, 347618, comes before this Honorable Court, proceeding pro-se, to offers the following appendage to his Application for Post Conviction Relief concerning Indictment Nos.: 2010GS081489 = SC Code §16-17-0470 (B) (1):

In regards to question Number Ten (10) of Page Three of the Application for Post Conviction Relief:

State concisely the Grounds on which you base your allegation(s) that you are being held in custody unlawfully.

- A. Ineffective Assistance of Counsel;
- B. Counsel failed to advise his client as to his right to appeal;

In regards to question Number eleven (11) or Page Three (3) of the Application for Post Conviction Relief:

[A]. Applicant was denied his Sixth and Fourteenth Amendment Right(s) to an effective assistance of counsel insofar as his trial counsel failed to provide competent representation and these omissions were prejudicial to his defense.

The Applicant's counsel failed to properly investigate the facts surrounding the circumstances that lead to his arrest. It has been clearly established that the amount of pre-trial research, or the lack thereof, can most definitely affect the outcome of a criminal defendant's trial. Davis v. Alabama, 100 S.Ct. 1827 (1980).

Effective assistance of counsel, i.e., will satisfy the requirements of the Sixth Amendment, is counsel "reasonable likely to render and rendering reasonably effective assistance given the totality of the circumstances?" Washington v. Strickland, 693 F.2d 1243, 1250 (CA5, 1982)(en banc) Cert. Granted, 466 U.S. 668, 104 S.Ct. 2052 (1984); Lockhart v. Fretwell 113 S.Ct. 838 (1993); Mays v. Balkcom, 631 F.2d 48, 52, n. 1 (CA5, 1980).

In considering the totality of the circumstances, a court must examine the quality of counsel's assistance from the time of initial retention, through the time of appeal. Goodwin v. Balkcom, 684 F.2d 794, 805 (CALL, 1981); State v. Williams, 571- SE2d 703 (Ct. App. 2002).

Would not justice best be served once a criminal defendant raised the issue of ineffective assistance of counsel, and the court determines there is a question of whether the defendant received effective assistance of counsel, should not the court allow the Applicant be granted a hearing regarding the issue?

In Powell v. Alabama 287 U.S. 45, 53 S.Ct. 55 (1933), the Court stated: "the right to be heard would be, in many cases, of little avail, if it did not comprehend the right to be heard by counsel."

Even in today's media driven society, the intelligent and educated laymen have little or sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the Rule of Evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issues, or otherwise, inadmissible. he would lack both the skill and knowledge adequately to prepare his defense, even though he may have a perfect one. He requires the guiding hand of counsel at every step in the proceeding against him. Without it, though he may be not guilty, he faces the dangers of conviction, because he does not know to establish his innocence. (Note: as was in the case of the Applicant.)

The Applicant can see no reason behind the thought that his counsel be considered as having rendered anything near effective assistance to the Applicant. The Applicant would further offer that he has clearly met the burden of proof essential in the two (2) prong requirements under Strickland v. Washington, supra., therefore, based on the forgoing, the Applicant

strongly feels that he is entitled to a correction of sentence and judgement, and to have this matter remanded back to the Court of General Sessions for Re-hearing.

[D]. In addition, the Applicant contends that counsel failed to advise him as to his right to appeal. The accused is entitled to be made aware of this right to appeal, as an element of effective assistance of counsel. Weather v. State, 459 SE2d 838 (SC 1995); White v. State, 208 SE2d 35 (SC 1974).

The Applicant was not advised of his right here, doubtlessly because at the time counsel misrepresentation of the facts were not clearly understood by Applicant. Nonetheless even if his advice on this point would have amounted to a mere formality the accused was nonetheless entitled to at least be made aware of this right to appeal, even in the wake of the outcome of his trial.

RELIEF SOUGHT

Therefore, the Applicant, Shawn L. Glennon, 347618, prays that this Honorable Court, by reviewing this record, should conclude that the issues and allegations contained herein, so in fact contain merit, and that the conviction of the Applicant was in violation of the Constitutional laws of the United States, as well as the state of South Carolina, and that this conviction should be vacated, because of the Due process violation, and at a minimum reversed.

Applicant prays also, that this Honorable Court would ensure that justice and fairplay prevail, and that this Court would take whatever steps necessary to examine every allegation and fact, ensuring a fair and just decision of this Honorable Court.

Respectfully Submitted



Shawn L. Glennon 347618

Applicant, Pro-se

RCI, PO Box 2039 GA-29

Ridgeland, S.C. 29936

December 07, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2011-CP-08-3504
COUNTY OF BERKELEY	)	
	)	
Shawn L. Glennon,	)	
S.C.D.C. No. 347618,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed December 19, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Berkeley County Grand Jury indicted the Applicant at the September 2010 term of General Sessions for voyeurism (2010-GS-08-1489). Chad Shelton, Esquire represented the Applicant.

The State proceeded to trial. On August 30, 2011, the Applicant was convicted as indicted. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to three (3) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections.

II.

In his application for post-conviction relief the Applicant alleges he is being held in

custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "Counsel failed to advise client of his right to appeal."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v.

State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

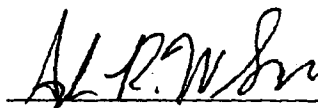
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEIGH WILSON
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:



Attorneys for Respondent

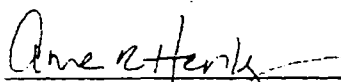
June 8, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2011-CP-08-3504
	)	
SHAWN L. GLENNON, #347618	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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:

Marybeth Mullaney, Esquire
Vitetta Sarji Law Firm
 225 Seven Farms Drive
 Suite 201
 Daniel Island, SC 29492

DATED this 8th day of June, 2012


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) NINTH JUDICIAL CIRCUIT

SHAWN LEONARD GLENNON,)

Petitioner,)

vs.)

Case: 2011-CP-08-3504

STATE OF SOUTH CAROLINA,)

Respondent.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
POST-CONVICTION RELIEF HEARING
HEARD BEFORE JUDGE KRISTI HARRINGTON
ON OCTOBER 1, 2012

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
Post Office Box 342
Summerville, South Carolina 29484

A P P E A R A N C E S

For the Respondent:

ASHLEIGH R. WILSON
South Carolina Comm. On Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201
(803) 734-1330

For the Petitioner:

MARYBETH MULLANEY
Marybeth Mullaney Law Firm
321 Wingo Way
Mount Pleasant, South Carolina 29464
(800) 385-8160

Reported by:
ROLAYNE M. VOLPE, CCR, RPR

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina

I N D E X

DESCRIPTION

PAGE

PROCEEDINGS

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WITNESS: MICHAEL SEAN O'NEAL

Direct Examination by Ms. Mullaney

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Cross-Examination by Ms. Wilson

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Redirect Examination by Ms. Mullaney

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Recross-Examination by Ms. Wilson

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WITNESS: SHAWN LEONARD GLENNON

Direct Examination by Ms. Mullaney

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Cross-Examination by Ms. Wilson

49

Redirect Examination by Ms. Mullaney

52

REPORTER'S CERTIFICATE

65

E X H I B I T S

DESCRIPTION

PAGE

(No exhibits were marked during this proceeding.)

Reported By:

Rolayne M. Volpe, CCR, RPR

Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina

1 The above-styled cause came on for hearing
2 on the 1st day of October, 2012, at 10:25 a.m., before
3 the Honorable Kristi Harrington, presiding over the
4 Common Pleas Court for the County of Berkeley, when the
5 following proceedings were had and entered of record, to
6 wit:

7 PROCEEDINGS

8 THE COURT: Thank you. Be seated.

9 Ms. Mullaney, you represent Mr. Glennon?

10 MS. MULLANEY: Yes, ma'am, I do.

11 THE COURT: And you had asked for a time to
12 meet with your client. Have you had sufficient time to
13 meet with him?

14 MS. MULLANEY: Yes, ma'am, I have. Thank you
15 so much.

16 THE COURT: All right. Are you Shawn Glennon?

17 THE PETITIONER: Yes, your Honor, I am.

18 THE COURT: And you are ready to go forward
19 on your application for post-conviction relief; is that
20 correct?

21 THE PETITIONER: That is correct, your Honor.

22 THE COURT: You were sentenced to three years;
23 is that correct?

24 THE PETITIONER: Yes, your Honor.

25 THE COURT: You understand if I grant your

Reported By:

Rolayne M. Volpe, CCR, RPR

Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina

1 request for post-conviction relief, this matter doesn't
2 just go away. You start back at the beginning, and you
3 will have the opportunity to either plead or for a
4 trial; you understand that?

5 THE PETITIONER: I do, your Honor, yes.

6 THE COURT: Knowing that, do you still wish to
7 go forward here today?

8 THE PETITIONER: Absolutely, yes, your Honor.

9 THE COURT: All right. Thank you. You may
10 have a seat.

11 Ms. Mullaney, which grounds are we moving
12 forward on?

13 MS. MULLANEY: I'm going forward on the grounds
14 that are cited in the application, and then depending on
15 the testimony --

16 THE COURT: Well, let's go -- just so the
17 record is clear, what are those grounds?

18 MS. MULLANEY: The grounds -- I believe his
19 grounds in the application are that he wasn't properly
20 advised of his right to appeal.

21 THE COURT: All right.

22 MS. MULLANEY: And then, your Honor, I'll
23 probably, depending upon the testimony, pursuant to
24 Rule -- Civil Procedure Rule 15(b), I will probably
25 orally amend the application at the close of the

Reported By:
Rolayne M. Volpe, CCR, RPR.
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina

1 testimony on other issues.

2 THE COURT: All right. Ms. Wilson -- it puts
3 Ms. Wilson -- to do that -- what happens is, is it puts
4 Ms. Wilson in a very precarious situation because she
5 doesn't know what to prepare for.

6 So, Ms. Wilson, are you prepared to allow
7 Ms. Mullaney to proceed in that fashion?

8 MS. WILSON: Your Honor, I would prefer that
9 she proceed by putting all of the amendments on the
10 record at the beginning of it, so that way we can
11 question -- I can question the Applicant or his attorney
12 regarding those issues when their testimony is taken.

13 THE COURT: All right.

14 MS. MULLANEY: Sure. You'd like me to put
15 those on the record at this time?

16 THE COURT: Yes. Thank you.

17 MS. MULLANEY: Sure. I will be going forward
18 on the grounds that are listed in the application, which
19 is:

20 That he wasn't properly advised of his right to
21 appeal;

22 I will also be going forward on that trial
23 counsel did not object under Rule 404(b) and Lyle when
24 the prosecutor elicited evidence of Defendant's
25 pornography addiction;

Reported By:

Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina

1 I'll also be going forward that trial counsel
2 then, himself, elicited inadmissible 404(b) and Lyle
3 evidence on Cross-Examination of the State witnesses and
4 on Direct Examination of the Defendant regarding the
5 pornography addiction;

6 I will also be going forward that he failed to
7 advise the client that he had a right to enter a plea or
8 to take the plea offer under Alford;

9 I will also be going forward on that he advised
10 the client -- he did not advise the client that if he
11 took the stand, the statement that trial counsel had won
12 suppression on would come in against him at trial for
13 impeachment purposes, that he was not -- my client was
14 not advised prior to taking the stand that when he made
15 the decision to take the stand, that the statement that
16 was suppressed would then come in against him for
17 impeachment purposes.

18 THE COURT: Are you prepared to go forward on
19 all of these grounds?

20 MS. WILSON: Your Honor, I was not advised of
21 several of these, but I'm going to say I'm prepared to
22 go forward. If you give me, maybe, five minutes to
23 speak to my witness about these other additional issues?

