

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Dorchester County

Honorable Heath P. Taylor, Circuit Court Judge

VERNON COOLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000362

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER) 2016-GS-18-0534

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	August 27, 2018
	)	
Vernon Lamarr Cooley,	)	
	)	
Defendant.	)	

B E F O R E:

Honorable Diane S. Goodstein
Dorchester County Courthouse
St. George, South Carolina

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

Sheila Mims, Esquire
Ryan Templeton, Esquire
Attorneys for Plaintiff

Charlie Lee Whirl, Esquire
Attorney for Defendant

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Circuit Court Reporter

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Voir Dire

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1 (On the record, August 27, 2018. General jury panel
2 qualification takes place. There is a break and the following
3 takes place outside the presence of the jury venire.)

4 THE COURT: Mr. Whirl, may I have your permission in the
5 absence of your client to put on the record just what occurred
6 or would you prefer that I wait? Either way is fine.

7 MR. WHIRL: You can put it on the record now.

8 THE COURT: All right. Very well. Mr. Whirl approached
9 because his client, he shares with me, is a diabetic, and he
10 did not want to have an accident, and he needed to retire for
11 a comfort break, and Mr. Whirl shared that with me. The jury
12 was, as they were exiting, Mr. Whirl turned around, and, and I
13 told him at the point in time when the jury was sufficiently
14 exited the courtroom, on behalf of his client, he could direct
15 when his client would then exit into the lockup, which is
16 right outside the courtroom, and there was a point in time
17 when Mr. Whirl so indicated, and our security folks took his
18 client outside so that he could use the facilities. Does that
19 -- accurate, Mr. Whirl?

20 MR. WHIRL: It does. It is, Your Honor.

21 THE COURT: Very well. All right.

22 MR. WHIRL: And thank you.

23 THE COURT: You all concur?

24 MS. MIMS: Yes, ma'am.

25 THE COURT: All right. Very well.

Voir Dire

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1 OFF THE RECORD

2 (On the record. The following takes place in the
3 presence of the jury. General qualification of jury panel
4 resumes.)

5 THE COURT: All right. I find that our panel is now
6 qualified. Ladies and gentlemen, we are now going to begin
7 the process of selecting our jury for our first case for
8 trial. In just a moment I'm going to be calling on the
9 Solicitor's Office to call the first case.

10 Ladies and gentlemen, let me share with you a little bit
11 of information. In many states around the country the
12 individuals who represent the state, who prosecute cases for
13 the state are called the state's attorney or the district
14 attorney. We are different. We are unique in South Carolina.
15 The individuals who represent the state in criminal matters
16 are known as solicitors, the solicitor's office and the
17 solicitors. We are a little bit different. So if you've
18 watched TV or read books and you've heard about the district
19 attorney, well, in South Carolina the district attorney, if
20 you will, is called the solicitor, and in just a moment I'm
21 going to be calling on the Solicitor, and I'm going to ask the
22 Solicitor to call our first case for trial this week, and I
23 shall do that now.

24 Ms. Mims.

25 MS. MIMS: May it please the Court?

Voir Dire

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1 THE COURT: Yes.

2 MS. MIMS: The State calls the case of the State of South
3 Carolina versus Vernon Lamarr Cooley, indictment number 2016-
4 GS-18-0534, which is an indictment for criminal sexual conduct
5 with a minor in the second degree.

6 May I approach, Your Honor?

7 THE COURT: Yes.

8 MS. MIMS: Thank you.

9 THE COURT: Thank you.

10 Ladies and gentlemen, Solicitor Mims now has called the
11 first case for trial, and she has read the number of an
12 indictment, and in just a moment I am going to be reading to
13 you some of the allegations of the indictment. The reason
14 that I'm going to do that is to find out whether or not any of
15 you know or think you may know or have you heard or think you
16 may have heard anything about these allegations. However, I
17 want to hasten and tell you that Mr. Cooley has pled not
18 guilty to each and every one of these allegations and that
19 places the burden of proof on the State to prove guilt beyond
20 a reasonable doubt, and it will be the jury's duty to
21 determine whether the State has met that burden.

22 Ladies and gentlemen, the reason, again, that I am
23 reading to you some of these allegations is to determine
24 whether or not you think you have any information or if you've
25 heard anything about these allegations.

1 Now, once I've done that then I'm going to introduce you
2 to some folks. I have a few additional questions to ask of
3 you, and then we're going to select our jury for our first
4 case for trial.

5 Now, ladies and gentlemen, before I read you the
6 indictment I want to tell you what it is and what it isn't.
7 An indictment is -- it is known as a charging document. It's
8 a notice document, a piece of paper that notifies a citizen
9 that the State is alleging that that citizen has violated one
10 of the criminal laws of the State of South Carolina. What an
11 indictment is not is evidence of any of the allegations that
12 it contains, and again, to each and every allegation of this
13 indictment Mr. Cooley, the Defendant, has pled not guilty.

14 Now, ladies and gentlemen, you're going to hear me use
15 this phrase throughout the qualification process. I'm going
16 to ask are you related by blood or marriage or acquainted with
17 certain individuals, and I need to define for you what I mean
18 when I say acquainted with because I am trying to find out if
19 you have any connection with the individuals that I will be
20 asking you about, and I actually intend a very general
21 definition of acquainted with. For example, it may be that
22 you went to school with someone who I'll ask you about 20
23 years ago. You hadn't seen this person. You haven't thought
24 about this person in 20 years, but you know it's someone that
25 you went to school with. Well, that relationship would be

Voir Dire

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1 encompassed within my definition of acquainted with. It may
2 be, as another example, that you simply work at the same
3 location with someone whose name I'll ask you about and maybe
4 waved at each other across the parking lot. Well, believe it
5 or not, that relationship, as limited as it is, would be
6 encompassed within my definition of acquainted with, and you
7 would stand and let me know that. So please keep the
8 definition -- my definition of acquainted with in your minds
9 as I go through these questions.

10 Ladies and gentlemen, in a moment I am going to be
11 reading to you some of the allegations of the indictment, and
12 my question on the other side is going to be do any of you
13 know or think you may know or have you heard or think you may
14 have heard anything about these allegations.

15 Ladies and gentlemen, indictment 2016-GS-18-534 alleges
16 that in Dorchester County, South Carolina, on or about March
17 the 5th, 2016, the Defendant, Vernon Lamarr Cooley, did engage
18 in sexual battery upon a minor who was 14 years of age or less
19 but who is at least 11 years of age in that the Defendant did
20 penetrate [REDACTED] S.C. [REDACTED] vagina with his finger. The victim
21 was 12 years old when this incident occurred. This offense is
22 in violation of Section 16-3-655(B)(1) of the South Carolina
23 Code of Laws as amended. Ladies and gentlemen, to these
24 allegations the Defendant has pled not guilty.

25 Ladies and gentlemen, do you know or think you know, have

Voir Dire

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1 you heard or think you may have heard, to include today,
2 anything about these allegations? If so, please stand at this
3 time.

4 (No response.)

5 THE COURT: And I find no one standing.

6 Ladies and gentlemen, please allow me to introduce you
7 to, first of all, to Solicitor Mims, and she's going to
8 introduce the folks in her office, to begin with, Mr.
9 Templeton.

10 MS. MIMS: Thank you, Your Honor. May it please the
11 Court?

12 THE COURT: Yes.

13 MS. MIMS: I'm Sheila Mims. I'm an Assistant Solicitor
14 here in Dorchester County. As the Judge has mentioned, I am
15 part of the First Circuit Solicitor's Office. Our Solicitor
16 is Mr. David Pascoe.

17 Sitting to the left, my left and trying the case with me
18 today will be Mr. Ryan Templeton. Also in my office is First
19 Circuit -- First Assistant Solicitor Don Sorenson, Mike
20 Spears, George Smythe, Vergil Deas, Heather Huckabee and Nick
21 Young.

22 THE COURT: Ladies and gentlemen, do any of you know or
23 think you may know or are you related by blood or marriage or
24 acquainted with either Ms. Mims, Solicitor Mims, Solicitor
25 Templeton or any of the lawyers or other persons who are

Voir Dire

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1 employed by the First Circuit Solicitor's Office? If so,
2 please stand at this time.

3 Your number, please?

4 JUROR NUMBER 72: 72.

5 THE COURT: 72. First of all, who do you know?

6 JUROR NUMBER 72: Well, my husband plays tennis with Don
7 Sorenson.

8 THE COURT: All right. And --

9 JUROR NUMBER 72: I personally don't know him.

10 THE COURT: I understand, and as a result of that
11 connection, I gather Mr. Sorenson then doesn't visit in your
12 home?

13 JUROR NUMBER 72: No.

14 THE COURT: And you don't visit in his home?

15 JUROR NUMBER 72: No.

16 THE COURT: All right. As a result of that connection,
17 might that, could that interfere with your ability to be
18 completely fair and impartial to the State as well as to Mr.
19 Cooley? I need the answer to be yes or no.

20 JUROR NUMBER 72: I don't think it would interfere.

21 THE COURT: Can you set that relationship aside and make
22 up your mind based upon what you hear in court while court is
23 in session?

24 JUROR NUMBER 72: Yes.

25 THE COURT: Thank you so much. Please stay with us.

Voir Dire

10

1 Your number?

2 JUROR NUMBER 55: 55.

3 THE COURT: 55?

4 JUROR NUMBER 55: Yes, ma'am.

5 THE COURT: Tell me who you know.

6 JUROR NUMBER 55: Vergil Deas.

7 THE COURT: All right. And would you describe that
8 relationship as one that is more personal or professional?

9 JUROR NUMBER 55: Personal.

10 THE COURT: All right. Do you visit in each other's
11 homes?

12 JUROR NUMBER 55: We have.

13 THE COURT: Yes. And how recently, months, years?

14 JUROR NUMBER 55: It's been months --

15 THE COURT: Months?

16 JUROR NUMBER 55: -- when his father passed away, when
17 his father passed. So the --

18 THE COURT: I understand.

19 JUROR NUMBER 55: Yes, ma'am.

20 THE COURT: And as a result of that friendship, might
21 that -- could that interfere with your ability to be
22 completely fair and impartial to the State as well as to Mr.
23 Cooley?

24 JUROR NUMBER 55: No, ma'am.

25 THE COURT: Can you set that relationship aside and make

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11

1 up your mind based upon what you hear in court while court is
2 in session?

3 JUROR NUMBER 55: Yes, ma'am.

4 THE COURT: Please stay with us.

5 All right. Now, ladies and gentlemen, please allow me to
6 introduce you to Mr. Vernon Cooley, and Mr. Cooley, if you
7 could just stand and face our jury panel, and thank you so
8 very much and you may be seated.

9 Ladies and gentlemen, are you related by blood or
10 marriage or acquainted with Mr. Vernon Cooley? If so, please
11 stand at this time.

12 (No response.)

13 THE COURT: And I find no one standing.

14 Ladies and gentlemen, Mr. Cooley is represented by Mr.
15 Charlie Whirl, and this is Mr. Whirl. Mr. Whirl practices --
16 he is a sole practitioner, and my question to you is are you
17 related by blood or marriage or acquainted with or have you or
18 any member of your immediate family ever been represented by
19 Mr. Whirl? If so, please stand at this time.

20 (No response.)

21 THE COURT: And I find no one standing. Thank you so
22 much, Mr. Whirl.

23 All right. Now, ladies and gentlemen, I have a list of
24 potential witnesses. The lawyers assist me and give me a list
25 of potential witnesses so that I can ask at this juncture if,

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1 if anyone knows anyone.

2 If you happen to be in the courtroom when your name is
3 called I'm going to ask you to please stand because it's so
4 much easier to put a face with a name than just the name.

5 My question as to each and every one of these individuals
6 is are you related by blood or marriage or acquainted with any
7 of these individuals: [REDACTED] S.C.; Eddie Pringle; Shaketa
8 or Shaketa Pringle. Ah, and they have stood. Thank you so
9 much. Now, let me be -- Eddie Pringle?

10 MR. PRINGLE: Yes, ma'am.

11 THE COURT: Thank you.

12 Ladies and gentlemen, you all could -- if you all could
13 turn around you can see Mr. Eddie Pringle and Ms. -- is it --
14 and [REDACTED] S.C., yes, and Ms. Shaketa Pringle. Was that
15 right, Shaketa or Shaketa?

16 MS. PRINGLE: Shaketa.

17 THE COURT: Thank you. Sorry. Shaketa Pringle. Very
18 well. Thank you, and you all may be seated. Thank you so
19 much.

20 Raydonis Cooley; Eric Amos; Melissa Blanchard, and this
21 is Detective Melissa Blanchard. Thank you so much, and you
22 may be seated.

23 Detective Brandon Berg; Officer Russell Hagen; Stacey
24 Defrank; Kathy Fabrizio; Dr. Michelle Amaya; Agent Jessica
25 Stowe; Agent Donna Money; Elizabeth Pilcher; Carolyn Cooley;

Voir Dire

13

1 Henry Morant; and with regards to Dr. Michelle Amaya, have you
2 or any member of your immediate family to your knowledge ever
3 been treated by Dr. Michelle Amaya? If so, please stand in
4 response to the -- my last question or are you related by
5 blood or marriage or acquainted with any of these individuals?
6 If so, please stand.

7 (No response.)

8 THE COURT: And I find no one standing.

9 Now, ladies and gentlemen, are you now or have you in the
10 past been in law enforcement, meaning you held a commission,
11 you had the power of arrest, and also, do you have any members
12 of your immediate family who are employed as a law enforcement
13 officer, again meaning that have the power of arrest? If so,
14 please stand at this time.

15 And your number?

16 JUROR NUMBER 32: 32.

17 THE COURT: Yes, ma'am.

18 JUROR NUMBER 32: I was a detention deputy for Charleston
19 County Sheriff's Office.

20 THE COURT: Very well. Thank you so much.

21 Anyone else?

22 (No response.)

23 THE COURT: Very well. I find no one standing.

24 Ladies and gentlemen, have you or any member of your
25 immediate family to your knowledge ever have any contact with

Voir Dire

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1 the First Circuit Solicitor's Office? If so, please stand,
2 ever had any contact with the First Circuit Solicitor's
3 Office. If so, please stand.

4 Yes, sir, would you please stand?

5 JUROR NUMBER 81: Yes. Yes, in Charleston County.

6 THE COURT: Not Dorchester County?

7 JUROR NUMBER 81: No.

8 THE COURT: Charleston County? Very well, you may be
9 seated.

10 Oh, and your number, sir? I'm so sorry.

11 JUROR NUMBER 81: 81.

12 THE COURT: Perfect. Thank you.

13 Now, ladies and gentlemen, I am going to ask two
14 questions together. Have you or any member of your immediate
15 family ever been the victim of a crime or accused of a crime?
16 That's the first question. The second question is have you or
17 any member of your immediate family to your knowledge ever
18 been the victim of or accused of committing a sex-related
19 crime, and the third question is have you contributed money or
20 otherwise been involved in organizations such as MADD, Mothers
21 Against Drunk Driving, or SADD, Students Against Drunk
22 Driving, or CAVC, Citizens Against Violent Crime, and
23 organizations such as those? If you need to respond to any of
24 those questions I'm going to ask you to please come forward at
25 this time.

Voir Dire

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1 All right. One at a time, and I'll meet you down there.

2 All right.

3 BAILIFF: Juror 144.

4 THE COURT: Now, those of you who are going to -- coming
5 to speak to me, let me tell you what I'm going to -- so as I
6 can tell everybody at the same time, I need enough volume for
7 our court reporter to hear you, and we will gather around. I
8 don't -- I want your responses not to be all over the
9 courtroom. Yes, sir. And you are 145?

10 JUROR NUMBER 144: 144.

11 THE COURT: 145 -- 144. Got it. Yes, sir.

12 (Whereupon, an on-the-record bench conference is held
13 with Juror Number 144, counsel for the State and counsel for
14 the Defendant in the presence but out of the hearing of the
15 jury venire.)

16 JUROR NUMBER 144: My wife at the age of 14 was
17 repeatedly raped and molested and had a child who is now --
18 she had to put up for adoption. I know what this does.

19 THE COURT: All right.

20 JUROR NUMBER 144: I can't do it.

21 THE COURT: Okay. Got it.

22 JUROR NUMBER 144: I, I know good and well I can't do it.

23 THE COURT: What I'm going to ask you to do for me --

24 JUROR NUMBER 144: Yes, ma'am.

25 THE COURT: -- is I'm going to ask you first of all not

1 to discuss this matter with your fellow jurors --

2 JUROR NUMBER 144: Yes, ma'am.

3 THE COURT: -- and I am going to ask you to sit this one
4 out, but stay with me so I can give you some explanation about
5 how we're going to stay in contact --

6 JUROR NUMBER 144: Yes, ma'am.

7 THE COURT: -- with regards to the rest of the week.
8 Okay?

9 JUROR NUMBER 144: Yes, ma'am.

10 THE COURT: Thank you. He's out. Oh, and if I ask --

11 JUROR NUMBER 144: Yes, ma'am. I'm sorry.

12 THE COURT: -- if I, if I ask a question that you would
13 otherwise respond to, you don't need to respond. I got you
14 because I'm going to ask you to sit this one out.

15 JUROR NUMBER 144: Yes, ma'am.

16 THE COURT: Does that make sense what I'm saying?

17 JUROR NUMBER 144: Yes, ma'am.

18 THE COURT: Okay.

19 JUROR NUMBER 144: Yes, ma'am.

20 THE COURT: Very well.

21 (The following takes place in open court.)

22 BAILIFF: Juror 155.

23 (Whereupon, an on-the-record bench conference is held
24 with Juror Number 155, counsel for the State and counsel for
25 the Defendant in the presence but out of the hearing of the

Voir Dire

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1 jury venire.)

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 155: I was molested as a child. My dad
4 was the accused.

5 THE COURT: Okay. And --

6 JUROR NUMBER 155: And I donated to the organizations.

7 THE COURT: Okay. And might that, could that interfere
8 with your ability?

9 JUROR NUMBER 155: Yes.

10 THE COURT: I completely understand. I'm going to ask
11 you to sit this one out and not discuss this matter with
12 anyone and your fellow jurors because I do want to give you
13 some instruction about how we'll stay in contact with each
14 other. Okay?

15 JUROR NUMBER 155: Okay.

16 THE COURT: Thank you so much. 155 is out. Okay. If
17 you -- let me -- come a little closer. She was molested as a
18 child. Got it. All right. All right.

19 (The following takes place in open court.)

20 BAILIFF: Juror 63.

21 THE CLERK: One second.

22 (Whereupon, an on-the-record bench conference is held
23 with Juror Number 63, counsel for the State and counsel for
24 the Defendant in the presence but out of the hearing of the
25 jury venire.)

Voir Dire

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1 JUROR NUMBER 63: I have a brother that was accused of a
2 sexual assault.

3 THE COURT: And how long ago?

4 JUROR NUMBER 63: That was about 20 years ago.

5 THE COURT: About 20 years ago. Would that have an
6 effect on your ability to be fair and impartial both to the
7 State as well as to Mr. Cooley?

8 JUROR NUMBER 63: No.

9 THE COURT: Can you set that aside and make up your mind
10 based on what you hear in court while court is in session?

11 JUROR NUMBER 63: Yes.

12 THE COURT: Please stay with us.

13 JUROR NUMBER 63: Okay.

14 THE COURT: She's staying.

15 (Whereupon, the following takes place in open court.)

16 BAILIFF: Juror 141.

17 (Whereupon, an on-the-record bench conference is held
18 with Juror Number 141, counsel for the State and counsel for
19 the Defendant in the presence but out of the hearing of the
20 jury venire.)

21 THE COURT: Yes, ma'am.

22 JUROR NUMBER 141: My daughter was a victim of a sexual
23 assault.

24 THE COURT: How long ago?

25 JUROR NUMBER 141: April.

Voir Dire

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1 THE COURT: All right. And might that have an effect on
2 your ability to be completely fair and impartial?

3 JUROR NUMBER 141: Yes.

4 THE COURT: All right. I'm going to ask you two things.
5 Please don't discuss this with your fellow jurors and stay
6 with me so I can give you some, some explanation about how
7 we're going to stay in contact with each other over the
8 balance of the week. Okay?

9 JUROR 141: Thank you.

10 THE COURT: Thank you so much. She is out.

11 (Whereupon, the following takes place in open court.)

12 THE COURT: Okay.

13 BAILIFF: Number 40.

14 THE COURT: Yes.

15 (Whereupon, an on-the-record bench conference is held
16 with Juror Number 40, counsel for the State and counsel for
17 the Defendant in the presence but out of the hearing of the
18 jury venire.)

19 THE COURT: Hi. Yes.

20 JUROR NUMBER 40: I've been the victim of molestation at
21 the age of 11.

22 THE COURT: Okay. Might that, could that have an effect
23 on your ability to be fair and impartial?

24 JUROR NUMBER 40: Yes.

25 THE COURT: I'm going to ask you two things. I'm going

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20

1 to ask you, first of all, please don't discuss this with your
2 fellow jurors, and secondly, stay with me so that I can give
3 you some instruction about how we're going to stay in contact
4 with each other over the balance of the week.

5 JUROR NUMBER 40: Okay. Thanks.

6 THE COURT: Thank you so much. Out.

7 (The following takes place in open court.)

8 BAILIFF: Juror 133.

9 (Whereupon, an on-the-record bench conference is held
10 with Juror Number 133, counsel for the State and counsel for
11 the Defendant in the presence but out of the hearing of the
12 jury venire.)

13 THE COURT: Hello.

14 JUROR NUMBER 133: Hello.

15 THE COURT: Yes, ma'am.

16 JUROR NUMBER 133: My sister was assaulted while at work
17 in December.

18 THE COURT: Okay. Oh, recently, okay.

19 JUROR NUMBER 133: Yes, ma'am.

20 THE COURT: Might that have an effect on your ability to
21 be completely fair and impartial?

22 JUROR NUMBER 133: I don't think so.

23 THE COURT: All right. And can you set that aside and
24 make up your mind based upon what you hear in court while
25 court is in session?

Voir Dire

21

1 JUROR NUMBER 133: I believe so, yes, ma'am.

2 THE COURT: All right. Very well. Stay with us. She's
3 staying.

4 (The following takes place in open court.)

5 THE COURT: All right. Next.

6 BAILIFF: Juror 89.

7 THE COURT: All right.

8 (Whereupon, an on-the-record bench conference is held
9 with Juror Number 89, counsel for the State and counsel for
10 the Defendant in the presence but out of the hearing of the
11 jury venire.)

12 THE COURT: Yes.

13 JUROR NUMBER 89: Yeah. My daughter was raped a few
14 years ago.

15 THE COURT: Two years ago?

16 JUROR NUMBER 89: A few years ago.

17 THE COURT: A few years ago.

18 JUROR NUMBER 89: Three years ago, basically, three years
19 ago.

20 THE COURT: Three years ago.

21 JUROR NUMBER 89: Yes, ma'am.

22 THE COURT: All right. And would that, could that have
23 an effect on your ability to be fair and impartial?

24 JUROR NUMBER 89: It might. She's still coping and she's
25 an --

1 THE COURT: I, I --

2 JUROR NUMBER 89: -- alcoholic right now and everything
3 and so.

4 THE COURT: I understand. She's having difficult. I
5 understand.

6 JUROR NUMBER 89: To cope with that.

7 THE COURT: I, I'm going to ask you to sit this one out.

8 JUROR NUMBER 89: All right.

9 THE COURT: But two things, please don't discuss this
10 matter with any --

11 JUROR NUMBER 89: Yes, ma'am

12 THE COURT: -- of the other jurors and stay with me so
13 that I can tell you how we're going to stay in contact with
14 each other over the balance of the week.

15 JUROR NUMBER 89: Yes, ma'am.

16 THE COURT: Thank you.

17 JUROR NUMBER 89: Thank you.

18 THE COURT: Out.

19 (The following takes place in open court.)

20 BAILIFF: Juror 172.

21 (Whereupon, an on-the-record bench conference is held
22 with Juror Number 172, counsel for the State and counsel for
23 the Defendant in the presence but out of the hearing of the
24 jury venire.)

25 THE COURT: Sir, hello, yes, sir.

Voir Dire

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1 JUROR NUMBER 172: My niece, I have a niece that was
2 sexually abused --

3 THE COURT: Okay.

4 JUROR NUMBER 172: -- about 20 years ago.

5 THE COURT: Twenty years ago, and do you believe that that
6 might or could interfere with your ability to be completely
7 fair and impartial to the State as well as to Mr. Cooley?

8 JUROR NUMBER 172: I don't know.

9 THE COURT: Okay.

10 JUROR NUMBER 172: I'll be honest with you, I really
11 don't know because my niece she's still kind of suffering from
12 it even though it was 20 years ago. She's still kind of --

13 THE COURT: I understand.

14 JUROR NUMBER 172: I can't give an honest answer either
15 way.

16 THE COURT: Okay. Okay. Because you have to be able to
17 set it completely aside, and are you concerned about your
18 ability to do that?

19 JUROR NUMBER 172: Yes, ma'am. I am.

20 THE COURT: What I'm going to do then is I'm going to ask
21 you to please sit this one out.

22 JUROR NUMBER 172: Okay.

23 THE COURT: But don't discuss that matter with your
24 fellow jurors, but do stay with me so that I can give you some
25 information about how we'll stay in contact with each other

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24

1 over the balance of the week.

2 JUROR NUMBER 172: Okay.

3 THE COURT: All right. Thank you, sir. He's out.

4 (The following takes place in open court.)

5 BAILIFF: Juror 81.

6 (Whereupon, an on-the-record bench conference is held
7 with Juror Number 81, counsel for the State and counsel for
8 the Defendant in the presence but out of the hearing of the
9 jury venire.)

10 THE COURT: And yes, sir.

11 JUROR NUMBER 81: My son is involved in a case right now.
12 He's in jail right now for a sex crime case.

13 THE COURT: All right. Where?

14 JUROR NUMBER 81: Where is he in jail at?

15 THE COURT: Yes.

16 JUROR NUMBER 81: Allendale.

17 THE COURT: All right. So not in the First Circuit, in
18 the 14th Circuit?

19 JUROR NUMBER 81: Uh-huh. Yeah. He got sentenced here.
20 He was sentenced in Dorchester County.

21 THE COURT: It was a Dorchester County case?

22 JUROR NUMBER 81: Uh-huh.

23 THE COURT: It was prosecuted by the Dorchester County
24 Sheriff's --

25 JUROR NUMBER 81: Yeah.

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1 THE COURT: -- Department?

2 JUROR NUMBER 81: Uh-huh.

3 THE COURT: And the Solicitor's Office?

4 JUROR NUMBER 81: Right. Yes.

5 THE COURT: Okay. Got you, and do you believe that that
6 might have an effect on your ability to be fair and impartial?

7 JUROR NUMBER 81: I just don't want to be involved with
8 them. I'm tire of dealing, I'm tired of dealing with it. So
9 I don't want to be involved.

10 THE COURT: Okay. Got you.

11 JUROR NUMBER 81: I've been through enough already.

12 THE COURT: I understand. So it could have an effect?

13 JUROR NUMBER 81: Probably.

14 THE COURT: I think --

15 JUROR NUMBER 81: Yes.

16 THE COURT: -- that's completely understandable. I'm
17 going to ask you to sit this one out, but I am going to ask
18 that you not discuss this matter with anyone.

19 JUROR NUMBER 81: Oh, yeah. Right.

20 THE COURT: Okay? But stay with me so I can tell you
21 about how we're going to stay in contact with each other.

22 JUROR NUMBER 81: Okay.

23 THE COURT: All right. Thank you, sir. Just -- well,
24 just wait for me. All right. Out.

25 (The following takes place in open court.)

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1 BAILIFF: Juror 112.

2 (Whereupon, an on-the-record bench conference is held
3 with Juror Number 112, counsel for the State and counsel for
4 the Defendant in the presence but out of the hearing of the
5 jury venire.)

6 THE COURT: Yes, sir.

7 JUROR NUMBER 112: I, I think this would apply.

8 THE COURT: Okay.

9 JUROR NUMBER 112: My live-in girlfriend was the victim
10 of sexual assault when she was 16.

11 THE COURT: Okay. And how long ago was that, years ago,
12 months ago?

13 JUROR NUMBER 112: About a decade ago.

14 THE COURT: About a decade ago. Do you believe that that
15 experience might or could interfere with your ability to be
16 completely fair and impartial to the State as well as to Mr.
17 Cooley?

18 JUROR NUMBER 112: I don't think so.

19 THE COURT: Can you set her experience aside and make up
20 your mind based upon what you hear in court while court is in
21 session?

22 JUROR NUMBER 112: Yes, ma'am.

23 THE COURT: Let me tell that --

24 JUROR NUMBER 112: Okay.

25 THE COURT: I'm going to share this with you as well, the

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1 instruction to the jurors will be that during the course of
2 the trial they cannot discuss this matter with anyone, to
3 include family, friends. When you -- you know, when you go
4 home at night you cannot discuss the matter. Would that
5 present a problem for you?

6 JUROR NUMBER 112: No, ma'am.

7 THE COURT: Okay. Very well. Thank you.

8 JUROR NUMBER 112: Thank you.

9 THE COURT: Please stay. Stay. Stay.

10 (The following takes place in open court.)

11 BAILIFF: Juror Number 50.

12 (Whereupon, an on-the-record bench conference is held
13 with Juror Number 50, counsel for the State and counsel for
14 the Defendant in the presence but out of the hearing of the
15 jury venire.)

16 THE COURT: Hi, yes.

17 JUROR NUMBER 50: To question number two, I was assaulted
18 15 years ago.

19 THE COURT: Okay. And as a result of that experience
20 might that, could that interfere with your ability to be
21 completely fair and impartial to the State as well as to Mr.
22 Cooley?

23 JUROR NUMBER 50: Yes.

24 THE COURT: All right. Please sit this one out, but --
25 and, and I, I know I don't have to say it but I'm going to say

1 it, please don't discuss the matter with your fellow jurors,
2 but just remain with me so that I can tell you how we're going
3 to stay in contact with each other over the balance of the
4 week.

5 JUROR NUMBER 50: Okay. So just stay in here?

6 THE COURT: Yeah. And till I say go.

7 JUROR NUMBER 50: Okay.

8 THE COURT: All right. Thank you. Out.

9 (The following takes place in open court.)

10 THE COURT: All right. Ladies and gentlemen, this is
11 going to get -- can everybody hear me first of all? All
12 right. This is my concluding question and it's this, and I do
13 mean it to be general, just for your informational purposes.
14 Do you know any reason, any reason why you ought not, should
15 not, could not be a juror in this case, being ready, willing
16 and able to listen to the evidence, to listen to the law, to
17 follow the law as it is given to you even though you may
18 disagree with it, to make the findings of fact and apply the
19 law to those facts, and in making your findings of fact, you
20 must make up your mind based solely on what you hear in court
21 while court is in session being completely unaffected,
22 unaffected, not affected by matters and then the case law says
23 extraneous, meaning matters outside the courtroom, while court
24 is in session? In other words, in other words, can you listen
25 to the evidence and make up your mind based only what you hear

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1 in court while court is in session, being completely fair and
2 impartial to the State, to Mr. Cooley, follow the law as given
3 to you by the Court, make up your mind based solely on what
4 you hear in court while the court is in session, being
5 completely unaffected by matters extraneous to the proceeding,
6 if you have any concerns about your ability to do that, if you
7 are shy and now we've been together a while and you're a
8 little more at ease and you're a little more comfortable maybe
9 giving me a response that you didn't respond to earlier to the
10 questions that I asked, in other words, maybe when we took our
11 break you realized that the tickets to Tahiti are in your
12 wallet and you forgot about them, you're really supposed to
13 leave tomorrow afternoon at two, you know, maybe you have --
14 you just remembered that over lunch that somebody told you
15 that they were coming to your house at four today with a big
16 check and lots of roses or something like that, in other
17 words, if there's anything that you need to discuss with me
18 I'm going to ask you to approach, you have a particular
19 difficulty for whatever reason about this particular kind of
20 case, I want you to come forward and let me know that now or
21 as, as I -- when I ask this question let me include because
22 this happened about four years ago, three years ago now.
23 There was a young gentleman seated in this area, and he stood
24 up at this point in the jury qualification, and, and he said,
25 "Judge, can, can I go be with my wife down at Trident who's

1 giving birth to our first child?" Is anyone in labor? Is
2 anyone's loved one in labor? All right. Very well. If you
3 need to come forward, anyone, I'm going to ask you to come
4 forward and talk to me.

5 (No response.)

6 THE COURT: All right. I find that our panel is now
7 qualified. The strikes are ten and five. Okay. And let me
8 tell you what's going to happen now.

9 CLERK: Alternates?

10 THE COURT: Yeah. Yeah. Two if we can get them. All
11 right. What's going to -- you need to see me?

12 MR. WHIRL: Yes. I do.

13 THE COURT: Okay. If you all would come on forward.

14 (Whereupon, a bench conference is held in the presence,
15 but out of the hearing of the jury venire.)

16 THE COURT: We have to take another very short break,
17 very short break. I'm going to ask you all to please exit the
18 courtroom for me. We will not be long.

19 OFF THE RECORD

20 (On the record. The following takes place in the
21 presence of the jury venire.)

22 THE COURT: All right. Ladies and gentlemen, let me tell
23 you what happens next. In just a few moments our clerk is
24 going to begin to call individuals, and if your name is called
25 and your number is called, I'm going to ask you to exit your

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1 row and come through the gates and stand where I'm standing in
2 this area, and what will then occur is you will hear first
3 from one of the solicitors and you will hear them say one of
4 two things, either present the juror or excuse the juror. If
5 you hear present the juror you will just stand here, and then
6 you will hear from Mr. Whirl and he will either say seat the
7 juror, in which case you're going to have a seat in the jury
8 box, or you will hear him say excuse the juror, at which point
9 you will have your seat, take your seat back in the audience.
10 Obviously, if you hear the solicitor say excuse the juror you
11 would likewise take your seat back out in the audience.

12 Let me tell you that in the jury selection process there
13 are hundreds of considerations that go through an attorney's
14 mind. Let me tell you one that does not go through their mind
15 and that is any, any interest in or concern about or care to
16 embarrass you. I promise you that is not a consideration that
17 these attorneys have. There are many, many considerations
18 that go through. That certainly isn't one. So please know
19 that if you are excused it's certainly not intended in any
20 way, shape or form to embarrass you.

21 So, ladies and gentlemen, without further ado, I'll stand
22 here with the first person. How about that.

23 You ready?

24 THE CLERK: Ready. All right. As I call your name
25 please come forward.

1 Juror Number 58, Rajah Harris.

2 THE COURT: It's always fun to be the first person in the
3 hat. Come on, right here. I got you. We're right here
4 together. Turn.

5 JUROR NUMBER 58: Turn.

6 THE COURT: There you go. Perfect, perfect.

7 THE CLERK: What saith the State?

8 MS. MIMS: Please present the juror.

9 THE CLERK: The Defense?

10 MR. WHIRL: Please seat the juror.

11 THE COURT: All right. There you go.

12 THE CLERK: Have a seat in our jury box.

13 THE COURT: Exhibit A.

14 THE CLERK: All right. Juror Number 55, Lavondra Greene.
15 Hey. Turn around. You don't have to say a thing. What
16 saith the State?

17 MS. MIMS: Please present this juror.

18 THE CLERK: The Defense?

19 MR. WHIRL: Seat the juror.

20 THE CLERK: Have a seat in the juror box to your left.
21 Juror Number 132, Aubrey Sanders.
22 What saith the State?

23 MS. MIMS: Please present the juror.

24 THE CLERK: The Defense?

25 MR. WHIRL: I'm sorry. What was the number?

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1 THE CLERK: Number 132.

2 MR. WHIRL: I'm sorry. Seat the juror.

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

4 Juror Number 23, Richard Campbell.

5 What saith the State?

6 MS. MIMS: Please excuse the juror.

7 THE CLERK: Have a seat back in the audience.

8 Juror Number 71, James Horne.

9 What saith the State?

10 MS. MIMS: Please present the juror.

11 THE CLERK: The Defense?

12 MR. WHIRL: Excuse the juror.

13 THE CLERK: Have a seat back in the audience.

14 Juror Number 13, Michael Blanton.

15 What saith the State?

16 MS. MIMS: Please excuse the juror.

17 THE CLERK: Have a seat back in the audience.

18 Juror 180, Julieta Zettek, Zettek. Ms. Zettek, come on

19 back a little more, please. All the way back.

20 What saith the State?

21 MS. MIMS: Please present the juror.

22 THE CLERK: The Defense?

23 MR. WHIRL: Please excuse the juror.

24 THE CLERK: Have a seat back in the audience.

25 Juror Number 38, Sean Cronkey.

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1 What saith the State?

2 MS. MIMS: Please present the juror.

3 THE CLERK: The Defense?

4 MR. WHIRL: Please seat the juror.

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

6 Juror 119, Blondell Powell. Come all the way up. Thank

7 you, Ms. Powell.

8 What saith the State?

9 MS. MIMS: Please present the juror.

10 THE CLERK: The Defense?

11 MR. WHIRL: Please seat the juror.

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

13 Juror 110, Cynthia Morrison.

14 What saith the State?

15 MS. MIMS: Please present the juror.

16 THE CLERK: The Defense?

17 MR. WHIRL: Please excuse the juror.

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

19 Juror Number Four, Jeffery Ballard.

20 What saith the State?

21 MS. MIMS: Please present the juror.

22 THE CLERK: The Defense?

23 MR. WHIRL: Please excuse the juror.

24 THE CLERK: Have a seat back in the audience.

25 Juror 112, Brandon Neff.

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1 What saith the State?

2 MS. MIMS: Please present the juror.

3 THE CLERK: The Defense?

4 MR. WHIRL: Please seat the juror.

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

6 Juror 131, William Salisbury.

7 What saith the State?

8 MS. MIMS: Please present the juror.

9 THE CLERK: The Defense?

10 MR. WHIRL: What was the number?

11 THE CLERK: 131.

12 MR. WHIRL: Please excuse the juror.

13 THE CLERK: Thank you.

14 Juror 137, William Shuler.

15 What saith the State?

16 MS. MIMS: Please present the juror.

17 THE CLERK: The Defense?

18 MR. WHIRL: Please excuse the juror.

19 THE CLERK: Juror 147, Ronald Steele, Jr.

20 What saith the State?

21 MS. MIMS: Please present the juror.

22 THE CLERK: The Defense?

23 MR. WHIRL: Please excuse the juror.

24 THE CLERK: Have a seat back in the audience.

25 Juror 128, Hope Robinson.

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1 What saith the State?

2 MS. MIMS: Please present the juror.

3 THE CLERK: The Defense?

4 MR. WHIRL: Please seat the juror.

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

6 Juror 133, Jennifer Sandley.

7 What saith the State?

8 MS. MIMS: Please present the juror.

9 THE CLERK: The Defense?

10 MR. WHIRL: Please seat the juror.

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

12 Juror Number 72, Jane Hough.

13 What saith the State?

14 MS. MIMS: Please present the juror.

15 THE CLERK: The Defense?

16 MR. WHIRL: Please excuse the juror.

17 THE CLERK: Have a seat back in the audience.

18 Juror 123, Donald Reed, Jr.

19 What saith the State?

20 MS. MIMS: Please present the juror.

21 THE CLERK: The Defense?

22 MR. WHIRL: Please seat the juror.

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

24 Juror Number 78, Brittany Johnson.

25 What saith the State?

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1 MS. MIMS: Please present the juror.
2 THE CLERK: The Defense?
3 MR. WHIRL: Please seat the juror.
4 THE CLERK: Have a seat in the jury box.
5 Juror Number 80, Russell Johnson.
6 What saith the State?
7 MS. MIMS: Please present the juror.
8 THE CLERK: The Defense?
9 MR. WHIRL: Please excuse the juror.
10 THE CLERK: Juror Number 169, Chad West.
11 What saith the State?
12 MS. MIMS: Please present the juror.
13 THE CLERK: The Defense?
14 MR. WHIRL: Please excuse the juror.
15 THE CLERK: Juror Number 73, Amy Huff.
16 What saith the State?
17 MS. MIMS: Please present the juror.
18 THE CLERK: The Defense?
19 MR. WHIRL: Please excuse the juror.
20 MS. MIMS: He's already.
21 MR. TEMPLETON: He's already.
22 THE CLERK: One second, Ms. Huff.
23 MR. WHIRL: I only have nine -- thought I had nine. I'm
24 sorry.
25 THE CLERK: No.

1 THE COURT: It's all right.

2 THE CLERK: You stay right up here one second, please.

3 THE COURT: Do you want to review just to be sure, Mr.

4 Whirl? And you all can approach and we can --

5 (Whereupon, a bench conference is held in the presence,

6 but out of the hearing of the jury.)

7 THE COURT: No cause? Very well. All right.

8 THE CLERK: All right. Ms. Huff, you can have a seat in

9 the jury box.

10 Juror Number One, Charles Agee, Agee.

11 What saith the State?

12 MS. MIMS: Please present the juror.

13 THE CLERK: The Defense?

14 MR. WHIRL: Please seat the juror.

15 THE CLERK: Have a seat in the jury box. That's 12.

16 THE COURT: Alternate.

17 THE CLERK: Okay. One and two.

18 Juror Number 70, Dennis Hopkins.

19 What saith the State?

20 MS. MIMS: Please excuse the juror.

21 THE CLERK: Have a seat back in the audience.

22 Juror Number 98, Russell Main.

23 What saith the State?

24 MS. MIMS: Please present the juror.

25 THE CLERK: The Defense?

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1 MR. WHIRL: Please excuse the juror.
2 THE CLERK: Have a seat back in the audience.
3 Juror Number 91, Christopher Kunze.
4 JUROR NUMBER 91: No T.
5 THE CLERK: That's a Z.
6 What saith the State?
7 MS. MIMS: Please present the juror.
8 THE CLERK: The Defense?
9 MR. WHIRL: Excuse the juror.
10 THE CLERK: Have a seat back in the audience.
11 Juror Number 59, David Harvey.
12 What saith the State?
13 MS. MIMS: Please present the juror.
14 THE CLERK: The Defense?
15 MR. WHIRL: Present the juror.
16 THE CLERK: Have a seat in that jury box.
17 Alternate Number One.
18 Juror Number 87, Donald Kester, Jr.
19 What saith the State?
20 MS. MIMS: Please excuse the juror.
21 THE CLERK: Have a seat back in the audience.
22 Juror Number 148, Ann Steelman.
23 What saith the State?
24 MS. MIMS: Please present the juror.
25 THE CLERK: The Defense?

1 MR. WHIRL: Please seat the juror.

2 THE CLERK: Have a seat back in that jury box.

3 Thank you, Judge.

4 THE COURT: Thank you.

5 Are there any matters regarding the qualification or the
6 selection of the jury from the State?

7 MS. MIMS: Nothing from State, Your Honor.

8 THE COURT: All right. From the Defense?

9 MR. WHIRL: No, Your Honor.

10 (Remaining jury panel dismissed by Court with call-in
11 instructions.)

12 THE COURT: Counsel, let me see you just for scheduling
13 purposes real quick.

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

16 THE COURT: Ladies and gentlemen, I was conferring with
17 counsel because there are a couple of matters that I must
18 attend to before we'll be ready for you guys. So I'm going to
19 -- we'll start a little bit late tomorrow so that I can do the
20 work that I must do. I'm going to ask you all to be here in
21 the morning at 10:00 o'clock instead of 9, 9:30 -- 10:00
22 o'clock in the morning, and we should be ready for you by, by
23 ten, and I don't want you guys to, to be waiting on us. I'd
24 much rather we were waiting on you.

25 So, ladies and gentlemen, I do need to give you some

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1 instruction before we leave each other. You're going to hear
2 me give you this instruction each and every time that we leave
3 each other and that is do not discuss this matter and do not
4 allow anyone to discuss it with you.

5 Now, ladies and gentlemen, why in the world would I give
6 you that instruction now? Well, now I give it to you because
7 although you have a very small amount of information, you have
8 a very small amount of information. Secondly, let me explain
9 to you why I give you that instruction at all. Ladies and
10 gentlemen, we know from over 200 years of trying jury trials
11 in the United States, we know anecdotally that when we begin
12 to talk about something we begin to form opinions about it.
13 We can't help ourselves. It's the way we are put together.
14 Well, I guess young people say it's the way we are wired. We
15 begin to talk about it and we begin to form an opinion. I
16 will share with you that as jurors it's going to be absolutely
17 critical for you to do your job appropriately, it's going to
18 be critical that you are able to listen to everything open-
19 mindedly and make up your minds about nothing until you have
20 heard everything meaning all of the evidence that's presented
21 to you, plus the arguments of counsel, plus my charge on the
22 law. So the reason that I'm going to give you the instruction
23 do not discuss this matter or allow anyone to discuss it with
24 you is to support your ability to do that, to listen open-
25 mindedly to everything and make up your minds about nothing

1 till you have heard everything.

2 Now, ladies and gentlemen, we also need to talk about

3 what you can talk about when you go home because there's

4 probably going to be somebody curious about where you have

5 been or what you have been up to. It is fine to say, "I

6 reported for my jury duty." It is fine to say, "I have been

7 selected to serve on a jury," and it is fine to say that it is

8 a criminal matter as opposed to a civil matter, but that's it.

9 You can't talk about what kind of case, who is involved,

10 anyone that has anything to do with it. At that point you

11 cannot discuss the matter, but don't you let anybody get upset

12 with you, put it on the Judge and tell them that I am the one

13 that has told you not to discuss the matter. I will share

14 with you that when you have been discharged from your service

15 on this jury and there will be no question in your minds when

16 that time has come because we will talk about you talking

17 about this case with other people, then you will be at liberty

18 to talk about the case should you choose, but until that time

19 comes you must not discuss this case with anyone, including

20 your fellow jurors, your family, your friends, your neighbors,

21 your coworkers or anyone that has anything to do with this

22 case. As a matter of a fact I would tell you, should anyone

23 try to talk to you about this case, please get their name, if

24 not, a description, and report that to me immediately upon

25 your return to the court and I will deal with that individual.

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1 It would be highly improper. As a matter of a fact, should
2 you happen to see anyone that has anything to do with this
3 case and they don't even say hello to you, they seem to shirk
4 away from you, please know they're following my instructions.
5 They know they're not supposed to have any conversations with
6 you. So then if they don't even say hello, they're not being
7 rude. They're just following my instructions to not have any
8 conversation with you.

9 Now, anybody usually go to work at night? Not tonight,
10 and let me tell you why. It is impossible for you to work at
11 night and then sit and give to these matters the attention
12 that these matters deserve. However, again, I don't want
13 anybody upset with you. So if anybody gets upset, please get
14 me a name and a phone number and I look forward to talking to
15 them first thing in the morning because I don't want -- I
16 don't want -- I want you to rest. You need to rest. No one
17 can expect you to do -- to work at night and then to attend to
18 these matters during the day. It's not fair. So anybody's
19 upset get me a name, get me a number and I'll be happy to have
20 a conversation with them.

21 Now, ladies and gentlemen, we -- cell phones, cell phones
22 or other communication devices, I'm going to ask you to leave
23 them somewhere other than the courthouse tomorrow. You cannot
24 have a cell phone or other communication device with you while
25 you're serving on the jury. Let me tell you why. Several

1 years ago in Charleston the jury was deliberating. They just
2 reached a point where they needed to work together to remember
3 the evidence, talk about how they felt about, you know, the
4 evidence that had been presented, and one of the jurors said,
5 "Ah, let's don't worry with that. I've got a buddy," and the
6 gentleman picked up his phone and it's like that TV show, he
7 phoned a friend. Well, at that point there was, there was
8 information injected into the deliberation that was received
9 somewhere other than court, while court while was in session
10 and the entire trial had to be scrapped. So our very wise
11 chief justice after that sent down a proviso that said jurors
12 cannot have a cell phone with them while they're serving on
13 jury duty. I'm going to ask you to leave it somewhere other
14 than the courthouse tomorrow, but guess what, these things
15 follow us everywhere. So if you forget, just give it to our
16 -- your cell phone to one of our bailiffs and they will take
17 good care of it while you're serving on the jury and then you
18 can -- yeah, if you choose you can take it to your vehicle
19 during the lunch break. If not, and you want to use it during
20 lunch, you can use it during the breaks if you must, and then
21 you can just return it to the bailiff for the afternoon. You
22 cannot have a cell phone with you while you're serving on the
23 jury.

24 Now, no Columbo for those of you who are closer to my
25 age. For those of you who are young I can't help you because

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1 I don't know who's currently the investigatory person like
2 Columbo used to be. It's in popular culture. So let me just
3 tell you that you cannot access the internet for the purposes
4 of researching this particular matter or anyone that has
5 anything to do with it. You cannot even go to the internet
6 for the purpose of looking up a term. You cannot even go to
7 the internet to look up something that you think might be
8 helpful to your understanding, can't do that either. You
9 cannot blog. You cannot tweet. You cannot go to Facebook.
10 You cannot go to MySpace, LinkedIn and all the myriad of other
11 social networks. You cannot access social network for the
12 purpose of communicating to anyone with regards to this matter
13 or doing any sort of research or investigation. You must
14 receive all of the information from which you will make up
15 your minds here in court while court is in session. So,
16 please, please, keep that in mind over the evening.

17 Ladies and gentlemen, that concludes my remarks to you.
18 I do want you to go with our bailiffs because they're going to
19 show you your jury room and they'll show you how to come and
20 go from your jury room, and I am going to ask you to be ready,
21 here and present, ready to begin this matter at 10:00 o'clock
22 in the morning. I think we will be ready by then or very,
23 very shortly thereafter. Please be mindful, do not discuss
24 this matter. Do not allow anyone to discuss it with you. Do
25 not research. Do not read anything about this matter, and

1 that's the radio, the television, newspaper, the internet, you
2 mustn't listen to or read anything about this matter. It is
3 absolutely critical that you receive all of the information
4 from which you will make up your minds here in court while
5 court is in session.

6 Ladies and gentlemen, when you return in the morning I
7 have some preliminary remarks that I will make to you. You
8 will be sworn in as the jury in this case, and then we're
9 going to get right into the trial of this matter.

10 Now, seating assignments, seating assignments, as our
11 alternates, Mr. Harvey.

12 JUROR NUMBER 59: Yes.

13 THE COURT: Ms. Steelman, those are the alternate seats.
14 I'm going to ask you to keep those seats, please, throughout
15 the balance of the trial. Now, if you all want to switch,
16 that's fine, but those are the two alternate seats, and you
17 got to keep those two for me so I can keep up with you as our
18 alternates. Okay. Very well. And there isn't any other
19 assigned seating except for the presiding juror that has this
20 seat.

21 Now, the -- I'm going to ask you to please select your
22 own presiding juror. The presiding juror, ladies and
23 gentlemen, has very few additional tasks. Primarily, the
24 presiding juror just writes the verdict on the verdict form at
25 the conclusion of the deliberations. That's really what the

Jury Selection

47

1 -- somebody's got to write, and so that's the presiding juror.
2 The presiding juror, also, we ask just to be sure everybody
3 has a chance to talk during deliberations when that time comes
4 and, again, I will tell you when the time to begin your
5 deliberations has come because I will tell you, "Now is the
6 time to begin your deliberations," and the presiding juror
7 just makes sure everybody has a chance to talk. What the
8 presiding juror does not do is to control in any regard the
9 activities of the jury and the thought processes of the jury
10 at all. It, it's very minimal additional duties.

11 And then finally, in the event that the jury needs to
12 communicate with me for whatever reason, the presiding juror
13 takes that down in writing and gives it to one of our bailiffs
14 who in turn will give that to me, for example, "It's too cold.
15 It's too hot. I can't hear," and the like. So those are the
16 tasks of the presiding juror. I'm going to ask you to please
17 select your own presiding juror, and that person will take
18 this seat and keep that seat throughout the trial.

19 Now, when you have been selected as the presiding juror I
20 need to know and you all can let me know in one of three ways.
21 You can either give me a note that says, "I am juror number
22 blah blah and I have been selected to serve as the presiding
23 juror," you can tell me when you come in that you've been
24 selected as the presiding juror or you can just keep the seat
25 and see if I'm smart enough to figure it out. Any one of

1 those is perfectly fine. I just need to know prior to the
2 deliberation who is your presiding juror.

3 Now, ladies and gentlemen, with regards to the rest of
4 the seating, there is no other assigned seating. If you have
5 a seat that you like, keep it. If not, get here early and get
6 another seat. There is, there is no other assigned seating,
7 but that would conclude the remarks that I will make to you
8 this evening other than a reminder not to discuss this matter,
9 do not allow anyone to discuss it with you. I so look forward
10 to seeing you in the morning at 10:00 o'clock. If you'll go
11 with your bailiff. Thank you.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. Anything from the State, any
15 objection to my comments to the jury, anything before we begin
16 in the morning?

17 MS. MIMS: No, Your Honor.

18 THE COURT: Okay. From the Defense?

19 MR. WHIRL: No, Your Honor.

20 THE COURT: I will see everyone in the morning at 9:00
21 o'clock. Very well.

22 (Adjourned.)

23

24

25

1 C E R T I F I C A T E

2

3 I, the undersigned, Grace L. Hurley, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete Transcript
6 of Record of the hearing held in the case of The State versus
7 Vernon Lamarr Cooley, held in the Court of General Sessions
8 for Dorchester County, Dorchester County Courthouse, St.
9 George, South Carolina, on August 27, 2018. I do hereby
10 certify that I am neither of kin, counsel, nor interest to any
11 party hereto.

12

13

14

15

Grace L. Hurley

16

Grace L. Hurley, CVR-CM-M

17

Official Reporter

18

19

20

21

22 November 1, 2019.

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER) 2016-GS-18-00534

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

August 28-29, 2018

VERNON LAMARR COOLEY,)

Defendant.)

B E F O R E:

Honorable Diane Schafer Goodstein
Dorchester County Courthouse
St. George, South Carolina

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

Ryan Douglas Templeton, Esquire
Sheila R. Mims, Esquire
Attorney for Plaintiff

Charlie Lee Whirl, Esquire
Attorney for Defendant

Kay H. Richardson
Circuit Court Reporter

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State v. Cooley - 2016-GS-18-00534
MOTIONS

7

1 **AUGUST 28, 2018 - DAY TWO**

2 **(On the Record - 9:27 A.M.)**

3 MOTIONS:

4 THE COURT: All right. *Jackson v. Denno* hearing.

5 MR. WHIRL: Your Honor, we just have one matter before
6 the hearing.

7 THE COURT: Okay.

8 MR. WHIRL: I have talked to the state about my motion
9 for sequestration of the witnesses. May we approach?

10 THE COURT: Absolutely. Absolutely.

11 MR. WHIRL: Your Honor, just based on the nature of the
12 offense and based upon the fact that we do not want any
13 contamination and the emotional nature of it, we would ask
14 that each witness be outside of the courtroom until such times
15 as his or her testimony was necessary ---

16 THE COURT: Okay.

17 MR. WHIRL: --- in the courtroom.

18 THE COURT: I understand.

19 MS. MIMS: Thank you, Your Honor. Our witness in this
20 case is a juvenile. So, I would ask that at least, both of
21 her parents are witnesses for the state, so, I would ask that
22 at least one of them be allowed to stay in the courtroom.

23 THE COURT: Along, of course, with the victim?

24 MS. MIMS: Yes, ma'am.

25 THE COURT: With that, I certainly would allow that and

State v. Cooley - 2016-GS-18-00534
MELISSA BLANCHARD - DIRECT BY TEMPLETON

8

1 of course, you need your case officer to be present as well?

2 MS. MIMS: If that's okay, yes, ma'am.

3 THE COURT: Yeah, absolutely. So, other than -- other
4 than the alleged victim and one of the alleged victim's
5 parents and the case officer, the other witnesses will all be
6 sequestered and I will certainly grant that.

7 MS. MIMS: Yes, Your Honor.

8 MR. WHIRL: Thank you, Your Honor.

9 THE COURT: All right. And sauce for the goose is the
10 sauce for the gander. So, Mr. Whirl, any witnesses, you need
11 to have them sequestered as well.

12 MR. WHIRL: Yes, Your Honor.

13 THE COURT: All right. And *Jackson v. Denno*?

14 MS. MIMS: Yes, ma'am.

15 MR. TEMPLETON: Yes, Your Honor. The state calls
16 Detective Blanchard.

17 CLERK: Please raise your right hand and state your name
18 for the record.

19 MELISSA BLANCHARD, HAVING BEEN DULY
20 SWORN TESTIFIES AS FOLLOWS:

21 MS. BLANCHARD: Melissa Blanchard.

22 CLERK: Thank you.

23 DIRECT EXAMINATION OF MELISSA BLANCHARD BY MR. TEMPLETON:

24 Q: Good morning Detective Blanchard?

25 A: Good morning.

1 Q: Detective Blanchard, where are you employed?
2 A: Dorchester County Sheriff's Office.
3 Q: And are you the case officer in this case?
4 A: I am.
5 Q: Okay. Did you have the opportunity to take a statement
6 from the defendant in this case?
7 A: I did.
8 Q: Who was present during the portion of time when you took
9 that statement?
10 A: Detective Scott Hanks.
11 Q: As well as the defendant?
12 A: Yes, sir.
13 Q: Okay. To your knowledge, was the defendant under the
14 influence of any alcohol or drugs at the time his statement
15 was given?
16 A: I don't believe he was currently under. He didn't have
17 the smell of stale beer on his breath. He indicated he had
18 drank the day before, the night before, but he didn't appear
19 to be under the influence.
20 Q: Okay. Where was this statement taken?
21 A: At the CID office of the Dorchester County Sheriff's
22 Office.
23 Q: Okay. Approximately, how long did it take for you to
24 take his statement?
25 A: Anywhere from 15 to 20 minutes.