24 THE COURT: All right.

25 MS. WILSON: Thank you.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina
Direct Examination of Mr. O'Neal by Ms. Mullaney

1 (A break is taken from 10:30 a.m. until
2 10:33 a.m.; at which time, the proceedings continue as
3 follows:)

4 MS. WILSON: State is ready to proceed.

5 THE COURT: Ms. Mullaney, call your first
6 witness.

7 MS. MULLANEY: At this time, I call
8 Michael O'Neal.

9 THE COURT: All right. Mr. O'Neal.

10 (The oath is administered by the Deputy Clerk
11 of Court, and the witness answers as follows:)

12 THE WITNESS: I do.

13 THE DEPUTY CLERK OF COURT: Have a seat.

14 State your name for the Court and spell your
15 last name, please.

16 THE WITNESS: Michael Sean O'Neal -- O-
17 apostrophe-N-e-a-l.

18 MICHAEL SEAN O'NEAL,

19 having been first duly sworn by the Deputy Clerk of
20 Court to tell the truth, the whole truth, and nothing
21 but the truth, was examined and testified upon his oath
22 as follows:

23 DIRECT EXAMINATION

24 BY MS. MULLANEY:

25 Q Good morning, Mr. O'Neal.

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

Post-Conviction Relief Hearing
Shawn Glennon versus State of South Carolina
Direct Examination of Mr. O'Neal by Ms. Mullaney

1 A Good morning.

2 Q Mr. O'Neal, is it fair to say that you thought
3 this case was a good case, from a defense perspective?

4 A Yes, I did.

5 Q And that you did not expect to lose this case?

6 A That's correct.

7 Q And, in fact, that you -- is it fair to say
8 that you encouraged Mr. Glennon to go to trial on this
9 case?

10 A That's not exactly correct. He came to me --
11 he had already been represented by the public defender's
12 office, and he explained that he had had an offer
13 from the Solicitor's Office to plead guilty with a
14 recommendation of probation. As I recall, the offer was
15 that the -- the Solicitor's offer was to leave whether
16 or not he had to register as a sex offender for the rest
17 of his life up to the Judge. I went over the facts of
18 the case with him. I talked to him. Found out his side
19 of the story. Looked at all of the discovery. And
20 after I finished my investigation, I told him, I said,
21 You have a winnable case. Of course, I -- as I always
22 tell all my clients, no matter how good your case is,
23 there is still a chance we could lose it. I said, But
24 your choice is pretty simple: You either take their
25 offer or fight about it, have a jury trial. I showed

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1 him all the evidence that I had discovered. I explained
2 to him the plan I had for trial, and it was his decision
3 to take the case to trial.

4 Q Okay. But you agreed with his decision --

5 A Yes, I did.

6 Q -- to take the case to trial?

7 And you didn't try to talk him out of it or
8 advise him differently?

9 A Other than the things that I just said, which
10 is, no matter how good a case you've got, there's still
11 a chance you could lose. No, when we decided to go to
12 trial, my focus was on getting this case ready for trial
13 and doing the best of my ability at trial.

14 Q And you told him that he had a winnable case?

15 A Yes, I did.

16 Q And you had testified that the offer was
17 probation. He was offered probation?

18 A That's correct.

19 Q And that the Solicitor also said that he would
20 leave it up to the Judge to determine whether or not --

21 A That's my memory. That's my best recollection.

22 Q So then under the plea offer, he -- he may not
23 have had to register as a sex offender if he had availed
24 himself of the plea offer?

25 A I suppose that's possible, yeah.

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- 1 Q And you were retained in this case?
- 2 A Yes.
- 3 Q And the Defendant and his family paid you
- 4 \$10,000 to represent him?
- 5 A That's correct.
- 6 Q Okay. And prior to this, Shawn had never been
- 7 arrested?
- 8 A That's correct.
- 9 Q And he had never had any prior experience with
- 10 the court system?
- 11 A I believe that's correct, yes.
- 12 Q So he followed your advice when you told him to
- 13 reject the offer and to go to trial?
- 14 A Yes, he did.
- 15 Q Okay. And, Mr. O'Neal, you're familiar as to
- 16 what an Alford plea is; correct?
- 17 A Yes.
- 18 Q And did you speak with Shawn about possibly
- 19 taking the Alford plea in this case?
- 20 A No.
- 21 Q Did you speak with the Court about taking an
- 22 Alford plea?
- 23 A No.
- 24 Q And can you tell the Court what your defense
- 25 was in this case?

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1 A That he did not make the tape, that he
2 discovered it by accident, that he retained the tape to
3 give him time to figure out how to present it to his
4 wife, because they were having problems at the time,
5 and, unfortunately, for him, she found it before he was
6 able to bring it to her attention.

7 Q And this case is -- he was charged with
8 voyeurism; correct?

9 A Correct.

10 Q And it involved a videotape that was made of
11 Shawn's stepdaughter?

12 A That's correct.

13 Q And the tape was pretty -- of her taking a
14 shower and using the restroom?

15 A Well, actually, she was -- the tape -- the way
16 it looked like the tape was made --

17 This is the testimony from the police in this
18 case.

19 -- is that somebody had taken a mirror of some
20 kind, looked like, and put it underneath the bathroom
21 door. This particular bathroom door had an inch, I
22 guess, of clearance between the door and the floor, and
23 videotaped the mirror image. It was the girl sitting on
24 the toilet taking -- she was naked. And it was a video
25 of her grooming herself.

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1 Q And she was 17 years old?

2 A I believe.

3 Q And the tape was -- it's on -- it's undisputed
4 that the tape was made with Shawn's video camera?

5 A That was never really clear. It was a video
6 camera that he had owned prior to the marriage. The
7 police did not seize the video camera. He was allowed
8 to leave with it when he got out of jail. But that -- I
9 think that was the idea.

10 Q Right. The tape fit into that particular
11 camcorder?

12 A Yes.

13 Q And the tape was found in Shawn's dresser
14 drawer?

15 A One of his drawers, correct.

16 Q And the tape was made approximately in May of
17 2008?

18 A I think that's what the State's witnesses
19 testified to.

20 Q And they know that it was May of 2008 because
21 the 17-year-old girl had had a torn ACL; correct?

22 A That's how they -- that's how they were able to
23 narrow it down.

24 Q And she was -- during the time that she was
25 recovering from surgery, she was using her mom and

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1 Shawn's restroom -- bathroom to shower, because it was
2 too difficult for her to get into the other one?

3 A Correct.

4 Q So that's how they were able to pinpoint?

5 A Correct.

6 Q And then the tape was found, I believe,
7 May 27th of 2010?

8 A Somewhere around in there.

9 Q Okay. So the allegations are that Shawn had
10 had the tape from 2008 until 2010?

11 A Allegations were that he made the tape, and it
12 was his, and he held on to it.

13 Q Okay. Mr. O'Neal, what did you advise Shawn
14 regarding filing an appeal?

15 A When the guilty verdict came back, we were
16 all shocked. I told him, I said, You have a right to
17 appeal -- you have ten days in which to file an appeal,
18 but I told him that he didn't have any grounds for
19 appeal.

20 Q Okay. And you could have filed an appeal for
21 him; correct?

22 A Yes, I could have.

23 Q And you chose not to?

24 A I explained to him that he had a right to
25 appeal. I told him that based on my analysis of the

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1 trial -- and I've been trying cases for years and years
2 and years -- all the rulings went my way, the objections
3 went my way, he could only appeal for an error of law,
4 and I told him, You don't have any grounds for appeal.

5 Q Okay. Well, all -- there were some objections,
6 fair to say, that didn't go your way; is that correct?

7 A The only one that I can remember that didn't go
8 my way, my client told me that sometime prior to when
9 the State alleged this videotape -- when the State
10 alleged this videotape was discovered, my client and his
11 wife at the time had left and gone out of town with
12 instructions to the daughter, who was on the videotape,
13 not to have people over, not to have any parties. She
14 did. Had a party, had guys come over, alcohol,
15 everything else. And I wanted to cross-examine the
16 victim's mother about that party -- that was about the
17 time that this tape was made. The Judge would not allow
18 me to do it. I was allowed to ask and got answers from
19 the victim's mother that other people had access to the
20 house, that teenagers came and went in the house, she
21 testified that she worked as a nurse and worked 12-hour
22 shifts, and there were long periods of time when the
23 young girl was home alone with the video camera, other
24 people coming in there, so I was able to get it in front
25 of the jury kind of a different way.

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1 I've looked at this thing, and the only thing
2 that I can think of that I could have done differently
3 would be -- I guess I could have proffered testimony
4 from my client about this party, that was shortly before
5 the videotape was supposedly made.

6 Q And, in fact, you tried to elicit this
7 testimony --

8 A Yes, I did.

9 Q -- from your client during the trial?

10 A Yes, I did.

11 Q And it was Judge Dennis, and Judge Dennis did
12 not allow you to elicit this testimony?

13 A Not, at all, but he restricted me.

14 MS. MULLANEY: Beg the Court's indulgence for
15 just one moment?

16 (Respite.)

17 Q (By Ms. Mullaney) So you attempted to
18 cross-examine Karen Glennon about the party?

19 A Uh-huh.

20 Q And you were not allowed to do that?

21 A Only in a very restricted way.

22 Q Okay. Page 140 of the transcript. Do you
23 want --

24 A Sure.

25 Q If you'll -- it's in there, Mr. O'Neal. Page

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1 140, Line 5, you asked the question during the trial:

2 Okay. Let me ask you about this: Didn't

3 Minor --

4 Minor the 17-year-old girl who's the

5 subject of the video --

6 A Yes.

7 Q Let me start that over because that's not part

8 of the transcript. Sorry, Judge. I just wanted you to

9 know who Minor is.

10 The question was, on Line 5, Question: Okay.

11 Let me ask you about this: Didn't Minor get in

12 trouble some time frame prior to you discovering the

13 videotape?

14 Solicitor Cornwell: Objection, your Honor.

15 May we approach?

16 The Court: You may. I don't know -- I can't

17 rule on this yet.

18 There was a bench conference off the record.

19 Then the Court says: Thank you. I sustain the

20 objection.

21 A Uh-huh.

22 Q So you were not able to elicit that testimony?

23 A Well, sort of. Because if you go on down, the

24 next question, Line 17 is: Did any other people besides

25 family members come into the house prior -- shortly

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1 prior to you discovering the tape?

2 And the answer from the witness: Well, we have
3 had people at our house. I mean, doesn't everybody.
4 I don't understand what you're asking me --

5 THE COURT REPORTER: Slow down, please.

6 THE WITNESS: And I believe this is the -- is
7 this the Cross-Examination of the victim, or my
8 examination of my client?

9 Q (By Ms. Mullaney) This is the Cross-
10 Examination of Karen Glennon.

11 A Of the mom.

12 Q I'm sorry, I should have said that before.

13 A And then on Line 23, I asked again: Did any
14 people come in the house unknown to you without
15 your permission?

16 Answer is: No verbal response.

17 I follow up: Friends of Minor Friends of
18 Brian?

19 Brian was their other child -- other offspring.

20 And then the answer: I'm sure they probably
21 brought people over without me knowing about it,
22 because I work 12-hour shifts.

23 Oh, so it may have happened more than once?

24 Yes.

25 So I was able to get that idea in, without

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1 being allowed to specifically ask about this particular
2 party that --

3 Q Right.

4 A -- we thought happened --

5 Q You were able -- but you wanted to get in the
6 fact that she had had this kind of, wild, crazy party
7 without her parents' permission?

8 A Yeah.

9 Q And, in fact, you tried to get that in on
10 Page 190 on Direct Examination of Shawn, where you
11 asked, Line 1, Page 109, you asked the question:

12 How about Minor did she ever have friends
13 over?

14 Answer: She did have friends over. There was
15 an occasion --

16 Solicitor Cornwell: Objection, your Honor.

17 The Court: Approach.

18 Off-the-record side-bar.

19 The Court: Under 404, I sustain the objection.

20 A Correct.

21 Q So you were not able -- you would have liked to
22 have gotten that evidence in as part of your defense?

23 A Yes.

24 Q Okay. And the Court did not allow you
25 to -- that evidence?

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1 A Right. Correct.

2 Q And it's your opinion that the Judge made an
3 error of law by not allowing that evidence?

4 A Yes.

5 Q Okay. And you also made an objection,
6 Mr. O'Neal -- you won suppression; right? You won --

7 A Yes.

8 Q -- suppression of the statement?

9 The case started on Monday, and on Monday, you
10 got suppression of the statement; correct?

11 A Correct.

12 Q And then Tuesday morning, after the jury had
13 been sworn and after opening arguments, the Solicitor
14 came in with a set of pictures; isn't that correct?

15 A Yes.

16 Q And they were pictures that she had taken that
17 Monday night?

18 A Yes.

19 Q And, in fact, she told the Court that she
20 needed these pictures because you had won suppression of
21 the statement?

22 A Yes.

23 Q And that she then realized she wanted to get
24 these pictures into evidence. And you objected to these
25 pictures coming into evidence; isn't that correct?

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1 A More or less a *pro forma* objection that it
2 wasn't -- I just got it. You know, this case has been
3 pending for a while. I've made a Rule 5 motion. It's
4 not fair for them to bring these pictures in at the last
5 minute. It was two or three or four pictures of the
6 house and the doorway, and my client, said, Yep, that's
7 the house; that's the doorway. I didn't -- you know, I
8 didn't think I was going to win that.

9 Q Well, but that -- the pictures also came in
10 under Detective Wells' testimony; right? He was able to
11 use the pictures to explain how they made the video
12 under the door and with the mirror?

13 A Yes.

14 Q And you objected that morning to the pictures
15 when they were first presented; right?

16 A Yes.

17 Q And then you objected again contemporaneously
18 when the pictures were entered into evidence later on in
19 the trial?

20 A Yes.

21 Q And then you renewed your objection at the
22 close of the State's case to the pictures coming in?

23 A Any and all objections I may have made, right.

24 Q But you also specifically referred to that
25 objection at that time?

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1 A, Yes.