State v. Cooley - 2016-GS-18-00534
MELISSA BLANCHARD - DIRECT BY TEMPLETON

10

1 Q: Okay. Was the defendant offered anything to drink?

2 A: Water, usually when we -- before we start.

3 Q: Okay. If he needed a break and mentioned it to you,
4 would you have stopped?

5 A: Yes.

6 Q: Was he under arrest at the time that you -- that you took
7 his statement?

8 A: He was.

9 Q: Okay. Did you provide him with Miranda warnings in this
10 case?

11 A: We did.

12 STATE'S EXHIBIT NUMBER 3

13 MARKED FOR IDENTIFICATION

14 Q: Okay. I'm gonna show you State's Exhibit Number 3 for
15 identification.

16 May I approach the witness?

17 THE COURT: You may.

18 BY MR. WHIRL:

19 Q: What is State's Exhibit Number 3?

20 A: It's a statement of Miranda rights form that we typically
21 use when advising rights to the defendants.

22 Q: If you would, explain how either you or Detective Hanks
23 would've gone through that Miranda warnings with the
24 defendant?

25 A: Typically, we read each right individually and ask the

1 individual if they understand them after reading each one and
2 then have them initial it next to it, to the left of it, if
3 they indicate that they understand it before moving on to the
4 next one.

5 Q: So, were you present when the defendant was provided with
6 his Miranda warnings?

7 A: I was.

8 Q: Did he indicate that he understood each of those Miranda
9 warnings?

10 A: He did.

11 Q: Okay. And he indicated by initialing next to them?

12 A: Correct.

13 Q: Ultimately, did he sign that document?

14 A: He did.

15 Q: What does that document provide that he signed;
16 basically, what does it say that he's agreeing to?

17 A: That he understands his rights and that he's waiving his
18 rights and wishes to speak to us with regards to the incident.

19 Q: Okay. Did the defendant ever ask for an attorney during
20 questioning?

21 A: Not during questioning, no.

22 Q: To the best of your knowledge, was the defendant's
23 statement given freely and voluntarily?

24 A: Yes, sir.

25 Q: Was the defendant's statement that you took reduced to

State v. Cooley - 2016-GS-18-00534
MELISSA BLANCHARD - DIRECT BY TEMPLETON

12

1 writing in this case?

2 A: It was not. He was asked if he wanted to write it --
3 write a statement and he said he did not.

4 Q: So, it was a purely oral statement?

5 A: Correct.

6 Q: Okay. Did you ultimately document what the defendant
7 told you in that interview?

8 A: In my investigative notes, yes, sir.

9 Q: Okay. If you would, just briefly go through with the
10 Court what the defendant told you that day?

11 A: He indicated that he had spoken with his daughter,
12 Shaketa, and made arrangements to take [REDACTED] S.C. and two younger
13 siblings to breakfast. He said [REDACTED] S.C. and the two younger
14 siblings showed up to his house, I believe, at 11 o'clock. He
15 said that he was the only one at home at the time. He denied
16 that any of the children, including [REDACTED] S.C., entered the home.
17 He said that he and [REDACTED] S.C. drove to Burger King on Bacons
18 Bridge Road. I believe he said he was driving his older
19 model, green Mazda. That they went inside and ordered food,
20 and that on the ride back to his residence, [REDACTED] S.C. indicated
21 that as soon as she got back that she was gonna have to leave.
22 When I asked him, you know, why she had to leave, he said he
23 couldn't recall what excuse she gave for having to leave.
24 Then he indicated that he saw her a short time later on her
25 bike on the roadway in front of his residence. And then after

State v. Cooley - 2016-GS-18-00534
MELISSA BLANCHARD - CROSS BY WHIRL

13

1 that, he got a call from her mother, his daughter, asking why
2 she was across town and not his residence.

3 Q: Okay. That's all the questions the state would have in
4 the *Denno* hearing, Your Honor.

5 THE COURT: All right. Cross examination?

6 MR. WHIRL: Thank you, Your Honor.

7 THE COURT: Uh-huh, (affirmative response).

8 CROSS EXAMINATION OF MELISSA BLANCHARD BY MR. WHIRL:

9 Q: Detective, who did you say was present during the time?

10 A: Detective Scott Hanks.

11 Q: Okay. And are you the lead investigator on this case?

12 A: Yes, sir.

13 Q: And what's Detective Hanks' role?

14 A: He was actually on call the weekend of the incident and I
15 was called out to assist him and then I actually took over the
16 investigation.

17 Q: Okay.

18 A: So, we were kind of partnering up, I guess you would say.

19 Q: Okay. And you said that this interview took some 15 to
20 20 minutes?

21 A: Roughly, by the time we got to the office, I think.

22 Q: Okay. And that 15 to 20-minute interview, in your
23 report, you reduced to about 20 lines or so?

24 A: I believe so.

25 Q: Okay. I mean, you read it before you got on the stand,

State v. Cooley - 2016-GS-18-00534
MELISSA BLANCHARD - CROSS BY WHIRL

14

1 didn't you?

2 A: Yes, it was a paragraph or so.

3 Q: Okay. All right. And is Detective Scott here or will he

4 be here to corroborate your narrative here?

5 A: I don't know if he's being called as a witness.

6 Q: Okay. So, you're the -- what's your role to the state

7 here today?

8 A: Their witness.

9 Q: And are you not aware of the witnesses that the state is

10 calling?

11 A: He's a possible witness, I'm assuming.

12 Q: Okay. And you said this took place at the CID office?

13 A: Correct.

14 Q: And you also testified that it was not -- there was not

15 written statement?

16 A: No, I offered to let him write one and he said he didn't

17 want to write one.

18 Q: Okay. Was he recorded?

19 A: He was not.

20 Q: Did you have the capability to record him?

21 A: No, the video recording system in the room at the time

22 was not operable.

23 Q: Okay. Did you have any other means to record?

24 A: No, sir. At that time, the detectives weren't issued

25 body cameras.

State v. Cooley - 2016-GS-18-00534
MELISSA BLANCHARD - CROSS BY WHIRL

15

1 Q: Okay. And what about audio?

2 A: No, sir.

3 Q: And did you have any capability for audio?

4 A: That was not anything we'd been provided at that time.

5 Q: So, the detectives at a CID building and you have no

6 means of recording either audio or video?

7 A: At that time, again, it was inoperable. At that time, we

8 did not.

9 Q: Okay. Now, in this statement, or your summary here, you

10 say that the suspect confirmed that he was the only one home

11 at the time that the victim arrived?

12 A: Correct.

13 Q: Excuse me. During the course of your investigation, have

14 you found that to be true?

15 A: That he was ---

16 Q: That he was the only one, yes?

17 A: Yes, sir.

18 Q: Okay. So, you're not aware of anyone else that was at

19 the home at that time?

20 A: During the time of the incident?

21 Q: Yes.

22 A: No.

23 Q: Okay. And did he provide you any information that

24 perhaps the victim was on her way to a dance practice as to

25 why she would have to leave when they got back?

State v. Cooley - 2016-GS-18-00534

16

MOTIONS

1 A: He indicated he wasn't -- he couldn't recall what the
2 excuse was at that time.

3 Q: And why would you call it an excuse if she was headed to
4 dance practice, she was headed to dance practice?

5 A: He just said he couldn't recall why she said she had to
6 leave.

7 Q: Okay. So, he didn't use the word excuse; that's yours?

8 A: No, no, no, no. That's my -- yes, sir, that's my term.

9 Q: Okay. Okay.

10 MR. WHIRL: Nothing further, Your Honor.

11 THE COURT: All right. Any redirect?

12 MR. TEMPLETON: None, Your Honor.

13 THE COURT: Very well. Do you have any additional
14 witnesses?

15 MR. TEMPLETON: Your Honor, as to that statement, no. We
16 do have an additional statement that we'll need to do a
17 separate hearing on.

18 THE COURT: All right. Any motions?

19 MOTIONS:

20 MR. WHIRL: Your Honor, we would ask that the statement
21 be excluded for a couple of reasons. First of all, the --
22 this 15, 20-minute interview was reduced to 15, 20 -- a
23 paragraph, according to the testimony here and there are
24 things in there that -- a couple of things in there at least
25 that are not accurate. And so, under the Jackson Denno, we

State v. Cooley - 2016-GS-18-00534

17

BY THE COURT

1 would say that it is not an accurate report as such as it's
2 not being an accurate report should not be let in. She
3 certainly can testify as to what happens when she gets on the
4 stand because she is one of the primary witnesses for the
5 state and there's no corroboration as to what was actually
6 said that day and he refused to put a statement in writing.
7 So, he clearly indicated that he did not want to be put on
8 record with this by that and, so, we would ask that this
9 statement not come in.

10 THE COURT: Very well. And do you have any witnesses? I
11 really should have asked you that first?

12 MR. WHIRL: I do not, Your Honor.

13 BY THE COURT:

14 THE COURT: All right. Very well.

15 Now, based upon my having heard the testimony as well as
16 the cross examination, I think the state has met its burden to
17 share the statement with the jury. Of course, it's ultimately
18 up to them whether they believe it or not, but I think that
19 there's certainly a basis and find that it was voluntary and
20 ultimately it's the jury's determination.

21 MS. MIMS: Thank you.

22 THE COURT: All right. Statement Number 2?

23 MR. TEMPLETON: The state calls Officer Amos.

24 Your Honor, I just spoke with Mr. Whirl and he's actually
25 willing to stipulate that this statement is admissible,

State v. Cooley - 2016-GS-18-00534
BY THE COURT

18

1 assuming Mr. Amos is going to be available for cross
2 examination and he will be. So, I think we've ---

3 THE COURT: All right. Okay.

4 MR. TEMPLETON: --- resolved the Denno portion of the
5 hearing on Mr. Amos.

6 THE COURT: Hold on one second. Let me just double-
7 check. Thank you all so much, just let me double-check
8 something real quick.

9 Counsel, let me see you just a second.

10 (REPORTER'S NOTE: Bench conference is held off the record.)

11 THE COURT: All right. Very well then. There is a
12 stipulation and a belief on behalf of the defense that the
13 state could meet its burden about preponderance of the
14 evidence, that it's voluntary, that the statement was given
15 voluntary with Miranda. Of course, Mr. Whirl, you're not --
16 you're by no means, waiving anything to do with the jury, it's
17 ultimately up to the jury, and the state must prove
18 voluntariness beyond a reasonable doubt. But as I understand
19 it, at this point, the waiver is just as to the preponderance,
20 which of course will be my determination and with regards to
21 that, you believe that the state can meet that burden. You're
22 not conceding by any way the fact that the state could meet
23 the burden of voluntariness beyond a reasonable doubt,
24 correct?

25 MR. WHIRL: That is correct, Your Honor.

State v. Cooley - 2016-GS-18-00534
BY THE COURT

19

1 THE COURT: Thank you so much. Thank you all so much.

2 All right. Anything else before we bring our jury in and
3 get going?

4 MS. MIMS: Nothing from the state, Your Honor.

5 THE COURT: All right. You are -- are you ready Mr.
6 Whirl?

7 MR. WHIRL: We are, Your Honor.

8 THE COURT: Very well. Now, I know that your client is a
9 diabetic. Does he need to take a comfort break before we
10 begin, because now is a good time?

11 MR. WHIRL: That would be a good idea, Your Honor.

12 THE COURT: All right. Very well. We will have --
13 everybody take a little comfort break and then we -- Kay is
14 gonna take one, too, we're all gonna take one. And then we'll
15 -- tell the jury, Ms. Catherine, that we'll be starting in
16 five minutes.

17 MR. TEMPLETON: Is our jury all here; it's not even 10
18 o'clock yet?

19 THE COURT: Oh, that's right, they were coming at 10:00.
20 I was just thinking 9:30. Take a long comfort break.

21 **RECESS - 9:46 A.M.**

22 *****OFF THE RECORD*****

23 **(On the Record - 10:06 A.M.)**

24 (REPORTER'S NOTE: The following takes place outside the
25 presence of the jury.)

State v. Cooley - 2016-GS-18-00534
BY THE COURT

20

1 COURT'S EXHIBIT NUMBER 1

2 MARKED FOR IDENTIFICATION

3 THE COURT: Ms. Suzie, can you please bring me Mr.
4 Harris?

5 BAILIFF: Yes, sir -- yes, ma'am; I'm sorry.

6 THE COURT: Hi, Mr. Harris, come over right here. Just
7 have a seat. How are you doing this morning?

8 I have your note.

9 JUROR 59: Okay.

10 THE COURT: Tell me what you're concerned about?

11 JUROR 59: It's a residence issue. The thing about it is
12 that I've worked in Charlotte the past three years, but I have
13 a dual residence down here as well. So, that I have a
14 residence up there as well.

15 THE COURT: Yeah.

16 JUROR 59: And just because of that, I was thinking that
17 that could become an issue. Obviously, I was renting it out
18 to a family member, basically they give me the money and I pay
19 the mortgage with it. Over the past year, I actually did
20 basically make that as a rental property.

21 THE COURT: Your -- your place ---

22 JUROR 59: In Charleston.

23 THE COURT: In Charleston?

24 JUROR 59: In North Charleston, yes.

25 THE COURT: Okay. So, do you have -- let me ask you this

State v. Cooley - 2016-GS-18-00534
BY THE COURT

21

1 question. Where did you go -- where did you go to sleep last
2 night?

3 JUROR 59: At my mother's house.

4 THE COURT: At your momma's house?

5 JUROR 59: Yeah.

6 THE COURT: Okay. And are you married?

7 JUROR 59: No.

8 THE COURT: Okay. You got kids?

9 JUROR 59: No.

10 THE COURT: Okay. So, where do you work?

11 JUROR 59: I am -- my contract ended at Duke Energy. I
12 start at Bank of America on Monday -- Tuesday.

13 THE COURT: This coming Tuesday?

14 JUROR 59: Yeah.

15 THE COURT: B of A where?

16 JUROR 59: In Charlotte, North Carolina.

17 THE COURT: Oh good, in Charlotte?

18 JUROR 59: Yeah.

19 THE COURT: Okay. And so, we know then as of Tuesday,
20 your residence clearly is going to be Charlotte, right?

21 JUROR 59: Clearly, yes.

22 THE COURT: Because -- because -- that's right. And when
23 you -- and when did you leave your prior employer?

24 JUROR 59: July 31st of this year.

25 THE COURT: Okay.

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1 JUROR 59: But it was in Charlotte as well.

2 THE COURT: Gotcha. So, during August, you have --
3 you've just been waiting for this position to start.

4 JUROR 59: Yes.

5 THE COURT: I gotcha. And so, during that period, were
6 you residing in Charlotte?

7 JUROR 59: Yes.

8 THE COURT: I gotcha. And so, you own a piece of
9 property in South Carolina, right?

10 JUROR 59: Yes.

11 THE COURT: But you are renting that out to someone else?

12 JUROR 59: A family member, yes.

13 THE COURT: Oh, to a family member?

14 JUROR 59: Yes.

15 THE COURT: I gotcha. I gotcha. So, the -- the question
16 is this, where -- here's what the definition is, it's one
17 called domicile. And it's where -- where does someone reside
18 with the present intention to remain; that's the definition.

19 JUROR 59: Gotcha.

20 THE COURT: And I can certainly see where you -- I mean,
21 you own real estate year, it's rented to a family member ---

22 JUROR 59: Yeah.

23 THE COURT: --- and obviously -- and your mother is here?

24 JUROR 59: Uh-huh, (affirmative response).

25 THE COURT: So, I can understand, oh, goodness, and I'm

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1 in between because I'm actually at this moment, I can be here
2 as easily as I could be in Charlotte. However, I know on
3 Tuesday ---

4 JUROR 59: Yes, ma'am.

5 THE COURT: --- I'm in Charlotte.

6 JUROR 59: I have to travel back and forth a lot for
7 work.

8 THE COURT: That is exactly right. And so, it's like,
9 the question is pretty simple and so -- and I understand that
10 confusion. I get where you're coming from 100 percent. So,
11 I'm going to make it simple for you. Tell me where you reside
12 with the present intention, meaning right now, with the
13 present intention to remain?

14 JUROR 59: Charlotte.

15 THE COURT: I think so, too. I think so, too. And I --
16 I want to be real straight and real clear with you. I get the
17 confusion, and I so respect the integrity that you're like,
18 you know what, let me just -- let me not worry about this, let
19 me just say this where you live, I own property here, my
20 family is here, I'm -- at this moment, I'm in between; I will
21 probably end up living in Charlotte. Are you renting or do
22 you own?

23 JUROR 59: I was renting, but I purchased.

24 THE COURT: Oh, good. Where did you purchase?

25 JUROR 59: It's an area called NoDa, in North Davidson,

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1 Charlotte, North Carolina.

2 THE COURT: My husband went to Davidson. He would tell
3 you you have found a great place to live. So, you're on the
4 other side from South Carolina? Davidson is sort of on ---

5 JUROR 59: No, no, no, no, no. Okay. You said if I
6 purchased; I purchased in Charlotte.

7 THE COURT: Yeah, in Charlotte.

8 JUROR 59: Yeah.

9 THE COURT: And near Davidson?

10 JUROR 59: North Davidson. It's in Charlotte, North
11 Carolina.

12 THE COURT: Yes.

13 JUROR 59: North Davidson.

14 THE COURT: Okay. Which side of Charlotte is that?

15 JUROR 59: Close to downtown, downtown area.

16 THE COURT: Oh, okay. Cool.

17 JUROR 59: I don't know the east, west, so, it's in
18 Charlotte, but I don't know ---

19 THE COURT: I'm with you completely. I have a child
20 that's working in South Carolina and living in Charlotte, but
21 on that side of Charlotte.

22 JUROR 59: Yeah.

23 THE COURT: Well, what I'll -- here's what I'm going to
24 do. I'm gone -- I'm going to ask you to just step outside of
25 the courtroom and just hang out right outside the door so we

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1 can talk about you behind your back.

2 JUROR 59: Okay ---

3 THE COURT: All right. Very well. Thank you.

4 (REPORTER'S NOTE: Juror 59 exits courtroom.)

5 THE COURT: Yeah.

6 MS. MIMS: It sounds like his residency is in Charlotte,
7 yeah.

8 THE COURT: Yeah.

9 MS. MIMS: Yes, ma'am.

10 THE COURT: I hate to lose him. I really hate to lose
11 him, but he's domiciled in Charlotte. I certainly wish he had
12 let us know yesterday in that I hate to lose him, but he can't
13 serve; he's not a resident of Dorchester County. That's why I
14 defined domicile for him -- well, today I'm domicile in
15 Dorchester and next week it might be Charlotte, but today is
16 Dorchester.

17 Mr. Whirl, I'll hear from you?

18 MR. WHIRL: Your Honor, I don't -- I'd defer to the Court
19 on this one.

20 THE COURT: I know. I know how frustrating it is and I
21 hate to -- I really hate to lose him as a juror, but I don't
22 -- I think he's -- he's domiciled in Charlotte. And, you
23 know, I think I do understand some confusion, but he surely
24 should have brought that up yesterday and I surely wish that
25 he had brought that up yesterday. But, he has raised it now

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1 and we have to deal with it now.

2 So, under the rules, what I'm gonna do is I'm going to
3 place in a cup Mr. Harvey, Juror Number 28 and -- y'all come
4 on and take a look at that -- and then Ann Steelman. I'm
5 gonna put them in a cup.

6 (REPORTER'S NOTE: Alternates names are placed in a copy and a
7 representative from the clerk's office draws name.)

8 THE COURT: Okay. Here's what I think we should do.
9 Let's mark them both as a Court's exhibit.

10 Will you send in Mr. Harris?

11 Mr. Harris?

12 JUROR 59: Yes, ma'am.

13 THE COURT: First of all, thank you for the candor. And
14 secondly, because you are now a Charlotte resident, you will
15 be eligible for your jury service in Charlotte and just be
16 mindful, just in terms of driver's licenses and things like
17 that, you need to go ahead and get those changed, just so you
18 don't have a problem up in North Carolina since that's your
19 residence. We wish you all the best and good luck with B of A.
20 You know, they kinda big up in Charlotte. Very well. Thank
21 you so much and you're free to go also for the week.

22 JUROR 59: Okay.

23 THE COURT: Okay. That way you can get sort of situated
24 and ready for next week. Good luck.

25 JUROR 59: I appreciate it.

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1 THE COURT: Uh-huh, (affirmative response).

2 MS. MIMS: Your Honor, for clarification purposes, after
3 they testify -- we have everyone sequestered, after they
4 testify, because one is a parent, may he sit in the courtroom
5 after he's finished testifying?

6 BAILIFF: Bring the jury in.

7 THE COURT: Any problem with that?

8 MR. WHIRL: No, Your Honor.

9 THE COURT: Very well. Thank you.

10 (REPORTER'S NOTE: Jury enters courtroom @ 10:19 A.M.)

11 Good morning, ladies and gentlemen. Good morning.

12 THE COURT: Now, I need to share with you that one of
13 your number has come forward this morning and so we had an
14 opportunity to -- to visit with him and it appears that he's
15 actually not eligible to serve and, you know, it's certainly
16 nothing wrong, he just, you know, has two residences and he
17 was a little bit concerned about that because he has two
18 residences, one in Dorchester County and one not. And so, as
19 we worked through it, it does appear that he's more of a
20 resident of the other location than in Dorchester County and
21 so I have made the determination that -- of that. And a
22 person obviously of grand integrity to share that with that
23 this morning. I'm so grateful that he did that. And while
24 you were out -- and that's why we have alternates, right,
25 because these things can happen with folks with the absolute

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1 very best of intention. And so, while you were out, the
2 procedure is we take our alternates names and write them on a
3 piece of paper and we put them in a cup and jiggle them up and
4 then the name is drawn, and congratulations, Ms. Steelman, you
5 have lost your status as an alternate and you are now one of
6 our 12 jurors. You are now taking the seat and Mr. Harvey you
7 remain as our alternate. And guess what, you have the two
8 choice of two different seats. Wonderful.

9 Now, ladies and gentlemen, I know that you have your
10 notepads and we'll talk about those in a moment, but at this
11 time, I'm going to ask you to please stand and raise your
12 right hand to be sworn in as the jury in this case.

13 JURY IS DULY SWORN.

14 CLERK: Thank you.

15 THE COURT: All right. Now, you have the chair the
16 second time. Is that a sign?

17 JUROR 1: That's voluntary ---

18 THE COURT: Exactly. He has the seat, right? In my
19 experience, that is the number one qualification for -- to be
20 a presiding jury; you have a seat. It was like meant to be.
21 Thank you for serving in that capacity. And you are juror
22 number?

23 JUROR 1: 1.

24 THE COURT: Meant to be. Meant to be. Wonderful.
25 Fantastic. Thank you so much, for serving in that capacity.

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1 I really appreciate that, Mr. -- is it?

2 JUROR 1: Agee

3 THE COURT: Agee. Wonderful.

4 All right. Now, ladies and gentlemen, you are now the
5 jury in this case, and you have note pads. I want to talk to
6 you about to you about note pads because there's sort of their
7 own little issue.

8 Now, there is a debate that is ongoing and it's only been
9 ongoing for 200-plus years. So, it is a longstanding debate
10 and it still rages today, and here is the debate. It's a
11 debate about whether jurors ought to or ought not to take
12 notes. And the criticism of taking notes is that you can miss
13 something as it's coming from the witness stand. The other
14 criticism of notes is that if one juror has a note and another
15 juror doesn't have a note, then there can be an undue amount
16 of influence placed upon the note.

17 Now, the argument for the taking of notes are really two-
18 fold. Number one, it allows for a juror to take notes and
19 refresh that juror's recollection prior to deliberation or
20 during deliberation. And secondly, for those people who are
21 notetakers, in the sense that if they can write a note or two
22 it helps them focus and concentrate -- I'm that person,
23 because I will take a note or two because it helps me
24 concentrate, because I'll go back and look at my notes and
25 they rarely make any sense at all. It's like I don't even

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1 know what I was writing. I can't even read my handwriting.
2 But somehow it helps me focus, just to be able to take a note
3 or two.

4 So, here's the thing about notes. Number one, your notes
5 -- remember that old -- some of you are too young, but people
6 closer to my age, do you remember that movie, For Your Eyes
7 Only, it was a James Bond movie; they were on a yacht. I
8 can't even remember who was James Bond but it wasn't Pierce
9 Brosnan, it wasn't Sean Connery.

10 JUROR: It was Roger Moore.

11 THE COURT: I was going to say Roger Moore. It was Roger
12 Moore. But in any event, for your eyes only, your notes are
13 for your eyes only. What that means is they're not gonna be
14 shared with anyone; they are for you and your purposes to
15 refresh your recollection. That's it; that's what they're
16 for.

17 The other instruction that I would give you with regards
18 to notes is you must not feel any compunction to take notes.
19 You don't have to take notes. You're a notetaker -- if you're
20 not a notetaker, don't take a note; don't worry about it. And
21 I would also say for those of you who are notetakers, you
22 cannot let the taking of a note allow you to miss something as
23 it's coming from the witness stand. So, if you take notes,
24 just make them as brief as you can to serve your purposes
25 because I don't want you to miss anything as it's coming from

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1 the witness stand.

2 So, now here's the actually what you're going to do about
3 notes. On the first page, on the front page of your note, I
4 want you to write either your juror number or your name, it
5 doesn't make a bit of difference, on that first page. And
6 then, I want you to turn the page because now you have a cover
7 sheet; that's your cover sheet, and you'll take notes
8 beginning on that page, if you choose to take notes. Now, let
9 me tell you, you'll leave your notepads in the courtroom.
10 Each time you leave the courtroom, just leave your notepads
11 and we will secure them. Overnight, we will secure them. And
12 your notepads will be with you during your deliberations and
13 we'll deliver those to you for your deliberations. And once
14 your deliberations are complete and you have reached a
15 verdict, then you are welcome to take your notes with you;
16 that is not a problem. If you choose not to take your notes
17 or if you forget to take your notes with you, I want you to
18 understand, this is what happens with your notes. Those
19 notepads as soon as the deliberations are concluded and the
20 trial is concluded, they are brought to my chambers covered up
21 with your cover sheet. They come to my office, they go in my
22 chambers, in my office in my chambers, and I review them and
23 if there are any notes that remain, I, myself, tear them up.
24 If my shredder is working, I have a blast while feeding the
25 shredder. I tell you that because I want you to understand

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1 that your notes are protected. It's really important that you
2 understand that. So, if you take them, that's perfectly fine.
3 If you choose not to take them, I destroy them, and I do that
4 immediately after the trial is over. So, just wanted y'all to
5 know that.

6 Now, ladies and gentlemen, I'm now going to give to you
7 some preliminary instructions. I will tell you that these
8 instructions are not intended to be an instruction or charge
9 on the law applicable to this case. I will give you that
10 instruction, that charge on the law, applicable to the case,
11 after you've heard all of the evidence, after you've heard the
12 arguments of counsel, I will then deliver the instruction on
13 the law to you. These instructions are simply intended to
14 serve as a preliminary matter so that you will better know
15 where we are in the course of the trial and what to expect.

16 You've met our bailiffs and we have a court reporter,
17 Kay, who is with us. This is a court of record. She's known
18 as mask writer and she's actually repeating everything that is
19 being said in the courtroom; she's actually repeating it in
20 her mask and it's -- they are marvelous to watch. Although,
21 you've got to listen to the witnesses, but they are, because
22 they actually have trained themselves, I think to kind of
23 split their brains, because while she's repeating everything
24 that everyone is saying, she's also taking notes, and it's
25 remarkable what they do. I couldn't possibly do it. I think

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1 I'm way too ADD. I don't think I could ever do what they do.
2 We can't have court without a court reporter, and they are a
3 treasure to our state and around the country. They're
4 becoming more and more rare and we treasure our court
5 reporters and we are so lucky this day to have one of the best
6 of the best. So, I'm so excited to have her with us.

7 When exhibits are admitted into evidence, they'll come to
8 our reporter, she will mark them, she's responsible for them
9 until they go to you for your deliberations. Before you
10 actually begin your deliberations, she will martial them to be
11 sure that she has them all, then they go back with our juries
12 for jury deliberation. Once your deliberations are over, she
13 will martial them again, and she is responsible for filing
14 them with the Clerk of Court's Office where they remain, I
15 think, forever. Because I know Ms. Graham has got a door that
16 came in a civil case back in the 70's and she still has that
17 door. So, our court reporters are absolutely critical.

18 Obviously, we have our courtroom security. Sweeney is
19 here; he's with the -- he's part of our security detail. The
20 head of our security in this courthouse is Major Moultrie, who
21 is residing here. We have Marvin, who is also present. And
22 you will see we have, Jose who come and go. It's normally
23 customary that we have security whenever court is in session.
24 It's typical that -- and you've met Ms. Catherine. Amanda is
25 also one of our bailiffs and she will be assisting you, and

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1 they actually guard your jury room when you are in your jury
2 room. They position themselves and they guard your jury room
3 to make sure that no one enters that room that isn't supposed
4 to, and no one enters it except occasionally, they'll put
5 their head in to say we'll be beginning in five minutes.

6 All right. So, did you meet Tonda downstairs yesterday?
7 Tonda, she's one of our clerks, and she is -- she is our
8 preeminent clerk for our criminal side of our clerk's office,
9 and it is her responsibility to be present as a member of the
10 clerk's office just to be sure this courtroom runs efficiently
11 and properly, and we're delighted to have her up here. She
12 swears the witnesses. She just swore you in as the jury in
13 this case and her -- you may see her also coming up because
14 she has many tasks and they don't stop just because she's up
15 here with us, so you may see her come and go. She is working
16 with her computer and communicating to different folks as
17 well.

18 You met the attorneys involved in this case. You had an
19 opportunity to meet and hear the names of the witnesses. And
20 I think that pretty much rounds up -- excuse me, I have to
21 introduce my lawyer and this is Richards Hunley, he is my
22 lawyer, he is my law clerk. He is a recent graduate from the
23 University of South Carolina School of Law, and he will spend
24 a year with me before he is out into the practice of law. We
25 are so lucky to have law clerks because, obviously, they just

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1 graduated from law school, so they know everything. It's like
2 having my own Wikipedia right here. And it's grand for them
3 because they have the opportunity -- they spent three years
4 watching and learning in law school, now they get to see it in
5 action, and it's just fantastic for them because they have an
6 opportunity to observe trials. Richards has been with me less
7 than a month, right, Richards? And this is his third trial
8 that he's been able to -- to see. So, he's seen a lot of
9 action. So, it will inure to his benefit when he begins
10 actually in the practice of law. So, I'm delighted to have
11 him here as well.

12 All right. Now, ladies and gentlemen, as you know, we're
13 about to begin the case of the State of South Carolina versus
14 Mr. Vernon Cooley. Mr. Cooley, of course, is present here.
15 He is the defendant in this case. If you hear me use the
16 phrase, defendant, I am referring to Mr. Cooley. Obviously,
17 the state, if I use that term, I'm referring to the state,
18 meaning the State of South Carolina.

19 Now, ladies and gentlemen, I want you to -- I now will go
20 into the process and let you know how we're going to be
21 proceeding. The first thing that is going to occur is that
22 you're going to hear what are called opening statements.
23 You're first going to hear from one of the solicitors for the
24 state in the state's opening statement. You are then going to
25 hear from Mr. Whirl in his opening statement.

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1 What are opening statements? Well, let me tell you what
2 they are and what they are not. What they are is an
3 opportunity for each side to outline for you what they believe
4 the issues are in this case from their perspective. What they
5 are not are arguments. Those arguments will come at the
6 conclusion of the case. These -- once then we have finished
7 opening statements, then each side will have an opportunity to
8 present evidence to you with the state going first. Evidence
9 may take many forms. It will be testimony, sworn testimony;
10 it may be documents; it could be photographs and the like. I
11 must tell you, it is critical, it is critical that you pay
12 close attention to all of the evidence that is presented in
13 this case.

14 Ladies and gentlemen, under our system of justice, only
15 you, only a trial jury, can make the findings of fact in a
16 case and no one else is permitted to weigh the evidence and
17 determine what the facts are but a trial jury. That is a
18 matter solely for you to determine.

19 Once the evidence has been presented, then the attorneys
20 will have an opportunity to make what are called closing
21 arguments to you. The final remarks will be true arguments,
22 meaning that each side, no doubt, will emphasize certain
23 portions of the evidence and try to persuade you to agree with
24 their version of the facts. Keep in mind that what the
25 attorneys say is extremely important. Please give to them

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1 your undivided attention, but what the attorneys say is not
2 evidence. The evidence will come from the sworn witnesses in
3 this case and from any exhibits which are admitted into
4 evidence.

5 After the arguments are finished, I will explain to you
6 the law, which is applicable to this case. You will then
7 retire to your jury room and you are going to make the
8 findings of fact based upon the evidence. You will then take
9 the law as I give it to you, and you will apply it to those
10 facts and that is how you will render your verdict.

11 Now, ladies and gentlemen, it is your duty as jurors to
12 determine whether or not the state has met its burden of proof
13 and I'm going to talk about that for a moment. The burden of
14 proof applicable to the state is beyond a reasonable doubt.
15 The state must prove each and every allegation beyond a
16 reasonable doubt. It is your duty as jurors to determine
17 whether the state has met that burden. That is your duty.

18 Now, ladies and gentlemen, as I told you yesterday, the
19 defendant, Mr. Cooley, has pled not guilty to the allegations
20 made by the state and it is the state's burden to prove each
21 and every element beyond a reasonable doubt.

22 Now, I mentioned earlier to you that you are the finders
23 of fact and you determine the facts from the testimony that
24 you hear and other evidence, which is introduced into court.
25 And it's also up to you to determine what, if any, inferences

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1 you may feel can properly be drawn from the evidence. And as
2 I mentioned to you earlier, it is so important that you take
3 your duty to heart and that you listen conscientiously, that
4 you not allow your thoughts to wander, because you see, there
5 is, under our system, there is no way ordinarily to correct an
6 erroneous determination of the facts by a trial jury. That's
7 why it's so important for you to pay very close attention.

8 Ladies and gentlemen, I now share with you that in our
9 law, I am the judge of the law in this case. What this means
10 is, is that the law given to you by the Court, is the only law
11 that you may follow. If you happen to have come into court
12 and you had a preconceived idea as to what the law is or what
13 it ought to be -- now one day you may want to call upon your
14 legislator and have a conversation, but for our system to work
15 correctly, you must accept and apply the law exactly as I
16 state it to you. I cannot in any way intimate, comment on the
17 facts, because that is a matter solely for you to determine
18 and you cannot disagree with me about what the law is or what
19 it should be.

20 Again, I tell you, until I advise you to begin your
21 deliberations, you must not discuss this case with anyone,
22 including your fellow jurors, your friends, family members,
23 and certainly anyone involved in the case. This includes
24 discussions face-to-face and those by telephone, email, text,
25 blogs or any other method of communication. You may not use a

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1 computer, cellular phone, or other electronic device with
2 communication capabilities at any time while in the courtroom
3 or during deliberations. During your breaks for meals or
4 overnight, if necessary, you may use these devices. However,
5 you may not at any time use these devices to get or send
6 information about the case. This includes information about a
7 party, a witness, an attorney or a court officer, news
8 accounts about the case, research on any topics raised, any
9 topic you may think would be helpful in deciding the case or
10 any testimony presented by any witness. During the trial, do
11 not read, listen to, or watch any news reports about this
12 case. This includes anything that may be in newspapers, on
13 the internet, radio, or television. You must not consider
14 anything you may have read or heard about the case outside of
15 the courtroom, whether before or during the trial. And after
16 the case is submitted to you, you must discuss it only in the
17 jury room with your fellow jurors. The attorneys and the
18 parties in this case have been advised that they are not to
19 talk to you at all. So, if you happen to see anyone involved
20 in the case and they don't even say hello, they're not being
21 rude; they're just following my instructions.

22 I will tell you and I instruct you that it is important
23 that you keep an open mind and that you not decide any issue
24 in the case until all of the evidence has been presented, the
25 parties have made their closing arguments and I have

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1 instructed you regarding the law applicable to this case. It
2 is your solemn responsibility to determine whether the
3 defendant is guilty or not guilty, and your verdict must be
4 based solely on the evidence as it is presented to you during
5 this trial and on the law as I instruct you during it at the
6 close of the trial.

7 Now, ladies and gentlemen, I want to talk to you about
8 the rules of evidence and how they're handled during the
9 course of a trial. Ladies and gentlemen, obviously, a trial
10 is a structured activity and as in business or sports or any
11 other structured activity, there are certain rules that both
12 sides must obey when presenting evidence. These are called
13 the rules of evidence. It is a lawyer's duty to call a
14 possible violation of the rules of evidence to my attention,
15 and it is my duty to rule on the admissibility of evidence
16 during the course of a trial. In other words, whether
17 evidence is admissible at all or not, that is a matter of law.
18 That's a matter for me to determine. Whether or not you
19 believe it, what weight you give to it and any inferences you
20 draw from it, that's for you to determine.

21 And the way that the lawyers raise a possible violation
22 of the rules of evidence to my attention, they'll do it one of
23 three ways. They'll either say, objection, and then they'll
24 say a word or two, objection, hearsay. We probably hear that
25 more than any other. And what that says is, Your Honor, I

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1 believe that there is a violation of the rule of evidence
2 regarding hearsay, with regard to this evidence that is being
3 elicited by the other side. If I say overruled, what that
4 means is, I don't think there's a violation of the rule of
5 evidence and that piece of evidence can be received in that
6 way. If I say sustained, then that means that I do believe
7 that there's a violation of the rules of evidence and the
8 evidence cannot be received in that fashion.

9 Now, ladies and gentlemen, sometimes I will ask the
10 lawyers to approach and that's because I need to just hear a
11 word or two and when that happens, you are going to hear this;
12 you're going to go to the beach. Right? It sounds like the
13 ocean. And you're exactly right, that's to mask what we are
14 saying up here. And the reason for that is because I do not
15 want anything that I might say in ruling on the admissibility
16 of a bit of evidence to be considered by you as a comment on
17 the facts. It's to let me do my job. Sometimes, I may need
18 to ask you to step to your jury room, so that I can hear
19 something a little -- perhaps a little more fully, to allow me
20 to do what I must do. And again, I would not want anything
21 that I might say in ruling on the admissibility of evidence to
22 be considered by you as a comment on the facts or to have you
23 think I have an opinion regarding the facts.

24 As a matter of fact, ladies and gentlemen, I will tell
25 you now, if I say or do anything during the course of this

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1 trial that you think might be a comment on the facts or an
2 intimation about an opinion regarding the facts, I'm gonna ask
3 you right now to please disregard that. Maybe I had too much
4 lunch or something, because I can absolutely assure you, I do
5 not have an opinion regarding these facts. The law doesn't
6 allow me to have an opinion and I do not have an opinion
7 regarding these facts. So, if I do or say anything in ruling
8 on the admissibility of evidence or otherwise that you think
9 might be a comment on the facts, please disregard it, because
10 I can assure you, I have no opinion regarding these facts.
11 That's your duty.

12 Now, ladies and gentlemen, because it is the lawyers'
13 duty to raise objections, to raise the potentiality that
14 there's a violation of a rule of evidence, and that's their
15 duty, I'm going to ask you to please not hold an attorney's
16 objection against his or her client, because that is their
17 duty and you mustn't conclude from my ruling on an objection
18 that I favor one side or the other, because I can assure you,
19 I do not. It's just simply the manner in which we handle the
20 rules of evidence as they relate to the admissibility of
21 evidence.

22 Now, ladies and gentlemen, in determining what the facts
23 are in this case, you must decide whether or not the testimony
24 of the witnesses, whether or not that testimony is believable.
25 It's called the credibility of the witnesses. It just means

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1 believability of the witnesses. And ladies and gentlemen, as
2 you decide whether to believe a witness, you have the right to
3 consider the interest of any witness, the bias of any witness,
4 the prejudice of any witness, the opportunity for the witness
5 to have seen the matters and things about which the witness
6 may testify and the way the witness acts on the witness stand.
7 You have a right to consider anything that is in the record
8 that will help you to evaluate the testimony of the witnesses.
9 That means it is your duty to pay close attention to these
10 witnesses, absorb them, listen to them, and pay close
11 attention to the attorneys and to the Court. Please do not
12 your thoughts wander, but give the strictest attention to the
13 testimony in this case, so that at the end of the testimony,
14 after the arguments of counsel and the charge on the law by
15 the Court, you will then be in a position to perform your
16 solemn duty to determine the facts, apply the law to those
17 facts and thus render your verdict and ask and determine
18 whether the state has met its burden of proof.

19 Now, ladies and gentlemen, I'm going to ask you for a
20 personal favor, but I have to tell you a very short story so
21 that it will make sense. When I was a little girl and we
22 would be going to service, my mother would do this, I thought
23 she was sleeping. Well, that was my que to start squirming
24 and I must -- I'm a squirmer. Inevitably, I would get that
25 pinch. Y'all ever gotten that pinch from a parent? That's

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1 not a good thing. Well, I thought she was sleeping. Clearly,
2 she was concentrating with her eyes closed. As a favor to
3 me, I'm going to ask you, please concentrate with your eyes
4 open, because obviously I can't tell the difference. I
5 couldn't even tell it with my own mom. We just met yesterday
6 and I'm so concerned that I'm going to make the same mistake
7 with you that I made with my own mother, think you're sleeping
8 when you're concentrating with your eyes closed. So, as a
9 favor to me, I'm going to ask you to please concentrate with
10 your eyes open, so I will not make that mistake that I made
11 with my own mother.

12 Ladies and gentlemen, in order to preserve everyone's
13 rights, I need to give these parties an opportunity to object
14 to anything that I have said or tell me, you forgot to tell
15 them about something that I needed to tell you about. Any
16 exceptions?

17 MS. MIMS: No, ma'am.

18 MR. WHIRL: No, Your Honor.

19 THE COURT: Ladies and gentlemen, at this time, I ask
20 that you please draw close as we listen to the opening
21 statements.

22 Mr. Templeton?

23 MR. TEMPLETON: May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 OPENING BY MR. TEMPLETON:

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OPENING BY TEMPLETON

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1 MR. TEMPLETON: Good morning, ladies and gentlemen. As I
2 introduced myself to y'all yesterday, my name is Ryan
3 Templeton, I'm an assistant solicitor here in Dorchester
4 County. Ms. Sheila Mims is prosecuting this case along with
5 me.

6 Earlier today, yesterday you heard basically what the
7 basic allegations in this case are, and that is criminal
8 sexual conduct with a minor in the second degree. We have the
9 legal phrases but, ultimately, at the end of the day, what the
10 state has to prove is that the defendant, Vernon Cooley, on a
11 particular day, committed a sexual battery on a victim who was
12 between the ages of 11 and 14. In this case, our victim was
13 12 years old at the time this event occurred.

14 Now, sexual battery is simply the inserting of a portion
15 of his body or an object into either the vagina or the anal
16 opening of that child. In this case, it was a digital
17 penetration case, where he -- where the state alleges that he
18 fingered this 12-year-old little girl back in March of 2016.
19 What you're gonna hear from the witness stand in this case is
20 evidence from quite a few different people, from the victim
21 herself, from some medical professionals and some law
22 enforcement officers.

23 At the end of the day, what we have to prove to you are
24 those basically three facts. You're gonna hear that on March
25 the 5th, 2016, the victim in this case, along with her two

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OPENING BY TEMPLETON

1 younger siblings went over to her grandfather's house, Vernon
2 Cooley's house. The two younger siblings stayed outside while
3 that 12-year-old victim went inside to let him know they were
4 there. He was supposed to take them to breakfast that
5 morning. Instead of doing that immediately, he brought the
6 victim into his home with him, ultimately pulled down her
7 pants and began to sexually assault her. As she started to
8 get upset, he stopped and then took her to breakfast. As soon
9 as she got back, she got on her bike, rode as far away as
10 possible as she could and called her stepfather to come get
11 her.

12 Ladies and gentlemen, at the end of this case, the state
13 has to prove each of the elements of this offense beyond a
14 reasonable doubt. Judge Goodstein just briefly mentioned that
15 to you. But what we have to do is we provide you with enough
16 evidence that leaves you firmly convinced that that's what
17 happened on March the 5th, 2016. Once you've heard all the
18 testimony from that witness stand and seen the evidence in
19 this case, you will be firmly convinced and, at that time,
20 we'll ask you to return a verdict of guilty.

21 Thank you.

22 THE COURT: Thank you, Mr. Templeton.

23 Mr. Whirl?

24 MR. WHIRL: Thank you, Your Honor.

25 OPENING BY WHIRL:

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OPENING BY WHIRL

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1 MR. WHIRL: I also want to thank you in advance for your
2 service. I'm attorney, Charlie Whirl; I represent Mr. Cooley.
3 And the first thing I want to say to you is that there are
4 four things I want you to keep in mind. The first one is that
5 Mr. Cooley has said that he is not guilty and based upon that,
6 Mr. Cooley does not have to prove anything. As the state just
7 mentioned, the burden is upon them to prove that he actually
8 did this.

9 The second thing that I want you to consider is that
10 there will be some subjective testimony from the 12, now
11 older, alleged victim in this case that said that the incident
12 that the state mentioned actually happened on that particular
13 date. That is subjective testimony from her.

14 The third thing I want you to take a look at or listen to
15 and pay close attention to is the objective medical data.
16 That's where probably someone from MUSC, or a couple of people
17 from MUSC, are going to come in and they're going to talk
18 about what happened at the time of the examination of the
19 alleged victim.

20 And the last thing I want you to consider is any DNA that
21 would come into play here. And I believe, if you pay close
22 attention to those four things, I firmly know that you will
23 come back and say that the state has not met its burden and,
24 therefore, find Mr. Cooley did not commit these acts. And I
25 thank you very much.

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S.C. - DIRECT BY MIMS

1 THE COURT: Thank you, Mr. Whirl.

2 Call your first witness, please.

3 MS. MIMS: Thank you, Your Honor, may it please the
4 Court?

5 THE COURT: Yes.

6 MS. MIMS: The state calls **S.C.**.

7 CLERK: If you'll please raise your right hand and state
8 your name for the record.

9 **S.C.**, HAVING BEEN DULY

10 SWORN TESTIFIES AS FOLLOWS:

11 MS. **S.C.**: **S.C.**.

12 CLERK: If you'll have a seat.

13 THE COURT: Your witness.

14 MS. MIMS: Thank you, Your Honor.

15 DIRECT EXAMINATION OF **S.C.** BY MS. MIMS:

16 Q: Good morning, **S.C.**.

17 A: Good morning.

18 Q: Can you start by telling the jury how old you are?

19 A: I'm 15 years old.

20 Q: Okay. And when's your birthday?

21 A: **S.C.**, 2003.

22 Q: 2003, okay. Where do you go to school?

23 A: Summerville High School.

24 Q: What grade are you in?

25 A: Tenth.

██████████ S.C. ██████████ - DIRECT BY MIMS

- 1 Q: What's your favorite subject?
- 2 A: Math.
- 3 Q: And where do you live, ██████████ S.C. ██████████?
- 4 A: ██████████ Drive.
- 5 Q: How long have you lived there?
- 6 A: I don't know.
- 7 Q: Has it been a long time?
- 8 A: A long time.
- 9 Q: And who do you live with; who lives with you in your
- 10 home?
- 11 A: My mother, my stepfather, and my siblings.
- 12 Q: So, tell me about your siblings; how many siblings do you
- 13 have?
- 14 A: Three.
- 15 Q: How old are they, and are they a boy or a girl?
- 16 A: I have a youngest, my youngest is a boy, my little
- 17 brother; he is six. And I have a younger sister; she is
- 18 seven. And I have a older brother; he is 20.
- 19 Q: Gotcha. And does everybody live in the home with you?
- 20 A: My brother, he moved out.
- 21 Q: Okay. And does your mom work outside of the home?
- 22 A: Yes, ma'am.
- 23 Q: Does your stepdad work outside of the home?
- 24 A: No, ma'am.
- 25 Q: Okay. What does he do?

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██████████ S.C. ██████████ - DIRECT BY MIMS

- 1 A: He's disabled.
- 2 Q: And do any other relatives live near you on ██████████ Lane?
- 3 A: No, ma'am.
- 4 Q: Okay. Did any other relatives or anybody related to you
- 5 used to live near you on ██████████ Lane?
- 6 A: Yes, ma'am.
- 7 Q: Okay. Who?
- 8 A: My grandfather.
- 9 Q: What's your grandfather's name?
- 10 A: Vernon Cooley.
- 11 Q: And is he your grandfather through your mom's side or
- 12 dad's side?
- 13 A: My mom's side.
- 14 Q: And is he your mom's dad?
- 15 A: Yes, ma'am.
- 16 Q: Okay. Do you know how old you were when your grandfather
- 17 was living on ██████████ Lane?
- 18 A: I was 12.
- 19 Q: Okay. And did you spend a good bit of time with him?
- 20 A: Yes, ma'am.
- 21 Q: Okay. And did he sometimes come up to your house?
- 22 A: Yes, ma'am.
- 23 Q: Did you ever go to his house?
- 24 A: Yes, ma'am.
- 25 Q: Okay. What about your brothers and sisters, did they

██████████ S.C. ██████████ - DIRECT BY MIMS

- 1 also spend time with your grandfather?
- 2 A: Yes, ma'am.
- 3 Q: Did he live alone or did someone live with him?
- 4 A: Someone lived with him.
- 5 Q: Who was that?
- 6 A: Ms. Carolyn Cooley.
- 7 Q: Ms. Carolyn Cooley; is she your grandmother?
- 8 A: They just got married before this happened.
- 9 Q: ██████████ S.C. ██████████, I'm gonna take you to March the 5th of 2016. Do
10 you remember that day?
- 11 A: Yes, ma'am.
- 12 Q: Okay. And how old were you then?
- 13 A: I was 12.
- 14 Q: Can you please tell the jury what you remember about that
15 day first? What did you do that morning when you got up?
- 16 A: That morning, I woke up, and my grandfather was at our
17 house and he was talking about taking my sister to breakfast,
18 and my mom mentioned, if you take one, you take all. So, me
19 and my little brother started to go and then like ---
- 20 Q: Okay. So, this was at your house, right?
- 21 A: Yes, ma'am.
- 22 Q: Okay. And so, everybody was gonna go to breakfast?
- 23 A: Everybody was gonna go to breakfast.
- 24 Q: Okay. So, what happened next?
- 25 A: We got dressed and we walked back there, and he was there

S.C. - DIRECT BY MIMS

1 ---

2 Q: Walked back to where, sweetie?

3 A: Back to his house, my grandfather's house.

4 Q: So, he lives within walking distance of you?

5 A: Yes, ma'am.

6 Q: Okay. And who all was with you again?

7 A: Me and my two younger siblings.

8 Q: And when you got to his house, was anyone else there?

9 A: No one was there but him.

10 Q: Okay. And where did everybody go?

11 A: I had went in the house and was like, we here, and then
12 my two younger siblings was playing outside with the other
13 little kids so...

14 Q: Okay. And what happened next?

15 A: He was like on the couch and he said he wanted to talk
16 and like he just started kissing me on my neck and stuff. And
17 then like he was just touching me.

18 Q: And where was he touching you?

19 A: He was touching me like in my vagina area and stuff.

20 Q: Were your -- was he touching you on the outside of your
21 pants at that time?

22 A: Inside and out.

23 Q: Okay. What happened next?

24 A: So, we went in the -- well, we went to his room and I
25 laid down on the bed and he pulled down my pants and he

S.C. - DIRECT BY MIMS

1 fingered me.

2 Q: What does that mean?

3 A: He put his finger in my vagina and then like he took out
4 his penis and rubbed it on the outside area of my vagina and I
5 started crying, so he stopped and I had to make promises that
6 I won't tell nobody. Then we left and went to Burger King and
7 he said I could get anything I wanted.

8 Q: Okay. Let me stop you just a second. So, when you're in
9 the room, did you pull down your pants, or did he pull down
10 your pants?

11 A: He pulled down my pants.

12 Q: And did you lay on the bed or did he tell you to lay on
13 the bed?

14 A: He told me to lay on the bed.

15 Q: Okay. And why did he stop?

16 A: I started crying.

17 Q: And what did he say when you started crying?

18 A: I'm sorry and don't tell nobody. Don't tell your mom,
19 this can be our secret and stuff like that.

20 Q: Okay. So, what happened next?

21 A: So, he got in the car and we went to Burger King.

22 Q: Was it just the two of you?

23 A: Just the two of us. And he was like I can get whatever I
24 want if I don't tell, stuff like that. So, we got the food,
25 we got in the car, and he was asking could he put it in. So,

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S.C. - DIRECT BY MIMS

- 1 I got scared and I was like, I got to go as soon as we get
2 back, I got to go to practice. And we got back there and he
3 promised and stuff, and he let me leave.
- 4 Q: So, you were at Burger King and it was just the two of
5 you; is that right?
- 6 A: Yes, ma'am.
- 7 Q: Okay. And did you get anything that you wanted to eat?
- 8 A: I mean, I just ordered something; I really didn't eat it.
- 9 Q: Did the two of you eat there or did you take it go?
- 10 A: We took it to go.
- 11 Q: And where were your siblings?
- 12 A: He was -- they left at his house.
- 13 Q: Okay. And what were they doing when you all left?
- 14 A: They was playing with the kids.
- 15 Q: Were there any other adults around when you left?
- 16 A: I didn't -- I didn't see adults, so...
- 17 Q: Okay. So, when you're at Burger King and you're coming
18 back home, it was just the two of you in the car?
- 19 A: Yes, ma'am.
- 20 Q: And what did he say to you about when you got home?
- 21 A: I told him I had to leave like -- and he was like, just
22 wait.
- 23 Q: Did you really have practice?
- 24 A: No, ma'am.
- 25 Q: Okay. And so, when you got home, what happened, did you

██████████ S.C. ██████████ - DIRECT BY MIMS

1 go to his house?

2 A: We went to his house and then we had to promise things
3 like you're not gonna tell. So, I promised and he let me
4 leave. So, I walked to my house and I threw the food in the
5 trash. Like I cried and I grabbed my bike and I went back to
6 his house and I told my little sister, I was like don't go in
7 the house and make sure ██████████ Minor don't go in the house.

8 Q: Why did you say that?

9 A: I thought if he did it to me then he'll do it to her and,
10 plus, she don't really talk. So ---

11 Q: How old was she at that time?

12 A: She was like five, four.

13 Q: What did you do next?

14 A: So, I got on my bike and I rode like to this place.

15 Q: What place was it?

16 A: It was my mom's friend, it was like our neighborhood.
17 So, I went to the house and she wasn't there.

18 Q: Why did you go to her house?

19 A: It was like the closest, I thought -- even though it was
20 kinda far, so decided to just go to her.

21 Q: Okay. Was she home?

22 A: She wasn't home.

23 Q: What did you do?

24 A: I knew a friend over there, so, I asked to use her phone
25 and I called my stepdad and I just told him to come pick me

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██████████ S.C. ██████████ - DIRECT BY MIMS

1 up.

2 Q: What did you do next?

3 A: He came and picked me up.

4 Q: Where were you when he came and picked you up?

5 A: I was sitting on the curb like in her neighborhood and I
6 was just crying. And he opened the door and he was like,
7 what's wrong, and I was like my Papa tried to rape me. And my
8 mom was on the phone and they was like crying. So, we went to
9 the -- back and we got the kids ---

10 Q: You went where?

11 A: We went back to his house to go get my siblings. My
12 stepdad confronted him and, by that time, his wife was there
13 and she was screaming, oh, he didn't nothing, he didn't do
14 nothing to her, and we just waited till the police and my mom
15 got there.

16 Q: Did you wait at his house or did you go back to your
17 house?

18 A: We went back to my house.

19 Q: Okay. And you stayed at your house. ██████████ S.C. ██████████, after you
20 went back to your house, what starts happening after that?

21 A: It was like emotions, like my stepdad was crying and like
22 my brother, he came home and he was like upset. He was like
23 let me go back there, and my stepdad had to calm him down and
24 call my grandmother and told her what happened, and everybody
25 was just upset.

██████████ S.C. ██████████ - DIRECT BY MIMS

- 1 Q: Did anybody call the police?
- 2 A: My stepdad called the police.
- 3 Q: Okay. Did you end up talking to the police that day?
- 4 A: Yes, ma'am.
- 5 Q: Did you tell them what happened?
- 6 A: Yes, ma'am.
- 7 Q: Okay. And after you talked to the police, what happened
- 8 next?
- 9 A: I talked to the detective, and the ambulance came to
- 10 check me, and we went to the hospital.
- 11 Q: And who went with you to the hospital?
- 12 A: The detective, my mother, and my stepfather.
- 13 Q: Okay. And when you were at the hospital, what happened?
- 14 A: They examined everything, took my clothes, they swabbed,
- 15 took pictures and stuff.
- 16 Q: Okay. Did they have to swab your vagina?
- 17 A: Yes, ma'am.
- 18 Q: Okay. Your Honor, may I approach the witness?
- 19 THE COURT: You may.
- 20 BY MS. MIMS:
- 21 Q: ██████████ S.C. ██████████, I'd like to show you what's been marked as
- 22 State's Exhibit Number 1. Do you recognize what these are?
- 23 A: Yes, ma'am.
- 24 Q: What are those?
- 25 A: Those are my underwear I had on that day.