2 Q Okay. So it's fair to say, in your opinion,
3 Shawn was prejudiced because you weren't given those
4 pictures in advance?

5 A That was my position at trial.

6 Q And it's your opinion that the Judge made
7 an error of the law by allowing those pictures into
8 evidence?

9 A That is my opinion.

10 Q Okay. Okay. If I may, I would like to ask
11 you some more questions about the trial testimony. On
12 Page 111 -- and this -- this is on Direct Examination of
13 Karen Glennon, who was Shawn's wife, and she's the
14 State's witness, and she was one of the chief witnesses
15 against the Defendant. And did you ask this question --
16 I'm sorry. Did the Solicitor ask this question of
17 Karen Glennon?

18 Question: Were you suspicious of that? Why
19 were you looking through his nightstand to begin
20 with?

21 Answer: Well, because three months after we
22 got married, I discovered that he had a porn
23 addiction. And it had been what we fought about
24 most of the time during our marriage, was him lying
25 to me about when he was doing it, telling me that

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1 he wasn't doing it. I would constantly catch him.
2 Find notes in his pocket when he'd come home from
3 work with website after website after website of
4 porn sites. We went to counseling over it. We
5 tried to resolve the issue. So I just figured that
6 it was more pornographic material.

7 You did not object to that testimony; isn't
8 that correct, Mr. O'Neal?

9 A I did not.

10 Q Okay. And on Cross-Examination of
11 Mrs. Glennon, Page 135, Line 21, you elicited the
12 following testimony:

13 Question: I think your testimony on Direct
14 Examination is, that over time Minor your
15 daughter, cared for and trusted Shawn Glennon?

16 Answer, Line 20: Yes, she did.

17 Question: Now, I've got a little confusion
18 about that. Let me see if I can get straight. Your
19 testimony is, I think, that it was three months
20 after you got married that you discovered that he
21 was a raging porn -- pornography addict; is that
22 correct?

23 Answer: I didn't know to what extent. I just
24 first discovered his interest in porn three months
25 after we were married.

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1 Question: He was living with you in the home
2 at that time?

3 Answer: We were married, yes.

4 Question: What computer did he use to access
5 all the pornographic websites?

6 Answer: The one we -- our main computer in the
7 kitchen.

8 Question: Is that the one you caught him,
9 there, looking at porn?

10 Answer: No verbal response.

11 Question: On that computer?

12 Answer: I have caught him looking at porn,
13 when he thought I was asleep, and I would get up
14 and --

15 Question: How many times?

16 Answer: Oh, my word. More than I can count.

17 Question: Okay. You mentioned you found slips
18 of paper in his pocket when you did the laundry.
19 He'd written down names of pornographic websites.
20 Did you save those?

21 Answer: They're in an evidence box somewhere.

22 Question: So you didn't give them to the
23 police; right?

24 Answer: Um, uh-huh. Yes, I did.

25 Question: Do you know if they are here today?

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1 Do you have any idea?

2 Answer: I don't know if they are or not.

3 Question: Now, when you discovered that your
4 husband liked looking at pornography, did that upset
5 you?

6 Answer: Yes, it did.

7 Question: A lot?

8 Answer: The degree that he looked at it.
9 Number one, you can be fired from MUSC if you view
10 pornographic material. And people have been fired
11 for that. When you come home from work with all
12 these websites on visitors' passes to get into the
13 Institute of Psychiatry, it worried me that he would
14 get caught, and he would be fired.

15 Question --

16 And I'm going to skip over to the next page,
17 Page 138.

18 You asked the question: Okay. You weren't
19 afraid that he might prey on Minor or even Brian?

20 Answer: To me, there was a huge difference
21 in somebody being addicted to porn and somebody
22 actually being a sexual predator. I -- you know,
23 there's a big difference, to me.

24 Did you elicit that testimony during the trial,
25 Mr. O'Neal?

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1 A Yes, I did.

2 Q On Direct Examination of Shawn, Page 180,
3 -- Page 180, Line 10, did you ask Shawn the following
4 question during the trial:

5 Tell me how the marriage went. According to
6 her, on her Direct Examination, she said that three
7 months after y'all got married she discovered
8 that you were a hopeless porn -- pornograph --
9 pornography addict; is that true? Are you a
10 pornography addict?

11 Answer: Absolutely not. No.

12 Question: Have you ever looked at porn?

13 Answer: Yes, I have. Yeah.

14 Question: Have you looked at it for hours on
15 end on a million --

16 Answer: No.

17 -- different websites?

18 Answer: No, absolutely not.

19 Did you elicit that testimony from Shawn during
20 the --

21 A Yes, I did.

22 Q -- during his Direct Examination? Okay.

23 Okay. Mr. O'Neal, you were able to get the
24 Defendant's statement suppressed. The statement that he
25 made to law enforcement, you were able to get that

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1 suppressed pretrial --

2 A Yes.

3 Q -- correct?

4 And on Cross-Examination of Shawn, the
5 prosecutor introduced that statement, that the Defendant
6 made, to law enforcement; correct?

7 A I'm sorry, I don't understand your question.
8 Could you restate it?

9 Q That -- I'm sorry. You got the statement
10 suppressed; right?

11 A Yes.

12 Q And then Shawn testified --

13 A Yes.

14 Q -- on Direct? And then during Cross-
15 Examination, the prosecutor was able to introduce the
16 statement that you got suppression on?

17 A No. The prosecutor was allowed to
18 cross-examine him about something that he said in his
19 statement. The Judge allowed it.

20 Q My fault. So the prosecutor was allowed to
21 impeach him with that statement?

22 A I don't think he did.

23 Q So on -- on Cross-Examination, did the
24 prosecutor ask the following question of Shawn:

25 Question: --

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1 This is Page 199, Line 20.

2 -- did you make any statements to the --

3 THE COURT: Hold on one second.

4 MS. MULLANEY: I'm sorry. I'm sorry.

5 THE COURT: Thank you.

6 Q (By Ms. Mullaney) Line 20: Did you make any
7 statements to the police when you were arrested?

8 Michael O'Neal: Judge, I would object.

9 The Court: Overruled. He's on the stand.

10 Thank you.

11 Question, Page 200: Did you make any
12 statements to the police after you were arrested?

13 Answer: Not that I recall.

14 Question: Did you want to press charges
15 against your wife?

16 Answer: I asked what my legal options were.
17 As a police officer, I asked him as an expert in the
18 law, what my options were.

19 Question: Did you tell the police that you
20 wanted to press charges against your wife because
21 she did what she asked -- because you did what she
22 asked for making the tape, and she's pressing
23 charges anyway?

24 Answer: I asked what my legal options were,
25 and they said that I would have to take that up with

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1 a different police county. That was the only answer
2 they gave me.

3 Question: But you were concerned about
4 pressing charges against her because --

5 Answer: Yeah. When I asked what my legal
6 options were, they asked me, Well, what do you want
7 to press charges for?

8 Question: And you said because she said if I
9 went to counseling for making the tape that she
10 wouldn't press charges.

11 Answer: They asked me the question; I answered
12 it. I said I feel as if she blackmailed me. At
13 which time, they said, Can't do anything for you.
14 You have to go to a different county.

15 Question: Because after you admitted to her
16 that you made the tape, she asked you to go to
17 therapy, and you went to therapy for making the
18 tape, and then she still pressed charges?

19 Answer: She more or less demanded that I go to
20 therapy with her, that I go to church with her --
21 um, yeah, I followed everything that she wanted me
22 to do because that's how we were going to fix our
23 marriage. That's what she said, We're going to fix
24 our marriage, by doing this. So I did what she
25 said.

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1 So that was the statement -- that was, in
2 essence, the statement that -- that the State tried to
3 introduce against Shawn on their case in chief; correct?

4 A That was some of it. That was in the statement
5 that he gave to the police that I got suppressed. Some
6 of that was, yes.

7 Q And did you advise Shawn before he took the
8 stand that even though you had won suppression on that,
9 that by testifying, that statement could come in against
10 him for impeachment purposes?

11 A No.

12 Q Okay. And, Mr. O'Neal, Shawn retained you in
13 April of 2011?

14 A Yes.

15 Q And you met with him that day, and he gave
16 you -- he gave you the retainer on that day?

17 A I'm not sure when he paid it, but he eventually
18 paid it.

19 Q And then you didn't meet with Shawn again until
20 the morning of his trial; is that correct?

21 A I think I talked to him on the phone many
22 times. But as far as face-to-face meetings, that might
23 be true.

24 MS. MULLANEY: All right. Just one moment.

25 THE COURT: Take your time.

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1 (Ms. Mullaney speaks with her client off the
2 record.)

3 MS. MULLANEY: Thank you, no further questions
4 at this time.

5 THE COURT: Ms. Wilson.

6 CROSS-EXAMINATION

7 BY MS. WILSON:

8 Q Mr. O'Neal, how long have you been practicing
9 law?

10 A Since 1984.

11 Q So has that primarily been your area, criminal
12 law?

13 A I worked for the Government for the first five
14 years after I got out of law school, and then I jumped
15 to the private side of the fence in 1989.

16 Q So since 1989, you've been doing criminal?

17 A Yes.

18 Q And how many times do you think you met with
19 the Applicant prior to his trial to discuss his case?

20 A Several.

21 Q And did you file a Brady or Rule 5 Motion on
22 behalf of the Applicant?

23 A I think the public defender's office had done
24 so. I got that package. I don't think -- I can't
25 remember if I did or not.

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1 Q And you reviewed this discovery information
2 with the Applicant?

3 A Yes.

4 Q And prior to trial, did you discuss with
5 him the elements of voyeurism and what the State was
6 required to prove?

7 A Yes.

8 Q And did you discuss his version of the facts
9 with him --

10 A Yes.

11 Q -- and any possible defenses that the Applicant
12 may have had?

13 A Yes.

14 Q And did he give you any potential leads or any
15 issues to investigate prior to trial?

16 A As far as witness, no. Some of the things that
17 he talked about had to be tracked down. For example, he
18 told me that he thought that the police had seized the
19 family computer that she said he looked at all the
20 pornography websites on. I followed up with that by
21 checking with the police and determined that they had
22 checked the computer, done a forensic run on it, and
23 found no evidence of any visitation of any pornographic
24 websites. Further, that they didn't have, never got any
25 written slips of paper from the victim's mom that

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1 supposedly contained pornographic website addresses.
2 And that's why in the transcript when I asked her about
3 his supposed porn addiction and about -- and him about
4 his supposed porn addiction, it was put in front of the
5 jury that the police checked the computer that they
6 said -- that she said she saw him looking at the porno
7 websites over and over again and found no evidence of
8 any visits to any porn websites, and that the police
9 never got any written porn websites that she said she
10 turned over and got out of his pockets.

11 Q Okay. So was it the trial strategy for you to
12 put that information before the jury --

13 A Yes.

14 Q -- and then to follow it up with the fact that
15 the police didn't find anything on the computer?

16 A Yes.

17 Q And did you have ample time to prepare for the
18 Applicant's trial?

19 A Yes.

20 Q And aside from what we just discussed about
21 putting the Applicant's porn addiction -- alleged porn
22 addiction before the jury, what was your trial strategy
23 in this case?

24 A That he didn't make the tape, that he only held
25 on to it in an effort to try to preserve his marriage.

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1 The mother of the victim was going to testify that he
2 told her that he made the tape. His defense was that he
3 only told her that because she basically tricked him
4 into telling her that. She told him --

5 She kicked him out of the house. Wouldn't let
6 him come back.

7 -- I'll let you come back to the house only if
8 you tell me that you made that tape. He was out of the
9 house for a month -- or more than that, even. Finally,
10 he said that he told her that just to be able to try to
11 get the marriage back on track, and she used it to have
12 him be arrested.

13 Q And you testified earlier today that you
14 discussed with the Applicant the -- the appellate
15 process, and that you didn't feel like he had any
16 appealable issues?

17 A That's correct.

18 Q And did he reasonably demonstrate any interest
19 in appealing?

20 A Didn't say so.

21 Q And you made certain he was aware of these
22 rights -- his right to appeal?

23 A I told him. He did not tell me or ask me to
24 file an appeal.

25 Q And it is also your testimony today that after

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1 the Applicant came to you, after he had been offered a
2 guilty plea, by the Solicitor's Office when he was
3 represented by the public defender, it was your
4 testimony that it was his decision to proceed to trial?

5 A I told him that he had a choice of taking that
6 offer or having a trial. I explained to him that I
7 would investigate the Government's case against him and
8 report back to him as to whether I thought he had a
9 winnable case. I told him that once I did that, that I
10 would show him all the evidence that I had discovered in
11 my investigation, and only if he also thought he had a
12 winnable case, would we take it to trial. And that's
13 what we did.

14 Q But did you ever tell him to reject the guilty
15 plea, or did you tell him that --

16 A I told him that it was his choice.

17 Q Okay. And you testified that you never
18 discussed an Alford plea with the Applicant?

19 A I did not.

20 Q And what was purpose for not discussing that
21 with him?

22 A It wasn't an offer -- I knew the Solicitor's
23 Office -- I knew that the assistant solicitor that had
24 the file, and I would be amazed if they would have
25 offered him an Alford plea. But I did not bring it up.

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1 Q So it's unlikely that it would have been
2 offered by the Solicitor?

3 A In my opinion, yes.

4 Q And regarding the testimony that -- your
5 testimony that was restricted at trial, were you still
6 able to get in the testimony about other people being
7 in the home when the parents weren't there, with the
8 daughter?

9 A Yes.

10 Q And did you think that would have been an
11 appealable issue, despite the fact that you got it
12 in?

13 A No. Because I've done appeals to the Court of
14 Appeals and to the Supreme Court, and, really, the only
15 deficiency I can see in my performance in this case is,
16 I -- I could have made a proffer from my client with --
17 regarding specifics of that party that was had at the
18 house. But I was allowed to ask the witness -- and got
19 testimony from both the mother of the alleged victim and
20 my client -- that other people had access to the house,
21 teenagers included, access to the video camera, where
22 the video camera was in the house, many times, prior to
23 the -- when they allege this videotape was made.

24 Q So is it your opinion that likely the appeal on
25 that situation -- on that aspect of the Applicant's

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1 trial, would have not resulted in a reversal of his
2 conviction?

3 A That's my opinion, yes.

4 Q Okay. You also testified that you made
5 objections about the pictures that were submitted to you
6 on the day of trial.

7 A Yes.

8 Q Do you think that if that issue was on appeal,
9 it would have resulted in a reversal of the Defendant's
10 conviction?

11 A No.

12 Q And do you think that the admission of those
13 significantly affected your trial strategy or the -- the
14 outcome of the proceeding?

15 A No, I don't.

16 Q And do you recall the Applicant being advised
17 of his right to testify, by the Judge?

18 A Yes.

19 Q And do you recall the Judge advising the
20 Applicant that he could be cross-examined on the basis
21 of his testimony?

22 A I don't recall specifically.

23 MS. WILSON: Okay. No further questions, your
24 Honor.

25 MS. MULLANEY: Just briefly.

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REDIRECT EXAMINATION

1

2 BY MS. MULLANEY:

3 Q So, Mr. O'Neal, you only met with Shawn
4 face-to-face once before his trial?

5 A No, I disagree with that. We met face-to-face
6 several times.

7 Q Well, you met with him the day that he retained
8 you; correct?

9 A Correct.

10 Q And then you met with him the morning of the
11 trial?

12 A No, I think I met with him more than that.

13 Q You did?

14 A Yes.

15 Q And how many times? When did you -- do you
16 have any record in your file?

17 A No.

18 Q How many times did you meet with him?

19 A It must have been a couple, three -- three or
20 four, and telephone calls back and forth.

21 Q Okay. And you -- but you don't have -- you
22 don't have any records in your file or any dates written
23 down of times that you've met with Shawn?

24 A No.

25 Q Okay. And, Mr. O'Neal, there's a difference

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1 between downloading pornography on a computer and
2 actually viewing pornography on a computer; correct?

3 A I believe there is.

4 Q And there's nowhere in your file which shows
5 that the police did a forensic search of the computer?

6 A As I recall, the testimony at trial was that
7 the police did do a search of the computer to try to
8 determine whether or not he'd been looking at websites.
9 I don't know -- I mean, I -- as I recall, in the limited
10 intelligence I have with regard to computers, is you can
11 check a search history, see what he's searched, see what
12 websites he's been to, and that they did that and found
13 no pornographic websites.

14 Q Well, the police didn't testify to that --

15 A I believe they did.

16 Q -- did they?

17 Well, let's look at -- there was one police
18 officer who testified during the trial; correct?

19 A Gene Alterry (phonetic) and Jimmy Wells. Two.

20 Q Well, Alterry just testified at the suppression
21 hearing. It was just Jimmy Wells who testified at the
22 trial?

23 A Oh.

24 MS. MULLANEY: Just beg the Court's indulgence
25 while I find --

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1 THE COURT: Take your time.

2 Q (By Ms. Mullaney) Okay. If you could, look at
3 Page 150 where Detective Wells testifies.

4 A Uh-huh.

5 Q And I believe he finishes his -- I believe you
6 cross-examined him from -- so Page 150 to 160, if you
7 could, tell me where they state that they did a forensic
8 evaluation on the computer.

9 A May -- now that I think about it, I think I got
10 that testimony out of the victim's mom.

11 Q Mrs. --

12 A That's where I got it.

13 Q Right. Mrs. Glennon said that they took her
14 computer; right?

15 A Right.

16 Q But there's nothing that there was a forensic
17 evaluation ever done on this computer?

18 A I think the testimony was that the cops told
19 her that they had checked the computer and found no
20 pornographic website visitation records in it.

21 Q But there's no evidence that there was any type
22 of evaluation -- forensic evaluation ever done on the
23 computer?

24 A Whatever she said, that's the only evidence
25 that there was.

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1 Q Right. But you don't have, for instance, in
2 your discovery, there was never a search done on the
3 computer; correct?

4 A I'm trying to remember what was in the
5 discovery. As I recall, I determined that the police
6 checked the computer and found no evidence of any
7 visitation of pornographic websites. I believe that I
8 asked the mother of the victim on the stand: Isn't it
9 true that they took the computer? Yes. Didn't they
10 check the computer to see whether or not he had been
11 visiting any pornographic websites? Yes. Isn't it true
12 they didn't find any evidence of it? Yes. Something to
13 that effect.

14 Q Right. That's what the mother said?

15 A Yes.

16 Q But there's no evidence in -- there was never a
17 forensic evaluation done on the computer; correct?

18 A Yeah. I mean, I was told that there was
19 done --

20 Q You were told by the victim's mother. But is
21 there --

22 A I think I was told by the police also.

23 Q In the file, is there a police report?

24 A No, it's not in the file. I think it was a
25 face-to-face when I asked them about it, when I was

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1 investigating the case.

2 Q And do you have any notes to reflect that
3 conversation?

4 A I don't think so. It's in my head.

5 Q And there's no reports or any discovery
6 that was turned over to you of an extensive download
7 or search of the hard drive or the computer that was
8 done?

9 A No. I took them at their word.

10 Q Okay. You had said that you were "amazed"
11 if the Solicitor would have offered an Alford plea;
12 correct?

13 A Well, I would be surprised. I don't know about
14 amazed.

15 Q But Judge Dennis -- because he was pleading to
16 the charge, Judge Dennis could have allowed Shawn to
17 take an Alford plea; correct?

18 A It's possible, but not likely.

19 Q But you never explored it?

20 A No, I did not.

21 MS. MULLANEY: Just one moment.

22 THE COURT: Take your time.

23 MS. MULLANEY: Thank you. No further
24 questions.

25 MS. WILSON: Briefly, your Honor.

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RECROSS-EXAMINATION

BY MS. WILSON:

Q Mr. O'Neal, you said that you met with the Applicant at least three or four times, and you had several phone conversations with him back and forth?

A Yes.

Q And as a result of those contacts, those face-to-face contacts and phone conversations, you were able to amply prepare for the Applicant's trial; is that correct?

A Yes.

MS. WILSON: Nothing further, your Honor.

THE COURT: You may step down. Thank you.

THE WITNESS: Thank you.

THE COURT: Call your next witness.

MS. MULLANEY: At this time, I call
Shawn Glennon.

THE COURT: Mr. Glennon, please come forward
and be sworn.

(The oath is administered by the Deputy Clerk
of Court, and the witness answers as follows:)

THE PETITIONER: So help me God.

THE DEPUTY CLERK OF COURT: Please state your
full name for the record, and please spell your last
name.

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1 THE PETITIONER: Shawn Leonard Glennon,
2 G-l-e-n-n-o-n.

3 THE COURT: Ms. Mullaney.

4 MS. MULLANEY: Thank you.

5 SHAWN LEONARD GLENNON,

6 having been first duly sworn by the Deputy Clerk of
7 Court to tell the truth, the whole truth, and nothing
8 but the truth, was examined and testified upon his oath
9 as follows:

10 DIRECT EXAMINATION

11 BY MS. MULLANEY:

12 Q Can you tell the Court your full name, Shawn.

13 A Shawn Leonard Glennon.

14 Q And how old are you?

15 A I'm 40 years old.

16 Q And what is your educational background?

17 A I have a high school diploma, and I went
18 through a couple of semesters of college.

19 Q Have you ever served in the military?

20 A I have.

21 Q And can you tell us what you did in the
22 military, and where you served?

23 A I served with the First Calvary Division as an
24 armored crew member, tanker. I served in Texas, and I
25 did one year deployment in Baghdad.

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1 Q Okay. Other than this case, Shawn, have you
2 had any involvement with the criminal justice system?

3 A None.

4 Q You went to trial in the case; correct?

5 A That's correct.

6 Q And you got the maximum sentence that was
7 allowed by law?

8 A That is correct.

9 Q And you are currently now a registered sex
10 offender?

11 A That's correct.

12 Q You will have to register when you get
13 released?

14 A Yes.

15 Q And you will have to register as a sex offender
16 for the rest of your life?

17 A Yes, ma'am.

18 Q And that's a consequence of your conviction?

19 A It is.

20 Q Was there a plea offer that was made to you in
21 this case?

22 A There was.

23 Q And what was that offer?

24 A Probation.

25 Q And did you reject that offer and go to trial?

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1 A I did, after consulting with Mr. O'Neal, and he
2 said that that wasn't much of a deal.

3 Q And so what did Mr. O'Neal advise you regarding
4 the trial?

5 A Well, the fact that I -- after he said that I
6 had a very winnable case, he suggested that we take it
7 to trial.

8 Q And so you followed his advice; correct?

9 A That's correct.

10 Q Because you trusted Mr. O'Neal?

11 A That's correct. I have no knowledge of the law
12 at all.

13 Q And paid him a lot of money to represent you?

14 A Yes, ma'am.

15 Q Shawn, have you ever heard of what's called a
16 plea under North Carolina versus Alford?

17 A I do not. The only time I -- no. No.

18 Q Did I -- did I tell you what an Alford plea
19 was?

20 A Oh, the Alford plea, I'm sorry. You explained
21 that to me, yes.

22 Q Okay. And an Alford plea means you don't have
23 to admit your guilt, you can assert your innocence;
24 correct?

25 A That's correct.

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1 Q But you can admit that the State has enough
2 evidence and is likely to convince you -- to convict you
3 beyond a reasonable doubt; correct?

4 A Yes, ma'am, that was your explanation.

5 Q Okay. If you knew that you could have pled
6 guilty, gotten probation, and not have to admit your
7 crime, would you have done that?

8 A Absolutely.

9 Q If Mr. O'Neal had told you that your case
10 wasn't winnable, but, in fact, chances were, it was
11 likely that you were going to get convicted, would you
12 have still gone to trial?

13 A No. Absolutely not.

14 Q Did you ever discuss an Alford plea with
15 Mr. O'Neal?

16 A No.

17 Q If you were advised if you could have taken an
18 Alford plea instead of gone to trial, would you have
19 done that?

20 A If he had explained that to me, yes.

21 Q Now, Mr. O'Neal was successful in getting the
22 statement that you made to law enforcement suppressed;
23 correct?

24 A That is correct.

25 Q Did he advise you before you took the stand

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1 in your defense that when you testified that that
2 statement could come in for impeachment purposes against
3 you?

4 A No.

5 Q If he had advised you of that, would you have
6 changed your mind about testifying?

7 A Absolutely.

8 Q Okay. You hired Mr. O'Neal in March -- in
9 April -- I'm sorry, in April of 2011?

10 A Yes, ma'am.

11 Q And how many times did you meet with him before
12 the trial?

13 A Face-to-face meetings, I'd only seen him twice.

14 Q Okay. And what were those two times?

15 A One on the day that I hired him in April, and
16 one on the morning before the actual trial.

17 Q Okay. And did you make attempts to meet with
18 him face-to-face prior to that?

19 A I spoke with him on the phone, we exchanged a
20 few E-mails, and he kept me updated when I asked him
21 about how the case was going, he said, I'm preparing for
22 the trial and everything is going fine.

23 Q Would you have liked to have met with him more
24 to prepare for your case?

25 A I would have liked to.

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1 Q Okay. Did you feel adequately prepared for
2 trial?

3 A No, not at all.

4 MS. MULLANEY: Okay. All right. Just one
5 moment.

6 (Respite.)