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S.C. - DIRECT BY MIMS

1 Q: Okay. Are those the underwear you were wearing when your
2 grandfather touched you?

3 A: Yes, ma'am.

4 Q: Are these the underwear that the nurse took from you?

5 A: Yes, ma'am.

6 Q: Okay. And do they look the same that they looked the day
7 they took them from you?

8 A: Yes, ma'am.

9 MS. MIMS: Your Honor, at this time, I'd ask to introduce
10 State's Exhibit Number 1 into evidence?

11 THE COURT: Any objection?

12 MR. WHIRL: No objection, Your Honor.

13 THE COURT: Very well.

14 STATE'S EXHIBIT NUMBER 1

15 ADMITTED INTO EVIDENCE

16 BY MS. MIMS:

17 Q: **S.C.**, after you went to the hospital, did you end up
18 talking to other people about what had happened?

19 A: Yes, ma'am.

20 Q: Do you remember who you talked to?

21 A: Talked to a psychologist and people.

22 Q: Got some counseling?

23 A: Yes, ma'am.

24 Q: Okay. So, did you tell the police what happened?

25 A: Yes, ma'am.

██████ S.C. █████ - CROSS BY WHIRL

1 Q: Did you tell the nurses what happened?

2 A: Yes, ma'am.

3 Q: Did you tell the people that you talked to afterwards
4 what happened?

5 A: Yes, ma'am.

6 Q: Okay. █████ S.C. █████, what is your grandfather's name?

7 A: Vernon Cooley.

8 Q: Do you see him in the courtroom today?

9 A: Yes, ma'am.

10 Q: Could you please point to him?

11 MS. MIMS: Your Honor, I'd ask the record reflect, she's
12 identified the defendant as Vernon Cooley.

13 THE COURT: Very Well.

14 MS. MIMS: I beg the Court's indulgence.

15 THE COURT: All right.

16 BY MS. MIMS:

17 Q: Please answer any questions the defense attorney has.

18 THE COURT: Cross examination?

19 MR. WHIRL: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS EXAMINATION OF █████ S.C. █████ BY MR. WHIRL:

22 Q: Good morning, Miss █████ S.C. █████?

23 A: Good morning.

24 Q: How would you describe your relationship with your
25 grandfather prior to March of 2016?

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S.C. - CROSS BY WHIRL

- 1 A: We had a decent relationship.
- 2 Q: Okay.
- 3 A: At least it was like we talked a lot. We was always
- 4 active and did things together.
- 5 Q: Okay. Have you had any meaningful contact with your
- 6 grandfather since this incident happened?
- 7 A: No, sir.
- 8 Q: Now, at this point, how many times would you say that
- 9 you've told the story that you just told the solicitor and
- 10 this jury?
- 11 A: I've been doing it a lot to be honest -- so, yeah.
- 12 Q: Okay. So, would you say it's more than 10 times, less
- 13 than 10 times?
- 14 A: Less than 10 times.
- 15 Q: Okay. And how many times have you told it to the
- 16 solicitor's office?
- 17 A: I don't know.
- 18 Q: Okay. Did you tell it to them yesterday?
- 19 A: Yes, sir.
- 20 Q: Okay. And did you tell it to them a week ago, two weeks
- 21 ago?
- 22 A: Yes, sir.
- 23 Q: Okay. All right. Now, that day that you said you went
- 24 over to your grandfather's house, you said you went there so
- 25 he could take you guys to breakfast?

S.C. - CROSS BY WHIRL

1 A: Yes, sir.

2 Q: Okay. Has your grandfather cooked food at any other time
3 that you're home?

4 A: I don't know. No, he doesn't.

5 Q: He doesn't cook at your home?

6 A: He doesn't cook at my home.

7 Q: Okay. So, when your grandfather came over and said he
8 wanted to take you guys to breakfast -- well, take your
9 younger sister to breakfast and your mom invited everyone, you
10 didn't think there was anything wrong with going to breakfast
11 with your grandfather?

12 A: I didn't think anything was wrong.

13 Q: Okay. Now, when you got to your grandfather's house, was
14 there anyone else there?

15 A: He was the only one there.

16 Q: Okay. And was he inside or outside?

17 A: He was inside.

18 Q: Okay. And this man, Mr. Henry, that you -- when you told
19 this story before, that was on the porch. At what time did
20 you see Mr. Henry?

21 A: I never saw Mr. Henry.

22 Q: Okay. So, you've never said that there was a man that
23 was on the porch?

24 MS. MIMS: Objection, Your Honor, she did not say there
25 was a man on the porch.

S.C. - CROSS BY WHIRL

1 THE COURT: Counsel, let me see you a second.

2 (REPORTER'S NOTE: Bench conference is held off the record in
3 the presence of but outside the hearing of the jury.)

4 BY MR. WHIRL:

5 Q: Now, Ms. Cooley, have you -- you say that you've never
6 said that you saw a man on the porch?

7 A: I never said I saw a man on the porch.

8 Q: Okay. Have you ever heard anyone say or the question
9 asked by anyone in law enforcement, your grandfather, on this
10 day, to a man that was allegedly there, about whether or not
11 you went into the house or didn't go into the house?

12 A: Can you repeat that?

13 Q: Okay. Have you ever heard -- well, let me go back just
14 to talk about the March 5th. On March 5th, either when you
15 were there with your grandfather or when you were there with
16 the police, do you ever recall anyone asking another man
17 whether or not you ever went into the home?

18 A: Yes, sir.

19 Q: Okay. And when you heard that on March 5th, was that man
20 on scene at that time?

21 A: I don't know ---

22 Q: Okay. So, if you heard someone ask this man if you ever
23 went into the house, wouldn't that mean that that man was
24 there in your presence at the time?

25 A: Yes, sir.

1 Q: Okay. All right. And you don't know the name of that
2 man?

3 A: I do know the name of the man.

4 Q: And what's the name of that man?

5 A: Henry.

6 Q: Okay. It is Henry. All right. And so, you stated
7 earlier that no one was there when you first got there?

8 A: No one was there.

9 Q: Other than your grandfather?

10 A: Other than my grandfather.

11 Q: Okay. Okay. That's fine. Now, at some point, you say
12 that you ended up inside of the house with your grandfather?

13 A: Yes, sir.

14 Q: Okay. Did your other siblings go inside of the house?

15 A: No, sir.

16 Q: Okay. Did your brother and sister, were they wearing
17 jackets or coats that day?

18 A: I don't remember.

19 Q: Okay. So, you wouldn't know whether or not they took
20 their jackets or coat into the house?

21 A: They didn't -- no one went in the house but me.

22 Q: Okay. Do you remember what you were wearing that day?

23 A: Yes, sir.

24 Q: And what was that?

25 A: I had on white jeans, black and pink shoes, Nike Air Max.

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S.C. - CROSS BY WHIRL

1 I had on black shorts underneath and my underclothes. I had
2 on a gray sweatshirt with a soccer logo that had a varsity on
3 it.

4 Q: Okay. And do you recall if your white jeans were fitting
5 you or if they were loose jeans?

6 A: They were high waisted jeans.

7 Q: They were high waisted jeans, and did they fit you snugly
8 or were they loose?

9 A: They were kind of loose.

10 Q: They were kind of loose. Okay. And what do you recall
11 saying to your grandfather once you went into the home?

12 A: I told him we were here.

13 Q: Okay. And at that point, what did he do?

14 A: He was like, can I talk to you.

15 Q: Okay. And where was he situated at that point?

16 A: I don't remember.

17 Q: Well, I think you testified earlier that perhaps he was
18 -- so, you don't know where he was in the room?

19 A: Like he was -- I don't remember if he was standing or
20 sitting.

21 Q: So, you do not recall whether he was standing or sitting?

22 A: The only thing I know where we was at when it was
23 happening. We was by the door and he was sitting on the edge
24 of the couch.

25 Q: Okay. So, just so that I'm clear. You don't remember

S.C. - CROSS BY WHIRL

1 whether or not he was standing or sitting, but you know that
2 he was near the door and on the couch?

3 A: Like when I walked in, I don't know if he was standing or
4 sitting.

5 Q: Okay.

6 A: But during the process of him touching me, he was sitting
7 on the edge of the couch.

8 Q: Okay. Great. And you said that he rubbed you all over
9 your body or -- I don't want to put words in your mouth ---

10 MS. MIMS: Objection, that's not what she said, Your
11 Honor.

12 Q: What did you allege your grandfather do in terms of
13 touching you?

14 A: He felt my vagina. He took his penis and rubbed it on my
15 vagina.

16 Q: Inside of the living room, I'm sorry, just in the living
17 room when you first got there?

18 A: In the living room, he kissed my neck. He was kissing my
19 neck, he was touching the outside of my vagina area, his hands
20 was in my pants, he was touching like my back areas.

21 Q: Okay. Okay. And when he was kissing you, do you recall
22 if he was still sitting on the edge of the couch?

23 A: He was sitting on the edge of the couch.

24 Q: And you were?

25 A: I was standing like in front of him.

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S.C. - CROSS BY WHIRL

1 Q: Okay. And did you lean over so that he could kiss you on
2 the neck or how did it happen that he's sitting, you're
3 standing and he's kissing you on the neck?

4 A: His hand was on my neck and like he was pushed me at an
5 angle to like where if he's sitting and I'm standing, he has
6 my neck, so me in a angle where he could kiss me.

7 Q: Okay. Have you ever told anyone before what you just
8 said then about him holding your neck at an angle and by
9 anyone, I mean did you tell law enforcement that, did you tell
10 the nurses that?

11 A: I don't remember.

12 Q: Okay. All right. All right. And was he -- you say that
13 he also touched your vagina while you were in the living room?

14 A: Yes, sir.

15 Q: And was he sitting or standing when he did that?

16 A: He was sitting.

17 Q: Okay. And so, you were close -- in close proximity to
18 him in order for him to do that?

19 A: Yes, sir.

20 Q: Okay. And you said that, I believe you said that your
21 pants were fairly -- you didn't say fairly loose, you said
22 that your pants were somewhat loose?

23 A: Yes, sir.

24 Q: Okay. Could you explain how it is that he, from his
25 sitting position, how he got his hand inside of your pants?

S.C. - CROSS BY WHIRL

1 A: From his sitting position, he was on the edge of the
2 couch, I was standing and, at that time, I was like a little
3 person, so, he was like -- if I'm standing in front of him and
4 he's sitting at the same angle as me, he could've easily
5 grabbed me, you know.

6 Q: I don't know, that's why I'm asking.

7 A: Oh. Well, it's like he was sitting on the edge of the
8 couch and the couch is by the door, and like the arm of the
9 chair he was sitting, he was sitting like faced my way.

10 Q: Okay. And did he -- do you recall whether or not he
11 stuck his hand in your pants from -- with the palm of his hand
12 or with the -- which side of his hand; do you recall, the back
13 side or the front side?

14 A: The front side.

15 Q: Okay. So, from where he was sitting, he had to twist his
16 hand around and place it down your pants?

17 A: I don't know -- can I give an example or can I show you
18 an example?

19 Q: No, I don't -- you don't need to show me an example. I'm
20 simply asking a question.

21 MS. MIMS: Your Honor, I think he's opened the door to it
22 and I would ask that she be allowed now to show him.

23 MR. WHIRL: And what will we use to do that, Your Honor?

24 MS. MIMS: I think she's allowed to demonstrate.

25 THE COURT: In order to -- for her to explain to you your

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1 question, she's asking to demonstrate and you can -- and
2 that's what she's asking to do, too, in order to respond to
3 your question.

4 MR. WHIRL: Sure.

5 THE COURT: Very well.

6 A: Can I get a chair or something?

7 THE COURT: You can -- you can get whatever you need in
8 order for you to demonstrate appropriately if you'll just wait
9 one second. They'll bring you a chair. It needs to be in
10 front of the jury. So, if you'll back up just a little bit.
11 Just in front of the middle of the jury, in front of the
12 middle of the jury. All right.

13 A: All right. So ---

14 THE COURT: You need to keep your voice up because you
15 don't have a microphone.

16 A: All right. Can everybody hear me? All right. So, this
17 is the chair, and this is the arm and he's sitting like this,
18 and I come in from this angle and I'm here. This is how we
19 are.

20 BY MR. WHIRL:

21 Q: Okay. Okay. Does that conclude your demonstration?

22 A: Yes, sir.

23 Q: Okay. Thank you.

24 (REPORTER'S NOTE: Witness returns to witness stand.)

25 Q: And any idea how long you were in the living room?

S.C. - CROSS BY WHIRL

- 1 A: No, sir.
- 2 Q: Okay. And then once you left the living room, you went
3 into the bedroom?
- 4 A: Yes, sir.
- 5 Q: Okay. And do you recall while you were in the bedroom,
6 how far your pants were lowered?
- 7 A: It was like above my knee area.
- 8 Q: Okay. So, not down to the ankles, just above the knee?
- 9 A: Yes, sir.
- 10 Q: Okay. All right. And once your pants were lowered, then
11 what happened?
- 12 A: Like he was touching and rubbing my vagina area and he
13 took his finger and put it inside of my vagina.
- 14 Q: Okay. And after that what happened?
- 15 A: He took out his penis and he rubbed it on the outside of
16 my vagina and I started crying.
- 17 Q: Okay.
- 18 A: And he stopped.
- 19 Q: Okay. And, and, and you can do a demonstration if need
20 be, but how did he do that with your pants down around your
21 knees?
- 22 A: All right. So my pants were here and I was -- my knees
23 were bent and I was laying down, so my knees were bent but you
24 still can see everything, if that makes sense.
- 25 Q: That makes sense. But how does he get to where the pants

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1 are lowered to rub his penis on your vagina? That's the part
2 I'm trying to get a clarity on?

3 A: Like if my pants are here and my legs are here and my
4 pants was not tight. So, he walked, and he took it out and he
5 rubbed it.

6 Q: Okay. Okay. All right. And any idea how long you were
7 in the bedroom?

8 A: Maybe two, three minutes.

9 Q: Okay. And how long would you say that you and your
10 grandfather were in the house together?

11 A: I don't know.

12 Q: Okay. And when you went to BK, who went there with you?

13 A: Just me and him.

14 Q: All right. Were the two younger children, at one time,
15 in the car but decided that they wanted to stay and play?

16 A: I don't remember.

17 Q: Okay. All right. So, they could've been in the car and
18 decided that they wanted to stay and play with the other
19 children; you just don't remember?

20 A: (Indicates affirmatively.)

21 Q: Is that a yes?

22 A: Yes, sir.

23 Q: Okay. Now, you stated that your grandfather said some
24 things to you in Burger King?

25 A: Yes, sir.

S.C. - CROSS BY WHIRL

- 1 Q: And what did he say to you in Burger King?
- 2 A: He asked could he put his penis inside of my vagina?
- 3 Q: And where were you when he asked you this?
- 4 A: We was about to order. So, like ---
- 5 Q: So, you were in line?
- 6 A: Basically, in line.
- 7 Q: So, you were not sitting at a table, you were in line?
- 8 A: Yes, sir.
- 9 Q: Were there any people in front of you or any people
- 10 behind you?
- 11 A: I don't remember.
- 12 Q: Okay. But there were people behind the counter?
- 13 A: Yes, sir.
- 14 Q: And with people either in front of you or behind you, or
- 15 definitely behind the counter, that's what he said to you?
- 16 A: Yes, sir.
- 17 Q: Is that a yes? Okay. Okay. And then after you got back
- 18 from Burger King, do you recall if this man, Mr. Henry, was
- 19 there then?
- 20 A: No, sir.
- 21 Q: Okay.
- 22 A: He wasn't there.
- 23 Q: He wasn't there. Okay. So, how old was your sister and
- 24 brother at the time?
- 25 A: My sister was either four or five.

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S.C. - CROSS BY WHIRL

1 Q: Okay.

2 A: And he was either three or four.

3 Q: Okay. So, it was okay with you -- okay with you to leave

4 your young siblings at home without any adult supervision?

5 A: I mean, it wasn't okay, but I did it ---

6 Q: Okay.

7 A: --- anyways.

8 Q: And it was also your understanding was it was okay with

9 your grandfather to leave these two young children there in

10 the yard while you and him went to Burger King?

11 A: That was not okay, but we still did it.

12 Q: Okay. Okay. And did you guys bring any food back?

13 A: Yes, sir.

14 Q: Did you bring any food back for the younger children?

15 A: Yes, sir.

16 Q: Okay. And when you left your grandfather, where did you

17 go?

18 A: I went to my house.

19 Q: Okay. And do you have a key to your home?

20 A: At that time, I didn't.

21 Q: You did not. Okay. And you said, I believe you

22 testified -- well, I want even believe. What did you do when

23 you got home?

24 A: I threw the food in the trash and I got my bike -- I

25 cried first and then I got on my bike and I drove my bike back

██████████ S.C. ██████████ - CROSS BY WHIRL

1 to his house and I talked to my little brother -- I mean, I
2 talked to my sister and I told her not to go in the house and
3 I told her not to let my little brother go in the house and
4 then I left.

5 Q: Okay. So, when you went back to the house or when you
6 went to the house, you didn't have a key to get in?

7 A: Yes, sir.

8 Q: And your bike was outside?

9 A: Yes, sir.

10 Q: And there was a canister or something, a dumpster outside
11 where you threw the food away?

12 A: Yes, sir.

13 Q: Okay. And when you got back to the house, Mr. Cooley's
14 home and talked to your brother or your sister rather, was Mr.
15 Henry there at that time?

16 A: No, sir.

17 Q: Okay. And you went over to your friend's house and how
18 far was that?

19 A: That was -- it was a long drive. So, I don't really know
20 how far it was but ---

21 Q: Okay. But you got there on your bike?

22 A: Yes, sir.

23 Q: Okay. And what type of bike do you have?

24 A: It was like a mountain bike, like a regular bike.

25 Q: Okay. And would you say that this distance, when you say

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S.C. - CROSS BY WHIRL

1 a long way, did it take you more than 10 minutes to get there,
2 less than 10 minutes to get there?

3 A: More than 10 minutes.

4 Q: More than 10 minutes to get there. And what type of --
5 how did you travel there, and by that I mean how did you get
6 there, travel?

7 A: First, I had like to cross like this four-way and then --
8 I was on the sidewalk most of the time.

9 Q: Okay.

10 A: And then one area is like it didn't have a sidewalk. So,
11 I was in the road, like I hit turns, curves, and then by that
12 time, I was already there.

13 Q: Okay. So, there were asphalt or hard surfaces that you
14 rode on getting there?

15 A: Yes, sir.

16 Q: There were sidewalks that you rode on getting there?

17 A: Yes, sir.

18 Q: Were there any grassy areas that you rode on getting
19 there?

20 A: I don't remember.

21 Q: Okay. Were there any dirt roads that you rode on getting
22 there?

23 A: No, sir.

24 Q: Is there not dirt from where your grandfather lives
25 before you get up to the cross section of the main street from

██████████ S.C. ██████████ - CROSS BY WHIRL

1 ██████████?

2 A: I don't remember because that was paved. So, I don't
3 remember at that time was it dirt or not.

4 Q: So, are you saying -- are you testifying that to your
5 recollection that your grandfather's driveway and home area is
6 now paved?

7 A: Yes, sir.

8 Q: Okay. And when did you ---

9 A: Well, like ---

10 MS. MIMS: I object to the relevance. I don't see how
11 this is relevant to her testimony.

12 MR. WHIRL: I'm simply trying to find out what type of
13 surfaces she rode over to get to this place 10 or 15 minutes
14 down the road.

15 MS. MIMS: She drove from her house.

16 (REPORTER'S NOTE: Bench conference is held off the record in
17 the presence of but outside the hearing of the jury.)

18 BY MR. WHIRL:

19 Q: Okay. Just to finish that up. So, do you know whether
20 or not the area where your grandfather's house is, is actually
21 paved or is it still dirt?

22 A: I don't know.

23 Q: Okay. All right. And this place that you went to, is
24 that considered on the other side of town or is that nearby?

25 A: I don't know.

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S.C. - CROSS BY WHIRL

1 Q: Okay. Were you allowed to go that far by your parents by
2 bike or any other means?

3 A: No, sir.

4 Q: Okay. And would you say that it's -- is it safe to say
5 that you could possibly get into trouble for traveling that
6 far from home?

7 A: Yes, sir.

8 Q: Okay. Do you, on your bike ride, do you recall whether
9 or not you were standing while you were pedaling your bike
10 most of the way or whether you were sitting or whether you
11 were doing a combination of both?

12 A: A combination of both.

13 Q: And do you have any idea as to whether you did more
14 standing than sitting?

15 A: I did more standing than sitting.

16 Q: Okay. Did you say anything to your grandfather when you
17 went back to talk to -- when you first got back from
18 purchasing the food?

19 A: Can you repeat that?

20 Q: Did you say goodbye or anything else to your grandfather
21 before you left when you first got back with the food?

22 A: No.

23 Q: Did you give your grandfather a hug and -- before you
24 left?

25 A: I don't remember.

S.C. - CROSS BY WHIRL

1 Q: You don't remember? Okay. All right. And you don't
2 recall saying anything to the man that was on the porch at
3 that time when you left?

4 A: There was no man on the porch.

5 Q: Okay. Now, when you were leaving the neighborhood, do
6 you recall seeing Ms. Carolyn?

7 A: I saw Ms. Carolyn when we got back to go pick up my
8 little -- my siblings.

9 Q: So, when you were first leaving your grandfather's house
10 to go over to your mother's friend's house and then your
11 friend's house, you do not recall seeing Ms. Carolyn coming
12 into the neighborhood as you were going out of the
13 neighborhood?

14 A: I did not see Ms. Carolyn.

15 Q: Okay. As you were leaving the neighborhood on your bike,
16 do you recall whether or not you were crying at the time?

17 A: I was crying.

18 Q: Okay. And who did you call -- did you call your brother
19 to come pick you up once you got to your friend's house?

20 A: No, sir.

21 Q: Okay. Who did you call?

22 A: My stepdad.

23 Q: All right. So, you didn't call your mother either?

24 A: I didn't call nobody but my stepdad.

25 Q: And what's the relationship between you and your stepdad?

S.C. - CROSS BY WHIRL

- 1 A: We have a strong relationship.
- 2 Q: Okay. Okay. And were you at your friend's house when
- 3 your dad -- stepdad -- you call him stepdad or you call him
- 4 dad?
- 5 A: You can call him dad.
- 6 Q: Okay. What do you call him?
- 7 A: Mr. Eddie.
- 8 Q: Mr. A?
- 9 A: Mr. Eddie, but we can call him dad.
- 10 Q: Mr. Eddie. Okay. Okay. Well, when he came to pick you
- 11 up, were you at your friend's house or were you ---
- 12 A: I was off to the side of the curb.
- 13 Q: Okay. And that was the first phone that you had access
- 14 to since you left your neighborhood?
- 15 A: Yes, sir.
- 16 Q: Okay. And you testified earlier that your stepfather is
- 17 disabled now?
- 18 A: He was disabled before.
- 19 Q: So, he was disabled back in 2016 when ---
- 20 A: Yes, sir.
- 21 Q: So, he was not working at the time?
- 22 A: He was not working.
- 23 Q: All right. All right. And your grandfather was taking
- 24 you to breakfast even before this alleged incident happened;
- 25 is that not true?

S.C. - REDIRECT BY MIMS

1 A: Can you repeat that?

2 Q: You testified -- well, your grandfather was planning on
3 taking you and your siblings to breakfast even before this
4 alleged incident happened?

5 A: Yes, sir.

6 Q: Okay. One moment, Your Honor?

7 THE COURT: All right.

8 BY MR. WHIRL:

9 Q: Do you know about how long it was after you left your
10 grandfather's house before you called your stepfather?

11 A: No, sir.

12 Q: Okay. Thank you.

13 Nothing further, Your Honor.

14 THE COURT: Redirect?

15 MS. MIMS: Thank you, Your Honor.

16 REDIRECT EXAMINATION OF **S.C.** BY MS. MIMS:

17 Q: **S.C.**, just to clarify a few things, when you initially
18 went to your grandfather's house with your two siblings and he
19 was going to take you to breakfast, was anyone there when you
20 arrived?

21 A: No one was there but him.

22 Q: When you walked out the door after he assaulted you, was
23 anyone there?

24 A: No one was there.

25 Q: And how old were you at the time?

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S.C. - REDIRECT BY MIMS

- 1 A: I was 12.
- 2 Q: Were you in charge of everyone at the time, all the kids?
- 3 A: No, he was.
- 4 Q: Okay. And after this happened with your grandfather,
- 5 after he took you inside the house and did those things to
- 6 you, how were you feeling?
- 7 A: I was feeling worthless. I felt like -- I was upset at
- 8 myself because I didn't scream, I didn't run and, like, I just
- 9 sat there and I let him touch me, and I felt like that I
- 10 wanted to leave.
- 11 Q: So, when he said let's go to breakfast, did you feel
- 12 strong enough to fight him at that point?
- 13 A: No, ma'am.
- 14 Q: And did he only take you to breakfast?
- 15 A: Yes.
- 16 Q: And when he had you on the bed in his room and he was
- 17 touching you with his penis, were you on the edge of the bed
- 18 or in the middle of the bed?
- 19 A: The edge.
- 20 Q: **S.C.**, did you have a phone at that time?
- 21 A: No, ma'am.
- 22 Q: Why did you go so far away?
- 23 A: Because like there was nowhere around for me to go. So,
- 24 I thought that was the only place I could get safety.
- 25 MS. MIMS: No further questions, Your Honor.

S.C. - RECROSS BY WHIRL

1 THE COURT: Recross?

2 RECROSS EXAMINATION OF S.C. BY MR. WHIRL:

3 Q: Miss S.C., you said that there were other children in
4 the yard playing with your siblings?

5 A: Yes, sir.

6 Q: And where did those children come from or where did they
7 live?

8 A: They lived across the street from him.

9 Q: Okay. And did you -- do you know the folks that live
10 across the street from your grandfather?

11 A: Yes.

12 Q: And do those folks, do you know whether or not they have
13 a phone?

14 A: They don't have a phone.

15 Q: So, they have no phones at all in the house?

16 A: Not that I know of, but to me, they don't have a phone.

17 Q: Okay. All right. Thank you.

18 BY THE COURT:

19 THE COURT: All right. All right. Ladies and gentlemen,
20 we're going to take our morning break. We're going to take
21 about 15 minutes. Do not discuss this matter or allow anyone
22 to discuss it with you. Leave your notepads in your seats and
23 just remember, when you return, to get your notepad. I had a
24 jury panel one time that though, oh, God, he used the notepad
25 that's in the seat. Just be sure you get your notepad. Take

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BY THE COURT

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1 15.

2 Just go with the bailiffs.

3 (REPORTER'S NOTE: Jury exits courtroom @ 11:40 A.M.)

4 **RECESS - 11:40 A.M.**

5 ******OFF THE RECORD******

6 **(On the Record - 12:00 P.M.)**

7 THE COURT: Have you got your next witness ready?

8 MS. MIMS: Yes, ma'am.

9 THE COURT: Okay. Great. Let us have the jury.

10 BAILIFF: Judge, they're on the way.

11 THE COURT: Oh, wonderful. Thank you, Sweeney.

12 (REPORTER'S NOTE: Jury enters courtroom @ 12:01 P.M.)

13 THE COURT: All right. Ladies and gentlemen, at this
14 time, we will continue with the state's case. If you'd call
15 your next witness, please?

16 MS. MIMS: The state would call Eddie Pringle.

17 THE COURT: All right.

18 CLERK: If you'll please raise your right hand and state
19 your name for the record.

20 MR. PRINGLE: Eddie Pringle.

21 EDDIE PRINGLE, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Thank you. You can have a seat.

24 THE COURT: Yes, sir, your witness.

25 MS. MIMS: Thank you, Your Honor.

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EDDIE PRINGLE - DIRECT BY MIMS

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1 DIRECT EXAMINATION OF EDDIE PRINGLE BY MS. MIMS:
2 Q: Good morning, Mr. Pringle?
3 A: Good morning.
4 Q: Can you please tell the jury where you live?
5 A: I live at [REDACTED] Drive.
6 Q: I'm sorry, and what do you do for a living?
7 A: Oh, I'm disabled.
8 Q: Okay. And how long have you lived at [REDACTED]?
9 A: All my life, basically. I moved out with my parents --
10 probably about 15, 20 years ago.
11 Q: Gotcha. And are you married?
12 A: Yes, ma'am.
13 Q: Who are you married to?
14 A: To Shaketa.
15 Q: Okay. And when did you marry Shaketa?
16 A: 2006. No -- yeah, 2006.
17 Q: Okay.
18 A: I'm nervous. I'm sorry.
19 Q: That's okay. And do you have any children with Shaketa?
20 A: No, ma'am, I don't.
21 Q: Okay. Does she have any children?
22 A: Yes, ma'am.
23 Q: How many children does she have?
24 A: She have four.
25 Q: And do all those children live with both of you?

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EDDIE PRINGLE - DIRECT BY MIMS

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1 A: Yes, ma'am, at this point in time, but S.C., Minor
2 and Minor .

3 Q: And how old are all of those kids?

4 A: Minor -- Minor the youngest, he's six; Minor is
5 eight; and S.C. is 15.

6 Q: And are you S.C.'s stepfather?

7 A: Yes, ma'am.

8 Q: Okay. Do you know, since you've lived on this road for
9 so long, can you tell the jury a little bit about this street
10 that you live on?

11 A: It's a family ordinary street. I have an uncle stay next
12 door to me; he just passed away. I had my nephew stay on the
13 other side and I have sister right down the road. I have a
14 cousin right down the road from me. It's just a basic family
15 street.

16 Q: Uh-huh, (affirmative response).

17 A: Around the corner, that we stay from -- we have some
18 people that we kin to down the line like third cousin
19 something like that. So, it's a family ordinary neighborhood.
20 I've lived there all my life. It used to be a dirt road and
21 now it's a paved road.

22 Q: So, back in 2016, was -- was it a dirt road or a paved
23 road?

24 A: At that point in time, it was a paved road.

25 Q: Okay. And back during that time, did you still have some

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EDDIE PRINGLE - DIRECT BY MIMS

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1 family back there?

2 A: Yes, ma'am.

3 Q: Okay. And were there a lot of children back there?

4 A: Yes, ma'am.

5 Q: Okay. Where you live, is that anywhere close to where

6 Mr. Cooley was living in 2016?

7 A: Yeah, it's walking distance, probably a good five

8 minutes.

9 Q: Okay. Is it on the same street?

10 A: Yes, ma'am.

11 Q: And is that in Dorchester County?

12 A: Yes, ma'am.

13 Q: Okay. I want to take you to March the 5th of 2016. Do

14 you remember that day?

15 A: Yes, ma'am.

16 Q: And can you tell the jury what day of the week that was,

17 do you know?

18 A: Can't remember.

19 Q: That's okay.

20 A: That's a Saturday. It was a Saturday.

21 Q: Okay.

22 A: It was a Saturday weekend.

23 Q: Okay. And you mentioned that you were disabled at that

24 time; is that right?

25 A: Yes, ma'am.

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1 Q: Okay. Was your wife working at that time?

2 A: Yes, ma'am.

3 Q: Was she -- did she usually work on the weekends?

4 A: Yes, ma'am, a lot. It all depends.

5 Q: Okay. Can you tell the jury how that day started for you
6 on March the 5th of 2016? What, what -- how did your day
7 begin that day?

8 A: Just a regular morning, getting up and just getting up
9 that morning and get started. I had some business to take
10 care of that morning, so I had -- discuss leaving the house
11 and going to do that at the time.

12 Q: Okay.

13 A: Yes, ma'am.

14 Q: Okay. And when you left the house for the day, who all
15 was still at the house?

16 A: My wife had just left, the kids were still there, yes,
17 ma'am.

18 Q: Okay. Was Mr. Cooley there?

19 A: No, he had went next door with me to -- my nephew had
20 been getting a house built and he was -- there was some guys
21 there doing some work on the house. When I left, I think he
22 left, too, to go home.

23 Q: Okay. And so, at some point, you leave, I guess, for the
24 day?

25 A: Yes, ma'am.

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- 1 Q: Okay. At some point during the day, did you end up
2 hearing from or get a phone call from [REDACTED] S.C. ?
- 3 A: Yeah, it was probably about two-and-a-half or three hours
4 after that, she calls me.
- 5 Q: Do you know what time of day it was that she called you;
6 was it still morning?
- 7 A: Yes, ma'am, just -- I think like 11 or 12, something like
8 that.
- 9 Q: Okay. And how old was she back in 2016?
- 10 A: Twelve.
- 11 Q: And you mentioned that you're on a road where you know a
12 lot of people?
- 13 A: Yes, ma'am.
- 14 Q: Did [REDACTED] S.C. have a bike?
- 15 A: Yes, ma'am; she did.
- 16 Q: Was she allowed to ride her bike around [REDACTED] Road?
- 17 A: Just on [REDACTED] Road. We have the -- it's Bacons Bridge
18 Road, on top our road, she was not allowed to go that far.
- 19 Q: So, [REDACTED] runs into Bacons Bridge?
- 20 A: Yes, ma'am.
- 21 Q: Okay. And tell me about Bacons Bridge, is that a busy
22 road?
- 23 A: Yes, it is; it's a four-lane highway.
- 24 Q: Okay. So, were there rules about not going over there?
- 25 A: Yes, ma'am.

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1 Q: Okay. Would she generally abide by the rules?

2 A: Yes, ma'am.

3 Q: Did [S.C.] have a phone back then?

4 A: No, she didn't. We -- no, she didn't.

5 Q: Okay. Okay. So, I'm sorry, we'll get back to that. You
6 end up getting a call from [S.C.] that morning?

7 A: Yes, ma'am.

8 Q: Okay. And what happens?

9 A: When I pulled in the yard, [S.C.] had called me. It was
10 a strange number. I answered and it was her. She said, Mr.
11 Eddie, where are you? I said, I'm just pulling back up in the
12 yard. She said, can you come and get me? I said, well, where
13 are you at? She said, I'm over to Meka's (spelled
14 phonetically) house. And I'm thinking Meka way over there.
15 How you get over there, [S.C.]? She said, I rode my bike. I
16 said, what's wrong? She says please come get me; please come
17 get me, Mr. Eddie, please come get me. I'll tell you when you
18 get here. So, I got back in my truck and drove over there and
19 when I drove, she was sitting on the sidewalk, just with her
20 face down and, when she look up at me, she just busted out
21 crying. So, I got to her and I said, what's wrong, baby,
22 what's wrong. She said -- she said, Papa tried to rape me. I
23 said, what? She said, Papa tried to rape me. I said,
24 [S.C.], come on. She said, yes, Papa tried to rape me. I
25 said, well, get back in this truck. So, we got back in the

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1 truck and as we just going there back to his house, I was
2 talking to her. I said, are you all right? She said, no.
3 So, we got up to the house. As I pull up in the front of his
4 trailer, he was walking back and forth in front of the trailer
5 and I got out. I said, how you could do something like that?
6 How you actually did do something like that? I said -- he
7 told me, he said, don't even bother me about that. I said,
8 how you could do -- he just kept walking, and I said, well,
9 you know, I said, you know I have to call the police. I have
10 to call the police. I just can't let this go by like this.
11 Because this child and she -- and his wife had came out
12 saying, I don't know why y'all bring this around here for.
13 Why y'all bring this around here for? He didn't do that. And
14 I just -- got my two little children -- **Minor** and **Minor**
15 still around there, so I got them together and put them in the
16 truck and went back to the house. And as I was going back, I
17 call the police and I explained to them exactly what had
18 happened and what was going on. And at that time, I was
19 speaking to my wife on the phone and letting her know what was
20 going on, too.

21 Q: And where was your wife that day?

22 A: At work in Mount Pleasant.

23 Q: In Mount Pleasant?

24 A: Yes.

25 Q: So, going back a little bit. You, when you picked up

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1 █ S.C. █ from -- whose house was this?

2 A: She was Meka's, one of my wife's girlfriends that goes to
3 church with us. She went to her house because that's the
4 closest house to us that she probably had a chance to get to
5 somebody that she knew.

6 Q: Okay.

7 A: Yes, ma'am.

8 Q: And how far away, approximately, does Meka live from you?

9 A: It's about, I'd say two miles or two-and-a-half miles.
10 Yes, ma'am.

11 Q: Okay. Ordinarily, would █ S.C. █ have gotten in trouble
12 for going that far away?

13 A: Yes, ma'am.

14 Q: Okay.

15 A: Definitely.

16 Q: But she calls you as soon as she gets over there?

17 A: Yes, as soon as she got over there. And Meka wasn't
18 home, so somebody, one of her school mates that she knew stays
19 over there and she went and got her phone and called.

20 Q: Okay. And when you picked her up and she told you what
21 happened, what was her demeanor?

22 A: She was upset. She was upset, disappointed, and just I
23 had to really calm her down because she was so to the point
24 that she was shaking, just shaking. She didn't believe it.
25 She kept saying, I can't believe Papa did that to me. She

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1 kept saying I can't believe that. She kept telling me over
2 and over again.

3 Q: So, when you pick her up, you end up going -- do you end
4 up going back to Mr. Cooley's home?

5 A: Yes, ma'am, that's where the children were at.

6 Q: Why did you go right back to Mr. Cooley's house?

7 A: Because the little kids was there, and I had wanted to
8 ask him personally why did he do something like that.

9 Q: So, when you confronted him about that, was he shocked
10 that you asked him a question like that?

11 A: Just being normal, just walking, looking back at me. He
12 never stopped and looked at me, he just kept walking saying I
13 don't want to hear that. I don't want to hear that, and he
14 kept walking. Because I think he was sitting in a chair --
15 like he was sitting in a chair on the side of the yard with
16 his wife at the time. That's when she jumped up and say I
17 can't believe y'all brought this back around here.

18 Q: Okay. Did you tell him what the full allegation was when
19 you got there?

20 A: I asked him why did he try to rape his granddaughter,
21 that's the words that came out of my mouth to him.

22 Q: And was he shocked by that allegation?

23 A: Like I say, he just look at me and kept walking.

24 Q: Okay. So, what happens next, do you call the police?

25 A: Yes, ma'am.

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1 Q: Okay. And do the police show up?

2 A: Yes, they did.

3 Q: Okay. And tell me about that?

4 A: By the time we got back to the house, I was calling them
5 and he took about a good five, 10 minutes to come. And after
6 that, when the officer got to the yard, he was getting out the
7 car and I was walking towards him and my wife passed and she
8 went to the back, I told her to let's go around to the back at
9 the time, and ---

10 Q: What do you mean your wife passed -- I don't mean to stop
11 you. What do you mean your wife passed?

12 A: She was coming from Mount Pleasant and I already told her
13 what her dad did to her child. So, she was upset. So, she
14 passed me, she went on to the back, past the house and around
15 to the back. So, the officers was getting out of the car at
16 the time and walking toward me and I said, sir, get back in
17 the car and let's go behind her.

18 Q: Why did you tell them that?

19 A: Because she was upset. She was upset and she was
20 disappointed what her father did to her daughter.

21 Q: Where was she headed?

22 A: Back to the back to confront him.

23 Q: So, after the officer -- what does he do? Does he end up
24 leaving and going back?

25 A: Jumped in his car and raced right behind her.

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1 Q: Okay. Do you stay at the house or do you go ---

2 A: No, I got in my truck and went right behind them.

3 Q: Okay. And when you got there, what was going on?

4 A: All chaos. All chaos. She was upset. The officer was
5 trying to separate her and asked me to help get her calmed
6 down. It was chaos.

7 Q: Okay. Did the officer end up talking to you?

8 A: Yes, he did.

9 Q: Did he end up talking to [REDACTED] S.C.?

10 A: Yes, he did.

11 Q: Okay. After that, what happened after he left; did she
12 end up going anywhere else that day?

13 A: Yes, to the ---

14 Q: [REDACTED] S.C. .

15 A: --- [REDACTED] S.C., yeah, she went back to took her to the
16 Medical University, yes, ma'am.

17 MS. MIMS: I beg the Court's indulgence, Your Honor.

18 THE COURT: All right.

19 BY MS. MIMS:

20 Q: I have no further questions. Please answer any question
21 from defense counsel.

22 THE COURT: Cross examination?

23 MR. WHIRL: Thank you, Your Honor.

24 THE COURT: Uh-huh, (affirmative response).

25 CROSS EXAMINATION OF EDDIE PRINGLE BY MR. WHIRL:

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1 Q: I just have to look at the clock to say either good
2 morning or good afternoon. Good afternoon.

3 A: Yes, sir.

4 Q: Now, just to pick up briefly upon where you left off your
5 testimony with the state. You said that when you got there,
6 all chaos had broke out?

7 A: Uh-huh, (affirmative response).

8 Q: Okay. By chaos, was there a physical fight going on?

9 A: My wife was upset that her father just attempt to rape
10 her daughter. So, she went back there to confront him.

11 Q: Okay. My question was, was a physical fight going on?

12 A: I didn't see anything. When I got there, it was broke
13 up. The officer had already got there before I did, so
14 everything was broke up. Yes, sir.

15 Q: Okay. But in order to be a break up, there has to be an
16 altercation; would you agree with that?

17 A: Yes, sir.

18 Q: Okay. And did you know your wife was going there to
19 fight him, fight Mr. Cooley?

20 A: With her, yes, I did, and that's why I told the officer
21 when he came in the yard to go behind her because she was
22 upset.

23 Q: Was anyone with her?

24 A: She had a patient with her that she worked with.

25 Q: Was there anyone else with her?

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1 A: No.

2 Q: So, her son was not ---

3 A: He came. I tried to hold him back. He was in the yard
4 standing with me at the time the officer came in the yard. He
5 took off and ran, so I couldn't get him.

6 Q: Okay. And do you know whether or not he was involved in
7 this altercation?

8 A: I think he -- I think he was trying to help his mom at
9 the time. When I got there, everything was -- the officer had
10 everybody pushed aside and tried to get me to help him,
11 because there wasn't but one officer at that time. So, I went
12 back there to grab my wife. I think he had -- I couldn't tell
13 you at the time, sir.

14 Q: Okay. And that officer, do you recall his name?

15 A: No, sir.

16 Q: Do you think perhaps it was Officer Amos?

17 A: Yes, I don't know. I can't -- I ---

18 Q: Okay. All right. Excuse me. Did you witness any of
19 these allegations that your daughter said happened on March
20 5th? Did you actually witness any of this touching or any of
21 these other things that she alleged from her grandfather?

22 A: I think I stated earlier, I wasn't there at the time. I
23 had left to go take care of some business.

24 Q: Okay. And you -- you testified that Mr. Cooley's house
25 -- well, I want to ask you, Mr. Cooley's house is in the back

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1 of [REDACTED]?

2 A: Yes. Yes, sir, it's at the dead end.

3 Q: Okay. At the dead end?

4 A: Yes, sir.

5 Q: And do you recall whether or not that area of [REDACTED] is
6 paved or whether or not it's dirt?

7 A: Right at probably from about 40 feet from his house is
8 paved. That's where they stop at paving the road. It's a
9 tree there and about 40 feet from his house.

10 Q: Okay. So, the last 40 feet or so is in fact dirt?

11 A: Dirt, yes, sir.

12 Q: Okay. All right. And you also testified that on this
13 street, there are lots of family members?

14 A: Yes, sir.

15 Q: And does your daughter know any of your family members?

16 A: At the time, as we thought she -- at the time, she just
17 wanted to get away. I think she wanted to get away from the
18 street altogether. So, she found the nearest -- she went to a
19 church member's house.

20 Q: Okay.

21 A: Yes, sir.

22 Q: My question is, did ---

23 A: The family members, I don't think they were home at the
24 time, sir, they work.

25 Q: Okay. So, the children that were in the neighborhood,

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1 they were left in the neighborhood without their parents?

2 A: No, the children was with they grandparent, him, at the
3 time, because he came to the house and took them -- was
4 supposed to take them to Burger King. So, he was over --
5 guardian of them. That's who we left them -- the kids with
6 him. She got -- got away and went to Meka's house for help.
7 So, she went -- didn't take the kids with her, because she had
8 to go on a bicycle ride.

9 Q: Okay. Okay. But I'm asking you whether or not they were
10 -- and you may not know this -- were their other children in
11 the neighborhood in Mr. Cooley's yard playing with your step-
12 children?

13 A: I, I think the neighbors -- the neighbors who stayed next
14 to him kids was over there.

15 Q: Okay.

16 A: At the time when I got there, sir, I didn't know what
17 children was there, I was just ---.

18 Q: Okay. And you said that you had three or four family
19 members living on [REDACTED]?

20 A: At the time, I had a uncle, sister, nephew, and cousin,
21 uh-huh, (affirmative response).

22 Q: Okay. And the two of you have been married since 2006?

23 A: Yeah, I think that I got that wrong. I think it's 2011.

24 Q: Okay. So, this was either five years later or 10 years
25 later, depending on whether you were married in 2011 or 2006?

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1 A: This October will be five years. So, whatever you can
2 take from that, I think it's 2011, yes, sir.

3 Q: Okay. And so, during that five years, with all of these
4 family members, there was no communications between any of
5 your family members and your new family?

6 A: There was.

7 Q: There was?

8 A: Yes, sir, there was. They got along with everybody.
9 Yes, sir.

10 Q: Okay. Okay. Were there any of your three or four family
11 members along that route from [REDACTED] to the main road that
12 had phones?

13 A: Yes, sir.

14 Q: Okay. And what did you mean when you told detectives or
15 you told authorities that your daughter was not allowed to
16 travel that far away from home?

17 A: Yes, sir. If you know anything about Summerville, Bacons
18 Bridge -- there's a main road Bacons Bridge, there's too much
19 traffic for her to be on that type of road at that age.

20 Q: Okay. Okay. And do you have any idea why your daughter
21 called you as opposed to her brother or her mother?

22 A: At that time, I couldn't tell you. I guess, I was the
23 one who answered the phone first.

24 Q: Well, do the three of you all have the same phone?

25 A: The same number, yes, sir.

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1 Q: You all have the same number?

2 A: We got the same number -- I think we had T-Mobile at the
3 time. I guess she thought I was home, but I was the one who
4 was supposed to've been home at the time, coming back home at
5 the time.

6 Q: Okay. So, was her brother working that day?

7 A: No.

8 Q: And do you know whether or not her brother had a phone?

9 A: He probably did. He been at a basketball game ---

10 Q: He was at a basketball game at 11 o'clock in the morning?

11 A: Yes, sir, a church, they have basketball games early.

12 Q: Okay. And you are able to read and write; is that
13 correct?

14 A: Yes, sir.

15 Q: And you did provide a written statement on March 5th?

16 A: Yes, sir.

17 Q: And who wrote that statement for you?

18 A: Actually, at the time, the detective did it. I was too
19 nervous, no glasses, no nothing, and I asked her to write it.

20 Q: Okay. And do you recall telling authorities that your
21 daughter indicated to you or told you that Mr. Cooley tried to
22 get her to touch him?

23 A: Yes. Yes, sir.

24 Q: Okay. Have you seen any other statements since then that
25 says that your daughter stated that he tried to get her to

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1 touch him?

2 A: Yes, sir.

3 Q: You have seen such statements?

4 A: No, I haven't, no.

5 Q: Okay. All right. All right. What was the relationship

6 between Mr. Cooley, Carolyn Cooley, and your daughter at the

7 time that this incident happened back in March 2016?

8 A: When the incident happened?

9 Q: Prior to the incident happening, yes, sir?

10 A: He was a great grandfather. He used to come by and see

11 the kids and do things with the kids. I mean, all I can tell

12 you is he was a good grandfather. I thought he was until it

13 happened.

14 Q: Okay. And what did you mean, when you told the

15 authorities that your daughter hated Mr. Cooley and Ms.

16 Carolyn?

17 A: I told who this?

18 Q: Authorities, you don't recall saying that?

19 A: No, sir.

20 Q: Okay. All right. Fair enough.

21 A: No.

22 Q: Are you close to your daughter?

23 A: Yes, sir.

24 Q: Now, there was some testimony that your daughter was

25 receiving counseling; do you know anything about it?

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1 A: Yes, sir.

2 Q: And was there any counseling going on prior to March of
3 2016?

4 A: Not for the incident that happened to her. She had some
5 other counseling that was going on. Did she? No, no.

6 MS. MIMS: I object, Your Honor, to the relevance.

7 THE COURT: Counsel, let me see you.

8 (REPORTER'S NOTE: Bench conference is held off the record in
9 the presence of but outside the hearing of the jury.)

10 MS. MIMS: I withdraw the objection, Your Honor.

11 THE COURT: Okay.

12 BY MR. WHIRL:

13 Q: So, do you know anyone by the name of Ms. Sandra; have
14 you ever heard that name before?

15 A: Huh-uh, (negative response).

16 Q: Okay. All right. But there was some counseling going on
17 prior to this incident; you just don't know what type of
18 counseling?

19 A: Yes, sir.

20 Q: Okay. And it didn't have anything to do with this
21 incident?

22 A: Huh-uh, (negative response).

23 Q: Okay.

24 THE COURT: And that's a no? Your response is a no;
25 you're shaking your head?

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1 A: Yes, ma'am. Yes, ma'am. I'm sorry.

2 BY MR. WHIRL:

3 Q: Okay. And do you have any knowledge as to whether or not
4 this counseling is still going on?

5 A: Yes, because my wife had just took her to -- I mean, for
6 -- **S.C.** acts out a lot now since that happened to her. She
7 was acting out a lot in school. Somebody got a whiff of what
8 happened to her, that her grandfather tried to rape her, and
9 she act out -- some girls had got her information, and one day
10 they blurted out that it wasn't they problem because they told
11 everybody that **S.C.**'s grandfather raped her or however it
12 went. It got back to the school.

13 Q: Okay.

14 A: And made a big issue at school and that gave her a lot of
15 problems with people teasing her about it.

16 Q: Okay. The counseling prior to 2016, do you know what
17 that counseling was about?

18 A: Probably for her behavior.

19 Q: Okay. And are you aware that it may have had anything to
20 do with bullying?

21 A: She was -- before I met my wife and got with my wife, she
22 was ---

23 MS. MIMS: Your Honor, I'm going to object. Bullying has
24 nothing to do with ---

25 MR. WHIRL: I'll move on. I'll move forward.

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1 THE COURT: All right.

2 BY MR. WHIRL:

3 Q: Well, do you know if she was seeing Ms. Sandra during the
4 last school year or the school counselor?

5 A: Okay. The school counselor, see I don't know these
6 people by name.

7 Q: Okay.

8 A: Sandra was seen by [REDACTED] S.C., yeah.

9 Q: Okay. And I'm assuming from your earlier testimony that
10 -- well, I won't assume anything. What was the relationship
11 between you and Mr. Cooley prior to this incident?

12 A: It was cool. We used to talk a lot, yeah.

13 Q: Okay.

14 A: A good relationship.

15 Q: And what about the relationship between your wife and Mr.
16 Cooley?

17 A: Great relationship. She took him out of the position
18 that he was in and bring him down here and help him out, so
19 they a good relationship, a father/daughter relationship.

20 Q: Okay. And did the two of you go on any vacations or
21 cruises in 2016, prior to this incident?

22 A: Me and my wife?

23 Q: Yes.

24 A: Yes, sir.

25 Q: And when you went on -- how long were you gone on

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1 vacation?

2 A: It was a short, three, I think it was.

3 Q: You said three days?

4 A: Yes, sir.

5 Q: And during that three days' vacation, who was with the

6 children?

7 A: Mr. Cooley was.

8 Q: And did Mr. Cooley have the children at your home or did

9 he have the children at his home during that three days?

10 A: At my home.

11 Q: Okay. And so, there had been no problems or incidents or

12 worries or concerns about Mr. Cooley and the children prior to

13 you and your wife going on this vacation?

14 A: Not really. Only thing he did was he left the house and

15 left them unattended a couple of nights.

16 Q: So, when you said left the house, he left them unattended

17 at the home for overnight?

18 A: Overnight. I heard about it, they said that he left the

19 house and left them unattended. So, we talked to him about

20 that incident, because he was supposed to be watching the kids

21 and he left the house and went back home without the kids

22 being attended by an adult. We left him in charge of his

23 grandchildren.

24 Q: Okay. And where was the 17-year-old at the time?

25 A: At the time, I think Ray probably went to a friend's

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1 house.

2 Q: Okay.

3 A: Yeah.

4 Q: So, the 3 days he was not there either?

5 A: I couldn't tell you, sir. I was on vacation at the time,
6 so as I know of -- I know he was left in charge.

7 Q: Okay. Fair enough.

8 Court's indulgence?

9 THE COURT: All right.

10 Q: Do you have any knowledge as to whether when you were on
11 vacation, the 17-year-old was staying at the house with his
12 girlfriend and, if you don't know, you don't know, because you
13 were on vacation?

14 A: I can't remember.

15 Q: Okay.

16 MR. WHIRL: Nothing further, Your Honor.

17 THE COURT: All right. Redirect?

18 MS. MIMS: Thank you, Your Honor.

19 REDIRECT EXAMINATION OF EDDIE PRINGLE BY MS. MIMS:

20 Q: Mr. Pringle, you're [REDACTED] S.C. 's stepfather?

21 A: Yes, ma'am.

22 Q: Do you -- are you -- is your relationship with her a
23 father/daughter type relationship?

24 A: Yes, there is -- well, yes, sir -- yes, ma'am. They get
25 them growing pains getting there because I came into her

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EDDIE PRINGLE - REDIRECT BY MIMS

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1 relationship probably ---
2 Q: Have you always gotten along with [REDACTED] S.C. ?
3 A: Yes, ma'am.
4 Q: Has she always trusted you?
5 A: Yes, ma'am.
6 Q: Okay. So, is it unusual that she would call you when
7 she's in a really bad spot?
8 A: Yes, ma'am, because she -- I'm the one that she called.
9 Q: Are you someone that she would call?
10 A: Yes, ma'am. She wouldn't call mom just as quick as she'd
11 call me.
12 Q: Okay.
13 A: Yeah.
14 Q: Okay. Did you give a statement to the police on March
15 the 5th of 2016 after this incident occurred?
16 A: Yes, ma'am.
17 Q: Did you give the statement to Detective Blanchard?
18 A: Yes, ma'am.
19 Q: Okay. And anywhere in the statement, did you say that
20 [REDACTED] S.C. did not like Mr. Cooley and his wife?
21 A: No, that's strange what he's saying.
22 Q: Okay.
23 A: Cause they got along good.
24 MS. MIMS: I beg the Court's indulgence, Your Honor?
25 THE COURT: All right.

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SHAKETA PRINGLE - DIRECT BY MIMS

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1 MS. MIMS: I have nothing further.

2 THE COURT: All right. Recross?

3 MR. WHIRL: No, Your Honor.

4 THE COURT: All right. Sir, you may come down.

5 Next witness, please?

6 MS. MIMS: The state would call Shaketa Cooley, I'm
7 sorry, Shaketa Pringle.

8 CLERK: If you'll please raise your right hand and state
9 your name for the record?

10 MS. PRINGLE: Shaketa Pringle.

11 SHAKETA PRINGLE, HAVING BEEN DULY SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: You can have a seat.

14 THE COURT: Your witness.

15 MS. MIMS: Thank you, Your Honor.

16 DIRECT EXAMINATION OF SHAKETA PRINGLE BY MS. MIMS:

17 Q: Good afternoon, Ms. Pringle?

18 A: Good afternoon.

19 Q: Can you tell this jury what you do for a living?

20 A: I am a CNA.

21 Q: What's a CNA?

22 A: CNA is a caregiver.

23 Q: Can you describe a little bit about what you do?

24 A: Yes, I take care of elderly people.

25 Q: Okay. Does your job take you outside of Summerville?

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SHAKETA PRINGLE - DIRECT BY MIMS

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- 1 A: Yes, ma'am.
- 2 Q: Where all do you travel?
- 3 A: Mount Pleasant -- well, Mount Pleasant and Summerville.
- 4 Q: And Summerville, okay. And when you take care of people,
- 5 are you always with them in their house, or do you sometimes
- 6 take them places?
- 7 A: In their house or doctor's appointments. I stay
- 8 overnight our and five days; it's all depends.
- 9 Q: So, are your hours Monday through Friday 8:00 to 5:00?
- 10 A: No, it's whatever I set my hours for, for that month.
- 11 Q: Okay. Where do you live?
- 12 A: [REDACTED] Drive, Summerville, South Carolina 29485.
- 13 Q: And who do you live with?
- 14 A: My husband and now my three kids.
- 15 Q: Why do you say now?
- 16 A: Because my son is not there.
- 17 Q: Gotcha.
- 18 A: My oldest son.
- 19 Q: And what's your oldest son's name?
- 20 A: His name is Raydonis.
- 21 Q: And how old is Raydonis?
- 22 A: He's 20 now.
- 23 Q: Okay. And can you tell me the ages of your other
- 24 children now?
- 25 A: [REDACTED] Minor is my daughter, she's eight, wait I'm getting

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SHAKETA PRINGLE - DIRECT BY MIMS

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1 her birthday wrong; she's seven. She would be eight in
2 October.
3 Q: Okay.
4 A: S.C. is 15 and Minor -- he is six.
5 Q: Gotcha. Do any of your children have any disabilities?
6 A: Yes. Minor, she has a speech problem and she have a
7 learning disability.
8 Q: Okay. When you say speech problem, can you be specific?
9 A: She have a speech delay; she can't hardly talk.
10 Q: Okay. Okay. And she's eight years old now?
11 A: She is about to be eight in October.
12 Q: Okay. Is she talking fluently now?
13 A: Not really. She's still working on this and progressing
14 over the years, but ---
15 Q: Was she talking well back when she was five and six?
16 A: No, you couldn't understand what she say.
17 Q: Okay. And you mentioned you live on Lane?
18 A: Uh-huh, (affirmative response).
19 Q: How long have you lived on ?
20 A: For 5 -- well, 4 and a half years now.
21 Q: What made you move to ?
22 A: My friend -- I come -- I'm from Alabama. I come down
23 here to stay with my friend and her grandparents, they live on
24 that street. So, I started staying with them and I just never
25 went back.

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SHAKETA PRINGLE - DIRECT BY MIMS

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1 Q: Okay. And did you meet Eddie at some point?

2 A: Yes, ma'am.

3 Q: And does he live on [REDACTED] -- was he living on

4 [REDACTED]?

5 A: Yes, ma'am.

6 Q: Okay. All right. And who is your father?

7 A: Vernon Cooley.

8 Q: And back in 2016, did he live near you?

9 A: Yes, ma'am.

10 Q: How far away did he live from you?

11 A: Maybe 5 or 10 minutes walking around the corner.

12 Q: Okay. So very close?

13 A: Uh-huh, (affirmative response).

14 Q: All right. And did you grow up close to him?

15 A: No.

16 Q: Okay. Was he in your home as you grew up?

17 A: No.

18 Q: Okay. How did he come to live on [REDACTED]?

19 MR. WHIRL: Your Honor, may we approach?

20 THE COURT: Sure.

21 (REPORTER'S NOTE: Bench conference is held off the record in

22 the presence of but outside the hearing of the jury.)

23 BY MS. MIMS:

24 Q: Ms. Pringle, did you -- did you help your dad relocate to

25 the area that you live in now?

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SHAKETA PRINGLE - DIRECT BY MIMS

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- 1 A: Yes, ma'am.
- 2 Q: Okay. Did you help him find a place on [REDACTED]?
- 3 A: No, he was living with me first.
- 4 Q: Okay. Okay. And then he got his own place?
- 5 A: Then he got his own place.
- 6 Q: Okay. Thank you very much. And would your father
- 7 sometimes help you out with your children?
- 8 A: Yes, ma'am.
- 9 Q: Okay. And would he take them places sometimes?
- 10 A: Yes, ma'am.
- 11 Q: Okay. I'm going to take you to March the 5th of 2016.
- 12 Do you recall that day?
- 13 A: Unfortunately, yes.
- 14 Q: Okay. How old were -- how old was [REDACTED] S.C. on that day?
- 15 A: She was 12.
- 16 Q: Okay. Can you tell this jury how your day started that
- 17 day?
- 18 A: I was getting ready for work and my dad came over and he
- 19 asked if he can take my younger daughter, [REDACTED] Minor to
- 20 breakfast and I told him no, you're not going to take one if
- 21 you're not going to take all. So, he was like, well, just get
- 22 them ready, I'm gonna come back and get them. So, I start
- 23 getting ready for work and then I went off to work.
- 24 Q: Okay. When you left for work, were the children still in
- 25 your house?

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SHAKETA PRINGLE - DIRECT BY MIMS

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- 1 A: Yes, ma'am.
- 2 Q: Were you assuming he was going to come back and take them
3 to breakfast?
- 4 A: Yes, ma'am.
- 5 Q: Okay. And is it your understanding that happened?
- 6 A: Yes, ma'am.
- 7 Q: Okay. So, tell me about your day from there; what did
8 you do from there?
- 9 A: I get to work, I was getting my resident ready to go out
10 to the store and stuff, getting her prepared.
- 11 Q: Where were you?
- 12 A: In Mount Pleasant.
- 13 Q: Okay.
- 14 A: And I got a phone call saying that my dad, Vernon Cooley,
15 had tried to molest my daughter.
- 16 Q: Who called you?
- 17 A: My husband.
- 18 Q: Do you know what time of day this was?
- 19 A: I can't recall.
- 20 Q: Okay. What did you do?
- 21 A: I just went black. The only thing I wanted to do was to
22 kill him; that's the only thing I remember like.
- 23 Q: Was your husband upset when he was talking to you on the
24 phone?
- 25 A: Yes, he was crying, and he said, I called the police and

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SHAKETA PRINGLE - DIRECT BY MIMS

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1 I was cussing him out for calling the police.
2 Q: Why?
3 A: Because I was gonna kill him.
4 Q: Okay. So, you were very upset?
5 A: Yes.
6 Q: What did you do?
7 A: I was going probably a 100 from Mount Pleasant. I made
8 it to Summerville less than 15 minutes from Mount Pleasant.
9 Q: Was anybody in the car with you?
10 A: Yes, my patient was in the car with me.
11 Q: Would you normally bring your patient back to
12 Summerville?
13 A: No, no.
14 Q: So, she was just the one in the car with you when you got
15 the call?
16 A: Yes.
17 Q: Okay. Tell me what happens when you get to [REDACTED]
18 Lane; where do you go?
19 A: I went straight to the back.
20 Q: What's in the back?
21 A: Straight back to his house.
22 Q: What did you do?
23 A: I was planning to hit him because I seen him and his wife
24 sitting down, but there was a car in front of me. So, I jump
25 out and I start fighting him.

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SHAKETA PRINGLE - DIRECT BY MIMS

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- 1 Q: Okay. Were you still very upset?
- 2 A: I was angry.
- 3 Q: Who else was there?
- 4 A: Him and his wife, and I don't know where my son come
- 5 from. I don't know where he come from, out the blue.
- 6 Q: Is this your older son?
- 7 A: This is my oldest, I don't even much know where he come
- 8 from.
- 9 Q: What did he do?
- 10 A: He was fighting him as well.
- 11 Q: Was he upset as well?
- 12 A: He was angry.
- 13 Q: Okay. Were the police there?
- 14 A: Yeah, it was an officer there.
- 15 Q: Okay. And what did he do?
- 16 A: He was trying to separate us and he was telling us just
- 17 to calm down, calm down, or whatever. He couldn't understand,
- 18 just calm down though. He didn't want to take nobody to jail.
- 19 Q: Okay. Did you finally calm down?
- 20 A: Sorta, kinda.
- 21 Q: Did you stay there or did you go back to your house?
- 22 A: No, I went back home.
- 23 Q: Okay. Did your son go back, too?
- 24 A: Uh-huh, (affirmative response).
- 25 Q: Okay. Did you end up talking to the police that day?

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SHAKETA PRINGLE - DIRECT BY MIMS

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- 1 A: Uh-huh, (affirmative response).
- 2 Q: Did [REDACTED] S.C. talk to the police that day?
- 3 A: Yes, ma'am.
- 4 Q: Okay. Can you please tell the jury what happened after
- 5 talking to the police with [REDACTED] S.C.?
- 6 A: After we talked to the police, [REDACTED] S.C., we went -- she
- 7 got in the car with one of her -- she's a detective or
- 8 something, I don't know.
- 9 Q: A female?
- 10 A: And we followed behind her, me and my husband, to MUSC.
- 11 Q: What happened there?
- 12 A: They tested her for everything.
- 13 Q: Okay.
- 14 A: Ran a lot of tests and ---
- 15 Q: Did they give her an examination?
- 16 A: Yes, gave her a pelvic. It was just horrible just to see
- 17 that she was going through that.
- 18 Q: Was she -- when you saw [REDACTED] S.C., what was her demeanor?
- 19 A: She was just crying. She was devastated.
- 20 Q: Had [REDACTED] S.C. had a good relationship with her grandfather
- 21 before?
- 22 A: Uh-huh, (affirmative response).
- 23 Q: When you left that morning, was [REDACTED] S.C. fine?
- 24 A: Uh-huh, (affirmative response). Yes, ma'am. I'm sorry.
- 25 THE COURT: That's okay.

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SHAKETA PRINGLE - DIRECT BY MIMS

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1 Q: And when you, let me ask you this. When you, back where
2 you all lived, were there some people that were members of
3 your family that lived back there?
4 A: Members of my family? Yes, just my daddy.
5 Q: Just your daddy?
6 A: Uh-huh, (affirmative response).
7 Q: Okay. Was he related to anybody else who lived back
8 there?
9 A: No, ma'am.
10 Q: Was anybody who lived with him related to anybody back
11 there?
12 A: His wife is family with everybody back there as well.
13 They are all family.
14 Q: Okay. Okay. So, Mr. Cooley's wife had a lot of family
15 back there?
16 A: Uh-huh, (affirmative response). Yes, ma'am.
17 Q: And was she there when you drove up in the beginning,
18 after you found out everything and you arrived and Mr.
19 Cooley's house, was she there?
20 A: Yeah, she was sitting beside him.
21 Q: Okay. Sort of a random question, in your home, who does
22 the laundry?
23 A: Myself or my husband.
24 Q: Okay. And when you do the laundry, do you do everybody's
25 laundry together?

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SHAKETA PRINGLE - CROSS BY WHIRL

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1 A: Yes, ma'am.

2 Q: And you have boys and girls in your house?

3 A: Boys and girls.

4 MS. MIMS: I beg the Court's indulgence, Your Honor.

5 THE COURT: All right.

6 BY MS. MIMS:

7 Q: I have no further questions. Please answer any questions
8 for defense counsel.

9 THE COURT: Cross examination?

10 MR. WHIRL: Thank you, Your Honor.

11 CROSS EXAMINATION OF SHAKETA PRINGLE BY MR. WHIRL:

12 Q: Good afternoon, Ms. Pringle.

13 A: Good afternoon.

14 Q: Just so we're clear, how long have you been married to
15 Mr. Pringle?

16 A: October, I mean, October will be five years.

17 Q: Okay. All right. And is it safe to say or would you say
18 that he's like a father to your daughter?

19 A: Yes, sir.

20 Q: Okay. And is the natural father involved in her life as
21 much as Mr. Pringle is?

22 A: No.

23 Q: Okay. Anywhere near as close as Mr. Pringle?

24 A: No.

25 Q: So, that would be the reason why she would be close to

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BY THE COURT

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1 Mr. Pringle?

2 A: Yes.

3 Q: Okay. And prior to this relation -- prior to this
4 incident, what relationship did you have with Mr. Cooley?

5 A: Basically, we was trying to build our relationship
6 because he never was in my life my whole life.

7 Q: Okay. Fair enough. And what about the relationship
8 between him and your children?

9 A: It was good.

10 Q: Okay. And you've already heard that testimony about
11 going on vacation and leaving the children in his charge?

12 A: Uh-huh, (affirmative response), yes.

13 Q: And you would agree with that?

14 A: Yes.

15 Q: Okay. All right. And the phone call that was made about
16 this incident came from your husband, not from your daughter?

17 A: Yes.

18 Q: And not from your son?

19 A: Yes.

20 Q: Okay. Now, on March 5th, when you arrived at this
21 location, you say you don't know where your oldest son came
22 from?

23 A: No, I don't know where he came from.

24 Q: Do you recall whether or not he had a 2 x 4 in his hand
25 as he approached Mr. Cooley?

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ERIC AMOS - DIRECT BY TEMPLETON

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1 A: I don't know.

2 Q: So, you were just enraged, and you were engaging
3 yourself?

4 A: Yes.

5 Q: Okay. And did Mr. Cooley end up pressing any charges
6 against you or your son?

7 A: No.

8 Q: Okay. And did the officer indicate that he could press
9 charges, based upon him saying he didn't want to take anyone
10 to jail?

11 A: Yes.

12 Q: Okay.

13 MR. WHIRL: Court's indulgence?

14 THE COURT: All right.

15 MR. WHIRL: No further questions, Your Honor.

16 THE COURT: All right.

17 MS. MIMS: Nothing further, Your Honor.

18 THE COURT: Very well. You may come down.

19 BY THE COURT:

20 THE COURT: All right. Ladies and gentlemen, we're going
21 to stop now and take our lunch break because your pizzas have
22 arrived and I don't want them to get cold. Over the lunch
23 break, I'm going to ask you to please be mindful not to
24 discuss this matter or allow anyone to discuss it with you.
25 Please leave your notepads in your seat.

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ERIC AMOS - DIRECT BY TEMPLETON

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1 Any of you that need to make a phone call over lunch, and
2 if you don't want to have lunch, that's perfectly fine. But
3 it's certainly here for you. My hope is that we can keep our
4 lunch to a minimum. I would like to reconvene at a quarter
5 till 2:00, at a quarter till 2:00. That will give you right
6 at an hour. If you will please step to your jury room and
7 leave your notepads in your seat. Enjoy.

8 (REPORTER'S NOTE: Jury exits courtroom @ 12:46 P.M.)

9 THE COURT: All right. Anything from the state before we
10 take lunch?

11 MS. MIMS: We would just like to approach about the
12 scheduling, Your Honor.

13 THE COURT: Sure.

14 (REPORTER'S NOTE: Bench conference is held off the record.)

15 THE COURT: All right. Everybody enjoy your lunch.

16 **RECESS - 12:49 P.M.**

17 *******OFF THE RECORD*******

18 **(On the Record - 1:53 P.M.)**

19 THE COURT: Please be seated. Thank you.

20 Anything before we bring the jury in?

21 MS. MIMS: Off the record and just back to that
22 scheduling issue?

23 THE COURT: Yeah.

24 (REPORTER'S NOTE: Bench conference is held off the record.)

25 THE COURT: All right. Anything from the defense?

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ERIC AMOS - DIRECT BY TEMPLETON

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1 MR. WHIRL: No, Your Honor.

2 THE COURT: All right.

3 (REPORTER'S NOTE: Jury enters courtroom @ 1:55 P.M.)

4 THE COURT: All right. Ladies and gentlemen, I hope you
5 enjoyed your lunch. At this time, we will continue with the
6 state's case. If you'd please call your next witness?

7 MR. TEMPLETON: Your Honor, the state calls Eric Amos.

8 CLERK: If you'll please raise your right hand and state
9 your name for the record

10 MR. AMOS: Eric Amos.

11 ERIC AMOS, HAVING BEEN DULY SWORN

12 TESTIFIES AS FOLLOWS:

13 CLERK: Thank you. If you'll have a seat.

14 THE COURT: All right.

15 Your witness?

16 MR. TEMPLETON: Thank you, Your Honor.

17 DIRECT EXAMINATION OF ERIC AMOS BY MR. TEMPLETON:

18 Q: Mr. Amos, where are you currently employed?

19 A: Dorchester County.

20 Q: Okay. And in what capacity are you currently employed by
21 Dorchester County?

22 A: Currently, I'm employed in IT.

23 Q: Okay. Back in March of 2016, what agency were you
24 employed by?

25 A: Still Dorchester County.

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ERIC AMOS - DIRECT BY TEMPLETON

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1 Q: Okay. In what capacity?

2 A: As a corporal with the sheriff's office.

3 Q: Okay. How long were you employed with the Sheriff's
4 Department?

5 A: Approximately 12 years.

6 Q: Okay. If you would, briefly go through your educational
7 background, including any law enforcement trainings that you
8 received?

9 A: I am a high school graduate. I also graduated with an
10 associate's degree. I have attended the academy; at the time
11 it was nine weeks, I believe. I completed training at the
12 academy and I became a full-time deputy.

13 Q: Do you recall working on March the 5th, 2016?

14 A: I do.

15 Q: Okay. Where were you dispatched in reference to that
16 day?

17 A: Originally, I was dispatched to [REDACTED] Lane to meet
18 with a victim.

19 Q: Okay. And is that in Dorchester County?

20 A: Correct.

21 Q: Okay. Once you arrived on scene, what did you first --
22 who did you first encounter?

23 A: Originally, the first two people that I encountered was a
24 older, excuse me, an older gentlemen, that was later
25 identified as Eddie. If you don't mind, I'm gonna use first

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ERIC AMOS - DIRECT BY TEMPLETON

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1 names, because there's a lot of ---

2 Q: That's fine.

3 A: --- family members involved. With Eddie was also a
4 younger female by the name of [REDACTED] S.C. .

5 Q: Okay. When you were speaking with them, did anything in
6 particular happen that you remember?

7 A: When I first arrived on scene, I started talking to the
8 two of them. Specifically, with Eddie at first because I
9 didn't know the situation at the time. I started gathering
10 basic information and in the process of gathering basic
11 information, immediately the car behind me, I'm not sure if
12 you've been shown a description of [REDACTED] Lane, it's a very
13 small dirt road and a car had sped by me and while speeding by
14 me, Eddie actually said, you need to stop her, you need to
15 stop her.

16 Q: Okay. Now, I'm gonna -- Your Honor, may I approach the
17 witness?

18 THE COURT: You may.

19 Q: I'm gonna show you State's Exhibit Number 6 for
20 identification at this point, what is that?

21 A: That's a overview of [REDACTED] Lane.

22 Q: Okay. Is that a fair and accurate representation of
23 [REDACTED] Lane at this time?

24 A: Yes.

25 MR. TEMPLETON: Your Honor, at this time, I'd offer

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ERIC AMOS - CROSS BY WHIRL

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1 State's Exhibit Number 6 into evidence?

2 THE COURT: Any objection?

3 MR. WHIRL: No objection.

4 THE COURT: Very well.

5 STATE'S EXHIBIT NUMBER 6

6 ADMITTED INTO EVIDENCE

7 BY MR. TEMPLETON:

8 Q: I'm gonna show you State's Exhibit Number 6. If you
9 would, on your monitor, you can actually draw on there; could
10 you kind of point out where [REDACTED] Lane is on -- on that
11 monitor?

12 A: Sure. This right here is actually [REDACTED] Lane.

13 Q: Okay. Where were you originally dispatched to?

14 A: Originally ---

15 Q: Go ahead.

16 A: The original location was approximately right here
17 (indicating).

18 Q: Okay. And when that vehicle sped by, what happened next?

19 A: This right here, if anybody is unfamiliar with it, is
20 Bacons Bridge Road near the double lights. [REDACTED] Lane, if
21 you come down [REDACTED] Lane, it's all dirt road, and while I
22 was at the location marked on the screen speaking with Mr.
23 Eddie and the juvenile, a car sped by going down [REDACTED] Lane
24 and turned -- it's a very winding road, dirt road -- sped by
25 me, behind me and was going deeper into [REDACTED] Lane and

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ERIC AMOS - CROSS BY WHIRL

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1 that's when Mr. Eddie was talking to me.

2 Q: Okay. What did you do next then?

3 A: Mr. Eddie had told me, you need to stop her, you need to
4 stop her, he's going to fight -- or excuse me, she's going to
5 fight him and I immediately told him to stay at the location,
6 advised dispatch that I was chasing after a vehicle related to
7 this, but I still wasn't a hundred percent on what exactly was
8 going on at this point and chased after the vehicle.

9 Q: Okay. Do you remember the address of the location that
10 you ultimately catch up with the vehicle?

11 A: It was at [REDACTED] Lane.

12 Q: Okay. And when you got to 316, what did you see?

13 A: [REDACTED] Lane is approximately right here on the map.
14 I'll mark it with an X. [REDACTED] Lane, I followed the
15 vehicle. When I arrived at the location where the vehicle had
16 stopped, a older female and a younger male, probably in his
17 teens, had gotten out of the vehicle and were assaulting a
18 much older male at that location.

19 Q: Did you ultimately break up that fight?

20 A: I did.

21 Q: Okay. Once that altercation was completed, did you have
22 a chance to speak with Vernon Cooley?

23 A: Mr. Vernon Cooley was actually the, quote/unquote, victim
24 of the assault. And after I extricated the female and
25 juvenile off of Mr. Cooley, Mr. Cooley immediately made a

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ERIC AMOS - CROSS BY WHIRL

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1 statement to me saying, and I'll quote this because you have
2 to bear in mind, this was two and a half years ago, that girl
3 putting lies, putting on lies.

4 Q: Okay.

5 A: And approximately -- while he was saying that, again, at
6 this point, I didn't know what was going on. I still hadn't
7 had a chance to talk to anybody. I asked him what he was
8 talking about, why he said that, and he stated that the
9 juvenile victim, the original juvenile that I was going to go
10 talk to, that she was -- she wasn't being honest, she was
11 being untruthful, not only to her mother and the family, but
12 to us as well.

13 Q: Okay. Did you ultimately Mirandize Mr. Cooley?

14 A: I did.

15 STATE'S EXHIBIT NUMBER 4

16 MARKED FOR IDENTIFICATION

17 Q: Okay. I'm going to show you State's Exhibit Number 4.
18 What is State's Exhibit Number 4?

19 A: This is a statement of Miranda rights.

20 Q: Okay. Would you have provided Mr. Cooley his Miranda
21 rights verbally?

22 A: Correct.

23 Q: Also, in writing?

24 A: Correct.

25 Q: Okay. Ultimately, did you take a statement from Mr.

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1 Cooley?

2 A: A statement was dictated to me by Mr. Cooley; that's
3 correct.

4 Q: Okay. So, he would tell you what he wanted said, but you
5 would write it down?

6 A: Correct. And then additionally, I asked direct questions
7 of Mr. Cooley and in his own handwriting he wrote answers.

8 Q: Okay. I'm gonna show you State's Exhibit Number 5.
9 What is State's Exhibit Number 5?

10 A: This is the original statement that I took from Mr.
11 Cooley.

12 MR. TEMPLETON: Okay. At this time, the state would
13 offer State's Exhibit Number 5 into evidence.

14 THE COURT: Any objection?

15 MR. WHIRL: No objection, Your Honor.

16 THE COURT: Very well.

17 STATE'S EXHIBIT NUMBER 5

18 ADMITTED INTO EVIDENCE

19 BY MR. TEMPLETON:

20 Q: If you would, tell the jury what information Mr. Cooley
21 provided you?

22 A: After Mirandizing Mr. Cooley and Mr. Cooley waiving his
23 Miranda rights, I began asking him if he wanted to make a
24 statement on what exactly was going on. Mr. Cooley went on to
25 explain that he had recently taken one of his juvenile

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1 grandchildren, later identified as Miss [REDACTED] S.C., and took her
2 to go get food from Burger King. There was two other
3 juveniles at the location at his house, but they did not go
4 with them.

5 Q: Okay. Did he indicate why those children didn't go with
6 him?

7 A: No, he did not.

8 Q: Okay. Did he indicate that there was anyone else present
9 at his house when he took those children or took the victim in
10 this case to Burger King?

11 A: At the time, no. He -- there was no other adults at the
12 location.

13 Q: Okay. Did he provide you with any additional
14 information?

15 A: Give me a minute just to review this.

16 Q: Absolutely.

17 A: In the statement itself, I did directly ask him if he
18 knew why the older female and the teenager had assaulted him
19 when I first rolled up and I -- I flat-out asked him that. In
20 his own handwriting, he did admit that they accused him of
21 messing with Kandy. I later had him identify Kandy as
22 [REDACTED] S.C. .

23 Q: Okay. I'll take that statement back. That's all the
24 questions I have for you. Please answer any questions that
25 Mr. Whirl may have.

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ERIC AMOS - CROSS BY WHIRL

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1 THE COURT: Cross examination?

2 MR. WHIRL: Thank you, Your Honor.

3 THE COURT: Uh-huh, (affirmative response).

4 CROSS EXAMINATION OF ERIC AMOS BY MR. WHIRL:

5 Q: Mr. Amos, did you specifically ask the question of Mr.
6 Cooley -- well, let me back up. You said that there were no
7 -- there was no one else at the home with Mr. Cooley?

8 A: When?

9 Q: That's what I'm trying to figure out.

10 A: You're gonna have to tell me a time.

11 Q: When you arrived there, was there anyone else at the home
12 with Mr. Cooley other than his grandson and his daughter that
13 were engaged in the fight?

14 A: Not that I recall.

15 Q: Okay. So, you don't recall whether or not his wife was
16 there?

17 A: At that time, I believe she was, yes.

18 Q: Okay. And the state asked you whether or not he
19 indicated to you whether or not anyone else was there, and do
20 you recall what your response to that question was?

21 A: No, I do not.

22 Q: Okay. Did you ever ask Mr. Cooley whether or not there
23 was anyone else there when this alleged incident happened?

24 A: I don't recall, no.

25 Q: Okay. And you say that you did specifically ask him

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ERIC AMOS - CROSS BY WHIRL

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1 questions as part of the statement that you took from him?

2 A: That's correct.

3 Q: And in reviewing your statement, you don't see anywhere
4 on there where you specifically asked him whether or not there
5 was anyone else at the home at the time that this alleged
6 incident happened?

7 A: Are we talking about the assault, or are we talking about
8 ---

9 Q: We're talking about the alleged -- the assault, I'm
10 sorry. Yes, the assault.

11 A: The sexual assault or the assault?

12 Q: The first alleged criminal sexual assault?

13 A: He said that his two grandchildren, the -- give me a
14 second and I can give you their names, [Minor], I believe is
15 her name and [Minor] ---

16 Q: Okay.

17 A: --- were also at the house.

18 Q: Okay. And was that in response to a direct question that
19 you asked him or was that something that he volunteered to
20 you?

21 A: He volunteered that information to me.

22 Q: Okay. And ---

23 A: It's written on the statement.

24 Q: Okay. And you say that you broke up a physical
25 altercation that was going on?

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ERIC AMOS - CROSS BY WHIRL

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1 A: Correct.

2 Q: All right. Did you happen to see a two-by-four by the
3 teenage person?

4 A: I don't recall.

5 Q: You don't recall. Okay. All right. Did Mr. Cooley ever
6 admit to you the sexual allegations?

7 A: No, he did not.

8 Q: Okay. Thank you.

9 THE COURT: Redirect?

10 MR. TEMPLETON: None, Your Honor.

11 THE COURT: All right. Is this witness free to leave and
12 is there any objection?

13 MR. WHIRL: No, Your Honor.

14 THE COURT: Very well. Thank you, sir, you're free to
15 leave.

16 MR. AMOS: Thank you, Judge.

17 THE COURT: If you would call your next witness, please.

18 MR. TEMPLETON: The state calls Detective Blanchard.

19 THE COURT: All right.

20 CLERK: If you'll please raise your right hand and state
21 your name for the record.

22 MS. BLANCHARD: Melissa Blanchard.

23 MELISSA BLANCHARD, HAVING BEEN DULY

24 SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Please be seated.

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MELISSA BLANCHARD - DIRECT BY TEMPLETON

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1 THE COURT: Your witness.

2 MR. TEMPLETON: Thank you, Your Honor.

3 DIRECT EXAMINATION OF MELISSA BLANCHARD BY MR. TEMPLETON:

4 Q: Detective Blanchard, where are you employed?

5 A: I'm currently employed at Dorchester County Sheriff's
6 Office.

7 Q: And what are your duties with the Dorchester County
8 Sheriff's Office?

9 A: I'm a detective assigned to the Criminal Investigations
10 Division.

11 Q: Okay. How did you get involved with this particular
12 case?

13 A: I was called by Sergeant Carson to respond to [REDACTED]
14 [REDACTED] to assist Sergeant, excuse me, Detective Scott Hanks,
15 he was on the on-call detective that weekend with this case.

16 Q: Okay. And when -- when did these events occur?

17 A: March the 5th, 2016.

18 Q: Okay. And you said you were dispatched to [REDACTED]?

19 A: Correct.

20 Q: Is that in Dorchester County?

21 A: It is.

22 Q: Okay. When you arrived on scene, did you have an
23 opportunity to speak with the victim's stepfather?

24 A: I did.

25 Q: Okay. Did he provide you with some information regarding

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MELISSA BLANCHARD - DIRECT BY TEMPLETON

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1 what had occurred?

2 A: He did.

3 Q: Okay. What did he tell you had occurred?

4 A: He indicated that he had left the house to run some

5 errands that morning. He got a phone call from [REDACTED] S.C., and

6 she was upset and asked that she picked up. Just a second.

7 He indicated that she had called from a number that he didn't

8 recognize. When he answered the phone, he asked why she had

9 gone all the way over there on her bike, and she indicated

10 that she couldn't tell him at that moment over the telephone.

11 And so, he went to that location and stated that, that's where

12 he picked her up from and when the vehicle -- she was in the

13 vehicle and she was crying and when he asked her what was

14 wrong, that she said, Papa tried to rape me.

15 Q: Okay. Did he indicate where he picked up the victim in

16 this case?

17 A: Over at a friend's house, which was like a mile and a

18 half, two miles away.

19 Q: Did you actually kind of find a way to determine the

20 length of --

21 A: Google maps.

22 Q: Okay. And it's a little over a mile, a mile and a half?

23 A: A mile and a half.

24 Q: Okay. Did you end up having an opportunity to speak with

25 the defendant in this case on March 5th?

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MELISSA BLANCHARD - DIRECT BY TEMPLETON

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- 1 A: No.
- 2 Q: Okay. Did you have -- did you have the opportunity to
3 speak with the victim in this case?
- 4 A: I did.
- 5 Q: Okay. Where did you speak with the victim?
- 6 A: In my patrol vehicle at that location.
- 7 Q: Okay. If you would, just kind of briefly tell us, what
8 was the victim's demeanor at that point?
- 9 A: You could tell she had been crying. She was in my car,
10 she was quiet, reserved, she seemed embarrassed to want to
11 talk to me. But ultimately, she discussed what occurred.
- 12 Q: Okay. What did she tell you occurred?
- 13 A: The victim reported to me that Papa was supposed to take
14 her and her younger siblings out to breakfast. She reported
15 that her five-year-old sister and three-year-old brother, they
16 walked down there to the house, and that the two younger
17 children stayed in the yard to play. The victim went into the
18 suspect's house to let him know that they were there and ready
19 to go to get food. She said Papa was drinking beer at the
20 time and stated that the suspect was sitting in the living
21 room and when he called her over to where he was sitting and
22 told her he needed to talk to her about sex.
- 23 Q: Okay. Did she ultimately reveal the sexual assault
24 occurred?
- 25 A: She did.

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MELISSA BLANCHARD - CROSS BY WHIRL

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- 1 Q: Once you completed speaking with the victim in this case,
2 what did you have her do next?
- 3 A: I called the victim's advocate to escort her down to
4 MUSC.
- 5 Q: Okay. And what was the purpose of sending her to MUSC?
- 6 A: To submit to a sexual assault kit.
- 7 Q: Okay. Did you review the report from that sexual assault
8 kit?
- 9 A: I did.
- 10 Q: Did she make a similar report to the nurse doing that
11 sexual assault kit?
- 12 A: She did.
- 13 Q: Okay. Did you set up any other interviews with the
14 victim in this case?
- 15 A: I did.
- 16 Q: Okay. What other interviews did you set up with her?
- 17 A: I set up a forensic interview at Dorchester Children's
18 Advocacy Center in Summerville.
- 19 Q: Okay. And did you actually -- you didn't conduct that
20 interview, did you?
- 21 A: I did not.
- 22 Q: Okay. Did you view that interview?
- 23 A: Yes, sir, I watched it.
- 24 Q: Okay. Did she indicate the same actions occurred?
- 25 A: Correct.

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MELISSA BLANCHARD - CROSS BY WHIRL

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- 1 Q: Okay. Once you had all that information together, what
2 did you do next?
- 3 A: Given the report from MUSC that I received and the
4 consistent disclosures from the juvenile, I prepared an
5 affidavit and presented it to the magistrate for a warrant.
- 6 Q: Okay. Did you ultimately go to execute that warrant?
- 7 A: I did.
- 8 Q: Okay. Once Mr. Cooley was placed under arrest, did you
9 have an opportunity to speak with him?
- 10 A: I did.
- 11 Q: Okay. Did you Mirandize him?
- 12 A: Myself and Detective Scott Hanks did.
- 13 Q: Did you do that in writing?
- 14 A: Yes, sir.
- 15 Q: As well as verbally?
- 16 A: Correct.
- 17 Q: I'm going to show you State's Exhibit Number 3. What is
18 State's Exhibit Number 3?
- 19 A: It's a statement of Miranda rights form along with the
20 waiver section.
- 21 Q: If you would, briefly just explain how you would go about
22 going over Mr. Cooley's Miranda rights with him.
- 23 A: Typically, we read straight from the form. We'll read
24 each one individually, ask them after we've read each right if
25 they understand that right and indicate if they do, we usually

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MELISSA BLANCHARD - CROSS BY WHIRL

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1 draw a line out beside the number. If they understand that
2 particular right, we ask them to initial next to it. If they
3 don't understand and need some explanation, you know, we say,
4 if you don't understand, ask us and we'll explain it better
5 until you do. We went through the rights, he initialed that
6 he understood all five.

7 MR. TEMPLETON: Okay. Your Honor, at this time, the
8 state would offer State's Exhibit Number 3 into evidence?

9 THE COURT: Any objection?

10 MR. WHIRL: No objection, Your Honor.

11 THE COURT: Very well.

12 STATE'S EXHIBIT NUMBER 3

13 ADMITTED INTO EVIDENCE

14 BY MR. TEMPLETON:

15 Q: After you gave him his Miranda warnings, did you have an
16 opportunity to speak with Mr. Cooley?

17 A: Yes, sir.

18 Q: If you would, tell the jury what information you received
19 from Mr. Cooley?

20 A: In speaking with him, he indicated that he had arranged
21 with his daughter, Shaketa, about taking the victim and her
22 younger siblings for breakfast that -- the morning of March
23 the 5th. Also, that the victim and her younger siblings came
24 over to his home. The suspect confirmed that he was the only
25 one home at the time. When the siblings -- when the victim

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1 and siblings arrived, the suspect denied that the victim ever
2 entered his residence and the suspect confirmed that he drove
3 the victim to Burger King in an older model, green Mazda and
4 that both he and the victim entered the restaurant to order
5 food. The suspect then stated that he was driving back to the
6 house with the victim when she told him that she had to go as
7 soon as they got back, but he could not recall to me what
8 reason she gave for her needing to leave. The suspect stated
9 that he saw the victim sometime later on her bike out on the
10 street in front of his house, but then later on, got a call
11 from his -- from [REDACTED] S.C. 's mother, Shaketa, wanting to know
12 why her daughter was across town.

13 Q: Okay. At that point, did the interview basically
14 conclude?

15 A: When I asked him if he wanted to provide us that
16 information in the form of a written statement, he said he did
17 not. We concluded at that point.

18 Q: Okay. Once you were done with your statement, did you
19 also have a search warrant at that point?

20 A: Correct.

21 Q: Okay. What was that search warrant for?

22 A: The search warrant was for to collect DNA samples, two
23 buccal swabs to compare to any samples we may've obtained from
24 the sexual assault kit.

25 Q: Okay. And I'm gonna show you State's Exhibit Number 2.

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1 Can you identify State's Exhibit Number 2?

2 A: The two buccal swabs of the defendant, Mr. Vernon Cooley.

3 Q: Okay. Did you personally collect those?

4 A: I did with gloved hands.

5 Q: Okay.

6 MR. TEMPLETON: Your Honor, at this time, the state would
7 offer State's Exhibit Number 2 into evidence?

8 MR. WHIRL: No objection.

9 THE COURT: Very well.

10 STATE'S EXHIBIT NUMBER 2

11 ADMITTED INTO EVIDENCE

12 BY MR. TEMPLETON:

13 Q: That's all the questions I have. Please answer any
14 questions Mr. Whirl may have.

15 THE COURT: Yes, sir. Cross examination?

16 MR. WHIRL: Thank you, Your Honor.

17 THE COURT: Uh-huh, (affirmative response).

18 CROSS EXAMINATION OF MELISSA BLANCHARD BY MR. WHIRL:

19 Q: Good afternoon, detective.

20 A: Good afternoon.

21 Q: Now, let's get back to the -- let's start with the
22 statement that you took, just so that we're clear. This was a
23 oral statement that you took and you wrote it out?

24 A: I didn't write -- I mean, I wrote it in my investigative
25 notes because he didn't want to provide a written statement.

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MELISSA BLANCHARD - CROSS BY WHIRL

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- 1 Q: Okay. So, he did not provide you with a written
2 statement?
- 3 A: No, sir; he did not.
- 4 Q: Okay. So, unlike Officer Amos, you don't have a written
5 statement that was provided and signed by Mr. Cooley?
- 6 A: No, sir; I don't.
- 7 Q: Okay. Was his statement recorded?
- 8 A: It was not.
- 9 Q: Okay. Was there any reason why you didn't record his
10 statement?
- 11 A: That wasn't available to us when we were interviewing
12 him.
- 13 Q: What about audio?
- 14 A: Not available in that room.
- 15 Q: What about a phone that you could record on?
- 16 A: I don't take phones into an interview room.
- 17 Q: Okay. Was anyone else there watching the interview?
- 18 A: Detective Hanks.
- 19 Q: Okay. And did Detective Hanks provide a supplemental
20 report or any type of report to substantiate what it is that
21 you said?
- 22 A: I don't believe he did.
- 23 Q: Okay. Were you the lead detective on the case?
- 24 A: Correct.
- 25 Q: And if there were any supplemental statements, you would

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MELISSA BLANCHARD - CROSS BY WHIRL

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1 know about -- not statements, but reports, you would know
2 about that, right?

3 A: Correct.

4 Q: And to your knowledge, there has been no report?

5 A: No.

6 Q: Okay. Since the report was allegedly communicated to you
7 orally, did you not think that you would need to have some
8 corroboration as to what was actually said?

9 A: He didn't provide a supplement. I mean, that's not
10 generally what we do.

11 Q: Okay. So, if there are two officers that are
12 investigating a particular incident, only one officer writes a
13 report?

14 A: Typically, the case agent does.

15 Q: Okay. All right. But it does happen where another
16 officer could also write a report?

17 A: Certainly, they can.

18 Q: Okay. All right. Now, you wrote in your report that
19 Mr. Cooley reported to you that he was the only one at the
20 house at the time; is that correct?

21 A: Right.

22 Q: And you have no backup to him telling you that?

23 A: Other than -- no, I mean, other than Detective Hanks
24 being in the room.

25 Q: Okay. Now, do you recall, you said you prepared an

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MELISSA BLANCHARD - CROSS BY WHIRL

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1 affidavit and arrest warrant?

2 A: Yes, sir.

3 Q: And did you confer with anyone as to what the charges
4 should be?

5 A: Just my lieutenant, I believe.

6 Q: Okay. And what did he decide that the charges should be,
7 or what did the two of you discuss as charges?

8 A: Well, the elements met the criminal sexual conduct with a
9 minor in the second degree.

10 Q: Okay. Okay. Now, in any of your interviews with Mr.
11 Cooley, at any time, has he -- or any interviews that you've
12 seen with anyone else, has he ever admitted that this sexual
13 assault took place?

14 A: No, sir.

15 Q: All right. And in your investigation, has anyone
16 corroborated the fact or saw that -- saw this incident happen
17 other than what was reported by the young Miss [REDACTED] S.C.?

18 A: No, the only two people in the room were Mr. Cooley and
19 Shaketa -- [REDACTED] S.C. .

20 Q: Okay. Did you ever tell Mr. Cooley during any of your
21 interviews that they had his DNA from all over the young Miss
22 [REDACTED] S.C.'s body?

23 A: No, sir. I just indicated I was collecting it for
24 comparison.

25 Q: Okay. Did you ever tell Mr. Cooley that they found

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MELISSA BLANCHARD - CROSS BY WHIRL

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- 1 hickeys on the young Miss [REDACTED] S.C.'s neck?
- 2 A: No, sir; I did not.
- 3 Q: Okay. And you testified that the distance from [REDACTED]
- 4 Lane to where the young Miss [REDACTED] S.C. was picked up, was
- 5 approximately a mile and a half?
- 6 A: Running the Google Maps for a direct route is a mile and
- 7 a half, but again, I don't know the route she actually took,
- 8 but Google Maps says for a direct -- route.
- 9 Q: So, you wouldn't know as to what type of surfaces she
- 10 took to get from [REDACTED] over to that area?
- 11 A: Mostly what Google Map shows is hard cement surfaces, I
- 12 mean, and she had to cross the four-lane highway there at
- 13 Bacons Bridge Road and mostly it's residential sidewalks.
- 14 Q: Okay.
- 15 A: Pavement.
- 16 Q: Okay. Do you recall, at any time, the young Miss [REDACTED] S.C.
- 17 telling you that her grandfather, Mr. Cooley, made her touch
- 18 him?
- 19 A: When we were in the vehicle.
- 20 Q: Okay.
- 21 A: At the initial interview.
- 22 Q: Okay. And when you wrote your report, you didn't put
- 23 that into your report?
- 24 A: I don't know whether I did or not. There was a lot going
- 25 on that day. Let me see. I don't see it written down here.

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MELISSA BLANCHARD - CROSS BY WHIRL

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- 1 Q: Okay.
- 2 A: I'm sure -- I'm sorry.
- 3 Q: No, go ahead.
- 4 A: I just -- she mentioned that when they were in the
5 bedroom.
- 6 Q: Okay. And you're sure you didn't get that information
7 from Mr. Pringle and not the young Miss S.C.?
- 8 A: I don't think so.
- 9 Q: Okay. If you would just bear with me for a minute.
- 10 A: Yes, sir.
- 11 Q: Because of something that didn't come in, there is some
12 of these questions I don't need to ask you. Do you recall at
13 one point in either of your conversations with the young Miss
14 Cooley, that she told her -- allegedly told her grandfather
15 that she was not comfortable with what he was doing?
- 16 A: Yes.
- 17 Q: And where was that?
- 18 A: She stated that the suspect unzipped his pants and pulled
19 out his thing, and then when I asked her what a thing was
20 because I can't assume what a thing is, she said a penis. She
21 said that the suspect started rubbing himself and then rubbed
22 his penis on her vagina. The victim said that the suspect was
23 saying that it could be their secret and for her not to tell
24 her mom. The victim said the suspect asked her, are you
25 crying, and she explained to me that her eyes were welled up

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1 with tears but they hadn't started falling, so she told him
2 no, she wasn't crying.

3 Q: Okay.

4 A: And the victim stated that -- asked her what was wrong
5 and that at that point, she told him, I don't feel comfortable
6 with this. And the victim stated, that's when the suspect
7 zipped up his pants and allowed her to pull her pants up and
8 leave the bedroom.

9 Q: Okay. And at any time, did Mr. Pringle relay to you that
10 the young Miss [REDACTED] S.C. hated her grandfather and the
11 grandmother, Ms. Cooley?

12 A: No, sir.

13 Q: Okay. And at any time, did Mr. Cooley tell you that
14 there was someone else at the house, at his home at the time
15 that this alleged incident happened?

16 A: No, sir.

17 Q: Do you recall asking him who was present at the home when
18 this happened?

19 A: He indicated that it was -- the kids came for them to go
20 get breakfast. So, it was the three children. He didn't
21 indicate that anybody else was there.

22 Q: Okay. And you didn't ask him whether anyone else was
23 there?

24 A: I did, and he said there was nobody else home but him.

25 Q: Okay. And are you aware of the DNA results from this

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MELISSA BLANCHARD - CROSS BY WHIRL

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1 case?

2 A: Not completely. I can't explain them to you.

3 Q: Well, not explain them to me, but at some point, you
4 became aware of them?

5 A: Yeah, but I'm not knowledgeable enough to know what -- to
6 tell you about them.

7 Q: Okay. I wasn't gonna ask you anything about them.

8 A: Okay.

9 Q: Other than the fact that once you became aware of those
10 DNA results, did you do any supplemental reports?

11 A: All those reports were added to the case file and turned
12 over to the solicitor's office, the case file.

13 Q: Okay. So, is that a yes, you did do a supplemental
14 report after the DNA results were known?

15 A: Not investigative notes, no, sir.

16 Q: Okay. And, excuse me, and once you became aware of the
17 DNA results, you didn't do any other investigation of any
18 other persons that could've possibly been involved in this
19 case?

20 A: I didn't see any necessity.

21 Q: Okay. All right. Thank you.

22 MR. WHIRL: One moment, Your Honor.

23 THE COURT: All right.

24 MR. WHIRL: Nothing further, Your Honor.

25 THE COURT: Very well.

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RUSSELL HAGEN - DIRECT BY MIMS

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1 Redirect?

2 MR. TEMPLETON: None, Your Honor.

3 THE COURT: All right. You can come on back down.

4 Call your next witness, please?

5 MS. MIMS: The state calls Russell Hagen.

6 CLERK: If you'll please raise your right hand and state
7 your name for the record?

8 MR. HAGEN: Russell Hagen.

9 RUSSELL HAGEN, HAVING BEEN DULY SWORN

10 TESTIFIES AS FOLLOWS:

11 CLERK: Thank you. You can have a seat.

12 THE COURT: Your witness.

13 MS. MIMS: Thank you, Your Honor.

14 DIRECT EXAMINATION OF RUSSELL HAGEN BY MS. MIMS:

15 Q: Good afternoon, Mr. Hagen?

16 A: Good afternoon.

17 Q: Could you please tell the jury where you work?

18 A: I'm retired from the Medical University of South
19 Carolina. I was a police officer there.

20 Q: Can you tell us what your duties were while you worked
21 for MUSC?

22 A: Well, we were policemen at the University and we -- we
23 patrolled -- patrolled and did security for the campus of MUSC
24 and also helped out departments when they needed, other
25 departments.

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RUSSELL HAGEN - DIRECT BY MIMS

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- 1 Q: And did you cover all of the downtown MUSC?
- 2 A: We covered around the University, around MUSC.
- 3 Q: And how long did you work there; what were the dates that
- 4 you worked there?
- 5 A: I don't remember the dates, I was there for 25 years.
- 6 Q: Wow. Okay. When did you retire?
- 7 A: May 11th.
- 8 Q: May 11 of this year?
- 9 A: This year.
- 10 Q: Okay. Did any of your duties -- as a public safety
- 11 officer, did any of your duties include the collection of
- 12 evidence that was collected by the hospital?
- 13 A: Yes, it did.
- 14 Q: Okay. Can you tell the jury a little bit about that?
- 15 A: So, what we -- a lot of times, cases would come to the --
- 16 to our -- to our hospital and from other counties or other
- 17 areas and -- and the nurses would do -- would collect evidence
- 18 and they would call us and ask us to pick up the evidence to
- 19 help out the other departments, because a lot of times they
- 20 were far away and what we would do is take the evidence and
- 21 bring it to our headquarters, where we had a secure lockers,
- 22 evidence lockers, and we would secure it there for the
- 23 departments then to come and pick it up from there, and that's
- 24 what we did.
- 25 Q: So, when you say for departments to come pick it up from

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RUSSELL HAGEN - DIRECT BY MIMS

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1 there, what kind of departments are you referring to?
2 A: Police departments.
3 Q: Police departments.
4 A: Or sheriff's departments.
5 Q: Okay. So, would you gather the evidence and store it in
6 essence for the police departments to then come take it from
7 you?
8 A: Yes, we would.
9 Q: Okay. Would that keep the evidence safe?
10 A: Yes.
11 Q: Was the evidence locked?
12 A: Yes.
13 Q: Okay. And was that part of your duties back in May 5th
14 of 2016 ---
15 A: Yes.
16 Q: --- would that have been?
17 A: Yes, ma'am.
18 Q: Okay. And tell us a little bit about the evidence that
19 you would collect from the nurses in all the different
20 departments. Was it packaged in certain ways?
21 A: It was always -- yes, it was. It was packaged in boxes
22 for -- the evidence we usually collected were called sexual
23 assault kits and they -- and we -- it was packaged and it was
24 -- it was sealed and -- and we would get that evidence and we
25 would start a chain of custody on the box. It would start

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1 from the nurse to me, if I was picking it up.

2 Q: Uh-huh, (affirmative response).

3 A: And then it would go from me to the evidence locker at
4 MUSC headquarters, and that's it.

5 Q: Okay. So, when you picked up evidence from the different
6 departments, was that evidence sealed?

7 A: Yes, yes.

8 Q: Was it always sealed?

9 A: Always sealed.

10 Q: Would you touch the evidence if it wasn't sealed?

11 A: No.

12 Q: Okay.

13 MS. MIMS: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 BY MS. MIMS:

16 Q: I'd like to show you what's been marked as State's
17 Exhibit Number 8. Do you recognize that document?

18 A: Yes, I do.

19 Q: Can you tell the jury what that document is?

20 A: This is a chain of custody form and -- which I started.
21 So, this document is, is from when I went to pick up the
22 evidence from the nurse, and I started this form and it's from
23 the nurse -- it goes from the nurse to me and then to the
24 evidence locker, and it's starting the chain of custody of the
25 evidence.

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- 1 Q: Number 1 on the evidence form says secured; what does
2 that mean?
- 3 A: So, we -- above that, we circle evidence, because it was
4 evidence, and then we check secured and that means we secured
5 it into our evidence locker.
- 6 Q: Okay. Got you. And again, you wouldn't have taken it if
7 it wasn't sealed?
- 8 A: No, I always checked to make sure it was sealed.
- 9 Q: Okay. And so, on that form, the officer receiving the
10 evidence is who?
- 11 A: Myself.
- 12 Q: Okay. And is -- and what date did you receive that
13 evidence?
- 14 A: It was 2016 on the 5th of -- I can't read the date --
15 maybe March.
- 16 Q: Okay. March 5th, 2016?
- 17 A: Yeah.
- 18 Q: Does it name a victim on the form?
- 19 A: It does.
- 20 Q: Who is the victim?
- 21 A: ████████ S.C. ████████.
- 22 Q: Okay. And did you end up signing that form?
- 23 A: Yes.
- 24 Q: As the person who received that evidence?
- 25 A: Yes, I did.

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1 Q: Okay. And so, after you filled out that form, you took
2 the evidence, what did you do with that evidence?

3 A: So, I fill out -- it went to our public safety
4 headquarters.

5 Q: Okay.

6 A: And then it went into the evidence locker there.

7 Q: Okay. Does that form tell you who then picked up that
8 evidence?

9 A: Yes. So, the form on the bottom line, which is 19 ---

10 Q: Uh-huh, (affirmative response).

11 A: --- it is who picked up the evidence from our -- our
12 department, and I believe that it was Brandon Berg.

13 Q: Brandon Berg, and do you know what department he was
14 from?

15 A: Dorchester County.

16 Q: Okay. And again, is that your signature on that form?

17 A: Yes, it is.

18 Q: And does that document look the way it looked back in
19 2016?

20 A: Exactly how I did it.

21 MS. MIMS: Okay. Your Honor, at this time, I'd ask to
22 introduce State's Number 8 into evidence?

23 THE COURT: Any objection?

24 MR. WHIRL: No objection, Your Honor.

25 THE COURT: Very well.

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RUSSELL HAGEN - CROSS BY WHIRL

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1 STATE'S EXHIBIT NUMBER 8

2 ADMITTED INTO EVIDENCE

3 BY MS. MIMS:

4 Q: I have no further questions. Please answer any questions
5 from the defense counsel.

6 THE COURT: Cross examination?

7 CROSS EXAMINATION OF RUSSELL HAGEN BY MR. WHIRL:

8 Q: Just one question.

9 A: Yes, sir.

10 Q: And what date did you say you received this evidence?

11 A: I believe it -- what I could read was March 5th, 2016.

12 Q: Okay. So, you put a time on it?

13 A: Yes, it was on the right of it.

14 Q: Okay.

15 MR. WHIRL: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY MR. WHIRL:

18 Q: And what time was it?

19 A: 22:00, which 10 o'clock -- 22, yeah.

20 Q: 22:00?

21 A: Yes, sir.

22 Q: Okay. Thank you.

23 MR. WHIRL: May I approach the witness?

24 THE COURT: Yes.

25 MR. WHIRL: Nothing further, Your Honor.

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BRANDON BERG - DIRECT BY MIMS

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1 THE COURT: Very well.

2 Redirect?

3 MS. MIMS: No, ma'am.

4 THE COURT: Is this witness free to leave and is there
5 any objection?

6 MS. MIMS: No objection.

7 MR. WHIRL: No objection.

8 THE COURT: Very well. Thank you, sir.

9 MR. HAGEN: Thank you, ma'am.

10 THE COURT: You are excused.

11 Call your next witness, please?

12 MS. MIMS: The state would call Officer Brandon Berg.

13 CLERK: If you'll please raise your right hand and state
14 your name for the record.

15 MR. BERG: Brandon Berg.

16 BRANDON BERG, HAVING BEEN DULY SWORN

17 TESTIFIES AS FOLLOWS:

18 CLERK: Thank you. If you'll have a seat.

19 THE COURT: Your witness.

20 MS. MIMS: Thank you, Your Honor.

21 DIRECT EXAMINATION OF BRANDON BERG BY MS. MIMS:

22 Q: Good afternoon, Detective Berg?

23 A: Good afternoon.

24 Q: Can you please tell the jury where you're employed?

25 A: The Dorchester County Sheriff's Office.

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BRANDON BERG - DIRECT BY MIMS

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1 Q: What do you do with the Dorchester County Sheriff's
2 Office?

3 A: I'm a sergeant in the Crime Scene Unit.

4 Q: Can you tell the jury what your duties are as working in
5 the Crime Scene Division?

6 A: In general, we respond out to scenes. It's our job to
7 process those scenes, collect any evidence that may be there,
8 preserve, package that evidence, and then take it back to our
9 lab or to an outside lab for further -- to be analyzed.

10 Q: Were you working with the Crime Scene Division of
11 Dorchester County in March 5th of 2016?

12 A: I was.

13 Q: Okay. And was part of your duties with crime scene, that
14 you would actually collect evidence from other agencies as
15 well?

16 A: That's correct.

17 Q: Okay. And did you ever go down to MUSC and collect any
18 evidence from them as well?

19 A: I have.

20 Q: Okay. Did you have to go into the hospital or did they
21 have their own separate entity that you could go to?

22 A: They have a public safety building where their law
23 enforcement site is located, and that's where I would go and
24 meet with them.

25 Q: So, I'd like to show you -- may I approach the witness,

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BRANDON BERG - DIRECT BY MIMS

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1 Your Honor?

2 THE COURT: You may.

3 Q: I'd like to show you what's been marked as State's
4 Exhibit Number 8. Do you recognize that document?

5 A: I do.

6 Q: And what is that?

7 A: That is the property receipt, excuse me. That is the
8 property receipt that I received from MUSC.

9 Q: Is that their document?

10 A: That is their document.

11 Q: Okay. And does that document tell you who put that items
12 of evidence into the locker at public safety?

13 A: At public safety, yes, it does.

14 Q: Okay. And who was that?

15 A: It appears -- it's hard to read here, Officer Hagen.

16 Q: Okay. And does it also tell you on that form who picked
17 up the evidence and took it away?

18 A: Yes.

19 Q: And who was that?

20 A: That was me.

21 Q: That was you?

22 A: Yes.

23 Q: Okay.

24 May I approach again, Your Honor?

25 THE COURT: You may.

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BRANDON BERG - DIRECT BY MIMS

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1 Q: I'd like to also show you what's been marked as State's
2 Exhibit Number 9. Can you -- can you identify that document?

3 A: Yes.

4 Q: What is that?

5 A: That is the chain of custody that I completed once I got
6 back to our office. We don't use MUSC's paperwork. That's
7 just for our documentation. We start a whole new chain of
8 custody that's ours as soon as we get it back to the office
9 and that's what this is.

10 Q: Is that a form that you keep in the regular course of
11 business?

12 A: Yes.

13 Q: When you collect new evidence, do you fill out that form?

14 A: Correct.

15 Q: Okay. Can you tell the jury what type of evidence was
16 collected on that form?

17 A: On this chain of custody, it's one CSC kit from MUSC and
18 one white bag containing clothing.

19 Q: Okay. And who signs that form, in essence, receiving the
20 evidence?

21 A: That would me, yes.

22 Q: Okay. And once you receive that evidence, can you tell
23 the jury what you do with it at your department?

24 A: Once it's there in our department, I would just complete
25 the necessary paperwork and we would submit that, those items

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BRANDON BERG - DIRECT BY MIMS

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1 to SLED. Every CSC kit, in general, would go up to SLED
2 automatically. I would then prepare it and put it basically
3 on standby to go up to SLED, whichever one of our crime scene
4 techs is next to go up there and take evidence there.

5 Q: Okay. So, are you, in essence, just sort of just the
6 transfer of the evidence?

7 A: Yes.

8 Q: The evidence started at MUSC and just kind of comes
9 through you?

10 A: Yes.

11 Q: Where does it eventually go?

12 A: To SLED.

13 Q: Okay. When it came to you, was the evidence sealed?

14 A: It was.

15 Q: Okay. And any time you get evidence from MUSC, is that
16 sealed?

17 A: Yes.

18 Q: Okay. Is it important that it stays sealed?

19 A: Yes.

20 Q: Okay. And why is that?

21 A: To ensure that it hadn't been tampered with.

22 Q: Okay. And once it came to you, was this evidence sealed?

23 A: It was.

24 Q: All right. And you -- and from you it went to?

25 A: It went to our evidence room and then it would go to

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BRANDON BERG - CROSS BY WHIRL

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1 SLED.

2 MS. MIMS: I have no further questions, Your Honor.

3 THE COURT: Cross examination?

4 MR. WHIRL: Thank you, Your Honor.

5 CROSS EXAMINATION OF BRANDON BERG BY MR. WHIRL:

6 Q: Good afternoon.

7 A: Good afternoon, sir.

8 Q: Do you recall what date you picked the evidence up from
9 MUSC?

10 A: No, sir, I'd have to look at the chain of custody sheet.

11 MR. WHIRL: May I approach the witness?

12 THE COURT: You may.

13 A: According to our chain of custody sheet, it would be
14 March 22nd of 2016.

15 BY MR. WHIRL:

16 Q: Okay. Is that when you logged it in or you picked it up
17 the same day and logged it in?

18 A: Yes, sir. I would pick it up that day and immediately
19 bring it back to our office and complete the chain of custody.
20 In general, that's our practice.

21 Q: Okay. So, from the 5th of March until the 22nd, it was
22 at MUSC as far as you know?

23 A: Yes, sir, as far as I know; that's correct.

24 Q: And do you have any idea when it left your evidence room.

25 MR. WHIRL: May I approach the witness?

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BRANDON BERG - REDIRECT BY MIMS

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1 THE COURT: You may.

2 A: I don't know if I have the SLED paperwork here. It would
3 be indicated on that SLED paperwork when it was signed into
4 SLED, from whichever one of our evidence techs brought it up
5 there. I don't see -- I don't have the form, the submission
6 paperwork in front of me where it went to SLED. So, I don't
7 know.

8 BY MR. WHIRL:

9 Q: That's fine, but the procedure would be, once you've
10 logged it in, it goes in the evidence. The next place that it
11 would go would be to SLED?