7 MS. MULLANEY: No further questions at this
8 time.

9 THE COURT: Ms. Wilson.

10 CROSS-EXAMINATION

11 BY MS. WILSON:

12 Q Mr. Glennon, it's your testimony today that
13 you met with the Applicant [sic] two times face-to-face
14 prior to trial?

15 A That's correct.

16 Q And you also testified that you spoke to him on
17 the phone and exchanged E-mails with him?

18 A Yes. A few, yes.

19 Q It's also your testimony that whenever you
20 wished to be apprised of the status of your case or
21 where Mr. O'Neal was in his strategy and preparation,
22 that he always told you where he was and gave you
23 update?

24 A That's correct.

25 Q And do you recall reviewing your discovery with

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1 Mr. O'Neal?

2 A I'm not sure what you mean? What discovery are
3 you --

4 Q Did he go over the evidence that the State had
5 against you, and did he tell you, you know, what the
6 State was required to prove for your voyeurism charges
7 and stuff?

8 A Yes, ma'am.

9 Q And did he discuss any possible defenses or
10 what the trial strategies would have been -- what your
11 trial strategy would be at trial?

12 A He had a couple of ideas, yes, ma'am.

13 Q And did you give him any leads or witnesses or
14 anything to investigate?

15 A Yes, ma'am.

16 Q And was it your decision to proceed to trial?

17 A Upon his advice, stating that I had a winnable
18 case, yes, ma'am.

19 Q So upon his advise, you decided -- it was your
20 decision to proceed to trial?

21 A Yes, ma'am.

22 Q Okay. And you testified today about, you know,
23 had you known that there was such a thing as an Alford
24 plea, you would have pled guilty under the Alford plea
25 and not proceeded to trial; is that correct?

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1 A That is correct.

2 Q Had an Alford plea not been extended to you by
3 the Judge or by the Solicitor, would you have pled
4 straight up to the charge of voyeurism and admitted your
5 guilt?

6 MS. MULLANEY: Objection. An Alford plea is
7 not admitting your guilt. That question is a little
8 confusing.

9 THE COURT: Rephrase your question. Slow down
10 just a little bit.

11 MS. WILSON: Yes, your Honor.

12 THE COURT: Thank you.

13 Q (By Ms. Wilson) You know, you've discussed
14 with your attorney what an the Alford plea is; correct?

15 A With Mr. O'Neal?

16 Q With Ms. Mullaney.

17 A Yes, ma'am. Yes, ma'am.

18 Q So you know what an Alford plea is now?

19 A Yes, ma'am.

20 Q And is it your understanding that the Judge and
21 the Solicitor can extend to you the opportunity to plead
22 to an Alford plea?

23 A Yes, ma'am.

24 Q Had the Judge and the Solicitor not offered
25 you the opportunity to plea under Alford, would you have

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1 pled guilty and admitted your guilt?

2 A No.

3 Q And after your trial, did you ever tell
4 Mr. O'Neal that you wanted to appeal your case?

5 A I asked him if there was a possibility of
6 filing an appeal.

7 Q Okay. But you never told him -- what was his
8 response?

9 A He said that it wouldn't do me any good.

10 Q And did you want an appeal? Did you tell him
11 that you wanted an appeal after that?

12 A I didn't, no, because I took his advice.

13 MS. WILSON: Okay. No further questions, your
14 Honor.

15 MS. MULLANEY: Just briefly.

16 **REDIRECT EXAMINATION**

17 **BY MS. MULLANEY:**

18 Q The Solicitor asked you a question that was a
19 little confusing. She said, had you not been offered an
20 Alford plea, would you have pled guilty. I want to ask
21 you, because I think you might have gotten confused by
22 it. Had you been advised, okay, at your -- at the plea,
23 had you been -- if you had been advised that it was
24 likely that you were probably going to get convicted at
25 trial and that you would get the maximum sentence and it

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1 was likely that you could get the maximum sentence,
2 would you have gone to trial? Had your lawyer told you:
3 I think we're going to lose this case, and I think
4 you're going to get prison time, what would you have
5 decided to do?

6 A I probably would have taken the deal. I
7 probably would have pled guilty.

8 Q You would have taken probation?

9 A Yes, ma'am.

10 Q To avoid prison time?

11 A Yes, ma'am.

12 MS. MULLANEY: No further questions. Thanks.

13 MS. WILSON: Nothing from the State, your
14 Honor.

15 THE COURT: You may step down. Thank you.
16 Call your next witness.

17 MS. MULLANEY: I have no further witnesses.

18 THE COURT: All right. Does the State have any
19 witnesses?

20 MS. WILSON: No, your Honor, the State doesn't
21 have any witnesses.

22 THE COURT: All right. Ms. Mullaney, I'll be
23 happy to hear from you regarding argument.

24 MS. MULLANEY: Yes, ma'am.

25 Your Honor, I believe I've already amended the

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1 Petition orally. Would you like me to go back and amend
2 it, add those -- reiterate those counts, or is it okay
3 if I just go and argue those counts?

4 THE COURT: They are already added. That is
5 what you went forward on.

6 MS. MULLANEY: Okay. Thank you.

7 First, your Honor, I would like to address the
8 claim that Shawn raised in his Petition, that trial
9 counsel was ineffective for not advising him of his
10 right to appeal. Today, trial counsel testified that he
11 did not file an appeal for Shawn, and that he didn't
12 feel like that Shawn had issues to appeal, and that's
13 why he didn't. However, he also testified that he made
14 several objections during the trial on -- on two points.
15 The one is the pictures that came in into evidence the
16 morning of the trial. He testified -- not the morning
17 of the trial, the next morning during the trial. He
18 testified that he would have liked to have had an
19 opportunity to review those pictures, to be given those
20 pictures earlier, and in his opinion he was prejudiced
21 by not having those pictures earlier, and he believes
22 that the Judge made an error of law in that ruling.

23 He also testified that he believes that the
24 Judge made an error of law by not allowing him to
25 present evidence about the party that the victim had

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1 had, and that it was his defense that the video was made
2 during the party. Given that trial counsel felt that
3 the Court had made two errors of law, he was ineffective
4 for not advising his client to file an appeal, and he
5 was ineffective for, himself, not filing an appeal for
6 his client.

7 The second issue, which I would like the
8 Petition to be granted, because I think trial counsel
9 was ineffective, is under 404(b) and Lyle. First, he
10 did not object when the prosecutor elicited testimony
11 regarding the Defendant's pornography addiction. He
12 should have objected contemporaneously at the time that
13 that testimony was admitted, and he should have objected
14 later on during the trial. However, not only did he not
15 object at that time, but then he proceeded, himself, to
16 continue on and elicit much more damaging testimony
17 through Cross-Examination of Karen Glennon; and then, in
18 fact, he put his client up and asked his client on the
19 stand, in which the client admitted that he watches
20 porn. Although the client said he wasn't -- what he
21 characterized -- he wouldn't characterize himself as a
22 pornography addict, but he did admit. It's our opinion
23 that that is inadmissible 404(b) evidence under Lyle,
24 and defense counsel was ineffective for eliciting that
25 testimony during the trial.

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1 I would like to refer the case -- the Court to
2 the case of State versus Mitchell, 379 S.E.2d 123, where
3 trial counsel in a murder case was found ineffective for
4 failing to object to inadmissible evidence of the
5 defendant's devil worship and mafia membership, which
6 tended to prove only that the defendant was a bad person
7 with a propensity to commit a crime.

8 I would also like to refer the Court to Caprood
9 versus State, which is 525 S.E.2d 517, where counsel was
10 found ineffective in an armed robbery case for eliciting
11 hearsay from an officer about the defendant's rap sheet
12 and some type of violation.

13 Your Honor, these -- what happened in this case
14 goes much further than the Mitchell case and the Caprood
15 case, because not only did he not object, but then he
16 elicited it. I don't think that it was a proper trial
17 strategy in a voyeurism case to bring or address a
18 client's prior history with pornography or whether he
19 may or may not have an addiction to pornography, and I
20 believe under Strickland it doesn't meet the reasonable
21 attorney standard, and I believe that the client was
22 clearly prejudiced by this evidence coming into the
23 trial.

24 Third, your Honor, defense trial counsel failed
25 to advise the client that he had a right to -- to enter

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1 a plea under Alford, and he, in fact, testified that he
2 told the client that he had a winning case, and that he
3 encouraged the client to go to trial, and he was shocked
4 when he lost the trial.

5 Your Honor, again, under the reasonable
6 standard, under Strickland, the reasonable attorney,
7 this was not a good case for the defense. The Defendant
8 had admitted to his wife that he had made the tape on
9 numerous occasions, testimony came in where he had sent
10 her texts, saying that he always screws everything up,
11 where he apologized, he -- the tape could have only been
12 made or was made with the Defendant's camcorder. Maybe
13 it wasn't that Defendant's camcorder. Maybe they could
14 argue that it was a similar camcorder. But it was clear
15 that the tape was made from a camcorder of the make and
16 model that the Defendant possessed, the tape was found
17 in the Defendant's drawer, and he held on to it for over
18 two years. Despite this, trial counsel encouraged the
19 Defendant to turn down probation and go to trial, where
20 the Defendant got the maximum.

21 Trial counsel also testified that there was a
22 possibility that the Judge may not -- it was up to the
23 Court -- that the Judge may not have sentenced him as a
24 sex offender. The trial counsel should have told the
25 client that he had a possibility of not being sentenced

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1 as a sex offender at that time, and probably should have
2 had an evaluation done with Dr. Burke and presented
3 mitigation to the Court --

4 THE COURT: Wasn't that an automatic sex
5 registry?

6 MS. MULLANEY: I'm not sure if voyeurism is.
7 Probably. Is it?

8 MS. WILSON: I have the statute right here.

9 THE COURT: Pretty clear from the transcript
10 that it was. Because even at the end of Judge Dennis'
11 sentence, he says it's mandatory now, and I'm not going
12 to check it on the sheet, so. . .

13 MS. MULLANEY: Okay. So then I believe, then,
14 counsel must have made an error, then, when he testified
15 that that was the discussion.

16 But I'm going to refer the Court to U.S.
17 Supreme Court Lafler versus Anthony Cooper, which
18 is 132 S.Ct. 1376. It's a 2011 case, your Honor, which
19 is directly on point. In that case, the U.S. Supreme
20 Court held that if a plea bargain has been offered, a
21 defendant has the right to effective assistance of
22 counsel in considering whether to accept it. If that
23 right is denied, prejudice can be shown if loss of the
24 plea bargain led to a trial resulting in a conviction on
25 more serious charges or the imposition of a more serious

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1 sentence. In that case, the inmate's counsel -- the
2 Court found that the inmate's counsel was deficient in
3 providing erroneous legal advice about the plea and
4 encouraging the defendant in that case to turn down the
5 plea bargain and to go to trial.

6 Lastly, your Honor, this application should
7 be granted because trial counsel was ineffective by not
8 advising the client that -- that his statement would be
9 suppressed -- that his statement which was suppressed
10 would come in against him for impeachment purposes if he
11 took the stand. The client should have known that; he
12 should have been advised of that before he took the
13 stand. I don't think that he adequately was advised of
14 that of.

15 Let me just have one moment just to make sure
16 I've covered all my points.

17 (Respite.)

18 MS. MULLANEY: Your Honor, I believe he
19 was ineffective under the -- ask you to grant the
20 application and find that counsel was ineffective
21 representation under the Sixth Amendment to the
22 Constitution and under the applicable State
23 Constitution.

24 THE COURT: What was your Supreme Court site
25 132 1376 --

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1 MS. MULLANEY: Lafler versus Anthony Cooper,
2 and it's 132 S.Ct. 1376, and it was decided in 2011.

3 (Respite.)

4 THE COURT: All right. Ms. Wilson?

5 MS. WILSON: May it please the Court, your
6 Honor. It's the State's position that you should deny
7 the application for post-conviction relief. Regarding
8 the Applicant's -- regarding counsel's failure to advise
9 the Applicant of his right to appeal. The Applicant
10 testified and trial counsel testified that the Defendant
11 was informed of his right to appeal, as well as the
12 manner and method of filing appeal, and trial counsel
13 testified that he didn't see any appealable issues, and
14 he had won all significant objections and motions, and
15 that the Applicant did not request an appeal. He also
16 testified further that the issues that were raised by
17 the Applicant today would not have been successful on
18 appeal.

19 Specifically, regarding the trial counsel's
20 objection -- failure to object to testimony about porn
21 addiction and the -- the -- putting forth that evidence,
22 he testified that it was trial strategy to further bring
23 out testimony that once the family computer was wiped of
24 -- was reviewed, it didn't have any evidence that porn
25 sites had been seen, and it also -- that testimony was

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1 also rebutted on the stand by the Defendant at trial.