12 A: Yes.

13 Q: Okay. Thank you. Nothing further.

14 THE COURT: Redirect?

15 MS. MIMS: Yes, ma'am. May I approach the witness again,
16 Your Honor?

17 THE COURT: You may.

18 MS. MIMS: Beg the Court's indulgence.

19 REDIRECT EXAMINATION OF BRANDON BERG BY MS. MIMS:

20 Q: Detective Berg, can you take a look at that one too; can
21 you tell me what that form is as well?

22 A: This is another chain of custody, in which there were two
23 -- what we refer to as buccal swabs; they're known standard
24 DNA swabs taken from somebody. These are listed on the sheet
25 and turned as evidence.

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BRANDON BERG - REDIRECT BY MIMS

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1 Q: Okay. And was that also evidence that you received from
2 MUSC that's on this form as well?

3 A: I can't see -- no, ma'am. These came directly from
4 detective ---

5 Q: From Detective Blanchard?

6 A: Yes.

7 Q: Okay.

8 A: Yes.

9 Q: And Detective Berg, looking at Exhibit Number 8, I'm
10 sorry, Number 9, can you read again what the evidence is on
11 that for the jury?

12 A: This is one CSC Kit from MUSC and one white bag
13 containing clothing.

14 Q: And is that your handwriting on that form?

15 A: It is.

16 Q: Is that your signature at the bottom of that form?

17 A: It is.

18 Q: Does it accurately look like a form that you use at
19 Dorchester County Sheriff's Department?

20 A: Yes.

21 Q: And is it used in the regular course of business?

22 A: It is.

23 MS. MIMS: Your Honor, at this time, I'd ask to introduce
24 State's Number 9 into evidence?

25 THE COURT: Any objection? You need to see it?

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BRANDON BERG - REDIRECT BY MIMS

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1 MR. WHIRL: I just need to make sure which one it is.

2 THE COURT: Sure.

3 MR. WHIRL: No objection, Your Honor.

4 THE COURT: Very well.

5 STATE'S EXHIBIT NUMBER 9

6 ADMITTED INTO EVIDENCE

7 MS. MIMS: Thank you, Your Honor, no further questions.

8 THE COURT: Cross examination?

9 MR. WHIRL: Nothing, Your Honor.

10 THE COURT: All right, no reply.

11 Is this witness free to leave and are there any
12 objection?

13 MR. WHIRL: No objection.

14 THE COURT: Very well, sir, you're free to go.

15 MR. BERG: Thank you, Your Honor.

16 THE COURT: Please call your next witness.

17 MR. TEMPLETON: The state calls Agent Jessica Stowe.

18 CLERK: If you'll please raise your right hand and state
19 your name for the record.

20 MS. STOWE: Jessica Heron Stowe, S-T-O-W-E.

21 JESSICA STOWE, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: If you'll have a seat.

24 THE COURT: Your witness.

25 DIRECT EXAMINATION OF JESSICA STOWE BY MR. TEMPLETON:

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JESSICA STOWE - DIRECT BY TEMPLETON

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1 Q: Ms. Stowe, where are you employed?

2 A: I am employed with the South Carolina Law Enforcement
3 Division, often referred to as SLED.

4 Q: Okay. How long have you been employed by SLED?

5 A: About six-and-a-half years.

6 Q: And what is your job title at SLED?

7 A: I am a forensic serologist.

8 Q: Okay. And what are your duties as a forensic serologist?

9 A: So, let me explain what serology is. Serology is the
10 identification of body fluids, such as blood, semen, and
11 saliva. We also process items of evidence for potential skin
12 cells that may have been left behind if someone wore something
13 or touched something. We collect that evidence and test for
14 positive or negative presence of those body fluids and forward
15 that to DNA if necessary.

16 Q: Okay. If you would, briefly go over your educational
17 background?

18 A: I have a bachelor's in biology with a minor in chemistry
19 from the University of South Carolina. I am currently
20 finishing my Masters of Science in microbiology and cellular
21 science with a concentration in medical microbiology and
22 biochemistry from the University of Florida.

23 Q: Okay. And did you receive any specialized training to be
24 a serologist?

25 A: Yes, upon being hired, I was trained by SLED's in-house

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JESSICA STOWE - DIRECT BY TEMPLETON

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1 training program. I was trained by a court qualified DNA
2 analyst and evidence processing technician at the time. So,
3 what that entails is, in the beginning, there's a bunch of
4 policies and procedures and so, it basically starts out with a
5 lot of reading and just kind of getting an understanding of
6 what's expected from me as an employee in the lab. You start
7 watching someone who is currently able to do casework
8 independently. I may test this small item for blood, I may
9 test this item for semen. I'm just getting comfortable at
10 that time. Throughout all of the training, there are small
11 tests that you pass, and then at the end you got to take a big
12 test that encompasses all aspects of being a forensic
13 serologist. Upon passing that, you are deemed competent to
14 perform an independent casework.

15 Q: Okay. And have you been qualified as an expert in
16 forensic serology?

17 A: Yes, I have.

18 Q: Okay. Do you know approximately how many times?

19 A: Probably 16 or 17.

20 MR. TEMPLETON: Okay. Your Honor, at this time, the
21 state would offer Agent Stowe as an expert in forensic
22 serology?

23 THE COURT: Is there any voir dire?

24 MR. WHIRL: No, Your Honor.

25 THE COURT: No objection?

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JESSICA STOWE - DIRECT BY TEMPLETON

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1 MR. WHIRL: No objection.

2 BY THE COURT:

3 THE COURT: All right. Ladies and gentlemen, normally
4 under the rules of evidence, witnesses are not allowed to
5 testify regarding their opinions or the reasons for those
6 opinions. There is an exception and that is when, by virtue
7 of someone's knowledge, education, training, profession, they
8 have become an expert in some field, art or science, again or
9 profession. And those witnesses who are deemed to be experts
10 are allowed to testify regarding their opinions and the
11 reasons for those opinions within the confines of their
12 expertise. Ladies and gentlemen, expert testimony is given
13 for the purpose of helping you understand the evidence, and
14 not for the purpose of controlling your judgment. When I give
15 you the concluding instruction, I will talk more about expert
16 testimony.

17 You may proceed.

18 MR. TEMPLETON: Thank you, Your Honor.

19 THE COURT: Uh-huh, (affirmative response).

20 BY MR. TEMPLETON:

21 Q: Did you have an opportunity to examine some evidence in
22 this case?

23 A: Yes, I did.

24 Q: Okay. If you would, briefly go over how SLED originally
25 receives evidence and how they manage it once it is received

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JESSICA STOWE - DIRECT BY TEMPLETON

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1 by SLED?

2 A: Okay. So, in the beginning, the submitting agency, so in
3 this case, Dorchester County Sheriff's Office brings the
4 evidence to SLED. There is a area of SLED called Evidence
5 Control, where we have four ladies who are responsible for
6 intaking that evidence. They operate under a said-to-contain
7 policy, meaning they don't inventory evidence, they don't
8 confirm that this item is what this officer is saying it is,
9 they just put it in a package, and then they seal it in the
10 presence of the person who is submitting the evidence, and
11 then they store it away in a safe area, where very limited
12 personnel has access to it. So, in the meantime, that's where
13 it's stored. So, when I need evidence, I send in a formal
14 request to them and say, hey, I need this item number from
15 this lab number. They retrieve it for me from a secure area
16 and then I obtain it from their custody.

17 Q: Okay. I'm going to show you State's Exhibit Number 1 to
18 begin with.

19 May I approach the witness, Your Honor?

20 THE COURT: You may.

21 Q: State's Exhibit Number 1, do you know what that is?

22 A: State's Exhibit item 1 is actually SLED lab number L-
23 165090, Item Number 3. This is a piece of evidence that I
24 processed. It is the underwear submitted in this case.

25 Q: Okay. If you would, briefly go through what you did to

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JESSICA STOWE - DIRECT BY TEMPLETON

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1 process that particular piece of evidence?

2 A: Okay. So, before we begin processing any evidence in a
3 case, we try to learn as much as we can about the case. We
4 have the liberty to test for saliva if we want to, blood,
5 semen. And so, in this case, there was potential digital
6 penetration in the paperwork that was submitted. And there
7 was also a request for semen. So, I tested this item for the
8 potential presence of semen and also scraped the crotch of the
9 underwear where potential skin cells could be leftover if a
10 digital penetration occurred.

11 Q: Okay. And I'm going to show you State's Exhibit Number
12 12. What is State's Exhibit Number 12?

13 A: State's Exhibit Number 12 is our lab number L165090
14 container A. Within container A, will be items 3.1, 3.2, and
15 3.3. So, the underwear is Item 3. So, when I take the crotch
16 of the underwear, that's gonna move forward in my analysis.
17 The rest of the underwear is not needed, so, it's just going
18 to stay behind. So, I take a small cutting and then put it in
19 these orange coin envelopes and that will go in one. The
20 scraping from this -- from scraping the underwear, that will
21 go in another coin envelope, and then there is also debris
22 collected off the underwear that will also go in the third
23 envelope within this container. You put them in a container
24 so that it just stays together. That way we don't have three
25 envelopes and three packages just floating around the lab;

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1 it's all contained into one.

2 Q: Okay. So, with everything you collected from State's
3 Exhibit Number 12, come from State's Exhibit Number 1?

4 A: Yes, that is correct.

5 MR. TEMPLETON: Okay. At this time, the state would
6 offer State's Exhibit Number 12 into evidence?

7 MR. WHIRL: No objection.

8 THE COURT: Very well.

9 MR. TEMPLETON: Okay.

10 STATE'S EXHIBIT NUMBER 12

11 ADMITTED INTO EVIDENCE

12 BY MR. TEMPLETON:

13 Q: Next I'm going to show you State's Exhibit Number 11.
14 Can you tell me what State's Exhibit Number 11 is?

15 A: Yes. State's Exhibit Number 11 is the Item Number 1 in
16 this case, which is the sexual assault evidence collection kit
17 from [REDACTED] S.C. .

18 Q: Can you explain to the jury what processing you did to
19 the sexual assault kit?

20 A: Okay. So, I'm going to explain what a sexual assault kit
21 is first. At the hospital, a sexual assault kit is collected
22 off of the patient. The kit contains standardized items
23 within it. So, you may have vaginal, oral, rectal swabs,
24 pubic hair cuttings, fingernail scrapings, items that are used
25 to collect evidence off of a body.

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1 So, when I get the sexual assault kit, it is in this
2 envelope right here. I'm the first person to inventory it.
3 So, there are individual items of evidence within this
4 package. So, I inventory it. There are small envelopes
5 inside it. They each become 1.1 and then 1.2 and then 1.3.
6 And so, I perform testing on each item and then it will get
7 reported out individually.

8 And for this, I tested for semen.

9 Q: Okay. Would that item have been sealed when you received
10 it?

11 A: Yes.

12 MR. TEMPLETON: Okay. Your Honor, at this time, the
13 state would offer State's Exhibit Number 11 into evidence?

14 MR. WHIRL: No objection.

15 THE COURT: Very well.

16 STATE'S EXHIBIT NUMBER 11

17 ADMITTED INTO EVIDENCE

18 BY MR. TEMPLETON:

19 Q: Okay. If you would, go through what items you ultimately
20 tested in this case for semen?

21 A: Can I refer to my report?

22 Q: Absolutely.

23 A: So, the underwear that I mentioned before, I did test for
24 semen. Vaginal swabs, oral swabs, rectal swabs, and that's
25 it.

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1 Q: Okay.

2 A: For semen.

3 Q: Ultimately, was there any semen found in this case?

4 A: No semen was detected.

5 Q: If you would, kind of explain what kind of testing you do

6 to determine whether semen is present or not?

7 A: Okay. So, that kind of depends on what type of item I

8 start out with. With the underwear, for example, underwear is

9 a larger item. So, I use a special light, it's called an

10 alternate light source, that I shine on the item and look for

11 florescence, semen fluoresces; it glows. So, I was like,

12 okay, Jessica, you need to focus on that area. And so, we

13 have a test called an acid phosphatase test. So, what acid

14 phosphatase is that's an enzyme found in high concentrations

15 of seminal fluid. So, if that test is positive, it will turn

16 purple. Now, the disclaimer with that test is it can also be

17 found in vaginal fluid. So, all that says is okay, semen

18 could be here, but let's take it forward. And so, I tested

19 the cutting of the crotch along with the swabs. The swabs

20 don't need the acid phosphatase test, we can take them

21 straight to the P30 test, which is the next test that I then

22 performed on the cutting of the crotch. So, there's a P30

23 test next and it a prostate specific antigen. That is a

24 protein found in high concentrations in male seminal fluid.

25 In this case, it was negative.

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JESSICA STOWE - CROSS BY WHIRL

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1 I also take those samples and take it forward one more
2 step and look at that sample under a microscope. And in this
3 case, there was no sperm cells visualized by myself.

4 Q: Okay. Ultimately, were you able to determine if there
5 was any semen found in this case?

6 A: No, there was not.

7 Q: Okay. Please answer any questions Mr. Whirl may have.

8 THE COURT: Cross examination?

9 MR. WHIRL: Thank you, Your Honor.

10 THE COURT: Uh-huh, (affirmative response).

11 CROSS EXAMINATION OF JESSICA STOWE BY MR. WHIRL:

12 Q: Would you refer to -- good afternoon, first of all.

13 A: Good afternoon.

14 Q: And would you take a look at Item Number 1.8 on your
15 report and tell us what that is?

16 A: 1.8 is suspected saliva swabs, left neck.

17 Q: Okay. And did you have an occasion to test that?

18 A: I did. I screened that for the possible presence of
19 saliva.

20 Q: And on the second page, what were the results from Item
21 1.8?

22 A: Presumptive testing for saliva was negative, item
23 forwarded to the DNA section.

24 Q: Okay. So, you found nothing from the neck area?

25 A: The test that I used was negative.

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DONNA MONEY - DIRECT BY TEMPLETON

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1 Q: Okay. Thank you. And no semen?
2 A: No semen was detected.
3 Q: All right. Nothing further.
4 THE COURT: Redirect?
5 MR. TEMPLETON: None, Your Honor.
6 THE COURT: Is this witness free to leave?
7 MR. TEMPLETON: She is.
8 THE COURT: Any objection?
9 MR. WHIRL: No objection.
10 THE COURT: Thank you. You are free to go.
11 Call your next witness, please?
12 MR. TEMPLETON: The state calls Donna Money.
13 THE COURT: Did you say Money?
14 MR. TEMPLETON: Donna Money.
15 CLERK: If you'll please raise your right hand and state
16 your name for the record.
17 MR. TEMPLETON: Donna Money.
18 DONNA MONEY, HAVING BEEN DULY SWORN
19 TESTIFIES AS FOLLOWS:
20 CLERK: If you'll please be seated.
21 THE COURT: Your witness.
22 DIRECT EXAMINATION OF DONNA MONEY BY MR. TEMPLETON:
23 Q: Good afternoon?
24 A: Good afternoon.
25 Q: Ms. Money, where are you employed?

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DONNA MONEY - DIRECT BY TEMPLETON

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1 A: I am currently employed at the South Carolina Law
2 Enforcement Division, also known as SLED.

3 Q: Okay. And what is your job title at SLED?

4 A: I am a forensic scientist in the DNA casework department.

5 Q: Okay. How long have you been employed by SLED?

6 A: Going on six years in November.

7 Q: Okay. And what are your duties as a forensic scientist?

8 A: I perform forensic DNA analysis on evidence items
9 submitted and known standards, conduct comparisons from the
10 profiles that are developed, write reports and testify in
11 court.

12 Q: Okay. If you would, go over your educational background?

13 A: I received a bachelor's degree in forensic science from
14 the Pennsylvania State University in 2011.

15 Q: Okay. Any specialized training for your current position
16 at SLED?

17 A: When I started working at SLED, I underwent a year-and-a-
18 half long training program under a qualified analyst in the
19 department. This training included running hundreds of
20 samples, training in competency, written exams, an oral exam,
21 a mock court run. Upon my completion of this training, I was
22 signed off and I am required by the FBI to at least have eight
23 hours every year of training.

24 Q: Okay. Have you been qualified as an expert in forensic
25 DNA analysis before?

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DONNA MONEY - DIRECT BY TEMPLETON

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1 A: Yes.

2 Q: Approximately how many times?

3 A: Twenty-four.

4 MR. TEMPLETON: Your Honor, at this time, the state would
5 offer Ms. Donna Money as an expert in forensic DNA analysis.

6 THE COURT: Any objection?

7 MR. WHIRL: No objection.

8 THE COURT: Very well. So qualified.

9 BY MR. TEMPLETON:

10 Q: Have you had the opportunity to analyze some of the
11 evidence in this case?

12 A: Yes.

13 Q: Okay. I'm going to give you State's Exhibits Number 11,
14 Number 12, and Number 2. I'm going to start with State's
15 Exhibit Number 11. Do you know what State's Exhibit Number 11
16 is?

17 A: Yes. State Exhibit Number 11 is SLED Lab Number L165090,
18 Item 1.

19 Q: Okay. Is that a sexual assault kit?

20 A: Yes.

21 Q: Okay. Did you some testing to some of the items that
22 came from that sexual assault kit?

23 A: Yes.

24 Q: Okay. What is State's Exhibit Number 12, which is
25 already in evidence?

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- 1 A: State's Exhibit 12 is SLED Container A from the same
2 case. This contains some items that were created from the
3 underwear submitted with the sexual assault kit.
- 4 Q: Okay. And did you also have the opportunity to do some
5 testing of just those items?
- 6 A: Yes.
- 7 Q: Okay. And what is State's Exhibit Number 2?
- 8 A: State's Exhibit 2 is SLED Lab Number L165090, Item Number
9 2, which was a known standard.
- 10 Q: Is that for Vernon Cooley?
- 11 A: Yes.
- 12 Q: Okay. When you originally get these items, what do you
13 do first?
- 14 A: So, DNA analysis is a four-step process. The first step
15 is the DNA is extracted from whether it's a swab or a cutting
16 from a piece of clothing. From there, we determine how much
17 DNA is present in that sample. After that, we will amplify or
18 make more copies of the DNA to have more to work with, and
19 finally, the sample is run through an instrument that will
20 separate the DNA based on size and that DNA is then translated
21 into what is known as a DNA profile.
- 22 Q: Okay. Ultimately, some of the items that you tested, if
23 you would basically go through what items you tested and what
24 your results were?
- 25 A: May I consult my report?

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1 Q: Absolutely.

2 A: For SLED Item 1, which was the sexual assault kit, I
3 tested Sub-Item 1.2, which was the vaginal swab and then Sub -
4 Item 1.8, which as a saliva swabs from the left neck. The
5 known standard from the victim is Sub-Item 1.7, which is also
6 included in the kit.

7 Q: Okay. Were you able to develop a DNA profile from Item
8 1.8?

9 A: 1.8 was a partial DNA profile attributable to [REDACTED] S.C.
10 [REDACTED].

11 Q: Okay. The victim in this case?

12 A: Yes.

13 Q: Okay. Were you able to develop profiles from Items 1.2
14 and 1.3?

15 A: 1.3 was not tested.

16 Q: I apologize. 1.2 and 3.1?

17 A: Item 1.2 again back to the victim, [REDACTED] S.C. And
18 then SLED Item 3.1, which was the swab from scraping the
19 interior crotch of the underwear, which was located in the
20 sexual assault kit also came back to the victim, [REDACTED] S.C.
21 [REDACTED].

22 Q: Okay. Once you went through your normal process of DNA
23 analysis, did you also do a second kind of level of DNA
24 analysis with what's called Y-STR DNA?

25 A: Yes. Typically, in cases like sexual assault, it is

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- 1 expected to have an overabundance of female DNA, which could
2 sometimes mask any male DNA that may be present. There is a
3 second type of DNA analysis done, it's Y-STR, which focuses on
4 the Y chromosome in a male individual. That deemed useful in
5 this case. Based on the information that was developed, there
6 was an indication that there was some male DNA present.
7 Unfortunately, because of the overabundance of female DNA, you
8 couldn't see it at first. So, sub samples in this case were
9 forwarded to this Y testing.
- 10 Q: Okay. And ultimately, Item 3.1 was tested; is that
11 correct?
- 12 A: Yes.
- 13 Q: Do you know, what is item 3.1?
- 14 A: Item 3.1 again is the swab from the scraping interior
15 crotch of the underwear.
- 16 Q: Okay. What were you able to determine from Item 3.1?
- 17 A: The partial Y-STR profile developed from Item 3.1 is --
18 of at least two male individuals.
- 19 Q: Okay. Ultimately -- we just heard from Agent Stowe that
20 there was no semen present; is that correct?
- 21 A: According to my report, no.
- 22 Q: Okay. But there was some amount of DNA of two
23 individuals present?
- 24 A: Based on my results, yes, there was DNA present.
- 25 Q: Were you able to include or exclude the defendant in this

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1 case?

2 A: The result was a mixture. Unfortunately, no statistical
3 weight could be applied to this profile and therefore, no
4 comparisons can be done, excuse me, conducted.

5 Q: Okay. So, you can't include him, and you can't exclude
6 him; is that correct?

7 A: I can't include or exclude anybody.

8 Q: Okay.

9 MR. TEMPLETON: I beg the Court's indulgence for just a
10 second.

11 THE COURT: Okay.

12 BY MR. TEMPLETON:

13 Q: Based on your knowledge, what are some ways that other
14 DNA can be present on this particular item?

15 A: DNA can be found in pretty much any cell of the human
16 body. So, your skin cells for instance, they have DNA. If
17 you touch an item, you could leave some skin cells behind. If
18 you spit, you have, again, cells in your saliva, that can
19 leave some DNA behind.

20 Q: So, if he -- if there were other males in the household,
21 is there a chance that DNA could be transferred to them say
22 through washing clothing?

23 A: It's possible.

24 Q: Okay.

25 MR. TEMPLETON: I beg the Court's indulgence for just a

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DONNA MONEY - CROSS BY WHIRL

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1 moment.

2 THE COURT: All right.

3 BY MR. TEMPLETON:

4 Q: Please answer any questions Mr. Whirl may have.

5 THE COURT: Cross examination?

6 MR. WHIRL: Thank you, Your Honor.

7 THE COURT: Uh-huh, (affirmative response).

8 CROSS EXAMINATION OF DONNA MONEY BY MR. WHIRL:

9 Q: All right. Agent, is it Mooney or Money?

10 A: Money.

11 Q: Money, okay. So, one of the last questions that was
12 posed to you that if there were other males living in the same
13 household with this particular female, that it's possible
14 through laundry, that that DNA would be picked up?

15 A: It's possible.

16 Q: Okay. And you couldn't rule out that the DNA that had no
17 measurable amount is attributable to those two family members
18 or the other two males that are living in that house either,
19 could you?

20 A: I can't draw any further conclusions.

21 Q: Okay. And I'm a layman when he comes to DNA and there
22 may be some jurors that are quite familiar with this, but how
23 is it that you determine whether or not there's any measurable
24 amount, so that you can make a -- is there a baseline that you
25 have to have in order to make an analysis that it's

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1 attributable to one person or another?

2 A: I'm a little unclear of your question.

3 Q: And so am I. And I don't want to muddle this for anyone
4 to include myself. So, let me just ask the question based
5 upon what you have there, you couldn't determine where this
6 DNA is from?

7 A: I can't determine the source.

8 Q: It could be from family members that were using the same
9 washing machine?

10 A: It's possible.

11 Q: Thank you.

12 THE COURT: Redirect?

13 MR. TEMPLETON: No further questions, Your Honor.

14 THE COURT: Is this witness free to leave and is there
15 any objection?

16 MR. TEMPLETON: She is.

17 MR. WHIRL: No objection, Your Honor.

18 THE COURT: Very well. Thank you. You are free to go.
19 Call your next witness, please.

20 MR. TEMPLETON: May we approach real quick, Your Honor?

21 THE COURT: Sure.

22 (REPORTER'S NOTE: Bench conference is held off the record in
23 the presence of but outside the hearing of the jury.)

24 BY THE COURT:

25 THE COURT: Ladies and gentlemen, we are going to take

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BY THE COURT

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1 our afternoon break. We'll take 15 minutes. Please step to
2 your jury room. Do not discuss this matter and do not allow
3 anyone to discuss it with you. We'll take 15. Leave your
4 notepads in your seats, please.

5 (REPORTER'S NOTE: Jury exits courtroom @ 3:06 P.M.)

6 **RECESS - 3:08 P.M.**

7 *******OFF THE RECORD*******

8 **(On the Record - 3:30 P.M.)**

9 (REPORTER'S NOTE: The following takes place outside the
10 presence of the jury.)

11 THE COURT: Thank you. Please be seated.

12 Okay. Proffer, you want to proffer something?

13 MS. MIMS: Yes, ma'am.

14 THE COURT: All right.

15 MS. MIMS: We'd like to proffer the testimony of Kathy
16 Fabrizio. She is the nurse practitioner who saw the victim at
17 the Medical University of South Carolina approximately two
18 weeks after the incident happened, when she came back for a
19 follow-up interview.

20 THE COURT: Okay.

21 MS. MIMS: And we'd like to see about qualifying her as
22 an expert.

23 THE COURT: Okay.

24 MS. MIMS: You want me to go ahead and put her on the
25 stand, Your Honor? We're just waiting for the defendant to

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KATHERINE FABRIZIO - PROFFER DIRECT BY MIMS

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1 come in.

2 THE COURT: Oh, yes, that's right.

3 CLERK: Please raise your right hand and state your name
4 for the record.

5 MS. FABRIZIO: Katherine Fabrizio.

6 KATHRINE FABRIZIO, HAVING BEEN SWORN
7 TESTIFIES AS FOLLOWS:

8 CLERK: Thank you. Please have a seat.

9 THE COURT: Your witness.

10 MS. MIMS: Thank you, Your Honor.

11 DIRECT EXAMINATION OF KATHERINE FABRIZIO BY MS. MIMS:

12 Q: Ms. Fabrizio, how are you?

13 A: Good.

14 Q: Where do you work?

15 A: I work at MUSC in the Child Abuse Pediatric Division.

16 Q: What do you do there?

17 A: I'm a nurse practitioner.

18 Q: Okay. And can you tell the Court a little bit about your
19 educational background?

20 A: I've got a Bachelor of Science in Nursing in 1982. In
21 1989, I went back to school -- or in 1988 I went back to
22 school and in 1989, I got a Master's in Nursing from the
23 Medical University of South Carolina. A few years later, I
24 went back for specialty training as a Family Nurse
25 Practitioner at Emory University in Atlanta. Then after that,

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1 I've mainly just worked. I haven't gone back to any
2 educational schools, but I do continuing education. Every
3 year you have to do a certain number of credit hours of
4 continuing education.

5 Q: Do you have any specialized training?

6 A: I do have specialized training. I've been doing child
7 abuse pediatrics for the past 10 years; full-time for the past
8 eight years, or October will be 8 years. And I, when I first
9 started the position that I have now, I started as a sexual
10 assault nurse examiner, and so there was specialty training
11 for about two-and-a-half years, from January of '08 to October
12 of '10. And during that time, I solely did sexual assault
13 exams. And when you first start in that position, you're
14 paired with a preceptor, who is an expert in the area, and she
15 watches every one of your exams, all of your exams are
16 reviewed by a supervising physician. And then when they feel
17 like that you're an expert in that area, then you start doing
18 the exams by yourself. So, that's sort of the training that I
19 got.

20 Q: Okay. Did you continue to do sexual assault examinations
21 throughout the rest of your time as a nurse?

22 A: Yes, I still do sexual assault nurse exams. In 2010,
23 when I started a full-time nurse practitioner position, I just
24 started doing nurse practitioner -- I did all kinds of abuse.
25 So, not just the sexual abuse. So, for the first two-and-a-

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KATHERINE FABRIZIO - VOIR DIRE BY WHIRL

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1 half it was just sexual abuse, and then after that it's been
2 all types of abuse, including the sexual assault, which we see
3 a lot of.

4 Q: Okay. How many sexual assault exams do you think you've
5 done through the years?

6 A: Probably between 125 and 150.

7 Q: Okay. And have you testified in court before as a child
8 abuse -- as an expert in child abuse pediatrics?

9 A: Yes; uh-huh, (affirmative response).

10 Q: How many times have you done that?

11 A: I can't recall exactly; it's probably been about three
12 times.

13 MS. MIMS: Okay. Your Honor, at this time, I'd ask to
14 qualify Ms. Fabrizio as an expert in child abuse pediatrics?

15 THE COURT: Any voir dire?

16 MR. WHIRL: Yes, Your Honor.

17 THE COURT: All right.

18 PROFFER VOIR DIRE OF KATHERINE FABRIZIO BY MR. WHIRL:

19 Q: Now, you said that -- well, let me ask you, have you been
20 SANE certified since 2010?

21 A: I have been -- I was SANE certified as a sexual assault
22 nurse examiner when I did just the sexual assault nurse
23 program through the IAFN. When I first started in -- and that
24 certification lasts for five years. When that certification
25 came up, I didn't recertify because I started full-time in

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KATHERINE FABRIZIO - VOIR DIRE BY WHIRL

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1 child abuse pediatrics and you don't need that to do the job
2 that I do now.
3 Q: Okay. So, were you certified as an A or P, as a SANE
4 nurse?
5 A: P.
6 Q: As a P.
7 A: SANE-P, yes, sir.
8 Q: Okay. And you haven't -- and when did you -- when were
9 you last certified, because I'm not too sure if we're talking
10 2010 or 2015?
11 A: I was certified -- you have to work a year before you can
12 take the exam. So, I took the exam -- 9, 10, 11, 12, 13, 14
13 -- so I probably was certified through 2014 or 2015.
14 Q: And are you sure you don't have to work two years before
15 -- two years' experience before you can take the exam?
16 A: I can't remember how long I worked. I know that you have
17 to have that six months of preceptorship and then you have to
18 do so many acute sexual assault exams, and then you have to do
19 so many that are not acute, and it all has to be pediatrics
20 which is all that I was working in. And then once you receive
21 -- once you have completed all of those exams, then you apply
22 to be able to take the exam and sit for the exam, which I did,
23 and then I passed it the first time and -- but I, to be
24 perfectly honest, I can't remember what year that was. And
25 then once you get the certification, I believe the

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- 1 certification was good for five years.
- 2 Q: Okay. Okay. It doesn't matter. You're not certified
3 now?
- 4 A: I am ---
- 5 Q: In terms of the A or the P for SANE?
- 6 A: Correct; yes, sir.
- 7 Q: Okay. And when you were certified, was it through IAFN
8 or ---
- 9 A: IAFN.
- 10 Q: Okay. All right. And is that something that's available
11 to you as a nurse practitioner?
- 12 A: Say that again?
- 13 Q: Is SANE certification something that's available to you
14 as a nurse practitioner?
- 15 A: You can do SANE certification any time.
- 16 Q: Once you get past the two years?
- 17 A: Yes.
- 18 Q: Okay. And have you applied to the ANCC for any type of
19 ---
- 20 A: I am -- that is American Nurses Credentialing Center ---
- 21 Q: Yes.
- 22 A: --- is who I'm certified through with for my family nurse
23 practitioner. So, my advanced practice certification is
24 through that.
- 25 Q: Okay. And where you're working now as a nurse

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KATHERINE FABRIZIO - VOIR DIRE BY WHIRL

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1 practitioner?

2 A: Uh-huh, (affirmative response), Family Nurse
3 Practitioner.

4 Q: And where is that, where do you work?

5 A: At MUSC.

6 Q: And how long have you been in that position?

7 A: I have been full-time for -- since October of 2010, and I
8 started part-time in 2008 doing just the sexual assault exams.

9 Q: Okay. And -- and you may have already answered this, but
10 the -- the sexual assault cases that you're working on now,
11 are they A or P?

12 A: I have never done anything but P.

13 Q: P. Okay. All right.

14 A: I don't do adults.

15 Q: Okay. And -- and what age does P stop?

16 A: The 17 years old. Once they've had their 18th birthday,
17 we don't accept those cases and they go to the adult team.

18 Q: Understood.

19 MR. WHIRL: Nothing further, Your Honor.

20 THE COURT: Okay. I'm -- I don't know what I'm going to
21 do at this point, but you can proceed.

22 MS. MIMS: Okay.

23 THE COURT: Because I've got to hear what -- what she's
24 gonna testify ---

25 MS. MIMS: What else she's going to say?

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1 THE COURT: Uh-huh, (affirmative response).

2 MS. MIMS: Okay.

3 PROFFER DIRECT EXAMINATION OF KATHERINE FABRIZIO BY MS. MIMS:

4 Q: And just to clarify, you are trained as a family nurse
5 practitioner, correct?

6 A: Yes.

7 Q: And is that a higher degree than a registered nurse?

8 A: Yes.

9 Q: Okay. And you still only see children for child abuse
10 pediatrics or for child abuse?

11 A: Yes, I just see children now. I can see all ages ---

12 Q: Uh-huh, (affirmative response).

13 A: --- but since I had my children, I've mainly focused on
14 doing pediatrics.

15 Q: Pediatrics, okay. I understand.

16 Ms. Fabrizio, were you working as a nurse practitioner in
17 2016?

18 A: I was.

19 Q: Did you ever examine a child named [REDACTED] S.C. [REDACTED]?

20 A: I did.

21 Q: On what date did you examine [REDACTED] S.C. [REDACTED]?

22 A: I saw her on 3/24/2016.

23 Q: Okay. Do you do anything to prepare or is there any
24 protocol that you follow before you conduct a sexual assault
25 examination on a child?

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1 A: When somebody is being seen for their -- this was
2 basically a two-week follow-up exam. You go back and look at
3 their ASA report, which is the SLED notes. So, I look at the
4 SLED note, I look at the photos that were taken, I review the
5 lab work and just get prepared for seeing her and
6 understanding what she's coming in for.

7 Q: Okay. And what had her prior photos and lab reports and
8 examinations shown you?

9 A: On the -- what was significant was that all of her lab
10 work was negative. Her exam showed the hymenal tissue, that
11 there was some redness, and I saw the picture of that, some
12 redness from 5:00 to 6 o'clock on the hymen. And so that's
13 what I saw prior to coming in and some history of what had
14 happened.

15 Q: And you observed those from the pictures that were taken
16 on the 5th of March?

17 A: Yeah, I reviewed the photos that were taken initially in
18 the emergency room.

19 Q: Okay. Did you end up talking to S.C. before the
20 interview as part of the protocol or as a part of what you ---

21 A: When I see her, you know, I ask her how she's doing and
22 -- and I confirmed at that time, that there had been digital
23 penetration. She also said he kissed her, and then she talked
24 about she was in therapy and that that was going well.

25 Q: Okay. When you do these types of examinations, what

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KATHERINE FABRIZIO - PROFFER DIRECT BY MIMS

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1 exactly are you looking for, when you do these follow-up
2 examinations?

3 A: Well, you are doing a basic exam from head to toe, so
4 you're looking for, you know, you're just making sure that she
5 is normal and healthy. When you see redness that was seen on
6 the initial photo, you want to look at that same area during
7 your -- you look at the whole area, but you specifically look
8 at that area to see if that redness is still there, to see if
9 it's a chronic condition, to see if it's gone. And in my
10 case, it was no longer there.

11 Q: It was no longer there. Okay. Is that significant that
12 it was no longer there?

13 A: It is significant. Redness can be a non-specific
14 finding, but it also, when with -- with the digital
15 penetration that I read had happened and that she told me had
16 happened, that can cause some redness to the tissue, just like
17 any type of rubbing can and -- and she was seen very closely
18 from the time of the assault, she said happened about 10
19 o'clock in the morning and she was seen that evening. So,
20 that's not a long period of time and usually, if you are going
21 to see an injury, you're going to see it within the first 72
22 hours. And so, the fact that the redness was there -- if it
23 was a chronic condition, it might still be there when I see
24 her back in two weeks, but the fact that it was gone says to
25 me that it was most likely an acute finding at the time that

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KATHERINE FABRIZIO - PROFFER CROSS BY WHIRL

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1 she was seen for the sexual assault.

2 Q: Okay. Acute because it was there on the day she was seen
3 for the sexual assault on the date that she said it occurred
4 ---

5 A: Uh-huh, (affirmative response).

6 Q: --- but then gone two weeks later?

7 A: Yes.

8 Q: Okay. After conducting your examinations and
9 understanding the allegations, what was your diagnosis in this
10 case?

11 A: Sexual assault.

12 THE COURT: Cross examination?

13 PROFFER CROSS EXAMINATION OF KATHERINE FABRIZIO BY MR. WHIRL:

14 Q: Now on the follow-up that you did on 3/24, you didn't
15 connect -- you didn't conduct it as SANE-P, did you?

16 A: No, I did it as a nurse practitioner.

17 Q: Okay. And -- and you couldn't have anyway because you're
18 not certified -- you were not certified at that time as a
19 SANE-P; is that correct?

20 A: Correct.

21 Q: Okay.

22 A: Correct.

23 Q: And did you go about reviewing the SANE-P's report back
24 from 3/5?

25 A: I reviewed that report, yes. I reviewed her report.

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KATHERINE FABRIZIO - PROFFER CROSS BY WHIRL

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1 Q: And is that what you used to base -- part of what you
2 used to basically form your opinion about whether or not this
3 was sexual abuse or not?

4 A: You -- I based my diagnosis based on what the child had
5 said, her disclosure, what she had said initially, what she
6 said in the forensic interview and what the finding was at the
7 time of the assault and then the findings that I had that the
8 findings had -- the redness had dissipated and gone away.

9 Q: So, you were relying on back on the redness that was seen
10 back on the original SANE-P testing on 3/5?

11 A: You always -- you always have to look at a sexual assault
12 as a total package; you don't -- when you see them for follow-
13 up, that's one of the reasons you do follow-up, to see if
14 there is any change in the exam. So, that's the purpose,
15 that's one of the purposes of the exam two weeks later. It's
16 also to see how the child is doing and make sure she's
17 emotionally doing well after a traumatic event.

18 Q: And what method was used to review the area to make sure
19 that it was not still red?

20 A: I use a glove scopette, which is a very good way. It's a
21 blue glove scopette and you insert that into the vaginal canal
22 and then you trace the hymen, so that you can actually see the
23 hymenal tissue very clearly.

24 Q: Okay. And you had noted that this could've been -- well,
25 the initial SANE-P noted that this could have been a non-

1 specific finding?

2 A: I noted it could be a non-specific finding. I'm not sure
3 what she said.

4 Q: Well, you said you relied upon her report to get to this
5 report; is that not true?

6 A: I'm not clear what you're asking me?

7 Q: I'm asking you whether or not when you reviewed the SANE-
8 P's report from 3/5 of 2016 ---

9 A: Uh-huh, (affirmative response).

10 Q: --- did it say in there that it was non-specific?

11 A: Yes.

12 Q: Okay.

13 A: Like I can, in my own knowledge, know that redness can be
14 a non-specific finding. So, I don't have to rely on someone
15 else's report to know that redness can be a non-specific
16 finding.

17 Q: Okay. And by non-specific, what is it that a nurse
18 practitioner or a SANE-P mean?

19 A: It just means that it's not diagnostic of sexual abuse.
20 Redness is not diagnostic of sexual abuse. So, it could have
21 been caused by something else. She could've rubbed her own
22 self or she could have -- there are -- there are other things
23 that can cause redness and -- but her history -- but you have
24 to look at the whole package and what she's saying is that she
25 had digital penetration. A few hours after the digital

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1 penetration, she had the redness. Two weeks later when she
2 was seen, the redness was gone. And so even though redness
3 can be a non-specific finding, in this case, it's indicative
4 to me or consistent with the fact that she that she had been
5 digitally penetrated.

6 Q: So, are you testifying that a non-specific redness or --
7 or abrasion could not also go away within 14 days or 20 days,
8 whatever the -- I guess it was 19 days, 3/5-3/24?

9 A: Yeah, it could.

10 Q: It could happen in a non-specific as well, right?

11 A: Yes.

12 Q: Okay.

13 MR. WHIRL: Nothing further, Your Honor.

14 BY THE COURT:

15 THE COURT: Okay. Ms. Mims, talk to me about why you
16 believe this testimony is admissible?

17 MS. MIMS: I believe it's admissible as a medical
18 diagnosis, Your Honor. I think that -- I think that she's
19 allowed to -- well, I think that she's allowed to give an
20 opinion. I think the Court of Appeals has said if you follow
21 a particular protocol. As a nurse practitioner that's been
22 dictated by a doctor, she said that this was part of her
23 protocol to follow, to come to these conclusions. She talked
24 about looking at the pictures; she talked about talking to the
25 child; she talked about reviewing the SLED report; she talked

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1 about conducting her own genital examination of the child at
2 the time. And then taking that information, based on what she
3 sees at the time in forming an opinion. I think she can
4 testify as an expert. And I think that the Court of Appeals,
5 we know at least in 2003 in *Crawford v. Henderson*, they stated
6 that a nurse practitioner could testify as an expert, could
7 give an opinion as an expert, if she was following a written
8 protocol.

9 THE COURT: My concern is that the 2003 case comes before
10 all those cases that forbid any expert to bolster the victim's
11 testimony. That's what's got me concerned.

12 MS. MIMS: Yes, ma'am.

13 THE COURT: And I'm looking at even though it is an
14 unreported case and it doesn't have any precedential value,
15 but when you put in expert on sexual abuse, up it pops and
16 that's *State v. Ross* and it is a June 2018 case. And what it,
17 I guess, can we even say it may be persuasive, can we say that
18 about it?

19 MS. MIMS: It may be.

20 THE COURT: I don't know. It ends by saying -- I'm sorry
21 -- somehow my computer did something very exciting. It gave
22 me the wrong case and I don't really know why. *State v.*
23 *Miller* is the case. And what *State v. Miller* says is the
24 better practice, however, is not to have the individual who
25 examined the alleged victim testify, but rather to call an

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1 independent expert. And then it says, it is improper for a
2 witness to testify as to his or her opinion about the
3 credibility of the child/victim in a sexual abuse matter.
4 *State v. Barrett*. What worries me about that is that when she
5 says that the redness is non-specific except when you add the
6 -- her having interviewed the child and what the child said.
7 Is that bolstering? I guess when we get right down to it, is
8 that part of her testimony which she indicates -- takes her
9 from saying this is a non-specific abrasion to it is sexual
10 abuse, is that bolstering?

11 MS. MIMS: So, I guess I'm looking at bolstering in the
12 way of like *Kromah*, in terms of like the forensic interviews
13 where I would go and I would think about the bolstering
14 issues. I guess I'm trying to distinguish this from *Kromah*.
15 I'm trying to say that this is actually a medical diagnosis
16 based on actual evidence that a doctor -- or an expert sees.
17 They actually see a red -- a finding. They actually see an
18 injury. They see the patient again two weeks later and that
19 injury is gone. I think that cross examination can bring out
20 that that could be -- it is an acute injury perhaps, but it
21 could be a result of all kinds of things. He just brought
22 that out pretty well on cross here. But I think it can be
23 distinguished because it's a medical diagnosis versus what you
24 have in *Kromah* with a forensic interviewer, who is talking
25 about truthfulness or just something that is subjective. I

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1 think here, with the medical diagnosis, you could be a little
2 bit more precise.

3 THE COURT: The general behavioral characteristics of
4 child sex abuse victims are there for a -- more appropriate
5 for an expert qualified in the field to explain to the jury so
6 long as the expert does not bolster the victim's testimony.
7 And what they're talking about is that you can have an expert
8 testify about why a sexual abuse victim's behavior might be
9 this or might be that.

10 MS. MIMS: Yes, ma'am. So, the part of where she's
11 including the child saying there's digital penetration ---

12 THE COURT: That's what ---

13 MS. MIMS: Yes, ma'am.

14 THE COURT: That's what concerns me.

15 MS. MIMS: But I'm hung up on the part that she -- when
16 you go to see a doctor, you have to say what your symptoms are
17 before they can actually look at you and tell what the
18 conclusion could be. So, I feel -- and I'm not arguing this
19 based on any fact -- any case law, but it seems to me that a
20 medical diagnosis is different in that it would be based on an
21 actual ailment. The doctor has to know what to go in looking
22 for, before they can actually do an examination and reach a
23 conclusion.

24 THE COURT: I understand. Here -- here's -- and as we
25 know, that's admissible hearsay, what we know as to a health

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1 care professional or a doctor is we can admit that under the
2 hearsay rule. And I don't believe that she can testify that
3 this condition on the hymen is sexual abuse without accepting
4 as true her interview with the alleged victim. I think it's
5 impossible, based on what she's just said, because she says it
6 is a non-specific redness.

7 MS. MIMS: Yes, ma'am.

8 THE COURT: Can she then testify that it is consistent
9 with someone having been digitally -- with digital
10 penetration? What about that?

11 MR. WHIRL: Your Honor, I don't -- I mean, my problem is
12 that I -- I certainly think that it is bolstering and adding
13 to the credibility of the child, which is if you roll back to
14 this morning, in terms of my really brief opening remarks, I
15 talked about the subjective versus the objective. So, that's
16 kind of like where I was going to probably end up anyway at
17 some point, saying that this is bolstered. Because when they
18 specifically say that this is, you know, non-specific and
19 basically saying but for what this -- what the subjective
20 victim actually said, then I don't know how you separate that
21 as being bolstering. And perhaps, the Court can cut that fine
22 distinction, but the way my mind works, I can't make that -- I
23 can't compartmentalize that that way to where I can separate
24 out the two.

25 MS. MIMS: Your Honor, if -- could I -- would I still be

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1 allowed to get into the hearsay exception for the purposes of
2 the medical diagnosis or would I not even be allowed to touch
3 that and just let her say there was redness, which could be
4 consistent with digital penetration? I understand the
5 bolstering part.

6 THE COURT: Oh, I'm with you. I'm thinking. I'm
7 actually thinking.

8 MR. WHIRL: And, Your Honor, while you're thinking, just
9 one other thing. This particular witness never saw the
10 redness except for by way of photographs.

11 THE COURT: Yeah, she's testifying as an expert. If she
12 testifies, then this is the type of information that is
13 reviewed by experts in her field, then she certainly can --
14 she can certainly say that I saw a photograph and this is the
15 type of information that an expert in my field utilizes. I
16 think that's fine. I'm not troubled by that.

17 I think that -- I don't think that the testimony is being
18 bolstered if, if the testimony is, You're an expert? Yes.
19 You know how to do these examinations, do these assessments?
20 Yes. And you examined her on such and such occasion? Yes.
21 You had the benefit of her allegations and you had the benefit
22 of the prior photographs that were allegedly taken close to
23 the time of the events, are those the types of information
24 that are reviewed by experts in your field? Yes. And what
25 did you see? I saw nothing.

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1 MS. MIMS: Yes, ma'am.

2 THE COURT: I looked in the same area and I saw nothing.

3 Is that consistent -- based on your knowledge, experience and

4 training, is that, based upon what you reviewed, is that

5 consistent with digital penetration? Yes. I think you got an

6 expert. I think that's a close as you can get.

7 MS. MIMS: Yes, ma'am. That's fine.

8 THE COURT: I don't think that's bolstering. And then of

9 course, you got cross examination, it's also unspecified?

10 Yes, it's unspecified.

11 MS. MIMS: Yes, ma'am.

12 THE COURT: Okay. All right. Very well. I think that's

13 acceptable.

14 MS. MIMS: Yes, ma'am. So, that would be true with the

15 doctor who oversees everything, too; we would have to stick to

16 that type of ---

17 THE COURT: I don't know. Did the doctor who interviewed

18 ---

19 MS. MIMS: The child, no, ma'am.

20 THE COURT: That's different.

21 MS. MIMS: She refused ---

22 THE COURT: That actually gets to be different -- that's

23 different when the doctor wasn't -- tell me what the doctor

24 has reviewed -- how would the doctor testify?

25 MS. MIMS: So, the doctor would testify that she is the

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1 one who reviews and talks to and is on standby for the nurse
2 practitioners to talk to when they're doing the SANE
3 interview. I think she would testify that she would review
4 their examinations, perhaps pictures, and that type thing and
5 concur and sign off on their findings. She never actually
6 sees the child, she doesn't talk to the child. She
7 essentially goes over what evidence they've taken down in
8 their reports and says I concur with these findings and that's
9 what she does in both -- in the first report when they find
10 the redness and she does the same in Ms. Fabrizio's report,
11 where she says this is an indicator of sexual abuse.

12 THE COURT: Again, my concern is that if the element of
13 her ability to testify that this is an incident of sexual
14 abuse relies on the -- the truth-telling of the alleged victim
15 in order to reach the decision that the doctor has reached, I
16 think has got to be consistent. I think it's bolstering.

17 MS. MIMS: Okay.

18 THE COURT: In other words, their -- and the problem is
19 is that the opinion is rendered based upon the fact that the
20 expert has decided that the -- that the alleged victim is
21 telling the truth.

22 MS. MIMS: Yes, ma'am.

23 THE COURT: And that is an element that is a necessary
24 required element of the determination that this is an incident
25 of sexual abuse.

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1 MS. MIMS: Yes, ma'am. So, if I leave it consistent with
2 digital penetration ---

3 THE COURT: You concur with the -- you reviewed
4 everything and you concur with the finding that it is
5 consistent, given all of the information that the findings are
6 consistent with digital penetration.

7 MS. MIMS: Yes, ma'am. Okay.

8 THE COURT: And that's -- that doesn't bolster anything.
9 It doesn't identify an individual, it doesn't identify or
10 characterize activity; it just says this is consistent with
11 digital penetration. That is not bolstering anybody's
12 testimony.

13 MS. MIMS: Yes, ma'am. So, just for clarification
14 purposes, on direct examination, should we leave out the fact
15 that the medical diagnosis part, the hearsay exception, leave
16 that out?

17 THE COURT: Did you interview the child, interview the
18 child. I think that's fine to say -- for her to say what she
19 did.

20 MS. MIMS: She did interview the child but not
21 necessarily what the child said.

22 THE COURT: Yeah, I think she interviewed -- has had the
23 opportunity to interview the child.

24 MS. MIMS: Yes, ma'am. Okay.

25 THE COURT: I mean, that's what she did.

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1 MS. MIMS: So, if you take that -- okay, you interviewed
2 the child and then you had the benefit of the prior
3 photographs taken on the day of the incident?

4 THE COURT: Uh-huh, (affirmative response).

5 MS. MIMS: Okay. And then just go from there, but
6 nothing else about what the child said?

7 THE COURT: I'm a little uncomfortable at that point,
8 because remember, we have got -- the courts have been all on
9 this issue of bolstering.

10 MS. MIMS: Yes, ma'am.

11 THE COURT: And my concern is, is that, I think that it
12 is -- I think it's cleaner if it -- if we -- she can certainly
13 say that she interviewed her; that's part of what she did.

14 MS. MIMS: Yes, ma'am.

15 THE COURT: And she can certainly testify that she has
16 expertise in this area and that based upon what she has
17 reviewed, what her knowledge base says is that the condition
18 of her examination is consistent with digital penetration. I
19 think that's the safest and as close as you can get.

20 MR. WHIRL: Your Honor, and just so for clarity sake ---

21 THE COURT: Yeah.

22 MR. WHIRL: --- are you planning on introducing these
23 reports?

24 MS. MIMS: No.

25 MR. WHIRL: No?

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1 MS. MIMS: No.

2 MR. WHIRL: Okay. All right.

3 MS. MIMS: Because I know we've got the information we're
4 trying to keep out earlier, I think we mentioned, Your Honor,
5 so, I'm not introducing the reports, and I have already
6 instructed the witness not to go into anything dealing with
7 Mr. Cooley.

8 THE COURT: Got it.

9 MR. WHIRL: Then that's fine.

10 MS. MIMS: I would still go through the, essentially the
11 qualifications as an expert?

12 THE COURT: And be mindful -- and just so everybody is
13 clear, don't go opening any doors. Leave it closed. You
14 understand what I'm saying? For example, and doctor, you
15 cannot say to a reasonable degree of certainty that this is an
16 incident of sexual abuse, because I think you may have opened
17 the door at that point. I think you have to be very
18 circumspect. Do you know what I mean.

19 MR. WHIRL: I do.

20 THE COURT: I think you can ask all the cross examination
21 clearly that you did. You know, this consistent also with --
22 it's non-specific.

23 MR. WHILE: Right.

24 THE COURT: Right? Okay. And I think that's as close as
25 the Supreme Court will let us go.

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1 MS. MIMS: Yes, ma'am.

2 THE COURT: I could be wrong, but I think ---

3 MS. MIMS: Better safe than sorry.

4 THE COURT: Ma'am?

5 MS. MIMS: Better safe than sorry.

6 THE COURT: Well ---

7 MS. MIMS: I know.

8 THE COURT: And for your benefit, you're just gonna have
9 to pay close attention and go ---

10 MS. FABRIZIO: Okay.

11 THE COURT: I don't understand your question, if you need
12 it.

13 MS. FABRIZIO: Okay. I'm trying to listen to what you
14 all are saying because I don't want to say something that I am
15 not supposed to say.

16 THE COURT: I know. I know. And, Mr. Whirl, maybe at
17 some point, you'll let -- you'll let the Solicitor Mims do a
18 little bit of leading to be sure we don't run afoul.

19 MR. WHIRL: That would be fine.

20 THE COURT: Okay.

21 MR. WHIRL: Probably preferable.

22 THE COURT: It would be helpful.

23 MS. MIMS: Yes, ma'am. That would be great. If you
24 don't mind, I'll take just two minutes to tell her exactly how
25 I'm gonna have that -- is that okay?

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1 THE COURT: Yeah, you know, Solicitor Templeton, you just
2 never know. He's out there doing it, you know. You know, you
3 need some backup.

4 MS. MIMS: I'm telling you. Thank you very much.

5 THE COURT: Absolutely. And y'all -- are y'all gonna
6 have a conversation? That's right, because she hasn't
7 testified, so you need to have a conversation. That's no
8 problem.

9 **RECESS - 3:30**

10 *****OFF THE RECORD*****

11 **(On the Record @ 4:08 P.M.)**

12 THE COURT: All right. So, we're ready, ready and more
13 ready?

14 MS. MIMS: Yes, we are.

15 THE COURT: Okay. All right.

16 Bring us a jury, please, ma'am.

17 (REPORTER'S NOTE: Jury enters courtroom @ 4:13 P.M.)

18 THE COURT: Direct, please, ma'am?

19 CLERK: Yes, ma'am.

20 MS. MIMS: Thank you, Your Honor.

21 THE COURT: Call your next witness.

22 MS. MIMS: The state would call Kathy Fabrizio.

23 CLERK: If you would please raise your right hand and
24 state your name for the record?

25 MS. FABRIZIO: Katherine Fabrizio.

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1 KATHERINE FABRIZIO, HAVING BEEN SWORN

2 TESTIFIES AS FOLLOWS:

3 CLERK: Thank you. If you'll have a seat.

4 THE COURT: Your witness.

5 MS. MIMS: Thank you, Your Honor.

6 DIRECT EXAMINATION OF KATHERINE FABRIZIO BY MS. MIMS:

7 Q: Good afternoon, Ms. Fabrizio.

8 A: Hello.

9 Q: Can you please tell the jury where you're employed?

10 A: I work at MUSC, the Medical University of South Carolina
11 in Charleston.

12 Q: And what do you do at MUSC?

13 A: I'm a nurse practitioner.

14 Q: How long have you worked there?

15 A: I've worked there full-time since 2010, but I started
16 part-time in 2008.

17 Q: And what -- can you tell the jury, what exactly is a
18 nurse practitioner?

19 A: A nurse practitioner is somebody who you become a nurse
20 first as a registered nurse and I -- and you take care of
21 patients and then we want to be able to do more and give
22 diagnosis, then you go to more school, and then you become
23 what I became as a family nurse practitioner, and that person
24 is able to diagnose rather than just take care.

25 Q: Could you tell the jury about your education?

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1 A: I got a Bachelor of Science in nursing from the
2 University of North Carolina in Chapel Hill, and then later I
3 went to the Medical University of South Carolina and got a
4 Master's Degree in Nursing, and then a few years later, I was
5 living in Atlanta and I went back and did some specialty
6 training as a family nurse practitioner from -- at Emory
7 University. And then since then, I haven't gone to any formal
8 education but every year you have to do so many like CEUs,
9 continuing education to keep your license current. So, you
10 have to keep your license current as an advanced practice
11 nurse as well as a -- as well as a family nurse practitioner,
12 as well as, in the field that I'm in, I have to do specialty
13 CEUs for child abuse pediatrics.

14 Q: And what specialty are you -- can you tell us more about
15 the specialty you are in?

16 A: Well, I'm in child abuse pediatrics. We are sort of
17 monitored by, it's called the South Carolina Medical Response
18 System; it's call SCCAMRS, and that's out of Columbia, and
19 they sort of organize all child abuse in South Carolina. And
20 so, we meet every three -- every four months, three times a
21 year, and we meet there and you have to go to so many
22 conferences, you have to do so many exams in order to be a
23 part of SCCAMRS. And Dr. Olga Rosa is the person who
24 organizes that. She works at USC School of Medicine, and
25 she's in the Department of Pediatrics there. And she's sort

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1 of -- she is the one who basically streamlines our education
2 and our keeping us up to date on all child abuse, nationally
3 as well as in South Carolina.

4 Q: So, are you specialized in child abuse pediatrics?

5 A: Yes.

6 Q: Do you only see cases dealing with child abuse?

7 A: Yes.

8 Q: Okay. And what type of abuse cases do you see?

9 A: I see all types of abuse; physical abuse, sexual abuse,
10 medical neglect, all kinds of child neglect, educational
11 neglect, exposure to -- anyway, just lot so any type of abuse.
12 There's lots of different types of abuse and neglect with
13 children and so we see all types.

14 Q: So, have you done -- you mentioned that you've done
15 sexual assaults as well. How many sexual assault patients do
16 you think you've seen over the years?

17 A: Probably around 125. I sort of quit counting at a
18 hundred and -- and I've -- that was a couple of years ago and
19 to be perfectly honest, I can't remember how many I've done in
20 the last couple of years.