2 With regard to the objection about the Judge
3 not letting in testimony regarding the daughter having a
4 party prior -- a couple of weeks before the video was
5 reported, trial counsel testified that the evidence was
6 put forth before the jury through further testimony, and
7 he didn't -- he didn't necessarily need to ask that one
8 particular question to get in this -- that issue.

9 Also, your Honor, regarding counsel's failure
10 to advise of an Alford plea, counsel testified that it
11 was unlikely that one would have been extended, and that
12 it was his advice of counsel that they had a good chance
13 of winning at trial, and as a result, he -- he advised
14 him that he would -- he would -- he gave him the advice
15 that proceeding to trial was a good idea. The Defendant
16 testified that it was -- based on that advice, it was
17 his decision to proceed to trial.

18 Regarding the failure to advise the Defendant
19 about the statement for impeachment purposes, the
20 Applicant did -- in the statement, did admit to
21 committing the crime, and trial counsel objected to
22 that line of questioning at trial. And also that the
23 Applicant was advised of his right to testify and all
24 the rights that he was waiving if he took the stand, by
25 the Judge at trial.

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1 Regarding, lastly, your Honor, if the -- I
2 guess the thought process or the reasoning of the Court
3 in that case seems, to me, to be outcome determinative
4 and not regarding the Applicant -- not regarding
5 counsel's ineffectiveness, because, here, it seems that
6 the counsel -- the Applicant was just kind of upset with
7 the result, and that Mr. O'Neal did everything he could
8 to advise him of what would be the outcome at trial, and
9 that they had a good chance, but they could possibly
10 lose. So the State requests that you reject this
11 Applicant's post-conviction relief.

12 THE COURT: Your response?

13 MS. MULLANEY: Yes. Your Honor, first of
14 all, regarding the family computer, there's no police
15 reports, there's no evidence that the computer -- that
16 there was a forensic evaluation ever done on the
17 forensic computer, and counsel didn't call a witness to
18 introduce that evidence. And, also, the Attorney
19 General argues that the reason that counsel didn't file
20 an appeal, because the 404(b) evidence and Lyle evidence
21 would not have been grounds for an appeal. The reason
22 why is because counsel didn't object, and that's exactly
23 why there should be a PCR. Counsel didn't object to the
24 404(b) and to the Lyle evidence coming in, so he cannot
25 now argue that he shouldn't -- that there weren't

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1 grounds -- I'm sorry. I'm getting all confused. It's a
2 roundabout argument. Let me start all over.

3 The Attorney General said that Mr. O'Neal did
4 not file an appeal because the pornography and the Lyle
5 evidence was not grounds for an appeal. And it wasn't
6 grounds for an appeal because Mr. O'Neal didn't make it
7 grounds for appeal because he didn't object to it when
8 the prosecutor elicited that. That is exactly the
9 purpose of a PCR, when counsel -- when trial counsel
10 is ineffective and does not preserve issues for
11 the appellate court. Because of trial counsel's
12 ineffectiveness, the appellate court never got to hear
13 or decide that issue; therefore, that was ineffective,
14 and that is exactly why this application should be
15 granted, your Honor.

16 THE COURT: All right. Counsel, I'm going to
17 give you ten days to submit proposed orders. Please
18 make sure that you provide them to the Court and serve
19 them on opposing counsel. You have ten days to do so.
20 This matter is under advisement.

21 Good luck to you, Mr. Glennon.

22 MS. WILSON: Your Honor, may I request
23 something? The State requests 30 days to submit a
24 proposed order. In two weeks, I have oral argument in
25 front of the Court of Appeals.

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1 MS. MULLANEY: I have no objection.

2 THE COURT: I'm not going to give you 30 days.
3 I'm going to keep it at ten. If you need a request for
4 extension, you may do so at a later time.

5 MS. WILSON: Thank you.

6 THE COURT: Thank you.

7 WHICH WAS ALL THE EVIDENCE ADDUCED AT THIS
8 CAUSE.

9 (The hearing of this cause concluded at
10 11:41 a.m.; on October 1, 2012.)

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R E P O R T E R ' S C E R T I F I C A T E

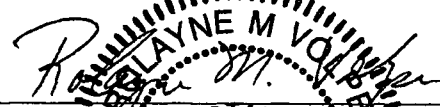
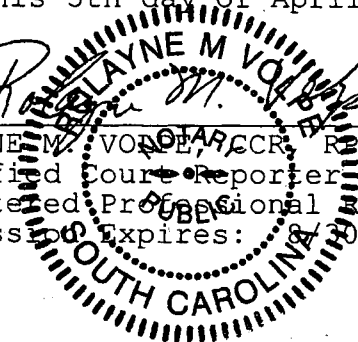
STATE OF SOUTH CAROLINA)
) ss.
COUNTY OF BERKELEY)

I, ROLAYNE M. VOLPE, Certified Court Reporter, CCR,
and Registered Professional Reporter, RPR, do hereby
certify that the transcript of the foregoing proceedings
accurately reflects the events that occurred before me
to the best of my ability at the time and place set out
on the caption hereto, the witnesses having been duly
cautioned and sworn, or affirmed, to tell the truth, the
whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for,
related to, nor employed by any of the parties to the
action in which these proceedings were taken or to any
attorney or counsel employed by the parties hereto, nor
financially interested, directly or indirectly, in the
outcome of this action.

CERTIFIED AND SIGNED on this 5th day of April, 2013.

ORIGINAL


ROLAYNE M. VOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 8/30/2021


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Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Shawn L. Glennon, #347618,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2011-CP-08-3504

ORDER OF DISMISSAL

FILED
2012 NOV -9 PM 1:13
MARY B. BRADY
CLERK OF COURT
BERKELEY COUNTY

This matter comes before the Court by way of an application for post-conviction relief (PCR) dated December 19, 2011. The Respondent made its return on June 8, 2012. An evidentiary hearing on the matter was convened on October 1, 2012 at the Berkeley County Courthouse. The Applicant was present at the hearing and represented by Mary Beth Mullaney. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified along with Michael O'Neal, Esquire. The Court had before it the trial transcript, the Berkeley County Clerk of Court records, and the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, and the Respondent's return.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Berkeley County Clerk of Court. The Applicant was indicted at the September 2010 term of the Berkeley County Grand Jury for voyeurism (2010-GS-08-1489). He was represented by Michael O'Neal, Esquire.

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email:
MF, MAM

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The case was called to trial and the Applicant was found guilty. On August 30, 2011, the Applicant was sentenced by the Honorable R. Markely Dennis, Jr. to three (3) years imprisonment. The Applicant did not appeal.

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 advise client of his right to appeal.

At the hearing, Applicant proceeding solely on the ineffective assistance of counsel issue and raised several additional allegations of ineffectiveness.

1. Ineffective Assistance of Counsel
 - a. Failure to advise defendant of an Alford¹ plea
 - b. Failure to advise defendant that his statement could be used against him for impeachment purposes when he took the stand at trial
 - c. Failure to object to testimony about the defendant's porn addiction under 404(b)
 - d. Failure to object to the Judge's ruling that testimony about a party held by the victim at the home was inadmissible.

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 their 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. Sec. 17-27-80 (2003).

¹ North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).

[Handwritten signature and date 10/15/12]

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For the Applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant was present and testified at the evidentiary hearing. He testified that he met with trial counsel two times, exchanged emails, and spoke to counsel on the phone several times prior to going to trial. He testified that he reviewed discovery and discussed trial strategy with counsel. The Applicant testified that the State offered him a plea to probation. He testified that he consulted with trial counsel and was advised that he had a winning case and that he should go to trial. He also testified that trial counsel gave him the option to plead guilty or proceed to trial. He testified that after consulting with trial counsel he decided to reject the plea offer. The Applicant testified further that he did not know that he could have entered an Alford plea. He testified that had he been able to enter an Alford plea, he would not have gone to trial.

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However, he also testified that he would not have pleaded straight up to the charge and admitted guilt. He testified that had he been advised that he would have been convicted, he would have pled guilty.

The Applicant also testified that trial counsel did not advise him that his statement could be brought up on the State's cross-examination of him. He testified that had he known this he would not have testified at his trial. The Applicant testified that he never requested an appeal from trial counsel. Lastly, the Applicant testified that he would liked to have met with trial counsel more and that he did not feel prepared for trial.

Trial counsel testified that he met with the Applicant several times prior to trial. He testified that he could not recall whether he or the Applicant's former attorney filed a Rule 5 motion, but he did review the discovery materials with the Applicant. He testified that he discussed with the Applicant the elements of the charge and what the State was required to prove. He also testified that the Applicant did not give him any leads or witnesses to investigate. However, he testified that he checked with the police about the seizure of the family computer and whether or not the victim's mother had turned over to the police any pieces of paper with porn websites written on them by the Applicant.

Counsel testified that the State offered the Applicant the chance to plead guilty and receive probation with his status as a registered sex offender in the discretion of the plea judge. Counsel testified that he told the Applicant that his case appeared to be a winnable case, but that he could lose at trial. He testified that the Applicant decided to go to trial and that he agreed with that decision. Counsel testified that he never discussed the possibility of an Alford plea with the Petitioner. He testified that he knew the Solicitor handling the Applicant's case and that it was unlikely an Alford plea would have been offered by the Solicitor or accepted by the judge.

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Counsel testified that he had ample time to prepare for trial. He testified that the Applicant's defense was that he did not make the tape, he found the tape and held on to it to save his marriage, he told his wife he made the tape to save his marriage, and he was tricked into admitting he made the tape by his wife. Counsel testified that he did not object to the State's testimony about the Applicant's porn addiction because he was able to put before jury that the computer was checked by the police and he found no evidence of pornography on the computer.

Counsel testified that he advised the Applicant of his right to appeal, but told him that he did not have any grounds for appeal. Counsel testified that most of the court's rulings and objections were in the Applicant's favor. He testified that after he advised the Applicant of his right to appeal, the Applicant never requested an appeal.

Counsel testified that he wanted to elicit testimony from the victim's mother that the victim had a party in the family home while the mother and the Applicant were away. He testified that the court held the testimony was inadmissible, but that he was still able to elicit testimony from the mother that the victim had other people over while they were not home and that other people had access to the home and camcorder. Counsel testified that he did not think the court's ruling on the admissibility would have been an appealable issue.

Counsel also testified that he objected to the introduction of two or three photos of the family home and the bathroom doorway. He testified that at trial he felt the pictures were prejudicial. He also testified that the Applicant said that the photos were photos of the family home and that he ultimately did not feel the introduction of the photos affected the outcome of the Applicant's trial.

Counsel testified that he did not object to testimony from the State's witness about the Applicant's pornography addiction. Counsel also testified that he elicited testimony from the

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Applicant about a pornography addiction. He testified that at trial, the victim's mother testified that the police told her they checked the family computer and they found no forensic evidence of pornography. Counsel testified that he did not recall how he determined that the police had checked the computer and found no evidence of the viewing of pornography, but that he likely spoke to police about the results of a forensic examination.

Lastly, counsel testified that the Applicant's statement was suppressed prior to trial. He testified that on cross-examination, the prosecutor cross-examined the Applicant on part of his statement. Counsel testified that the statement was introduced into evidence or used to impeach the Applicant. He testified that some of the Applicant's statement was presented during the State's cross-examination. He testified further that he did not tell the Applicant that by taking the stand to testify, his statement could be used against him. Counsel testified that he did advise the Applicant of his right to testify.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation. Counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the 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.

This Court finds that the Applicant failed to meet his burden of proving trial counsel did not advise the Applicant of his right to appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega,

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528 U.S. 470, 120 S.Ct. 1029 (2000). In most cases, a professionally reasonable attorney should consult with the defendant regarding an appeal. Id. In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances courts should consider: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id.

This Court finds that trial counsel properly consulted with the Applicant about his right to appeal. Counsel and the Applicant both testified that trial counsel advised the Applicant of his right to appeal. Counsel testified further that he felt that most of the court's rulings were in the Applicant's favor at trial and that there were no meritorious issues for appeal. Counsel and the Applicant also both testified that the Applicant never expressed an interest in appealing. This Court finds that trial counsel's performance was professionally reasonable and counsel adequately advised the Applicant of his right to appeal.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have advised the Applicant of an Alford plea. The United States Supreme Court has held that an express admission of guilt is not required for imposition of a criminal penalty. Alford, 400 U.S. at 37. This Court finds that trial counsel was not ineffective for failing to advise the Applicant of an Alford plea. Trial counsel gave credible testimony that he did not advise the Applicant of the possibility of entering an Alford plea because he thought it was unlikely that the Solicitor handling the Applicant case would have offered a plea pursuant to Alford. This Court also finds that the Applicant failed to present any evidence that an Alford plea was extended to the Applicant or that trial counsel failed to convey an Alford plea to the Applicant.

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This Court finds that the Applicant freely and voluntarily rejected the State's plea offer to probation with sex offender registry left to the discretion of the sentencing judge. This Court finds further that based on the Applicant's testimony that he proceeded to trial on the advice of counsel and that he would have plead guilty had he known he was going to be convicted at trial, it was unlikely that the Applicant would have plead guilty instead of proceeding to trial. This Court finds that trial counsel was not deficient for failing to advise the Applicant of an Alford plea.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have advised the Applicant that his statement could be used against him for impeachment purposes when he took the stand at trial. This Court finds that the Applicant was properly advised of his right to testify prior to taking the stand at his trial. (T. 167-170). The record reflects that the Applicant was advised that the State would have the opportunity to cross-examine him and that he was relinquishing his right to remain silent. This Court finds that trial counsel was not deficient for not advising the Applicant that his statement could be used against him for impeachment purposes when he took the stand at trial. The record reflects that trial counsel objected to the line of questioning about the Applicant's statement to the police. This Court also finds that the Applicant denied making a statement to the police.

The Court also finds that trial counsel gave credible testimony that the Applicant was never impeached with his statement and the statement was never introduced into evidence. This Court finds that the testimony elicited from the Applicant by the State on cross-examination was very similar to the testimony elicited from the Applicant by trial counsel, therefore, the testimony given by the Applicant on cross-examination about his statement to police was not prejudicial and did not affect the outcome of the Applicant's trial. This Court finds that trial counsel was

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not ineffective for not advising the Applicant that his statement could be used against him at trial for impeachment purposes when he took the stand.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have objected under SCRE 404(b) to the mention of the Applicant's alleged pornography addiction at trial. Under Rule 404(b), SCRE, evidence of other crimes, wrongs, or acts is generally not admissible to prove the defendant's guilt for the crime charged. State v. Fletcher, 379 S.C. 17, 23, 664 S.E.2d 480, 483 (2008). Such evidence is, however, admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent. Id.

This Court finds that testimony presented by the State of the Applicant's alleged pornography addiction was not objectionable under SCRE 404(b). The testimony was not evidence of other crimes, wrongs, or bad acts. This Court also finds that the Applicant was not prejudiced by the State's presentation of this testimony. The Applicant testified at trial that he was not a pornography addict and that he did not view pornography for hours on end. (T. 180:10-23). In addition, trial counsel was able to elicit testimony from the victim's mother on cross-examination that the police did a forensic search of the computer and found no evidence of pornography viewing. (T. 141:9-22). This Court finds that trial counsel was not ineffective for failing to object to testimony about the Applicant's alleged pornography addiction.

This Court finds that the Applicant failed to meet his burden of proving trial counsel should have objected to the trial judge's ruling that testimony about the victim's party in the family home was inadmissible. This Court finds that trial counsel was not ineffective for failing to object to the exclusion of this testimony. This Court finds that immediately after the State's objection to the testimony was sustained, trial counsel was able to elicit from the victim's mother

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testimony that her children frequently came in and out of the home and that the children brought people over without her knowledge. (T. 140:23-141:8). This Court finds that trial counsel was not ineffective for failing to object to the judge's exclusion of this testimony when the substance of the testimony was elicited through another line of questioning.

Accordingly, this Court finds the Applicant failed to prove the first prong of the Strickland test- that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in their representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland- that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application 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.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations 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.

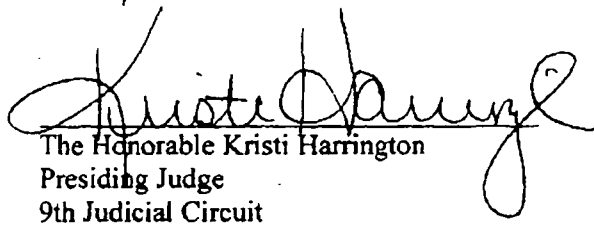
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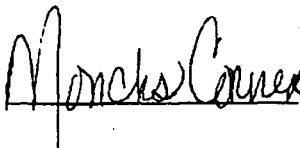
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate 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 5th day of November, 2012


The Honorable Kristi Harrington
Presiding Judge
9th Judicial Circuit

 Moncho Conner South Carolina.

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
Shawn Leonard Glennon,	)	
Applicant,	)	
	)	MOTION TO RECONSIDER
vs.	)	PURSUANT SCRPC 59(E)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

FILED
2012 NOV 19 PM 3:36
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorney for the above-named Applicant, moves pursuant to Rule 59 (e), SCRPC, for relief from said Order of Dismissal signed by the Court on November 5, 2012. A filed copy of the Order of Dismissal was received by email the mail on November 9, 2012. Rule 59 (e), SCRPC, provides that one has ten days after receipt of the notice of the order within which to seek relief.

Applicant presents this Motion for Reconsideration reserving all rights to appeal any and all findings, conclusions, and results in this Motion for Reconsideration. Applicant files this Motion for Reconsideration for the purpose the opportunity to correct what she perceives to be errors of law and to comment upon issues, which should have been ruled upon but were not.

See. Talley vs. S.C. Higher Ed. Tuition Grants Comm., 289 S.C. 483, 347 S.E.2d 99 (1986); *Bailey v. Covil Corporation*, 291 S.C. 417, 354 S.E.2d 35 (1987); *Ringer v. Graham*, 293 S.C. 238, 359 S.E.2d 523 (Ct. App. 1987).

PROCEDURAL HISTORY

The Applicant was indicted at the September 2010 term of Berkeley County Grand Jury for Voyeurism (2010-GS-08-1489). The case was called to trial on August 29, 2012 before the Honorable R. Markley Dennis, Jr. Upon the advice of Counsel, Petitioner turned down an offer of probation prior to trial. On August 30, 2011 following a guilty verdict on the sole count of the indictment Voyeurism SC Code § 16-17-470(B)(1) the Applicant was sentenced to a period of incarceration of three years with the additional requirement that he register as a sex offender. No appeal followed Petitioner's trial. On October 1, 2012 an evidentiary hearing on the Petition for Post Conviction Relief (PCR) was held before the Honorable Kristi Harrington. Present for this hearing were the Petitioner, his PCR attorney Marybeth Mullaney and Assistant Attorney General Ashleigh Wilson. Also present was attorney Michael O'Neal, who was Petitioner's Trial Counsel. Mr. O'Neal and Petitioner testified at the October 1, 2012 hearing. The Court issued an Order on November 5, 2012 dismissing the application for post-conviction relief. The Applicant respectfully requests that the Court

reconsider the Order of Dismissal dated November 5, 2012 and grant the application for post conviction-relief.

Facts

The allegations at trial were that Petitioner videotaped his seventeen-year stepdaughter in 2008 while she showered and groomed herself in the Petitioner's bathroom. The Petitioner's wife found the tape in Petitioner's dresser drawer on May 27, 2010. The video was compatible with Petitioner's personal video camera. Petitioner admitted to his wife and to law enforcement that he made the tape. Prior to trial, the Assistant Solicitor recommended probation. Petitioner rejected the plea offer upon the advice of Trial Counsel.

The Petitioner now asks the court to grant his petition for post-conviction relief on the grounds of ineffective assistance of counsel. Specifically in his written Application for Post-Conviction Relief, Petitioner asserts that he was not advised of his right to appeal. At the hearing, PCR Counsel made a motion pursuant to SCRCP 15(b) to orally amend the Application to include the following:

- (1) Trial Counsel was ineffective for incorrectly advising the Petitioner that he had a "good case" that was "winnable" at trial.

- (2) Trial Counsel was ineffective because he failed to convey the possibility of a guilty plea under *North Carolina v. Alford*.
- (3) Trial Counsel was ineffective for not objecting under SCRE 404 and *State v. Lyle* to impermissible character evidence on direct examination of Petitioner's alleged addiction to pornography.
- (4) Trial Counsel was ineffective for eliciting damaging character evidence on cross-examination and direct examination of the Petitioner's alleged pornography addiction.
- (5) Trial Counsel was ineffective for not advising Petitioner when he took the stand in his own defense that his statement to law enforcement, which was suppressed pre-trial, would be admissible for impeachment purposes.

Law and Analysis

South Carolina has adopted a two-prong analysis for determining whether a petitioner is entitled to post-conviction relief (PCR) on the grounds of ineffective assistance of counsel. First, defendant must show that counsel's performance was deficient, *Butler v. State*, 286 S.C. 441, 334 S.E. 2d 813 (1985), quoting *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, (1984). "Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional

norms.” *Cherry v. Stage*, 300 S.C. 115, 386 S.E. 2d 624 (1989), quoting *Strickland, supra*. “Second, the defendant must show that the deficient performance prejudiced the defense.” *Butler*, 286 S.C. 441, quoting *Strickland, supra*. The burden of proof lies in the Petitioner. *Daniel v. State*, 282 S.C. 155, 317 S.E. 2d 746 (1984).

I. Rejecting the plea offer

Trial Counsel was ineffective for advising applicant he had a “good case” and for encouraging applicant to reject the plea offer and proceed to trial. The applicant did not have a “good case”, there was substantial evidence against Petitioner: the video was found in Petitioner’s dresser drawer; the video was compatible with Petitioner’s video camera; the Petitioner held onto the tape for over 2 years; Petitioner confessed to his wife and to law enforcement that he made the video. Counsel failed to render reasonable effective assistance under the prevailing professional norm when he advised the applicant that this case was “winnable” and it was unlikely the Applicant would get jail time if he were convicted after trial.

Petitioner testified that he retained Mr. O’Neal and he paid him ten thousand dollars (\$10,000). Petitioner testified that he met with his attorney only once prior to trial. He testified he met with Mr. O’Neal at his office on the day he hired him and he did not meet again with Mr. Neal until the day

of trial.¹ The applicant testified that Mr. O'Neal advised him to reject the offer of probation and proceed to trial on the grounds that he had a "good case." The Applicant testified that Trial Counsel advised him even if he lost he would get probation because he did not have a criminal record and because he had served his country in Iraq. The Petitioner testified he had no prior involvement with criminal justice system and he relied heavily upon his attorney's advice when he decided how to proceed in his case. The Applicant was prejudiced by Trial Counsel's advice to reject the plea offer because instead of receiving probation, he was sentenced to the maximum amount of jail time under the statute.

Defendants have a Sixth Amendment right to counsel, a right that extends to the plea-bargaining process. *See Missouri v. Frye*, 562 U.S. 1386, 132 S.Ct. 1399 (2012); *Lafler v. Cooper*, 132 S.Ct. 1376, 182 L.Ed 2d 398 (2012); *Padilla v. Kentucky* 559 U.S. 288, 130 S.Ct. 1473 (2010); *Hill v. Lockhart* 57 U.S. 52, 106 S.Ct. 366 (1985); *McMann v. Richardson*, 397 U.S. 759, 771, 90 S.Ct. 1441(1970). In *Hill*, the Court held "the two-part *Strickland v. Washington* test applies to challenges to guilty pleas based on ineffective assistance of counsel." *Id* at 58, 106 S.Ct. at 366. The

¹ Mr. O'Neal testified on direct examination that he met once with the Applicant before trial and then he met with him again the morning of his trial however he changed his testimony during cross examination by the Assistant Attorney General stating that he met several times with the Applicant.

performance prong of Strickland requires a defendant to show “that counsel's representation fell below an objective standard of reasonableness.” *Lafler v. Cooper* 132 S.Ct 1376, 182 L.Ed 2d 398 (2012)). The Supreme Court in *Missouri v. Frye* 132 S.Ct. 1399 (2012) and *Lafler v. Cooper*, 132 S.Ct 1376, 182 L.Ed 2d 398 (2012) held that a defendant’s right to the effective assistance of counsel under the Sixth Amendment can be violated by the loss of a favorable plea deal. In *Lafler* the Court stated, “If a plea bargain has been offered, a defendant has the right to effective assistance of counsel in considering whether to accept it. If that right is denied, prejudice can be shown if loss of the plea opportunity led to a trial resulting in a conviction on more serious charges or the imposition of a more severe sentence.” *Id* at 1386, 182 L.Ed 2d at 410. The Court likewise vacated and remanded the judgment of the lower court in *Missouri v. Frye*, holding that the Sixth Amendment right to effective assistance of counsel in criminal cases includes the right to notice from one’s attorney of the terms of a plea offer from the prosecution. Failure to convey such terms to the defendant violates that right. *Id.* at 1399, 182 L.Ed 2d at 379.

Trial Counsel testified the State offered the Applicant a plea to probation with sex offender registry left to the discretion of the sentencing

judge.² Trial Counsel testified he advised the Petitioner he had a “good case”. He testified he instructed the Applicant that his case was “winnable” at trial. Trial Counsel testified that he did not expect the jury to convict the Petitioner and he did not expect the Judge to sentence Petitioner to the maximum sentence allowed under the law.