21 Q: Okay. Have you ever come to court and testified as an
22 expert in child abuse pediatrics before?

23 A: I have.

24 Q: Do you know how many times you've testified?

25 A: I think it's been three, but I'm not positive about that

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1 either.

2 Q: Okay.

3 MS. MIMS: Your Honor, at this time, I'd offer Ms.
4 Fabrizio as an expert in child abuse pediatrics?

5 THE COURT: Is there any voir dire?

6 MR. WHIRL: No, Your Honor.

7 THE COURT: Any objection?

8 MR. WHIRL: No.

9 THE COURT: Very well. So qualified.

10 BY MS. MIMS:

11 Q: Ms. Fabrizio, were you working at MUSC in 2016?

12 A: I was.

13 Q: And were you working as a nurse practitioner?

14 A: I was.

15 Q: Specialized in child abuse pediatrics?

16 A: Yes.

17 Q: Okay. And were you working -- were you -- well, let me
18 ask you this. Have you ever the chance to examine a child
19 named [REDACTED] S.C.?

20 A: I did; I examined her.

21 Q: Can you please tell the Court what date you examined
22 [REDACTED] S.C.?

23 A: I saw her on 3/24 of 2016.

24 Q: Okay. Before you examine a child, is there any protocol
25 you follow before you see them, such as do you view any

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1 photographs or anything like that?

2 A: Particularly on sexual abuse, what I do and what all the
3 people that I work with do is that you review the case before
4 you see the child. So, you review the SLED note which sort of
5 tells you what happened the night that they ---

6 Q: Well, let me ask you this. Do you review any photographs
7 of the child?

8 A: I do. I review the photographs and I review the lab
9 work.

10 Q: Okay. And do you -- let me ask you this. Was [REDACTED] S.C.
11 seen before she saw you on March the 24th, was [REDACTED] S.C. ever
12 seen before that date?

13 A: Yes, she was seen in the emergency room for acute sexual
14 assault of 3/5.

15 Q: On 3/5?

16 A: And I was seeing her back -- we usually try to get them
17 in two weeks later; it's called their two-week follow-up. And
18 so, that's protocol that we see them for a two-week follow-up.
19 So, I was seeing her for the two-week follow-up.

20 Q: Okay. I understand. So, during these interviews or
21 during these examinations, do you interview the child ahead of
22 time?

23 A: I do talk to the child.

24 Q: Okay. Are pictures taken during these types of
25 examinations?

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1 A: Yes, I took pictures.

2 Q: And were the pictures -- would pictures have been taken
3 on the first time she was examined, which was on 3/5 of 2016?

4 A: Yes, our protocol is that we take pictures unless the
5 child refuses or the parent refuses or some, you know ---

6 Q: Okay. I understand. So, before you conducted your
7 examination of [REDACTED] S.C. on March the 24th, she had previously
8 been seen on March the 5th; is that right?

9 A: Yes, that's correct.

10 Q: And you were able to review photographs from that March
11 5th visit as well?

12 A: Uh-huh, (affirmative response). I reviewed those
13 pictures before I saw her.

14 Q: Okay. When you reviewing those pictures, did -- were you
15 able to see if there was any signs of injury or any redness or
16 anything different about her genitalia that day?

17 A: There was redness of the hymenal tissue at between like
18 5:00 and 6 o'clock. You look at the hymen like a clock. You
19 talk about it like a clock, and so, between 5:00 and 6:00 is
20 like the base of a clock is where the redness was.

21 Q: Okay. And when looking at those pictures, did you see
22 any other injuries besides that?

23 A: No.

24 Q: Okay. And so, [REDACTED] S.C. came back and saw you two weeks
25 later?

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- 1 A: Yes.
- 2 Q: Is that normal to ask a child to come back in two weeks?
- 3 A: Yes.
- 4 Q: Okay.
- 5 A: That's our protocol.
- 6 Q: Okay. And why did you do that?
- 7 A: We do that to see if there are any changes.
- 8 Q: Okay. And did you examine S.C. again on March the
- 9 24th of 2016?
- 10 A: That was my first exam, and so she was examined for the
- 11 second time for this situation.
- 12 Q: Okay. And you saw her yourself?
- 13 A: I saw her myself.
- 14 Q: Okay. And did you conduct a full physical exam?
- 15 A: Yes.
- 16 Q: And, and what were you looking for?
- 17 A: You just do a general pediatric exam, just to make sure
- 18 she's healthy and then you do the genital exam to see if there
- 19 are any changes. Sometimes, you get breaking out and lesions;
- 20 you can get, you know, you can get warty breakouts, you can
- 21 get herpes breakouts, you can -- so if some things happen
- 22 around two weeks and so, you want to make sure that doesn't
- 23 happen. And then if there was an injury, you want to see if
- 24 that injury is still there, or if it was something that's just
- 25 part of her body or if it was a chronic condition or something

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1 that was an acute finding at the time.

2 Q: I understand. So, on the first visit, there was redness
3 to the hymen?

4 A: Yes.

5 Q: What type of test did you conduct to see if that injury
6 was still there?

7 A: What I did in her particular case and what you try to do
8 is trace with a Q-tip and, in this particular case, I used a
9 scope which is sort of like a large Q-tip. I put a blue glove
10 over it because it gives a color contrast so you can see the
11 tissue very well. And so, you, with a glove scopette, you put
12 that sort of inside the vagina and then trace the hymen around
13 and you can see very clearly what the hymen looks like.

14 Q: Was there any redness when she came back and saw you two
15 weeks later?

16 A: She had none.

17 Q: Okay. What type of indication does that mean, what type
18 of -- what does that mean?

19 A: That means that she probably had an injury to that area
20 initially, and it was acute at the time, and that it has now
21 resolved.

22 Q: Okay. So, when you saw her on March 24th, the injury
23 that was there on March 5th was gone?

24 A: It was gone.

25 Q: Okay. Is that consistent or would that be consistent

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KATHERINE FABRIZIO - CROSS BY WHIRL

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1 with digital penetration?

2 A: Yes.

3 Q: Okay.

4 MS. MIMS: I beg the Court's indulgence, Your Honor.

5 THE COURT: All right.

6 MS. MIMS: I have no further questions.

7 THE COURT: All right.

8 Cross examination?

9 MR. WHIRL: Thank you, Your Honor.

10 CROSS EXAMINATION OF KATHERINE FABRIZIO BY MR. WHIRL:

11 Q: Good afternoon?

12 A: Hello.

13 Q: Now, the method that you used, you said to exam the
14 hymen, that's not an instrument called a speculum, is it?

15 A: No.

16 Q: Okay. All right.

17 A: No.

18 Q: And do you have any idea whether as part of the first
19 examination, what method was used?

20 A: I believe she used a Q-tip. She used a smaller Q-tip.

21 Q: Okay.

22 A: Sometimes on the first exam, when they might be tender,
23 you might just use a small Q-tip, because a scopette is much
24 larger and, if they're having any pain, that can create more
25 pressure.

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- 1 Q: Okay.
- 2 A: It's sort of a better exam but it can create more
3 pressure. But the standard of care would be you can use just
4 a Q-tip.
- 5 Q: Okay. But you don't -- you're not sure what she used in
6 the first exam?
- 7 A: I am sorry; I can't remember.
- 8 Q: No, that's fine.
- 9 A: I think she used a Q-tip. I know she didn't use the
10 scopette.
- 11 Q: Okay. And what is the definition of -- and I'm gonna
12 spell this -- E-R-Y-T-H-E-M-A of the hymen?
- 13 A: Erythema?
- 14 Q: Erythema, yes.
- 15 A: Okay. That's redness.
- 16 Q: That is redness?
- 17 A: That's just another word for redness.
- 18 Q: So, that's what we're talking about?
- 19 A: Yeah. Uh-huh, (affirmative response).
- 20 Q: Okay. And is it safe to say that the legal definition or
21 not the legal, but the medical definition is redness of the
22 hymen membrane produced by congestion? Close enough?
- 23 A: Say that one more time.
- 24 Q: Redness of the hymen membrane ---
- 25 A: Uh-huh, (affirmative response).

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- 1 Q: --- that is produced by congestion, C-O-N-G-E-S-T-I-O-N?
- 2 A: Congestion, I've never heard that.
- 3 Q: Okay. Enlargement ---
- 4 A: I did not see any swelling of the tissue. So,
- 5 congestion, I think maybe congestion might mean that there is
- 6 some swelling of the tissue and I didn't see swelling of the
- 7 tissue.
- 8 Q: You didn't see any of that?
- 9 A: I just saw the redness.
- 10 Q: Okay. Great. And could that redness be as a result of a
- 11 non-specific finding?
- 12 A: Yes.
- 13 Q: And what is a non-specific finding?
- 14 A: A non-specific finding would be something that's not
- 15 related. It's just like just touching an area or rubbing an
- 16 area. It doesn't have to be sexual abuse; it could be -- it
- 17 means it could be non-specific; it doesn't have to be sexual
- 18 abuse.
- 19 Q: So, it wouldn't necessarily have to have anything to do
- 20 with fingering, non-specific?
- 21 A: Correct.
- 22 Q: Okay. And as an example, could non-specific be caused by
- 23 running, jumping, stretching, riding a bike, or rubbing
- 24 yourself?
- 25 A: Rubbing yourself could cause it. I think the other ones,

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1 not necessarily. The hymenal tissue is very well protected;
2 it has the labia minora that covers it. It has the labia
3 majora that covers it. So, I would think the hymen is sort of
4 tucked in pretty deeply, so that running, biking -- not that I
5 have gotten somebody to run and then brought them in and
6 looked at their hymen, but that type of -- I would not think
7 that that would cause redness of the hymen. But I think
8 rubbing yourself, if you rub yourself because you can -- with
9 your finger, you could get close to your hymen or in your
10 hymen.

11 Q: Okay.

12 A: So, you could get redness that way.

13 Q: Okay. All right. Thank you. Nothing further.

14 THE COURT: All right.

15 Redirect?

16 MS. MIMS: No, ma'am.

17 THE COURT: Is this witness free to leave and is there
18 any objection?

19 MR. WHIRL: No objection, Your Honor.

20 THE COURT: All right. Very well.

21 Thank you. You are free to go.

22 Call your witness, please.

23 MR. TEMPLETON: The state calls Dr. Amaya.

24 I apologize, Your Honor. She's coming up right now.

25 THE COURT: All right. Very well. Thank you.

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MICHELLE AMAYA - DIRECT BY TEMPLETON

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1 CLERK: If you'll please raise your right hand and state
2 your name for the record.

3 MS. AMAYA: I'm sorry. I just ran up all those steps.
4 Michelle Amaya.

5 MICHELLE AMAYA, HAVING BEEN DULY
6 SWORN TESTIFIES AS FOLLOWS:

7 CLERK: Thank you. You may have a seat.

8 THE COURT: Your witness.

9 DIRECT EXAMINATION OF MICHELLE AMAYA BY MR. TEMPLETON:

10 Q: Good afternoon.

11 A: Hi.

12 Q: If you would, tell the jury where you're employed.

13 A: I work at the Medical University of South Carolina in
14 Charleston.

15 Q: Okay. And what is your position at the Medical
16 University?

17 A: I am a faculty physician, attending physician in
18 pediatrics.

19 Q: Okay. Do you have -- if you would, briefly go through
20 your educational background, please?

21 A: Sure. I graduated from college in 1982, sorry, 1986.
22 Then I graduated from medical school in 1990 from the
23 University of North Carolina at Chapel Hill. And then, I did
24 a three-year fellowship in -- at MUSC, sorry, at UAB,
25 University of Alabama in Birmingham, and I completed that and

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1 got a Master's in Public Health at the same time. Then
2 finished that in 1996. And then, since that -- I was first
3 appointed as a an assistant professor in pediatrics there. I
4 as recruited to MUSC about 10 years ago in 2008, and I've been
5 working there since then.

6 Q: Do you hold any board certifications?

7 A: I do.

8 Q: What are those board certifications in?

9 A: I am double-board certified. So, I am board certified in
10 general child -- I'm sorry -- in general pediatrics and then
11 I'm also board certified in child abuse pediatrics.

12 Q: Okay. Have you been qualified as an expert before in
13 child abuse pediatrics?

14 A: Yes, I have.

15 Q: Approximately how many times?

16 A: More than 30.

17 Q: Okay.

18 MR. TEMPLETON: Your Honor, at this time, the state would
19 offer Dr. Amaya as an expert in child abuse pediatrics?

20 THE COURT: Any voir dire?

21 MR. WHIRL: No voir dire, no objection.

22 THE COURT: Very well. So qualified.

23 BY MR. TEMPLETON:

24 Q: Dr. Amaya, did you review the reports -- did you review a
25 SANE report in this case?

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1 A: I did.

2 Q: Was that done by Stacey Defrank?

3 A: It was.

4 Q: Okay. When you review one of these reports, what all do
5 you do?

6 A: Well, the most important thing is just go through
7 everything that was written and make sure that all the things
8 were done appropriately and signed off, and note the time that
9 they came in, and we look to see if the appropriate referrals
10 have been made. Most of the time, the pediatric SANE nurse
11 will do images even if they don't collect forensic evidence,
12 because sometimes with a little tiny girl or little tiny
13 children they may have like mouth swabs for their own DNA.
14 So, and then I review the images that are stored on a secure
15 server.

16 Q: Okay. Did you review the images in this case?

17 A: Yes, I did.

18 Q: Okay. Would you tell the jury what the findings of those
19 or what you saw on those images?

20 A: On the images, sure. I knew reviewing the case that this
21 was a young girl pubertal. She had signs of pubertal
22 development on her images. She had -- specifically meaning
23 that she had some pubic hair. She also had changes in the --
24 the opening to the vagina that are typical of estrogen changes
25 so that makes a little bit of vaginal secretion that makes

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1 things a little more spongy and a little bit more stretchy.
2 And she had an abnormality where there was some redness, an
3 abnormal amount of redness in the tissues right on the vaginal
4 opening itself. So, the tissue is called hymenal tissue, and
5 it was around 5 o'clock, 5:00 or 6 o'clock, between 5:00 and 6
6 o'clock position.

7 Q: Okay. Did you ultimately agree with the findings of the
8 SANE nurse, Stacey Defrank?

9 A: I did.

10 Q: Okay. Did you also review a report done by Katherine
11 Fabrizio in this case?

12 A: Yes, I did.

13 Q: Did you review photographs that she took in this case?

14 A: I did.

15 Q: Okay. If you would, did you find some of those same
16 things in Kathy Fabrizio's photographs as you did in Ms.
17 Defrank's?

18 A: I did not.

19 Q: Okay. What was different?

20 A: She no -- the child no longer had any redness of the
21 vaginal tissues.

22 Q: Ultimately, based on that change from the first report to
23 the second report, do you -- do you believe that that could be
24 consistent with digital penetration?

25 A: I'm sorry, will you say that again?

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MICHELLE AMAYA - CROSS BY WHIRL

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1 Q: The changes in the redness from having redness in the
2 first exam and not having that redness in the second exam,
3 could that be consistent with digital penetration?

4 A: May I answer it more than yes or no?

5 Q: Absolutely, yeah, you can explain.

6 A: Okay. So, the main purpose of that follow-up exam was to
7 do a more comprehensive assessment, because that SANE nurse in
8 the emergency department is recording findings but not making
9 any interpretations and collecting evidence. So, then the
10 detailed high-level comprehensive evaluation that was done by
11 my partner, Ms. Fabrizio, was to look and see if the findings
12 were still there because, if there was still redness there,
13 then there's a whole differential diagnosis or a list of
14 possible causes, including could it have been like a
15 congenital finding, did she have a like a birthmark or
16 something. They're not that uncommon to have a hemangioma to
17 cause a redness in the area.

18 So, to answer the question, is that because there wasn't
19 any redness there and it was otherwise a normal appearing exam
20 at that time, means that was a temporary, brief problem. So,
21 could that digital penetration have caused her the redness in
22 the focal area? Absolutely.

23 Q: Okay.

24 MR. TEMPLETON: I beg the Court's indulgence.

25 THE COURT: All right.

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1 BY MR. TEMPLETON:

2 Q: Please answer any questions Mr. Whirl may have.

3 THE COURT: Cross examination?

4 MR. WHIRL: Thank you.

5 CROSS EXAMINATION OF MELANIE AMAYA BY MR. WHIRL:

6 Q: Dr. Amaya?

7 A: Yes, sir.

8 Q: Could the redness also be non-specific?

9 A: Yes, sir; it could be.

10 Q: Okay. And by non-specific, what does that mean?

11 A: Could there -- well, it means that there could've been
12 other causes, not a specific cause.

13 Q: And we're talking about the specific cause of fingering
14 her. So, there could be causes other than that that caused
15 the redness?

16 A: That's true.

17 Q: Okay. And ---

18 A: May I add something?

19 Q: I -- you've answered my question.

20 MR. TEMPLETON: I believe she's entitled to explain.

21 THE COURT: I think she's explained it. If you want to
22 go into it on redirect perhaps, but I think she's answered the
23 question.

24 MR. WHIRL: Thank you.

25 BY MR. WHIRL:

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MICHELLE AMAYA - CROSS BY WHIRL

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1 Q: And when you -- you said you reviewed the report of the
2 SANE nurse?
3 A: Yes, sir.
4 Q: And do you recall the post assessment, and by that, I
5 mean whether or not she bathed or any of those things prior to
6 seeing the SANE nurse?
7 A: I believe that she had only had something to drink.
8 Q: Okay.
9 A: I have it here if you want me to look.
10 Q: Specifically, she did not urinate, did not have any
11 genital wipes used?
12 A: I have that she ate or drank, yes.
13 Q: Okay. Didn't change clothes? Did not change any
14 clothes?
15 A: That was indicated, yes, no change.
16 Q: All right. Thank you. Nothing further.
17 THE COURT: All right. Redirect?
18 MR. TEMPLETON: None, Your Honor.
19 THE COURT: And is this witness free to leave?
20 MR. TEMPLETON: She is.
21 MR. WHIRL: No objection.
22 THE COURT: Very well. Thank you. You may do so.
23 All right. Call your next witness, please?
24 MS. MIMS: The state would rest, Your Honor.
25 BY THE COURT:

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MOTIONS

1 THE COURT: All right. Very well. Ladies and gentlemen,
2 you have now heard the witnesses and received the evidence
3 which you will from the state in the state's case in chief.
4 That signifies to me that there are matters that I must take
5 up outside your presence. I'm going to ask you to please step
6 to your jury room, leaving your notebooks in your seat. Do
7 not discuss this matter and do not allow anyone to discuss it
8 with you. We will be with you shortly.

9 (REPORTER'S NOTE: Jury exits courtroom @ 4:38 P.M.)

10 THE COURT: All right. Motions, Mr. Whirl?

11 MOTIONS:

12 MR. WHIRL: Your Honor, we would, as our right, move for
13 a directed verdict at this time. We would submit to the Court
14 that the state has not met its burden at this point.
15 Specifically, what we have is a subjective statement. There
16 is no DNA to back that up. There is the objective medical
17 data, which at this point, as presented to the court that this
18 could have been a non-specific finding. And based upon that,
19 we would say -- we would ask the court for a directed verdict
20 of not guilty.

21 THE COURT: Thank you so much, Mr. Whirl. I would
22 respectfully deny your motion. There is direct evidence on
23 each and every element of the -- of the indictment, which of
24 course is criminal sexual conduct with a minor in the second
25 degree, and there is direct evidence on each element. It's

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1 not for the Court to weigh the evidence, but it is for the
2 Court to ask ascertain whether or not there is evidence on
3 each and every element from which a jury could reasonably find
4 and determine -- find a verdict of guilty, and I so find there
5 is direct evidence of that.

6 All right. Tell me where you are in terms of your case.
7 I know I need to -- I know I need to examine and have a
8 conversation with your client.

9 MR. WHIRL: Not withstanding having a conversation with
10 him ---

11 THE COURT: Yes.

12 MR. WHIRL: --- about whether or not he's gonna testify,
13 I have two witnesses. I would suspect that may at most 15
14 minutes each.

15 THE COURT: Very well. Well, what I think I would do is
16 to examine your client at this point with regards to whether
17 or not he wishes to testify. We'll do that now. Okay?

18 MR. WHIRL: May I have a moment?

19 THE COURT: Sure.

20 (REPORTER'S NOTE: Mr. Whirl confers with Defendant.)

21 THE COURT: All right. You ready?

22 MR. WHIRL: Yes.

23 THE COURT: Very well. If you would please stand for me,
24 Mr. Cooley?

25 CLERK: If you'll please raise your right hand and state

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VERNON COOLEY - BY THE COURT

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1 your name for the record.

2 MR. COOLEY: Vernon Cooley.

3 VERNON COOLEY, HAVING BEEN DULY SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: Thank you.

6 THE COURT: All right. You are Vernon Cooley?

7 MR. COOLEY: Yes, ma'am.

8 THE COURT: All right. Mr. Cooley, at this time, I am
9 going to explain to you certain of your rights. If you do not
10 understand anything that I say, please let me know. There are
11 many ways to explain any one thing. If you want me to explain
12 in more detail, please let me know. Do you understand?

13 MR. COOLEY: Yes, ma'am.

14 THE COURT: It's very important that you understand what
15 I'm about to go over with you. So, if you need to ask me
16 questions, ask me to explain further, I want you to do that.

17 We've now reached the stage of the trial, where you may
18 present your defense. You have the right to claim the
19 protections given to you by the Fifth Amendment to the
20 Constitution of the United States. This amendment states in
21 part that no person shall be compelled in any criminal case to
22 be a witness against himself. This means that you cannot be
23 required to testify in this case. You have the right to
24 testify on your own behalf; however, no one can make you
25 testify. This is a personal right and no one can waive this

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VERNON COOLEY - BY THE COURT

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1 right except you. If you decide to testify, you'll be subject
2 to the same rules that govern other witnesses and you may be
3 examined and cross examined on any relevant issue in this
4 case. In addition, if you have any convictions involving
5 dishonesty or false statements or for crimes punishable by a
6 imprisonment for more than one year and this Court determines
7 that the probative value of admitting this evidence outweighs
8 its prejudicial effect to you, the solicitor will be able to
9 introduce your record to attack your credibility. I have not
10 had any information with regards to your record, Mr. Cooley.
11 I just wanted to share that with you. This is simply a
12 statement of the law. You understand?

13 MR. COOLEY: Yes, ma'am.

14 THE COURT: All right. If you decide to testify, this
15 decision on your part, must be freely, voluntarily, and
16 intelligently made with the knowledge of the protections given
17 to you by the Fifth Amendment and the consequences of your
18 decision to testify. If you decide not to testify, I will
19 instruct the jurors that they cannot give the fact that you
20 did not testify any consideration whatsoever, and that there
21 is to be absolutely no prejudice to you because you did not
22 testify. It is left entirely up to you whether or not you
23 testify. You may talk with your attorney, your family,
24 friends, or anyone else, but the final decision will be left
25 entirely up to you.

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VERNON COOLEY - BY THE COURT

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1 And, Ms. Mims, have you all shared with Mr. Cooley any
2 record that you've been able to ascertain?

3 MS. MIMS: Your Honor, he has several charges out of
4 state but no convictions. So, I don't see any way of ---

5 THE COURT: Very well.

6 MS. MIMS: --- crossing him on that.

7 THE COURT: Very well. I think that's helpful
8 information for you to have. Do you agree, Mr. Whirl?

9 MR. WHIRL: I do, Your Honor.

10 THE COURT: All right. Do you explain -- do you
11 understand what I have explained to you, Mr. Cooley?

12 MR. COOLEY: Yes, ma'am.

13 THE COURT: And do you have any questions?

14 MR. COOLEY: No, ma'am.

15 THE COURT: All right. And have you had ample
16 opportunity to discuss with Mr. Whirl whether you should or
17 should not testify?

18 MR. COOLEY: Yes.

19 THE COURT: And do you wish to talk to Mr. Whirl any more
20 at this time regarding whether you wish to testify or not?

21 MR. COOLEY: No, ma'am

22 THE COURT: You do not need to talk to him further?

23 MR. COOLEY: No, ma'am.

24 THE COURT: No?

25 MR. COOLEY: No, ma'am.

BY THE COURT

1 THE COURT: All right. And do you wish to testify?

2 MR. COOLEY: No, ma'am.

3 THE COURT: Very well. Very well. All right. And you
4 may be seated. Thank you, Mr. Cooley.

5 MR. COOLEY: Thank you, ma'am.

6 BY THE COURT:

7 THE COURT: Now, Mr. Whirl, do I understand correctly
8 that your witnesses are to be present in the morning?

9 MR. WHIRL: Whatever time you tell me to have them here,
10 Your Honor.

11 THE COURT: All right.

12 Yes?

13 MS. MIMS: Your Honor, we will need date of births of his
14 witnesses, so that we can run rap sheets.

15 THE COURT: Okay. Date of birth; oh, yes. Okay, of the
16 witnesses. All right. And you'll be able to provide that?

17 MR. WHIRL: I should be, yes.

18 THE COURT: All right. Very well. All right. Hopefully
19 the folks when they were born, right?

20 MR. WHIRL: Right.

21 THE COURT: All right. Very well. And, Mr. Whirl, are
22 your witnesses -- are any of them present this afternoon?

23 MR. WHIRL: No. No, Your Honor.

24 THE COURT: That's what I thought.

25 MR. WHIRL: They are both noticed for tomorrow morning.

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BY THE COURT

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1 THE COURT: I understand. I understand completely. And
2 it's about 17 minutes until 5:00. So, by the time the jury
3 comes out and I make instruction regarding this evening, it
4 will be 5 o'clock. All right. Very well.

5 I would propose to start in the morning at 9:00 or 9:30.
6 Okay. All right.

7 Anything further before I let the jury back out?

8 MS. MIMS: No, ma'am.

9 MR. WHIRL: Just which one, Your Honor, 9:00 or 9:30?

10 THE COURT: You have two witnesses?

11 MR. WHIRL: I have two.

12 THE COURT: And don't know at this point whether or not
13 there'll be any reply or rebuttal, but you don't normally do
14 that.

15 9:30?

16 MR. WHIRL: 9:30. Thank you.

17 THE COURT: All right.

18 (REPORTER'S NOTE: Jury enters courtroom @ 4:49 P.M.)

19 THE COURT: Ladies and gentlemen, I don't know if you
20 noticed the time but, by the time I have concluded my
21 opportunity to talk to you about this evening, it's gonna be 5
22 o'clock. So, we're not gonna do anymore work today, but I do
23 need to give you some instructions. And my intention is for
24 us to begin in the morning at 9:30. We started at 9:00 this
25 morning, but my intent and I know you all came in a little bit

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BY THE COURT

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1 later at 10:00, but my intention is for us to begin in the
2 morning at 9:30. Does that pose any problem for anybody?
3 Okay. Very well.

4 This -- I love to do this. How many people are from
5 below the swamp; that's Summerville? Below the swamp. How
6 many people are above the swamp? Normally, it's ---

7 JUROR: I'm on this end. So, whichever end that is.

8 THE COURT: I don't know which; this end or that end.

9 JUROR: I'm just ---

10 THE COURT: Normally, we have -- that's about we break
11 down to be, 10 people from below the swamp; you're above the
12 swamp. You're above the swamp. It's usually breaks down
13 almost every time to about 10 people below and about two up.
14 When that becomes very important is -- is when jurors go out
15 for lunch because I have a great time telling folks when they
16 go out to lunch that are from below the swamp that all of the
17 dining opportunities in St. George lie along Highway 78.

18 Ladies and gentlemen, we're gonna begin in the morning at
19 9:30. You're going to be going home this evening and there's
20 going to be somebody even more curious about what you have
21 been up to. So, you have to remember that you cannot discuss
22 this matter or allow anyone to discuss it with you. But
23 again, I don't want anybody getting upset with my jurors. Put
24 it on the Judge, and whoever -- I just tell folks, you go to
25 work at night and you -- y'all are like together in this and

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BY THE COURT

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1 how did they -- were they accepting last evening? More or
2 less?

3 JUROR: I left a phone message and she called me at 7:00
4 A.M. and asked if I was joking and I said no and she was like,
5 that was about it. As long as I have a document when we
6 leave, it's fine.

7 THE COURT: Indeed you will. Indeed you will. And
8 again, same thing, you must rest tonight. And if anybody is
9 unhappy and needs me to have a conversation, I'm excited to do
10 that. Give me a name and number and I'm excited to make that
11 phone call. And so, because I don't want -- I genuinely do
12 not want anyone upsetting my jurors. I want them to be upset
13 with me, not you.

14 Now, ladies and gentlemen, remember, remember you must
15 not discuss this matter, you must not allow anyone to discuss
16 it with you. No investigation. Do not go to social media, no
17 blogging, no tweeting, no going to Facebook, MySpace with
18 regards to this matter or anyone that has anything to do with
19 it or any sort of investigation. Don't even go looking up a
20 definition of a word. You must receive all of the information
21 from which you will make up your minds here in court while the
22 court is in session. And don't communicate with anyone face
23 to face or blogging, tweeting, by telephone, or any other
24 means. You cannot talk about this case or allow anyone to
25 discuss it with you.

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1 Your notes that you have, those are going to be secured
2 over the evening for you. And then typically, I think they
3 pass them out to you as you come in in the morning. We also
4 put them along the -- the bar here at the jury rail just to
5 allow you to pick them up, so you can pick up your own
6 notepads.

7 Ladies and gentlemen, have a very pleasant evening and we
8 will see you in the morning. Remember the admonition about
9 cell phones, and I'll see you at 9:30. Have a good evening.
10 (REPORTER'S NOTE: Jury exits courtroom @ 4:53 P.M. The
11 following takes place outside the presence of the jury.)

12 THE COURT: All right. What I'm going to ask you all to
13 do and it's a little bit perhaps a tiny bit premature, but I
14 did want to go over with you a little bit about the charge if
15 y'all don't mind just y'all can come up here and we'll talk
16 about it. I don't have it completed, but it's close to being
17 completed, but it's not quite completed, and I'll give you
18 hopefully a copy of it to you in the morning and we'll be able
19 to go over it. But I did want to see you guys for just a
20 moment.

21 Anything further from the state or defense before we ---

22 MR. WHIRL: No, Your Honor.

23 MS. MIMS: No, ma'am.

24 RECESS - 4:55 P.M. - END OF DAY TWO.

25 *****OFF THE RECORD*****

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HENRY MORANT - DIRECT BY WHIRL

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1 **AUGUST 29, 2018 - DAY THREE**

2 **(On the Record - 9:54 A.M.)**

3 (REPORTER'S NOTE: Jury enters courtroom @ 9:55 A.M.)

4 THE COURT: Good morning, ladies and gentlemen.

5 At this time we will continue and we will hear from the
6 defense.

7 Mr. Whirl?

8 MR. WHIRL: Thank you, Your Honor.

9 THE COURT: Yes.

10 MR. WHIRL: The defense calls Mr. Henry Morant.

11 CLERK: If you'll please raise your right hand and state
12 your name for the record.

13 MR. MORANT: Henry Morant.

14 HENRY MORANT, HAVING BEEN DULY SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: Thank you. You can have a seat.

17 DIRECT EXAMINATION OF HENRY MORANT BY MR. WHIRL:

18 Q: Good morning, sir.

19 A: Good morning.

20 Q: If you'll sort of lean forward and speak into that
21 microphone, if necessary. So, what's your full name?

22 A: Henry Morant.

23 Q: And where do you live?

24 A: 705 South Lane.

25 Q: Okay.

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HENRY MORANT - DIRECT BY WHIRL

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- 1 A: Summerville, South Carolina.
- 2 Q: Thank you. And where do you work?
- 3 A: Same place, 705 South Lane.
- 4 Q: Okay. And what is that location?
- 5 A: That's the seminary of Diocese of the Southeast Reformed
- 6 Episcopal Church.
- 7 Q: Okay. How old are you, sir?
- 8 A: I'm 57.
- 9 Q: Okay. And do you know Mr. Cooley?
- 10 A: Yes.
- 11 Q: All right. Have you ever seen his granddaughter, S.C.
- 12 ?
- 13 A: No, not until that day whenever I saw her; that was my
- 14 first time seeing her.
- 15 Q: Okay. And the date that you're talking about, would that
- 16 be March 5th of 2016?
- 17 A: Yes, sir.
- 18 Q: Okay. And on the date of March 5th of 2016, did you have
- 19 an occasion to visit Mr. Cooley's home?
- 20 A: I did.
- 21 Q: And about -- do you know about what time you arrived
- 22 there?
- 23 A: I'd say approximately between 9:30 and 10:30, 11:00,
- 24 something like that.
- 25 Q: Okay. So, you were there somewhere between 10 o'clock

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HENRY MORANT - DIRECT BY WHIRL

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1 and 11 o'clock?

2 A: Yes.

3 Q: Okay. And when you arrived there, who was there?

4 A: Mr. Cooley.

5 Q: Okay. And why did you go to Mr. Cooley's home?

6 A: He wanted me to put a BBQ grill together and a lawn
7 mower.

8 Q: Okay. And did you in fact work on that while you were
9 there?

10 A: Yes.

11 Q: Okay. And while you were there on March 5th, who
12 arrived? Well, did -- did any of his grandchildren arrive?

13 A: Yes, they, they did approach -- come to the yard.

14 Q: Okay. And was Miss [REDACTED] S.C. one of the
15 grandchildren that arrived?

16 A: Yes.

17 Q: Okay. Now, while she was there, did you ever see her go
18 into the house?

19 A: Well, no, she went in to use the restroom, you know, I
20 didn't see her ---

21 Q: Okay. Okay. And did you ever see Mr. Cooley go into the
22 house?

23 A: No, I saw him go on the front porch. You know, I was out
24 in the yard working on the grill or whatever, and he did walk
25 up onto the porch and asked what was she doing in the house,

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HENRY MORANT - DIRECT BY WHIRL

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1 you know.

2 Q: Okay. So, when you say the front porch, is there a ---

3 A: It's a screened-in porch like before you go in there to

4 the front door.

5 Q: Okay. All right. All right. And any idea how long he

6 may have been on the porch?

7 A: Thirty seconds.

8 Q: Okay. So, do you ever recall -- well, let me back up.

9 Were you at the home when Mr. Cooley left to go to breakfast?

10 A: Yes.

11 Q: Okay. And were you at the home when Mr. Cooley returned

12 from breakfast?

13 A: I was.

14 Q: Okay. And when he came back, what did he have with him?

15 A: Burger King bag.

16 Q: So, is it safe to assume that he may've gone to Burger

17 King?

18 A: Yes.

19 Q: Okay. And what time, do you recall what time you left

20 Mr. Cooley's home that day?

21 A: I guess it was probably 1:00 or 2 o'clock, sometime

22 around there.

23 Q: Okay. So, were you at Mr. Cooley's home when Miss

24 **S.C.** and her father -- her step-father, Mr. Pringle,

25 arrived?

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HENRY MORANT - CROSS BY TEMPLETON

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1 A: Yes.

2 Q: Okay. And were you there when the police arrived?

3 A: No, I was not.

4 Q: So, you were gone by the time the police got there?

5 A: Yeah.

6 Q: Okay. Please answer any questions that the state may

7 have.

8 THE COURT: Cross examination?

9 CROSS EXAMINATION OF HENRY MORANT BY MR. TEMPLETON:

10 Q: Good morning.

11 A: Good morning.

12 Q: How long have you know Mr. Cooley?

13 A: About a year, a year and a half maybe.

14 Q: A year, year and a half now?

15 A: Yeah, when I knew him. We met, I met him about a year

16 prior to him coming here.

17 Q: I don't quite understand what you're saying. When did

18 you meet him for the first time?

19 A: Okay. I would say 2015.

20 Q: Okay. How did you get to know Mr. Cooley?

21 A: Well, I do a lot of maintenance work, and I was working

22 with one of his neighbors over there and I met him.

23 Q: Okay. Which neighbor?

24 A: One of the older fellows that live over there in that

25 neighborhood.

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HENRY MORANT - CROSS BY TEMPLETON

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- 1 Q: Okay. You don't know his name?
- 2 A: Robbie.
- 3 Q: Okay. Some guy named Robbie?
- 4 A: Uh-huh, (affirmative response)
- 5 Q: All right.
- 6 A: Right.
- 7 Q: Do you have a cell phone?
- 8 A: Yes, I do.
- 9 Q: What's your cell phone number?
- 10 A: 709-4839, 843 area code.
- 11 Q: Okay. Do you have a mode of transportation?
- 12 A: A bicycle.
- 13 Q: Okay. Did you ever tell this story to anyone before
- 14 today?
- 15 A: I'm pretty sure I mentioned it at one time or another.
- 16 Q: Did you ever tell law enforcement that you could provide
- 17 an alibi for the defendant?
- 18 A: I had no reason to, no.
- 19 Q: I mean, your friend had gotten arrested and you had this
- 20 information, you didn't think that would be important to
- 21 provide to law enforcement?
- 22 A: No, I didn't take it upon myself to went to law
- 23 enforcement and give that information.
- 24 Q: Okay. Even though it would've helped your friend?
- 25 A: Yeah.

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HENRY MORANT - CROSS BY TEMPLETON

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- 1 Q: Okay. When did you move to Summerville?
- 2 A: Approximately -- let's see -- I've been here about 17
- 3 years now.
- 4 Q: Okay. Where did you live before Summerville?
- 5 A: Kingstree, South Carolina.
- 6 Q: Is that in Williamsburg County?
- 7 A: Yes.
- 8 Q: Okay. And when again did you arrive at Mr. Cooley's
- 9 house?
- 10 A: It was that morning, I'd say about 10 o'clock.
- 11 Q: About 10 o'clock?
- 12 A: Yeah.
- 13 Q: And you left around 1 o'clock?
- 14 A: 1:00 or 2 o'clock, something like that.
- 15 Q: Okay. Why did you leave, were you done putting together
- 16 your stuff?
- 17 A: Right.
- 18 Q: Okay. It wasn't because Mr. Eddie and the victim came
- 19 back up and confronted Mr. Cooley? Were you there -- you just
- 20 testified you were there when that happened, right?
- 21 A: Yeah, I was there.
- 22 Q: And Mr. Eddie was calling the police; he told y'all that,
- 23 didn't he?
- 24 A: I didn't know all about that.
- 25 Q: That's now why you left that day?

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HENRY MORANT - REDIRECT BY WHIRL

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1 A: No.

2 Q: Okay. Do you have any reason why Mr. Cooley has
3 indicated that there was nobody else there during this entire
4 period of time, but you're coming in and testifying otherwise?

5 A: Well, I was there ---

6 MR. WHIRL: Objection, Your Honor. There is no evidence
7 -- there has been no testimony from Mr. Cooley to that effect.

8 MR. TEMPLETON: It came out through Detective Blanchard.

9 THE COURT: I'll sustain on pitting witnesses.

10 MR. TEMPLETON: Thank you, Your Honor.

11 I beg the Court's indulgence?

12 THE COURT: Sure.

13 MR. TEMPLETON: I have no further questions.

14 THE COURT: All right. Redirect?

15 MR. WHIRL: Just one question.

16 REDIRECT EXAMINATION OF HENRY MORANT BY MR. WHIRL:

17 Q: Mr. Morant, did law enforcement approach you at any time
18 and ask you about or try to investigate what happened that
19 day?

20 A: No, sir.

21 Q: Thank you.

22 MR. TEMPLETON: No further questions, Your Honor.

23 THE COURT: Very well. Is this witness free to leave and
24 any objection?

25 MR. TEMPLETON: No objection.

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CAROLINE COOLEY - DIRECT BY WHIRL

1 THE COURT: Very well. You are free to go.

2 MR. MORANT: Thank you, ma'am. All right.

3 THE COURT: Call your next witness, please.

4 MR. WHIRL: Your Honor, I call Ms. Caroline Cooley.

5 CLERK: If you would please raise your right hand and
6 state your name for the record.

7 MS. COOLEY: Caroline Cooley.

8 CAROLINE COOLEY, HAVING BEEN DULY

9 SWORN TESTIFIES AS FOLLOWS:

10 Clerk: Thank you. You can have a seat.

11 THE COURT: Your witness.

12 MR. WHIRL: Thank you.

13 DIRECT EXAMINATION OF CAROLINE COOLEY BY MR. WHIRL:

14 Q: Ma'am, would you state your full name for the record?

15 A: Caroline Cooley.

16 Q: Thank you. And where do you live?

17 A: [REDACTED] Drive, Summerville, South Carolina.

18 Q: And were you living at that address on March 5th of 2016?

19 A: Yes, I was.

20 Q: And who was living there with you?

21 A: My husband and my granddaughter.

22 Q: And does your granddaughter still live there?

23 A: No.

24 Q: Where is your granddaughter now?

25 A: She's in college now.

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CAROLINE COOLEY - DIRECT BY WHIRL

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- 1 Q: Okay. Congratulations.
- 2 A: Thank you.
- 3 Q: And you said your husband?
- 4 A: Yes.
- 5 Q: So, you're married to Mr. Cooley?
- 6 A: Yes, I am.
- 7 Q: And when did the two of you marry?
- 8 A: April 24th, 2015.
- 9 Q: Okay. Now, can you -- since we've mentioned the morning
10 of March 5th of 2016 already, can you tell me what happened
11 after you got up that morning, what your activities were?
- 12 A: Well, that morning, I got up and got ready to go to a
13 church meeting I had, preparing for Sunday. So, I left my
14 house about 9 o'clock that morning. I went to my meeting and
15 came back home.
- 16 Q: Okay. Okay. Now, and about what time did you arrive
17 back from your meeting?
- 18 A: About 10 till 12:00.
- 19 Q: Okay. Okay. And once you got back home, who was there?
- 20 A: Mr. Henry and my husband.
- 21 Q: Okay. Were any of the -- were any of Mr. Cooley's
22 grandchildren in the area?
- 23 A: Yes.
- 24 Q: And which grandchildren were in the area?
- 25 A: The two smallest ones.

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CAROLINE COOLEY - DIRECT BY WHIRL

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- 1 Q: Okay. Were they at your house or were they just in the
2 neighborhood playing?
- 3 A: They were in the neighborhood playing.
- 4 Q: Okay. Was Miss [REDACTED] S.C. in the area when you got
5 there?
- 6 A: She was not there when I got home.
- 7 Q: Okay. Now, once you got home, somewhere between 11:45,
8 10 to 12:00, you testified to, how long were you there before
9 you left again?
- 10 A: Just a few minutes, because Mr. Cooley asked me to go to
11 BI-LO.
- 12 Q: Okay. And you went to BI-LO, on your way to BI-LO, did
13 you either see Miss [REDACTED] S.C. or anyone else in her family?
- 14 A: Yes, I saw [REDACTED] S.C. coming headed back to my house in
15 front of the mailbox where I exit out of my neighborhood.
- 16 Q: Okay. And was she walking, was she riding?
- 17 A: Oh yeah, she was on a bike.
- 18 Q: Okay. And did you -- did the two of you exchange any
19 pleasantries or ---
- 20 A: Yeah, just, you know, as we do, hey, good morning, Granny
21 CC, or something like that.
- 22 Q: Okay.
- 23 A: Uh-huh, (affirmative response).
- 24 Q: And that was the extent of the conversation -- or not
25 conversation, but the greeting?

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CAROLINE COOLEY - DIRECT BY WHIRL

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1 A: Yeah, because she was coming, and I was going.

2 Q: Okay. All right. And were you there when the police
3 arrived?

4 A: Yes, I was.

5 Q: Were you there when Ms. Shaketa Cooley and her son
6 arrived?

7 A: Yes, I was.

8 Q: And what happened when they arrived?

9 A: It was a physical altercation immediately because she
10 jumped out of her vehicle, her and her son, and they charged
11 my husband.

12 Q: Okay. All right. Now, do you know Mr. Henry Morant?

13 A: Yes, I do.

14 Q: And do you know if he was -- you said -- you testified
15 that he was at your house that day?

16 A: Yes, he was.

17 Q: And why was he at your house?

18 A: I had bought my husband a BBQ grill and a lawnmower for
19 his birthday, and Mr. Henry came by to put that stuff together
20 for him.

21 Q: Okay. Did he do that as a friendly neighbor or was he
22 expecting you to pay him to do that?

23 A: Well, actually he was getting paid for it.

24 Q: Okay. All right. Please answer any questions that the
25 state may have.

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CAROLINE COOLEY - CROSS BY MIMS

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1 A: Yes, sir.

2 THE COURT: Cross examination?

3 MS. MIMS: Thank you, Your Honor.

4 CROSS EXAMINATION OF CAROLINE COOLEY BY MS. MIMS:

5 Q: Good morning, Ms. Cooley.

6 A: Good morning.

7 Q: Can you tell me a little bit about you said you live on

8 [REDACTED] Lane?

9 A: Yes.

10 Q: Okay. And was that [REDACTED] Lane?

11 A: [REDACTED].

12 Q: [REDACTED]. Okay. Can you tell me, do you know the people who

13 live back there around you?

14 A: We're pretty much family, so yeah.

15 Q: Are you?

16 A: Yes, ma'am.

17 Q: Okay. So, you know them really well?

18 A: Uh-huh, (affirmative response).

19 Q: And are they mostly all of your family?

20 A: No, not all of them are my family, no.

21 Q: Are some of them your family?

22 A: Uh-huh, (affirmative response).

23 Q: Okay. And how long have you lived back there on [REDACTED]

24 Lane?

25 A: Over 12 years.

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CAROLINE COOLEY - CROSS BY MIMS

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1 Q: Okay. Is it fair to say that you lived on [REDACTED] Lane
2 before Mr. Cooley did?
3 A: Yes.
4 Q: Okay. When did Mr. Cooley come to live on [REDACTED] Lane?
5 A: Actually, he was living on [REDACTED] Lane before we moved
6 to [REDACTED].
7 Q: Okay. How long was he living back on [REDACTED] Lane?
8 A: With me?
9 Q: No, just the whole time.
10 A: Honestly, I can't answer that question. I can only, you
11 know ---
12 Q: Yes, ma'am.
13 A: --- tell you what I know.
14 Q: Yes, ma'am. That's fine.
15 A: I don't know how long he was on [REDACTED] Lane.
16 Q: But you were living on [REDACTED] for a long time?
17 A: Yes, ma'am.
18 Q: Okay. And you have family back on [REDACTED] Lane?
19 A: Yes, ma'am.
20 Q: Okay. And do you have a lot of friends back on [REDACTED]
21 Lane?
22 A: Yes, ma'am.
23 Q: And what's your relationship to [REDACTED] S.C. [REDACTED]?
24 A: Now, that I'm married to Mr. Cooley, my step-
25 granddaughter.

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CAROLINE COOLEY - CROSS BY MIMS

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1 Q: Step-granddaughter. And you married Mr. Cooley in 2015?
2 A: Yes.
3 Q: Okay. But she's not your biological family?
4 A: No.
5 Q: Okay. And you mentioned that you left home about 9
6 o'clock to go to church; is that right?
7 A: Uh-huh, (affirmative response).
8 Q: Okay. And then you came back around 11:50?
9 A: Yeah.
10 Q: And then you were leaving again to go to BI-OATES?
11 A: Yes.
12 Q: Okay. And you passed [REDACTED] SC., she was on a bicycle?
13 A: Yes.
14 Q: She was coming back towards Mr. Cooley, towards your
15 house?
16 A: Yes.
17 Q: Okay. And the two children were in the yard?
18 A: Yes.
19 MS. MIMS: I beg the Court's indulgence.
20 THE COURT: All right.
21 MS. MIMS: I have no further questions. Thank you, Your
22 Honor.
23 THE COURT: All right. Yes, sir?
24 MR. WHIRL: Nothing further, Your Honor.
25 THE COURT: All right. Is this witness free to leave?

BY THE COURT

1 MR. WHIRL: Yes, Your Honor.

2 THE COURT: You are free to leave if you wish.

3 All right. Call your next witness?

4 MR. WHIRL: Nothing further from the defense, Your Honor.

5 THE COURT: All right. The defense rests?

6 MR. WHIRL: The defense rests.

7 THE COURT: Very well.

8 All right. Will there be any reply or rebuttal; no?

9 MS. MIMS: No, ma'am.

10 BY THE COURT:

11 THE COURT: All right. Ladies and gentlemen, you have
12 now heard the witnesses and received the evidence which you
13 will in this case. What remains for us are the arguments of
14 counsel and then my charge or instruction on the law. It also
15 signifies to me though at this moment, there are matters that
16 I must take up outside your presence. And we're also going to
17 use this as our morning break, because when you return from
18 this break, you will hear the arguments of counsel and then my
19 charge or instruction on the law.

20 So, ladies and gentlemen, this break is probably going to
21 take us about 20 minutes just to -- so we can prepare for
22 closing arguments and the charge. And as I said, we'll use
23 this also as our morning break.

24 You have not heard the arguments of counsel. You have
25 not heard my charge on the law. Therefore, you are not

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BY THE COURT

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1 prepared to deliberate. So, please be mindful of that as you
2 step to your jury room and leave your notepads in your seat
3 and we'll about 20 minutes, I think.

4 Thank you so much.

5 (REPORTER'S NOTE: Jury exits courtroom @ 10:13 A.M. The
6 following takes place outside the presence of the jury.)

7 THE COURT: All right. Motions?

8 MR. WHIRL: None, Your Honor.

9 THE COURT: Very well. All right.

10 So, I do have the charge and what I'd like to do is for
11 us to just go over the charge in an informal charge conference
12 if you all would help me in that regard. Then I want you all
13 obviously to have a few moments to take your comfort break
14 and, of course, get ready for the closings.

15 Tell me how the closings are going to be. Who's gonna
16 open and who's gonna close? Have y'all decided?

17 MS. MIMS: I know things have changed. Oh, who is
18 closing amongst the two of us? It will be me.

19 THE COURT: Okay. Got it. Okay. Wonderful.

20 All right. So, let's do that now.

21 (REPORTER'S NOTE: Charge conference held off the record.)

22 **RECESS - 10:15 A.M.**

23 *******OFF THE RECORD*******

24 **(On the Record - 11:09 A.M.)**

25 THE COURT: Thanks y'all and please be seated. Did you

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BY THE COURT

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1 pull up *State v. Beaty*?

2 MS. MIMS: Yes, ma'am.

3 THE COURT: Oh, my goodness.

4 All right. So, *State v. Beaty*, too, and this of course
5 I'm addressing the question regarding whether or not the state
6 must open in full and rebut, and *State v. Beaty*,
7 at the end of the day, after a very long discussion, says that
8 there is no rule with regards to whether the state must open
9 in full and then reply and the Court must make, on a case-by-
10 case basis, a determination whether or not the due process
11 rights of the defendant will be violated if the argument is
12 otherwise.

13 With that in mind, I am going to order that the state
14 open in full and reply. Okay.

15 All right. And you all haven't had a chance to look, of
16 course, both sides have looked at the charge and I know I only
17 had one copy. My law clerk is bringing, hopefully, a clean
18 version out. All right?

19 MS. MIMS: All right.

20 THE COURT: Thank you so much.

21 And you're making both arguments?

22 MS. MIMS: Yes, ma'am.

23 THE COURT: Very well.

24 Anything before we bring the jury out from the state?

25 MS. MIMS: No, Your Honor.

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BY THE COURT

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1 THE COURT: From the defense?

2 MR. WHIRL: Nothing, Your Honor.

3 THE COURT: Okay. Yes, ma'am.

4 MS. MIM: Yes, ma'am.

5 (REPORTER'S NOTE: Jury enters courtroom @ 11:11 A.M.)

6 THE COURT: All right. Ladies and gentlemen, you're
7 about to hear the closing arguments of the attorneys. So, let
8 me tell you what -- what -- what's about to occur. You're
9 going to hear from Solicitor Mims in her closing argument.
10 And then you're going to hear from Mr. Whirl in his closing
11 argument on behalf of Mr. Cooley. And then you are going to
12 hear from Ms. Mims in her reply argument. That will then
13 conclude the closing arguments. There's going to be a very
14 short break that will be self-explanatory at that point, and
15 then I'm going to deliver the charge or the instruction on the
16 law to you. There will be another very short break, which
17 I'll explain when we reach that point. And then, ladies and
18 gentlemen, you're going to receive this case for your
19 deliberations.

20 Ladies and gentlemen, at this time, I ask that you please
21 draw close as we listen to closing arguments.

22 Ms. Mims?

23 MS. MIMS: Thank you, Your Honor, may it please the
24 Court?

25 THE COURT: Yes.

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CLOSING BY MIMS

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1 CLOSING BY MIMS:

2 MS. MIMS: Good morning. I'm going to take a minute
3 before I begin, just to say thank you. Thank you on behalf of
4 [REDACTED] S.C. and her entire family. Thank you so much on
5 behalf of Vernon Cooley. This has been tough, I know. This
6 is not an easy case to listen to. I'm sure you could've been
7 at work. I'm sure you could've been with your family. We
8 appreciate your time. You are an integral part of our system
9 of justice and without you, we couldn't get our job done. So,
10 thank you so much for being here.

11 As I said, difficult case, difficult facts. It's really
12 hard to hear about child abuse. We try to protect our
13 children and so these are tough things to sit through and
14 listen about. It's also difficult when it involves an assault
15 on a child by a family member. Family member, especially a
16 grandfather, is somebody that you're supposed to trust, you
17 spend time with, somebody that you're supposed to look up to,
18 somebody, frankly, that's supposed to protect you. And in
19 this case, we have a violation on a child by a grandfather.
20 And what that does to a child is traumatic, ladies and
21 gentlemen. I submit to you, the trauma is great.

22 And this case is really unique because you were able to
23 really hear about that trauma. We don't usually have that.
24 But because of the testimony that you heard from the little
25 girl that sat here and testified to you and told you about how

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1 she was violated by her grandfather and what she had to do
2 afterwards, showed you the trauma that was inflicted on that
3 child, and we don't usually get to see that. That was unique.

4 I want to take some time just to talk about the testimony
5 you heard yesterday. And as I do that, I want you to keep one
6 word in mind and that word is credibility. Credibility is
7 huge and, as jurors, you're gonna go back and you're gonna
8 take all your life lessons, every single one of you are
9 qualified to be here. Every single one of you, because every
10 single day you talk to people and every single day you decide
11 how much credibility you give to what they're saying to you,
12 every single day. So, you're all qualified to be here. And
13 when you go back in that jury room, you're gonna be able to
14 apply your common sense to what you've heard and decide if you
15 would give that person any weight, if they have earned your
16 trust, if you believe what they're saying. So, credibility is
17 the word I want you to think about as we talk about the facts
18 today or as I talk about the facts today.

19 S.C. got on the witness stand and she talked to
20 you about her grandparents, she talked about her family
21 situation. And the thing I tried to do in the beginning of
22 this case, with all the witnesses, is I said, how did your day
23 start, especially with the family, how did your day start?
24 And we got little nuggets of information from them every time.
25 One little nugget in particular that I thought was really

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1 compelling, came from Shaketa Pringle, the mother of [REDACTED] S.C.
2 [REDACTED]. She said, I got up on the morning of March the 5th of
3 2016. I was getting ready for work and my father showed up at
4 my house and he wanted to take my little daughter to
5 breakfast, my youngest. The youngest was five years old and
6 do you remember she said she had a disability and she couldn't
7 speak. I thought that was interesting. He came over wanting
8 to take the youngest daughter to breakfast. But she says, no,
9 if you take one, you take them all. And he said okay. So,
10 they all end up going back down to Vernon Cooley's house.

11 [REDACTED] S.C. testified no one was at the house when we got
12 there. Vernon Cooley told Melissa Blanchard, the
13 investigator, no one was there when I got to the house. No
14 one was there when I got to the house. The two little
15 children stay outside and he takes [REDACTED] S.C. inside, and this is
16 when I want you to think about what she said to you. Because
17 I think she gave you a lot of details. She talks about coming
18 into the house and she tells you, he sits on the edge of the
19 couch, he sits on the arm of the couch. She demonstrated it
20 for you; I thought that was clever. If you're having a hard
21 time of understanding it, I'll show you. He sits on the
22 couch, so he's sitting up a little bit; he's not sitting down
23 on the cushion. He brings her in front of him and he puts his
24 hand down her pants. Defense counsel was -- made a comment
25 about how does your hand get down there? It's very simple,

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1 ladies and gentlemen. If you're sitting on the edge of the
2 couch and a little girl is standing in front of you and you
3 just simply put your hand in her pants and he touched her
4 vagina.

5 She then told you that he took her to the bedroom and he
6 put her on the bed and he pulled her pants down to her knees
7 and he began to fondle her. And I said, [REDACTED] S.C. [REDACTED], where were
8 you on the bed? Were you in the middle of the bed or were you
9 on the edge of the bed? And she said I was on the edge of the
10 bed. That makes sense. He sticks his finger in her vagina
11 and then he puts his -- takes his penis and he rubs it on her
12 vagina. Now, if she's on the edge of the bed and he's
13 standing up, that can happen. Those little details were
14 important for her credibility. And then she starts to cry.
15 Let's go to Burger King.

16 And here's another interesting fact. He takes [REDACTED] S.C. [REDACTED] to
17 Burger King. Wasn't he supposed to take everyone to Burger
18 King? Didn't mom say if you take one, you take them all and
19 he said okay? Why does he only take [REDACTED] S.C. [REDACTED] to Burger King?
20 Ladies and gentlemen, I submit to you, he only takes [REDACTED] S.C. [REDACTED],
21 because he's not done with [REDACTED] S.C. [REDACTED] yet. Okay? He stopped
22 because she started crying. But he takes her to Burger King
23 and he says, when they get to Burger King, when we get back
24 home, I'm going to stick it in. He's not done with her.

25 And there's another reason he's not done with her,

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1 because he hasn't told her not to tell, right? He hasn't said
2 that to her, right, because she started crying, they jumped
3 up, they went to Burger King. He still has to make sure she
4 doesn't tell, and he says that to her. Remember how she
5 testified, pinky promise, promise not to tell your mom? So,
6 that's why he only takes [REDACTED] S.C., I submit to you, to Burger
7 King.

8 So, then he tells [REDACTED] S.C., when we get home, I'm going to
9 stick it in. So, they get home and what does she do? She
10 heads up the road. She says, I've got to go. She leaves his
11 house, she goes to her house, she gets her bike but, before
12 she leaves, what does she do? She comes back to his house to
13 do what? To tell her little sister, don't go in the house.

14 If she's making up this story, ladies and gentlemen,
15 that's a part she doesn't -- she had just been sexually
16 assaulted by her grandfather, so who is she thinking of? Her
17 little sister and brother. That makes sense. She comes back
18 and says, don't go in the house and then she heads out.

19 Now, why didn't she stick around and just call the people
20 who were living on [REDACTED] Lane? You heard from Ms. Cooley,
21 those aren't her people, those are his people. All those
22 people out there, they're related to Vernon Cooley's wife.
23 Those aren't her people and that's why she headed across town.
24 She went to go get with her people. She went to go find an
25 adult, her mom's friend from church. That little girl had

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1 never jumped on her bike and headed out off of [REDACTED] Lane.
2 She wasn't allowed to. So, think about her actions when you
3 think about credibility. She heads out a mile and a half from
4 her home; she's 12 years old on a bicycle. And, ladies and
5 gentlemen, the first road you come to is Bacons Bridge Road.
6 I don't know if y'all are familiar with that road, but it is
7 very busy. It's a four-lane highway. I wouldn't go across
8 Bacons Bridge on a bicycle. But this little girl was ready to
9 get out of there and that's what she did. Think about her
10 actions. Why would she do that? Because she had just been
11 assaulted and had just been told she's gonna get it again.
12 So, she heads out. She goes a mile and a half down the road
13 to safety.

14 She gets to her mom's friend's house and she's not home.
15 And you heard her testimony, I thought where do I go now, and
16 she remembered about her friend, Meka. She heads to Meka's
17 house because she's got to get to a phone. She gets to Meka's
18 house and she uses the phone and she calls Eddie Pringle; she
19 calls a parent. She says, come get me. I can't tell you why
20 but come get me. She didn't tell her friend, she didn't tell
21 anybody. She was waiting on Eddie. And Eddie gets there, and
22 what does he tell you, she's curled up in a ball on the
23 sidewalk crying and shaking.

24 So, as jurors, when you assess credibility, please think
25 about that. Please think about the actions of that little

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1 girl after this assault happens and does that make sense to
2 you that she would act like this? I submit it does. I submit
3 to you, those actions are a lot -- show a lot of credibility
4 for that little girl.

5 So, when we're talking about credibility of witnesses,
6 let's talk about the others. We heard from Eddie Pringle,
7 [REDACTED] S.C. 's stepfather, he got up here and talked to you. He,
8 in my opinion, did everything he could possibly do right as
9 well. He gets a call from [REDACTED] S.C. . I'm at Meka's house. How
10 are you at Meka's house? I rode my bike. You're not supposed
11 to do that. Come get me. He does exactly that. He heads
12 straight over. He tries talking about it. She's curled up in
13 a ball, crying on the sidewalk. He gets her in the car and
14 what does he do? He calls the police. He calls his wife. He
15 heads straight over to this man's house to protect his other
16 children, to get them in the car so nothing happens to them.
17 These are the actions of a man, who truly believes that this
18 just happened to his little girl. He goes back and he waits
19 on the police.

20 You got the testimony of the mother in this case. I love
21 her testimony. I think it's so honest. She gets up here and
22 talks to you, I was mad, I was so mad. She talked about she
23 had a patient in her car in Mount Pleasant. She gets a call
24 that her daughter is assaulted and she doesn't care if that
25 patient is still in her car, she heads straight up to Vernon

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1 Cooley's house, because she was so mad, she wanted to fight
2 him, and that's what she did. That is a true, honest,
3 reaction to hearing that your daughter has just been
4 assaulted.

5 Then we had Henry Morant on the stand today. He talked
6 to you. And Henry Morant wants you to believe that he was at
7 that house that morning and that he was there and saw that
8 Vernon Cooley never went in the house. Well, there are some
9 problems with that. One of them is that [REDACTED] S.C. testified no
10 one was there. The biggest problem is that Vernon Cooley told
11 Detective Blanchard no one was there when they arrived in his
12 statement. And the other big problem with that is that he
13 never told police. That seems like a big deal. If your
14 friend gets arrested and you know that it couldn't have
15 happened, wouldn't you tell the police? Credibility,
16 credibility.

17 And if you believe that Vernon Cooley is not guilty in
18 this case, then you have to believe that this little girl made
19 it up. So, you have to sit back and go why, because all the
20 testimony that we've heard is that he was a good guy, that
21 they had a good relationship. We didn't hear that there was
22 anything wrong. He came to the house and asked to take them
23 to breakfast, they went to breakfast and, all of a sudden,
24 this happens. Why would she make that up?

25 Now, let's look at corroboration. Corroboration is when

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1 you have some facts out there that go along with the testimony
2 you've heard and make it stronger. And in this case, we've
3 had a couple of things. We had DNA. The DNA in this case,
4 unfortunately, we have a bit of a mixture, so we don't have a
5 good strong case for DNA. There is no testimony of there
6 being ejaculation, so there's no semen. We have a very faint
7 DNA molecules that are found from two Y chromosomes but they
8 were too faint to be matched. They can't include Mr. Cooley;
9 they can't exclude Mr. Cooley. The two Y chromosomes that are
10 found on her underwear, you heard the forensic scientist,
11 could come from washing clothes together with men in the
12 house; it could come from folding clothes; it can come from
13 anything. So, unfortunately, DNA is not helpful. The
14 medicals are.

15 Remember the medicals? Do you remember hearing from the
16 SANE nurse -- I'm sorry -- nurse practitioner, sat up here and
17 talked to you about [REDACTED] S.C. coming to see them at MUSC. The
18 first time that [REDACTED] S.C. came to visit at MUSC was the day of
19 the assault, March the 5th of 2016. She goes there and she
20 has a full, physical examination. Ladies and gentlemen, those
21 are not pleasant, too. So, if you're going to the credibility
22 of witnesses, for a little girl to put herself through that if
23 it wasn't true, those are tough, at 12 years old to have to be
24 examined that way. Those are tough examinations. But they
25 had to look at her vagina and, when they did, they found an

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1 injury to her hymen, a red spot on her hymen. That's on the
2 day of the assault. They say, come back in two weeks. And
3 Kathy Fabrizio testified we do that because we want to know if
4 that injury is acute or not. Acute meaning it's an injury
5 that happened and it only stays on there for about 72 hours.
6 That's about three days and then it's gone.

7 So, she came back in two weeks, the injury is gone. So,
8 they know it's not a mark that's congenital, they know it's
9 not hereditary, they know it's not a birthmark; they know that
10 that was an acute injury that had recently happened to that
11 child. It just so happens, that that injury was on her hymen
12 the day she says that man stuck his finger in her vagina. I
13 submit that's not a coincidence. I submit it's from the
14 sexual assault. And you heard Katherine Fabrizio tell you
15 what? She said that injury is consistent for digital
16 generation. Dr. Amaya said what? That injury is consistent
17 with digital penetration. She was injured from her
18 grandfather sticking his finger in her vagina.

19 Now, it is the state's burden to prove to you that Vernon
20 Cooley committed a criminal sexual -- that he committed this
21 crime of criminal sexual conduct with a minor in the second
22 degree. It's our burden to prove that to you. I submit we
23 have. We have to prove to you that he engaged in a sexual
24 battery with a child between the ages of 11 and 14. S.C.,
25 her mother, her father, the nurse testified she was 12 years

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CLOSING BY WHIRL

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1 old when this injury occurred or when this incident occurred.

2 Sexual battery is gonna be defined by her Honor, but it's
3 also, any intrusion, however slight, into any opening of the
4 body, whether it be the vagina, the anus, the mouth, of any
5 object, penis, finger, any object. A finger in the vagina is
6 a sexual battery. I think we have met our burden.

7 Ladies and gentlemen, we must also prove this case to you
8 beyond a reasonable doubt. You're going to hear a lot about
9 that from defense counsel, I'm sure, and you will also hear
10 about that from Her Honor. But very quickly, reasonable doubt
11 is when you are firmly convinced that Vernon Cooley sexually
12 assaulted [REDACTED] S.C. on March the 5th of 2016, firmly
13 convinced. And I submit to you, the actions of that little
14 girl, after this alleged assault happened, going a mile and a
15 half away from her home, sitting on the sidewalk crying, going
16 to see the SANE nurse with injuries to her hymen, should
17 firmly convince you that Vernon Cooley is guilty of this
18 offense. I ask you to return a verdict of guilty.

19 Thank you.

20 THE COURT: Thank you, Ms. Mims.

21 Mr. Whirl?

22 MR. WHIRL: Thank you, Your Honor.

23 THE COURT: Yes, sir.

24 CLOSING BY WHIRL:

25 MR. WHIRL: Good morning.

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CLOSING BY WHIRL

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1 I opened -- it seems like a lot longer but it was just
2 yesterday -- I told you there were four things I wanted you to
3 think about, and I'm just going to simply talk about those
4 four things again. I will be brief with this. But before I
5 talk about those four things, there's a couple of things that
6 the state mentioned, that I want to also mention.

7 First of all, you'll note that it's quite different where
8 two sides can listen to the same witnesses and have a
9 completely different feel or take away from what was testified
10 to. The 12 of you have to go back into that jury room and
11 you've got to do it, if you get my gist.

12 The state mentioned that Vernon Cooley's people or his
13 wife's people were all up and down this street and that's why
14 the young Miss [REDACTED] S.C. left the area. If you recall, there was
15 testimony from Mr. Pringle, that he had three or four family
16 members that also lived on that street. The state said that
17 there was a great relationship between Mr. Pringle and [REDACTED] S.C.
18 [REDACTED]. So, there were family members from her stepfather's
19 side that she -- that were there.

20 She also said that Mr. Pringle went to pick up [REDACTED] S.C.
21 and the child was on the sidewalk balled up. If you look back
22 at your notes, if you recall in your memory, what he said was
23 when he got there, the child had her head down. Quite a
24 difference between being balled up and having your head down.

25 Now, with that being said, let's get back to the four

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CLOSING BY WHIRL

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1 things I asked you to think about. The first one I said, Mr.
2 Cooley has said that he is innocent; he's not guilty; he did
3 not commit this offense. He sits there today still saying
4 that he's not guilty; he did not commit this offense. Even
5 after he was physically assaulted by his daughter as well as
6 her 17-year-old son, he did not press charges, did not want
7 them entered into the judicial system for having a record.
8 You recall that the police officer, Patrolman Sergeant Amos,
9 testified that when he got there, he actually had to pull the
10 mother or the young child off of Mr. Cooley. There's no doubt
11 that there was an assault that was going on and he chose not
12 to pursue these charges.

13 The second thing I told you to think about was the fact
14 that you are going to hear some subjective testimony from the
15 young Miss [REDACTED] S.C., and you heard that, and the state talked
16 about that. And what I would submit to you is simply this.
17 During her testimony, she talked about the fact on cross
18 examination that no one else was there, there was never any
19 mention about anyone else was there. And as I pressed her,
20 and we talked about this man by the name of Mr. Herman, then
21 she said, yes, Mr. Herman. I remember that conversation,
22 something to that effect. I don't want to put words into her
23 mouth in terms of what she said, but she did acknowledge,
24 after initially saying there was no one there, that Mr. Henry
25 was there. Okay?

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CLOSING BY WHIRL

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1 Next, the thing that I want to ask you to think about was
2 the objective medical data. Those are the experts that the
3 state talked about and she left out half of the story. She
4 told you that the redness on the hymen, the expert testified
5 that that was caused by fingering. But, what she didn't tell
6 you is that they also said that it was just as likely that it
7 could be caused non-specific, which means that it wasn't
8 because of the fingering, it was something else. So, you've
9 got reasonable doubt, because the experts say it could've been
10 fingering or it could've been something else. The expert said
11 it. So, that's reasonable doubt.

12 And then we have the DNA, and I asked you -- the fourth
13 thing that I asked you to note of was the DNA. It's
14 significant that young Miss [REDACTED] S.C. submitted to a sexual
15 assault exam on the day of this alleged incident. So, they
16 gathered this information and they sent it to SLED. You heard
17 from two SLED officers. Agent Stowe, who came in and said
18 that she looked at the scrapings from the neck, found no DNA,
19 found no saliva, found nothing. She said that she looked at
20 the fiber analysis, the scraping from the panties, again, no
21 DNA at all.

22 Then you heard from Agent Money, and Agent Money
23 basically said the same thing, that she found no DNA, except
24 when they did a more extended test, she found that there were
25 two possible Y chromosomes, for lack of a better word, that

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CLOSING BY WHIRL

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1 were there. And the state rose to the occasion because it was
2 their witness and asked the question whether or not that could
3 be caused by the males that were living in the home, which
4 would have been Mr. Pringle and her 17-year-old brother, if it
5 could've been caused by the washing of the clothes and some
6 type of contamination. But yet, they stand before you today
7 and say, well, you couldn't rule out Mr. Cooley, but when they
8 were on the stand, they brought out and they brought it out --
9 of course, I asked the question too, but the state brought it
10 out, the fact that there's no DNA and the fact that the
11 examination was done immediately after the alleged incident
12 should cause reasonable doubt.

13 So, what I say to you and I ask you, when you go back
14 into that jury room because what I say, and the Judge will
15 tell you this later, but what I say and what the solicitors
16 say in terms of recapping the facts to you and what people
17 testified to, it's not evidence. What is evidence is the fact
18 that the medical folks sat here and said what they said about
19 it could be non-specific. The fact that there was no DNA --
20 I'm telling you that, but you don't take my word for it, rely
21 back upon what was said on the stand. Because nothing that
22 she says or that I say is considered facts that you have to
23 rely on. What came from that witness stand is what you rely
24 upon when the 12 of you go back there.

25 And we're asking you, based upon everything that you've

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REPLY CLOSING BY MIMS

1 heard, based upon reasonable doubt and the four factors that I
2 asked you to take a look at, that you return a verdict of not
3 guilty.

4 And I thank you.

5 THE COURT: Thank you, Mr. Whirl.

6 Ms. Mims?

7 MS. MIMS: Very briefly, Your Honor. Thank you.

8 THE COURT: Yes.

9 REPLY CLOSING BY MIMS:

10 MS. MIMS: Very briefly, ladies and gentlemen, just for A
11 -- just for a few minutes. Eddie Pringle clearly testified
12 that when he showed up at Meka's house to pick up [REDACTED] S.C., she
13 was sitting on the sidewalk, her head down, sobbing and
14 shaking. He testified to that on direct examination.

15 Yes, there was an assault on Vernon Cooley by Shaketa
16 Pringle and her son, because she had just found out that her
17 father had sexually assaulted her daughter. We do not dispute
18 that.

19 And this is very important, because we clarified this on
20 redirect, [REDACTED] S.C. testified that no one was there when we
21 first came to my grandfather's house before he took me into
22 the house. No one was there. When Mr. Whirl got up here and
23 talked to her under cross examination, he said, but you
24 mentioned Mr. Henry, wasn't Mr. Henry there? When she got
25 back from Burger King, Mr. Henry might've been there. So,

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REPLY CLOSING BY MIMS

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1 when I got back to ask her again, was anybody at the home when
2 you first came to your grandfather's, she said, no, no one was
3 home. So, did he, to Detective Blanchard, nobody was home
4 when we first got to my house before we went to Burger King.
5 When they came back, yes, other people were at the house. No
6 one was there when he took that little girl into that house
7 and he sexually assaulted her.

8 I wish we had DNA. I wish we had more DNA. This isn't
9 CSI, I can't make it up. We don't have it, but we do have
10 that injury to the hymen. Yes, the doctor said other things
11 can cause those injuries, yes. She also said the hymen is
12 pretty protected. It has two extra layers of skin; it's
13 pretty protected. And again, it's not just ironic that the
14 day the sexual assault happens is the day she has the injury.
15 Remember, those injuries don't last long. The day she has or
16 she said she was sexually assaulted, her hymen is injured.

17 If you are firmly convinced that Vernon Cooley sexually
18 assaulted [REDACTED] S.C. on March the 5th of 2016, then you
19 must return a verdict of guilty. Very few things in our world
20 are known beyond all doubt. But we are asking, if you are
21 firmly convinced by the evidence you've heard that this man
22 sexually assaulted his 12-year-old granddaughter, then you
23 must return a verdict of guilty and I would ask that you
24 please do that.

25 Thank you.

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CHARGE TO JURY

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1 THE COURT: Thank you, Ms. Mims.

2 All right. That first break I talked about, just stand
3 up. That's it, just stand up and stretch your legs a minute.
4 Breathe. Just because I'm going to ask that you give me your
5 undivided attention. It will probably take me about 15
6 minutes to deliver or 20 minutes to deliver the charge to you.
7 Does anybody need to take a comfort break? Everybody okay?
8 Very well. All right.

9 Ladies and gentlemen, just move around and get some
10 oxygen moving and when you're ready to be seated, be seated.

11 CHARGE TO JURY:

12 THE COURT: Ladies and gentlemen, you and I have had
13 certain duties to perform during the course of this trial. As
14 the Trial Judge, it is my responsibility to preside over the
15 trial of this case, and I also have the duty to rule on the
16 admissibility of the evidence which has been offered during
17 this trial. You, ladies and gentlemen, are to consider the
18 testimony, which has been presented from this witness stand
19 and any exhibits which have been made a part of the record in
20 this case. I have the additional duty to charge or instruct
21 you on the law applicable to this case. As the Presiding
22 Judge, I am the sole judge of the law of this case, and it is
23 your duty, as jurors, to accept and to apply the law as I now
24 state it to you. If you already have any idea as to what the
25 law is or what it ought to be, and it does not agree with what

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CHARGE TO JURY

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1 I tell you the law is, you must abandon your preconceived
2 idea, because for our system to work correctly you must accept
3 and apply the law exactly as I state it to you. And that may
4 require that you abandon any preconceived idea that you have
5 because you are sworn to accept the law and to apply the law
6 as I state it to you.

7 In every case tried in this court before a jury, the
8 jury, you, become the sole and the exclusive judge of the
9 facts in the case. The Trial Judge cannot not intimate,
10 state, comment on, or make any statement to a trial jury about
11 the facts in the case. Since, you, the jury, are the sole
12 judges of the facts in this case, you are not to infer from
13 what I may have said during the progress of this trial, in
14 ruling on the admissibility of evidence or otherwise, or
15 anything that I say now during the course of this instruction
16 to you that I have any opinion about the facts in this case.
17 The law does not allow me to have an opinion about the facts
18 in this case. This is a matter solely for you, the jury, to
19 determine. As jurors, it is your duty to determine the
20 effect, the value, the weight of the evidence presented during
21 this trial and to decide whether the state has met its burden
22 of proof.

23 Ladies and gentlemen, the indictment in this case charges
24 the defendant, Mr. Cooley, with criminal sexual conduct with a
25 minor in the second degree. I remind you that the fact that

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1 the defendant, Mr. Cooley, was arrested, charged, and indicted
2 in this case is not evidence in this case and cannot be
3 considered by you as evidence of guilt in this case nor does
4 it create any presumption or inference of guilt. The
5 indictment is simply the formal written instrument which
6 contains the charge made against the defendant. It is the
7 formal document by which this case is brought into this court.

8 Ladies and gentlemen, indictment 2016-GS-18-534 alleges
9 that in Dorchester County, South Carolina, on or about March
10 the 5th, 2016, the defendant, Vernon Lamar Cooley, did engage
11 in sexual battery upon a minor, who was 14 years of age or
12 less but who was at least 11 years of age in that the
13 defendant did penetrate [REDACTED] S.C.'s vagina with his
14 finger. The victim was 12 years old when this incident
15 occurred. This offense is in violation of Section 16-3-655
16 (B)(1) of the South Carolina Code of Laws, as amended.

17 Ladies and gentlemen, the defendant, Mr. Cooley, has pled
18 not guilty to this indictment and that plea places the burden
19 on the state to prove the defendant guilty. A person charged
20 with committing a criminal offense in South Carolina is never
21 required to prove himself innocent or not guilty. I remind
22 you that it is an important rule of the law that the defendant
23 in a criminal trial, no matter what the seriousness of the
24 charge may be, will always be presumed to be innocent of the
25 crime for which the indictment was issued unless guilt has

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1 been proven by evidence satisfying you of that guilt beyond a
2 reasonable doubt.

3 This presumption of innocence, does not end when you
4 begin your deliberations, but it accompanies the defendant
5 throughout the trial until you reach a verdict of guilt based
6 on evidence satisfying you of that guilt, beyond a reasonable
7 doubt. The presumption of innocence is like a robe of
8 righteousness placed about the shoulders of the defendant,
9 which remains with the defendant until it has been stripped
10 from the defendant by evidence satisfying you of the
11 defendant's guilt beyond a reasonable doubt. The presumption
12 of innocence is not mere legal theory. It is not just a legal
13 phrase. It is a substantial right to which every defendant is
14 entitled, unless you, the jury, are satisfied from the
15 evidence of the defendant's guilt, beyond a reasonable doubt.

16 What then is reasonable doubt in the law? A reasonable
17 doubt is the kind of doubt that would cause a reasonable
18 person to hesitate to act. The state has the burden of
19 proving the defendant guilty beyond a reasonable doubt. Some
20 of you may have served as jurors in civil cases, where you are
21 told that it is only necessary to prove that a fact is more
22 likely true than not true, such as by the greater weight of
23 the preponderance of the evidence. In criminal cases, the
24 state's proof must be more powerful than that; it must be
25 beyond a reasonable doubt. Proof beyond a reasonable doubt is

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1 proof that leaves you firmly convinced of the defendant's
2 guilt.

3 There are very few things in this world that we know with
4 absolute certainty and, in criminal cases, the law does not
5 require proof that overcomes every possible doubt. If based
6 on your consideration of the evidence, you are firmly
7 convinced that the defendant is guilty of the crime charged,
8 you must find the defendant guilty. If, on the other hand,
9 you think there is a real possibility that the defendant is
10 not guilty, you must give the defendant the benefit of the
11 doubt and find him not guilty.

12 Now, there are two types of evidence, which are generally
13 presented during a trial. One is called direct evidence; the
14 other circumstantial evidence. Direct evidence is the
15 testimony of a person who claims to have actual knowledge of a
16 fact, such as an eyewitness. Circumstantial evidence is proof
17 of a chain of facts and circumstances which indicate the
18 existence of a fact. The law makes absolutely no distinction
19 between the weight or value to be given to either direct or
20 circumstantial evidence. However, to the extent the state
21 relies on circumstantial evidence, all of the circumstances
22 must be consistent with each other and, when taken together,
23 point conclusively to the guilt of the accused beyond a
24 reasonable doubt. If these circumstances merely portray the
25 defendant's behavior as suspicious, the proof has failed, nor

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1 is a greater degree of certainty required of circumstantial
2 evidence than of direct evidence. You should weigh all of the
3 evidence in the case and, after weighing all of the evidence,
4 if you are not convinced of the guilt of the defendant beyond
5 a reasonable doubt, you must find the defendant not guilty.

6 I'm going to give you an example of direct and
7 circumstantial evidence. First, direct evidence, it's
8 February, snow is forecast, it's really cold. We have those
9 gray skies, lots of clouds. You walk outside, you look up and
10 snow is falling everywhere. As a matter of fact, it hits you
11 right in the eye. You come back in and you say, it's snowing
12 outside. Well, you perceived that through your senses. You
13 saw it, you felt it, and you are literally an eyewitness when
14 you come in and say, it's snowing outside. You perceived it
15 with your senses.

16 Now, I want talk about circumstantial evidence. We're
17 going to stay in February. Snow is forecast; it's real cold.
18 When you go to bed and look outside, you know you're trying to
19 plan for your snow day, but you don't see it snowing. All you
20 see is your poor, pitiful, brown, crunchy grass. You go to
21 bed, when you wake up the next morning, the sun is shining,
22 but snow covers everything. You didn't see it snow, you
23 didn't feel it snow, but you know that it snowed overnight,
24 because of the collateral facts that you do know and they all
25 point conclusively and consistently to the fact that it snowed

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1 overnight. That is circumstantial evidence.

2 Now, ladies and gentlemen, I'm going to talk to you about
3 intent. In order to establish criminal liability, criminal
4 intent is required. And, the state must prove the mental
5 state required for a particular crime, and that particular
6 crime, the type of intent might be purpose, or knowledge,
7 criminal negligence, recklessness. Irrespective of the type
8 of criminal intent whether it be, for example, purpose,
9 intent, knowledge, recklessness, it must -- it being the
10 criminal intent -- must be proven by the state beyond a
11 reasonable doubt.

12 Criminal intent is always a matter that must be
13 determined from and by the jury on the circumstances
14 surrounding the situation. Because you see, obviously, there
15 is no way to prove intent to mathematical certainty. There is
16 no way that medical science can dissect a person's brain and
17 determine what the person had in mind. So, the law says that
18 criminal intent may be inferred from the circumstances shown
19 to have existed. This is how you make a determination of
20 whether or not the element requiring intent was present. It
21 is not necessary to establish intent by direct and positive
22 evidence. But, intent may be established by inference in the
23 same way as any other fact, by taking into consideration the
24 acts of the parties and all the facts and circumstances of the
25 case.

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1 Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you to determine what the defendant
3 intended to do based on the circumstances shown to have
4 existed.

5 Now, ladies and gentlemen, in order for you to determine
6 whether the state has met its burden of proof, necessarily,
7 you must determine what is called the credibility of the
8 witnesses, and that of course is credibility of the witnesses
9 who have testified in this case. Credibility simply means
10 believability. It becomes your duty as jurors to analyze and
11 evaluate the evidence and determine which evidence, what
12 evidence you believe.

13 In determining the believability of witnesses who have
14 testified in this case, you may believe one witness over
15 several witnesses, or several witnesses over one witness. You
16 may believe a part of the testimony of a witness and reject
17 the remaining part of the testimony of that same witness. You
18 may believe the testimony of a witness in its entirety, or you
19 may reject the testimony of a witness in its entirety. You
20 may consider whether any witness has exhibited to you any
21 interest, bias, prejudice, or other motive in this case. You
22 may also consider the appearance and the manner of a witness
23 while on the witness stand.

24 Now, ladies and gentlemen -- take your water, drink your
25 water. Don't be shy. And --- anybody else? Pass it around.

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1 No, all right. Oh, come on, let her have you cup. I bet that
2 will more water in that cup than that little ---

3 Now, ladies and gentlemen, if you will recall, we talked
4 a little bit about expert witnesses during the course of the
5 trial. I told you I would give you more instruction about
6 expert witnesses. I'm going to do that now. Our rules of
7 evidence ordinarily do not permit witnesses to testify
8 regarding their opinions or the reasons for those opinions.
9 There is an exception to this rule and exists for witnesses,
10 who are found to be expert witnesses. Those are witnesses,
11 who by education, experience, have become an expert in some
12 art, science, profession, or calling, and they may state an
13 opinion as to relevant and material matters in which the
14 witness claims to be an expert. And they may also state the
15 reasons for those opinions. You should consider expert
16 opinions received in evidence in this case and, like any other
17 evidence, give it the weight that you believe it deserves.

18 If you decide that the opinion of an expert witness is
19 not based on sufficient education and experience, or if you
20 conclude that the reasons given in support of the opinion are
21 not sound, or that the opinion is outweighed by other
22 evidence, you may disregard the opinion entirely. An expert
23 witness' testimony is to be given no greater weight than that
24 of other witnesses simply because the witness is an expert.

25 Now, ladies and gentlemen, a statement alleged to have

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1 been made by the defendant has been admitted into evidence in
2 this case. And while the Court has determined that the
3 statement or statements were admissible, I instruct you that
4 you make the ultimate decision of whether or not the defendant
5 made the statement. If the defendant did make the statement,
6 you must determine whether the statement was made by the
7 defendant voluntarily and of his own free will. This means
8 that the statement was not caused by pressure, force, fear,
9 threats, coercion, or intimidation, or by hope, or a promise
10 of leniency, or a reward of any kind. In determining the
11 statement was voluntary, you should consider both the
12 characteristics of the defendant and the details of the
13 questioning.

14 Some of the factors that you must consider are the age of
15 the defendant, the defendant's education or lack of it, the
16 defendant's mental ability or capacity, the defendant's IQ or
17 intelligence, the defendant's background and environment, the
18 place and length of detention, the nature of the questioning,
19 and the advice or lack thereof to the defendant of his
20 constitutional rights including but not limited to the right
21 to remain silent, that any statement could be used against him
22 in a court of law, the right to have a lawyer present, that if
23 he could not afford a lawyer a lawyer would be appointed to
24 represent him without any costs, and that he could stop making
25 his statement at any time. You must carefully consider all of

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1 the surrounding circumstances before you give any weight to an
2 alleged statement.

3 The state has the burden of proving, beyond a reasonable
4 doubt, that the alleged statement was voluntary. If you
5 determine it was, you may give the statement any further
6 consideration that you deem proper. You must decide what
7 weight, if any, should be given to the alleged statement. If
8 you determine the alleged statement was not the free and
9 voluntary statement of the defendant, you should not consider
10 the statement at all.

11 Now, ladies and gentlemen -- I need you to bear with me
12 for just a moment. What I am doing, ladies and gentlemen,
13 there is an instruction that I want to pull -- there we go. I
14 have it now.

15 Ladies and gentlemen, I instruct you and I emphasize
16 that the fact that Mr. Cooley did not testify in this case is
17 not a factor to be considered by you in any way in your
18 deliberations and in your consideration on the question of
19 whether Mr. Cooley is guilty or not guilty. The fact that he
20 chose not to testify must not be considered by you in any
21 manner whatsoever. A defendant has the constitutional right
22 to remain silent and the assertion of this right, must not be
23 considered by you in your deliberations. I repeat, under your
24 oath, you are to draw no conclusion whatsoever from the fact
25 that the defendant in this case did not testify. The fact

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1 that this defendant did not testify should not even be
2 discussed in the jury room. The burden of proof, as I have
3 stated to you, is on the state to prove guilt beyond a
4 reasonable doubt. The defendant is not required to prove he
5 is not guilty. The burden of the proof is and remains on the
6 state to prove guilt beyond a reasonable doubt.

7 Now, ladies and gentlemen, I'm now going to talk to you
8 about this particular charge and the elements of this offense.
9 With regards to the elements of this offense, as well as the
10 other matters I've already discussed that the state must
11 prove, it is the state's burden to prove, beyond a reasonable
12 doubt. The defendant is charged with criminal sexual conduct
13 with a minor in the second degree. The state must prove,
14 beyond a reasonable doubt, that the defendant engaged in a
15 sexual battery with the victim.

16 A sexual battery is defined as sexual intercourse,
17 cunnilingus, fellatio, anal intercourse, or any intrusion,
18 however slight, of any part of a person's body or of any
19 object into the genital or anal openings of another person's
20 body, except when the intrusion is accomplished from medically
21 recognized treatment or diagnostic purposes.

22 The state must then prove, beyond a reasonable doubt,
23 that the victim was at least 11 years old, but not more than
24 14 years old at the time of the sexual battery.

25 Ladies and gentlemen, I further charge you, that consent,

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1 willingness, indifference, or ignorance on the part of the
2 minor, if any, as to what was taking place does not in any way
3 affect the charge of criminal sexual conduct with a minor.
4 Because an unmarried woman under the age of 16 cannot legally
5 consent to sexual intercourse.

6 Now, ladies and gentlemen, there are two possible
7 verdicts in this case and I'm going to go over those with you
8 in just a moment. But before I do that, I want to discuss
9 with you -- and Mr. Harvey ---

10 JUROR 59: Yes, ma'am?

11 THE COURT: When my jury leaves me -- I want you to
12 remain right where you are, but you can stand up and let them
13 pass but don't leave. Stay with me.

14 JUROR 59: All right.

15 THE COURT: All right.

16 Ladies and gentlemen, you're going to have with you in
17 your jury room, a verdict form. It's a piece of paper and
18 there are two things that I need to talk to you about before
19 we go over this. First of all, your verdict has to be
20 unanimous. What does that mean? Well, first of all, it means
21 it's not -- the majority doesn't rule. This is not majority
22 rule day, and this is not the verdict of any one of you. This
23 must be the verdict of each and every one of you. All 12 of
24 you have to agree on your verdict. This must be the verdict
25 of all 12 of you. So, it must be unanimous. That's the first

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1 thing I want to tell you.

2 The second thing that I want to tell you is that there
3 are two possible verdicts. I had to write them on a piece of
4 paper. It's just reality that if I'm going to write two
5 things on a piece of paper, one has to be first, the other has
6 to be second. And you're to take no hidden meaning from the
7 order in which these matters have been placed on paper. So, I
8 need to tell you that as well, there's no hidden meaning in
9 the order in which these possible verdicts are placed on
10 paper.

11 Now, ladies and gentlemen, I want to talk to you -- can
12 everybody see, sort of see, kind of see a little bit.
13 Obviously, it will be with you in your jury room. This top
14 part is just the caption of the case. It's just the
15 identifying information of this case. It has an indictment
16 number. It's just a docket number that's written on the
17 indictment and that's -- and we talked about what an
18 indictment is and what it is not, and this is simply an
19 indictment number. And the other information just reflects
20 that this is in Dorchester County and this is the Court of
21 General Sessions or criminal court. That's what a caption is.
22 If you will, it's the title of the case, if you will. The
23 instructions say, please circle the appropriate verdict below
24 and follow the accompanying instructions carefully. And it
25 says Number 1, as to the charge of criminal sexual conduct

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1 with a minor in the second degree, we, the jury, unanimously
2 -- see, now you know why my children think I'm a nag --
3 unanimously, I put that in there just as a reminder that your
4 verdict must be unanimous. We, the jury, unanimously find the
5 defendant, there are two possible verdicts. One is guilty;
6 one is not guilty. Irrespective of what unanimous verdict of
7 the jury is, once the jury deliberations are concluded and
8 that determination has been made unanimously, Mr. Presiding
9 Juror, I'm going to ask you simply to circle it, so it's very
10 clear which is the unanimous verdict of the jury. And then it
11 says, stop and end your deliberations. And then it asks you
12 to please sign and date, and you know who you are, and today
13 is the 29th of August for your reference, just for reference
14 purposes.

15 Now, when you have completed your deliberations and you
16 have signed the verdict form and dated it and indicated the
17 jury of the verdict on the verdict form, you will knock on the
18 door, you will return to courtroom, and then you'll pass your
19 verdict form to one of our bailiffs, who will pass it to me.
20 You do not announce the verdict.

21 Now, ladies and gentlemen, in just a moment, I am going
22 to ask you to step back to your jury room with this
23 instruction, do not discuss this matter or allow anyone to
24 discuss it with you. And at this point, you would be within
25 your rights to say hu-huh, hu-huh, this is where you told us

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1 it would be time for us to deliberate. I'm going to tell you
2 exactly what's going to happen when you step back to your jury
3 room on this next occasion. I am going to turn to these
4 lawyers and I'm going to ask them two questions, and they help
5 me. I'm going to ask them have I given this jury all of the
6 law that they may need for their deliberations and have I
7 stated it for them correctly.

8 Now, ladies and gentlemen, sometimes -- and goodness
9 knows it's unintended -- but sometimes something will just
10 come out wrong and I need to invite the jury to come back out
11 so that I can correct my error. I'm going to ask you in
12 advance to please allow me to do that. Please allow me to
13 correct my error in your minds. It may be that I need to
14 bring you back out because I have failed to give you an
15 instruction that you may need for your deliberations and, in
16 the event that I need to bring you back out for that reason, I
17 ask you in advance please do not consider that instruction
18 with any emphasis. Just know that this is my one chance to --
19 to get this right, to give you all the law that you may need
20 for your deliberations and to state it for you correctly.

21 Now, in the event that I do not need to bring you back
22 out, you will be brought the verdict form, the exhibits, your
23 notepads, and an instruction to begin your deliberations.

24 Ladies and gentlemen, I've been -- been here a long time
25 working with these terrific bailiffs. And you may be the very

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1 first jury that our bailiff fails to say begin your
2 deliberations. I don't think you will be, but it's possible.
3 However, you will not have your notepads, the verdict form,
4 and exhibits unless it's time to begin your deliberations.
5 So, that will be your sign.

6 Now, let me mention also to you, that lunch is coming.
7 And so -- and you'll be free to deliberate over your lunch if
8 you choose to. I do need you to keep in mind, however, that
9 each and every one of you must be present for you to
10 deliberate. So, if you need to take a break, stop your
11 deliberations, take your comfort break, and then reconvene
12 your deliberations when all 12 of you are together again.

13 Now, at this time, I am going to ask you to please step
14 to your jury room. Leave your notepads in your seats. Do not
15 discuss this matter, do not allow anyone to discuss it with
16 you and we'll be with you shortly.

17 (REPORTER'S NOTE: Jury exits courtroom @ 12:20 P.M.)

18 THE COURT: You just wanted to hang out with us.

19 JUROR 59: Yeah, it's fun.

20 THE COURT: All right. Here's what I'm going to ask you
21 to do for me, please, Mr. Harvey -- and let me tell you that
22 this actually does happen from time to time. It is not
23 unheard of, and it's surely happened to me, that something
24 will happen to one of our jurors just as they begin to
25 deliberate. It happens. It happened fairly recently. And

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1 so, in the event that something was to happen to one of our
2 jurors, if it happens early, I am confident that I can stop
3 the jury's deliberations, seat you as a juror, and then
4 reconvene, start anew the deliberations and save the trial.
5 Because of that, I'm going to ask you to please give us a
6 little bit more of your time. We've got lunch coming. You
7 might as well let us give you some lunch. But, if you can
8 give us just a little bit more time, you know, usually I say
9 15 minutes. Is lunch here? I don't know that lunch is here,
10 but I'd like you to have lunch before you go. What Ms. Suzie
11 will do, though, she's going to place you in a place separate
12 from the jury. You have to remain separate from the jury.
13 But we do want you to have lunch with us.

14 JUROR 59: Okay.

15 THE COURT: And then once -- if I need to bring the jury
16 back out, I'll bring you back out as well. But at this
17 moment, though, you'll be placed in a separate location. But
18 Ms. Suzy won't forget about you when it comes to lunchtime.
19 And after you have had lunch, just check with us, because I
20 think at that point, you will -- if you choose you can remain
21 with us if you like but you can certainly be free to go at
22 that point.

23 JUROR 59: Okay.

24 THE COURT: Thank you so much.

25 JUROR 59: All right. Thank you.

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BY THE COURT

1 THE COURT: Yes, sir.

2 (REPORTER'S NOTE: Juror 59 exits courtroom.)

3 BY THE COURT:

4 THE COURT: Any exceptions or additions from the state?

5 MS. MIMS: None from the state, Your Honor.

6 THE COURT: From the defense?

7 MR. WHIRL: No, Your Honor.

8 THE COURT: Thank you all so much.

9 Now, listen, I need you all to please look at the
10 exhibits and the verdict form and just be sure that what is
11 going to the jury is what's supposed to go to the jury.

12 And, Ms. Suzie, let me go ahead and hold the alternates
13 notes, and then if you'll gather up the notepads so they can
14 have those?

15 BAILIFF: Yes, ma'am.

16 THE COURT: And then you guys, if y'all will take a look
17 at the -- thank you. If y'all will take a look, please, at
18 the exhibits and the verdict form and make sure what's going
19 to the jury is supposed to be going to the jury.

20 And then Ms. Suzie, if you'll take the exhibits and the
21 verdict form as well as the notes. Just take it all to them
22 at the same time and tell them to begin their deliberations.

23 BAILIFF: Yes, ma'am.

24 THE COURT: Thank you, ma'am.

25 (REPORTER'S NOTE: Counsel reviews and stipulates to exhibits

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1 to be submitted to jury.)

2 THE COURT: Ms. Suzie?

3 BAILIFF: Yes, ma'am.

4 THE COURT: You've got a juror that needs a smoke break.
5 So, they can't start the deliberations until that person gets
6 back.

7 And then will be in recess.

8 (REPORTER'S NOTE: Deliberations commence at 11:26 A.M.)

9 **(RECESS - 11:26 A.M.)**

10 *******OFF THE RECORD*******

11 **(On the Record - 2:05 P.M.)**

12 THE COURT: All right. It is my understanding that the
13 jury has reached its verdict and I am prepared to bring the
14 jury out, anything before I do?

15 MS. MIMS: No, Your Honor.

16 THE COURT: From the defense?

17 MR. WHIRL: No, Your Honor.

18 THE COURT: Let me have our jury.

19 BAILIFF: Yes, ma'am.

20 (REPORTER'S NOTE: Jury enters courtroom @ 2:05.)

21 THE COURT: All right. It's my understanding the jury
22 has reached its verdict; is that correct?

23 JUROR 1: Yes.

24 THE COURT: If you'll pass it. All right. The verdict
25 is perfect form, if you would publish it for me, please,

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VERDICT OF JURY

1 ma'am?

2 CLERK: Yes, ma'am.

3 VERDICT OF THE JURY:

4 CLERK: In the matter of State of South Carolina versus
5 Vernon Lamar Cooley, Indictment Number 2016-GS-18-0534, as to
6 the charge of criminal sexual conduct with a minor in the
7 second degree, we, the jury, unanimously find the defendant
8 guilty. Signed by foreperson, Charles Agee, dated August
9 29th, 2018.

10 THE COURT: Ladies and gentlemen, if this was your
11 verdict in your jury room and continues to be your verdict
12 here in the courtroom, please indicate by raising your right
13 hand. And let me observe for the record, all of our jurors
14 have their right hands raised.

15 Thank you. You may put your hands down.

16 Anything further from the state at this time?

17 MS. MIMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. WHIRL: No, Your Honor.

20 THE COURT: Very well.

21 BY THE COURT:

22 THE COURT: All right. Ladies and gentlemen, I would
23 like to thank you for your service on this jury and on our
24 jury panel this week. You are now at liberty to talk about
25 this matter should you wish. If you do not wish to discuss

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1 this matter, just let whomever is asking to talk about it,
2 just tell them you don't want to talk about it and that
3 certainly should suffice. If it doesn't, just call the clerk
4 of court and she'll call me and I'll be happy to intercede on
5 your behalf.

6 Let me share with you that you are now not eligible to
7 serve on a jury in a court of record for the balance of 2018.
8 I feel your pain. And, but certainly you can still serve in
9 Magistrate's Court and Municipal Court. Remember, there's an
10 exemption for those folks who have served on a jury. It would
11 apply for the years 2019 and 2020, should you choose to
12 exercise that exemption.

13 Those of you who need something for your employer, if you
14 will step to your jury room, our bailiffs will assist you in
15 getting that. They may just send you down to the clerk's
16 office, but they'll assist you in getting that.

17 Those of you who work at night, you're still sitting
18 together, up to you. You've worked all day; you haven't had a
19 chance to rest. It is appropriate if you need to rest tonight
20 as well. I will leave that up to you though.

21 And again, if there's any concern about the fact that you
22 have served on this jury during the day and you could not go
23 to work at night, you just let me know or let our clerk know
24 if there's any issue about that and, again, I will be happy to
25 intercede on your behalf.

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BY THE COURT

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1 I used to tell folks that the check was in the mail and
2 then Ms. Graham said no, it's not, you need to quit telling
3 people that. Your check is not in the mail for your jury
4 service. But let me share with you, that a trip to Tahiti, it
5 will get you to Jedburg. It is a small token of all that you
6 have given to us that, of course, is your dear and precious
7 time and I must tell you for every single, solitary tick of
8 the clock, we are all so very grateful. We are citizen-based
9 judicial system and couldn't -- couldn't do court without you,
10 and I'm so grateful to the sacrifice that I know that you all
11 have given to our system of justice this week, and for that I
12 am so grateful.

13 Ladies and gentlemen, for your informational purposes,
14 what will occur now is that we'll proceed to sentencing. It
15 is completely up to you if you wish to stay or if you wish to
16 go. If you wish to stay, you're fine where you are. If you
17 wish to go, that is certainly your prerogative and you're free
18 to do that if you wish.

19 Thank you so kindly. It's been an honor and privilege to
20 serve with you in this capacity and be well.

21 All right.

22 (REPORTER'S NOTE: Jury is excused @ 2:11 P.M.)

23 THE COURT: All right. If there's nothing further from
24 the state other than sentencing, correct?

25 MS. MIMS: That's correct, Your Honor.

SENTENCE OF THE COURT

1 THE COURT: Yes. Motions, Mr. Whirl?

2 MR. WHIRL: No motions, Your Honor.

3 THE COURT: All right. Very well.

4 You all come forward for sentencing.

5 MS. MIMS: Your Honor, we're just working on getting the
6 sentencing sheet.

7 THE COURT: Okay.

8 MS. MIMS: Yes, ma'am, if we could just have one minute.

9 THE COURT: All right. Do you -- if y'all -- if you want
10 me to, I can postpone a little bit and take some pleas and
11 then you can tell me when you're ready if you wish? Whatever
12 you need to do.

13 MS. MIMS: I think it's right up on the computer. There
14 was one thing we needed to change.

15 THE COURT: Sure.

16 MS. MIMS: May we approach real quick, Your Honor?

17 THE COURT: Sure.

18 (REPORTER'S NOTE: Bench conference is held off the record.)

19 **(RECESS - 2:12 P.M.)**

20 *******OFF THE RECORD*******

21 **(On the Record - 3:00 P.M.)**

22 SENTENCING OF THE COURT:

23 THE COURT: Yes, ma'am?

24 MS. MIMS: Thank you, Your Honor. May it please the
25 Court. We're back on the record for Indictment Number 2016-

State v. Cooley - 2016-GS-18-00534

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SENTENCE OF THE COURT

1 GS-18-0534 for the sentencing of Mr. Cooley.

2 Your Honor has heard the facts in this case. The jury
3 has rendered their verdict, Your Honor, and I have spoken with
4 the family since the verdict came out. The mother of the
5 victim would like to address the Court whenever the time is
6 appropriate. But we would be asking for a very lengthy
7 sentence in this case. There has been -- it's even hard to
8 describe what this little girl has gone through since this
9 incident has happened, through school, through relatives
10 around her neighborhood, things she's been called, and not
11 only that, but the mental anguish of what she's been through
12 at the hands of someone she loved and trusted and I don't
13 think, you know, that's anything that she'll ever get back.
14 Her innocence was taken from her, and we would ask for a very
15 lengthy sentence. I'd just ask that you hear from the mother
16 when you feel it's appropriate.

17 THE COURT: Yeah. Certainly. All I need you to do for
18 me is -- is just state your name for our record.

19 MS. PRINGLE: Shaketa Pringle.

20 THE COURT: Yes, ma'am. Ms. Pringle, I'm listening.

21 MS. PRINGLE: I just want to look at him, if that's okay.

22 THE COURT: You can look at him, but then I want you to
23 address your comments to me.

24 MS. PRINGLE: I'm so heartbreaking that my child had to
25 go through this. The trauma, the pain, for someone that we

State v. Cooley - 2016-GS-18-00534
SENTENCE OF THE COURT

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1 trusted, someone that was never in our life that I decide to
2 help change his life. And for him to come and do that to my
3 child is devastating. Out of a million years, someone you
4 think that is safe for your child is not even safe. He was
5 supposed to've been her protector, not to harm her. He should
6 have been teaching her about boys and about mens, but instead
7 you did the opposite; you took advantage of her. That's the
8 hurt and sad part about it. And it hurts me the most because
9 it could have been my five-year old, that's who you wanted,
10 that couldn't speak for herself. And that is so painful to
11 know that you took my child's dignity from her. Her dignity,
12 her insanity, the time she's up crying at night, and she don't
13 even much want my son, he's six, to touch her, without her
14 jumping and screaming, don't touch me, because she is that
15 afraid. And I pray that God heals your heart. And I forgive
16 you, I really do, but I pray that you get the max for what you
17 did traumatize my child. And I'm teaching her to love and to
18 forgive, but it's so painful to watch her in anger because
19 something you did to her. That's all.

20 MS. MIMS: That's all we have, Your Honor.

21 THE COURT: Yes, sir?

22 MR. WHIRL: Thank you, Your Honor. Your Honor, Mr.

23 Cooley -- as the state mentioned, you've heard the facts of
24 this case over the last two and a half days. He is 58 years
25 old. He has been in jail since March 10th of 2016 for 899

State v. Cooley - 2016-GS-18-00534

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SENTENCE OF THE COURT

1 days. He suffers from a number of health issues to include,
2 Hep C, a collapsed lung, a missing rib, recently diagnosed as
3 diabetic, and he has a problem with his feet. Upon his
4 release, he will be relocating to Alabama. His brother is in
5 the courtroom today. He's been up here to support him over
6 the last couple of days. He does have extensive immediate
7 family in the Alabama area. And as I mentioned, if he's
8 released or when he's released, that's where he would be
9 going.

10 Your Honor, we would submit to the Court that a 20-year
11 sentence with his -- or any lengthy sentence, but certainly a
12 20-year sentence would be a life sentence for him, with the
13 issues that he's got right now. We'd respectfully ask the
14 Court for something in the four to five year range. He will
15 be on sexual registry. We've talked about that briefly, not
16 in any great detail, but he's going to be monitored for the
17 rest of his life. He's leaving this area. He's been disabled
18 for a number of years. Right now he had Attorney Jack Spawn
19 file for a disability claim and was pending a social security
20 hearing about the time that he was arrested.

21 Your Honor, one of the reasons and one of the reasons
22 we're asking for the sentence other than his medical issues is
23 because he has no significant criminal record, very little
24 criminal record at all. And he certainly has no prior history
25 of these type -- of this type of activity. And for those

State v. Cooley - 2016-GS-18-00534
SENTENCE OF THE COURT

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1 reasons, we would ask the Court to be lenient on Mr. Cooley in
2 terms of the range of the sentence from zero to 20 years and
3 then we think the four-year range would -- would be
4 appropriate.

5 THE COURT: Very well. Thank you so much, Mr. Whirl.
6 Anything else from anyone?

7 MR. WHIRL: Your Honor, I don't know if his brother wants
8 to ---

9 THE COURT: If he does, I'm happy to hear from him.

10 MR. WHIRL: Yes/no, sir?

11 THE COURT: Yes, sir. I just need you to state your name
12 for our record?

13 MR. WILLIAMS: My name is Charles Williams.

14 THE COURT: Yes, sir; I'm listening to you.

15 MR. WILLIAMS: Beg your pardon?

16 THE COURT: I'm listening to you.

17 MR. WILLIAMS: Yes, ma'am. I'm here in support of my
18 brother, Vernon Cooley. And there is no doubt that the entire
19 family has been affected by this and I pray for the entire
20 family. But upon the news and everything today, I came up
21 here in support of him and, upon his release, I will come back
22 up here and go through the procedures and everything and
23 transport him back to Alabama where he'll have somewhere to
24 stay.

25 THE COURT: That's very generous and kind of you, sir.

State v. Cooley - 2016-GS-18-00534
SENTENCE OF THE COURT

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1 Anyone else?

2 MR. WHIRL: No, Your Honor.

3 THE COURT: Or anything else?

4 MR. WHIRL: No, Your Honor.

5 THE COURT: All right. And the time, Mr. Whirl, was how

6 ---

7 MR. WHIRL: 899 days.

8 THE COURT: 889 or 899?

9 MR. WHIRL: 899. Starting on March 10th of 2016.

10 THE COURT: All right. Does anyone know of any reason
11 why I ought not pass sentence on Mr. Cooley at this time?

12 MR. WHIRL: No, Your Honor.

13 THE COURT: Very well. I am going to pronounce the
14 sentence and then I'd like, if the victim is present, I'd just
15 to have her approach for a moment. All right?

16 MS. MIMS: Yes, ma'am.

17 THE COURT: All right. Very well.

18 Mr. Cooley, I'm going to commit you to the State
19 Department of Corrections for a period of 20 years. I'm
20 giving you credit for the 899 days that you have already
21 served beginning March the 10th, 2016. The Court finds that
22 the sexual assault was non-consensual. There was no consent
23 associated. The Court makes that finding on the basis of the
24 reaction of the victim and her exclamation that her
25 grandfather tried to rape her and the fact that, as the matter

State v. Cooley - 2016-GS-18-00534
SENTENCE OF THE COURT

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1 was progressing, she wept. And I say that in addition to the
2 fact of her age, which she was obviously below the age of
3 consent. But all of her testimony was certainly indicative
4 and was replete that there was no consent on her part.

5 Therefore, you must not only register as a sex offender,
6 but also it is appropriate that, upon your release from the
7 South Carolina Department of Corrections, that you monitored
8 electronically.

9 Good luck to you, sir.

10 MS. MIMS: Thank you, Your Honor.

11 THE COURT: Thank you, Mr. Whirl.

12 MR. WHIRL: Thank you, Your Honor.

13 **ADJOURNED - 3:14 P.M.**

14

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State v. Cooley - 2016-GS-18-00534
CERTIFICATE OF COURT REPORTER

302

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Vernon Cooley, held in the Court of General Sessions for Dorchester County, Dorchester County Courthouse, St. George, South Carolina, on August 28-29, 2018.

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

Kay H. Richardson
Official Court Reporter

October 14, 2019.

WITNESSES

M. Blanchard

Dorchester County Sheriff
16-002351

ARREST WARRANT NUMBER
2016A1810300188

Arrested: March 10, 2016

ACTION OF GRAND JURY

TRUE BILL

John A. Smith
Foreperson of Grand Jury
Date: August 16, 2018

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2016GS18-0534

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

August 20, 2018 TERM

THE STATE
vs.

Vernon Lamarr Cooley

Indictment for

Criminal Sexual Conduct with Minor -
Second Degree

SC Code: 16-3-655(B)(1)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2018 AUG 16 PM 12:04
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY
2018 JUL 23 AM 11:09
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

INDICTMENT
2016GS18-0534

As a Court of General Sessions, convened on August 16, 2018 the Grand Jurors of DORCHESTER County present upon their oath:

AMENDED

CRIMINAL SEXUAL CONDUCT WITH MINOR - SECOND DEGREE

That in Dorchester County, South Carolina, on or about March 5, 2016, the Defendant, Vernon Lamarr Cooley, did engage in sexual battery upon a minor who was fourteen (14) years of age or less but who is at least eleven (11) years of age in that the defendant did penetrate **MINOR** [REDACTED] vagina with his finger. The victim was twelve (12) years old when this incident occurred. This offense in violation of Section 16-3-655(B)(1) of the South Carolina Code of Laws, as amended.

CERTIFIED COPY
2019 JUL 23 AM 11:49
Charles E. Mims
CLERK OF COURT
DORCHESTER COUNTY

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Sheila Mims

Sheila Mims, Solicitor

COUNTY OF
STATE

Dorchester

VS.

Vernon Lamarr Cooley

INDICTMENT/CASE#: 2016GS18-0534

A/W#: 2016A1810300188

Date of Offense: 3/5/2016

S.C. Code §: 16-3-655(3)

CDR Code #: 0397

AKA:

Race: BLACK

Sex: M

Age: 33

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Summerville, SC [REDACTED]

DL#: [REDACTED]

SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Criminal Sexual Conduct with Minor - Victim 11 to 14 Yrs of Age inclusive - Second Deg.

in violation of § 16-3-655(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

15784

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: *The Court finds that the sexual assault was non consensual. Defendant must register as a sex offender and be monitored electronically upon his release*☐ Appointed PD or appointed other counsel

Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 212

Sentence Date: 3-29-18

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER CO.)~~WETA~~)

Full name and prison number (if any) of Applicant.)

Vernon Lamar Cooley 327574)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2019-CP-18-1323

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED COPY

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 B.A.C.I.
2. Name and location of Court which imposed sentence GENERAL SESSION COURT
3. Name(s) of co-defendant(s) (if any) N/A 5200 EAST 5th BAYVIEW BLVD
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2045
 - (b) 2016GS18-0534
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8-29-19
 - (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. X
- ii. X
- iii. X
- (b) the result in each such Court to which you appealed:
- i. X
- ii. X
- iii. X
- (c) the date of each such result:
- i. X
- ii. X
- iii. X
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. X
- ii. X
- iii. X
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) my Lawyer suppose to appeal But did not
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: I was Commit of A Crime I did not do

- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) yes
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? n/d
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? n/d
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/d
- (d) any other petitions, motions or applications in this or any other Court? n/d
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. X
- ii. X
- iii. X
- iv. X
- (b) the name and location of the Court in which each was filed:
- i. X
- ii. X
- iii. X
- iv. X
- (c) the disposition thereof:
- i. X
- ii. X
- iii. X

iv. ℓ

(d) the date of each such disposition:

i. ℓ ii. ℓ iii. ℓ iv. ℓ

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

i. ℓ ii. ℓ iii. ℓ iv. ℓ

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?

 n/a

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. ℓ ii. ℓ iii. ℓ

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

i. ℓ ii. ℓ iii. ℓ

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) ℓ (b) ℓ (c) ℓ

17. Were you represented by an attorney at any time during the course of: yes

- (a) your arraignment and plea? _____
 - (b) your trial, if any? _____
 - (c) your sentencing? _____
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ND
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ND
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. MR. Charlie whirl 212 Commander Rd.
 - ii. N. Charleston S.C. 29405
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. _____
 - ii. _____
 - iii. _____
19. State clearly the relief you seek in filing this application:
- Yes
20. Are you now under sentence from any other court that you have not challenged?
- No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester CO.)2019-CP-18-1373

I, _____, 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.