Trial Counsel admitted that he did not ever discuss the possibility of an *Alford* plea with Applicant, Trial Court, or the Assistant Solicitor. Trial Counsel stated the reason for this was that he didn’t think this particular Assistant Solicitor would agree to an *Alford* plea. This testimony was pure speculation given that Counsel never made any attempt to investigation this option for his client. South Carolina Courts have accepted guilty pleas under *Alford*. See *Gaines v. State*, 335 S.C. 376 (1999). Petitioner testified that had he been aware of his ability to enter a plea pursuant to *North Carolina v. Alford* 400 U.S. 25, 91 S.Ct. 160 (1970) he would have availed himself of that plea offer.

This Court should grant the application for post-conviction relief because the Applicant was prejudiced by counsel’s ineffective performance

² Either Trial Counsel was mistaken about the plea offer or the Assistant Solicitor made an offer that was in violation of that statute. A plea or conviction to Voyeurism requires mandatory sex offender registration and is not in the discretion of the Court. Pursuant to SC Code § 20-3-430(c)(12) a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for voyeurism or aggravated voyeurism shall be referred to as an sex offender and is required to register as such.

because Petitioner received a more severe sentence than the plea offer.

Applicant was offered a plea to probation but he rejected it upon the advice of counsel. As a result he was convicted and received a sentence of 3 years prison. In addition Trial Counsel failed to explore the possibility of a plea under *North Carolina v. Alford* 400 U.S. 25, 91 S.Ct 160 (1970).

II. SCRCP 404 Evidence

Trial Counsel erred in failing to object to the following testimony from the victim's mother:

Well, because three months after we got married I discovered that he had a porn addiction. And it had been, uh-what we fought about most of the time during our marriage was him lying to me about when he was doing it, telling me that he wasn't doing it. I would constantly catch him, find notes in his pocket when he'd come from work with website after website after website of pornsites. We went to counseling over it to try to resolve the issue. So I just figured it was more pornographic material. (Trial Transcripts p 111,112 ln 18-7)

This error was prejudicial to the petitioner. In a criminal case, the State cannot attack the character of the defendant. *State v. McElveen*, 280 S.C. 325, 313 S.E. (2d) 298 (1984); *State v. Swords*, 279 S.C. 554, 309 S.E. (2d) 750 (1983); *State v. Gamble*, 247 S.C. 214, 146 S.E. (2d) 709 (1966).

Further, character evidence is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person. *State v. Johnson*, 293 S.C. 321, 360 S.E. (2d) 317 (1987). Counsel's failure to object to the introduction of

this character evidence constituted ineffectiveness. *See Mitchell v. State*, 379 S.E. 123 (S.C. 1989); *State v. Caprood* 525 S.E.2d 514 (S.C. 2000).

On cross-examination of State's witnesses, Trial Counsel elicited additional damaging character testimony from the witness about Petitioner's predilection for pornography. In his questions of the State's witnesses, Trial Counsel characterized the Applicant as being a "raging pornography addict" (Trial Transcript p135 ln 25 and p136-137). On direct examination of the Applicant, Trial Counsel asked, "Have you ever looked at porn?" Petitioner replied, "Yes I have." (Trial Transcript p180 ln 17-18). Counsel testified he purposefully introduced this evidence as part of a trial strategy. Counsel testified his trial strategy was to elicit from the victim's mother on cross-examination that the police did a forensic search of the computer and found no evidence pornography. However, at the hearing Counsel admitted that he was never received any reports from law enforcement to suggest that the police had taken possession of the computer or that a forensic evaluation was ever done on the Petitioner's computer. Counsel testified that he did no recall how he determined that the police had checked the computer and found no evidence of the viewing of pornography, but that he likely spoke to the police about the results of a forensic examination. However it appears that no such examination ever occurred. In fact, Trial Counsel had his file

at the hearing and was unable to produce any documentation to establish that a forensic evaluation of the Applicant's computer was ever completed. Therefore this trial strategy was based upon false and unsubstantiated evidence.

Trial Counsel introduced evidence that was consistent with the State's witnesses when he asked the Applicant to admit on direct examination that he watches pornography. Trial Counsel sandbagged his own client when he introduced evidence that the Petitioner watched pornography. This testimony was clearly prejudicial to the Applicant. Failing to object to testimony regarding the Applications predilection for pornography and then introducing evidence that the applicant watches pornography is not based upon a valid trial strategy.

When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000). However South Carolina Courts have held that merely asserting a trial strategy is not sufficient. Counsel was found deficient in *Gilchrist v. State*, 350 S.C. 221, 565 S.E.2d 281 (2002), for the failure to object to the state's vouching for the credibility of a key witness. At the PCR hearing, counsel explained he "thought seriously about making a mistrial motion and objection to all of

that at the time. However, based upon the strategy of the case, [he] decided not to." *Id. at 226, 565 S.E.2d at 284*. No further explanation was given. The Court stated, "counsel never articulated any strategy at all. A blanket statement by counsel at a PCR hearing that he employed 'strategy' does not automatically insulate the lawyer from being found ineffective." *Id. at 228, 565 S.E.2d at 284*. In *Sanchez v. State*, 351 S.C. 270, 569 S.E.2d 363 (2002), the defendant appealed his criminal sexual conduct conviction. The Court held representation was ineffective because of counsel's failure to object to a police officer's hearsay testimony about the six-year-old victim's demonstration of the assault using an anatomically correct doll. Trial counsel felt the testimony would be useful to show the accusations were vague. *Id. at 274, 569 S.E.2d at 365*. However, this strategy was deemed unreasonable as the hearsay corroborated the victim's testimony at trial. *Id. at 276, 569 S.E.2d at 366*.

In *Dawkins v. State* 346 S.C. 151 (2001), the South Carolina Supreme Court rejected the PCR court's finding that trial counsel had a valid strategic reason for not objecting to the introduction of impermissible hearsay. Trial Counsel's failure to object to testimony regarding the Applicant's predilection for pornography and dishonesty constituted ineffective assistance of counsel. Trial Counsel was also ineffective for eliciting

testimony on direct examination that corroborated the State's witnesses. The Applicant respectfully asks this Court to find Trial Counsel's strategy was unreasonable and prejudicial.

III. Failure to Advise Petitioner Regarding his Right to Appeal

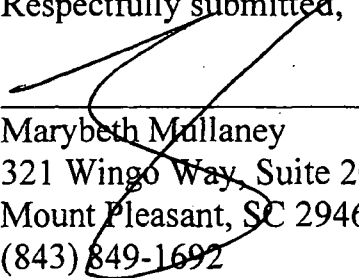
Petitioner testified that after the trial he asked Counsel about appealing the conviction. Petitioner testified that Counsel told him he had no grounds for an appeal. Mr. O'Neal also testified that he advised Petitioner he did not have legal grounds for appeal. However, Mr. O'Neal testified that in his opinion the Trial Judge made an error of law by not allowing him to elicit testimony regarding a party that the victim had at the home without her parent's knowledge. Trial Counsel testified it was his defense at trial that one of the victim's friends made the video of the victim during the party.

Mr. O'Neal testified that during the trial the Assistant Solicitor produced pictures that had not been shown to him before the trial. Mr. O'Neal testified that he objected to the pictures coming into evidence because he had prepared his case without the pictures. (Trial Transcripts p 90 ln 4-23) The Trial Judge overruled his objection and allowed the pictures into evidence. Mr. O'Neal testified that in his opinion the Trial Judge made an error of law by allowing these pictures into evidence. Therefore, Trial

counsel was ineffective for giving Petitioner inadequate advice regarding his right to appeal. See *Johnson v. State*, 480 S.E. 733 (S.C. 1997).

Based upon the foregoing the applicant, through his undersigned attorney respectfully request that the applicant's petition for post conviction relief be granted.

Respectfully submitted,



Marybeth Mullaney
321 Wingo Way, Suite 201
Mount Pleasant, SC 29464
(843) 849-1692
ATTORNEY FOR APPLICANT

November 19, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEASE

COUNTY OF BERKELY)

SHAWN LEONARD GLENNON,)

Applicant,)

CERTIFICATE OF SERVICE

V.)

STATE OF SOUTH CAROLINA,)

Respondent.)

I, Jenny Ryan, the undersigned employee of the Mullaney Law, certifies that a filed copy of *Motion to Reconsider Pursuant to 59(e)* was served on Ms. Ashley Wilson, Assistant Attorney General via U.S. Mail/Certified/Return Receipt Requested on this the 19th day of November, 2012.

Ms. Ashley Wilson
 Assistant Attorney General
 Rembert C. Dennis Building
 Post Office Box 11549
 Columbia, SC 29211-1549

Jenny Ryan
 Jenny Ryan
 Paralegal

SWORN to before me this the
19 day of November, 2012.

Notary Public for South Carolina
 My Commission Expires: 3/9/22

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
2011-CP-08-3504

Shawn L. Glennon, #347618)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN AND MOTION TO DISMISS
MOTION TO ALTER OR AMEND
PURSUANT TO RULE 59(e) SCRPC

2012 DEC 17 PM 4:27
CLERK OF COURT
BERKELEY COU

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRPC, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

The Order of Dismissal of the Honorable Kristi L. Harrington, dated November 5, 2012, contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRPC. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). The Applicant alleges the following:

1. Post-conviction relief should be granted because the Applicant was prejudiced by counsel's ineffective performance because Applicant received a more severe sentence than the plea offer.

a. Respondent submits that this issue was properly addressed by the Court on pages 7 and 8 of the Court's Order of Dismissal.

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2. Trial counsel's failure to object to testimony regarding the Applicant's predilection for pornography and dishonesty constituted ineffective assistance of counsel.

a. The Respondent submits that this issue was properly addressed by the Court on pages 9 and 10 of the Court's Order of Dismissal.

3. Trial counsel was ineffective for giving the Applicant inadequate advice regarding his right to appeal.

a. The Respondent submits that this issue was properly addressed by the Court on pages 6 and 7 of the Court's Order of Dismissal.

II.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior 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
(803) 734-3737

Columbia, South Carolina
December 3, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

2012-CP-08-3504

SHAWN L. GLENNON, #347618)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

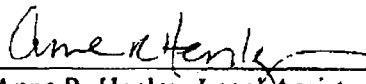
STATE OF SOUTH CAROLINA,)

Respondent.)

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 and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Marybeth Mullaney, Esquire
 321 Wingo Way, Ste 201
 Mount Pleasant, SC 29464

DATED this 3rd day of December 2012


 Anne R. Henley, Legal Assistant
 For Respondent

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Berkeley
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-08 3504

Shawn L. Glennon, #347618

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Applicant's Motion to Reconsider Pursuant to SCRPC 59(e) is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

12/19/12
email:
MF
MBEM
AKW
Circuit Court Judge

2151

Judge Code

12/11/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of Dec 12 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Dec 12 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Mary J. Bruner
CLERK OF COURT

Court Reporter: N/A

COR2010-07-01481

WITNESSES

Jimmy Wells
Berkeley County Sheriff's Office

9-09-10

AGENCY CASE NUMBER

20107032630

ARREST WARRANT NUMBER

M331953

DATE OF ARREST

July 29, 2010

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 9-8-10

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010-GS-08-1489

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS

SEPTEMBER Term 2010

THE STATE

vs.

Shawn Leonard Glennon
DOB:
W/M

Indictment for
VOYEURISM

MAKAY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.
2010 SEP -8 AM 11:32

FILED

JAN

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

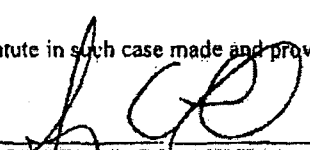
INDICTMENT

At a Court of General Sessions, convened on SEPTEMBER 8, 2010 the Grand Jurors of Berkeley County present upon their oath:

VOYEURISM

That Shawn L. Glennon did in Berkeley County on or about July 27, 2010 for the purpose of arousing or gratifying sexual desire of any person, knowingly view, photograph, audio record, video record, produce, or create a digital electronic file, or film the victim Minor , without her knowledge and consent, while the victim was in a place where she would have a reasonable expectation of privacy, in violation of Section 16-17-470 (B) (1) 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.


ASHLEY B CORNWELL
ASSISTANT SOLICITOR

COUNTY OF
STATEBerkel
VS.

Shawn Leonard Glennon

AKA:

Race: WHITE Sex: M Age: 39

DOB: SS#

Address:

City, State, Zip: Ladson, SC 29456

DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Voyeurism, violating place of privacy, views, photogra

INDICTMENT/CASE#: 2010GS081489

A/W#: M331953

Date of Offense: 7/27/2010

S.C. Code § : 16-17-0470(B)(1)

CDR Code #: 2865

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0470(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2865

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Cornwell, Ashley B

SC Bar# 76577

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS days/hours Public Service EmploymentObtain 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 FundOther: Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$133.90

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2060Sentence Date: 8/30/11