Vernon Cooley

SWORN to and subscribed before me this _____
day of 15th, 2019

Crystal Jones (L.S.)
Notary Public

My Commission Expires: July 22nd, 2026

CERTIFIED COPY
2019 JUL 23 AM 11:41
Crystal Jones
CLERK OF COURT
DORCHESTER COUNTY

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

2019-CP-18- 1373

I, _____, 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.

Vernon Cooley
Applicant

SWORN or affirmed to and subscribed before me this

15th day of July, 2019.

Crystl Jones
Notary Public

My Commission Expires: July 22nd, 2026

CERTIFIED COPY
 2019 JUL 23 AM 11:02
 Charles H. Johnson
 CLERK OF COURT
 DOUGHERTY COUNTY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Vernon L. Cooley, SCDC #377574,	)	Case No. 2019-CP-18-1373
	)	
Applicant,	)	RETURN TO THE APPLICATION
	)	FOR POST-CONVICTION
v.	)	RELIEF AND PARTIAL
	)	MOTION TO DISMISS
State of South Carolina,	)	(Counsel Already Appointed)
	)	
Respondent.	)	

In response to the post-conviction relief (PCR) action commenced by Vernon L. Cooley (Applicant) on July 23, 2019, the State makes this return and would respectfully show this Court

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on March 10, 2016, following an investigation into the sexual battery of twelve-year-old victim. During its August 2018 term, the Dorchester County Grand Jury indicted Applicant for criminal sexual conduct with minor – second degree (2016-GS-18-0534).

On August 27-29, 2018, Applicant proceeded to a jury trial before the Honorable Diane Schafer Goodstein. Charlie Lee Whirl, Esquire, represented Applicant. Ryan Douglas Templeton and Shelia R. Mims, of the First Circuit Solicitor's Office prosecuted the case.

At the conclusion of the multi-day trial, the jury found Applicant guilty as indicted. Following the verdict, Judge Goodstein sentenced Applicant to twenty years' imprisonment. Applicant did not appeal from the conviction or sentence.

¹ Applicant filed this post-conviction relief application *pro se*. Counsel, Christopher Geel, Esquire, was appointed on August 19, 2019.

II. Allegations Raised and Relief Sought in Post-Conviction Relief Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following:

- 1) "My lawyer suppose [sic] to appeal but did not"² and
- 2) "I was commit [sic] of a crime I did not do"³.

Applicant requests relief as follows:

"yes."

Attached to this return and incorporated by reference are the Dorchester County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the trial transcript; and the records of this current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. Partial Motion to Dismiss in Response to Actual Innocence Allegation

Applicant's allegation of actual innocence should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act⁴ (the Act). *See, e.g., Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.").

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

² In response to question nine as to why he did not pursue a direct appeal, Applicant states "[m]y lawyer suppose [sic] to appeal but did not." Based on this response and Applicant's failure to state this as an enumerated ground for relief, it is unclear whether Applicant is seeking belated appellate review pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) (finding that a defendant who did not knowingly and voluntarily waive his right to direct appeal of his conviction is entitled to a belated review of direct appeal issues). However, out of an abundance of caution, the State is interpreting Applicant's response to question nine as an allegation that counsel was ineffective for failing to file a direct appeal on Applicant's behalf.

³ Respondent interprets this allegation as an allegation of Applicant's actual innocence.

⁴ S.C. Code Ann. § 17-27-10 to -160.

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Post-conviction relief “is a proper avenue of relief *only when the applicant mounts a collateral attack challenging the validity of his conviction or sentence.*” *Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000).

Applicant’s allegation of actual innocence does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Consequently, Respondent submits this allegation should be dismissed for failing to state a claim cognizable under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. Claims by an applicant that he is actually innocent or is not guilty are not cognizable grounds for post-conviction relief absent a claim of ineffective assistance of counsel or newly discovered evidence. S.C. Code Ann. § 17-27-20(a)(6) (“[T]his section shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.”); *Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1975) (interpreting the statute as barring such claims as inappropriate for consideration under the act). Here, Applicant wholly fails to frame this allegation as one of ineffective assistance of counsel or as one of newly discovered evidence. Indeed, Applicant merely alleges “I was commit [*sic*] of a crime I did not do,” without any basis to support his claim. Therefore, this allegation should be dismissed for failure to state a cognizable claim under the Uniform Post-Conviction

Procedure Act.

Accordingly, the State moves to dismiss this allegation pursuant to Rule 12(b)(6), SCRCP, for failure to state a cognizable claim. The State further moves for summary dismissal of this claim pursuant to § 17-27-70 because there is no genuine issue of material fact which would necessitate an evidentiary hearing and these allegations should be dismissed as a matter of law.

IV. Response to Allegation Applicant was Denied His Right to Appeal

In response to question nine as to why he did not pursue a direct appeal, Applicant states, “My lawyer suppose [*sic*] to appeal but did not.” When counsel has consulted with the defendant regarding the right to appeal, “[c]ounsel performs in a professionally unreasonable manner *only* by failing to follow the defendant’s express instructions with respect to an appeal.” *Flores-Ortega*, 528 U.S. at 478 (emphasis added). Accordingly, where an applicant establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the applicant may petition our Supreme Court for review of direct appeal issues pursuant to *White v. State*.⁵ See *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (establishing procedural guidelines for *White* review when the PCR judge determines the applicant did not freely and voluntarily waive his appellate rights). The Court, upon an appeal of the post-conviction relief decision, will review the lower court record and pass upon all issues properly raised and argued as

⁵ In *White*, the PCR judge found the applicant did not knowingly and intelligently waive his right to direct appeal due to ineffective assistance of counsel. 263 S.C. at 117, 208 S.E.2d at 39. As a result, the PCR court directed PCR counsel to attempt to secure a belated appeal to the Supreme Court from his original conviction and sentence. *Id.* On appeal, our Supreme Court explained that it did not have jurisdiction to entertain a belated direct appeal absent the timely filing of notice of appeal. *Id.* at 119, 208 S.E.2d at 39. However, because the *post-conviction relief appeal* was properly before it, the Court reviewed the trial record and all issues properly raised as if the direct appeal had been perfected. *Id.* at 119, 208 S.E.2d at 39–40. The Court ultimately held that “that there was no reversible error in the trial and that there was not an arguably meritorious ground of appeal, even if notice of intention to appeal had been timely served.” *Id.* at 119, 208 S.E.2d at 40.

if the direct appeal has been perfected. *White*, 263 S.C. at 119, 108 S.E.2d at 39–40.

The State submits Applicant cannot meet his burden showing he is entitled to a belated appeal pursuant to *White*. Applicant failed to present any facts that would show he inquired of counsel about filing an appeal, communicated to counsel his desire to appeal, or instructed counsel to file an appeal. However, because this allegation likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

V. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Conclusion

WHEREFORE, the State respectfully requests this Court grant its partial motion to dismiss as set forth in section III and thereafter convene an evidentiary hearing be held **solely** to determine whether Applicant was denied his right to appeal pursuant to *White*.

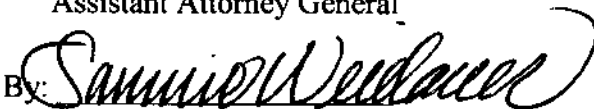
Respectfully submitted,

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By: 

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November 17, 2021

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Vernon L. Cooley, #377574

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2019-CP-18-1373

Affidavit of Service by Mail

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
SOUTH CAROLINA

2021 NOV 22 PM 4:14

FILED-RECORDED

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 to the Application for Post-Conviction Relief and Partial Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Christopher R. Geel, Esquire
Geel Law Firm, LLC
Post Office Box 21771
Charleston, SC 29413

DATED this 17th day of November, 2021.



Katie Wade, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COMMON PLEAS COURT
	)	
COUNTY OF DORCHESTER	)	FIRST JUDICIAL CIRCUIT
VERNON COOLEY	)	NO. 2019-CP-18-01373
	)	
VS.	)	<u>TRANSCRIPT OF RECORD</u>
	)	
THE STATE OF SOUTH CAROLINA	)	PCR Hearing

B E F O R E:

The Honorable Heath P. Taylor, Judge

Orangeburg, South Carolina

DATE: Wednesday, January 25, 2023

9:38 a.m.

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

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Reported by: Cathy J. Provost, RMR, Official Court Reporter

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CHARLIE L. WHIRL

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INDEX TO EXHIBITS

(No exhibits marked.)

- - - - -

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
 ellipses ... trailing off
 [ph] phonetically written
 [sic] written as said
 [indiscernible] unable to be understood due to low volume or
 quality of audio

-- P R O C E E D I N G S --

(Court called to order.)

THE COURT: Ms. O'Kelly, what have we got this morning?

ATTORNEY O'KELLY: May it please the Court.

THE COURT: Yes, ma'am.

ATTORNEY O'KELLY: My name is Whitney O'Kelly on behalf of the State of South Carolina. The case before us today is that of Mr. Vernon Cooley, 2019-CP-18-01373. Applicant is presently confined in the South Carolina Department of Corrections.

In August 2018 applicant was indicted by a Dorchester Grand Jury for criminal sexual conduct with a minor, second degree, 2016-GS-18-0534. Applicant was represented by Mr. Charlie Whirl. Ryan Templeton and Shelia Mims of the First Circuit Solicitor's Office prosecuted this case. On August 27th through the 29th, 2018, applicant appeared before the Honorable Diane Goodstein and a jury of his peers. Applicant received a guilty verdict, and was sentenced to 20 years' imprisonment. Applicant did not appeal his conviction or sentence.

Applicant submitted his application for a PCR on July 23rd of 2019, and the State made its return on November 22nd, 2021.

With that, I'll hand it over to Mr. Geel.

ATTORNEY GEEL: Good morning, Your Honor.

THE COURT: Good morning.

ATTORNEY GEEL: Chris Geel on behalf of the applicant, Mr. Vernon Cooley. Your Honor, I have an amended list of issues,

1 if I may approach.

2 THE COURT: Sure.

3 ATTORNEY GEEL: They haven't been filed yet but I'll file it
4 on the way back from court. Your Honor, there are essentially
5 two issues. As the State has mentioned, there was no direct
6 appeal in this case so, as our first enumeration, we are arguing
7 that Mr. Cooley's entitled to a belated direct appeal pursuant to
8 *White v. State*; that he never waived his right to a direct
9 appeal.

10 As to the second issue, we are simply alleging that trial
11 counsel, Mr. Whirl, was ineffective in failing to object to
12 vouching and bolstering testimony. Your Honor, we're pointing to
13 two instances in the transcript as far as the second issue.

14 Just for a point of clarification so that our presentation
15 isn't too muddy, as to the second transcript site, page 182 to
16 217, there was quite a lengthy colloquy about excluding that
17 particular testimony on the grounds that we're discussing, but we
18 are enumerating that is an issue just in the instance that the
19 appellate court that reviews this case might conclude that
20 Mr. Whirl waived that particular objection. So it's really just
21 finding that out, because Mr. Cooley has not had his direct
22 appeal yet as we noted, so we're not sure whether the appellate
23 court might deem that issue waived. So we're really just kind of
24 buttoning that up just in case that's the court's view on that
25 issue.

1 So those are our only two enumerations that we're proceeding
2 with today. And we are ready to proceed with our evidence at the
3 appropriate time.

4 THE COURT: Do you have a copy of the transcript for me?

5 ATTORNEY O'KELLY: Your Honor, I have that right here. May
6 I approach?

7 THE COURT: Yes, ma'am. Thank you.

8 ATTORNEY O'KELLY: You're welcome.

9 THE COURT: All right, Mr. Geel, whenever you're ready.

10 ATTORNEY GEEL: Thank you, Your Honor. We'll first call the
11 applicant, Mr. Vernon Cooley.

12 THE COURT: All right.

13 VERNON L. COOLEY,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE COURT: It's hard to hear with this glass, so please
17 speak up.

18 ATTORNEY GEEL: Your Honor, would it be all right if I
19 remain seated while I ask questions?

20 THE COURT: Sure.

21 ATTORNEY GEEL: Thank you.

22 **DIRECT EXAMINATION**

23 BY ATTORNEY GEEL:

24 Q Mr. Cooley, just let me know if you have any difficulty
25 hearing me, okay?

1 A No, sir.

2 Q Okay. And speak loudly and slowly, okay, so everyone can
3 take down what you're saying, all right?

4 A Okay.

5 Q Let's start at the beginning of this case. How is it that
6 you came to be represented by Mr. Whirl in this case?

7 A How did I -- him representing me?

8 Q Yes. How did he come to represent you?

9 A My wife, at the time, hired him.

10 Q Did he represent you for the entire duration of this case
11 until you were convicted?

12 A Yes.

13 Q So did any other attorneys represent you for a substantial
14 period of time during this case other than Mr. Whirl?

15 A No, sir.

16 Q Okay. Were you in jail or out on bond -- or, out on bond
17 while the charges were pending? Were you in jail or did you get
18 out?

19 A In jail.

20 Q For the entire time since you were arrested?

21 A The entire time.

22 Q And so while you were in jail did Mr. Whirl visit you to
23 prepare for trial and everything along those lines?

24 A At times he came in.

25 Q Now, during those meetings did y'all have any discussions

1 about appealing your case if it came to pass that you were
2 convicted at your trial?

3 A No, sir.

4 Q So that was not an issue that was discussed at all?

5 A No, sir.

6 Q Were you aware that you had the right to appeal if you were
7 convicted?

8 A Yes. I knew that. Yes.

9 Q When did you become aware of that fact?

10 A Uhm ...

11 Q If you know.

12 A I have been to several courts before. You know. I have the
13 right to appeal.

14 Q Okay. So is this something that you knew before this case?

15 A Yes. Yes.

16 Q And just to be clear, you never actually discussed the
17 appeal with Mr. Whirl directly?

18 A No, sir.

19 Q Okay. So if we fast-forward to the date when you were
20 actually convicted at trial --

21 A Yes.

22 Q -- after your conviction did you want to appeal your case?

23 A Yes. Yes. Yes.

24 Q And what efforts did you make to let Mr. Whirl know that you
25 wanted to appeal?

1 A I told my brother to tell him, you know, because I was
2 really upset, you know, because they had found me guilty, you
3 know, for something I didn't do, so I had my brother contact
4 Mr. Whirl.

5 Q Okay. Did you have any direct discussions with Mr. Whirl
6 about appealing?

7 A No.

8 Q At any time did you want to give up your right to appeal?

9 A No, sir.

10 Q Okay. I just want to show you something very briefly.

11 ATTORNEY GEEL: Your Honor, may I approach the witness?

12 THE COURT: Sure.

13 ATTORNEY GEEL: And, Your Honor, for the purposes of the
14 record, I'm showing Mr. Cooley his pro se PCR application that he
15 filed.

16 BY ATTORNEY GEEL:

17 Q Mr. Cooley, I'm going to flip to the second page of your PCR
18 application. First of all, do you recognize this PCR application
19 that you filed?

20 A Yes.

21 Q And is that your handwriting on it?

22 A Yes, sir.

23 Q I'd like to direct your attention to page 2, section 9. Can
24 you read what that says?

25 A If your answer's no --

1 Q Just your an answer.

2 A "State your reason for not so appealing. My lawyer was
3 supposed to appeal but did not."

4 Q Okay. So on that application you indicated that your lawyer
5 was supposed to appeal but did that appeal your case?

6 A Yes.

7 Q So when you put that on your PCR application is that
8 essentially what you were arguing, because you wanted your lawyer
9 to appeal but he did not?

10 A Yes.

11 Q And again, was there anytime that you communicated to
12 Mr. Whirl that you did not want to appeal?

13 A No, sir.

14 ATTORNEY GEEL: Thank you, Your Honor. Nothing further for
15 Mr. Cooley.

16 THE COURT: Ms. O'Kelly.

17 **CROSS-EXAMINATION**

18 BY ATTORNEY GEEL:

19 Q Mr. Cooley, were you otherwise satisfied with your meetings
20 with Mr. Whirl?

21 A I can't hear you. You have to speak up.

22 Q Were you otherwise satisfied with your meetings with
23 Mr. Whirl during the course of your trial?

24 A Not all of them.

25 Q Not all of them. All right. Thank you.

1 THE COURT: Anything on redirect, Mr. Geel?

2 ATTORNEY GEEL: No, sir, Your Honor. Thank you.

3 THE COURT: All right, Mr. Cooley. You can step down, sir.

4 MR. COOLEY: Thank you, sir.

5 THE COURT: Yes, sir. All right. Anything else, Mr. Geel?

6 ATTORNEY GEEL: Yes, Your Honor. We next call trial

7 counsel, Mr. Charlie Whirl.

8 THE COURT: Okay.

9 ATTORNEY WHIRL: May I bring the file with me, Your Honor?

10 THE COURT: Yes, sir.

11 CHARLIE L. WHIRL,

12 having first been duly sworn, was examined and testified as
13 follows:

14 **DIRECT EXAMINATION**

15 BY ATTORNEY GEEL:

16 Q Good morning, Mr. Whirl.

17 A Good morning.

18 Q Just let me know if you have any issues hearing my
19 questions, okay?

20 A Yes.

21 Q All right. Let's start off by talking about the direct
22 appeal issue. You just heard Mr. -- you were present in the
23 courtroom, and you just heard Mr. Cooley's testimony?

24 A I did.

25 Q Can you tell the Court what your recollection is in terms of

1 how it was that a direct appeal was not filed in this case?

2 A Yes. My recollection is that on the day of the conviction I
3 do believe that was the first time we had any substantial
4 conversation about an appeal. I told him that I would not be
5 doing the appeal, I did not do appellate work, and that he should
6 contact the -- I believe I told him the -- public defender's
7 office or the appellate office for those purposes.

8 Q Okay. So just to make sure that I understand, you
9 communicated to Mr. Cooley that you would not file a notice of
10 appeal on his behalf?

11 A I communicated that to him and I believe to his brother.

12 Q Okay. Was this in response to them communicating to you
13 that they wanted to appeal?

14 A No. This was in response -- after the verdict was directed
15 that same day. He went downstairs. I came downstairs and talked
16 to him. Also talked to him at the jail.

17 Q I know it's been a while but, to the best of your
18 recollection, how did the issue of appeal even come up at all if
19 it wasn't by their request?

20 A I brought it up. Told him he had the right to appeal.

21 Q Okay. And this was after the verdict?

22 A After the verdict.

23 Q On the same day?

24 A Yes.

25 Q And so you instructed Mr. Cooley and his brother to contact

1 the public defender's office?

2 A I don't know if I told him -- I'm sorry, I didn't mean to
3 cut you off. Go ahead.

4 Q No. I was done with the question. Just clarify what you
5 instructed them to do to pursue an appeal.

6 A I know I instructed Mr. Cooley to do that. The conversation
7 with his brother, it was somewhat heated. I don't recall whether
8 or not I told them that they should contact anyone -- that he
9 should contact anyone other than the public defender.

10 Q Okay. You practice significantly in criminal law; is that
11 fair to say?

12 A Yes.

13 Q And you've done a number of jury trials, correct?

14 A Yes.

15 Q Just as a general practice, if you have a client who's
16 convicted is it your general practice to file a notice of appeal
17 if they request it?

18 A It is.

19 Q And is there a reason why you deviated from that practice
20 here?

21 A There is.

22 Q Do you recall what that is specifically as you sit here
23 today?

24 A I actually wanted an opportunity to bolster Mr. Cooley's
25 PCR.

1 Q And what's that? Would you mind expanding on that a little
2 bit.

3 A In the sense that I felt like I was obligated to tell him
4 that he had the right to appeal, but if I did not file a notice
5 of appeal I was certain that anyone receiving a 20-year sentence
6 would file a PCR, and as part of that PCR he would say that his
7 lawyer did not file an appeal.

8 Q Okay. And as you said, you don't do appellate work. I
9 don't want to put words in your mouth. You don't do criminal
10 appellate work?

11 A I do not do criminal appellate work.

12 Q Okay. And so are you familiar with the procedures under
13 *White v. State* and things like that where a PCR applicant can get
14 a direct appeal, or is that not something that you typically do?

15 A It's not something I typically do.

16 Q So you're not aware of what procedure a defendant would have
17 to undertake to get his direct appeal in an instance where a
18 notice of appeal had not been filed?

19 A I did not have that conversation with him at all.

20 Q Let me ask you this: In the event that you had been
21 directly instructed to file an appeal can you say how you would
22 have reacted to that?

23 A How I would have reacted to it?

24 Q Uh-huh. Like if there was a direct request.

25 A I mean, I would have -- I would have done the research to

1 find out how to do a direct appeal and I would have made the
2 appeal.

3 Q Are you aware one way or the other whether you would be
4 obligated to actually do the appeal if you filed a notice of
5 appeal?

6 A I would not have been obligated. I'd just have to -- I
7 would have had to actually file the notice of appeal, but I
8 wouldn't be the person that would actually have to do the appeal.

9 Q So you would agree then that you don't actually have to be
10 knowledgeable in appellate work to file a notice of appeal?

11 A Absolutely.

12 Q So that's something that you could have done?

13 A I could have filed a notice of appeal. Yes.

14 Q As far as you know, is an attorney who tries a case under
15 any obligation to file a notice of appeal in instances where it's
16 communicated to them that that's their client's wish?

17 A I don't recall the exact rule but, yes, it is. It would be
18 an obligation if it was directly communicated to me. Yes.

19 Q Let's turn to the actual issues in the transcripts here.
20 I'd like to direct your attention to the testimony of Katherine
21 Fabrizio. I know, again, it's been a while but have you had some
22 occasion to do some refreshing of your recollection about what
23 led up to Ms. Fabrizio's testimony in terms of a --

24 A I looked at it briefly. I believe that was the SANE nurse?

25 Q Yes, I believe so.

1 A Okay.

2 Q And so just for a bit of background, there was a pretty
3 lengthy proffer prior to Ms. Fabrizio's testimony. Do you recall
4 that during the trial?

5 A Yes, I do.

6 Q And do you recall arguing to the Court that you wanted
7 Ms. Fabrizio's testimony excluded?

8 A Yes, I do. Basically the issue was whether or not -- or, to
9 me, the issue was whether or not, by testifying, she would be
10 actually bolstering the credibility, or the statements, of the
11 young lady that was the victim in this case --

12 Q Okay.

13 A -- so I did not want that to come in, and I particularly did
14 not want her making an analysis or a jump from the fact that this
15 one condition, this redness, was a sexual assault. I didn't want
16 that in. And we spent quite some time going back and forth on
17 excluding that.

18 Q Let's pause on that briefly, the issue of bolstering. Let's
19 talk about that a little bit. You argued to the Court that you
20 believed her testimony bolstered the alleged victim's. This is
21 an issue, would you agree, that comes up a lot in criminal sexual
22 conduct cases, this issue of bolstering or vouching?

23 A Yes.

24 Q Would you agree with that?

25 A Yes.

1 Q Have you worked on and/or tried a number of criminal sexual
2 conduct cases before?

3 A Just one other.

4 Q Have you had the issue of bolstering or vouching of a victim
5 in a CSC case come up in the past?

6 A Yes.

7 Q And as a general practice -- it may be obvious but -- what
8 are your concerns about bolstering in a criminal sexual conduct
9 case?

10 A Well, I mean, it's just what it says. I mean, if a jury
11 hears that there is this so-called -- or, this SANE nurse who has
12 to go through certain certifications to get to that point and
13 certain training, and I believe that this particular person
14 testified that she had done maybe 125 exams or so, that
15 information, you want it, I wanted it, excluded because I think
16 it actually adds credibility to what the alleged victim is saying
17 about the sexual assault.

18 Q If I could, Mr. Whirl, I'd like to direct your attention
19 specifically to page 198 of the transcript. Do you have a copy
20 of the trial transcript there with you?

21 A I do. You said 198?

22 Q 198. Yes, sir.

23 A Okay.

24 Q Let me know when you reach that page.

25 A I'm there.

1 Q On line 11 do you see where you address the Court where you
2 begin: "Your Honor, I don't -- I mean, my problem is ..." Do
3 you see that portion?

4 A "I think it is bolstering and adding to the credibility of
5 the child."

6 Q Right, "which is, if you roll back this morning in terms of
7 my brief opening remarks, I talked about the subjective versus
8 the objective, so that's kind of like where I was going to
9 probably end up anyway at some point, saying that this is
10 bolstered."

11 So let's just pause there. Just for the point of -- just
12 for putting a fine point on it, is that essentially what you were
13 communicating to the Court, that you believed this was bolstering
14 testimony?

15 A It is.

16 Q And you were seeking to have Ms. Fabrizio's testimony
17 excluded on those specific grounds --

18 A I was.

19 Q -- fair to say? Now, to the best of your recollection,
20 Ms. Fabrizio was ultimately permitted to testify?

21 A She was.

22 Q And let me put it this way: I mean, you're aware of the
23 need to make contemporaneous objections to testimony?

24 A I am.

25 Q If a reviewing court deemed that there was a failure to make

1 a contemporaneous objection here -- let me back up and start --
2 rephrase the question. Was it your view at that point, having
3 argued to the Court that this testimony should be excluded, that
4 that issue was preserved for review?

5 A I believe it was. To an extent, looking back at the
6 transcript, I believe that what was limited -- that the testimony
7 was somewhat limited based upon the out-of-jury conversations
8 between the Court, myself, and defense [sic] counsel.

9 Q Okay. Let me clarify that, if I could. So was it your view
10 that your objection was sustained at that point or that it was
11 overruled? Or did you have an --

12 A I thought, because of the limiting language -- I mean, if I
13 have to think back on where my thought process was at that point,
14 I felt that it was preserved because the judge basically did not
15 allow that type of testimony that I was concerned about to come
16 in.

17 Q And let me ask one more clarification question. As you sit
18 here today could you identify any strategic reason for not
19 objecting to this testimony?

20 A No. No.

21 Q So if it were deemed waived, the objection, that wouldn't
22 have been a strategic thing; that would have been your belief
23 that it was preserved and that you didn't need to object; is that
24 a fair to say?

25 A That is correct.

1 Q So there's no strategic reason for not objecting?

2 A No.

3 Q And if we could back up in the transcript to page 135 --
4 actually, pardon me, 134. And, Mr. Whirl, this is during the
5 testimony of Melissa Blanchard, who is a Dorchester County
6 Sheriff's Office detective. Do you recall Ms. Blanchard
7 testifying about interviewing the alleged victim in this case?

8 A I do briefly. Vaguely.

9 Q Well, I'll walk us through some of the pertinent parts. Can
10 you join me on page 134 of the transcript.

11 A I'm there.

12 Q Okay. On line 2, the question to Ms. Blanchard is: "Did
13 you have the opportunity to speak with the victim in this case?"
14 to which Ms. Blanchard answers "I did." And then the question
15 is: "Where did you speak with the victim?" Answer: "In my
16 patrol vehicle at that location." And then on line 12 the
17 question is: "What did she tell you occurred?" And then she
18 gives a long answer there for the remainder of the page but at
19 the page the question is: "Did she ultimately" -- she, the
20 victim -- "ultimately reveal the sexual assault occurred?", and
21 then the answer is "She did."

22 Do you have any independent recollection of Ms. Blanchard's
23 testimony as you sit here today?

24 A No. Other than looking at it now, I don't.

25 Q Okay. And if you wouldn't mind flipping to page 135 of the

1 transcript. The question to Ms. Blanchard at the top of 135 is:
2 "Once you completed speaking with the victim in this case what
3 did you have her do next?" The answer is: "I called the
4 victim's advocate to escort her down to MUSC." Question: "Okay.
5 What's the purpose of sending her to MUSC?" Answer: "To submit
6 to a sexual assault kit." Question: "Did you review the report
7 from the sexual assault kit?" Answer: "I did." Question: "Did
8 she make a similar report to the nurse doing the sexual assault
9 kit?" Answer: "She did." Question: "Okay. Did you set up
10 other interviews with the victim in this case?" Answer: "I
11 did." Question: "What other interviews did you set up with
12 her?" Answer: "I set up a forensic interview at Dorchester
13 Children's Advocacy Center in Summerville." Question: "Okay.
14 And did you actually -- you didn't conduct that interview, did
15 you?" Answer: "I did not." Question: "Did you watch -- did
16 you view the interview?" Answer: "Yes, sir. I watched it."
17 Question: "Okay. Did she indicate that the same actions
18 occurred?" Answer: "Correct."

19 And then lastly, at the top of page 136, question: "Okay.
20 Once you had all that information together what did you do next?"
21 Answer: "Given the report from MUSC that I received and the
22 consistent disclosures from the juvenile, I prepared an affidavit
23 and presented it to a magistrate for a warrant." Question: "Did
24 you ultimately go and execute that warrant?" Answer: "I did."
25 Question: "Once Mr. Cooley was placed under arrest did you have

1 an opportunity to speak with him?" Answer: "I did."

2 Okay. So, Mr. Whirl, as Ms. Blanchard -- bearing in mind
3 the issues that we just discussed with bolstering and vouching
4 and things like along those lines, as you sit here today and
5 review this portion of Ms. Blanchard's testimony do you have any
6 concerns in that regard for what she's testifying to?

7 A For some reason, I don't have page 135, but I have 134 and
8 136.

9 Q My apologies. Would you like to have a copy to review it?
10 I don't want you to --

11 A Yeah, page 135.

12 Q Sure. Let me bring that up to you.

13 ATTORNEY GEEL: Your Honor, may I approach?

14 THE COURT: Absolutely.

15 THE WITNESS: Apparently at the time I did not consider that
16 to be bolstering or I would have objected to it.

17 BY ATTORNEY GEEL:

18 Q I'm sorry?

19 A Or I would have objected to it if I did. At the time I must
20 not have considered it to be bolstering the witness.

21 Q Okay.

22 A I mean the victim.

23 Q Right. And understanding again that it's been several
24 years, as you sit here today do you have an opinion on this issue
25 now that you have time to look at the transcript and consider it

1 more carefully?

2 A Well, I really haven't -- I mean, I read it but I haven't
3 considered it more carefully than I did back then. I still don't
4 think it, in the context of what she testified to, that it was
5 bolstering.

6 It was just facts that had actually happened and led up to
7 as an incident from her investigation.

8 Q So as you sit here today you don't regard this particular
9 testimony as bolstering; is that fair to say?

10 A It's on the verge but, no, I do not.

11 Q And again understanding that it's been quite a while since
12 this trial took place, would it be fair to say then that the
13 choice not to object to this particular testimony would be
14 informed by your opinion that this is not bolstering?

15 A It was at the time. Yes.

16 Q And if your opinion had been different then you essentially
17 would have objected to that; is that fair to say?

18 A I would have. I would have.

19 Q You couldn't identify a strategic reason for not objecting
20 to bolstering testimony?

21 A No. No.

22 ATTORNEY GEEL: The Court's indulgence, please, Your Honor?

23 THE COURT: Yes, sir.

24 ATTORNEY GEEL: Okay. Thank you, Your Honor. Nothing
25 further from this witness.

1 THE COURT: Ms. O'Kelly.

2 **CROSS-EXAMINATION**

3 BY ATTORNEY GEEL:

4 Q All right. Mr. Whirl, thank you for being here. Let's see.
5 Do you remember how many times you met with the applicant in
6 general?

7 A No. I would say it was less than ten, probably somewhere --
8 eight or nine times.

9 Q And do you remember discussing with him the State's evidence
10 against him, including possible witnesses?

11 A Yes.

12 Q I then I assume that means you probably discussed the risks
13 of going to trial with the applicant as well?

14 A I did, but there was -- there was no offer that was worth
15 considering taking. It would have been a straight-up plea.

16 Q And do you recall your overall strategy for trial then?

17 A I do.

18 Q And what would that be?

19 A Basically the main thing with Mr. Cooley is that there was
20 no DNA evidence connecting him to this particular incident.
21 There was the testimony of the victim, and looking back on it,
22 she was not the 12-year old or 12-and-a-half-year old by the time
23 we got to trial.

24 If I had to do anything over again in terms of a strategy it
25 probably would have been going at her at a little different

1 direction, perhaps in a more forceful direction because
2 certainly, with the bullying that she had allegedly been
3 receiving back at school prior to this incident, as well as some
4 counseling that she was doing, my strategy probably was a little
5 bit less is more; I need to get out what happened but I'm not
6 going hard at her.

7 Q And so was the testimony of Ms. Fabrizio an issue for you
8 going into trial?

9 A I'm sorry?

10 Q Was the testimony that Ms. Fabrizio was going to offer a
11 worry for you going into trial? Did you think about that?

12 A Well, I mean, I thought about it, as was mentioned earlier,
13 from the standpoint that I did not want her bolstering what this
14 child was saying at the time.

15 Q And so you do remember that you had a proffer of testimony
16 from Ms. Fabrizio before she was ever heard in front of the jury,
17 correct?

18 A Yes.

19 Q And do you remember that you advocated your points regarding
20 the aspects of bolstering, that you were worried that it would
21 add to the credibility of the child, and that was all done in
22 camera?

23 A Yes.

24 Q And do you recall that the judge gave specific parameters as
25 to what the State could ask for after that?

1 A Yes.

2 Q And the judge actually excluded portions of the testimony
3 that you were worried could be bolstering?

4 A She did. And if I -- as I think back on that I think the
5 judge actually warned both of us about -- and probably more
6 directed to me than to her -- about opening any doors for the
7 SANE nurse. So, yeah, I remember that. That was one of the most
8 lengthy conversations between the bench and the attorneys.

9 Q And so do you remember the judge ended up giving you
10 explicit permission to follow the desired questioning that you
11 had regarding her findings as to whether or not it was
12 nonspecific injury?

13 A Correct.

14 Q And I know that you have the transcript in front of you, but
15 do you remember that you ended up successfully cross-examining
16 Ms. Fabrizio in getting her to admit five times on cross that the
17 redness presented in the original genital examination was, in
18 fact, could be due to -- or, were not indicative of sexual abuse?

19 A I do. And the reasoning, one of the reasons, I believe I
20 went that route and wanted to point that out was because the
21 young lady testified that she rode her bike from one area where
22 Mr. Cooley and her mother lived in close proximity across the
23 way.

24 And when I drove that route -- and part of it I had to
25 walk -- it seemed to be about a 20 - 25 minute trek not following

1 the bike path, but I wanted make sure that the jury understood
2 that it was not specific and you could not directly relate that
3 to the alleged fingering.

4 Q And so moving on, do you believe that Ms. Fabrizio's
5 testimony affected the outcome of this trial in any significant
6 way against your client then?

7 A If I had to say -- I would say no. The most significant
8 impact in that trial, to me, was the testimony of that 15-year
9 old. I think that sealed the deal, I really do, just my opinion
10 in terms of the day of trial, and it's still my opinion today.

11 Q And then I know we've already spoken about the appeal but
12 just to clarify, Mr. Cooley did not directly ask you for an
13 appeal himself?

14 A Mr. Cooley is an honorable man. I think that he is confused
15 about that conversation with me versus that conversation with his
16 brother.

17 I do not want to call him an outright liar here, but I will
18 tell you that on the day of his conviction we had a conversation
19 about an appeal and the fact that I was not going to file an
20 appeal on his behalf.

21 Q So that means he did not ask even for a notice of appeal to
22 be filed on his behalf?

23 A I don't know that Mr. Cooley would have been versed in
24 saying/in making the distinction between, Will you file a notice
25 of appeal, or, Will you appeal this on my behalf? My extent of

1 the conversation dealt with just that an appeal had to be filed.

2 Q Okay. Gotcha.

3 ATTORNEY O'KELLY: Beg the Court's indulgence one moment.

4 THE COURT: Yes, ma'am.

5 BY ATTORNEY O'KELLY:

6 Q So it's your testimony here today that he did not ask you to
7 file a notice of appeal?

8 A I have no recollection of him asking me to file it. I do
9 have a recollection of us having a conversation about the appeal
10 and me telling him that I would not. Did he say to me during
11 that conversation, Will you file the appeal?, it wouldn't make
12 sense for him to ask me that if I directly told him in the
13 beginning that I would not be doing that and told him to contact
14 the public defender's office.

15 Q Right. And do you recall the specific reason that you
16 didn't want to other than the fact that you don't typically do
17 appellate work? Was there any other strategy or decision-making
18 rationale that went into that decision?

19 A I mean, at the expense of what this could actually mean to
20 me, I mean, I just felt it would bolster Mr. Cooley's appeal --
21 I'm sorry, his PCR.

22 Q Okay.

23 A I honestly felt that.

24 Q All right. Thank you.

25 THE COURT: Anything on redirect, Mr. Geel?

1 ATTORNEY GEEL: No, sir, Your Honor. Thank you.

2 THE COURT: All right, Mr. Whirl. You can step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Yes, sir. Any other witnesses?

5 ATTORNEY GEEL: No further evidence, Your Honor.

6 THE COURT: Okay. Would y'all like to be heard?

7 ATTORNEY GEEL: Your Honor, I wouldn't mind addressing the
8 Court briefly, if that's Your Honor's preference.

9 THE COURT: That will be good.

10 ATTORNEY GEEL: So, Your Honor, as to our first enumeration,
11 I certainly -- I'll point out two things. Number one, that
12 trial, it's not up to the trial attorney whether an appeal gets
13 filed. That's the client's choice. I appreciate Mr. Whirl's
14 candor here in terms of hoping to help Mr. Cooley in his appeal
15 but unfortunately all that he achieved was depriving him of his
16 rights to his direct appeal which, again, is Mr. Cooley's right.

17 And Mr. Whirl, just like any other trial lawyer, has the
18 responsibility to determine whether their client wants to do an
19 appeal, and then to file a notice of appeal irrespective of his
20 own lawyer's preferences in that regard, irrespective of the
21 lawyer's own practice, limited experience, or whatever the case
22 make.

23 The state of South Carolina is equipped with public
24 defenders who will do any appeal for any incarcerated defendant
25 irrespective of trial counsel's knowledge of the appellate

1 system. So there's simply no justification for not filing the
2 appeal.

3 And again, reiterating that, I appreciate Mr. Whirl's candor
4 in his desire to help Mr. Cooley but the choice to forego the
5 notice of appeal in contradiction to Mr. Cooley's, we maintain,
6 his express wishes that he wanted to have an appeal, to forego
7 that achieved nothing; it only prejudices his client.

8 And so, Your Honor, I think the record before us amply
9 demonstrates that this was simply ineffective and that was the
10 reason that the appeal was not filed. Again, Mr. Cooley's
11 conviction, until today, has not been reviewed by anyone and
12 that's because Mr. Whirl simply declined to file the notice of
13 appeal. So we submit respectfully that he is entitled to his
14 belated direct appeal pursuant to *White v. State* based on the
15 record before the Court.

16 Your Honor, turning to the second issue here, as to the
17 vouching and bolstering, I'm sure Your Honor is very familiar
18 with *Kromah* and the line of cases that deal with bolstering in
19 criminal sexual conduct cases. And the reason that our appellate
20 courts take such a close -- or, scrutinize so closely these types
21 of cases is precisely of what Mr. Whirl mentioned during his
22 testimony, that this, like many other CSC cases, primarily came
23 down to a credibility issue, whether the alleged victim was to be
24 believed by the jury.

25 Likely many CSC cases, there really wasn't any forensic

1 evidence -- or, there wasn't substantial forensic witness; there
2 wasn't DNA or anything along those lines; no other eyewitnesses;
3 no allegations of prior conduct or anything along those lines.

4 Essentially, as Mr. Whirl candidly mentioned during his
5 testimony, it came down to the credibility of the victim here.

6 And so what we have here, Your Honor, respectfully, is two
7 instances that we've enumerated.

8 As to the latter one, Ms. Fabrizio's testimony, again, as I
9 mentioned during my opening remarks, we are simply enumerating
10 that in case the appellate court views Mr. Whirl as having waived
11 that particular objection. My view of this transcript is that
12 the issue was adequately preserved for review but as Mr. Cooley's
13 case has not been reviewed by the Court I wanted to ensure that
14 the Court had a record to look at in the instance that it
15 determined, in case it determined, that Mr. Whirl had waived that
16 particular objection. I wanted to create a record that he did
17 not intend to waive that objection and that he had no strategic
18 reason for doing so.

19 As to the first instance that we enumerated, on transcript
20 page 134, 135, and 136, Melissa Blanchard's testimony, what I
21 would reiterate here, Your Honor, is simply, again, getting back
22 to the fact that this essentially came down to the victim
23 credibility. We have Ms. Blanchard's testimony here that she
24 interviewed the victim, that the victim's advocate interviewed
25 the victim, and that there was a forensic interview at the

1 Dorchester County Children's Advocacy Center, and immediately in
2 the wake of pointing out those few things, that she had spoken to
3 the victim, that the victim's advocate spoke to the victim, and
4 that the Dorchester County Advocacy Center spoke to the victim,
5 she characterized the reports as consistent disclosures,
6 indicating her personal opinion that the victim had given
7 consistent disclosures not just to her but to the two other
8 individuals who had interviewed her. And again, she just
9 mentioned that the victim had been interviewed by those two
10 people.

11 One of the things that *Kromah* and the other line of cases
12 speaks very clearly about is that we scrutinize this type of
13 testimony very closely for vouching and bolstering when it is the
14 case that the witness who's testifying personally interviewed the
15 victim which is exactly what happened here.

16 So, in other words, this person is expressing their own
17 opinion about the credibility of this victim and pointing to the
18 fact that her disclosure to her, to Blanchard, was consistent
19 with what was said to the victim's advocate and to the Dorchester
20 Children's Advocacy Center.

21 So we submit to the Court respectfully that this is textbook
22 vouching and bolstering. This is Ms. Blanchard indicating that
23 she charged Mr. Cooley based on what she deemed as consistent
24 disclosures from the victim to herself and these other witnesses.

25 So again, with respect to Mr. Whirl's testimony, he has

1 indicated that he doesn't believe that this is vouching or
2 bolstering and based on that there was no strategic reason for
3 not objecting.

4 Respectfully -- with all due respect to Mr. Whirl, we have
5 the opposite opinion. We believe very strongly that this is
6 vouching and bolstering and that there should have been an
7 objection here. And, again, as Mr. Whirl candidly admitted
8 during his teaming, the entire case came down to the credibility
9 of this witness, and so it's particularly important that the
10 trial attorney not allow any vouching or bolstering from these
11 other witnesses, as was allowed here.

12 So bearing those in mind, Your Honor, we submit, as to our
13 two enumerations, that Mr. Cooley is entitled to belated direct
14 appeal of this case, and also that he is entitled to a retrial
15 based on the vouching and bolstering. Thank you.

16 THE COURT: All right. Well, just for my edification, I
17 can't do both, can I?

18 ATTORNEY GEEL: Yes, sir, Your Honor, you can. So
19 essentially my understanding of how it would work is that we
20 would do cross appeals if Your Honor was to grant the belated
21 appeal.

22 THE COURT: Let's say I granted everything that you just
23 asked me for. I can't give him a new trial and an appeal at the
24 same time, right?

25 ATTORNEY GEEL: Yes, sir, Your Honor. I anticipate that if

1 Your Honor was to grant a new trial that the State would appeal
2 that, and then we'd do cross appeals on those two issues.

3 THE COURT: Okay.

4 ATTORNEY GEEL: If the State declines to appeal then
5 obviously we would waive the direct appeal and take the retrial.
6 That's what we would do. But I believe Your Honor can grant or
7 deny either or both.

8 THE COURT: Okay. I was just checking. Ms. O'Kelly.

9 ATTORNEY O'KELLY: Your Honor, as far as the claim to
10 ineffective assistance of counsel, the State would submit that
11 the failure to object to Fabrizio's testimony would not so affect
12 the trial to render the outcome, I guess, justice stability, and
13 that the result of the proceeding would not have been any
14 different had he done so. There's no reasonable probability
15 sufficient to undermine the confidence in the outcome of this
16 case.

17 I would also submit that, as to the appeal, when the
18 post-conviction relief the judge has affirmatively found that the
19 right to a direct appeal is not knowingly and intelligently
20 waived, the applicant may petition for writ of certiorari
21 pursuant to Supreme Court Rule 50, Section 9, according to *State*
22 *v. Davis*.

23 And we would submit to the Court, respectfully, to deny
24 relief as he has not met his burden.

25 THE COURT: All right. Okay. Well, I'll take it under

1 advisement and let you all know something in a day or so.

2 (End of Transcript of Record.)

3
4 CERTIFICATE OF REPORTER

5 I, Cathy J. Provost, Official Court Reporter for the
6 Fourteenth Judicial Circuit of the State of South Carolina, do
7 hereby certify that the foregoing is a true, accurate and
8 complete Transcript of Record of the proceedings had and evidence
9 introduced in the trial/proceedings of the captioned case in the
10 Court of Common Pleas for Dorchester County, South Carolina, on
11 the 25th day of January, 2032.

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

14
15 Date: April 29, 2023

16
17 \s\ Cathy J. Provost
18 Cathy J. Provost, RMR
19 Official Circuit Reporter
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FILED-RECORDED

State of South Carolina Dorchester County	2023 FEB 21 AM 10:28	In the Court of Common Pleas For the First Judicial Circuit
	CHERYL GRAHAM CLERK OF COURT DORCHESTER COUNTY	Case No(s): 2019CP1801373 (PCR Application)
Vernon Cooley (#377574)		
v.		
State of South Carolina		ORDER PARTIALLY GRANTING AND PARTIALLY DENYING APPLICATION FOR POST- CONVICTION RELIEF

This matter came before this Court in the First Judicial Circuit on January 25, 2023 upon Applicant's request for post-conviction relief ("PCR"). At the hearing, the Applicant Vernon Cooley, through counsel, made several arguments in support of his alleged grounds for Post-Conviction Relief. Those arguments and this Court's findings regarding each alleged ground for relief are discussed in detail below.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Dorchester County Clerk of Court. Applicant was arrested on March 10, 2016, following an investigation into the alleged sexual assault of a minor victim. Applicant was indicted in August 2018 for criminal sexual conduct with a minor in the second degree. On August 27, Applicant proceeded to trial before the Honorable Diane Goodstein. Applicant was represented by Charlie Whirl, and the State was represented by Ryan Templeton and Sheila Mims. At the end of trial, Applicant was convicted on the sole count of the indictment. The trial court sentenced Applicant to twenty years' imprisonment. Applicant did not file a direct appeal.

Applicant filed a *pro se* PCR application in Dorchester County on July 23, 2019. That application was subsequently amended by PCR counsel. The matter was convened

for an evidentiary hearing on January 25, 2023. At that evidentiary hearing, Cooley asserted the following grounds for relief:

1. The Applicant is entitled to a belated direct appeal, pursuant to White v. State, 263 S.C. 110 (1974). Applicant never received a direct appeal, and Applicant never knowingly and intelligently waived this right.
2. Trial counsel was constitutionally ineffective pursuant to Strickland v. Washington when he failed to object to improper vouching/bolstering testimony.

At the evidentiary hearing, Applicant testified on his own behalf, and the Court also heard testimony from trial counsel Charlie Whirl. Having heard the evidence presented in this matter, the application is hereby GRANTED in part and DENIED in part, for the reasons set forth below.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Synopsis of Trial Evidence

This case arises from an allegation that on March 5, 2016, the Applicant Vernon Cooley sexually assaulted his 15-year-old granddaughter. The State alleged that on the date in question, Applicant had agreed to take the victim out for breakfast. Instead, they went to Applicant's house and the victim alleged that Applicant kissed her, removed her clothing, and digitally penetrated her vagina. After the alleged incident, the victim reported these events to her step-father, who contacted police. Applicant was subsequently charged with criminal sexual conduct, and he maintained his innocence throughout the underlying proceedings. At trial, the State presented testimony of the victim, the victim's mother (Applicant's daughter), the victim's step-father, and several law enforcement personnel who responded to the scene on the date in question. At issue in this proceeding is the testimony of two witnesses who interviewed the victim – (1) Melissa Blanchard, a Dorchester County Sheriff's Office investigator who spoke to the victim on the date of the

incident, and (2) Katherine Fabrizio, a nurse practitioner at M.U.S.C. who met with the victim on March 24, 2016, nineteen days after the incident took place. The details of their testimony are set forth in greater detail below.

The forensic evidence presented at trial was ultimately inconclusive. Investigators analyzed the victim's underwear but serology testing did not identify the presence of semen or saliva. (Tr. 170-71). Similarly, a DNA sample recovered from the sexual assault kit could not be matched to Applicant. (Tr. 177-79). However, Katherine Fabrizio testified that two weeks prior to her examination of victim, redness was observed on victim's hymenal tissue. (Tr. 189). Fabrizio testified that this redness was not present during her follow-up examination, and "the fact that it was gone says to me that it was most likely an acute finding," and expressed her opinion that her "diagnosis" was sexual assault. (Tr. 190-91).

Ineffective Assistance of Trial Counsel

Applicant alleges that he received ineffective assistance of trial counsel in several respects. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389 (2002). Mere allegation of ineffective assistance is not sufficient to warrant granting relief. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). The applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Attorneys are held to an objective standard of "reasonably effective assistance" under "prevailing professional norms." Cherry v. State, 300 S.C. 115, 117 (1989)(quoting Strickland, 466 U.S. at 688). A PCR applicant must also show prejudice to receive relief. Prejudice is defined as a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Lafler v. Cooper, 566 U.S. 156, 163 (2012). A reasonable probability is a probability sufficient to undermine

confidence in the outcome of the proceeding. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

I. Belated direct appeal, pursuant to White v. State, 263 S.C. 110 (1974).

Applicant alleges that he was deprived of his right to a direct appeal, and that he never knowingly and voluntarily waived this right. This Court agrees, and finds that Applicant is entitled a belated direct appeal pursuant to White. The record before this Court demonstrates that trial counsel failed to file a notice of appeal, and failed to adequately inquire whether Applicant desired that a direct appeal be filed. Applicant testified that he never waived his right to an appeal, and that he never intended to relinquish this right. Moreover, trial counsel candidly admitted that he elected not to file a notice of appeal in order to ensure that Applicant had meritorious issues to raise in his PCR proceeding. This was clearly an objectively unreasonable choice on counsel's part, since Applicant did not stand to benefit in any conceivable way from counsel's failure to pursue an appeal. Further, counsel candidly admitted that he was unaware of the appellate procedures that would allow Applicant to pursue his direct appeal with the assistance of appointed counsel, nor the procedures that would resurrect Applicant's right to a belated appeal under White v. State. In summary, trial counsel was simply misinformed or unaware about the procedural issues at play, and the possible consequences of failing to file an appeal. In other words, his decision was not the product of strategic reasoning, nor was it informed by an adequate understanding of the law. Whether or not clarifying this point was trial counsel's responsibility, the end result was that Applicant was deprived of his right to a direct appeal, and there is no evidence whatsoever that Applicant intended to give up this right at any time. An applicant who meets the burden of showing that he did not knowingly and voluntarily waive his right to a direct appeal of his trial conviction is entitled to a belated appeal. Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002); Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986). This Court hereby finds that the Applicant did not knowingly and

intelligently and voluntarily waive his right to direct appeal. Consequently, he is entitled to relief on this ground.

II. Failing to object to alleged vouching/bolstering testimony

Applicant alleges that trial counsel was constitutionally ineffective for failing to object to testimony from the State's witnesses that Applicant alleges constitutes vouching/bolstering, which is prohibited under State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (S.C. 2013) and related cases. In Kromah, the supreme court clarified the scope permissible testimony from forensic interviewers as follows:

Our courts have previously held that the assessment of witness credibility is within the exclusive province of the jury, and that witnesses generally are not allowed to testify whether another witness is telling the truth. . . . Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter. Because the admissibility of forensic interviews and the testimony based thereon at trial has been the subject of several recent appeals, we believe it would be helpful to set forth, by way of example, the kinds of statements that a forensic interviewer should avoid at trial:

- that the child was told to be truthful;
- a direct opinion as to a child's veracity or tendency to tell the truth;
- any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse;
- any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or
- an opinion that the child's behavior indicated the child was telling the truth.

State v. Kromah, 401 S.C. 340, 358-60, 737 S.E.2d 490 (S.C. 2013)(internal citations and quotations omitted). Applicant specifically points to two witnesses whose testimony

Applicant claims was impermissible under Kromah, and Applicant further alleges that trial counsel was ineffective for failing to object to such testimony and/or seek its exclusion from trial. The substance of this testimony and this Court's analysis of Applicant's claims will be presented separately.

Testimony of Melissa Blanchard

Applicant cites the following exchange during Blanchard's testimony:

Q: Okay. Did you have -- did you have the opportunity to speak with the victim in this case?

A: I did.

...

Q: Okay. Did she ultimately reveal the sexual assault occurred?

A: She did.

...

Q: Did you review the report from [the] sexual assault kit?

A: I did.

Q: Did she make a similar report to the nurse doing that sexual assault kit?

A: She did.

Q: Okay. Did you set up any other interviews with the victim in this case?

A: I did.

Q: Okay. What other interviews did you set up with her?

A: I set up a forensic interview at Dorchester Children's Advocacy Center in Summerville.

Q: Okay. And did you actually -- you didn't conduct that interview, did you?

A: I did not.

Q: Okay. Did you view that interview?

A: Yes, sir, I watched it.

Q: Okay. Did she indicate the same actions occurred?

A: Correct.

Q: Okay. Once you had all that information together, what did you do next?

A: Given the report from MUSC that I received and the consistent disclosures from the juvenile, I prepared an affidavit and presented it to the magistrate for a warrant.

(Tr. 134-36). When asked about this exchange during Applicant's PCR proceeding, trial counsel indicated that he did not believe that this testimony constituted vouching or bolstering testimony, and therefore he saw no permissible basis for objecting or attempting to exclude this testimony. This Court agrees. Although Blanchard clearly indicated that the various statements the victim gave led directly to her decision to charge Applicant with criminal sexual conduct, Blanchard did not express her personal opinion about the veracity of the victim's statements, which is the primary concern expressed in Kromah and similar cases. Because this Court finds that this evidence was properly admissible, the Court further finds that there was no appropriate basis for trial counsel to object to this testimony. Thus there is no basis for this Court to conclude that trial counsel's choice to *not object* to this testimony was unreasonable under Strickland. Counsel cannot be expected to make frivolous or groundless objections to admissible testimony, nor would making such objections give rise to a reasonable probability that the evidence would be excluded, much less change the outcome of the trial. Consequently, counsel cannot be deemed ineffective under the Strickland framework for choosing not to object in this manner, and Applicant's claim must be denied for this reason.

Testimony of Katherine Fabrizio

Applicant argues that the testimony of Katherine Fabrizio impermissibly bolstered the victim's credibility, and that trial counsel was ineffective under Strickland for failing to object to her testimony or exclude it from trial. Applicant's claim fails for the simple reason that trial counsel *did* seek exclusion of this evidence at trial, but his objection was overruled by the trial court. During Applicant's PCR hearing, Applicant's counsel asked trial counsel about the need for a contemporaneous objection to Fabrizio's testimony, and trial counsel did not recall any strategic reason for not renewing his objection during Fabrizio's actual testimony. However, this Court finds that such an objection was not necessary under the circumstances in order to preserve counsel's objection for appellate review.

Typically, when a party moves *in limine* to exclude evidence or testimony, the moving party must also make a contemporaneous objection to the evidence when it is actually presented in order to preserve the issue for appellate review. State v. Moses, 390 S.C. 502, 511 (Ct. App. 2010). This is because rulings on motions *in limine* are provisional rulings, and are typically not final. Kromah, 401 S.C. at 353 ("Generally, a motion in limine is not a final determination; a contemporaneous objection must be made when the evidence is introduced."). However, our courts have identified an important exception to this general rule, which occurs when the motion *in limine* is made immediately prior to the introduction of the evidence in question. State v. Forrester, 541 S.E.2d 837, 343 S.C. 637 (S.C. 2001) ("where a judge makes a ruling on the admission of evidence on the record immediately prior to the introduction of the evidence in question, the aggrieved party does not need to renew the objection. The issue is preserved."). Such is the case here. Trial counsel requested exclusion of Fabrizio's testimony immediately prior to its presentation at trial. (Tr. 198). In fact, immediately before her actual trial testimony, Fabrizio's proposed testimony was proffered outside the presence of the jury and both parties argued its admissibility to the court. (Tr. 181-205). Trial counsel even argued that the evidence should be excluded *because* it constitutes bolstering, and it "[adds] to the credibility of the child."

(Tr. 198). In summary, trial counsel specifically argued that Fabrizio's testimony should be excluded on the grounds alleged by Applicant herein. Although this Court does not express its opinion on the admissibility of this evidence, there is no basis for finding that trial counsel was ineffective under Strickland for his handling of this evidence. Counsel moved to exclude the evidence immediately prior to its presentation to the jury, and the trial court made a ruling on the admissibility of the evidence. Further objections from counsel were not necessary in order to preserve this issue for appellate review, and thus it cannot be said that trial counsel was deficient in any regard. Therefore Applicant cannot carry his burden under Strickland, and this ground for relief must be denied.

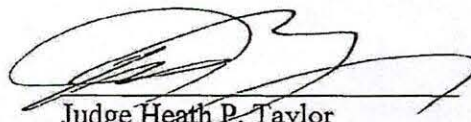
CONCLUSION

Based on the foregoing, this Court finds that Applicant has failed to establish sufficient constitutional violations regarding trial counsel's handling of the alleged "vouching/bolstering" testimony, and consequently the Applicant is not entitled to Post-Conviction Relief on that ground. The application must therefore be DENIED as to that ground. Regarding Applicant's belated appeal pursuant to White, the Court hereby finds that Applicant was deprived of his right to a direct appeal, and that he never voluntarily relinquished that right. Consequently, Applicant is entitled to a belated direct appeal, and therefore the application must be GRANTED with respect to that ground.

IT IS THEREFORE ORDERED that the Application for Post-Conviction Relief must be GRANTED as to Ground 1 (belated appeal pursuant to White), and DENIED as to the remaining ground for relief.

IT IS SO ORDERED!

Date: February 21, 2023


Judge Heath P. Taylor
Presiding Judge
First Judicial Circuit